

VOL. 11 ISSUE 3 | SUMMER 2017

# *in*FOCUS

QUARTERLY

AMERICA: MAKING IT AND KEEPING IT



**Juliana Geran Pilon** on Jews and Nationalism | **Tevi Troy** on Healthcare | **Abraham H. Miller** on Alternatives to College  
| **Pinar Cebi Wilber** on Capital Formation | **Stephen Bryen** on Protecting Our Privacy | **Tara Ross** on the Electoral  
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Featuring an Interview with United States Senator **Rob Portman** (R-OH)

# LETTER FROM THE PUBLISHER

Our electrifying, exhausting, and sometimes exhilarating election is over; the inauguration is over; the first 100 days are over.

The issues that confronted us before the election are still here, and issues demand answers – sometimes in the form of legislation and implementation, sometimes in the form of individuals doing what they can alone and in groups to make this the best country it can be. That’s as it always has been. But there are other issues that don’t lend themselves as easily to legislative solutions – or to solutions at all – but lend themselves to reflection.

The domestic policy issue of inFOCUS asks broadly, “How can we make this the best America?” That requires more questions: Who are we? Who might we be in 25 years? Where did we come from politically and governmentally? What do we do? What do we want? How do we make ourselves safe? What do we expect from our government; is that too much or too little?

Looking back at who we are and how we got to this place, George Friedman considers the national debt from the Founders’ perspective and Tara Ross looks at the Electoral College. Judicial overreach is the purview of Elizabeth



Slattery. Capital formation and alternatives in higher education will help determine our future; Pinar Cebi Wilber and Abraham Miller address them. Tevi Troy takes on health care, and Stephen Bryen warns of our decreasing personal privacy – both to hackers and to the government. Nationalism is an often-frightening word to Jews and Americans, but Juliana Pilon has a different view. Immigration is too big for one article, so Ramesh Ponnuru, Michael Barone and David Azarrad tackle various elements of a difficult subject.

Shoshana Bryen reviews Tevi Troy’s *Shall we Wake the President? Two Centuries of Disaster Management*.

Don’t miss our interview with Sen. Rob Portman – his length and breadth of government service, both legislative and executive, make him a great resource and a real talent.

If you appreciate what you’ve read, I encourage you to make a contribution to the Jewish Policy Center. As always, you can use our secure site: <http://www.jewishpolicycenter.org/donate>

Sincerely,

Matthew Brooks,  
Executive Director

## inFOCUS VOLUME 11 | ISSUE 3

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inFOCUS is published by the

Jewish Policy Center,

50 F Street, NW, Suite 100,

Washington, DC 20001.

(202) 638-2411

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# How Jews Understand Nationalism, and How they Should

by JULIANA GERAN PILON

The dialectical trajectory of human history had presumably targeted nationalism for extinction. Its synthesis had been all but preordained into the inexorable next stage, variously described as internationalism, globalization, post-modernism, or transnationalism. But things didn't quite work out as expected. Though its persistence has confused progressives of the academy, who had written it off as just one more ideological casualty along the march to Progress Uber Alles, nationalism stubbornly refuses to go away.

Most inconvenient of all perhaps is Zionism, whose strength appears to thrive on adversity. Not that many of its own opinion-makers do not feel uneasy. For as Professor Anita Shapira of Tel Aviv University observed in the journal *Shma*, "the Jewish state is not immune

again serve as the Jews' true homeland and their refuge of last resort.

But after all, nationalism need not exclude a globalist outlook. A Dane or a Latvian may be a proud citizen of his country while merrily doing business with Japanese partners, patronizing Italian restaurants, and enjoying the tango. But there is a catch: Danes and Latvians are also members of the European Union, which presumably amounts to a "higher," trans-national European identity. It's as if belonging to the globalist EU somehow mitigates the sin of retrograde national identification.

But that narrative is, basically, a hoax. For despite the EU's self-proclaimed image as a post-nationalist modern political structure, it is in fact more like a socialist version of the United States, a United States of Europe with-

other immigrants has decidedly exacerbated the crisis. According to a study just released by the American Enterprise Institute, "The EU's asylum system was not designed to deal with large, irregular influxes of asylum seekers and places unreasonable strains on individual countries." Though few news media outlets cover the true magnitude of the economic, cultural, and especially security strains caused by these unfortunate people fleeing misery and carnage, the EU's methods of dealing with the problem have caused considerable consternation throughout the continent.

And well they should. In a Special Report published in March, *The Economist* has found that "The EU's institutions, built up over six decades, are not ideally suited to responding flexibly to challenges such as the single currency, migration or foreign and security policy. The club remains vulnerable to the charges of operating with a 'democratic deficit' that alienates many voters." In the name of globalism, the EU runs roughshod over traditions that vary from one member nation to another, to the detriment of those whose savings habits do not conform to those of, say, Germany. Calling it a "club" says it all. Not everyone who is fed up with it is a Russian troll, a far-right fascist, or an anti-Semite.

Jews have traditionally thought of themselves as a "nation" that transcends boundaries...yet without implying antagonism to nationalism as such – on the contrary.

to the global trends. Nationalism is out of fashion these days, and young intellectuals are seeking ways of avoiding this label. For them, globalization became synonymous with 'normalization,' namely, shedding the Jewish component of the state of Israel and becoming a civil society, 'a state of all its citizens.'" That of course is what Israel's enemies have long argued, in direct opposition to the basic tenet of Zionism that Israel would once

out the checks and balances of a genuine federalism. The plethora of tariffs placed on goods imported into the EU give the lie to the notion of a border-free market system. When unelected bureaucrats in Brussels, moreover, dictate where migrants may settle and how they must be treated, what most readily comes to mind is the Austro-Hungarian court of Karl Franz Joseph.

The influx of Middle Eastern and

## ■ The Left-Wing Threat to Jews

In truth, the greatest danger to the Jews of Europe today comes from radicalized Muslims and their left-wing acolytes. Gunther Jikeli, coordinator of the New York City-based Institute for the Study of Global Antisemitism and

Policy's (ISGAP) activities in France, has found that "antisemitism from Muslims has become a serious issue in Western Europe, although not often acknowledged as such." While Brexit was blamed on the "nationalist far right," a term widely perceived as essentially redundant, it was really the pro-EU Labor Party in the UK that wins the prize for anti-Zionist and anti-Semitic rhetoric. Obviously, xenophobic Jew-haters continue to infest Europe, in alarming numbers. Yet it was no Green peacenik but Dutch nationalist free marketer Geert Wilders who said he never feels more at home than in Jerusalem.

...few media outlets cover the true magnitude of the economic, cultural, and especially security strains caused by these unfortunate people fleeing misery and carnage.

To their credit, Jews have long prided themselves in proclaiming a transnational conception of human rights predicated on the equality of mankind that transcends borders. It was consistent with the notion that Judaism is above all a religious community, an idea eloquently defended by the great eighteenth century philosopher Moses Mendelsohn. In the same vein, historian Simon Dubnow described the Jewish people as an "am olam," literally "eternal people," whose home is the entire world across time and space – crediting Perez Smolenskin with coining the term. As it happens, however, Smolenskin changed his mind after the pogroms of 1881, becoming an enthusiastic preacher of Zionism. So too did Dubnow, but it was too late: he was killed in 1941 in Nazi-occupied Riga.

### ■ *A Nation Beyond Borders*

Jews have traditionally thought of themselves as a "nation" that transcends boundaries, whose special culture is not tied to residence in a specific state, yet without implying antagonism to nationalism as such – on the contrary.

Throughout the ages, many sought to become patriotic citizens of the commonwealth where they happened to reside, without abandoning their beliefs. But while this is possible in a relatively liberal state that is predicated on religious and philosophical tolerance, it is incompatible with Marxist socialism, of which modern-day internationalism is decidedly an offshoot.

The reasons were clearly articulated by the Hungarian Socialist Leader Count Michael Karolyi, who urged Jews to eschew nationalism and stick to their progressivist impulses: "The Jews

should play their historic role of building up a better world; they should bend their efforts toward the rehabilitation of Europe instead of secluding themselves among half-civilized Arabs and nursing a petty nationalism." The date was February 5, 1930.

Socialism became even more appealing to the Jews as fascism rose across Europe. Professor Shapira elaborates: "In a world where Jews filled the role of outsiders, it was only natural for us to

seek salvation in theories of universal redemption that cross national borders and states, abolish differences of religion and of origin, and predict the coming of a just kingdom on earth in which Jews would stop being foreign." Unfortunately, Marxist internationalism exploited this yearning, and the Jews succumbed

to its siren song. As the left invoked "universal brotherhood," a slogan aimed at the world's capitalist forces, forgotten was Marx's mantra "The God of the Jew is money" from his infamous essay with the monumentally infelicitous title "On the Jewish Question." Meanwhile, Hitler's "Aryan" racism, which he dubbed somewhat disingenuously as "nationalist," seems to have eclipsed altogether his belief in socialism.

### ■ *And the Nation in Israel*

Many of Israel's settlers held on to their socialist beliefs, either unwilling or unable to learn the lessons of the Soviet Union and other state-run economies. It took a while to admit that free markets work best, but at last Israel has one of the most dynamic and innovative economies in the world. At the same time, even as it embraces economic globalization, Israel cherishes and preserves its cultural heritage. It has managed to thrive despite a relentless campaign against its very legitimacy, specifically in international forums allegedly devoted to human rights, whose members are among the most vicious regimes on earth. What is more, Israel must confront a vicious, increasingly vocal BDS [Boycott, Divestment, Sanctions] movement, sponsored by the likes of the EU with support from academic centers in the United States.

Indeed, it is in America that the ideological battle is particularly momentous.

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Writing in the May 2017 issue of *Mosaic* magazine, Professor Daniel Gordis of Shalem College reports a "waning of attachment to Israel among American Jews, especially but not exclusively younger American Jews. Gordis believes that the most important reason for hostility to Israel comes from the left, and it "lies in



Young people gathering with flags of Israel at Jaffa Street in the center of Jerusalem to celebrate Israel's Independence Day.

the ethnic particularism at the core of the latter's very being." And so it is. In their Declaration of Independence, on May 14, 1948, the Jews of Palestine proudly proclaimed their intent to create "a country that, democratic in form and in function, and welcoming of all religions and ethnic identities, would unapologetically serve the security needs and cultural purposes and interests of the Jewish nation, vast numbers of whom had recently been murdered and/or abandoned by European civilization." The land of Israel was the birthplace of the Jewish people, stated the Declaration. Their spiritual, religious, and political identity was shaped there. You couldn't find, writes Gordis, a "clearer or more candid statement of national particularism, or one at greater odds with the universalist and post- or trans-nationalist affinities of so many liberal American Jews."

What will it take for them to understand the wisdom of Zionism? Will they too have to witness pogroms, as did Smolenskin in the 1880s, and then again Dubnow half a century later, before they recognize that Jews deserve a place of refuge? Is it not enough to witness the blatant double standard and perennial lying at the United Nations, where majorities routinely castigate the Jewish state for

crimes it has not committed, while simultaneously ignoring innumerable atrocities taking place elsewhere?

### ■ **Narrow-Minded Political Correctness**

The EU's political correctness is mirrored on American campuses, where antisemitism is far greater than among the population at large. As Earl Cox wrote in May in *The Jerusalem Post*, a wave of antisemitism "pervades college campuses around the nation under the guise of protecting 'oppressed' Palestinians from 'colonial' Israel. In a survey of 50 U.S. universities, more than half the students reported observing or experiencing anti-Semitism from peers or staff." The reason is not hard to find: "Today's millennials are influenced not only by liberal professors and administrators, but also by being deliberately targeted by pro-terrorism student organizations that push the right progressive buttons by portraying Palestinians as the trodden-upon underdogs and Israel as a repressive Apartheid state 'occupying' Palestinian land." Liberal internationalists are being played for fools. So Israeli nationalism is bad while Palestinian nationalism is good? Where is the logic?

Never mind. As Saul Alinsky made abundantly clear in his notorious "Rules for Radicals," logic takes a back seat to politics. It does not take a rocket scientist to recognize the many contradictions at the heart of an ideology that proclaims a leveling of inequalities while presuming to respect individual rights. A world of equal outcomes is an age-old utopia, or rather dystopia. In the real world, we settle for pluralism and, when possible, popular representation. And that requires some form of nation-state, whose members share a relatively common culture. Ideally, such political arrangements will respect the rights of minorities among them whose culture is different, which is what we mean by liberal republican democracy.

America is one such nation. Israel is another. Indeed, few other states can claim an equal commitment to the universal idea of liberty and tolerance. Not only the Jews' survival but also that of civilization itself depends on recognizing that seldom acknowledged, but critically important, fact.

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# What to do About Health Care

by TEVI TROY

**T**he current debate over health care reform obscures the many problems that exist in the U.S. health care system. Too many people are uninsured – approximately 29 million – despite spending billions of dollars under the Affordable Care Act. We spend way too much money on health care – about 18 percent of GDP, twice that of comparable nations in Europe and Israel. And we have significant disparities: if you have quality health insurance, you can have access to the best health care in the world. If you are on Medicaid or lack insurance completely, then you may not get the care you need or even maintain the type of preventive care that can keep you healthy over the long run.

How we got to this place is a long and painful story, often paved with good intentions but more often leading to bad results. Since 1965, the main building blocks for our health care system have included employer-sponsored care, Medicare for the elderly, and Medicaid for the impoverished. Medicare and Medicaid came about in 1965 as a part of Lyndon Johnson's Great Society. The idea was to fill in the gaps of those who were not getting employer-sponsored health care, namely the elderly, the disabled, and the very poor. This approach, expecting people to be covered by their employers unless they were elderly or impoverished, worked for a time, but gaps in the system began to emerge in the 1990s. One problem was the higher than expected cost of health care. When Medicare passed Congress, the House Ways and Means Committee projected that it would cost \$12 billion by 1990; the actual cost of the system in that year was \$107 billion, about nine times that initial projection.

## ■ *Health Care Inflation*

The problem of health care inflation surpassing inflation overall has been a feature of our post-1965 system, in which the vast majority of people have received their health services via third party payments. What this means is for a long time you would go to the doctor, show your insurance card and not have to pay anything at the point of service. Not paying anything out of pocket for services made it appear as if these services were "free." Making health services appear to be free had its appeal but it also took the consumer element out of health care.

In so many areas of our economy, we have experienced the consumer revolution so that we are constantly encountering higher quality goods for lower price. Think of consumer electronics like TVs, computing devices, cars, etc. Products improve and prices go down because consumers have choices. In exercising their choices, consumers impose market pressures that force manufacturers to compete, either making their products better and cheaper or going out of business.

insurance companies. The fact that the service is paid out of pocket forces consumers to shop for the best deal.)

As the chart on the opposite page shows, since we moved to a largely third-party payment system in 1965, the amount of out of pocket spending has been consistently dropping, while the percentage of health care as a percent of GDP has been steadily on the rise. More than half of health care spending came in the form of out of pocket expenses in 1965. Today, that figure is barely above 5%.

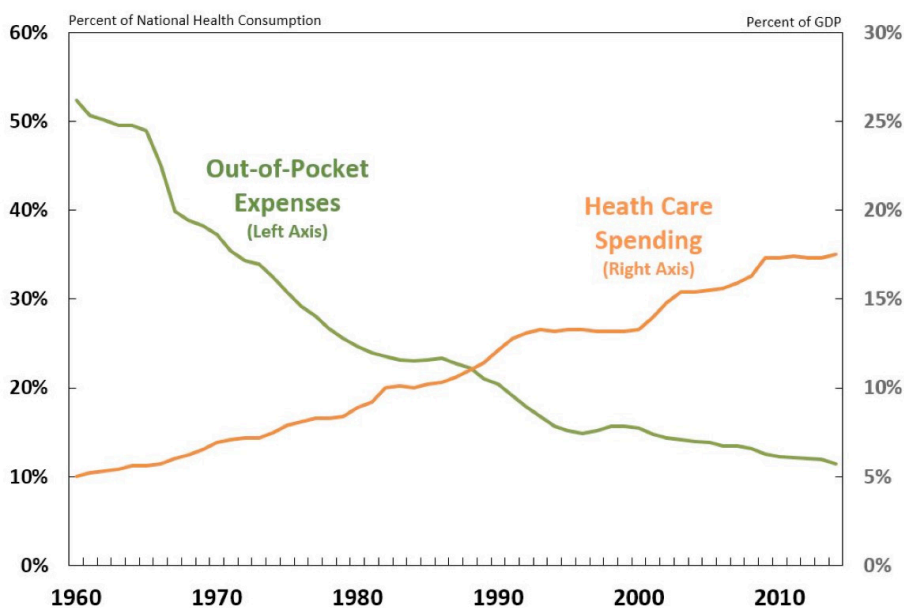
## ■ *Government Involvement*

The growth of health care spending has had a number of deleterious effects. The increasing share of health care as a percentage of GDP meant that the government began spending a greater and greater amount on health care, not only creating a challenging fiscal situation but also making government more and more involved in the health care system. This problem has become increasingly acute in Medicaid. Medicaid is a program that is financed by a mix of federal and state

In the aggregate, states now spend about 25 percent of their total budgets on Medicaid. This aggregate figure is expected to pass \$1 trillion by 2025.

