HOOVER DIGEST

RESEARCH + OPINION ON PUBLIC POLICY

FALL 2015 NO. 4

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The *Hoover Digest* (ISSN 1088-5161) is published quarterly by the Hoover Institution on War, Revolution and Peace, Stanford University, Stanford CA 94305-6010. Periodicals Postage Paid at Palo Alto CA and additional mailing offices.

POSTMASTER: Send address changes to the *Hoover Digest*, Hoover Press, Stanford University, Stanford CA 94305-6010.

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ON THE COVER

A raging wildfire and an indifferent spectator are the focus of this 1918 poster created to support Australian recruiting in the last year of the Great War. Many Australians had signed up as the war began and even after the bloody debacle of Gallipoli, which cost eight thousand Australian lives, but by 1918 enlistments were flagging. At the same time, Australia was becoming deeply divided over compulsory military service. This poster urges Australian volunteers to step forward and finish the job. **See story, page 180.**

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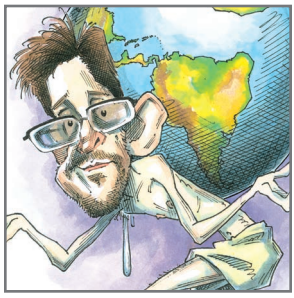

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Are the Good Times Over?

Don't settle for a "new normal" of sluggish growth—not when information technology is just beginning to bloom.

By Michael J. Boskin

In the twenty-five years before the Great Recession of 2008–9, the United States experienced two brief, mild recessions and two strong, long expansions. Globally, incomes grew briskly, inflation abated, and stock markets boomed. Moreover, the recovery from the last major slump, in the early 1980s, brought about a quarter century of unprecedentedly strong and stable macroeconomic performance. This time, however, the return to growth has been much more difficult.

America's recovery since the Great Recession has been inconsistent, with growth repeatedly picking up and then sputtering out. In fact, the United States has not experienced three consecutive quarters of 3 percent growth in a decade. Though lower oil prices are helping consumers, this gain is partly offset by less energy investment, and the effects of the stronger dollar will be even larger.

The United States is not alone. Though most European economies are now growing again, aided by lower oil prices and currency depreciation, the pace of expansion remains anemic. Similarly, Japan's recovery remains fragile, despite strong efforts by the government. Even the major emerging economies, which

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were supposed to serve as global growth engines in the years ahead, are struggling: China and India have downshifted and Brazil and Russia are contracting.

When a boom or bust lasts for such a long time, it begins to seem as if it will continue indefinitely. Six years after the crisis, some prominent economists are asking whether insufficient investment or waning gains from technological innovation have pushed the global economy into a "new normal" of lower growth and slow, if any, gains in living standards. Some economists call this "secular stagnation"—a fancy way of saying that the good times are gone for good. Are they right?

Total economic growth amounts to roughly the sum of the growth of work hours (an increase in the number of workers or the amount of hours that they work) and productivity (output per hour of work). If productivity improves by one percentage point in a year, the improvement in living standards over the subsequent generation would be augmented by one-third. Over time, a productivity improvement of even a fraction of a percentage point would be immensely consequential.

Productivity can be enhanced by capital investment, technological innovation, and improvements in the knowledge and skills of the labor force, though economists disagree on which has the largest impact. According to my research with Larry Lau, technology has played the largest role boosting productivity in the G-7 economies since World War II.

Given this, America's declining productivity growth—which has averaged just 0.7 percent annually since 2010—has led some observers to blame the slowdown on inadequate technological advances. These pessimists, such as economist Robert Gordon, claim that innovations are unlikely to improve productivity as fundamentally as electricity, automobiles, and computers did in the last century.

Optimists counter that smartphones, big data, and expected advances in nanotechnology, robotics, and biosciences are harbingers of a new era of technology-driven productivity improvements. It may be impossible to predict the next killer app, they argue, but it will always be developed.

Both sides cite Moore's Law, named for Intel's co-founder, Gordon Moore, who noticed that the density of transistors on a chip could be doubled every eighteen months. The pessimists claim that this is becoming harder and more expensive; the optimists hold that the law will remain valid, with chips moving to three dimensions.

Clearly, the trajectory of technological progress is difficult to predict. In fact, the main commercial value of new technology is not always apparent even to the inventor. When Guglielmo Marconi made the first transatlantic

[Taylor Jones—for the *Hoover Digest*]

wireless transmission over a century ago, he was competing with the telegraph in point-to-point communication; he never envisioned popular mass-broadcast radio. Thomas Edison designed the phonograph to help the blind—and filed a lawsuit to prevent it from being used to play music.

Complicating matters further is the fact that the next waves of productivity-enhancing technological developments are likely to occur in sectors such as health care, where their economic impact is difficult to measure. Economists believe that many improvements in health care quality—such as more effective treatments for cataracts or cardiac disease—are not accurately reflected in real GDP, and are incorrectly reported as price increases. Better measures for these changes are essential for an accurate assessment of economic progress.

To be sure, technology-driven growth carries some risks. While old fears that automation and artificial intelligence would cause widespread structural unemployment have never been borne out, technology and globalization have put downward pressure on wages for all but the most skilled workers in the advanced economies. Capital's share of national income has increased, while labor's share has fallen. But implementing policies that restrict potentially productivity-enhancing technologies would be a grave mistake.

To encourage more robust growth and the associated improvements in living standards, governments should ensure that the private sector has sufficient incentives for innovation, entrepreneurship, and investment in physical and human capital. For example, officials could cut red tape, rein in deficits and debt, enact tax policies conducive to capital formation, reform the education system, and invest in research and development.

Of course, no one should expect a return to the pre-crisis boom years, given the demographic pressures that almost all major economies—including China—are facing. But these incentives stand the best chance of continuing the flow of productivity-enhancing technology, from startups to the research divisions of established companies in industries from technology to energy to health care. ■

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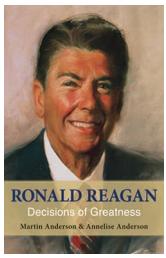

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Where the Business Climate Is Fair and Warming

States that are friendly to business are climbing out of recession more quickly than those that aren't.

By Edward Paul Lazear

A number of current and former governors will be running for president in 2016, and each will tout his state's accomplishments and claim credit for the positives, deserved or not. Politics aside, cross-state comparisons provide a real-world experiment that helps show which economic policies work and which don't.

Employment, state GDP, labor law, and tax data from 2000 to the present yield two strong lessons. First, a business-friendly climate—market-oriented labor policies and lower taxes—is effective in raising the growth in a state's gross domestic product and employment. Second, states that suffered the worst employment shocks in the 2007–9 recession had the most rapid

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postrecession employment growth. This suggests that the weak national recovery cannot be explained by the depth of the recession.

There are a number of ways to categorize a state's business climate. I focused on labor policies and average tax rates. On average, I found that employment growth is twice as high in states that have a right-to-work law and minimum wages that are below average across states, and the difference is statistically significant—that is, unlikely to have occurred by chance. GDP grows about one and a half times faster over this period in those states.

A state's labor policies were gauged by its minimum wage relative to those of other states (or the federal minimum when binding) and whether it had a right-to-work law—which generally prohibits requiring employees to pay dues to a union. Throughout most of the period from 2000 to March 2015, there were twenty-two right-to-work states. The proportion of a state's GDP that is taken through taxes varies across states from a high of 12 percent in New York to a low of 5 percent in Alaska. The relevant data are available from the Labor Department, the Commerce Department's Census Bureau, and the Tax Foundation, a nonpartisan research group.

Nevada, Utah, Texas, Arizona, and North Dakota enjoyed the highest growth. All have market-oriented labor policies and all but one (Utah) have tax rates that are below average. The poorest performers: Michigan, West Virginia, Mississippi, Illinois, and Ohio. Only Mississippi has market-oriented labor policies and four out of five (again excepting Mississippi) have tax rates that are above average. These results do not diverge greatly from a 2014 report for the American Legislative Exchange Council by Arthur Laffer, Stephen Moore, and Jonathan Williams, *Rich States, Poor States*.

Indiana, Michigan, and Wisconsin changed their right-to-work status during the past three years, although Wisconsin did so too recently to have much of an effect. The before-and-after comparison is striking. Before the recession, without right-to-work laws, these states averaged slightly negative employment growth that was well below the national average. After right-to-work, growth in these states was one and a half times the national average.

Among the governors running for the presidency, Jeb Bush gets the bragging rights. Growth in employment and GDP was substantially stronger during his two terms in Florida (January 1999 to January 2007) than when he was not in office, even accounting for the business cycle.

John Kasich (Ohio), Mike Huckabee (Arkansas), Scott Walker (Wisconsin), Gary Johnson (New Mexico), and Bobby Jindal (Louisiana) also can boast that their states' employment growth picked up significantly during their terms. Texas experienced very rapid employment growth under Rick

Perry—but he was in office during almost the entire period studied, which rules out comparisons with other Texas governors.

The second result of my cross-state comparison: states that had the most severe recessions on average enjoyed the most rapid comebacks. For example, Florida's employment growth declined 1.9 times the national average, but its employment growth in the postrecession years was 1.8 times the national average. By contrast, Kansas's employment growth declined by only 45 percent of the national average, but its postrecession employment growth was only 41 percent of the national average. For the nation as a whole, the correlation between a state's loss in employment and its subsequent growth during recovery is strong. The bigger the hit, the larger the rebound.

President Obama has rationalized the weak recovery by saying that the recession was deep. Recently he told Chris Matthews on MSNBC that "I've spent the last six and a half years yanking this economy out of the worst recession since the Great Depression." His surrogates and supporters have long echoed this trope. But as the University of Chicago's Victor Zarnowitz pointed out decades ago, the deeper the recession the steeper the recovery. More recently, Michael Bordo and Joseph Haubrich (National Bureau of Economic Research, 2012) also found steep recoveries after financial crises.

What do cross-state comparisons tell us about national economies? First, it is clear that a state's business climate can induce businesses to relocate to where there are better profit opportunities, and employment growth follows as workers move to states where there are vacancies and away from those with high unemployment. New capital and business startups also prefer states that have a business-friendly environment.

A severe recession is no excuse for a weak national recovery. States hit the hardest recovered the fastest. This in turn suggests that with the right policies, high growth should have followed the deep recession of 2007–9. ◘

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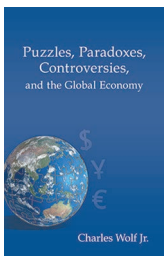

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Reach for 4% Growth

Make a clean sweep in taxes, regulation, and investment, and the economy will **leave stagnation in the dust.**

By John H. Cochrane

Is it possible for the United States to have 4 percent real GDP growth again?

The US economy has experienced such growth in the past. In my view a return to this growth, or more, is surely possible as a matter of economics.

Some of my colleagues answer this question in the negative, but our disagreement may be less than it appears. I believe their caution is based more on politics than economics. They don't think any candidates (at least any with a prayer of being elected) will advocate, let alone get enacted, a set of policies sufficiently radical to raise growth that much. This is a sensible, though debatable, forecast. But it does not deny 4 percent growth, or more, as an economic possibility.

When I consider whether 4 percent growth for a decade is economically possible, I ask whether the most extreme pro-growth policies would indeed yield at least that result. A short list:

» ***Thorough reform of the tax code.*** Raise revenue with minimal distortion: a uniform consumption tax and no income, corporate, estate, or other taxes, and no deductions.

John H. Cochrane *is a senior fellow at the Hoover Institution.*

» ***Dramatic regulatory reform.*** For instance, simple equity-financed banking in place of Dodd-Frank. Private health-status insurance (with, if needed, on-budget voucher subsidies) in place of ObamaCare. An end to the mess of energy subsidies and interference. No more fuel economy standards, HOV lanes, Tesla tax credits, windmill subsidies, and the like. If you want to control carbon, pass a uniform carbon tax and nothing else. Many agencies cease to exist. No more endless waits for regulatory decisions.

» ***No more witch hunts for multibillion-dollar settlements.*** Fear of those is causing many businesses to hunker down and invest in political contacts rather than their business.

» ***Overhaul social programs to remove disincentives.*** Deliver most help via on-budget vouchers.

» ***End agricultural subsidies.***

» ***Close Fannie and Freddie.***

» ***Unilateral free trade.***

» ***Essentially open immigration.*** Anyone can work.

» ***Much labor law rolled back.*** Let Uber drivers be contractors. Remove most occupational licenses.

» ***Drug legalization.***

» ***School vouchers.***

And so on. Essentially, every single action and policy is reoriented toward growth.

Labor force participation increases—about 40 percent of the US population is not even looking for work. The labor force itself grows. We get a spurt of productivity growth just from greater efficiency without needing big investments. And then innovation and new businesses, investment, and technology kick in.

There would, however, be a lot of unemployment among lawyers, accountants, lobbyists, compliance officers, and regulators. Oh, well—Uber needs drivers.

I think my fellow economists might agree that 4 percent growth for a decade is possible with such a libertarian free-market nirvana program, though they might complain about inequality or other objectives. In fact, we

OPEN INVITATION: A company beckons applicants at TechDay, an event that brings together start-ups and investors, last spring in New York. The percentage of Americans participating in the workforce was measured in June at 62.6 percent, the lowest since 1977. [© Newscom / Richard B. Levine]

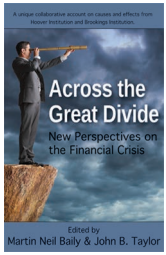
could probably get to 4 percent with much less than all of these policies. But typical proposals—a small reduction in corporate rates, a twiddle here, a tweak there, the typical modest promise to improve regulation—would not have one-tenth the needed effect.

Impossible? You never know what's "politically feasible." In 1955, civil rights were politically infeasible. In 2005, gay marriage was politically infeasible. Politics sticks in the mud for a hundred years, and then changes faster than we imagine. I think there actually are quite a few politicians who would do some of the radical things that need to be done. They need to hear from economists that it could work, as a matter of economics, and let them handle the politics. They don't need economists to make political forecasts.

We will soon see a test: can any candidate show up in Iowa and say, "Ladies and gentlemen, government-subsidized corn ethanol is a rotten idea"? And then say something vaguely coherent on immigration and trade? The campaign season is young. Let's not prejudge them.

Growth is too important to give up on so easily. Sclerotic growth is the economic issue of our time. If we do not return to 4 percent growth, our government will eventually default either on our national debt or on its promises to pay for health care and retirement. Economists should be cheering any policy agenda focused on growth. If the policies needed to give us growth seem hard and out of the current political mainstream, that's all the more reason to keep reminding people that growth is possible and needs *big* changes, not to confuse "it's unlikely they'll do it" with "it's economically impossible." ■

Adapted from John H. Cochrane's blog,* The Grumpy Economist *(http://johnhcochrane.blogspot.com).



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Don't Ask, Just Take

President Obama believes personal success is just a game of chance. No wonder he encourages government to demand a bigger and bigger cut.

By Thomas Sowell

In a recent panel discussion on poverty at Georgetown University, President Barack Obama gave another demonstration of his mastery of rhetoric—and disregard of reality.

One of the ways of fighting poverty, he proposed, was to "ask from society's lottery winners" that they make a "modest investment" in government programs to help the poor.

Since free speech is guaranteed to everyone by the First Amendment to the Constitution, there is nothing to prevent anybody from asking anything from anybody else. But the federal government does not just "ask" for money. It takes the money it wants in taxes, usually before the people who have earned it see their paychecks.

Despite pious rhetoric on the left about "asking" the more fortunate for more money, the government does not "ask" anything. It seizes what it wants by force. If you don't pay up, it can take not only your paycheck, it can seize your bank account, put a lien on your home, and/or put you in federal prison.

So please don't insult our intelligence by talking piously about "asking."

***Thomas Sowell** is the Rose and Milton Friedman Senior Fellow on Public Policy at the Hoover Institution.*

And please don't call the government's pouring trillions of tax dollars down a bottomless pit "investment." Remember the soaring words from Barack Obama, in his early days in the White House, about "investing in the industries of the future"? After Solyndra and other companies in which he "invested" the taxpayers' money went bankrupt, we haven't heard those soaring words so much.

Then there are those who produced the wealth that politicians want to grab. In Obama's rhetoric, these producers are called "society's lottery winners."

"You didn't build that!" the president declared to those who did.

Was Bill Gates a lottery winner? Or did he produce and sell a computer operating system that allows billions of people around the world to use computers, without knowing anything about the inner workings of this complex technology?

Was Henry Ford a lottery winner? Or did he revolutionize the production of automobiles, bringing the price down to the point where cars were no longer luxuries of the rich but vehicles that millions of ordinary people could afford, greatly expanding the scope of their lives?

Most people who want to redistribute wealth don't want to talk about how that wealth was produced in the first place.

They just want "the rich" to pay their undefined "fair share" of taxes. This share must remain undefined because all it really means is "more." Once you have defined it—whether at 30 percent, 60 percent, or 90 percent—you won't be able to come back for more.

Obama goes further than other income redistributionists. "You didn't build that!" he declared to those who did. Why? Because those who created additions to the world's wealth used government-built roads or other government-provided services to market their products.

And who paid for those roads and other government-provided services if not the taxpayers? Since all other taxpayers, as well as non-taxpayers, also use government facilities, why are those who created private wealth not to use them also, since they are taxpayers as well?

Was Bill Gates a "lottery winner"? Was Henry Ford?

The fact that most of the rhetorical ploys used by Barack Obama and other redistributionists will not stand up under scrutiny means very little

politically. After all, how many people who come out of our schools and colleges today are capable of critical scrutiny?

When all else fails, redistributionists can say, as Obama did at Georgetown University, that "coldhearted, free-market capitalist types" are people who "pretty much have more than you'll ever be able to use and your family will ever be able to use," so they should let the government take that extra money to help the poor.

Slippery use of the word "use" seems to confine it to personal consumption. The real question is whether the investment of wealth is likely to be done better by those who created that wealth in the first place or by politicians. The track record of politicians hardly suggests that turning ever more of a nation's wealth over to them is likely to turn out well. ■

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Bernie Sanders's Sneakers

The socialist candidate thinks the free market forces Americans to choose between shoes and food. For all he's learned about the failure of central planning, the twentieth century might as well never have happened.

By Richard A. Epstein

Senator Bernie Sanders's quixotic presidential campaign received some unexpected attention for an off-the-cuff comment he made in Iowa. "You don't necessarily need a choice of twenty-three underarm spray deodorants or of eighteen different pairs of sneakers when children are hungry in this country," he remarked. For Sanders, it appears, the market economy that provides consumers with such choices is fundamentally at odds with society's duty to care for the vulnerable.

Sanders's pronouncement was delivered in casual conversation as a stand-alone, one-sentence indictment of what is wrong with America. Unpacking it helps expose his profound misunderstanding of how a well-functioning market system operates.

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HERE'S THE SCOOP

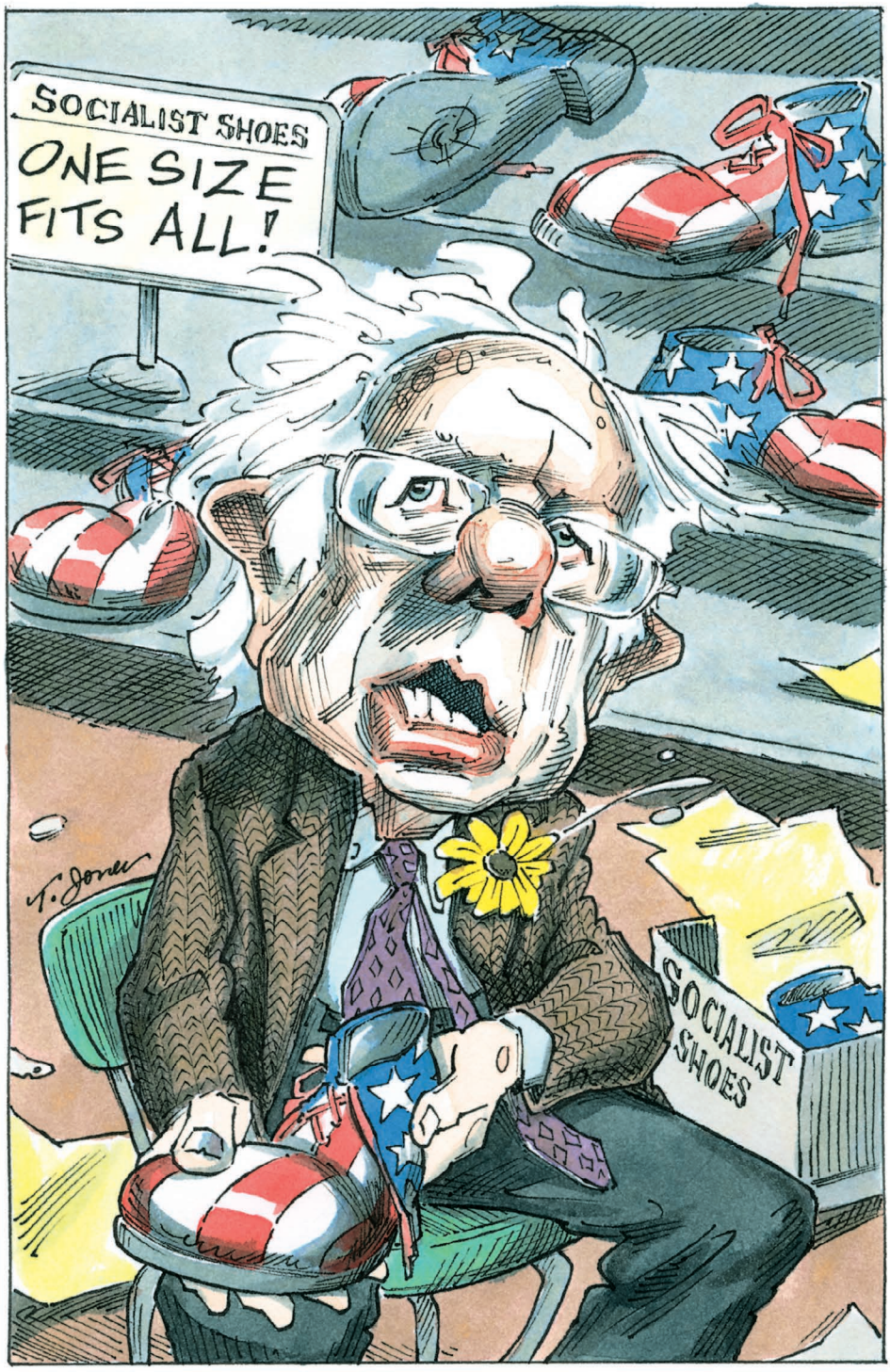
To be sure, his position derives some support from a strand of behavioral economics that warns of the risks of "choking on choice." Consumers struggle, for example, in deciding which of the iconic thirty-one Baskin-Robbins ice cream flavors they want to eat. But something is clearly amiss with that critique of choice. Baskin-Robbins, founded in 1945, has thrived for seventy years. If it were in its interest to reduce its menu options to spare its customers from difficult choices, it would have figured that out long ago. But instead it has expanded its menu to offer consumers even more options. Why?

The simplest explanation is that it does not expect every customer to examine every choice when he or she comes into the store. Some people like chocolate, others vanilla, and so they can quickly reduce their own choice sets to manageable proportions. Reducing the number of flavors means a reduction in either the number of flavor groups or the number of flavors in each group, and both steps could have adverse consequences for the merchant. When people go for ice cream in groups, they do not all have the same preferences. Make the flavor list too small, and they will head for another shop that offers more choices. ("Brand extension" is everywhere, as companies try to leverage new products off old ones, which is why "original" Fritos now has six companions in flavor.)

No one has to ask whether the number of market-generated choices in any given niche is too large, too small, or just right.

So does this capsule explanation mean every business should feature an unlimited menu? Certainly not. Expanding choices for customers necessarily entails increasing costs for the provider. At this point the usual economic truth holds: firms compare marginal revenues (from each additional unit) with marginal costs (from those same units). It is something of an art form for a firm to decide exactly how many options to offer its customers. The supersized McDonald's menu of one hundred twenty-one items, for instance, turned out to be counterproductive, but not because customers were being overwhelmed by choices. The true cause was that the wide range of menu choices made kitchen operations maddeningly complex, which slowed down service and drove away impatient customers.

Just like everyone else, large and powerful companies face complex tradeoffs. What matters from the social point of view is that management has every incentive to fix this problem. The conundrum of too many customer



[Taylor Jones—for the *Hoover Digest*]

choices may present a nice problem for psychological studies. But it is one problem among many, none of which is amenable to any sensible form of government intervention.

TO CHOOSE SHOES

It is fair to ask whether Bernie Sanders was thinking about how a given firm faces the market, or how multiple firms operate within a competitive market. With his deep socialist antipathy to private markets, Sanders probably does not care all that much. But it is instructive to ask: what should be done if in fact we conclude that twenty-three varieties of underarm deodorants and eighteen types of sneakers aren't necessary in a world with starving children? What next? It will surely not do to operate with no types of deodorants or sneakers. But if open markets generate too many alternatives for these and thousands of other market goods, just who is responsible for deciding what firms can offer which products at which prices, and why?

It's something of an art form for a firm to decide exactly how many options to give its customers.

That problem solves itself in a market economy through the mechanism of decentralized consumer choice. Any increase in the number of choices is a mixed blessing. New choices could lure new customers into stagnant market niches; they could pirate unhappy customers from established brands; or they could flop. No matter. The strong brands will survive and the weak ones will go into bankruptcy. The outside analyst does not have to predict which brands will succeed or fail. He just has to defend the process as a way of getting sensible matches in markets that are always in some state of predictable disequilibrium. But no one has to ask whether the number of market-generated choices in any given niche is too large, too small, or just right. Analysts who understand particular markets can help their clients decide—in life as in poker—whether to hold, fold, or raise.

The socialist Sanders cannot take any comfort in these decentralized processes, but wishes to put in place cumbersome administrative processes to make choices. It is there that the agony begins. The population contains many different groups of people. Some have allergies; others have demanding jobs; still others have distinctive personal and professional objectives. Just how thin does a regulator slice the pie in deciding which niche brands of deodorants should disappear and which should survive? The same is true for shoes. A quick trip to *Runner's World* reveals that shoes can differ

by sex, by age, by skill level, by size, by arch height, by motion mechanics, by injury, by terrain, and so on. And that is just for one category of footwear—running shoes. Similar breakdowns appear for dress shoes, casual footwear, and so on.

It turns out that any effort to regulate who can make what kind of products leads to a planned economy that will quickly go belly up. The history on this point is clear. I doubt very much that Sanders has any familiarity with the socialist-calculation debate of the 1930s, which proved that no central planner has the information to make intelligent judgments on the question of which products should be sold and at what price. There are, of course, many things government must do to maintain competitive markets, but none of them relies on the heavy-handed forms of intervention that rolled effortlessly off Sanders's lips.

GO BACK TO THE BASICS

Sanders's initial blunder was compounded by a second. Why assume our society faces a stark choice between feeding the hungry on the one hand and indulging in unnecessary consumer choices on the other? His basic mistake is common among egalitarians, who believe in a zero-sum tradeoff between taking care of the needy and giving useless favors to the rich. It is always wrong to act as though there is a "choice" between two social programs that are randomly connected. Just as it is possible to reject both tax subsidies to the rich and the minimum wage, so it is possible to insist on a decoupling of the question of consumer choice from that of public assistance to the poor.

The key task in all cases is to make sure both of these programs are run with maximum efficiency. One benefit, for example, of having robust consumer markets with lots of choices is that it will expand the social pie, which then increases the resources that society can devote to taking care of the poor, either through government programs or, preferably, private charitable assistance. Efficient markets will also allow the dollars of poor people, like the dollars of rich people, to go further when the array of products and their prices are not subject to government override.

Efficient markets allow the dollars of poor people, like the dollars of rich people, to go further.

The ideal is to increase both business income and consumer satisfaction. Once that problem is solved on its own terms, it is possible to look separately at the serious problem of hungry children. And indeed there are major flaws

in agricultural markets that cry out for reform, yet virtually all of them stem from the strong New Deal tendency to use government power to raise the price of agricultural produce above competitive levels. The hard question for people like Sanders is whether they are willing to look hard at government programs and ask whether, and if so how, they disadvantage the poor, and indeed all other classes of consumers. To reach the right conclusion requires that we start from the right benchmark, which is the array of goods and services that only decentralized, competitive markets are able to produce. Socialists like Sanders fail to see the harm their interventionist programs do to the very people they want to help.

The socialist-calculation debate of the 1930s proved that no central planner can make intelligent judgments about which products should be sold and at what price.

I have long insisted that progressive policies are unsustainable because they hope to pile an ever-larger set of transfer programs onto an economy already hobbled by high levels of taxation and extensive government regulation. No one can blame the idle musings of Bernie Sanders for the lethargic economic recovery. His sloppy thinking is a symptom rather than a cause of our current malaise. But I have little doubt that the constant political oversight in labor, real estate, and financial markets is a major reason the economy is not growing. It is time for our progressive political leaders to take ownership of the current stagnation, which is best countered by a major dose of deregulation and tax reduction and simplification—not candidates' zingers. ◘

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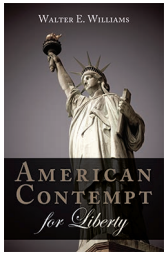

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Kelo, *Ten Years On*

The notorious eminent-domain ruling still provokes outrage and legal confusion.

By Richard A. Epstein

Ten years ago, on June 23, 2005, the US Supreme Court dropped a judicial thunderbolt in *Kelo v. City of New London*. By a narrow five-to-four vote it rejected the spirited challenge that Susette Kelo and her neighboring landowners had raised against the ambitious land-use development plan put forward by the city of New London, Connecticut. The formulaic account of the holding is that a local government does not violate the "public use" component of the Constitution's takings clause—"nor shall private property be taken for public use, without just compensation"—when it condemns property that will be turned over to a private developer for private development. Under the logic of Justice John Paul Stevens, so long as there is an indirect promised public benefit from the development process, the public-use inquiry is at an end, and Kelo can be driven out of her pink house by the water.

Ten years later, my reaction is the same as it was then: truly horrible. Justice Stevens and the Supreme Court were tone-deaf as to what moves people

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in dealing with property. Of all the cases decided since the year 2000, Kelo may not be the most important or the most controversial. But hands down, it was the decision that got more people indignant than any other.

LEFT AND RIGHT JOIN HANDS

The bipartisan coalition in opposition was, and is, easy to identify. On the right, there are folks who think that a person's home is his castle, and thus resent any forced displacement of individuals for the benefit of some supposed social good. And that anger doubles because of the crackpot and visionary nature of the particular plan at issue in *Kelo*. The communitarians on the left were upset that Pfizer, the company that was going to use the seized land for a research facility, should flex its muscles in ways that prey on individual people.

Anyone who wants to get a sense of the process would be well-advised to real Ilya Somin's new book, *The Grasping Hand*, which offers a painful blow-by-blow account of how good intentions for redevelopment were so badly misdirected that ten years later the seized property remains empty. Perhaps the only nice feature about the case is that Kelo's pink house was whisked away to another site, so that the newly vacant land can be used to collect debris that washes up on the shore. Yes, the grandiose development plans for the Fort Trumbull neighborhood never got to first base. As it turned out, New London was too slow off the mark, other communities built the ancillary facilities that Pfizer wanted, and the company pulled out of New London once the tax subsidies ran out.

Truth be told, however, this bipartisan form of indignation cut too broadly for its own good. The same fierce objections could also be used to attack the destruction of homes to make way for a public hospital or public road. The public-use clause looks only at the purpose for which property is taken, but ordinary people also look at the other side of the equation and ask about the purpose that is deprived. Indeed, the fierce reaction to *Kelo* prompted lots of people to re-examine the use of eminent domain even in cases where the government's public use, narrowly conceived, was incontrovertible.

Hands down, Kelo got more people indignant than any other decision of the past fifteen years.

And they are right. The Constitution should not be the only restriction on the use of the takings power. It is one thing to knock someone out of a home,

THIS LAND WAS YOUR LAND: Susette Kelo fought eminent domain and lost, but the backlash from* Kelo v. City of New London *still reverberates. In the end, Kelo disassembled her "little pink house" and had it rebuilt a few miles away. The land where it stood is still vacant, and New London Mayor Daryl Justin Finizio has apologized to Kelo and her fellow plaintiffs who lost their homes in the failed redevelopment scheme. [Institute for Justice]

and quite another to tell a landlord that he is duty-bound to transfer his interest to his tenant in possession in an exchange that the state will enforce only after the tenant ponies up the cash to the state to work the condemnation. Yet this blatant violation of the public-use clause received its judicial blessing in *Hawaii Housing Authority v. Midkiff*, a muddy 1984 decision in which Justice Sandra Day O'Connor concocted an indirect benefit that justified the coerced

transfer—the need to eliminate supposed "oligarchy" in the Hawaiian housing market, which could have been done quite easily by opening up more restricted agricultural land to urban development. To her credit, O'Connor backed away from *Midkiff* in her *Kelo* dissent.

