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FREE MINDS

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What's the deal with CBD?  
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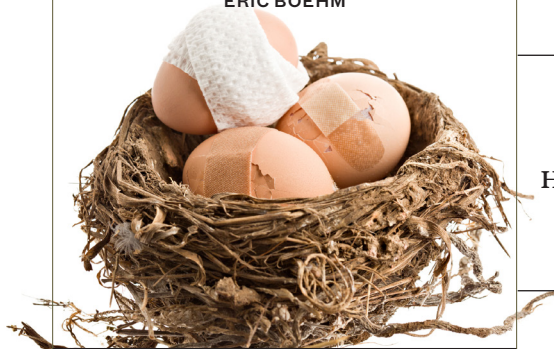
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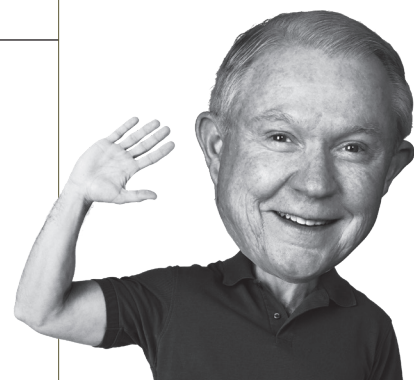
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# BUDGET HAWKS FLY THE COOP

**Goodbye to Paul Ryan,  
Jeff Flake, and Mark  
Sanford.**

**KATHERINE MANGU-WARD**

MORE THAN A decade ago, a young Rep. Paul Ryan (R-Wisc.) swooped into the House Budget Committee, talons extended. Even before he ascended to committee chairman in 2011, the hard-core hawk had already drafted functional legislation to replace Medicare with vouchers. He was going to privatize Social Security! There were tax cuts balanced by huge cuts to discretionary spending! He gave his interns copies of *Atlas Shrugged* and slept in his office to save taxpayers money! His reputation as a wonk preceded him and he rose high, gliding on the updrafts of the Tea Party movement.

But as the 115th Congress comes to a close, Ryan is slinking out the door like a trod-upon rattlesnake. The speaker of the House declined to seek re-election, an unusual move for a man at the height of his congressional powers. The announcement of his departure checked all the boxes of a political life well-lived: generic remarks about spending more time with his family, a valedictory tweet from the president about “a legacy of achievement no one can question,” even an official portrait to unveil. But it rang hollow.

Ryan sought power and won it, but it came at a high cost. There is every reason to believe he compromised time and time again because he genuinely hoped to use his power to achieve the meaningful goals he arrived with so many years ago. He came close to attaining the summit, picking up the party’s vice presidential nod in 2012 under former Massachusetts Gov. Mitt Romney.

But there’s simply no getting around the fact that he never did get to the payoff. Annual deficits spiked on Ryan’s watch, going from \$430 billion when he took the

gavel in 2015 to almost \$1 trillion now. He also voted for nearly every meaningful expansion of the scope of the federal government (with their associated opportunities to spend more money) other than the Affordable Care Act, including No Child Left Behind, the Troubled Assets Relief Program, the PATRIOT Act, and more. He did deliver on tax cuts, but without any of the attendant reforms to entitlements or spending that he so carefully paired them with as a younger, more optimistic man.

“On health care itself and debt and deficits,” he said at an event hosted by *The Washington Post* at the end of November, “it’s the one that got away.” He also regretted not getting an immigration deal done, he admitted. He’s not the only one.

ON THE OTHER side of the Capitol rotunda an alternate version of this story was unfolding, starring Sen. Jeff Flake (R-Ariz.). In October 2017, he also announced he would not seek re-election, but in a far more pointed way: “The path that I would have to travel to get the Republican nomination is a path I’m not willing to take, and that I can’t in good conscience take. It would require me to believe in positions I don’t hold on such issues as trade and immigration, and it would require me to condone behavior that I cannot condone.”

Flake then went on to infuriate nearly everyone on his way out the door by standing on both principle and ceremony as it suited him. He threatened to withhold his vote on Brett Kavanaugh’s Supreme Court nomination before eventually relenting and voting with his party. President Don-

ald Trump called him “toxic,” and weeping sexual assault activists cornered him in an elevator. Even among those who do not appreciate them, Flake’s antics have mostly been correctly read as the senator following his conscience. But some see it as unorthodox positioning (read: show-boating) for a 2020 challenge to Trump.

Flake’s record isn’t spotless either. His hobbyhorse was always eliminating earmarks, and he religiously kept up that drumbeat. He stuck by controversial votes against disaster relief as well. He fought the party powers that be on immigration and on portions of the PATRIOT Act. But keeping peace with his party required “yes” votes on decidedly nonlibertarian attorney general nominee Jeff Sessions and on foreign adventurism in Iraq, Syria, and elsewhere. Flake’s elections were brutal, with small margins and fierce rhetoric.

The toll from those compromise votes and hard-fought campaigns seemed to show on his face. At times, the weary, rumpled Flake was like the portrait Paul Ryan kept in his attic.

THEN THERE’S MARK Sanford, the South Carolina Republican who has done two stints in the House, with a period as governor (and national laughingstock) in between. Sanford does not go along to get along. Early in his career, he was already making enemies of other Republicans: In 1999, Sanford and pal Tom Coburn (R-Okla.) shut down floor debate over a lardy appropriations bill against the express wishes of their own party leadership.

As South Carolina governor, Sanford discovered some accounting trickery that was allowing pork barrel spending to sneak into the budget. In response, he brought two piglets to a press conference in 2004. “With cameras rolling and lawmakers and lobbyists gaping,” Columbia’s *The State* reported, “Sanford stood just outside the House chambers, pigs wriggling under his arms, pig feces on his jacket and shoes, and criticized House members for burying pork-barrel projects in the budget.”

In 2013, Sanford unexpectedly and semi-triumphantly returned to Congress after a short political exile that followed—

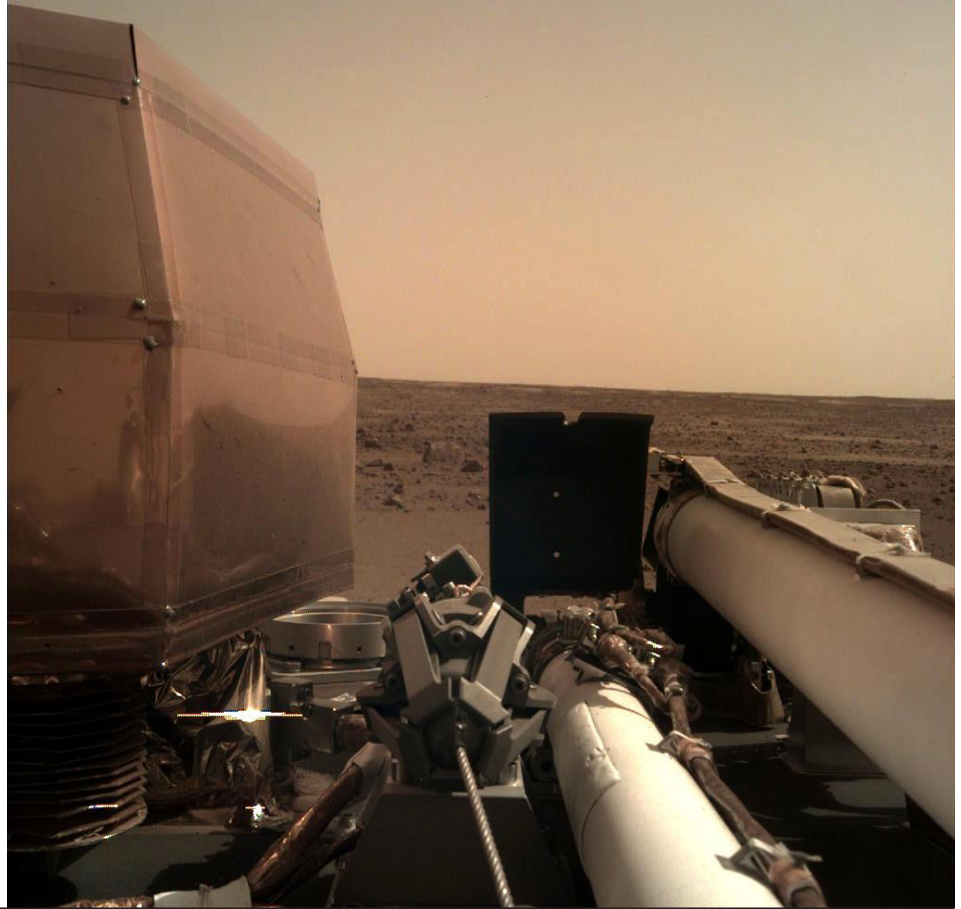




PHOTO

## POSTCARD FROM THE RED PLANET

NASA'S *INSIGHT ROVER* landed on Mars on November 26 and immediately began snapping selfies. This shot features the Elysium Planitia, a lava plain near the Martian equator. *InSight* left Earth on May 5 and traveled 301 million miles in six and a half months. The rover will now collect data about the formation of Mars by drilling deep into the red planet's crust. 📍



though was not directly caused by—a high-profile international extramarital affair. He won his campaign that year without the backing of the National Republican Congressional Committee.

In the end, Sanford got primaried. Booted by a Trump-backed candidate. The president called him “a nasty guy” on the way out, tweeting, “I have never been a fan of his.” It will be cold comfort for Sanford to see a Democrat take that seat in January, as he largely went along with Trump’s GOP on policy, though he parted ways with the president on tone and rhetoric—something he made no secret about.

**THREE CONGRESSIONAL REPUBLICANS** walk away from the Capitol. Their stories are different, but they started in the same place: with a genuine commitment to

principles of limited government. And now all three are taking their ideology and going home.

Each of these men, in his own way, is a lesson in how politicians will inevitably break your heart. They either stick to their guns and lose, or they compromise until they eventually can’t take it anymore.

Folks on the far left are about to learn this same lesson. A small class of New Socialists is marching on the Hill with fire in its eyes as I write. But safe money says that even in the best-case scenario for them, by 2030 democratic socialist darling Rep. Alexandria Ocasio Cortez (D-N.Y.) will be turning in her lapel pin, having ignominiously voted for massive military appropriations, messy entitlement legislation, and tax increases on the working class. Even the most lustily wielded sickles dull soon enough.

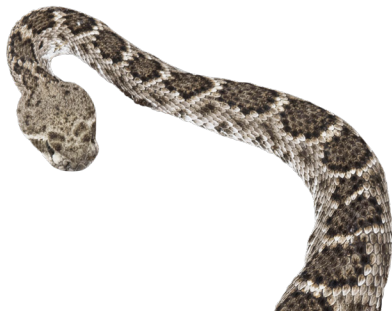
There are still some on the Hill fighting for limited government and budgetary sanity: Reps. Justin Amash of Michigan and Thomas Massie of Kentucky, plus Sens. Ben Sasse of Nebraska and Rand Paul of Kentucky.

In 2017, White House staff showed

Donald Trump the famous “hockey stick” graph of national debt projections, according to the *Daily Beast*; noting that the spike would occur after the end of his hypothetical second term, he casually dismissed the problem, saying, “Yeah, but I won’t be here then.” Still, the president is not to blame for the federal government’s lack of fiscal continence, no matter what Flake or Sanford say. Trump may have driven this batch of budget hawks out of the coop, but Republicans’ utter lack of interest in economic discipline is the culmination of a long trend. Fiscal prudence remains a part of the GOP’s DNA, but the trait is currently dormant.

A real budget reformer in the country’s highest office could revive the prospects for reform—and perhaps generate more popular support. But hawks are solitary creatures. Ryan chose domestication, settling on Trump’s glove and accepting scraps. Sanford wheeled and tried to peck the president’s eyes out. Flake simply flew away, screeching. 📍

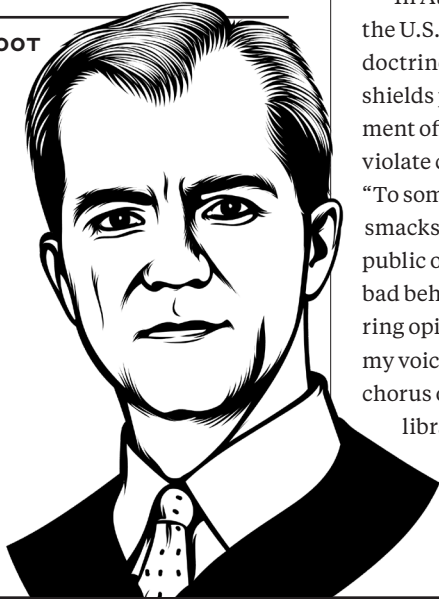
KATHERINE MANGU-WARD is editor in chief of *Reason*.





## LIBERTY HAS A NEW CHAMPION ON THE FEDERAL BENCH

DAMON ROOT



Don Willett

**DON WILLETT FIRST** rose to fame as a libertarian-leaning Texas Supreme Court justice who penned constitutional defenses of economic freedom. Since joining the U.S. Court of Appeals for the 5th Circuit in late 2017, Willett has been making a name for himself in another area of the law: criminal justice reform.

In August 2018, Willett took aim at the U.S. Supreme Court's controversial doctrine of qualified immunity, which shields police officers and other government officials from being sued when they violate citizens' constitutional rights. "To some observers, qualified immunity smacks of unqualified impunity, letting public officials duck consequences for bad behavior," Willett wrote in a concurring opinion in *Zadeh v. Robinson*. "I add my voice to a growing, cross-ideological chorus of jurists and scholars urging recalibration of contemporary immunity jurisprudence."

Next, in October, Willett wrote a unanimous 5th Circuit

ruling that voided three "special conditions" for supervised release imposed upon a criminal defendant at sentencing. The problem here was that the federal district court failed to "orally enumerate each condition," thus preventing the defendant from having a "meaningful opportunity to object" at his sentencing, and thereby running afoul of both due process and the Confrontation Clause of the Sixth Amendment. As Willett explained in *United States v. Rivas-Estrada*, that "requirement isn't formalistic. It's practical....The point is to give fair notice."

Finally, also in October, Willett wrote another unanimous 5th Circuit opinion, this one allowing an innocent man to sue for damages for false imprisonment. Brandon Lee Moon spent 17 years behind bars for a crime he did not commit. He was finally set free in 2004 after being exonerated by DNA evidence. In 2006, he sued the city of El Paso, Texas, and several of its officials. But the U.S. District Court for the Western District of Texas ruled

POLICY

## CAN PUBLIC PENSIONS SURVIVE THE NEXT RECESSION?

ERIC BOEHM

A DECADE OF consistent economic growth lifted the major stock market indices to all-time highs in 2018. But even before the recent dip, many state pension plans were struggling to get back to where they were before the

last recession. Unfunded pension debt across the 50 states totals a staggering \$1.6 trillion, even by the plans' own (often overly rosy) accounting.

If a decade of positive investment returns can't fix what's wrong with America's public pension systems, how much worse could things get in the event of another downturn? That's what Greg Mennis, Susan Banta, and David Draine, three researchers at the Harvard Kennedy School, set out to determine. They subjected state pension plans to a series of stress tests meant to simulate the consequences of a variety of adverse economic climates over the next two decades,

including everything from another major recession to merely lower-than-

expected investment growth.

What they found isn't pretty.

"Public pension systems may be more vulnerable to an economic downturn than they have ever been," the trio of researchers concluded in a paper published by the Pew Charitable Trusts in 2018. Deeply indebted pension plans in places such as Kentucky and New Jersey face insolvency if annual returns average 5 percent for the foreseeable future rather than the higher (usually around 7 percent) rates the plans assume. In other words, it won't take much to tip those systems into bankruptcy.

If a major downturn does come, states such as Colorado, Ohio, and Pennsylvania—which are closer to the national average in terms of how well-funded their pensions are—could require "contributions that may be unaffordable" to avoid insolvency.

One of the only states that seems ready to survive fiscal troubles is Wisconsin, where the combination of low existing debt and a 401(k)-style defined benefit plan means unexpected costs would be





against him, arguing that his suit was time-barred because it exceeded the two-year statute of limitations set by Texas law.

“But when did the clock start running?” Willett asked in *Moon v. City of El Paso*. “When Moon was imprisoned in 1988 or when he was released in 2004?” The district court said 1988; Willett concluded otherwise. “Every day behind bars is irreplaceable, with the final day as wrongful as the first,” he wrote. “False imprisonment is a continuing tort in Texas—the injury persists until the imprisonment ends—meaning Moon’s claim accrued upon his release in December 2004.”

It would appear that advocates of criminal justice reform have a new champion on the federal bench. 📍

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Senior Editor DAMON ROOT is the author of *Overruled: The Long War for Control of the U.S. Supreme Court* (Palgrave Macmillan).

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manageable and shared between employees and taxpayers.

Mennis, Banta, and Draine argue convincingly that stress tests provide a better snapshot of the health of a state pension system than more traditional methods, such as looking at aggregate unfunded liabilities or the funding ratio—that is, the percentage of future liabilities projected to be covered by a combination of future contributions, taxes, and investment earnings. Those metrics can be gamed by making unreasonable assumptions of future investment growth, but stress testing is a reminder that the good times won’t keep rolling forever.

Connecticut, Hawaii, New Jersey, and Virginia have passed legislation or adopted policy changes mandating annual stress-testing of public pension plans, while California and Washington have created informal guidelines establishing similar processes. More states should do the same. 📍

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ERIC BOEHM is a reporter at *Reason*.

## CIVIL LIBERTIES

# JEFF SESSIONS DEALS ONE MORE BLOW TO CRIMINAL JUSTICE REFORM ON HIS WAY OUT THE DOOR

C.J. CIARAMELLA

AS HIS LAST move before resigning as U.S. attorney general in October, former Sen. Jeff Sessions signed a memo making it much more difficult for the Department of Justice (DOJ) to enter into binding court agreements with police departments accused of civil rights violations.

It was a parting shot at Sessions’ long-time ideological enemies, groups such as the American Civil Liberties Union (ACLU) and his department’s own Civil Rights Division.

The DOJ first began creating so-called “consent decrees” to rein in rogue police departments in the 1990s, following the Rodney King trial. But they were used sparingly until the Obama era, during which time the DOJ launched a record 25 civil rights investigations into state and local law enforcement agencies. Probes in Baltimore; Chicago; Ferguson, Missouri; and elsewhere revealed excessive force, unconstitutional searches, racial discrimination, and cover-up cultures that protect bad cops.

Sessions loathed the Obama administration’s use of consent decrees. He said they impugned the integrity of police, and he blamed the decrees for the dramatic spikes in violent crime seen in many large U.S. cities over the past two years. One of his first acts after taking office was ordering a review of the 14 ongoing consent decrees with various cities.

“There’s a clear lesson here: If you want more shootings and more

death, then listen to the ACLU, Black Lives Matter, or antifa,” Sessions said in a September speech in Alabama.

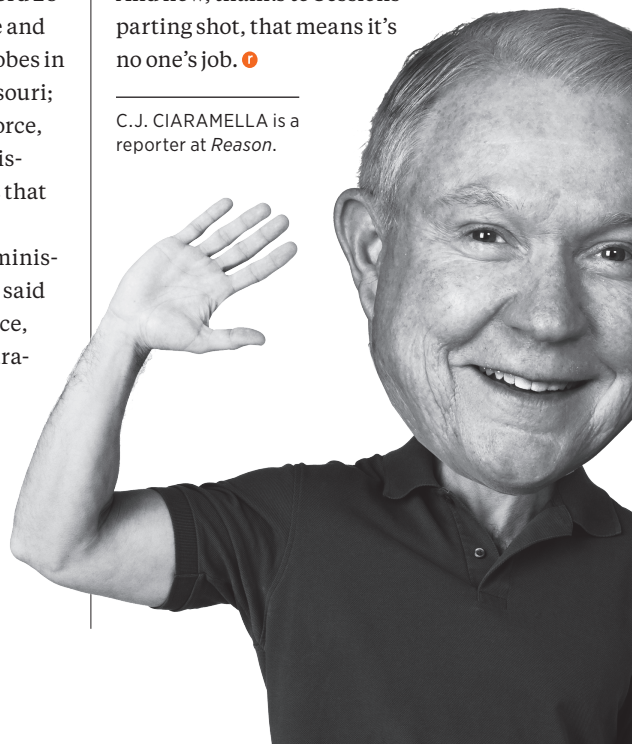
There are legitimate concerns when the federal government uses the courts to strong-arm local governments, but it has become glaringly obvious in the years since Ferguson that many police departments simply cannot be trusted to police themselves. In a report released in November, the U.S. Commission on Civil Rights urged the Trump administration “to return to vigorous enforcement of constitutional policing.” In seven of the 10 cities with the largest reductions in police shootings since 2014, the report found, “one thing they had in common was federal intervention—either through collaborative reform agreements or consent decrees.”

A future attorney general in a different administration could overturn the October memo with the same ease with which Sessions enacted it, but by then the momentum behind policing reform will be considerably slowed.

Take, for example, the town of Elkhart, Indiana. When dogged reporting by *ProPublica* and *The South Bend Tribune* recently revealed deep-rooted problems in Elkhart’s police department, the town’s mayor asked the Indiana State Police to investigate. The state police shrugged and said it was the Justice Department’s job. And now, thanks to Sessions’ parting shot, that means it’s no one’s job. 📍

---

C.J. CIARAMELLA is a reporter at *Reason*.



# AFTER LIVING ABROAD, KIDS STRUGGLE WITH AMERICAN OVERPARENTING

LENORE SKENAZY



WHEN JEAN PHILLIPSON'S family returned to Fairfax, Virginia, after living in Bolivia, the main thing her 10-year-old son complained about was the bus ride home from school. "He wasn't allowed to have a pencil out," says the mom of three, "because it was considered unsafe."

Welcome back, kid, to the land of the outlandishly cautious.

I asked children and parents who'd lived both abroad and here in the States what struck them as the biggest difference. They all said it was the lack of childhood independence in America.

In Berlin, says Tully Comfort, an 11-year-old living there now, "me and my friends will meet up and go to the market and get something to eat on our own." But a year ago, when she was living in the U.S., "the parents had to always be around."

Tully and her family lived in Costa Rica and Mexico for six years before moving back to her mother's hometown of Montclair, New Jersey, when she was 7. "I enrolled her in public school and right away we came up against this lack of freedom," says Tully's mom, Julie Comfort. "They told me my daughter was not allowed to walk to school without an adult until middle school."

Back when she was her daughter's age, Julie says, "I used to walk with my friends in this same neighborhood." But since then, fear of strangers and liability issues have ossified into hard rules. Fed up, the

Comforts moved to Berlin, a city Julie picked after vacationing there and seeing "a little kid, maybe 3 years old, riding his bike down the sidewalk, and his parents were way down the street, nonchalant."

Thirteen-year-old Molly Lukas lives in Germany now, too, after stints in Belgium, Austria, and metro D.C. Her dad is in the Foreign Service. Molly loved being around her extended family when she was back in the States about a year ago, but there were some annoyances. "One time I made plans with my friend to go to Chick-fil-A. My friend's mom had to drive us and she stayed there to make sure we were OK while we were eating." In Germany, on the other hand, "I bike to school every day—it's about 10 minutes away—and I can take the bus and trains alone."

"My daughter always says, 'Oh, I wish we could have more playdates like in Brazil!'" says Claudia Jorge, whose family of four recently relocated to Havertown, Pennsylvania. "Here we have to schedule them; there she just goes and knocks on the neighbor's door."

Tully, the 11-year-old, makes a similar observation about American playdates. "In New Jersey, the parents were watching us all the time. It was kind of weird."

Jenny Engleka raised her daughter in Mexico, Panama, and Germany before moving back to New Jersey a few years ago when the girl was 12. In Hamburg, she recalls, "kids are traveling all the time

by themselves" starting at age 6 or 7. But here, children's activities are far more likely to be both structured and supervised. "Your weekends are filled up with soccer games. Even for kids that are mediocre players, they're still quite involved."

And once they're in a league, there isn't much wiggle room. You come, you play, mom drives you home. In Germany, says Molly, the 13-year-old, if someone wants to stay and keep playing lacrosse after practice has ended, she just does. "My sister's gotten a lot better at lacrosse since she's been able to go on her own time without bugging my parents about it."

If the coach is still around, sometimes she—or he!—will take the kid home.