This consumer revolution has clearly not happened in health care. (One noticeable exception to this is in LASIK surgery. LASIK surgery is less expensive, safer, and more effective than it was years ago. This can be attributed, in large part, to the lack of coverage provided by

spending. As the federal government – namely Congress – has frequently voted to increase the size and scope of the program, the obligations on the states to cover the people mandated by the government have increased. It is true that the federal government pays the majority



of Medicaid spending, but the states still do pay a significant percentage, traditionally about 44 percent. In addition, the states often have balanced budget amendments, something the federal government decidedly does not have. This means that the states cannot run deficits to pay for the Medicaid program, but must instead squeeze out services such as education,

spend time with their grandchildren, and do other great things in their post full-time working lives. However, they are also being financed by the Medicare system, which heavily subsidizes health care for post-65 retirees. As a result of these increased obligations on the federal government, we are looking in the long term at the bankruptcy of the sys-

The baby boomers are currently retiring at the rate  
of 10,000 a day.

public safety, and transportation. In the aggregate, states now spend about 25 percent of their total budgets on Medicaid. This aggregate figure is expected to pass \$1 trillion by 2025.

In the Medicare program, spending is much greater than originally anticipated because of increased life expectancy. At the time that Medicare passed, the average life expectancy was about 65 years. It was not unusual for people to retire and then pass away shortly afterwards. Now, life expectancy is closer to 80, and Americans enjoy decades of life following retirement, which is a wonderful thing. Many retirees travel, consult,

tem. The baby boomers are currently retiring at the rate of 10,000 a day. When the last baby boomer retires around 2029, the Medicare part B hospital insurance system will be facing insolvency.

The third problem that emerged out of the post-1965 consensus was that changes in the work force meant that people have different relationships with their employers. The time of starting a job with a large corporation at 22 and retiring from the corporation at 65 with a gold watch, pension, and lifelong health insurance is no more. The average American has 10-15 jobs over the course of a career. Many more Americans are

self-employed, or employed by small businesses that do not provide health insurance for employees. Americans also spend periods of time out of the workforce on self-development, or just taking a break. All of these people who are not employed by traditional employers must get health insurance in some other way, often via the individual market.

### ■ *Individuals in the Market*

By the 1990s, it became apparent that those who were entering the individual market were experiencing high costs and significant challenges in procuring the health insurance they needed. At this time, politics started to play a bigger role in health care. In the 1992 presidential race, Bill Clinton made health care a major issue, and pushing for expanded health care coverage via government programs has been a standard part of the Democratic playbook ever since. All of these factors – higher costs, financially strapped government systems, people lacking coverage – came to a head after the 2008 election of President Barack Obama, leading him to push for and pass the Affordable Care Act in 2010. The ACA largely failed to solve all of the many problems facing our health insurance system. But it did create subsidies for an additional 20 million or so Americans. It is these additional subsidies that have made it much harder to actuate changes along the lines of what the Republicans are trying to do. Any changes lead to accusations of Republicans "taking away" health care from people.

### ■ *Challenges to the System*

Given these many challenges, what is to be done? How can we improve our health care system in a time of extreme polarization and partisan bitterness?

There are a number of plausible pathways for improving health care in this country, but the main goal in doing so should be to reduce the cost. For too long, the default DC option has been to increase subsidies for some as a means to



Barack Obama signing the Patient Protection and Affordable Care Act at the White House in March 2010. (Photo: Pete Souza/White House)

get more people covered. This approach has had the opposite effect of that which was intended. Increasing government subsidies for a product tends to make that product more expensive for those who wish to purchase it. Reagan era Education Secretary William J. Bennett coined the “Bennett Hypothesis” distilling this concept. As Bennett put it in a 1987 *New York Times* essay, “increases in financial aid in recent years have enabled colleges and universities blithely to raise their tuitions, confident that federal loan subsidies would help cushion the increase.” Health care does not work in precisely the same way, but it is also the case that more taxpayer money in health care has not been an effective way to drive down costs.

In addition to recognizing that more government money is not the answer, policy makers need to understand the impact of incentives in health care. The incentives in our current system do not reward consumer-based behavior, which limits market disciplines from having a positive impact on price and quality. Reducing government involvement and increasing consumer engagement can help change the misaligned

incentives that currently plague our health care system. In recent years, employer-sponsored plans have been making the transition to HDHPs, or high deductible health plans, in order to increase employee engagement. According to the Kaiser Family Foundation, the percentage of workers with HDHPs grew by 8 percent in 2014 and 2015. At the same time, Kaiser Family Foundation also found that average premiums are significantly lower in those HDHP plans with a savings option. This kind of successful private sector innovation should be driving health policy changes, such as health savings accounts, which encourage individuals to save tax free to pay for health care costs. HSAs, which came out of the Bush era Medicare Modernization Act, could be expanded to help taxpayers act more like savvy consumers rather than passive beneficiaries of third party payments.

This leads to another point about the benefit of private sector innovation overall. Private sector changes in plan design such as the one outlined above are only one way in which innovation can drive down cost. We are in the midst of a technological revolution that is allowing

providers to wield new treatments and new cures, and also to allow analysts to evaluate vast swaths of data to determine what is and what is not working in health care. As promising as these new technologies are – and they are indeed quite promising – their deployment and utilization will not be driven by government. Government health determinations are too slow, too determined by politics, and too far divorced from the bottom line to allow government programs to serve as a leader in bringing health care innovations to market. The private sector is far better equipped to take that leading role, with government to follow once the innovations are recognized and integrated into the system. That is why we need to maintain and even expand the role of the private sector in health care. If we are going to be able to find ways to drive down the cost of health care in the years ahead, we will need the private sector to take the lead.

Finally, it is extremely important that policymakers proceed with modesty. No government program or single piece of legislation can fully reform our enormous and inefficient \$3.2 trillion health care system. The Affordable Care Act, with its 2,700 pages and tens of thousands of pages of regulations was a misbegotten attempt to control health care from Washington. It proved that hundreds of millions of people making billions of health care interactions cannot be controlled or made more efficient by Washington. Going forward, policy makers should heed the lessons of the ACA and aim for more manageable health care policy changes in the future.

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TEVI TROY, Ph.D, is a Jewish Policy Center Fellow, CEO of the American Health Policy Institute, and a former Deputy Secretary of Health and Human Services under George W. Bush. His latest book, *Shall We Wake the President? Two Centuries of Disaster Management from the Oval Office*, is reviewed in this issue.

# College: Is It Really for Everyone?

by ABRAHAM H. MILLER

At parents' night at our upscale suburban high school, the principal droned on, barely able to contain his euphoria over the number of our upcoming graduates that would go on to college. Conspicuously omitted from the paean to our bright students, wonderful teachers and concerned parents, not to mention our lucrative tax base, was any statement about which colleges they would go to and more importantly, how many would actually finish.

The devil is not always in the details. Sometimes it is in a calculated and self-serving omission.

While we proudly sent a disproportionate number of students into the hallowed halls of academia, only about half would come back after six years with a sheepskin. This figure is no different from the national average.

The other half would generally drop out within two years, having acquired little in the way of an education but a heavy burden of college debt. Their prospects for paying it off would not be good.

Most parents will know more about buying a used car than helping their children choose a college.

## ■ *Choosing College – or Not*

If you're buying a used car, there's Consumer Reports and CARFAX. For colleges and universities, the national ratings are suspect not only because they rely on data provided by the institutions themselves – data that are aspirational rather than real – but their criteria can also be dysfunctional for any individual student. A school can achieve high

marks for having a prestigious faculty. But many of these people are uncomfortable away from their research and view undergraduate students with disdain if not outright contempt.

In research-oriented universities, students have to be highly motivated, assertive, and not in need of handholding. For the shy student with a good deal of adolescent angst, this is not simply a bad choice; it is a catastrophic choice.

Few parents, especially middle-class parents, however, are willing to engage the more fundamental question of whether any college education is appropriate for their children.

Much of human decision-making is based on normative expectations and social myths. The decision about sending children to college is entrenched in both.

After all, what will you tell your friends at the golf club if you child de-

In over 30 years of teaching, I encountered hundreds of lost souls who had no idea why they were in college other than they were expected to be there.

cides not to go to college? In certain circles, college is not really a choice, it is a social expectation. For the affluent, it can result in parents paying out-of-state tuition for their children who would not otherwise meet the acceptance criteria at a public university.

In over 30 years of teaching, I encountered hundreds of lost souls who had no idea why they were in college other than they were expected to be there.

## ■ *A Million Dollars More?*

The great myth about college is that on average, a person with a college education makes a million dollars more over a lifetime than a person without a college education. Here the devil really is in the details.

If you remove from this population the people who went on to get professional degrees (the computer, science, business, and engineering majors) and make comparisons between high school graduates and liberal arts majors, that million-dollar difference rapidly attenuates. Then subtract student debt with its compound interest from the liberal arts majors and that difference shrinks further. To my knowledge, no one has done those calculations, but liberal arts majors in 2012 peaked at \$58,000 per year, while a skilled, experienced carpenter made \$71,000 – with no college debt payment.



Although there are notable exceptions, most students do not go through some intellectual and motivational metamorphosis in the summer between high school and college. Most mediocre high school students who manage to get into a second- or third-tier university's liberal arts program will not acquire useful skills that translate into economic payoff. Many of them will, however, acquire debt.

With social promotion and bureaucratic pressure on faculty to keep up the retention percentages in tuition-driven majors where research money is sparse, almost any student who puts in the time can get a degree someplace. Whether that degree represents an education is a vastly different story.

A full 38 percent of all college graduates will end up in jobs that do not require a college degree, and only 27 percent of undergraduates will end up in a

field related to their course of study.

Of the 62 percent whose employers required a college degree, the degree requirement is an arbitrary imposition for many of these positions. Do you really need a college degree to manage a retail department or sell real estate? Employers think requiring a degree constitutes a basic part of the selection process. But the reality is more complicated, for there are bright people who have no interest in college.

High school graduates can be exceptionally bright and not interested in college course offerings and how they are marketed. Liberal arts courses were not designed to be pragmatically career-oriented, nor were they designed to be entertaining. Much of higher education is based on a model constructed in 19th century Germany and developed for sons of Europe's upper classes.

Social sciences (including history),

for example, are overall the third largest major. With the exception of a small percentage of students with extraordinary verbal aptitudes and strong intellectual interests, these programs are basically "default majors." Students enroll in them having no interest in the field or even in being in college. They are there by default. They are fulfilling parental or social expectations.

As most public colleges and universities have seen a decline in public funding, they have become increasingly dependent on tuition. The same can be true of private universities in years when their endowments underperform the financial markets or fundraising is disappointing. Consequently, expanding the student base has become vital to the financial health of many institutions.

Obviously, it is easier to expand the student base in the liberal arts than in the sciences and mathematics.

## ■ *Expanding the Base by Lowering the Standards*

Expanding the student base is accomplished by lowering the standards for admission, especially for out-of-state tuition payers, and then reminding the faculty at final exam time of the school's "commitment to social justice through retention and diversity." You don't need a graduate degree to understand the meaning of the admonition.

Social promotion does not end with a high school diploma. And these days, the term "social justice" is invoked frequently to rationalize social promotions, which in some departments extend to the doctoral level and even to the granting of professional degrees. That is a theme that would warrant another essay.

To understand how institutions accommodate the political pressures to capture enrollment and produce degrees, I'd like to tell you about my friend "Yuri" (not his real name). An émigré from the Soviet Union, Yuri was a highly regarded mathematician who could not comprehend the mores and folkways of the American education system. In the Soviet Union, Yuri was endlessly in trouble with state organs and was once carted off by the KGB for a stay in the notorious Lubyanka prison, complete with lengthy interrogations.

In America, at a major research university, Yuri was constantly in trouble with the school's administrators. Yuri had difficulty acclimating to the "social justice" system of grading. When it came to standards, Yuri acted as if he were still teaching mathematics in Moscow.

As punishment, Yuri was assigned to what we call "baby math" – a course in introductory mathematics (read arithmetic) for non-majors who are required to complete a math course. This is usually a burden placed on some first-year teaching assistant. Its content would embarrass a seventh-grade student in Russia.

The object is to keep the tests easy and make sure these non-majors pass. That satisfies their department heads and

keeps up the mathematics department's enrollment. Everyone is happy with the arrangement, including the students who are guaranteed a passing grade.

Yuri flunked half the class and was called into the college office for a lecture on being a team player. "Unacceptable," is the word the dean used in warning Yuri that he needed to change the grades.

Yuri responded that if he valued being a team player he would have stayed in the Soviet Union, where the KGB was the team.

The dean made threats. Yuri laughed. "I spent months in Lubyanka. What, you think you're the KGB?"

Yuri went on to say that mathematics is not sociology. There is a right and a wrong answer. Besides, the test was machine graded. The whole thing was an embarrassment. This wasn't even mathematics. It was seventh-grade arithmetic back in Russia. Yuri stood firm.

So, the dean created a fictitious math course in the summer program and enrolled all the students who had flunked. There were no class sessions and no examinations. At the end of the term, the dean simply assigned each student a grade of "B," restoring the status quo of happy department heads and pleased consumers. Of course, none of these students could do the basic arith-

metic a future employer might require.

Yuri continued to be a pariah. The dean went on to become an even higher-ranking college administrator at another school. There are rewards for being a compliant team player.

In a reflective moment, Yuri once asked me, "How did you win the Cold War?"

"We brain-drained other countries." I responded.

## ■ *Ideological Indoctrination*

It is not, however, academic corruption that is the biggest problem on today's campus. Paying tuition for ideological indoctrination is.

Worse than giving students meaningless degrees is the insufferable audacity of leftist faculty who believe captive audiences of financially exploited young people are there to hear political ideology presented not as opinion but as hard fact.

Such ideologies as "black lives matter," "white privilege," "capitalism is evil," and "Zionism is racism" are taught as incontrovertible truths, not as ideas to be challenged and investigated.

Examples abound of the exploitation of the classroom, which are reminiscent of the "workmen's circle" during the after-work hours in Hungarian factories in the Soviet period. My reference is to Hungary because a fellow graduate student who escaped in 1956 provided exquisite detail of what those sessions were like. In a scene that could have been ripped from an Arthur Koestler novel, he was forced to confess his "mechanistic" thinking and "bourgeois" attitudes as today's students are coerced to confess and examine their "white privilege." Although he endured such sessions after a torturous day's work on an assembly line

As most public colleges and universities have seen  
a decline in public funding, they have become  
increasingly dependent on tuition.

in the people's paradise, he neither paid tuition nor incurred debt for the humiliation imposed on him.

That raises the question of who was better off: Hungarian factory workers, under an authoritarian regime, who were humiliated for free – or today's college students who pay for their humiliation?

Why would anyone pay to be humiliated for their skin color and to be told that they are responsible for all the



*Columbia University (pictured) has the highest tuition costs in the United States, \$55,056 per year, according to a 2016 study published in U.S. News and World Report. (Photo: George Hodan)*

ills in the world allegedly caused by people who share their skin pigmentation? Because not only are such courses required; that ideology is infused in much of the liberal arts curriculum.

Of course, this is the same mentality of the lynch mob that thought one black person was as indistinguishable and as guilty as any other.

### ■ **Other Paths to Success**

If you are the parent of a child with high scientific and quantitative aptitudes, of course your child should go to college. If you are the parent of a child with high verbal skills and strong intellectual interests, your child too should go to college.