So what should have been done in *Kelo*? Here the deep irony is that Stevens did not have to tempt the devil. In general, my own view is that master plans are often too ambitious for their own good, much like those vaunted Soviet-style five-year plans. Such was evident in *Kelo*, where the introduction of a major $73 million subsidy from the state to the city had to be spent lest it be lost. So the impulse was to move first and think later, which is what the city did when it condemned the entire ninety-acre Fort Trumbull development site before any concrete plans were in place. Remove the subsidy and perhaps New London would have been content to plan today and condemn tomorrow, when matters got closer to realization. On the facts of that case, a possible halfway house would have been to condemn the land at the center of the development site immediately and leave the peripheral takings until later. Judicially, that is what the Connecticut trial judge decided when he spared Kelo's plot because it was not in the path of any planned development.

But hubris is in far greater supply as one moves through the court system, so that the Connecticut Supreme Court had such confidence in the city's planners that it thought maximum flexibility was needed for effective planning. Had that court simply affirmed the decision below, *Kelo* would never have reached the US Supreme Court and the entire incident would have faded away.

THE FLAWED DECISION STANDS

Some state courts, and some state legislatures, have tried to clip the wings of the *Kelo* decision, which still provokes outrage, but even that has been a hard battle. Since that time, the Supreme Court has ducked the issue, even though some local governments have done things just as foolish and unnecessary as what the city of New London did.

The public-use clause looks only at the purpose for which property is taken. Ordinary people ask what purpose was deprived.

It is difficult to get anyone to attack general planning for economic development, because sometimes in blighted communities it actually works. Yet "blight" can easily become a term of art, so that weeds in the garden may trigger a government takeover. All this is not to deny that *Kelo* has had its

effect, for surely it has, but chiefly through the medium of public opinion, which has tended to make it politically more costly for governments to condemn the property of their own citizens. It is so much easier politically to get local governments to rally support to zone out people they don't want in their communities.

"Blight" can easily become a term of art, so that weeds in the garden may trigger a government takeover. But it also has its uses.

Kelo was a big deal, and it will remain in the consciousness of the American public for years to come. Zoning is a bigger deal, and the same misguided progressive impulses that led to the rise of central planning on steroids are still dominant in an area that needs its own *Kelo*-like fiasco to get the public attention it so richly deserves.

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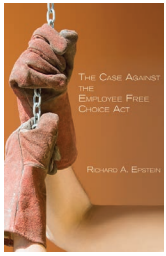

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Pill of Great Price

As Sovaldi demonstrates, even a very expensive new drug can save money. A prescription for strong patents and less government price-fixing.

By David R. Henderson

In a *Huffington Post* article, "The drug that is bankrupting America," Columbia University economist Jeffrey Sachs argued against the high price that Gilead Sciences charges for Sovaldi, a drug used to treat hepatitis C. Sachs did not fault Sovaldi as ineffective. Instead, his argument was simply that the $84,000 price for a full treatment is far above its production cost.

Sachs said he wanted a "rational drug pricing system." So do I. And I'll point out some changes that could be made to get to such a system.

But, first, let's consider the relevant question about Sovaldi: is its value higher than its price? For many people, it is. Indeed, when we understand just how valuable the drug is—not to Gilead, but to patients—it's clear that Sovaldi is an incredible bargain.

Consider how doctors treated hepatitis C shortly before Sovaldi came along. According to WebMD, "the typical treatment for hepatitis C was a combination of interferon and ribavirin with two antiviral drugs," telaprevir or boceprevir, both of which were introduced in 2011. This combination led to cure rates between 30 and 80 percent. But the side effects were awful: flu-like symptoms, fatigue, anxiety, depression, and anemia. Sovaldi has only mild side effects and a 90 percent cure rate. Also, the previous treatments

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took twenty-eight to forty-eight weeks to cure hepatitis C, whereas Sovaldi takes only twelve.

Moreover, according to Jonathan M. Fenkel, a doctor who directs Thomas Jefferson University's Hepatitis C Center, the price of a Sovaldi treatment is "on a par with the costs of telaprevir or boceprevir." So the price of Sovaldi is about the same as the combined prices of telaprevir or boceprevir; the cure rate is higher; the side effects are much milder; and the therapy takes less time. Sovaldi sounds like a bargain.

ONE SOLUTION: COST SHARING

Sachs admitted all the drug's virtues, calling it "a remarkable, life-saving medicine at the cutting edge of science." He pointed out that Sovaldi could save "millions of Americans" and perhaps "hundreds of millions of people around the world." He also called it a "godsend."

Whatever role God may have played, God didn't invent Sovaldi. People did. These people worked under Professor Raymond Schinazi, a biochemistry professor at Emory University. People also brought the drug to market. After the drug was invented, Gilead Sciences bought the rights to the drug and now produces it.

People need incentives to discover, not just to produce life-saving drugs. High drug prices give people such an incentive. Sachs didn't disagree. He wrote, "With a rational US drug pricing system, private investors would expect to earn a reasonable multiple of their R&D for a highly successful drug, perhaps even five to ten times the R&D outlays, in order to reflect the long time horizons and high uncertainties surrounding drug development." He pointed out that the multiple for Sovaldi is "forty times or more." But how does Sachs know what the right multiple is? He doesn't. Nor do I. What we know, as I've noted, is that Sovaldi, compared to what existed before, is a bargain.

Why can Gilead charge so much for the drug? One main reason is that the people who use it do not typically pay for it. Sachs pointed out that federal and state governments—he presumably had in mind Medicare and Medicaid—as well as private insurers will often pay for all the cost. If we had different health insurance systems in which a large percentage of patients paid even a small percentage of the cost, drug companies would almost certainly price drugs

Patents will cause many things to be invented that otherwise might never have been invented.

YOUR MONEY, OR YOUR LIFE!
I'M THINKING, I'M THINKING...
Rx

lower. Without the favorable tax treatment the government gives employees' private insurance, there would be more cost sharing. And more cost sharing by patients should certainly be injected into Medicare and Medicaid. Is Sachs advocating more cost sharing by patients so that prices will fall? He didn't say.

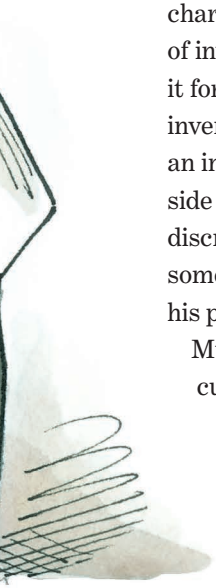
There is another reason that Gilead Sciences has been able to charge such a high price for Sovaldi. That factor is a government monopoly in the form of a patent. No one besides Gilead is legally allowed to produce and sell Sovaldi.

Is Sachs's problem with Gilead the fact that it has a monopoly? I don't think so. The only way you could get rid of Gilead's monopoly would be to end its patent. And he didn't propose doing so. Is his complaint that Gilead is using the full extent of its monopoly power to charge high prices? That appears to be it. But then what is the "right" price? As noted above, Sachs seems to know that it's one that gives the company five to ten times the R&D outlays, but he never tells us how he knows that. And which outlays: the early high-risk outlays or the later low-risk ones? And does this account for failures in the clinic, where 198 out of 200 products fail?

IMPERFECT, BUT IT WORKS

It may seem strange to justify Gilead's monopoly. But a brief tour of the economics of intellectual property and FDA regulation shows that if we want new drugs and if we keep FDA regulation, we will need patents.

The classic argument that economists have made for patents is that they imperfectly solve a market failure. If someone invents something and tries to charge a high price to recoup not only production costs but also his high cost of invention, other producers can copy the item and make money by selling it for a price above their production costs but below the price charged by the inventor. A potential inventor, looking ahead and seeing this, will have less of an incentive to invent. Why is this an imperfect solution? Because the downside is that the inventor has a legal monopoly. Unless he can perfectly price discriminate, charging lower prices to people willing to pay less, he will price some people out of the market who would have been willing to pay more than his production cost.



Much innovation would occur without patents. It would occur because curious people would still want to do research. Also, people often invent things by happenstance. So we have a tradeoff. On the one hand, patents will give monopolies to people for inventions that would have been invented even without patents. On the other hand, patents

will cause many things to be invented that otherwise might never have been invented or, at least, might not have been invented so soon.

That's a tough tradeoff, and, as British economist Arnold Plant pointed out in the 1930s, the choice between having and not having patents is not obvious. But there is one area where one can pretty clearly make the case that patents are, on net, good. That area is pharmaceuticals.

The main reason for that is regulation by the Food and Drug Administration. The FDA's rules for being able to produce and sell a drug put companies through multiple layers of testing. According to a November 2014 study by Joseph DiMasi of the Tufts Center for the Study of Drug Development, Henry G. Grabowski of Duke University's Department of Economics, and Ronald W. Hansen of the Simon Business School at the University of Rochester, the cost of bringing a drug successfully to market in the United States is $2.558 billion. That includes, of course, the cost of "dry holes"—the drugs that companies abandon because they are not safe or effective or because to figure out whether they are safe and effective is too costly. What drug company would be foolish enough to spend that amount of money without some kind of protection from competition?

People need incentives to discover. High drug prices give people such an incentive.

The FDA's regulations matter in another way. The FDA's rules require disclosure of the drugs' contents. That, combined with the long time taken for approval, makes it easier for competitors to produce copycat versions.

With such extreme FDA regulations and with no patent protection, we would probably have no new drugs. Given that the FDA is unlikely to lose its regulatory powers any time soon, the patent system seems like a reasonable solution to a difficult problem.

RIGID PRICING HARMS THE UNINSURED

There is a further solution. Ironically, one of the federal government's regulations makes it difficult for drug companies to charge low prices to low-income people who want their drugs. The government mandates that when a drug company sells to Medicaid, it must charge Medicaid a price at least as low as it charges anyone else. That law is what prevents many drug companies from charging low prices to the uninsured who have little wealth. Drug companies would love to engage in the "price discrimination" that I mentioned earlier. If the production cost of Sovaldi is, say, $500 for the whole

regimen, and the market price is $84,000, there are probably many uninsured people willing to pay well below $84,000, but well above $500, to save their lives. Gilead Sciences could charge them, say, $2,000. But as long as Gilead is stuck having to charge that price to Medicaid as well, it won't charge that price to anyone.

Pharmaceuticals are an area where it's pretty clear patents are a good thing.

One of the big breakthroughs in economics was the "marginal revolution" of the 1870s, when economists figured out that the value of something is not the same as the cost. The value of Sovaldi to many people is far above the production cost. Allowing companies to charge high prices that reflect that value will give them an incentive to keep on researching, discovering, and producing high-value—and sometimes life-saving—drugs. ◘

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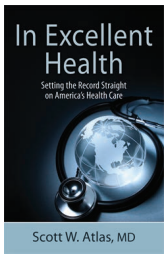

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The Terrorist's Apprentice

HELP WANTED: Must be zealous, willing to travel. Benefits to die for.

By Mark Harrison

Recently the Philosophy, Politics, and Economics Program put on an event at the University of Warwick to show what each of those three disciplines can contribute to the study of terrorism. Philosophy, it turns out, is good at trying to understand the concept of terrorism. Politics helps us understand how Western ideas have influenced our concepts of terrorism. I decided to focus on the economics angle and explore why young people choose terrorism as a career.

A terrorist is someone who kills or injures civilians with a particular purpose: to create a violent spectacle, and so to spread terror beyond the immediate victims. The motivation is political: to support political demands (*maybe*,

Key points

» Terrorism is a choice, with benefits and costs like any other choice.

» Personal benefits, not group goals, draw young people into terrorism.

» Young people are likelier to join because their friends are members than because of ideology.

» Key to the terrorist choice is the belief that others' interests don't matter.

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as we shall see). Terrorists seem to belong to the world of politics. What do they have to do with economics?

Assume that deciding to become a terrorist is an occupational choice and we can analyze that choice through economic concepts such as cost, benefits, and rational decision making. To become one is costly. There must also be benefits, but what are they?

FREELY AND SANELY CHOSEN

The first step is to establish that *choice* is the appropriate word. Do people choose terrorism or are they driven into it by despair (or by voices in their heads)? My answer is that they choose.

How do we know? From two things. One is that far more people support terrorism than take part in it. Across societies and over time, support for terrorism is rarely a majority point of view, but around the world supporters come in significant numbers that amount to sizable minorities.

Research by Pew in 2013 showed that support among Muslims for suicide terrorism is highly variable—widespread in some places, infrequent in others. That support also tended to dwindle over the eleven-year period studied. But bear in mind that three of the countries polled are among the most populous on earth: Pakistan, Indonesia, and Nigeria together account for more than 600 million people. If you apply the percentages for 2013 to the working-age populations (aged fifteen to sixty-four) of these three countries and the eight others surveyed, you come up with at least fifty million sympathizers. Sizable minorities support terrorism.

In contrast, those who choose a career in terrorism are tiny minorities. In 2013 there were perhaps as many as a quarter million international terrorists worldwide. I base that on a rough count of members of groups aiming to attack the United States (according to the US State Department in 2014). That is a tiny number. Among 4.3 billion people of working age in the world, it is one in 18,000. In the Middle East and North Africa, active terrorists number perhaps 150,000. Relative to the working-age population of the region, that is one in 1,500. In short, many people sympathize with terrorists, but hardly anyone becomes one.

The second important fact is that terrorists are competent to choose, and have alternatives which they reject. These people are not driven by crazy inner urges they cannot control; study after study has shown that most are psychologically normal. Moreover, the typical terrorist is male, young, relatively affluent, and relatively educated—and in every society the people with the fewest choices are women, the elderly, the poor, and the uneducated.

[Taylor Jones—for the *Hoover Digest*]

Terrorists are people with *more* choices, not fewer. They are not compelled by their circumstances.

But is it a *rational* choice? Economic thinking revolves around the idea of people as rational actors. A rational actor isn't a good or bad person, just a person whose behavior follows a consistent logic. A rational actor should compare expected marginal private benefits with marginal private opportunity costs. The word *marginal* emphasizes that each person should ask: what difference will my choice make? The word *private* means "the difference to me." Then, the rational person will choose the option that yields the largest net gain to him or her. The gain does not have to be monetary; it will come in any form that the person concerned values.

COLD-HEARTED CALCULATIONS

An aspiring young terrorist can make a list of marginal costs and benefits, just like a list of pros and cons. The marginal costs associated with becoming a terrorist are many and large. You have to make the effort to research the groups that are willing to recruit you and work out the differences among them in order to seek to join one of them (in economics that is called a matching problem: there has to be the right match between the group and you). This effort is a cost. You have to learn occupational skills such as violence and concealment. Learning is costly too. You have to make efforts to adopt and live a new social identity, becoming a warrior or martyr.

Any career choice is likely to present analogous costs of matching, training, and developing a new professional identity. But the costs of choosing terrorism that would not arise with other choices are that you have to abandon your home, your family, and a peaceful way of life in order to risk death. And, if you survive, and decide that you made a mistake, there may be no going back. These are all things that go under the "cons."

You have to learn skills such as violence and concealment.

What goes under the "pros"? What are the benefits terrorists seek from their career choice?

One you might think of (assuming these are indeed benefits to you) would be to achieve the declared goals of the group: usually to unify the homeland, drive out foreigners, or establish religious order. But the economist rules this one out on several grounds, each of which should be decisive on its own.

First, on average, attacking civilians does not achieve declared goals. Terrorism is counterproductive. All the evidence suggests that international

terrorism against civilians moves public opinion against it, while increasing the likelihood of Western cross-border intervention against terrorists. Even Osama bin Laden could see that.

Even if terrorism were productive, one person more or less would make no difference, so the marginal gain from your personal participation is inevitably less than the private marginal cost you will bear.

Finally, terrorists often turn out to be quite uninformed about their own group's declared goals (and beyond that, usually also fairly clueless about world politics and religion). For all these reasons we cannot put much weight on claims, often made many years later, that "I joined the IRA to bring about a united Ireland," for example.

A clue to where the benefits lie is the fact that while psychologically normal, terrorists are often excluded or isolated. They are young unmarried men, or young women who were prematurely widowed, or poorly assimilated migrants. Correspondingly, Max Abrahms has argued that what terrorists value above all is the comradeship and supportive ties they find in the organization they joined.

Here is some evidence. Among 516 Guantánamo Bay detainees, knowing an Al-Qaeda member was a significantly better predictor than belief in jihad for choosing a terrorist path. Among 1,100 detained members of the Kurdish PKK, respondents were ten times as likely to say they were attracted to join "because their friends were members" than by political ideology. There are related findings from Europe based on study of the IRA, the ETA, the Red Army Faction, and the Red Brigades. Moreover, terrorist groups are well placed to supply intense comradeship. They provide shared dangers and extreme experiences that cannot be shared with outsiders.

Terrorists aren't driven by crazy inner urges they can't control. Most are psychologically normal.

This suggests a more general model. Young people seek a variety of benefits from work. To some, salary and prospects matter most. For others, the kind of work is most important. Suppose you want excitement and risk, not a job that is routine or desk-bound. Suppose you want teamwork and comradeship, not isolation. Suppose you want the opportunity for acknowledgement of your personal role; you don't want to disappear into an anonymous mass.

If you are that sort of person, you might consider competitive team sports, or becoming an outdoor adventure leader, or joining the emergency services, perhaps the fire brigades. Or. . . you might become a terrorist.

FATAL BELIEF

So far I've said nothing about beliefs. Yet in choosing terrorism, beliefs do play a role. For only a tiny minority chooses terrorism. Most young people do not want to kill others in order to share excitement and form bonds of affection with co-workers. What can overcome this natural reluctance?

As an economist, I note that beliefs shape rational choice. You cannot make a rational career choice without beliefs. Here is a minimum set of beliefs that seem to matter for young people who choose terrorism.

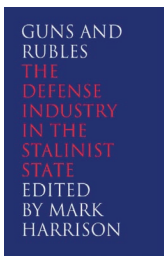
Terrorists seem to value above all the comradeship and supportive ties they find in the organization.

There is the choice of identity: the very concept of self-interest is predicated on the existence of a self that answers the question "who am I?" For those who choose terrorism the answer is apparently "I am a warrior" (or "I am a martyr"). Sometimes the choice of identity is fueled by anger. But this choice alone is not sufficient; you can be a soldier or a martyr without directing your rage against innocent people.

There is also a matter of values: specifically, when I choose how to behave in society, how much weight should I give the interests of other people, compared to my own self-interest? Here the critical answer is: "people who don't share my beliefs have no right to be considered and don't deserve to live." This, and only this, makes it OK for the soldier to kill them.

When some young people look for others with whom they can form social bonds, these beliefs can tip the rational choice towards terrorist groups. So to adopt these two beliefs, the identity of the soldier and the exclusion of others from the right to exist based on different beliefs or culture, must be decisive in what some authorities now call "radicalization." ◘

Special to the* Hoover Digest. *Adapted from Mark Harrison's blog (https://blogs.warwick.ac.uk/markharrison).



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Secrets in a Transparent World

Hoover fellow **Jack Goldsmith** urges the intelligence community to accept a few leaks, earn some credibility, and let in the sunshine.

By Jack Goldsmith

How should the intelligence community think about and react to the government's growing inability to keep secrets? Last May I was honored to give a keynote speech on this subject at an intelligence-community legal conference. Here is the speech, titled "Toward Greater Transparency of National Security Legal Work."

It is a pleasure to speak to a group of intelligence-community lawyers under benign circumstances. The last time I had such an audience, eleven years ago, I was "scaring the hell out of" former CIA acting general counsel John Rizzo, as he said in his memoirs, because of my efforts to fix some serious factual and legal errors in Office of Legal Counsel opinions that undergirded important ongoing operations. I was also scaring the hell out of Rizzo's client, other intelligence-community principals and attorneys, White House officials, and the attorney general. And, frankly, I

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was scaring the hell out of myself. It was an unprecedented and difficult situation, and I'm glad it's eleven years in my rear-view mirror. I'm also pleased that you and your colleagues have thoroughly rejected or overcome most of the pathologies that characterized my period in government.

My topic today is about the one pathology I think you have not rectified: the balance between secrecy and transparency in your work. I will quickly review the reasons why so much highly classified information, including legal work, ends up in the public these days, and why such disclosures are likely to persist and grow. I then hope to provoke you by suggesting that the government rather than the media is almost entirely responsible for the publication of these leaks. Then I will offer thoughts on how you should deal with the forced transparency that will characterize your work for the foreseeable future.

An amazing number of very highly classified programs have been revealed to the public in the past eleven years. These revelations included a lot of executive branch legal work related to these programs—by my rough count, at least several hundred documents. The vast majority of these disclosures involved insider leaks to the press followed by shamefaced government production in reaction to leaks. The disclosures of classified legal materials are now so commonplace that we forget they rarely occurred before 2004.

The reasons for the rise in leaks that underlie these disclosures is well known. The number of secrets and size of the secrecy bureaucracy have ballooned. As former CIA director Richard Helms said, "the probability of leaks escalates exponentially each time a classified document is exposed to another person."

Even while President Obama condemned the damage Edward Snowden caused to national security, he emphasized that Snowden sparked "an important conversation we needed to have."

Digitalization has also made leaking much easier. The placement of the nation's most important secrets in bits on computer systems makes them easy to copy, store, encrypt, and transfer in bulk. The same technology empowers individuals around the globe to receive leaks and to watch and analyze intelligence-community actions in a coordinated fashion, and to organize and publish that information.

And then there is the problem that the norms that once restrained the press from publishing classified secrets have weakened significantly. In part this is because the nature of the press has changed. Today the national

security media include not just the *Washington Post* and the *New York Times* but also the *Guardian*, the *Intercept*, *Gawker*, *Cryptocomb*, and hundreds of other sites around the globe. These nontraditional publishers deploy the digital tools I just described. They don't take the national security concerns of the US government nearly as seriously as the *Times* and the *Post*, and some of them thrive on thumbing their noses at these concerns. Competition from these nontraditional sources has led media outlets like the *Times* to publish things they once wouldn't, for fear of being scooped.

The government complains bitterly when the traditional press and their less-traditional heirs publish classified secrets. But from where I sit, these criticisms almost always seem misplaced because the government is almost entirely responsible for these publications.

National security officials will leak information to explain an operation to the public, show it in a favorable light, or achieve some other self-serving end.

First, they are your secrets—you created them, and you created the security system that allows them to leak so readily. As Justice Stewart said in the Pentagon Papers case: "The responsibility must be where the power is. If the Constitution gives the executive a large degree of unshared power in the conduct of foreign affairs and the maintenance of our national defense, then under the Constitution the executive must have the largely unshared duty to determine and preserve the degree of internal security necessary to exercise that power successfully." It still astounds me that Edward Snowden worked for and stole those secrets from the agency charged with information assurance for the government.

Second, many of the leaks of the past dozen years sparked reforms after revealing that the government was doing things the American people disapproved of in some way. This happened with the CIA's detention and interrogation program and is happening to a degree with domestic bulk collection. Even when programs like targeted killing are not significantly modified as a result of leaks, the leaks have induced procedural reform and greater transparency. Journalists see these beneficial effects and feel justified in thinking that their publications make fundamental contributions to American democracy and that publication of more secrets would have a similar impact.

Third, the government has sent strong signals that it approves of the press publishing these secrets. Yes, the Justice Department has ramped up attempted prosecutions of leakers, though the ratio of leak prosecutions to

leaks of highly classified programs is not obviously a lot higher after 9/11 than before. At the same time, the government has backed away from accountability for journalists who publish classified information. Congress has never enacted a coherent law that criminalizes publication of national security information, and it purposefully included a media loophole in the Intelligence Identities Protection Act. Moreover, both the Bush and Obama administrations declined to prosecute journalists for defying the one criminal prohibition on publishing secrets that might pass First Amendment muster, namely, the ban on publishing classified information related to communications intelligence in 18 USC 798. Journalists defy this law on a regular basis.

The government has also made clear that it will very rarely, if ever, pursue journalists for their sources in leak investigations. During a period of unprecedented leaks, former attorney general Eric Holder twice modified Justice Department guidelines to further narrow the circumstances in which prosecutors can subpoena journalists. He also refused to exercise the government's clear legal right to require James Risen of the *New York Times* to testify in the leak prosecution of Jeffrey Sterling. The press interprets these moves as vindication of Risen's tough stance.

President Obama has sent a similar message. Even while he condemned the damage that Snowden caused to national security he emphasized that Snowden sparked "an important conversation we needed to have." The president also said journalists would not go to jail "for doing their job" and added that "we have to constantly balance the need for certain national security issues to remain secret with journalists pursuing leads wherever they can." Journalists rightly view these statements as support for their disclosure of classified information.

Finally, journalists find support for reporting classified information in the regular practice of national security officials leaking such information to explain an operation to the public, show it in a favorable light, or achieve some other self-serving end. I see examples of self-serving leaks of classified information every week in the newspapers and books I read. This practice makes the media inured to the leaks and disrespectful of security classifications when deciding whether to publish information that senior officials actually want to keep secret, like the names of the undercover officers.

I think it is important that you understand that the post-9/11 precedents and norms that govern the publication of national security secrets reflect a deep societal belief that press reporting of secret executive branch action serves a vital function in American democracy, especially in an indefinitely long and secretive war, even though such publications sometimes harm national security.

SECRETS AND CANDOR: James Clapper, director of national intelligence, testifies before the Senate Armed Services Committee earlier this year. Clapper told the House intelligence committee in 2013 that "we must do a better job in helping the American people understand what we do, why we do it, and, most importantly, the rigorous oversight that helps ensure we do it correctly."
[© ZUMA / Louie Palu]

It is no accident that the constitutional democracy with the largest and most powerful intelligence organization in the world is also the nation that gives the media by far the freest reins to discover and publish classified secrets about that organization. The two go hand in hand—the independent press helps legitimate what you do. Congress and the president have room under the First Amendment to tighten the legal reins on the press in this context. But in an era of unprecedented leaks, they have been loosening the legal reins, not tightening them. And there has been no public outcry at this loosening.

For all these reasons, it seems likely that classified intelligence activities and related legal work will continue to flow out to the public. The question I now turn to is: how should you think about and react to the government's growing inability to keep secrets? Acknowledging fully my outsider perspective, I offer six principles that I think should guide this

rethinking—some that apply to the executive branch generally and some that are lawyer-specific.

» ***Fully absorb and adhere to the Front Page Rule.*** That rule counsels that the US government should not engage in secret, covert, or clandestine activity unless it believes, in the words of the President's Review Group, that it can "persuade the American people of the necessity and wisdom of such activities were they to learn of them as the result of a leak or other disclosure." The theoretical justification for this rule is that the intelligence community acts on behalf of the American people and cannot act legitimately in a way that it thinks the American people would not support if disclosed. One pragmatic justification for the rule is that thinking about how your work will survive front-page coverage will induce you to avoid unsound, incautious, or unnecessary legal claims. A second is that intelligence actions and related legal analysis that the American people do not support will, if disclosed, invite congressional and public mistrust, legal and political backlash, new restrictions, and other costs.

I know that national security officials consider the likelihood and consequences of public disclosure when crafting intelligence decisions. But very often, officials discount the likelihood of disclosure to almost zero. The Front Page Rule counsels that in a world of greater transparency, intelligence officials, including lawyers helping them assess risk, should take these potential costs of publicity more fully into account ex ante when devising and scrutinizing new operations.

» ***Stop jeopardizing vital credibility through exaggerated claims about the national security harms of disclosure.*** In a world with no effective legal barriers to the publication of national security secrets, the only tool you have to prevent publication by the mainstream press is a credible claim of national security harm from disclosure. This tactic has worked in the past more than the public realizes. The *Times* and the *Post* often hold secrets because they believe the harm of publication outweighs the benefits. And they often seek information from your clients about what those harms might be.

I have interviewed four executive editors of the *Times* and the *Post* in the past five years, and they all four said the same thing: the government has so often exaggerated threatened harm from publication that the editors now discount claims of harm very significantly. You might think these claims are self-serving, and perhaps they are. But senior intelligence officials and senior intelligence lawyers have made the same point to me. Your credibility about national security harm is a limited and diminishing resource and must be spent carefully.

Several judges have started to signal, in public opinions and in private conversation, that the government has lost credibility about the harms of disclosure because it so often exaggerates the harm. This is a serious medium-term threat to your control over your secrets, I think.

» ***Rethink the pervasive resistance to public disclosure of any aspect of any intelligence operation, including the legal rationale for such operations.*** Director Clapper explained the basis for this resistance when he said: "Before the unauthorized [Snowden] disclosures, we were always conservative about discussing specifics of our collection programs, based on the truism that the more adversaries know about what we're doing, the more they can avoid our surveillance." Clapper added: "But the disclosures, for better or worse, have lowered the threshold for discussing these matters in public." Nonetheless, the intelligence community and many of its lawyers still appear to embrace an absolute presumption of secrecy when possible, and still see the costs of disclosure about secret operations in all-or-nothing terms.

An independent press helps legitimate what the intelligence community does.

This attitude might have made sense in a world in which you could keep secrets. But in a world in which secret operations often become public, it doesn't make sense. You are damaged much more by leaks and disclosures under pressure from leaks than you are by voluntary self-disclosure before leaks. Leaks and disclosures under pressure are reactive and invariably seem defensive and self-impeaching. When you disclose information before leaks, by contrast, you can better control what is disclosed and the narrative about what is disclosed. You are also much more likely to get credit and gain legitimacy from self-disclosure, especially compared to disclosure via or in response to a leak.

The main counterargument to this point, and the sentiment that still dominates in your world, is that, as former CIA director Allen Dulles once put it, "what a government, or the press, tells the people it also automatically tells its foes." This argument has special salience in the surveillance context because any disclosure about collection techniques heightens the enemy's communications operational security and causes it to shift to other forms of communication less subject to detection. And I know it has super-special salience when you are on the inside watching the bad guys up close, and are loath to give them any tactical advantage.

But this argument proves too much as a basis for blanket secrecy. The same argument applies to fingerprint identification and most other

investigative or surveillance tools in your toolkit. Secrecy about means and methods is an important value but not the only value. Other values include the medium-term legitimacy and support for your programs that I just discussed and the notion that the governed should know at least the basic outlines of what its government is entitled to do, especially vis-à-vis its citizens. These and other values must be weighed in the balance.

Also, not all voluntary revelations about an intelligence operation are equally harmful. Disclosure that the government has interpreted Section 215 of the Patriot Act to authorize bulk metadata collection is less damaging to the intelligence-collection mission than disclosure of the fine-grained details about how the National Security Agency collects and analyzes that metadata. Similarly, you can disclose large elements of the legal rationale and processes supporting targeted killing without exposing intelligence or the diplomatic deals associated with the program.

Early openness about what the NSA was doing inside the United States might have diminished the effectiveness of the collection programs at a tactical level but also would have given the government a better chance of securing longer-term strategic legitimacy for the programs.

» ***Confident assessments of legality in secret are no guarantee of public acceptance or legitimacy.*** I am a big believer in the legitimating effects of executive branch lawyering combined with congressional and (when appropriate) judicial scrutiny of the legality of your secret programs. Such scrutiny has been important in producing first-rate assessments of your programs and in legitimating those programs when they leak to the public. That said, government lawyers tend to have too much confidence in the adequacy or persuasiveness of legal conclusions made in secret. Time and time again in the past dozen years these decisions have seemed less persuasive to a public audience than to a secret one. Some of the critical reaction in public is opportunistic. But some of the reaction is based on the fact that legal judgments in secret are invariably different from legal judgments in public. It is easier for a lawyer or a FISC judge to support the legality of executive action when the supporting opinion is not exposed to public scrutiny. Also, secret legal decision making is invariably less adversarial—less exposed to counterarguments and unconsidered facts that can reveal weaknesses.

Journalists say that government has exaggerated the threat of harm from publication so often that editors now discount such claims.

» ***Rethink the extreme disinclination to share all significant legal opinions related to classified operations with the intelligence committees.*** My understanding is that in recent years, NSA and DOJ have overcome this disinclination and regularly report all significant legal opinions and analysis related to domestic surveillance to both the intelligence committees and the judiciary committees. This should be the practice more broadly.

I am a committed defender of the executive branch's right and duty to interpret law for itself. But when the government acts in secret, and especially when it acts outside of contexts reviewed by the FISA court, the only possible mechanism for oversight and legitimation is the congressional intelligence committees. It is important to show your legal work to the committees so that they—or, more realistically, their staffs—can understand what you are doing, can probe or push back against your analysis, and can determine whether it is appropriate. Even if you think that the substance of the oversight is poor, disclosures of this sort will, like attention to the Front Page Rule, make your legal work better and better able to withstand disclosure.

