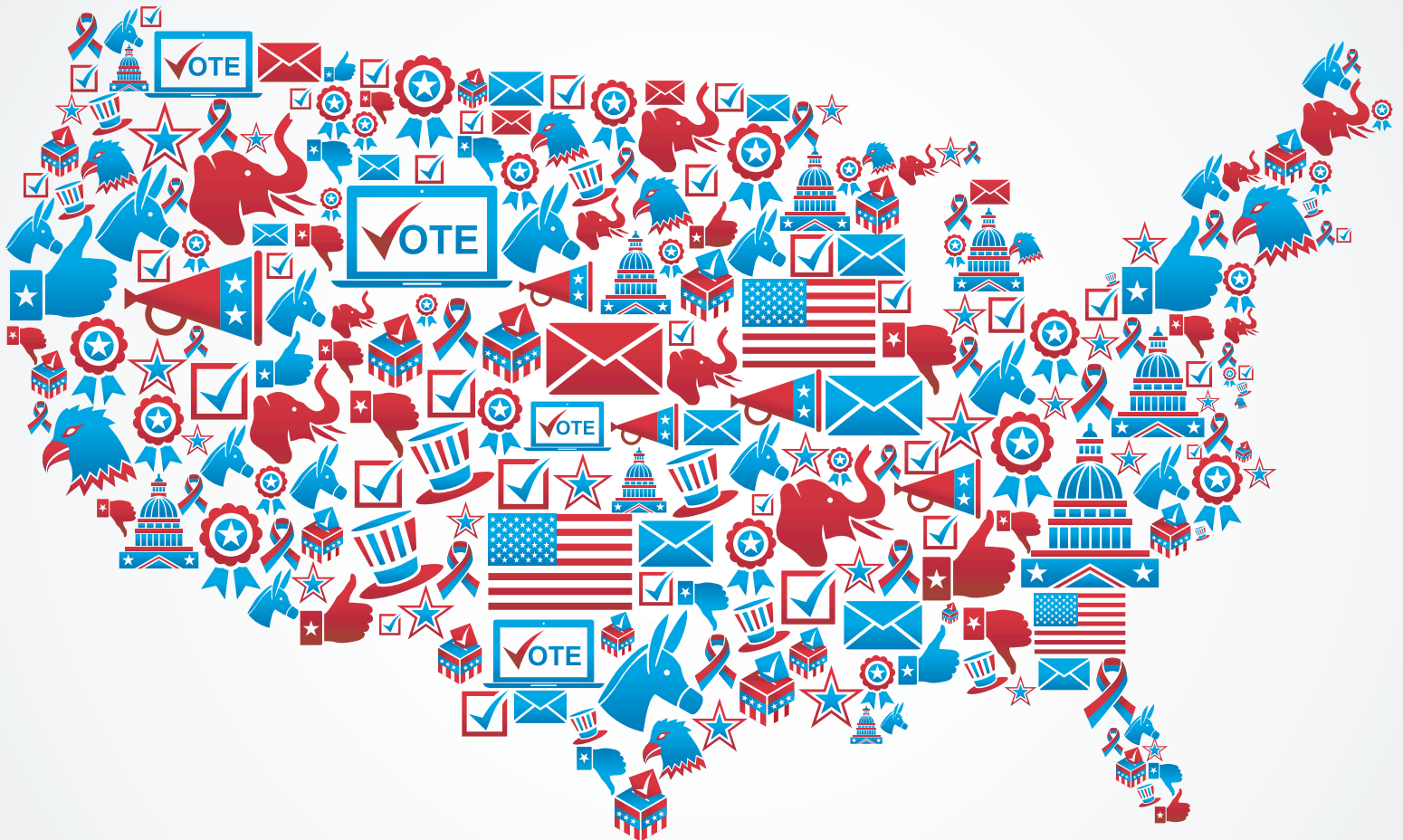


*in*FOCUS

LIMITING OUR GOVERNMENT; EXPANDING OUR FREEDOM



Featuring an Interview with Congresswoman Martha McSally (R-AZ)

LETTER FROM THE PUBLISHER

Go Vote! For whom? I certainly can't tell you and wouldn't if I could. This issue of *inFOCUS* is dedicated to the "for what" of voting.

Sometimes "politics" can appear nasty and overwhelming, but the list of concerns that move us to elect our representatives is a good and healthy one. Vote for a strong and safe United States. Vote for your children and your parents; vote for *our* children and *our* parents. Vote for medical care that rewards innovation – something at which American medicine excels. Vote for energy. Vote for cyber-security. Vote for a tax code that encourages investment and entrepreneurship – two other things at which Americans really excel. Vote for your neighbors. Vote for the Constitution.

In this issue of *inFOCUS*, our authors define some of the issues that should be at the heart of American voting. For Roger Pilon, the United States is a post-Constitutional Republic with vast implications for the relationship between the government and "We the People." Control of our personal information – or the lack thereof – is the purview of Harold Furchtgott-Roth; Ilya Shapiro discusses the Supreme Court; and Paul



Larkin adds to our understanding of criminal justice with his take on clemency. The opioid crisis, tax reform, and energy sources are addressed by Jason Fodeman, Eileen O'Connor, and Paul Driessen, respectively. Stephen Moore and Erwin Antoni cover unemployment, work, and welfare. Daniel Flynn reminds us that Russia has been trying to subvert the U.S. for a century. And Dexter Van Zile writes about Evangelical support for Israel. Shoshana Bryen reviews Mona Charen's book, *Sex Matters*. No doubt it does.

And don't miss our interview with Rep. Martha McSally of the House Homeland Security Committee. Our security here at home is one of those things you should vote for.

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,
Publisher

inFOCUS

VOLUME 12 | ISSUE 4

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Jewish Policy Center
50 F Street NW, Suite 100
Washington, DC 20001.

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The United States as a Post-Constitutional Republic

by **ROGER PILON**

Some years ago I was testifying before one of Congress's seemingly countless subcommittees—if you can't remember a congressman's name, it's usually safe to say "Mr. Chairman"—when one of the members got up to go to another hearing just as I was starting my remarks with, "Most of what Congress does today is unconstitutional." The good man stopped dead in his tracks and, needing no microphone, thundered, "Mr. Pilon, did I hear you say that most of what we do up here is unconstitutional?" "You did sir," I answered. "Then I'm staying for this hearing," he replied. And he did.

That's not the kind of thing most supplicants before Congress are inclined to say. They're up there to ask for more government goods and services. As a guest said the other day on NPR (speaking of government goods and services): "Politics is about who gets what." Today it is, alas. The result of this "free for all"—pause a moment on that locution—is a nation deeply divided over "who gets what." How could it be otherwise? When

the recent battle over the Supreme Court nomination of Judge Brett Kavanaugh, driving no less than Justice Elena Kagan to remark that it makes the Court look like we're "junior varsity politicians."

To a significant extent we're living today in a post-constitutional republic. The vast redistributive and regulatory powers Congress now indulges are nowhere among the "few and defined" constitutionally authorized powers that James Madison outlined in Federalist 45—he, the document's principal author. They are *ultra vires*. But it doesn't end there. For decades, Congress has not only been legislating beyond its authority but delegating ever more of those powers to the 450 or so executive branch agencies it has created (the exact number is unknown), despite the very first words of the Constitution after the Preamble: "*All* legislative Powers herein granted shall be vested in a *Congress* (emphasis added). Not some: *all*." The Framers wanted Congress to be accountable for its acts. Instead, Congress today passes broadly worded measures,

act on an issue a president thinks important, rule by executive order is said to be the answer. "I've got a pen and I've got a phone," threatened President Obama, echoing Paul Begala, aide to President Clinton: "Stroke of the pen. Law of the land. Kinda cool." Thus, the modern executive state, legislating. So much for the separation of powers.

And where have the courts been in all of this? When not themselves legislating, they've often played handmaiden to the political branches and the states. The Supreme Court has developed the deference doctrines that have enabled Congress to act beyond its authority, enabled it to delegate those legislative powers to the executive branch, and then enabled those agencies to act with little if any judicial oversight. Unleashed thus by less engaged courts, the political branches and the states have behaved as democracies have ever behaved—catering, at best, to majorities, at worst but far more common, to special interests more able to work the system to their advantage.

Nowhere is the outcome of those developments more starkly and disturbingly presented than in our federal debt, which today exceeds \$21 trillion and is growing, having more than doubled over the past decade—and our unfunded liabilities vastly exceed that. In fewer than 20 years, our debt-to-GDP ratio has more than doubled, from 33 percent in 2000 to 78 percent today; it's projected to reach 100 percent in 10 years and continue rising thereafter. Put simply, we're demanding more than we're willing to pay for, so we borrow. Our children and grandchildren will bear the costs of our

Congress today passes broadly worded measures,
then tells unaccountable agency bureaucrats to fill
in the details.

we believe that the purpose of government is to solve our every problem, then all is politics. And eventually it all ends up in the courts, politicizing the non-political branch in the process. Witness

then tells unaccountable agency bureaucrats to fill in the details. Most of the "law" that now binds us is made in those agencies as regulations, rules, guidance, and more. And when Congress fails to

current consumption, if they can. As history shows, this cannot go on

Federalist 51 teaches that constitutions are written to discipline not only rulers but the ruled, we the people. But we have to respect those limits. For much of our history we did, largely. Citizens, politicians, and judges alike took the Constitution and the rule of law it secured seriously. Not that there was any golden age—we've always had

powers. The government doesn't give us our rights. We already have them—our pre-existing natural rights.

That fundamental understanding of the moral, political, and legal order, together with their reading of history and their recent experience with majoritarian democracy in the states under the Articles of Confederation, led the Framers to create a government at once more powerful than its predecessor but also restrained in

the Bill of Rights was added two years later, that restraint was made explicit in the Tenth Amendment, which makes it clear that if a power is not found in the document, it belongs to the states or to the people, not having been granted to either government. With the Ninth Amendment stating that we have both enumerated and countless unenumerated rights, we return, through those two concluding amendments, to the Declaration's vision. Rights first; government second, to secure our rights.

The fundamental flaw, of course, was the document's oblique recognition of slavery—the Faustian bargain that enabled unity among the states. The Framers hoped the institution would wither away in time. It didn't. It took a civil war to end slavery and the ratification of the Civil War Amendments, which provided federal remedies against states violating the rights of their own citizens. With those amendments, and the later Nineteenth Amendment providing for women's suffrage, the promise of the Declaration was at last incorporated into the Constitution.

In sum, the vision implicit in the amended Constitution was straightforward. Most of life was to be lived in the private sector. Private relationships were to be ordered by basic common law principles—liberty, property, and contract—

Put simply, we're demanding more than we're willing to pay for, so we borrow. Our children and grandchildren will bear the costs of our current consumption, if they can.

politics—but there was a time when it wasn't all politics, when we better understood the proper place of politics within the rule of law. That changed during the Progressive Era. Here's Woodrow Wilson, who found the document too constraining: “The Constitution was not made to fit us like a straitjacket. In its elasticity lies its chief greatness.” There's a grain of truth in that, of course, but when we get to the New Deal, the implicit latitude would yield a Constitution the Founders would not recognize. To see that, let's first outline the original vision, which begins, not surprisingly, with the Declaration of Independence.

■ *The Original Vision*

The Declaration, grounded in reason, sets forth universal truths: We're born with equal rights to freedom. To secure our freedom, we create governments, their just powers derived from the consent of the governed. That vision was captured 11 years later in the Constitution's Preamble: “We the People ... do ordain and establish this Constitution.” All power rests initially, that is, with us. We create government. We give it its

numerous ways. Principal among such restraints: Federalism, the division of powers between the federal and state governments, most left with the states; separated powers among the three branches, each defined functionally; a bicameral legislature, each chamber constituted differently; a unitary executive with veto power; an independent judiciary with the implicit power to check the political branches and, later, the states; and periodic elections to fill the offices provided for.

It took a civil war to end slavery and the ratification of the Civil War Amendments, which provided federal remedies against states violating the rights of their own citizens.

But the main way the Framers restrained Congress was by enumerating and hence limiting its powers. Captured in the document's very first sentence, Congress was “herein granted” only 18 powers or ends, dealing mainly with objects of national concern. And when

secured mainly by state courts, plus a federal backstop through the Fourteenth Amendment. By contrast, recall the Obama campaign's “Life of Julia,” the animated woman who turns to government at every stage of life. Earlier Americans wanted to be free, not dependent.



Scene at the Signing of the Constitution of the United States. (Painting: Howard Chandler Christy)

■ **Progressives Rewrite the Constitution—Without Amending It**

Progressives found that vision unsatisfying. Arising late in the 19th century, many from elite Northeastern universities, they were social engineers, drawing inspiration from political and social developments in Europe and from the new social sciences at home. Insensitive when not hostile to the power of markets to order human affairs justly and efficiently, they sought to address what they saw as social and economic problems less through litigation than through redistributive and regulatory legislation. Although many were enamored of the direct democracy the Founders feared, many others, paradoxically, called for widespread planning by government bureaucrats.

Perhaps no one put this new vision more starkly than Rexford Tugwell, one

of the principal architects of Franklin Roosevelt's New Deal: "Fundamental changes of attitude, new disciplines, revised legal structures, unaccustomed limitations on activity, are all necessary if we are to plan. This amounts, in fact, to the abandonment, finally, of laissez-faire. It amounts, practically, to

[i.e., the Constitution] intended to prevent them." They knew exactly what they were doing; they were turning the Constitution on its head.

Pushing mostly at the state level early in the 20th century, Progressives ran often into constitutional headwinds when judges, pointing to the document's

Although many were enamored of the direct democracy the Founders feared, many others, paradoxically, called for widespread planning by government bureaucrats.

the abolition of "business." This is the same Rexford Tugwell who, more than three decades later, would write, "To the extent that these new social virtues [i.e., New Deal policies] developed, they were tortured interpretations of a document

restraints, stood athwart their efforts. And that continued during President Roosevelt's first term, when Progressives shifted their activism to the federal level. After several setbacks at the Supreme Court, Roosevelt unveiled his infamous

Court-packing scheme following his landslide reelection in 1936. The scheme failed, but the famous “switch in time that saved nine” meant that the Court got the message.

Without a legitimating amendment,

cooperative federalism, as I discussed in these pages in winter 2015.

But beyond the division of powers, those burgeoning federal programs took a toll on the separation of powers as well, as noted above. For as Congress created

Pushing mostly at the state level early in the 20th century, Progressives ran often into constitutional headwinds when judges point[ed] to the document's restraints...

the Court began, in effect, to rewrite the Constitution, doing so in three main steps. In 1937, it eviscerated the enumerated powers doctrine, thus opening the floodgates to the modern redistributive and regulatory state. A year later, it bifurcated the Bill of Rights, conflating rights and values by distinguishing “fundamental” and “nonfundamental” rights and different levels of judicial review to match. A major effect was to reduce economic liberty to a second-class status. Finally, in 1943, the Court jettisoned the nondelegation doctrine, thus enabling Congress to delegate ever more of its powers to bureaucratic planners in the executive branch agencies. With that, the stage was set for government to grow and liberty to yield—for the emergence of the modern executive state.

■ *Law as Policy, Not Principle*

Notice, then, how each of those steps undermined the restraints outlined above. Most important was the demise of the enumerated powers doctrine, because everything else followed from that. Two Progressive Era amendments—the Sixteenth, providing for a federal income tax, and the Seventeenth, providing for the direct election of senators, both ratified in 1913—provided the wherewithal and the incentive to federalize power, but not until 1937 did the Court authorize that expansion. Once it did, federal programs overtook state programs, replacing our original competitive federalism with

ever more executive branch agencies, it empowered them with legislative, executive, and judicial functions. Yet at the same time, with its creation of “independent” agencies, it undercut the appointment powers of the unitary executive, creating agencies that have become laws unto themselves.

Although authorized by the Court, those changes, except for the last, can rightly be thought of as having been imposed by the dominant forces in both political branches, for the Court was influenced (if not browbeaten) by Roosevelt's threat to pack it with six new members.

For as Congress created ever more executive branch agencies, it empowered them with legislative, executive, and judicial functions.

(He eventually did “pack” it as justices retired or died.) That political pressure helps to explain, if not justify, the Court's actions, including its bifurcation of rights and levels of review, written from whole cloth. That move undercut a vast sea of liberty, clearing the way for the expansion of both federal and state programs. But most important, by instituting the idea of judicial deference to the political branches, the Court's actions reversed the Founders' presumption of liberty first, government second.

The crucial thing to note about this constitutional inversion, however, is that it's a shift from judge-made to statutory law, from ordering human relationships mainly on the basis of fundamental moral principles—liberty, property, and contract—to ordering them through legislative will. That is a shift from principles, grounded in universal reason as old as humanity itself, to policies reflecting, again, the will of majorities, at best, special interests, more often. It is precisely what the Founders and Framers feared—law as will rather than reason. And it has brought us to today, with politics overwhelming all.

Our demand for ever more “free goods” has led to “entitlements” that are said to be “untouchable.” No wonder that for 20 years, Congress has failed to pass more than a third of the 12 bills that cover “discretionary” spending. Instead, it stumbles on with a hodgepodge of continuing resolutions and omnibus spending packages. When “we're all in this together,” the politics that is set in motion allows for little else, for redistributive government is a negative-sum game. That's what happens when constitutional restraints designed to prevent that kind of government are abandoned.

The Court can chip away at the edges of this problem, but only Congress, which created the problem, can directly address it. For that to happen, however, we ourselves must demand less from government, and that will take a cultural sea change. Such is the issue before us in this post-constitutional republic.