But if you are a parent whose child is of average intelligence – as most of them are – and who never reads a book or picks up a magazine, there is little value in sending him or her to college. Sure, some will get degrees. Faculty are

constantly reminded how to accomplish that goal. But these students will have acquired little in the way of marketable skills, and their substantive information will have remained with them only long enough to be regurgitated on the last examination.

And unless you are well off, rest assured that the burden of student debt will remain with these students, who acquired few if any skills to pay it off, long after they have forgotten what little they learned.

So, what should the parents of these students do? They should investigate the numerous career paths that are available without a four-year college degree. Students will need post-high school education and training, but much of that is readily available for modest tuition at community colleges that provide two-year degrees and certificates in a number of growing fields, many of which are in medical technology. Beyond that, there

is a demand for skilled labor. Mechanics, carpenters, plumbers and electricians can and do earn six-figure incomes.

Lists of careers that do not require a college education are readily found on the Internet and in school counselors' offices. A resourceful school counselor will generally be able to assess a student's prospects for various career paths as well as the likelihood of achieving a meaningful career from going to college. But the most difficult problem in this assessment too often will be overcoming the parents' desires for the assumed prestige college attendance and a bachelor's degree brings.

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# Capital Formation 101

by PINAR CEBI WILBER

Economic output is produced by combining various factors of production, including labor, land, capital and available technology. These factors of production must be increased or used more efficiently in order to achieve real economic growth.

First, for workers to provide their maximum contribution to the production of goods and services, they must use the most advanced equipment and tools available and have adequate education and training. These investments in both physical and human capital will boost labor productivity, thereby allowing for increased real wages and providing incentives for greater work effort. The resulting rise in economic activity will thus increase total income and total output.

Second, for capital equipment, structures, and the land upon which they are located to be efficient, funds must be constantly plowed back into new and innovative machinery and more efficient designs for buildings and land use. The capital that is efficient today may not be efficient tomorrow.

Third, for America to keep ahead of its foreign competitors, research and development must be encouraged to expand the frontiers of technological knowledge.

## ■ What Factors Interfere with Capital Formation?

Federal tax, spending, and regulatory policies may interfere with capital formation and diminish the prospects for economic growth to the extent that they create a different level and distribution of capital goods than would have otherwise existed. Such federal policies have interfered with the necessary expansion of capital formation in recent years.

According to Robert Gordon's *The*

*Rise and Fall of American Growth: The U.S. Standard of Living Since the Civil War*, rapid economic growth for the United States is a thing of the past and new technologies, such as the Internet, cannot be expected to boost both growth and productivity levels similar to advances between 1870 and 1970. Gordon argues that the some of the crucial inventions such as telephones, airplanes, television, synthetic fibers, plastics, and assembly lines and their application to ease our daily lives and increase our efficiency cannot be repeated.

Time will tell whether Prof. Gordon's predictions are correct. However, if this is the case, federal policies to support and encourage lagging capital investment become much more important.

First, U.S. tax laws contain an inherent bias against saving, investment,

investment and toward consumption. Economic theory suggests that taxing consumption is more conducive to economic growth than is taxing income.

In general, economists agree that taxes should be designed so that the relative prices of work effort and leisure, and of consumption and saving (and investment) are not disturbed after their imposition. The development of such "neutral" tax policies should be a major goal of tax reform. These "neutral" tax policies would not differentially alter the prices of the necessary ingredients of production: work effort, saving, and investment.

Second, the deficits generated by federal spending in excess of revenues represent claims against private resources and, as such, can preempt private sector activity. As a result, government fi-

A dollar of income saved is taxed when first earned, and, if invested, taxed over and over again as the returns to saving accrue.

and work effort. Our progressive tax rates reduce after-tax returns to work effort, thus decreasing the volume of work effort. At the same time, the relative "price" of leisure is reduced, further discouraging labor market participation. In a similar fashion, saving and investment are taxed more severely than consumption. A dollar of income earned and spent is taxed only once.

But a dollar of income saved is taxed when first earned, and, if invested, taxed over and over again as the returns to saving accrue. This taxation of capital gains, dividend, and interest income constitutes a tax bias against saving and

nancing of the deficit may "crowd-out" private sector needs in credit markets. For these reasons, federal finances have become a major concern of policymakers today. In 2000, budget outlays on a fiscal year basis were 17.6 percent of gross domestic product (GDP).

By 2017, federal government claims on total output had grown to 20.7 percent. According to the Congressional Budget Office's 2017 *Long-Term Budget Outlook*, outlays will continue to grow, reaching 29.4 percent of GDP in 2047, increasing the U.S. budget deficit. These trends underscore the need for fiscal discipline to encourage real rate



*President Trump signs Executive Order 13772 on February 3, 2017, ordering the Department of the Treasury to review financial regulations. (Photo: White House)*

of growth in total output, lower capital costs, and encourage private sector capital formation.

Third, the rapid expansion of government regulation in recent years has resulted in high compliance costs to firms, with such costs being ultimately reflected in final prices to the public.

Regulation expert Murray Weidenbaum had noted that these costs also have had the effect of displacing productive investment and encouraging “defensive” research and development rather than innovative product research. For example, as firms devote greater portions of their resources to meeting federal regulatory requirements, new product development is delayed, increasing the final cost of bringing a new product to the market. If a firm is already operating efficiently, the increased costs caused by these government regulations may well result in either lower profit margins, which result in even fewer resources being devoted to product innovation, or higher prices to the public. Another concern with regulations is their impact on entrepreneurship. According to a body of economic literature, regulations may restrict entry, deter competition, and inhibit the disciplinary effect of competition on existing market players.

Of course, this is not to say that all regulation is bad. Over the years, the United States undertook major regulations to better protect human health and the environment. However, as President Ronald Reagan’s 1981 Executive Order stated, “Regulatory action shall not be undertaken unless the potential

Economic theory suggests that taxing consumption  
is more conducive to economic growth compared to  
taxing income.

benefits to society for the regulation outweigh the potential costs to society.” With careful analysis of the costs and benefits of federal regulations, the number of regulations that drain capital from productive to nonproductive uses can be reduced, thereby encouraging more private capital formation.

### ■ **Do We Have Adequate Levels of Capital Formation?**

Recent statistics on U.S. economic health reflect a softening of vital indicators. Although America still produces the second largest share of world output after China, investment and productivity

are sluggish and our international economic performance is lackluster. A closer look at the levels and trends of major economic aggregates and their components provide a better understanding of the reasons behind the recent slowdown in economic indicators.

### ■ **The Recent Trends in Investment**

In a classical formulation, the factors contributing to economic growth are labor, land, capital and technology. These factors are all interrelated in their contribution to real output.

Increases in investment will have positive effect on economic growth by increasing the quantity and quality of capital per employee. However, over the years both the investment and net stock of private capital have shown disappointing growth. While between 1947 and 1973, the net stock of fixed assets grew at an average rate of 3.8 percent, after 2007 (the period that started with the great recession), the average growth rate was only 1.5 percent.

This decline in net investment

growth, combined with changes in labor structure and composition (such as the retirement of the baby boomers with lots of human capital and the lack of skilled labor, especially in the manufacturing sector), resulted in slower growth in labor productivity. Between 1947 and 1973, labor productivity grew at an average rate of 2.8 percent. After 2007, the average growth rate was only 1.3 percent.

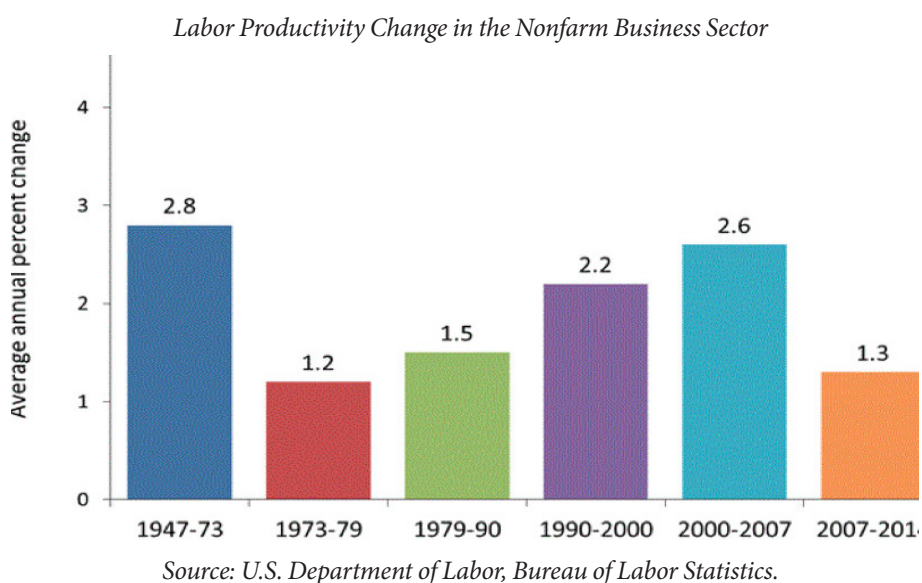
Domestic capital formation not only declined over time, but also compared unfavorably relative to our top 10 trading partners. The United States lagged behind all countries except the

United Kingdom in gross fixed capital formation as a percent of GDP for 2007-2015. This record reflects poorly on our ability to replace and expand the capital stock with new and innovative equipment, which is so important to improving the productivity of our work force.

Research and development expenditures, through their influence on technology, also contribute to increases in labor productivity. The relationship between R&D expenditures and productivity growth has been analyzed by many economists. According to a recent CBO analysis, the estimates are wide-ranging – from zero to substantial. However as stated in the paper:

Most of the estimates lie somewhere between the two extremes, and as a result, a consensus has formed around the view that R&D spending has a significantly positive effect on productivity growth, with a rate of return that is about the same size as (or perhaps slightly larger than) the rate of return on conventional investments.

Despite the importance of R&D, there is mounting evidence that the U.S. lead in technological advance has stagnated over the last decade. R&D as a percent of GDP has grown faster in many of our top trading partners (which include the top 10 economies in the world based on GDP). In 2000, the United States was ranked second among these countries in terms of R&D as a percent of GDP. By



boost labor productivity. Investment in human capital through education and training results in an increase in the quality of the work force, which in turn raises productivity. Educational progress affects productivity by increasing the number of engineers, scientists, and inventors who generate innovations, and entrepreneurs who make innovative investment decisions. But data shows that, especially in science, technology, engineering and mathematics (STEM) fields, the United States is lacking.

According to National Math and Science Initiative (NMSI) data, only 44 percent of 2013 U.S. high school graduates were ready for college level math and only 36 percent were ready for college level science. Among the students who entered STEM fields between 2003 and 2009, a total of 48 percent of bach-

rest left without earning a degree.

When we look at the impact of these numbers on U.S. R&D effectiveness, according to NMSI data, in 2009 U.S. scientists published nearly 29 percent of the research papers in the most influential journals, down from 40 percent in 1981.

### ■ Recent Trends in Saving

Recent figures comparing household saving rates as a percent of household disposable income among the U.S.'s top trading partners show that this country is in the middle of the pack, averaging 5.7 percent between 2007 and 2015. Our trading partners' saving rates ranged from 1.2 percent (Japan) to 38 percent (China). Many experts think that U.S. personal saving rate is not nearly enough, especially to ensure a comfortable retirement for individuals. According to a recent report by the Center for American Progress, nearly one-third of working Americans do not have a pension or any savings. For many, Social Security income is still the source of sole support during retirement years.

However, questions about the financial health of the Social Security system and the continuing retirement of the baby boomers have increased the importance of the other income sources financed by personal savings. According

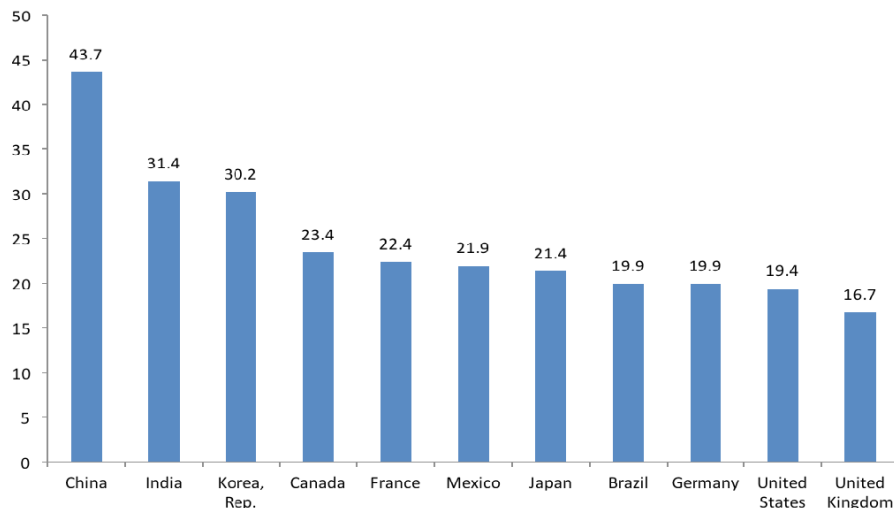
As firms devote greater portions of their resources to meeting Federal regulatory requirements, new product development is delayed, increasing the final cost of bringing a new product to the market.

2015, America had fallen to fourth, after Korea, Japan, and Germany.

Increases in capital investment and R&D are not the only factors needed to

elior's degree and 69 percent of associate's degree students had left these fields by spring 2009. Half of these people switched to non-STEM fields and the

*Gross Fixed Capital Formation as a Percent of GDP (Average 2007-2014)*



Source: World Development Indicators, World Bank

to the 2016 Social Security Trustees Report, it is expected that Social Security will be able to pay full benefits until 2034. After 2034, the income generated by payroll taxes and other sources will only be sufficient to pay 79 percent of scheduled benefits. The shortfall in Social Security makes it even more important to find ways to encourage personal savings.

### ■ **The Tax Burden on Capital**

One way to increase rates of capital formation in the United States is to reduce the existing tax bias against saving and investment. Reducing the tax burden on income from capital services would lower the cost of capital relative to

described as a hybrid system that relies heavily on an income tax with some features that resemble a consumption tax. A pure consumption tax is defined as a system that taxes individuals on the goods and services they purchase and exempts all saving from tax.

The current U.S. tax code contains tax preferred savings vehicles, such as IRA's and 401k's; these are features of the tax code that act like a consumption tax. Individuals can contribute pre-tax dollars to these accounts and the tax on the accumulation of savings is deferred until the funds are withdrawn.

In addition, the current tax system allows some investments to be expensed (deducted from taxable income in the

switching to a system whereby the tax base depends primarily on consumption rather than income could increase saving, investment, real output, and long run economic growth. In addition, the current tax treatment of dividends and capital gains both at individual and corporate level retains a substantial bias toward consumption. The outdated corporate tax system in United States provides another burden for capital formation.

### ■ **Conclusion: An Agenda for Economic Growth**

In America today, capital investment is falling behind relative to our competitors and personal saving rates are far from sufficient.

There are signs that the direction of public policy is changing. Tax, spending and regulatory policies are now being carefully examined in light of their effects on capital formation. There is increased talk of moving towards a consumption income tax system to ease the tax bias against saving and investment. Among the constructive areas of future tax reform are proposals to reduce the corporate income tax rate and bring the business tax system into the 21st century. Tax and additional incentives for personal savings, especially in the retirement arena, are being considered to provide a more secure future for U.S. retirees. Budget reform should continue to aim at controlling the projected acceleration in the ratio of federal spending to GDP.

Future actions will be needed to reduce the federal budget deficit.

Finally, regulatory policy, so vital to any capital formation initiative, should maintain its emphasis on ameliorating the costly and burdensome restraints on productive saving and investment.

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Despite the importance of R&D, there is mounting evidence that the U.S. lead in technological advance has stagnated over the last decade.

consumption, thus providing an incentive for individuals to save and invest rather than spend. Reducing the cost of capital in America would also boost capital formation by attracting inflows of foreign capital.

The current U.S. tax code can be

first year). There is also accelerated depreciation, which reduces the tax burden on some investment. Even though these "consumption tax-like features" reduce the distortionary impact of the current tax system, they are selective and limited in scope. Most economists believe that

# The End of Privacy?

by **STEPHEN D. BRYEN**

A high-ranking member of the U.S. government recently asked if I could be of help in finding a mechanical typewriter. Actually, the person did not need any help: old-fashioned manual typewriters, both “up-rights” and portables can be bought new or used (some refurbished) on the Internet. Prices vary between \$50 and \$300.