Secrecy about means and methods is an important value, but not the only value.

Oversight by congressional intelligence committees is a primary justification for why you are able to take action in secret contrary to the usual rules of public deliberation in our democracy.

» ***You are unlikely to seriously rethink your approach to secrecy and transparency without some kind of institutionalized, interagency study of the problem.*** You tend to approach issues of secrecy versus transparency ad hoc and in the context of litigation. The litigation pressure and the fact that you are enormously busy keeping the country safe means that you have little time to step back and consider systemic costs and benefits of your transparency practices, or organizational reforms.

And yet I think you must find a way to do so. I know many of you will think I have overstated the likelihood of increased unwanted disclosure since so much of what you do remains successfully secret; or that I have understated the costs of disclosure on intelligence practices; or that I have exaggerated the benefits of disclosure on your legitimacy.

Even if I am wrong on all these points, I do not think I am wrong in saying that you face a very different reality on these issues from fourteen or even two years ago, or in doubting that you have reached the right systemic

approach to optimal disclosure of legal analysis. This issue warrants your extended attention and study.

Let me close with a word of appreciation. It has been eleven years since I was in your business, but I think about and appreciate what you do just about every day. I think about you because I teach a lot of national security courses, because I advise dozens of students every year whose professional goal in life is to have a job like yours, and because I watch your work closely and write about it. In thinking about what you do, I am constantly struck by how hard your jobs are—hard because the threat is so hard to discern, hard because the law is so often indeterminate or ill-suited to the task, and hard because you or your offices are often brutalized in public for sound or defensible legal judgments that are inevitably controversial because of the context in which they are made.

In a speech eight years ago, FBI Director James Comey talked about the importance of the intelligence lawyer saying no to the client when appropriate. Saying no in the face of pressures to approve an action, Comey said, "takes moral character" and "an appreciation of the damage that will flow from an unjustified yes," and "an understanding that, in the long run, intelligence under law is the only sustainable intelligence in the country." I have made similar points myself.

But there is an important related principle that often goes unstated and which will become more salient as your work becomes ever more transparent. Just as it is sometimes hard but important to say no to a client, it is also sometimes hard but no less important to say yes when yes is the right answer under the law but the context is politically controversial and the yes might invite public criticism and, conceivably, professional harm. I don't envy you in the difficult task of legal judgment in the face of scary threats, inadequate law, and an unforgiving public. But I am truly grateful for what you do. ◘

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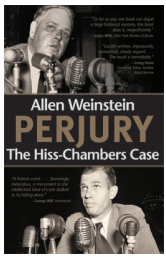

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Snowden Shrugged

If the NSA had done what Chinese hackers did—steal millions of Americans' dossiers—privacy advocates would be up in arms.

By Benjamin Wittes

A giant government surveillance program has scooped up sensitive personal information on literally millions of Americans. The spying almost certainly includes the creation of digital dossiers on people. It is apparently conducted without minimization requirements, court orders, or legislative oversight—indeed, without any publicly known rules. The dossiers include mental health information, individuals' alcohol and drug histories, and people's past criminal histories; they include intimate contacts, family networks, and friends. They include Social Security numbers. It's everything civil libertarians and privacy activists have been warning about for years.

Yet the privacy community is virtually silent. Why? This giant surveillance program isn't being run by the US government. It's being run against the US government—by the Chinese government. And for some reason, even the grossest privacy violations—in this case the pilfering of millions of background investigations and personnel records from the Office of Personnel Management (OPM)—just don't seem so bad when someone other than the United States is doing it.

For the record, I have no problem with the Chinese going after this kind of data. Espionage is a rough business and the Chinese owe as little to the

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privacy rights of our citizens as our intelligence services do to the employees of the Chinese government. It's our government's job to protect this material, knowing it could be used to compromise, threaten, or injure its people—not the job of the People's Liberation Army to forbear collecting material that may have real utility.

Yet I would have thought that privacy groups that take such strong views of the need to put limits on American collection, even American collection overseas against non-US persons, would look askance at a foreign intelligence operation consisting of the bulk collection of the most highly personal information—an operation involving not only government employees but also those close to them. You'd think this would raise someone's privacy hackles, if not mine.

Yet take a look at the website of the Center for Democracy and Technology (CDT). It's busy celebrating the passage of the USA Freedom Act and, ironically, worrying about the privacy implications of pending cybersecurity legislation. The ACLU also responds to the news of the OPM breaches by criticizing cybersecurity legislation. The Electronic Frontier Foundation? Nope. That group doesn't seem to mention the OPM hacks at all. The *Intercept* has one good story, but you'd certainly never know from reading the publication founded to pick the Snowden scab how badly these hacks outmatch the National Security Agency's most aggressive programs as threats to Americans' privacy.

Why the difference? One possibility is that privacy advocates simply expect the Chinese to run roughshod over people's privacy, so they're not that outraged when the Chinese go and do it. Another possibility is that the advocates have such inflated expectations of the moral purity of our own country's foreign intelligence activities that they become outraged when those agencies behave like, well, intelligence agencies. Still another possibility, I suppose, is that they would contend that this material, consisting of government records, is fair game. I could actually accept that argument, except that I don't believe the same privacy groups would sit still for the bulk collection by our own intelligence services of, say, all personnel records of the Chinese government.

There's a huge double standard at play here. And I await an explanation of why I should continue to regard the NSA as the world's great threat to privacy.

Then again, maybe the privacy groups would claim it's just a tactical judgment: it's better to focus on your own government and its policies than on a foreign authoritarian sovereign over which one has no influence. In this account, the issue is less a double standard than a hard-headed assessment of where one's energy is best spent.

There are several reasons why I think this is inadequate. For one thing, human rights groups comment all the time on the behavior of governments over

[Taylor Jones—for the *Hoover Digest*]

which they have no influence. Glance at the front page of Human Rights Watch's home page and you won't see the implausibility of influencing Russian or Angolan policy inhibiting the group from talking about what governments are doing. Tilting at authoritarian windmills is part of what human rights advocacy is.

Second, if you're a group devoted to protecting the privacy of Americans, you should simply find it unthinkable to ignore the OPM hack. It is, after all, a far bigger threat to the interests you are pledged to protect than any activity by your own government. You are tolerating an absurd situation in which anyone can ride roughshod over Americans' privacy except the US government.

Recall, moreover, that the whole theory of international outrage at NSA's behavior was that global collection implicates some kind of *international social contract*, not just the relationship between individuals and their own governments. Remember all the talk about the international right to privacy, that idea—now embraced by the US government—that US collection must take into account the privacy interests of foreigners overseas. US privacy groups have had no trouble invoking the International Covenant on Civil and Political Rights (ICCPR) to restrain US surveillance. Surely they are not more concerned about using the ICCPR to "hold the US to account for its [surveillance] abuses"—as CDT recently put it—than they are in that document's restraining Chinese abuses against US nationals?

There's really only one group of people who should not be outraged by the behavior of the Chinese here: those who, like me and General Michael Hayden, take the bloodless view that this is espionage and the shame is on us for letting it happen, not on the Chinese for doing it. But you don't get to take this view only with respect to adversary intelligence services, while insisting that your own respect some transcendentally important, and ever growing and morphing, right of international privacy. ■

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Deterrence Has to Be Lethal

Cyberwar is real war, which means strategists must develop ways to punish—and yes, to kill—those who wage it.

By Enrique A. Oti

Imagine a cyberattack beyond anything seen to date. A cyberattack that causes death and destruction in the physical world, possibly one that destroys the economic livelihood of millions of people. Would the United States respond in kind with cyber weapons or would it respond with conventional and nuclear arms? Would the response be immediate or would it take time? Would US allies be protected if they were the victims?

The answer to all these questions is "it depends," or more precisely, "nobody knows." However, a credible deterrence strategy demands that adversaries and allies alike know that the United States would respond—if not always where, when, and how.

Nuclear deterrence worked during the Cold War and still works today because people understand the devastation caused by nuclear weapons. Leaders, academics, scientists, religious leaders, and the American people openly debated how many people the United States was willing to kill (or threaten) to defend US interests. This conversation has not yet started in

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cyberspace, but there is still time to debate and develop a policy to deter devastating attacks in the high-tech realm.

Any kind of deterrence is ineffective if the intent and the consequences cannot be communicated to the adversary, to allies, and to the American people. Additionally, deeds must match words—blustering lowers credibility—and the complexities of cyberwar mean the connection between words and deeds might seem unclear. Once the United States develops a cyberwar strategy, the key to its execution is to establish credibility, which means being more careful with rhetoric. If leaders continue to declare all types of cyberattacks unacceptable but the United States never responds, for example, the message to adversaries is that all cyberattacks are acceptable. Harsh rhetoric must be reserved for extreme cases so that adversaries clearly understand the signals. For lesser cyberattacks, US defensive and response actions should speak for themselves.

HOW DO YOU STOP A MALICIOUS HACK?

The first level of deterrence must focus on the "soldiers," the hackers themselves—not just those who carry out the attack but those who develop the technological weapons. The hacker may be a government employee, such as a military or intelligence professional, or a third-party hacker acting out of loyalty or for profit. Government employees do not make feasible targets for deterrence.

Deterring the third-party hacker, on the other hand, could be accomplished through a combination of incentives to draw him toward legitimate markets and dissuade him from selling his wares to US adversaries, and punitive options that instill existential fear. The elite nonstate hacker who knowingly offers his services to adversaries of the United States should live with the dread that at any moment he might be snatched from his home or killed by an airstrike. This threat must be so credible that no hacker would be willing to launch strategic cyberattacks or support a nation's economic spying against the United States. Anything less does not promise enough hurt.

US leaders should avoid setting red lines or timetables.

The United States also must clearly target those who benefit from the hacking. In the case of economic espionage, leaders should establish policies to ensure that a nation or those doing business in that nation see it as in their best interest to avoid espionage and compete through legitimate means. The Chinese government, to take a pertinent example, has ten years of experience

showing that the United States will not respond with economic espionage of its own. Chinese hackers do not fear the consequences of a retaliatory US strike in cyberspace. But businessmen who run the Chinese state enterprises that exploit stolen data are vulnerable to coercive measures that target their values. They value access to markets, access to capital, and the perks of international travel, among other things. The US government has options that include raising the cost of doing business through fines, seizure of US assets, closing of US and other subsidiaries, and delisting from stock exchanges. There are also diplomatic and legal avenues, including criminal prosecution.

More severe punishment must be kept in reserve—for example, destroying every piece of information on an adversary's information and manufacturing systems, effectively destroying the business. Although this type of action sounds extreme and runs the risk of retaliation, its potential use is what separates deterrence from mere defense.

RED LINES ARE A TRAP

Clear communication about deterrence includes avoiding red lines and timetables. The detonation of a single nuclear weapon in anger plainly would be so dramatic that it would cross a well-defined red line. Even the threat of a nation newly obtaining nuclear weapons provokes UN resolutions and threats of military response. But in cyberspace, red lines are almost impossible to implement where the damage could be cumulative over time, deaths or injuries indirect (such as loss of power at a hospital leading to fatalities), or attribution absent. Adversaries should know in advance what is unacceptable (economic espionage and strategic attacks) but not the exact threshold that will provoke a response. This gives decision room to US leadership, but more important it avoids the tendency of adversaries to get as close as possible to the red lines to probe for resolve.

If we continue to declare cyberattacks unacceptable but the United States never responds, credibility vanishes.

Similarly, US leadership should not set timetables for responses, including responding to lesser cyberattacks. This consistency would help bolster credibility regarding major attacks that the United States desires to deter.

The difficulty for decision makers is balancing risk and time. In a hypothetical nuclear attack the attribution is nearly instantaneous, with intelligence systems able to detect the source of the attack. Even if a nonstate terrorist

WARRIORS IN THE HOOD: Israelis train at CyberGym, a facility that teaches computer experts how to defend themselves against attacks on such targets as financial institutions, government databases, and industrial servers. Trainees wear different colored hoodies to signify attackers and defenders. [©UPI / Debbie Hill]

detonated a nuclear weapon, the signature of the nuclear material would quickly lead back to the perpetrator (assuming the terrorist group did not already announce responsibility).

Rapid confirmation or attribution of a cyberattack could also be possible, based on a clear understanding of the most capable potential adversaries, deployment of government and commercial intelligence sensors, use of sophisticated network security tools, and traditional intelligence collection.

Leaders must be able to accept some risk that the attribution may be wrong. On the other hand, if leaders are willing to wait weeks or months for detailed forensics and intelligence collection, then attribution is much more likely to be accurate and the risk of retaliating against the wrong target lower.

A STRATEGIC DELAY

This variable gap in time between the adversary action and the US response has both advantages and disadvantages, depending on the scenario.

Domestically, decision makers may be under intense pressure to respond quickly. At the same time, forbearance may mean that the government is not compelled into a dramatic response if the effects of the cyberattack itself are mitigated and public pressure subsides. Again, this also applies to cyberattacks that fall below the threshold of deterrence, as effective responses to attacks at all levels build the credibility of the United States to respond at a strategic level to enforce a deterrence policy.

The elite nonstate hacker should live in fear that at any moment he might be snatched from his home or killed by an airstrike.

Internationally, a time lag also helps credibility. A single mistake in attribution made for the sake of time, especially if the United States chooses a so-called kinetic response—bombs, bullets, and missiles—could force the United States to cede the moral high ground and limit future decision making. Allowing time before responding allows that response to be more accurate, more tailored to the target, and possibly more severe.

When it is eventually implemented, a deterrence strategy for cyberwar may require at some point a dramatic show of force to prove capability and resolve—to quote a Chinese proverb, the United States may need to "kill a chicken to scare the monkey."

Ultimately a deterrence strategy for cyberattacks will succeed only if the United States' communication and signaling are clear, consistent, and credible. Debating the tough choices must start now. ■

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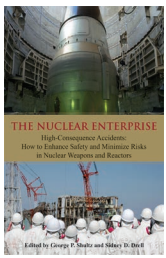

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North Star Rising

The Arctic is the world's new frontier for resources, shipping, and security. We need to stake our claim.

By Gary Roughead

A change of momentous environmental and geopolitical consequence is upon us: the opening of a new ocean in the Arctic.

Most images of the opening Arctic portray calm seas, brilliant sunshine, and distressed wildlife. The Arctic is big, formidable, and profoundly different from the southern polar region. Canada's Arctic region alone adds up to around the same area as all of Europe. Including other Arctic landmasses, the terrestrial space of the Arctic is immense. Oftentimes, Arctic policy encourages adoption of time-tested Antarctic arrangements and protocols, but the two poles could not be more different: the Antarctic is a continent surrounded by ocean while the Arctic is an ocean surrounded by continents. The Antarctic has a transient population of scientists and tourists while the Arctic has a number of indigenous populations whose ways of life for millennia are quickly disappearing. The ice is diminishing but the Arctic remains, for most of the year, a dark, stormy, and rapidly changing environment.

It is best to think about the Arctic in terms of energy and mineral resources, shipping, security, and governance. These issues are inextricably linked. Furthermore, it is also significant that the region is opening at a time of significant technological change. To simply replicate protocols and policies

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of other geographic areas, without thoughtfully and aggressively applying new technology to this extraordinarily rare event, would be shortsighted. No longer are we at a point where we can just talk about climate change or the dramatic physical changes. The United States must begin to make informed investments that best position it for a fruitful Arctic future.

ENERGY AND MINERAL RESOURCES

The conversation about Arctic resources today is significantly different from what it would have been three years ago, or even three months. The vast amount of estimated energy reserves in the region bring to mind opportunities akin to the Alaska gold rush, with US Geological Survey estimates placing as much as 13 percent of the world's undiscovered oil and 30 percent of the world's gas deposits there. For the United States, gas drawn from its Arctic region is closer to the sizable Asian market than gas from the gulf coast. Extraction could be challenging because of climactic conditions, but projections of increasing demand and decreasing global supply make it worth pursuing.

North America's flush prospects have changed the energy calculus, though not necessarily right away. Russia, with its struggling hydrocarbon-dependent economy, will continue to produce, as will the finely tuned Norwegian enterprises. Costly extraction from the offshore fields of North America will not take place for some time.

Other resource markets present a different picture. Although commodity markets are down, Arctic deposits of nickel (Russia), zinc (Alaska), and iron (Greenland) will remain attractive. While resource extraction (especially in energy) may not be at previously predicted rates, the United States must recognize the importance of Alaska to an effective US energy strategy and support policies that help our northernmost state. Moreover, the United States should ensure that its claims to territories with potential energy sources are internationally recognized under the United Nations Convention on the Law of the Sea (UNCLOS) and that US technology remains in the fore wherever resources are being extracted.

SHIPPING

Recent commentary on Arctic shipping often cites dramatic increases in Arctic maritime activity. For example, reports claim that ship transits on the busiest route increased 54 percent from 2012 to 2013. However, this is an example of the law of small numbers. The transits on that route totaled forty-six in 2012 and seventy-one in 2013, compared to the 18,000 ships passing

through the Suez Canal in 2012 and the 13,000 transiting the Panama Canal that year.

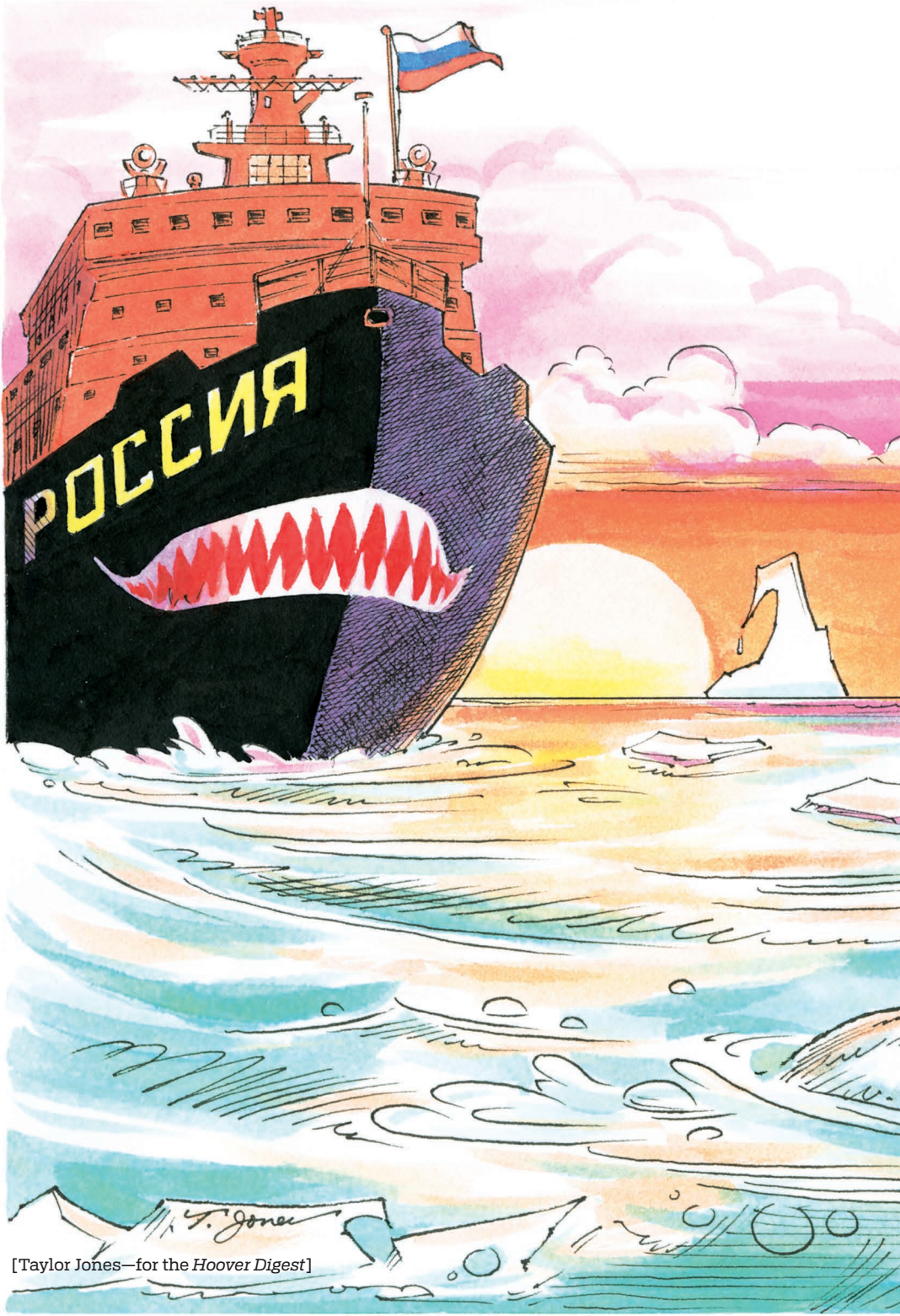
Nevertheless, the Arctic will see increased maritime activity. Fishing fleets will remain active longer and will begin operating in new areas consistent with fish migration resulting from changes in the ocean environment. Cruise-ship activity is sure to increase and shift farther north, closer to land and ice formations to expose thousands to the unique wonders and untouched beauty of the Arctic, as well as the attendant risks.

There are three transit sea-lanes in the Arctic: the Northwest Passage (adjacent to Alaska and Canada), the Northern Sea Route (along the Russian littoral zone), and the Transpolar Route (through the North Pole). Simplistic distance and speed calculations regarding the Arctic routes between Atlantic and Pacific lead to the convenient and compelling conclusion that container traffic will begin moving through the shorter northern routes in the near term. However, adverse weather and shifting ice fields can constrain and rapidly close passages, which will disrupt the predictability that shipping companies and global supply chains demand.

The Arctic remains, for most of the year, a dark, stormy, and rapidly changing environment.

Moreover, cost per container is a key consideration. New container ships and the expansion of the Panama Canal enable cargos of up to 18,000 containers per ship, compared to the largest for the Arctic trade, which are in the 2,500-container range. While the transit distance may be shorter in the high north, voyages there will remain unpredictable and the cost per container using the longer traditional routes is lower because there are more containers per ship. Moreover, the harsh seasonality of the Arctic would require seasonal route changes that will not be profitable in the near term.

Although Arctic sea ice is diminishing, it will remain a factor in the Northwest Passage and the Northern Sea Route. Increasing Arctic maritime activity will demand more icebreaking capacity to assist and support threatened and icebound ships. National inventories of icebreakers vary in numbers, capability, and age. The Russian icebreaking fleet is by far the largest and most capable. A recent inventory puts the Russian fleet at thirty-seven vessels, plus four under construction and eight planned. The US inventory is a mere five, plus one planned. Furthermore, not all US ships are operational or capable of heavy polar operations. Clearly, the Russian need for icebreaking capabilities is greater because of its interests in the Northern Sea Route

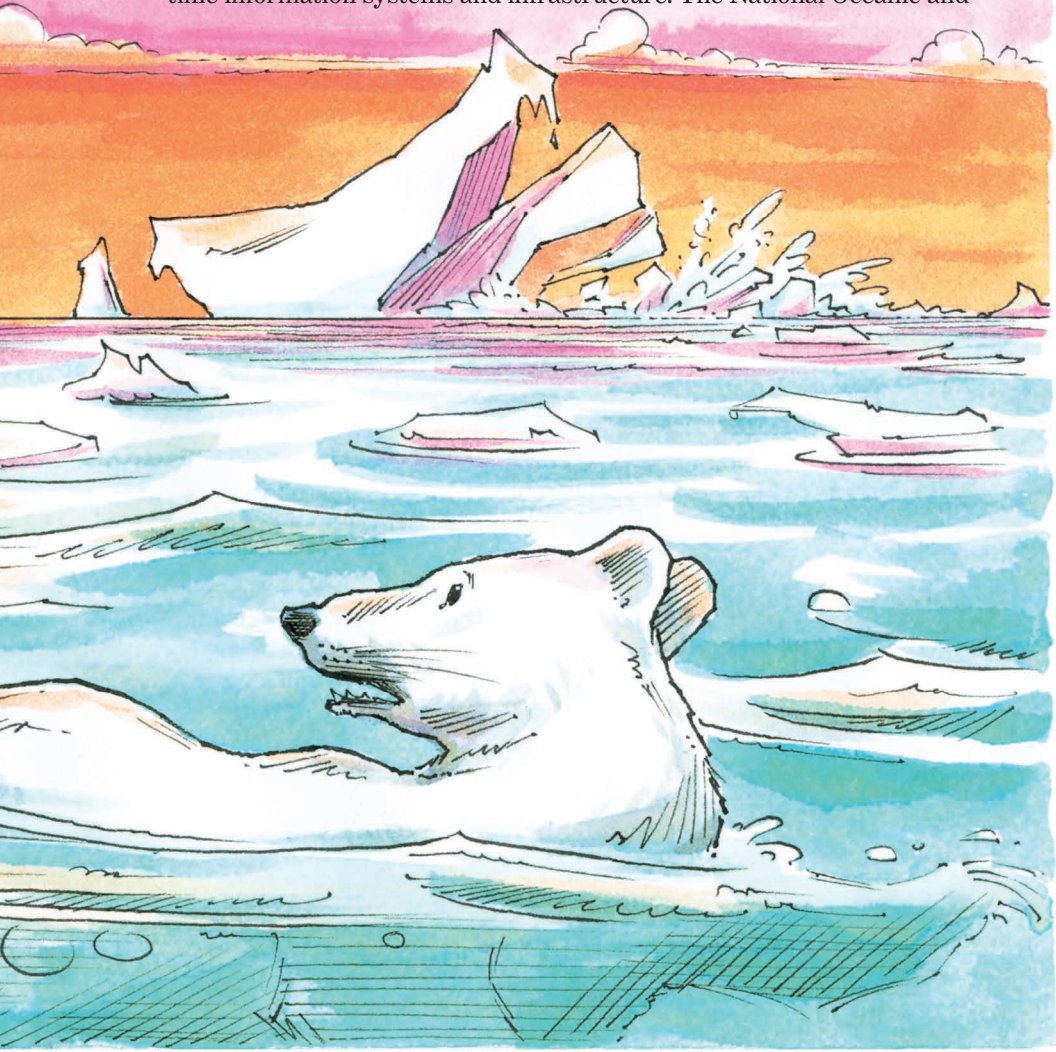


[Taylor Jones—for the *Hoover Digest*]

and its ambitious Arctic energy initiatives, but the United States will require more than its current inventory to support its security, commercial, and scientific interests in the Arctic and Antarctic.

The challenge for the United States, and particularly the Coast Guard, which operates the heavy icebreakers, will be recapitalizing an icebreaking fleet at the same time the Coast Guard must increase its cutter inventory to meet homeland security needs and numerous other missions. Increasing the challenge is the need for the Navy and Coast Guard to ice-harden existing ships to operate in marginal ice zones and modify heating and ventilation systems for colder climates.

A larger issue looms for Arctic shipping: the staggering lack of maritime information systems and infrastructure. The National Oceanic and



Atmospheric Administration (NOAA) acknowledges that the Arctic lacks reliable survey data, upon which navigational charts are based. Most of the survey data are from the 1800s, and most of Alaska's northern and western coasts have not been mapped since 1960. Canada estimates that only 10 percent of its Arctic region has been surveyed to modern standards. It will take decades, using existing methods, to survey and provide reliable navigation charts to mariners sailing there. Additionally, the navigation systems that enable very precise positioning in lower latitudes are not optimized for the higher latitudes, greatly increasing navigational risk.

"Domain awareness" is vital—knowing what's taking place on, under, and over the sea.

Accidents and emergencies will remain more likely in the inhospitable Arctic environment. Regional infrastructure for prompt and effective search and rescue does not exist. Similarly, staging of environmental-response capabilities, personnel, and consumables is also lacking. Recall the massive response required for the *Deepwater Horizon* oil-platform disaster in the Gulf of Mexico. That accident occurred in a moderate climate and relatively close to shore, near multiple ports and facilities built over decades to support the US energy industry in the gulf. Those are luxuries that do not exist along Arctic coastlines. It is one thing to recover oil on water; it is a very different problem to recover oil trapped under ice. Apart from the physical difficulty of such recovery, the required technology has yet to mature. This is a sign of a lack of focus and the absence of research on materials, equipment, and procedures applicable to extremely cold conditions.

SECURITY

Security in an Arctic context is about more than military capability. Although Russia has announced investments of hundreds of millions of dollars in militarizing the Arctic, the likelihood of major military confrontation in the region will remain low. Systems other than submarines and long-range aircraft are incapable of sustained combat operations. For much of the year, the most formidable adversary to any military operation would be nature.

Security considerations in the Arctic must be broad and should underpin a safe, secure, and prosperous region. Navigation and communication systems must be able to support any contingencies and incidents, including environmental disasters or maritime accidents, in addition to enabling new activity and enterprises. The first step in building viable technical architectures and

practices is "domain awareness"—knowing what is taking place in areas of activity or interest. As the Arctic Ocean becomes more accessible, domain awareness will apply to actions on, under, and over the sea. Unlike most other ocean areas, the surface of the Arctic Ocean will change seasonally. Knowing where and when that change is taking place will be vital.

The harshness of the Arctic environment makes the region an ideal place to boldly advance the use of unmanned aircraft and undersea systems. Long-endurance unmanned underwater systems have not yet matured, but when they do, they will be ideal for activity under the ice. They will be especially useful in producing bottom surveys to eliminate the backlog of navigational charts and understand the changing Arctic water mass. Unmanned underwater systems are not confined to submarines; they include crawlers and fixed and mobile relay nodes to transfer data to shore, ships, and aircraft.

The newest generation of unmanned aircraft is much more capable than those featured in Iraq and Afghanistan. Northrop Grumman's concept of a Polar Hawk, derived from the proven Global Hawk, and the US Navy's Triton can provide hours of overhead coverage of the sea routes and areas of maritime activity. High-altitude unmanned orbits can mitigate communication gaps resulting from the paucity of polar satellite coverage and eventually augment satellite coverage when established. Until airbase infrastructure is in place in higher latitudes, these long-endurance aircraft can operate from existing bases in Canada, the United States, and Norway, though this limits their time on station.

It's time to make the informed investments that would best position America for a fruitful Arctic future.

GOVERNANCE

Apart from Russia's recent bellicose actions and its expressions of increased militarization in the region, the record of cooperation in the Arctic is rather impressive. The eight member states of the Arctic Council (the United States, Canada, Denmark, Finland, Iceland, Norway, Russia, and Sweden) and its permanent participants have been effective in addressing matters of mutual interest. Arguably, the Arctic is the most peaceful region on the planet because of the common focus on responsible development and the shared experience of harsh conditions. The objective must be to keep it that way. As activity in the north increases and other non–Arctic Council nations, particularly in Asia, seek more of a voice in Arctic matters, the challenges

to the council will increase. The council's primary focus is on sustainable development and environmental protection and it does not deal with security. Since the Arctic is a maritime environment, much of the activity there is governed by existing maritime protocols and international agreements and structures.

Central to Arctic governance is the United Nations Convention on the Law of the Sea (UNCLOS). This agreement is extraordinarily influential, as it is recognized by most countries as defining responsibilities in the maritime domain. Furthermore, it sets the sovereign rights to the resources found in a nation's continental shelf and the extended continental shelf (ECS). Under UNCLOS, every coastal nation has a recognized continental shelf out to two hundred nautical miles. The convention also addresses a range of maritime activities that take place within those limits. Importantly, UNCLOS is the basis upon which the important and consequential extended-continental-shelf claims will be determined.

A harsh environment makes the Arctic an ideal place to boldly advance the use of unmanned aircraft and undersea systems.

The ECS of the United States is roughly twice the area of California, with half of it off the coast of Alaska. Some data indicate it could be larger. The estimates of the resources on and under the ECS range into billions of dollars. Regrettably, the United States is not a party to UNCLOS. Although some argue that the United States need not be a party to the convention to have its ECS formally recognized, given today's litigious environment and the vast wealth on the seabed, any unilateral US claims are sure to be challenged. Accordingly, the stakes will be high for those who mine or extract from an unrecognized US ECS. The solution: the United States must ratify UNCLOS.

FIRST STEPS FOR THE FUTURE

The opening Arctic will lead to increased activity and extraction of resources at a rate for which the United States is unprepared. The US National Strategy articulates our objectives for the region and broadly addresses the challenges. As a strategic document, it sets an appropriate high-level focus and general policy guidelines but fails to prepare the country for a consequential role in the Arctic.