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The Supreme Court: Too Important

by ILYA SHAPIRO

Nobody likes judges. Progressives think the courts are too cozy with big business, stomping on the rights of the “little guy” when they’re not depriving him of the right to vote or allowing his boss to deny him contraceptives. And don’t get them started on *Citizens United* (no, please, don’t). Conservatives, for their part, are wary that, even if they win plenty of cases, they always seem to be one vote short on the things that really matter: marriage, racial preferences, Obamacare. Not to mention the nationwide injunctions since Donald Trump became president, thwarting the president’s agenda on everything from the travel ban to sanctuary cities to 3-D printed guns to the reversal of various regulations and executive actions from the Obama era.

And all that’s before we even get to the bizarre circus that comes to town any time there’s a vacancy on the Supreme Court, when the left dials it up to 12 – “where we’re going, we don’t need dials” – mostly about abortion but there are plenty of other horrors in that evergreen parade. If Neil Gorsuch is an “illegitimate” justice because he “stole” Merrick Garland’s seat, Brett Kavanaugh’s illegitimacy stems from his being selected to grant Trump some sort of newfangled immunity. (As if Kavanaugh wouldn’t have been picked by Jeb Bush or Ted Cruz, or that this scholarly jurist is just Michael Cohen with a Yale degree.)

This isn’t right. No other country has this sort of judicial fetish; Americans famously can’t identify any Supreme Court justices – notwithstanding Ruth Bader Ginsburg’s current semi-celebrity in some circles – but other countries’

elites don’t know who their top jurists are. And for good reason: whereas in America, every June nine black-robed lawyers decide a handful of the nation’s biggest political controversies, elsewhere it’s the national parliament that’s supreme, or in any event doesn’t give the courts power over issues with significant political salience (and also, the people don’t expect the legislature to be bound in the same way).

are going to be fraught with partisan considerations, particularly as competing interpretive theories essentially map onto political parties that are more ideologically sorted than ever.

At the same time, courts are reactive institutions: even the most “activist” need a case or controversy before them, rather than reaching out to make rulings out of thin air. So, it’s Congress that’s ultimately the aggressor, both daring the

...the Supreme Court itself bears significant blame for the toxic nature of our legal battles, with a constitutional corruption that started during the New Deal...

■ *The Court and Congress Corrupted the Constitution*

As I wrote for *inFOCUS* in 2016, the Supreme Court itself bears significant blame for the toxic nature of our legal battles, with a constitutional corruption that started during the New Deal and expanded in the decades since. As the Court has allowed both the legislative and executive branches to grow beyond their constitutionally authorized powers, so have the laws and regulations that the Court now polices. All of a sudden, competing legal theories battle for control of both the United States Code and the Federal Register, as well as determining – often at the whim of one “swing vote” – what rights will be recognized. As we’ve gone down the wrong jurisprudential track, the federal judiciary now has the opportunity to change the direction of public policy more than it ever did. So of course, judicial confirmations

courts to strike down significant pieces of legislation and passing broad legislation that leave it to the administrative state to produce the legal rules by which people are ultimately bound.

Senator Ben Sasse (R-NE) gave a pithy summary of this dynamic in his opening statement at the Kavanaugh hearings, reprinted in *The Wall Street Journal* the next day.

For the past century, more legislative authority has been delegated to the executive branch every year. Both parties do it. The legislature is weak, and most people here in Congress want their jobs more than they want to do legislative work. So, they punt most of the work to the next branch.

The consequence of this transfer of power is that people yearn for a place where politics can actually be done.



Inside the Supreme Court Building in Washington, DC.

When we don't do a lot of big political debating here in Congress, we transfer it to the Supreme Court. And that's why the court is increasingly a substitute political battleground. We badly need to restore the proper duties and the balance of power to our constitutional system.

In other words, Congress doesn't complete its work because this way it can pass the political buck to a faceless bureaucracy, and to a court system that ultimately has to evaluate if what these alphabet agencies come up with is within spitting distance of what the Constitution allows. What's supposed to be the most democratically accountable branch of government has been punting its responsibilities and avoiding the hard political choices since long before the current polarization.

Indeed, the "gridlock" of the last decade is a feature of a legislative

process that's meant to be difficult by design, but compounded of late by citizens of all political views being fed up with a situation whereby nothing changes regardless of which party is elected. Washington has become a perpetual-motion machine – and the courts are the only actors with an abil-

■ ***With the Newest Justices, Things Are Looking Up***

In any case, things are looking up as far as the Court is concerned. The term just past was the first full one with the Court back at its "full strength" of nine justices, so all eyes were on Justice Gorsuch to see how the Court's internal dy-

...courts are reactive institutions: even the most "activist" need a case or controversy before them, rather than reaching out to make rulings out of thin air.

ity to throw in a monkey wrench from time to time. That's why people are so concerned about the views of judicial nominees – and why there are more protests in front of the Supreme Court than in Congress (which, when you think about it, is absurd).

namic would shift. While early reports, based on what turns out now to be unsubstantiated speculation, spoke of tensions between the newest justice and several of his colleagues, he quickly settled in and ended up writing many thoughtful opinions, including being assigned to write for

the majority in more 5-4 rulings than any junior justice since 1988-89 (when the junior justice was one Anthony Kennedy).

Gorsuch is the real deal. Those who hoped for (or feared) a smooth-writing textualist got what they expected. “Wouldn’t it be a lot easier if we just followed the plain text of the statute?” he asked at his first argument, in an otherwise forgettable case. “Originalism has regained its place at the table [and] textualism has triumphed,” he explained to more than 2,000 celebrants at the Federalist Society’s annual dinner last November.

Gorsuch has also been warning against judicial over-deference to executive agencies. I can’t do the debate justice here, but suffice it to say that in this pen-and-phone-and-tweet era, it’s refreshing to see a jurist note the lack of accountability in a system driven by bureaucrats rather than legislators. Why do Democrats want a Scott Pruitt or Betsy DeVos to have so much power anyway? Because that’s what they’re saying when they want judges to defer to agencies.

Regardless, the Court’s ideological dynamic that we’ve all gotten used to, with four liberals, four conservatives, and a “swing,” is now done. With Justice Kennedy’s retirement, the Court will move right, with the chief justice at its center. While John Roberts will have even more incentive to indulge his minimalist fantasies to lead the Court from the squishy commanding heights, he is a far surer vote for conservatives than Kennedy.

And by filibustering Gorsuch, Democrats destroyed their leverage over this latest, more consequential vacancy. It’s not clear that moderate Republican senators would’ve gone for a “nuclear option” to replace Kennedy with Kavanaugh, but now they don’t face that dilemma.

Brett Kavanaugh is a great pick even if an inside-the-Beltway double-Ivy swamp creature is a somewhat surprising choice for this president. Having spent a dozen years on the D.C. Circuit, Kavanaugh’s opinions are grounded in text and history, and are often cited by the Supreme Court itself. He’s much like

Justice Kennedy, for whom he clerked, in his dedication to the Constitution’s structural protections for liberty. That was a central theme of Kavanaugh’s remarks during the White House ceremony announcing his nomination: “I teach that the separation of powers protects individual liberty.”

Perhaps most notably, Kavanaugh’s willingness to push back on the excesses of the regulatory state make him a man for the moment. At the same time, he approaches this task from slightly different angle than Gorsuch. Whereas Gorsuch wants to pare back the scope of deference, Kavanaugh focuses on reducing the number of instances where deference is applied in the first place. For example, under the famous Chevron doctrine, judges defer to agencies when the agency’s operational statute is ambiguous – and Kavanaugh would rather that judges work not to find (or manufacture) that ambiguity.

More prosaically, Kavanaugh sees the judicial role as reading and applying the law, not being an agent for social

ball back in Congress’s court – and returning power back to the states. After all, the separation of powers and federalism exist not as some dry exercise in Madisonian political theory but as a means to that singular end of protecting our freedom.

These structural protections are the Framers’ brilliant best stab at answering the eternal question of how you empower government to do the things it must do to secure liberty while also building internal controls for self-policing. Or, as James Madison famously put it in Federalist 51, “In framing a government which is to be administered by men over men [because men aren’t angels], the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”

The reason we keep having these heated battles in the courts is that the federal government is simply making too many decisions at a national level. There’s no more reason that there needs to be a one-size-fits-all health care system, for example, than that zoning laws

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change. There will be cases where he and the Cato Institute don’t see eye-to-eye – he’s not a libertarian – but I hope that in those politically sensitive times where Chief Justice Roberts may be inclined to rewrite a law in order to save it, Kavanaugh will be more like Justice Antonin Scalia and let the political chips fall where they may.

■ *A Return to Federalism Is the Only Hope*

In the end, the measure of the Supreme Court’s success will be the extent to which it plays a role in rebalancing our constitutional order, curbing executive-branch overreach – thereby putting the

must be uniform in every city. Let legislators – not regulators – make the hard calls about truly national issues like defense or interstate commerce, but let states and localities make most of the decisions that affect Americans’ daily lives. Let Texas be Texas, California be California, and Ohio be Ohio. That’s ultimately the only way we’re going to defuse tensions in Washington, whether in the halls of Congress or in the marble palace of the highest court in the land.

ILYA SHAPIRO is a senior fellow in constitutional studies at the Cato Institute and editor-in-chief of the *Cato Supreme Court Review*.

Taxes: ‘The Price We Pay for a Civilized Society’

by EILEEN O’CONNOR

“Taxes are the price we pay for a civilized society.” This oft-repeated quotation is carved over the entrance of the national headquarters of the Internal Revenue Service in Washington, D.C. It is attributed, correctly, to U.S. Supreme Court Justice Oliver Wendell Holmes. When Justice Holmes penned those words, it is likely he wasn’t intending to create a profundity that would be repeated ad nauseum over the years. They appear in his dissent to an opinion addressing an issue with which the Supreme Court wrestled again just a few years ago, in *NFIB (National Federation of Independent Business) vs. Sebelius*: whether a government imposition is a tax or a penalty.

Just a few lines after his famous quotation, Holmes wrote that he could see no ground for denying a government’s “right to use its power to tax unless it can be shown that it has conferred no benefit of a kind that would justify the tax. . .”

So, what is the benefit U.S. taxpayers receive on account of paying federal income taxes?

Cardi B asked that question when she saw her tax bill earlier this year. The young rapper from New York apparently earned a lot of money last year and, like all new earners, was shocked when she learned that 40 percent of her income had been taken from her in taxes. She complained bitterly (to put it mildly) that she has no idea where her taxes are going. None of the things she thought her taxes should pay for were being done: the streets of New York were dirty, rats were on the trains, prisoners were not given adequate clothing.

When you give to a charity for children, she said (in the expletive-laden rant she posted online), they send you regular photos to let you know how the child you sponsored is doing. She demanded to know how her tax dollars were being spent. She demanded receipts. Let’s leave aside for the moment that her immediate complaints relate to things state and local taxes, not federal taxes, are devoted. Her questions are good ones: what is government doing with all the tax dollars we send it?

Alexandria Ocasio-Cortez is the Democrat candidate to represent New York’s 14th congressional district. Long-time incumbent Democrat Joe Crowley was so confident in his re-election he hardly bothered to campaign. Instead of showing up himself, he sent surrogates to debate her. In a district with 235,745 people eligible to vote in the Democrat

government would have plenty of money to pay for free education and health care and everything else, she says, if it would just stop spending so much on national defense.

So, what should government pay for? To what ends should taxes be devoted? Where do our tax dollars go now?

Unfortunately, answering these questions would only give us a partial answer to what we should want to know. If the federal government spent only what it took in, what a wonderful world it would be. We need to ask an additional question. In addition to “what does the government spend and on what,” we need to ask “where does it get it?” But borrowing is a topic that, to do it justice, we must set aside for another time.

This essay contains quite a few numbers, not because you need to know or remember them, but because you read

If the federal government spent only what it took in,
what a wonderful world it would be.

primary, Ocasio-Cortez garnered only 15,897 votes. But that was more than the 11,761 who showed up for Crowley.

The headlines shout that she won with more than 57 percent of the vote. Yes, she did. Fifty-seven percent of the votes that were cast. Whether she won, or Crowley forfeited, the result is the same. The young socialist is now given platforms daily on which to promote her free everything for everyone policies. Not to worry, government will pay. The

about numbers like this all the time, in settings that do not provide context or points of comparison. You’ll find those things here, using the latest available numbers, some of which are more recent than others.

■ **Constitutional Guidelines**

Section 8 of the United States Constitution reads, in relevant part: “The Congress shall have the Power To lay and collect Taxes, Duties, Imposts, and

Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.” The 16th Amendment added and altered: “The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.”

There you have it: Congress has the authority to impose taxes to pay the nation's debts and to provide for its defense and general welfare. Pretty simple and straightforward. Budget experts categorize federal expenditures as either mandatory or discretionary. Oddly, ones you might think are mandatory—like those for national defense—are categorized, in our upside-down world, as discretionary. And ones you might think are discretionary—like financial assistance to the needy, which can be accomplished more effectively through religious or community or local government organizations closer to home—are categorized as mandatory.

In early 2009, then-Rep. Barney Frank argued for a significant reduction in defense spending: “. . . [I]f we do not make reductions approximating 25 percent of the military budget starting fairly soon, it will be impossible to continue to fund an adequate level of domestic activity. . .”

That was nearly ten years ago. According to the most recent data available from the U.S. Census Bureau, in 2016, nearly 36 percent of all people in the United States, and more than 52 percent of people under the age of 18 in the country, lived in households receiving some sort of means-tested federal government assistance.

In 1922, Massachusetts citizen Harriett Frothingham challenged the government's first program in what we now call the welfare state. Congress had established a bureau, and appropriated funds for it, to reduce maternal and infant mortality and protect the health of mothers and infants. Mrs. Frothingham

probably bore no ill will towards mothers or infants, but nonetheless challenged the law—the Maternity Act—as exceeding Congress's authority.

Congress was authorized by the Constitution (as amended by 16th Amendment) to tax her income, but there were limits on how it could spend the revenue so collected. Unfortunately, rather than address the question, the Supreme Court dodged it completely, ruling that Mrs. Frothingham did not have standing to challenge the law. The Commonwealth of Massachusetts had also challenged the law, on the basis that with it, the federal government was usurping Massachusetts' authority. The Supreme Court ruled against it as well, finding that Massachusetts could opt out of the program. Mrs. Frothingham, sadly, could not. Nor can we.

■ *The Ins and Outs*

For 2017, federal receipts were about \$3.3 trillion and spending was about \$3.9 trillion, for a deficit of about \$665 billion. Those numbers, however, do not tell the complete story of the U.S. government's financial situation or fiscal performance. They do not reflect, for example, the tax gap—i.e., the difference between the taxes the government should be collecting and the amount it does collect. When

Federal revenue and spending numbers also do not include the cost of tax expenditures, which, for 2017, totaled about \$1.6 trillion. And they do not include the cost of government regulation, which is estimated to have cost the economy \$1.9 trillion in 2015, and more each year since then. The Trump administration is working hard to reduce government red tape, but for many reasons, it will take quite a while.

■ *Tax Expenditures*

You can look at tax expenditures as taxes Congress has decided, for policy reasons, not to impose. Or you can look at them as lawmakers avoiding their Constitutional obligation to appropriate taxpayer funds they wish to spend, like tax breaks for “green energy.” Because lawmakers believe that promoting homeownership is good for society, for example, the government annually forgoes billions in tax revenues it would collect but for the federal income tax deduction for home mortgage interest. For 2017, this deduction reduced federal revenues by \$65 billion. The charitable contribution deduction reduced 2017 federal revenues by about \$47.7 billion. The exclusion for employer-paid health insurance for employees reduced federal revenues by about \$214 billion.

Federal revenue and spending numbers also do not include the cost of tax expenditures, which, for 2017, totaled about \$1.6 trillion.

last estimated, for 2010, this came to about \$406 billion a year. The number had been experiencing substantial annual increases at that point, and is likely much larger now. The tax gap, in turn, does not reflect the money the IRS gives away that it should not—improper payments, in government jargon. And the IRS estimate of its improper payments is also vastly understated. More on those items in a moment.

But you probably wouldn't agree with some of the items Congress classifies as “tax expenditures.” Among them is an item called “net imputed rental income.” Believe it or not, tax and budget economists consider it to be a matter of legislative grace that you are not taxed on the rental income you forgo by living in your home instead of renting it out. This tax “break”—not having to pay tax on rental income you have decided not

to receive—cost the federal government about \$121 billion in 2017. There are only a few items like this, though. For the most part, the calculation of tax expenditures is a ballpark number you can rely on.

■ **Improper Payments**

All federal programs are susceptible to making improper payments. They can result from any number of factors, ranging from simple errors by the agency or the recipient, to negligence or gross incompetence by agencies, to criminal fraud amounting to theft of the funds taxpayers worked hard to earn and paid into the federal Treasury under penalty of law. As you can imagine, this is not a new phenomenon. But it wasn't until 2002 that Congress began requiring federal agencies to identify vulnerable programs and report to Congress an estimate of the improper payments they had made under them. Before the Act went into effect, agencies reported an estimated \$20 billion

One of these is the Additional Child Tax Credit (ACTC) program for which the IRS is responsible. Notwithstanding the urging of the Treasury Inspector General for Tax Administration (TIGTA) to do so, IRS does not classify the ACTC program as one requiring it to estimate and report improper payments. For fiscal year 2017, the IRS improperly handed out \$7.4 billion of ACTC, more than 23 percent of the total amount it paid for this program. During this period, it also improperly handed out \$16.2 billion in earned income tax credit (EITC), nearly 24 percent of the total it paid.