Why would anyone want a manual typewriter in the age of computers? The answer is easy: to prevent spies from reading what you write. Next to handwriting, a typewriter offers partial anonymity because the machine is immune to electronic spying. Our official feared surveillance from within the government and was trying to find a way to block these attempts.

It is for the same reason that some high profile Hollywood actors, directors and producers have given up smartphones and started using so-called Flip Phones. A Flip Phone is just a telephone, and the simplest of them have no data connection. It does not mean they cannot be intercepted – but it means stored information including documents, photos and videos (as well as e-mails) are safe just because they don’t “live” on a Flip Phone.

We have evolved today from computers and networks to home networks, to the Internet and now to the Internet of Things. Simply put, the Internet of Things means technology is being built into “things” so the “things” can communicate through the Internet. This includes, for example, a Smart TV that can plug into broadcast channels from anywhere on the globe; or security cameras that can transmit live video anywhere; to smart washing machines and high tech Internet-connected refrigerators (Your leftover hamburger is about to become too old, better have it for dinner

tonight); to “helpers” who live among us and respond to voice commands using voice recognition and artificial intelligence to manage tasks. Tools such as Amazon’s Alexa, Google’s Assistant and Apple’s Siri are “helpers.” These devices are always on and always listening because they don’t know when you will want them, but if someone tries to bug them (they will of course have to get in a long line of hackers trying to do so), they can make odd things happen.

The Internet of Things is not alone in making privacy impossible, but it is a strong indication that people actually don’t either care about privacy or don’t believe they have any to begin with.

## ■ *Where the Problem Starts*

Spying on people has been going on for thousands of years. In the Bible we read that Joseph accuses his brothers of being spies (Genesis 42:9); Moses is told, “Send out for yourself men so that

they may spy out the land of Canaan...” (Numbers 13:2 and Joshua 2:1-3); “David sent out spies, and he knew that Saul was definitely coming.” (1 Samuel 26:4); and in the New Testament in Galatians 2:4 we read, “But it was because of the false brethren secretly brought in, who had sneaked in to spy out our liberty which we have in Christ Jesus, in order to bring us into bondage.”

Before and during the American Revolution, spying on private mail was of critical importance to both sides.

Benjamin Franklin was caught with secret British official correspondence, humiliated and instantly turned into a ferocious American patriot thanks to British stupidity in letting Franklin know what they knew. The British themselves intercepted colonial mail, opened and copied significant letters – many of them preserved today – and re-sealed envelopes so the recipient could not see that they had been opened. Americans did the same.

It is not surprising that part of Benjamin Franklin’s humiliation was that he was fired as the Crown’s Deputy Postmaster of North America. (Had the British realized Franklin’s prestige would help him secure French support for the American colonies, they would have thought twice about driving him out of Britain. Britain then could then have won the war since only Franklin had the skill and position to get Louis XVI and his foreign minister to recognize the new country, finance its war and provide troops and the decisive

The Internet of Things means technology is being built into “things” so the “things” can communicate through the Internet.

naval support that trapped Cornwallis’ army at Yorktown.)

Today spying is easier: it is done by exploiting weaknesses in computers, tablets, smartphones, and other devices.

## ■ *Types of Spying and Why They Matter*

There are different kinds of spying. For example, there is spying to uncover threats to national security; there is spying to carry out law enforcement-related investigations; there is plenty of political

spying, often focusing on recording meetings and intercepting e-mails and texts; there is competition spying by business and industry, often through cutouts or third parties to create plausible deniability; there is malicious spying, sometimes for political reasons,

spying operation primarily targeting electronic communications. At Camp Williams near Bluffdale, Utah, the National Security Agency (NSA) has built a vast data storage center capable of storing Exabytes of data (full extent not known). An Exabyte is a unit of infor-

electronically got its hands on more than 50 terabytes of design information that cost taxpayers tens of billions of dollars to finance. One would think, given the exotic capabilities of NSA and the CIA that this would not have happened, or it would have been quickly found out and stopped. But it seems the Chinese had free access for weeks and months and sucked out 50 terabytes of blueprints and data unmolested. How could this be? It raises a serious question about the focus of the NSA, CIA and, for that matter, the FBI. Why wouldn't they focus on national security instead of sucking up billions of phone records of Americans?

In a way, even worse happened at the Office of Personnel Management (OPM) where some 21.5 million records were stolen, probably by the Chinese or the Russians. These records were government background checks – information needed for employees of the government to get security clearances. The check is based on a form called the SF-86. Here all your

While it may seem that information from monetization activity is just a sophisticated form of advertising, it is far more.

sometimes to stir up trouble; and there is “monetization” spying which is done to relay customer behavior information to clients. Big companies including Google, Amazon, Yahoo and others use information gleaned from correspondence or from shopping preferences to promote their businesses or they sell the information to other parties.

While it may seem that information from monetization activity is just a sophisticated form of advertising, it is far more. It can reveal secret political preferences or tendencies that can be exploited; it can pick up transactions that could prove embarrassing, making information of this sort of interest to criminal organizations; it can provide a window of sensitive information to foreign intelligence organizations, perhaps making it possible to bribe or influence people because of “insider” information.

Courts have backed monetization spying on the grounds that if you give a “free” service you didn't promise anybody anything by way of privacy. But the judiciary did not look deeply enough to estimate what misuse of such information might mean in a free society. Generally speaking, when it comes to privacy matters, U.S. courts have not been very friendly to individual freedom. Thus while there is a lot of moaning about Russian and other foreign spying, domestic spying is given a permissive pat on the shoulder.

The U.S. government runs a vast

mation equal to one quintillion ( $10^{18}$ ) bytes, or one billion gigabytes. The Center initially cost \$1.5 billion to construct and another \$2 billion or more for equipment. It takes 65 megawatts of power at a cost of \$40 million a year to keep it running. Part of the reason for the huge data storage capability was to hold metadata from U.S. phone calls,

...While the government seems to have taken on the role of superspy, it has failed to protect sensitive information it gathers.

which tells you all you need to know, actually. When you build something this mammoth then you need to fill it; and while there is probably useful information there about terrorists or hostile foreign countries, massive data storage like this was never needed in the past.

### ■ *Failing to Protect Privacy or Data*

Yet while the government seems to have taken on the role of superspy, it has failed to protect sensitive information it gathers. We know that important defense information has been compromised. The design of the F-22 and F-35 stealth fighter planes was stolen by China without complaint from the United States. China

personal information – your address, your Social Security and tax information, your children's names and personal information, your photo and your fingerprints, the names of your colleagues and friends – are collected “voluntarily.” Such information in the hands of a hostile power is dynamite because it immediately grants means to access information or create false flags that can be used to plant computer bugs or manipulate employees. OPM did not discover the breach until April 2015, long after it began.

You can be reasonably sure that information you give to the government – tax records, Social Security number and information, Medicare, Medicaid, Veterans, law enforcement and military

service records – is at risk. None of it is stored in a secure way, nor is the data encrypted. Routinely, it is handed around to others in and out of the government. Your passport application, for example, is handed over to outside contractors for “processing.” Forget about security or any hope of privacy.

We are, therefore, living in a time where privacy protection has become a thing of the past, despite what the Constitution might say or imply.

## ■ *The Fourth Amendment*

The Fourth Amendment to the Constitution says, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” If you couple the 4th Amendment to the 1st Amendment (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; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances) you can make the argument that the only way one could carry out electronic spying would be to get a warrant and be able to demonstrate that you are not interfering in a person’s freedom of speech.

Courts have chipped away at situations in which a warrant is required, and the Foreign Intelligence Surveillance Court has approved thousands of warrants to track “foreign spies.”

Then there is the matter of “outing” Americans who are intercepted as a result of the surveillance of a foreign target. Under U.S. law, if an American happens to be picked up in an intercept of a foreign target, the name of the American is supposed to be redacted and not distributed within the government, for example to the CIA, law enforcement, and

especially not to political leaders. But it seems that the Obama administration ordered the outing – often called “unmasking” – of high profile Americans, especially political opponents, and the disclosures were shared with officials in the White House, Justice Department, CIA and elsewhere, perhaps even beyond government personnel. Today there is a huge controversy over contacts between President Donald Trump’s 2016 campaign team and Russian diplomats. While in and of itself contacts of this kind are not illegal, it is clear the “outing” process is being used to try to undermine the current administration’s

unleashed in the U.S. market. And consideration needs to be given to strong oversight over foreign origin equipment and software, such as from China, that likely comes pre-compromised. Without secure equipment that can protect users against spying, any restoration of privacy is a hopeless undertaking.

The second step is to tamp down excessive U.S. government spying. The quickest way to do this is to establish priority targets and slash budgets. Naturally the key agencies will all complain this will undermine their counter-terrorism and national security responsibilities. But, as we might say, the excess is so excessive

You can be reasonably sure that information you  
give to the government...is at risk.

credibility. At the same time, a message is being sent to the general public that no one is immune from electronic spying.

We can draw three conclusions:

- The Internet of Things and the lack of protection of modern electronics and electronic systems creates huge opportunities for spying, whether the spying is foreign or domestic, legal or illegal, governmental or commercial or political;
- The government that should be protecting privacy is still hell-bent on spying on anything that moves (or not). It is spending billions on a spying empire epitomized by its Utah Data Center; and
- At the same time the government has proven unable to protect the strategic and personal information in its care, costing taxpayers billions and harming people irrevocably.

## ■ *What Should be Done?*

The first step is to improve security in electronic devices that are sold to the public or used by industry and government.

Congress needs to encourage policy makers and U.S. agencies to set standards of security acceptability before gadgets and computers of all kinds are

these days that this argument really isn’t sustainable. Lawmakers will have to show courage for this step to happen.

Third, the government needs to exercise real duty of care over the information it is supposed to safeguard. The quickest and best way involves: 1) compartmentalization on a “need to know” basis of information in government hands, so it does not get passed around willy-nilly and thereby compromised; and 2) encrypting all data using top of the line encryption and not the so-called Advanced Encryption Standard (AES) based on a Dutch cipher recast by NSA. AES is easily compromised and the government knows it – which may be why officials use it and why they want us to use it.

To recover our freedom and secure democracy we have to find ways to make all Americans more “secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” which means to limit electronic spying. The above steps may help us get there.

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# “I Am Very Optimistic”

## An *in*FOCUS Interview with Senator Rob Portman

Senator Portman was first elected U.S. Senator from Ohio in 2010 and is a member of the Budget Committee, the Finance Committee, the Committee on Energy and Natural Resources, and the Committee on Homeland Security and Governmental Affairs. He is a leading voice on the current opioid crisis. From 1995-2003, he represented Ohio's Second Congressional District, during which he said his proudest moments were, “When we passed the balanced budget agreement and the welfare reform bill.” He served in the George W. Bush administration as the 14th U.S. Trade Representative and the 35th Director of the Office of Management and Budget.” *in*FOCUS Editor Shoshana Bryen met with him recently in Washington.

***in*FOCUS: THANK YOU FOR MEETING THIS MORNING. REPUBLICANS ARE THE PARTY OF FREE MARKETS, BUT ALSO WANT TO PROTECT AMERICAN JOBS FROM OUTSOURCING. HOW DO YOU SEE JOB REVITALIZATION IN A PLACE LIKE OHIO? DO WE NEED PROTECTIONIST LEGISLATION; DO WE NEED SOMETHING ELSE? HOW ARE WE GOING TO GET THE JOBS BACK?**

**Senator Portman:** I actually am very optimistic about insourcing more jobs, but we have to change the way we approach pretty much every major economic institution in our country – meaning our tax system, our regulatory system, our worker skills, worker training system, our health care system. We have huge opportunities out there, but we have not taken the time to carefully construct pro-growth, modern systems to adapt to an increasingly competitive global environment. Tax reform may be the easiest, which pardon me for talking about it for that reason, but also because the code is so out of date.

If you're talking about not outsourcing but rather insourcing jobs, you have to start with the fact that we have a tax code that actually encourages investment in jobs that go overseas. There's no question about it – you mentioned Ohio

– two big companies have inverted overseas, classic Cleveland companies. They would have stayed here but for the tax code. When they leave it's not just that they change their headquarters. They take jobs and investment with them.

One of the things that I'm very excited about in this congress with a new Republican president is to actually get tax reform done. Everybody's got their own ideas, I have mine, and I'm trying to encourage my colleagues to listen to everybody else and come up with something that we can all agree on. I think it would be lowering the rate, we have the highest rate of any industrialized country, which is a terrible place to be, but then also our international system encourages people to keep their money overseas. Which is crazy.

***iF: SO YOU WANT THE CODE TO FAVOR REPATRIATION?***

**Senator Portman:** Yes. There's two and a half, maybe three trillion dollars locked up overseas, so I really believe this is an opportunity. I know there's always skepticism over whether anything can get done here in this town, but I think tax reform is very realistic. Get it right and you'll make a big difference in terms of insourcing and giving the economy a boost. I've been

seeing with skills training, you can do it.

We spend a lot of money, federal government money, ineffectively now, in my view. Between \$15 and \$18 billion a year on 47 job training programs spread over seven or eight departments or agencies. The right hand doesn't know what the left hand is doing and very few programs have any performance measures. I think we should focus much more on CTE [Career & Technical Education], at the middle-school level and high school level.

If kids have these skills, they can get a job in Ohio, and therefore the jobs will stay in Ohio. It's not just about trying to ensure you have the right tax, health care, regulatory environment. It's also to be sure there are the right skills in the community. Otherwise, companies will leave. They'll go to another state or another country. I'm very high on the CTE programs and how they can work better and how we should support them more, and on the worker re-training for the incumbent workers who need to be retrained in an evolving, high-tech economy.

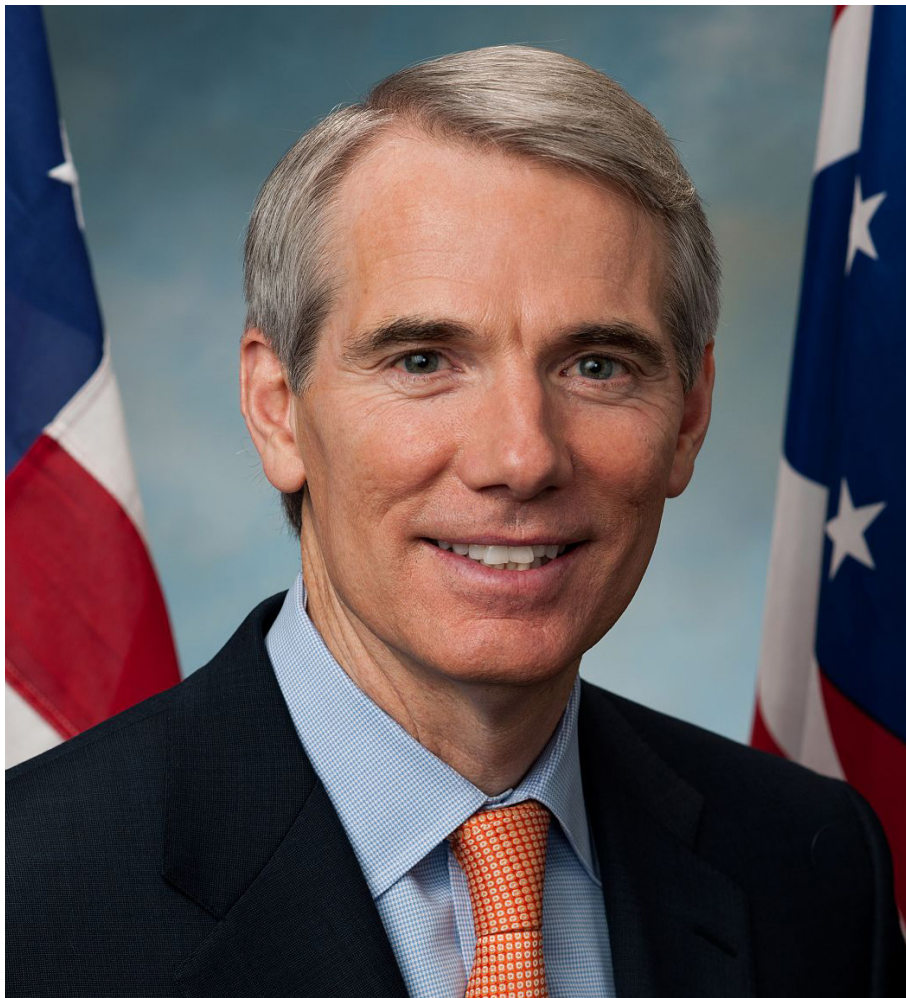
These are all things that we can do. It is within our power to make an environment that's much more pro-growth. We know about health care – the cost spikes have just been deadly for job growth. If you're in small business and you're hiring somebody, you're bringing on a 25 percent

increase in health care cost year to year. That's a real negative to hiring. As a small business owner in Ohio, with costs and mandates, you've had an 82 percent increase in the last four years for health care. It's very hard. Health care, regulations, and taxes create a real compliance burden.