Trust is still normal in most of the world. And something about that trust allows kids to expand. Abby Morton, who raised her kids in Thailand for two years while she and her husband worked there as teachers, still remembers the recycling project one of her sixth-grade students brought in. He'd taken some scrap metal and fashioned it into a working crossbow. "It could shoot a spear!" says Morton, now back in Boston. So she took the class outside and let them try it.

But in the home of the brave, a kid can't hold a pencil on the school bus. 🇺🇸

LENORE SKENAZY is president of the nonprofit Let Grow and founder of Free-Range Kids.



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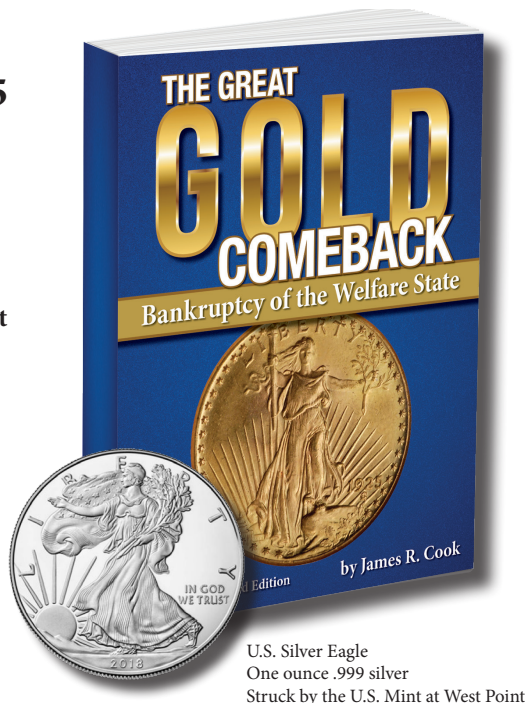
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# THE MCCONNELL ERA HAS BEEN TERRIBLE FOR AMERICAN POLITICS

**The Senate majority leader delivers hollow partisan victories and little else.**

PETER SUDERMAN



WE TEND TO think of political eras in terms of presidents: The 1980s remind us of Ronald Reagan, not Senate Majority Leader Howard Baker. The same is true of the 1990s and Bill Clinton, the post-9/11 era and George W. Bush, the years after the financial collapse and Barack Obama. Now, it is assumed, we are in the era of Donald Trump.

But are we? Trump is certainly the most visible elected leader in our national political life. But with his inescapably controversial persona serving as the starkest partisan dividing line in our polarized age, he is, perhaps more than any other modern president, also a figurehead—a president-in-name-only, elected to sit in the Oval Office and tweet into the abyss, which may or may not tweet back.

Meanwhile, the real work of legislating and governing is done by others—in particular, by Senate Majority Leader Mitch McConnell. McConnell, the chelonian senior senator from Kentucky, is almost certainly the most influential Republican in either chamber of Congress. He is the architect of his party's legislative strategy and the tactician behind its more process-oriented victories. Where McConnell goes, the rest of the GOP tends to follow.

And under Obama and now Trump, McConnell—whose steely temperament and avoidance of the limelight make him the current president's stylistic opposite—has adopted a form of politics that is partisan and procedural, focused above all on tactical and electoral victory rather than broad policy goals or ideological transformation. In many ways, it is his world we're living in rather than Trump's.

To understand McConnell's method, it's important to remember that before he was majority leader, he served for four years as the Senate GOP's whip during the Bush administration. The whip is the party leader's top lieutenant, and his job is both to count votes and to pressure them into existence.

It was in this role that McConnell developed a reputation for being a canny legislative tactician with a deep knowledge of the Senate's

**Mitch McConnell has adopted a form of politics that is focused on tactical victory rather than policy goals or ideological transformation.**

often-arcaic rules and traditions and the ways they could be used to advance the party's interests.

But the whip's role is to execute an agenda set by someone else rather than to develop a long-term legislative vision of his own. The goal isn't to change the world or make it a better place. It's to deliver the party a win.

McConnell has carried over that focus on discrete partisan victories to his tenure as leader. He counts votes and secures them, and he uses the rulebook to achieve narrow victories, but when it comes to policy—the substance of legislation—he's a cypher whose only real guidestar seems to be the maintenance of political power.

That's true even of his two most consequential victories: the confirmations of Neil Gorsuch and Brett Kavanaugh to the Supreme Court. Gorsuch's vacancy existed only because McConnell refused for most of a year to hold a vote on President Obama's nominee, Merrick Garland. Keeping the seat open not only let Trump nominate a replacement, it created pressure on Trump-skeptical Republicans during the 2016 election by providing a strong reason for them to vote against Hillary Clinton. Both Gorsuch and Kavanaugh were confirmed with a simple majority after McConnell ended the minority party's ability to filibuster Supreme Court nominations.

The same pattern applies to the GOP's two biggest legislative initiatives during Trump's first year in office: Obamacare repeal and tax reform.

When health care reform advanced to the Senate, McConnell tore up the House bill and started from scratch, producing complex legislation via an insular process



run out of his office. Even his fellow Republican senators were unclear about what was in the bill at any given time; sometimes they relied on lobbyists to find out. Despite the opacity of the process, McConnell declined to hold extensive hearings on the bill or to make a sustained public case for its virtues. He pushed legislators into up-or-down votes on legislation that no one really understood, releasing rushed, sometimes handwritten changes just hours before the roll call.

In the end, the bill, which failed in a dramatic late-night session, was little more than a shell, with details to be filled in at some later point. McConnell was not pursuing any particular policy goals. He was pursuing only a legislative victory.

The tax bill that followed was more successful, yet once again the process was centrally run, with little allowance made for outside input and little time for analysis or argument. It passed on McConnell's explicit assurances that it would spark enough economic growth to produce a net reduction in the federal budget deficit, which so far it has not. But McConnell made clear that he saw it as necessary to enact if Republicans wanted to do well in the 2018 midterms. It was an electoral ploy as much as a policy achievement, and it was led almost entirely by the Senate majority leader.

Or consider the criminal justice reform legislation that has been working its way through Congress this year. Although the bill commands bipartisan support in the Senate and is backed by advocacy groups on both the right and the left, McConnell worked to slow it throughout the fall, reportedly informing Trump in November that there wouldn't be time for a vote this year. He also gave a platform to Republican opponents of the legislation, such as Arkansas Sen. Tom Cotton, in internal discussions. Trump held a press conference announcing his support for the measure, but McConnell is in the driver's seat, and he suspects enacting criminal justice reform on a bipartisan basis would hand Democrats a victory. The bill's political fortunes were significantly imperiled because of him.

**MCCONNELL'S RESISTANCE ON** criminal justice reform—one of the most politically unifying issues in the country right now—is especially notable given his public calls for bipartisan cooperation following this year's midterm election. The success of the next Congress, he wrote in a *Fox News* column, would “depend on our Democratic colleagues. Will they choose to go it alone and simply make political points? Or will they choose to work together and actually make a difference?”

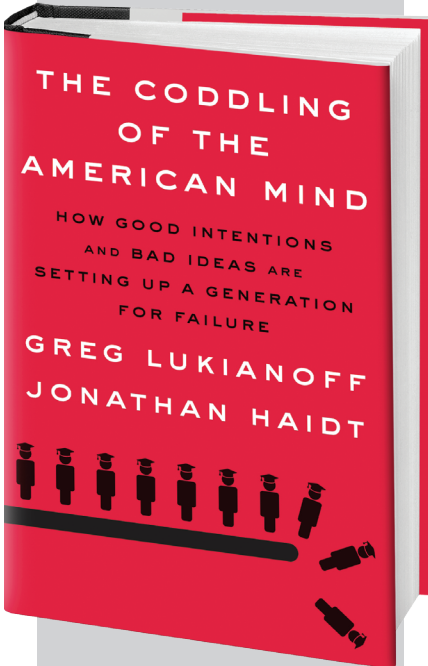
We know what McConnell would choose. Under Obama, he declared that his highest priority was to make him a one-term president. His primary tactic was to refuse to work across the aisle on any significant legislation, ever. The “key,” McConnell explained, “was to deny the president, if possible, the opportunity to have any of these things be considered bipartisan.” That was how McConnell would win.

This is not to say that bipartisanship is a good unto itself. But it is one that McConnell tends to deploy with brazen selectivity, in service of hollow partisan gain.

There is an important place in politics for victory, of course, and some of McConnell's wins, particularly when it comes to filling court seats, will probably net out for the best. But his single-minded focus on tactics and procedure, on working the machinery of politics to grind out wins, has almost certainly come at a cost: It has made our nation's politics more starkly divided and more nakedly partisan—more like a team sport in which the game is all that matters than a system of productive democratic compromise between differing ideological visions.

McConnell is neither the first nor the only elected lawmaker to engage in this sort of cynical politicking, but he is its most prominent and successful current practitioner. Our era—the McConnell era—is defined by his empty, partisan, point-scoring approach and the deleterious ripple effects it has had across our political institutions. Among other things, it gave us Donald Trump. 🗳️

PETER SUDERMAN is features editor at *Reason*.



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# IF EVEN UTAH HAS GONE SOFT ON POT, CAN THE NATION BE FAR BEHIND?

JACOB SULLUM

TALKING TO *ROLL CALL* in October, Sen. Cory Gardner (R-Colo.) described Senate Majority Leader Mitch McConnell's dismay upon hearing that Utah voters seemed ready to approve medical marijuana. "McConnell looks at me, and he goes, 'Utah?'" Gardner recalled. "Just this terrified look. And as he says that, [Republican Utah Sen.] Orrin Hatch walks up, and Mitch looks at Orrin and says, 'Orrin, is Utah really going to legalize marijuana?' And Orrin Hatch folds his hands, looks down at his feet, and says, 'First tea, then coffee, and now this.'"

Utah's medical marijuana initiative won by six points on November 6, notwithstanding vocal opposition from the Church of Jesus Christ of Latter-day Saints. Voters were even more enthusiastic in Missouri, where a measure legalizing medical use won by a margin of nearly 2-1. Counting Oklahoma, where a similar initiative passed in June by a 14-point margin, three red states approved medical marijuana in 2018, while Michigan became the first Midwestern state to legalize recreational use.

By the end of 2018, medical marijuana had been legalized in 33 states, 10 of which also now let adults use cannabis

without a doctor's note. Nearly a quarter of the U.S. population lives in a jurisdiction where recreational use is legal. Yet marijuana is still prohibited in any form for any purpose under federal law, something that could change now that Democrats have a majority in the House of Representatives.

THE RESPECT STATE Marijuana Laws Act, a bill first introduced by now-former Rep. Dana Rohrabacher (R-Calif.) in 2013, would have made the federal ban inapplicable to "any person acting in compliance with State laws." The most recent version of the bill attracted 46 co-sponsors, 70 percent of whom were Democrats. It never got a hearing.

"While members of Congress in both major parties have become increasingly supportive of good marijuana legislation," Marijuana Policy Project co-founder Rob Kampia wrote on his blog the day after the elections, "approximately 90% of Democrats—and only 25% of Republicans—support such legislation generally." When it comes to marijuana reform, Kampia said, "the Democratic takeover of the U.S. House was the most important outcome" of the 2018 elections.

Assuming that the new House leadership lets something like Rohrabacher's bill advance, a coalition of reform-friendly Democrats and federalism-friendly Republicans should be able to pass it. While that prospect may seem more remote in the Senate, which is still controlled by Republicans, a similar bill introduced in June by Sen. Elizabeth Warren (D-Mass.), known as the Strengthening the Tenth Amendment Through Entrusting States (STATES) Act, attracted 10 co-sponsors, evenly divided between Democrats and Republicans. "We'll probably

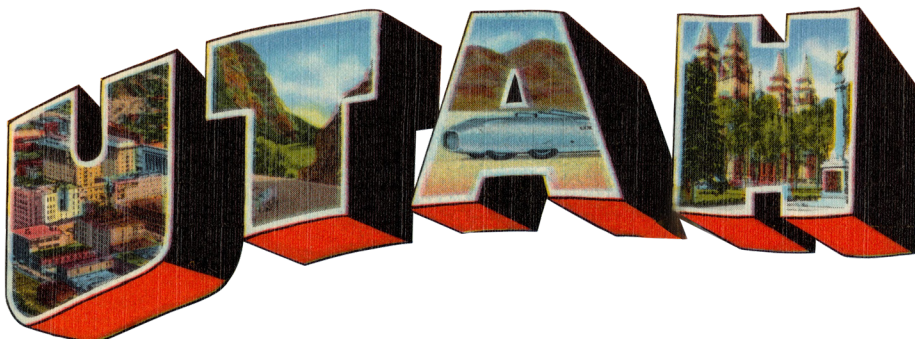
end up supporting that," President Donald Trump, who has repeatedly said states should be free to go their own way on marijuana, told reporters after the STATES Act was unveiled.

Such legislation seems to be popular. A Quinnipiac University poll conducted last April put support for medical marijuana at 93 percent, including 86 percent of Republicans, and support for general legalization at 63 percent. While 55 percent of Republicans opposed legalizing recreational use, just 38 percent of them favored enforcing the federal ban in states that do so. Three-quarters of the respondents, including more than half of Republicans, supported legislation that would shield those states from federal interference.

BECAUSE OF THE federal ban, state-licensed marijuana merchants are constantly exposed to the risk of prosecution, forfeiture, and anti-racketeering litigation. The ban complicates financing, leasing, contracting, branding, insurance, banking, and income taxes. Now that two-thirds of the states have legalized marijuana for medical or recreational use, surely it is time for Congress to eliminate these burdens by acknowledging that most of the country has rejected pot prohibition.

In addition to the state marijuana ballot initiatives and the Democratic takeover of the House, two election-related developments involving men named Sessions bode well for that reckoning. House Rules Committee Chairman Pete Sessions (R-Texas), an unreconstructed drug warrior whom Kampia calls "the sphincter who has constipated all marijuana bills and amendments in the House in recent years," lost his bid for re-election. A day later, Trump finally (for reasons of his own) got rid of Jeff Sessions, who as a senator averred that "good people don't smoke marijuana" and as attorney general periodically threatened to crack down on state-legal cannabis businesses. The two anti-pot stalwarts are related only spiritually. 

Senior Editor JACOB SULLUM is the author of *Saying Yes: In Defense of Drug Use* (Tarcher/Penguin).





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# DEPLATFORMING IS A DANGEROUS GAME

DECLAN MCCULLAGH

SILICON VALLEY'S EFFORTS to pull the plug on dissenting opinions began with Twitter, Facebook, and YouTube, who have proven to be innovators in devising excuses to suspend ideologically disfavored accounts. Until now, the deleted or suspended accounts have mostly been unpaid users of social media—libertarian law professor Glenn Reynolds, actor James Woods, radio talk show host Jesse Kelly, Infowars provocateur Alex Jones. But paying customers may be the next targets for social media “deplatforming.”

At a company-wide meeting in November, Amazon executives tried to fend off a revolt by employees upset about the company's decision to sell its facial recognition technology to U.S. police agencies and Immigration and Customs Enforcement (ICE). Some Amazon workers also objected to Palantir, an analytics firm that relies on government contracts, being allowed to purchase Amazon cloud services.

This effort to deplatform paying customers has spread throughout the tech industry: Some 100 Microsoft employees signed an open letter complaining that, by providing email and calendar services, their company was “complicit” in ICE's border enforcement policies. Salesforce and Google employees have staged similar protests.

With the exception of Google suspending a Department of Defense contract, tech execs have thus far proven hesitant to turn away governmental and corporate customers willing to write checks totaling hundreds of millions of dollars, if not more. Workers have responded by accusing management of ignoring their complaints. “I don't think Amazon leadership addressed the concerns brought up in the question,” an anonymous Amazon employee

told *BuzzFeed News* after the company's November meeting. “There is no way [for us] to hold leadership responsible.”

The first problem with this strategy is that deplatforming won't solve the issues tech workers are upset about. Civil libertarians have no love for ICE or the surveillance state, but facial recognition technology is likely here to stay. If Amazon won't sell it to law enforcement, someone else will. Haranguing any one company in hopes that it won't provide services that are perfectly legal only delays the inevitable, without addressing the fact that we need more oversight over how law enforcement agencies *use* surveillance technology.

There's another problem with deplatforming, which is that it's open-ended. If ICE can be denied contracts with tech companies, why not the Republican Party, which proclaims in its 2018 platform, “We support building a wall along our southern border”? Or the Libertarian Party, which holds views that differ from progressive shibboleths on the environment, education, Social Security, collective bargaining, and private employers' rights to hire and fire whoever they want, including members of protected classes?

The next deplatforming candidate could be groups advocating gun rights or religious freedom: Why should they have the privilege of purchasing services from Google Cloud, Microsoft OneDrive, or Amazon, especially when their views appear to be repugnant to so many people who work at those companies?

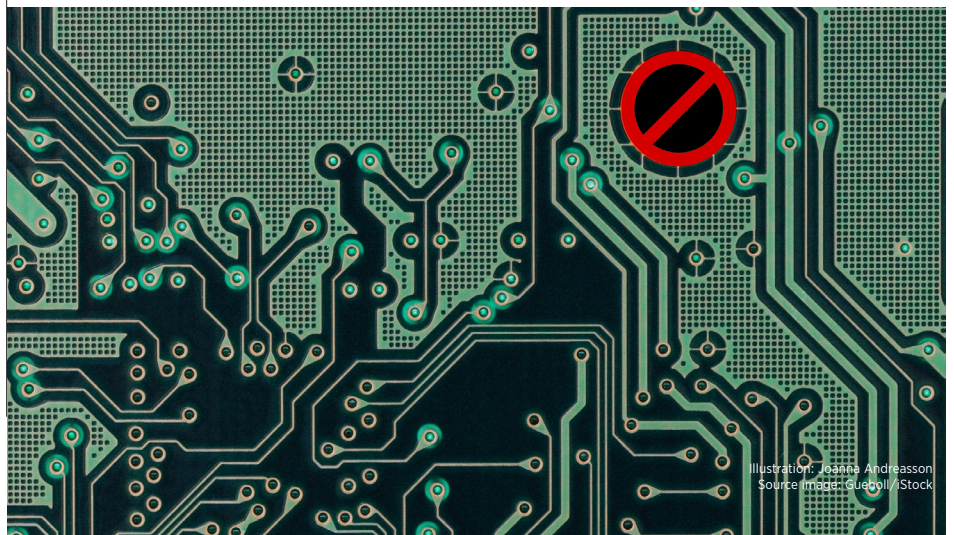
While we're at it, will Silicon Valley's progressives march around their pleasantly landscaped campuses to decry their

employers' decision to accept ads and provide other paid services for President Donald Trump and his fellow Republicans running for election in 2020?

It will be an unwelcome development in the culture wars if companies that today sell software or services to anyone who can afford them change their minds, and instead sell only to businesses or government agencies seen as politically aligned. Such an evolution would be worrisome whether it were a response to internal pressure from employees or external pressure from government officials. It was, after all, U.S. Sen. Joe Lieberman (D-Conn.) who once pressed Amazon to shut down WikiLeaks' website. To its discredit, and despite the absence of a law requiring the company to pull the plug, the e-commerce giant complied.

A ray of hope is that few, if any, company founders and CEOs are calling for deplatforming paying customers. Google co-founder Sergey Brin joined the January 2017 airport protests against Trump's initial—and poorly drafted—executive order on immigration. But Brin, who owns nearly half of the company's voting shares, has not endorsed his more radical employees' political demands. On the other hand, despite lamenting in a 2012 post that no matter what happened in that year's election, “our government will still be a giant bonfire of partisanship,” Brin has not publicly criticized the deplatforming calls either. Among Silicon Valley's billionaires, political courage is in too-short supply. 🔴

DECLAN MCCULLAGH is a Silicon Valley writer, entrepreneur, and co-founder of Recent Media Inc.





# A DIVIDED CONGRESS WON'T SLOW RUNAWAY SPENDING

VERONIQUE DE RUGY

ELECTION RESULTS ARE rarely good news for libertarians—or for the economy.

The 2018 midterm election was no different.

The Republicans lost the House, an outcome they deserved thanks to their failure to repeal and replace Obamacare, their lack of opposition to President Donald Trump's destructive trade policies and the resulting \$12 billion farmers' bailout, and their responsibility for the return of \$1 trillion deficits three years ahead of schedule.

Republicans also picked up two more Senate seats, giving them a comfortable majority to confirm new Supreme Court justices and other federal nominees. But even though divided government is generally thought to be good for fiscal restraint, that might not be the case for the next several years. As the late William Niskanen of the Cato Institute demonstrated, the slowest rates of spending growth occur when the president is a Democrat and one or two branches of Congress are under Republican control. That's because when they are in the minority, Republicans suddenly remember how to be fiscally responsible and object to large and rapid spending increases.

Unfortunately, it is unlikely that we will get the reduction in government spending we now need. Trump has repeatedly said he will not touch two of the big-

gest drivers of our debt, Medicare and Social Security. And on this matter, Democrats are solidly in the president's corner. (While Trump has said he would be willing to cut Medicaid, there is no chance House Democrats will allow him to.)

Is there any silver lining? Maybe a faint one. *Maybe.*

A Democratic House might block the militaristic instincts usually exhibited by Republican administrations. It might also refuse to approve further military-spending boosts—unless, of course, such spending is offset with nondefense spending on education and infrastructure, or on any other of the Democrats' pet projects.

There's also a serious risk that this administration, under the influence of first daughter Ivanka Trump, will pursue a federal paid-leave mandate. Although such a policy would be detrimental to women—producing lower wages for everyone and, very likely, discrimination by employers against women of child-bearing age—House Democrats would support it.

One big winner of the midterms is cronyism, and in particular the Export-Import Bank (Ex-Im). The president loves doling out favors to large companies such as Boeing and General Electric (which Ex-Im exists to do), especially if he believes that it will prop up U.S. exports. Meanwhile, with the House under Democratic control, the Committee on Financial Services will certainly approve Ex-Im's reauthorization.

That would be a shame. The data collected over the last three years—during which time the bank has functioned at only 16 percent capacity due to a lack of quorum on its board of directors—prove that taxpayers would be better off without it. Ex-Im's annual authorizations declined from \$20 billion in 2014 to \$3.4 billion in 2017, *without* reducing U.S. exports. Furthermore, Boeing and other big manufacturers continued to prosper while taxpayers' exposure dropped by about 34 percent.

In 2014, as in most years, 40 percent of the bank's activity benefited Boeing, the United States' No. 1 exporter—a giant company with revenue of \$93.39 billion and a market cap of \$210 billion in 2017. That percentage plunged to 0.56 percent in 2017 and averaged 27 percent between 2015 and 2017. Meanwhile, small businesses' share of Ex-Im activities increased from 20 percent to 63 percent in 2017. You would think that Democrats would welcome such a change. Instead, they're eager to restore the Boeing Bank to its past glory.

On the bright side, the midterms saw the re-election of the two most libertarian members of Congress: Reps. Justin Amash (R-Mich.) and Thomas Massie (R-Ky.). They can surely be counted on to push their colleagues on both sides of the aisle to resist their baser fiscal temptations. Nonetheless, we're likely in for two years of vitriol and little or no real reform. **1**

Contributing Editor VERONIQUE DE RUGY is a senior research fellow at the Mercatus Center at George Mason University.



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## HEY, CALIFORNIA: STOP ENCOURAGING BUILDING IN FIRE ZONES!

CHRISTIAN BRITSCHGI

THE SO-CALLED CAMP Fire in Butte County, California, has led to the deaths of 85 people and destroyed 13,972 homes, making it the deadliest wildfire in the state's history. Sadly, California law makes it likely that another fire will soon claim that dubious distinction.

Thanks to the state's funky way of regulating insurance, residents in fire-prone areas have little reason to move out of harm's way after the last ember has cooled, says Ray Lehmann, an insurance

policy expert at the R Street Institute. "California makes it really difficult for the market to do what it would normally do in these cases, which is when assessments of risk go up, insurance rates go up, and a place becomes less attractive to build there," he says.

As with many of California's problems, its dysfunctional insurance market can be traced back to a decades-old ballot initiative. Passed in 1988, Proposition 103 expanded the mandate of the insurance commissioner, who is responsible for approving rate increases. The law also allows for extensive public input on any proposed rate hike. As a result, insurers are slower to respond to risk and less able to write policies that discount fire-safe practices on an individual basis—say, by charging less for having a stone porch instead of a flammable wood one.

