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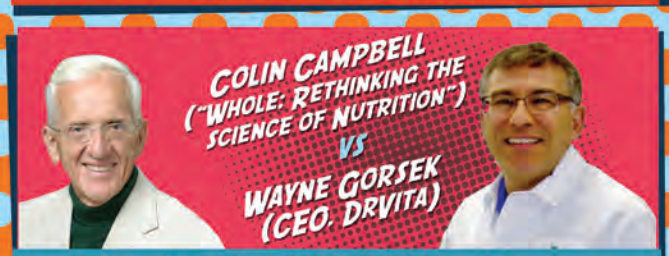

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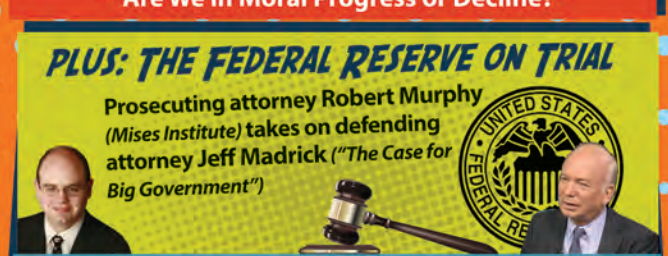

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Free Minds and Free Markets

May 2015
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Culture & Reviews

Briefly Noted

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The Net Neutrality Riddle

Why are Edward Snowden's supporters so eager to give government more control over the Internet?

THERE'S A TELLING moment in Laura Poitras' Oscar-winning documentary *Citizenfour*. As Edward Snowden, the National Security Agency whistleblower at the center of the film, packs his bags in a Hong Kong hotel for a desperately uncertain future, the camera lingers for a beat on the book near Snowden's ever-present laptop: Cory Doctorow's novel *Homeland*.

As sci-fi nerds can tell you, *Homeland* is no random novel. The book tells the tale of a wary, civil libertarian college-dropout hacker who has in his possession a four-gigabyte file of nefarious government documents, which he seeks to release even as powerful interests stalk his every move. Sound familiar?

The novelist is also no ordinary scribbler. In addition to producing Prometheus Award–winning novels, Cory Doctorow is an influential copyright reform activist and co-editor of the hugely popular tech-culture group weblog *BoingBoing*. As the media thinker Lawrence Lessig pointed out last year, *Citizenfour*'s core audience of geeks recognized *Homeland* as one of several key "internal references," along with the stickers on Snowden's laptop from the Electronic Frontier Foundation and the online privacy tool Tor. "If you are a public official on the wrong side of this fight," Lessig proclaimed, "that core will stand against you."

But that's not quite true. Or at least, it's not the whole story. As I watched *Citizenfour* for the first time the day after the Academy Awards, the Doctorow reference felt bittersweet. That's because the Federal Communications Commission (FCC) was on the cusp of a long-telegraphed 3–2 vote along party lines to place unprecedented regulatory controls onto the Internet. And one of the key lobbies supporting the FCC's intrusion was led in part by none other than Cory Doctorow himself.

Under the vague banner of "net neutrality"—once technical jargon, now a surprisingly effective political slogan—federal regulators unceremoniously shoved the Internet out of the less-regulated "information service" category and reclassified it as a "telecommunications service," thus subjecting it to oversight under the far more hands-on Title II of the Telecommunications Act. The aim, in the words of supporters such as Doctorow, is to forcibly prevent Internet Service Providers (ISPs) such as Comcast, Time Warner Cable, and Verizon from "extract[ing] ransom from everyone you want to talk to on the internet." That such ransom notes have stubbornly failed to materialize has been deemed immaterial.

As dissenting FCC commissioner Ajit Pai puts it bracingly in a must-read interview with **reason**'s Nick Gillespie on page 44, net neutrality is "a solution that won't work to a problem that simply doesn't exist." Instances where large ISPs have violated the principles of the "open Internet" are vanishingly few, and all involve disputes between corporations that were resolvable under existing laws, not circumstances where Comcast is brutally repressing a lone defenseless blogger.

Why did the same Netizens (as they are no longer called) who rally against government in the name of privacy turn around and rally in favor of it when it comes to data prioritization arrangements? Partly because of a deep-seated and wholly understandable dislike of ISP giants. In a world where very few brands matter anymore on a visceral level (with Apple being one of the few exceptions), companies like Time Warner and Comcast inspire deep hatred. My family probably called Time Warner customer service at least four dozen times in our two years as unhappy clients; the moment we were

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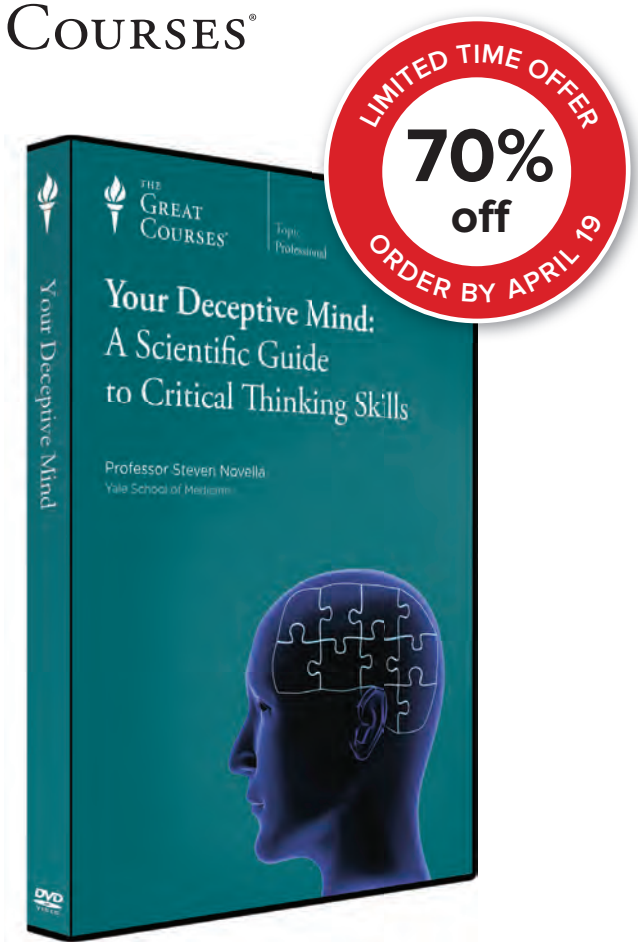

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able to escape to Verizon felt like V.J. Day. Champagne was uncorked.

It's not hard to upgrade such well-deserved customer hostility from assertions of incompetence to accusations of organized thuggery. As Doctorow charged in *The Guardian* last year, "The ISPs aren't seeking to get paid, they're seeking to get paid twice: once by you, and a second time because you are now their hostage and the companies you want to do business with have to get through them to get to you."

But one problem with today's (and yesterday's) complaints about ISP giants is that they discount the more competitive developments coming tomorrow—if government gets the hell out of the way. As Geoffrey A. Manne and R. Ben Sperry explain in "How to Break the Internet" (page 20), "imposing public-utility regulation under Title II means the qualities you don't like about your cable company will become more widespread. It will mean less competition, reduced investment (especially in underserved communities), slower broadband for everyone, and new regulatory hurdles for startups." If you don't like what the comparatively free market offered, just wait until broadband providers start feeling more like your local electric company.

Manne and Sperry argue that allowing the Internet industry to set prices on data prioritization (or not!) is an excellent way to maximize the potential for experimentation and business development. We'll all be streaming live video to and from all our devices soon enough; somebody needs to build out the infrastructure to make that possible. And an underappreciated benefit to legalizing prices is that it allows total unknowns to buy their way onto the same radar screens as the major players. Take that ability away and incumbents will become even more entrenched.

Even if you take as given that tolerating data-delivery prices equals allowing for "discrimination," it's still a terrible idea to task the government with preventing it. Adam Thierer, the thinker behind the concept of "permissionless innovation," explains on page 30 ("Uncle Sam Wants Your Fitbit") that the precautionary principle could prove disastrous if applied to America's globally envied Internet culture. "If we spend all our time worrying over worst-case scenarios," Thierer argues, "that means the *best-case* scenarios will never come about either."

Are the days of the freewheeling Internet behind us? Of course not. To see why, look no further than the proclamations 15 years ago from the very people cheering loudest today about net neutrality.

When AOL announced a merger with Time Warner in 2000, the media activist Robert McChesney warned that unless the mega-deal was blocked on antitrust grounds, "the eventual course of the Internet—the central nervous system of our era—will be determined by where the most money can be made, regardless of the social and political implications." Not only was the macro-prediction wildly off-base—the course of the Internet has continued flowing through every which way that humans dream up, regardless of the money implications—but the micro-fear was quickly rendered ridiculous as well. AOL Time Warner no longer exists; its remaining husk sheared off Time Inc. in 2013.

Yet McChesney and his Free Press group continued soldiering on, lobbying on behalf of net neutrality for more than a decade now. Their short-term victory is a triumph of fear over evidence, of anti-corporate animus eclipsing suspicion of the state. I don't expect anything different from pessimistic anti-capitalists, but it's more disappointing coming from libertarian-fluent, future-loving optimists like Cory Doctorow, whose work has been discussed scores of times in the pages of this magazine.

So consider this special issue of reason the beginning of a new conversation. To our net-neutrality-hating friends on the right, we say thank you for correctly identifying "Internet freedom" as a key political and moral issue for our time; America's online innovation has been one of the most salutary developments of the last two decades, one that everyone on every side of every political debate benefits from. Now let's talk about clemency for Edward Snowden.

As for Cory Doctorow and our pals on the techie left, we promise you this: After the FCC's net neutrality push is rolled back by the courts—and it will be—let's talk together about why we think a government powerful enough to read all your emails is one that we shouldn't entrust with protecting the future development of the Internet. We're all in favor of free minds; it's up to us to persuade you that free markets are the quickest way to get there. r

Editor in Chief Matt Welch (matt.welch@reason.com) is 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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Editor in Chief Matt Welch (matt.welch@reason.com)
Managing Editor Katherine Mangu-Ward (kmw@reason.com)
Deputy Managing Editor Stephanie Slade (sslade@reason.com)
Books Editor Jesse Walker (jwalker@reason.com)
Senior Editors
Brian Doherty (bdoherty@reason.com)
Damon Root (droot@reason.com)
Peter Suderman (peter.suderman@reason.com)
Jacob Sullum (jsullum@reason.com)
Science Correspondent Ronald Bailey (rbailey@reason.com)
Art Director Barb Burch (bburch@reason.com)
Graphic Designer Jason Keisling (jason.keisling@reason.com)
Photo Researcher Blair Rainey
Editorial Assistant Mary Toledo (mtoledo@reason.org)
Burton C. Gray Memorial Intern Jim Pagels (jim.pagels@reason.com)

reason.com
Editor in Chief Nick Gillespie (gillespie@reason.com)
Managing Editor J.D. Tuccille (jdtuccille@reason.com)
Managing Editor, Reason TV Meredith Bragg (mbragg@reason.com)
Associate Editors
Ed Krayewski (ekrayewski@reason.com)
Scott Shackford (sshackford@reason.com)
Staff Editors
Elizabeth Nolan Brown (elizabeth.brown@reason.com)
Zenon Evans (zevans@reason.com)
Robby Soave (robby.soave@reason.com)
Producers
Paul Feine, Senior Producer (paul.feine@reason.tv)
Paul Detrick (paul.detrick@reason.tv)
Jim Epstein (jim.epstein@reason.tv)
Alexis Garcia (agarcia@reason.tv)
Todd Krainin (todd.krainin@reason.tv)
Alex Manning (alex.manning@reason.tv)
Tracy Oppenheimer (tracy.oppenheimer@reason.tv)
Joshua Swain (josh.swain@reason.tv)
Zach Weissmueller (zach@reason.tv)
Amanda Winkler (amanda.winkler@reason.tv)

Contributing Editors
Peter Bagge, Greg Beato, Gregory Benford, Veronique de Rugy, James V. DeLong, Charles Paul Freund, Glenn Garvin, Mike Godwin, David R. Henderson, John Hood, Kerry Howley, Carolyn Lochhead, Loren E. Lomasky, Mike Lynch, John McClaughry, Deirdre N. McCloskey, Michael McMenamin, Michael Valdez Moses, Michael C. Moynihan, Charles Oliver, Walter Olson, John J. Pitney Jr., Julian Sanchez, Jeff A. Taylor, David Weigel, Cathy Young, Michael Young
Legal Adviser Don Erik Franzen
Headquarters
5737 Mesmer Avenue, Los Angeles, CA 90230-6316
Tel: 310-391-2245 Fax: 310-391-4395
Washington Offices
1747 Connecticut Avenue, NW, Washington, DC 20009
Tel: 202-986-0916 Fax: 202-315-3623
Advertising Sales
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Ronald E. Burr, 703-893-3632
Joseph P. Whistler, 540-349-4042
(advertise@reason.com)
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Contributors

Declan McCullagh

Geoffrey Manne

Adam Thierer

On page 24, Declan McCullagh writes about efforts to force companies to build "back doors" into new technologies to make government snooping easier ("The Feds Want a Backdoor Into Your Computer. Again"). McCullagh, 43, says he's "been online since 1988," when he signed on via a local university's Sun-3 workstation. "What surprises me is how much we view today's Internet as inevitable," he explains. "It wasn't. We could have ended up with an archipelago of centralized services—CompuServe, Prodigy, The Source, AOL—with no room for startups. Preserving that decentralization is more important than enacting 324 pages of 'net neutrality' regulations." Today, McCullagh is the founder of Recent.io, a company that aims to index the news and make personalized recommendations about what individual users will want to see.

In "How to Break the Internet" (page 20), Geoffrey Manne, along with co-author R. Ben Sperry, demystifies the net neutrality debate. Manne is the executive director of the International Center for Law and Economics, which he started after Microsoft asked him to run a law and economics outreach program and he realized "other companies would have an interest in supporting quality law and economics research" as well. Manne, 43, resides in the Pacific Northwest—in part, he says, because "I relish debating with everyone around. I think I'm one of six libertarians living in Portland."

Adam Thierer is a senior research fellow at the Mercatus Center at George Mason University. In "Uncle Sam Wants Your Fitbit" (page 30), he explores the government's attempts to regulate the so-called Internet of Things. Thierer, 36, has authored or edited eight books, the latest of which is *Permissionless Innovation: The Continuing Case for Comprehensive Technological Freedom* (Mercatus). The term *permissionless innovation*, he says, "refers to the notion that experimentation with new technologies and business models should generally be permitted by default unless a compelling case can be made that a new invention or business model will bring serious harm to individuals."

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*"**The soul that sinneth, it shall die.** The son shall not bear the iniquity of the father, neither shall the father bear the iniquity of the son. But if the wicked will turn from all his sins to do what is lawful and right, **he shall surely live, he shall not die**."*

Again, quoting the creator to the prophet, *"Have I any pleasure that the wicked should die and not that he should turn from his wickedness and live? For I have no pleasure in the death of him that dieth: wherefore turn yourselves, and live ye."*

We think those words from the Book of Ezekiel affirm the Law of Right Action identified by Richard Wetherill decades ago. It is a natural law, calling for people to turn away from mankind's laws. Instead, to obey the creator's law. It requires behavior that is best described today as ***rational, honest, and morally right.***

These words from the creator spoken to the prophet Ezekiel are as relevant now as they were thousands of years ago:

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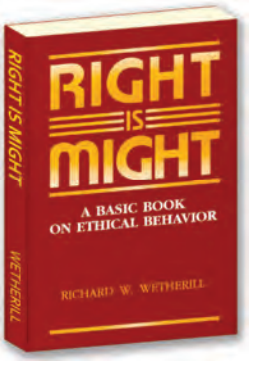

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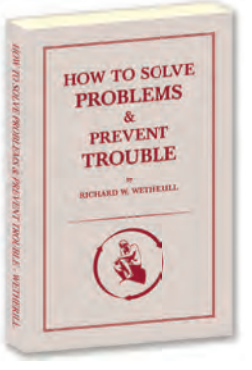

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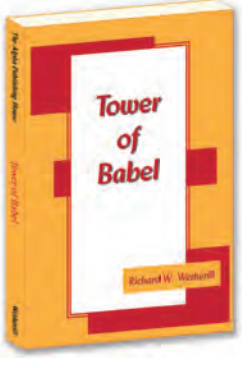


This public-service message is from a self-financed, nonprofit group of former associates of Mr. Wetherill.

Plastic panic; religious freedom win; the loss of trust in government and politics; foie gras unbanned; student loan déjà vu; the year the future started

Overeager CPS

Fiat Parenting

Lenore Skenazy

For the crime of allowing their 6- and 10-year-old children to play unsupervised at a neighborhood park, two Maryland parents have been visited by a series of cops and representatives of Child Protective Services (CPS). Officials say the family broke the law, but the statute in question says nothing about whether kids are allowed to visit the local playground on their own.

It reads: "A person who is charged with the care of a child under the age of 8 years may not allow the child to be locked or confined in a dwelling, building, enclosure, or motor vehicle while the person charged is absent...unless the person charged provides a reliable person at least 13 years old to remain with the child to protect the child." As Danielle Meitiv and her husband Alexander correctly informed the authorities, parks and playgrounds are not enclosed spaces, and their kids were neither locked nor confined anywhere.

That does not seem to matter to CPS, which in December threatened to take the children away on the spot unless Alexander signed a "temporary plan" promising not to leave his kids unsupervised until someone from its office could contact him. Then, in January, a CPS worker "went to my children's school and interviewed them without my knowledge or consent," Danielle says. "We are frightened and confused....As difficult as it is for us to believe, all of these events occurred as the result of allowing our children to walk along public streets in the middle of the afternoon without our supervision."

Pot reclassification

Misfiled Marijuana

Jacob Sullum

In a policy statement published in January, the American Academy of Pediatrics (AAP) reiterated its opposition to marijuana legalization. But it also endorsed the decriminalization of possession and called for the drug's reclassification under the Controlled Substances Act.

Marijuana currently is classified as a Schedule I substance, which cannot be legally used for any purpose. The AAP says that classification makes medical research difficult: "The AAP strongly supports research and development of pharmaceutical cannabinoids and supports a review of policies promoting research on the medical use of these compounds. The AAP recommends changing marijuana from a Drug Enforcement Administration schedule I to a schedule II drug to facilitate this research."

That change, which could be carried out by Congress or by the executive branch, would move marijuana out of a category supposedly reserved for drugs with a "high potential for

Children playing (DAI/Thinkstock)
Chinese singers Tony Chan and Cannon Hu, 2002 (Reuters/China Photo)

15 years ago in reason

"Requiring Web publishers to make their sites 'accessible' to blind, deaf, and other handicapped users under the Americans with Disabilities Act was a nearly perfect way to stifle creative freedom and slam the brakes on the Internet's expansion."

—Walter Olson, "Access Excess"

"The Chinese Ministry of Culture, which will review all music posted on the site, envisions a place where all of China's 1.2 billion potential Madonnas and Ricky Martins can tunefully sing the praises of the state to a worldwide audience. As Western record labels are finding out, however, technologies that ease the transmission of information have a way of escaping centralized control. Chinese authorities may think they're creating a music portal that will be easy to supervise and turn to their own purposes, but they may be singing a different tune once the site goes live."

—Brian Doherty, "The East Is Wired"

—May 2000

abuse" that have "no currently accepted medical use" and are so dangerous that they cannot be used safely even under a doctor's supervision. Other Schedule I drugs include heroin and LSD. Schedule II, the new category suggested by the AAP, includes prescription drugs such as morphine, oxycodone, cocaine, and methamphetamine, which are viewed as having high abuse potential but legitimate medical uses.

The AAP joins the American College of Physicians in urging a review of marijuana's legal status.

British snooping

Media Spies

Scott Shackford

CITIZENS STILL may not know exactly how much information government spy agencies actually gather about them, but they are getting a better sense of what governments are capable of doing, thanks to the files leaked by whistleblower Edward Snowden.

In January, *The Guardian* released new information from Snowden's documents that provides more detail about the bulk surveillance by Britain's Government Communications Headquarters (GCHQ), the country's top spy agency. For 10 minutes in 2008, the agency captured emails to and from journalists at top media outlets in both the United States and the United Kingdom. In all, the agency harvested more than 70,000 emails as part of a test exercise. While a lot of the emails were spam or press releases, the agency also snatched messages between journalists and editors (and potentially sources). The outlets affected included *The Guardian*, *The New York Times*, the BBC, Reuters, and *The Washington Post*, among others.

It's not clear whether journalists were the actual targets of the email harvesting or just included by happenstance. It is also not known whether these emails were read and whether such harvesting occurs regularly as a matter of policy. GCHQ declined to comment on the matter other than to claim that its surveillance policies are legal.

Unemployment insurance

Boosted Jobs

Brian Doherty

DID THE decision to cut federal unemployment benefits at the end of 2013 contribute to the 2014 employment boom? Economists Marcus Hagedorn, Kurt Mitman, and Iourii Manovskii think the evidence says yes.

In a study published in January by the National Bureau of Economic Research, the economists found that "1.8 million additional jobs were created in 2014 due to the benefit cut. Almost 1 million of these jobs were filled by workers from out of the labor force who would not have participated in the labor market had benefit extensions been reauthorized."

The study divides states into two groups, based on the duration of their employment benefits, and then compares how the jobless fared. The authors also compare border counties in which the respective states had different unemployment benefit extension policies, finding that "employment growth was much higher in 2014 in the border counties that experienced a larger decline in benefit durations." They conclude that 61 percent of 2014's employment growth was likely caused by the benefit cut.

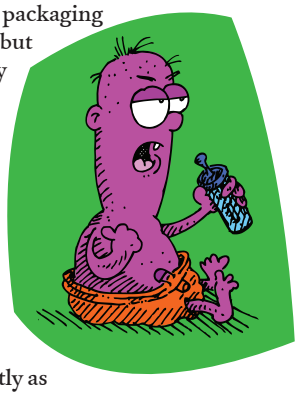
Other economists have objected. The most prominent critique of the study suggests that the larger employment jumps in states that most aggressively cut back benefit extensions may have been caused by states bouncing back naturally from a larger initial fall.

Re-evaluating BPA

Plastic Panic

Elizabeth Nolan Brown

FOR THE better part of the past decade, activists have been warning about the dangers of bisphenol A (BPA), a chemical compound common in plastic products. The U.S. Food and Drug Administration banned its use in baby bottles and infant-formula packaging in 2012, but for many this wasn't enough. France banned BPA from all food packaging, and as recently as June 2014 U.S. lawmakers were pushing a similar ban.



Baby (Daryl Boman/Thinkstock)

But everyday exposure to BPA may not be as dangerous as previously suspected. In January 2015, the European Food Safety Authority (EFSA) released the results of a comprehensive re-evaluation of the stuff, concluding that it "poses no health risk to consumers of any age group (including unborn children, infants and adolescents) at current exposure levels."

This isn't to say that BPA is safe at *all* exposure levels—the EFSA stands by a recent reduction of the safe limit from 50 micrograms to 4 micrograms per kilogram of body weight daily. But the average "exposure from the diet or from a combination of sources (diet, dust, cosmetics and thermal paper)" turns out to be "considerably under the [new] safe level."

The last time the EFSA assessed BPA was in 2006, when there was much less research available. Trine Husøy, chair of the EFSA's working group on the subject, said in a press release that our dietary exposure to BPA "is four to fifteen times lower than previously estimated."

Religious freedom win

Beard Ban Cut

Damon Root

IN JANUARY, the U.S. Supreme Court struck a unanimous blow for religious liberty when it overturned an Arkansas Depart- »

Quotes

"Get informed, not by reading *The Huffington Post*."

—President Barack Obama, speaking at a retreat for House Democrats on the same day he published an op-ed at *The Huffington Post* touting his budget proposal, *The Washington Post*, January 29

"I'm not against a lot of people being involved, but I am against a process that can turn into a circus, which is what I'm trying to prevent."

—Republican National Committee Chairman Reince Priebus on NewsMaxTV, talking about the number of Republicans who will run in 2016, February 3

"Get out of here, you low-life scum."

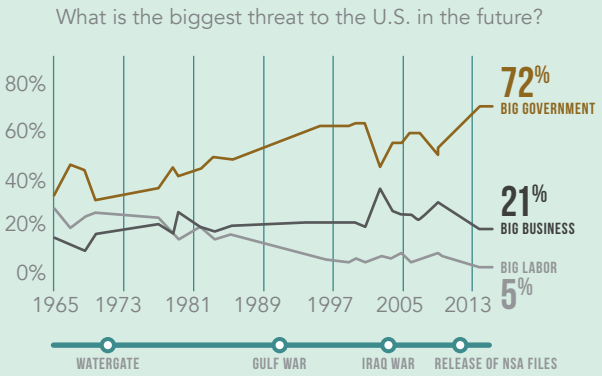
—Sen. John McCain (R–Ariz.), ousting Code Pink demonstrators who called Henry Kissinger a "war criminal" at a Senate Armed Services Committee hearing, January 21

"I can't work the kind of hours I did when I was 24."