The United States is quick to recognize and express our interests as a Pacific and Atlantic nation because those oceans connect us to Asia and Europe. It values and invests in the infrastructure and the Navy and Coast

Guard forces to protect our large continental shelves to the west and east. The Arctic must be viewed similarly: it connects the United States to the rest of the world, and to vast resources on its continental and projected extended continental shelves. The Arctic is a far more challenging region, and future activity can risk our interests and the collective interests of our fellow Arctic nations. It is time to invest more than words.

The priority must be on being ready to respond promptly to unexpected events that are sure to arise from increased human activity. The United States must put in place the architectures and technology to sense what is happening in the Arctic. Unmanned systems are appropriate to the harsh environment. A collective approach with Canada, our European allies, and other like-minded partners to field domain-awareness systems (including long-endurance sensors and communications) should be undertaken immediately.

The United States should also accelerate surveying the Arctic, employing new technologies to provide current, accurate navigational information to mariners. This includes another role for unmanned systems.

The United States must anticipate accidents and other incidents and plan responses to them. Collectively, especially with Canada, it should determine where the infrastructure to support air operations, search and rescue, and environmental response should be placed and invest in those facilities to bring them online quickly. Public and private funding should be pursued in establishing those facilities. Pre-positioned equipment, along with teams that are experienced, conditioned, and prepared for the Arctic, should be in place to respond within hours. A multinational, robust "Arctic Center of Excellence" should be established to prepare for environmental-incident responses and research the design and operation of ships and infrastructure.

The United States is not a party to the United Nations Convention on the Law of the Sea. This could lead to disputes.

Furthermore, the United States must address its inadequate shipbuilding and ship-modification programs. In the case of the United States' inadequate icebreaking capability, its current design and build approaches will be too expensive and will significantly affect other shipbuilding needs. Options such as leasing icebreakers, building an existing foreign design in the United States, and collaboration among North American shipyards should be examined seriously. Such an approach would also contribute to the commonality of ships operating in the Arctic.

Now is the time to recast US governmental organizations to best address the opportunities in the Arctic. An enviable future of energy, trade, demographics, food production, and innovation is ahead of us. This century is poised to be the "North American century" that warrants greater economic and policy focus. Importantly, some heavy political lifting must take place and the United States must become party to UNCLOS. Membership would define and guide activity in the Arctic and beyond without infringing on US sovereignty or restricting the rights of the Navy and Coast Guard. Moreover, it would ensure uncontested access to the vast wealth within the US extended continental shelf.

Teams that are experienced, conditioned, and prepared for the Arctic should be placed to respond quickly.

In short, it is time to get serious about the Arctic.

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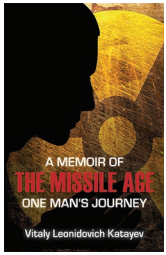

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The Golden Tipping Point

A lack of housing threatens to take the shine off California's economy. And where is opposition to new construction strongest? Not in conservative areas.

By Carson Bruno

Californians find it harder and harder to buy homes—even to rent them. The state's housing prices are the second-highest in the country; only Hawaii's are higher. According to the online real estate site Zillow, Californian home values are 2.5 times the national average and rental prices 1.5 times. To Californians this runs deeper than an economic problem: according to the results of the latest Hoover Institution Golden State Poll, unaffordable housing represents a threat to the California Dream, and presents state and local elected officials with a challenge they need to address.

To learn more, the Golden State Poll examined opinions of California adults living within the Bay Area, the Central Valley, and Southern California on housing prices and policies.

***Carson Bruno** is a research fellow at the Hoover Institution.*

Property ownership enables individuals and families to put their equity to work and leads to better opportunities for economic mobility. Among adults surveyed in the Bay Area, Central Valley, or Southern California, 45 percent said they are homeowners versus 43 percent who rent (the remainder live with either a homeowner or a renter). The three regions are evenly split. Renters make up majorities of those eighteen to twenty-nine years old (52 percent) and thirty to forty-four years old (53 percent). Moreover, 49 percent of Latinos and 66 percent of blacks are renters, and, by an almost three to one ratio, low-income Californians rent. These are among the groups that could benefit most from strong economic mobility. Meanwhile, 53 percent of white Californians, 77 percent of Californians sixty-five and older, and 71 percent of higher-income Californians are homeowners.

A strong majority of renters would prefer to own. As a good indication of high homeownership demand, Californians gauge no meaningful difference in the housing-market competitiveness between the area where they currently live and the one where they would prefer to live (55 percent say their own housing market is very or somewhat competitive, while 53 percent say the same about the market where they wish to live). In other words, regardless of where Californians decide to live, they see little relief on the horizon.

Moreover, when presented with five types of housing developments, ranging from apartment-only buildings to single-family homes with large yards spread farther apart, a majority of Californians strongly or somewhat support constructing more of the classic home: single-family, big yards, and not close to one's neighbor. In fact, this is the only development choice to receive a majority. Among those most eager to get a slice of the dream (younger Californians, Latinos, and low-income Californians), this option is endorsed by roughly 60 percent.

The California Dream is best characterized by the belief that by coming to the Golden State and working hard (and with a dash of good luck), an individual can strike success. Yet with homeownership out of reach for the median household and rental prices straining household budgets, the Golden State Poll tested a series of concerns related to the affordability crisis. Three-fourths of Californians name these as their top concerns: "younger generations will have a difficult time owning a home" (28 percent), "low-income individuals/families priced out of the area" (17 percent), "middle-income individuals/

The only long-term solution to California's housing affordability crisis is a greater supply of housing.

CROWDED HOUSE: A man waits outside new construction in San Francisco, where the median rent for an apartment is about $3,500 a month. [© Reuters / Robert Galbraith]

families being priced out of the area" (15 percent), and "I'm being priced out of the area in which I currently live" (15 percent). These responses show deep anxiety that the lack of affordable housing is seriously undercutting most Californians' ability to achieve the cornerstone of success. In fact, a plurality across all demographics and regions named one of these four California Dream–centric concerns as their top concern.

Californians appear to have accurately assessed the problem. But when it comes to solutions, they seem to put short-term gratification over long-term, sustainable results. Among the three state-level and three local government policies to improve housing affordability they were offered, Californians in the poll side with solutions that would attack the crisis's symptoms but do little to address the underlying cause. Fifty-four percent strongly or somewhat support Sacramento subsidizing regional public transportation to ease commutes. By contrast, just 40 percent support increasing the renter's tax credit and 33 percent relaxing the California Environmental Quality Act (CEQA) to encourage more housing construction. On the local government policies, 47 percent strongly or somewhat support passing more rent-control laws but

just 38 percent back changing the zoning laws and 36 percent relaxing open-space requirements, both of which would encourage more construction.

The only long-term solution to California's housing affordability crisis is a greater supply of housing. But that takes time. And it appears Californians are less willing to wait even if those policies solve the problem.

Opposition to policies that would increase housing was strongest in the very area prices are highest: the Bay Area.

California has had a housing affordability problem for more than thirty years, but it may just now be threatening the California Dream. The state's economy has significantly shifted from a diverse, across-the-state economy to one centered in the Silicon Valley/Bay Area, where the housing crisis is particularly acute. Seventy-eight percent in the Bay Area, the most among the regions surveyed, said housing prices are very or somewhat expensive. And this has implications.

As more of the state relies on jobs in just one area—particularly an area as unwilling to endorse pro-growth policies as the Bay Area (relaxing CEQA, changing zoning laws, and relaxing open-space requirements received the greatest opposition among the three regions)—Californians seeking homeownership are experiencing intense friction. Regardless of Californians' decisions when faced with the affordability crisis—whether they move or spend more of their income on housing—the state's economy will eventually suffer. And without a vibrant economy, the California Dream that so many have realized could become for some a distant memory and for others an unobtainable goal. ◘

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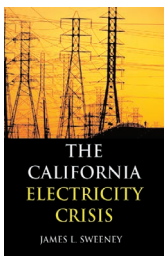

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It Didn't Happen Here

It was all spelled out in 1982: a plan to save water, streamline zoning, build homes, and cut construction costs. This was California's road not taken, and it could still make all the difference.

By Carol Galante

Serious students of California's housing woes may remember *101 Steps to Better Housing: the California Housing Plan, 1982*, a document now over three decades old. Produced by the California Department of Housing and Community Development—led at the time by the late visionary Don Terner, who served under former and current governor Jerry Brown—the publication proposed solutions for many issues the Golden State still struggles with today. If only they had been aggressively and consistently implemented.

California has a massive and chronic housing problem, with two key challenges:

» ***Intense demand.*** The growth in the number of California households is outpacing new housing construction permits by wide margins.

» ***Income disparity.*** Though California is experiencing a robust recovery from the Great Recession, newly minted high-wage jobs are adding pressure to the housing market while wages remain stagnant or are decreasing for very-low-income California workers.

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Median rental prices are up almost 10 percent since 2010, while median renter incomes are down more than 3 percent. This means that more Californians can no longer afford to live close to their jobs. Obviously, this is an unsustainable trend for a recovering state economy.

In looking toward strategic actions for 2015 and beyond, I want to return to three themes outlined in *101 Steps to Better Housing*: increase the supply of new homes, reduce the costs of new homes, and locate housing close to jobs. It will take both changes in public policy and innovation on the part of business and industry to make any meaningful difference.

Some of the actions recommended for increasing new-home supply back in 1982 (for instance, planning for new sites and offering density bonuses) were at least partially implemented. However, California still doesn't begin to do all it could to actually ensure that land is zoned at appropriate densities and that homes actually get built. One idea worthy of further research and dialogue is a state "projects appeals board" empowered to approve development when a local community will not. This tool is used effectively in states such as Massachusetts and Oregon. And guess what? It was proposed in the California State Legislature back in 1979 but never passed.

It simply makes no sense for the state to mandate plans that sit on the shelf without results. Cities shouldn't be rewarded for "checking the box"—rather, they need to demonstrate results or have some of their authority limited.

New supply is a necessary component of an agenda to reduce the cost of housing to the consumer, but it's not enough by itself. Here again, we can look to the recommendations of *101 Steps to Better Housing*, which include many prescient ideas about how to bend the cost curve. These include "curbing excessive site standards," "designing for water conservation," and "reducing repeated environmental reviews." The status of many of these ideas should be reviewed in detail and additional efforts made to update and implement them.

At the same time, reducing costs is an area where the building and technology industry could come together and make a huge impact. Why is it that while we no longer use an old Underwood typewriter or drive a Ford Model T, we're still building homes in much the same manner as in the 1950s? There are glimmers of innovation in modular construction for multifamily homes. This is an area that jumps out as ripe for further exploration and ingenuity.

To be clear: bending the cost curve, like increasing new supply, is necessary but again not sufficient to produce affordable shelter for all Californians. There's an undeniable need for government to provide financial resources—yes, call it what it is, a subsidy—to ensure homes and apartments are affordable to lower-wage workers. Unless we as a society are willing to pay much more for goods and services, and employers are willing to raise wages very substantially, very-low-income Californians will continue to be severely burdened by the cost of housing.

To her credit, California State Assembly Speaker Toni Atkins has taken leadership with a package of bills designed to generate additional funding for affordable housing. Any sensible housing policy requires at least a modest reliable and dedicated funding source. Sacramento should also explore a direct appropriation of state funding, which was used routinely for many years, and look at changing tax policies that compel local communities to prefer retail or other uses over housing.

How extraordinarily visionary this was in the 1980s: to suggest that California "pace" and "link" new job growth with the required infrastructure, including readily available affordable-housing units—and mandate that the state plan for it on a regional basis. Unfortunately, many of the ideas were not implemented at scale. Once again, there weren't enough carrots or sticks.

Today, we have an opportunity and an obligation to provide housing for middle- and lower-income families that is both reasonably priced and strategically located near jobs. If we don't, already-major problems such as long commutes, congestion, and greenhouse-gas emissions will only worsen.

Our environment, our economy, and the well-being of California families depend on making housing a central priority for the state. California can't afford to have this same discussion in another thirty years.

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Readiness Isn't Optional

New tests can show parents whether their kids are on track. Will the states give them the results straight?

By Chester E. Finn Jr.

Amid way too much talk about testing and the Common Core, not enough attention is being paid to what parents will actually learn about their children's achievement when results are finally released from the recent round of state assessments (most of which assert that they're "aligned" with the Common Core).

Ever since states adopted more rigorous standards—and the two assessment consortia began to develop next-generation tests that will faithfully gauge pupil performance in relation to those standards—there's been vast anxiety about the bad news apt to emerge. How will people react when informed that their kids aren't doing nearly as well academically as the previous standards-and-testing regime had led them to believe? Will more parents "opt out" of testing? Will the political backlash cause more states to repudiate the Common Core, change tests yet again, or lower the "cut scores"?

We know the Common Core State Standards (CCSS) are more challenging than what preceded them in most places. That was the point. We know that the new assessments—at least those custom-built by the Partnership

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for Assessment of Readiness for College and Careers (PARCC) and Smarter Balanced—are supposed to probe deeper and expect more. We understand that this reboot of America's academic expectations is indeed like moving the goal posts. There's ample reason for such a move, but we know this means it will be harder to score without additional training and conditioning. Finally, we know that changing from one test to another generally yields an initial drop in scores.

Acknowledging all that: what exactly are states going to tell parents (and others) about how their kids are doing?

A SOFT LANDING

There's reason to worry, as early evidence indicates that the ways student performance will be reported will soft-pedal the truth, playing into parents' innate conviction that their kids are fine even if others aren't—and in so doing, undermine the fundamental rationale for the Common Core itself.

Recall—as if it could possibly have slipped your mind!—that CCSS arose from the awareness that far too many young Americans were leaving school ill-prepared for either college or career while too few states had set their K–12 expectations anywhere close to college and career readiness. That's why so many young people graduate from high school having met teacher expectations, taken required courses, attained a decent GPA, and reached a respectable class rank, only to find themselves shunted into remedial courses at college. That also why so many employers complain that those hired after high school lack the fundamental competence to do the job well (and why many employers look overseas for skilled workers).

Dating back at least to Achieve's launch (with Fordham's encouragement) of the American Diploma Project, the idea that K–12 standards ought to be geared toward college and career readiness has gained momentum, strongly boosted by funders, business leaders, and, ultimately, governors and state education chiefs. The central mission of Common Core is to design English and math standards from kindergarten through twelfth grade such that a young person fully meeting those standards will actually be prepared to succeed in college without remediation, or to succeed in a job with good future prospects.

Paramount to the idea of vertically aligning standards and assessments that way is the expectation that parents and teachers will know from the primary years whether a given child is, in fact, on track to college and career readiness. Once off track, it's really hard to get back on; parents and educators are therefore better served by being advised early about problems so they can take action and avoid painful surprises later.

It's no secret that parents (and many teachers) really do tend to view their own children as doing fine even when they're not. (And not only in education: a team at the NYU Medical Center recently reported that the vast majority of parents with obese kids actually believe their children are "about the right weight.")

Causing parents and other caregivers instead to see things clearly, grasp reality, and understand the implications is no small feat. It must begin with accurate information. But what if reality is fuzzed up and its implications glossed over? What if this is done so that parents don't become upset, whether with their kids or with the bearer of bad tidings? What if education officials, worried about backlash, can't bring themselves to say that elementary and middle school pupils are not on track for college? Who ultimately benefits from this kind of partial cover-up? Not the kids, certainly.

We realize that this reboot of America's academic expectations is indeed like moving the goal posts.

Yet the sample score reports for parents now being promulgated by PARCC appear to pussyfoot around the concept of college readiness, at least until high school. They talk about children's test score performance in relation to being prepared for "further studies" and "the next grade level," but they don't say a word about college and career—or help parents (particularly those who haven't graduated from college themselves) parse the meaning and implications of "further studies."

Only in a sample report for the algebra II assessment (for hypothetical eleventh-grader Leonard Jarvis) does the phrase "College & Career Ready" appear at all, and then it's in small print, related to how PARCC's five cut scores are calibrated. It's not tied directly to Leonard's performance; his parents are simply told that he will "likely need academic support to engage successfully in further studies."

PARCC states aren't required to use these reports. But when I mentioned my concern to an official in one of those states, he replied that all this had been carefully worked out by the consortium—implying that his state agreed with the cautious approach—and added that it would cost the state extra to report results differently.

TOO LATE FOR A WAKE-UP CALL?

Over at Smarter Balanced, they expect participating states to design their own reports. They have also supplied models, and these do offer "college and

career readiness information for students in eighth and eleventh grades," but not in earlier grades.

Admittedly, it's harder to make college readiness predictions about nine- and eleven-year-olds, and nobody wants to be deterministic. But parents who erroneously suppose that their child's academic performance, like his body mass index, is "about right" need a wake-up call much earlier than eighth grade.

It's hard to know what Smarter Balanced states will actually do, but the hypothetical fifth-grader report recently approved for use in California makes no mention of college or career—or even readiness for further study, as shown on the PARCC reports.

Bottom line: it's looking as if parents may not actually be told anything explicit as to whether or not their daughters and sons are on track for college and career, at least not until they're in high school (or maybe eighth grade)—and even then, they're not likely to have this information pushed hard.

I understand the reluctance to agitate parents regarding their children, and the fear of triggering an even bigger political backlash against standards and testing. But if the point of these standards is to prepare kids for college and career, how can we not tell those closest to children whether such preparation is actually happening? If a fourth-grader weighs two hundred pounds, is it not the obligation of responsible adults to let his parents know that this is a problem that menaces his future? Isn't the same true for parents of a seventh-grader whose reading and math skills are at the fourth-grade level, or worse? ■

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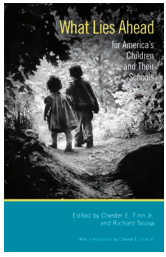

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Mired in Social Poverty

Poor schools need **more than money.** They need ***social*** **capital.**

By Michael J. Petrilli

At the heart of Robert Putnam's important new book, *Our Kids: The American Dream in Crisis*, is a paradox. As Putnam so effectively and compassionately illustrates, the fundamental reality of life for many children growing up in poverty in America today is the extremely low level of "social capital" of their families, communities, and schools. One or both parents are absent; church attendance is down; opportunities to participate in sports teams or scout troops or youth groups are few and far between. Put simply, these kids—"our kids"—feel all alone, living "troubled, isolated, hopeless lives." The solution, then—the way to help poor children climb the ladder to the middle class and achieve the American Dream—must involve rebuilding this social capital, right?

Yet that's not what Putnam proposes; instead, he calls for more investments in government services and transfer payments. He wants to replace social capital with financial capital. Why? It's probably because, like the rest of us, he doesn't know how to rebuild social capital. Once it's lost, it may be gone forever. And that's the paradox: social capital is essential to keeping families and communities spiritually and materially prosperous. But once a

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family or a community experiences social-capital insolvency, declaring bankruptcy and starting fresh is extraordinarily hard to do.

This is an age-old insight among conservatives, and it's why so many on the right (going back at least to Burke) have worried about protecting civil society. If the left is also coming around to this view, so much the better. But is it too late?

A few months ago, I had the honor of hosting Putnam at the Thomas B. Fordham Institute and interviewing him about his book. I put that question to him. I asked him what we could do to stitch together the frayed social fabric of the most disadvantaged and dysfunctional families and communities. Is it simply, as President Obama says repeatedly, about "investing in public goods" like preschool? This was Putnam's response:

> I would love to have some ideas about how to address the collapse of social capital and especially the collapse of family social capital. I mean, I really would. When we convened my group after the book—we are in the midst of convening a set of working groups on various baskets of possible solutions—we convened one on family structure, and we had people from different sorts of backgrounds, and actually liberals and conservatives in the group all agree this is a problem but we don't quite know how to fix it. George W. Bush tried the [Healthy Marriage Initiative], and, to his great credit, they did evaluations of them, and evaluations are that it's hard for government to do anything about that part of the problem. It doesn't mean we shouldn't do something about it. I think that not all problems have government solutions. I think some of them have social or cultural solutions.

This is an honest and appropriate answer. It syncs with the conclusion Charles Murray comes to at the end of his similar 2012 book, *Coming Apart*. In a nutshell: he also admitted to not knowing what to do about these problems. Maybe there's nothing we can do about broken families and communities. But that doesn't mean that all hope is lost. Schools, in particular, can be instruments for building social capital. Consider three strategies:

» ***Invite poor children into schools with social capital to spare.*** If loneliness, isolation, and extremely fragile families are big parts of the poverty problem, then connecting poor children with thriving families and communities can be part of the solution. Great schools can be such communities. The left likes this idea as it pertains to school desegregation. In fact, the Century Foundation's Rick Kahlenberg reads Putnam's book as an explicit

endorsement of experimenting with various ways of integrating schools along socioeconomic lines. The right likes this idea as it pertains to school choice, and especially private-school choice. Why not let poor children use vouchers to join strong private-school communities with oodles of social capital? The results—in terms of academic and other outcomes—speak for themselves. A "purple solution," as Putnam might say, would embrace both integration and school choice.

» ***Build on the social capital that does exist in poor communities.*** As devastating as Putnam's depiction of today's poverty may be, we shouldn't think that there's absolutely no social capital in low-income communities. Far from it. Churches and other faith communities continue to play critical roles; so do a variety of neighborhood organizations. Likewise, sports and other extracurricular programs provide an important home for poor kids. It's obscene, as Putnam said at our event, that some schools are now charging "activities fees" to participate in these programs.

Education reformers should look for ways to nurture existing social capital and help it grow. Community-based charter schools are one way; so (again) is private-school choice. That's a particularly powerful way to engage faith communities in expanding their mission into education, as we've seen with voucher and tax-credit programs in Florida and elsewhere. And as the important book *Lost Classroom, Lost Community* argues, urban Catholic schools have been in the social-capital business for a century, to great effect. We must do everything we can to stem their demise.

Let's be honest, though: growing social capital is a different mission from growing academic achievement. They are probably related, but sometimes clash. If community-based charters or faith-based voucher schools are doing important work on the social-capital front but are not getting the test scores we seek, it creates a real dilemma for us. We have to tread carefully.

» ***Build social capital by creating new schools.*** This is the toughest item—logistically, politically, and otherwise. It's like growing a flower in the desert. Yet it's the approach taken by most "no excuses" charter schools: import loads of financial, human, and social capital into an impoverished neighborhood and build something new and enduring. Such schools connect with the deepest desires of the parents in those communities—for their children to succeed, to prepare for college or career, to live the American Dream. But the people who run these schools are often not from the community, and that creates inevitable conflicts. It's also something of an open question whether these brand-new schools can create true social capital beyond their four walls; the authors of *Lost Classroom, Lost Community* aren't so sure.

And what about the other solutions that Putnam, President Obama, and many others on the left promote? These include investing in preschool and creating "wraparound" services at poor schools, à la the Harlem Children's Zone—which, in addition to providing schooling, also provides health care, meals, and after-school activities for students and their families. I'm certainly game for trying them. But it seems to me that if they are to have much of an impact, they must build social capital rather than just provide services to individual kids. I'm skeptical that a typical Head Start center, after-school program, or school-based health clinic can do that, but I'd be glad to be proven wrong.

There are some people, mostly on the left, who still believe that the poverty problem can be solved by giving poor people more money or services. This position has the benefit of simplicity. But it's hard to read Putnam and think that such an approach will do much to interrupt intergenerational poverty. If we want to spur upward mobility, we need something much more. Amanda Ripley famously reported in *The Smartest Kids in the World* that South Koreans consider their teachers to be "nation builders." Likewise, our educators—and our education reformers—need to be considered "social-capital builders." Let's figure out how. ◘

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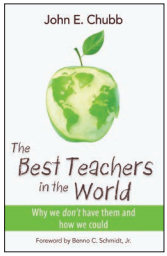

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Freedom's Creative Clamor

Free speech has given us cranks, crazies, alarmists—and some of history's best ideas. Why we must defend this most basic of rights.

By Victor Davis Hanson

Free speech and artistic and intellectual expression have been controversial Western traditions since the rise of the city-state in classical Greece. When the American founders introduced guarantees of such freedoms to our new nation, they never intended to protect thinkers we all admire or the makers of beloved movies like *The Sound of Music*. The First Amendment to the Constitution instead was designed to protect the obnoxious, the provocative, the uncouth, and the creepy—on the principle that if the foulmouths can say or express what they wish and the public can put up with it, then everyone else is assured of free speech.

Every time the West forgets that fact—from prosecuting cranky Socrates or incendiary Jesus to burning books in the Third Reich—we come to regret what follows. Censorship, of course, is never branded as extreme and dangerous but rather as a moderate, helpful step: curbing the hate speech of a bald, barefoot crank philosopher who pollutes young minds and introduces wacky and dangerous cults, suppressing a rabble-rousing prophet, controlling Jews

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and their decadent, traitorous works. Banning free expression is never presented as provocative, but always as the final act of an aggrieved and understandably provoked society.

An obscure Egyptian-born video maker, Nakoula Nakoula, in 2012 made an amateurish Internet video criticizing Islam. *Innocence of Muslims* went global and viral. Violent demonstrations in the Muslim world followed. In an effort to placate Muslims, the Obama administration falsely blamed Nakoula's video for the storming of the American consulate in Benghazi, Libya. Leading the pack was then–secretary of state Hillary Clinton, who saw in Nakoula a convenient fall guy to explain away US security lapses in Libya. In reality, the killing of Americans there was the planned work of an Al-Qaeda terrorist affiliate that took advantage of absentminded US officials. No matter. President Obama scapegoated Nakoula at the United Nations—a majority of whose members ban free speech as a rule—with pompous promises that the prophet would not be mocked with impunity in the United States of America. Nakoula was suddenly arrested on a minor probation violation and jailed for over a year. No one seemed to care that the unsavory firebrand Egyptian had a constitutional right while legally resident in America to freely caricature any religion that he chose.

The best strategy to stifle free speech is to label it "hate speech."

The best strategy now for stifling free speech is to arbitrarily substitute the word "hate" for "free"—and then suddenly we all must unite to curb "hate speech." The effort is insidious and spreading, from silly "trigger warnings" in university classes about time-honored classics that activists suspect of hurtful language and ideas, to shouting down campus speakers or declaring them dangerous "extremists" who traffic in "hate speech" if their politics are deemed insufficiently progressive.

SPEAKING TRUTH TO TERROR

More recently, the anti-sharia-law activist Pamela Geller organized a conference in Texas to draw caricatures of Muhammad—in the fashion of the Paris cartoonists who were killed at the offices of the satirical magazine *Charlie Hebdo*. As in the French case, jihadists showed up to kill them. This time, however, two brave and skilled Texas policemen stopped their attempts at mass murder. What followed the botched assassination attempt, however, was almost as scary. Commentators—both left-wing multiculturalists and right-wing traditionalists, from talk radio and Fox News to MSNBC and

Salon—blasted Geller for supposedly stirring up religious hatred. Geller, not the jihadists who sought to murder those with whom they disagreed, was supposedly at fault.

Her critics could not figure out that radical Muslims object not just to caricatures and cartoons but to any iconographic representation of Muhammad. Had Geller invited artists to compete for the most majestic statue of the prophet, jihadists might still have tried to stop her with violence. Had she held a beauty pageant for gay Muslims or a public wedding for gay Muslim couples, jihadists would certainly have shown up. Had she offered a contest for the bravest Islamic apostates, jihadists would have been galvanized to kill the unbelievers. Had she organized a support rally for Israel, jihadists might well have tried to kill the innocent, as they did in Paris when they attacked a kosher market that had no connection to *Charlie Hebdo*.

Geller's critics also failed to understand that radical Islam has already cut a huge swath out of American free speech through more than a decade of death threats. Ever since 9/11, they have largely succeeded by demanding special rules for public discourse about Islam in a way accorded no other religion. Disagree and one is branded "Islamophobic" and a purveyor of "hate speech." Meanwhile, the accusers are enabled by Westerners who prefer tranquillity to freedom of expression. Of course, when other so-called artists desecrate Christian images, they operate on the belief not just that they will not be harmed but that, as in Andres Serrano's notorious photograph *Piss Christ*, they might actually be subsidized by the US government.

One wonders what the current apologists would have said about Nazi book burning. Didn't Freudian writers and modern artists grasp that their work would offend traditional National Socialists who sought only to bring back balance to artistic and literary expression? Why then would they continue to produce abstract paintings or publish Jungian theories about sexual repression when they must have known that such works would only provoke the Nazis? And had Jews just left Germany en masse by 1935 or gone into hiding, wouldn't Hitler have cooled his anti-Semitic rhetoric? Why did some Jews insist on staying in a clearly Aryan nation when they must have known that their ideas—indeed, their mere presence—could only provoke Nazis to violence?

Special rules against criticism are accorded no other religion but Islam.

Apparently there is no longer a First Amendment as our founders wrote it. Instead there is something like an Orwellian Amendment 1.5, which reads:

PROVOCATIVE: A SWAT officer examines images at a "Muhammad Art Exhibit" held last spring in Garland, Texas. Dozens of heavily armed police were on hand when two men drove up to the building hosting the exhibit and opened fire. [© EPA / Larry W. Smith]

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press—except if someone finds some speech hurtful, controversial, or not helpful."

CAKES OF WRATH

Among those who attack free expression most vigorously are progressives who dislike politically incorrect speech that does not further their own agendas. Of course, the restrictionists have no compunction about smearing their critics with slurs such as xenophobe, racist, or nativist. If a Christian cake decorator does not wish to use his skills to celebrate gay marriage—an innovation that both Hillary Clinton and Barack Obama opposed until very recently—then he is rendered a homophobe who must be punished for not using his artistic talents in the correct way. This despite a lack of evidence of

any discrimination concerning fundamental civil rights: voting, housing, using public facilities, or purchasing standard merchandise. Are we really prepared to force gay bakers to decorate Christian wedding cakes with slogans they find offensive or homophobic? Or to insist that a Jewish baker must prepare a cake for a Palestinian wedding featuring a map of the Middle East without Israel? Or to require a black-owned catering company to cook ribs for the KKK? Instead, radical gays demand the exclusive right to force an artist—and a cake decorator is an artist of sorts—to express himself in ways they deem correct.

Progressives condemn speech that doesn't suit their agendas.

Without free speech, the United States becomes just another two-bit society of sycophants, opportunists, and toadies who warp expression for their own personal and political agendas. How odd that we of the twenty-first century lack the vision and courage of our eighteenth-century founders, who warned us of exactly what we are now becoming.

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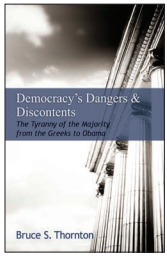

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A Very Cozy Duopoly

One unaccountable gatekeeper—the Commission on Presidential Debates—still bars the door to third-party candidates.

By Larry Diamond

The Democratic and Republican parties—which cannot seem to agree on anything else these days—have conspired to construct and defend a duopoly that closes competition to all other political alternatives. As a result, every current state governor and every one of the 535 members of Congress (save Maine senator Angus King and Vermont senator Bernie Sanders) was elected on one of the two party tickets. Governance in Washington is increasingly deadlocked between two parties that are being dragged to the extremes, while new alternatives that might fashion creative policy options and broader governing coalitions are stifled from competing. The political parties have become rigid and resistant to change, and have lost their capacity to find necessary and imaginative solutions to major problems.

Is it any wonder, then, that the polls show unprecedented disaffection among the American public? Sixty-two percent of Americans do not think the federal government has the consent of the governed, and 86 percent feel

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[Taylor Jones—for the *Hoover Digest*]

the political system is broken and does not serve the interests of the American people.

In the *Economist*'s 2013 democracy index, the United States looked mediocre by international standards. It ranked only nineteenth in the quality of democracy. Americans should care about the quality and openness of their democracy for its own sake.

But there are also strong connections between the adaptability and competitiveness of its political institutions and the outcomes they produce. Globally, the United States ranks fourteenth in education, nineteenth in quality of infrastructure, twenty-sixth in child well-being, twenty-sixth in life expectancy, thirty-third in Internet download speeds, and forty-fourth in health care efficiency, but first in one thing—the rate of incarceration.

A DEARTH OF COMPETITION

Nowhere are openness, innovation, and competition more sorely needed than in presidential politics. If competition is good for the economy, why shouldn't it be good for the political system as well? If economic

markets thrive when there are low barriers to entry, why shouldn't the political marketplace—democracy—benefit from the same principle?

Two-thirds of Americans say they wish they had the option to vote for an independent candidate for president. But any alternative to the 162-year-old duopoly of Democrats and Republicans is blocked by the system the two parties have created. Leave aside the huge hurdles of organization and funding that independents must scale to collect enough signatures to qualify for the ballot across the states. Even more formidable is the obstacle imposed by a crucial but little-known and unaccountable gatekeeper, the Commission on Presidential Debates (CPD). Members of this unelected commission have established a rule that makes it impossible for an independent, nonpartisan, or third-party ticket to gain access to the general-election debates. In the contemporary era, these debates have become such a dominant focus of political attention that no candidate (and particularly not a third one) can become president without participating.