Craziest of all, California regulators are forbidden from setting policyholder rates based on future risks (increasing incidences of wildfire due to climate change, for instance) or the increasing cost of the reinsurance on which property insur-

ers rely to protect themselves. Insurance providers are being squeezed as reinsurers, acting rationally, raise their prices, but the primary insurers can't increase their own rates to reflect the risks that all parties have identified.

The consequences of this system are twofold. First, as the state's Department of Insurance noted in a lengthy January 2018 report, some people are having trouble getting insurance in the first place for properties in very fire-prone areas. Because insurers can't sell them policies that reflect the actual likelihood of their houses burning down, they won't sell them insurance at all.

The second consequence is that those homeowners who do get insurance are not paying what they should—and since they're insulated from the true cost of the risk, they end up building in areas they shouldn't.

"There is not an incentive when they rebuild to rebuild to a better standard and use better practices," Lehmann says. "That's the bigger concern."

It gets worse, however, because this





SEX

## A TRUCE IN THE BATTLE OVER BIRTH CONTROL

**But the war isn't over.**

**ELIZABETH NOLAN BROWN**

**TWO NEW RULES** concerning employer-sponsored health insurance and contraception coverage, set to take effect in January, will finally allow conscientious objectors to opt out of the now-notorious Obamacare contraception mandate. But the feds shouldn't consider the matter settled until women can buy birth control over the counter.

Under the first new rule—issued jointly by the departments of Health and Human Services (HHS), Treasury, and Labor—churches, religious orders and auxiliaries, nonprofit and for-profit organizations, nonpublic institutions of higher education, and “other non-governmental employers with religious objections” are allowed to opt out of offering insurance plans that pay for birth control “on the basis of sincerely held religious beliefs.”

Insurance issuers can also opt out if all of the companies they provide plans to are exempted. And individuals can opt out of being insured by a plan that includes contraception coverage to the extent that their employer and insurance issuer are willing to provide another option.

Under a second new rule, all of the above organizations save publicly traded businesses can get an exception based on “non-religious moral convictions opposing services covered by the contraceptive mandate.”

Freedom of conscience is good news. The bad news is that HHS et al. estimate the changes will leave anywhere between 6,400 and 127,000 women without coverage for some or all forms of contraception. That's an undesirable result, even if you don't think the solution is forcing others to subsidize the service—which is why it's time for the Food and Drug Administration to allow hormonal birth control pills to be sold over the counter.

Such a change would drive down costs and increase ease of access for women regardless of whether they're insured. In conjunction with the repeal of other unnecessary regulations about how birth control can be prescribed and obtained, new low-cost services for women's health could flourish. (Emergency contraception, one of the most controversial forms of birth control among those with religious objections, is already available without a prescription in the United States.)

Freeing birth control pills from prescription-drug status is an idea with broad support from Democrats and Republicans as well as from the American College of Obstetricians and Gynecologists. With the contraception mandate settled, it's time we set our sights and energies on the root of the problem: Birth control is harder for women to get and to use than it should be. Making it available without a prescription would solve problems a mandate never could. 📌

ELIZABETH NOLAN BROWN is an associate editor at *Reason*.

isn't just an insurance issue. In cities and counties affected by wildfires, regulators are quick to waive zoning laws and permitting requirements post-disaster. These redevelopments are also exempt from the California Environmental Quality Act (CEQA)—which mandates expensive pre-construction environmental reviews, and which can stall projects for years.

In other parts of the state, CEQA and restrictive zoning codes and permitting requirements make it incredibly difficult to build more residential housing. This is particularly true in large (and largely wildfire-free) city centers. Indeed, the number of structures destroyed by the Camp Fire alone is almost twice the number of residential units San Francisco managed to add all last year.

With such absurdly strict urban rules, it's no wonder so many Californians live instead in fire-prone areas, which recent trends suggest are likely to face ever-deadlier and more destructive fires over time.

Of the 20 largest California fires—measured by acres burned—recorded in the last century by the California Department of Forestry and Fire Protection (Cal Fire), three occurred in the last two years. However, of the 20 most destructive fires—measured by number of structures burned—seven are from the last two years, as are five of the 20 deadliest fires.

State spending on fire suppression has skyrocketed. In fiscal year 2010, Cal Fire spent some \$90 million on fire suppression. In fiscal year 2017, spending was up to \$773 million—an eightfold increase and a state record.

Far from looking for fixes to this problem, California politicians are doubling down on their current approaches to both housing and insurance. A crop of insurance bills landed on outgoing Democratic Gov. Jerry Brown's desk this year, and almost all of them make it harder for insurance companies to avoid renewing policies in risky areas or to limit future payouts.

As a result, more unnecessary property destruction and fire-related deaths are still to come. 📌

CHRISTIAN BRITSCHGL is an associate editor at *Reason*.











# Kanye West Is Misunder- stood

YEEZUS GETS CRUCIFIED FOR OUR SINS.

BRIAN DOHERTY

**S**HORTLY AFTER DONALD Trump won the presidency, Kanye West, the successful and controversial hip-hop artist and fashion mogul, tried to start a conversation about political pluralism. On stage during a show in San Jose, California, he admitted something he knew would alarm a lot of his audience: While he hadn't actually voted, if he had, it would have been for Trump.

"That don't mean that I don't think that black lives matter," he clarified. "That don't mean I don't think that I'm a believer in women's rights. That don't mean I don't believe in gay marriage." Still, West told his San Jose crowd, it was time to "stop focusing on racism....We are in a racist country, period...and not one or the other candidate was gonna instantly be able to change that because of their views."

Most of his friends and family were for Clinton, he conceded. And he knew none of his political ruminations were apt to please his fans. "I guess we're just not gonna sell out the rest of the tour now," he said, presciently. *New York* magazine chided him afterward for turning himself into "basically the uncle you really wish you could avoid at Thanksgiving dinner," and R&B singer John Legend told a French magazine that "for Kanye to support [Trump's] message is very disappointing."

A week after the San Jose show, West canceled 21 remaining tour dates, was hospitalized for "stress and exhaustion," and disappeared from public life and productivity for a year. He later attributed his troubles that week to trying to wean himself from an opioid dependency; he has since publicly identified himself as diagnosed bipolar, and he often talks about when he is or isn't on his meds.

He became active again in 2018, releasing a string of albums that he either performed on or produced in early summer. This time, it looked like his politics might not hinder his creative ventures. His solo record *Ye* quickly hit No. 1. A week later, a collaboration with Kid Cudi called *Kids See Ghosts* debuted at No. 2, while *Ye* held on to No. 5.

But during this same period of artistic fertility, he also dove back into politics, doubling down on his support for Trump. The cultural storm he generated by praising the president didn't initially drive away his core audience, but it did result in months of increasing pressure that culminated in a late October announcement from the singer that he would be eschewing political arguments to focus on just being creative. The bumpy road leading to that declaration demonstrates the toxicity of politics today—and, as collateral damage, likely ends West's ability to use his influence to do real good for real people.

## 'THE MOB CAN'T MAKE ME NOT LOVE HIM'

WEST'S PUBLIC ANNOUNCEMENT of his bipolar diagnosis and struggles with addiction were a relief to admirers who hated the president. It allowed them to write off the Trump talk as a side effect of stress, mental illness, and/or a drug problem.

Then, in April 2018, after being absent from Twitter for over a year and having released no music in the interim, West tweeted a photo of himself in a "Make America Great Again" (MAGA) hat. People got mad all over again. In response, he tweeted that "the mob can't make me not love" Trump. "We are both dragon energy," he said. "He is my brother."

West also struck up an unlikely ideological alliance with Candace Owens of the right-wing advocacy group Turning Point USA. Owens, a black woman who pushes black support for the Republican Party, became a frequent public companion, including at the release event for West's *Ye* album, which he issued about a month after launching himself as a born-again MAGAite.

Hearing "love" anywhere near "Trump" caused the tastemakers of hip-hop and respectable popular culture to see red, as West well knew it would. In his songs, if not always in his copious interviews, he has frequently been his own most intelligent observer and critic. Despite his reputation as an arrogant maniac, he consistently looks on himself with usually wise judgment and vivid self-awareness.

In response to the MAGA controversy, West and rapper T.I. rush-released a duet single, "Ye vs. the People." In it, T.I. stands in for "the people," capturing the baffled incredulity of Trump-hating Kanye fans. "This shit is stubborn, selfish, bullheaded, even for you," he raps. "You wore a dusty-ass hat to represent the same views as white supremacy, man. We expect better from you."

West counters that his wearing a MAGA hat rebranded it: "Make America Great Again had a negative perception. I took it, wore it, rocked it, gave it a new direction. Added empathy, care, and love and affection." He analogized reaching out to the MAGA world as "like a gang truce, the first Blood to shake the Crip's hand."

## JUSTICE FOR ALICE JOHNSON

ANTI-TRUMPERS IN POP culture remained on T.I.'s side. The current cultural mode, after all, is constant watchful hostility against one's political enemy and all who stand with him (or her).

A couple of West's subsequent public pronouncements fed the assumption that anyone, even a black man, who supported Trump must be soft on racism. He made a certifiably outrageous statement to *TMZ* in May: "When you hear about slavery for 400 years...For 400 years? That sounds like a choice."



Yet when West explained himself later, he touched on a line of political philosophy that goes back as far as the 16th century: the controversial idea, associated with classical liberal theorist Etienne de la Boetie, author of *Discourse on Voluntary Servitude*, that where rebellion is physically possible, the oppressor often forces on the oppressed a mindset that on some level justifies the slavery to the enslaved.

As West put it later, “My point is for us to have stayed in that position even though the numbers were on our side means that we were mentally enslaved.”

In late September, Kanye tweeted that “we will provide jobs for all who are free from prisons as we abolish the 13th amendment.” He meant—as would be obvious to anyone familiar with the details of that constitutional amendment or the lingo of the modern prison reform movement—the part of the 13th that allows involuntary servitude for “punishment for crime whereof the party shall have been duly convicted.” Kanye was advocating an end to the often brutal yet completely legal practice of forced prison labor. But confused onlookers, thinking of the 13th only as the amendment that largely abolished slavery in the United States, assumed crazy Kanye wanted to send blacks back to the plantation.

For his apostasy from standard liberal opinion on Trump, West became a victim of “cancel culture,” the practice of completely writing off anyone—celebrity, relative, and everyone in between—who does or says something sufficiently disagreeable. Yet West’s public attachment to the MAGA cause had already freed a woman from jail. In June, Trump took a meeting with the rapper’s wife, reality star and media mogul Kim Kardashian. She asked him to commute the sentence of a 63-year-old black grandmother named Alice Johnson, and he did so.

In October, right before a controversial televised Oval Office meeting with West, Trump told Fox News that he was on the artist’s side when it came to America’s penal system. “There has to be a reform,” he said. “It’s very unfair to African Americans, it’s very unfair to everybody, and it’s also very costly.” The president added that if a conflict arose between West’s vision on prison reform and that of then–Attorney General Jeff Sessions, Trump would overrule Sessions in favor of West.

It wouldn’t be fair to infer that West and his wife were the primary influence on Trump’s surprising embrace of criminal justice reform; the president’s son-in-law Jared Kushner is its biggest supporter within the White House itself. But in May, less than a month after Kanye’s MAGA tweeting began, Trump hosted a prison reform summit at the White House. “Our whole nation benefits if former inmates are able to re-enter society as productive, law-abiding citizens,” he said. And Johnson’s release does seem directly connected to the president’s relationship with the Kardashian-West.

During their notorious October White House meeting, West

## Kanye West analogized reaching out to Trump’s MAGA world as “like a gang truce, the first Blood to shake the Crip’s hand.”

physically embraced the president, told the country to lay off Trump because if he doesn’t look good we don’t look good, and said that wearing the MAGA hat makes him feel like Superman. He reinforced Trump’s proclivity for trade protectionism via calls to bring manufacturing jobs to West’s native Chicago. And he used the air time to offer, from beside the leader of the free world, a consistent positive message of mercy and reform for people stuck in the prison system. West was at the very least a prominent public part of the chorus of voices in Trump’s ear that led him, in November, to say he’d be happy to sign the FIRST STEP Act if both houses of Congress can agree on a final version. That bill would, among other things, shore up re-entry programs and job training for federal prisoners and make it easier to rack up “good time” credits toward earlier release. The legislation, which has bipartisan support on the Hill, would also reduce some mandatory minimum sentences for repeat drug offenders and limit the sentencing impact of possessing a firearm while committing a nonviolent offense.

The only two policies West explicitly spoke in favor of in his meeting with Trump—more industrial jobs in America and prison reform—are perfectly consistent with a 21st century progressive political agenda. These are also the only items on Trump’s policy slate that West has *ever* actually endorsed. The rapper has looking for points of agreement and commonality in places where other people from his world are blind, and he’s been crucified for it.

### INSANE OR VISIONARY?

THE FRACTURED, TWISTED, manic style of West’s public statements, in addition to his admitted history of mental health problems, led many to write off his adventures in MAGAland as byproducts of mania or depression, not worth engaging.

This “ignore him, he’s crazy” campaign is the most unsavory aspect of West’s public shaming. Don Lemon and a panel of black pundits on CNN indulged in such rhetoric at length after

the Oval Office visit. “No one should be taking Kanye West seriously,” declared CNN’s Tara Setmayer. “He clearly has issues. He’s already been hospitalized.” This is a shockingly retrograde view about mental illness and fitness for participation in civic life from commentators who ought to know better.

The connection between genius and madness is complicated, and the insights offered by a perpendicular view of the world should not be so readily dismissed. As music critic Chris Richards pointed out in a spot-on 2017 *Washington Post* essay, there are strange parallels between West and the eccentric and visionary science fiction author Philip K. Dick: Each man had an experience in a dentist chair that led him to believe he’d been stabbed with beams of divine wisdom.

Dick turned that revelation into a final series of novels, most prominently *VALIS*, and a sprawling, much-lauded journal thinking through the meaning and reality of what he thought he’d learned. West turned his experience into one of his most emotionally powerful songs, 2016’s “Ultralight Beam,” in which he marvels that “this”—the universe? his music? his life?—is “a God dream. This is everything.” The song is beatific, mysterious, humbling, gorgeous—all the things people willing to apply the imperatives of “cancel culture” to West are rejecting.

Richards wrote in the *Post* that “we should remember to recalibrate our expectations” about West. “If he sounds as though he’s lost his mind, it might mean he’s found himself.”

That’s what West seemed to think happened. Most of the world disagreed, violently.

### **‘IT HURTS WHEN PEOPLE TRY TO TELL ME WHAT TO DO’**

**THE VEHEMENCE** OF the public reaction to West reveals something unyieldingly dogmatic about our current politico-cultural moment. Even T.I., willing to be his foil in the “Ye vs. the People” single, publicly abandoned West after his White House meeting with Trump, saying on Instagram that it was “the most repulsive, disgraceful, embarrassing act of desperation....I’ve reached my limits. This is my stop, I’m officially DONE!!!!”

This, even though Kanye has never expressed support for any actual policy of Trump’s that the so-called #resistance is against. What turned progressives against West was his notion, per Owens, that a black person should have the ability to make a choice about his partisan allegiance.

West—the man who once said on live TV that George W. Bush “doesn’t care about black people” in the wake of Hurricane Katrina—was still concerned about the plight of his community. He just didn’t see his friendship with the president as undermining that concern. He told a Chicago radio station in August that “I feel that [Trump] cares about the way black people feel about him, and he would like for black people to like









him like they did when he was cool in the rap songs....He will do the things that are necessary to make that happen because he's got an ego like all the rest of us, and...he can't be the greatest president without the acceptance of the black community." West laid out explicitly what he thought could come of open, friendly communication with the president: "It's something he's gonna work towards, but we're gonna have to speak to him."

West doesn't talk like a political strategist, but if you pay attention to what he's *done* (use his family's star power to secure a black grandmother's release from prison and to get Trump to tell Fox News that he supports reforms that would make life better for many inmates) and to what he has *not* said (that he supports any particular Trump policy other than industrial production in the U.S.), what he was trying to pull off was clear enough. He wanted to open a dialog with someone he thought could make a positive difference in the world. Sadly, all "cancel culture" saw was a lunatic rebel with a cause they were too prejudiced even to try to understand.

What did it cost West to have opinions he took seriously shredded and mocked as signs of insanity? As he said in a video rant posted to Twitter in October, it's "like someone touched your brain with their hands...how that would hurt you, that's how it hurts when people try to tell me what to do when I'm going from my heart."

That was a vivid artist's way of expressing something that any citizen of a post-Enlightenment nation should be able to relate to at least a little: the sense that freedom of expression is important in part because what we think, feel, and believe is emotionally and intellectually core to our being. Pressure to force it underground can seem like an intolerable violation of our autonomy.

Such pressure to conform, whether you feel it from others or impose it on others, makes the world an uglier, narrower, more unpleasant place—and all for little gain other than the pleasure of hating and disdaining people who seem to think differently from you.

## NO SAFE SPACE FOR TRUMP FANS

BY LATE OCTOBER, West was in public conflict with former political consigliere Owens over her attaching his name, apparently without his permission, to a product for her "Blexit" campaign to encourage blacks to abandon the Democratic Party.

Soon thereafter, he tweeted some of the things he stands for politically, including "holding people who misuse their power accountable." He continued: "I believe in love and compassion for people seeking asylum and parents who are fighting to protect their children from violence and war....I support creating jobs and opportunities for people who need them the most, I support prison reform, I support common-sense gun laws that

will make our world safer."

West's final political tweet, an apparent effort to close out the Kanye-MAGA saga, read: "I am distancing myself from politics and completely focusing on being creative !!!" While some people were clearly willing to take the prodigal back, the declaration was also greeted with tons of salty responses such as "unstable sellouts suck" and "just go away," as well as slightly more substantive rants insisting this was an insincere attempt to win back cultural market share and assuring him it was too late to regain their respect or attention.

West has gone to some considerable trouble to distance himself from Trump's immigration and firearms policies. He merely said he loved the man and, as he put it in an April radio interview with the media personality Charlamagne tha God, believed the reality star's election "proves that anything is possible in America....I'm not talking about what he's done since he's in office. But the fact that he was able to do it."

Wearing a MAGA hat or meeting with Trump does not make you personally to blame for, say, the president's policies toward refugees. By any sensible standard of guilt—which should mean that you actually caused the thing to happen—even people who voted for Trump are not responsible for every bad thing he does, since his victory would have happened whether or not any specific individual cast a ballot for him.

At that San Jose concert in 2016 where he expressed his affection for Trump, West said that "whether you voted for Hillary or Trump, this is a safe space for both of you." As his public shellacking shows, many Americans are not interested in such safe spaces. Even at the expense of a dialog that literally led to freedom for an unjustly jailed black prisoner, they'd rather pillory, abuse, mock, and "cancel" than engage or even just ignore.

The sour but real joys of expressing contempt, however well-earned, for Trump have thus become more important to people—in Kanye's case and many others—than art, friendship, family, or even seeing literal justice done. That's a choice anyone is free to make, but given that no number of angry snubs of Trump fans will limit the damage wrought by his policies one iota, doing so simply makes the world a lot less pleasant.

West can take it; he loves being a provocateur, and it has long been his stated policy that "soon as they like you, make 'em unlike you, 'cause kissing people's ass is so unlike you." But in a country with tens of millions of Trump voters, one hopes the example of Yeezus sacrificing his reputation for the freedom of Alice Johnson will make people think twice about filtering all their human interactions through an acceptable set of political beliefs. 🗨️

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Senior Editor BRIAN DOHERTY is the author of four books, including *This Is Burning Man* (Little, Brown).





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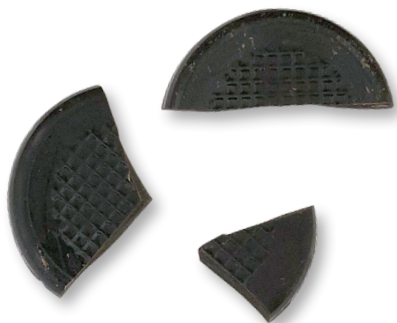


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# IS CBD A MIRACLE CURE OR A MARKETING SCAM? (BOTH.)

MIKE RIGGS



# J

ENNIFER ANISTON USES it for anxiety. Podcast host Joe Rogan applies it for elbow pain. You can buy dog treats infused with it, as well as facial scrubs and hand lotions, tinctures, and vaporizer cartridges. It's used as an ingredient in cocktails, beer, and gummy worms. It's sold at Amish markets and at fancy boutiques and at prepper depots. In October, it received the ultimate blessing for a trendy new cure-all: It was the subject of a

multipart special on daytime basic cable hosted by Dr. Oz.

"It" is cannabidiol, or CBD, a compound contained mostly in the flowers of the female marijuana plant but also in the burlier hemp plant—both strains of *Cannabis sativa*. Like tetrahydrocannabinol (THC), CBD attaches to receptors throughout the body. But unlike THC, it doesn't alter perception or sharpen the appetite. Instead, people who use pure CBD report feeling calmed and relaxed. As Aniston recently told *Us Weekly*, "CBD helps with pain, stress, and anxiety. It has all the benefits of marijuana without the high."

But alongside all the celebrity buzz and bright marketing claims, there is another, more inspiring type of story about CBD: Children wracked by dozens of severe epileptic seizures a day who are suddenly well, their desperate parents weeping in relief. Although there is a near-complete absence of data concerning casual, low-dose use in lollipops or scented skin creams, a growing body of scientific evidence shows the efficacy of large doses of pure CBD for treating certain dire medical conditions.

The growing universe of CBD products—powerful cures and spa-day fun alike—is threatened by overzealous regulators, some of whom insist that CBD be classed among the most dangerous drugs. That means the people who stand to benefit most—the sickest and most desperate CBD users—remain at grave risk.

CBD, then, is caught between two worlds: the medical reality of its effectiveness in large doses on the one hand, and the popular image of a tasty, calming, faddish cure-all on the other.

## CANNABIS FOR KINDERGARTNERS

THE STORY OF today's CBD resurgence starts in 2011, when Paige Figi of Colorado put her 5-year-old daughter, Charlotte, in hospice care. Doctors thought she had a few weeks left to live, a few months at most.

For most of Charlotte's brief life, Figi and her husband had been on a fruitless quest to alleviate the violent seizures their daughter suffered as a result of Dravet syndrome, a rare and incurable form of epilepsy whose sufferers have a life expectancy of about eight years.

By the time Charlotte turned 5, her parents had tried just about every treatment available. Yet Charlotte still needed a feeding tube to eat and was debilitated by seizures that came on at all times of day and night.

"We did vitamins, acupuncture, gluten-free, dairy-free, keto, all raw and organic," Figi says. "We tried every pharmaceutical drug on the market except ones that were dangerous to children. You're just sort of throwing darts aimlessly."

Even after all those failures, there was one more thing Charlotte's parents wanted to try. During the hundreds of hours Figi spent researching Dravet syndrome, she came across studies from Israel and Europe that showed that CBD worked as an anticonvulsant and could possibly keep Charlotte's seizures at bay.

Figi wanted to administer CBD to her daughter. She found translators so she could talk to physicians and researchers in Israel and France. From these distant mentors, she learned how to extract CBD from marijuana, how to dose it, and how to test its purity.

The only remaining obstacle was finding a doctor who would recommend giving a cannabis derivative to a kindergartner. While federal law is shifting all the time, in 2011 CBD was illegal. As a compound that could be derived from cannabis, it was classified as a Schedule I drug, meaning it had no accepted medical use and a high potential for abuse. It was therefore illegal to manufacture, possess, sell, purchase, or consume. Even in pioneering Colorado, then home to a very liberal medical marijuana system, giving CBD to a small child was a tough sell.

"I was terribly nervous," Figi says. "The 'red card' doctors"—physicians who specialized in approving people for the state's medical marijuana program—"were all opposed." Eventually, Figi convinced a small team of physicians across several institutions to review Charlotte's case and sign off on giving her CBD, making her the youngest medical marijuana patient in the state.

After 18 months, Figi stepped forward to announce that her daughter was free of seizures and no longer taking any medication aside from CBD. Sanjay Gupta, a physician and talking head, flew to Colorado to meet the Figis and eventually created a series of CNN specials on medical marijuana that sparked national interest in Charlotte's case.