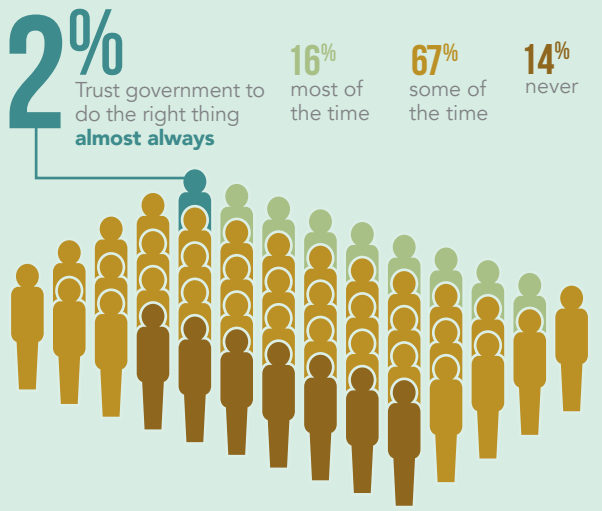
—28-year-old *Politico* labor reporter Mike Elk, who is working to unionize his employer, *The Washington Post*, January 27

THE LOSS OF TRUST IN GOVERNMENT & POLITICS

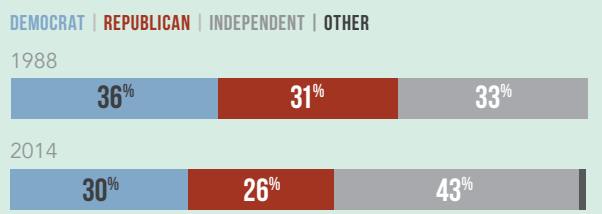
A GROWING MAJORITY VIEWS GOVERNMENT AS THE BIGGEST THREAT.[1]



AND ONLY A TINY PERCENTAGE OF AMERICANS TRUST GOVERNMENT TO ALWAYS DO THE RIGHT THING.[2]



AMERICANS ALSO HAVE LESS TRUST IN THE TWO MAJOR POLITICAL PARTIES. A RECORD 43% NOW IDENTIFY AS INDEPENDENTS.[3]



SOURCES: (1) Gallup Poll "Record High in U.S. Say Big Government Greatest Threat" December 18, 2013 (2) Pew Research Poll "Low levels of trust in government and advertisers" November 11, 2014 (3) Gallup Poll "In U.S., New Record 43% Are Political Independents" January 7, 2015

(Jason Keisling)

› ment of Corrections policy that prevented a Muslim inmate from growing a half-inch beard in accordance with his religious views. Per Justice Samuel Alito's majority opinion in *Holt v. Hobbs*, the prison's no-beard rule imposed a substantial burden on the prisoner's religious freedom. To pass muster, the policy needed to offer "the least restrictive means" of advancing the prison's legitimate interests in safety and order.

"An item of contraband would have to be very small indeed to be concealed by a 1/2-inch beard," Alito observed. "Since the Department does not demand that inmates have shaved heads or short crew cuts, it is hard to see why an inmate would seek to hide contraband in a 1/2-inch beard rather than in the longer hair on his head."

Alito made a similar point about contraband during the October 2014 oral argument in the case, during which he asked the prison's lawyer, "Why can't the prison just give the inmate a comb...and say comb your beard, and if there's anything in there, if there's a SIM card in there...a tiny revolver, it'll fall out." The lawyer's response to that question effectively doomed the prison's case. "I suppose that's a possible alternative," he conceded.

Foie gras unbanned

Back on the Menu

Scott Shackford

CALIFORNIANS with a fondness for the fatty liver of a goose or duck can return to their favorite fancy restaurants. The state's two-year ban on serving foie gras has been struck down by a federal judge.

The law was actually passed way back in 2004, after being pushed by animal rights activists unhappy with the manner by which foie gras is produced. (The bird is force-fed corn through a tube.) Implementation, however, was delayed until 2012. After that, farmers were forbidden in California from creating foie gras in this fashion and restaurants were forbidden from selling it.

To say the law was "implemented" may be an overstatement. Public officials openly stated little interest in actually enforcing the ban, and restaurants were able to work around it by giving away foie gras as samples or agreeing to serve foie gras that customers brought in with them. Animal rights activists responded by attempting to sue restaurants directly.

Their efforts were for naught. U.S. District Judge Stephen V. Wilson blocked California from enforcing the law in January, ruling that federal poultry regulations supersede state laws. Restaurants across the Golden State immediately returned the pricey dish to their menus, if indeed they hadn't quietly been still serving it all along.

Justice reform

Faux Fixes

Ed Krayewski

TWO AND a half years after raiding their bank account and seizing $446,000, the federal government agreed to return that money to Bi-County Distributors Inc., a small candy and snack distributor in Long Island owned by two brothers, Richard and Mitch Hirsch. The settlement was signed off on by Loretta Lynch, the U.S. attorney for eastern New York, shortly after her nomination to the post of attorney general by President Obama and three months after the public interest law firm the Institute for Justice took on the case.

The feds seized the company's money under laws that prohibit purposefully breaking down cash deposits to avoid reporting requirements that kick in at $10,000. As small business owners, the Hirsch brothers made frequent deposits to the company's account.

At her confirmation hearing, Lynch insisted "civil and criminal forfeiture are very important tools" and that forfeitures are "done pursuant to supervision

by a court, it is done pursuant to court order, and I believe the protections are there."

Before leaving office, Attorney General Eric Holder instituted a minor change of federal forfeiture policies, limiting "adoption," or the federal government taking over prosecution after local authorities seize property, to cases that involve "public safety concerns" or child pornography. But the change did not affect the Department of Justice's civil and criminal forfeiture practices, nor did it end the Equitable Sharing Program, which lets local authorities seize property under laxer federal guidelines.

Meanwhile, Sen. Rand Paul (R–Ky.) and Rep. Tim Walberg (R–Mich.) have reintroduced a law that might actually make a difference: the Fifth Amendment Integrity Restoration Act, which would impose much tougher limits on federal forfeiture policies.

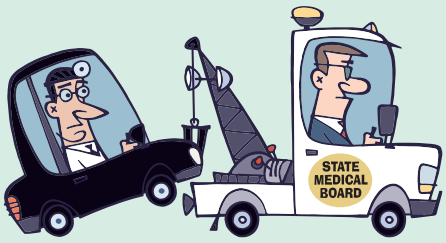
Leaker convicted

Jury Rules

Stephanie Slade

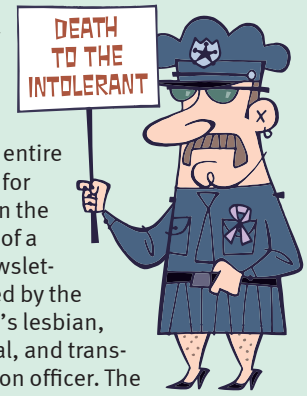
Former CIA officer Jeffrey Sterling has been convicted of leaking secret details of "Operation Merlin," a mission by the agency to frustrate Iran's nuclear ambitions. The U.S. District Court verdict came in January, nearly a decade after *New York Times* journalist James Risen reported on the operation, which he saw as botched, in his 2006 book *State of War: The Secret History of the CIA and the Bush Administration*.

For years, the government tried to force Risen to disclose the source of his information. In 2013 an appeals court ruled he would have to testify in the trial against Sterling. But Risen made it clear that he would not talk, even if it meant going to jail for contempt of court. Attorney General Eric Holder ultimately said he would not punish reporters for doing their jobs, and so prosecutors chose not to call Risen to the stand. There was evidence the two men had communicated extensively but no proof that »



Mississippi's medical licensing board is trying to revoke Dr. Carroll Landrum's license. They say he's incompetent, though they have provided no examples to back up that claim. Landrum thinks they're going after him because he doesn't have an office. He practices out of his car, going to meet patients at their homes or other places convenient for them.

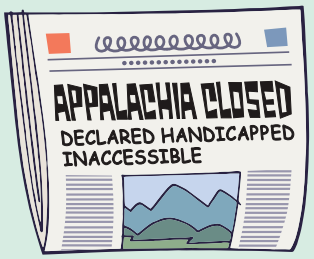
After a brush fire destroyed a bridge to his Kinglake, Australia, property in 2009, Anthony McMahon got tired of waiting for the government to rebuild it. With financial help from a couple of charities, he constructed the bridge himself. Now the government is demanding he pay a $170 annual license fee to use it.



Cincinnati Police Chief Jeffrey Blackwell has apologized to the entire police force for comments in the latest issue of a monthly newsletter published by the department's lesbian, gay, bisexual, and transgender liaison officer. The newsletter contained an excerpt from *The Huffington Post* asserting that anyone who tithes to a religion that "denies transgender identities" is "bankrolling the slaughter of innocents."

The Ecuadoran government is using U.S. law to silence its critics. The regime is filing complaints under the Digital Millennium Copyright Act, claiming that posts critical of the government violate copyrights. Websites hosting the material must automatically take it down. Those who posted the material are generally able to get it reinstated, but that takes time and effort.

Churchill Academy in North Somerset, England, placed 13-year-old Stan Lock in isolation from other students after he shaved his head for charity. Officials said his shaved head does not meet the school's dress and grooming code.

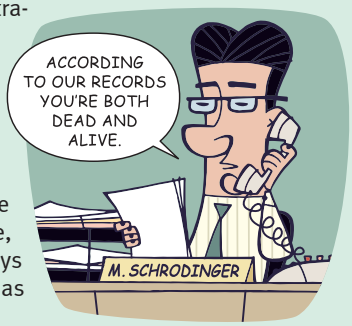


Officials in Charlotte–Mecklenburg County, North Carolina, received a complaint that an entrance to Romare Bearden Park wasn't handicapped accessible. So they used benches to block it.

When Steven Patterson found two baby eagles that had been blown out of a tree, he took them to a wildlife rehabilitation center. One has recovered and been released into the wild; the other is still healing. The county prosecutor responded by charging Patterson with the crime of "interfering with wildlife."

Three students at the University of California, Davis, placed a community refrigerator on their lawn and invited neighbors to use it. At the end of the first month, people were sharing not only food but books as well. Then the Yolo County health department stepped in, deemed the fridge an unregulated food facility, and shut it down.

Siegfried Meinstein has been dead since April, and he's not happy about it. The Internal Revenue Service declared Meinstein deceased last year when he tried to file his taxes, and despite his best efforts, the agency refuses to acknowledge he's still alive. The IRS blames the problem on the Social Security Administration, which mistakenly declares about 1,000 people dead every month. But that agency refuses to take the blame for this one, saying it has always shown Meinstein as alive.



Charles Oliver

(Illustrations: TerryColon.com)

Student Loan Déjà Vu

Katherine Mangu-Ward

Exactly 20 years ago, in **reason**'s May 1995 issue, John Hood described then–President Bill Clinton's plans to revamp student aid, which included a proposal that the federal government take over the role of lender: "The selling point of Clinton's direct-lending scheme, passed as a pilot program last year, is that it would eliminate the private middlemen and have the Education Department issue loans directly to students. The administration claims this will save the government billions of dollars a year, but we won't be able to gauge that for another six to eight years, when the loans start to come due. Without waiting for the results of this experiment, Clinton wants to increase dramatically the number of loans directly issued by Washington."

Clinton's dreams of direct lending were thwarted by the infamous Republican-dominated 104th Congress, which passed legislation limiting the measure in 1994. But President Barack Obama finished what Clinton started with the Health Care and Education Reconciliation Act of 2010, and as of that year all new loan originations come from Washington.

While it's true that the measure has saved some administrative costs, the move has done nothing to address the exploding price of college education. In fact, it is likely to make an already terrifying trend worse as colleges inflate their rates to milk the feds for all they're worth.

Now, with over $1 trillion in overall education debt hanging over the heads of American graduates, Obama is looking to revive another element of Clinton's dream. Obama's 2016 budget contains a debt forgiveness measure. But buried in the February proposal is this bombshell: The student loan program will rack up an impressive $21.8 billion shortfall in a single year. *Politico*'s Michael Grunwald called it "a big quasi-bailout, increasing the deficit nearly 5 percent." Obama also debuted another expensive proposal in February, a plan to make community college free for many Americans.

In his 1995 article, Hood made a prediction: "Clinton's policies, if enacted, will actually make it easier for colleges and universities to charge students more and more for tuition and other costs." He was right: The College Board puts annual tuition, fee, and room and board for the 1989–90 school year at $24,622 for private four-year colleges and $9,417 for public schools (in 2014 dollars). Those figures have nearly doubled since then, to an average cost of $42,419 for private and $18,943 for public schools.

› classified information was ever shared.

It didn't matter. The jury convicted Sterling—who was fired from the CIA in 2002 after filing an unsuccessful discrimination complaint against the agency—of all nine counts under the Espionage Act.

Cops fight back

App Challenged

Jim Pagels

Waze is a popular real-time traffic-reporting application from Google that relies on drivers to self-report traffic, accidents, red light cameras, and police. It will soon lose that last feature if some cops get their way.

Police officials from around the country want Waze's cop-tracking feature shut off, saying it endangers the lives of officers. In December, Los Angeles Police Chief Charlie Beck wrote a letter to Google saying the app had been used in the slaying of two NYPD officers, though that claim has not been corroborated. His feelings were echoed by Mike Brown, the sheriff of Bedford County, Virginia, who called Waze a "police stalker" app and threatened litigation.

These arguments may be difficult to sustain in court. Judges have frequently protected the rights of citizens to hold signs ahead of speed traps or blink their headlights alerting motorists to upcoming police. Additionally, police scanner traffic is publicly available, and a cop can be summoned to your door with a simple call to 911.

Waze has defended the feature by claiming motorists drive more carefully when they know a police officer may be in the area. Some police departments fully support the app. The cops in Mountain View, California, where Google is headquartered, even created their own Waze account specifically to inform the public of officer locations.

Economic freedom

Free and Fair

Ronald Bailey

Increases in overall freedom correlate with larger total market income growth—that is, growth in earned income, as opposed to government transfers, and excluding capital gains. So concluded a study that compared levels of "freedom" in the various American states, as measured by the Economic Freedom of North America index from the Fraser Institute.

The study, conducted by the Mississippi State University economist Travis Wiseman, was published by the National Bureau of Economic Research in November 2014. All things being equal, it concluded, a one-point increase on the seven-point freedom index is associated with an $8,156 increase in real average market incomes.

Wiseman also reported that higher freedom index scores are linked to larger average market income growth for earners in the bottom 90 percent relative to those in the top 10 percent. Wiseman speculates that this might be because more freedom from "takings and discriminatory taxes" signifies less "crony capitalism"—that is, less shifting of money to benefit those with the best political connec-

Waze (waze.com)

tions. That in turn decreases the incomes of the richest tenth of Americans.

School privacy

Password Powers

Robby Soave

Students in the state of Illinois better watch what they say about each other on Facebook, Snapchat, and Instagram. The legislature there has granted school administrators the power to demand kids' social media passwords to make sure they aren't bullying each other—even outside of school hours.

Previously, authority figures had the right to log in to students' social media accounts if they were caught using their devices at school. But legislators didn't think that policy went far enough in discouraging bad behavior. Illinois' new cyberbullying law, which took effect this year, gives school officials the ability to demand passwords if they merely suspect students of bullying each other, regardless of when or where the alleged bothering took place.

The law thus lets school personnel encroach on parental territory and student privacy. "It's one thing for me to take my child's social media account and open it up, or for the teacher to look or even a child to pull up their social media account, but to have to hand over your password and personal information is not acceptable to me," parent Sara Bozarth told KTVI.

Teens who finish high school still aren't safe from would-be snoopers. The new law applies to public university students as well.

Phone (Lemonsky/Thinkstock)

The Year the Future Started

Interview by Nick Gillespie

W. Joseph Campbell

In his compulsively readable new book, 1995, American University communications professor W. Joseph Campbell takes us back to what he calls "the year the future began." The Oklahoma City Bombing took place, ushering in the terror fears and security measures that would expand even further after 9/11. Coverage of the trial of O.J. Simpson for the murder of his ex-wife and Ronald Goldman birthed the 24-hour news cycle. The Dayton Peace Accords, which ended the Bosnian War, inflated a "hubris bubble" in U.S. foreign policy that would pop only after the long, unsuccessful interventions in Afghanistan and Iraq. And Bill Clinton met Monica Lewinsky, an encounter whose endgame would cement partisan loyalties in the federal government and deeply undercut presidential stature.

Perhaps most important, says Campbell, who spoke with Reason TV's Nick Gillespie in February, 1995 was "the year of the Internet." Early iterations of Amazon, eBay, Yahoo!, and Craigslist first appeared; Netscape held a record-breaking IPO; and the World Wide Web emerged as a mass medium.

For video of this interview, go to **reason.com**.

Q: Netscape doesn't even exist anymore! How big was the Netscape IPO in legitimating the Internet as something real and vital?

A: Netscape made a fantastic browser, but the company had only been in existence for less than two years when it had its IPO. It went through the roof, and the shares were incredibly valuable. Netscape showed that people could make money on the Internet. But more importantly, it illuminated the Web for a lot of people who weren't familiar with it.

Q: You suggest that Marc Andreessen, one of the co-founders of Netscape, was the first great Web star.

A: He really was. And he was only in his 20s, just out of college, when he co-founded Netscape. These guys were setting their own rules, and the Internet allowed people to do that, because nobody knew what this was going to look like.

Q: As the Web became popular, people freaked out and Congress passed the Communications Decency Act, which would have regulated the Internet like broadcast TV.

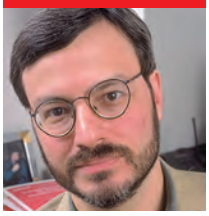
A: The Communications Decency Act was declared unconstitutional by the Supreme Court, but it was a really shocking attempt to regulate this emergent technology. It probably would have strangled it in its infancy. A lot of people thought this was going to just be a cesspool of pornography, with nothing redeeming about it at all. The congressmen and senators behind the act had very little familiarity with what they were trying to regulate. But it was also a moment in which a lot of people who were advocates of the Web vigorously opposed these measures and ultimately prevailed.

Q: Part of the power of the Internet and the World Wide Web was the idea that a few individuals coming out of nowhere could transform the world in a positive way. The Oklahoma City bombing was kind of a dark inversion of that.

A: You could look at it that way, for sure. In the bombing's immediate aftermath, the U.S. government began to put in place measures and restrictions on American life that have only become more apparent, more onerous, and even more accepted by many Americans, especially after 9/11.

Q: People seem to remember the '90s very fondly, as a time of calm prosperity when living was easy. Is that wrong?

A: Attempts to label a decade are inevitably simplistic, superficial, and misleading. The 1990s were certainly not "a holiday from history," as [*Washington Post* columnist] Charles Krauthammer has said. And it certainly wasn't a time in which nothing much happened.



Begging to Die

The curiously circumscribed suicide right recognized by Canada's Supreme Court

According to the U.S. Supreme Court, people do not have a fundamental right to kill themselves. The Supreme Court of Canada used to agree, but in February it changed its mind.

Both courts still agree, however, that the government has the authority to determine when and how you may take your life. The curiously circumscribed right recognized by the Canadian Supreme Court reflects a willingness to surrender our most basic liberty—to be or not to be—in exchange for an official stamp of approval that free people should not need.

The Canadian Supreme Court concluded that criminal penalties for assisting suicide "unjustifiably infringe" on "the right to life, liberty and security of the person," but only "to the extent that they prohibit physician-assisted death for a competent adult person who (1) clearly consents to the termination of life and (2) has a grievous and irremediable medical condition...that causes enduring suffering that is intolerable to the individual." Oregon, Washington, and Vermont, which have statutes that allow physicians to help patients kill themselves, likewise strictly define the circumstances in which suicide is acceptable.

It is not hard to see why judges, voters, and legislators would be sympathetic to people in the situation described by the Canadian Supreme Court. If I had a grievous and irremediable medical condition that caused intolerable suffering, they think, I would like to have the option of dying painlessly at a time of my own choosing, and I might need other people's help to do that.

One of the plaintiffs in the Canadian case provided compelling testimony to that effect. "I live in apprehension that my death will be slow, difficult, unpleasant, painful, undignified, and inconsistent with the values and principles I have tried to live by," said Gloria Taylor, who died from amyotrophic lateral sclerosis (a.k.a. Lou Gehrig's disease) in 2012. "What I fear is a death that negates, as opposed to concludes, my life. I do not want to die slowly, piece by piece. I do not want to waste away unconscious in a hospital bed. I do not want to die wracked with pain."

It truly is outrageous that the state would try to prevent someone in Taylor's position from ending her own life on her own terms. But why is strictly regulated "physician-assisted death" the only alternative that any government sees fit to allow?

The state has a legitimate role in distinguishing between assisted suicide and murder, which requires some sort of verifiable agreement and perhaps proof of mental competence if there is any serious question about that. But why must the process be overseen by physicians, state-appointed gatekeepers who certify that each supplicant has what the government recognizes as a good reason to kill himself?

One reason is practical: Doctors have special access to the drugs that are most suitable for suicide. As the late psychiatric gadfly Thomas Szasz observed, drug prohibition goes a long way toward explaining the clamor for physician-assisted suicide.

As Szasz also pointed out, mandating the involvement of physicians serves a psychological function by disguising a moral judgment as a medical one. That impulse is apparent from two decades of polling on this issue.

Since 1997, the Gallup Poll has found most Americans support physician-assisted suicide. But support is substantially higher when respondents are asked whether a doctor should be allowed to "end the patient's life by some painless means" than when they are asked whether a doctor should be allowed to "assist the patient to commit suicide."

That gap, which has ranged from 10 to 19 percentage points, suggests that many Americans would rather not take responsibility for their own deaths. They prefer to trust the experts. But doctors have no special knowledge or training that enables them to say when a life should end, and the law should not pretend that they do.

Senior Editor Jacob Sullum is a nationally syndicated columnist.

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The Online Sales Tax Cash Grab

As states lunge for dot-com money, Congress threatens to get into the act.

In 2014, U.S. sales on the Internet amounted to an estimated $305 billion. While still small in comparison to the $4.7 trillion in overall domestic sales, the online component grew 15 percent over the previous year, sending terror into the hearts not only of brick-and-mortar competitors, but of state legislators desperate to get their hands on sales-tax revenue.

Now the two groups are lobbying Congress to let state governments require businesses to collect sales taxes on out-of-state purchases made online. But they should be careful what they wish for: A bill on the subject is making headway on Capitol Hill, and it's not quite what the two lobbies wanted.

House Judiciary Chairman Bob Goodlatte (R–Va.) is circulating legislation—the Online Sales Simplification Act of 2015—that would make it easier for states to tax online purchases, while also limiting the states' power by allowing for something known as an "origin-based" sales tax. States would tax Internet sales based on the *seller's* location rather than the buyer's, the opposite of what sales tax expansionists have been pining for.

Under the bill, a California shopper who buys a product online from a vendor in Virginia would be taxed at Virginia's rate of 5.63 percent rather than California's rate of 8.41 percent. (Where local sales taxes exist, these would also apply.) Sellers with outlets in multiple states would collect taxes for the state where they have their largest presence.

The main benefit of an origin-based tax is that it encourages competition between the states, giving governments an incentive to limit their sales tax rates in order to attract and keep businesses. Such a system also allows consumers in high-tax states to escape the burden by buying from sellers in low-rate states. And because it allows taxes only on businesses within the taxers' jurisdictions, an origin-based tax is in line with constitutional protections for interstate commerce.

"Finally, someone in Congress has drafted an approach to the Internet sales tax issue that doesn't empower bureaucrats to tax across state lines and saddle Web-based retailers with enormous complexity," says Andrew Moylan, executive director of the pro-market R Street Institute. Moylan was alluding to the Marketplace Fairness Act, the states' preferred alternative to Goodlatte's bill. The act, which passed the Senate in 2013 but died in the House, would have allowed states to levy sales taxes based on buyers' locations.

As Moylan notes, that "would force online sellers to comply with the tax rules of as many as 9,998 different taxing jurisdictions nationwide, imposing huge compliance burdens and opening them up to audits from all 46 states with statewide sales taxes." It would also destroy tax competition by giving "state-level 'IRS' agents the unprecedented power to enforce their tax obligations on businesses all across the country even if [the businesses] lack a physical presence within [the agents'] jurisdiction."

Thanks to a 1992 Supreme Court decision (*Quill v. North Dakota*), a business must have a significant presence in a state before that state can require it to collect sales taxes. The online retailer Amazon must collect taxes from customers in 24 states, because its vast distribution network touches so many places. But most online retailers do not have Amazon's far-flung physical presence.

Many cash-hungry state governments have

passed "affiliate nexus" laws, which redefine the concept of "significant presence" in absurd ways—stretching it, for example, so that it includes a blogger in the same state as the buyer who posts a link to an out-of-state vendor. This has led to a series of legal challenges, but the courts have so far encouraged states to continue pursuing such cash-grabbing schemes.

Even if state governments get their way and are able to require out-of-state sellers to collect taxes for them, that won't solve their budget problems. According to data from the Henry J. Kaiser Family Foundation, the states had a combined budget gap of $55 billion in fiscal year 2013. The main academic study that brick-and-mortar retailers cite to show how much money the government is leaving on the table comes from the University of Tennessee business professor William Fox, who estimates that $11.4 billion in annual sales taxes are going uncollected. And even that number is wildly exaggerated—a more realistic estimate was produced by Jeff Eisenach of the American Enterprise Institute and Robert Litan of the Brookings Institution, who put uncollected e-commerce sales taxes at just $3.9 billion in 2008. Were states able to collect every penny of that amount, it would still barely dent their cumulative shortfall.

Although the Goodlatte bill would help put a stop to the trend of state revenue authorities attempting to impose taxes on out-of-state entities, it's still a far cry from *pure* origin-based taxation. In an ideal scenario, all sales by businesses in California would pay sales taxes at California's 8.41 percent rate, regardless of the location of the buyer. The ravenous desire for more overall revenue, plus the secondary benefits of having companies based in the Golden State (jobs, for instance) would push Sacramento to consider *lowering* tax rates—driven by the kind of tax competition that benefits customers.