As Senator Everett Dirksen is reported to have quipped: a billion here, a billion there, pretty soon you're talking real money.

It has been estimated that the wall President Donald Trump would like to construct on our southern border—for purposes of national security—would cost from \$21 billion to \$24 billion. People who think “horrors—we can't

to Congress that are informative and useful. Much of the responsibility for IRS's inability to prevent making tens of billions of dollars in improper payments every year, however, can be laid at the Advocate's feet, and its insistence that the IRS not be permitted to take the steps necessary to determine eligibility for “refundable credits” before paying them. And once paid, with very few exceptions, those dollars are gone. They might as well be feathers in the wind.

IRS is hardly the only federal agency making improper payments. For 2017, Health and Human Services made \$90 billion in improper payments. For a peek at the relative size of this amount, consider that the \$854 billion spending bill Senate passed in August included a \$2.3 billion funding increase for HHS. That's right, an agency that admits to having made at least \$90 billion in improper payments last year gets a \$2.3 billion increase in funding this year.

■ **Who Cares?**

Lawmakers consider they are doing a wonderful thing when they relieve people of the obligation to file returns and pay taxes. The consequence of continuing to shrink the pool of people paying taxes is to also shrink the portion of the population that cares that government takes an ever-increasing share of earnings and can't be bothered to be a good steward of those funds.

Candidates for public office should be required to explain how they will demand that the federal government treat taxpayers and the taxes they pay with the respect they deserve. Voters must demand that their elected officials see that the government confers benefits that are within its constitutional authority to provide, and that justify the taxes imposed and collected.

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It is up to the agency to identify the programs on which it reports, and the amounts it estimates to have been improperly paid.

in improper payments for fiscal year 2001. For fiscal year 2004, the first year the Act was in effect, the number rose to \$45 billion, but was acknowledged to be incomplete, as it did not include all risk-susceptible programs. Government agencies estimate they made about \$141 billion in improper payments for 2017. Since reporting began in 2003, the estimated total is \$1.4 trillion.

But these numbers don't tell the whole story. It is up to the agency to identify the programs on which it reports, and the amounts it estimates to have been improperly paid. Programs the agency doesn't consider to be particularly vulnerable or to have an especially high rate or amount of improper payments are not included in the numbers it reports.

afford that!” should consider that IRS not making improper payments on just these two programs—ACTC or EITC—for just one year would cover it.

For years, the IRS has been asking Congress for authority to determine eligibility for these programs before paying out the credits claimed. And for years, the IRS Taxpayer Advocate, whose job it is to help low-income taxpayers not get crushed in the machinery of tax administration, has prevailed upon Congress to not grant IRS that authority, or to only grant a limited version of the tools necessary to avoid paying out on false, fraudulent, or simply erroneous claims.

The Taxpayer Advocate's Office does terrific work, producing annual reports

Digital Information: Who controls it?

by **HAROLD FURCHTGOTT-ROTH**

In his dystopian novel *1984*, George Orwell describes a world in which a government controls information, rewrites history, and conducts surveillance of individuals' private lives in order to control their movements and thoughts. Protagonists Winston and Julia seek but ultimately fail to revolt against Big Brother and The Party.

While the world today—outside of a few places like North Korea—is not the dystopian nightmare of 1984, individuals still face challenges with misuse of information that even Orwell could not have imagined. Consider the following four examples of abuse:

means of collection and use have expanded dramatically in the past few decades.

2. *Third parties benefitting from use of personal information*—Governments and businesses collect vast troves of information on individuals not as an idle activity but precisely because it is valuable. Even when not useful in the short term, having banks of data about consumers can be beneficial at a later date. Some governments might use consumer databases for purposes ranging from tax collection to international espionage. Businesses purchase consumer data such as driving habits, purchasing habits, choices of en-

instances, consumers prefer that some information about themselves not be sold. For example, an individual diagnosed with a certain medical condition might not be pleased that her medical information is known to anyone, much less sold to third parties that advertise remedies.

4. *Stolen information*—Government agencies such as the Office of Personnel Management (OPM) have had their databases breached and personal information stolen. So too have private companies such as Target and Equifax and countless others. Consumers receive the cheery message that their personal information may have been compromised. Information theft is not limited to corporate websites. Individuals using social media rely on privacy settings to guard their information, not recognizing that the settings and their data can be hacked. Information system administrators risk losing their jobs in these cases, but individual consumers are rarely offered compensation.

Abuses...would be substantially lessened if information were endowed with property rights.

1. *Information gathered and used without knowledge*—Many major corporations and governments collect substantial troves of data about practically everyone. Some of this information is gathered with knowing consent, some with a check of a box on an unread screen, and some without consent at all. Some data are gathered from GPS location services. Social media sites such as Facebook collect information about individuals who don't use their services. Information may also be gathered surreptitiously from unencrypted communications. Even if a consumer consents to the collection of certain information, the consumer likely is unaware of how the information is used. Of course, businesses and governments have collected and used information about individuals for millennia, but the

tainment, and personal political views to target marketing to specific customers. Others simply collect this data and sell it to other businesses. Most consumers are generally powerless to address this issue.

3. *Third parties benefitting from the sale of information*—One friend is drafting an email to another friend suggesting lunch. Suddenly, restaurant advertisements appear before the email is even sent. Some entities are eavesdropping on the mere drafting of emails and selling advertisements on that basis. Much of the Internet business model is built on selling advertisements to consumers based on specific information about the consumer. The matching of information generally benefits both consumer and advertiser, but in many

■ *Information as Property*

Above, we reviewed four types of abuse of information. In a well-functioning economy, an asset is rarely abused or misallocated if it is treated as property and where property laws are enforceable. Thus, assets ranging from land, groceries, clothes, and securities are rarely abused in the United States.

From an economic perspective, if an asset is to be considered property, the party controlling it has three rights associated with it: (1) the ability to determine the use of the asset; (2) the ability to benefit from the use of the asset; and (3) the ability to benefit from the sale of the asset. A person

or entity that has these three characteristics controls the property, regardless of the underlying ownership structure. Thus the issue of whether a hospital, a doctor, a laboratory, or a patient owns an x-ray scan, or other information, is less important than who controls that information. The four abuses discussed above would be substantially lessened if information were endowed with property rights and if control of information were more transparent and if individuals had more control over information relevant to them.

Information has always been valuable, but with the advent of the Internet, personal information has become a gold mine. Many of the largest corporations in the world did not exist a generation ago, and most have capitalized on the value of individuals' personal information on the Internet. These corporations did not necessarily purchase the information rights of individuals, but they have successfully found, developed, and controlled that information.

Some forms of information, such as

information collected? Does a consumer consent to having cookies placed on a machine? Does a consumer consent to receiving notices which in turn may collect further information? Is a form with hundreds of words of legalese printed in small font a reasonable basis for consent?

But these forms of consent are not equivalent to either ownership or control of property. A consumer who consents to a wide range of forms of collection of information does not necessarily abandon all interest in how personal information is later used or sold.

The current debate over consent focuses on the collection of information, not on the subsequent use of information. Detecting the misuse of information is often easier than the improper collection of information. If an advertiser sends an improper advertisement, that is easier to detect than if an advertiser has access to a hidden database.

Much of the discussion of consent implies that individuals have absolute control over the collection of their personal in-

■ **Data Privacy in the U.S.**

Currently, Americans have limited rights related to personal and consumer information. Those rights are usually created by federal administrative agencies and cover only specific categories of personal information. For example, the Department of Education creates privacy protections for students' education information, particularly for college and high school students. In the name of privacy, schools are not allowed to tell parents of older students about their academic performance without specific student consent, possibly even for students who may need remedial programs. However, students cannot fully determine the use or the benefit of their academic data, nor can they benefit from selling the information.

Similarly, health information privacy laws limit the sharing of health information about a patient. These laws do not actually assign any tangible property rights to patients, who still cannot determine the use of information, benefit from that use, or benefit from the selling of information. Consumers ostensibly control the dissemination of health care information, but that is a far cry from actually determining how information is to be used and benefitting from that use.

The current legal framework that addresses personal information rights is a confusion of laws with which most consumers are unfamiliar. The exact protections vary by federal agency, and the enforcement of those rules is often primarily by the agency itself. The United States has yet to develop a streamlined approach to solving this problem.

■ **The Europeans Try a New Approach**

The E.U. has a new set of privacy rules, GDPR (General Data Protection Regulation), that gives consumers substantial new rights with regard to their online personal data. Individuals have more tools to limit the collection of their online information, the rights to review and edit information that has already been collected, and companies have new

Protecting consumers from unwanted use of personal information should be profitable.

copyrighted works, have clear property rights, both for ownership and control. This is not to say that property rights for copyrighted works are perfect; indeed, piracy of copyrighted works is rampant in much of the world. But there are mechanisms to ensure that for law-abiding websites, copyrighted works are not used without approval. Owners of copyrighted works may feel that these mechanisms are inadequate, but they are far better than the essentially non-existent mechanisms to protect consumers from unauthorized use of personal information.

■ **The Limitations of Consent to Collecting Information**

Many consumer privacy efforts today focus on consent to collect information. Does a consumer consent to have certain

formation. However, things are much less clear cut, even without bringing the Internet into consideration. If I walk into a store, and a store manager records my presence, that is information about me that belongs to the store with or without my consent. I have no right to object to that collection of information. It is only if a store uses the information about my presence in an improper way—for example, using a photo of me shopping for vegetables as part of an ad campaign without my permission—that I have a right to object. So the idea that each individual can hope to control all aspects of their personal information is implausible in a world where entities are constantly collecting information about people. The question is, what is proper information collection and use? And when do individuals have a right to object?



limitations on how information is sold. These rights of review are doubtlessly costly for online companies, most of which are American. At least currently, the European rules do not distinguish between information that has properly been collected and information that has not.

But the European rules clarify no particular right of Europeans to control the use, and benefit from the use, of their own information. The European rules do provide an individual with some ostensible control over the sale of consumer information, but in the complex realm of consumer databases, an online company can accurately claim to have received the information from many sources other than the consumer.

■ Deploying Consumer-Oriented Property Rights

Today, most discussions of consumer privacy focus on government regulations to limit the collection of consumer information. The solutions range from the European approach of creating rights for individuals to request information from online companies to public hearings to excoriate online companies. The usual solutions assume that large corporations have a monopoly on technology, and that only these companies can use technology to control

information. These solutions concede the technological and practical control of all information to the very entities suspected of mishandling information. Ordinary individuals are seen as passive victims, relying on the good graces of government to help them out.

Internet technology, however, is neither one-sided nor limited. Because collection of consumer information is prof-

Technology, rather than government regulation, is
the most certain method of gaining control over
[one's] personal information.

itable, extraordinary technologies have been developed to enable the collection of consumer information, often without consumer awareness.

Protecting consumers from unwanted use of personal information should also be profitable. If there were sufficient demand, consumers could be equipped with technology to block collection of information and to track where collected information has been used and where it has been sold. Consumers might be able to control and monetize their own data, and lease data to different companies. That technology should come not from the companies

that benefit from the collection of consumer information but from independent software developers, specializing in protecting personal information.

Technology to protect consumers is not a pipe dream. Companies have developed applications to help consumers in many ways. In each instance, consumer demand created a market for consumer-oriented software.

But today, there is no array of software to protect consumer control over the misuse of personal information on the Internet. Instead of looking to Silicon Valley for protection, many consumer groups look to Washington to limit the collection of customer information. These rules are unlikely to do much.

A better approach would be consumer recognition that technology, rather than government regulation, is their most certain method of gaining control over their personal information. Clever software is easier to develop, and more reliable, than clever regulation. If applications developers perceived the demand for apps to help consumers control information on the Internet, the market would likely develop.

The Orwellian nightmare in 1984 of Big Brother controlling information and thereby controlling individuals was premised on the notion that individuals could not effectively use technology to defend themselves. The 21st century is different, most importantly because individuals can use technology to fight back. Just let them assert property rights to control their own information.

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Letting Physicians Heal

by JASON FODEMAN

In September, Blue Cross Blue Shield of Tennessee, the largest health insurer in Tennessee, announced it would not cover oxycontin next year. Elsewhere, many health insurers are requiring prior authorizations to be completed for opioid prescriptions. Earlier this year the Centers for Medicare and Medicaid Services (CMS) had proposed a “hard” stop for opioid prescriptions of 90 Morphine Milligram Equivalent (MME) for Medicare Part D plans. These policies and others by health insurers, hospital administrators, and state and federal regulators to tackle the opioid epidemic have largely been based on guidelines released by the Centers for Disease Control and Prevention (CDC) in March 2016.

As a physician I know firsthand the heartbreaking potential addiction has to ruin lives and tear families apart. The attention the opioid epidemic has received is absolutely warranted and leaders in the public and private sector should be commended for their efforts to fight opioid addiction. Yet, as a physician I also know the complexities and challenges that physicians face when treating chronic pain and it is imperative that medical guidelines, third party payer policies, and state and federal regulations reflect these complexities to best buck the trend of rising opioid-related overdoses and deaths, and minimize unintended consequences.

■ *The Scope of the Problem*

The prevalence of opioid use and abuse has increased substantially in recent years. Currently 3-4% of adults are on long-term opiate therapy and in 2012, 259 million prescriptions for opioids were written. As the use of opioids has increased so too have their serious side effects. From 1999 to 2013, deaths involving prescription painkillers quadrupled with more than 16,000 people dying from

these medications in 2013. Between 1999 and 2014, over 165,000 individuals fatally succumbed to overdose from prescription painkillers. By 2002, opioids contributed to more deaths than heroin or cocaine.

■ *Guidelines and Physicians*

Generally speaking, physicians would benefit from additional training in the treatment of chronic pain, the risks of painkillers, and ways to mitigate the risks of opioids. The guidelines can help here. Medical schools, residency training programs, and academic medical centers must improve educational curricula on the treatment of chronic pain and opioid prescribing: alternatives to opioids, safety, and public health considerations should be prioritized. The guidelines can be a foundation for these efforts.

The CDC opioid guidelines were designed to be a tool for doctors treating patients with chronic pain. In fact, they state that their audience is “primary care clinicians (e.g., family physicians and internists) who are treating patients with chronic pain (i.e., pain lasting >3 months or past the time of normal tissue healing) in outpatient settings.” The CDC guidelines offer a resource for these physicians to facilitate important discussions with patients with chronic pain about the risks

patients with chronic pain and could decrease the number of opioid prescriptions as well as the risk of these medicines.

The CDC opioid guidelines were not designed to be used by policymakers and regulators. Furthermore, they also state that they are intended to be “voluntary” and that “Clinical decision making should be based on a relationship between the clinician and patient, and an understanding of the patient’s clinical situation, functioning, and life context... and unique needs of each patient when providing care.” Unfortunately, the adoption by health insurers or governments at the state and federal level makes them mandatory, contradictory to their intent. It also hinders the ability of physicians to use their unparalleled education, training, and experience to best meet the “unique” situation of an individual patient and impedes the value of the patient-doctor relationship in medical decisions and limits shared decision making. This top-down approach to the opioid epidemic will limit choice. It also has the potential to produce an array of unintended consequences for patients, physicians, and the health care system, such as worsening pain, increased emergency room visits, increased health care costs, and restricted access. For physi-

Medical schools, residency training programs, and academic medical centers must improve educational curricula on the treatment of chronic pain and opioid prescribing...

and benefits of opioids. The CDC guidelines also offer guidance on how patients on chronic opioid therapy should be monitored. In this context, they have the potential to help physicians better treat

patients, it could lead to more paperwork, box checking, EMR clicks, professional dissatisfaction, physician burnout, physician retirement, and worsening of the primary care shortage.



Buprenorphine is a common drug to help with opioid or heroine withdrawal. (Photo: PureRadiancPhoto / Shutterstock.com)

■ Time Constraints and Treating Chronic Pain

The treatment of chronic pain is incredibly complex. Some of these nuances, limitations, and barriers are exclusive to chronic pain while others are more reflective of the health care system as a whole. Rather than drawing lines in the sand, policymakers, regulators, and administrators should craft policies and regulations that empower physicians to better treat their patients with chronic pain and create a health care system that better aligns with the spirit of the CDC opioid guidelines. Doctors and patients find themselves working in a system that works for the system. The current health care system does not align with the treatment of chronic pain or the mitigation of the risks of opioids. Doctors and patients need a health care system that works for doctors and patients.

The CDC opioid guidelines stress discussions with patients about the risks and benefits of opioids, education, and counseling. These are essential to the treatment of chronic pain but they are also time intensive and, unfortunately this is time that frontline providers often lack in today's health care system. The

time crunch stems from the physician reimbursement system that prioritizes quantity over quality and emphasizes procedures over cognition. The Physicians Foundation, in a 2016 survey of over 17,000 doctors, found that only 14% of doctors always had enough time to practice high-quality care. The survey found that almost 50% of physicians reported that their time with patients was always or often limited.