In the years since, parents of epileptic children have moved their families to Colorado in order to gain access to reliable and legal-to-administer CBD. Following Paige Figi's advocacy, several red-state legislatures legalized CBD while leaving marijuana itself and other cannabinoids illegal.

CBD doesn't "cure" Dravet syndrome; it only treats the most dangerous symptoms. Dravet patients will still have drastically shorter lives than average, and not all of them will



respond equally well to CBD, because every patient is different. But there is no longer any question among medical professionals that CBD works as an anti-epileptic drug.

#### ‘PURE CBD GUMDROPS’

DURING THE SAME period that Charlotte was undergoing treatment, CBD found its way into a variety of nonmedicinal products, from \$13 bath bombs advertised as providing pain relief and “mental clarity” to essential oil combinations that retail for as much as \$60 an ounce. This year, CBD made an appearance at In Goop Health, the conference hosted by actress and wellness entrepreneur Gwyneth Paltrow, as part of a panel devoted to the health effects of marijuana and associated products. Once you know what it is, you start to see it everywhere. It served as a punchline in a recent *New Yorker* “Shouts and Murmurs” column and earned a shoutout from Paul Nassif, a star of the reality TV show *Botched*.

“CBD was isolated in 1940, and for decades nobody cared,” says Paul Armentano, deputy director of the National Organization for the Reform of Marijuana Laws (NORML) and an early proponent of researching CBD’s medical utility. “I have been doing this work since the mid-1990s, and for the first decade or so, nobody but a wonk would talk about CBD.” Now, however, the number of CBD questions Armentano receives at NORML is “almost overwhelming.”

Among cannabis policy analysts and the people who report on drug policy, Armentano has a reputation for possessing an almost encyclopedic knowledge of marijuana research. When we talked in October, he expressed irritation at shady actors promoting CBD for applications that haven’t been studied and for hawking CBD health products that contain so little of the active ingredient that they may as well be sugar pills.

“The idea that it’s going to be in this balm or that balm, I don’t know what the scientific basis for that is,” Armentano says of lotions that claim to contain CBD. “The people who are talking the loudest about CBD don’t have a scientific background. They are marketers and advertisers, and they have done a hell of a job.”

Which is a shame, because CBD does work quite well for some things and, with additional research, may turn out to work quite well for others. In an email, Armentano pointed to peer-reviewed research suggesting that, in addition to epilepsy, CBD holds promise for treating cancer, diabetes, inflammation, migraines, and even schizophrenia and substance abuse.

“Holds promise” is the key qualifier. Many makers and marketers of CBD products have latched onto these glimmers of efficacy to promote watered-down products that may or may not contain actual CBD (in addition to other cannabinoids) in varying doses. This kind of sloppy extrapolation is a regular occurrence in the nutritional supplement industry, where com-

**Not all Dravet syndrome sufferers will respond equally well, because every patient is different. But there is no longer any question among medical professionals that CBD works as an anti-epileptic drug.**

pounds frequently make the leap from lab to bottle with little or no input from clinical researchers. A lot can get lost in translation, such as the minimum dosage required for a compound to be effective or the best route of administration.

“Even if products do contain what they advertise,” Armentano says, “the dosing is very low compared to what’s used in clinical trials.” A recent migraine clinical trial, for instance, used 200 milligrams of CBD daily. A highly rated and reviewed one-ounce bottle of hemp oil I found online delivers 8.33 milligrams of CBD per serving and contains a total of 30 servings. A person would need to consume nearly a bottle per day to achieve the therapeutic effects seen in peer-reviewed CBD studies.

Curious as to whether Armentano was exaggerating the extent of this problem, I then looked at the label information of more than a dozen highly reviewed CBD products marketed to adults. Not one of them contained even half the dose of marijuana-derived CBD recommended for a child suffering from seizures. But some of these products did sound tasty and look chic: An elegantly boxed candy described itself as “pure CBD gumdrops...made by hand in small batches from five simple ingredients: natural fruit essences, gelatin, citric acid, sugar and the finest full-spectrum phytocannabinoid-rich CBD extract.”

While they’re probably delicious, each piece of candy contains only 20 milligrams of CBD, according to the packaging. That’s one-tenth the amount used in the adult migraine trial and one-fifth the minimum dose required by a child with Dravet syndrome. At \$60 for a box of nine doses, the boutique gum-



drop is more like a slice of rum cake than a shot of rum. Various CBD products available on Amazon contain roughly the same amount or a few milligrams more per dose—still nowhere close to the therapeutic doses used in research.

This is not nitpicking. Dosing is an essential aspect of getting specific therapeutic results for specific ailments. Several studies have shown that CBD has a “bell-shaped dose-response curve,” as one Brazilian report notes. In that study, which tested CBD as a treatment for anxiety in adults, 57 men were divided into four groups and given three different doses of CBD, plus a placebo. The group that received 300 mg of CBD had the best results, while the placebo group, the 150 mg group, and the 600 mg group fared much worse. There is, in other words, a sweet spot.

While the compound is gaining acceptance as a life-changing medicine for the chronically and terminally ill, its explosive popularity as a hot new luxury self-care product rests on shaky ground. And it’s not clear how many consumers (or sellers) have a clue what they’re doing.

#### ‘HEY, WHAT ABOUT THIS PRODUCT?’

SOMETIMES THE THERAPEUTIC and recreational markets get tangled up. The twin issues of provenance and purity are of special concern to people who are genuinely sick yet still unable to obtain CBD through traditional medical channels.

“I get thousands and thousands of messages a week from parents sending me pictures or asking me, ‘Hey, what about this product? What about this product?’” says Sebastien Cotte, whose son Jagger has a rare and terminal neurological disorder called Leigh syndrome. Like Paige Figi, Cotte has become a sherpa for parents of children with rare diseases. He speaks around the U.S. about finding CBD products that are safe and tested for contaminants.

“I don’t give anything to Jagger that I don’t see the lab report for,” Cotte says. “His immune system is so compromised, if there’s a family of mold or *E. coli* in a product, it could kill him.” It makes Cotte particularly nervous when parents ask him about CBD products they’ve found in places like gas stations, which he calls “a horrible place to buy a product for your kid.”

Yet it’s hard to blame consumers for feeling baffled. The “green rush” that started in 2012, when Colorado and Washington state legalized recreational cannabis, has attracted the energies of not just good Samaritans, scientists, and honest entrepreneurs but also hustlers, scam artists, and people who don’t know much about what they’re selling.

“There’s no question that the explosion of CBD products is creating serious confusion, and consumers are left to try to sort the wheat from the chaff without a lot of help,” says Taylor West, former deputy director of the National Cannabis Industry Association, now with Cohnnabis,



a Denver-based marketing agency that works with marijuana companies. “It’ll get worse before it gets better.”

Pulling CBD from hemp rather than the marijuana plant has become a flashpoint inside the cannabis world. While the two are in the same family, hemp is a heftier strain. It’s used to make fabric and rope, not drugs. You can’t get high smoking hemp or make edibles from it. While it does contain trace amounts of cannabidiol, all of the clinical research into CBD to date has used derivatives of the marijuana plant, not hemp.

“No one talked about CBD being derived from hemp until a few years ago, when people thought it might be a potential loophole,” Armentano says. That “loophole” is hemp’s debatable classification under the Controlled Substances Act (CSA). The law’s definition of “marihuana” excludes “the mature stalks” of *Cannabis sativa*, along with any “derivative” of the stalks, “oil or cake made from the seeds,” and the seeds themselves if they have been sterilized to prevent germination. In addition to those exemptions, a 2014 federal law allowed limited cultivation of “industrial hemp,” defined as *Cannabis sativa* with a THC content of “not more than 0.3 percent on a dry weight basis.” The 2018 farm bill allows even broader cultivation of hemp based on the same definition.

Over the last several years, the Drug Enforcement Administration (DEA) has attempted to clarify its position. In May 2018, the agency released an internal directive informing staff that “products and materials that are made from the cannabis plant and which fall outside the CSA definition of marijuana (such as sterilized seeds, oil or cake made from the seeds, and mature stalks) are not controlled under the CSA.” That would seem to suggest that CBD made from hemp containing less than 0.3 percent THC is not a controlled substance. But as researcher Jamie Corroon and attorney Rod Kight noted in an October 2018 paper for *Cannabis and Cannabinoid Research*, while “these statements clarified that CBD derived from a source other than cannabis was lawful, they did not specifically state that CBD from industrial hemp was lawful.”

Hemp’s murky legal status doesn’t necessarily make it a good source of CBD. “Many lower-quality producers use hemp oil imported from overseas,” West explains in an email. The vast majority of CBD products available on sites like Amazon, for instance, use CBD derived from hemp, and many vendors are not clear about where that hemp was grown.

Perhaps more important, potential buyers may not have a clear idea of what to look for. “High-quality CBD producers need to understand that there is very little education in the general populace about CBD,” West says. “Market research from BDS Analytics tells us that most consumers don’t even know the difference between CBD and THC. That’s how basic the knowledge gap is between those of us living in the hemp/cannabis bubble and the outside world.”

West thinks there are several ways to provide clarity to consumers, including putting more information on product labels, creating a third-party testing group, and sharing lab results with sellers and buyers (although this last option requires lab testing, which is not cheap).

“I’m actually brainstorming with a couple other parents to see if we can try to start some kind of *Consumer Reports*, but for cannabis,” says Cotte, Jagger’s father. “It’s so needed. There’s a new CBD product coming out every day, brands I’ve never heard of, stuff from Europe and China. Sometimes it’s full of toxins.”

*Toxins* is a buzzword among crunchy hypochondriacs, but Cotte is talking about the very real risk posed by drugs sold in black or gray markets. A random CBD product you buy on Amazon or at your local head shop is unlikely to contain a contaminant such as illicit fentanyl, but it might not contain what the label claims, either. In late 2017, more than 30 people were admitted to emergency rooms in Utah after consuming “Yolo CBD oil.” The Centers for Disease Control and Prevention later reported that the bottles actually contained a synthetic cannabinoid called 4-CCB. This dangerous, lab-made drug, meant to mimic the effects of THC, caused seizures and vomiting. What’s more, the Yolo bottles contained no actual CBD.

A 2018 paper in *Medical Cannabis and Cannabinoids*, published by the European academic house Karger, highlighted this information asymmetry. Consumers know only what they see on the label and in most cases have no third party to help them make decisions. As a result, the paper’s authors warned, consumers are ignorant of the “residual presence of toxic solvents used during the extraction procedure” and do not know whether a formulation contains heavy metals absorbed from soil, excessive pesticides sprayed on the plants themselves, or non-CBD drugs designed to give users the sense that the product “works.” In 2016, the Food and Drug Administration (FDA) tested 13 different CBD products and found that only two of them contained the amount of CBD listed on the label.

Aside from the incident in Utah, very few products marketed as containing mostly or exclusively CBD have proven to be harmful. But the available data suggest the market has been flooded with crappy products created by companies, both foreign and domestic, hoping to cash in on the hype.

## **‘FROM THE DEA’S PERSPECTIVE, CBD IS STILL A SCHEDULE I SUBSTANCE’**

EVEN FOR CBD products that *are* made and dosed correctly and that *do* work, there’s an additional hurdle. With a single exception, this entire product sector cannot legally market itself as medically better than the hyped placebo it’s competing against.

According to the Drug Enforcement Administration, CBD, whether it’s derived from the cannabis plant or the hemp plant,

is illegal. This seems to conflict with the clarification the agency published in May 2018, but it's consistent with what DEA Spokesperson Melvin Patterson told *Men's Health* in October 2018: "From the DEA's perspective, CBD is still a Schedule I substance."

While many producers of hemp-derived CBD insist otherwise and do in fact operate with relative impunity when compared to people who grow cannabis, the DEA doesn't formally recognize the distinction, and many retailers don't either.

That point was driven home to me by a cashier at a local pet store, who rang up my CBD-infused honey sticks (made in Colorado and said to help pets relax) separately from the bag of salmon treats I was buying for my cat. I paid for the salmon treats with my credit card but paid for the CBD with PayPal. The latter transaction was described to PayPal as involving an artisanal good, with no mention of CBD.

A new federal farm bill could soon remove CBD's classification as an illicit drug. But until such legislation goes into effect, the only CBD formulation considered legal by the DEA is Epidiolex, an oral spray that the FDA approved in June 2018 for the treatment of Dravet syndrome, Charlotte Figi's disease, and Lennox-Gastaut syndrome, another rare form of epilepsy. Both conditions cause frequent and potentially deadly seizures in infants and children.

Two months after the FDA approved Epidiolex, the DEA announced it had moved the medication from Schedule I to Schedule V, the least regulated category of controlled substances. Schedule V contains drugs that have demonstrated medical value and are unlikely to be abused or lead to addiction.

This is how federal regulators and law enforcement agencies want drug makers to do things: Submit a new drug application, go through clinical trials, and wait for approval before you take your product to market. It is a highly detailed, highly specialized, and highly bureaucratic process that costs millions of dollars and takes years to complete. But if you do it right, the federal government gives you permission to sell your drug in the United States.

The reclassification of Epidiolex from Schedule I to Schedule V is a testament to the hard work and ingenuity of GW Pharmaceuticals, the British firm that holds the patent on the drug. But its approval also underscores the mindless dogmatism that colors federal drug policy.

Epidiolex was developed using cannabis grown in the United Kingdom because the Department of Justice (which includes the DEA) for decades has blocked medical marijuana development in the U.S. by refusing to license private growers of research cannabis. The only federally legal source of cannabis is the University of Mississippi's Marijuana Research Project, which grows it under a contract with the National Institute on Drug Abuse. But that cannabis cannot be used to develop

pharmaceutical products.

We don't and can't know if Epidiolex works better than the illegally manufactured high-dose CBD products currently used by children like Jagger and Charlotte. It is against the law for any researcher in the U.S. to test a domestic CBD formulation against Epidiolex in a randomized, controlled trial.

It seems like a matter of principle that consumers should know whether a new prescription medication is more or less effective than the medicines they're already using. But it's an even more important question considering the relative cost of FDA-approved drugs.

Phil Nadeau, a biotech analyst with the financial services firm Cowen, projects that Epidiolex will have "an average gross price of \$32,500 a year," according to reporting by *Stat*. At five cents a milligram, the equivalent amount of black-market CBD would cost somewhere between \$100 and \$400 a month, or \$1,200 to \$4,800 a year, depending on the patient's dosing requirements. That's a massive price difference, especially since we don't yet know what portion of Epidiolex's cost American insurance companies will agree to pay. Then again, insurers won't pay anything for CBD made in Colorado, even if it works perfectly, because it hasn't been approved by the FDA.

The fact that some consumers will have access to a tested and regulated prescription drug while others will have to rely on a self-regulated market would be less troubling if the FDA were fine with some manufacturers operating outside of its regulatory purview. But the FDA is not fine with this. In the last several years, it has threatened regulatory action against 19 CBD marketers, including the company that grows the strain of cannabis that saved Charlotte Figi's life.

## **'TO BE IN GOOD STANDING WITH THE FDA, WE SIMPLY CANNOT SPEAK'**

THE STANLEY BROTHERS of Colorado got into the cannabis business to serve Jesus Christ and to help a family member diagnosed with pancreatic cancer.

"We're actually a relatively conservative family," Joel Stanley, one of seven brothers affiliated with the family's cannabis and hemp operation, told the news service Al Jazeera in 2014. "People wouldn't have guessed that we would be in this. I graduated from a Christian school just a few miles away. But the truth is, we grow plants for sick people. What's un-Christian about that?" According to a profile written by Steve Rabey for *On Faith*, "Jesse Stanley believes God has called his family to pioneer a form of cannabis-based Christian compassion."

Jesse, Joel, and several of their brothers entered the medical cannabis business in 2008. In 2011, they met Paige Figi and her daughter. Together, Figi and the Stanleys developed Charlotte's Web, a low-THC cannabis-hemp hybrid from which



the Stanleys created the CBD treatment that stopped Charlotte's seizures. The brothers went on to develop an entire line of hemp-based health products that includes Charlotte's Web. In doing so, they drew the ire of the FDA.

In 2017, the agency sent warning letters to several marketers of CBD products, among them Stanley Brothers Social Enterprises. In the letter dated October 31, 2017, it told the Stanleys they were violating federal law by marketing their CBD products as treatments for a range of diseases, including cancer. The feds had two problems with that: First, CBD had not been approved as a treatment for cancer (or, at that time, anything else) and thus could not be marketed for that purpose. Second, the company could not take advantage of the broad regulatory latitude granted to nutritional supplements because (a) it had claimed to be selling medicine—a no-no for supplement makers—and (b) GW Pharmaceuticals' Epidiolex application had triggered a clause in the Federal Food, Drug, and Cosmetic Act prohibiting the active ingredient in the drug under review from being marketed as a nutritional supplement.

Every year, the FDA sends hundreds of warnings like that one to manufacturers across the United States. What made its letter to the Stanleys so remarkable is that the brothers had created a drug that demonstrably treats the seizures associated with Dravet syndrome but were being told they could not say so.

Someone who knew nothing about Charlotte could be forgiven if he read the FDA's letter and concluded that the Stanleys were charlatans. The company's decision to advertise anti-cancer benefits, as opposed to focusing exclusively on the anti-seizure benefits, didn't help. The FDA is particularly aggressive in going after companies that claim their products cure or treat cancer.

Time and research may eventually show that the company overpromised on that. The CW Hemp website, where the Stanley brothers sell their formulations, currently makes no medical claims about the company's products. Instead, there's a message on the website titled "Tongue Tied for the Right Reasons."

"You might notice something missing from blog posts and our responses to comments on our blog and social media channels," the message reads. "Namely, details about what Charlotte's Web products do for specific health issues. To be in good standing with the Food and Drug Administration's (FDA) regulations, we simply cannot speak about our product in relation to any disease."



## 'I GET FRUSTRATED THAT THIS ISN'T DONE YET'

CHARLOTTE FIGI TURNED 12 in October. She doesn't have a feeding tube, and she hasn't been hospitalized in seven years. But her mother still worries. There is no cure for Dravet, and seizures aren't the syndrome's only symptoms.

Paige Figi also worries because she expected families like hers would have won the CBD fight by now. The seeming ubiquity of trendy low-dose CBD products might make it seem like, in fact, they did. But it's not over until the federal lady sings.

"I get frustrated that this isn't done yet," Figi says. "This is like a vitamin, except it's less dangerous than a vitamin. We could've been done with this already. But seven years later, it's still federally illegal."

The idea that CBD is a vitamin, or should be treated like one, is an increasingly popular argument among cannabis reform advocates. Armentano and Cotte both mentioned it in interviews as perhaps the ideal way forward. The FDA could require marketers of cannabis products to undergo facility inspections, and it could enforce strict labeling requirements, as it does with nutritional supplements. But it wouldn't require cannabis products to undergo extensive clinical trials, as it does now.

Several states are already exercising the kind of thoughtful oversight that the feds are not. Despite the Schedule I status of cannabis and its associated compounds, Colorado has a seed-to-sale regulatory system and regularly inspects every aspect of the cannabis and hemp supply chain, including the Stanley brothers' operation.

Treating CBD products like nutritional supplements would, of course, require the FDA to cede some of its power. The agency can entirely prevent a pharmaceutical drug from going to market, because pharmaceuticals are expensive to make and their value is explicitly tied to FDA approval. By comparison, nutritional supplements are cheaper to make and don't require FDA approval before going to market. Nutritional supplement companies are like the turtles in a *Mario Brothers* game. The FDA can and does bop them, but the ratio of regulators to regulatees favors the latter.

There's some reason to believe the FDA is willing to accept a limited role in the regulation of cannabis products, at least with regard to CBD. In 2018, *Marijuana Moment* reporter Tom Angell obtained a letter from Health and Human Services Assistant Secretary Brett Giroir to DEA Acting Administrator Robert Patterson (who has since retired) in which Giroir informed Patterson that the FDA did not think CBD should be a controlled substance at all. But if the DEA insists on continuing to treat it like one, Giroir said, it should reschedule CBD from Schedule I to Schedule V. That would put all CBD products—not just Epidiolex—in the least restrictive regulatory category for prescription drugs.

In September, an administrative law judge for the United States Postal Service ruled that CBD that comes from hemp is legal to send through the mail, while CBD that comes from cannabis is not. The farm bill currently under debate could remove hemp and all of its chemical compounds from the Controlled Substances Act.

For now, however, CBD remains in a legal gray area. The Justice Department has chosen to interpret the United Nations Single Convention on Narcotics, a lodestar for federal scheduling decisions, as requiring drugs in Schedule I to be reviewed and reconsidered at the formulary level, meaning one at a time.

While things are easier now for patients and parents than they were seven years ago, the status quo feels unacceptable. Even if federal law enforcement agencies seem mostly uninterested in cracking down on CBD, dangers remain at the state and local level. "I can't tell you how many calls we get [at NORML] about CBD from retailers," Armentano says. "At least once every couple of weeks, we hear from someone raided by local cops for selling CBD products out of a retail space."

This uncertain situation means that both casual and medical users will have to remain wary. Until the market develops a way to self-regulate, buyers must be extra cautious. Here's a rule of thumb: The stuff that's both safe and effective isn't cheap, and you're not likely to find it in a gas station.

As CBD becomes ever trendier and more commodified, it's important not to let it become a punchline. Just as medical cannabis proved a godsend for AIDS patients in the 1990s, well before the boom in semi-bogus medical cards for back pain and anxiety, CBD is truly helping people with seizure disorders who badly need relief.

It could help even more people were the U.S. not decades behind other first-world hotbeds of medical research. Researchers in the United States face cumbersome and antiquated barriers to studying CBD, THC, and other compounds contained in marijuana, in part because the Controlled Substances Act has installed cops and prosecutors as the arbiters of what scientists and doctors can investigate and learn. That decision has likely impacted countless lives for the worse.

"There are people who died waiting for CBD to become legal," Figi says. "There are parents who didn't want to break the law, and their kid died. Now they have to spend the rest of their lives wondering if they could've done something."

Slather on CBD cream and sip CBD tea, if you want to. Give CBD treats to your dog, even! But keep in mind that it's buyer beware. And that behind all the hype there are lives and freedoms at stake. 🍓

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MIKE RIGGS is an associate editor at *Reason*.