The discussion draft of the Goodlatte legislation offers a more complicated scenario: Virginia might offer a low sales tax with the hope of attracting companies to locate within its borders, and buyers from companies based in the Old Dominion would pay at the Virginia rate. But if the two states are part of the same tax clearinghouse then low-tax Virginia would be required to send the money collected from California buyers in Virginia to high-tax California through the clearinghouse. That means states would still receive money collected where they have no jurisdiction.

This is not as mechanically problematic as a destination-based tax, since the sellers need only collect sales taxes at one rate—that of the state where they are based. But it still gets in the way of the tax competition benefits of a true origin-based tax by diminishing the incentive for states to attract more businesses by maintaining or pursuing lower rates. If a high-tax state will still get some revenue collected from out-of-state sales, they have less reason to lower their rates.

Mitigating this problem from a customer's point of view is that the incentive remains to buy from sellers in low-rate states. And as R Street's Moylan notes, "cutting checks by formula" is one of the few things the government is good at.

The much bigger drawback is that Goodlatte's bill would impose taxes on customers buying from businesses in states that do not have a sales tax at all, such as Delaware and Oregon. A business in any of those states would be required to collect taxes from out-of-state buyers using the lowest combined state and local rate in the country. (At the moment, Wyoming takes that prize with a combined sales tax rate of 5.49 percent.) This provision, which is likely intended to grab more revenue, defeats the point of having an origin-based tax, since it forces certain businesses to collect taxes when they otherwise would not have to.

"The proposal would be improved substantially," Moylan says, "if it better protected sellers in non-sales-tax states (perhaps by allowing them to opt out of any collection scheme)." He also suggests other changes, such as passing legislation to impede the silly abuses allowed by affiliate nexus laws. But ultimately, Moylan thinks a version of Goodlatte's proposal would be "an enormous victory for the cause of sanity in taxation. It would solve the Internet sales tax debacle without imposing a cure worse than the disease and it would help reestablish borders as limits to tax state tax power."

If the goal is to wring as much tax revenue out of consumers as possible, this plan is not the answer. But as a way of making e-commerce taxes both fairer and more straightforward, we could do a lot worse.

Contributing Editor Veronique de Rugy (vderugy@mercatus.gmu.edu) is a senior research fellow at the Mercatus Center at George Mason University.

Minimum Wage and Magical Thinking

No one can defy the law of demand.

If all other factors remain equal, the higher the price of a good, the fewer people will demand it. That's the law of demand, a fundamental idea in economics. And yet there is no shortage of politicians, pundits, policy wonks, and members of the public who insist that raising the price of labor will not have the effect of reducing the demand for workers. In his 2014 State of the Union address, for example, President Barack Obama called on Congress to raise the national minimum wage from $7.25 to $10.10 an hour. He argued that increasing the minimum wage would "grow the economy for everyone" by giving "businesses customers with more spending money."

A January 2015 working paper by two economists, Robert Pollin and Jeannette Wicks-Lim of the Political Economy Research Institute at the University of Massachusetts Amherst, claims that raising the minimum wage of fast food workers to $15 per hour over a four-year transition period would not necessarily result in "shedding jobs." The two acknowledge that "raising the price of anything will reduce demand for that thing, all else equal." But they believe they've found a way to "relax" the all-else-being-equal part, at least as far as the wages of fast food workers go. Pollin and Wicks-Lim argue that "the fast-food industry could fully absorb these wage bill increases through a combination of turnover reductions; trend increases in sales growth; and modest annual price increases over the four-year period." They further claim that a $15-per-hour minimum wage would not result in lower profits or the reallocation of funds away from other operations, such as marketing. Amazing.

Pollin and Wicks-Lim calculate that doubling the minimum wage for 2.5 million fast food workers would cost the industry an additional $33 billion annually. They further calculate that reduced turnover will lower costs by $5.2 billion annually and that three years of sales growth at 2.5 percent per year combined with price hikes at 3 percent per year will yield $30 billion in extra revenues.

Let's consider turnover first. Pollin and Wicks-Lim claim that an increased minimum wage will make employees less likely to leave their jobs, saving fast food companies money that can now go to pay higher wages. *New York Times* columnist Paul Krugman convincingly refuted this argument in his review of Pollin's 1998 book *The Living Wage*. Krugman wrote: "The obvious economist's reply is, if paying higher wages is such a good idea, why aren't companies doing it voluntarily?" (That question goes unaddressed in the current study.) Krugman continues, "But in any case there is a fundamental flaw in the argument: Surely the benefits of low turnover and high morale in your work force come not from paying a high wage, but from paying a high wage 'compared with other companies'—and that is precisely what mandating an increase in the minimum wage for all companies cannot accomplish." So scratch that $5.2 billion.

What about Pollin and Wicks-Lim's sales growth projections? Well, sales don't always grow. McDonald's reported a sales decrease of 1 percent in 2014. Some analysts think fast food sales may have already peaked in the United States.

But there's a deeper problem. In the absence of the higher minimum wage, employers would generally hire more workers to meet an increased demand for fast food. Boosting the minimum wage means that the revenues that would have otherwise been used to hire new

workers is not available. The end result: fewer jobs created and more folks unemployed.

Pollin and Wicks-Lim acknowledge that raising the price means that people will eat fewer hamburgers and fries. They calculate that a 3 percent per year price increase results in a 1.5 percent per year decline in what sales would have been, which means that revenues would increase by 1.5 percent. Then they assume that the price increases won't affect the underlying 2.5 percent annual sales growth rate. With this statistical sleight of hand, Pollin and Wicks-Lim roughly generate enough revenues to cover the higher wages by calculating that a three-year increase in prices and three years of sales growth will net $10.6 billion and $19.8 billion, respectively. Adding these to the postulated turnover savings of $5.2 billion yields $35.6 billion, which handily covers the extra wage costs of $33 billion. Voilà.

Meanwhile, two new studies by econ- omists that are much better grounded in actual wage and employment data have just been published. Both find that in the real world, the law of demand still applies to labor.

In the first paper, published in the December 2014 issue of the *Journal of Labor Research,* Andrew Hanson of Marquette University and Zack Hawley of Texas Christian University analyzed how low-wage employment would be affected in each state by the imposition of the national $10.10 per hour minimum wage supported by President Obama. The Hanson/Hawley study takes into account how wages relate to the varying cost-of-living levels among the states. First they report the number of workers in a state who earn less than $10.10 per hour. Next they apply the widely agreed upon formula that for every 10 percent increase in wages there is a corresponding 1 to 2 percent decrease in demand for labor. They then straightforwardly estimate that boosting the federal minimum wage from $7.25 per hour to $10.10 per hour would result in the loss of between 550,000 and 1.5 million jobs.

The second study, authored by Jeffrey Clemens and Michael Wither of the University of California, San Diego and published by the National Bureau of Economic Research in December, parses how the actual increase of the federal minimum wage from $5.15 to $7.25 per hour between July 2007 and July 2009 affected employment rates. Using U.S. Census employment data, they focus specifically on how low-skilled workers fared when the minimum wage rose as the Great Recession proceeded. The authors compare what happened to the employment rates of such employees in states where they started out generally earning below the new minimum wage versus in states where low-skilled wages were already higher than $7.25. They refer to the first set of 27 states as being "bound" by the increase and the second set as being "unbound" by it.

In the real world, the law of demand still applies to labor.

The minimum wage, Clemens and Wither show, exacerbated unemployment. Their analysis starts in December 2006, when the employment-to-population ratio—defined as the portion of working-age Americans (ages to 16 to 64) who are in the labor market—stood at 63.4 percent. It ends in December 2012, when that ratio had dropped to 58.6 percent. They estimate that by the second year following the implementation of the higher minimum wage, the employment rates of low-skilled workers "had fallen by 6 percentage points more in bound than in unbound states."

In other words, job losses were considerably higher in states where unskilled workers had been earning less than the new minimum and employers were now forced to pay more. Overall, the authors estimate that the minimum wage increase "reduced the employment-to-population ratio of working age adults by 0.7 percentage points." Stated otherwise, not raising the minimum wage would have boosted the 2012 employment-to-population ratio from 58.6 to 59.3, which implies that we actually had 1.4 million fewer jobs than we otherwise would have had.

The conclusion is clear. Defying the law of demand will end up harming lots of the people minimum wage proponents aim to help.

Science Correspondent Ronald Bailey (rbailey@reason.com) is the author of the forthcoming The End of Doom: Environmental Renewal in the 21st Century (St. Martin's).

How to Break the Internet

The biggest threat to the Net isn't cable companies. It's government.

Geoffrey A. Manne and R. Ben Sperry

"Net neutrality" sounds like a good idea. It isn't.

As political slogans go, the phrase net neutrality has been enormously effective, riling up the chattering classes and forcing a sea change in the government's decades-old hands-off approach to regulating the Internet. But as an organizing principle for the Internet, the concept is dangerously misguided. That is especially true of the particular form of net neutrality regulation proposed in February by Federal Communications Commission (FCC) Chairman Tom Wheeler.

Net neutrality backers traffic in fear. Pushing a suite of suggested interventions, they warn of rapacious cable operators who seek to control online media and other content by "picking winners and losers" on the Internet. They proclaim that regulation is the only way to stave off "fast lanes" that would render your favorite website "invisible" unless it's one of the corporate-favored. They declare that it will shelter startups, guarantee free expression, and preserve the great, egalitarian "openness" of the Internet.

No decent person, in other words, could be against net neutrality.

In truth, this latest campaign to regulate the Internet is an apt illustration of F.A. Hayek's famous observation that "the curious task of economics is to demonstrate to men how little they really know about what they imagine they can design." Egged on by a bootleggers-and-Baptists coalition of rent-seeking industry groups and corporation-hating progressives (and bolstered by a highly unusual proclamation from the White House), Chairman Wheeler and his staff are attempting to design something they know very little about—not just the sprawling Internet of today, but also the unknowable Internet of tomorrow.

Origins of a Regulatory Meme

"Network neutrality" was coined in a 2003 paper by the law professor Tim Wu. A "neutral" Internet, Wu postulated, "is an Internet that does not favor one application (say, the world wide web) over others (say, email)." For Wu, "email, the web, and streaming applications are in a battle for the attention and interest of end-users. It is therefore important that the platform be neutral to ensure the competition remains meritocratic."

Over time, Wu's notion has morphed from vague abstraction to regulatory imperative and even article of faith. Net neutrality has come to represent a set of edicts aimed at constraining Internet Service Providers (ISPs) to a specific, static vision of the Internet in which they treat all data equally—not charging differentially (or "discriminating," in activists' parlance) by user, content, site, platform, application, type of equipment used, or mode of communication.

Along the way, the movement acquired some radical political baggage: to "get rid of the media capitalists in the phone and cable companies and to divest them from control," in the 2009 words of media activist Robert McChesney, founder of the anti-media-consolidation group Free Press. Not coincidentally, Free Press, which has been at the vanguard of net neutrality activism, was long chaired by Tim Wu.

But the net neutrality movement has had less to do with class struggle than with the familiar delusion of technocrats

(Jason Keisling)

DONT TREAD ON MY INTERNET

Egged on by a bootleggers-and-Baptists coalition of rent-seeking industry groups and corporation-hating progressives, FCC bureaucrats are attempting to design something they know very little about—not just the sprawling Internet of today, but also the unknowable Internet of tomorrow.

everywhere: that government can "design" a better future if only it pulls the right levers. The goal, in theory, is to "save the Internet" from big corporations, ensuring (in Free Press' words) that "it will remain a medium for free expression, economic opportunity and innovation." According to a group of pro-net-neutrality startup investors, this can be accomplished only by locking in yesterday's business model. They want new Internet applications, like their favorite Internet companies of the past, to "be able to afford to [make] their service freely available and then build a business over time as they better understand the value consumers find in their service." In the name of innovation, net neutrality proponents want the Internet to remain just as it is.

But even without government's guiding hand, neutrality has long been an organizing principle of the Net. The engineers who first started connecting computers to one another decades ago embraced as a first-cut rule for directing Internet traffic the "end-to-end principle"—a component of network architecture design holding that the network itself should interfere as little as possible with traffic flowing from one end-user to another. Yet the idea that this network "intelligence" should reside only at the ends of the network, has never been—and could never be—an absolute. Effective network management has always required prominent exceptions to the end-to-end principle.

Not all bits are created equal, as the designers of those first Internet software protocols recognized. Some bits are more time-sensitive than others. Some bits need to arrive at their destination in sequence, while others can turn up in any order. For instance, live streaming video, interactive gaming, and VoIP calls won't work if the data arrive out of order or with too much delay between data packets. But email, software updates, and even downloaded videos don't require such preferential treatment—they work as long as all the bits eventually end up where they're supposed to go.

Anticipating the needs of future real-time applications, early Internet engineers developed differentiated services ("DiffServ") and integrated services ("IntServ") protocols, which have discriminated among types of Internet traffic for decades. The effect on less time-sensitive applications has gone virtually unnoticed. Does anyone really care if their email shows up a few milliseconds "late"?

But these are *engineering* prioritizations, and they come without an associated price mechanism. As a result, there's little incentive for anyone to mark these packets accurately: In the face of network congestion, everyone wants the highest priority as long as it's free.

Here, as throughout the economy, prices would make everyone reveal the value they place on a transaction, thereby allocating scarce resources efficiently. An Internet characterized by *business* prioritization, offering fast and slow lanes for purchase by end-users or content providers, could make all applications work better, significantly increasing consumer satisfaction while also promoting broadband adoption and deployment.

Thus far the demand for these types of business models has been fairly limited for the simple reason that congestion (scarcity of bandwidth) is, for now, an infrequent problem. To be sure, ISPs offer consumers varying tiers of service, and mobile broadband providers (facing far more frequent congestion) are increasingly experimenting with prioritization schemes, such as AT&T's Sponsored Data program and T-Mobile's Music Freedom service. But the current lack of uptake doesn't mean that a market for prioritization

wouldn't develop without rules preventing it. And it will be the unknown applications of tomorrow (say, holographic video streaming) that will most likely lead to—and benefit from—this type of prioritization.

Generally speaking, neutrality advocates don't spend much time in the weeds of boring traffic-flow engineering and network prioritization. What has animated everyone from HBO comedian/anchor John Oliver to millions of irate FCC commenters has been an angry suspicion that somewhere, some rich corporations are on the verge of hijacking the Internet's architecture to profit themselves while excluding others. In Oliver's pointed words, net neutrality rules are code for "preventing cable company fuckery."

But attempting to bureaucratically manage the technical and economic realities of building, operating, and constantly improving a flexible, modern communications network is a daunting challenge for even the most capable and fair-minded of administrators. Doing so at the behest of ideologically motivated partisans is a recipe not just for failure, but disaster.

On Whose Authority?

The Communications Act of 1934 (as amended) authorized the FCC to "make available so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, rapid, efficient, Nation-wide, and world-wide wire and radio communication services with adequate facilities at reasonable charges." When Congress finally got around to updating the Communications Act in 1996, it added that the government should "promote the continued development of the Internet and other interactive computer services and other interactive media" and "preserve the vibrant and competitive free market that presently exists for the Internet... unfettered by Federal or State regulation."

The added language expressed a *policy preference*, but didn't grant the FCC any direct authority to regulate the Internet. And the most successful push in Congress to expand the commission's authority over the Internet—the Communications Decency Act of 1996—was mostly shot down by the Supreme Court in 1997 on First Amendment grounds.

Yet none of this stopped the George W. Bush–era FCC from trying to cobble together the legal authority to more robustly regulate the Net. In 2005, the agency released an "Internet Policy Statement" to "Preserve and Promote the Open and Interconnected Nature of Public Internet." A declaration of policy orientation rather than a set of new regulations, the statement outlined four principles: "(1) consumers are entitled to access the lawful Internet content of their choice; (2) consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement; (3) consumers are entitled to connect their choice of legal devices that do not harm the network; and (4) consumers are entitled to competition among network providers, application and service providers, and content providers."

In 2007, Free Press and other media activists petitioned the FCC to enforce the policy statement against Comcast after the cable giant intermittently slowed or blocked certain peer-to-peer activities among its users—despite the fact that, according to a study by Princeton computer scientist Ed Felten, up to 99 percent of such content is illegal, and thus unprotected under any version of net neutrality. The agency agreed with the critics, issuing a cease-and-desist order. But in the 2010 decision *Comcast v. FCC*, the D.C. Circuit found that the commission had no authority to enforce the policy.

Despite the court's ruling, the Obama-era FCC regrouped and took another swing at enforcing net neutrality. Its 2010 "Open Internet Order" advocated stricter and more detailed rules, written in language designed to justify them before the courts. The Order—the first real net neutrality rule at the FCC—drew scathing and prescient dissents from the agency's two Republican commissioners, Robert McDowell and Meredith Attwell Baker. McDowell's dissent, in particular, captured the essential defects of the FCC's effort, which he summarized as follows:

- Nothing is broken in the Internet access market that needs fixing;
- The FCC does not have the legal authority to issue these rules;
- The proposed rules are likely to cause irreparable harm; and
- Existing law and Internet governance structures provide ample consumer protection in the event a systemic market failure occurs.

The inevitable legal challenge followed, and in early 2014 the FCC lost yet again at the D.C. Circuit for imposing rules that exceeded its statutory authority—although the court, for the first

time, did accept the Commission's assertion that it had authority to issue *some* form of rules to regulate Internet access buried within Section 706 of the Telecommunications Act.

Undeterred, and bolstered by the court's acknowledgement of his agency's claimed authority, Chairman Wheeler introduced the latest iteration of net neutrality rules in February 2015. Tellingly, it took over 300 pages of notes and argument to explain and defend a grand total of *eight* pages worth of rules. It's significant, too, that Wheeler touted his plan as enacting the specific vision laid out by President Obama the previous November. (The White House's intervention in the decision making of the ostensibly independent FCC is currently being investigated by committees in both the Senate and the House of Representatives.)

Having already been run through the wood chipper of interest-group politics and years of litigation, the FCC's net neutrality push now turns entirely on the relative merits

The Feds Want a Back Door Into Your Computer. Again.

Declan McCullagh

If you've been paying attention to officialdom's recent demands for more Internet surveillance and encryption back doors, you may be experiencing 1990s flashbacks.

One fine day in 1991, an ambitious senator named Joe Biden introduced legislation declaring that telecommunications companies "shall ensure" that their hardware includes backdoors for government eavesdropping. Biden's proposal was followed by the introduction of the Clipper Chip by the National Security Agency (NSA) and a remarkable bill, approved by a House of Representatives committee in 1997, that would have outlawed encryption without back doors for the feds.

The NSA's encryption device was instantly criticized by civil libertarians, of course, but met its doom when cryptographers discovered that the Clipper Chip's built-in backdoors for government surveillance could be easily sealed off. That 1997 legislation also died, but only after Silicon Valley firms scrambled to inform politicians that encryption was now embedded in web browsers, and criminalizing it would likely not boost U.S. firms' international competitiveness. By the end of the decade, Team Crypto seemed to have won: Government officials were no longer calling for a ban, and the White House even backed away from export restrictions.

So did the FBI, the NSA, and the other extrusions of the homeland-surveillance complex recognize their '90s errors and change course? Not exactly. Today demands for mandatory back doors and weakened encryption are nearly as loud as they were a quarter-century ago. The feds' disregard for citizens' privacy has been undimmed by the passage of time.

"We need our private sector partners to take a step back, to pause, and to consider changing course," FBI Director James Comey said last fall. "We also need a regulatory or legislative fix to create a level playing field, so that all communication service providers are held to the same standard."

This could have been copied and pasted from his predecessor's call to arms. Then–FBI Director Louis Freeh informed a congressional committee in 1997 that law enforcement was concerned by the increased use of "strong encryption products [that] cannot support timely law enforcement decryption." As a result, he said, new anti-crypto laws were necessary.

That never happened, thanks to an alliance of technology firms and advocacy groups, aided by a court decision establishing that encryption source code was protected by the First Amendment. Today, when you check your email or do online banking, you're using fairly secure encryption without legally mandated FBI or NSA back doors.

As technology advances, encryption is growing increasingly capable as well. Since NSA whistleblower Edward Snowden's disclosures nearly two years ago, Silicon Valley firms have raced to deploy encryption more widely, to upgrade to newer standards, and to increase the security of the certificates used to guard against eavesdropping. Google, Apple, Facebook, Twitter, and others have called on Congress to enact pro-privacy reforms. Even Yahoo!, long a laggard, made encryption routinely available to users in 2014.

The feds' renewed ire was inspired by Google's and Apple's near-simultaneous announcements last year that full-device encryption would be enabled for the latest versions of the Android and iOS operating systems. If implemented properly, only owners will be able to unlock their own devices. The companies themselves cannot, even in response to a formal law enforcement request. (OS X and some versions of Windows already support full-disk encryption.)

In his speech last October, FBI Director Comey singled out Apple and

of two potential legal bases for its rules that are, at root, far more similar than they are different.

On the one hand, Section 706 would permit the FCC to regulate broadband under a purportedly "light touch" regime in which the FCC would have to justify the enforcement of its rules on a case-by-case basis. Title II (the section of the 1934 Act authorizing regulation of common-carrier services), on the other hand, would *presumptively* impose on ISPs a set of rules designed for 19th-century railroads and the early telephone monopoly. Under Title II, ISPs would be saddled with rate regulation and a host of other antiquated burdens. Although Wheeler has proposed to forbear from enforcement of some of Title II's provisions, the remaining rules still impose on ISPs the fundamental attributes of traditional common-carrier regulation.

The courts are likely to strike down the assertion of authority to regulate broadband providers under Title II. Yet even then, Wheeler's rules could still bar ISPs from entering into most com-

Google by name. "It will have very serious consequences for law enforcement and national security agencies at all levels," he said at the Brookings Institution. "Sophisticated criminals will come to count on these means of evading detection. It's the equivalent of a closet that can't be opened."

But why shouldn't Americans be allowed locked virtual closets? Absolute privacy isn't exactly a novel concept. As John Gilmore, the libertarian co-founder of the Electronic Frontier Foundation, frequently notes, at the time the United States was founded, colonists could row to the middle of Boston Harbor and speak with no fear of being overheard. The expectation that government agencies must be guaranteed access to Americans' private thoughts and conversations is a modern development.

"Besides the specifics of privacy or encryption, the real issue is who is working for whom," says Gilmore. "Government agencies always seem to think that the public exists for their convenience, not that the government exists for the public's convenience. The people are sovereign, the government exists to serve the people. And not to serve just that amorphous manipulable 'will of the people' or 'the silent majority.' The ordinary individual people have the right and liberty to build what they want, sell what they want, and buy what they want."

It's certainly true that widespread use of encryption makes it more difficult for the government to peruse locked devices or to perform bulk surveillance of millions or billions of conversations. But the second point is more of a problem for the NSA's vacuum cleaner than it is for domestic police agencies, which have no legal mandate for such broad electronic spying.

If police are investigating a specific person, recent history has shown that encryption is not an insurmountable obstacle. When an alleged New Jersey mobster was using encryption, FBI agents obtained a court order to sneak into his office and implant a key logger to snatch his passphrase. Using a Tor hidden service didn't prevent alleged Silk Road founder Ross Ulbricht, better known as "Dread Pirate Roberts," from being convicted of drug trafficking and money laundering. (Police also found a way to access Ulbricht's laptop without triggering his encryption software.)

Device makers could likely be compelled by court order to implant government malware on customers' devices, given sufficient probable cause or other reasons. Metadata analysis remains possible, and files stored in the cloud may not always be encrypted. Snowden's cache of classified documents has revealed surprisingly aggressive techniques by the government, including deliberately weakening encryption standards.

The 1990s are repeating themselves in another way. When Biden introduced his anti-crypto bill 24 years ago, he unintentionally kickstarted the modern encryption era. That's because a Colorado-based programmer named Phil Zimmermann happened to read the legislation and was horrified. The result was Pretty Good Privacy, a.k.a. PGP, the first popular email encryption software. It was Biden's bill, Zimmermann later wrote, that "led me to publish PGP electronically for free"—before it could be outlawed by a future act of Congress.

More recent disclosures of government surveillance have spurred new interest in secure messaging, including products with names such as TextSecure, Gliph, Telegram, and Wickr. Zimmermann is back too, as the co-founder of the secure-phone provider Blackphone. This time he's taking no chances: The company is based not in the U.S. but in Switzerland, which Blackphone boasts is "home to the world's strictest privacy laws."

Declan McCullagh (declan@well.com) founded Recent.io to build a news recommendation engine and Android and iOS app. He previously worked at CNET, CBSNews.com, Time, and Wired.

mercial arrangements with content providers for preferential treatment under Section 706.

For many activists, the substantive debate over such handcuffing of ISPs has been settled. But it's not.

A Better Vision

One would think that after 10 years of political teeth-gnashing, regulatory rule making, and relentless litigating, there would by now be a strong economic case for net neutrality—a clear record of harmful practices and agreements embodying the types of behavior that only regulation can pre-empt. But there isn't.

In fact, after poring over hundreds of thousands of pages of comments in the public record, the FCC in its 2010 Open Internet Order could identify just *four* actions in the history of the Internet that might have been prevented by such rules. Even these four are questionable, and all of them were resolved without the heavy hand of net neutrality.