The time pressures of medical practice have been getting worse and are most significant for those with the most complicated medical and psychosocial needs. Research in the *Journal of General Internal Medicine* found the average primary care physician has a mere 3.8 minutes per clinical issue. In the trenches, the time is likely even less with physicians finding themselves devoting more time, resources, and energy to electronic medical records, an excessive amount of clicks, paperwork, and box-checking and less on actual patient care. These time pressures have produced a myriad of unintended consequences, including likely the over-prescription of opioids in the treatment of acute and chronic pain and limitations on the ability of physicians to mitigate the

risks of opioids as well as recognize and treat addiction and opioid use disorder. While more peer-reviewed literature is needed to study the role that time constraints have played in fostering the opioid epidemic, a piece in the *New England Journal of Medicine* did highlight the reimbursement system and time pressures as impetus for opioid prescribing in the emergency room. Additionally, research in the *Clinical Journal of Pain* cited time constraints as a barrier to checking prescription drug monitoring programs (state data bases that are one of the main risk mitigation tools).

■ A More Patient-Centered Approach

To tackle the opioid epidemic, government payers should institute a more patient-centered reimbursement system that better meets the unique needs of individual patients and ensures patients get the time that their medical issues deserve. This would allow physicians to better treat their patients with chronic pain and do so as dictated by the CDC opioid guidelines. It would also allow physicians to better monitor risk profiles and mitigate the risk of those patients already

on chronic opioids or that require chronic opioids in the future. This flexibility would be most helpful for those patients with the most complex medical comorbidities and greatest societal needs.

Simultaneously, CMS should work with the American Medical Association to make sure the recent changes in medicine, such as the adoption of EMRs and a transition to value-based care, are reflected by the RVS Update Committee (RUC) and cognition is adequately accounted for. The RUC assigns relative value to medical interventions and thus determines how much Medicare will pay physicians for their work. The RUC has been criticized for favoring procedures over cognitive interventions. Fixing this bias would help primary care physicians treat patients with chronic pain and better mitigate the risks of opioids when they are indicated.

The U.S. Department of Health and Human Services (HHS) should also adopt policies that encourage and support the use of technologies that better elevate the expertise of physicians to meet the needs of patient and improve the efficiency of physicians. At the same time, HHS should be careful about enacting policies that mandate health care technologies that do not improve physician efficiency and adopting mandates in general that are cumbersome for physicians. More broadly HHS needs to find a way to consider physician time in the regulatory process and consider and account for the impact its rules and regulations will have on physician time. This is incredibly important given the shortage of physicians in this country and time constraints of medical practice that already exist. In this work environment, these policies have the potential to take valuable physician time away from patients – time that could be used to treat diseases such as chronic pain.

The CDC opioid guidelines call for a collaborative approach to the management of pain. This integration and communication between providers is integral to the treatment of chronic pain and

mitigation of the risks of opioids. Examples of this could include a primary care physician speaking with a surgeon about a recent procedure and how long the surgeon thinks the patient should require opioids for in the post-operative period. It could involve speaking with a psychiatrist about the mood and psychiatric medication regimen of a patient with chronic pain. It could also entail speaking with a pain management specialist about a patient's case. These conversations and

directions with one mandate coming at the expense of the other. For example, some regulations mandate patient satisfaction, while others emphasize lowering healthcare costs. Yet, research in the *Archives of Internal Medicine* concluded that higher patient satisfaction correlated with higher healthcare expenditures. It was also associated with higher rates of death. CMS should work with the medical community to streamline and simplify these quality measures. CMS should also per-

The time pressures of medical practice have been getting worse and are most significant for those with the most complicated medical and psychosocial needs.

others could improve the management of a patient's pain and facilitate the type of approach to pain as prescribed by the CDC opioid guidelines.

Unfortunately, historically, health insurers have not reimbursed for non-face to face care, which likely has deterred this type of coordination. To tackle the opioid epidemic and create a health care system that aligns with the CDC opioid guidelines, CMS should start reimbursing physicians for non-face to face work. This would encourage these important conversations and empower doctors to better treat chronic pain. It would also likely fuel innovation and produce a more patient-centered medical product and more patient-centered health care system. Research I authored in the *American Journal of Medicine* (Fodeman J, Factor P. *Solutions to the Primary Care Physician Shortage*. Am J Med. 2015;128:800–1) proposed three different ways for CMS to reimburse doctors for this work.

■ The Need for Regulatory Consistency

In recent years, physicians have found themselves subject to an onslaught of mandates and priorities. Some of these regulations pull physicians in competing

form a comprehensive review to ensure consistency and eliminate competing priorities. Additionally HHS should ensure relevant regulations and statutes align with the CDC opioid guidelines.

Thus far the approach to the opioid epidemic has centered around incorporating the CDC opioid guidelines into policy, regulation, and statute. This top-down approach will limit choice and has the potential to maximize unintended consequences for patients, doctors, and health care systems. It is also not consistent with the original intent of these guidelines. A better approach for policymakers and regulators is to adopt solutions that facilitate a healthcare system that aligns with the CDC opioid guidelines. Leaders should attempt to understand the barriers, complexities, and limitations that providers face when treating patients with chronic pain and work with the medical community to espouse regulations and policies that better elevate the education, training and experience of physicians to treat patients with chronic pain.

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Reforming Federal Clemency

by PAUL J. LARKIN, JR.

Clemency—the ability to forgive wrongdoing or mitigate punishment—is a revered aspect of presidential authority. It ordinarily takes one of five forms:

- A pardon forgives an offender and erases his legal penalties;
- A commutation lessens the punishment but leaves a conviction intact;
- A remission returns all or some of the fine or forfeiture attached to a conviction;
- A reprieve delays the imposition of punishment; and
- Amnesty grants clemency to a large number of offenders.

The English Crown exercised the power to grant clemency at common law, the Colonists brought that authority with them to their new home, and the Framers wrote it into our Constitution as the Article II Pardon Clause. In its classic form, the clemency power allows a chief executive to say to an offender, “I forgive you. Go and sin no more.”

Yet, presidents do not make clemency decisions in isolation. Over time, a bureaucracy has developed to advise the president about who should receive clemency, and what type they should receive. That bureaucracy, however, is now hampering the effectiveness of clemency as an instrument of justice and mercy. It should be reformed.

Beginning with George Washington, presidents have largely relied on the U.S. attorney general for advice (although Abraham Lincoln was famous for considering pleas directly from soldiers and their families), and Thomas Jefferson began the practice of consulting the U.S. attorney who prosecuted the applicant. Following Congress’s creation of the U.S. Department of Justice in 1870, the attorney general assigned a “Clerk of Pardons,” later renamed the “Pardon Attorney,” to investigate

petitions and assist him. No longer just one lawyer, the Office of the Pardon Attorney is now staffed by several lawyers and FBI agents, who conduct any necessary investigations. In the late 1970s, Attorney General Griffin Bell delegated advice-giving responsibility to the deputy attorney general.

For the last 40 years, that official has determined the Justice Department’s recommendations to the president. With the White House staff reviewing a clemency petition yet again, clemency applications must traverse a fairly sizeable bureaucracy before reaching the president’s desk.

■ Who Decides?

The biggest criticism of the federal clemency process, however, is not its bureaucratic nature. No, the complaint cuts deeper. Article II gives the president clemency authority over federal offenses, which means that the Justice Department prosecuted or investigat-

(and perhaps present) adversary. In an unknown number of cases, the current scheme forces one cadre of government officials to criticize their colleagues for creating an injustice or for allowing one to stand. That creates a problem. Few Justice Department officials, the argument goes, would be willing to recommend that the president exonerate or grant leniency to someone whom a colleague has convicted and sent to prison. Like police officers, prosecutors have their own version of the “thin blue line.”

Worsening the situation is that the deputy attorney general has the authority not only to decide what recommendation to offer the president, but also when and whether to offer one at all. There is no requirement that the Justice Department submit its recommendation to the White House within any period of time. Indeed, in some cases prisoners who asked only to cross the River Styx outside the prison walls died before the department acted on their petitions. The

Management of the clemency process is in the hands of the petitioner’s former (and perhaps present) adversary.

ed every clemency applicant, whether he was already convicted of, is now charged with, or is under investigation for a federal crime.

Moreover, the deputy attorney general is responsible for supervising all criminal prosecutions brought by the 93 U.S. Attorneys and the Justice Department’s Criminal Division (along with a small number of criminal cases brought by other divisions). The result is that management of the clemency process is in the hands of the petitioner’s former

upshot is that the Justice Department could strangle in the cradle any application that might cast the department in an unfavorable light, and the public would never be the wiser. That is not how we want the railroad to be run.

It is one thing, as President Jefferson realized, for the president to ask for the opinion of the government lawyers responsible for seeing to an applicant’s conviction. Those lawyers might know more about the applicant than anyone else, including the judge who imposed



A watch tower at a California State Prison. (Photo: Joseph Sohm)

sentence. But it is another thing to trust the management of the clemency process to an organization with a built-in bias against any argument that the applicant, in fact, is innocent; that he or she should not have been prosecuted for some other reason, such as the prosecutor's personal animus; that a prejudicial error occurred at trial that the courts failed to rectify; that his sentence is excessive; or that, perhaps due to his post-conviction conduct, he should be forgiven and his punishment lifted. That creates an actual or apparent conflict of interest on the part of the Justice Department.

Appearances matter. Elsewhere, within or outside of the government, we would hope that a neutral, disinterested party, one who has not already taken a firm position about a person's entitlement to some benefit, would be responsible for handling the review and recommendation process. Yet, that is not true in the most important category of cases, those where a person's liberty is at stake.

■ **Office of Executive Clemency?**

Various scholars have criticized that aspect of the federal clemency process. Clemency cannot fulfill its noble purposes, critics maintain, as long as Justice Department officials manage the

clemency bureaucracy. To reclaim the important role that clemency should play, critics submit, the president should restructure the clemency system by taking it out of the department and giving it a new home.

Two alternative residences have been proposed. One would have the president create a multi-member clemency advisory board to supply him with general policies or standards, a list of factors to consider when making decisions, or recommendations about specific parties. It would effectively enable the president to create a parallel version of the Office of the Pardon Attorney, perhaps called the Office of Executive Clemency, to be managed out of the White House.

A committee has several advantages. It would avoid the actual or apparent conflict of interest now plaguing the Justice Department; it would enable the president to obtain recommendations from a range of people—former law enforcement officials, defense attorneys, members of the clergy, criminologists, and so forth—representative of the variegated opinions of the American public. A favorable committee recommendation would offer the president the political cover he or she would want were a clemency recipient to reoffend, particularly by committing a heinous crime—the nightmare that every

chief executive fears whenever signing a clemency warrant.

Of course, there are downsides to creating a collegial advice-giving body. Interest groups will vie for seats on the committee, with the losers complaining in the news media about being shut out of the process. Members could use the board's status as a platform to criticize the president's clemency philosophy, practices, or individual decisions. Members could also act like legislators and trade votes for favored candidates, with the process degenerating into a spoils system as members campaign for certain types of offenses (e.g., street crimes vs. white collar crimes vs. drug crimes), offenders (e.g., ones identified by race, ethnicity, income-level, and so forth), or constituents (e.g., rural vs. suburban vs. urban offenders). Leaks, a concern for any administration, regarding the boards' deliberations and recommendations would be far more difficult to prevent as the number of advice-givers increases. Nonetheless, a president could decide, on balance, to pursue that option.

Congress could try to force that option on the president by creating a U.S. Clemency Commission parallel to the U.S. Sentencing Commission. Congress chartered the Sentencing Commission to eliminate arbitrary differences in the sentences imposed in federal courts nationwide, and directed the commission to achieve that goal by devising "Sentencing Guidelines" to channel a district court's otherwise vast sentencing discretion. A Clemency Commission could draft similar guidelines for clemency. In fact, a statutory scheme would be necessary if Congress wanted commissioners to be "independent"—that is, to have some degree of tenure—by limiting the president's removal authority to for-cause grounds.

That approach is problematic, however, and not just because of the drawbacks noted above regarding an informal advisory council. Congress might demand the right to appoint some members of a Clemency Commission, which

would inevitably lead to partisan infighting between the legislative and executive branches over philosophy and applicants. To be sure, a president who found a commission's existence undesirable or its recommendations useless could and likely would ignore whatever the board did or said because sentencing and clemency are horses of very different colors. Congress can restrict or eliminate a federal judge's sentencing discretion, as the Supreme Court of the United States ruled a century ago in *Ex parte United States*, 242 U.S. 27 (1916), when it upheld mandatory terms of imprisonment.

By contrast, Congress cannot limit the president's clemency power, as the Court held more than 140 years ago in *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871), when it ruled unconstitutional a congressional attempt to limit the effect of a pardon. The president, therefore, is under no obligation to accept any recommendations that a commission offers. But that wouldn't keep Congress from baying about the president's insensitivity, arbitrariness, or whatever, to say nothing of holding repeated congressional hearings on the subject. The republic hardly needs additional intergovernmental partisan assaults and sniping. We should keep politics from infecting judgments about justice and mercy.

■ *A Role for the Vice President?*

Another option would be to use the vice president as the president's principal clemency advisor. The vice president lacks the institutional conflict-of-interest plaguing the process today because he has no law enforcement responsibility; that belongs to the president, the attorney general, and the officials heading the federal law enforcement agencies. The vice president can informally consult with the same people who would comprise a multimember board. He gives the president some political cover by sharing in any potential blame for an unpopular decision. Presumably, the president values the vice president's

judgment, since the president selected him or her as a running mate. Vice President Mike Pence even has experience making clemency decisions because he previously was Indiana's governor.

Any vice president also enjoys several unique institutional and practical advantages. He is a constitutional officer, elected for the same term as the president. As the immediate successor to the president and the president's designee to manage the clemency process, the vice president would have the stature necessary to fend off challenges from the attorney general and private organizations or individuals with an interest in clemency such as the American Bar Association, the defense bar, or civil rights organizations. Finally, he has ideal access to the president since he can

walk to the Oval Office from his quarters in the West Wing.

Yet, here, too, there are potential costs involved. There certainly would be media criticism that White House control increases the politicization of clemency. After all, former President Bill Clinton granted clemency petitions that were never seen, let alone evaluated, by the Justice Department, some of which certainly gave every appearance of favoring cronies. White House domination of the clemency process, it will be said, only exacerbates that risk.

Also, friction could arise between the president and vice president over clemency philosophy or in specific cases, particularly at the end of a president's second term if the vice president is campaigning to replace him. Finally, while the president can remove the vice president from any advice-giving role, the president cannot fire him. The Twelfth Amendment defines a vice

president's term of office, and the occupant can be removed only by impeachment, which rests in Congress's hands. Nonetheless, the vice president might be the perfect choice for principal clemency advisor.

One path the president should not take is to delegate all decision-making authority to the clemency bureaucracy. The clemency power resides in that component of Article II that is not subject to the "advice and consent" of the Senate or anyone else. That placement suggests the Framers intended for the president alone—not some "superior" or "inferior" officer he appointed, let alone a nongovernmental official—to decide whether to forgive an offender on behalf of the nation and to take responsibility for doing so. Unfortunately, the result is that the

Congress cannot limit the president's clemency power, as the Court held more than 140 years ago in *United States v. Klein*...

president will not be able to forgive everyone; some deserving offenders won't receive relief.

If the president tried to right every wrong, he would wind up delegating that task to someone or have no time for anything else. Neither course is a good one. Receiving advice is salutary; turning over the conn to a subordinate is not. Perfect justice will have to await that journey to Elysium.

President Donald Trump has granted a small number of clemency petitions, but has not yet decided how he wants the process to operate. If he takes this opportunity to systematically reform the clemency bureaucracy, the criminal justice system will be the better for it.

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“We’re Better than We Were”

An *inFOCUS* interview with Representative MARTHA MCSALLY

U.S. Representative Martha McSally, elected to the House in 2014 from Arizona’s 2nd congressional district, serves on the Armed Services Committee and the Homeland Security Committee. She served in the United States Air Force from 1988 to 2010 and rose to the rank of colonel. One of the highest-ranking female pilots in the history of the Air Force, McSally was the first American woman to fly in combat following the 1991 lifting of the prohibition on female combat pilots. In 2001, she successfully challenged the military policy that required American and United Kingdom servicewomen stationed in Saudi Arabia to wear the body-covering abaya when traveling off base. *inFOCUS* editor Shoshana Bryen spoke with her in September.

***inFOCUS:* THIS IS THE ANNUAL DOMESTIC ISSUE OF inFOCUS. ONE OF OUR CHIEF CONCERNS IS HOMELAND SECURITY AND HOW THREATS TO OUR SECURITY ARE EVOLVING. CAN YOU TALK ABOUT THE APPROPRIATE ROLE FOR THE FEDERAL GOVERNMENT VERSUS THE ROLE OF THE STATES AND CITIES?**

Rep. McSally: The biggest evolution is the weaponization of social media. Radical Islamic terrorism has been around for a long time, but al Qaeda was hiding in mountains and using couriers—not really utilizing 21st century technologies to train, propagandize, recruit, and inspire people to commit terrorist acts in their own communities.

We saw a change with ISIS when they were able to take swaths of territory in Iraq and Syria. The last administration just watched it happen without doing anything. There were all sorts of blunders, and ISIS grew like a cancer. Think about the amount of territory they had.

It looked like they were winning. People want to join the winning team and ISIS was trying to find recruits. There have always been foreign fighters, people who travel around the world to the hot spots and the conflicts, where they fight and get training and experience, but it was unprecedented under ISIS. I believe there were as many as 40,000 people from 120 different countries—including

5,000 or so from Western countries—traveling in for the fight and for training.

On top of recruitment, they used social media to spread their word and to post their awful propaganda and videos for people who didn’t go to Syria. How to put a bomb together and how to make an IED [improvised explosive device], for example. So, with very little training and very little other information, individuals sitting in their own communities, who might be vulnerable to being turned and recruited, could be directed specifically or just inspired to act.