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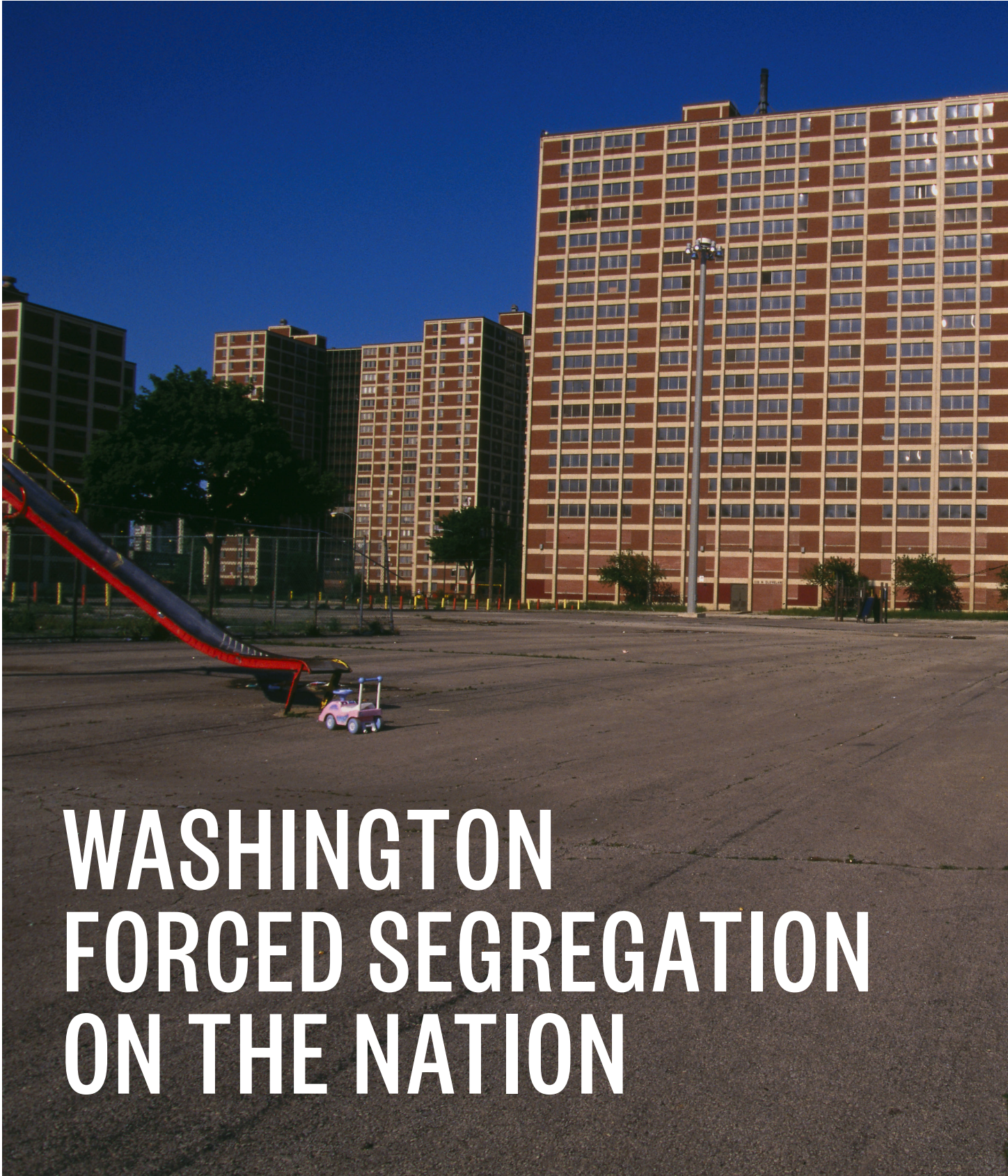
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# WASHINGTON FORCED SEGREGATION ON THE NATION





## IT'S TIME TO REMEDY THE EFFECTS OF THAT TERRIBLE POLICY.

RICHARD ROTHSTEIN

IN 1940, THE federal government required a Detroit builder to construct a six-foot-high, half-mile-long, north-south concrete wall. The express purpose was to separate an all-white housing development he was constructing from an African-American neighborhood to its east. The builder would be approved for a Federal Housing Administration (FHA) loan guarantee he needed only if he complied with the government's demand.

Today, most African Americans in every metropolitan area remain residentially concentrated or entirely separate. That fact underlies or exacerbates many of the nation's most serious social and economic problems, from relatively low intergenerational mobility to the disproportionate prevalence of hostile encounters between police and disadvantaged black youths in neighborhoods without access to good jobs. The Detroit wall offers a striking illustration of an underappreciated truth about this shameful situation: Racial segregation in America was, to a large degree, engineered by policy makers in Washington.

Beginning in the 1930s, civil rights litigators won court victories that desegregated law and graduate schools, then colleges and, with 1954's *Brown v. Board of Education* ruling, elementary and secondary schools. These legal victories helped to spur a civil rights movement that, in the 1960s, forced an end to racial segregation in public transportation, in public accommodations, in employment, and in voting.

Yet despite those victories, America has left untouched the biggest segregation of all: Progress in the desegregation of neighborhoods has been minimal.

In low-income, racially segregated communities, children are in poorer health, are under greater stress from parents'



economic insecurity, and have less access to high-quality early childhood, after-school, and summer programs. When children with these and other challenges are concentrated in a single school, their problems can overwhelm teachers, and educational outcomes suffer. The “black-white achievement gap,” a focus of education reformers, is substantially attributable to residential segregation.

This form of segregation is more difficult to eradicate than many others. After the abolition of discrimination on buses and at lunch counters, African Americans could take any empty seat on a bus or sit at any lunch counter. But the Fair Housing Act’s prohibition of future discrimination in housing left previously segregated neighborhoods intact.

Americans have rationalized our failure to achieve desegregated neighborhoods by adopting a national myth shared by the left and the right, by blacks and whites: that what we see around us is *de facto*, not legally enforced, segregation. It’s the result not

of a government design to keep the races separated but rather of private prejudice, the personal preferences of both blacks and whites to live with same-race neighbors, and income differences that make integrated communities unaffordable to many African Americans.

This is a small part of the truth. In reality, explicit government policy in the mid-20th century—imposed in the name of promoting safety and social harmony—was the most powerful force separating the races in every metropolitan area, and the effects of that policy endure. Because racial segregation results from the open, racially explicit, purposeful action of federal, state, and local governments, our residential racial boundaries are unconstitutional; because they are unconstitutional, we have an obligation to ensure that our government remedies them; because we have forgotten the history of how residential segregation was created by government, we are handicapped in our ability to address it.



## THE NEW DEAL'S SEGREGATED HOUSING PROJECTS

DURING THE DEPRESSION, to provide lodging for lower-middle-class white families, the New Deal created America's first civilian public housing. Some projects were built for black families as well, but these were almost always separate from the white projects. At the time, many urban areas were sites of considerable diversity, with black and white workers living within walking distance of downtown factories and other workplaces. Communities near train stations were often integrated, for example, because railroads would hire only African Americans as baggage handlers or Pullman car porters.

When Franklin Roosevelt became president, the nation was facing a desperate housing shortage. Many black and white working families lived in neighborhoods that, while integrated, could rightly be described as slums. To improve the quality of housing, as well as to provide jobs for construction workers, one of the first New Deal agencies, the Public Works Administration (PWA), demolished housing in many such integrated neighborhoods and built explicitly segregated housing instead. The policy created racial boundaries where they had not previously existed or reinforced them where they had taken root, giving segregation new government sanction. In Atlanta's "Flats," the government demolished a neighborhood that was about half white and half black to build a public housing project for whites only, with a separate project for African Americans farther away. In St. Louis' DeSoto-Carr neighborhood, housing in a similarly mixed neighborhood was demolished to build a project for African Americans only, with a separate project for whites built in a different part of the city.

This, it should be emphasized, was not primarily a program for the South or border states. In Northern and Midwestern states, the federal government's New Deal programs and local housing agencies worked together to create segregated patterns that have persisted for generations. In his autobiography, *The Big Sea*, the African-American poet and novelist Langston Hughes described going to high school in an integrated Central Cleveland neighborhood where his best friend was Polish and he dated a Jewish girl. The PWA cleared housing in that area to build one project for whites and another for African Americans. In Cambridge, Massachusetts, the Central Square neighborhood between Harvard University and the Massachusetts Institute of Technology was about half white and half black at the beginning of the 1930s. The federal government demolished integrated housing there to create two racially separated projects.

In Boston, the federally financed Mission Hill project was for whites, while the Mission Hill Extension across the road was for African Americans. In Chicago, the Julia C. Lathrop and Trumbull Park Homes were built in white neighborhoods for whites only; the Ida B. Wells Homes were built in an African-American

In the 1950s, a government program guaranteed loans to builders of working-class suburban subdivisions—with explicit requirements that black families be excluded and that house deeds prohibit resale to them.

area for blacks only. This government housing program exacerbated existing racial patterns; had the projects been integrated, Chicago would not now be one of the most segregated cities in the nation.

During World War II, whites and African Americans flocked to jobs in war plants, sometimes in communities that had no tradition of segregated living. Yet the government built separate projects for blacks and whites, determining future residential boundaries. Richmond, California, a suburb of Berkeley, was one of the nation's largest shipbuilding centers. It had few African Americans before the war; by its end, thousands were living in public housing along the railroad tracks, while white workers were assigned to housing in more established residential areas. Along the Pacific coast, racial segregation in Portland, Seattle, San Francisco, and Los Angeles has its roots in federal war housing.

Postwar, veterans desperately needed lodging, so President Harry Truman proposed even more housing projects. Congressional conservatives, deeming public housing socialistic, resolved to defeat Truman's 1949 legislation. They introduced a "poison pill" amendment banning racial discrimination in public housing, which they expected Northern liberals to support, ensuring its passage. Then they planned to ally with Southern Democrats to defeat the amended legislation.

Instead, the liberals mobilized *against* the integration amendment. "I should like to point out to my Negro friends what a large amount of housing they will get under this act," Illinois Sen. Paul Douglas urged. "I am ready to appeal to history...that it is in the best interests of the Negro race that we carry through the housing program as planned rather than put in the bill an amendment that will inevitably defeat it." Douglas was persuasive: The amendment was defeated and the Housing Act passed, including permission to continue a policy of discrimination.

I doubt that segregated housing was in anyone's best interest, but it's no easy call. The NAACP had the foresight to reject Douglas' plea. Many African Americans, however, welcomed the subsequent construction of all-black towers like Brownsville's Van Dyke Houses (now the poorest community in New York City) or Chicago's Cabrini-Green. Located in places where African-American poverty was already concentrated, these new high-rises replaced barely habitable slum dwellings, wood-frame firetraps frequently without plumbing, heat, or adequate sanitation. Yet the towers' racial isolation came at a price, solidifying ghettos where our most serious social problems—unemployment, violence, confrontations with police, inadequate student achievement, health disparities, multi-generational poverty—fester to this day.

### FEDERAL SUBSIDIES AND THE 'WHITE NOOSE'

BY THE MID-1950S, housing projects for whites had many unoccupied units, while those for African Americans had long waiting lists. Eventually, as whites continued to leave the inner cities, almost all public housing was opened to African Americans.

At about the same time, industry began to leave urban centers. Automakers, for example, closed many downtown assembly plants and relocated to rural and suburban areas to which African-American workers had less access. Good urban jobs became scarcer and public housing residents became poorer. A program that originally addressed a middle-class housing shortage became a way to warehouse the poor.

Why did white-designated projects develop vacancies while black-designated ones faced more demand than supply? The disparity largely resulted from an FHA program that guaranteed loans to builders of working-class suburban subdivisions—with explicit requirements that black families be excluded and that house deeds prohibit resale to them.

This was not an act of rogue bureaucrats. It was written policy, in blatant violation of the Fifth, 13th, and 14th amendments to the U.S. Constitution. The Federal Housing Administration published a manual used by real estate appraisers nationwide, specifying that loans for suburban development could not be federally subsidized if an "inharmonious racial group" would be present or was already nearby. Suburbs like Levittown (east of New York City), Lakewood (south of Los Angeles), San Lorenzo (across the Bay from San Francisco), and hundreds of others were created in this way, ensuring their racial homogeneity and isolation.

After World War II, the white novelist Wallace Stegner was recruited to teach writing at Stanford University. Given the housing shortage, he could find no place for his family to live, so he joined a cooperative of 150 families that bought a large ranch adjoining the university with a plan to build 400 homes. Banks,

however, would not extend loans for such subdivisions without a federal guarantee—the construction of so many houses for which there were yet no buyers with approved mortgages was just too risky. And the federal government would not guarantee the Stegner project because three of the 150 families were African-American. The co-op refused to expel its black families, disbanding instead. A private developer purchased the land and, with FHA support, built an all-white subdivision in its place, complete with federally mandated deed restrictions prohibiting resale to black families.

Urban public housing combined with FHA-subsidized whites-only suburbs to create a "white noose" around urban black families that persists to this day. Every metropolitan area suburbanized in the mid-20th century, with all-white subdivisions surrounding an urban core where African Americans were concentrated. In 1968, the Fair Housing Act permitted African Americans to access previously white neighborhoods, but it prohibited only *future* discrimination, without undoing the previous 35 years of government-imposed segregation.

This had not just social but economic consequences as well. In suburbs such as Levittown, Lakewood, and San Lorenzo, houses in the 1940s and '50s sold for about \$100,000 (in today's inflation-adjusted currency), twice the national median income. FHA and Veterans Administration amortized mortgages made such homes affordable for working-class families of either race, but only whites were allowed. Today, all are technically welcome, but homes in these places can sell for \$400,000 (or more), seven times the national median income—unaffordable to working-class families of either race. Consequently, whites who suburbanized with federal protection in the mid-20th century gained \$300,000 (or more) in equity that could be used to pay for a child's college education, care for their elderly parents, subsidize their own retirement income, cover medical expenses or other unforeseen economic emergencies, or bequeath wealth to children and grandchildren, who then had down payment funds for their own homes. Black families and their offspring, who largely remained in cities as renters, gained no such security.

Although average African-American family incomes today are about 60 percent of average white family incomes, average African-American household wealth is only about 10 percent of average white household wealth. This enormous disparity is almost entirely the result of unconstitutional federal housing policy in the last century, which explains a good part of the racial inequality that we see all around us.

### UNDOING 60 YEARS OF BAD POLICY

IN 1935, CONGRESS adopted a National Labor Relations Act that gave unions the exclusive right to bargain with employers, provided those unions gained government certification. When the





act was first introduced, it prohibited the government from certifying unions that excluded African Americans from membership. That provision was deleted from the final bill, and the federal government proceeded to certify all-white unions, including the most powerful unions in the construction trades. Not until 1964 did the government deny certification to such a group.

Think about that for a moment: Not only did Washington prohibit African Americans from living in the suburbs, but it also sanctioned their exclusion from the construction of those same suburbs and from fully participating in the great postwar economic expansion that boosted so many white working-class families into the middle class. If too many African Americans today cannot afford to move to middle-class communities, the government's labor policy as well as its housing policy bears significant responsibility.

If we developed a new national consensus that rejected the myth that residential segregation has only ever been de facto,

we could then begin to discuss ways to chip away at the problem. The largest federal housing program today is the mortgage interest deduction, a continued subsidy to many racially exclusive suburbs. One remedy might be to make the claim of this deduction by homeowners in a racially exclusive community contingent on that community's taking steps to desegregate.

The next largest federal housing program is a tax credit for developers of housing for low-income families. Most tax-credit projects are located in already low-income neighborhoods, because developers would rather build in places where they face no community opposition. The result is that the program reinforces segregation. Prioritizing integrated development could eliminate that distortion.

Addressing the sad status quo requires regulating the actions of private citizens, something that libertarians tend to resist. In this case, such resistance fails to consider the fact that segregation was created by the indefensible regulation of private citizens—regulation designed to create, reinforce, and sustain

a dual and unequal housing market. Those who object to remediating such artificial racial segregation must make a case that what happened unnaturally can unhappen naturally. But that case is impossible to make: The government's control over housing markets to impose segregation was so powerful that its effects have already endured for more than half a century following the end of explicit racial housing policies.

What types of rules might the federal government consider to address that problem? On the deregulatory side, it could prohibit suburbs from maintaining zoning policies that discourage construction of less expensive housing options, such as townhouses, apartments, or even modest single-family homes on smaller lots. Secretary of Housing and Urban Development Ben Carson has stated that he wants to prohibit exclusionary zoning and withhold federal funds from suburbs that maintain such land use regulations. There is no evidence, however, that his department has taken this offhand comment seriously.

The federal government could go further and require that all new development be mixed-income. For lower-income families hoping to move from segregated to integrated neighborhoods, it could prohibit landlords from discriminating against holders of "Section 8" vouchers. It could even adjust how the vouchers are administered to make it affordable to use them in middle-class areas. In the context of our shameful history, these and many other policies are not only feasible. They are constitutionally required.

Carson has stated his opposition to aggressive policies aimed at residential desegregation. He calls such actions "social engineering" and warns that they always have unintended consequences. His reasoning is flawed on two counts. First, desegregation is an effort to undo previous bad social engineering, not to create utopia from a blank slate. Second, unintended consequences are inevitable. Policy makers have an obligation to develop programs carefully in order to eliminate the most serious harmful consequences to the extent possible. But there are unintended consequences to inaction as well. The mortgage interest deduction, the Low-Income Housing Tax Credit, and Section 8 are all race-neutral programs. Their unintended consequence is to reinforce and perpetuate racial segregation. They continue to do so, every day.

Certainly, many whites in the early and mid-20th century were bigoted; government policies that resulted in residential segregation were not merely forced upon them. And certainly many whites *and* blacks sometimes prefer to live in same-race neighborhoods. But private prejudice and personal preferences do not negate the sin of government sponsorship. The U.S. Constitution prohibits government from violating civil rights by supporting popular—even majority—demands for discriminatory actions. The counterfactual is not whether we would have segregation if government did not exist. The counterfactual is

what the nation would look like if government had fulfilled its constitutional responsibilities.

William Levitt, the builder of Levittown, was a bigot. He acknowledged that, left to his own devices, he would have refused to sell homes to African Americans. But he was not left to his own devices. No bank would lend him the capital to build 17,000 homes for which he yet had no buyers. He could proceed only if he obtained a government guarantee of his bank loans. The Federal Housing Administration was constitutionally obligated to issue such a guarantee only if he sold homes on a non-discriminatory basis. It failed in this responsibility.

Likewise, the Public Works Administration and subsequent war and public housing agencies were constitutionally obligated to rent public housing on a nondiscriminatory basis. Instead, they built projects specifically designated for one racial group or another.

Had the PWA and FHA acted in a lawful manner, some bigoted white families might have refused to live in public projects or to purchase suburban homes. But the housing shortage was so severe that for any family that so refused, many were waiting to take its place. Had federal agencies performed in a nondiscriminatory fashion, the landscapes of our metropolitan areas today would be much more diverse than they now are.

Our belief in de facto segregation is paralyzing. If our racial separation stems from millions of individual decisions, it is hard to imagine the millions of private steps it would take to undo it. But if we learn and remember that residential segregation results primarily from forceful and unconstitutional government policy, we can begin to consider equally forceful public action to reverse it.

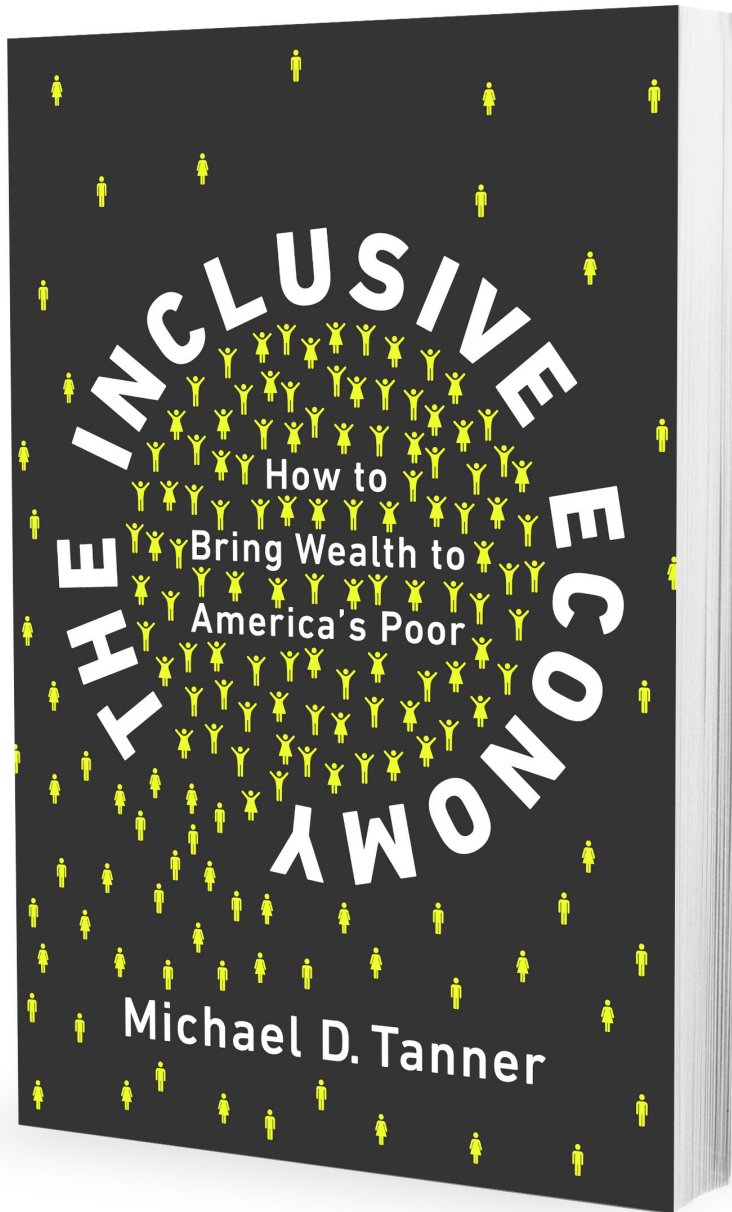
We must teach this history to our young people as well. Today, the most widely used American history high school textbooks fail to tell the truth about how segregation was created. They adopt our national myth by describing segregation in the North as de facto, pretending that government-sponsored segregation took place only in the South. They describe how the New Deal built housing for the homeless during the Depression but fail to mention that it segregated previously integrated communities. They praise the FHA's contribution to suburbanization but ignore that it benefited whites only. Parents and others should insist that public schools use alternative curricula that accurately convey how our nation became segregated. If we don't do a better job of instructing future generations, they will fail as miserably as we have in creating a fair and integrated society. 📌

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RICHARD ROTHSTEIN, a distinguished fellow at the Economic Policy Institute, is the author of *The Color of Law: A Forgotten History of How Our Government Segregated America* (Liveright) and many articles on residential segregation in the United States. Parts of this article have been adapted from his previous work.



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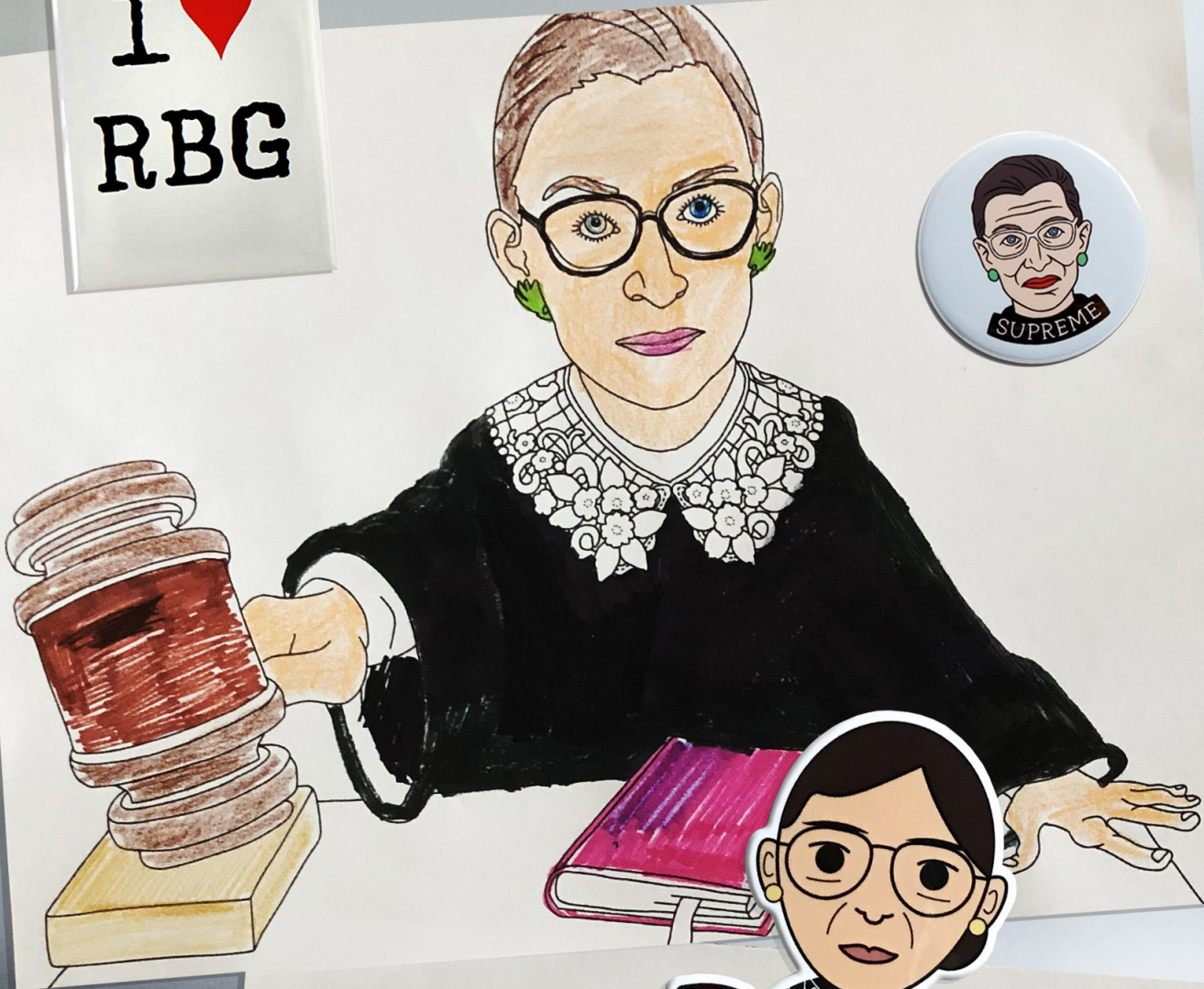
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RBG



With her lacy and crocheted jabots  
RBG has made the boring, black  
robes of the US Supreme Court  
fashionable ever since her 1993  
appointment. But this is only one of  
her remarkable achievements.