To simplify, the Internet marketplace can be analytically split into three categories: content providers (Google, Netflix, porn sites, your friend's blog), ISPs (Comcast, Verizon, CenturyLink), and end-users (you and me). The end-users are consumers, whose consumption preferences ultimately determine the value of content. ISPs interact directly with consumers by selling the high-speed connections that allow their customers to access content.

ISPs interact with content providers by managing the networks over which information flows. Thus ISPs are resource owners, because they own the networks, but they are also entrepreneurs, insofar as they strive to maintain the profitability of their networks under rapidly evolving market conditions. To be successful, ISPs must serve consumer demand in a cost-effective manner.

FCC regulation of the Internet is rooted in the belief that a "virtuous circle" of broadband investment is ultimately driven by content providers. The more good content that providers make available, the more consumers will demand access to sites and apps, and the more ISPs will invest in the infrastructure to facilitate delivery. Minimize the financial and transaction costs imposed by ISPs on content providers, and content will flourish and drive the engine.

That's the theory, anyway. But in practice, there's no good evidence that myopically favoring content providers over infrastructure owners is beneficial even to content providers themselves, let alone to consumers.

Rather, the two markets are symbiotic; gains for one inevitably produce gains for the other. Without an assessment of actual competitive effects, it is impossible to say that consumers are best served by policies that systematically favor one over the other.

Somehow, even absent net neutrality regulation, ISPs have invested heavily in infrastructure and broadband. End-users have benefitted immensely, with 94 percent of U.S. households having access to at least two providers offering fixed broadband connections of at least 10 megabits per second, not to mention the near-ubiquitous coverage of wireless carriers offering 3G and LTE service at comparable speeds. Comcast may not be one of the nation's most well-loved companies, but it's misleading to describe an economy-of-scale marketplace with two or three major providers as one lacking competition. And while activists claim that the U.S. lags behind in broadband speed and deployment, the truth is almost exactly the opposite. Controlling for size and population density, the U.S. compares very favorably with the rest of the world. In fact, if you look at slightly smaller geographical units, 5 of the top 10 (and 9 of the top 15) fastest places in the world would be U.S. states or Washington, D.C.

Broadband networks are expensive to build and, particularly for mobile networks, increasingly prone to congestion as snowballing consumer use outpaces construction and upgrades. In order to earn revenue, economize the scarce resource of network capacity, and provide benefits to consumers, ISPs may engage in various price-discrimination and cross-subsidization schemes—i.e., the much-maligned "paid prioritization" motivating net neutrality activists.

The non-Internet economy is replete with countless business models that use similar forms of discrimination or exclusion to consumers' benefit. From Priority Mail to highway toll lanes to variable airline-ticket pricing, discriminatory or exclusionary arrangements can improve service, finance investment, and expand consumer choices.

The real question is why we would view these practices any differently when they happen on the Internet. When T-Mobile began offering its subscribers free data use for

ISP price discrimination is as likely to *help* new entrants as hurt them. Non-neutrality offers startups the potential to buy priority access, thus overcoming the inherent disadvantage of obscurity.

Spotify, Rhapsody, and a few other streaming music services, but not some of their more obscure competitors, net neutrality activists decried the program for its presumed effect on the excluded services. But T-Mobile presumably benefits from this program—capitalizing on consumer demand for particularly popular content to attract users to its service—and consumers obviously benefit as well.

What about music services that aren't included in T-Mobile's package? Even they stand to benefit, since users now have more spare data capacity to experiment with new streaming content. Meanwhile, T-Mobile isn't the only (or remotely the most significant) source of marketing or distribution for these companies. There is, in other words, no evidence that the excluded music services are unable to compete.

The depredations that net neutrality seeks to eliminate —blocking, throttling, and discrimination of online content by ISPs—are species of exclusion, allegedly impeding valuable transactions between content providers and end-users. But a host of other Internet entities have the theoretical power to control users' access to content (and vice versa) as well. Content providers such as Netflix, Spotify, and iTunes mediate relationships between content and users, buyers and sellers, frequently in a non-"neutral" fashion. So do online platforms such as eBay, Etsy, and Kickstarter. Amazon finances and promotes its own content and offers it to its own subscribers exclusively. Google Maps offers users direct access to Uber (but not Lyft) from its app. Why do ISPs deserve special rules?

The usual answer is that ISP competition is limited or non-existent, while competition among content providers is plentiful. But if the underlying problem is an absence of competition, then antitrust laws—or even adjudication of alleged net neutrality violations on a case-by-case basis, assessing actual effects after the fact—would be sufficient. The logic of prophylactic regulation simply doesn't hold up. In fact, the real competitive constraints are usually imposed by local government franchise regulations, including the imposition of substantial build-out requirements and restrictions on broadband providers' access to government-owned utility poles.

Meanwhile, the existence of other Internet intermediaries undermines claims that ISPs are unfettered by competitive forces. *Bob Loblaw's Law Blog* may seem to be at the mercy of its Internet provider, the way your kitchen appliance is at the "mercy" of your local power company. But if Loblaw uses WordPress to publish and host his site, an ISP would have to take on WordPress itself—not just a single blog—to impede access to the site.

The same is true for independent artists plying their music or videos on the Web. It isn't Adele vs. Comcast; it's YouTube vs. Comcast. That's a very different situation, one in which YouTube is by no means at an obvious disadvantage.

The sources and dynamics of competition in the Internet ecosystem are complicated, evolving, and poorly understood. One of the central defects of net neutrality rules is that they simply ignore these complications and assert a fanciful, one-dimensional conception of market competition that has never really existed.

Net neutrality would also imperil another powerful source of consumer benefit on the Internet: cross-subsidization. Certain apps, for example, make money through subscriptions and purchaser fees, while others depend on advertiser-supported revenue but are otherwise "free" to users. Diverse business models fre-

quently coexist where different consumers pay in different ways for the same or similar services.

Is there any good reason that AT&T customers should only be permitted to purchase data directly from AT&T but prohibited from having their data usage sponsored by advertisers that enter into deals with AT&T? Some mobile providers offer free Facebook and Wikipedia to encourage broadband adoption in the poorest parts of the world. Strident net neutrality supporters, such as the Harvard law professor Susan Crawford, are sharply critical of such arrangements, claiming that "no Internet" is better than "some Internet"—even, apparently, if "some" comprises nearly all of what a user wants. By presuming to know that only one business model is appropriate and to impose that model across the board, net neutrality activists risk obstructing access, impeding innovation, and stifling the very content providers they purport to protect.

It is also often claimed that continued non-neutrality would imperil Internet startups that don't have the resources of their incumbent competitors to purchase priority access, placing them at an unfair disadvantage. It is curious, then, that some of the loudest voices in favor of net neutrality are also some of the Internet's biggest incumbents, such as Google, Facebook, Twitter, Netflix, and Amazon.

Many a new entrant has foundered on the shoals of obscurity. In a functioning competitive market, there are mechanisms to help startups overcome such structural impediments, and they usually cost money. Which, if you follow the anti-corporate logic of net neutrality activists, is itself a kind of favoritism. But who stands to benefit more from, and be willing to pay for, promotion—the company that's already known or the one that no one's ever heard of?

In fact, ISP price discrimination is as likely to *help* new entrants as hurt them. Non-neutrality offers startups the potential to buy priority access, thus overcoming the inherent disadvantage of newness. With a neutral Internet, on the other hand, the advantages of incumbency can't be routed around by buying a leg-up in speed, access, or promotion.

That an incumbent content provider might enter into an agreement with an ISP to gain advantage over its smaller competitors in a non-neutral environment may be a reason to scrutinize such agreements under existing antitrust laws. For instance, if an ISP with dominant market share refused to give access to online content that competed with its own, antitrust law might look askance at such conduct. But it doesn't justify presumptively hamstringing an ISP's commercial arrangements when such conduct isn't remotely typical.

Recognizing the ubiquity of paid prioritization-like agreements throughout the economy, including in the most competitive sectors, antitrust regulators condemn such conduct only after careful analysis shows that it has resulted in real consumer harm. Net neutrality turns this evidence-based paradigm on its head, pre-emptively condemning *all* discriminatory arrangements between ISPs and content providers regardless of their effect, on the basis of an evidentiary record that demonstrates that such agreements have so far never been harmful.

The Specter of Net Neutrality

Google Fiber and other innovative companies are trying to build out new and faster broadband connections to compete with cable, but the regulatory costs and legal uncertainty of sweeping net neutrality rules will impede their plans. Meanwhile, incumbent Internet providers won't have an incentive to upgrade their existing networks if they're saddled with monopoly-era regulation, which is *designed* to thwart competition. That sort of anti-competitive regulation is for 19th-century railroads, not 21st-century broadband.

So you may not love your cable company. But imposing public-utility regulation under Title II means the qualities you don't like about your cable company will become more widespread. It will mean less competition, poorer customer service, reduced investment (especially in underserved communities), slower broadband for everyone, and new regulatory hurdles for startups. Title II won't even do what its adherents cite as its primary justification: banning "fast lanes." What it will do is saddle the Internet with archaic rules that will make broadband providers as inefficient and slow to innovate as your local utility company.

No decent person, in other words, should be *for* net neutrality.

Geoffrey A. Manne (gmanne@laweconcenter.org) and R. Ben Sperry (bsperry@laweconcenter.org) are executive director and associate director, respectively, of the International Center for Law & Economics.

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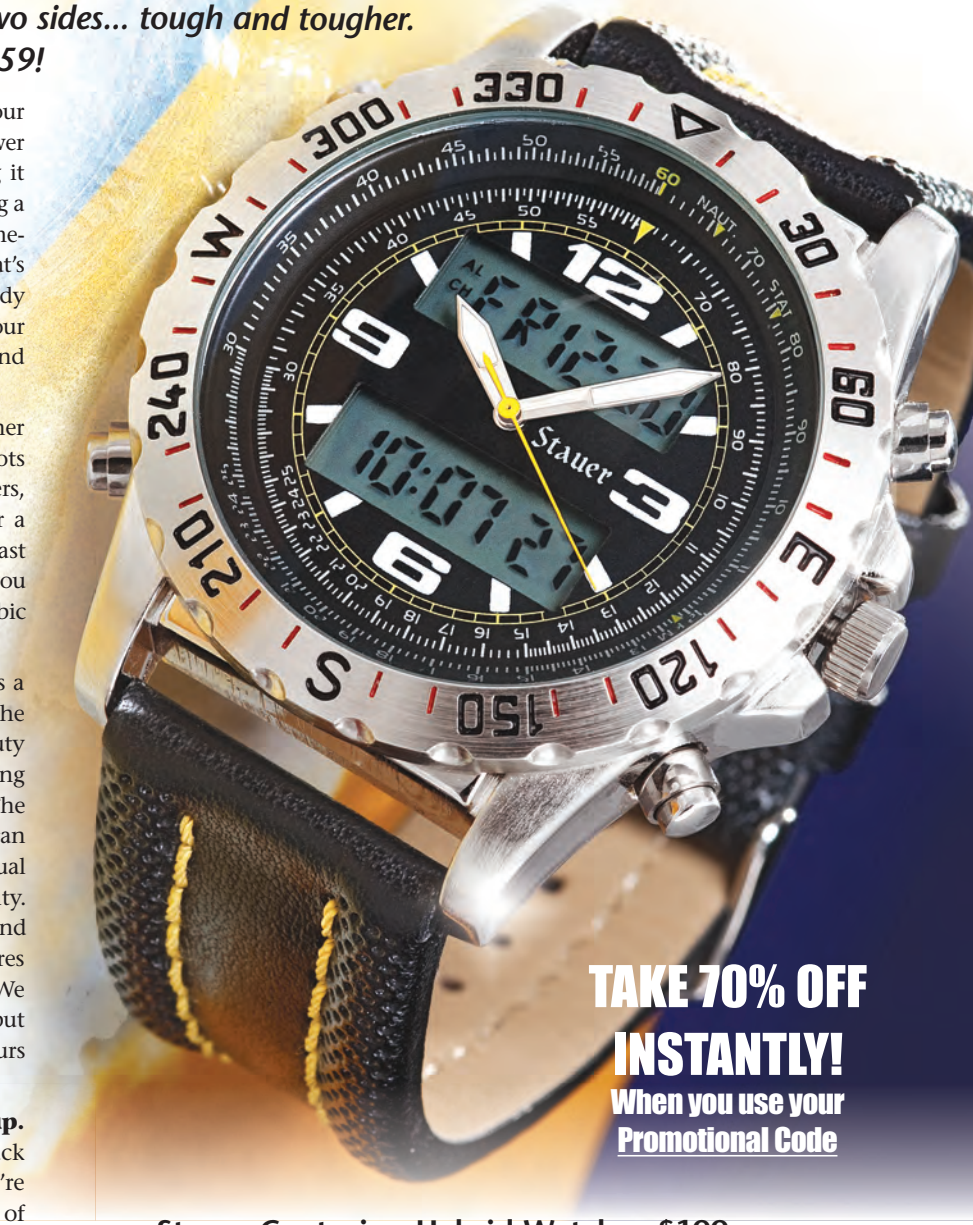

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Uncle Sam Wants Your Fitbit

The fight for Internet freedom gets physical.

Adam Thierer

We are at the dawn of the Internet of Things—a world full of smart devices equipped with sensors, all hooked up to a digital universe that will become as omnipresent as the air we breathe. Imagine every appliance in your home, every machine in your office, and every device in your car constantly communicating with a network and offering you a fully customizable, personalized experience. Besides neato gadgets and productivity gains, this hyper-connected future will also mean a new wave of policy wars, as politicians panic over privacy, security, intellectual property, occupational disruptions, technical standards, and more.

Behind these battles will be a grander clash of visions over the future course of technology. The initial boom of digital entrepreneurship was powered by largely unfettered experiments with new technologies and business models. Will we preserve and extend this ethos going forward? Or will technological reactionaries pre-emptively eliminate every hypothetical risk posed by the next generation of Internet-enabled things, perhaps regulating them out of existence before they even come to be?

Web Wars

The first generation of Internet policy punditry was dominated by voices declaring that the world of bits was, or at least should be, a unique space with a different set of rules than the world of atoms. Digital visionary John Perry Barlow set the tone with his famous 1996 essay, "A Declaration of the Independence of Cyberspace," which argued not just that governments should leave the Internet unregulated but that Internet regulation was not really feasible in the first place.

Barlow's vision thus embodied both *Internet exceptionalism* and *technological determinism*. Internet exceptionalism is the notion that the Net is a special medium that shouldn't be treated like earlier media and communications platforms, such as broadcasting or telephony. Technological determinism is the belief that technology drives history, and (in the extreme version) that it almost has an unstoppable will of its own.

First-generation exceptionalists and determinists included Nicholas Negroponte, the former director of the MIT Media Lab, and George Gilder, a technology journalist and historian. "Like a force of nature, the digital age cannot be denied or stopped," Negroponte insisted in his 1995 polemic, *Being Digital*. But Barlow's declaration represented the high-water mark of the early exceptionalist era. "Governments of the Industrial World," he declared, "are not welcome among us [and] have no sovereignty where we gather." The "global social space we are building," he added, is "naturally independent of the tyrannies you seek to impose on us. You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear."

Wearable computers iHealth, Jawbone Up, Basis B1, Fitbit Flex, MOTOACTV, Larklife, and Google Glass (©Mark Rightmire/*The Orange County Register*/ZUMAPRESS.com)

It turned out we had reasons to fear after all. If the first era of Internet policy signified *A New Hope*, the second generation—beginning about the time the dot-com bubble burst in 2000—could be called *The Empire Strikes Back*. From taxes to surveillance to network regulation, governments gradually learned that by applying enough pressure in just the right places, citizens and organizations will submit.

A second generation of Internet scholars cheered on these developments. The scholar-activists at Harvard's Berkman Center for Internet and Society, such as Lawrence Lessig, Jonathan Zittrain, and Tim Wu, joined with a growing assortment of policy activists with tangential pet peeves they wanted governments to address. Together they revolted against the earlier ethos and called for stronger powers for governments to direct social and commercial activities online.

In the new narrative, the real threat to our freedom was not public law but private code. "Left to itself," Lessig famously predicted, "cyberspace will become a perfect tool of control." Thus, government controls were called for. Later, Wu would advocate a forcible disintegration of the information economy via a "separations principle" that would segregate information providers into three buckets—creators, distributors, and hardware makers—and force them to stay put. All in the name of keeping us safe from "information monopolies."

Spurred on by this crowd, governments across the globe are clamoring for even greater control over people in cyberspace. But the second generation's narrative has proved overly simplistic in two ways.

First, the exceptionalists and techno-determinists were partially right—the Internet, while not being unregulatable per se, really has proven more resistant to government control than analog-era communications systems. The combination of highly decentralized networks, a global scale, empowered end-users, and the unprecedented volume of information created in the process has created formidable enforcement challenges for would-be censors and economic regulators.

With each passing year, the gap between "Internet time" and "government time" is widening. As the technology analyst Larry Downes argued in his 2009 book *The Laws of Disruption*, information-age "technology changes exponentially, but social, economic, and legal systems change incrementally." His examples ranged from copyright law, where bottling up published works is growing harder, to online privacy, where personal information is flowing faster than the ability of the law to control it.

This leads to the second way in which the *Empire Strikes Back* narrative falls short. As the Internet changes the way people connect with one another, governments have had to change the way they try to impose their wills on the rest of us. The old command-and-control models just don't work on highly distributed and decentralized networks.

Consider regulation of speech. Outright censorship has proven extremely difficult to enforce, and not just in the United States, where we have a First Amendment keeping the police at bay. Although some atavistic regimes still try to clamp down on content and communications, most attempt to shape behavior by encouraging firms and organizations to adopt recommended codes of conduct for online speech, often in the name of protecting children.

A similar phenomenon is at play for data privacy and cybersecurity policy. While some comprehensive regulatory frameworks have been floated, the conversations are shifting toward

The initial boom of digital entrepreneurship was powered by largely unfettered experiments. Will we preserve and extend this ethos going forward? Or will technological reactionaries pre-emptively eliminate every hypothetical risk?

alternative methods of encouraging compliance. Many governments are choosing the softer road of encouraging codes of conduct and "best practices."

Economic regulations have evolved, too. Price and entry controls are almost never suggested as a first-order solution to concerns over market concentration. Instead of hard-nosed, top-down diktats, governments are increasingly using "nudges," convening "multistakeholder" meetings and workshops, and deploying what Tim Wu calls "agency threats." The Obama administration's Commerce Department and Federal Trade Commission (FTC) have already used this approach in their attempts to influence "big data" collection, biometrics, online advertising, mobile app development, and other emerging sectors and technologies.

Think of it as a "soft power" approach to tech policy: Policy makers dangle a regulatory Sword of Damocles over the heads of Internet innovators and subtly threaten them with vague penalties—or at least a lot of bad press—if they don't fall into line. The sword doesn't always have to fall to be effective; the fact that it's hanging there is enough to intimidate many firms into doing what regulators want. It's similar to the approach that the Food and Drug Administration has employed for decades with many food or medical device manufacturers: constantly harping on them about how to better develop their products, often without ever implementing formal regulations clarifying exactly how to do so.

That's how policy makers are already approaching the Internet of Things, too.

Why Matter Matters

It may feel like the Internet is already a ubiquitous backdrop of our existence, but "getting online" still requires a conscious effort to sit in front of a computer or grab a smartphone and then take steps to connect with specific sites and services. The Net does not have a completely seamless, visceral presence in our everyday lives. Yet.

The Internet of Things can change that, ushering in an era of ambient computing, always-on connectivity, and fully customizable, personalized services. Wearable health and fitness devices like Fitbit and Jawbone are already popular, foreshadowing a future in which these devices become "lifestyle remotes" that help consumers control or automate many other systems around them—in their homes, offices, cars, and so on.

Nest, recently acquired by Google, is already giving homeowners the ability to better manage their homes' energy use and to do so remotely. It signals the arrival of easy-to-program home automation technologies that will, in short order, allow us to personalize nearly every appliance in our home.

Meanwhile, our cars are quickly becoming rolling computers, loaded with chips and sensors that automate more tasks and make us safer in the process. Soon, automobiles will be communicating not only with us but with everything else around them. While fully driverless cars may still be a few decades away, semi-autonomous technologies that are already here are gradually making it easier for our cars to drive us instead of us driving them.

Think of this new world as the equivalent of Iron Man Tony Stark's invisible butler JARVIS; we'll be able to interface with our devices and the entire world around us in an almost effortless fashion. Apple's Siri and similar digital personal assistants are already on the market but are quite crude. The near future will bring us Siri's far more advanced descendants, ambient technologies that are invisible yet omnipresent in our lives, waiting for us to bark out orders and then taking immediate, complex actions based on our demands.

After that we may quickly enter the realm of cyberpunk. There are already plans for "digital skin" and "electronic tattoos" that affix ultrathin wearables directly to the body. Many firms have already debuted "epidermal electronics" that, beyond the obvious health monitoring benefits, will allow users to interface with other devices—money scanners might be one obvious application—to allow frictionless transactions. Monitoring and communication technologies could also be swallowed or implanted within the body, allowing users to develop a more robust and less invasive record of their health at all times.

These innovations are poised to fuel an amazing transformation in the industrial world too, leading to a world of machine-to-machine communications that can sense, optimize, and repair instantaneously, producing greater efficiency. Consulting firms such as McKinsey and IDC have predicted that this transformation will yield trillions of dollars' worth of benefits by expanding economic opportunities and opening up new commercial sectors.

When the Net is being baked into everything we contact, policy anxieties will multiply rapidly as well. Security and privacy concerns already dominate policy discussions about the Internet of Things. Critics fear a future in which marketers or the government scrape up the data our connected devices will collect about us. But even more profound existential questions are being raised by legal theorists, ethical philosophers, and technology critics, who often conjure up dystopian scenarios of intelligent machines taking over our lives and economy.

Which Vision Shall Govern?

This is where the question of permissionless innovation comes into play. Will Internet of Things–era innovators be at liberty to experiment and to offer new inventions without prior approval? Or will a more precautionary approach prevail, one where creators will have to get the blessing of bureaucrats before launching new products and services?

The FTC has already issued reports proposing codes of conduct to manage the growing deluge of data. The goal is to encourage coders to bake in "privacy by design" and "security by design" at every step of product development. In particular, FTC officials want developers to provide users with adequate notice regarding data collection practices, while also minimizing data collection in the aggregate.

Many of those practices are quite sensible as general guidelines, especially those related to promoting the use of encryption and anonymization to better secure stored data. But the FTC wants developers *always* to adopt such privacy and data security practices, and it wants to be able to hit them with fines and other penalties (using the agency's "unfair and deceptive practices" authority) if they fail to live up to those promises. If the intimidation game gets too aggressive and developers reorient their focus to pleasing Washington instead of their customers, it could have a chilling effect on many new forms of data-driven, Internet-enabled innovation.

The FTC has already gone after dozens of digital operators in this way, including such Internet giants as Google. In consent decrees, the commission extracted a wide variety of changes to those companies' privacy and data collection practices while also demanding that they undergo privacy audits for a remarkable two decades. That'll provide regulators with a hook for nudging corporate data decisions for many years to come.

While the FTC looks to incorporate the Internet of Things within this expanded process, some precautionary-minded academics are pushing for even more aggressive interventions. Many critics of private-sector data collection would like to formalize the FTC's privacy and security auditing process. Decrying a supposed lack of transparency regarding the algorithms that power various digital devices and services, they propose that companies create internal review boards or hire "data ethicists" (like themselves) to judge the wisdom of each new data-driven innovation before product launch.

More far-reaching would be the "algorithmic auditing" proposed by tech critic Evgeny Morozov and others. Advocates seek a legal mechanism to ensure that the algorithms that power search engines or other large-scale digital databases are "fair" or "accountable," without really explaining how to set that standard. There's also a movement afoot for some sort of "right of reply" to protect our online reputations by forcing digital platforms to give us the chance to respond to websites or comments we don't like.

The alphabet soup of technocratic agencies already trying to expand their jurisdictions to cover emerging technologies—FCC, FTC, FDA, FAA, NHTSA, etc.—aren't doing enough for the critics. New bureaucracies are being floated.

The European Union is already going down this path with the so-called Right to be Forgotten law, which mandates that search results for individuals' names be scrubbed upon request.

Fortunately, we are protected from such mandates in the U.S. by the First Amendment. The right to code is the right to speak. Technocrats will have to be cleverer to impose their controls stateside. Realizing that those roadblocks lie ahead, some activists are already trying to shift the discussion by claiming it's about "civil rights" and the supposed disparate impact that will occur if algorithmic decisions are left to the marketplace. Danielle Keats Citron, a law professor at the University of Maryland, calls for "technological due process" that would subject private companies to the sort of legal scrutiny usually reserved for government actors.

Meanwhile, new bureaucracies are being floated to enforce it all. Apparently the alphabet soup of technocratic agencies already trying to expand their jurisdictions to cover emerging technologies—FCC, FTC, FDA, FAA, NHTSA, etc.—aren't doing enough for the critics. For example, Frank Pasquale, also of Maryland's law school, favors not only a right of reply but also a Federal Search Commission to oversee "search neutrality" (think of it as net neutrality for search engines and social networking sites), as well as "fair automation practices" that would regulate what he regards as the "black box" of large private databases. And Ryan Calo of the University of Washington School of Law fears "digital market manipulation" that might "exploit the cognitive limitations of consumers." He also proposes a Federal Robotics Commission "to deal with the novel experiences and harms robotics enables."

Better Safe Than Sorry?