Even if a third-party candidate does not manage to use the debate as a springboard to the Oval Office, his or her presence on the stage might reshape the conversation. With a third-party candidate in the race, both Democrats and Republicans would have a strong incentive to speak to the issues propelling that candidacy.

The CPD requires candidates for president to average over 15 percent in five polls (which they reserve the right to select, and which are open to manipulation) taken in September, just days before the debates. Since 1960 not one American who had not participated in a major-party primary has ever polled over 15 percent less than two weeks before the debates. (Ross Perot was polling in the single digits when he was permitted into the debates under an old rule.) For a candidate who has not run the gantlet of the two major-party primaries, new research demonstrates that getting to that level of support in the polls by mid-September might require an expenditure of nearly $270 million. No independent campaign has ever spent, or ever will spend, that kind of money without knowing that its presidential and vice-presidential candidates can stand on the stage of the debates in the fall with a fair chance to compete.

WHAT IF SIGNATURES COUNTED?

In January, forty-nine prominent Republicans, Democrats, and independents—including current and former governors, members of Congress, cabinet members, academics, military leaders, and me—wrote to the CPD, asking it to change the rule and open up the debates to an independent

voice. The letter proposed a different (or at least supplementary) way to earn a third spot on the debate stage: if one or more alternative candidates or parties qualified for the presidential ballot in states with enough electoral votes to win the election, then whichever one gathered the most signatures as part of the ballot-access process would be invited to participate in the debates. It urged that this decision be made by April 30 of the election year, to allow enough time for the candidate to mount a serious national campaign—and to be tested and scrutinized by the media. And it invited the CPD to propose other means by which an alternative ticket could reasonably qualify to enter the debates.

Two-thirds of Americans say they wish they had the option to vote for an independent candidate.

When a Petition for Rulemaking was filed with the Federal Election Commission and posted for public comment in December, all but one of the 1,252 public comments endorsed the request for a new rule. Only the CPD claimed there was no need for a change. Despite this overwhelming backing, the CPD has stonewalled. In fact, the seventeen-member board has refused even to meet with the four dozen signers of the Change the Rule letter.

For more than two centuries, the United States has been a beacon of hope for democracy worldwide. For the past century, the United States has been the world's most successful and powerful democracy. But both of these elements of global leadership are now rapidly eroding. Making the election for America's highest office more open and competitive might renew the vigor and promise of its democracy. ◘

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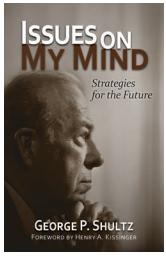

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"You Built Your Own Monument"

General **James Mattis** speaks to his fellow vets.

By James Mattis

This article was adapted from remarks for the fourth annual salute to Iraq and Afghanistan veterans at the Marines' Memorial Club in San Francisco on April 16, 2015.

Our country gives hope to millions around the world, and you—who knew that at one time your job was to fight well—kept that hope alive. By your service you made clear your choice about what kind of world we want for our children: the world of violent jihadist terrorists, or one defined by Abraham Lincoln when he advised us to listen to our better angels.

I searched for words to pay my respects to all of you tonight and had to turn to others more articulate than I to convey what our service meant. Someone once said that America is like a bank: if you want to take something out, then you must be willing to put something in.

For the veterans of the Iraq and Afghanistan wars—poorly explained and inconclusive wars, the first major wars since our Revolution fought without a draft forcing some men into the ranks—the question of what our service

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meant may loom large in your minds. You without doubt have put something into the nation's moral bank.

Rest assured that by your service, you sent a necessary message to the world and especially to those maniacs who thought by hurting us that they could scare us.

No granite monuments, regardless of how grandly built, can take the place of your raw example of courage, when in your youth you answered your country's call. When you looked past the hot political rhetoric. When you voluntarily left behind life's well-lit avenues. When you signed that blank check to the American people payable with your lives. And, most important, when you made a full personal commitment even while, for over a dozen years, the country's political leadership had difficulty defining our national level of commitment.

"Adversity, we are told, reveals a man to himself, and young patriots coming home from such patrols are worth more than gold, for nothing they face can ever again be that tough."

You built your own monument with a soldier's faith, embracing an unlimited liability clause and showing America's younger generation at its best when times were at their worst.

Oliver Wendell Holmes Jr., arguably the most articulate justice in the Supreme Court's history and himself a combat-experienced infantry officer in our awful Civil War, said: "As life is action and passion, it is required of a man that he should share the passion and action of his time at peril of being judged not to have lived."

You, my fine veterans, are privileged that you will never face a judgment of having failed to live fully. For you young patriots were more concerned in living life fully than in your own longevity, freely facing daunting odds and the random nature of death and wounds on the battlefield.

So long as you maintain that same commitment to others and that same enthusiasm for life's challenges that you felt in yourself, your shipmates, your comrades and buddies, you will never question at age forty-five on a shrink's couch whether you have lived.

Veterans know the difference between being in a dangerous combat zone and being in close combat, seeking out and killing the enemy. Close combat is tough. Much of the rest of war is boring if hard work. Yet nothing is mentally crippling about hard work in dangerous circumstances, as shown by generations of American veterans who came thankfully home as better men and women.

THE GOOD FIGHT: Hoover distinguished visiting fellow James Mattis, shown in 2011, retired from the Marine Corps in 2013 as a four-star general. His final assignment was commander of US Central Command. [© Associated Press / Matt Dunham]

Close combat, however, is an "incommunicable experience"—again quoting Holmes. Then there was Joshua Lawrence Chamberlain, the Union general, who spoke of war's effects, distinguishing the impact of close combat from military service in general. He said that such combat is "a test of character, it makes bad men worse and good men better."

We are masters of our character, choosing what we will stand for in this life. Veterans today have had a unique privilege, that of having seen the tenacious spirit of our lads, like those young grunts preparing for a patrol by loosely wrapping tourniquets on their limbs so they could swiftly stop their own bleeding if their legs were blown off. Yet day after day they stoically patrolled. Adversity, we are told, reveals a man to himself, and young patriots coming home from such patrols are worth more than gold, for nothing they face can ever again be that tough.

Now, most of us lost friends, the best of friends, and we learned that war's glory lay only in them—there is no other glory in warfare. They were friends who proved their manhood at age eighteen, before they could legally drink a beer. They were young men and women taking responsibility for their own

actions, never playing the victim card. Rather, they took responsibility for their own reaction to adversity.

This was something that we once took for granted in ourselves and in our buddies, units where teenagers naturally stood tall, and we counted on each other. Yet it is a characteristic that can seem oddly vacant in our postmilitary society, where victimhood often seems to be celebrated. We found in the ranks that we were all coequal, general or private, admiral or seaman. We were equally committed to the mission and to one another, a thought captured by General Robert E. Lee, saying his spirit bled each time one of his men fell.

Looking back over my own service, I realize now how fortunate I was to experience all this and the many riotous excursions I had when I was privileged to march or fight beside you. And a question comes to mind: what can I do to repay our country for the privilege of learning things that only you in this room could have taught me? For today I feel sorry for those who were not there with us when trouble loomed. I sometimes wonder how to embrace those who were not with us, those who were not so fortunate to discover what we were privileged to learn when we were receiving our master's and PhDs in how to live life, and gaining the understanding and appreciation of small things that we would otherwise have never known.

How do we embrace our fellow citizens who weren't there? America is too large at heart for divisions between us. If we became keenly aware of anything at war, it was what is printed on our coins: *E Pluribus Unum*—out of many, one.

We veterans did our patriotic duty, nothing more, certainly nothing less, and we need to "come home" like veterans of all of America's wars. Come home stronger and more compassionate, not characterized as damaged, or with disorders, or with syndromes or other disease labels. Not labeled "dependent on the government" even as we take the lead in care of our grievously wounded comrades and hold our Gold Star families close. We deserve nothing more than a level playing field in America, for we endured nothing more, and often less, than vets of past wars.

"You built your own monument with a soldier's faith."

For whatever trauma came with service in tough circumstances, we should take what we learned—take our post-traumatic growth—and, like past generations coming home, bring our sharpened strengths to bear, bring our attitude of gratitude to bear. And, most important, we should deny cynicism a role in our view of the world.

We know that in tough times cynicism is just another way to give up, and in the military we consider cynicism or giving up simply as forms of cowardice. No matter how bad any situation, cynicism has no positive impact. Watching the news, you might notice that cynicism and victimhood often seem to go hand in hand, but not for veterans. People who have faced no harsh trials seem to fall into that mode, unaware of what it indicates when taking refuge from responsibility for their actions. This is an area where your example can help our society rediscover its courage and its optimism.

"Our country needs your vigor and wisdom. It was gained at great cost to our comrades and to our Gold Star families, who need to see their sons' spirits live on in your enthusiasm for life."

We also learned the pleasure of exceeding expectations. We saw the power we brought when working together as a team. We learned alongside one another, in teams where admired leadership built teamwork, where free men and women could change the world.

Now having seen the moon shine on the other side of the world and having worked with others of many cultures, having worked in one of the most diverse teams on earth—that of the US military—and having faced down grim circumstances without losing our sense of humor or moral balance under conditions where war's realities scrape away civilization's veneer, we have learned that nothing can stop our spirit unless we ignore Lincoln's call to our better angels.

"Most important, we should deny cynicism a role in our view of the world."

American colleges and businesses know your pedigree for commitment, reliability, and loyalty. This is why so many corporations and startups aggressively recruit veterans. As San Francisco–based Uber sums it up: veterans deliver higher value. Bellwether companies like Microsoft, Uber, Starbucks, and more act on that premise.

I will close with words again borrowed from others.

From Alexander Dumas: you should be satisfied with the way you have conducted yourselves, "with no remorse for the past, confident regarding the present, and full of hope for the future." When you retire to bed you should sleep "the sleep of the brave."

If Jackie Robinson, a sparkling ballplayer and veteran of World War II, could write his own epitaph on leadership by saying "a life is not important except in the impact it has on other lives," then you who are fortunate to have learned so much living in the greatest country on earth while making an impact so young—you should recognize that our country needs your vigor and wisdom. It was gained at great cost to our comrades and to our Gold Star families, who need to see their sons' spirits live on in your enthusiasm for life.

I am reminded of General William Sherman's words when bidding farewell to his army in 1865: "As in war you have been good soldiers, so in peace you will make good citizens." H

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Speaking Too Softly

A case for keeping Teddy Roosevelt's big stick: overwhelming military force.

By Thomas Donnelly

"God is on the side of the big battalions."

The historical record is opaque about whether it was Napoleon, Turenne, Voltaire, or indeed any identifiable Frenchman who made that statement, but in this age of supposedly post-industrial warfare, He has apparently changed His mind. Equipped with an iPhone and GPS-guided munitions, God has broken the phalanx, emptied the battlefield, and super-empowered the individual. Mass—particularly the large military formations of the modern era: infantry divisions and corps, aircraft carrier battle groups, tactical air wings—has gone out of style.

Ironically, the United States, which became history's "sole superpower" by crushing Nazi Germany and Imperial Japan and outlasting the Soviet Union, has become the leading exponent of strategic "agility" and operational "mobility"—or, anything except durability. The impulse has reached the level of farce in the campaign to roll back the Islamic State in Iraq and Syria. President Obama has repeatedly lamented the inability to formulate a "complete strategy" for the war, complaining that while ISIS forces are "nimble

Thomas Donnelly *is a member of the Hoover Institution's Working Group on the Role of Military History in Contemporary Conflict.*

and they're aggressive and they're opportunistic," his cumbersome coalition of US advisers, the vanishing Iraqi army, and Iranian-backed Shi'a militias is not.

While the main source of Obama's ISIS problems is his own compromised commitment to the fight, he found a natural partner in the form of the modern US military. Since the inception of the "all volunteer" force after Vietnam, the purpose of American military professionals has been to remake themselves from Joe Frazier–style brawlers into Muhammad Ali–style boxers. In the context of the Cold War face-off, that made sense; the Red Army was a living testament to Stalin's maxim that "quantity has a quality all its own," so the Reagan buildup was premised on the idea that Western quality could give Eastern quantity a run for its money. And because NATO's operational goal was first of all defensive—stop a Soviet blitzkrieg across the central German plain—technological and tactical improvements were guided by clear objectives.

But if this capability-over-capacity preference grew from the particular operational problems of the late 1970s and early 1980s, it now reflects a deeper sensibility about the nature of war, one that resonates very strongly with a small, professional force. It should come as no surprise that our staff colleges venerate Lee before Grant, and Guderian before Rotmistrov. The "lesson" of Operation Desert Storm was not that a global great power had overwhelmed a tin-pot dictator, but that well-equipped and -trained regulars had bested, bloodlessly, an Arab imitation of the conscript masses of the world wars. General Norman Schwarzkopf concluded his memoir, despite "feel[ing] that retired general officers should never miss an opportunity to remain silent," with at least one prediction: "I am quite confident that in the foreseeable future armed conflict will not take the form of huge land armies facing each other across extended battle lines."

THE FAST AND THE FLEXIBLE

And so, through the 1990s, as the US military found itself caught between continuing worldwide missions—the planet had not gotten any smaller nor humanity less unruly—and shrinking defense budgets, it began to break itself into smaller and smaller pieces. Air fleets were counted by squadrons rather than wings, and the number of aircraft per squadron reduced. Naval battle groups contained fewer ships and were more frequently organized just around surface combatants rather than carriers. The Marine Corps shaved a little closer, but it was the US Army, facing a kind of existential crisis, that went the farthest down the smaller-is-better path.

Leading that charge was Douglas Macgregor, who had served as the operations chief in the 2nd Armored Cavalry Regiment in Desert Storm. That unit was the first to make contact with the Republican Guard, the elite of Saddam Hussein's army; the resulting "Battle of 73 Easting"—named for the north-south grid line on service maps in the otherwise featureless desert—rapidly became the centerpiece in the Army's narrative of its virtues. Macgregor's book *Breaking the Phalanx: A New Design for Landpower in the Twenty-first Century* was a paean to the role information technologies would play in a "revolution in military affairs" that would reward speed and rapid decision making. It was also, when published in 1997, a bold criticism of an Army leadership viewed as not just too slow to adapt to changing battlefield realities but also institutionally incapable of innovation. Macgregor argued that the Army's divisional structure was too ponderous. Instead, the service should be organized into more nimble and operationally independent "combat groups" of about five thousand soldiers that would, thanks to technological advances, have command-and-control capabilities surpassing those of older division and brigade headquarters while also fitting more seamlessly into joint-service formations.

The Reagan buildup was built on the idea that Western quality could give Eastern quantity a run for its money.

The man found his moment in the spring of 1999 during the Kosovo crisis. The palsied NATO air campaign had failed to have the desired effect on the Serbian forces of Slobodan Milosevic, who were continuing their "ethnic cleansing" of Kosovars. Unable to persuade President Clinton and European leaders to commit ground formations, NATO commander General Wesley Clark got permission to employ several dozen Army Apache attack helicopters to better support the "Kosovo Liberation Army." This so-called Task Force Hawk took thirty days to wheeze its way from Germany to bases in Albania, and even then the Army demanded that a mechanized infantry battalion be subsequently deployed to guard the airfields.

After Desert Storm, there was much talk of a "revolution in military affairs" that would reward speed and rapid decision making.

The result was, as Andrew Krepinevich of the Center for Strategic and Budgetary Assessments and another advocate of defense "transformation"

put it, that "more and more people in Congress, even people in the Pentagon, began to ask if the Army is strategically relevant. Can the Army get to one of these unpredictable trouble spots in a hurry?"

When, that summer, General Eric Shinseki was promoted from commander of US Army Europe—where he had witnessed the troubles of Task Force Hawk at painfully short range—to become Army chief of staff, he immediately unveiled a plan for a medium-weight "Objective Army" wherein information technologies would allow for the lethality of traditional tank units but with a smaller "future combat system" (FCS); the knowledge of a "transparent" battlefield would provide the protection of heavy armor. The FCS would be a family of vehicles with a common chassis for the entire Army—and it would be small and light enough to fit in a C-130 transport plane.

THE PROBLEM WITH A SMALL FOOTPRINT

It fell to Shinseki's successor, General Peter Schoomaker, to complete the redesign of the Army away from larger divisions and corps into "brigade combat teams" of 3,500—even smaller units than those imagined by Macgregor. Schoomaker, whose career was primarily in special-operations forces and who was one of the original leaders of the Army's elite Delta Force, had been brought out of retirement by an impatient Defense Secretary Donald Rumsfeld, himself recruited to a second term in the Pentagon by new president George W. Bush. Rumsfeld was to be the "secretary of transformation," bringing a troglodytic "industrial age" military into the information age. The new Army unit designs not only made for smaller maneuver units but also chopped logistics, fire support, intelligence, and other forms of support from the divisional structure. The Army was to replace its traditional hierarchy with something "flat," and thus presumably more nimble.

The failure to establish security in Iraq cost the Republicans their congressional majority and Donald Rumsfeld his job.

Rumsfeld was in a hurry to bring his smaller-lighter-fast-better approach to bear, and he saw the post-9/11 invasions of Afghanistan and Iraq as opportunities to force the pace of change. The striking successes of both campaigns confirmed Rumsfeld in his presumptions; as his senior military commander, General Tommy Franks, declared, "Speed kills." Military transformation became a goal of the Bush administration's formal national security strategy, and defining a "capabilities-based approach"—in lieu of an

assessment of overall capacity—became the purpose of the Pentagon's force-planning review. From 1945 to 2001, US military planners asked, "How much is enough?" Now they asked, "What kind?"

The problems with this approach became almost immediately apparent in Iraq, where the "small footprint" of US forces, combined with the administration's antipathy toward "nation building," opened the door to multiple insurgencies and, by 2006, a sectarian civil war. The failure to establish security in Iraq also cost the Republican Party its congressional majority and Rumsfeld his job.

"Agility" and "nimbleness" are less important than being constantly present and striking repeated heavy blows.

To his credit, President Bush committed to a "surge" of forces in Iraq, a counterinsurgency, and—the least noticed change in policy—an expansion of the Army that eventually added about 150,000 soldiers to its active-duty end strength. The skeletal brigade combat teams were expanded with "enablers" that brought their strength back to 5,000 soldiers and more. And the service has now formally returned to a more traditional brigade design, even under the fiscal constraints imposed by the Budget Control Act of 2011, the ongoing threat of sequestration, and previous reductions. In other words, the present Army will be much smaller in total, but its pieces will be larger than they have been for the past two decades.

Finally, if the American purpose in the world is to sustain a favorable global balance of power across Eurasia—the traditional US strategy again affirmed by the recent National Defense Panel—then "agility" and "nimbleness" must not be the primary characteristics of its military posture. It is more important to deter adversaries and reassure allies by being constantly present, and, when in conflict, strike repeated heavy blows. Those capacities come from large, robust formations, which can bring additional resources to bear to reinforce in case of setbacks or exploit successes.

The way to destroy ISIS's military power is not to outbox it but to pound it.

To anyone outside the White House, the futility of trying to employ strike-and-raid methods against quicksilver enemies like ISIS or Al-Qaeda is apparent. The way to destroy ISIS's military power is not to outbox it but to pound it.

What has proved true in irregular war is likely to be true in the high-technology conventional realm as well. Alas, the "transformational" mindset is now so deeply rooted—it has itself become the entrenched orthodoxy—that

it is distorting how the Pentagon views the growth of Chinese military power: "air-sea battle" and its doctrinal progeny are, in sum, an attempt to apply raid-and-strike methods to a rising continental power of more than one billion people. In this, of all "strategic competitions," numbers matter. Compelling China to do our will—that is, accommodate itself to the existing liberal order—is possible, but only if Beijing perceives that the cost for overturning that order is too high. Cruise missiles and SEAL Team Six may annoy the Chinese, but they cannot instill much fear. What might do the trick is a large American-led coalition with the capacity to sustain a long, twilight struggle and to deliver painful punishment—to bring the effects of massed military power to bear.

In the Pacific as in the Middle East, the United States needs to get right with Napoleon's God. ■

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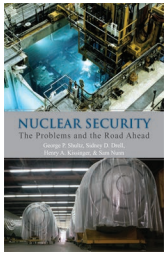

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What Leninism Cost Russia

Hoover fellow Robert Service is a leading scholar of the Soviet icon's "dangerous genius," whose legacy still damages Russia today.

By Vladimir Koryagin

Hoover senior fellow Robert Service recently discussed the legacy of Vladimir Lenin with the Russian news site Gazeta.ru.

***Vladimir Koryagin,* Gazeta.ru:** What made you study Vladimir Lenin and why did you decide to write his biography?

Robert Service: I starting writing about Lenin after doing research on the Communist Party as a whole, from the Central Committee down to the rank-and-file members, in 1917 to 1923. Originally I had wanted to gauge the responsibility of communism in a general sense for the horrors that afflicted Russia and other countries. This required an analysis of the political, economic, and cultural environment of the October 1917 Revolution. But I also felt the need to investigate the impact of individual leaders, beginning with the founder of the Soviet state, Vladimir Lenin. It wasn't enough to deal with the general environment unless the specific contribution of leadership was treated.

Koryagin: Was it difficult for you to gain access to the Soviet and Russian archives? Which sources do you consider to be most interesting and important?

***Robert Service** is a senior fellow at the Hoover Institution, a fellow of the British Academy, and the professor of Russian history at the University of Oxford.*

Service: When I began my trilogy on Lenin's political life in the early 1980s, it was completely impossible for all but trusted Soviet Communist historians to enter the Moscow archives on Lenin's life. Things changed drastically from 1991—I was very lucky to be in Moscow in September 1991 when the central party archive itself was at last unsealed after the abortive August coup against Gorbachev. For a couple of years we could examine more and more of the forbidden documentary treasures. More recently, I've found it easier to do my research on Soviet and Russian high politics at Stanford's Hoover Institution, with its wealth of accessible documentation.

Koryagin: What amazes you most in Vladimir Lenin's life and personality? And what is your biggest disappointment?

Service: The primary sources on Lenin's life and career were carefully and deliberately restricted by Soviet authorities. In death, he was iconized. In East and West the result was that our image of him—whether positive or negative—was one of a superlative robot of politics. As the archives opened, it was a thrill to be able to show him in all his human dimensions. He was bright but he was also dazzled by his own brightness. He exploited his undoubted charm. He was extremely clinical in his calculations. But he nursed uncontrolled passions, including an obsession for Marxism. He was unfaithful to his long-suffering, devoted wife. He was a spoiled man and a dangerous genius.

"Despite his intellectual brilliance, he didn't foresee the nightmare he was constructing. Other people—millions and millions of them—paid the price."

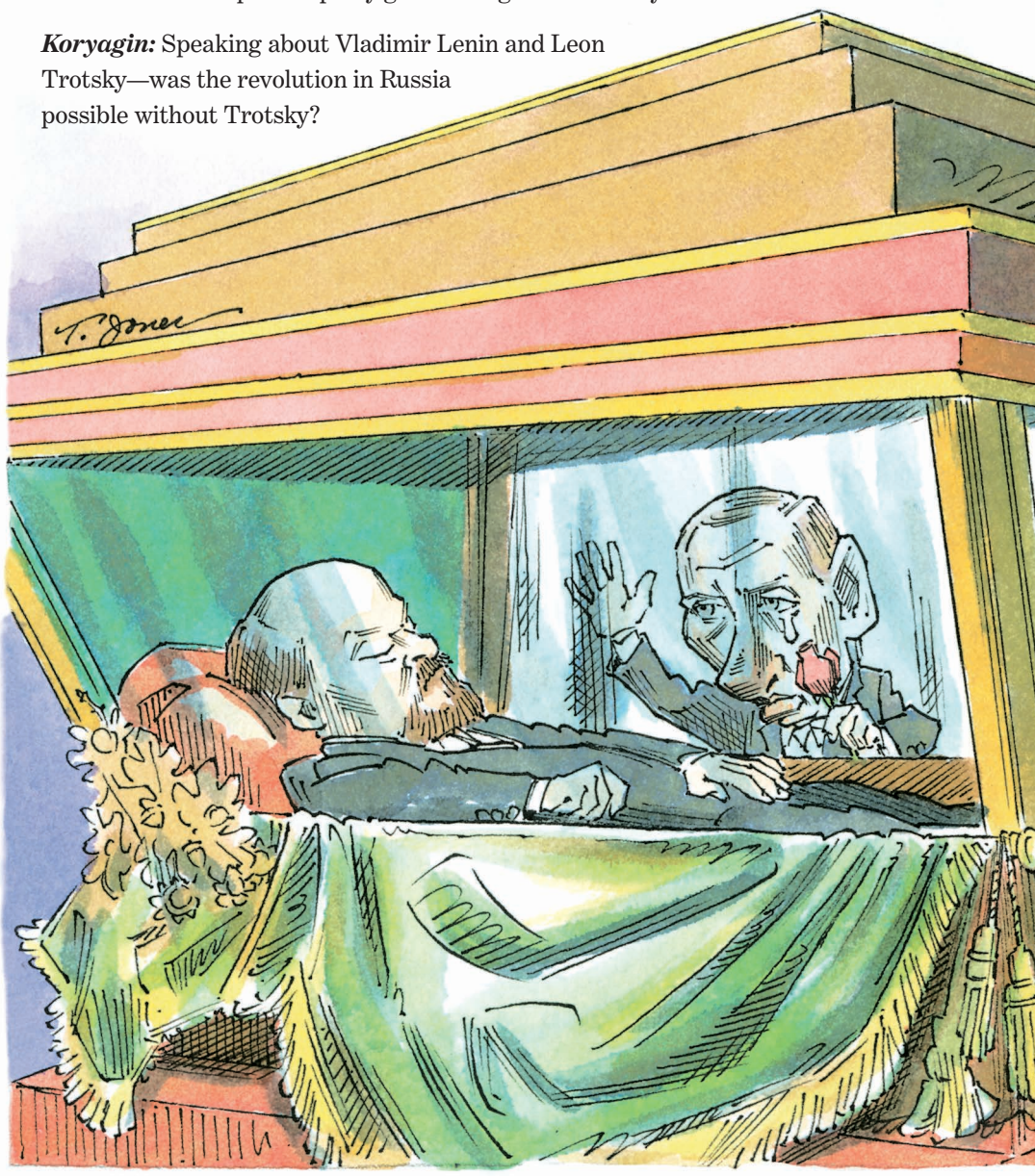
Koryagin: What could be described as Lenin's greatest achievement or biggest failure?

Service: He took Russia out of the First World War and saved it from German invasion in 1918. That was a success achieved in the teeth of internal party opposition. At the same time he surrendered half the population of the old Russian empire to military occupation by Germany. What is more, he enabled the Germans to transfer vast military forces to France and almost win the war. This would, if it had happened, have been a catastrophe for him in the end. Even his greatest success had the seeds of potential disaster. Let's not put him on a pedestal. He would never have come to power if Russia in 1917 hadn't been reduced to an economic, political, and military mess.

Koryagin: Some people say Lenin got financial support for revolution from abroad. What is your opinion?

Service: Undoubtedly the Bolsheviks received money from the German authorities, who wanted a Russian government that would weaken the Russian army and strengthen the peace movement in Russia. This was not the only reason why Lenin came to power. But it is beyond dispute that German official finance helped his party get off the ground in early 1917.

Koryagin: Speaking about Vladimir Lenin and Leon Trotsky—was the revolution in Russia possible without Trotsky?



Service: Trotsky helped to adjust strategy and tactics in the seizure of power in October 1917 in Petrograd. He also reinforced Lenin's position in driving most of the other socialist parties away from the idea of forming a coalition with the Communists. Trotsky was an important figure. But like other politicians who write their own history, he over-wrote his personal contribution. Another brilliant, arrogant revolutionary politician who refused to take notice of the warnings that he and Lenin received about the dangers of dictatorship! Lenin was fortunate inasmuch as he died in his bed. Trotsky fell mortal victim in 1940 to the very dictatorship he had so joyously constructed.

"Even his greatest success had the seeds of potential disaster. Let's not put him on a pedestal."

Koryagin: What can you say about the relationship between Vladimir Lenin and Josef Stalin? How did it change during the years?

Service: Lenin always felt he could use Stalin. He knew of Stalin's talent to boss, intimidate, and disrupt, but he assumed that he himself would always hold the levers of ultimate control. He overlooked his own medical frailty, and when Stalin failed to obey him, he reacted like a father spurned by his son. Russian and indeed Western historians have always exaggerated the importance of the Lenin-Stalin dispute of 1922–23, which was really about only secondary features of the Soviet order. They agreed entirely about one-party administrative rule, arbitrary "justice," mobilized society, manipulable nationhood, and militant atheism—and to that very large extent they were blood brothers. Let's not idealize Lenin!

Koryagin: Was the path for the country-building Lenin had chosen before his death realistic?

Service: You must be joking. What country needs a quarantined economy and society while it's seeking to modernize itself and hoping to benefit its people? He didn't even provide security for Russia in its international relations. True, he restrained the Communist International from taking dangerous initiatives, but this was only after his own invasion of Poland in 1920 had culminated in disaster for him and his Red Army.

"When Stalin failed to obey him, he reacted like a father spurned by his son."

Koryagin: What role does the personality of Lenin play nowadays? What is the perception of Lenin in Europe today? How did it change over the years?

Service: Once upon a time he was a controversial figure. Western Communists admired him, fellow travelers made allowances for him. Now, I think, he has little support. There is widespread support across the political spectrum for the conclusion that Leninism is a catastrophic way to organize a people, its politics, and its economy. Who ever would choose dictatorship if democracy is available? And let there be no doubt: some kind of democratic outcome of the fall of the Romanov autocracy was not impossible in 1917 even if it might have run into severe difficulties. Russia's plight was not an enviable one at the time.

Koryagin: What did Lenin give to modern politics? Are there any politicians who could be compared to him?

Service: He helped to invent totalitarianism. He had precursors in revolutionary France; he had post-cursors, if I can coin the word, in the "world Communist movement" in the twentieth century. Despite his intellectual brilliance (or perhaps because of it!), he didn't foresee the nightmare he was constructing. He saw the world through a glass darkly. Other people—millions and millions of them—paid the price for his self-confidence and myopia.

"He was bright but he was also dazzled by his own brightness."

Koryagin: Where do you see the place of Lenin's legacy in modern Russia?

Service: He left a legacy of we-know-better-than-the-people authoritarianism and crypto-imperialism that soaked the USSR in blood. He founded the world's most invasive secret police. He hymned an intolerant, ruthless political credo. Russia is no longer governed by Communists but the imprint of the Communist past has yet to be eradicated. Many statues of Lenin have been pulled down but attitudes and practices need to be reformed before we can truly say that Russian rulers have undergone de-Leninization. The fact that the Lenin Mausoleum still stands on Red Square in tribute to his memory is not just an affront to architectural dignity: it signifies a failure of rulers to turn their backs on a shameful past that brought pain to Russia and the rest of the world. ■

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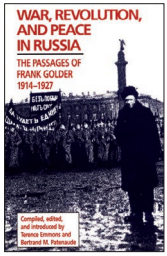

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Another Russia Will Rise

Vladimir Putin is only mortal. Soon enough he will have to give way to others—who will lead Russia out of its imperial afterlife and into the modern world.

By Timothy Garton Ash

Russia has lost an empire and not yet found a role. Only the Russians themselves can decide what that should be, and it will take some time. The new Russia may not emerge for decades, but we should never abandon hope for that other Russia and we must keep faith with the Russians who are working for it.

The phrase "lost an empire and not yet found a role" was first applied to Britain, by a former US secretary of state. The British know as well as anyone how initially uncomfortable it is to lose an empire, and how difficult to find a new role. Some would say Britain has still not got there. And, by the way, the fate of the original, heartland empire, the one that forged the four nations of these islands—England, Wales, Scotland, and (now only a small part of) Ireland—into a supposedly United Kingdom, is still unresolved.

Yet at least these internally complicated islands were surrounded by water so that most of the British empire was "overseas." Russia's, by contrast, has been a land empire, growing patch by patch over centuries. As the historian

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Geoffrey Hosking argues in his book *Russia: People and Empire, 1552–1917*, Russia's historical problem is that it has never been able to distinguish clearly enough between the nation and the empire. In fact, "the building of an empire impeded the formation of a nation."

Moreover, while the British empire was slowly dissolved across more than twenty years, the Russian-Soviet empire was dismantled in little more than two years, between 1989 and 1991—one of history's most spectacular vanishing acts.