# The Case of the Notorious RBG

EXAMINING THE LIFE AND LEGEND  
OF RUTH BADER GINSBURG

DAMON ROOT

**O**N JUNE 14, 1993, President Bill Clinton announced his pick to replace retiring Justice Byron White on the U.S. Supreme Court. “Ruth Bader Ginsburg cannot be called a liberal or a conservative,” Clinton declared of his nominee. “She has proved herself too thoughtful for such labels.”

The president was half right. Ginsburg, who was 60 years old at the time, already had a long and distinguished record as a litigator, a law professor, and a judge on the prestigious U.S. Court of Appeals for the District of Columbia Circuit. She was undeniably thoughtful.

At the same time, Ginsburg was undeniably a liberal. Indeed, she was arguably one of the greatest liberal lawyers of her generation. Today, after serving 25 years on the high bench, Ginsburg stands as the outspoken leader of its liberal wing.

Meanwhile, outside of the courtroom, Ginsburg has emerged as a sort of judicial rock star. Popularly known among her fans as the “Notorious RBG” (a play on the name of the late rapper Notorious B.I.G.), Ginsburg is now a bona fide celebrity, widely feted throughout American culture. In the last few years alone, she has been the subject of admiring books, including a fawning new biography by historian Jane Sherron De Hart (*Ruth Bader Ginsburg: A Life*), a glowing documentary (*RBG*), and a celebratory exhibit at the Skirball Cultural Center in Los Angeles (*Notorious RBG: The Life and Times of Ruth Bader Ginsburg*). *Late Show* host Stephen Colbert has interviewed her about her fitness regime. *Saturday Night Live* has paid tribute to her in a series of skits. Felicity Jones, the star of the 2016 Star Wars movie *Rogue One*, will be playing her in a new feature film.

As for Ginsburg’s legions of fans, they are not exactly shy about showing their love. They carry RBG tote bags, drink from RBG coffee mugs, and use smartphones housed in RBG cases. They wear RBG T-shirts, hats, jewelry, even Halloween costumes. On the internet, Ginsburg memes and viral videos are common currency. Search the web for “Ruth Bader Ginsburg tattoos” and you’ll find many colorful results. As the journalist Irin Carmon writes in the introduction to her runaway 2015 bestseller, *Notorious RBG* (HarperCollins), “we are frankly in awe of what we’ve learned about her.”

In short, it’s become fashionable to make a fuss about Ginsburg’s gloriousness. While her life and accomplishments are genuinely impressive, though, the Notorious RBG is far from perfect.

## LIBERAL LEADER

ON MARCH 24, 2009, Deputy Solicitor General Malcolm Stewart told the Supreme Court that the federal government possessed the lawful power to ban books if those books happened to mention the name of a candidate for federal office and were published by a corporate entity in the run-up to the federal election in which that candidate was competing.

“It’s a 500-page book, and at the end it says, so vote for X, the government could ban that?” asked an incredulous Chief Justice John Roberts during that day’s oral arguments in *Citizens United v. Federal Election Commission*. Yes, the deputy solicitor general conceded. Under the government’s theory of the case, that’s precisely what he was saying. “We could prohibit the

publication of the book,” Stewart declared.

Ten months later, a majority of the Supreme Court rejected that view, overturning the campaign finance regulations at issue for violating the First Amendment. Among the dissenters was Justice Ruth Bader Ginsburg, who was apparently untroubled by the censorious implications of the government’s stance. Two years later, Ginsburg urged her colleagues to hear a new case that would give “the Court the opportunity to consider whether, in light of the huge sums currently deployed to buy candidates’ allegiance, *Citizens United* should continue to hold sway.”

It was a familiar scene. Since joining the Court in 1993, Ginsburg has, in case after case, proven herself to be a reliable champion for the liberal side. When the Court declared the University of Michigan’s affirmative action program for undergraduate admissions unconstitutional in *Gratz v. Bollinger* (2003), Ginsburg accused the majority of turning a blind eye toward “the stain of generations of racial oppression [that] is still visible in our society.” When the Court came within one vote of declaring the Patient Protection and Affordable Care Act unconstitutional in *National Federation of Independent Business v. Sebelius* (2012), Ginsburg denounced the “stunningly retrogressive” idea that Congress might lack the lawful power to force individuals to buy health insurance.

In 2005, when the city of New London, Connecticut, wanted to broaden its tax base by bulldozing a working-class neighborhood and handing the land over to private developers, Ginsburg dismissed the homeowners’ constitutional objections out of hand. “The critical fact on the city side,” she told Institute for Justice lawyer Scott Bullock, lead attorney for the homeowners, during oral arguments in *Kelo v. City of New London*, “is that this was a depressed community and they wanted to build it up, get more jobs.” Ginsburg went on to join Justice John Paul Stevens’ majority opinion, which upheld the city’s eminent domain scheme on the grounds that government officials should enjoy “broad latitude in determining what public needs justify the use of the takings power.”

Select almost any case that has divided the Supreme Court along ideological lines in recent years and you’ll find Ginsburg firing similar salvos from the left.

## THE FEMINIST LAWYER

GINSBURG BEGAN HER legal career in the mid-1950s as a top student at Harvard Law School, where she faced blatant institutional sexism at nearly every turn. She was prohibited, for example, from using Lamont Library, which held the university’s large collection of old magazines and journals—essential fodder for legal research—because entry was officially restricted to men. A few years later, she was passed over for a well-deserved Supreme Court clerkship with Justice Felix

Frankfurter, a New Deal-era legal icon, because Frankfurter had no interest in hiring a woman.

Despite these and other obstacles, Ginsburg proceeded to leave her mark on the law. Most notably, she co-founded the Women’s Rights Project at the American Civil Liberties Union (ACLU) in 1972; she would also serve as an ACLU board member. Taking a page from National Association for the Advancement of Colored People lawyer (and future Supreme Court justice) Thurgood Marshall, the architect of the campaign to overturn *Plessy v. Ferguson* (1896) and its racial doctrine of “separate but equal,” Ginsburg took the lead in developing a long-term legal strategy designed to unsettle and ultimately overturn those Supreme Court precedents that formally enshrined the inequality of women.

One such precedent was *Muller v. Oregon* (1908), in which the Supreme Court had unanimously upheld a state law limiting female laundry employees to working no more than 10 hours a day. The Court did so thanks in large part to an infamous brief, filed in the case by Progressive Era lawyer (and future Supreme Court justice) Louis Brandeis, who marshaled a mountain of arguments and statistics “proving” that women required special protection by the state. “The overwork of future mothers,” he wrote, “directly attacks the welfare of the nation.” In other words, Brandeis maintained, because women are responsible for giving birth to future generations, their bodies should be viewed as a sort of collective property in the eyes of the government.

The Supreme Court would adopt that very view. “As healthy mothers are essential to vigorous offspring,” the justices declared, “the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race.”

Ginsburg also set her sights on *Goesaert v. Cleary* (1948), in which the Court had upheld a Michigan law forbidding women from working as bartenders unless they were “the wife or daughter of the male owner.” Valentine Goesaert, who owned a bar in Dearborn, challenged the law for violating her right to tend bar at her own establishment. “We cannot give ear to the suggestion that the real impulse behind this legislation was an unchivalrous desire of male bartenders to try to monopolize the calling,” wrote Justice Felix Frankfurter (the same justice who later refused to hire Ginsburg as a clerk). In fact, he declared, “Michigan could, beyond question, forbid all women from working behind the bar.”

Ginsburg and her allies proceeded to litigate a series of test cases, all aimed at destroying the legal rationales underlying those sexist precedents. “The 1970s cases in which I participated under ACLU auspices,” Ginsburg later explained, “all rested on the same fundamental premise: that the law’s differential treatment of men and women, typically rationalized as reflecting ‘natural’ differences between the sexes, histori-



cally had tended to contribute to women's subordination—their confined 'place' in man's world—even when conceived as protective of the fairer but weaker and dependent-prone sex.”

One such test case came to be known as *Craig v. Boren* (1976). At issue was an Oklahoma law that prohibited the sale of “near beer” (3.2 percent alcohol by volume) to males under the age of 21, while at the same time allowing women ages 18–20 to purchase the beverage. The state justified this uneven approach as a legitimate exercise of its public health and safety powers on the grounds that men are less responsible drinkers.

Ginsburg saw it as an unconstitutional denial of equal treatment and went on the attack. First, she worked as a sort of unofficial co-counsel to the private lawyer who initially filed the case, providing crucial strategic advice as well as many useful tips on writing a better SCOTUS brief. She also filed a weighty *amicus* brief of her own on behalf of the ACLU, which argued that the state's ostensible health and safety justifications could not stand up to scrutiny.

The Supreme Court ultimately agreed with that assessment. “Clearly, the protection of public health and safety represents an important function of state and local governments,” the Court observed. Oklahoma's claims, however, “cannot support the conclusion that the gender-based distinction closely serves to achieve that objective and therefore the distinction cannot... withstand equal protection challenge.”

To be sure, Ginsburg and her allies did not prevail in every such case. But her pioneering legal advocacy unquestionably helped to move the law in the direction that she wanted.

#### **'HEAVY-HANDED JUDICIAL INTERVENTION'**

IRONICALLY, GIVEN HER record as a groundbreaking feminist lawyer, Ginsburg's bona fides would later be called into question in some feminist legal circles over her views on *Roe v. Wade* (1973), the famous Supreme Court decision recognizing a woman's constitutional right to have an abortion.

The trouble started with a 1985 *North Carolina Law Review* article titled “Some Thoughts on Autonomy and Equality in Relation to *Roe v. Wade*.” In it, Ginsburg argued that while the Texas statute at issue in *Roe* (which banned all abortions except where the life of the mother was at stake) certainly deserved to be struck down, the Court had “ventured too far” when it “called into question the criminal abortion statutes of every state.” This “heavy-handed judicial intervention was difficult to justify,” she argued, “and appears to have provoked, not resolved, conflict.”

Ginsburg also questioned the legal foundations of *Roe* itself. In his majority opinion, Justice Harry Blackmun had grounded the right to abortion in “personal privacy, somehow sheltered by due process,” Ginsburg wrote. It would have been much better, she maintained, if the right had been rooted in “a constitution-

## **Will Justice Ruth Bader Ginsburg be remembered as a legal trailblazer or burned in effigy for not stepping down while Obama was president?**

ally based sex-equality perspective.”

Ginsburg doubled down on her critique eight years later in a widely discussed guest lecture at New York University School of Law. The Texas statute under review in *Roe* “intolerably shackled a woman's autonomy,” Ginsburg noted. But “suppose the Court had stopped there, rightly declaring unconstitutional the most extreme brand of law in the nation, and had not gone on, as the Court did in *Roe*, to fashion a regime blanketing the subject, a set of rules that displaced virtually every state law then in force. Would there have been the 20-year controversy we have witnessed?”

For some feminist legal observers, that position sounded a little too much like the views expressed by Ginsburg's old colleague on the D.C. Circuit, Judge Robert Bork, who had denounced *Roe* as “the greatest example and symbol of the judicial usurpation of democratic prerogatives in this century.”

Of course, Bork also maintained that abortion rights deserved no constitutional protection whatsoever from the courts, while Ginsburg argued that they should be protected, but in a more limited way, and that the right should have been grounded in a different constitutional principle. Still, there is no denying that Ginsburg caused real disquiet in feminist quarters at the time by questioning *Roe*'s reasoning while also insisting that the case actually gave the anti-abortion movement a boost.

Today's young feminists might not like the sound of that either. Which perhaps explains why so few of Ginsburg's current hagiographers tend to grapple with this particular aspect of her jurisprudence—if they even bother to mention it at all.

#### **CONTEMPT OF COURT**

IN JUNE 2016, Justice Ginsburg sat down for a wide-ranging interview with *The New York Times*. Asked about the upcoming presidential election, the Notorious RBG let loose, declaring that she “can't imagine” Donald Trump, then the Republican





nominee, winning the White House. “For the country, it could be four years. For the Court, it could be—I don’t even want to contemplate that.” She then joked about moving “to New Zealand” if Trump won. A few days later, speaking to CNN, Ginsburg denounced Trump as “a faker” who “has no consistency about him....How has he gotten away with not turning over his tax returns?”

Ginsburg’s fan base loudly cheered her on. The feminist site *Bustle*, for example, featured her anti-Trump remarks in a list of “13 Spicy Ruth Bader Ginsburg Quotes & Clapbacks That Really Bring the Heat.” Serious legal observers, on the other hand, had a very different reaction. Was the Notorious RBG starting to believe her own hype?

It sure seemed like her celebrity status had gone to her head. Not only was it totally inappropriate for a sitting justice to sling mud at a major party’s presidential candidate, but it would raise inevitable calls for Ginsburg’s recusal if Trump won and his administration appeared before her in court. Also, it was just dumb politics—a fact that Trump was smart enough to recognize right off the bat. As he told the *Times*, getting attacked by Ginsburg “only energizes my base even more.”

A much-chagrined Ginsburg eventually backed down. “On reflection, my recent remarks in response to press inquiries were ill-advised and I regret making them,” she said in a statement. “Judges should avoid commenting on a candidate for public office. In the future I will be more circumspect.”

## FINAL JUDGMENT

HOW WILL FUTURE generations remember Ruth Bader Ginsburg? “Ginsburg’s legacy,” observed the liberal legal pundit Kenneth Jost in 2013, “will depend in part on whether she makes the right decision about the best time to step aside.”

It was a blunt analysis, motivated by naked partisan calculations, but Jost did have a point. If Ginsburg had retired while President

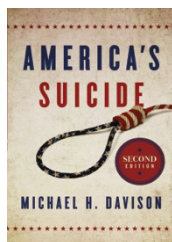
Barack Obama was in office and the Democrats still controlled the Senate, thereby ensuring that a liberal-minded jurist would take her place on the bench, her status as a liberal icon would have been cemented. Indeed, she would have gone out as a sort of conquering hero of the left.

But of course Ginsburg did not step down at that time. As a result, there is now a very real chance that the 85-year-old justice might be forced to retire for health reasons with both the White House and the Senate in the hands of the GOP. Should that scenario unfold, Ginsburg’s future legacy, even among the progressive left, is unclear. Will she be remembered as a legal trailblazer who helped to shape the course of constitutional law? Or will she be burned in effigy for “letting” Trump pick her replacement? Ginsburg’s critics on the right, meanwhile, might just end up thanking her for sticking around for so long.

When it comes to the case of the Notorious RBG, the jury is still out. 🗳️

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Senior Editor DAMON ROOT is the author of *Overruled: The Long War for Control of the U.S. Supreme Court* (Palgrave Macmillan).



### AMERICA'S SUICIDE, Second Edition by Michael H. Davison Major themes expanded in this book:

- The human race cannot survive without moral principles.
- The religious foundation of morals in the United States has crumbled. In consequence our nation flounders in a moral crisis.
- Crumbled especially but not only by science, the religious foundation of morals cannot survive the advance of thought. Into the no man’s land vacated by the retreat of traditional religion has rushed a secular religion masquerading as liberal, progressive, compassionate and just.
- This allegedly new but in reality ancient doctrine has all the characteristics of the theistic religions it strives to displace: the same intolerant dogmatism, the same adherence to undemonstrable principles, the same persecution of doubters and infidels, the same proselytizing of the true faith, the same presumption of moral superiority and righteousness. Earlier faiths rested their claims to power on beliefs in God or gods, the current ones on socialist pretentiousness. Either ideology can only extend our term of ignorance and lethal conflict and the beliefs trump truth.
- Our political problems are not at root political and cannot be resolved by politicians or political and social theorists no matter how well intentioned. They are psychological, rooted in the human condition and poor self awareness, and addressable only by difficult, painful and abhorrent individual self examination.
- We desperately need a rational secular foundation for morality and that, tragically, we do not have. I propose that we initially set our moral principles on the premise of not trying to defeat evolution as we are now doing. As we gain more knowledge of ourselves and genetic engineering, we should very gradually over many generations improve the human species toward ever greater intelligence, self awareness and longer, healthier, happier and more fulfilling lives. For the first time in history we would free ourselves from pretentious, arbitrary and oppressive religious and political authority, the eternal curse hanging over individuals who yearn to be free.
- One chapter focuses on President Trump, how the news media treat him, and the 2018 elections.
- The last chapter opens a window to a view of what a rational and minimally contentious nation would look like.

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**The  
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Furious.**





## IS RAGE THE FUTURE OF FEMINISM?

CATHY YOUNG

**I**N OCTOBER, A few days after Brett Kavanaugh was sworn in as a Supreme Court justice, *The Washington Post* published one woman's account of channeling her rage into half an hour of screaming at her husband. "I announced that I hate all men and wish all men were dead," wrote retired history professor Victoria Bissell Brown, entirely unapologetic despite conceding that her hapless spouse was "one of the good men."

While Brown's piece was more clickbait than commentary, it was an extreme expression of a larger cultural moment. 'Tis the season to be angry if you're a woman in America—or so we're told.

The storm of sexual assault allegations that nearly derailed Kavanaugh's confirmation was just the latest reported conflagration of female fury. The Kavanaugh drama coincided with the first anniversary of the downfall of the multiply accused Hollywood superpredator Harvey Weinstein. But this decade's wave of feminist anger had been building for several years before that—from the May 2014 #YesAllWomen Twitter hashtag, created to express women's vulnerability to male violence after woman hater Elliot Rodger went on a shooting and stabbing rampage in California, to the November 2016 election, in which the expected victory of America's first woman president was ignominiously thwarted by a man who casually discussed grabbing women's genitals.

While the "female rage" narrative does not represent all or even most women, there is little doubt that it taps into real problems and real frustrations. The quest for women's liberation from their traditional subjection is an essential part of the story of human freedom—and for all the tremendous strides made in the United States during the last half-century, lingering

gender-based biases and obstacles remain an unfinished business. But is rage feminism (to coin a phrase) the way forward, or is it a dangerous detour?

The case for rage is made in two new books published almost simultaneously in the fall: *Rage Becomes Her: The Power of Women's Anger*, by activist Soraya Chemaly, and *Good and Mad: The Revolutionary Power of Women's Anger*, by New York columnist Rebecca Traister.

Traister's book is, despite its forays into the history of American feminism, very much of the current moment. It is dominated by the 2016 presidential race, the Women's March, and the #MeToo movement. Traister believes that Donald Trump's election woke the "sleeping giant" of female rage at the patriarchy. (Along the way, she seems to suggest that pre-2016 feminism was a mostly "cheerful" kind, with a focus on girl power and sex positivity—an account that airbrushes not only #YesAllWomen but many other days of rage on feminist Twitter and on websites such as *Jezebel*.) She wants women to hold on to this anger and channel it into a struggle for "revolutionary change," rather than to move on and calm down in deference to social expectations. "Our job is to stay angry...perhaps for a very long time," Traister warns darkly.

*Rage Becomes Her* provides a broader context for this anger. Chemaly, the creator of that #YesAllWomen hashtag, sets out to count the ways sexist oppression continues, in her view, to permeate the lives of women and girls in America. Her indictment includes inequalities in school and at work, ever-present male violence, rampant and usually unpunished sexual assault, the sidelining of women in literature and film, male-centered sexual norms, subtle or overt hostility toward female power and ambition, and a variety of petty indignities, from "mansplaining" to catcalls to long bathroom lines. Like Traister, Chemaly sees women's long-suppressed anger as a necessary driver of change.

The themes that preoccupy Traister and Chemaly are also explored in an earlier book—*Down Girl: The Logic of Misogyny*, by the Cornell philosopher Kate Manne—which was published in late 2017 and has been widely hailed as a new feminist classic. Like *Good and Mad*, *Down Girl* views Trump's victory as the triumph of patriarchal backlash; like *Rage Becomes Her*, it treats Rodger's massacre as a defining moment in American male-female relations. Manne may not issue an explicit call for anger, but the logic of *Down Girl* is unmistakable: A deeply entrenched misogyny ruthlessly punishes women who refuse to defer to men, and female fury is a natural and salutary response.

**YOU CAN DEBATE** the extent to which gender inequalities in 21st century liberal democracies stem from present-day sexism, from cultural baggage from the past, or from personal choices and innate sex differences at an individual level. But does the gallery of horrors in the literature of feminist rage really reflect

women's lives in today's America?

In 1994, dissident feminist Christina Hoff Sommers published a controversial book, *Who Stole Feminism?*, that charged feminist activists and authors with using bogus facts and other "myth-information" to portray modern Western women as brutally oppressed. Much of this critique has held up—and, as the new crop of feminist books shows, has remained relevant.

Indeed, one pseudo-fact debunked by Sommers and mostly retracted by its authors, school equity crusaders David Sadker and the late Myra Sadker, makes a comeback in Chemaly's book: the claim that boys in class call out answers eight times as often as girls do, while girls who speak out of turn are usually rebuked. Manne not only recycles that "fictoid" (as Sommers called it) but garbles it.

These are no isolated lapses. A cursory fact check of Chemaly's lengthy endnotes reveals that many of her sources don't say what she claims they do. The claim that "when women speak 30 percent of the time in mixed-gender conversations, listeners think they dominate," for instance, is sourced to a 1990 study that shows only a slight tendency to overestimate the female portion of a male-female dialogue. (Chemaly's claim is apparently derived from a passing mention in the study of a 1979 article by Australian radical feminist scholar Dale Spender.) The purported source for another alleged fact—"domestic violence injures more American women annually than rapes, car accidents and muggings combined"—is a book appendix by journalist Philip Cook that *debunks* this very myth.

Chemaly's treatment of news stories is just as cavalier. For example, she claims that Michigan Circuit Court Judge Rosemarie Aquilina was criticized for showing "clear contempt" toward former sports doctor and confessed sexual abuser Larry Nassar at his sentencing, supposedly due to "deep unease with women passing judgment on *men*." In fact, Aquilina was widely praised as a champion for victims. The criticism had to do with her suggestion that Nassar deserved punishment by rape.

Beyond the fictoids, what is the bigger picture? Manne defines misogyny so broadly—as a "systemic" bias that threatens women with "hostile consequences" for violating patriarchal norms, especially the expectation that women will be "givers" who tend to male needs—that any antagonism toward any woman for almost any reason can fit the label.

According to Manne, "misogyny is killing women and girls, literally and metaphorically." Deadly misogyny is exemplified here by Rodger (a severely disturbed man who killed two women and four men and planned to cap a sorority massacre with indiscriminate slaughter in the streets), but also by more ordinary domestic killings. Manne also asserts that men who victimize women get disproportionate sympathy, a.k.a. "himpathy" (a word to join *mansplaining* on the list of atrocious feminist neologisms).



*DOWN GIRL NEVER* grapples with issues that complicate its narrative: the ways men have been traditionally expected to “give” and sacrifice for others’ needs in war and breadwinning; the fact that the primary victims of male violence are other males; the reality of domestic abuse in same-sex couples and intimate violence by women; the evidence that violent crimes with female victims tend to be punished more severely while female perpetrators tend to be treated more leniently.

Nor is Manne a particularly reliable narrator. At one point, she quotes excerpts from a news story in which a woman’s family refuses to blame the boyfriend who fatally stabbed her and was later shot dead by police. But she leaves out a key detail: The woman was apparently unstable and prone to violence, and the man had likely acted in self-defense.

In all three books, the 2016 election looms large as an odious testament to the enduring power of patriarchy and misogyny. Yet you can loathe Trump and still question the assumption that Hillary Clinton’s loss was the result of sexism. Some anti-Clinton sentiment certainly had to do with her gender; then again, so did what enthusiasm her campaign managed to generate. Traister, Chemaly, and Manne lament the stereotypes and double standards faced by ambitious and powerful women. Yet they never mention recent research by scholars such as Deborah Jordan Brooks of Dartmouth College or Jennifer Lawless of American University, who looked at actual political campaigns in the last decade and concluded that female candidates were not held back by voter biases.