Anticipatory regulatory threats such as these will proliferate in tandem with the expanding penetration of ambient, networked technologies. The logic that animates such thinking has always been seductive among the wet-blanket set: Isn't it better to be safe than sorry? Why not head off hypothetical problems in privacy and security?

There is no doubt that slowing Internet of Things development could prevent future data spills or privacy losses, just as there is no doubt that regulatorily strangling Henry Ford's vision in the crib would have prevented numerous car crashes (while also preventing all the advantages cars have brought to our lives as well). If we spend all our time worrying over worst-case scenarios, that means the *best-case* scenarios will never come about either. Nothing ventured, nothing gained.

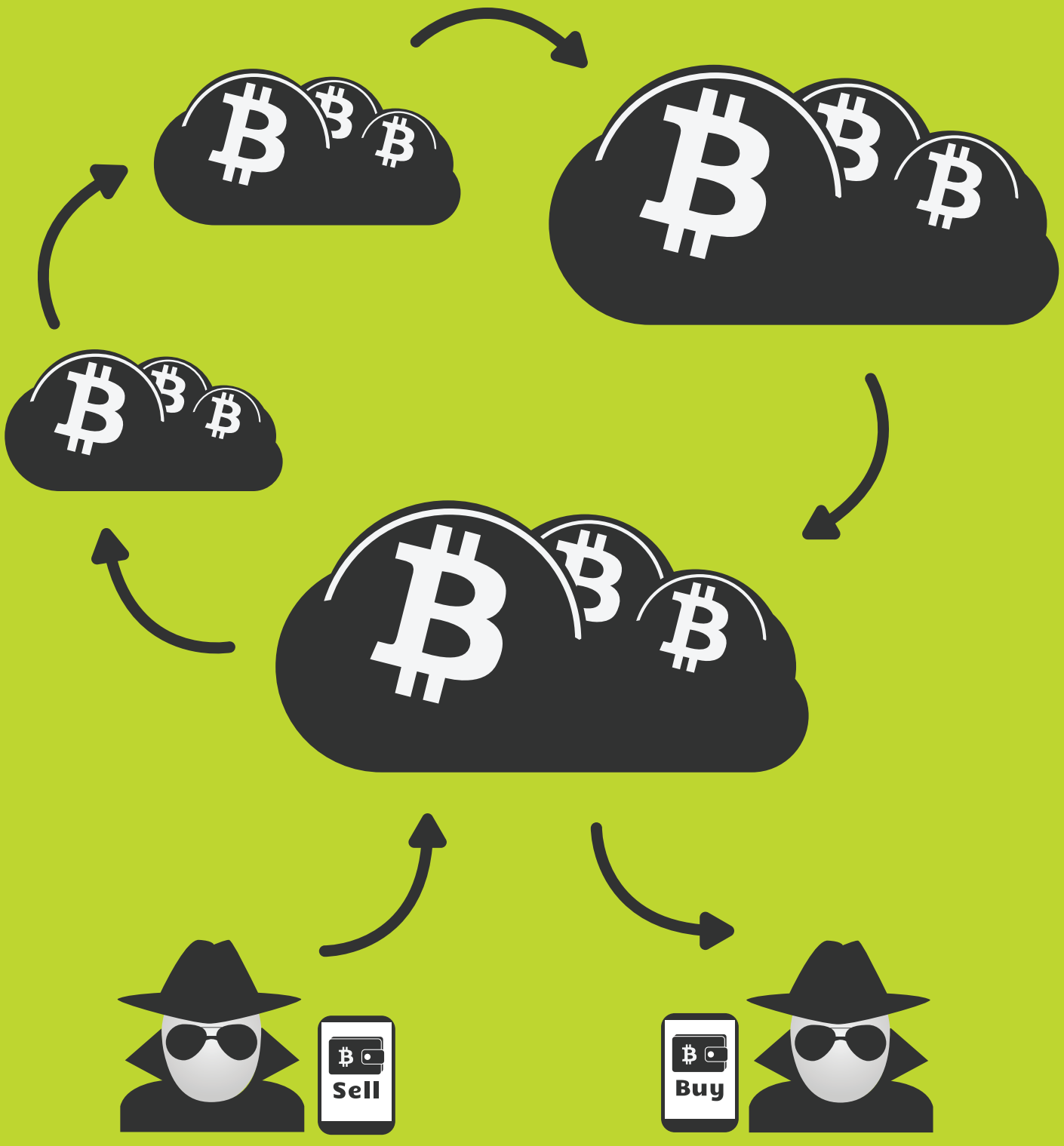
The trans-Atlantic contrast between the U.S. and Europe on digital innovation over the past 15 years offers real-world evidence of why this conflict of visions matters. America's tech sector came to be the envy of the world, and many U.S.-based firms are household names across Europe. (Indeed, European regulators are constantly trying to take the likes of Google, Amazon, and Facebook down a peg.) Meanwhile, it is difficult to name more than a few major Internet innovators from Europe. America's more flexible, light-touch regulatory regime left more room for competition and innovation compared to Europe's top-down regime of data directives and bureaucratic restrictions.

Instead of precaution, a little patience is the better prescription. Long before the Internet of Things came along, many predecessor technologies—telephones, broadcast networks, cameras, and the Net itself—were initially viewed with suspicion and anxiety. Yet we quickly adapted to them and made them part of our daily routines.

Human beings are not completely subservient to their tools or helpless in the face of technological change. Citizens have found creative ways to adjust to technological transformations by employing a variety of coping mechanisms, new norms, or other creative fixes. Historically, the births of new, highly disruptive networking technologies—think of social networking sites just a decade ago—have been met by momentary techno-panics, only to see citizens quickly adapting to them and then clamoring for more and more of the stuff. The same will be true as we adjust to the Internet of Things.

If we hope to usher in what Michael Mandel, chief economic strategist at the Progressive Policy Institute, calls "the next stage of the Internet Revolution," we'll need to guarantee that innovators will remain free to experiment with new and better ways of doing things. That's the Internet freedom we should be fighting for.

Adam Thierer (athierer@mercatus.gmu.edu) is a senior research fellow at the Mercatus Center at George Mason University. His most recent book is Permissionless Innovation: The Continuing Case for Comprehensive Technological Freedom (Mercatus).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Bitcoin and the Cypherpunks

Will recent breakthroughs in computer science make truly free markets a reality?

Jim Epstein

Uber has made waves by undermining the government's hold over the taxi industry while making it easy for anyone with a car to become a driver and anyone with a phone to hail a car. But for some radical entrepreneurs, the ride service hasn't gone nearly far enough. Take Matan Field, a 35-year-old Israeli and theoretical physicist, who is the cofounder of a venture called La'Zooz. His aim is to bypass not just regulators but all kinds of middlemen, liberating the taxi industry from external controls altogether. And Field doesn't plan to stop there. "It's a new vision for the economy," he says, "that's much bigger than transportation."

Field is part of a self-branded "decentralization" movement coalescing around the idea that recent breakthroughs in computer science have made it possible for individuals to exchange goods and services without the involvement of any third party.

Some of the highest profile firms in tech—including Uber, Lyft, eBay, Etsy, and Airbnb—are essentially marketplace operators that facilitate trade between independent buyers and sellers. In return, they extract fees, put limits on who can participate in the market, and occasionally hand over personal information about their users to the government.

Not for much longer, perhaps. The theory is that these new decentralized marketplaces will allow anyone to buy anything from anyone anywhere with as much privacy as they want, and that repressive governments will have little recourse to stop them. Brian Hoffman, the project lead on an eBay-like decentralized peer-to-peer marketplace called OpenBazaar, says that getting to know his wife's Iranian family is part of what made him want to get involved. "It gave me a first-hand look at how hard it is for people to conduct any kind of online commerce across borders," says the 32-year-old developer. "Just to get an iPhone in Iran is such an encumbering process."

The decentralization movement takes the ethos of the cypherpunks—a community that came together in the early 1990s around the idea that cryptography could preserve online freedom by shielding communications from the

Bitcoin (Denys Kotenko/Veer)

government's purview—and extends it to the exchange of goods and services. The movement's philosophy, Matan Field and others say, is best summed up by a quote from the inventor and theorist Buckminster Fuller: "You never change things by fighting the existing reality. To change something, build a new model that makes the existing model obsolete."

But Field and his cohorts face a befuddling problem: How do they convince anyone—other than drug dealers and thieves—to actually participate in the elegant systems they're creating? A handful of these marketplaces launched late last year, and almost nobody is using them. Slow uptake is far from a death sentence for early-stage companies, but there are other reasons to fear that these entrepreneurs and techno-utopians are ill prepared for the challenges the old world presents for the new one they are trying to create.

Bitcoin and Decentralization

Decentralized peer-to-peer marketplaces became technically possible only in 2009, when a shadowy figure calling himself Satoshi Nakamoto gave the world a new form of virtual currency called Bitcoin. More than just a new form of money, Bitcoin is also a protocol, or system for managing information, that has the capacity to undergird—and revolutionize—much of the Internet.

Matan Field (Reut Field)

eBay facilitates trade among its users in a multitude of ways: by tracking the reputations of buyers and sellers, arbitrating disputes, and establishing ground rules about what can be bought and sold. It also hosts product listings on its servers and maintains a central ledger of who sold what to whom and at what price. Enter Bitcoin's core feature, the "distributed ledger," also known as the "blockchain," which allows strangers to trust each other without the involvement of a third party. In a nutshell, when bitcoins are traded between two parties, a record of the transaction is broadcast to the entire community and then eventually added to the blockchain.

Everyone in the world running Bitcoin client software maintains a duplicate copy of at least a portion of what's essentially a shared file. This gives the network tremendous resilience. Deleting or altering past transactions recorded to the blockchain would involve invading the homes of every person in the world running a Bitcoin client and commandeering their personal computers. NXT FreeMarket, another decentralized peer-to-peer marketplace, records all of its product listings and trades to the blockchain. So instead of relying on a central operator like eBay to be a repository of information, every user maintains a duplicate file detailing every product for sale and every trade that takes place on the platform.

It doesn't sound so user-friendly, but it is; buyers and sellers simply install an easy-to-use application on their home computers that reads the blockchain and makes product listings simple to create and locate. (NXT FreeMarket, which launched in October 2014, utilizes an alternative form of cryptocurrency called NXT that's similar to Bitcoin in most ways.) As of mid-February, about 1,000 users had downloaded NXT's client application and were trading approximately three or four items per week.

OpenBazaar's developers took a different approach to creating a decentralized peer-to-peer platform. Its product listings aren't stored in the blockchain; rather, they live on each seller's home hard drive. Users simply run an application that works like BitTorrent, a popular technology that lets strangers share files directly with each other. BitTorrent is commonly used for illegally sharing copyrighted videos. It's entirely peer-to-peer and doesn't route through a central server, so big media companies are virtually powerless to stop its use. The same is true of OpenBazaar, which launched last August in beta.

OpenBazaar does use Bitcoin to resolve the inevitable conflicts that arise when people sell things to each other.

The new decentralized marketplaces will allow anyone to buy anything from anyone anywhere with as much privacy as they want. Repressive governments will have little recourse to stop them. In theory, anyway.

Bitcoins are stored at a virtual address, and a secret password is required to transfer funds from one address to another. OpenBazaar requires buyers to transfer payment to an escrow address that has not one but three passwords; the combination of any two releases the funds. The buyer and seller both hold one password, so when both parties are satisfied, they can agree to transfer payment out of escrow to the seller.

If a dispute arises, however, the network assigns an independent arbitrator, who holds the third key. The arbitrator breaks the tie by transferring the money to one of the two parties (after first sending a percentage into his or her account as a fee).

Centralized marketplace operators, such as Uber, Etsy, eBay, and Airbnb, also perform the essential function of reputation tracking. They solicit reviews from buyers after each sale is complete and tabulate the results. This helps ensure that the stranger getting into your car or staying in your spare bedroom isn't planning to rob you, or worse.

Users of decentralized peer-to-peer marketplaces are anonymous, so they're not accountable for what they say, which is why review systems pose a unique challenge in these networks.

Brian Hoffman says that OpenBazaar is considering a system that allows its participants to "burn" bitcoins, or take them permanently out of circulation by sending them to dead addresses that nobody owns. The idea is that by destroying some of their money, users prove their commitment to the network—demonstrating that they have skin in the game—so their ratings and reviews are given more weight. This would also weed out spammers and trolls. Hoffman is working on another approach that would mimic Google's page-ranking system by basing users' reputations on whom they've done business with, and then whom those people did business with, and so on, to create a pyramid of trust.

If They Build It, Who Will Come?

There's karmic justice to the notion of using computer code to make the jobs of Silicon Valley executives irrelevant, but are consumers really clamoring for a service to duplicate what eBay already does so well? Hoffman says saving money will be a big enticement: eBay generally takes at least 10 percent of every sale, while OpenBazaar, which has no shareholders, creditors, or paid staffers, is free to use.

Privacy is another selling point. Stored on eBay's servers are the identities, payment information, and buying histories of all its users. The company is known to routinely hand over information to the government—in fact, it maintains a separate portal to make it easy for law enforcement agencies to query eBay's servers. Decentralized peer-to-peer marketplaces have no servers and keep no information on their users whatsoever. And all the personal information traveling through the network is encrypted.

Mr. Knuckle, the pseudonym of one of the lead developers of NXT FreeMarket, says the project is an effort "to route around the system and do the things you should be allowed to do, like trade peacefully." A self-described anarchist who says he isn't breaking the law, Mr. Knuckle still won't reveal his identity because "I don't trust the government not to come and arrest me anyway and stick me in a cage where I can be raped."

All these projects were created with grim awareness of the fate of Silk Road, an e-commerce site primarily for illegal drugs that thrived from 2011 to 2013. Though Silk Road encrypted the identities and transactions of all participants

and required payment with bitcoins, it was a *centralized* marketplace, and that was its downfall. Silk Road concealed the location of its servers, but the FBI eventually tracked them to Iceland, and in October 2013 the Reykjavik Metropolitan Police pulled the plug. The FBI also arrested Ross Ulbricht, the then-29-year-old libertarian founder and alleged operator of the site, and he now potentially faces life in prison after being found guilty of seven charges in a New York federal court.

NXT FreeMarket has no plug to pull.

Mr. Knuckle says he has no personal interest in facilitating the sale of narcotics. He thinks that it's "inevitable" drug dealers will use platforms like NXT FreeMarket, because nobody can stop them. But that's not the point, he adds. These marketplaces will be particularly useful in repressive countries where "many more things are illegal" than drugs.

Even so, filling the void left by Silk Road, which helped make drug buying safer, is one thing. These services could also be used for truly nefarious purposes, like selling stolen bikes and credit cards. eBay collaborates with law enforcement agencies primarily to combat run-of-the-mill theft, and even Silk Road banned the sale of child pornography and stolen goods. On these new peer-to-peer platforms, that won't be possible.

Mr. Knuckle says NXT FreeMarket will eventually roll out a "blacklisting option, by which a user can set a preference to filter out any listings," but ultimately he thinks even genuinely criminal activities on these sites are the price of freedom. OpenBazaar's Operations Lead Sam Patterson says the creators of a decentralized peer-to-peer marketplace "aren't morally responsible for the way it's used," just as the creators of the Internet itself aren't responsible for what people do with it. He's confident "it won't primarily be used for immoral purposes."

Other forms of product censorship could entice users. Patterson, whose day job is working as a technology policy analyst with the Charles Koch Institute (his employer has no involvement in OpenBazaar), points to a recent move by the e-commerce platform Etsy to ban listings that use the term "redskins" because it's "disparaging and damaging to Native Americans," as the company explained in a blog post. "Freedom of speech," Etsy solemnly stated, "is not without limits."

"It's the company's platform and that's Etsy's right," says Patterson, but on OpenBazaar "nobody can censor trade." That's a feature that in theory could siphon business from the world of Etsy into this cypher world.

Sam Patterson (Todd Krainin)

Mr. Knuckle, the pseudonym of one of the lead developers of NXT FreeMarket, says the project is an effort "to route around the system and do the things you should be allowed to do, like trade peacefully."

Neither drug dealers nor the purveyors of homemade Chief Wahoo memorabilia, however, have yet to find OpenBazaar. If you log in to the platform today, you might purchase a video game cartridge for the game "Kaboom!" that works on a first-generation Atari, a bottle of raw honey, a T-shirt that references the British sci-fi series *Doctor Who*, and other sundry items. NXT FreeMarket recently had nine items for sale on its platform, including a windhorse sculpture and silver maple leaf.

Both operations are in an early test stage so their low usage rates are hardly damning, but ultimately getting users who are more interested in selling their wares than yammering about Bitcoin's potential to revolutionize the economy will be an enormous challenge. These projects aren't designed to make their creators fabulously rich or, in most cases, attract venture capital funding—so where's the advertising budget supposed to come from?

Software engineer Steve Dekorte, 43, a co-creator of the decentralized peer-to-peer marketplace Bitmarkets, is candid on this subject. "We know how to write software, so we can put together an app in a pretty straightforward way, but we have no idea how to market it," he says.

Dekorte, a libertarian who's passionate about using his technical skills to bring positive social change, admits that "practically nobody is using" his service either, which launched in November. "I'm really interested in solving that problem." This issue is a "sensitive" one, says Mr. Knuckle. "We have built it; now will people come?"

Mike Hearn, a former Google engineer and an influential figure in the Bitcoin community, says that decentralized peer-to-peer marketplaces seem tailored to the specific needs of drug dealers. If criminals are the only ones to participate, "the whole reputation of these things will be tarnished." How many parents would have considered buying diapers on Silk Road, even if they were on sale at 10 percent below Amazon's price?

Hearn recently developed a Bitcoin app called Lighthouse that mechanizes the complex task of handling money in crowdfunding campaigns. Lighthouse is designed as a tool that platforms wanting to compete with Kickstarter and Indiegogo can integrate into their websites. But it doesn't aim to decentralize every aspect of crowdfunding at once. Hearn suggests developers follow his lead and look for piecemeal ways to integrate blockchain technology in areas where existing companies are weakest.

The decentralization movement is trying to live up to Fuller's adage that the best path to changing the world is to build a better one and then convince people to move there. But convincing people to move will be damn hard.

Real World Problems

Matan Field, of the decentralized peer-to-peer ridesharing platform La'Zooz (Hebrew for "to move"), says he's well aware that similar ventures have failed because they didn't attract enough users. So from the outset his team has focused its energies on solving this problem.

The need for a critical mass of users is particularly important when it comes to transportation platforms; Uber customers have grown accustomed to the luxury of always having a car nearby with a few minutes' notice. If La'Zooz is going to compete, Field realizes, he has to flood the streets with vehicles participating in the network.

Field's solution is to get Zooz tokens—the currency that riders and drivers exchange on this new network—out into the world before the service even launches. His idea is that once the cur-

These projects aren't designed to attract venture capital—so where will the advertising budget come from? "We know how to write software...but we have no idea how to market it," one programmer said.

rency is in wide circulation, people will use it. So in the early stage of the venture, riders or drivers can earn Zooz tokens simply by driving around with the La'Zooz app open on their phones, which is a way of rewarding early adopters. (The app tracks geolocation and compensates users for distance traveled.) Since mid-August, when the app went live, about 1,200 users have mined Zooz tokens, says Field, which is nowhere close to the participation level the network will need to become a viable transportation service.

Tokens can also be purchased using cryptocurrency from an informal bank that's operated by the La'Zooz community. Each token will also be assigned to correspond with a fraction of a bitcoin, which will integrate the network into the Bitcoin blockchain. That way, when Zooz tokens are traded, no third party is required to confirm that the money changed hands, because a record of the sale will be verified and recorded to Bitcoin's distributed ledger. (This method of anchoring new currencies to the Bitcoin blockchain, part of what's known as Bitcoin 2.0, is currently all the rage in the cryptocurrency community.)

Insurance is another hurdle for a burgeoning ride-sharing service. Personal policies generally don't cover accidents for cars with paying passengers. Field's solution is to start by limiting the cost of a La'Zooz ride to a share of the drivers' costs—gas, tolls, and something for wear and tear on the car. As long as drivers aren't profiting, he says, there's no issue with regulation or insurance. But not only does this severely limit the network's ability to get drivers to participate, it also won't necessarily give the network the regulatory immunity Field thinks it will. In the U.S., at least, regulators and insurance carriers generally forbid the drivers of vehicles that aren't properly licensed and insured from accepting any form of compensation, whether they are profiting or not.

Field, who did his Ph.D. work on String Theory, a unified explanation for the workings of the universe related to particle physics, seems to approach the challenge of solving the information problems inherent to a decentralized marketplace with the same zeal that he might have for tackling a difficult math proof. But it'll be a different sort of challenge convincing customers who just want a convenient late-night ride home from the bar to grapple with La'Zooz's many intricacies. Field may be building a system that's too complex to sell.

Steve Dekorte of Bitmarkets says that despite these early problems in finding users, the rise of the decentralized peer-to-peer economy is inevitable. Bitcoin and cryptography are such powerful tools that their manifest benefits will eventually win over a mass public. "I can't imagine how this could be stopped without the government imposing totalitarian-like controls," he says.

This notion that in the tech space certain ideas have a momentum of their own is reminiscent of *Wired* co-founder Kevin Kelly's theory of the "technium," the subject of his 2011 book *What Technology Wants*. Kelly imagines new innovations as part of a complex interconnected web that acts like a living organism, proliferating according to its own logic.

There's little doubt that Bitcoin or similar technologies will, in one way or another, make the world freer, richer, and more equitable. But a lot of false starts and failed ventures are likely along the way to a more libertarian world.

Jim Epstein (jim.epstein@reason.tv) is a producer at Reason TV.

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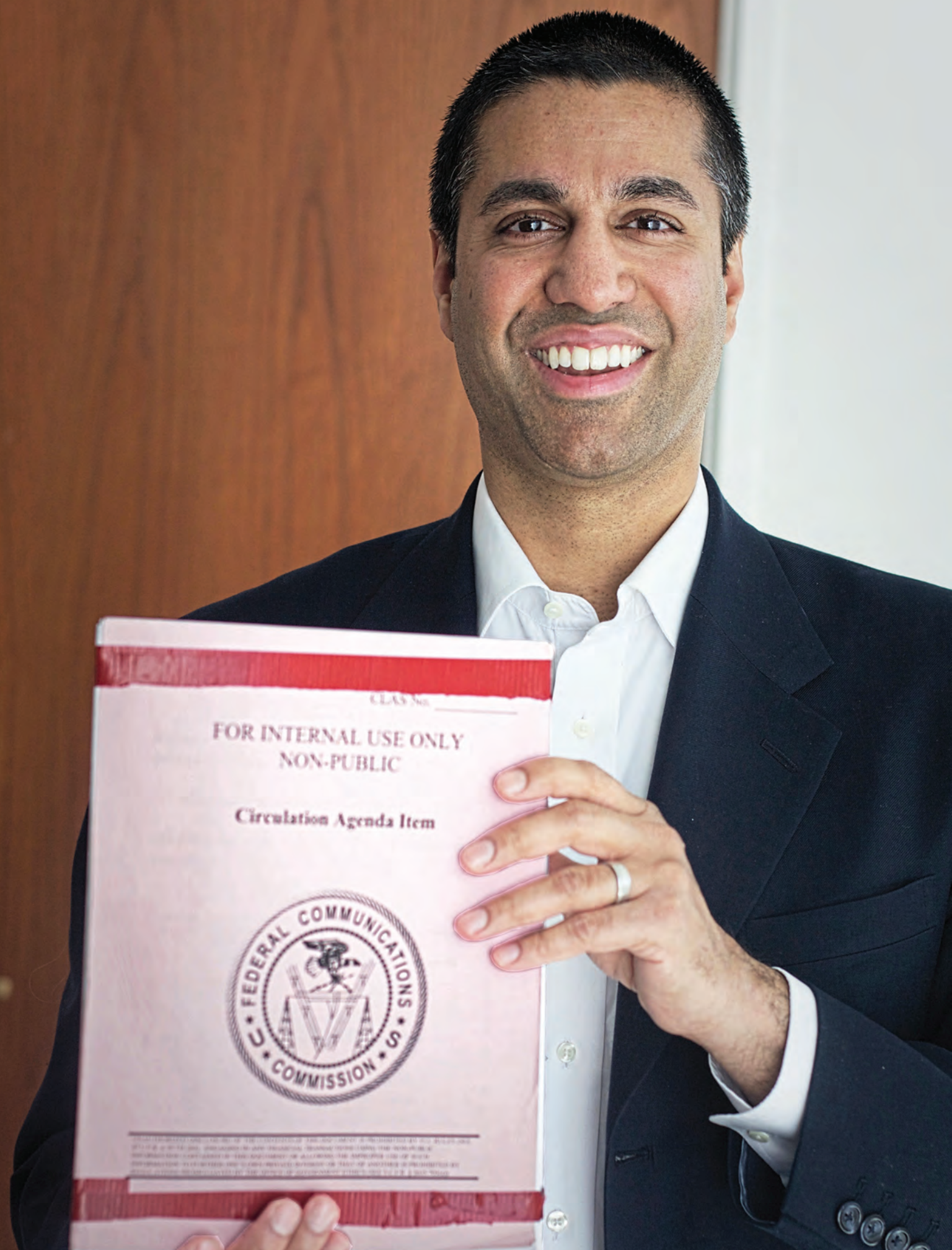
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'A Solution That Won't Work to a Problem That Simply Doesn't Exist'

Maverick FCC Commissioner Ajit Pai on why net neutrality and government attempts to regulate the Internet are all wrong.