We just finished marking up a bill last week on regulations to come up with smarter regulations going forward and having to go through a cost and benefit analysis for all regulations. You would have to have more input from the public. You would have to use the most cost-effective way to get from here to there, whatever the objective is. That's not done yet. In my view, this is exciting because there's an opportunity across the board. As a Republican and as a fiscal conservative and free market person, I think there is enormous opportunity for improvement.

**iF: HAVE WE ENTERED THE AGE WHERE THE FEDERAL GOVERNMENT IS GOING TO BE SUPPLYING HEALTH CARE TO US? EXCEPT FOR THE SAFETY NET, PEOPLE WHO ARE POOR AND REALLY CANNOT DO IT, IT'S NOT CLEAR TO ME WHY THE FEDERAL GOVERNMENT OR THE STATES ARE PROVIDING INSURANCE TO PEOPLE. HAVE WE ENTERED AN AGE WHERE WE'RE NOT EVER GOING TO GET RID OF THAT?**

**Senator Portman:** I don't know. By far the biggest provider of health care is still the employer. Probably 65 percent of people in Ohio get their health care from the employer; we forget about that sometimes. Then you take into account Medicare and Medicaid, and you end up with about 6 percent of the people who are in the exchanges – 212,000 in Ohio. Not that that's not a really important group, but there are ways through the market to provide them with refundable tax credits where they can buy their own health care in the private market. I think if we do the right things on replacing the Affordable Care Act, we will move to more market approaches



*United States Senator Rob Portman (R-OH).*

and market approaches can reduce cost. If you have real transparency and real information and then you have competition, there's no question in my mind that we can stop the big increases in cost.

Now there are some underlying problems in health care we also have to address. The cost of technology, the cost of pharmaceuticals, the cost of things are going up, and that's tough because it's health care, and it's very personal and very emotional. But we have to do it all. We can't just do the insurance reform, and some of this will have to come later because it can't fit into budget reconciliation. Coming up with a way to have pharmaceutical companies compete more here rather than having high costs here and lower costs overseas. There are some things that can be done to put more market orientation in place.

### ■ **Veterans' Health Care**

**iF CAN SOME OF THAT APPLY TO VETERANS' HEALTH CARE AS WELL?**

**Senator Portman:** Yes. I will say, our veterans like to have their own system. That's my impression from Ohio: we have had veteran town halls all over the state and there's a portal on our website for veterans. There are complaints and concerns that we will try to address with individual VA providers, but as a rule, I do think having facilities that are focused on veterans and their unique problems is also important. At the same time, they should have more choice. If they don't have what they need in terms of a specialty near their homes, they should be able to get a card, go out and get it on their own.

I'm not one of those Republicans who thinks we get rid of the health care

system for VA and just have them all in the regular health care system, particularly now. There is a lot of PTSD, a lot of traumatic brain injury, a lot of very acute problems with returning veterans from Iraq and Afghanistan, Syria and wherever we're going to be. Can we make it better? Yes, we definitely can. We should give more choice to veterans, but I do think there's a role for a veterans' system.

With regard to opioids, I've been working to try to stop the overprescribing. We're putting things in place with

wasn't a legitimate prescription, it was, "We know what we're doing and we're going to give you whatever you want." In Ohio, people were lined up around the corner to get medications. At one point there were as many prescriptions as there were individuals in parts of Southern Ohio – as many prescriptions per year as there were individuals. Think about that. We're still probably prescribing as many pills in Ohio as there are individuals. It got out of hand and people got physically addicted. Some of it was

I know there's always skepticism over whether anything can get done here in this town, but I think tax reform is very realistic.

the VA that can be cutting-edge. Having the doctors and the nurses come up with alternative ways to deal with pain. That can be leading-edge practice, developed in the VA, rather than having them as the more antiquated approach to health care.

## ■ The Opioid Epidemic

**iF: I KNOW YOU'RE VERY CONCERNED ABOUT OPIOIDS. HOW DID WE GET TO THIS POINT? IT'S AS IF WE WOKE UP ONE MORNING AND WE DISCOVERED THERE'S AN OPIOID EPIDEMIC. HOW DID WE GET HERE?**

**Senator Portman:** It's so, so sad. If you could point your finger to one thing, it would be overprescribing, and I mean that both in terms of purposeful overprescribing and accidental overprescribing in the sense that doctors really didn't understand the addictive power of this medication. There were literally people, who wrote to medical journals, one in particular, saying if you use opioids for pain it won't be addictive or it's unlikely to be addictive, but it is. For many people, it is extremely addictive.

Then there were "pill mills" where it

because there was an accident or an injury and the doctor said, "Take 60 pills." And they would say, "Oh, the doctor said it, so it must be the right thing to do." Others abused it knowing it would give them the high they were looking for. It's hard to differentiate because we don't have good data on that, but a lot of it came out of that. And then heroin was less expensive. Heroin traffickers in Ohio would show up at these pill mills and follow people home and say, "When you finish this, here's something else that's cheaper and we'll give you the first hit for free."

**iF: YOU NEED A BUY-IN FROM LEGITIMATE DOCTORS. YOU NEED LAW ENFORCEMENT FOR PILL MILLS AND PEOPLE THAT SHOULDN'T BE DOING IT, AND LAW ENFORCEMENT FOR HEROIN DEALERS. SO THERE'S NOT A SINGLE TRACK HERE. YOU'RE REALLY TALKING ABOUT FIVE OR SIX DIFFERENT STRANDS OF THINGS TO GET CONTROL OF THE ISSUE.**

**Senator Portman:** Exactly. It has to be more comprehensive, and you're absolutely right. I will say the pill mills are

mostly shut down now, so we've done a good job of that, but meanwhile we have an estimated 200,000 people addicted in Ohio, and four out of five of the heroin addicts started on prescription drugs they say. So the pill mills may mostly shut down, but the people are addicted.

**iF: THEN FROM A GOVERNMENTAL POINT OF VIEW, YOU STILL HAVE THOSE PEOPLE AND THEY NEED SERVICES.**

**Senator Portman:** Oh yes. Now it's their kids, and their kids' kids getting into heroin, and the latest one is the synthetic heroin, which is Fentanyl, Carfentanil, U4 – it goes by other names. Basically it is a chemical compound that is an opioid, but it's synthetic, meaning it can be made even less expensively. And it's deadly; Fentanyl is 30 to 50 times as powerful as heroin. Carfentanil is even more powerful. This is the stuff you use to put elephants to sleep for operations.

**iF: IS THIS A FEDERAL ISSUE OR IS IT STATE? WHERE DOES THE PRIMARY EMPHASIS GO?**

**Senator Portman:** All of the above. I've been a leader here in Washington, but I think you'll be hard pressed to find a speech I give where I don't say, "This is not going to be solved in Washington." But Washington has a role to play. One thing we did with our bill, the Comprehensive Addiction Recovery Act, was to bring experts from all over the country to five conferences here in Washington over three years, looking for best practices. What's going on in Connecticut that works? What's going on in Oregon that works? We tried to come up with evidence-based approaches and stimulate more state and local activity as well, to leverage the federal dollar more. I think that's the answer but it's a national epidemic and obviously it goes across state lines. In terms of enforcement, having the FBI involved, and DEA, and the Customs and Border Patrol is really important because a state or a



*Air Force Reserve Master Sgt. John Zoky, a crew chief assigned to the 910th Aircraft Maintenance Squadron, points out avionics instruments to Senator Portman on the flight deck of one of the 910th Airlift Wing's C-130H cargo planes July 2015. (Photo: U.S. Air Force)*

local official certainly can't control it the way it needs to be done.

Right now we're trying to get legislation passed at the federal level with regard to drugs coming in from overseas – mostly from China where most of the Fentanyl is produced. They literally stick it in the mail, and you can go online and get it at your PO box. It is a federal responsibility to try and protect our communities from this poison coming in. Protecting our borders, essentially.

### ■ **Career and Technical Education (CTE)**

**iF: YOU TALKED ABOUT CTE AND STUDENTS. HOW DO YOU BREAK THROUGH THE IDEA THAT ALL KIDS SHOULD GO TO FOUR-YEAR COLLEGES? HOW DO WE DEVELOP A CONVERSATION ABOUT WHAT HIGH SCHOOL STUDENTS SHOULD DO?**

**Senator Portman:** It should be customized to the child and I think it starts in

middle school. Skills training helps to keep kids in high school, based on the data, because they're using their hands, it's more interesting. In Ohio, you can get college credit for CTE and we're trying to spread that idea around the country. I think the answer is getting to the administrators, but also getting to the parents, because many parents grew up in an era where vocational education was considered a place for people who couldn't succeed on the four-year track. That's no longer true. Now if you get into a CTE program in an exciting school district, you get a great education and you get a job when you get out – because that apprenticeship program leads to a \$50,000 a year job in a manufacturing facility or a biotech facility or an IT facility. It's such a great opportunity, and you can go back to school if you want, and often your employer will send you back to school.

The alternative is pushing everybody into four-year colleges and

universities, which is what we've done for too long, in my view. The average college debt in Ohio is \$27,000 and 50 percent of the kids graduating from Ohio four-year colleges and universities are not finding a job that matches their degrees. So they may end up in retail or something else – not that retail is a bad thing, but it's not what you went to school for and you can't buy the car, and you can't get your own home because you've got \$27,000 debt. So, I think CTE is really exciting because it's great for the kids and it's great for the economy.

### ■ **Tax Cuts and the Economy**

**iF: COULD YOU TALK ABOUT TAX CUTS? WE HAVE A HUGE DEFICIT PROBLEM, AND HOW DO YOU SQUARE THE FACT THAT WE HAVE A DEFICIT THAT'S PROBABLY BIGGER THAN IT OUGHT TO BE AND A NATIONAL DEBT THAT IS BIGGER THAN IT OUGHT TO BE, WITH EVERYBODY'S**

**DESIRE TO PAY LESS IN TAXES? MINE INCLUDED, YOURS INCLUDED, AND EVERYBODY'S INCLUDED, RIGHT?**

**Senator Portman:** If you did properly structured tax reform, I believe we would get a lot of economic growth, which rolls into more revenue. Not every tax cut results in more economic growth and more revenue, but some do. I was in Congress in the 1990s when the balanced budget was done. We assumed there would be a balance after five years. There was balance in about a year and a half because capital gains taxes were cut and the revenue came in. You also need to have an analysis that's fair – that figures what the macro-economic impact is going to be. Not a static CBO score, or a Joint Tax Committee score, but dy-

spending under control, and there's no question the Pentagon can be run more efficiently, and we should try to find savings in procurement, and in the bureaucracy. We are over cost on pretty much every major weapon system. But we find ourselves in a position right now where we have to spend more just to be able to get the readiness that we need. We have ships that are docked because we don't have the resources to keep them up. We have planes that are grounded. We have pilots who can't fly because it costs too much. We have, I think some serious issues with regard to some of our weapons programs, including everything from small arms to the Joint Strike Fighter where we need to get moving on this stuff to keep our qualitative edge.

It's very important to Israel that the

if you get into a CTE program in an exciting school district, you get a great education and you get a job when you get out...

namic scoring. You look at the actual impact on behavior. The result of that will be more jobs, more investment, and everybody wins.

I don't know if you've seen some of those articles where they said, "Portman's kind of in the middle." I'm not for blowing a hole in the deficit but I'm not worrying about it. I think it should be revenue-neutral, but I don't think it should be based on a static score; it should be based on a dynamic score that shows the changes. That produces a significant difference because we think there's about a trillion dollars more revenue that comes in under a pro-growth tax reform proposal, which leaves a lot of room for tax cuts relative to a static score.

**iF: CAN WE AFFORD THE DEFENSE SPENDING THAT WE NEED TO HAVE?**

**Senator Portman:** We have to do it. I'm a budget hawk. I want to keep the

United States has that qualitative edge. Not just that Israel has it, but the United States has it, and so I think we need a further investment right now. I would agree with the president on that and agree with my own leadership, but at the same time, let's be sure it's spent wisely. Let's redouble our efforts in oversight, because the Pentagon is a big place and some of these procurements have been way over cost.

The Joint Strike Fighter cost \$150 billion and they didn't use a second engine for competition. I believe in competition and the Pentagon needs to be better at spending money wisely.

## **■ Energy Policy**

**iF: WHEN THE PRESIDENT WAS IN SAUDI ARABIA, HE TALKED ABOUT MIDDLE EAST COUNTRIES NOT FUNDING TERRORISM. ONE WAY TO LIMIT FUNDS AVAILABLE FOR TERRORISM WOULD BE GREATER**

**AMERICAN ENERGY INDEPENDENCE AND THE ABILITY TO EXPORT ENERGY. NUCLEAR POWER, FRACKING, NATURAL GAS. WHERE ARE YOU ON THINGS LIKE NUCLEAR ENERGY?**

**Senator Portman:** I totally agree and again, I'm excited about the opportunities there. If we use nuclear power and use the resources from the ground and use them wisely, we have the potential to be the energy power in the world. We have it all now. With the shale finds we have oil and natural gas; we have lots of sunlight; we have lots of wind; and we have nuclear power capability that enables us to produce emissions-free energy. I'm also a big fan of using coal and burning it more cleanly. I have legislation to give the power plants a tax benefit called a Private Activity Bond if they capture CO2 and sequester it. We have perhaps 300 years worth of coal in the ground. I think the United States can be an energy powerhouse and that is so important for our economic security, but also for our national security. We don't need to rely on Saudi Arabia or anybody else. We can be an exporter and I think that is exciting.

In Ohio ten years ago, no one would have thought we would be an energy exporting state. We were totally dependent on other states or foreign countries to provide our energy. Now we have two big shale finds and once we build up the infrastructure a little more, we'll be able to be a net exporter. That lowers the cost for our industry. Ohio will be able to use natural gas to bring back the chemical industry, the steel industry, and all these energy intensive industries. So it really is exciting.

**iF: THAT CIRCLES RIGHT BACK TO WHERE WE STARTED, WHICH IS HOW YOU GET JOBS IN OHIO. SENATOR PORTMAN, ON BEHALF OF THE JEWISH POLICY CENTER AND THE READERS OF inFOCUS, THANK YOU.**

# The Electoral College: Misunderstood, Unappreciated

by TARA ROSS

“The story of the Electoral College,” one pundit recently wrote, “is also one of slavery.”

Such a comment is just the tip of the iceberg. The Electoral College has been taking quite a beating lately. Even former President Barack Obama has jumped onto this bandwagon.

“The Electoral College is a vestige,” he told reporters late last year. “It’s a carry-over...[T]here are some structures in our political system, as envisioned by the Founders, that sometimes are going to disadvantage Democrats.”

Others are just as harsh in their assessments. The institution is blasted as a “loose cannon, a game of Russian roulette” or as an “archaic,” “quaint,” or “outdated” institution. It’s labeled a “living symbol of America’s original sin,” and an unfair system in which “the winner doesn’t win.”

“[M]oving to a popular vote for President,” former presidential candidate Al Gore concluded, “would be one of the initiatives . . . that could bring our democracy back to life.”

In a pure democracy, 51 percent of the people can tell the other 49 percent what to do – all the time, without question.

Are these critics right? Should Americans ditch the system that has given the presidency to a popular vote loser twice in the past sixteen years? Americans have abolished slavery, given women the right to vote, and expanded

civil rights in all sorts of ways. Isn’t an amendment to eliminate the Electoral College the next logical step?

Emphatically, no.

A little education reveals the truth: The Founders had sound, principled reasons for creating the Electoral College. They didn’t create it because some of them were slave owners, and they didn’t create it because telephones, television, and 24-hour news channels hadn’t been invented yet. Instead, they created the Electoral College because they understood the flaws of human nature – and because they understood the dynamics that had caused other, earlier governments to implode.

The Founders weren’t ones to sit around, blindly repeating the mistakes of the past. Instead, they sought to learn from history; they set out to create something better than the failed attempts at self-governance that had preceded them.