It would be extraordinary if there had not been a confused and angry response from many in Russia after such an event. Under the current leadership that reaction has taken a dangerous form. We have to confront that danger firmly right now, but beyond that there is the question of how we think and talk about Russia. One wrong way is exemplified by those who have come to be known throughout Europe as the *Putinversteher* (literally, "Putin understanders"). Confusing Putin with Russia, they make the classic mistake of "to understand all is to excuse all."

A REVOLUTION OF THE MIND

German businesspeople seem particularly prone to this confusion. The Russian writer Vladimir Voinovich, author of two of the finest satirical novels in twentieth-century European literature, once told me an amusing story about being invited to dinner by a German banker sometime in the 1980s. Chauffeured out to the villa in a Mercedes the size of a tank, Voinovich was treated to a lavish dinner, through all the many courses of which the German banker explained to the then-exiled Russian writer how one should properly appreciate the Russian trauma. Throughout its history, poor Russia had been constantly invaded, by the Mongols, by the Poles, by the French, and then, worst of all, by the Germans. One must *verstehen*. Finally, Voinovich could stand it no longer: "So I say to him: 'Then why it is so big?' "

Today Voinovich is a still-satirical but also bravely outspoken representative of the other Russia. He has criticized the annexation of Crimea and the war in eastern Ukraine. In a recent interview on a Russian website, he said Russia needs a revolution—not a violent one or a Ukrainian-style orange one, but "I think that the revolution should take place in people's minds. . . . Not only Putin is to blame, the society is also, because it allows him to do whatever he wants."

Characteristically, Voinovich articulates a complicated truth. There is another Russia. It is represented by the murdered opposition politician Boris Nemtsov and the people who come to lay flowers on the bridge where he was assassinated, which they already call Nemtsov bridge. While some must have been frightened by that murder and the atmosphere of intimidation, a brave

NOT SILENCED: Activist Ilya Yashin, a friend of opposition figure Boris Nemtsov (in background), holds a copy of the report on Russia's role in the Ukraine war that Nemtsov was preparing when he was assassinated. The report was published in May. Yashin said the goal in releasing it was to "disprove lies." [© Reuters / Maxim Zmeyev]

few have redoubled their defiance. The blogger-oppositionist Alexei Navalny directly accused the Putin regime of responsibility for Nemtsov's death. The murder has galvanized attempts to unite a fragmented opposition, including a new electoral alliance between the parties founded by Nemtsov and Navalny.

But the other Russia is also represented by activists who planned a "march for peace and freedom"; by the theatre group Teatr Doc; by Lena Nemirovskaya, the inspirational head of the embattled Moscow School of Political Studies; by Pavel Durov, the founder of the leading Russian social network VKontakte, now living abroad; by Mikhail Khodorkovsky, the oligarch turned political prisoner turned exiled campaigner for a better Russia; and many more—all in their different ways.

When Thomas Mann arrived in American exile from Nazi Germany, he said: "Where I am, there is Germany." All these Russians have the right to say, "Where I am, there is Russia." But when Khodorkovsky tells an audience in London that "Putin is not Russia; we are," he is making a rhetorical statement of principle, not an accurate description of reality. For the truth is that Putin does, so far as

we can judge, enjoy great popular support, and in that sense Putin is also Russia. Germans know better than anyone that this is what sometimes happens to nations, and then one day they wake up with the mother of all hangovers.

CONSIDER SWITZERLAND

Working out what Russia should be, drawing a novel line between nation and empire, involves developing a new kind of relationship with neighbors who speak your tongue and share much of your culture and history. In recent years Putin has misappropriated the term "Russian world" (*russkiy mir*) and made it a political slogan that almost implies "if you speak Russian you belong in Russia." But it doesn't have to be like that, and most of the neighbors don't want it to be. I was in Minsk recently, and the Belarussian foreign minister told our visiting study group that his long-term vision is for Belarus to become something like Switzerland. Well, still a little way to go perhaps . . . but the point is clear. Switzerland may have a lot of German speakers, but it doesn't need to be part of Germany.

The same is self-evidently true across today's Spanish-speaking, French-speaking, Portuguese-speaking, and English-speaking worlds. There are very close cultural, economic, and political ties, but we don't want to be in the same state or empire. I have more Canadian cousins than I do British ones. The relationship between Britain and Canada is at least as special as that between Russia and Ukraine. In my case, as in that of many Russians and Ukrainians, it is literally in the family. But (my Canadian cousins may be relieved to hear) the annexation of Toronto and the restoration of British North America are not being proposed in London. Our countries get on much better being together apart.

The same will be true for Russia and its cousins. If the Spanish-, French-, Portuguese-, and English-speaking worlds could manage the transition from complex imperial past to today's elective affinities, so can the Russian-speaking world. And one day it will.

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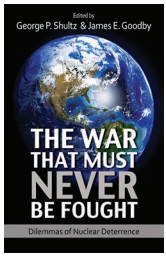

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Will Japan and China Ever Make Up?

The problem is never whether a particular apology is "enough." The problem in both countries is domestic politics.

By Emily S. Chen

Those with a discerning eye see that the tensions between China and Japan, focused on the rocky islands in the East China Sea known as Senkaku (or Diaoyu), are not merely about competing claims over fishing grounds, natural resources, or territory. They are about intractable disputes over historical memories, with China arguing that Japan has generally offered only denials and half-hearted, if any, apologies for waging aggressive war and committing atrocities during World War II. Indeed, it is easy to find facts pointing to an unrepentant Japan: numerous prime ministers have visited the Yasukuni Shrine, a memorial that honors and deifies Japanese war dead from 1867 to 1951, including war criminals from the Second World War. Even now, no nationally sponsored museums or monuments acknowledge Japan's aggression and atrocities. To China, without an apologetic move from Japan that is acceptable to China, the

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reconciliation process—building relationships today that are not disturbed by the hatreds of yesterday—seems to portend a dead end.

However, reconciliation is a mutual process: it takes two to tango. This essay seeks to build on the concept of mutuality to explore what has made reconciliation of the Sino-Japanese wartime memories so elusive. Is Japan alone in hindering the peace-building process? No—in fact, both Japan and China have failed to perform in the Sino-Japanese rapprochement. Japan has always struggled to send an unequivocally apologetic message through its statements and actions. Japan's inconsistent attitude toward its wartime past stems from Japan's dual conception of the wartime history—a divided wartime narrative that reflects its polarized domestic politics. At the same time, as a self-proclaimed victim, China and its leaders continuously show an unwillingness to reconcile with Japan. They have preferred to take a hard line, instigating anti-Japanese sentiment—a move designed to consolidate the legitimacy of Chinese Communist Party.

REMEMBRANCE OF ATROCITIES PAST

We often hear the argument that Japan has never apologized for its wartime crimes during World War II and offered only little compensation to the victims. However, this is only half the story. In fact, what makes Japan an obstruction in the peace-building process is not the lack of apology of which it has been accused; Japan has done much more apologizing than most Chinese think. Instead, it is the on-again, off-again discourse over war guilt that is highly linked with political polarization in Japan, as well as the ambiguous gestures of atonement—the ineffectiveness of the Japanese Official Development Assistance (ODA), the wartime reparation in disguise—that complicate the reconciliation process.

Both China and Japan portray themselves as victims: China, of Japanese militarism; Japan, of the atomic bombs.

Japanese political polarization, which features competing political parties and alternative narratives of the wartime history in Japan, accounts for a dual interpretation of the war. According to Takashi Inoguchi, professor emeritus of the University of Tokyo, most Japanese tend to define World War II as a two-level war—one against other imperial powers and the other against the Pacific Asians. In the former, Japan was no more "guilty of aggression and exploitation" than Western imperialist countries, differing only in its "entering the imperialist game quite late" and in being "the only

[Taylor Jones—for the *Hoover Digest*]

non-Western player." As for the latter, Japan admits its guilt in causing great suffering to Pacific Asians. Because of this dual interpretation, there is a popular belief among the Japanese that Japan was not totally in the wrong in World War II.

This "two war" mindset has long been a foundation of the Japanese war memory; however, in recent years, what had been a divided mindset has split into sharply competing narratives as the two dominant political parties have each embraced one version of events and taken it to extremes. Those who tend to look at World War II from the perspective of a war among other imperialist nations—a conservative narrative, supported by revisionists—deny Japan's aggressive intent and defend its wartime record. In contrast, a progressive narrative highlights the guilt of causing great suffering for Pacific Asians and embraces Japanese responsibility as the aggressor and for committing war crimes.

After World War II, the conservative Liberal Democratic Party (LDP), which voiced the revisionist narrative, enjoyed a half century of near monopoly of political power. Under LDP rule, the revisionist narrative was strengthened by several elements: the justification of Japanese victimhood, the structure of postwar Japan's government and its Cold War role, and a conscious ignorance of war responsibilities. Thus it created a widespread perception of Japan as a nation in denial:

» ***Victimhood and the atomic bombs.*** The chief characteristic of the revisionist narrative is the claim of Japanese victimhood in World War II, displacing the notion of Japanese aggression. The sense of victimhood springs from Japan's suffering after the atomic bombings of Hiroshima and Nagasaki, along with the subsequent American occupation of Japan. This victim identity is strengthened by the fact that Imperial Japan's forces carried out their military campaigns outside the homeland; Japanese civilians did not see the atrocities of their own forces.

» ***No clear break with the past.*** Most wartime officials, apart from military leaders and war criminals, continued to occupy places of power after the war. Moreover, on the decision of the American occupational forces in Japan, the emperor remained as the symbol of the state and the unity of the people. Thus, Japan never experienced a clear break with the prewar regime. By solely blaming the military or ultranationalists for the war, Japan as a nation could be effectively free from having to take full responsibility for the war.

» ***A lost opportunity.*** Japan lost a chance to reconcile with China soon after the war because of China's absence from the San Francisco Peace Treaty of 1951. Japan was later positioned in a prolonged Cold War confrontation

RED FLAGS: Marchers in Luoyang, central China, denounce Japan amid nationwide demonstrations over the Senkaku Islands, known in China as the Diaoyu Islands. China's leaders have helped instigate such demonstrations under the banner of national unity. Taiwan also stakes a claim to the island chain. [© FEATURECHINA / Zhang Xiaoli]

with China, as it was urged by the United States to support an anti-China policy that prevailed after the Communists assumed power in 1949.

» ***A conscious ignorance.*** As the word *conscious* suggests, the idea is that the Japanese are actually aware of and guilty about wartime aggression and atrocities but deliberately turn a deaf ear to those facts because of other purposes. For example, the Japanese believe that apologizing for their wartime past would cast shame on ancestors who died fighting for Japan. Avoiding apologies would thus not only free themselves from war responsibilities but also pay homage to their predecessors.

FINDING THE RIGHT WORDS

However, the revisionist narrative just described has not represented the predominant war memory. The progressive narrative has been equally noticeable in Japanese discourse and behaviors. Consumed by guilt over Japan's actions in Asia, progressives in Japan embrace a Marxist-influenced

historiography that describes Japan as an imperialist aggressor in Asia, stressing its responsibility for aggression. A well-known official apology, the "Murayama statement" expressed by Socialist prime minister Tomiichi Murayama in 1995 on the fiftieth anniversary of the war's end, has been reaffirmed by subsequent governments, including that of current prime minister Shinzo Abe. Murayama expressed his "deep remorse" and "heartfelt apology" by specifying that Japan's "colonial rule and aggression" had caused "tremendous damage and suffering to the people of many countries" and "the hope that no such mistake be made in the future."

Official apologies between states are a common mechanism of reconciliation to address past wrongdoings. Here we focus on the language Japan has used to apologize for its wartime history. Because the apologetic rhetoric that Japan has offered to China and South Korea regarding its wartime conduct is correlated, we can examine Japanese apologies not only to China but also to South Korea. Judging from official statements, Japan has apologized several times in ways that range from half-hearted to sincere since the 1965 normalization of relations with South Korea. Specifically, Japan's apologetic language to South Korea and China has evolved through three stages, beginning with the initial lightweight expression of *hansei* (self-reflection/remorse) in a statement by Foreign Minister Shiina Etsusaburo in February 1965; the use of a stronger word of *owabi* (sorry/apology), first offered by Prime Minister Toshiki Kaifu in May 1990; and the consolidation of Japanese official position on wartime apologies based on the well-known Murayama statement of 1995.

To China, trying to move past the hatreds of yesterday without an acceptable apology from Japan seems futile.

Seeing the development of the official apologetic rhetoric from feeble expressions of "remorse/self-reflection" to sincere apologies, it is reasonable to expect that official apologies from Japan would be conducive to Sino-Japanese reconciliation, yet the words have proven ineffective.

The problem is not whether any particular apology is sufficient; instead, it is tightly linked to the interference of domestic political polarization, which sends an equivocal message to the outside world regarding the genuineness of Japan's regret. When a Japanese leader apologizes or initiates moves that symbolize the admission of guilt and remorse, revisionists with their different narrative about the country's history challenge such attempts at penitence.

REPARATIONS BY ANOTHER NAME

It is a common belief that Japan established the Official Development Assistance (ODA) in 1954 as a way to make war reparations to Asian countries, a practice Japan continues to undertake even after an agreed termination of the reparations. While the Japanese ODA to China began in 1979 and has contributed to China's economic development for more than thirty years, this financial assistance—or, as some have argued, the war reparations in disguise—has had limited impact as a means of transitional justice to facilitate a Sino-Japanese reconciliation. Three characteristics of the ODA contribute to its falling short.

First, the ODA was begun at a time when China had renounced any demand for war reparations. Therefore, one could reason that the purpose of the ODA was technically unassociated with wartime history. Again in 1972, while negotiating normalization of Sino-Japanese relations, China declared its renunciation of any demand for war reparations from Japan for good, based on principles of morality and justice. As China's premier, Zhou Enlai, explained during a meeting with Japanese Foreign Minister Miki Takeo in April 1972, this declaration sprang from a view that the Japanese people, unlike Japan's wartime military or ultranationalists, were also victims of war.

Rejection of reparations notwithstanding, Japanese guilt over the aggressive war was said to motivate Japan's offer of financial support for China's economic development. China did not accept that offer until it started to implement the Reform and Opening policies in 1979.

Second, it is often said that the ODA served its own political and economic interests rather than conferring benefits to China. In political terms, Japan took the ODA achievements as "concrete manifestation of Chinese and Japanese friendly relations" and "a way to support the Reform and Opening policies of China," as spelled out by the Ministry of Foreign Affairs. Japan also hoped to improve Sino-Japanese economic and trade relations. Specifically, it hoped the ODA could promote China's energy development as a means to serve Japan's energy import needs.

Finally, even if Japan itself had regarded the ODA as a means of war reparations, or if there was a tacit understanding between the two countries to that effect, its effectiveness would have ended. In light of China's significant economic development in recent years and Japan's own stagnation, Japan stopped fresh disbursement of ODA loans to China in December 2007. China overtook Japan as the world's second-largest economy in 2010, while Japan has the developed world's highest debt-to-GDP ratio.

Thus the hope of fostering historical reconciliation through the ODA seems far-fetched.

DEFIANT: Anti-China protesters march through Tokyo's Shibuya district. Revisionist and conservative parties in Japan emphasize Japan's suffering from the atomic bombings and oppose apologies that they believe cast shame on ancestors who died for Imperial Japan. [Wikimedia Commons]

WHY WON'T CHINA FORGIVE?

Clearly, Japan has failed to make consistent efforts to come to terms with its wartime past, but whether China is as innocent as it has asserted also requires scrutiny. An intriguing question arises from Japanese attempts to reconcile with other Asian countries: why have most Southeast Asians and Taiwanese appeared to be willing to forgive the Japanese when China still has a hard time moving on? We need to consider not only the possibility that the Japanese may have committed more atrocities in China than in other regions but also whether Chinese leaders have a vested interest in cultivating that view. Perhaps Chinese leaders are not genuinely, or at least not completely, interested in reconciliation, but are "wielding the history weapon to score domestic political points at Japan's expense," as Jennifer Lind wrote in the *National Interest*. Indeed, an evaluation of China's changing treatment of wartime history during the postwar period suggests there is some basis for that view.

BE OUR GUEST: Japanese Prime Minister Shinzo Abe arrives in Beijing last November for an Asia-Pacific Economic Cooperation meeting. Abe is the latest Japanese leader to be caught up in the controversy over the extent, and sincerity, of his country's apologies for wartime aggression. [© Reuters / Kim Kyung-Hoon]

Chinese construction of historical memory underwent a significant change in the mid-1980s when two museums—the Museum of the War of Chinese People's Resistance Against Japanese Aggression and the Nanjing Memorial—were erected. Before then, the Chinese Communist leadership had paid little attention to the anti-Japanese struggle or to Japanese wartime crimes. Rather, it was preoccupied by a historical narrative that emphasized the civil war against the Kuomintang (KMT), the Chinese Nationalists, in which the Communists stressed their role in the struggle against the Japanese invader. Over the past three decades, however, Chinese construction of historical memory has shifted alongside an increasing priority for China's leadership: national unity.

Challenged by both domestic and international forces, including domestic unrest caused by the Tiananmen Square incident of 1989, the overwhelming

flow of foreign information following the Reform and Opening policies since 1979, and the revision of Japanese history textbooks in 1982 to erase the description of the war as an invasion, China's leaders initiated the Patriotic Education Campaign in 1991. This would deliver to young Chinese a version of history recounting China's victimhood under a brutal and criminal invader.

The patriotic-education campaign in China seemed to produce desirable outcomes for the Chinese leadership. In a survey of Chinese people led by the Japanese think tank Genron NPO and *China Daily* in August 2013, 92.8 percent expressed an unfavorable impression of Japan. The two predominant reasons offered by respondents for their unfavorable impressions of Japan were related to historical disputes: the largest percentage, 77.6 percent, stated that "Japan has caused a territorial dispute over the Diaoyu Islands (Senkaku Islands), taking a hard stance toward China"; the second-largest, 63.8 percent, mentioned "Japan's lack of a proper apology and remorse about its invasion of China."

GETTING POLITICS OUT OF THE WAY

Politics is responsible for the continuing stalemate in Sino-Japanese reconciliation. *Transitional justice*—efforts to confront and make amends for large-scale human rights abuses—should be detached from politics, in the general view. Political calculations are regarded as an obstacle to a sincere pursuit of mutual understanding. Transitional justice cannot be a tool for political advantage; international tribunals and truth commissions should not work at the behest of a particular government's interests.

In Japan, the polarization reflected in and reinforced by competing narratives of wartime history shows the effects of politics. Although progressives in Japan often argue that official apologies to China are needed to repair relations with Asian countries, stimulate national self-reflection and work toward a new national identity, and affirm moral principles, it is reasonable to expect apologies also to be used for political ends. A new progressive administration would criticize the previous conservative administrations for lacking self-reflection and causing instability in Sino-Japanese relations, for example. By the same token, Japanese conservatives stress their aversion to an apology, fearing that it would implicate the emperor and provoke demands from other Asian nations for further compensation.

China uses nationalist sloganeering to distract attention from corruption and slowing economic growth.

As for China, where Marxist ideology can no longer serve as a source of legitimacy for the Communist regime, cultivating the patriotic narrative—instigating nationalism—is a substitute. Nationalist sloganeering also serves as a convenient tool to distract attention from corruption and slowing economic growth, both of which endanger the Communist government's legitimacy. On the other hand, incessant domestic unrest born of the current wave of popular anti-Japanese sentiment could threaten the government's legitimacy, too. Public hostility toward Japan could grow beyond the control of Chinese leaders, thus limiting their room to maneuver in any attempted reconciliation.

Chinese historical memory has shifted. Leaders now pursue national unity by emphasizing Japan's wartime crimes.

So are attempts at reconciliation between the two countries doomed? Not necessarily—politics can also help promote mutual understanding instead of impeding it. When political actors are capable and willing to commit to the mechanisms and goals of certain forms of justice and accountability, reconciliation can advance. How governments treat each other also can have a strong impact on people's impressions of the other side. This is especially true for China, an authoritarian regime that holds more power than its democratic counterparts. China finds it relatively easy to move public sentiment through patriotic campaigns—when it chooses to.

While governments should lead the process of reconciliation by taking genuine steps toward transitional justice, individuals also play significant roles. Public opinion, if strong enough, can counter the political calculations that impede peace building. In a democratic country such as Japan, a ruling party is subject to regular elections in which public opinion can sway leaders to change government policies. In China, it would be up to the government to rein in the nationalism it has unleashed. ■

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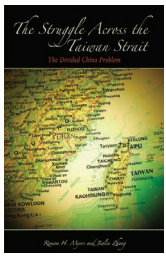

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Let My Conscience Be Your Guide

Are eternal truths subject to the approval of nine justices? Pondering the right to live as if God mattered.

By David Davenport

America is moving into uncharted territory as it enters a post-Christian era. This shift has been evident for several years, with reported drops in church attendance and belief in God, but Justice Anthony Kennedy and the US Supreme Court gave it a big push with last summer's decision in *Obergefell v. Hodges* concerning same-sex marriage. The court decisively shifted marriage away from not only the states but also the church and conservative religious understandings of the institution. While the court gave lip service to the ongoing role of religion in marriage, it spoke only in limited terms of the right to "advocate" or "teach" historic values about marriage, avoiding the broader language of the First Amendment right to "exercise" its religious tenets.

A deeper and more disturbing philosophical argument being advanced is that God and the church must adjust their moral and doctrinal understandings with the times. Frank Bruni, a columnist for the *New York Times*, wrote that Christians should rightly "[bow] to the enlightenments of modernity." He quoted with approval businessman and gay philanthropist Mitchell Gold, who said church leaders must be made to "take homosexuality off the sin

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list." Hillary Clinton, speaking of reproductive care and safe childbirth at the Women in the World Summit, sounded a similar theme, saying "deep-seated cultural codes, religious beliefs, and structural biases have to be changed." Even the Archbishop of Dublin, after Ireland's vote on gay marriage, said the church needed to do a "reality check" to see whether it had "drifted completely away from young people."

The notion that God must keep up with the times is more than a little presumptuous, as well as historically unconstitutional, but that seems to be where the law is heading. An emerging limitation on the First Amendment right to the "free exercise of religion" would apparently require that such religion be in touch with the spirit and understandings of the modern age. Perhaps the Fourteenth Amendment promise that "no state [shall] deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" now trumps the First Amendment's free exercise of religion, which would be a momentous and stunning conclusion, reached with essentially no debate.

A gay philanthropist insists church leaders must be made to "take homosexuality off the sin list."

Especially troubling for religion was Kennedy's invention of a right to "equal dignity" in support of the *Obergefell* decision. In the closing line of the opinion, the court said those seeking the right to gay marriage "ask for equal dignity in the eyes of law. The Constitution grants them that right." But read the Constitution from beginning to end and you will find no such right. Kennedy has long searched for a right to equal dignity, mentioning it in his opinions in the *Casey* abortion case, the *Lawrence* sodomy decision, and the Defense of Marriage Act (DOMA) case, as well as in this latest opinion. But whatever equal dignity means to Kennedy, such a right would be so vague and broad that it could mean almost anything as a legal standard.

Although none of the cases has attempted to define equal dignity under the law, dictionary definitions of dignity talk about respect and esteem. In our crowded, busy, and increasingly impolite society, one regularly encounters indignities everywhere. Apparently some unspecified grouping of those, at least if such affronts involve the state, is now unconstitutional.

In particular, it is easy to foresee a clash between a conservative Christian exercising freedom of religion and a gay couple's right to equal dignity. A number of religious conservatives or traditionalists, including Muslims, some Jews, and some Christians, believe that gay marriage violates their religious

beliefs and principles. Some believe that according to the Bible, homosexuality itself is a sin. Does such a belief constitute a failure to extend dignity and is therefore against the law? How about preaching it from its pulpits? Might that even be a form of hate speech under the law?

In his dissenting opinion, Chief Justice Roberts saw hard questions arising when, "for example, a religious college provides married student housing only to opposite-sex married couples, or a religious adoption agency declines to place children with same-sex couples." These are all looming clashes between the growing jurisprudence of equal dignity of the Fourteenth Amendment and the shrinking First Amendment right to the free exercise of religion.

Indeed, a number of these clashes are already occurring. Immediately after the decision, some county clerks refused to issue marriage licenses to same-sex couples in violation of their conscience, in at least two cases with state support, and these questions are now in court. The question has been raised whether churches that do not fully comply with the right to same-sex marriage should lose their tax exemptions. Florists, bakers, and photographers who say that participating in same-sex ceremonies violates their religious beliefs have already been subject to legal action, including a $135,000 fine and gag order imposed on Christian bakers in Oregon. Senator Mike Lee of Utah has introduced the "First Amendment Defense Act" in Congress in an effort to protect religious liberty and tax exemptions in the wake of *Obergefell*.

Over time, the pendulum of religious liberty has swung left and then right. Efforts to remove God from the public square brought about the religious right. A court decision limiting religious liberties served as a catalyst for religious freedom restoration acts, both federal and state. More recently, the Affordable Care Act provisions about abortion and birth control triggered the *Hobby Lobby* case affording religious rights even to a privately held company. In the *Obergefell* case, proponents of gay rights had said that same-sex marriage should have no effect on other people or society as a whole—it was just about letting two people in love get married. But, as Roberts observed in his dissent, "Federal courts are blunt instruments when it comes to creating rights," and this case will have profound implications, including challenges to religious liberty.

The notion that God must keep up with the times is more than a little presumptuous, as well as historically unconstitutional.

The present times feel less like the temporary swing of a pendulum and more like a new era of more limited religious liberty whenever it clashes with the freedoms or dignity of others. A new secular orthodoxy has trickled down from the elites to the larger society, and has now been codified by the Supreme Court. God has survived countless forms of government throughout the ages and will doubtless find a way through this one as well. But, as Roberts warned, "hard questions" about religious liberty under the Constitution lie ahead, ones that Justice Clarence Thomas warned hold "potentially ruinous consequences for religious liberty." This is the new normal in post-Christian America. ■

Is preaching against gay marriage now a form of hate speech?

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"It's Not About You . . ."

Hoover fellow **Bill Damon** wants young people to find purpose and meaning—not just for themselves but for our democracy.

By Clifton B. Parker

Encouraging a sense of meaning and purpose in young people often comes down to a "beyond the self" way of orienting to the world, says Hoover senior fellow William Damon.

Yet while service to others can build a capacity for purpose that endures into later life, says Damon, an education professor and director of the Stanford Center on Adolescence, those activities should be something that a young person truly enjoys and finds appealing—not just obligatory work.

Damon's research explores how young people develop purpose in their civic, work, family, and community relationships. The Stanford News Service recently interviewed him about this topic.

Clifton B. Parker, **Stanford Report:** What does your research show about how to encourage a sense of purpose and meaning among young people?

William Damon: There are a couple of key insights that lead young people to start their search for purpose. First is the realization that there is a need

William Damon *is a senior fellow at the Hoover Institution. He is a professor of education at Stanford University and the director of Stanford's Center on Adolescence.* ***Clifton B. Parker*** *covers the social sciences for the* ***Stanford Report.***

in the world that calls for action. It could be a problem or a deficit of some kind—for example, some people die from cancer or some people go hungry from lack of food—or it could simply be that there are things that could be improved or created by new efforts. The second realization is that young people believe they are capable of making such efforts, and in fact would enjoy doing so if given the chance.

Parker: Do young people struggle with purpose and meaning?

Damon: Of course, as do many people later in life. Purpose requires both a personal desire to accomplish something meaningful to the self and a commitment to take the actions needed to do so. Some people struggle because they feel their lives are full of obligatory actions that have no personal meaning. Others struggle because they have trouble developing an action plan they can commit to. These difficulties can arise at any age, but young people in particular may struggle with them—some if they feel forced to engage in activities that lack meaning and others because they have not yet learned how to follow up aspirations with appropriate actions.

Parker: What are some of the most popular purposeful interests for young people?

Damon: Many are motivated by family purposes (raising a family, caring for an extended family); others by vocational purposes (becoming a doctor, teacher, Army officer, and so on); others by faith (serving God or some transcendent cause); and others by the arts, sports, or civic duty. In our studies, we have found a number of young people with civic purposes such as fighting for a particular cause or contributing to the betterment of their communities, but we have found few who aspire to civic leadership. If this is a trend among today's youth, it bodes a problem for the future of our democracy, since a thriving democratic society depends upon strong leadership in every new generation.

"Schools that encourage purpose will see their students become energized, diligent, and resilient."

Parker: Is encouraging purpose and meaning a worthy educational goal?

Damon: Purpose is the pre-eminent long-term motivator of learning and achievement. Any school that fails to encourage purpose among its students risks becoming irrelevant for the choices those students will make in their

lives. Schools that encourage purpose will see their students become energized, diligent, and resilient in the face of challenges and obstacles.

Parker: Why is "beyond the self" thinking important for young people?

Damon: Especially in these days of intense focus on individual performance and status, a real risk in the development of today's young is self-absorption. For the sake of both their mental health and their character development, all young people need to hear the message "It's not about you" every now and then. Finding a purpose that contributes to the world beyond the self is a premier way of tuning in to that message. Consider a common example: as early as age four or five, a child can be asked to help out in the home, such as by watering the plants or feeding a pet. When children help out with such tasks, they acquire a sense of service to their families. Eventually, this sense of service generalizes to other parts of the world beyond the self.

"We have found few who aspire to civic leadership. If this is a trend among today's youth, it bodes a problem for the future of our democracy."

Children take pride in what they accomplish. Service to others, even in the form of childhood responsibilities, can build a capacity for purpose that endures into later life.

Parker: How can adults, teachers, and parents help educate the young about purpose and meaning?

Damon: Parents, teachers, and other adults can nurture sparks of realization. We also found that purposeful youth had chances to observe admired people in their lives who themselves were pursuing purposes they believed in. Parents can model for the child a dedication to a purposeful goal. Rarely, however, did we find that purposeful youngsters found their choices in direct instructions from parents or other adults. Rather, young people tend to choose from the menu of options that they are exposed to by parents, teachers, and other adults. One thing, therefore, that adults can do for young people is present them with a full palette of possibilities that align with the "sparks" that the young people express. To be of help, adults must be good listeners when young people discuss their interests.

Also, adults can be supportive of the choices that young people make on their own—all the purposeful youngsters we studied said that their parents eventually supported and encouraged the purposes that they chose.

Parker: Is it more challenging in today's world for young people to focus on purpose and meaning?

Damon: It is a challenging time for young people to find purpose. Choices about where to live, what sorts of careers to pursue, how to spend one's time, and what kinds of interpersonal arrangements are possible and desirable have expanded enormously from earlier eras in our own society. While the availability of so many choices can be liberating, it also can be confusing for a young person first facing them.

"One thing adults can do for young people is present them with a full palette of possibilities that align with the 'sparks' the young people express."

Also, choices create uncertainty, which can be frightening. In prior times, when the major choices about vocation, family, and community location were settled by age twenty or so, there was less room for agonizing about what to do in life than exists in our time, in which many young people are still searching at age thirty or later. But my sense is that such delay is not itself a problem as long as there is learning and forward movement during this extended period of choice making. In fact, for many, such delay offers the opportunity to make sounder and more interesting choices for the kinds of lives they want to lead and the kinds of people they want to be.

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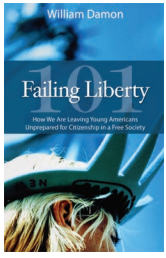

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Long Live Magna Carta!

Democracies' great debt to the Great Charter. (America's may be the greatest.)

By Clint Bolick

A recent conference at the Hoover Institution celebrated the eight-hundredth anniversary of Magna Carta, the "Great Charter" signed on June 15, 1215, by King John of England and his barons. Scholars of economics, political science, and law focused on the enduring relevance of this document—particularly as a beacon for American political thought that enshrined the principles of individual liberty and the rule of law.

The octocentennial of Magna Carta is cause for celebration among all freedom-loving people, but none more so than Americans. Because of Magna Carta's recognition of due process as the cornerstone of the rule of law, the US Constitution could not exist but for Magna Carta. And because it in turn strengthened the due-process guarantee and added to it the protection of other vital liberties, the US Constitution represents the culmination of the promise of freedom that was proclaimed at Runnymede eight centuries ago.