Interview by Nick Gillespie

THINGS WERE TENSE at the end of February, as the Federal Communications Commission (FCC) prepared to vote on a proposal that would revamp the way Washington regulates the Internet. The 332-page document put forth by Chairman Tom Wheeler aimed to shift the classification of broadband Internet service from a Title I information service to a more heavily regulated Title II telecommunications service. Wheeler had made general information about the outlines of an earlier version of the proposal public, but, as is common at the FCC, the full text had not been released.

As the deadline neared, outspoken FCC commissioner Ajit Pai took to the airwaves he regulates (and the social media sites he doesn't), requesting that the commission's vote be delayed and the document released to the public: "The future of the entire Internet [is] at stake," Pai declared in conjunction with his fellow Republican commissioner Mike O'Rielly. But it was to no avail: The FCC ruled 3-2 to regulate the Internet.

Pai, educated at Harvard and the University of Chicago, has long been an opponent of net neutrality regulation and other measures to increase the power of the government over the Internet. The 42-year-old son of Indian immigrants spoke with Reason TV's Nick Gillespie just days before the controversial vote. For video of the interview, go to **reason.com**.

Ajit Pai (Todd Krainin)

reason: Everyone says they want a free and open Internet. What are the points of agreement and then where does it get fuzzy?

Ajit Pai: I think [former FCC Chairman Michael] Powell put it best when he said in 2004 that there were four basic Internet freedoms that he thought everyone should agree with: the freedom to access lawful content of one's choice, the freedom to access applications that don't harm the network, the freedom to attach devices to the network, and the freedom to get information about your service plan.

Everybody, or virtually everybody, agrees on that. I certainly do. The question is how do we operationalize that? In my view, the federal government is a pretty poor arbiter of what is reasonable and what is not, and it's exceptionally poor when it comes to having a track record of promoting innovation and investment in broadband networks. That's something the private sector has done a remarkable job of on its own.

reason: What are the instances that net neutrality proponents can point to where Internet Service Providers (ISPs) or other network operators have actually violated those open network principles?

Pai: There are scattered examples that people often cite: an ISP that nobody's ever heard of called

"The federal government is a pretty poor arbiter of what is reasonable and what is not, and it's exceptionally poor when it comes to promoting innovation and investment in broadband networks."

Madison River almost a decade ago. MetroPCS, an upstart competitor of course, basically had no market power to speak of compared to the other carriers. [The company] wanted to make a splash in the marketplace, so it offered its consumers virtually unlimited data plans for $40. You could stream YouTube for example without it counting against your data cap, all for $40.

reason: But basically you could only stream YouTube videos, right? The rest of the Web, you really couldn't get on it?

Pai: Exactly. So critics called it a net neutrality violation, called it a "walled garden," which was bad for consumers. It's telling that they didn't go after one of the major incumbents, which now they complain about vociferously. They went after an upstart competitor.

reason: MetroPCS was saying, "We're going to give you less for less, but if you want it, you can have it."

Pai: [For net neutrality proponents,] you either get to eat all you can eat at a restaurant, or you don't get to eat at all.

reason: So that's the idea of net neutrality?

Pai: Essentially.

reason: So what do you think are the main drivers behind net neutrality? From my perspective, when I look at things from a kind of public choice economics idea, what I tend to see are companies like Netflix, Amazon, to a certain degree Google, eBay, other players who are very big and have done very well with the way that the Internet works now, and they want to freeze everything in place. This, to me, seems a lot like the robber barons when railroads were starting to be regulated who were like, "Great, let's regulate things and fix our market positions." Is that wrong to think of that in those terms?

Pai: I certainly think there are particular companies that might see a strategic advantage in having the FCC inject itself for the first time into the nuts and bolts of the Internet's operation. For example, regulating the rates and terms on which ISPs and edge providers [such as YouTube, Amazon, and iTunes] have to interconnect. That's something that, if you're not getting what you think is a good deal through private commercial agreements, might be helpful to have an FCC backstop.

There are a lot of other people, smaller entrepreneurs and innovators that we hear from, that are worried that ISPs might end up acting as gatekeepers and keeping their content off the Web. While I understand their concern, I nonetheless think that (1) there's no existing example of that, and (2) the way to solve that is through case-by-case adjudication using the antitrust laws or Federal Trade Commission authority, or even FCC authority to the extent we have it. It is not imposing Title II regulations, which ultimately and ironically are going to limit the progress of this online platform.

All these startups and innovators are based here for a reason. It's because we have the best Internet infrastructure in the world. But that network doesn't have to exist. People don't have to invest in it, and ultimately, this could be counterproductive for them too.

reason: You've called out Netflix in particular, which has probably been the most vocal proponent of net neutrality and of Title II regulation. They apparently have a system where they gain an advantage by the way they code some of their streams. Essentially, you and others have suggested that they've created a fast lane on today's Internet. Why would that be wrong?

Pai: To be clear, I don't think that Netflix should be subject to regulation, but when it came to this question,

we heard an allegation in the fall from people who are pushing open video standards—everyone from ISPs to [content distribution networks] Level 3, Limelight, and the like. They wanted to create a system in which essentially traffic would be recognized as being video traffic, and then you could optimize the network to deliver it more efficiently, [with a] better experience for the end user. Netflix, we heard, was encrypting some of that traffic to make it difficult, if not impossible, for that traffic to be recognized as video traffic. So I simply asked them: What's the gist of your response to these allegations, in particular allegations that they had done encryptions selectively, and they had picked in particular, encryption against the ISPs that were using open video standards before encryption?

If the interest is truly in a free and open Internet, then one could make the argument that what the company's arguing for when it comes to ISP behavior should apply equally to edge provider behavior.

reason: How did they respond?

Pai: Well, they responded that they employed an encryption to preserve the privacy of their customers; they didn't deploy it selectively. In any case, there weren't any ongoing FCC proceedings.

reason: Netflix was also involved in a kind of large battle that wasn't quite about net neutrality. But Netflix was saying that on Comcast in particular and a couple of other large ISPs customers were suffering through extended buffering times where the quality of the stream and its reliability weren't so good. The ISPs said, "Look, Netflix is generating a huge amount of traffic, and we need to build out our networks in order to handle this traffic and prioritize it." And Comcast in particular, they have a new deal with Netflix where Netflix basically pays them more so that they get a faster pipe into the ISP. Is that the way the system should work? Is there any reason to believe that ISPs were purposefully slowing down the stream of Netflix to their customers so that they could go back to Netflix and say, "You better pay the toll, or people are going to get a real choppy image?"

Pai: From a procedural standpoint, neither of those parties ever filed a formal complaint with us, so we don't have what you might consider objective evidence from the parties as to what exactly the nitty gritty of the situation was. All I can say is based on what I've read in the press. That said, I think the nature of the dispute illustrates the folly of involving the government in refereeing some of those disputes in real time. We simply don't have the ability to determine who was right and who was wrong.

Even if we had the legal authority to do it, which I don't necessarily think we do, but ultimately, if you look at the end result, these arrangements, which have been commercially reasonable according to both parties given that they signed it, have been good for consumers. Again, if there's some kind of systemic problem when it comes to peering and transit, and other kinds of interconnection, I'm certainly willing to have an open mind about it, but I think in the absence of that, we should let the commercial arrangements work themselves out.

reason: We're talking about this as if it's a battle between Comcast and Netflix or this company and that company, but ultimately, the measure of all kind of economic regulation, and certainly antitrust law, is how it affects the consumer. That Netflix has to pay more to deliver its service, or the ISP has to eat more costs, that's not the same thing as saying the customer is in a bad position.

Pai: Exactly. I'm an antitrust lawyer by training, and that's why I view everything through the prism of consumer welfare, and that's why I find it amusing when some of my coworkers say, "Oh, you're just shilling for ISPs or looking out for big business." At the end of the day, my sole concern is: What is going to produce a better digital experience in the digital age? And I truly believe that removing some of these regulations that are impeding on IP-based investment and getting rid of some of these antiquated regulations is the best way to promote competition, promote consumer welfare. Not over-the-top 80-year-old regulations that have been proven not to work.

reason: Recently, FCC Chairman Tom Wheeler said that he's going to move forward with the FCC regulating the Internet under Title II regulations. That'll change the regulatory structure from that of an information service to a telecom. What is the most important thing that people need to know about that switch?

Pai: The most important thing that people need to know is that this is a solution that won't work to a problem that simply doesn't exist. Nowhere in the 332-page document that I've received will anyone find the FCC detailing any kind of systemic harm to consumers, and it seems to me that should be the predicate for certainly any kind of pre-emptive regulation—some kind of sys-

"Title II common-carrier regulations will sweep a lot of these smaller providers away who simply don't have the ability to comply with all these regulations. This hypothetical problem that people worry about is going to become worse because of the lack of competition."

temic problem that requires an industry-wide solution. That simply isn't here.

reason: So you're saying the Internet is not broken.

Pai: I don't think it is. By and large, people are able to access the lawful content of their choice. While competition isn't where we want it to be—we can always have more choices, better speeds, lower prices, etc.—nonetheless, if you look at the metrics compared to, say, Europe, which has a utility-style regulatory approach, I think we're doing pretty well.

reason: The FCC recently redefined what counts as broadband. But using the definitions in the agency's last roundup of the state of Internet connections, the FCC said that about 80 percent of households have at least two options for high-speed service. One of the things that people say is, "Well, we need to regulate the Internet because local ISPs like Time Warner or Comcast have an effective local monopoly on service." Is that accurate, and would that be enough of a reason to say, "Hey, we gotta do something"?

Pai: I certainly think there are a lot of markets where consumers want and could use more competition. That's why since I've become a commissioner, I've focused on getting rid of some of the regulatory underbrush that stands in the way of some upstart competitors providing that alternative: streamlining local permit rules, getting more wireless infrastructure out there to give a mobile alternative, making sure we have enough spectrum in the commercial marketplace. But these kind of Title II common-carrier regulations, ironically, will be completely counterproductive. It's going to sweep a lot of these smaller providers away who simply don't have the ability to comply with all these regulations, and moreover it's going to deter investment in broadband networks, so ironically enough, this hypothetical problem that people worry about is going to become worse because of the lack of competition.

reason: So do most people in America have a choice in broadband carriers, and do they have more choice than they did five years ago, and is there reason to believe they'll have more choice in another five years?

Pai: I think there are hiccups any given consumer might experience in any given market. Nonetheless, if you look on the aggregate, Americans are much better off than they were five years ago, 10 years ago. Speeds are increasing; the amount of choice is increasing. Something like 76 percent of Americans have access to three or more facilities-based providers. Over 80 percent of Americans have access to 25 mbps speeds. In terms of the mobile part of the equation, there's no question that America has made tremendous strides. Eighty-six percent of Americans have access to 4G LTE. We have 50 percent of the world's LTE subscribers and only 4 percent of the population.

reason: Many will say that part of the problem is that Europe, for instance, is so much more advanced than we are in terms of the speed of connectivity, the price of a connection, and the variety. Is that just wrong?

Pai: That is wrong. If you look at the Akamai *State of the Internet* report, for example, or other objective data, there's no question that America is better off, especially considering our relatively lower population density, in terms of deployment, speeds, prices, whatever metric you choose. Moreover, if you look at investment, in the U.S. it's $562 per household. In Europe, it's only $244.

reason: Why is that important?

Pai: It's important because we want to have a strong enough platform for innovation investment and online options as possible, but you won't get that if the private sector doesn't have the incentive to risk capital to build those networks. It's a pretty tough thing to build

the nuts and bolts of the Internet, and if the regulatory system is one that second-guesses you every single step of the way, regulates your rates, tells you what service plans are allowed or not, regulates the commercial arrangements you have both within users and companies, you're going to have the European situation, essentially.

reason: You've talked about the proposal as being well over 300 pages. There have been accounts that that's mostly footnotes and addenda, and that the rules are about eight or 10 pages. Is that accurate?

Pai: The rules are eight pages. However, the details with respect to forbearance, the regulations from which we will not be taking action—that alone is 79 pages. Moreover, sprinkled throughout the document there are uncodified rules, ones that won't make it in the code of federal regulations, that people will have to comply with in the private sector. On top of that, there are things that aren't going to be codified, such as the Internet conduct standard, where the FCC will essentially say that it has carte blanche to decide which service plans are legitimate and which are not, and the FCC sort of hints at what factors it might consider in making that determination.

reason: What goes into something like that where you're saying, "We're the regulators and we're here now, and you've got to pay attention to us, but we're not going to tell you what you actually need to do"? That's passive-aggressive to the max, and is that a deliberate strategy, to say, "We want you to jump, but we're not going to tell you how high"?

Pai: I think part of the problem is that the rules don't give sufficient guidance to the private sector, regardless of whether they're public or not. Part of the reason I want them to be [made] public soon, in advance of the vote, is I think the American public and particularly the people who'd be affected by it deserve to see what regulations are going to be adopted before they're formally adopted.

reason: Why wouldn't the FCC just put the document out into the public when it was announced that it was going to be voted on? What is the history of the kind of secrecy of rule making or documentation in the FCC, and does this represent a break with that?

Pai: Under the rules, only the chairman has the authority to disclose this document, and he's said both to Congress and to the public that he's not going to do so, and he's cited the traditional practice of the FCC, which is to not reveal these proposals until after they're voted on. And he's absolutely right, that is the traditional practice.

reason: Is that a good practice?

Pai: In this case, it absolutely is not. If you look at how great the public interest is in this issue, the folks who have been advocating for net neutrality have told us repeatedly that the Internet is something unique among the FCC's responsibilities, that four million people have commented, the president himself has made specific comments about it, and so I think if ever we were to make an exception to the traditional practice, this is it. Moreover, it's not that big a leap to say that the FCC should be as open and transparent as the Internet itself. Simply publish the rules, let the American people see it, and I think they can make up their own minds.

reason: What role did the White House play in creating the Title II decision? A year ago, everyone was saying, "Well, Wheeler is not going to go with Title II. He's a former lobbyist or employee of the cable industries. He's not going to do that." So what role did the White House play in enforcing this decision?

Pai: I think the White House changed the landscape dramatically with the president's announcement shortly after the midterm elections that he wanted the FCC to adopt Title II regulations and said—and it's still on his website—"I ask the FCC to implement this plan."

reason: The FCC is technically an independent agency, right?

Pai: It is and always has been.

reason: So is it a break with past protocols for the president to be kind of demanding certain things?

Pai: It is a break, in my experience. I've served under a number of different chairmen during administrations of Republican and Democratic affiliation. I've never seen anything as high profile as this. There have been other examples of presidents weighing in with a letter or a phone call, that kind of thing. But creating a YouTube video and [posting to the White House website] very specific prescriptions as to what this agency should do, followed by the agency suddenly changing course from where it was to mimic the president's plan, I think suggests that the independence of the agency has been compromised to some extent.

reason: Mark Cuban recently said at a tech conference that in letting the FCC enforce net neutrality, "the government will fuck everything up." Do you agree with that?

"The White House changed the landscape dramatically with the president's announcement shortly after the midterm elections that he wanted the FCC to adopt Title II regulations and said 'I ask the FCC to implement this plan.'"

Pai: Well, as an FCC regulator, I certainly can't say that I agree with his use of one of the seven dirty words. [*Laughs*.] But I will say that the gist of his sentiment is absolutely right. I mean, do you trust the federal government to make the Internet ecosystem more vibrant than it is today? Can you think of any regulated utility like the electric company or water company that is as innovative as the Internet? What Marc Andreessen, who developed the Netscape browser, and what other entrepreneurs are saying is that this is something that's worked really well and there's no reason for the FCC to mess it up by inserting itself into areas where it hasn't been before.

reason: You've also been critical of the idea that if the U.S. government gets involved in the regulation of our Internet, that sends a particular message to other countries that's not particularly good. Explain what you mean by that.

Pai: On the international stage, there was an effort at the International Telecommunications Union, which is an arm of the United Nations, and another for the current model of Internet governance, which has been multistakeholder or decentralized, to be changed. And a lot of foreign governments, especially oppressive governments, would love nothing more than to have more direct control over both the infrastructure of the Internet and the content that rides over those networks. The U.S., to its credit, has spoken with a single voice against such efforts, but I think to the extent that Title II and the FCC's plans to micromanage the same nuts and bolts of the network [come to fruition], it becomes harder for us on the international stage to make that case, to persuade other countries not to go down the same road. And I would note that this is the exact same position that the Obama administration itself took in 2009 and 2010 when one of our ambassadors at the State Department said specifically that he was concerned that Title II–style regulation would send a negative message to oppressive governments and would lead them to block or otherwise degrade certain kinds of Internet traffic.

reason: Where do your ideas come from? You're obviously very pro-free market. You mention you're an antitrust lawyer by trade. You're a Republican appointee by Obama, so what are the ideas that motivate your thinking process in terms of regulation?

Pai: Going back to college at Harvard and then law school at the University of Chicago, I was exposed to a view of the world through the lens of economics that recognized that when government is relatively restrained in terms of its intervention in the economy, there is unbounded possibility for the consumer or the citizen. And that's why I've been outspoken since I've been at the FCC in favor of policies that I think will get the government out of the equation to the extent necessary to allow innovation to flourish.

There's no question that capitalism, generally speaking, has been the greatest source of human benefit, much greater than any government program that's ever been designed. If you look at how many people have been lifted out of poverty by free market ideas, it's tremendous. And it's that kind of innovation that people often take for granted, because we live naturally in the moment, and so it's hard to see the sweep of history. But I can tell you that for people as old as me, I remember 20 years ago when the Internet was at its inception, it was hard to get news, it was hard to do certain things that we now take for granted on a smartphone. But now, thanks to people in the private sector taking the risk, investing the capital, and being able to count on a regulatory system that didn't micromanage them, that's delivered unparalleled value. r

"An **intriguing** account of judicial and economic policy reflecting controversies within conservatism over civil rights and other issues." —*KIRKUS REVIEWS*

JUDICIAL ACTIVISM V. JUDICIAL RESTRAINT

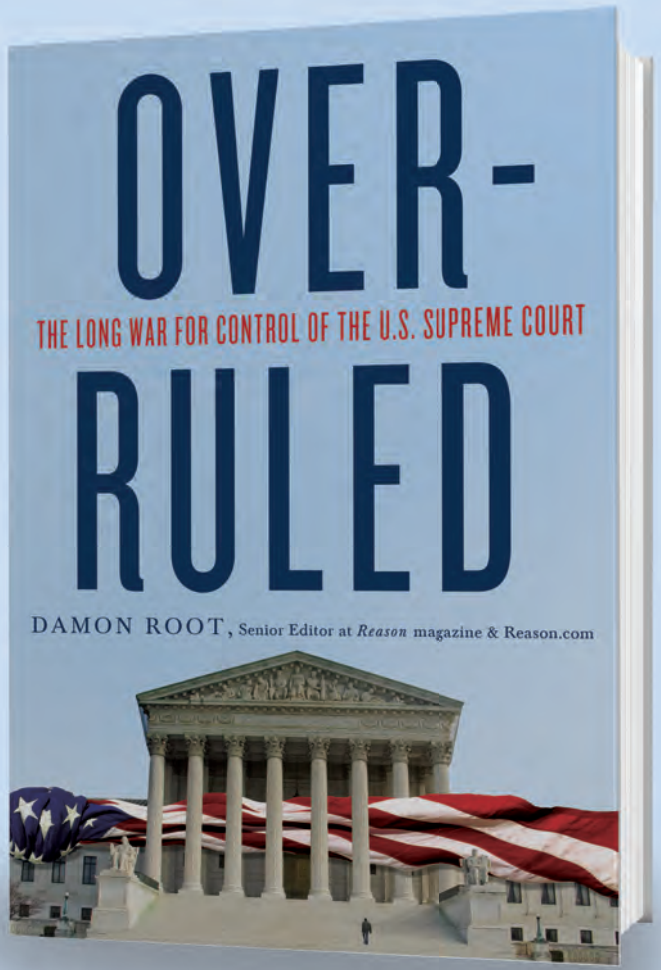
FROM *REASON* SENIOR EDITOR DAMON ROOT

"A **riveting** account of the raging debate over the future of our Constitution… Root reveals the inside story behind the surging movement to restore constitutionally-limited government. **I loved this book.**"

—RANDY E. BARNETT, Carmack Waterhouse Professor of Legal Theory, Georgetown University Law Center, and Director, Georgetown Center for the Constitution

"I not only learned a lot from Damon Root's **rich and compelling** analysis of the clash between the warring legal traditions but was **thoroughly entertained** along the way."

—DAVID T. BEITO, co-author of *Black Maverick: T.R.M. Howard's Fight for Civil Rights and Economic Power*



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Taking Comics to the People

Artists are using new platforms to bypass gatekeepers and grow the comic book industry.

Alexis Garcia

"Any time you don't have to ask permission is awesome. And now you don't," says Jason McNamara, an award-winning graphic novelist based in northern California. McNamara is just one of many in the comics community turning away from traditional publishing and toward digital platforms like Kickstarter and comiXology to finance and publish their work.

It's a strategy that worked well for McNamara's last release, *The Rattler*, a graphic novel he co-created with Los Angeles artist Greg Hinkle. The writer launched a campaign through Kickstarter, the online crowdfunding website that lets potential customers contribute money to help get creative or business projects off the ground. His goal was to raise $4,600 to publish the book; he ended up collecting pledges worth more than three times that amount from 390 different backers. "By going through Kickstarter first, we could get a real idea of what the interest is for this book," McNamara says. "There is an element of entrepreneurship and there's a gamble that appeals to people. In Kickstarter, I've had better conversations with [fans] than I've had over the past 10 years of doing conventions."

The Rattler (Jason McNamara)

The emergence of crowdfunding sites has provided fans with a more diverse selection of comics by allowing creators such as McNamara to sidestep editorial gatekeepers and bring their art directly to consumers. Before online platforms like Kickstarter came along, graphic novelists essentially had two choices: work with Diamond Comic Distributors—a company that boasts exclusive arrangements with most American comic publishers and stores—or publish, fold, and staple your books yourself, hoping you'll be able to sell them in person at events.

"In order to get in the comic shops you had to go through Diamond. They do have a monopoly in the comics community," explains Matt Silady, chair of the Master of Fine Arts in Comics program at California College of the Arts in San Francisco. "Diamond does a lot of great things for retailing, but they also have a business model that requires you to have a certain number of pre-orders for you to even be considered as part of their catalog. If you're not in that catalog, nobody is seeing your work."

Now artists and writers can showcase their offerings on a variety of websites and speak directly to fans without sacrificing artistic integrity or ownership.

"Diamond will turn a lot of stuff down based on whether they think it's worth it to them," says McNamara. "You have to appeal to their taste and what they think. But comiXology is more open...Kickstarter—there is no barrier of entry.

Which is great, because if you want to make comic books, no one is saying 'no' to you anymore. You just have to find the right platform."

As more creators look online to publish their work, consumers are also embracing the digital marketplace. Comic book sales broke industry records in 2014, with digital comics contributing an estimated $90 million in sales, according to the most recent numbers published by ICV2, a news and data source that serves pop culture retailers. The rise of these digital platforms has only helped to expand readership—which has led to bigger profits in the comics industry and a reported 4 percent increase in the number of brick-and-mortar comic book retailers.

"Overall, comics is healthier than ever as an art form," says Silady. "There's nothing more exciting than the traditional barriers falling away and someone having art, showing it, and being able to put it out there without having to compromise." ▪

Alexis Garcia (alexis.garcia@reason.tv) is a producer at Reason TV. To see a video version of this story, go to **reason.com**.

Clockwise from top: 2014 ComiKaze Expo in Los Angeles (Alexis Garcia); Matt Silady (Tracy Oppenheimer); Jason McNamara (Tracy Oppenheimer)


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(Ed Honowitz/Getty Images)

Unpacking Obamacare

How the president's signature law came into effect, and what might come next

Peter Suderman

America's Bitter Pill: Money, Politics, Backroom Deals, and the Fight to Fix Our Broken Healthcare System, by Steven Brill, Random House, 528 pages, $28

Overcoming Obamacare: Three Approaches to Reversing the Government Takeover of Health Care, by Philip Klein, Washington Examiner, 112 pages, $9.99

NEAR THE BEGINNING of *America's Bitter Pill,* journalist Steven Brill describes an episode in which he was whisked through a hospital on the way to a major heart surgery. His book, he then promises, will be a "roller-coaster story of how Obamacare happened, what it means, what it will fix, what it won't fix, and what it means to people like me on that gurney consuming the most personal, most fear-inducing products—the ones meant to keep us alive."

This is an exaggeration; the narrative is less of a rapid roller-coaster thrill ride and more of a long journey on a rickety wagon. But it is accurate in the sense that Brill's book is largely focused on the "what" of Obamacare. Although he frames his text as a chronological narrative, and though it contains scattered moments of tension and drama, it is chiefly concerned with collecting

Girls Pulls the Trigger

Millennial auteur Lena Dunham often brings far more nuance to her HBO show, *Girls*, than she manages to demonstrate in her own hyper-partisan public persona. Returning for its fourth season, *Girls* transplants Dunham's character, Hannah Horvath, from New York City to rural Iowa, a perfect venue to put the contradictions of campus culture on display. Hannah enrolls in a creative writing program at the University of Iowa, where she confronts some unsettling realities. Initially concerned that her edgy fiction will "trigger" her fellow students, she finds they're merely offended at how bad it is.