THE CENTRAL THEME of the call to feminist rage is sexual victimhood: #MeToo and the crusade against American “rape culture” that began a few years earlier. Few would doubt the worthiness of the cause. The scandals that followed Weinstein’s exposure included story after story in which powerful men seemed to regard the women in their professional orbit as a personal harem and in which women’s attempts to complain were deep-sixed; many of these stories, backed by contemporaneous reports to colleagues, friends, or family, involved allegations of criminal conduct ranging from sexual assault to indecent exposure. Even critics of feminist sex panic, such as Sommers and Northwestern University film studies professor Laura Kipnis, were mostly on board with #MeToo.

But from the start, the anti-patriarchal revolt had its own complications. For one, while revelations of male victims (and, eventually, female abusers) do not negate the claim that sexual harassment is linked to male power over women, these incidents do suggest that sexism is not the only reason high-status predators have had license to abuse. What’s more, some career-killing accusations involved clumsy but noncoercive come-ons, awkward compliments, off-color jokes, or even vaguer offenses. Veteran National Public Radio host Leonard Lopate was fired

Three new books suggest that a deeply entrenched misogyny ruthlessly punishes women who refuse to defer to men, and that female fury is a natural and salutary response.

over “inappropriate” comments such as telling a female producer working on a cookbook segment that *avocado* was derived from the Aztec word for *testicle*. Vince Ingenito, former editor of the pop culture website IGN, was accused of harassing a female staffer and onetime friend by complimenting her looks, disparaging some men she dated, and once telling her that he wished he could “go all night” as he’d done at her age.

When comedian Aziz Ansari got #MeTooed for being a jerk on a date, many supporters of the movement felt it had gone too far. But not Chemaly, who insists that the resulting “conversation” was needed to challenge “the tremendous power...that men can wield over women” in intimate encounters, even when no institutional power is involved. For both Chemaly and Traister, sexuality in the workplace is virtually always a male imposition on women, and male-female sexual dynamics under any circumstances are steeped in male “entitlement” and privilege. In this paradigm, female agency is virtually nonexistent.

Perhaps the most revealing part of *Good and Mad* is Traister’s elegy for the late radical feminist writer/activist Andrea Dworkin, whom she sees as a tragic, misunderstood, maligned prophet of #MeToo: She speaks of “the sorrow I felt that Dworkin

was not here to see what was happening.” While she admits that Dworkin’s anti-porn crusade was misguided, Traister defends her larger vision and her relentless fury while sanitizing her more *outré* views. (Traister insists that “all sex is rape” is a misreading of Dworkin’s *Intercourse*, even though the book clearly equates penetrative sex with female subjugation and violation: “There is never a real privacy of the body that can coexist with intercourse....The thrusting is persistent invasion....She is occupied—physically, internally, in her privacy.”)

Traister’s tribute to Dworkin is a whitewash, but she’s not wrong about the current feminist revival as a Dworkin moment. Many of the ideas championed by Dworkin and her sister in arms, legal scholar Catharine MacKinnon, since the 1970s—that the lives of modern Western women and girls are an everyday “atrociousness” of male depredations; that feminism, in MacKinnon’s words, “is built on believing women’s accounts of sexual use and abuse by men”; that bad speech constitutes “harm”—are now mainstream feminist beliefs.

That does not bode well for feminism.

**IN MANY WAYS**, 20th century American feminism was one of liberal democracy’s great success stories. Overtly discriminatory laws and policies crumbled; cultural attitudes on a wide range of subjects underwent a dramatic shift. (By 2000, more than nine out of 10 Americans said they would vote for a female presidential candidate, up from about one in two in 1955.) For some, this means that feminism has won its battle. For others, that it must now fight subtler and more complicated obstacles.

Even in the generations raised with the norm of gender equality, it’s still mostly men who occupy positions of power and mostly women who tend to home and children. Conservatives and many libertarians see this as the result of free choices and differing preferences; most feminists blame structural sexism and deep-seated, often unconscious prejudices. While feminist arguments often rely on far-reaching speculation, feminism’s critics can be too dismissive of the role played by cultural biases, social pressures, and similar factors in hindering equal opportunity. For example, several studies of employee performance reviews, most recently by Harvard researcher Paola Cecchi Dimeglio, have found that women tend to get less constructive feedback and more personal criticism, especially for being “too aggressive.”

Addressing these issues is a legitimate goal, and one that doesn’t require state coercion. In recent years, social media have given activists highly effective tools allowing them to use public opinion and consumer power to work for change without getting the government involved—whether it’s to hold corporations accountable for condoning sexual predation in the workplace, to call for children’s products that don’t treat adventure and invention as the sole preserve of boys, or to

push for more gender balance in various projects from films to academic conferences.

Unfortunately, when grievances become wildly inflated and the default mode for activism is rage, advocacy can easily turn into a baneful hypervigilance (do women really gain when every conversation is zealously monitored for “microaggressions” or “manterruptions”?) and misfocused mob outrage. Take the trashing of renowned British biochemist Tim Hunt in 2015 over alleged sexist remarks about the trouble with “girls in the lab.” Hunt was roundly reviled as a misogynist on social media and in the press, then stripped of several posts. That fate came despite objections from attendees who said his offense was a misreported self-deprecating joke—a claim later supported by a partial audio recording—and despite his undisputed record as a champion of women in science.

Modern feminism, with its framework of male privilege and female oppression, takes a simplistic and one-sided view of gender dynamics in modern Western societies. It ignores the possibility that some gender-based biases (such as the expectation that males will perform physically grueling and/or dangerous tasks, paid or not) may benefit women or disadvantage men. It disregards the vast diversity and flexibility of cultural norms. It refuses to recognize that there is no perfect solution to the problem of dispensing justice when someone alleges a crime with no witnesses and both parties tell a credible story.

Rage-driven activism can be particularly destructive when it targets and politicizes interpersonal relationships, an area in which the sexes are probably equal but different in bad behavior. Victoria Bissell Brown’s verbal abuse of her husband is hardly a typical example, but even Traister sees nothing wrong with the fact that, at the height of #MeToo, her husband once marveled, “How can you even want to have sex with me at this point?”

Anger can be productive, usually as an impetus for short-term action. But rage feminism is a path of fear and hate. It traps women in victimhood and bitterness. It demonizes men, even turning empathy for a male into a fault, and dismisses dissenting women as man-pleasing collaborators. It short-circuits important conversation on gender issues.

Urging women to disregard warnings about the perils of rage, Traister writes, “Consider that the white men in the Rust Belt are rarely told that *their* anger is bad for them.” But aren’t they? The anger of “white men in the Rust Belt” is commonly portrayed as an unfocused, dangerous emotion that scapegoats innocents and empowers unprincipled demagogues like Trump. The anger of privileged women is not much of an improvement. **🔴**

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Contributing Editor CATHY YOUNG is the author of *Ceasefire!: Why Women and Men Must Join Forces to Achieve True Equality* (1999).





# How We Childproofed Our Cities

**Kid-friendly spaces make it harder to grow up.**

KEVIN CURRIE-KNIGHT



INDEPENDENCE REQUIRES INFRASTRUCTURE.” That line captures the essence of *The Design of Childhood*. In this book Alexandra Lange, a design critic and mother, examines the history of how children’s items and spaces have been designed. These designs, she shows, can either expand or inhibit kids’ autonomy.

Consider the Tripp Trapp, an adjustable child’s chair from the early 1970s. Designed to afford children more independence, the simple seat enabled kids of different sizes to comfortably navigate in and out, as it will never be too big or small. That was the original idea, anyway. The new versions have elaborate harnesses and straps; as Lange explains, the Tripp Trapp “now comes with more binding accouterments to meet the high chair safety standards of the United States and European Union.”

The evolution of the Tripp Trapp illustrates the push and pull at the center of this book: When designing children’s items and spaces, we can design for independence or dependence, for freedom or containment.

That push and pull is also evident in the history of children’s blocks, which no less a figure than John Locke once encouraged as a way to foster children’s creativity. Lange shows how simple stackable blocks begat Lego, which begat





even more complex interlocking toy systems such as Zoob and K’Nex. Blocks also have descendants in the digital world—they’re a key design element in “sandbox games” like Minecraft and Sims. Yet the history of Lego alone reveals “a tension between creative play and realistic architecture that continues to the present day.” Blocks can allow for open-ended creativity, or they can be built for a more specific assembly, where the player’s role is to follow a blueprint.

This type of push and pull is even more pronounced in the history of playgrounds, which started (in the 1880s) primarily as sandboxes that “had no climbing bars, no seesaws, no swings.” As the Progressive Era took hold, they became more “symmetrical, geometric, with a place for each activity.” In the ’60s and ’70s, the pendulum swung back toward “junk” playgrounds built around children’s self-directed activity; it has now swung back again in the adult-structured direction.

LANGE PRIMARILY TELLS the story in terms of the pendulum swinging between liberating and inhibitory designs, but I detect another story in this book as well. As childhood became more widely seen as a distinct phase of life, children increasingly found themselves inhabiting “children’s only” spaces and playing with “children’s only” things.

No matter how playgrounds were structured, they were designed in the first place because adults believed children “needed somewhere other than the increasingly crowded and dangerous streets to play,” Lange writes. Schools, of course, were also designed specifically to be children’s places. The informal design of one-room schoolhouses emerged when attendance largely wasn’t compulsory. As more children went to school, building design became more efficient so that schools could absorb more children. In the mid-20th

## As families’ wealth increased, kids who used to sleep where adults slept and play in whatever space was available increasingly got their own rooms. “Children’s only” spaces were appearing everywhere.

century this gave way to increasingly “child-friendly” designs—halls that are easier for children to navigate, classrooms organized to encourage “hands on” activity, and so on.

Even in homes, as families’ wealth increased, kids who used to sleep where adults slept and play in whatever space was available increasingly got their own rooms. Children’s spaces were appearing everywhere.

In other words, we now increasingly design with the assumption of children’s separateness. Creating playgrounds, schools, and bedrooms for children means that what used to be common spaces—like city streets—nudge toward becoming *adult* spaces. These trends could be liberating (“Here’s a space all your own!”), yet adults also increasingly seek to manage how those spaces are used.

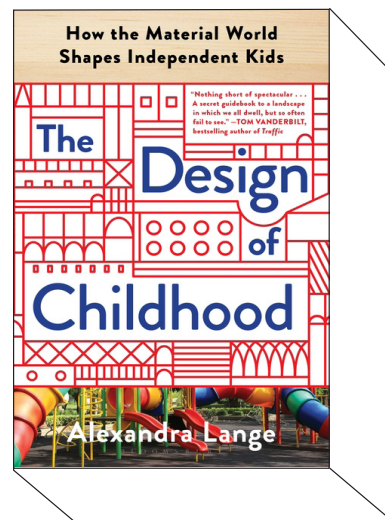
Partly as a result of all this, urban and suburban areas outside those children’s spaces have become less hospitable to children’s independent navigation. Increasingly centralized schools, for example, are farther from most homes than in decades past. Lange is generally sympathetic to the Free-Range Kids movement, which seeks to undo the cultural trend of overprotecting children. But she argues that nur-

turing children’s independence “may require not just a change in policy...but physical intervention—redesigning cities for children.”

She is eager to bring government planners into the equation, calling for mandates that playgrounds be more plentiful, that child-friendly common areas be placed in apartment complexes, and more. Yet even if her proposals here are sometimes misguided, she has a point. If we want to raise kids who can play on their own, we need to make sure that the spaces they play in and around facilitate independence.

Lange ends on an optimistic note. She sees a cultural move away from adult attempts to control children’s spaces and things and toward a more laissez faire attitude: Minimalist playgrounds are making a comeback, Minecraft is leading a trend toward “sandbox games,” and less coercive methods of education are in the air. “History shows us that the design of childhood is cyclical,” she writes, “and I think we are on the verge of another revolution.”

KEVIN CURRIE-KNIGHT teaches at East Carolina University’s College of Education, where he focuses on the philosophy and history of conventional schooling. He is the author of the forthcoming book *Education in the Marketplace* (Springer).

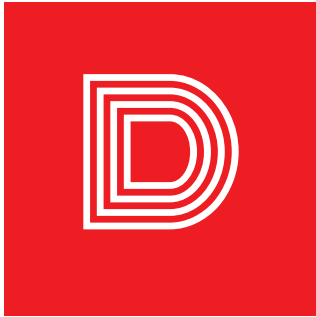


*The Design of Childhood: How the Material World Shapes Independent Kids*, by Alexandra Lange, Bloomsbury, 416 pages, \$30

# Why Do So Many Modern Jobs Seem Pointless?

An investigation into why people are working more without accomplishing more

RODERICK T. LONG



URING THE LAST century, everyone from John Maynard Keynes to *The Jetsons* predicted that in the future, technological advances would drastically cut down the number of hours the average person would need to work to keep the economy going. Why didn't that happen?

In *Bullshit Jobs*, David Graeber, an anthropologist at the London School of Economics, suggests it *did* happen. Not that people are working fewer hours, but that fewer of those hours are actually needed.

Graeber argues that much, perhaps most, of the waged labor in the world's industrialized nations consists of "bullshit jobs": jobs that are "so completely pointless, unnecessary, or pernicious that even the employee cannot justify [their] existence." These are not to be confused with "shit jobs," which are unpleasant and poorly paid but often produce some obviously useful good or service. On the contrary, bullshit jobs may be well-paid and fairly easy, yet people nevertheless tend to find them extremely demoralizing, as evidenced by testimonials Graeber has collected from workers around the world. Contrary to the widespread presumption that people seek maximum financial return for minimum effort, Graeber finds that people will often quit a bullshit job for a lower-paying and more labor-intensive one if the latter offers greater scope for meaningful personal agency.

Many bullshit jobs exist "only or primarily to make someone else look important" or to solve problems arising from a "fault in the organization" or "the damage done by a superior." Graeber points to polls in which 37 to 40 percent of respondents felt their jobs made no "meaningful contribution to the world." Add the unneeded aspects of needed jobs, and Graeber estimates the total "bullshitization" of the job market at "slightly over 50%."

While it's a commonplace that the "service" sector has dramatically increased at the expense of traditional industry and agriculture, Graeber points out that this does not mean

we are seeing an explosion of "waiters, barbers, salesclerks, and the like." The proportion of such jobs has remained small and steady. The growth in the service sector consists primarily of such positions as "administrators, consultants, clerical and accounting staff, IT professionals, and the like." While not all such jobs are bullshit, this is the place where "bullshit jobs proliferate," he says. (As an academic, I can testify to the relentless increase, within the academy, in both the numbers of administrative staff and the weight of bureaucratic burdens they place on faculty.)

In particular, Graeber identifies the financial sector as a major generator of bullshit jobs, inasmuch as the "overwhelming bulk of its profits comes from colluding with government to create, and then to trade and manipulate, various forms of debt." Eliminating unneeded or harmful tasks would drastically cut the amount of labor needed to sustain the economy.

CRITICISM OF MAKE-WORK often focuses on the public sector, but Graeber maintains that the problem is at least as pervasive in private industry. As Graeber notes, this thesis will meet with resistance from many libertarians, who expect inefficiency from government but not from markets. Graeber summarizes what I'll call the First Libertarian Response: "Since competing firms would never pay workers to do nothing, their jobs must be useful in some way that [we] simply do not understand."

In reply, Graeber challenges his critics to explain how employees who spend most of their workdays surfing the internet or creating cat memes are secretly fueling profits. He also points to cases where such a job goes unfilled for months or years with no adverse consequence—or, in extreme instances, where the holder of a job stops coming to work and no one notices. A six-month bank strike in Ireland, he notes, caused far less economic disruption than a 10-day strike of garbage collectors in New York two years earlier. (The Irish coped by circulating checks as though they were cash.)

Graeber is right to be unimpressed by the First Libertarian Response. But as he himself notes, a different response is available: to grant that private-sector bullshit jobs exist but argue that they're the "product of government interference." Graeber is extremely dismissive of this Second Libertarian



Response—so much so that he apparently forgets about it a few pages later, when he claims that “doctrinaire libertarians...always insist” on the First Response. But before he forgets the Second Response, he characterizes it as the product of a naive “faith” in the “magic of the marketplace” and objects that it’s “circular” and “can’t be disproved.” Since “all actually existing market systems are to some degree state regulated,” he writes, it will always be possible to assign the results one likes to the market and the results one dislikes to the government.

This response is surely too quick. Disentangling the contributions made by different components of a social system is difficult, but it’s hardly impossible; otherwise there’d be no such thing as social science.

But Graeber does have more, and better, to say to the Second Libertarian Response. While the proportion of administrative staff to faculty has been mushrooming at both public and private colleges, “the number of administrators and managers at private institutions increased at more than twice the rate [that] it did at public ones”—135 percent at the former from 1975 to 2005, compared with 66 percent at the latter. Declaring it “extremely unlikely that government regulation caused private sector administrative jobs to be created at twice the rate [that] it did within the government bureaucracy itself,” Graeber concludes that the “only reasonable interpretation” is that “public universities are ultimately answerable to the public” and “under constant pressure to cut costs,” while “private universities are answerable only to their board of trustees,” generally made up of “creatures of the corporate world” who find it “only natural” that administrators should enjoy a retinue of flunkies.

Yet Graeber’s explanation is perfectly compatible with the Second Response. If libertarians are right, then

market discipline is the best form of accountability. It might still be true that democratic oversight is second best, or at any rate better than nothing. When government-granted privileges enable nominally “private” firms to largely insulate themselves from competition, it’s no surprise at all, from a free market standpoint, that public institutions subject to relatively robust forms of democratic oversight can be more efficient than private institutions subject to relatively weak forms of market discipline. A healthy jackal may well prove stronger than a very sick lion.

Graeber seems to assume that the only form the Second Response can take is one that sees big business as the victim, rather than the beneficiary, of regulation—one where “increases in government regulation” have “forced corporations to employ armies of box tickers to keep [the regulators] at bay.” This is a rather odd assumption for Graeber in particular to make. After all, he is familiar with the left-libertarian Kevin Carson and even cites his work favorably (ironically, only one page before his line about what “doctrinaire libertarians” all believe). According to Carson’s analysis, insulation from competitive discipline turns favored firms into islands of central planning, protecting executives from the cost of inefficient decisions.

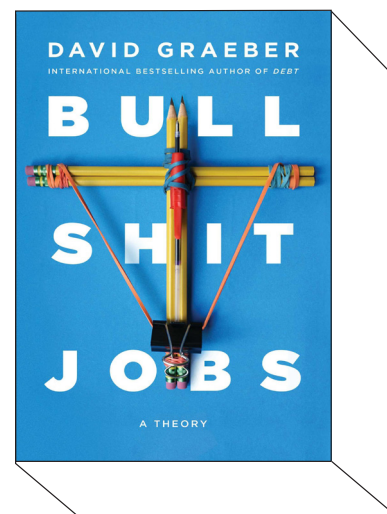
Moreover, unlike many critics of libertarianism, Graeber is well aware of the enormous gap between a free market and the “entanglement of public and private, economic and political” that dominates our economy, with government playing the role of “guaranteeing private profits” so that “economic and political imperatives have come to largely merge.” He even explains that by “capitalism” he is referring “not to markets,” which have “long existed,” but to the relatively recent “relation between some people who owned capital, and others who did not and thus

were obliged to work for them.” By his own lights, then, Graeber is not entitled to dismiss the Second Response as casually as he does.

ON GRAEBER’S ANALYSIS, unneeded jobs are protected by the perception that eliminating them would throw people out of work. That *Jetsons* vision of reduced working hours was supposed to benefit the workers, not impoverish them. Graeber notes that while, as an anarchist, he generally prefers bottom-up grassroots solutions to social problems rather than top-down public policy solutions, he nevertheless favors a tax-funded universal basic income as a way to relieve the working class’s reliance on bullshit jobs. But calling upon the state for assistance is always a risky strategy for anarchists; those who subsidize the piper call the tune.

Whatever the blind spots in his analysis, Graeber’s liberatory vision of a de-bullshitized future of work should serve as a useful corrective for those who are too quick to take the case for free enterprise as a validation of the perversities of the existing employment market. **Q**

RODERICK T. LONG is a professor of philosophy at Auburn University and the president of the Molinari Institute.



*Bullshit Jobs: A Theory*, by David Graeber, Simon & Schuster, 333 pages, \$27



FILM

THE CRIMES OF GRINDELWALD

STEPHANIE SLADE

Like its plot overall, the social justice messages are rather muddled in *Fantastic Beasts: The Crimes of Grindelwald*, the newest Harry Potter spinoff feature film.

There can be no doubt that Gellert Grindelwald is the bad guy in this prequel series. The movie makes excruciatingly clear that the goal of its titular character is to build an army of witches and wizards—purebloods, preferably—to conquer and rule the nonmagical world. (He stops just shy of advocating outright genocide of Muggles, noting that “beasts of labor” will always be necessary.) Yet writer J.K. Rowling jarringly has her villain waging a sort of “love is love” campaign: He wins at least one good-hearted character over to his cause by demanding an overthrow of prejudiced laws banning intermarriage between magical folk and their nonmagical neighbors.

Perhaps it was a considered choice on Rowling’s part. In reality, neither side in most political conflicts is totally without fault or flaw. Persuasive and even honorable arguments often are exploited to rally support for horrifying behaviors. Still, to offer that theme up with minimal development in what is ultimately a children’s story mostly just leaves the audience befuddled. **T**

BOOK

THE REVISED BOY SCOUT MANUAL

JESSE WALKER

“You construct fake news broadcasts on video camera,” the revolutionary handbook advises. “For the pictures you can use old footage. Mexico City will do for a riot in Saigon and vice versa....Nobody knows the difference.” You don’t even have to conceal the fakery. “In fact, you can advertise the fact that you are writing news in advance and trying to make it happen by techniques anybody can use. And that makes you NEWS. And a TV personality as well, if you play it right.”

It sounds like a sardonic guide to modern info-warfare, but it’s from a satire written nearly 50 years ago. *The Revised Boy Scout Manual* was composed circa 1970 by the Beat novelist and counterculture wizard-figure William Burroughs; parts have appeared here and there since then, but Ohio State University Press has

only now made the full text available for the first time.

This is the ayahuasca trip of guerrilla guidebooks. At one point it suggests that revolutionaries release wild leopards—“they would eat the CIA men first, since they are bigger and slower.” Another section proposes a plan to end the British monarchy by, among other things, violently compelling aristocrats to shout “Bugger the Queen!”

Amid the wild fantasies, dark irony, and dubious terrorist techniques, a humane social vision periodically peeks out. The basic social unit of Burroughs’ utopia would be the MOB, standing for My Own Business. The MOB, he informs us, recognizes “the right of every individual to possess his inner space, to do what interests him with people he wants to see.” Its enemies consist of “those who can’t mind their own business because they have no business of their own to mind, any more than a small pox virus. Their business is degrading, harassing and frightening other people.” **T**

VIDEO GAME

RED DEAD REDEMPTION 2

PETER SUDERMAN

You can do anything you want in *Red Dead Redemption 2*—or pretty close to it, anyway—but the law will eventually come for you. The video game, which in narrative terms is a prequel to 2010’s *Red Dead Redemption*, is an open-world Western that allows players to explore a massive virtual territory, with a near-infinite number of options for gameplay.

You can rob and steal, or start conversations with strangers and offer assistance to folks in need. Or you can just ride your horse and hunt, bringing fresh game back to keep the rest of the gang fed.

You play as Arthur Morgan, a member of a gang run by Dutch van der Linde, an ambitious outlaw leader who has just botched a big score. Heists and shootouts abound, but the game forces you into a patient, naturalistic rhythm, maintaining and upgrading your camp, building your relationship with the rest of the crew, and taking long, cinematic rides through the gorgeously rendered digital landscape.

Yet every action you take has consequences. You might lose your horse, or hit a civilian during a brawl. If you choose to get violent or steal, the local police always show up. You can run, try to shoot your way out, or pay a fine.

Even if you play as peacefully as the system allows, if you follow the story, you eventually run afoul of federal agents on the trail of your gang. It’s a game built around both individual choice and the certainty that the state will always get its due. **T**



## APP

## WHERE'S WEED

ELIZABETH NOLAN BROWN

Launched as a web guide in Denver in 2011, Where's Weed can now be accessed via smartphone app and connect you to local dispensaries and delivery services in states across the country where cannabis is decriminalized.