Now there is movement the other way, with us finally taking the gloves off and finally taking their territory away. But there is definitely a threat at home. Americans, or people here in our country, are either specifically recruited and directed to commit terrorist attacks in our communities, or are just inspired to take the direction from the organization and the leaders in a very decentralized way. Those people drive a truck down a bike path, shoot up a nightclub, or use whatever makeshift weapon they come up with.

■ ***See Something, Say Something***

Rep. McSally: This is a generational fight. The latest name is ISIS, but it will eventually be replaced some other name.

The challenge that comes with that is identifying those who are going down the path of potential recruits or those

who will be inspired. Here we are, 17 years after 9/11 [attacks by Al-Qaeda] and perhaps the most important thing we learned in the aftermath was how necessary it is to break down information stove pipes among federal agencies—horizontally as well as vertically. Between federal and local law enforcement and between law enforcement and other elements of civil society.

We still have to protect people’s civil liberties. Often times, these attacks happen, and investigators look back and there was just nothing there ... the terrorists were not on anybody’s radar. They hadn’t committed any crimes. They hadn’t done anything wrong. But usually the people closest to them—whether it’s friends or family members or Facebook friends or religious leaders or coaches or teachers—people in the closest circle of engagement with an individual are the ones who know best that somebody is a potential concern or could become a potential threat.

That early intervention and that early identification or early reporting is crucial. “If you see something, say something” really matters both virtually and in the physical realm to quickly identify whether there’s a concern with someone, and maybe find an “off ramp” if they’re at the stage where they’re not hardened.

Then, we need a way for law enforcement to get the information and not have it stuck somewhere so it’s not acted upon or not shared, either by the federal

government or local authorities. Often the local community law enforcement is going to be the first to respond, the first to engage. We've been really fighting to make sure we break down those stove pipes between the federal and local.

iF: HOW ARE WE DOING?

Rep. McSally: We're doing better than we were, but we still have a way to go. We've created terrorism task forces that include cross-functional, cross-jurisdictional entities that help in information sharing. We have fusion centers across the country, as well, that are intended to share information among those jurisdictions. It's still not enough in my view. Rural communities in particular are often are not well represented, or they don't have the resources to access the information that is available to them. We have more to do across law enforcement.

I held a round table with executives and security professionals from what we consider to be "soft" venues, such as sporting arenas, the hotel industry, and music concert venues. Security leaders within those industries said, "Things are better than they were as far as the information sharing goes, with the people responsible as the front line of defense for the security, but it's not enough."

Even professionals with security clearances are often not given information in a timely manner, but even people who don't have security clearances could be given what we call a "tear line" – without sources and methods—and just say, "Hey. Here is what we're concerned about. Here is what we're on the lookout for. These are the types of new tactics that we're seeing that could be used." The feedback from those that are out there responsible for the security of these venues has to go back to the government.

■ Information and Analytics

Rep. McSally: We have to be better in our use of technology in communication, analysis, and sharing information collaboratively. We have to take advantage



Martha McSally (R-AZ)

of analytics as well, so we are not relying totally on human analysis.

We often have the benefit of a lot of information, but things are missed because we're relying on human beings to be sitting there, putting it together and analyzing it. You can't rely totally on data analytics and machines – there has to be human oversight and, ultimately, human responsibility – but there is a better balance.

I saw this in the military. We had a massive amount of intelligence information and we just didn't have enough intelligence analysts to be able to go through everything that was seen on those missions to make it useful in a timely manner.

We would find out later, maybe 48

hours later, that an SA-3 [missile] was set up in the back of a pickup truck, but by the time the information actually got to us, it was too late. It had already moved. It's the same idea with security information. There is a lot of information out there. There is a lot of pretty sophisticated data analytics out there. Often, government is the last to become innovative in using some of these tools to increase situational awareness and prioritize how they should be further investigating.

For example, I often bring up the issue of deception detection technology. I'm not talking about a lie detector test, which is costly and limited. We've had some breakthroughs on things that detect, when you're standing in front of

them, what sort of indications are happening with your blood vessels and your eye movements and things that could indicate deception. Not guarantee, but could indicate deception.

Another technology was actually developed out of the University of Arizona, related to how people fill in online forms—such as in the Visa Waiver pro-

cess, but is able to speed it up. That's the travel issue in addition to the homegrown issues.

We have to have a system where, if people are putting alerts in, somebody is doing something with them and they're not being bogged down with information, so they don't notice that the alert was in until after an awful attack happens.

We are a nation of immigrants, but we are a nation of laws. We shouldn't have to choose between the two.

gram. There is no in-person interview. If someone is coming from a Visa Waiver country to the United States, they can come on a 90-day visa. With homegrown terrorism and the ISIS diaspora going on in Europe, this is a real concern for us; people traveling here legally.

There is a technology that allows authorities to flag people based on how they fill out the form, where they hover with their mouse, where they click from yes to no and back. It's not saying they're guilty. It's just saying, "Yellow Flag. Go ask this guy some additional questions." That technology is out there. In at least nearly a half a dozen hearings, I've hammered on the Department of Homeland Security, "How is it going—using deception detection technology?"

We actually included it in one of the pieces of legislation that got signed into law; demanding and mandating that they start using some innovative deception detection technology.

In Las Vegas, the shooter's fiancé came here with a Fiancé Visa. They did an interview and said, "Well, we didn't notice any deception." Well, you guys are really highly trained operatives and I have a lot of faith in you, but use some technology to back you up, right? Just to see if there are any indications that somebody is not being truthful to you, in a way that doesn't slow down the

Then we've got to be very mindful about the vulnerabilities we have for those who might be traveling here legally. Illegally is a separate issue.

■ **Legal Immigration**

iF: WHAT WOULD YOU WANT OUR READERS TO UNDERSTAND ABOUT LEGAL AND ILLEGAL IMMIGRATION AND HOW THESE THINGS AFFECT HOMELAND SECURITY?

Legitimate asylum seekers are getting lost in this sea of the fraudulent ones taking advantage of the system.

Rep. McSally: Often these things get caught up in partisan language, which is not helpful, so I always am going to ground myself in, what are the facts? What do we need to do to fix the system, so that we keep America safe, while we continue to have a very generous legal immigration system, which we do?

Over one million people a year get Green Cards and the opportunity for citizenship, in addition to a very generous refugee program, asylum program, and everything that goes with that. So, we need to be clear, this is not about being unfriendly to immigrants. We are a

nation of immigrants, but we are a nation of laws. We shouldn't have to choose between the two.

In my view, our legal immigration system, the laws on the books, is archaic. It needs to be modernized. The loopholes in the current legal system are such that cartels right now are taking advantage of them. We need to move our legal immigration system toward one that is more like Canada and Australia, which is more merit based. When I say, "merit based," I don't mean just people getting PhDs from our institutions. We should be stapling Green Cards to their diplomas, right, instead of having to go into other countries to compete against us.

We have a booming economy right now. Everywhere I go, what I hear is, we have a shortage of workers. It is true that we still need to get Americans off the sidelines. We still have Americans who need to be retrained for the jobs that are out there, but we also need an immigration system that is nimble and responsive enough to meet economic needs where the gaps are.

Right now, we have the Visa Lottery

system, which needs to go away. And we have extended family migration, often called "chain migration." We have to protect the nuclear family, but upwards of 70 percent of the Green Cards are to extended family: brothers, sisters, parents, and adult children.

That doesn't make any sense for us. There are vulnerabilities in these programs, especially when they are so massive, and there are concerns about the vetting in which people that might be more vulnerable to becoming radicalized are allowed to come in through this process.

This isn't about making labels. This is about identifying where there might

be vulnerabilities and making sure that we keep us safe. I think we need to move away from “chain migration” and the visa lottery. We also have loopholes right now specifically in our asylum process and unaccompanied minors, where well-intended laws of the past are now being taken advantage of by trans-national criminal organizations.

■ **Abuses in the Asylum System**

iF: WOULD YOU TALK A LITTLE BIT MORE ABOUT THE CRIMINAL ORGANIZATIONS?

Rep. McSally: Yes. The cartel is a money-making operation and they are making money by trafficking people either against their will or by paying them a significant amount of money. They understand that if a migrant shows up at a port of entry and simply says the words, “I have a credible fear,” that’s all they have to say. The way our asylum law is executed, that puts you into the process.

Traffickers train people to say it, but they provide little or no proof that the people meet the legal definition of “asylum seeker,” which means you are being targeted—usually by your government, based on a particular class definition, which is often the political opposition or an ethnic or religious minority that is being targeted. It’s not that you come from a country that has poverty or violence. That’s not what the asylum law is for.

But they know if they say those words, they will be released into the interior of the United States with a court date years in the future. The vast majority do not show for the court date; they just disappear. Fewer than 20 percent of those who do show are actually granted asylum.

Legitimate asylum seekers are getting lost in this sea of the fraudulent ones taking advantage of the system. If we heard their cases quickly, then either they could be on the path of asylum or they would be sent back—because that’s the humane thing to do.

The humane thing to do is to not



Border Patrol vehicle patrolling along the fence of the international border between San Diego, California and Tijuana, Mexico. (Photo: Sherry V. Smith)

have people who entered legally but don’t meet the criteria waiting in limbo for years and then marrying an American citizen or having American citizen children and then—five years from now when their court date comes up—tell them, “You’re out of here; you don’t meet the criteria.” The humane thing to do is to swiftly hear their cases and get them out.

■ **A Safe Third Country**

Rep. McSally: We have to up the threshold of that initial interview, that initial determination, which is in the bill that I sponsored. It’s often called the Goodlatte Bill and it’s also the McSally Bill. There has to be some burden of proof for a legitimate asylum case at the initial interview.

The other issue is the unaccompanied children that again, was a well-intended law trying to stop human trafficking or child trafficking in the past, but now the cartels are taking advantage of it because they know that if you’re not from a contiguous country, Mexico or

Canada, we can’t return you. We have to go through a very challenging process, which is not good for children after they’ve already been through an arduous journey. Our bill also allows us to swiftly return unaccompanied minors from non-contiguous countries.

If you are a legitimate asylum seeker and you are able to flee your country, as soon as you get to what we call a “safe third country,” you should be able to file your asylum claim. If you are being targeted by the government of Guatemala, for example, and you feel that you meet the threshold for asylum, as soon as you get to Mexico, you should be safe and your asylum claim should be filed and processed in that safe third country. Not after a 2,000-plus-mile trek to the port of entry in Arizona just to make your claim there.

iF: ARE WE GETTING SOME HELP FROM THE MEXICAN GOVERNMENT? I CAN IMAGINE THEM THROWING UP THEIR HANDS AND SAYING NOT TOO MUCH FOR THEM.

Rep. McSally: We are getting some level of help, but they need to up their game; their southern border is far smaller than our southern border and we've actually provided some assistance to them for that. For a long time, they were doing nothing. After the first "unaccompanied minor" flood gates opened around 2014, we saw a shift. They had been doing nothing.

They have worked at some level to process some asylum claims in their country, but it's just not enough. In many cases, they will hand migrants what amounts to a temporary legal pass. The Mexican government may say that the intent is that the migrants will go back, but they know that they can use those papers to just make it up to our border. They definitely need to do more. We're in this together and it's a security as well as an economic issue.

■ **Visa Overstay**

Rep. McSally: There is the potential for human traffickers to find some collaboration with those who want to do us harm. It would be easier for terrorists to find somebody who can come over through the Visa Waiver program from a European country than to take a trek down through Central America and up through Mexico. But it is a vulnerability that has to be closed.

We have to secure our border. In our bill, we also have a visa overstay provision—the biometric entry/exit program—which has been mandated by Congress for years now and funded. But they've really struggled with implementing it.

We're forcing the issue now and it looks like they're testing a low infrastructure—low manpower—biometric identification system for entry/exit.

Right now, we don't track people when they leave here. They can do it now biographically, which means seeing if your name is on the manifest, but that's not 100 percent effective.

Somebody could go through security at TSA [Transportation Safety Administration] and never get on the

airplane, or there could be a misspelling or misidentification. But we are testing biometric exit tracking for international travelers that actually looks like it has some promise at much lower cost than some of the ideas they've had in the past.

And then there are the land and sea ports of entry, but at the airports of entry, that actually would be a really important breakthrough for us. Last year, more people overstayed their visas than were caught coming over the border illegally.

■ **Cyber Security**

iF: I WANT TO GET THE WORDS "CYBER TERROR" AND "CYBER SECURITY" IN HERE. IT'S NOT JUST BOMBS. IT'S NOT JUST PEOPLE WHO BLOW PEOPLE UP. HOW ARE WE DOING ON CYBER?

Rep. McSally: I was a legislative fellow for Senator John Kyl back in 1999 and 2000. He was the Judiciary Committee sub-committee chair on technology, terrorism, and government information. One main part of my portfolio was this issue of cyber terrorism and cyber security and critical infrastructure vulnerabilities for cyber attack. Think about that. I actually helped author the Cyber Security Act of 2000 related to some of these things that we raised in the hearings.

I left my legislative fellowship and went back to flying fighters and doing my responsibilities in the military. Then I retired (2010), and was serving as a professor at the Marshall Center [George C. Marshall European Center for Security Studies]. We started talking about cyber issues and I felt like I was in a time warp because I was just diving deep into it again. Really, we've hit the pause button as the threat continues to grow—both state sponsored, especially state sponsored, but also non-state actors—and we did hardly anything from that time in 2000, pre-9/11, when we were very much focused on this vulnerability, until the last few years. The vulnerability is

growing. Our reliance on cyber for our military capabilities, our way of life, our financial institutions, our power grids, is greater than ever. Our enemies have grown to much greater sophistication than we have. We're behind.

Some of the things that this administration is doing are right on target. We're setting up a U.S. Cyber Command. We've passed legislation in the House related to better information sharing between Homeland Security and the private sector. We can share threats and they can better prepare. Although that still needs to permeate through the system and be implemented in a much more robust way. The administration just rescinded an Obama-era directive related to the very cumbersome process that you'd have to go through in order to do any sort of offensive operations.

I look at this like it's a domain. We fight in air, land, sea, space, and cyber. These are the domains in which bad guys can try to do us harm. They may not be hitting us with a JDAM [Joint Direct Attack Munition or "smart bomb"], but if you're taking out a power grid, or you're hitting a financial institution as we saw happen in Estonia and we've seen happen in Ukraine, it is harm nonetheless. I was over there actually last year, and it looks as if Russia is testing capabilities. We saw it happen in Georgia too.

Our vulnerabilities are very real. The threats are very sophisticated. We are finally, I think, paying enough attention to it. We're always going to be the best when we put our mind and our effort and our people to something, but we haven't really had the focus and the will in the past. It's been very disjointed. I think now with this administration and the focus that we have both within the military and other departments, we are moving in the right direction.

iF: THANK YOU FOR YOUR YOUR INSIGHTS, ON BEHALF OF THE JEWISH POLICY CENTER AND THE READERS OF *inFOCUS* MAGAZINE.

The Miracle of Prosperity — and Trap of Poverty

by **PAUL DRIESSEN**

For countless thousands of years, mankind endured life on the edge, in hunter-gatherer, subsistence farmer, and primitive urban industrial societies powered by wood, charcoal, animal dung, water wheels, and windmills. Despite backbreaking dawn-to-dusk labor, wretched poverty was the norm; starvation was just a drought, war or long winter away; rampant disease and infection were addressed by herbs, traditional medicine, and superstition. Life was certainly eco-friendly, but life spans averaged 35 to 40 years.

Then, suddenly—a miracle! Beginning around 1800, health, prosperity and life expectancy began to climb ... slowly but inexorably at first, then more rapidly and dramatically. Today, the average American lives longer, healthier and better than even royalty did a mere century ago.

How did this happen? What had been absent before from human civilization that now was present, bringing about this incredible transformation?

Humanity already had the basic scientific method (1250), printing press (1450), corporation (1600) and early steam engines (1770). What inventions, discoveries and practices arrived post-1800, to propel us forward over this short time span?

Ideals of liberty and equality took root, says economics historian Deirdre McCloskey. Liberated people are more ingenious, free to pursue happiness, and ideas; free to try, fail and try again; free to pursue their self-interests and thereby, intentionally or not, better mankind—as Adam Smith detailed.

Equality (of social dignity and before the law) emboldened otherwise ordinary people to invest, invent, and take risks. Once accidents of parentage, titles, inherited wealth, or formal education no longer controlled destinies, humanity increasingly benefitted from the innate inspiration, perspiration, and perseverance of inventors like American Charles Newbold, who patented the first iron plow in 1807.

Ideas suddenly start having sex, say McCloskey and United Kingdom parliamentarian and science writer Matt Ridley. Free enterprise capitalism and entrepreneurship took off, as did commercial and international banking, risk management and stock markets. Legal and regulatory systems expanded to express societal expectations, coordinate growth and activities, and punish bad actors.

The scientific method began to flourish, unleashing wondrous advances at an increasingly frenzied pace. Not just inventions like steam-powered

This was the advent of abundant, reliable, affordable energy—the vast majority of it fossil fuels. It made the sudden progress possible. Coal and coal gas, then also oil, then natural gas as well, replaced primitive fuels with densely packed energy (our Master Resource, economist Julian Simon called it) that could power engines, trains, farms, factories, laboratories, schools, hospitals, offices, homes, and more, 24 hours a day, seven days a week, 365 days per year.