Back in NYC, her friend Jessa and boyfriend Adam drift aimlessly. The show's voice of reason, Ray, chides them for not being more responsible. *Girls* refuses to let its characters off the hook for their delusions and immaturity, suggesting that Dunham is more self-aware about her generation's foibles than her critics think.

—Robby Soave

and arranging for easy consumption the mind-numbing litany of details that informed the law's creation. Brill is always perfectly clear and at times even evocative in his scene setting, but his book is best understood as a compendium of Obamacare minutiae.

The sheer volume of detail in *America's Bitter Pill* can make for exhausting reading. But the journalistic record it provides is invaluable. Brill's book is a thoroughly reported look back at the law's history, from the drawn-out negotiations before its passage to the fumbled rollout of the health insurance exchanges in 2013. Brill interviewed almost all the major players in the story, and he obtained mountains of memos and internal documents, including private notes kept on high-level administration meetings and diary entries by at least one White House staffer. It is the most comprehensive single account of Obamacare's creation yet, and it effectively serves as an extended Obamacare origin story.

Many of the details Brill provides will be familiar to those who have followed the law's saga. But even the savviest Obamacare watcher is likely to find a few new nuggets, and a clearer explanation of a familiar issue. The problem comes when Brill changes roles from journalist to pundit and tries to propose an alternative approach to health care. The reader interested in different reform ideas would be better off perusing another new book, Philip Klein's *Overcoming Obamacare*.

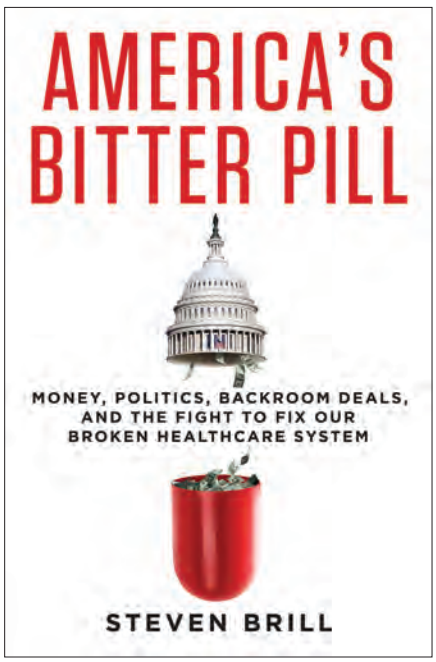
Dirty Deals

Brill is particularly adept at describing the process by which the law's backers cut deals with major health industries. These agreements grew partly from a desire to avoid vocal industry opposition, which many believed had killed Bill Clinton's health care reform plan in the 1990s. On the government side, the negotiations also stemmed from a sense that the industry should shoulder much of the financial burden associated with the law; health care companies, meanwhile, were motivated to minimize damage and perhaps create an even more profitable new system.

The industry strategy was led by Billy Tauzin, the former congressman who headed the drug-industry lobbying group Pharmaceutical Research and Manufacturers of America, better known as PhRMA. The model for Tauzin's approach was the Medicare prescription drug benefit that had passed under the Bush administration, providing a boon for drug makers. If PhRMA resisted instead of playing ball, he reckoned, Democratic health care reformers were certain to impose harsher measures. As one anonymous drug industry CEO tells Brill, Tauzin "liked to say that if you're not at the table, you're going to be on the menu."

The health insurance lobby, too, knew from state-by-state experience that it was likely to wind up on the menu, so America's Health Insurance Plans, the health insurance lobbying group, soon signaled its willingness to negotiate as well. The American Hospital Association also joined in.

Some of these deals were cut with the White House, which proved complicated because it wasn't always clear that the congressional offices



Girls (Mark Schafer/HBO)
America's Bitter Pill

writing the law were bound by the agreements. Much of the negotiation, however, occurred directly between industry representatives and Congress—primarily staffers working for Sen. Max Baucus (D–Mont.) on the Senate Finance Committee. Baucus' team included Antonios "Tony" Clapsis, a former Wall Street health care industry analyst who, Brill says, specialized in tracking "how much expanding healthcare coverage was going to benefit each sector of the industry."

When Finance Committee staffers met with industry lobbyists, they thus came armed with numbers showing not only what costs they believed the industry should incur but what improvements the law would make to their bottom lines. With PhRMA, for example, Clapsis estimated that the law would boost drug makers' revenues by roughly $200 billion over a decade—substantially more than the $130 billion the congressional staffers wanted the companies to kick in to help fund Obamacare.

In the end, the drug lobby agreed to take an $80 billion hit in conjunction with the law, while also becoming the primary backer of a series of ads supporting the law. The existence of the deal, as well as the group's role in supporting the ads, was intended to be secret.

Similar negotiations and similar deals with the insurance and hospital lobbies followed. Insurers were promised that the law would include a coverage mandate for individuals. Hospitals were initially exempted from potentially onerous cuts to their reimbursements. In exchange, the health care groups offered various forms of financial and promotional support. In effect, the industries negotiated profit-sharing agreements with the feds, with side deals to pay for marketing costs.

Government and industry were partners in the law. But not everyone approved, then or now.

Staff Squabbles

Jeanne Lambrew was one of the key players in both the design and the rollout of the Patient Protection and Affordable Care Act. A former Clinton official, Lambrew directed the Office of Health Reform at the Department of Health and Human Services. She was a major influence on the design of the law, and she led the implementation effort from the White House.

Lambrew *hated* health insurers. She expressed her hatred openly at staff meetings, according to staff notes obtained by Brill, referring to sellers of inexpensive policies as "bottom feeders." Lambrew was often charged with designing and implementing regulations that would directly affect large chunks of the health insurance industry's business, but according to Brill she frequently refused to deal directly with them, or even to communicate basic information, claiming not to trust them.

In Brill's telling, Lambrew comes across as both arrogant and incompetent, a fussy bureaucratic queen bee whose deep loathing of the insurers played a direct role in two of the health law's biggest fiascoes.

In the first mistake, Lambrew led the charge for ultra-strict rules regarding the "grandfathering" of existing insurance policies that did not meet the law's broader, more expensive requirements. She wanted them to disappear immediately, but eventually she settled for a compromise that nixed the plans at the end

Dylan in *Shadows*

Bob Dylan debuted two major works in February: *Shadows in the Night,* 10 torch songs previously recorded by Frank Sinatra, and his acceptance speech at the MusiCares Awards, in which he gave a detailed account of how his songwriting arose from the folk songs he sang as a young man. He also griped about critics of his unconventional singing.

Dylan led a generation in overthrowing the classic American songbook for a wild, more personal style, forcing reviewers of *Shadows* to note that in it Dylan is doing something he's always done: "confounding expectations." Yet in his MusiCares speech, he mocked those who dared say that's his driving motive.

Shadows does indeed confound expectations. Beyond that, it is an interesting but not compelling mood piece. Dylan's small band makes all these varied songbook classics sound like one misty, meandering, somber number, speeding along the historical process by which all distinctions in the 20th century pop songbook dissolve into unity.

—Brian Doherty

of 2013, when the insurance exchanges were set to go online. As a result, millions of individuals' policies were abruptly cancelled, directly contradicting President Barack Obama's repeated promises that those who liked their insurance could keep it. The affair caught Obama by surprise, Brill reports, because Lambrew had assured him it was a fake controversy conjured up by the insurers.

Lambrew's mistaken assurances also came back to bite the president when the federal health insurance exchange crashed out of the gate in October 2013. She had been in charge of the effort to create the exchanges, but repeatedly delayed decisions, holding up the process to micromanage insignificant details. When a report by consultants at McKinsey warned in March 2013 that the project was not on track, Lambrew ignored it. Throughout 2013, she repeatedly assured Obama and senior administration officials that the system was on schedule to open and work on day one. When the exchange flopped, the White House was blindsided.

Brill delves into the ways these sorts of personality-driven internal disputes shaped the law. While Lambrew looked for ways to teach insurers a lesson, the economic team pushed for aggressive cost-saving measures, many of which were cut or watered down, including a tort reform pilot program that was killed due to objections from trial lawyers. Yet the economic team made a show of aggressively touting the cost savings—so much so that Larry Summers, the National Economic Council director, wrote a memo complaining that White House budget director Peter Orszag had given the president a "snow job" by overstating their effects.

Brill emphasizes the ways poor communication, outright lies, and obscure departmental turf wars plagued Obamacare's implementation. He reports at length on the bureaucratic culture and complexity that defined, always for the worse, the contracting process, the decision making system, the flow of information, and the assignment of blame and responsibility. The book also suggests that these problems were exacerbated by an administration more interested in politics than in management. The White House put the bulk of its effort into campaigning for the law, not into trying to make it work.

Priced Out

Though most of Brill's book is dedicated to these machinations, a substantial fraction explores other areas of the medical system. Brill tells several detailed stories of individuals faced with staggeringly high medical bills, using them as the backdrop against which the larger legislative drama unfolds.

The details that concern Brill most are the dollar amounts listed on the bills. *America's Bitter Pill* often quotes prices for individual services provided to patients, including some of his own: $6,538 for a series of CT scans, $908 for the use of emergency room facilities, $451.59 for portable chest x-rays, $24 for a handful of niacin pills, $77 for a box of gauze pads, $186.54 for therapeutic exercise. At other times he gives us the grand totals: $149,872.50 for a cardiac surgery and eight-day in-hospital recovery, $9,418 for a visit to the emergency room that ended in stitches, $902,452 for a series of bills following a lung cancer diagnosis.

Brill quotes prices frequently enough that they become a kind of refrain. In the process, they begin to lose their meaning. This may also be because they are essentially meaningless.

When Brill presents his bills to hospital administrators, demanding explication, several decline to respond in detail. But the responses he does elicit are telling. A senior vice president for payer relations at Yale New Haven Health System admits that he has "no way" of explaining multiple items on one bill he's given.

Shadows in the Night

An executive from UnitedHealth Group looks at a confusingly worded bill and says, "I have no idea what that means; I would have no idea how to decode that."

The prices Brill quotes appear in most cases to be semi-arbitrary, and they are usually negotiated down by significant, highly variable percentages before being paid. In other words, the prices themselves are not the real prices.

Unfortunately, Brill's solution—payment rules and price controls, especially on pharmaceuticals—would not ground the bottom line in reality, either. Instead of arbitrary numbers negotiated between hospitals and insurers, it would be arbitrary numbers dreamt up by bureaucrats, who, as Brill's reporting on Obamacare makes clear, would surely be lobbied heavily by the industry. Indeed, when several states implemented restrictive price controls in the late 1970s and '80s, that's exactly what happened: The rules became complex to the point of incomprehensibility, and the big hospitals who were supposed to be reined in by the system effectively controlled it. Hospital costs, meanwhile, continued to rise.

Brill emphasizes the ways poor communication, outright lies, and departmental turf wars plagued Obamacare's implementation—exacerbated by an administration more interested in politics than management.

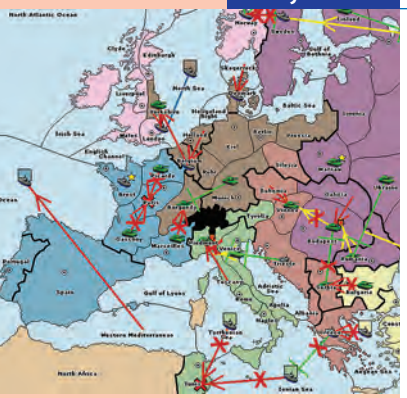
In addition to calling for price controls, Brill concludes his book with an extended call to transform health financing and care into a kind of quasi-public utility, with highly integrated, highly regulated hospital/insurer oligopolies replacing the more fragmented scene we have now. This is a strange end for a book that reports, in deep and often damning detail, the follies of federal management of health care. The book's biggest success story—the functional state-based exchange developed in Kentucky—is a success built on local methods and local control. Even the federal exchange was only fixed when the standard bureaucratic playbook was scrapped, the federal-employee lifers were pushed aside, and a team of outsiders from Google and elsewhere took over the recovery effort.

Brill's book examines every little incident with remarkable clarity. It is a pointillist portrait of legislative failure, viewed through a microscope. But it fails when it pulls back to reveal the bigger picture.

Republican Replacements

The big picture is where journalist Philip Klein shines. If *America's Bitter Pill* answers the question of how Obamacare came to be, *Overcoming Obamacare* explains what it might become, at least if the law's free market antagonists get their way.

Klein, the opinion editor of the *Washington Examiner*, divides the law's critics into three broad groups: the Reform School, which wants to build on the law, improving it and using it to further other health policy goals; the Replace School, which believes that Obamacare must be repealed but also that it's necessary to have a replacement that promises health coverage in the wings; and the Restart School, which argues not only that Obamacare should be



Diplomatic Games

The strategic board game Diplomacy, a mainstay of play-by-mail gaming for decades, can now be played via the Internet at webdiplomacy.net. Seven players assume the roles of pre–World War I European powers. Each country is nearly evenly balanced, and winning depends not just on strategic troop movements but on negotiating—and breaking—deals with other players, privately and publicly. The online game includes rule variants limiting the kinds of communications and modifying how victories are scored.

In reality, powers aren't so evenly or artificially balanced. But neither is the world so artificially demarcated. Despite the persistence of belligerence in real-world foreign policies, freer markets have connected people in unprecedented ways while new weapons have created new balances of power, making real-world diplomacy thankfully less of a zero-sum affair than this venerable game. *—Ed Krayewski*

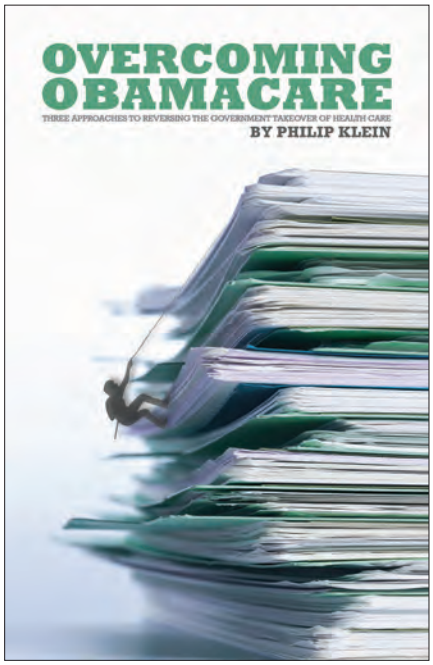
repealed but that its opponents should not let it define their health policy goals.

Like Brill, Klein is an astute reporter with broad access to the principal players. *Overcoming Obamacare* features revealing interviews with legislators and health wonks, as well as extensive but easy-to-grasp summaries of the major plans within each school.

The Reformers, for example, include Avik Roy of the Manhattan Institute, who for the last several months has been promoting a plan that would keep Obamacare but deregulate its exchanges and transition Medicare and Medicaid into the same system. In this way, Obamacare would become a vehicle for major entitlement reform with the potential for huge budgetary savings over time. The Replacers, who include many prominent conservative wonks, hope to use the substitution process to expand access to coverage in ways they believe are more market-friendly, such as through refundable tax credits, which could be paid for by limits on the tax breaks for employer-sponsored health care. The Restarters, including Louisiana Gov. Bobby Jindal and Michael Cannon of the libertarian Cato Institute, argue that Obamacare should not be the baseline from which alternatives work; they focus on flexibility and affordability more than coverage, in part by expanding health savings accounts.

As his title suggests, Klein is sympathetic to the anti-Obamacare cause. But he takes no sides, and he warns of the tradeoffs required with each approach. The Reformers would leave much of Obamacare in place, making it easy to ramp back up, and might not secure any liberal support. The Replacers would have to tread carefully around the dicey politics of capping tax breaks for high-end employer coverage. The Restarters would cede the goal of dramatically expanded coverage to the left.

But Klein's real strength is in laying out the conceptual underpinnings of each school. The Reform School works from the assumption that Obamacare cannot be repealed and that some Democratic support will be necessary for any alterations to be politically sustainable; the Replace School believes that the health law's



persistent unpopularity means that it *must* be repealed before putting something in its place; the Restart School worries that replacements that work from Obamacare's coverage and budget baselines will turn out to be little more than Obamacare Lite.

Klein, in other words, not only explains *what* each faction believes, he also explains *why*. It is this sense of *why*, of motivating principle and organizing theory, that is missing from Brill's otherwise illuminating book. The details Brill amasses are impressive, the minutiae he compiles are valuable for the historical record. But it's not enough to simply know what happened, especially when it comes time to decide what to do next.

Peter Suderman (peter.suderman@reason.com) is a senior editor at **reason**.

Bill Bennett's Pot Prevarications

A former drug czar's dazed and confused defense of marijuana prohibition

Jacob Sullum

Going to Pot: Why the Rush to Legalize Marijuana Is Harming America, by William J. Bennett and Robert A. White, Center Street, 240 pages, $26

"With marijuana," declare William J. Bennett and Robert A. White in *Going to Pot*, their new prohibitionist screed, "we have inexplicably suspended all the normal rules of reasoning and knowledge." You can't say they didn't warn us.

The challenge for Bennett, a former drug czar and secretary of education who makes his living nowadays as a conservative pundit and talk radio host, and White, a New Jersey lawyer, is that most Americans support marijuana legalization, having discovered through direct and indirect experience that cannabis is not the menace portrayed in decades of anti-pot propaganda. To make the familiar seem threatening again, Bennett and White argue that marijuana is both more dangerous than it used to be, because it is more potent, and more dangerous than we used to think, because recent research has revealed "long-lasting and permanent serious health effects." The result is a rambling, repetitive, self-contradicting hodgepodge of scare stories, misleading comparisons, unsupportable generalizations, and decontextualized research results.

Bennett and White exaggerate the increase in marijuana's potency, comparing THC levels in today's strongest strains with those in barely psychoactive samples from the 1970s that were not much stronger than ditch weed. "That is a growth of a psychoactive ingredient from 3 to 4 percent a few decades ago to close to 40 percent," they write, taking the most extreme outliers from both ends. Still, there is no question that average THC levels have increased substantially as Americans have gotten better at growing marijuana. Consumers generally view that as an improvement, and it arguably makes pot smoking safer, since users can achieve the same effect while inhaling less smoke.

But from Bennett and White's perspective, better pot is unambiguously worse. "You cannot consider it the same substance when you look at the dramatic increase in potency," they write. "It is like comparing a twelve-ounce glass of beer with a twelve-ounce glass of 80 proof vodka; both contain alcohol, but they have vastly different effects on the body when consumed." How many people do you know who treat 12 ounces of vodka as equivalent to 12 ounces of beer? Drinkers tend to consume less of stronger products, and the same is true of pot smokers—a crucial point that Bennett and White never consider.

When it comes to assessing the evidence concerning marijuana's hazards, Bennett and White's approach is not exactly rigorous. They criticize evidence of marijuana's benefits as merely "anecdotal" yet intersperse their text with personal testimonials about its harms ("My son is now 27 years old and a hopeless heroin addict living on the streets..."). They do Google searches on "marijuana" paired with various possible dangers, then present the alarming (and generally misleading) headlines that pop up as if they conclusively verify those risks. They cite any study that reflects negatively on marijuana (often repeatedly) as if it were the final word on the subject. Occasionally they acknowledge that the studies they favor have been criticized on methodological grounds or that other studies have generated different results. But they argue that even the possibility of bad outcomes such as IQ loss, psychosis, or addiction to other drugs is enough to oppose legalization.

"Let us hypothesize severe skepticism and say, for argument's sake, all these studies have a 5 percent chance of being right," Bennett and White write. Even then, they say, the continued prohibition of marijuana would be justified, noting that the painkiller Vioxx was pulled from the market in 2004 "when it was discovered 3.5 percent of its users suffered heart attacks as opposed to 1.9 percent [of those] taking a placebo." Bennett and White thus conflate a 5 percent chance that a drug poses any danger at all with a 5 percent chance that a given user will suffer serious harm. They are not the same thing. Bennett and White also imply that if "all these studies have a 5 percent chance of being right," that is equivalent to something like an 84 percent increase in risk (as seen with Vioxx). That is not right either.

Just as puzzling, Bennett and White put a lot of effort into arguing, quite unconvincingly, that "marijuana is at least as harmful as tobacco and alcohol," even though they repeatedly say it does not matter whether that's true. "More than smoking tobacco or drinking alcohol, smoking marijuana can damage the heart, lungs, and brain," they write. "It is simply untrue that tobacco is

The Spies Who Hated U.S.

In *The Americans*, a team of deep-cover Russian agents lives in the D.C. area during the Reagan era. They have two kids and a house in a suburban cul-de-sac. At night they put on wigs and run spy ops, stealing classified information, aiding Soviet allies, and occasionally engaging in bloody firefights with FBI agents—one of whom happens to be a friendly neighbor. The spies participate in American life even as they try to ruthlessly undermine it.

The Americans, which entered its third season this year on the FX Network, is a thriller as well as a glossy melodrama about marriage and family. Even more than that, it is a show about the ways that nationalism and ideology can warp one's perspective, making it easy to kill and lie for a totalitarian cause. The show adopts the perspective of its Communist protagonists, but its sympathetic viewpoint only renders the horror of their work more damning.

—Peter Suderman

more harmful than marijuana."

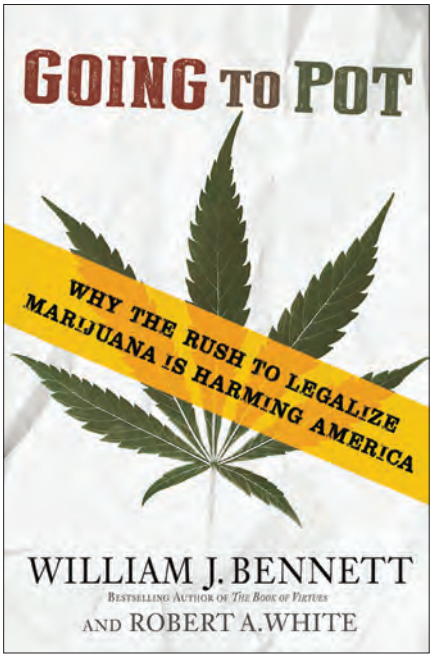
They never substantiate these claims, because they can't. As measured by acute toxicity, impact on driving ability, frequency of addiction, and the long-term effects of heavy consumption, alcohol is clearly more dangerous than marijuana. That point has been acknowledged not only by President Barack Obama but by his drug czar and even by Patrick Kennedy, co-founder of the anti-pot group Project SAM. The difference in risk is also recognized by a large majority of Americans, making Bennett and White's attempt to deny it even more quixotic.

The argument that marijuana is just as deadly as tobacco is equally bizarre, relying on the findings of a few scattered studies without regard to their strength or reproducibility. Bennett and White say, for example, that marijuana, like tobacco, causes lung cancer and cardiovascular disease. But according to a review published by the Colorado Department of Public Health and Environment (CDPHE) in January, there is "mixed evidence for whether or not marijuana smoking is associated with lung cancer." The CDPHE explains that "mixed evidence...indicates both supporting and opposing scientific findings for the outcome with neither direction dominating." The same report says there is only "limited evidence that marijuana use may increase risk for both heart attack and some forms of stroke." By "limited evidence," the CDPHE means there are "modest scientific findings that support the outcome, but these findings have significant limitations."

In other words, the hazards that Bennett and White cite, unlike the hazards of cigarette smoking, are unproven. Even if they were well established, there is no reason to think their magnitude would be similar, given the huge difference between the doses of toxins and carcinogens absorbed by a typical tobacco smoker and the doses absorbed by a typical pot smoker. Bennett and White quote Seattle thoracic surgeon Eric Vallieres on that very point.

"Some argue that one or two joints per day of exposure to these carcinogens does not even come close to the 1–2 packs per day contact a cigarette smoker experiences," Vallieres writes. "While this may mathematically make sense, the fact is that we do not know of a safe level for such exposures." Vallieres thus concedes that any lung cancer risk from smoking marijuana, assuming one exists, would be much lower than the risk observed in tobacco smokers, even among daily users. Still, he says, that does not mean smoking marijuana is completely safe!

Bennett and White devote much of their book to that sort of bait and switch. Consider their slippery handling of the fact that alcohol and tobacco kill people much more often than marijuana does. According to the U.S. Centers for Disease Control and Prevention, alcohol plays a role in something like 88,000 deaths a year, while tobacco is associated with 480,000. Tellingly, there is no official death toll for marijuana, although it's reasonable to assume the number is greater than zero, if only because stoned drivers get into fatal crashes



The Americans (Michael Parmelee/FX)
Going to Pot

from time to time. "As for the higher death and damage rates attributed to alcohol and tobacco," Bennett and White write, "it is *at present* correct to say more deaths are caused by those two legal substances than by marijuana. It is also true that alcohol and tobacco are far more widely used because they are legal."

The implication is that if marijuana were as popular as alcohol or tobacco, the marijuana death toll would be in the neighborhood of half a million a year. But as Bennett and White inadvertently concede, the number of marijuana-related deaths is much smaller not just in absolute terms but as a percentage of users. Bennett and White say there are

Bennett and White do not grapple with the question of how it can be just to treat people as criminals when their actions violate no one's rights.

seven times as many drinkers as pot smokers in this country. If marijuana were as dangerous as alcohol, we would already be seeing more than 12,000 marijuana-related deaths per year. Bennett and White say there are three times as many cigarette smokers as cannabis consumers. If marijuana were as dangerous as tobacco, we would already be seeing more than 150,000 marijuana-related deaths a year.

Obviously this is absurd, as Bennett and White eventually admit: "The point is this: there is no level of marijuana use that is actually completely safe." Wasn't the point supposed to be that "marijuana is at least as harmful as tobacco and alcohol"?