Entrepreneurs regularly post updates to what's on their "flower" menus, as well as any pre-rolled joints, edibles, or other products they're offering. Once users sign up and provide identification, they can pre-order from within the app, choosing pick-up (where applicable) or delivery and specifying a time.

In Washington, D.C., where marijuana was decriminalized for personal consumption and gifting but not commercial sales, businesses using Where's Weed stay semi-legal by stating that they're not selling pot per se. Rather, your pot is a "free gift" given with the purchase of some other object. So far, I've used the app to acquire cannabis via a cat postcard, a cannabis-leaf GIF file, a smiley-face wall hook, and an old Matchbox car. 🍓

## BOOK

## ASTOUNDING

BRIAN DOHERTY

John Campbell was the willful, bigoted, brilliant editor who guided science fiction through a shift from juvenilia to something closer to thoughtful adult respectability over the course of his stewardship of the magazine *Astounding*. In an endlessly entertaining group biography by the same name, science fiction author Alec Nevala-Lee focuses on Campbell and the three writers he nurtured who wore the biggest grooves into American culture: Robert Heinlein, Isaac Asimov, and L. Ron Hubbard.

Heinlein's off-planet fiction was an inspiration to the actual space age as it unfolded. Asimov became the most thorough and skilled explainer of science to the public after his stories established modern conceptions of robots and galactic empires. And the crafty, troubled Hubbard launched Scientology, a bizarre international empire of real estate and mind control, based on articles he initially wrote, with huge help from Campbell, for *Astounding*.

Campbell comes across as nearly deranged in his bullheaded attachment to eccentric pseudoscience; the archival research into his letters is Nevala-Lee's freshest contribution to science fiction historiography.

The book is especially revelatory about the ways World War II shaped Campbell and his *Astounding* writers. Locked out of the military by poor health and out of the volunteer effort by his unwillingness "to subordinate himself to

duties that didn't utilize his talents," Campbell kept editing and

confounded the military by printing fictionalized versions of its atomic secrets to establish science fiction's predictive power. Heinlein, emasculated by a failure to see combat, became the bard of personal sacrifice for the greater good in his later novels and fought to guarantee U.S. rocket supremacy. Hubbard's ridiculously error-filled naval career steered him in the direction of the controlling mania of Scientology. Asimov, true to his nature, did chemistry work stateside for the military—secure in the hope that scientific rationalism could guarantee a more peaceful future. 🍓

## EXHIBIT

## DIGITAL DISRUPTION

RONALD BAILEY

The Newseum in Washington, D.C., just blocks from the Capitol, is a dazzling modernist palace dedicated to defending the free press and honoring the lofty profession of journalism. Its just opened "Digital Disruption" exhibition offers a timely and succinct account of how such platforms as Google and Twitter upended traditional media gatekeeping and enabled new voices and perspectives to engage broader audiences.

That's the positive; digital communications technologies also make it easier to spread disinformation, while hyperpartisan news sites exacerbate political and social divisions by confirming the biases of their readers and viewers.

But for all the good and the bad, this is the media world we mostly seem to want. Readers and advertisers have abandoned print for the web, with daily newspaper subscriptions more than halved over the last 35 years. Today, Facebook, Google, and YouTube get more advertising revenue than every newspaper, magazine, and radio network in the world combined.

The Newseum exhibition features five sections: the

Internet Era, the Innovators, Social Media, the Disruptors, and Distortion. Various artifacts represent the transformation from old to new. These include media mogul Rupert Murdoch's phone with Fox News CEO Roger Ailes on speed dial, the *Washington Post* reporter David Fahrenthold's notebook detailing candidate Donald Trump's exaggerations of his charitable contributions, and the *Guardian* reporter Ben Jacobs' broken glasses from when he was body-slammed by 2017 Republican congressional candidate Greg Gianforte. 🍓

## AUDIOBOOK

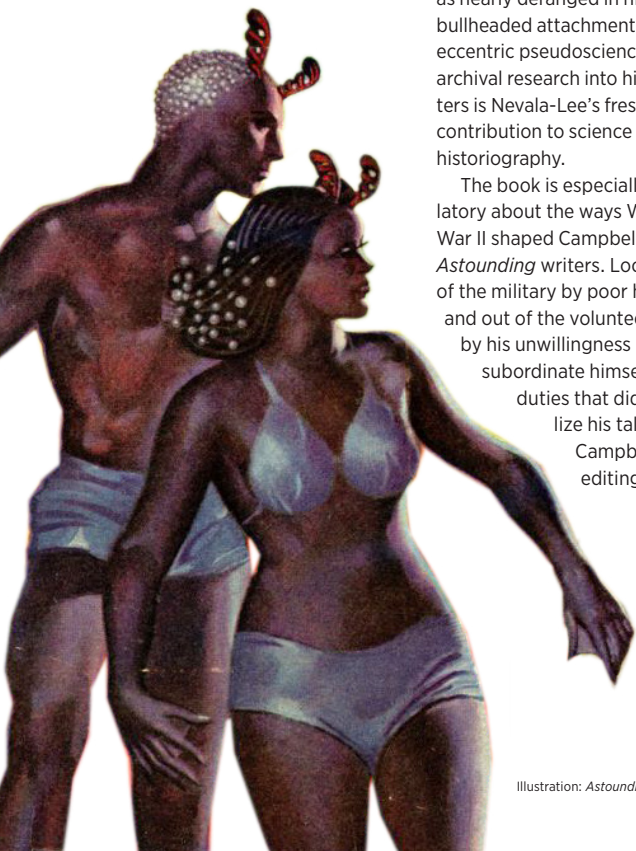
## TWIN'S FEAST

KATHERINE MANGU-WARD

When Mark Twain's 1879 European book tour ran long, his homesickness manifested in a list of uniquely American foods, an imagined meal of epic proportions. The menu included raccoon, turtle soup, and some very particular potatoes.

Actor Nick Offerman has, of late, taken up the mantle of Twain's modern-day medium and spiritual heir, recording Twain's books in the low, smooth voice familiar to fans of his absurdly libertarian character from *Parks and Recreation*, Ron Swanson. His newest effort, *Twain's Feast*, is a pleasing, slightly ramshackle six-episode series from Audible.com exploring the writer's dream menu with the help of a gaggle of young reporters and dinner party guests.

The project is not without setbacks. One of the most interesting ingredients—the once-abundant prairie chicken—proves unattainable; a vegan substitute is offered. While the backstory and explanation of the recipe were compelling, one shudders to imagine what the sharp-tongued Twain would have said upon ordering a fat, juicy little grouse and being served a pile of soy and corn instead. 🍓



20

YEARS AGO

February 1999

"In his 1946 essay 'Politics and the English Language,' Orwell cataloged some of the linguistic swindles and perversions that had long served powerful people. He wrote that 'one ought to recognize that the present political chaos is connected with the decay of language, and that one can probably bring about some improvement by starting at the verbal end.'"

**JOHN J. PITNEY JR.**

*"Tongue of Newt"*

"So-called economic nationalists like [Pat] Buchanan want to stop the world and get off—isolate the U.S. market behind protectionist barriers and let everybody else fend for themselves. Indeed, their hostility to trade liberalization is as much political as economic; they see the free trade cause as a cover for undermining U.S. sovereignty

and expanding world government. Conservative activist Phyllis Schlafly uses typical rhetoric when she refers to the World Trade Organization as 'a sort of United Nations of trade.' 'It is dishonest to call something 'free trade,' she writes, 'when it is managed by a huge international bureaucracy.'"

**BRINK LINDSEY**

*"Fast-Track Impasse"*

"Libertarians can appreciate Mars in a way that Barry Diller and his fellow moguls can't. A desolate planet free of earthly institutions is more appealing to libertarians than it is to the corporate elite, just as the New World was more appealing to the Pilgrims and other contrarians than it was to the European aristocracy. It will take some doing to settle Mars, but libertarians have a crucial advantage. They're not expecting government bureaucrats to do the job. They know better than to count on NASA."

**JOHN TIERNEY**

*"Martian Chronicle"*

35

YEARS AGO

February 1984

"Many, if not the vast majority, of the problems Britain's small-business owners face are caused by government interference. The same could probably be said of American proprietors of small businesses. Such interference is of itself bad enough; but matters are made even worse by the fact that the politicians and bureaucrats who enact and enforce the regulations are, for the most part, completely and utterly ignorant of what it is like to operate a small business and ignorant of the sort of people who do so."

**JOHN BLUNDELL**

*"Rolls Royces and Canned Carrots"*

"The common-ownership idea, it quickly turns out, is far from being a benign precept. It lays the foundation for immorality, both private and public. It justifies theft and pillage as the recovery of 'common property'; it excuses piracy as the exercise of 'shared joint rights.' In the hands of governments, it is used to defend plundering and expropriation. Down through the ages, tyrants of all descriptions have arbitrarily seized the wealth of individuals and classes, claiming to be implementing the very principle of common ownership."

**JAMES L. PAYNE**

*"When the Rich Get Richer"*

45

YEARS AGO

February 1974

"The public school teachers, after all their college English courses, have succeeded in

making poetry an object of hatred and disgust to millions of their subjects; why should they now be allowed to have a go at sex?"

**RALPH RAICO**

*"Against Sex Education—A Letter to The Humanist"*

"Civil libertarians point out that [zoning] violates due process. Many conservatives challenge it on the basis of individual rights. Liberals crank out angry charges of racial exclusion and unfair protection of white, upper-class, suburban land values. The heat is on, and yet zoning persists."

**DENNIS CHASE**

*"Land Use Without Zoning"*

50

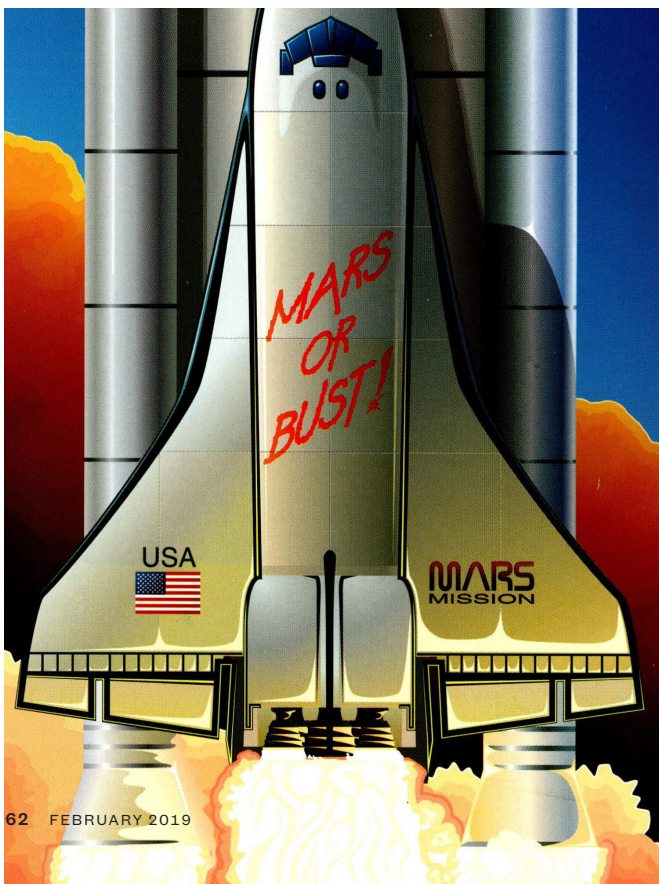
YEARS AGO

February 1969

"If 'black capitalism' is to survive—as capitalism—if it is to be something more than a phony label for black power—it must overcome the current surges of race-consciousness. The notion that certain races or national groups have inherent traits of character—the conviction that one's color or one's country of origin endows one with automatic pride or shame—the idea that there are collective virtues or vices pooled among the members of a given racial group—these are fatal to capitalism. One cannot uphold a system which rests on the freedom of the individual while claiming that man is just a token of his race. Racism—the practice of attributing to individuals the alienated traits of their race—collective—must be understood and rejected by all those who would advocate truly capitalist 'black capitalism.'"

**LANNY FRIEDLANDER**

*"Black Capitalism—A Preface"*





## Water From the Air and Power From Trash

INTERVIEW BY BRIAN DOHERTY

Jim Mason was first profiled in *Reason* in 2008 when his early attempts at homemade power generation ran afoul of regulators in his hometown of Berkeley, California. He fought through and created a business, All Power Labs, which turns trash into fuel.

In October, Mason and his crew were a core part of the Skysource/Skywater Alliance team that won a \$1.5 million Water Abundance XPrize. Their gasification-powered prototype, called the WEDEW Watertainer, heats wood chips in a low-oxygen environment to generate gas that can be used to power an engine, providing the energy to extract at least 2,000 liters of water per day from the atmosphere at a cost of less than 2 cents per liter. This technology has the ability to produce cheap, drinkable water in areas far from modern plumbing or places where disaster has cut off normal water supplies—and to do it with a negative carbon footprint. Senior Editor Brian Doherty talked with Mason about the project in November.

**Q: How was your gasification tech key to winning this XPrize dedicated to solving water supply problems?**

A: Atmospheric water generation usually requires [cooling air] below the dew point, and then water vapor condenses out as drinkable water. This is energy intensive. [For the prize] they needed something on-demand—you turn it on and it makes power all day [without the battery arrays that solar would require]. Gasification fit, because with biodiesel, the cost of fuel is too high for the 2-cent-per-liter cost target, whereas using biomass residue from forest and agriculture is [close to] free.

A huge hassle with gasification is often drying water [out of the fuel biomass]. But water vapor is exactly what the Watertainer needs. A limitation of atmospheric water generation machines is they only work well in hot, tropical environments, in high humidity. The Watertainer creates an artificial atmosphere from this [extra water from the biomass] which widens the places where such machines can be efficient outside the tropical band.

The solid byproduct of gasification is biochar, and the type we make is essentially what's used for charcoal filters, so beyond making water, we're making material for final filtration of water.

**Q: Does XPrize require a plan to take your water generation tech to market?**

A: That's certainly what they want to happen. One of the prize sponsors is Tata, [an Indian corporation that among other things] does rural infrastructure development, and water access is a major issue in India. There isn't a formal thing where they said, "We will enable you to bring this to market," but I believe they [don't want this] dying as a press release. We have a commitment to get to market but lots of work ahead. Running a prototype to win a contest is different than [a device that will reliably] work in the world.

**Q: Solar has gotten cheaper and more widespread since you got into power generation, so what is gasification's main advantage?**

A: Unique to biomass fuel is that it helps solve the waste management problem. California has a huge problem with half the forest dead and, as a consequence, California is burning down. You can go cut and process [the dead trees] but there's no good economic incentive to do it. Taking them to a big biomass plant—the cost of transportation is more than the wood.

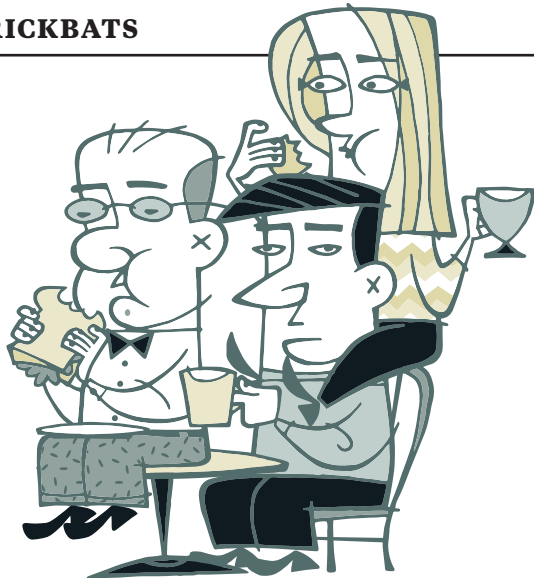
Our Watertainer is mobile. We can take it to where the wood is and process it. It is difficult getting through the regulatory issues to get self-made electricity into the grid. But with the water and the biochar

we can create, you can go into a forest with a mobile shipping container on a trailer, process wood in situ, and turn it into two products with economic benefits you can carry back out of the forest. And biochar in soil has a multiplier effect on increased plant growth.

[In the developing world] the most useful [application] is for rural distributed infrastructure. This is a tool that makes distributed power, an agricultural [product], and water simultaneously. In disasters—hurricanes or fires—you have waste to deal with, and for us the fuel are things that have to be gotten rid of. 🔥

*This interview has been condensed and edited for style and clarity.*





The town of Bannockburn, New Zealand, has just one café, and the owners say it may go out of business if the city council insists on enforcing an ordinance limiting the establishment to 12 chairs for customers. The restaurant has been around for many years and easily seats more than 12 people at a time. One of the previous owners says she was unaware of any limit. It only became an issue when the new owners applied to renew their alcohol license and a neighbor complained.

The Los Angeles City Council has unanimously voted to require those who do business with the city to disclose any ties—contracts or sponsorship—to the National Rifle Association.

David Gabbard thought he'd been improperly pulled over by a Kentucky State Police trooper, so he complained about his stop on Facebook. The next day, the trooper who stopped him and two others showed up at Gabbard's home. According to a federal lawsuit Gabbard has filed, when the woman who lives with Gabbard tried to record the confrontation, one of the troopers grabbed her phone. The trooper who stopped Gabbard then pulled off his badge and challenged him to a fight. The three troopers left only when one noticed video cameras attached to the front of the house.

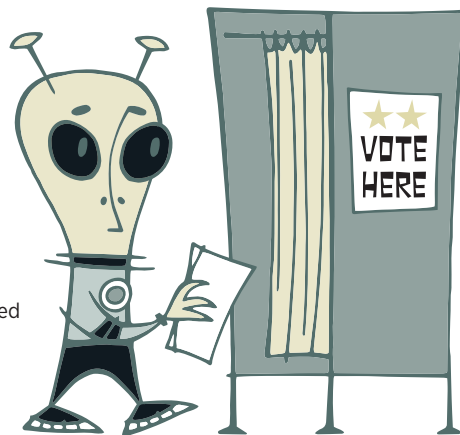
The South Korean government says its citizens must comply with its strict drug laws even when in other countries. Officials have warned South Koreans living in and visiting Canada not to partake of marijuana, which is newly legalized there. Police say they will charge anyone they catch under South Korean law. Those found guilty face up to five years in prison.



Prosecutors in Louisiana dropped sex and drug charges against people arrested following a raid on a St. Helena Parish strip club after finding one police officer digitally penetrated a dancer's vagina and another had a dancer squirt breast milk on him during an undercover investigation. Tangipahoa Parish Sheriff Daniel Edwards initially defended his deputies, saying such tactics are necessary in a prostitution sting. He subsequently said he would have the officers retrained.

This year, San Francisco spent about \$310,000 trying to register noncitizens to vote in school board elections. They signed up exactly 49 people.

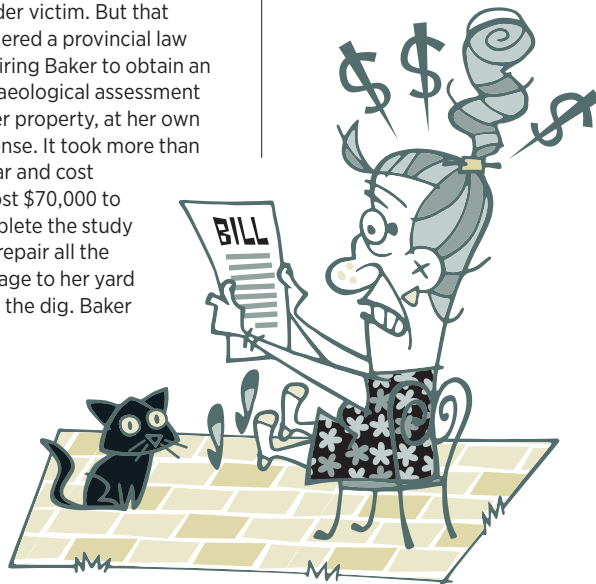
Pat Baker, 80, got a phone call from the contractor building a patio at her Goderich, Ontario, home. Workers had uncovered a skull. Police quickly figured out that the skull was about 130 years old, not a recent murder victim. But that triggered a provincial law requiring Baker to obtain an archaeological assessment of her property, at her own expense. It took more than a year and cost almost \$70,000 to complete the study and repair all the damage to her yard from the dig. Baker



was then required to properly bury the skull, also at her own expense.

Officials at North Carolina's Harnett Central High School told students they should wear patriotic garb to an October football game because it was "USA America Night." So one student wore a red, white, and blue jersey with "USA" on the front and "Trump 45" on the back. His father says the principal told the boy he would have to remove the shirt because others were complaining about it. The student left the game instead.

—CHARLES OLIVER





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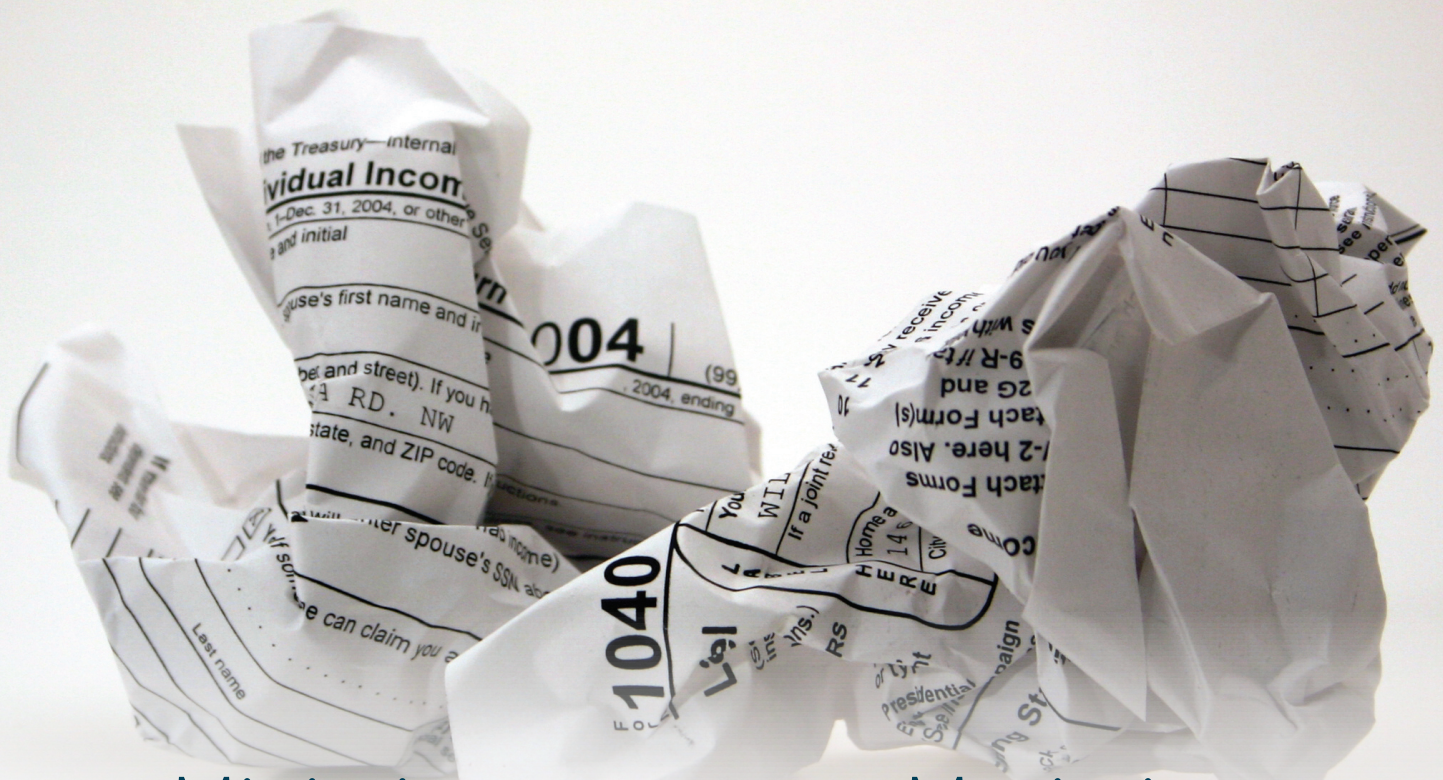


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