They were more than successful, creating something that surely exceeded even their wildest hopes and dreams.

## ■ *The Founders’ Objectives*

The delegates to the Constitutional Convention lived at a unique moment in time. Today, Congress is too often divided into Republican versus Democratic camps. Partisanship seems to taint

every discussion! But in 1787, as George Washington and others worked together in Philadelphia, political parties didn’t exist yet. Any disagreement that existed wasn’t Republican versus Democrat or Whig versus Tory. Instead, the biggest division was to be found between large and small state delegates.

It was not, as some have recently alleged, a division between slave and non-slave states.

The division between large and small states was particularly stark when it came to the topic of presidential selection.

Many large state delegates preferred a direct popular election system. Why shouldn’t the people simply vote and choose their own president? These delegates hailed from states such as Virginia, New York, and Pennsylvania. Notably, both slave owners and slavery opponents can be found in this group. On the other hand, small state delegates were worried about the prospect of a national popular vote: Many of them wanted Congress to choose the president. A wide variety of small state delegates were worried about the dangers of a simple national popular vote.

Slavery opponent Gunning Bedford of Delaware chastised the large state delegates on this point: “I do not, gentlemen, trust you,” he blasted. “If you possess the power, the abuse of it could not be checked; and what then would prevent you from exercising it to our destruction?” Slave owner Charles Pinckney of South Carolina concurred: “An Election by the people [is] liable to the most obvious & striking objections. They will be led by a few active & designing men. The most populous States by combining in



*John Trumbull's Declaration of Independence oil-on-canvas painting shows many of the Founding Fathers of the United States of America.*

favor of the same individual will be able to carry their points.”

The small states were worried about being bullied by their larger neighbors. Slavery was not the chief concern, at least not in the context of presidential elections.

Ultimately, one shared fear allowed the two sides to come together and make important compromises: The delegates to the Constitutional Convention were students of history. They understood the imperfections of human nature and the ways in which it had doomed past democracies to failure.

Flawed human beings can't be completely trusted, as the Founders knew. Power corrupts. Selfishness, ambition, and greed can grip even the best of people. Both government officials and voters need checks and balances on any power given to them. Their study of history had taught these Founders that any other route is doomed to failure.

### ■ **Self-Governing, Yes; Pure Democracy, No**

With all this knowledge in their back pocket, the Founders could not create a pure democracy for their new country. They wanted to be self-governing, of

course. They had just fought a revolution in part because they had no representation in Parliament. The principles of self-governance were very important to them. On the other hand, they knew that, as a matter of history, pure democracies have a tendency to implode.

Alexander Hamilton would refute the idea that a pure democracy is the “perfect” type of government. “Experience has proved that no position in politics is more false than this,” he wrote. “The ancient democracies, in which the people themselves deliberated, never possessed one feature of good government. Their very character was tyranny; their figure, deformity.” The nation's second president, John Adams, would agree. “Democracy never lasts long. It soon wastes, exhausts, and murders itself. There never was a democracy yet that did not commit suicide.” Other Founders called pure democracy “the greatest of evils” or “subject to caprice and the madness of popular rage.”

In short, mob rule can be very dangerous.

In a pure democracy, 51 percent of the people can tell the other 49 percent what to do – all the time, without question. Imagine what a mob mentality can

do in the wake of a terrorist event such as 9/11. A bare, emotional majority could enact any law it wanted to, regardless of its impact on the rest of the country. Religious freedoms and civil liberties could easily be infringed. Even very sizable minorities could be tyrannized.

The Founders wanted to avoid that situation at all costs.

What, then, were they to do? How could they create a Constitution that allowed the people to be self-governing, even as they erected hurdles to stop (or at least slow down) irrational, bare majorities? How could minority political interests, especially the small states, be protected from the tyranny of the majority?

In other words, what constitutional provisions would allow majorities to rule, but would also require them to take the needs of the minority into account?

The delegates to the Constitutional Convention solved the problem by creating a Constitution that combines democracy (self-governance) with federalism (states' rights) and republicanism (deliberation and compromise). The Congress is composed of a Senate with “one state, one vote” representation, while the House relies on “one person, one vote” representation. American government

is divided into three co-equal branches: executive, legislative and judicial. The Constitution provides for supermajority requirements to do things like amend the Constitution or ratify a treaty.

And, of course, our Constitution creates a unique method by which presidents are elected: the Electoral College.

All these constitutional checks and balances enable Americans to be self-governing, even as mob rule and majority tyranny are avoided.

The invention of the Internet, the airplane, or the iPhone hasn't changed anything about this situation, whatever news media headlines might say. Humans are still fallible. Power still corrupts. Bare majority groups will still bully others, if they are given the opportunity to do so.

The checks and balances in the Constitution – including the Electoral College – are still needed to safeguard liberty in our imperfect, human world. Moreover, our unique presidential election system also provides many benefits that no one anticipated.

## ■ *Modern Benefits of the System*

The Electoral College operates today as a unique blend of democracy and federalism. We have a two-phase election process in this country. Taken together, these two steps ensure that both individuals and states are taken into consideration when a president is elected.

The first step in our presidential election is an entirely democratic process. We hold 51 of these purely democratic elections, each and every presidential election year: one in each state and one in the District of Columbia. Voters who head to the polls on Election Day in November are participating in this part of the process. Their ballots decide which electors will represent their states in the second phase of the election.

In 2016, for example, most voters in Ohio cast a ballot for businessman Donald Trump. Thus, the state of Ohio appointed 18 Republicans to serve as

its electors. If Hillary Clinton had won, then 18 Democrats would have been appointed instead.

While the first phase of our election is a democratic election among individual voters, the second phase is a federalist election among the states. This election is held in December. This second vote in December – not the November vote – determines the identity of our next president. The Constitution provides that the candidate who gets a majority of states' electors (currently 270) wins the White House.

The Electoral College's unique blend of democracy and federalism provides many benefits that sometimes get taken for granted.

First, the system encourages presidential candidates to build national coalitions of voters. Candidates can't focus too exclusively on regional majorities or special interest groups. Polling large margins in isolated regions of the country will doom a candidacy to failure. Hillary Clinton demonstrated the truth of this statement in 2016: She won the national popular vote, but only because she'd disproportionately relied on two states: New York and California. More than 20 percent of Clinton's 65.8 million votes came from only those two states. Once they are removed from the national total, the situation reverses itself: Trump leads Clinton by more than 3 million votes.

To be successful, a candidate must win simultaneous, concurrent majorities in many states nationwide. Such victories tend to be achieved by the candidate who does the best job of reaching out to a wide variety of voters in many different parts of the country.

The election in 2016 admittedly felt a lot more divisive than other historical examples, but it also echoes a dynamic that existed in the post-Civil War years. In the late 1800s, the country was sharply divided between North and South. Fortunately, the Electoral College was one influence that healed division and brought the country back together.

Consider the fact that, given the electoral map in those days, Democrats could never win the presidency unless they won at least one state that leaned Republican. On the other hand, Republicans couldn't afford to lose even one state if they wanted to keep the White House.

In short, both sides had incentives (whether they liked it or not) to reach a hand across the political aisle. Those incentives ultimately brought our country to a healthier place. They can and will do the same today.

The Electoral College provides another benefit that too often goes unnoticed: It controls the effect of fraud and error on national vote totals.

In order to influence national vote totals today, you have to know when and where to steal a vote. And if one person can predict this location, then every poll watcher/lawyer in the nation can, too! It is hard to steal votes where it matters the most. Moreover, when problems do occur, these issues can be isolated to one or a handful of states.

Now consider a world without the Electoral College: Any vote stolen in any part of the country would always affect the national tally. Dishonest people could easily steal votes in the bluest California precinct or the reddest Texas one, knowing that they would be affecting the final outcome. Fraud would be rampant.

An American historian once said of the Founders' views on their presidential election system: "[F]or of all things done in the convention," Max Farrand wrote, "the members seemed to have been prouder of that than of any other, and they seemed to regard it as having solved the problem for any country of how to choose a chief magistrate."

Any country. Surely that would include 21st-century America.

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TARA ROSS is the author of *Enlightened Democracy: The Case for the Electoral College and We Elect a President: The Story of Our Electoral College*.

# Immigration Roundtable

*Editor's Note: Of all the public policy issues facing the United States today, immigration evokes the most tangled emotions: who to let in, how many, what skills, what countries? Immigration is too big for a single article, so we are pleased to bring three outstanding thinkers on three disparate – but related – parts of the immigration debate.*

## **An Immigration-Reform Plan for the Age of Trump**

by Ramesh Ponnuru

Lindsey Graham, the Republican senator from South Carolina, hasn't given up on immigration reform. He was in the Senate to watch comprehensive bills he favored fall apart in 2006, 2007, and 2013. He was one of the presidential candidates whom Donald Trump beat for the Republican nomination in 2016. Trump won that contest after saying he would deport all illegal immigrants over a two-year period.

But Trump softened on the issue after winning the nomination, and Graham now thinks he can work with him to achieve many of the aims of those earlier bills. He isn't trying to revive comprehensive legislation one more time, but he also rejects the idea of tackling issues a la carte. If Republicans try to enact legislation that only increases enforcement of the immigration laws, he believes Democrats will block it.

Instead, he tells me, he favors a series of discrete deals.

The first one would combine ramped-up enforcement, starting with "the bad dudes," and the legalization of illegal immigrants who came here as minors. Republicans are open to that legalization, he said, and it "would be hard for Democrats to say no to securing the border and helping these 800,000 kids have a better life."

The second one would legalize adult

illegal immigrants working in agriculture and tourism, and at the same time require employers to use the e-verify program to make sure all new hires are legal workers.

Third, Graham would legalize those remaining illegal immigrants who passed a background check and paid a fine. In return he wants to shift legal immigration toward recruiting people with high skills rather than reuniting extended families. "The immigration system of the future would be merit-based," he says.

I opposed the previous bills that Graham supported, and I'm not completely sold on this plan. But it has enough attractive elements to make me think that those of us who are more hawkish than Graham on immigration should consider it.

The earlier bills would have substantially increased immigration, and low-skilled immigrants would have made up much of the increase. Most Americans don't want that, and the economic case for it is weak. His current idea would not raise immigration levels.

Under earlier versions of comprehensive reform, illegal immigrants might have gotten legal status before effective enforcement measures were in place – because, for example, those measures were tied up in court. In that case, legalization could have acted as a magnet for more illegal immigration, and we would remain stuck in a cycle of illegal immigration and amnesty. This three-step sequence would reduce this risk, because Congress would enact most of the legalization after enforcement had been implemented.

One reason advocates for illegal immigrants have opposed enforcement-first bills is that they have feared that Republicans would never get around to addressing their concerns once they got those bills enacted. Because Graham's first step would include the legalization of illegal

immigrants who came here as minors, though, it might be taken as a sign of good faith.

As leery as congressmen are about trying to address immigration again, Graham believes that the expiration of President Barack Obama's executive order granting quasi-legal status to illegal immigrants who came here as minors will be a "tripwire" forcing action. Republicans don't want Trump to renew their status – they said it was an abuse of power when Obama granted it – but fear the political consequences of exposing them to deportation again. So they have an incentive to pass legislation granting legal status, but they will want to get something to make that legislation more congenial to conservatives.

The senator thinks he has one more thing going for him: the president. "Here's the key: Trump can do something no other Republican can do on immigration," Graham said. What Trump can do is persuade the voters who are most concerned about illegal immigration that he is enforcing the law, and serious about making sure it is enforced in the future.

The fact that comprehensive reform got as far as it did in the past, Graham added, suggests that congressional majorities could be assembled for many of its components. All in all, he is more hopeful than most observers that a productive immigration compromise, or series of compromises, can be reached. For that to happen, many of the Republicans who blocked previous bills would have to come along.

What are the prospects of that? Graham's judgment: "I believe the party will follow Trump if he leads."

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RAMESH PONNURU is a senior editor for National Review magazine. Used with permission of Bloomberg L.P. Copyright ©2017. All rights reserved.

## What Can the Declaration of Independence Teach Us About Immigration?

by David Azerrad

**D**ebates about immigration usually center on two interrelated questions: on what basis should we decide whom to let into our country and what should we expect of immigrants once they arrive in America? Among our elites, the dominant view seems to be that we should not discriminate based on country of origin, nor should we demand immigrants assimilate to our way of life. Multiculturalism teaches that all cultures are equal (except our own, of course, which has caused so much harm to others) and that there is strength in diversity.

If applied consistently, such an approach to immigration would, in the long run, dissolve the national ties that bind

seventh grievance leveled against the King) and cannot give us precise policy prescriptions. It can, however, help us think more clearly about immigration because it articulates certain fundamental truths we seem to have forgotten.

The first is that governments exist to secure the rights of their own people – not those of the rest of mankind. The Declaration does not begin with the self-evident truth of human equality, but with “one people” assuming its separate and equal station in the world. Mankind, we first learn, is divided into various peoples and “Powers of the Earth.”

People set up governments to ensure “their Safety and Happiness” and provide “for their future security.” Immigration policy, like all other policy, should therefore serve the interests and well-being of the American people. One should not confuse the universal duty not to infringe

part of our people. In practice, though, we are not blind to the fact that our common humanity is shaped by the laws, mores, traditions, and religious beliefs of particular nations. The rights of man are refracted through the dense medium of the regime.

The various “Systems of Government” form the minds and characters of people in very different ways. Not all ways of life are therefore equally compatible with ours. The Declaration, for example, distinguishes a “civilized nation” like Great Britain from “the merciless Indian Savages whose known Rule of Warfare, is an undistinguished Destruction, of all Ages, Sexes and Conditions.” While we today object to this characterization of Native Americans, we still are horrified by those, like ISIS, who eschew the rules of civilized warfare.

Although the Declaration does not contain a typology of regimes, it does reveal some of the important characteristics of ours. The list of grievances teaches that we are a people accustomed to representative government who think “the right of representation in the legislature ... inestimable.” We expect the judiciary to be independent, the military to be subordinated to civil power, and we know “the benefits of trial by jury.” We jealously guard our rights and oppose “with manly Firmness” any encroachment upon them.

In sum, we are “a free people,” whose character had been shaped over the centuries by “the free system of English laws.” The Declaration suggests we should look for similar attributes in potential immigrants so that they may more readily become “one people” with us upon arrival. Our dedication to the proposition that all men are created equal should therefore not blind us to the fact that these same men, because of the diversity of political regimes and the power of deeply ingrained habits, are not all equally prepared to live as free men.

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...we are not blind to the fact that our common humanity is shaped by the laws, mores, traditions, and religious beliefs of particular nations.

us into one people. In response, some argue that America is a white, Christian nation and that our immigration policy should not dilute its essential character. To defend their point, they like to cite John Jay’s description in *Federalist 2* of Americans as “a people descended from the same ancestors, speaking the same language, professing the same religion.”

Setting aside the fact that Jay made the colonists out to be much more unified and homogenous than they actually were, this approach to immigration does not sit well with most Americans and does not find support in our founding documents. Nowhere in the Declaration of Independence, or in the Constitution for that matter, are people classified according to race or religion (or any other of the categories that define contemporary identity politics).

The Declaration of Independence, it is true, does not address the question of immigration (with the exception of the

upon the rights of man with the duty of each government to secure the rights of its people only.

There are times when we may deem it best to encourage the migration of foreigners hither (as the colonists tried to do). But circumstances change. As a sovereign political community, we are always free to enact whatever immigration measures we deem to be in our national interest.

We could, for instance, decide at any given moment to completely block off all immigration. While one could argue against the wisdom of such a measure, it could not be said to be unjust. No one has a right to immigrate to America or to become an American.

To state the matter even more bluntly, we may discriminate as we see fit in matters of immigration. It is true that we believe all men to be created equal and therefore recognize that anyone can in principle immigrate to our country and become a

## What to Do About Second-Generation Terrorists?

by Michael Barone

**T**he terrorist (I'm not using names here) who rammed his car into pedestrians on Westminster Bridge and ran it through the fence around the Houses of Parliament turns out to be a son of immigrants and was born in England: a second-generation terrorist. He's not the only one: second-generation terrorists include, according to an interesting analysis by Stephen Dinan in the *Washington Times*, the June 2016 Orlando Pulse nightclub murderer, the son of immigrants from Pakistan, one of the December 2015 San Bernardino shooters, the son of immigrants from Pakistan; one of the attackers in a May 2015 Garland, Texas, Muhammad cartoon drawing contest, the son of immigrants from Pakistan; the November 2009 Fort Hood assailant (classified as a perpetrator of "workplace violence" by the Obama administration), the son of Palestinian immigrants; the two terrorist bombers at the April 2013 Boston Marathon bombing, the sons of asylum seekers from the Chechnya province of Russia.