The fuels also ended our unsustainable reliance on whale oil, saving those magnificent creatures from extinction. Eventually, they powered equipment that removes harmful pollutants from our air and water. Today, coal, oil, and natural gas still provide 80 percent of America's and the world's energy for heat, lights, manufacturing, transportation, communication, refrigeration, entertainment, and every other component of modern life. Equally important, they supported and still support the in-

Today, coal, oil, and natural gas still provide 80 percent of America's and the world's energy for heat, lights, manufacturing, transportation....

refrigeration (1834) but, often amid heated debate, discoveries like the germ theory of disease that finally bested the miasma theory around 1870. Yet, another absolutely vital, foundational advancement is often overlooked or only grudgingly recognized.

Infrastructure and vibrant societies and economies that enable the human mind (what Simon called our Ultimate Resource) to create seemingly endless new ideas, institutions, and technologies.

Fossil fuels also generated electricity, which play an increasingly



A illustration of the Sea of Japan at night highlighting the difference in electrification between North and South Korea. Elements of this image furnished by NASA. (Image: Anton Balazh)

prominent and indispensable role in modern life. Indeed, it is impossible to imagine life without this wondrous energy form. Hydroelectricity made its debut at Niagara Falls in 1881 and first lit a home a year later: the Hearthstone House in Appleton, Wisconsin, eight miles from where I grew up. Nuclear power joined the club in 1954. By 1925, half of all U.S. homes had electricity; a half century later, all did.

Medical research discovered why people died from minor wounds, and what really caused malaria (1898), smallpox, and cholera. Antibiotics (the most vital advance in centuries), vaccinations and new drugs began to combat disease and infection. X-rays, anesthesia, improved surgical techniques, sanitation, and pain killers (beginning with Bayer Aspirin in 1899) permitted life-saving operations. Indoor plumbing, electric

Few advances can rival water and wastewater treatment.

Medical discoveries and practices followed a similar trajectory, as millions of invisible hands worked together across buildings, cities, countries, and continents—without most of them ever even knowing the others existed. They shared and combined ideas and technologies, generating new products and practices that improved and saved billions of lives.

stoves (1896) and refrigerators (1913), trash removal, and countless other advances also helped raise average American life expectancy from 46 in 1900 to 76 (men) and 81 (women) in 2017.

Washing hands with soap (1850) also reduced infections and disease. Wearing shoes in southern U.S. states (1910) all but eliminated waterborne

hookworm, while the growing use of window screens (1887) kept hosts of disease-carrying insects out of homes. Accessible, affordable health insurance made better medical treatment available to the masses.

Meanwhile, petrochemicals—fossil fuel derivatives—increasingly provided countless pharmaceuticals, plastics, and other products that enhance and safeguard lives.

Few advances can rival water and wastewater treatment. Also made possible by fossil fuels, electricity and the infrastructure they support, such treatments enabled healthier societies that created still more prosperity, by eliminating the bacteria, parasites, and other waterborne pathogens that made people too sick to work and killed millions, especially children. They all but eradicated cholera, one of history's greatest killers.

Invented in 1939 and sprayed on war refugees and concentration camp survivors to stop typhus outbreaks, DDT delivered the coup de grace to malaria in the United States, Europe, Siberia and other places where it had long made people unable to work for weeks or months on end, left many with permanent brain or liver damage, and killed millions. DDT still enables African, Asian and Latin American health officials to spray the walls of primitive homes with the most powerful and long-lasting mosquito repellent ever invented. One spray every six months keeps most mosquitoes out, irritates those that do enter so they don't bite, kills any that land, and thus reduces malaria by 80 percent or more in locales where this disease is still prevalent.

Other chemicals control disease-carrying and crop-destroying insects and waterborne pathogens.

The internal combustion engine (Carl Benz, 1886) gradually replaced horses for farming and transportation, rid cities of equine pollution, and enabled forage cropland to become forests. Today we can travel states, nations, and the world in mere hours, instead of

weeks—and ship food, clothing, and other products to the globe's farthest corners.

The average horse emits 30 pounds of feces and two gallons of urine daily. Circa 1900, New York City sanitation crews dumped the excrement into rivers, fouling them beyond imagination, while thousands contracted tuberculosis from living in damp, moldy homes and inhaling dried, pulverized manure left behind on the streets.

Corrupt, kleptocratic, authoritarian if not totalitarian governing elites take care of their families and political allies, spend aid money on themselves...

Catalytic converters and other technologies steadily ensured that today's cars emit less than two percent of the pollutants that came out of tailpipes in 1970.

Ammonia-based fertilizers arrived in 1910; tractors and combines became common in the 1920s. Today, modern mechanized agriculture, fertilizers, hybrid and GMO seeds, drip irrigation, and other advances combine to produce bumper crops that feed billions, using less land, water, and insecticides.

Power equipment erects better and stronger houses and other buildings that keep out winter cold and summer heat, survive hurricanes and earthquakes, and connect occupants with entertainment and information centers from all over the planet. Radios, telephones and televisions warn of impending dangers, while fire trucks and ambulances rush accident victims to hospitals.

Some may yearn for "the simpler life of yesteryear." But having grown up without electricity or indoor plumbing, using horses and her own muscle to help remove large rocks from fields so her family could plant crops—and having lost children at a young age—my grandmother had a different perspective. "The

only good thing about the good old days is that they're gone," she told me.

Indeed, one could say prosperity and health begin with holes in the ground. Modern drilling and mining techniques and technologies find, extract, and process the incredible variety of fuels, metals, and other raw materials required to manufacture and operate factories and equipment, to produce the energy we need to grow or make everything we eat, wear or use.

Modern communication technologies combine cable and wireless connections, computers, chips, cell phones, televisions, radio, or Internet, and other devices to connect people and businesses, operate cars and equipment, and make once time-consuming operations happen in nanoseconds. In the invention and discovery arena, *Cosmopolitan* magazine might call it best idea-sex ever. And abundant, reliable, affordable energy, still mostly fossil fuels, still makes it all happen.

■ The Troubling Conundrum

Amid all this health, prosperity and longevity for so many—why do two billion of the Earth's estimated 7.6 bil-

intestinal diseases?

Why do two billion human beings still have minimal, sporadic, unpredictable electricity, while another 1.3 billion still have none? Why does the average American benefit from having 20 times more electricity than the average sub-Saharan African—the equivalent of having the energy of modern life just one hour a day, eight hours a week, 416 hours per year, unpredictably, for a few minutes, hours or days at a time?

The formula for health and prosperity is readily available via a computer or cell phone. The most modern technologies are widely and readily available. What is holding the rest of the world back? Indeed, says African human rights advocate Leon Louw, today the real mystery is not the "miracle of prosperity." It is the "miracle of poverty"—the sad, disgraceful "miracle" that abject poverty still exists.

Part of the explanation is endemic to the poorest countries. People have no jobs, no private property rights in their land, thus no collateral for loans. They have insufficient infrastructure or none at all—poor or no roads, wastewater treatment, indoor plumbing, decent schools or hospitals—largely because there is little or no energy, especially electricity.

Corrupt, kleptocratic, authoritarian if not totalitarian governing elites take care of their families and political allies, spend aid money on themselves, and do nothing for the people. Disturbingly, this intolerable situation is gravely worsened

...abundant, reliable, affordable energy, still mostly fossil fuels, still makes it all happen.

lion people still struggle on the edge of survival, on \$3 per day? Why do millions still die every year from malnutrition, Vitamin A deficiency, and insect-carried, waterborne, respiratory, and

by powerful, callous environmentalist groups and government agencies that justify eco-imperialist, environmentally racist policies by making exaggerated and fabricated assertions that fossil fuel

energy and middle-class housing and lifestyles for the world's poor would not be "sustainable" or would cause "unprecedented, catastrophic climate change." They actively prevent countries from acquiring the energy and other technologies that made their own nations healthy and prosperous.

Families in the world's poorest countries
are threatened by climate and sustainability
policies that deprive them of the energy, gainful
employment, living standards...

European Union and United Nations agencies, the World Bank, multilateral development banks, Greenpeace and similar groups, and even the U.S. Agency for International Development (USAID) restrict energy and infrastructure loans to wind, solar, and biofuel projects. They refuse to support coal-fired units and even gas-fired power plants that would utilize natural gas that is being "flared" and wasted in nearby oil fields. Nuclear and hydroelectric power receive similar contempt.

No factory, hospital, school, Internet server, or Greenpeace office could function on the expensive, unreliable "renewable" energy that these carbon colonialists impose on impoverished countries. Third World families are not threatened by climate and weather fluctuations, which are no worse than what they have confronted numerous times throughout their history—and exist primarily in headlines and computer model "projections."

Average global temperatures have barely budged for 20 years; seas are rising at the rate of seven inches per century; droughts and storms have not increased in number or intensity for 50 years; and Harvey in 2017 was the first major (categories three to five) hurricane to make U.S. landfall in a record 12 years.

Families in the world's poorest countries are threatened by climate and sustainability policies that deprive them of the energy, gainful employment, living standards, health and longevity that we in the already-developed nations view as our birthright. Indeed, the best way to ensure "climate resilience" is to

have strong economies, modern technologies, and modern homes and infrastructures that are built to withstand nature's onslaughts.

Rather than being sustainable or renewable, wind and solar energy require vast amounts of land, concrete, steel, copper, rare earth elements, lithium, cobalt, petrochemicals, and other raw

Rather than being sustainable or renewable, wind
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materials—and thus extensive mining, processing and manufacturing via fossil fuels. In one of the most fraudulent "sustainability" and "climate protection" projects ever undertaken, American and Canadian companies are cutting down thousands of acres of forest habitats, and turning millions of trees into wood pellets, which they truck to coastal ports and transport on oil-fueled cargo ships to England. There the pellets are hauled by train to the Drax Power Plant and burned to generate electricity, so that Britain "can meet its renewable fuel, sustainability and climate targets."

The same ostensibly pro-environment agencies restrict malaria reduction programs to narrowly defined "capacity building" and "integrated, multi-faceted" insect control efforts that emphasize bed nets and drugs which are often counterfeit or becoming ineffective. They prohibit insecticides, larvicides, and DDT. It's akin to telling cancer patients they should eat more broccoli but avoid chemotherapy because their hair will fall out.

Under extreme "Agro-Ecology" principles, activists and aid agencies oppose the use of hybrid and genetically engineered crops, chemical fertilizers and insecticides, even tractors and other machinery. These policies reduce crop yields per acre, require that more land be cultivated to feed people, and demand far more back-breaking, dawn-to-dusk labor.

Such policies and practices can no longer be tolerated.

Poor countries should no longer do what rich countries are doing now that they are rich. They should do what rich countries did to become rich, beginning

with safeguarding individual freedom and property rights, thereby stimulating creativity and problem-solving. And banks, wealthy nations, U.N. agencies, and true "civil society" and "human rights" groups should do everything possible to help them along.

PAUL DRIESSEN is senior policy analyst for the Committee For A Constructive Tomorrow and author of *Eco-Imperialism: Green Power – Black Death* and other books and articles on energy, climate change, economic development and human rights.

Fomenting Evangelical Hostility Toward Israel

by DEXTER VAN ZILE

This past spring I attended the Christ at the Checkpoint Conference (CATC), a biennial event organized by Bethlehem Bible College, an outpost of Christian anti-Zionism located in Beit Jala. The conference gives Palestinian Christians in the West Bank an opportunity to demonstrate their value to the corrupt tyrants who control Palestinian society (and protect Christians from jihadist violence) by demonizing Israel to Evangelicals from North America and Europe. The message offered at these conferences, which have taken place every even-numbered year since 2010,

escorted twenty or so attendees from the Orient Hotel, the conference venue, to the nearby “Walled Off Hotel” where they were exposed to anti-Zionist propaganda produced by Banksy, a charlatan who has turned anti-Israel contempt into a consumable art form that privileged young Westerners can purchase to demonstrate their authenticity and solidarity with the oppressed peoples of the world.

The walls of the hotel’s piano bar are covered with paintings and sculpture that portray Israel’s security barrier as something out of a horror movie. One painting, for example, showed a dozen children sitting in swings circulating

the feeling that Israel is a very bad, bad country and that visitors are part of the elite capable of seeing just how bad the country is.

It seems to work on this crowd. CATC attendees, well-to-do Evangelicals from the United States and Europe, looked at the exhibits with admiring eyes, as if they were young, naïve children at a haunted house on Halloween, with the unseen Jew as the monster. These Christians feast their eyes on the imagery, nod approvingly and ask laudatory questions of the hotel staffers, oblivious to the fact that they were being exposed to demonizing propaganda intended to incite base emotions of hate and fear against the Jewish state, whose citizens have been subjected to terrible acts of Arab and Muslim violence over the past several decades, which of course is not highlighted on the walls of the piano bar. The hotel is a sick place and the authenticity-seeking Evangelicals who visit bought its blasphemous and demonizing message hook, line and sinker. They like the hotel, which for them is a cool place to hang out. They like the vibe.

As attendees walked back toward the conference venue past the security barrier, where a graffiti artist with bad hand writing has spray-painted “F**k Jews,” I strike up a conversation with a woman whose husband is a pastor at a church back in the States. She had spent some time in the West Bank while her husband studied Arabic and had learned all about how terribly Israel mistreated the Palestinians during her time there.

In light of what she had learned while listening to her Palestinian friends — who all told her the same story — she

...where a graffiti artist with bad hand writing has spray-painted “F**k Jews,” I strike up a conversation with a woman whose husband is a pastor...

is that Evangelical support for Israel hinders the ability of Christians in the Middle East to live in peace and share their faith in Muslim-majority countries in the region. Speakers also seek to elicit feelings of guilt from the Western Christians while downplaying the problem of Arab and Muslim supremacism and Jew-hatred. With this narrative, Westerners are encouraged to expiate their guilt over Western colonialism by embracing a narrative that portrays Jews and their homeland as an obstacle to all that is good in the Muslim and Arab Middle East.

A few hours before the first night session of the conference, organizers

around an Israeli-built guard tower. On another wall hung a particularly gruesome sculpture of Jesus Christ hanging on the cross with scythe-like blades extending from the horizontal bar of the cross and a stretch of rope (a noose?) hanging from beneath Christ’s feet.

There are no images of hooked-nose Jews with long, serpentine hands trying to seduce white women from Europe on the walls of the piano bar, but there may as well be. The stuff on the walls is creepy, scary and edgy enough to give viewers something to pretend to think about as they wander around. The overall effect of the art on display at the Walled Off Hotel is to leave visitors with



A Pentecost mass at the Dormition Church on Mount Zion in Jerusalem, Israel. (Photo: Hanan Isachar)

concluded it was her job to convince all of her Trump-loving, Israel-supporting friends that not every Palestinian is a Muslim, not every Muslim is a terrorist, that there are Palestinian Christians and that these Christians are brothers in Christ, but Jews are not.

When I told her that I was a Zionist but didn't support Israel for religious reasons, she was mystified and asked how someone could support Israel without invoking spiritual or religious belief. I told her that the Jews were a people, and that European and Middle East history demonstrated that Jews could not live safely as a minority in either location and that Israel was a legitimate expression of the Jewish right to self-determination.

At this point, my conversation partner told me that the Israelis use the Holocaust to justify their mistreatment of the Palestinians. I struggled not to lose my temper as I walked her through the peace offer Arafat turned down at Camp David and also his refusal to

accept the Clinton Parameters, both of which would have given the Palestinians a state. When she realized that she didn't know as much about the conflict as she thought she did, she said, "Well, it's complicated."

Well, that's a start, I said to myself.

The episode was appalling, but instructive, reminding me once again that the same techniques used to turn mainline Protestants against Israel over

state and its inhabitants with contempt, but overall, since the 1967 Six-Day War, American Evangelicals have been regarded, with good reason, as solid allies of the Jewish state. Every once in a while an Evangelical leader will say something ugly about Jews, like G-d not listening to their prayers, but when it comes time for Israeli soldiers to arm themselves and do battle with their enemies, Evangelicals support them.

...the same techniques used to turn mainline Protestants against Israel over the past few decades are being deployed against Evangelicals in America with troubling effectiveness.

the past few decades are being deployed against Evangelicals in America with troubling effectiveness.

There has always been a small number of people in the Evangelical community in the States who regard the Jewish

The reasons for this support are rooted in a number of factors, none of which are mutually exclusive and most of which are mutually reinforcing. Some Evangelicals, for example, think Israel will play a role in the Second Coming

of Jesus Christ. Others support Israel because they think God's promises endure forever and do not want to worship a deity who changes his mind about the blessings He confers on humanity. Some Evangelicals worry about the threat of jihad on the rights of Christians and other minorities in the Middle East, and think Israel is a model of how to promote human rights in the Middle East. Remorse

Jews are not. Given that Evangelicals represent about 30 percent of the American population, and that most of them believe that God gave the land of Israel to the Jewish people, a decline in support for Israel represents a strategic threat to Israel and to the Jewish people throughout the world.

Anti-Zionism is an attractive agenda for some Evangelicals, milleni-

under the leadership of Jerry Falwell came roaring out of their ghetto, formed the Christian Right and helped Ronald Reagan get elected president in 1980. Not everyone in the Evangelical community wants to be associated with the Christian Right, which is regarded as a horror by progressive Christians and secularists. Some Evangelicals, millennials especially, have internalized the contempt directed at the conservative wing of their community by growing numbers of non-Evangelical Americans. One way progressive and young Evangelicals can demonstrate that they are not like the followers of Jerry Falwell — who was a staunch supporter of Israel — is to come to the West Bank, hang out at the Walled Off Hotel and listen to Palestinian Christians blame Israel for their suffering while lauding the crooks in the Palestinian Authority. And sadly enough, that's what a growing number of Evangelicals are doing, including the woman walking next to me in Bethlehem.