Magna Carta did not necessarily have such lofty aims. It was essentially a treaty between King John and rebellious barons, and most of its provisions were specific to barons' grievances. But Magna Carta established the

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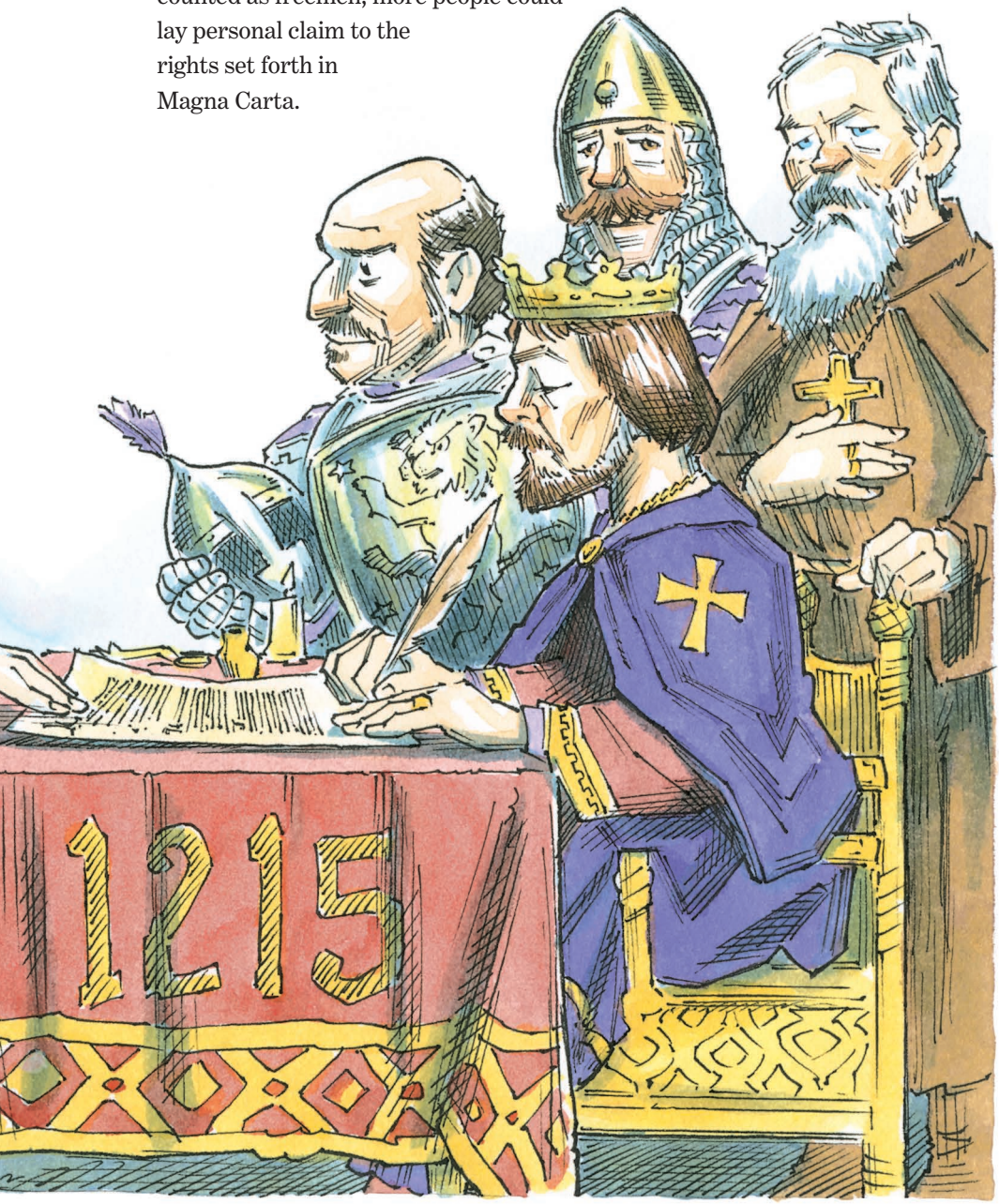
definition of what would come to be known as due process of law. Specifically, Magna Carta held that no freeman "shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful Judgment of his peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right."

All of those proclamations came to be recognized as essential components of due process: no deprivation of life, liberty, or property

without due process of law; the right to trial by jury by the accused's peers; equal rights; and swift justice. The initial impact of Magna Carta was narrow because it conferred rights only upon freemen, and at the time few people qualified. But as did the Declaration of Independence more than half a millennium later, Magna Carta spoke in universal terms, and thus as more people counted as freemen, more people could lay personal claim to the rights set forth in Magna Carta.



During the reign of the Tudor kings, Magna Carta was wielded by Sir Edward Coke and others to argue against the divine right of kings in favor of the constitutional rights of Englishmen and the supremacy of Parliament. The charter greatly influenced the development of English common law, in particular the right to trial by jury. It also provided the foundation for the Petition of Right in 1628 and the Bill of Rights in 1689, which recognized broader rights of Englishmen, restrictions of the powers of monarchs, and the hegemony of Parliament in a variety of areas.

Like the Declaration of Independence more than half a millennium later, Magna Carta spoke in universal terms.

When the first American colonies were established, their charters formally established that their inhabitants would possess the rights of Englishmen. The New England colonies spoke of such rights as "natural rights" endowed by the Creator. For many years, the colonies largely were self-governing, and as a result notions of inalienable individual rights were able to take root in American soil. When the crown began to exercise greater control, colonists chafed at the invasion of their rights as Englishmen. When the colonists decried taxation without representation and other abuses chronicled in the Declaration of Independence, they were asserting rights recognized by Magna Carta and subsequent charters of English liberty.

After establishing independence, the new American states established constitutions that embraced the guarantees of Magna Carta and its progeny. In the Ordinance of 1784, which set the rules for westward expansion in the territories secured through the Treaty of Paris, the fledgling government of the United States made clear that those who settled the frontier would enjoy the same rights as other Americans.

Ultimately, the rights of citizens and limits on government that flowed from Magna Carta were incorporated into the US Constitution. Indeed, the failure to explicitly protect many of those rights in the original Constitution was the principal complaint of the Anti-Federalists, who argued that a Bill of Rights was necessary to constrain the central government and protect the rights of the people. Ultimately the Constitution and its first ten amendments expressly guaranteed the rights of habeas corpus, jury trial, and speedy trial; as well as the central guarantee of Magna Carta, expressed in the Fifth Amendment, that "no person shall be deprived of life, liberty, or property, without due process of law." Other fundamental rights, such as freedom of religion, freedom of speech and press, and the right to keep and bear arms, traced as well to the English declarations of rights that followed Magna Carta.

But those rights were magnified on the American side of the Atlantic. The US Constitution is Magna Carta on steroids.

For in England, all rights are subject to the will of Parliament, which establishes the "Law of the Land." For Americans, who after all rebelled not only against the king but Parliament, that would not do. In the American system, rights are transcendent and are protected against not only the executive but the legislative arm of government, and even against democratic majorities. Indeed, the powers of all governments are derived from the people and subordinate to the rule of law. That primacy of individual rights is secured in a variety of ways, but in one particular manner unknown to our English forebears: judicial review, in which judges measure the validity of laws against the limited powers delegated to government by the people. (Or at least, ideally they do.)

But even though they went much further than their English antecedents, the original Constitution and Bill of Rights were not finished products. They were primarily aimed at constraining the powers of the national government, generally trusting states to abide by their own constitutions in protecting the rights of the people.

That expectation proved too optimistic. Through the institution of human slavery and other deprivations of civil liberties, the states often were oppressors rather than guardians of freedom. Hence, after the Civil War, new safeguards were adopted, particularly the Fourteenth Amendment, which protected the "privileges or immunities" of citizens against the states while guaranteeing due process of law and equal protection under law. US Supreme Court Justice Noah Swayne proclaimed that the post–Civil War amendments (which also outlawed slavery and protected the right to vote) "mark an important epoch in the constitutional history of the country," for they "trench directly upon the power of the states," and thus "may be said to rise to the dignity of a new Magna Charta."

The Constitution is Magna Carta on steroids.

Little remains of the full Magna Carta in England today—all but four provisions were repealed by Parliament. Most of the repealed provisions were anachronisms, and fortunately the due-process protections remain intact. But the surviving provisions are the "Law of the Land" only so long as Parliament deems them so.

By contrast, Magna Carta continues to flourish in the United States, and has been cited in hundreds of judicial opinions. That is because in America, the Constitution—not any elected body—is the "Law of the Land." All

elected officials take oaths to uphold it and their actions are subordinate to it.

Recently, Magna Carta has figured prominently in cases involving the rights of suspected terrorists. In *Boumediene v. Bush*, the US Supreme Court in 2008 invoked Magna Carta to invalidate federal laws that suspended the right of habeas corpus at Guantánamo Bay. Writing for the majority, Justice Anthony Kennedy proclaimed, "to hold that the political branches may switch the Constitution on or off at will would lead to a regime in which they, not this court, 'say what the law is.' "

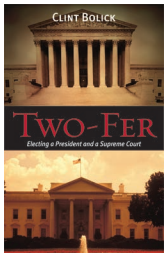
It falls to the contemporary heirs of Magna Carta to defend it in the new millennium. Although many protections have held up well, particularly in the context of the rights of the accused, others have not. In particular, economic liberties—the right to pursue a business or profession, and to be free from state-imposed monopolies—were deeply embedded in the common law and meant to be protected among the privileges or immunities guaranteed by the Fourteenth Amendment. But court decisions often have failed to protect such rights, even as the administrative state grows in its power to constrain economic freedoms. Eternal vigilance is required to preserve the liberties that became our birthright eight hundred years ago.

The barons who persuaded King John in 1215 to accept Magna Carta surely were not much concerned about the due-process rights of either suspected terrorists or bootstraps entrepreneurs. They were trying to protect their own rights against despotism. But in the process of asserting their own rights, they proclaimed universal values that would help define the rule of law that is essential to the preservation of liberty.

In the US Constitution, Magna Carta found its highest and greatest expression. The vitality of the fundamental principles expressed in Magna Carta and embodied in the Constitution is tested every day, and those who are heirs to that legacy of freedom must be its guardians.

Long live Magna Carta!

***Special to the* Hoover Digest.**



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Seeds of Liberty

In this messy, ephemeral contract, the West awoke to individual rights.

By Jeremy Catto

By far the oldest legal authority still to be cited in the US Supreme Court is a long and incoherent list of feudal privileges issued by an English king to his barons on June 15, 1215. It is now known, though the title is not its original name, as Magna Carta, the Great Charter. How did this curious situation come about, and what possible relevance can an ancient document issued in a foreign land have to the modern world?

The Great Charter was a compromise between the high-handed and untrustworthy King John of England and a group of his barons who had managed, with the help of the citizens of London, to corner him at Windsor Castle. In return for letting him raise money he desperately needed, the barons managed to extort concessions on their right of inheritance, access to judgment by their equals in lawsuits, and numerous other grievances.

Like all such compromises it was messy and in many ways ambiguous, and neither side, it seems, intended to abide by it. King John instantly appealed to the pope, his feudal superior, to release him from it. The pope quashed the charter just ten weeks later. In the civil war that followed, King John would probably have been defeated had he not died the following year. Oddly enough, it was the remnant of his supporters, gathered round his infant successor, who resurrected the charter and reissued it, slightly modified, in a

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bid for popular support. They were successful: the rebel barons made peace; the charter was further modified and finally confirmed in 1225 by King John's now adult heir, Henry III.

JUSTICE AND LIBERTY

Why are these ancient battles relevant in today's world? Mainly because of two clauses of the charter, which promised that no free man would be arrested or imprisoned or judged except by the lawful judgment of his peers; and that nobody would be denied justice. These clauses survived in all the revised versions of the charter even as most of the other provisions were superseded. From 1225 onward the charter gained iconic status; it was confirmed more than forty times by King John's successors and appeared in every attorney's handbook of current statutes. Though the high-handed Tudor monarchs, Henry VIII and Queen Elizabeth, largely ignored it, the antiquarian jurists of the seventeenth century, especially Sir Edward Coke, seized on the charter as a justification of supposed ancient fundamental rights against the authoritarian Stuart kings. For these lawyers it was no longer a standalone document. They dug up earlier texts to assert that English liberties go back to the beginnings of the English nation, and the royal prerogative is subordinate to them.

Ancient pacts like Magna Carta really did contain the seeds of future liberties. Some kind of fundamental law, these documents stressed, constrained the will of princes.

After the English Civil War and the Revolution of 1688, their arguments were incorporated in the so-called Whig interpretation of English history, according to which the English alone, relying on the common law, had preserved their fundamental rights in the face of successive attempts at tyranny, while the French and other foreigners suffered under arbitrary absolute monarchy, buttressed by Roman law. Whig philosophers like John Locke accepted all this, as did, on the whole, the fathers of the American Revolution—though in the Constitution, as practical statesmen, they were careful to safeguard the prerogatives of the executive power which Locke had passed over, and which were too obvious for a mention in Magna Carta.

Thus in the nineteenth century, the Whig version of English history was extended to include the United States as another land where freedom was preserved by the common law. At the same time, it was extended backwards into the forests of ancient Germany, where the Roman historian Tacitus had

noticed the free association of the Teutons and Saxons, the ancestors of the English, in contrast to the authoritarian ways of the Roman empire.

FRUITFUL MISUNDERSTANDINGS

Inevitably, the scholarship of the past century has largely unstitched this magnificent historical tapestry. The process began in 1905, when William Sharp McKechnie subjected every clause of the charter to a minute and devastating scrutiny, and showed that most of them, for the original framers, referred to highly specific grievances. The charter made sense only in terms of feudal law; as feudal law faded away, its provisions became irrelevant. The more the reign of King John was studied by historians such as Sir Maurice Powicke, Sir James Holt, David Carpenter, and Nicholas Vincent, the easier it was to understand Magna Carta in its immediate, thirteenth-century context, and to treat its fortunes in later centuries as, at best, a series of fruitful misunderstandings.

From a European point of view, the Great Charter is only one among a family of general charters or statutes in which rulers grant "liberties" to some of their subjects, similar though not identical to King John's reluctant concessions. In 1222, King Andrew II of Hungary was forced to promise, in the so-called Golden Bull of Hungary, that he would not deprive his subjects of life or property without judicial process. In 1213, the elder Simon de Montfort allowed the inhabitants of his new southern French dominion the right to inherit according to the customary law of Paris. In 1188, King Alfonso IX of the Spanish kingdom of León conceded that he would not deal violently with his subjects' property but would rely on the judgment of the law.

These are only a few examples of general charters, as specific and disordered as Magna Carta, that allow for impartial judgment in place of the royal will. The Hungarian Golden Bull was cited as a national Bill of Rights in much the same way Magna Carta was from the seventeenth century onwards. We can conclude from the charter's European cognates that lawyers who referred to them in later centuries were not just taking ancient enactments out of context; those enactments, however narrowly focused, really did contain the seeds of future liberties, and implied that some kind of fundamental law constrained the will of princes. In that respect the American and British judges who have referred back to Magna Carta have been, historically, quite right.

No Chinese emperor would have granted a Magna Carta.

LAW FOR THE MODERN WORLD

But these other general charters prove as well that the Whig interpretation of English history, contrasting English liberties and English common law with continental tyranny and Roman law, seriously distorts a broader reality. Roman law in the Roman empire may have been built on the emperor's personal will, but Roman law, when it was revived by the jurists of Bologna in the twelfth century, evolved into a sophisticated system for harmonizing the competing claims of the multiple kingdoms, lordships, communities, and corporate bodies that made up the European order of the time. The jurists had to adjust the formidable intellectual construct they had inherited from the ancient world to the realities of their own age. The outstanding reality of that age was the distribution of power.

The ever-changing landscape of rising and falling lords and princes, cities and kingdoms, allowed no single authority to emerge. Balance and compromise, or the mutual recognition of rights, was the only way to survive. So the jurists of Bologna developed a *ius gentium*, a law common to all peoples—a fundamental law—as the basis of a European order that nobody controlled.

In the year of Magna Carta, this idea was still fairly new. The mutual recognition of the rights of individuals and corporate bodies as well as princes would take time to bed down. But it was already clear that this European world was quite different from either the Roman empire that preceded it, or the world of Islam or the Chinese empire that flanked it in the east. The rulers of those empires each saw himself as the only legitimate power, the only source of peace and harmony in the world. It is impossible to imagine a Chinese emperor granting Magna Carta. But, imperfect as that document was, it marks the emergence of an order where legitimate power was distributed and limited, and in which it was the role of the law to adjust its limits. This order has—so far—endured. That is a good reason to celebrate Magna Carta. ■

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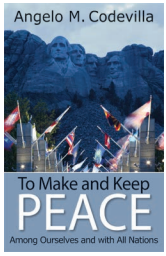

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Faith in Our Fathers

The Great Charter inspired America to create a founding document—and established the very idea of "founders."

By James Ceaser

Magna Carta has entered American political life more by its influence on our constitutional culture than by any specific provision. It has helped shape American constitutionalism, a concept much broader than the content of the Constitution and its legal interpretations. It includes basic ideas about the rule of law; the doctrines, ideas, and theoretical premises connected with the Constitution; and feelings and sentiments about the document and its authors.

Three major ideas developed in America between 1776 and 1789 form the bedrock of this extralegal part of our constitutional tradition: the theme of *founding*, a written document, and constitutional veneration. So deeply have these concepts become embedded in our understanding that, as so often happens with ideas that structure consciousness, they can be taken for granted and go unnoticed. All the more reason to bring them to the surface and explore their significance.

***James Ceaser** is a senior fellow at the Hoover Institution and the Harry F. Byrd Professor of Politics at the University of Virginia and director of the Program for Constitutionalism and Democracy.*

THE "FOUNDING" PHENOMENON

Americans speak continually about founding and founders both in popular discourse and academic writings. Our founders are everywhere; they are honored in monuments, serve as names for thousands of schools and roads—what is more iconic than Madison Avenue?—and are the subjects of countless biographies. What is rarely remarked is that the general theme of founding is largely absent from the politics of most other democratic nations. Founding is one of the principal, if unnoticed, features of American exceptionalism.

What accounts for the prominence of founding in American thought? A simple answer might be that it is the result of the facts of our history. Americans refer so often to the founding and the founders because America *had* a founding and founders; there is no more accurate way to capture what happened. Yet things may not be quite that simple. Far from being so natural or evident, the notion of founding in reference to forming the government structure was a concept that had to be deliberately revived and promoted. The label of the founder or *lawmaker* in 1787 was primarily reserved for certain figures of antiquity such as Romulus, the founder of Rome, Lycurgus, the founder of Sparta, or Solon, a lawgiver in Athens. Very few people employed the language of founding in speaking of the establishment of the state constitutions during the previous decade, or in reference to the creation of the Articles of Confederation, the nation's first constitution. Was John Dickinson, the James Madison of the Articles, ever celebrated as a founder?

The authors of the *Federalist* were the ones who reintroduced the elevated notion of the lawmaker. They aimed to induce Americans to view the events unfolding before them in 1787 and 1788 through the lens of the classical concept of founding, with its connotations of an extraordinary action and a bold remaking. Absent this intellectual step, the fathers of the Constitution might not be known as founders at all.

This explanation gains further credence in light of the neglect or suppression of this concept inside British political thought at the time. According to one of its two major schools—contract theory deriving from the political philosophers Thomas Hobbes and John Locke—governments are constructed by individuals who come together on the basis of their reasonable calculations of how to secure their primary rights and interest, above all safety and preservation. There is little if any place for the founder in this model. In fact, the concept of the founder would seem to threaten

HALLOWED HALL: The National Archives in Washington enshrines the most famous documents in US history, including the Constitution and the Declaration of Independence, in a secular temple to America and its founders. The Archives also possesses, and displays, a Magna Carta from 1297. [© ABACAUSA / Olivier Douliery]

this argument by making the successful establishment of a political order depend on the chance appearance of rare persons rather than on the logic of the case.

According to the other school of British thought—Whig jurisprudential history or organic theory—the English constitution formed gradually as a product of accident and adjustment. England never had a founding or founders. Whig writers usually presented this account of English constitutional development as actual history. It is not unfair to ask, however, whether they were not seeking to recruit history to discourage disruptions or breaks. The notion of a new beginning, together with its glorification, is intrinsic to the concept of founding, and this becomes the chief threat to good government. As Edmund Burke artfully explained, the British constitution had not been formed "upon a regular plan or with any unity of design" but grew "in a great length of time and by a great variety of accidents." He went on to declare: "The very idea of the

fabrication of a new government is enough to fill us with disgust and horror."

The *Federalist* broke definitively with both schools of British thought. Contrary to the organic position, it emphasizes the idea of consciously thinking about how to construct a new system of government. The introductory paragraph of the work sets the prospect of ratifying the Constitution, the immediate issue before the American people, in the context of a momentous theoretical test: "whether societies of men are capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force." Good government is the product of what is made or founded, not the blind product of what grows.

America has its "founders" because political thinkers wanted the new country to view its Constitution as something bold, historic, and worthy.

Contrary to the contractarian position, the *Federalist* argues that nothing necessarily leads to the formation of good government. Without the exertions of a few persons, the proposal for the Constitution in 1787 would not have been on the table. It has been the product of lawgivers par excellence, those who set in motion the whole process, who had a plan, and who worked assiduously to bring it to fruition. Although the people might sanction the results, and in this sense create a contract, their action cannot be counted as the primary cause.

The authors of the *Federalist* invite the reader to compare America's lawgivers to the great lawgivers of antiquity. By the mere act of placing America's founders in the same company as such figures as Lycurgus and Solon, they point to the momentousness of the proposed new Constitution. If the Constitution should be ratified and prove successful, America's founders will become worthy rivals of, if not indeed replacements for, the ancient lawmakers. Today, it is fair to say that they have achieved this lofty status.

The introduction of the concept of founding has greatly influenced subsequent understanding of American constitutionalism. That idea has woven the notion of political greatness into the fabric of America's constitutional narrative. While the Constitution abolishes legal aristocracy, the *Federalist* adds rank and hierarchy to the public view of political action. It provides a picture of a variant of political greatness. The lawgiver is one who possesses these attributes: the intellectual qualities of knowledge of the science

of politics and of sound judgment in determining where circumstances can accommodate theoretical knowledge, and the moral virtue of acting with persistence, and at times boldness, in the pursuit of the nation's good. These are the virtues that have come to be associated with our founders.

WRITTEN INTO HISTORY

During the founding era, the written constitution was considered an American innovation. Today, it is virtually taken for granted that establishing a government entails adopting a written constitution—with Great Britain, arguably the most constitutional of constitutional governments, being a notable exception.

According to Thomas Jefferson, Virginia was "the first of the nations of the earth, which assembled its wise men peaceably together to form a fundamental constitution, to commit it to writing, and place it among their archives, where every one should be free to appeal to its text." While the distinction of being first belongs in fact to South Carolina (by three months), the contention that the written constitution is an innovation of American origin has not been controverted.

The *Federalist* discusses the specific modes and instruments the American founders developed to carry out the act of founding. The most important is a reliance on the instrument of a written constitution, understood as a text chiefly of positive law that sets out the basic framework of government, assigns powers to government and institutions, and affords protections of certain rights.

A written constitution, eventually with a process of adoption and amendment independent of the powers of the existing government, has given birth to a remarkable theoretical transformation in the role of government. It erects a body of positive law above government and beyond government's authority to alter. All officers of the government are pledged to recognize and submit to the constitution. It is a constant lesson in humility for those in positions of power to acknowledge that they do not "rule," but exercise their discretion under a higher authority.

Good government isn't at all inevitable.

A written constitution also became a necessary instrument for the principle of "consent of the governed." If people are to consent to something, they need for all practical purposes a written text about which to deliberate. Popular consent to this document becomes the practical and juridical procedure by which to agree to a "social contract," a concept that previously existed

only in theory. Turning from theory to history, the ratification of the US Constitution proved to be one of the most important events in the establishment of modern constitutional government. In all human affairs, the initial act weighs heavily in setting the precedent for all that comes after.

Compare the American case in 1787 to the European one today, in which various versions of the European Union (EU) have been submitted to referenda in a number of countries—including Denmark, France, Ireland, and the Netherlands—and where the EU has routinely been rejected. Never mind! The elites continue to build Europe and even to pass a constitution. The absence of popular ratification reveals and reflects the democratic deficit that continues to trouble governance in Europe.

WORTHY OF VENERATION

The Constitution stands at the apex of positive law and has the legal status of being "the supreme law of the land." But a further issue remains: is the Constitution merely or only law, or is it also an instrument that performs other functions of the highest political importance?

The *Federalist* broaches this question by suggesting that the Constitution should be regarded with something beyond the sense of respect that should obtain for ordinary law; it should be viewed with a measure of "reverence" and "veneration." Though the Constitution is amendable, it should come to be thought of as permanent in its core and should enjoy the deepening support that comes with age: "the most rational government will not find it a superfluous advantage to have the prejudices of the community on its side."

A written constitution erects a body of law above government and beyond government's authority to alter.

The British political thinker Walter Bagehot once famously divided the British constitution into its efficient parts, which handle the business of governing, and its dignified parts, which touch the public's hearts and sentiments. A nation, he argued, needs both elements. Like the crown in Britain, the US Constitution has come to play a role within the dignified part of a constitution, attaching the public to the nation and its government.

It may surprise many to learn that a disposition to venerate the Constitution is not inherent to a written constitution. Its creation stands as perhaps the most important and original contribution of the *Federalist* to American constitutionalism. Proof that this disposition to venerate is not automatic may be seen in the attitudes of most Americans toward their state

constitutions, where feelings of reverence are rare. It would take a person of a peculiar temperament, and perhaps questionable sanity, to venerate the constitution of California.

More important, from what is known historically, there is no evidence in 1787 that the founders initially thought the Constitution would be considered an object of reverence. The germ of this new idea apparently emerged early in 1788 in response to a plan floated by Thomas Jefferson calling for regular revisions (and rewrites) of the document. Jefferson's view on the status of written constitutions, for all we know, may have been the dominant one. He looked on written constitutions more in the spirit of ordinary law, which should be constantly updated and improved. Not only do circumstances change, but also, by his progressive outlook, this generation will know more than the last, and the next generation will know more than this one. Deference to the past, which is what reverence counsels, makes us slaves to ancient prejudices, which is, as Jefferson later wrote, a position meriting disdain:

Those in power do not "rule"—they exercise power under a higher authority.

> Some men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment.

The *Federalist* authors saw this view as dangerous to the success and stability of the nation. Given the extraordinary difficulty of agreeing on a charter of government, inviting its revision on a regular basis would likely destroy the country. Better by far to lock in the gains made in 1787 and shield them from the vicissitudes of future politics and the influence of persons of lesser talents.

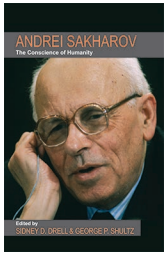
Beyond this significant practical consideration, the introduction of a disposition for constitutional reverence affects the very way in which people conceive of the political world around them. Contrary to the pure progressivism expressed by Jefferson, the *Federalist* sought to legitimate an inclination to look back and find connections to the old. Constitutional veneration connects a people to its founders. Without a written Constitution that endures and is revered, America has no founders, for what of significance would they have founded?

The delicate balance that the authors of the *Federalist* sought to establish now becomes clearer. American constitutionalism is on the one hand open to the idea of applying reason to human affairs, as seen in its celebration of the idea of making a government anew. Yet it seeks on the other hand to limit how far rationalism should be extended by instantiating the concept of veneration of the Constitution.

The founders sought to locate the American mind between reason and reverence.

The *Federalist* sought to locate the American mind between reason and reverence, endowing each mental disposition with a degree of authority. There is no better place a nation can be. ◼

***Special to the* Hoover Digest.**



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Fouad's Way

The late Hoover fellow made it his life's work to **teach the United States and the Arab world about each other.**

By Samuel Tadros

Will the Arabs ever come to grips with Fouad Ajami's legacy, and his love for them? A year after his death, as the Arab world continues its descent into the abyss, it seems fitting to remember this scholar whose remarkable qualities led him down a different path, away from Islamism, nihilism, or the mirage of deliverance that continually visits the world he was born into.

Fouad was first and foremost a teacher. Reading, being taught by, or talking to Fouad was not a conversation about politics as a detached subject—of rulers and armies, victories and failures—but instead an intercourse with the peoples of the region, their hopes and mirages. It was a living experience he invited his students to share. He was, as Leon Wieseltier pointed out, "a political scientist whose preferred 'data' were poems and sermons."

In this, Fouad personified liberal education as it was meant to be, and as Leo Strauss described it: "liberation from vulgarity. The Greeks had a beautiful word for 'vulgarity'; they called it *apeirokalia*, lack of experience in things

***Fouad Ajami** (1945–2014) was a senior fellow at the Hoover Institution and the co-chair of Hoover's Herbert and Jane Dwight Working Group on Islamism and the National Order. **Samuel Tadros** is a contributor to the Herbert and Jane Dwight Working Group, a research fellow at the Hudson Institute's Center for Religious Freedom, and a Professorial Lecturer at the Paul H. Nitze School of Advanced International Studies (SAIS) at Johns Hopkins University.*

beautiful. Liberal education supplies us with experience in things beautiful." For Fouad, the only way to understand the vulgarity of Arab politics was to detach oneself from it and immerse oneself in the experience of things beautiful.

THE CROSSROADS OF 1967

Fouad was shaped by the bitterness of the 1967 defeat. The young enthusiast for Arab nationalism and its tragic hero, Gamal Abdel Nasser, had been mugged by reality as the Arab humiliation played out in the sands of Sinai. The magnitude of the defeat horrified Arab intellectuals at the time, Fouad among them. Defeat, however, like the Lord, works in mysterious ways. Some were transformed into Islamists, others into champions of romanticized revolutionary Palestinian activism, while nihilism took hold of many of the rest.

Fouad Ajami wanted to see the Arabs "emerge from the political quicksand." [Hoover Institution]

But if Fouad shared this transformative moment with other Arab intellectuals, he was, as Michael Doran called him, "an original, a huge personality and intellect who followed his own star." Discussing Fouad's book *The Arab Predicament*, Egyptian intellectual Gamal Roshdy, whose writings continue Fouad's legacy, told me:

> For Ajami, 1967 was not just a setback, nor was it a military defeat; it was an embodiment of something rotten and fundamentally wrong, deeply rooted in Arab culture and society. Ajami was brave enough to bring this "thing" out into the open. It was like revealing a family secret kept in the dark for so long. No wonder the family rejected him as an outcast.

Fouad's argument, that "the wounds that mattered were self-inflicted," made him an outcast. Evoking the words of the greatest of Arab poets, Al-Mutanabbi, Fouad was "alone, without companion, in every town." He was a man excommunicated by his tribe for his insult to its mirage of greatness and cursed by Arab pseudointellectuals. It is testament to Fouad's qualities that

he did not allow such curses to overwhelm him, though there is no doubt that they hurt. In our first meeting, he warned me that my path would be filled with similar curses. Switching to Arabic, he remarked, "They will curse you, they will curse your wife."

Yet Fouad never allowed that pain to consume him, nor was he blinded by hate towards his tormentors. After he died, his critics invented a new accusation. After Edward Said's death, they claimed, Fouad had said "good riddance." Obviously they never knew Fouad. Once, when I paid Fouad a visit in Manhattan, we were walking through his neighborhood and he pointed out where Said had lived. "We saw each other on the street in Said's last days but never talked," he told me. His voice changed and he added, "I wish we had made peace before he died." Said, by far Fouad's intellectual inferior, had spent years accusing Fouad of every sin, and yet, while pained by those attacks and while rightly dismissive of Said's pseudoscholarship, Fouad rose above it. I wonder whether his nemesis would have done the same.

Ajami believed that the United States could deliver something to the Arab world it desperately needed: liberty.

One favored line of attack was to dismiss Fouad as a Shi'a and an American who had no empathy for the region. "Those attacks were what stung him most," Lee Smith wrote, "that he was simply acting on sectarian impulses." It must have perplexed his detractors, if they even sought to understand, how Fouad the Shi'a had championed the Sunni rebellion against the House of Assad. Indeed Fouad's Shi'ism affected his life, but above all he was a human being, and his deep attachment to the plight of the Shi'a did not make him incapable of transcending that plight. An Arab Christian's passion for the plight of Middle East Christians, by the same token, does not make him less of an Arab. Only in a region incapable of accepting the complexity of multiple identities, where breaking with the dominant tribal mindset is dismissed as a product of sectarianism, can such an accusation be leveled. Yet many academics were eager to repeat the hatreds of the region as facts.

IRAQ AND BEYOND

Those who focused on Fouad's championing of American power in the region also missed the mark. As Michael Young noted: "What really mattered to Fouad was not American power per se, but the fact that it might be used to transform the Middle East democratically. It was born of his deep frustration

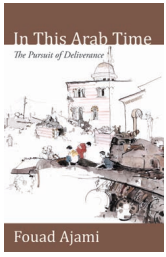
with an Arab world which, for most of the time he studied it, could not break free from suffocating authoritarianism and sterility." Fouad did not lack empathy for the peoples of the Arab world; he overflowed with empathy. It was precisely that empathy that drove him to support the invasion of Iraq. Fouad believed that the United States could deliver something to the region it desperately needed: liberty. Fouad, as Bernard Haykel remarked, wanted to see the Arabs "emerge from the political quicksand they had sunk into."