Opponents of restrictions on numbers of immigrants, refugees and asylum seekers from predominantly Muslim countries frequently make the argument that such restrictions wouldn't have kept these second-generation terrorists out of the nations where they committed their terrorist acts. That's true. But it's also true that if such restrictions had been applied to their parents when they sought to immigrate or sought refugee or asylum status, the second-generation terrorists wouldn't be here either. This doesn't settle the debate over whether we should block entry to people from countries where Islamist terrorism is common or to people from such countries who cannot be vetted. You can make serious arguments on both sides. But the phenomenon of frequent second-generation terrorism is something to weigh in the balance.

And it does seem to be a



*Orlando Pulse Gunman Omar Mateen*

phenomenon, not just a series of unrelated anecdotes. Dinan provides a thoughtful overview from former NSA and CIA Director Michael Hayden: "Historically, the 'high stress' generation for American immigrants has been second generation. Mom and Pop can rely on the culture of where they came from. Their grandchildren will be (more or less) thoroughly American. The generation in between, though, is anchored neither in the old or in the new. They often are searching for self or identity beyond self."

Those leaders who have declined to identify Islamist jihadism as a motivation for terrorism seem to be operating on two assumptions, (a) that the American (or British) people will retaliate with mass violence against perceived Muslims and (b) that seeming to blame Islam will antagonize Muslims here and abroad and motivate them to be terrorists. My guess is that the number of people moved to support terrorism in line with concern (b) is very small, but I'm not sure and will put that issue to the side. But I'm absolutely sure that concern (a) represents a view of the American people so factually wrong as to amount to group libel. It sees the American people as a dim beast easily provoked

to hateful rage. I think it's quite obvious to the vast bulk of the American people that most recent acts of terrorism here and abroad are committed by Muslims and that most, the vast majority, of Muslims in this country and in the world do not commit or support the commission of such acts. It's actually not too hard to keep these two ideas in your head at the same time: it just requires modest powers of observation.

And I think the same common sense that allows most people to understand these two things also allows them to understand that while the first generation of Muslim immigrants, refugees and asylum seekers may not commit many acts of terrorism, their sons and daughters – the second generation – may do so more frequently. It's not clear what policy you might advocate in response: perhaps just stronger programs of assimilation than many in our current university and media elites find congenial. But it's something you may want to keep in mind.

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# The Assault on Our First Freedom

by ELIZABETH SLATTERY

**T**he right to live out your faith in accordance with your beliefs is a cornerstone of our nation's history. Yet we seem to be living in a time of increasing hostility toward religion.

In June, for example, at the confirmation hearing for deputy director of the Office of Management and Budget Russ Vought, Sen. Bernie Sanders (I-Vt.) suggested that expressing the core belief of Evangelical Christians might make someone unfit for office. It was a troubling moment, because senators

may not deny someone unemployment benefits because her faith prohibited her from working on Saturdays, and in *Wisconsin v. Yoder* (1972), the Court determined that a state may not force Amish parents to send their teenage children to high school against their religious convictions. The Court has repeatedly recognized – as it stated in the *Barnette* case – that if there is a “fixed star in our constitutional constellation, it is that no official ... can prescribe what shall be orthodox in...religion.”

placing a substantial burden on the exercise of religion, unless that burden advances a compelling interest in the least restrictive way possible. It defines religious exercise as “any exercise of religion, whether or not compelled by, or central to, a system of religious belief.” Then in 2000, Congress passed a companion law, the Religious Land Use and Institutionalized Persons Act, known as “RLUIPA,” to protect houses of worship from discriminatory zoning and other land use regulations and extend RFRA protections to prisoners.

Together, RFRA and RLUIPA work to ensure sincere religious believers – whether or not they are considered politically correct today – are not forced to choose between their faith and complying with the law, unless the government can meet a high burden. In recent years, critics have claimed RFRA is a license for religious believers to discriminate in conflicts with the LGBTQ community. But RFRA doesn't provide a blank check for religious believers to do whatever they want in the name of religion. It simply provides a way to balance government interests and the free exercise of religion. As our newest Supreme Court Justice Neil Gorsuch once explained, “[RFRA] doesn't just apply to protect popular religious beliefs: it

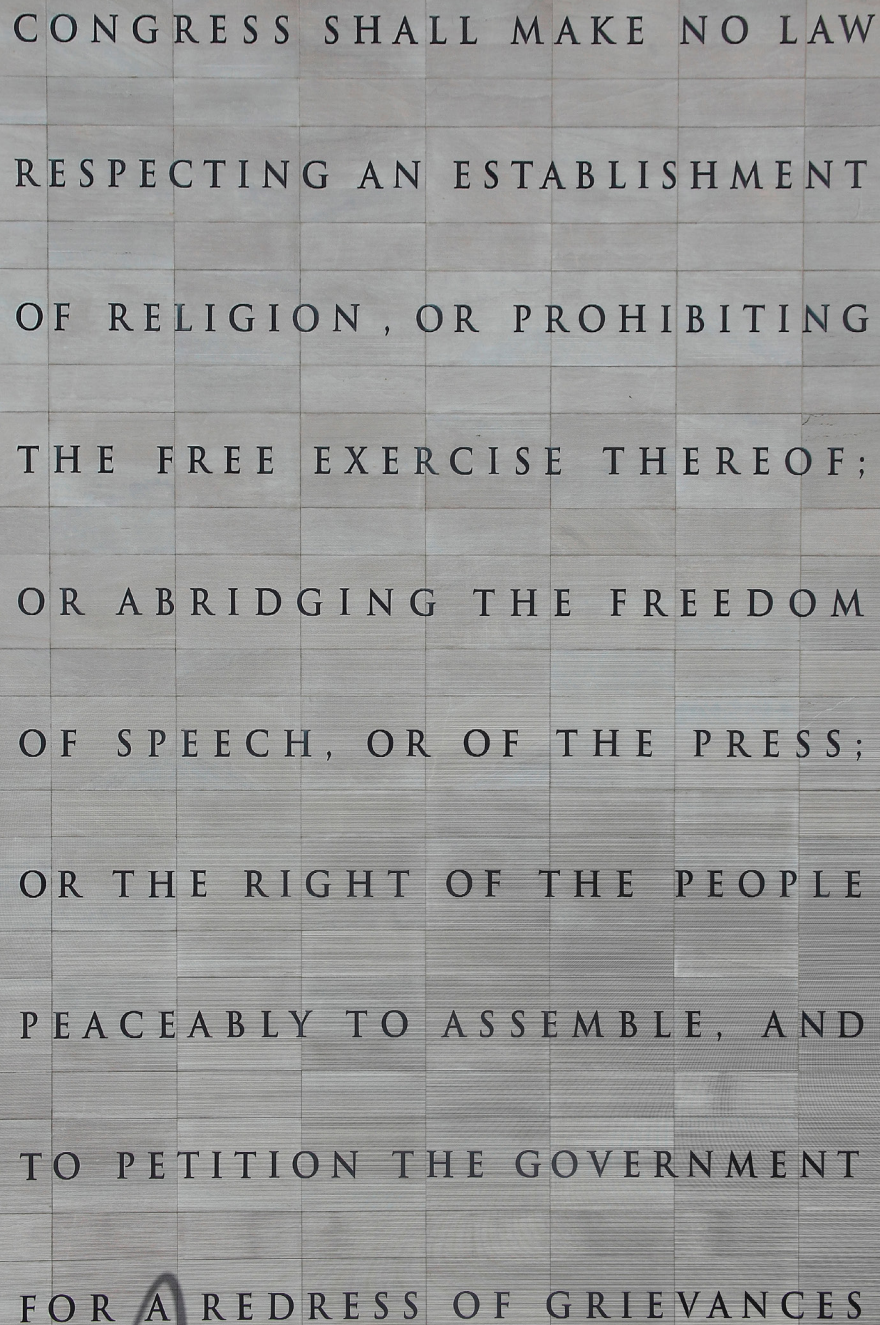
...senators are sworn to uphold the Constitution,  
and the Constitution demands that the government  
respect the free exercise of religion.

are sworn to uphold the Constitution, and the Constitution demands that the government respect the free exercise of religion.

The First Amendment states “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof....” The Supreme Court has long held that the government may not force someone to choose between complying with the tenets of his faith or the law. For example, in *West Virginia State Board of Education v. Barnette* (1943), the Supreme Court ruled in favor of school-age Jehovah's Witnesses who, for religious reasons, objected to being forced to recite the Pledge of Allegiance and salute the American flag. In *Sherbert v. Verner* (1963), the Court declared that a state

But in 1990, the Court ruled in *Employment Division, Department of Human Resources of Oregon v. Smith* that a Native American's sacramental use of peyote must yield to a generally applicable criminal law prohibiting peyote. Congress responded by passing the Religious Freedom Restoration Act of 1993 to strengthen First Amendment protection – even against generally applicable laws. Known as “RFRA,” this law prevents the federal government from

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CONGRESS SHALL MAKE NO LAW  
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PEACEABLY TO ASSEMBLE, AND  
TO PETITION THE GOVERNMENT  
FOR A REDRESS OF GRIEVANCES

*The First Amendment etched into the side of the Newseum in Washington, DC (Photo: Dennis Tarnay, Jr. / Alamy)*

does perhaps its most important work in protecting unpopular religious beliefs, vindicating this nation's long-held aspiration to serve as a refuge of religious tolerance." Indeed, RFRA and RLUIPA are the primary protection for religious freedom today. But as a series of cases demonstrate, there is a growing hostility to religion in our country, and these laws do not always lead to victories for

religious believers. Consider the following cases:

### ■ **How Religious Accommodation Works**

Kawaljeet Tagore, a member of the Sikh faith, was fired from her job with the IRS because she refused to stop wearing a kirpan – a miniature ceremonial sword with a 2.5-inch dull blade.

Her faith mandated that she wear the kirpan, one of five articles of faith, at all times. A district court judge in Texas dismissed her claims, but the U.S. Court of Appeals for the Fifth Circuit reversed, leading the government to settle with Ms. Tagore in 2014.

Robert Soto, a leader of the Lipan Apache Tribe, used eagle feathers in tribal ceremonies. A federal Fish and Wildlife Services agent confiscated his eagle feathers because the Lipan Apache is not a federally recognized tribe and could not obtain the necessary permit. Mr. Soto filed a federal lawsuit, arguing that the federal law that prohibits possession of eagle feathers without a permit violates his rights under RFRA and the Free Exercise Clause. The district court dismissed the case, but the Fifth Circuit ruled in his favor in 2014, finding that the government could not show that burdening Mr. Soto's faith advanced a compelling interest when it allowed many other tribes to possess eagle feathers.

Susan Abeles, an Orthodox Jewish woman who worked for an agency that runs two DC-area airports, lost her job for observing Passover. Her faith prohibited work on four days during Passover, and she was subsequently reprimanded and driven to retire early for complying with her faith. When she sued, the district court judge found that RFRA does not apply to her employer and that Ms. Abeles failed to prove that animus toward her religion was the reason the employer did not accommodate her religious practice. Unfortunately, the U.S. Court of Appeals for the Fourth Circuit affirmed that ruling in 2017.

Faruq Abdul-Aziz and Shakoora Mustafa – Sunni Muslims – were officers in the Newark, New Jersey, police department, which generally did not allow officers to have beards. Though the department allowed exemptions from its no-beard policy for medical reasons, it would not allow Aziz and Mustafa to maintain their beards for religious reasons, and they were disciplined.

Ultimately, in 1999, the U.S. Court of Appeals for the Third Circuit found that the department violated the officers' free exercise.

In another case involving beards, Gregory Holt, an inmate serving a life sentence at the Arkansas Department of Corrections, wished to maintain a half-inch beard to comply with his faith. Arkansas allowed inmates diagnosed with a dermatological problem to have a quarter-inch beard. Holt filed suit challenging the policy under RLUIPA, and the case eventually reached the Supreme Court, which ruled in his favor in 2015. While the state argued that its policy was intended to prevent inmates from concealing contraband and address concerns about an inmate's ability to quickly change his appearance, the Supreme Court held that there were less restrictive means of advancing these goals without forcing Mr. Holt to violate his faith.

Members of the Santo Daime faith in Oregon sued the federal government after drug agents raided their leader's home and government officials refused to give them an accommodation from the Controlled Substances Act for the importation of Daime tea, a hallucinogenic drink from Brazil used in their

rituals. A federal district court ruled in their favor in 2009, finding that the government did not demonstrate that its total ban on importing and possessing Daime tea was the least restrictive means of advancing its interests – particularly in light of accommodations made for various Native American tribes' use of peyote.

Monifa Sterling, a lance corporal in the Marine Corps, hung signs around her shared workspace with biblical passages as motivation and inspiration. One sign quoting Isaiah read, "No weapon formed against me shall prosper." She was ordered to take them down because her supervisor purport-

the signs did not substantially burden her religious exercise.

Andrew Yellowbear, a member of the Northern Arapaho Tribe and an inmate in a Wyoming correctional facility, wanted to use an existing sweat lodge for his religious exercise. Prison administrators denied Yellowbear's request because he was kept in a protective unit due to threats made by other inmates and, they concluded, the cost for extra security to move him to and from the sweat lodge would be unduly burdensome. He filed suit, and a district court held that there was no RLUIPA violation, but the U.S. Court of Appeals for the Tenth Circuit reversed in 2014, not-

... in 2014, the justices determined that closely held for-profit businesses like Hobby Lobby can bring claims under RFRA.

edly didn't like the tone. When Lance Corporal Sterling refused, the supervisor took the signs down, and Sterling was court-martialed and sanctioned for disobeying orders. She appealed, and in 2016, the Court of Appeals for the Armed Forces held that taking down

ing that denying any access to a sweat lodge seemed like a high burden.

During the Obama administration, the Department of Health and Human Services issued a regulation pursuant to the Affordable Care Act requiring employers to pay for or facilitate access to

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*Inside the Supreme Court Building in Washington, DC.*

contraception and potentially life-ending drugs and devices as part of their employee health insurance plans. Dozens of employers that had religious objections to this requirement challenged the regulation as a violation of RFRA for forcing them to violate their sincerely held religious beliefs or pay crushing fines for sticking with their faith. Many lower courts ruled that RFRA did not apply to for-profit businesses. A case brought by Hobby Lobby, a craft chain store,

The administration offered what it thought was an accommodation to certain non-profit employers by allowing them to sign a form that would trigger coverage by a third party. But many employers, including the Little Sisters of the Poor challenged this so-called accommodation for violating RFRA. The Little Sisters' case (consolidated with several others) also went to the Supreme Court, but the justices issued an unsigned opinion three months after

Little Sisters' religious beliefs. The cases remain in limbo, but the Trump administration's Department of Health and Human Services is considering a broad exemption.

While many of these people ultimately had their rights vindicated in court, it's troubling that the gut reaction of government officials tends to be not accommodating sincere religious beliefs. You don't have to agree with Hobby Lobby or the Little Sisters, or share the views of Susan Abeles, Robert Soto, Andrew Yellowbear, and many others to recognize that the government should not be able to force Americans to choose between their religious beliefs and the law.

it's troubling that the gut reaction of government officials tends to be not accommodating sincere religious beliefs.

reached the Supreme Court, and in 2014, the justices determined that closely held for-profit businesses like Hobby Lobby can bring claims under RFRA.

Justice Antonin Scalia's passing in 2016, sending the cases back to the lower courts and directing them to reach an arrangement that doesn't jeopardize the

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# The U.S. Debt Crisis from the Founders' Perspective

by **GEORGE FRIEDMAN**

**T**he U.S. government periodically faces the possibility that this country will default on its public debt. During the Obama administration, Congress and the president were obstinate toward each other on this issue. And so far neither the Trump White House nor Congress has developed a plan that enjoys wide support to resolve the debt crisis. To some extent, our political system is functioning as intended – the Founding Fathers meant it to be cumbersome. But as they set out to form a more perfect union, they probably did not anticipate the extent to which we have been able to cripple ourselves.