Never mind. Having abandoned that prominently placed claim, Bennett and White instead argue that "marijuana use is not safe or harmless." That point is important, they say, because marijuana is "propagated as harmless (at worst) and therapeutic (at best)," and "the culture has convinced itself marijuana is harmless." Still, one might question the relevance of showing that marijuana is not harmless in light of the fact that "almost none of the supporters of legalization of marijuana claim that smoking marijuana is without risk." Maybe they realize something that Bennett and White do not.

Ultimately, the question is not whether marijuana use carries risks, or even whether its risks are smaller than those posed by alcohol and tobacco—although that point surely casts doubt on the rationality, consistency, and fairness of our drug laws, as Bennett and White hazily perceive. "While there are dangerous substances that are legal in America (like tobacco and alcohol), we would be very ill-advised to add one more dangerous product (marijuana) to the list of things Americans should freely be able to obtain and use," they write. "We can add to the menu of dangerous substances available to our citizens, or we can draw a line and admit we are surfeited with the problems that already exist."

That is the real crux of Bennett and White's argument, and it depends on accepting their premise that using force to stop people from hurting themselves is morally justified. In the case of marijuana prohibition, this use of force includes hundreds of thousands of arrests each year—nearly 700,000 in 2013, the vast majority (88 percent) for simple possession. "When there is an arrest for possession," Bennett and

Edwardian Zines

A century ago, modernist writers such as Wyndham Lewis and Ezra Pound published much of their work in lively low-circulation journals, outlets whose graphic design could sometimes be as experimental as their writing. For years these magazines were hard to find, but now dozens of them have been digitized and posted at modjourn.org.

These publications' politics range from radical to reactionary, and some don't fit on the standard left/right spectrum. Several have an individualist orientation **reason** readers might like. For H.L. Mencken fans, the site has most of his run as co-editor of *The Smart Set*. Early issues of *The Crisis*, published by the National Association for the Advancement of Colored People, contain such classical liberals as Moorfield Storey and Oswald Garrison Villard. And the anti-state feminist Dora Marsden edited three magazines here: *The Freewoman*, *The New Freewoman*, and *The Egoist*. Their anarcho-individualist contributors range from Benjamin Tucker to James Joyce. —*Jesse Walker*

White claim, "it is usually of a large quantity—a lot of pounds." If that were true, there would be a lot more people accused of possession with intent to distribute and a lot fewer charged with simple possession. Bennett and White mention "one Department of Justice study" that "showed the median amount of marijuana seized in a possession arrest to be 115 pounds." That figure comes from a study of federal cases, which tend to involve large quantities but account for a tiny fraction of total marijuana arrests (around 1 percent).

Even as they inaccurately claim that people caught with marijuana typically have "a lot of pounds," Bennett and White also say the arrests are no big deal because they generally do not result in jail or prison sentences. Around 40,000 marijuana offenders nevertheless are serving sentences as long as life for growing a plant or distributing its produce. And even if cannabis consumers do not spend much time behind bars when they are busted, they still suffer the humiliation, cost, inconvenience, loss of liberty, stigma, and lasting ancillary penalties of a criminal arrest. That is no small thing, but Bennett and White shrug it off, likening marijuana possession to drunk driving, burglary, and theft. The fact that police arrest a lot of people for those offenses, they say, does not mean that drunk driving, burglary, and theft should be decriminalized. The crucial distinction, of course, is that marijuana in someone's pocket does not run over pedestrians, break into people's homes, or steal their wallets.

Bennett and White do not begin to grapple with the question of how it can be just to treat people as criminals when their actions violate no one's rights. They simply take it as a given that "the government not only has a right, but a duty to keep the public safe from harm, including dangerous substances." They maintain that an action is "worthy of being illegal" if it is "something that hurts individuals or society." Since Bennett has a Ph.D. in political philosophy, we can assume he understands the implications of his words, which make no distinction between self-regarding behavior and actions that harm others, or between the sort of injury that violates people's rights and the sort that does not. It would be hard to come up with a broader license for government intervention, and it is impossible to reconcile Bennett and White's free-ranging paternalism with their avowed support for "less government intrusion into the lives of all Americans."

Here is how Bennett and White sum up the moral objection to marijuana prohibition: "What is the ultimate right being argued for?...At the end of the day the right is, simply put, a right to get and be stoned. This, it seems to us, is a rather ridiculous right upon which to charge a hill."

This is like saying that freedom of speech is the right to tweet about the latest episode of *American Idol*, or that freedom of religion is the right to believe silly things and engage in pointless rituals. It is true as far as it goes, but it overlooks the broader principle. Drug prohibition dictates to people what substances they may ingest and what states of consciousness they may seek, thereby running roughshod over the principle that every man is sovereign over his own body and mind.

Even if marijuana is not as bad as they portray it, Bennett and White ask, "Do we need it?" They think cannabis consumers need to justify their freedom, when it is prohibitionists who need to justify forcibly imposing their pharmacological preferences on others. After so many years of taking that power for granted, it is hardly surprising they are not up to the task.

Senior Editor Jacob Sullum (jsullum@reason.com) blogs about drug policy at Forbes.com, where a version of this article first appeared.

Is Another Financial Crisis On the Way?

We didn't learn the lessons of the last crisis. Does that mean we're doomed to repeat it?

John McClaughry

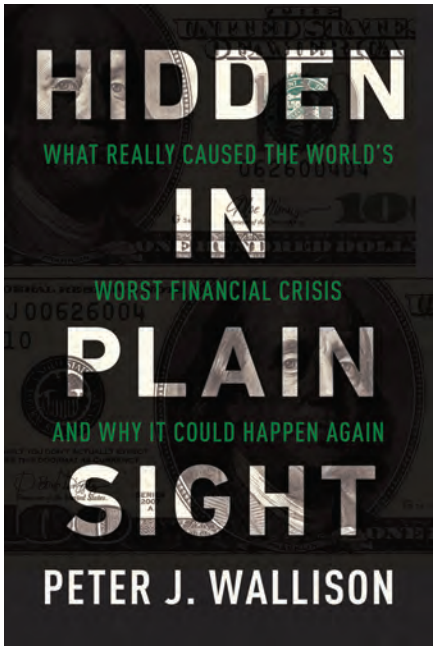
Hidden in Plain Sight: What Really Caused the World's Worst Financial Crisis and Why It Could Happen Again, by Peter J. Wallison, Encounter Books, 356 pages, $27.99

Eight years after the nation's financial system began its rapid slide into calamity, we all know why. Greedy Wall Street operators, aided by the repeal of the 1933 Glass-Steagall Act and only feebly regulated by the Bush administration, ran wild in the pursuit of greater profits for the rich. Eventually many big banks failed and were bailed out by taxpayers. But in 2010, President Barack Obama and the Democratic Congress took bold action to create powerful new government regulatory machinery. Still, much more regulation is needed to forestall future damage.

This narrative of the economic debacle is heavily promoted in the mainstream media and by regulators. But in *Hidden in Plain Sight*, financial scholar Peter Wallison argues that the story is laughably false. Worse yet, he says, the true causes of the debacle have not been dealt with, and there is every reason to believe that the same thing can happen all over again.

Wallison, a co-director of financial policy studies at the American Enterprise Institute, is one of the nation's top historians and analysts of financial structure and regulation. During the early Reagan years he was general counsel of the Treasury Department, where he learned a lot about markets and regulation. Happily he was not a participant in any part of the 1997–2009 financial disaster that is the subject of this book. He was, however, a member of the largely misguided Financial Crisis Inquiry Commission of 2009–2010, and he dissented from that body's final report.

Wallison's story of the run-up to the 2007 collapse begins with the Democratic Congress of 1992 and the 1993 arrival of the Clinton administration. The same years saw the rise of onetime Clinton roommate and political operator James A. Johnson to the chairmanship of the Federal National Mortgage Association (Fannie Mae). Wallison pays little attention to Johnson's career, but Johnson worked energetically and successfully to prevent Congress from privatizing Fannie Mae after the Republicans took control in 1995. He mobilized support on the left by buying millions of mortgages that increasingly departed downward from Fannie's historic underwriting standards. This subprime mortgage purchase binge is central to Wallison's story.



Here's the quick version. In 1992 Congress set "affordable housing" goals for Fannie Mae and its savings-and-loan counterpart, Freddie Mac (together known as the Government-Sponsored Enterprises, or GSEs). That year a manageable 30 percent of Fannie's portfolio qualified as "affordable housing." In 1997 the Department of Housing and Urban Development (HUD), as authorized by Congress, increased the required fraction to 42 percent. In 2001, under President George W. Bush, HUD increased the goal to 50 percent. In 2008 it upped the goal to 56 percent.

To find enough "nontraditional mortgages" to meet these increasing requirements, Fannie and Freddie bought increasingly lower-quality mortgage paper. Mortgages with three percent down payments sufficed for a while, but by 2000 the two GSEs were buying mortgages with zero down payments, credit rating scores below 660, and debt-to-income ratios as high as 38 percent. By 2008, half of the nation's home mortgages—32 million of them—were subprime, and 76 percent of those were owned by the GSEs.

As the two GSEs defined substandard lending ever downward and marketed pools of such mortgage paper to Wall Street investors, financial firms came to adopt the same lax standards for their Private Mortgage Backed Securities (PMBS). Investors bought billions of dollars' worth of those privately issued securities, believing they were backed by quality collateral. Market players also believed that GSE issues were backed by implicit federal government guarantees.

"With all these new buyers enter-

Hidden in Plain Sight

ing the market because of the affordable housing goals, together with the loosened underwriting standards the goals produced, housing prices began to rise," Wallison writes. "By 2000, the developing bubble was already larger than any bubble in U.S. history, and it kept rising until 2007...when it finally topped out, and housing prices began to fall."

With housing prices falling, financial regulation came into play. Regulators required "mark to market" valuation of housing assets—that is, institutions had to value them at their current market price. But suddenly there was no rational market to take a price from. Frightened investors dumped housing paper. Financial credit regulators, who had previously considered GSE paper almost risk-free, started requiring banks to have more capital. But the financial firms that held or stood behind $2 trillion in PMBS could hardly float new stock issues when much of their assets were rapidly shrinking in value.

Wallison notes some other factors in the crash, but this is the heart of his story. Between 1995 and 2008, Wallison writes, the government and investors following federal incentives "spread Non-Traditional Mortgages throughout the financial system, degraded underwriting standards, built an enormous and unprecedented housing bubble, and ultimately precipitated a massive mortgage meltdown. The result was a financial crisis."

How Washington and the mainstream media responded to that financial crisis occupies a large portion of the book. Wallison shows that the response was founded on two large ideas. The first was the belief that without large capital inflows from the Treasury and the Fed, the whole "interconnected" financial system would have fallen apart and the world as we know it would have come to an end. The second was that lax financial regulation allowed this crisis to happen, and therefore the financial sector should be subject to more muscular controls.

Wallison's views on three issues are worth exploring in detail. A major argument on the left, recently advanced on behalf of Sen. Elizabeth Warren's proposed 2014 financial legislation, is that the 1999 "repeal" of the 1933 Glass-Steagall Act removed the restrictions that kept investment banks from using commercial bank deposits to speculate in an unregulated marketplace. Wallison authoritatively refutes this contention. He points out that while the 1999 act allowed affiliates of commercial banks to engage in investment banking (and other financial activities), the 1933 Glass-Steagall firewall protecting insured deposits against speculative investing is still in full effect.

The second issue is the March 2008 forced merger of the investment firm Bear Stearns with JPMorganChase, greased by $29 billion in Fed-supplied capital. Wallison shows that there was never any need to bail out Bear Stearns in the first place. But he also argues that the Treasury and the Fed's refusal to bail out Lehman Brothers in September 2008, after giving the financial world the impression that the government would bail out "interconnected" firms of that size, "changed the perceptions and ultimately the actions of all major financial players," leaving them "weaker and less prepared to deal with the enormous financial panic that occurred when Lehman was allowed to fail." Wallison accuses Bush-era Treasury Secretary Henry Paulson and Fed Chairman Ben Bernanke of, essentially, bungling the management of events in that crucial year.

Wallison accuses Bush-era Treasury Secretary Henry Paulson and Fed Chairman Ben Bernanke of bungling the management of events in 2008 that led to the financial crisis.

Finally, Wallison sharply attacks the "false narrative" of the financial crisis offered by activists, politicians, and regulators with a direct interest in sweeping new regulation. We would have done much better, he writes, "if the narrative about the financial crisis had properly located

the problems in the reduction of mortgage underwriting standards brought on by the government's housing policies and implemented largely through the affordable housing goals." Continuing belief in this false narrative, evidenced by the Dodd-Frank Act, the Financial Crisis Inquiry Commission's myopic 2010 report, and proposed legislation in the most recent Congress, makes it likely that there will be another financial crisis in the future.

Wallison's book is well-informed, detailed, clear, and sharply focused —though readers unfamiliar with finance will find it thick going in some places. The author's independent point of view makes the book far more reliable than the self-protective accounts published by such actors as Paulson and his Obama-appointed successor, Timothy Geithner. Wallison makes it a point to consider alternative explanations for the crisis, and he convincingly presents the contrary evidence.

Perhaps most useful, *Hidden in Plain Sight* makes it clear that the next crisis will likely be caused by people peddling—or at least believing—a false narrative about the last one. This book would make a very good text for a business school course titled "Financial Crises: How They're Caused, How They're Made Worse, and How They Can Be Prevented." r

Contributing Editor John McClaughry (john@ethanallen.org) is the now-retired founder of Vermont's free market Ethan Allen Institute.

The Misguided War on Sexting

America is taking a punitive approach to teens who send each other explicit messages—and it's backfiring.

Noah Berlatsky

To save kids from the dangers of sexting, we should stop trying to save kids from the dangers of sexting. So suggests Amy Adele Hasinoff, an assistant professor of communications at the University of Colorado, Denver, in her counterintuitive but convincing new book, *Sexting Panic: Rethinking Criminalization, Privacy, and Consent* (University of Illinois Press).

Hasinoff argues that the current political and social approach to sexy texts is a well-intentioned mess. Currently, sexting is seen by the right, by the left, by parents, by schools, and by courts as a danger in itself. Teens—especially teen girls—are seen as lacking impulse control and/or self-esteem. Awash in hormones and lacking in judgment, they send naked digital pictures of themselves out into the ether, where said shots are inevitably distributed far and wide, resulting in humiliation and irreparable damage.

Sexting isn't really all that new; teens have been exchanging explicit messages at least since the invention of language. But up-to-date smartphone technology makes the old seem unusual and frightening. Sexting has been framed as an issue of pathological identity: There is a certain person who sexts, and that person is broken, ill, undeveloped, wrong. Authorities try to deal with sexting, therefore, by dealing with the person who does it. Sometimes, as Hasinoff documents, this is done through various kinds of treatments. Programs focus on trying to boost girls' self-esteem so that they won't feel the need for validation from their boyfriends and thus won't text naked pictures.

Such programs have demonstrated very little success, but at least they don't directly harm teens. Other responses are more dangerous. Teen girls can be prosecuted under child pornography laws for taking nude photos of themselves. As one judge said, incredulously, "It seems like the child here [is]... the victim, the perpetrator, and the accomplice. I mean, does that make any sense?"

If sexting is framed as dangerous in itself, girls who sext become perpetrators. And that means the state can target them for punishment. Among other consequences, this means sexting laws become a way parents can use law enforcement to squash relationships they don't like. (Hasinoff points to instances in which parents used sexts to prosecute their children's same-sex boyfriends or girlfriends.)

Law enforcement has shown little ability to punish, or interest in punishing, the people who distribute teen sexts, or who violate teen girls' trust for the purpose of humiliating or damaging them. Courts often assume that any sexual image will automatically and always be distributed. The crime is taking the image in the first place, and naively, stupidly assuming it will remain private. Hasinoff points to one case (*A.H. v. State*, 2007), in which a judge convicted a teen sexter whose images *were never distributed* on the grounds that she should have known that her boyfriend would eventually send them around.

In fact, Hasinoff notes that "the largest and most representative peer-reviewed study," published in *Pediatrics* in 2012, found that only 10 percent of young sexters reported having a private image forwarded to a third party. That's not negligible, but it's not inevitable either. And perhaps it could be reduced further if America rethought its approach to sexting. Specifically, Hasinoff argues, we need to start seeing sexting as speech, or at least as legitimate sexual expression.

Most people accept that adults sext

for a range of reasons. When surveyed, Hasinoff reports, younger people say they sext for much the same reasons: because it's fun, because it's sexy, because they want to stay in touch with an intimate friend, because flirting over SMS is in many ways socially safer than flirting in person. Parents, understandably, may not be eager to hear that their children are sexting, just as they may not be eager to have their kids date. But sexting isn't innately harmful or pathological or evil, and the worst-case consequences are less dire than for many other forms of teen sexual expression. Criminalizing it doesn't make sense.

If we start to see sexting as normal rather than pathological, Hasinoff argues, we can take steps toward making it safer. Rather than focusing education programs on telling kids not to sext, we could move the focus toward emphasizing that it is immoral to share private information without consent. School rules could try to target those who violate privacy, rather than punish teens whose sole crime is taking pictures

Sexting (David J. Green-Lifestyle/Alamy)

of themselves. There are possible novel technological solutions as well. Images could be locked so that they can't be sent to a third party without permission, for example. Snapchat, a popular messaging tool which erases communications after they are seen, provides a possible blueprint. (There are ways to defeat Snapchat's self-destruct mechanism, but it provides at least a measure of security.)

"Though it may sound counter-intuitive, affirming teens' right to sext helps protect them from privacy violations," Hasinoff argues. "The problem with viewing sexting as simply deviant and criminal for everyone involved is that it makes the malicious distribution of private images seem like a normal and inevitable part of sexting."

Yes, sexting can be bad and exploitive. Girls (and for that matter boys) can be pressured for nude images; kids (and for that matter adults) may make bad decisions about intimacy and trust. But sexting can also be fun, rewarding, and safe. Either way, criminalizing it doesn't protect young people; it makes them more likely to come to harm. You can't protect teens from sexual exploitation until you acknowledge that they have the right to make some sexual choices.

Noah Berlatsky (noahberlatsky@gmail.com) is the author of Wonder Woman: Bondage and Feminism in the Marston/Peter Comics (Rutgers University Press).

Greg Beato

Helpful Hackers vs. College Regulators

Why are state governments cracking down on innovative coding academies?

No one has ever called Milwaukee "the Silicon Valley of the Midwest." Or even "the Silicon Valley of Wisconsin." And they're not likely to any time soon, especially if state regulators get their way.

In November 2014, the Milwaukee *Journal-Sentinel* reported that the city would be getting its first intensive computer coding school, a.k.a. "computer boot camp" or "coding academy," at the beginning of 2015. That didn't happen. In January the *Journal-Sentinel* reported that the Global Entrepreneurship Collective, the nonprofit organizer behind the proposed Ward 5 Code Camp, would be postponing its debut to address regulatory requirements imposed by a state agency, the Educational Approval Board (EAB).

The EAB oversees private postsecondary education institutions in Wisconsin that are vocational in nature and not licensed or regulated by any other agency or public board. To comply with state regulations, Ward 5 must complete a lengthy application, pay the EAB a $2,000 fee, and buy a $25,000 surety bond. Unable to complete these tasks by its January start date, Ward 5 refunded tuition fees to students who had signed up for its $6,500 program, and said it would try to open at a later date.

What exactly is the EAB trying to protect the citizens of Wisconsin from—besides the possibility of obtaining a high-paying job in the tech industry?

Coding academies are a relatively new phenomenon. Typically, they offer immersive programs that teach students how to code in JavaScript, Ruby on Rails, and other in-demand languages in just 9 to 12 weeks. Classes are held on a daily basis, generally from 9 a.m. to 5 p.m., and many programs tell students they should expect to devote at least 20–40 more hours a week beyond classroom time to complete their assignments. Ward 5's $6,500 tuition is on the low end of the coding academy spectrum. Dev Bootcamp, located in San Francisco, charges $13,950; Hack Reactor, another San Francisco coding academy, charges $17,780.

For the sake of comparison, tuition for a 12-week quarter at Stanford University runs around $15,000 these days. But if these coding academy upstarts are charging as much as our most elite institutions of higher learning, they're also promising extremely favorable outcomes for students who complete the accelerated programs. On its website, Hack Reactor claims a "99 percent graduate hiring rate," with average starting salaries at $105,000. Zipfian Academy says that 91 percent of its graduates get jobs at companies like Facebook, Twitter, and Tesla within six months of completing the program, with an average base salary of $115,000. App Academy says that 98 percent of its graduates "have offers or are working in tech jobs," and that 2014 graduates from its San Francisco program "received an average salary of $105,000."

Regulators have shown an interest in these California-based academies as well. In January 2014, the state's Bureau of Private Postsecondary Education (BPPE) sent warning letters to at least a half dozen local coding programs. According to *VentureBeat*, which first reported on the letters, the coding academies were given two weeks to "start coming into compliance" with BPPE regulations. If they didn't, they risked $50,000 fines and forced closure.

Like the EAB, the BPPE operates under the mantle of consumer protection. On its website, it explains that California was known as the "diploma mill capital of the world" in the 1980s. And presumably its mandate is to weed out institutions that consist of little more than a charlatan with a post office box and a stack of fancy-looking certificates he's willing to dole out for a few thousand bucks. The BPPE demands that schools submit building plans and campus maps as part of their application process, as well as asking for evidence that all instructors have a college degree and at least three years of teaching experience. The regulators say they wants to make sure that any private postsecondary institution that is charging $2,500 or more in tuition to students, and promising some

(TerryColon.com)

vocational benefit, is offering actual instruction. (Institutions that charge less than $2,500 total in tuition, or offer only avocational or recreational instruction, are exempt from the BPPE's purview.)

But how can you be a diploma mill if you don't actually issue diplomas? Unlike the shady operations the BPPE is designed to prevent—or the thousands of accredited U.S. colleges and universities that grant degrees—the coding academies are not in the business of selling certification. All they offer students is instruction and a shot at a high-paying tech job. And in turn, that's all that students can buy from them.

If you graduate from Harvard, Stanford, or even some little-known state college and you are not crazy about the education you got, well, at least you've got a sheepskin that gets your foot in the door in situations where a bachelor's degree exists as the default filter. If you graduate from Hack Reactor or Dev Bootcamp, you better hope you've learned something about making calls to an API because your skills are all you leave with.

On the flipside, coding academies have a strong incentive to teach their students. By removing certification from their offerings and tying their value so closely to their ability to produce graduates who are able to find six-figure tech jobs with their new coding skills, the academies make themselves far more accountable than traditional universities. When was the last time that you saw even Harvard promising that 98 percent of its graduates emerge with an average starting salary of $105,000?

To make sure they can produce students who can help them achieve such high job placement rates, the coding academies don't just accept anyone who has the ability to pay tuition. Most are selective—Hack Reactor reportedly accepts fewer than 10 percent of its applicants. In addition, many require students to successfully complete preliminary programs remotely before they actually come to the boot camp portion of the curriculum. And some, like App Academy, defer payment until students complete the program and land a position.

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The kind of oversight that regulatory agencies like the EAB and the BPPE want to exercise over coding academies has some value. Information about graduation rates and job placement rates can help aspiring students choose which programs to pursue.

But the supervision these agencies provide also comes with signification costs. More than a year after the BPPE sent letters to the coding academies, none of them are licensed yet. "Licensing is a lengthy process for schools," says Russ Heimerich, deputy director of communications for California's Department of Consumer Affairs. In addition to all the paperwork the academies must complete, there will be financial obligations as well: A $5,000 application fee, plus 0.75 percent of their annual tuition revenues, capped at $25,000.

General Assembly, one of the institutions the BPPE targeted last year, reports on its website that it submitted an application and is waiting to hear back. App Academy echoes this experience. "We do not have a license from the BPPE, but we are working toward it," an App Academy spokesperson says. "Unfortunately it is a multi-year process."

Of course, now that the Internet exists, oversight is a far more abundant commodity than it once was. While the BPPE has yet to post any information about these schools for the benefit of prospective students, Yelp.com has nearly 100 reviews of Hack Reactor alone. Quora.com has more than 50. And Course Report, a site that specifically bills itself as a resource for individuals in the process of choosing a coding academy, already has a placeholder page for Milwaukee's Ward 5. If the program ever makes it past the barriers imposed by 20th-century regulators, the real scrutiny and assessment will begin.

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

Teddy Bears vs. the State

Jesse Walker

The Arab Spring came to Bahrain on February 14, 2011, with a wave of peaceful protests that prompted the petro-state to declare martial law. The crackdown stopped the demonstrators from bringing down the monarchy, but the movement for a freer Bahrain wasn't squelched entirely. Each year since 2011, dissidents have marked the anniversary with more civil disobedience.

This year they decided to combine their annual rebellion with the *other* special occasion that falls on February 14. And so on Valentine's Day 2015, the teddy bear became the mascot of the revolution.

Global Voices Online, a website that combines original reporting with translations from the international press, has posted photos of the results. In one picture, gas wafts past a protester carrying a bear bigger than a child. In another, villagers have erected a concrete barricade guarded by Winnie the Pooh. One photo shows not a bear but a gigantic stuffed gorilla. With a furtive look on its face, it sits before a forbidding pile of rubble.

In a police state, even a teddy-bear revolution has casualties. After those pictures of stuffed animals in hostile places, the *Global Voices* story offers images of demonstrators' gunshot wounds.

Jesse Walker (jwalker@reason.com) is books editor of **reason**.


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