As I part company with my conversation partner on our way into the Orient Hotel where the Christ at the Checkpoint Conference is taking place, I suggest that

Some Evangelicals worry about the threat of jihad on the rights of Christians and other minorities in the Middle East, and think Israel is a model of how to promote human rights in the Middle East.

over the role Christianity played in laying the ground for the Holocaust in Europe is also a factor.

Mainline, or liberal Protestants, who struggle with Evangelicals for hegemonic status in American civil society, do not typically support Israel. In fact, their churches assail Israel at nearly every opportunity. They make a great show of respecting the religious sensibilities of diaspora Jews in the United States, but freak out whenever an Israeli Jew picks up a gun or builds a wall to defend his home and family. They ignore Muslim and Arab Jew-hatred, but are always on the lookout for right-wing antisemitism. Pointing out that Israel does a better job protecting the rights of women and gays than any other country in the Middle East does not generate much sympathy from mainline Protestants, and even antagonizes some of them into hating Israel even more, justifying their contempt with charges of "pink-washing."

Ominously enough, it appears that growing numbers of Evangelical Protestants are starting to embrace the mainline progressive narrative of the Israeli-Arab conflict. Under this narrative, Israeli efforts to protect Jewish life and property are blameworthy while Arab and Muslim efforts to kill and terrorize

als especially, because it allows them to demonstrate to their peers — many of whom regard conservative Christians with contempt — that they are not the retrograde troglodytes that they have been portrayed as for the past 100 years.

In the aftermath of the Scopes Monkey Trial in 1925, which pitted bible-be-

Ominously enough, it appears that growing numbers of Evangelical Protestants are starting to embrace the mainline progressive narrative of the Israeli-Arab conflict.

lieving conservative Christians who were opposed to the teaching of evolution in schools against progressive Christians and secularists, conservative Christians have been what scholar Susan Harding calls the "repugnant other" that their adversaries can inveigh against to demonstrate that they are on the side of modernity. For a few decades after the trial, conservative Christians who believed in the inerrancy of the Bible lived in a self-imposed exile in American society, having very little to do with wider American culture.

In the 1980s, conservative Christians

maybe she should read Yossi Klein Halevi's recent book, *Letters to My Palestinian Neighbor* to learn some more about the Israeli perspective of the conflict. It seems like a weak counter to all of the hateful imagery broadcast at the Walled Off Hotel and the distorted narrative that she will be subjected to over the next few days, but it's the best I can do.

DEXTER VAN ZILE is *Christian Media Analyst for the Committee for Accuracy in Middle East Reporting in America (CAMERA)*. His opinions are his own.

Russian meddling in the U.S.: A 100 Year Tale

by DANIEL J. FLYNN

Liberals have finally come around to President Ronald Reagan's "evil empire" assessment of Soviet Russia. The slaughter of sailors at Kronstadt, the mass executions of 22,000 Polish army officers, policemen, and other leaders in the Katyn massacres, and the murder of Leon Trotsky with an ice pick all failed to persuade. Vladimir Putin's seeming fondness for Donald Trump proved an epiphany.

amount that dwarfs in inflation-adjusted dollars what the Russians allegedly spent on internet ads during the 2016 campaign, into the fledgling Communist movement in the United States in 1919 and 1920. The American Communist Party did not choose its own leaders. Moscow did. When a Jay Lovestone or an Earl Browder ran afoul of the Russians, they removed him from office.

In its composition, control, and

NKVD (Interior Ministry) mole inside the Army's Signals Intelligence Service, informed the Russians that the Venona Project succeeded in cracking their code.

The Russians infiltrated nongovernmental institutions that nevertheless wielded great influence. "By the late 1930s," *The Secret World of American Communism* points out regarding the American Congress of Industrial Organizations, "a quarter of the CIO's members were in unions led by Communists." Michael Straight dismissed Russian infiltration as a witch hunt as publisher of *The New Republic* just a few years removed from serving as a Soviet agent working within the U.S. government. Before Howard Zinn bound an anti-American libel in *A People's History of the United States*, he taught "Basic Marxism" at the CPUSA headquarters.

■ **Infiltration and Inspiration**

Others merely inspired by the Soviet Union demonstrated the baleful influence of Russia on the United States. Lee Harvey Oswald emigrated to the Soviet Union, corresponded with leaders of the CPUSA, and spoke with Rus-

The shocked, shocked response at Russian meddling in American domestic matters appears as a natural consequence of blanking out on the 20th century.

The shocked, shocked response at Russian meddling in American domestic matters appears as a natural consequence of blanking out on the 20th century. If you regarded Alger Hiss, the Rosenbergs, and the Hollywood Ten as something other than Stalinists, then Russians hacking private email accounts, buying internet ads, and fomenting division in 2016 necessarily comes across as terribly alarming rather than in keeping with a longstanding pattern.

For the last century, Russians have meddled in American domestic affairs. Foreign-language speakers, constituting 93 percent of the membership of the competing Communist parties that sprung up 99 years ago in the wake of the Bolshevik Revolution, speak to this external influence. As Communist International documents retrieved after the fall of the Soviet Union show, the Bolsheviks funneled several million dollars, an

funding, the Communist Party of the United States of America (CPUSA) launched as a foreign entity. Over time, Americans repaid that investment in dutifully carrying out the directives of their Russian masters.

Ted Hall, a scientist working on the Manhattan Project, provided detailed information on the plutonium bomb to the Russians. Harry Dexter White pro-

Lee Harvey Oswald emigrated to the Soviet Union, corresponded with leaders of the CPUSA, and spoke with Russian diplomats before he assassinated the president of the United States.

vided the Soviet Union with the U.S. Treasury plates for printing money in postwar Germany, which predictably sparked a counterfeiting frenzy by the Russians. William Weisband, an

sian diplomats before he assassinated the president of the United States. Upon his arrest, he requested John Abt, a former espionage agent of the Soviet Union who later served as chief counsel of the



British Prime Minister Winston Churchill, U.S. President Franklin D. Roosevelt and Soviet Premier Josef Stalin meeting at the “Big Three” Yalta Conference in February 1945, making plans for the final defeat of Nazi Germany. (Photo: U.S. National Archives)

CPUSA, to serve as his attorney. Several of the Weathermen, including murderers Kathy Boudin and Judith Clark, grew up as red-diaper babies before embarking on a campaign of terrorism in the late 1960s.

Russia wielded an overwhelmingly negative influence on the United States during the 20th century. Given the nuclear arsenal the Russians continue to maintain, forging a better relationship with them seems wise. But for this to succeed the Russians need to drop old habits.

That an agent of the same KGB (Committee for State Security) that engaged in dirty deeds during the Cold War now leads the Russian nation and employed over-the-top tactics to intrude on the 2016 U.S. presidential election flows from the history that preceded.

While hints at collusion between the Trump campaign and the Russians without any substantiation discredits the Mueller investigation, the part of the special counsel’s inquiry pertaining to Russian interference seems compelling. In 2016, as in 1936, the Russians aimed to sow discord in the fabric of the American democracy.

“After the election of Donald Trump in or around November 2016, Defendants and their co-conspirators used false U.S. personas to organize and coordinate U.S. political rallies in support of then president-elect Trump, while simultaneously using other false U.S. personas to organize and coordinate U.S. political rallies protesting the results of the 2016 U.S. presidential election,” the Robert Mueller indictment of 13 Russian

nationals charges. “For example, in or around November 2016, Defendants and their co-conspirators organized a rally in New York through one group designed to ‘show your support for President-Elect Donald Trump’ held on or about November 12, 2016. At the same time, Defendants and their co-conspirators, through another group, organized a rally in New York called ‘Trump is NOT my President’ held on or about November 12, 2016. Similarly, Defendants and their co-conspirators organized a rally entitled ‘Charlotte Against Trump’ in Charlotte, North Carolina, held on or about November 19, 2016.”

Americans should take Russian meddling seriously. They need not take all those carping about Russian meddling seriously.

■ *Worse than Yalta. Really?*

How soon before our news media call for the tearing down of monuments to Franklin D. Roosevelt?

Robin Wright of the *The New Yorker* dubbed the Helsinki summit this sum-

This strangely does not besmirch the reputation of Franklin Roosevelt. Historians consistently rank him as among America's three greatest presidents. Many of the Democrats lambasting Trump regard Roosevelt as the greatest president.

Franklin Roosevelt and Winston Churchill gave their imprimatur to the Russians controlling Poland after the war. Ditto for East Germany.

mer the worst such meeting between Russian and American leaders. The event left *New York Times* columnist Thomas Friedman to write, "Donald Trump is either an asset of Russian intelligence or really enjoys playing one on TV." Former CIA Director John Brennan called Trump's performance "nothing short of treasonous."

If only a member of the president's entourage departed the summit for Moscow to receive official honors for his service to Russia, then perhaps Donald Trump's critics might view him in a more favorable light. This actually happened at the conclusion of the 1945 Yalta Summit, when Franklin Roosevelt's advisor Alger Hiss traveled to Moscow. There, his Russian masters decorated him.

"Recently ALES and his whole group were awarded Soviet decorations," reads a Soviet intelligence document intercepted and decrypted by the Venona project. "After the Yalta conference, when he had gone on to Moscow, a Soviet personage in a very responsible position (ALES gave to understand that it was Comrade Vyshinsky) allegedly got in touch with ALES and at the behest of the Military NEIGHBOURS passed on to him their gratitude and so on."

Hiss, one of just three Americans to accompany the secretary of state to Moscow after Yalta, was the figure codenamed "ALES." The word "NEIGHBOURS" meant GRU, Russian military intelligence.

■ *Helsinki Doesn't Compare*

What happened at Yalta proved far more consequential than anything that comes out of the Helsinki conference. Franklin Roosevelt and Winston Churchill gave their imprimatur to the Russians controlling Poland after the war. Ditto for East Germany. Did Trump's critics forget Roosevelt's kid-glove treatment of Joseph Stalin when evaluating Trump's interactions with Vladimir Putin?

One might give Roosevelt a pass if

Russians to do their bidding. Roosevelt's vice president during his third term, Henry Wallace, ran for president in 1948 in a campaign largely run by Communists and their sympathizers.

This does not absolve Trump from criticism regarding certain answers in his joint press conference with Vladimir Putin. It just indicates that past American presidents got far worse results and cozied up to far worse Russian leaders. The reaction to Trump's performance ranks as an overreaction.

A word stronger than collusion describes the activities of many powerful members of the Roosevelt administration in their dealings with the Russians. American intelligence uncovered overwhelming evidence of "collusion" between the Russians and American government officials many decades ago. The liberal intelligentsia refused to believe it. American intelligence agencies produce no evidence of collusion between the Russians and anyone connected to the Trump campaign or administration (let alone spying), but the liberal intelligentsia nevertheless believes it.

A word stronger than collusion describes the activities of many powerful members of the Roosevelt administration in their dealings with the Russians.

Hiss served as the only Russian agent working at a high level within his administration. But Harry Dexter White, the assistant secretary of the U.S. Treasury and senior American official shaping postwar agreements at Bretton Woods; White House economic advisor Lauchlin Currie; and State Department official Lawrence Duggan all toiled for the interests of Stalin on the U.S. government payroll. Rep. Samuel Dickstein, a New Deal ally of President Roosevelt who ironically helped found the House Un-American Activities Committee, received a monthly stipend from the

When passions overcome reason, forcefully stated beliefs often tell us the truth about the speaker more than the "truth" said.

DANIEL FLYNN is a senior editor for *The American Spectator* and author of the soon-to-be-released *Cult City: Jim Jones, Harvey Milk, and 10 Days that Shook San Francisco. This analysis combines two articles: "Liberals Finally Come Around on 'Evil Empire'," July 20 and "Worse than Yalta, Really?" July 17, 2018, by Mr. Flynn that appeared originally in The American Spectator.*

Work for Welfare is Good for Taxpayers and for the Poor

by **STEPHEN MOORE** and **ERWIN ANTONI**

Welfare programs have a tremendous and obvious flaw: they take money from those who work and give it to those who do not. This is nothing more than an additional cost to working and an additional benefit to not working. These programs, though well-intended, incentivize people to work less and collect welfare more. We do not need any fancy calculus or advanced statistical analysis to arrive at those facts – just basic economic training and an understanding of human nature.

But convincing most people of the negative impact of the welfare state requires more than intuition. Economist Thomas Sowell has often said that you can defeat almost any erroneous position by asking three basic questions: At what cost? As opposed to what? And what hard evidence do you have? Analyzing welfare with this methodology dismantles many preconceptions of these government programs.

...welfare spending could be cut by 75 percent and by simply giving people cash they could be brought up above the poverty line.

■ **At What Cost?**

If we first look at the cost of welfare, it is staggering and even disgusting. In the 50 years after Lyndon Johnson's State of the Union Address, in which he declared war on poverty, the government spent over \$22 trillion on welfare programs, and that number has continued to grow. That figure does not even include Social

Security or Medicare. Without even considering the fact that the poverty rate has not significantly budged since the war on poverty began, the cost of the expanded welfare state is back-breaking, with nearly \$1 trillion a year in costs. Federal and state governments spend more on welfare than on defense.

That is just the start of the financial cost. Sowell's research has shown that welfare helped cause surges in violence, crime, and the dismantling of families, particularly poor minorities. At least one sentence of his is worth quoting in full: "The black family, which had survived centuries of slavery and discrimination, began rapidly disintegrating in the liberal welfare state that subsidized unwed pregnancy and changed welfare from an emergency rescue to a way of life." The cost of welfare has not just been in dollars. For example, programs that incentivize single-motherhood have a tremendously negative impact on children. The children of married couples

are 80 percent less likely to live in poverty than the children of single-mothers. With the introduction of massive welfare programs, the rates of both single-mother headed households and poverty among their children skyrocketed. The myriad social pathologies that are fed by the welfare state are far too numerous to list here in their entirety but, suffice

to say, they are many and insidious, despite the best intentions of those who advocate for those very programs. After all, the most famous road is paved with good intentions.

■ **As Opposed to What?**

Now, consider the second question mentioned earlier: As opposed to what? In other words, are there any alternatives to welfare programs? Historically, America had no welfare state, at least not on a governmental level. Historian Walter Trattner gives valuable insight as to just how many layers of protection were traditionally available to the poor in America:

"Those in need ... looked first to family, kin, and neighbors for aid, including the landlord, who sometimes deferred the rent; the local butcher or grocer, who frequently carried them for a while by allowing bills to go unpaid; and the local saloonkeeper, who often came to their aid by providing loans and outright gifts, including free meals and, on occasion, temporary jobs. Next, the needy sought assistance from various agencies in the community – those of their own devising, such as churches or religious groups, social and fraternal associations, mutual aid societies, local ethnic groups, and trade unions."

Clearly, society had developed a multitude of safety nets which were cast far and wide to ensure as few as possible would fall through the cracks. This reliance on one's self and one's fellow man has diminished greatly since the Great Depression and the New Deal. Just as one example, research has shown that as the government provides fewer social services, such as in the 1996 Welfare Reform,



President Bill Clinton signing the Personal Responsibility and Work Opportunity Act in 1996. (Photo: Social Security Administration)

religious institutions step in and provide more. Conversely, when people are being taxed to pay for welfare programs, there is little incentive to give to charitable organizations which are fighting the same poverty with which the government is supposedly already at war. Likewise, when no government programs exist, people are more willing to lend a hand. Furthermore, since we have already seen that welfare programs are expensive and must be paid with taxes, people paying for those programs have significantly less that they can give to charity.

While discussing the private alternatives to welfare, it is also worth noting how inefficient government is compared to private charities and other localized institutions. The burgeoning bureaucracy that oversees the welfare state is nothing more than a leech on taxpayers. The Senate Budget Committee reported that in 2011, more than \$61,000 was spent for each family in poverty, but much of that did not go to the families. If the bureaucracy

was eliminated and those families just got checks from Uncle Sam, their incomes would be two and a half times higher than the poverty threshold. Even the Census Bureau has acknowledged that welfare spending could be cut by 75 percent and by simply giving people cash they could be brought up above the poverty line.

...of the 21 million able-bodied adults on food stamps, less than 10 percent work full-time. More than 60 percent of them simply do not work...

We can only conclude that government is terribly inefficient, especially in the realm of charity. Despite burdensome meddling of government in this field, many religious and secular institutions still provide a wide safety net for those in society who have fallen on hard times. The difference today is that the government has put itself in a position

to replace those noble, long-standing institutions, and many people turn to government handouts instead, with entitlements continuously growing.

If history can teach us anything, it's that we don't need a bureaucracy to accomplish what we can do for ourselves. Even in the midst of President Franklin Roosevelt's New Deal, it was private individuals and churches that opened soup kitchens and temporary homeless shelters for those who were down on their luck during the Depression. Unemployment never fell below double digits for the remainder of the decade of the 1930's and people remained poor while FDR exploded the national debt with welfare efforts. After the war, it was tax cuts that led to prosperity. Private charitable activity and the free market have raised far more people out of poverty than the government has. These have historically been a better alternative to the monstrous welfare state we now face.