Striving for ineffectiveness seems counterintuitive. But there was a method to the Founders' madness, and we first need to consider their rationale before we apply it to the current dilemma afflicting Washington.

## ■ *Fear and Moderation*

The Founders did not want an efficient government. They feared tyranny and created a regime that made governance difficult. Power was diffused among local, state and federal governments, each with its own rights and privileges. Even the legislative branch was divided into two houses. It was a government created to do little, and what little it could do was meant to be done slowly.

The founders' fear was simple: Humans are by nature self-serving and prone to corruption. Thus the first purpose of the regime was to pit those who wished to govern against one other in order to thwart their designs. Except for times of emergency or of overwhelming consensus, the founders liked what we

today call gridlock.

At the same time, the founders believed in government. The U.S. Constitution is a framework for inefficiency, but its preamble denotes an extraordinary agenda: unity, justice, domestic tranquility, defense, general welfare and liberty. So, while they feared government, they saw government as a means to staggeringly ambitious ends – even if those ends were never fully defined.

Indeed, the Founders knew how ambiguous their goals were, and this ambiguity conferred on them a sense of moderation. They were revolutionaries, yet they were inherently reasonable men. They sought a *Novus Ordo Seclorum*, a “New Order of the Ages,” a term that was later put on the Great Seal of the United States, yet they were not fanatical. The murders and purges that would occur under Robespierre or Lenin were foreign to their nature.

The founders' moderation left many things unanswered. For example, they did not agree on what justice was, as can be seen in their divided stance on slavery. (Notably, they were prepared to compromise even on something as terrible as slavery so long as the Constitution and regime could be created.) But if the purpose of the Constitution was to secure the “general welfare,” what was the government's role in creating the circumstances that would help individuals pursue their own interests?

There is little in the Constitution that answered such questions, despite how meticulously it was crafted, and the founders knew it. It was not that they couldn't agree on what “general welfare” meant. Instead, they understood,

I think, that general welfare would vary over time, much as “common defense” would vary. They laid down a principle to be pursued but left it to their heirs to pursue it as their wisdom dictated.

In a sense, they left an enigma for the public to quarrel over. This was partly intentional. Subsequent arguments would involve the meaning of the Constitution rather than the possibility of creating a new one, so while we would disagree on fundamental issues, we would not constantly try to re-establish the regime. It may not have been a coincidence that Thomas Jefferson, who hinted at continual revolution, did not participate in the Constitutional convention.

## ■ *An Enigma Still to be Quarreled Over*

The Founders needed to bridge the gaps between the need to govern, the fear of tyranny and the uncertainty of the future. Their solution was not in law but in personal virtue. The Founders were fascinated by Rome and its notion of governance. Their Senate was both a Roman name and venue for the Roman vision of the statesman, particularly Cincinnatus, who left his farm to serve (not rule) and then returned to it when his service was over. The Romans, at least in the Founders' eyes if not always in reality, did not see government as a profession but rather as a burden and obligation. The Founders wanted reluctant rulers.

They also wanted virtuous rulers. Specifically they lauded Roman virtues. They are the virtues that most reasonable men would see as praiseworthy: courage, prudence, kindness to the weak,

honoring friendship, resolution with enemies. These were not virtues that were greatly respected by intellectuals, since they knew that life was more complicated than this. But the Founders knew that the virtues of common sense ought not be analyzed to the point that they lose their vigor and die. They did not want philosopher-kings; they wanted citizens of simple, clear virtues, who served reluctantly and left gladly, pursued their passions but were blocked by the system from imposing their idiosyncratic vision, pursued the ends of the preamble, but were contained in their occasional bitterness by the checks and balances that would frustrate the personal and ideological ambitions of others.

The Founding Father who best reflects these values is, of course, George Washington. Among the Founders, it is he whom we should heed as we ponder the paralysis-by-design of the Founders' system and the recurrent conundrum that threatens American debt default. He understood that the public would be reluctant to repay debt and that the federal government would lack the will to tax the public to pay debt on its behalf. He stressed the importance of redeeming and discharging public debt. He dis-

Of course, he made this argument at a time when the American dollar was not the world's reserve currency, and when there was no Federal Reserve Bank able to issue money at will. It was a time when the United States borrowed in gold and silver and had to repay in the same. Therefore in a technical sense, both the meaning and uses of debt have changed. From a purely economic standpoint, a good argument can be made that Washington's views no longer apply.

But Washington was making a moral argument, not an argument for economists. From the Founders' perspective, debt was not simply a technical issue; it was a moral issue. What was borrowed had to be repaid. Easing debt may power the economy, but the Founders would have argued that the well-being of the polity does not make economic growth the sole consideration. The moral consequences are there, too.

### ■ *The Republic of the Mind*

Consequently, I think the Founders would have questioned the prudence of our current debt. They would ask if it were necessary to incur, and how and whether it would be paid back. They would also question whether economic

care, I think they would be wary of entrusting such an important service to an entity they feared viscerally. But they wouldn't have been fanatical in their resistance to it. As much as federally mandated health care would frighten them, I believe fanaticism would have frightened them even more.

The question of a default would have been simple. They would have been disgusted by any failure to pay a debt unless it was simply impossible to do so. They would have regarded self-inflicted default – regardless of the imprudence of the debt, or health care reform or any such subject – as something moderate people do not contemplate, let alone do.

There is a perfectly valid argument that says nothing the Founders believed really affects the current situation. This is a discussion reasonable and thoughtful people ought to have without raised voices or suspicion that their opponent is vile. But in my opinion, we have to remember that our political and even private life has been framed by our regime and therefore by its Founders. The concept of limited government, of the distinction between public and private life, of obligation and rights, all flow from the Founders.

The three branches of government, the great hopes of the preamble and the moral character needed to navigate the course continue to define us. The moral character was always problematic from the beginning. Washington was unique, but America's early political parties fought viciously – with Aaron Burr even shooting Alexander Hamilton. The republic of the mind was always greater than the republic itself. Still, when we come to moments such as these, it is useful to contemplate what the Founders had in mind and measure ourselves against that.

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... the founders would have questioned the  
prudence of our current debt...because of what it  
does to the national character.

couraged accruing additional debt and warned against overusing debt.

However, Washington understood there would be instances in which debt had to be incurred. He saw public credit as vital and therefore something that ought to be used sparingly – particularly in the event of war – and then aggressively repaid. This is not a technical argument for those who see debt as a way to manage the economy. It is a moral argument built around the virtue of prudence.

growth driven by debt actually strengthens the nation. In any case, I think there is little doubt they would be appalled by our debt levels, not necessarily because of what it might do to the economy, but because of what it does to the national character. However, because they were moderate men they would not demand an immediate solution. Nor would they ask for a solution that undermines national power.

As for federally mandated health

# Save Yourself

review by SHOSHANA BRYEN

**S**hall We Wake the President, by former Deputy Secretary of Health and Human Services Tevi Troy, subtitles itself *Two Centuries of Disaster Management*. The title is a bit of a fraud. Yes, examples of presidential leadership or lack thereof are highlighted across the chapters. President Lyndon Johnson's reaction to the Watts riots, President George W. Bush's after al-Qaeda's Sept. 11, 2001 attacks and Hurricane Katrina, President Ronald Reagan and the Tylenol tampering, and Franklin D. Roosevelt and the Great Depression. Herbert Hoover, Jimmy Carter, Benjamin Harrison (the Johnstown Flood), Grover Cleveland, Barack Obama, Gerald Ford, and more. They're in there and Troy renders them human in success and failure.

The disasters are there as well – name your nightmare and Troy makes it worse. The book is divided into Acts of God (pandemics, flood, weather, and economic collapse) and Acts of Man (terror, tainted food, bioterror, loss of the power grid, and civil unrest).

But at the end of the day, *Shall We*

be rescued before organizing our own rescue? Can we organize our own rescue if we don't know our neighbors and if we don't have a community to turn to?

Troy is a great storyteller. Bits of history you never learned in school are in the tales of earlier presidents, and things you've probably forgotten are in the later works. But interesting as the stories are, it is hard to escape the fact that each is a non-fiction horror story, some of which resulted in the deaths of thousands of our fellow citizens.

In each chapter, after describing its historical antecedent, Troy suggests steps people can take to protect themselves from the effects of the "next time." There are lists of necessities to have at home – a diversified food supply, a medical kit, bottled water, and cash in case the electrical grid (and your ATM) goes down. (The idea that a couple hundred million of us should start kitchen gardens – just in case – is a little far-fetched, but it isn't wrong.) There are suggestions for navigating a city during a riot – don't try to stop illegal behavior, stay inconspicuous, and sometimes don't

Troy is a great storyteller. Bits of history you never learned in school are in the tales of earlier presidents...

*Wake the President* is neither about presidents nor about disasters. It is about you.

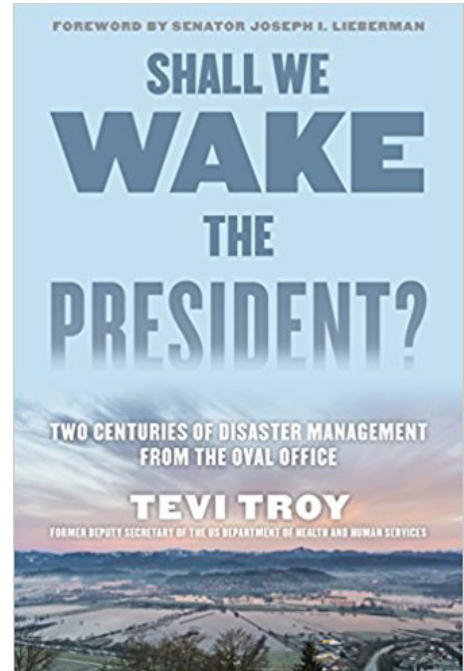
And me.

And us.

What do we expect from our presidents? What is his (or her) responsibility during a crisis and what is our responsibility? How much planning do we demand of the federal government, how much of the states, and how much are we willing to do ourselves? How long will we wait to

run, just walk. The chapter on civil unrest urges strong locks on your doors, but also knowing your neighbors, their needs and their capabilities, as well as being part of church or synagogue groups and civic organizations.

It's on you. With the simple "wash those hands," "be prepared to be on your own," and even, occasionally, "pray," Troy fights the increasingly common American reflex to rely on the federal government.



*Shall We Wake the President?: Two Centuries of Disaster Management from the Oval Office*

Dr. Tevi Troy

Lyons Press  
2017



President George W. Bush speaks to rescue workers at Ground Zero in New York City on Sept. 14, 2001. (Photo: Eric Draper/Bush Library)

Some of the most important parts of the book are explanations of the practical and theoretical limitations of the government. The 1878 Posse Comitatus Act prevents the president from sending in the National Guard without a request by a governor – see the chapter on Hurricane Katrina. States jealous of

and solutions is addressed. In the first chapter, “Pandemics,” we learn Woodrow Wilson refused to let the spread of Spanish Influenza halt or even change his plans to send Americans to Europe to fight in World War I. And, because the pandemic appears to have begun in a Kansas military base, the flu was sent to

of the 1918 pandemic. Bush’s strategy for pandemic included investments in vaccines, antivirals, domestic preparedness and international cooperation. Key aspects of preparedness were rapid diagnosis, antimicrobial treatments, making the vaccine available, and giving public health officials the ability to quarantine carriers.

This President Bush also has the distinction of being on Troy’s list of best and worst presidents in a major crisis. He received high marks for 9/11, but dismal grades for Hurricane Katrina. For the first:

Some of the most important parts of the book are explanations of the practical and theoretical limitations of the government.

their prerogatives can make stockpiling drugs or emergency equipment difficult. Sometimes the crisis itself – such as a bioterror attack – unfolds only over time, making early intervention by the government unlikely. Sometimes the president doesn’t want to set a precedent pre-empting the obligations of states by providing federal aid. The creation of FEMA in 1979 almost instantly federalized storm damage management – which had previously been the purview of states.

In all cases, the American tendency to look to government for security

Europe with the troops. “Of the American soldiers who died in Europe, half died from the flu.” Not only did Wilson continue to send troops abroad, he declined to address the issue or take steps at home to prevent the spread of the disease. As many as 675,000 Americans died in the pandemics at home (as many as 50 million worldwide) – some number of them died because they didn’t take precautions that the government might have either urged or mandated.

President George W. Bush took the opposite approach after, according to Troy, having read John Barry’s account

He did not spread misinformation and was able to shape the... narrative of 9/11 into one of tragedy, but also heroism. He also effectively reached out to Congress, worked through his agencies... and empowered cabinet officials to take actions necessary to deal with the terror threat.

On the other hand, after Hurricane Katrina:

The governmental response was widely characterized as delayed and disorganized. Bush compounded the situation by flying over the

affected area, and the disastrous photo of him surveying the damage from above made him seem callous and out of touch.

Bush himself outlined four mistakes on his part in handling Katrina: Failure to urge an earlier evacuation; failure to return to Washington sooner; slowness in showing both sympathy and federal action; and waiting too long to call in federal troops.

But true to his pattern of separating federal requirements from state and local mandates, Troy notes the failures at those

- Have plans,
- Appear to be in charge – even if their real control is limited,
- Communicate clearly and often,
- Provide direction, and
- Show up.

President Johnson's vacation had an impact on his response to the Watts riots, and Hurricane Katrina occurred while President Bush was on vacation and many of his staff members were out of the country for a staff wedding. Troy notes, "President Obama seemed out of touch when he left to play golf after ISIS ter-

millions more do not. If disaster strikes, we all will have to keep ourselves, our families, and our loved ones going – without staff, without a massive bureaucracy, without an army – with just ourselves. It is resilience, coupled with smart preparation that will get us there ...

At its very heart, the story of humankind is one of billions of individual actors trying to survive as best they can in an often difficult and dangerous world. Reading this book will make you better equipped to understand and to overcome whatever disaster the world might throw at us.

At its very heart, the story of humankind is one of billions of individual actors trying to survive as best they can...

levels in delaying the evacuation of the city; delaying a decision to allow federal troops; lacking the means to communicate within the state and local government; and leaving "basic tasks typically assigned to state and local officials ... to federal responders."

The outline of effective presidential action starts to take shape – and the limits of it do as well. Presidents are best when they:

rorists beheaded an American captive." Obama was also criticized for attending a political fundraiser in Las Vegas two days after the Benghazi attack.

The body of the book concludes with the understanding that disaster response is on us:

Individuals have a tough job ... Although many Americans do know what to do in terms of crisis,

But don't stop there. The appendices are well worth reading: "Presidential Lessons Learned," a checklist for "When Presidents Should Get Involved," and – a personal favorite – "The Five Best and Five Worst Presidents at Dealing with Disaster." If the first two are reminders of the limitations of government, the last is worth the price of the book.

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### ■ *A Final Thought ...*

## Federalism and the Paris Pact

One of the most interesting responses to American withdrawal from the Paris Climate Pact came from a dozen American states and more than 200 cities, who committed themselves (or their constituents) to the principles and goals of the agreement. More than 1,000 companies and institutions, including more than a dozen Fortune 500 businesses, signed a statement joining them.

Whether they planned it or not (probably not), they have exercised a fascinating burst of American federalism. For decades, liberals have sought more federal power over states (abortion, redefining marriage, mandatory health insurance), while conservatives have argued for less (school choice, Medicaid, abortion).

Not this time.

The determination of state, local, and business leadership to forge ahead on standards for conservation, energy, and pollution control is an outstanding development that does not require the federal government and appears not to run afoul of federal law (as, for example, sanctuary cities do). The question is not whether it is better to have clean air and water or not, or whether to find better ways of managing waste and generating electricity or not finding them.

The question is how.

The federal government has a poor track record choosing investments –Solyndra, anyone? The market, from startups to Fortune 500 companies, is the better mechanism for emerging and adaptive technologies.

In the Paris pact, there is no market or investment mechanism, or money for the sort of innovation at which America excels. There is, on the other hand, an international slush fund, the goal of which is to “help developing countries move away from fossil fuels and use more renewable power supplies...” by means of “appropriate financial flows...” That is to say, the “financial flows” from America and other developed countries.

There is no requirement that the U.S. fund anyone else’s program or China’s solar panel industry. American states, cities and entrepreneurs are likely better incubators of technologies that will advance clean and sustainable energy than multi-lateral institutions with lots of rules and no controls.

– Shoshana Bryen  
Senior Director, Jewish Policy Center