Fouad Ajami was "an original, a huge personality and intellect who followed his own star."

Will the peoples of the Arab world ever recognize that the wounds that mattered were self-inflicted and try to heal them? Arabs continue clinging to conspiracy theories and refusing to take responsibility for their fate. But Martin Kramer, in his testimonial about Fouad, believes change will eventually come. " 'In time,' [Fouad] wrote in his last message to me, 'you will fully understand and forgive. In time, I believe, the Arabs will do the same.' "

In the words of the Arab poet Abu Firas al-Hamdani, "My people will remember me in times of trial. . . . It is in the darkest of nights that the moon is missed."

***Special to the* Hoover Digest.**



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Sub-standardized Testing

Ensuring that high school students learn about America only at its worst.

By Peter Berkowitz

Fifty-five distinguished scholars have published an open letter protesting the one-sided, politicized curriculum framework introduced last year by the College Board to prepare high school students for the Advanced Placement exam in US history. The scholars assert that the College Board's framework exposes the teaching of American history to "a grave new risk." It does this and worse.

By obscuring this nation's founding principles and promise, the College Board's US history guidelines will erode the next generation's disposition to preserve what is best in the American political tradition. It will also weaken students' ability to improve our laws and political institutions in light of America's constitutional commitment to limited government, individual liberty, and equality under law.

The College Board is a powerful not-for-profit organization that writes, administers, and grades not only AP exams in more than thirty fields but also the SAT taken by college applicants. Its laudable goal is to help students prepare for college by promoting "excellence and equity in education."

***Peter Berkowitz** is the Tad and Dianne Taube Senior Fellow at the Hoover Institution and a member of Hoover's working groups on military history and foreign policy.*

Advanced Placement high school courses provide "the equivalent of a two-semester introductory college or university US history course." To assist high school teachers in the design of these courses, the College Board framework claims to present "thematic learning objectives" that "are written in a way that does not promote any particular political position or interpretation of history." This is far from the truth.

SCHOLARS' "INCESTUOUS CONVERSATIONS"

A big part of the problem stems from the College Board's intention to facilitate the construction of courses that "align with college-level standards." Created by professors and high school teachers, the College Board's US history curriculum framework embodies not only ideas and issues associated with college-level study but also the intellectual prejudices and partisan preferences that increasingly deform university history teaching.

The framework presents post–World War II conservatism as grounded in fear and belligerency.

Earlier this year Gordon Wood, a pre-eminent scholar of the American founding, took to the pages of the *Weekly Standard*—a noteworthy choice, since so many of Wood's non-academic essays have appeared in the *New Republic* and the *New York Review of Books*—to explain the decline of his discipline. His recent essay lamented that the rise of identity politics has all but blotted out traditional scholarship. "The inequalities of race and gender," he wrote, "now permeate much of academic history-writing, so much so that the general reading public that wants to learn about the whole of our nation's past has had to turn to history books written by nonacademics who have no PhDs and are not involved in the incestuous conversations of the academic scholars."

The College Board, however, takes its cue from the professors immersed in those incestuous conversations. Although it declares that its US history program aims to teach students "to use historical facts and evidence to achieve deeper conceptual understandings of major developments in US history," the College Board's framework highlights developments that correspond closely to progressive priorities and reflect politically correct dogmas.

The framework focuses on social history, which embraces the experience of ordinary people and minorities, while relegating the traditional topics of narrative history—constitutional principles and the unending debate about their

reach and application, as well as diplomacy, military strategy, and statesmanship—to bit parts in the story of America.

In addition, the framework emphasizes European conquest of native peoples, economic exploitation, and environmental abuse. It subordinates the formation of American national self-awareness and sovereignty to global forces and multicultural perspectives. It stresses the distinct group identities that have developed within the United States but gives little space to American citizenship. It showcases the rise of early twentieth-century progressivism, the mid-twentieth-century New Deal, and 1960s liberalism as bold responses to real-world challenges but presents post–World War II conservatism as grounded in fear and belligerency. And it dwells on America's sins, real and imagined, while soft-pedaling America's remarkable achievements in lifting people from poverty, assimilating immigrants from all over the world, and securing liberty at home and abroad.

"WARTS AND ALL"

The professors opposing the College Board framework stress that they do not seek to replace its progressive and politically correct curriculum with a conservative and adulatory one. They disavow any interest in suppressing the dark side of American history. Rather, in the spirit of a liberal education suited to a free people, they call for a curriculum that presents "our unfolding national drama, warts and all, a history that is alert to all the ways we have disagreed and fallen short of our ideals, while emphasizing the ways that we remain one nation with common ideals and a shared story."

The curriculum framework embodies the intellectual prejudices and partisan preferences that increasingly deform history teaching.

In response to critics, Trevor Packer, head of the College Board's AP programs, stated in April in a letter published in the *Wall Street Journal* that his organization would "release a new edition of the course framework which will clarify and encourage a balanced approach to the teaching of American history."

Even if the College Board were to meet critics more than halfway, its effectual monopoly still ought to be broken because the nation's schools should not be compelled to submit to a single approved account of US history.

In pursuit of genuine reform, a good next step would be the creation of a company to compete with the College Board as a testing and accrediting agency. This would give school districts across the country a choice about how to prepare their high school students for college-level study of American history.

Such an approach to curing the defects of the contemporary curriculum flows directly from the instructive arc of US history, which bends toward freedom. H

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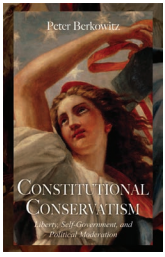

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Bridge of Spies

The Hoover Archives holds the papers of James Donovan, the key figure in a celebrated Cold War spy swap. Now a new Steven Spielberg film, starring Tom Hanks as Donovan, tells Donovan's story.

By Jean McElwee Cannon

This month Dreamworks Pictures released *Bridge of Spies*, a cinematic thriller based on the life of James Donovan, a lawyer turned intelligence operative whose papers are housed at the Hoover Institution. Directed by Steven Spielberg, written by Matt Charman and Joel and Ethan Coen, and starring Tom Hanks, the film tells the story of a Brooklyn-based attorney who, during the height of the Cold War, undertook the unpopular job of defending suspected Russian spy Rudolf Abel—and then, after Abel was convicted, negotiated the KGB agent's exchange for American U-2 pilot Francis Gary Powers, who had been shot down and captured by the USSR in May 1960.

The dramatic story of Donovan's Cold War exploits is documented in the photographs, diaries, memoirs, notebooks, and correspondence in the extensive James Donovan Collection at the Hoover Institution Library and Archives. From ciphers used in the famed "hollow nickel affair" to rubles given to Donovan by KGB operatives, the collection provides vivid insights into one of the most publicized lawsuits and spy exchanges of the twentieth century.

***Jean McElwee Cannon** is the assistant archivist for communications and outreach at the Hoover Institution.*

TO CATCH A SPY

Born in 1916 in New York City, Donovan attended Fordham University and later attained a law degree from Harvard. During World War II, he served as general counsel of the Office of Strategic Services, a predecessor of the CIA, and in 1945 as assistant to the US chief prosecutor of the International Military Tribunal at the Nuremberg Trials. Thus, by the time Rudolf Abel was arrested by the FBI on charges of conspiracy in 1957, Donovan was a well-regarded attorney with extensive military experience—making him a prime candidate to defend the alleged spy. Before approaching Donovan, the Brooklyn Bar Association had courted many young, ambitious lawyers, but each had turned down the case, fearing the bad publicity of aligning their names with such a high-profile, unpopular defendant.

In a draft of a memoir of the case, Donovan offers an amusing anecdote related to discussing the possibility of taking the case with his golf instructor, who asks, "Why would anyone want to defend that son of a ___?" Donovan notes that he did his best to explain legal due process, but the golf pro still considered his student's "twisted thinking" a reason for his "miserable golf swing." Despite being snubbed in many circles for representing an alleged enemy of the state, Donovan—determined on principle to maintain the American constitutional right of trial by jury—agreed to take the case.

Rudolf Ivanovich Abel (codename: MARK) was the highest-ranking spy to be captured on American soil up to 1957, and the Donovan Collection's two oversized albums of newspaper clippings about the case reveal that his trial was a national media sensation. Abel had entered the United States illegally through Canada in the late 1940s and, using Soviet funds, established his cover as that of an amateur artist (Abel did indeed draw and paint; the paintings he produced in prison would become souvenirs sought by FBI agents). As Donovan observes in his memoir *Strangers on a Bridge* (1964), Abel possessed a sharp and cultivated intellect: he had strong opinions about art, literature, and architecture, and enjoyed engaging in philosophical—and more rarely political—conversations.

Abel also had a technical turn of mind: when FBI agents raided his art studio in downtown Brooklyn, they found it littered with books about mathematics, coded messages, handcrafted hollowed-out items (such as pencils, sanding blocks, and cigarettes) for carrying ciphered messages, photography equipment for the production of microdot messages (which he would bind into copies of *Better Homes and Gardens* and send to agents abroad), and a shortwave radio set that Abel used to send information to and from Moscow (Abel had worked as a telecommunications operator for the KGB subsequent

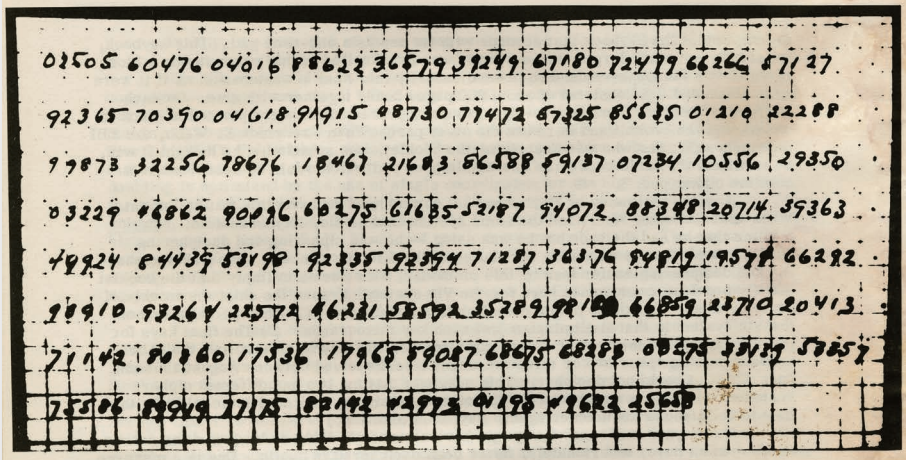


Fig. 6 -- Cipher message found in Abel's possession.

Fig. 7 -- Rudolf Ivanovich Abel: 'Mark.'

Fig. 8 -- Reino Hayhanen: 'Vik.'

MISSION FOR MOSCOW: Soviet spies Rudolf Ivanovich Abel—a.k.a. "MARK"—and Reino Hayhanen, known as "VIK," communicated by cipher and dead drops, sites where they could unobtrusively leave messages for each other. The two spies disliked each other. Hayhanen eventually defected to the US embassy in Paris and betrayed the espionage operation, leading to Abel's arrest. [Hoover Institution Archives—James B. Donovan Papers]

***A FAIR TRIAL FOR EVERYONE:** James Donovan, a Harvard-trained lawyer, served as general counsel for the Office of Strategic Services during World War II and assisted the chief US prosecutor at the Nuremberg Trials. His combination of military and legal experience made him a natural choice to defend Rudolf Abel, whose notoriety had made it difficult to line up an attorney. Donovan saw his defense of Abel as upholding the right to a fair trial by jury.*
[Hoover Institution Archives—James B. Donovan Papers]

to World War II). In terms of both his contacts and technical prowess, Abel was considered a Soviet master spy.

How did the FBI catch such an accomplished agent, who had been operating discreetly and successfully for nearly a decade? As Donovan recorded in his legal notes, Abel's one mistake during his time in the United States was to provide one of his underling agents, Reino Hayhanen, the address of his studio. Typically, Soviet spies were not allowed to know each other's living quarters; instead, they would communicate using prearranged "dead drops"—sites where one could unobtrusively plant messages for later retrieval. Abel's dead drops included a crack in a cement wall running from 165th to 167th Streets along Jerome Avenue in the Bronx, behind a loose brick under a bridge in Central Park, and under a lamppost in Prospect Park, within sight of the Donovan home. Messages were produced on microfilm and left. Abel used self-fashioned pencils, screws, flashlight batteries, and coins as message containers. On one occasion in the early 1950s, however, Abel communicated with Hayhanen in person, allowing Hayhanen access to the studio to pick up cumbersome photography equipment. Armed with knowledge of Abel's whereabouts, Hayhanen thus had the potential to become a dangerous enemy.

Abel had a sharp, creative mind and was skillful at the tools of spy craft.

Throughout his career as Soviet spymaster in New York, the savvy and discreet Abel fostered a deep dislike for Reino Hayhanen: unlike the quiet and meticulous Abel, Hayhanen drank, beat his wife, had police called to his house by neighbors, and squandered the money given him by the KGB. At some point in the early 1950s Hayhanen mistakenly spent one of Abel's hollow nickels—one with a coded message inside it. The coin then circulated in New York until a Brooklyn newsboy named James Bozart dropped it on the street in 1953. The coin split in half, revealing a microfilmed message wrapped in tissue paper. Bozart turned it over to the police, who gave it to the FBI. The FBI recognized the cipher as Soviet, but initially failed to crack the code.

Meanwhile, Hayhanen's outrageous behavior—and alcohol consumption—escalated, and finally in early 1957 an incensed Abel ordered the agent back to the USSR. Angry with Abel—and fearing reprisal once he returned to Russia—Hayhanen defected to the US embassy in Paris. In return for sanctuary and as revenge against Abel, Hayhanen disclosed the Soviet cipher system, the keys of which were embedded in the lyrics to a popular Russian folk song and important dates in Russian history. In the summer of 1957, an

FBI cryptoanalyst applied Hayhanen's cipher keys to the hollow-nickel cryptogram and read the message.

Armed with Hayhanen's official testimony documenting Soviet conspiracy, the FBI immediately moved to detain Abel. FBI agents contacted the Immigration and Naturalization Service and implored them to obtain a warrant to arrest Abel and search his dwellings. Early in the morning on June 21, 1957, a combined team of immigration and FBI agents laid siege to Latham's Hotel in Manhattan, where Abel was living under an alias. In his hotel room, agents found much of the same equipment as in the art studio: radio equipment, cameras, codebooks, hollowed-out tie pins and cufflinks, and maps on which major US defense sites had been marked. They also found the spymaster himself, sleeping soundly and in the buff on a hot summer day.

Once he knew where the master spy Abel kept a studio, Hayhanen acquired the potential to become a dangerous enemy.

Abel was interrogated and his possessions seized. He was then sent to an alien-detention center in McAllen, Texas, where for several weeks FBI agents continued to question him, hoping both to gain information about the Soviet spy network in America and to persuade Abel to save himself from charges by agreeing to turn into a double agent. Abel resisted, and finally, left with no recourse, the FBI moved to indict Abel for conspiracy.

DOES THE CONSTITUTION OUTRANK THE FBI?

In accepting Abel as a client, Donovan acquired a case rife with complexities of due process, media hype, and the potential to put American intelligence concerns at risk. The most daunting question of the case, perhaps, concerned whether or not Abel's Fourth Amendment rights had been violated. Abel had officially been arrested by the Immigration and Naturalization Service, using an administrative warrant; and yet his home had been searched and seized, and he himself had been held without charges or legal representation, as if by criminal warrant. Donovan immediately recognized that this question of due process was probably his best hope of having Abel acquitted. Only by dismissing the (certainly overwhelming) evidence of conspiracy as impermissible could Abel avoid conviction. Donovan also realized that he would have to convince the jury that Hayhanen—who had not been indicted for conspiracy despite confession, and who by trade was a professional liar—could not be considered a credible witness.

The Donovan archive at Hoover, which includes Donovan's notes and research materials for the trial, documents how extensive and convincing the evidence against Abel was. The collection houses the extensive notes kept by Donovan's trusted assistant Thomas Debevoise (later the attorney general of Vermont), who made exhaustive lists of Abel's aliases, code names, dead-drop sites, associates (including Julius and Ethel Rosenberg), and items confiscated from hotel rooms and apartments where Abel had stayed. The jury would have ample evidence of Abel's espionage activities, but could Donovan convince the jury that even a foreign spy on US soil was as deserving of Fourth Amendment rights as a US citizen? Repeatedly, both in his notes and in the press, Donovan stated that he wished the case to try not the whole of Soviet Russia, but a single man with a singular set of circumstances.

Early in the trial Donovan and his team met great resistance from presiding Judge Mortimer Byers, who dismissed Donovan's request for a hearing concerning the legality of the search and seizure. Throughout the trial, Donovan emphasized that the naturalization agents who arrested Abel were pawns of the FBI: the FBI wished to seize Abel without raising the awareness of Moscow and to turn him quietly, at which point charges would, presumably, disappear. When Abel resisted, the FBI was left with no choice but to press criminal charges—yet the charge was based on evidence acquired through an administrative, rather than criminal, warrant.

Hayhanen, who was careless and indiscreet, accidentally spent a hollowed-out nickel used to swap coded messages.

Donovan also alerted the jury that the as-yet-unindicted Hayhanen was most certainly, through cooperation, attempting to save himself from criminal charges. In cross-examination, Hayhanen's testimony became so bumbling that a federal agent at the courthouse told a magazine writer, "That guy couldn't get a job as a spy in a Marx Brothers movie." Abel himself did not take the stand; Donovan felt that if pushed in cross-examination, Abel would be liable to express Soviet values that would alienate the jury.

A MODEL PRISONER

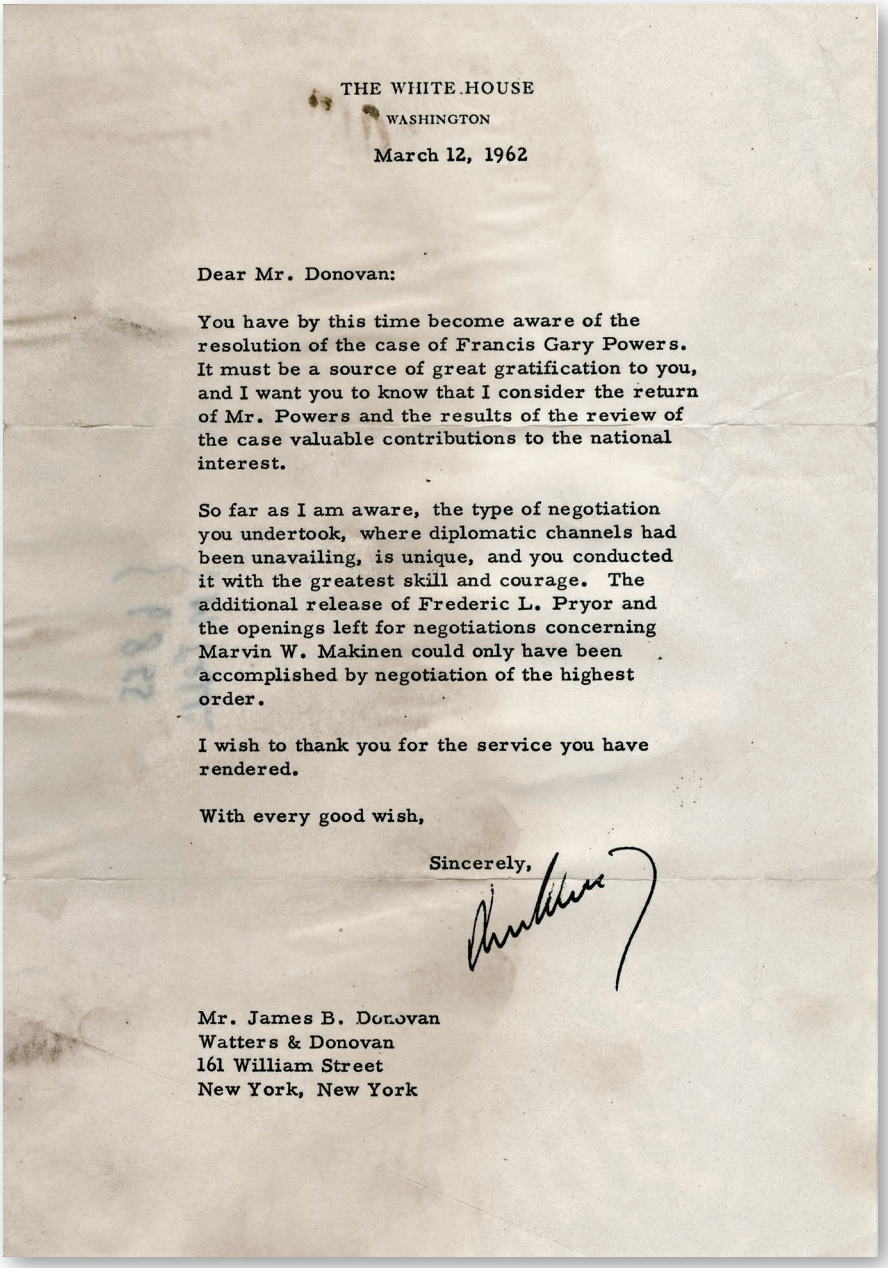
Though he delivered elegant, constitutionally grounded arguments against false arrest as well as an impassioned closing statement, Donovan lost the case and Abel was sentenced to forty-five years in prison for conspiracy. Documents from the Donovan collection record the frequent conversations

Donovan had with his client regarding the US government's accusations of conspiracy and espionage, and their consequences. *Bridge of Spies* stills released by Dreamworks Studios feature images of Donovan, played by Tom Hanks, questioning Abel, played by Mark Rylance, in scenes reminiscent of those found in notes from the Donovan archive. In his first conversation with Abel, Donovan emphasized that the government would seek the death penalty unless Abel agreed to work in counterintelligence or could prove to be of legitimate Russian military rank and thus deserving the status of political prisoner. In this conversation, Abel spuriously admitted his guilt, refused to cooperate with the American government, and described his rank as "quasi-military":

> He [Abel] asked me what I thought about his situation, adding with a smile that he was afraid he had been "caught with his pants down." I agreed with him and said I frankly thought that with the new penalty of capital punishment for espionage it would be a miracle if I could save his life. I told him that just from the press reports, and a quick glance at the official file in the Clerk's office, the evidence of the facts appeared to be overwhelming; that it would only be through some possible legal defect in the process of the trial, plus a tremendous change in public opinion, that his life could be saved. I stated on the latter point that it would be important to see the public effect of my first press conference, of which he seemed to have learned. He made a few gloomy observations on obtaining a fair trial in an atmosphere "still poisoned by McCarthyism."

Despite the overwhelming evidence proving his client's guilt, Donovan performed the miracle of saving Abel's life—largely by arguing that Abel had been a "colonel" in the Soviet intelligence service. Unlike the Rosenbergs, US citizens and traitors against their country, Abel and his espionage activities had been sanctioned by a state power and therefore did not fall under the rubric of demanding the death penalty. Abel was moved to Atlanta Federal

WELL DONE: President John F. Kennedy congratulates James Donovan after the successful spy exchange in Berlin. Kennedy and Donovan had received feelers, presumably from the KGB, suggesting that Rudolf Abel be swapped for Francis Gary Powers, the U-2 pilot who had been shot down over the Soviet Union. Attorney General Robert Kennedy cleared the way by commuting Abel's sentence. [Hoover Institution Archives—James B. Donovan Papers]



THE WHITE HOUSE
WASHINGTON

March 12, 1962

Dear Mr. Donovan:

You have by this time become aware of the resolution of the case of Francis Gary Powers. It must be a source of great gratification to you, and I want you to know that I consider the return of Mr. Powers and the results of the review of the case valuable contributions to the national interest.

So far as I am aware, the type of negotiation you undertook, where diplomatic channels had been unavailing, is unique, and you conducted it with the greatest skill and courage. The additional release of Frederic L. Pryor and the openings left for negotiations concerning Marvin W. Makinen could only have been accomplished by negotiation of the highest order.

I wish to thank you for the service you have rendered.

With every good wish,

Sincerely,

Mr. James B. Donovan
Watters & Donovan
161 William Street
New York, New York

"SKILL AND COURAGE": President Kennedy's letter of congratulations cites Donovan's "negotiation of the highest order." Frederic Pryor, a Yale student who had been arrested in East Germany, was also freed by the Soviets as part of the Powers deal. Marvin Makinen, a University of Pennsylvania student arrested in Kiev, was not released until 1963, when he and an American priest were swapped for two Soviet spies. [Hoover Institution Archives—James B. Donovan Papers]

Penitentiary, where he spent time tutoring his cellmates, learning screen-print techniques, and designing and printing an official prison Christmas card (Abel received special permission to send one to Donovan, and it is now found in the archive among dozens of letters written by Abel to Donovan during the former's incarceration).

Donovan was the inmate's only visitor. The two men, who by now knew each other well, spent long hours in the warden's office discussing art, literature, and law. When Donovan joked that Abel's new art studio was superior to his previous studio in Brooklyn, Abel replied, "The light is better and so is the rent." Abel's letters in the archive attest to the fact that he did not complain about prison conditions; nonetheless, the two men decided to appeal the 1957 ruling, and on February 25, 1959, the US Supreme Court reopened the Abel case.

Donovan's forcefully argued statement before the Supreme Court emphasized due process as a safeguard of just law and freedom—one that separates America from totalitarian states: "By the use of the evidence obtained in this manner, through this illegal search and seizure—illegal because no search warrant had been issued—this man has been convicted of a capital crime. The only place criminal proceedings, based on such practices, occur is in police states like Nazi Germany and Soviet Russia." To amplify the threat of too-powerful domestic intelligence units, he cited J. Edgar Hoover's book *Masters of Deceit* (1958), published just months before the Supreme Court argument, in which Hoover admitted that Abel was arrested by immigration officers "at the request of the FBI." On March 28, 1960, the Supreme Court decided in a 5-4 decision to uphold the decision in the Abel case. The justices submitted three different and sharply worded opinions on the case, reflecting the heat with which it had been debated in chambers. In emotional editorials across the nation journalists criticized the dissenters for a lack of patriotism bordering on treason.

THE KGB HAS A PROPOSITION

At the time of the Supreme Court ruling, Donovan expected his association with Abel to end—and yet, he mysteriously began receiving letters from "Hellen Abel," presumably Rudolf Abel's wife, who claimed to be living in East Germany. Donovan immediately suspected that the letters originated with the KGB, which was attempting to extract intimate information about the state of their valued agent. As the Donovan archive reveals, Abel's actual wife did in fact write letters to Abel before and after he was imprisoned, and the letters are drastically different in tone from those received by Donovan.

Donovan and Abel's entanglement would continue. Little more than a month after the Supreme Court ruling, an American U-2 spy plane was shot down over the USSR and its pilot, Francis Gary Powers, imprisoned and interrogated by Russian secret police. The U-2 plane was put on display in Gorki Park, and the Russian government used the incident as anti-American propaganda in the international press. Fearing a far-reaching intelligence crisis, the CIA approached Donovan to appeal for help in negotiating an exchange of Abel for Powers. Meanwhile, "Hellen Abel" had written letters to Donovan, as well as president-elect John F. Kennedy, to petition for a trade of agents. In collaboration with the CIA, Donovan sent a message to Hellen Abel indicating that a trade could be arranged, but only with the utmost caution and no publicity. "Accordingly," Donovan wrote, "if the foregoing meeting is satisfactory please cable me at my law office only the message 'Happy New Year.' " This simple telegram, stating "Happy New Year," is archived in the Donovan collection at Hoover.

Thus in early February 1962, Donovan traveled to Germany where, alone and without recording devices or weapons, he crossed the Berlin Wall to meet with agents at the Soviet embassy. Donovan spent two exasperating weeks negotiating with KGB operative and second secretary Ivan Alexandrovich Schischkin, as well as two women who he suspected were paid impersonators of Abel's wife and daughter. Finally working past mutual distrust and much heated debate upon terms, Donovan and Schischkin agreed to trade the spies on February 10. To enable the exchange, then–attorney general Robert Kennedy commuted Abel's sentence.

The spymaster and his attorney would never see each other again after the exchange on the Bridge of Spies.

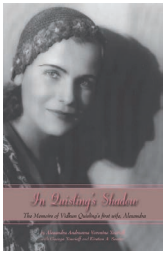
On a bitterly cold morning at 8:20, Powers and Abel crossed the famed Bridge of Spies—the Glienicke Bridge, a small steel structure across the Havel River that links Berlin with Potsdam. Beginning with Abel and Powers, the Glienicke Bridge would become the site of several high-value spy exchanges between the USSR and the West, thus becoming a lasting emblem of the Cold War.

In his memoir of the Abel case, Donovan referred to Abel as "an extraordinary individual, brilliant and with the consuming intellectual thirst of every lifetime scholar." The spymaster and his attorney would never see each other again after the exchange on the bridge, but late in August 1962 Donovan

SPY STORY: Director Steven Spielberg, German leader Angela Merkel, and star Tom Hanks chat on the set of* Bridge of Spies *during filming last fall. The final group of prisoners exchanged on the notorious Glienicke Bridge included the Soviet refusenik Anatoly Shcharansky, who crossed in February 1986. [© BPA/Polaris/Guido Bergmann]

received a package from Abel as a mark of "gratitude for all you have done for me." The package, which had been smuggled across the Berlin Wall, contained two rare, sixteenth-century, vellum-bound editions of *Commentaries on the Justinian Code*. For Donovan, the Abel case was finally closed.

***Special to the* Hoover Digest.**



Available from the Hoover Institution Press is ***In Quisling's Shadow: The Memoirs of Vidkun Quisling's First Wife, Alexandra****, by Alexandra Yourieff, W. George Yourieff, and Kirsten A. Seaver. To order, call (800) 888-4741 or visit www.hooverpress.org.*

On the Cover

"When the empire is at war, so also is Australia."
— Prime Minister Joseph Cook (August 5, 1914)

A raging wildfire and an indifferent spectator are the focus of this 1918 poster created to support Australian recruiting in the last year of the Great War. The image is apt—in Australia, as in California, wildfires maraud like an invading army and must be beaten back with everything at hand. World War I gave the young nation a chance to show that Australians could be counted on to put out major conflagrations far beyond their shores. That experience centered on a particular baptism of fire known as Gallipoli.

At the outbreak of the war, Australia was eager to help Britain fight the Central Powers. Recruiters had to turn away thousands. In 1914, fifty thousand men surged forward to join the army, which immediately achieved a few modest victories in New Guinea and Egypt. Gallipoli, however, was a searing failure. Between April 1915 and January 1916, Allied forces carried out an amphibious landing and then struggled to gain a toehold on the northern side of the Dardanelles, hoping to march on to Constantinople. Bottled up on the beach for eight months, many were killed or wounded; Australia lost more than eight thousand men (much worse would follow on the Western Front). Despite the losses, Gallipoli "became the common tie forged in adversity that bound the colonies and people of Australia into a nation," notes the army's website. In the battle's aftermath, Australians developed both a national and an Anzac (Australian and New Zealand Army Corps) identity. Anzac Day—April 25, the date of the first Gallipoli landings—is a day of remembrance in both countries.

Australia had been independent just thirteen years when the war began. Out of a population of five million, enlistments totaled 165,000 in 1915 and stayed strong the following year at around 124,000. But in 1917 the numbers flagged, with only 45,000 enlisting. By then Australians were deeply divided

over whether to start military conscription. Universal military training for men was already the law, but soldiers could not be ordered overseas. By 1918, when Germany was launching what would turn out to be its final offensive, Australians had twice voted down compulsory service in nationwide referenda—and the number of volunteers continued to lag. Unable to pass nationwide conscription, the government looked for other ways to increase enlistments.

This poster urged Australian men to stamp out their shared foe without further delay or special pleading. It was designed by H. J. Weston, a leading graphic artist, and printed by the Win the War League in conjunction with the New South Wales Recruiting Committee. University of Melbourne scholar Grace Moore writes on the website *Histories of Emotion* that the poster "masterfully transform[ed] the European conflict into an urgent and pressingly familiar problem" and gave the Australian people the inspiration they needed to push back the German offensive and finish out the war. Ultimately, 38 percent of men between eighteen and forty-four signed up to fight during World War I.

More than sixty thousand Australians were killed in the Great War. The "war to end all wars" was not Australia's last bushfire, but it has been by far its most destructive.

— Aryeh Roberts

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The Hoover Institution gratefully acknowledges the support of its benefactors in establishing the communications and information dissemination program.

Significant gifts for the support of the* Hoover Digest *are acknowledged from

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The Hoover Institution gratefully acknowledges generous support from the Founders of the Program on American Institutions and Economic Performance

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