One other alternative that is worth mentioning is sometimes referred to as workfare. This is welfare but with various caveats which seek to minimize the bad incentives welfare induces while still helping those in need. Provisions such as work requirements or limited durations on benefits are examples of possible methods to help transition people from the government dole to being productive and self-sufficient.

Economist Milton Friedman was long an advocate of such an approach that could transition people from cycles of poverty to independence by temporarily guaranteeing a minimum income in place of all welfare measures.

While overall unemployment nears record lows and several minority unemployment rates are setting new record

lows, one would imagine that it would be easy for those on welfare to get jobs. Once again though, we have to consider that the welfare state does not provide an incentive to leave those programs. This is especially problematic when you consider how many people on welfare are not old and infirm, but able to contribute to society, and possibly leave welfare altogether. Amazingly, of the 21 million able-bodied adults on food stamps, less than 10 percent work full-time. More than 60 percent of them simply do not

incentives to work, chaining generations to a cycle of poverty, and wasting taxpayers' money. The cost has indeed been high, with nothing to show for it.

Another tremendous and unnecessary cost to the welfare state is the addition of illegal aliens to the welfare rolls. Los Angeles County spent about \$1.3 billion on welfare for illegal aliens in just two years. In fact, this is such a drain on the welfare state that in 1996, when Republicans banned immigrants from receiving welfare for only five years, it

Another tremendous and unnecessary cost to the welfare state is the addition of illegal aliens to the welfare rolls.

work, not even part-time. Many other welfare programs face similar dilemmas. Strict requirements on work, for those who are able, would certainly be a superior alternative to the current welfare mess wherein recipients circle the drain of government dependency.

■ *And the Evidence*

The last of the three questions we set out to answer is: What hard evidence do you have? In this case, what hard evidence can be presented to show that welfare has actually reduced poverty? In a word, none. As was mentioned earlier, the government has spent vast sums to eliminate poverty, but to no avail. Thorough research by the Cato Institute has shown that the War on Poverty was entirely ineffective. The rate of poverty is roughly what it was during the Johnson administration. So, we've wasted trillions of dollars to barely budge the needle. There just is no hard evidence to support a continuation of the welfare state.

Meanwhile, as Sowell, Heritage scholar Robert Rector, and others point out, the welfare state has demonstrated an appalling track record of encouraging families to break up, destroying

was the largest cost savings in the entire welfare reform. The Federation for American Immigration Reform found that in the state of Pennsylvania alone, when one includes welfare programs, the cost of illegal aliens to the state's residents is over \$1.3 billion annually. If one adds the federal taxes Pennsylvanians pay, which fund other programs used by illegal aliens, the burden is even higher.

■ *The Way to Cut*

The entire welfare situation looks bleak, but there is still hope, and a way out. Many of these programs can be scaled back and the costs drastically reduced by simply requiring that those receiving benefits must work, if they are

Many of these programs can be scaled back and the costs drastically reduced by simply requiring that those receiving benefits must work, if they are able.

able. Time limits can also be put in place so that people cannot remain dependent forever. Programs that promise benefits at a certain age can have those ages increased and the payments can be scaled

down over time. Also key to escaping the welfare mess is economic growth. Continuing the president's pro-growth policies of tax cuts and deregulation will help grow the economy and lessen the burden of the welfare state as a percent of gross domestic product.

In short, the welfare crisis can be averted with three simple steps. First, eliminate benefits for those who are able to work and fail to meet work requirements. The old biblical adage holds true – if you do not work, you do not eat. Second, end all assistance to illegal aliens. American safety nets are for Americans, not the world. Third, moderately and slowly cut benefits so that, over time, some programs can be eliminated and private groups and local communities can take over again with charitable activities, as they have traditionally done.

Research by Ron Haskins of the Brookings Institute has found that during the late 1990s after work requirements were included in the 1996 welfare reform law, more than half of welfare recipients left the rolls and moved into gainful employment. Most saw gains in income as they developed work habits, skills and climbed the economic ladder. So taxpayers and the welfare recipients benefited. Millions eventually gained economic self-sufficiency.

If ever there were a public policy triumph, this was it.

Unfortunately, under Barack Obama, work requirements for welfare were eviscerated. The recession was so deep the poverty lobby argued that there

were no jobs for the welfare recipients to fill. Moreover, enrollment in the non-work requirement welfare programs, such as food stamps, Medicaid, disability and housing assistance, exploded.

Even as the unemployment rate fell, food stamps, Medicaid and disability enrollment remained at near-record highs. Is it a coincidence that during the Obama presidency, as welfare ballooned, workforce participation rates for those in the prime working ages fell dramatically?

The panoply of more than 20 welfare programs has become a substitute, not a supplement, for work. A Cato Institute

have vanished from the landscape.

Some Democrats have equated workfare to a form of “slavery.” By the way, the hard left made these same kind of over-the-top accusations in the mid-1990s about the Clinton work requirements, predicting “blood in the streets” if the bill passed. There was no blood in the streets. A 2018 study by the White House Council of Economic Advisers (CEA) report finds that only about one

Some Democrats have equated workfare to a form of “slavery.”

study showed that the full package of federal and state welfare benefits could delivered to a family with more than \$30,000 of benefits — tax and work-free. Why work?

Earlier this year, Republicans in Congress and the Trump administration tried to add a fairly modest work provision for able-bodied adults in the food stamps financing bill. Democrats en masse voted against the bill to stop workfare. This was more sad evidence that the “new Democrats” of the 1990s

in five able-bodied recipients of food stamps and Medicaid work full time. This is scandalous given that today jobs are plentiful and, in most states, employers are begging for workers. “These low employment rates of non-disabled working-age recipients” the CEA report concludes, “suggest that legislative changes requiring them to work and supporting their transition into the labor force for Food Stamps and Medicaid would have positive effects on work participation and self-sufficiency.”

Liberals have denounced the CEA report by regurgitating the same discredited arguments used in 1996 that millions of Americans will lose their benefits and poverty rates will soar. Jared Bernstein, a former Obama economist, wrote that the proposal shows that Republicans care more about rich donors than poor people. *The Daily Kos* headline shouted that Republicans have replaced the War on Poverty with a “war on poor people.”

The CEA report makes a very valid point that there are “pecuniary and non-pecuniary gains” when people get off welfare and into work. There is dignity and pride in a job well done and earning a paycheck.

Not so in the moral and financial dead end of a welfare check. The Democrats want to give the poor a fish. Experience teaches us that it’s far better to teach people to fish so they can eat for a lifetime. This is why work for welfare is not just good economics, it is the moral thing to do.

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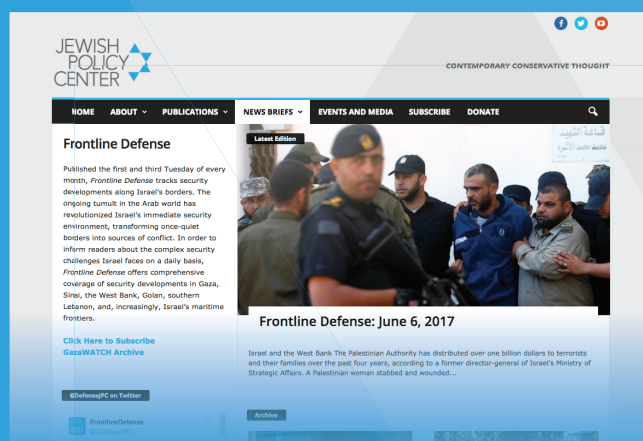


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Where Feminism Failed

review by SHOSHANA BRYEN

Sex matters. Really. It does. Sex matters. But *Sex Matters: How Modern Feminism Lost Touch with Science, Love and Common Sense* by Mona Charen is not exactly about sex. Really. It's not. OK, it is about sexes, two of them, and their differences—and differences matter. It is also about culture—and culture matters. But mostly, it is about reality.

Feminist writer Ayushi Roy told women:

The cost of any form of self-policing—not walking alone in the dark, watching what you drink and what you wear—is that you live under a self-inflicted form of fear. You are living in this fear that drinking, of letting yourself go, is a bad thing.

Her contemporary, Rebecca Nagle, agreed:

*As a woman, I'm told not to go out alone at night, to watch my drink, to do all of these things. That way, rape isn't just controlling me while I'm actually being assaulted—it controls me 24/7 because it limits my behavior. Solutions like these actually just recreate that. I don't want to f**ing test my drink when I'm at the bar. That's not the world I want to live in.*

Most of us, it should be said, have problems with the world we live in and wish the world to be otherwise. Most of us have dreams about walking safely down dark alleys or drinking ourselves into oblivion without rape or a hangover, eating cheesecake every day without getting fat, or living in a villa in Positano on our middle-class salaries. Most of us know this isn't happening, so we do what

we must to stay safe and out of bankruptcy—and limit the cheesecake.

Charen is a senior fellow at the Ethics and Public Policy Center in Washington, a *New York Times* bestselling author, a syndicated columnist, and a frequent radio and television guest. She is also, to the point here, a wife and the mother of three young men. Living in a house full of men and raising boys into men gave her an appreciation for “maleness” and the myriad differences between men and women. She recognizes that hers is a politically difficult position today, and she approaches it with seriousness, leavened with gentle humor and irony, and copious footnotes.

Necessary disclaimer: Charen makes the point—several times—that a) a return to the “olden days” is neither possible nor in any way desirable, b) increasing pay equality and wider opportunities for women are to be applauded and encouraged, c) human beings are neither appendages or chattel, d) rape, sexual abuse, and assault are real, and e) single mothers are often heroic figures.

The essential core that she wants to come to, however, is this:

Sexual differentiation has been a feature of life on Earth for millennia. In human history, too much has arguably been made of sexual distinctions, and men have frequently controlled and even stunted their daughters and wives, out of a misguided belief in male superiority. But the pendulum has swung way too far in the other direction. It is now a borderline thought crime even to broach the matter of inborn sexual differences in aptitudes and interests, though biologists continue to illuminate the thousands of influences that chromosomes exert on our bodies and minds.

How Modern Feminism
Lost Touch with Science, Love,
and Common Sense

SEX
MATTERS

MONA CHAREN

Author of the *New York Times* Bestsellers
Useful Idiots and *Do-Gooders*

Sex Matters

By Mona Charen

She enthusiastically jumps into the breach.

To set the stage, Charen goes to early American feminism—noting that the single biggest example of female power was the Women’s Christian Temperance Movement (WCTU), not the contemporaneous suffrage movement. With 150,000 members, the WCTU was not focused on the morality of drinking as such, but rather on the nefarious effects of excessive drinking almost exclusively by men—on families. In other words, it was an attempt to rein in the excesses of men. The National American Woman Suffrage Association, by contrast, had only about 7,000 members.

If you think much of history consists of women’s attempts to rein in the excesses of men, she would agree with you—and then wonder why some women are so keen to prove themselves “equal” by taking on men’s most unappealing excesses, most particularly drinking and loose sex. (See Roy, above.) Only Betty Friedan, of the dozens of mid-20th century feminists cited, recalculated the trajectory of the movement’s understanding of women not as the equal of men, but as the same as men. She came to believe that too many women had “turned their backs on the ‘life-serving core of feminine identity.’” In 1981, she wrote:

From the totality of our own experience as women—and our knowledge of psychology, anthropology, biology—many feminists knew all along that the extremist rhetoric of sexual politics defied and denied the profound, complex human reality of the sexual, social psychological, economic, and yes, biological relationship between woman and man. It denied the reality of women’s own sexuality, her child-bearing, her roots, and life connection in the family.

■ **What We Are & What We Do**

Many of Friedan’s peers and successors didn’t get the message. The chapter on biology is informative and thoroughly

documents what you learned in high school. Females are XX and males are XY. Removing the male sex organ does not make men XX. Giving women male hormones to induce a beard does not make them XY. (And giving children hormones to do either is tantamount to child abuse.)

Many of the same people who are fully certain that global warming is proven by science, and that the climatic fate of our planet can be limned within inches and degrees a hundred years out are, in the name of “gender,” quick to dismiss biology and the chromosomal difference between men and women as a “construct.”

Pointing to the “vast literature about sexual differentiation in neuroscience, evolutionary biology, and other fields,” Charen acknowledges, “The truth frightens feminists because they worry that biology, anthropology, or neurology will be cited as proof of women’s inferiority to men. Their fear is not ground-

vast unhappiness of women across campuses has led universities on occasion to abandon the American legal system for Star Chambers and various sorts of punishments meted out to young men who believed Rebecca Nagle.

The belief that women should have no particular responsibility for their own safety in a community that expects excesses of the male half of its members, writes Charen, actually makes it more difficult to understand and prosecute rape on campus—which is a real, frightening criminal activity.

■ **Marriage Matters; Happiness Does Too**

The “Family” chapter is worth the price of the book. In the face of a society that often “defames the traditional family,” Charen shows how the roles of fathers and mothers differ, how step-parents differ from biological ones, how

Charen deals with the sticky issues of race and class in these statistics as she does everything else in the book—with a kind heart and a lot of carefully documented academic research.

less, but it is outdated... In times past, many also believed in slavery, witches, child labor, executing horse thieves and the unhealthful effects of night air.”

If there is no scientific construct that makes men into women and vice versa, there is certainly a cultural one that tries its best to rearrange both sides. If you have college-aged children—or are in college—start with Chapter 5, “The Campus Rape Mess.” The increase in young women drinking to excess and engaging willingly or under pressure in the “hook-up culture” on campuses has led to a lot of unhappy women, a lot of sex that is regretted the next morning, and a lot of confusion about personal control, personal safety, and love. The

single mothers—and she gives them their due as often-heroic figures—have more trouble than married ones, and how married people are happier and healthier than singles.

According to a University of Virginia report, “Thirty-five percent of single men and cohabiting men report they are ‘highly satisfied’ with their lives, compared to 52 percent of married men. Likewise, 33 percent of single women and 29 percent of cohabiting women are ‘highly satisfied,’ compared to 47 percent of married women.” Discussing the report more broadly, she notes:

We can glean from the data that married people are much healthier,

wealthier, less prone to suicide, less likely to be drug abusers or alcoholics, less likely to be unemployed, and more likely to have broad networks of friends and relatives than single or divorced people. Married people are also less likely to develop Alzheimer's disease and are even more likely to survive a cancer diagnosis and other serious illnesses.

While she often quotes Senator Daniel Patrick Moynihan, in this chapter

today is 8 percent, or half the national rate of 16 percent. Among black single mothers, 46 percent live in poverty. The ratios [Ed. Although not the numbers] are similar for whites. The poverty rate for married white couples is 3.1 percent and for single white parents, it's 22 percent."

Charen deals with the sticky issues of race and class in these statistics as she does everything else in the book—with a kind heart and a lot of carefully documented academic research. The section on "Lost Men" is an eye-opener.

The caste of men who don't work, don't marry, and don't support children is worrying...

Charen channels her inner Representative Jack Kemp, citing statistics on the poverty rate for people who take the "life script" for which the congressman and Housing and Urban Development secretary was famous: high school graduation, then marriage, then children. "The poverty rate among married black couples

African American *husbands* [Emphasis in the original] participate in the labor force at higher rates than never-married white men. And married men with high school diplomas are more likely to be employed than single men with some college or even an associate's degree. The caste of men who

don't work, don't marry, and don't support children is worrying. They spend an average of five and a-half hours a day watching TV and movies, and less time caring for household members than either unemployed men who are married, or employed women.

■ Conclusion

The takeaways are:

- Mid-20th century sexual "liberation" was a fraud that damaged "the best instincts of men and the best interests of women."
- Children are not a burden to be managed, but a treasure to be cherished.
- Any step that reconnects us to life-long love, commitment, and tenderness will make us personally happier and move society closer to the ideals we all prize.

And, since humans are learning organisms, we can get there by accepting who we are, differences and all, "not in the world of work but in our homes and families." This book is a keeper.

SHOSHANA BRYEN is Senior Director of The Jewish Policy Center and Editor of inFOCUS Quarterly.

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■ *A Final Thought ...*

America the Honest Broker

The Trump administration has restored the United States to the position of honest broker – emphasis on “honest” – and taken a hatchet to a series of fantasies underlying the notion of an Israeli-Palestinian “peace process.” Twenty-five years after the Oslo Accords ushered in radical, despotic, kleptocratic Palestinian self-government, the Accords are dead. And that’s good.

The new construct is as follows:

- The U.S. is not neutral between Israel, America’s democratic friend and ally, and the Palestinians, who are neither.
- Everybody has a “narrative,” a national story. Not everyone’s narrative is factual. The U.S. will insist that there are facts, and that history – both ancient and modern – is real and knowable. The American government’s recognition of Jerusalem as the capital of the State of Israel is simply the acceptance of the truth of history. The city is the capital of the Jewish people and was never, ever the seat of government for any other.
 - o In this assertion, the president was joined by many members of the U.S. House and Senate, irrespective of party – although some had more trouble

saying so than others.

- The U.S. will not pay for fraud, mismanagement, or support of terrorism from Palestinians or the United Nations.
 - o Repeat the comment about congressional support.
- Neither will we fund two Palestinian governments simply because it is easier than figuring out what to do with Hamas and Fatah, who are fighting a civil war and agree on little besides the need for Israel’s ultimate demise.
 - o Repeat the comment about congressional support.

In the new game, the Palestinians have something to lose – the *sine qua non* of successful negotiations.

If “peace” is a bridge too far, a long-term stabilization process is not out of reach based on President Trump’s new foundations for American policy. At a minimum, the United States can be sure that the policies that it pursues are consonant with American interests and American allies.

– Shoshana Bryen
Editor, *inFOCUS*