# FEE FREEMAN

Volume 64, No 5 June 2013

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#### **Published by**

The Foundation for Economic Education Irvington-on-Hudson, NY 10533 Phone: (914) 591-7230; E-mail: freeman@fee.org www.fee.org

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The Foundation for Economic Education (FEE) is a nonpolitical, nonprofit educational champion of individual liberty, private property, the free market, and constitutionally limited government.

The Freeman is published monthly, except for combined January-February and July-August issues. Views expressed by the authors do not necessarily reflect those of FEE's officers and trustees. To receive a sample copy, or to have *The Freeman* come regularly to your door, call 800-960-4333, or e-mail mnolan@fee.org.

*The Freeman* is available electronically through products and services provided by ProQuest LLC, 789 East Eisenhower Parkway, PO Box 1346, Ann Arbor, Michigan 48106-1346. More information can be found at www.proquest.com or by calling 1-800-521-0600.

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# Cities and Emergent Order

By definition, cities are places where a lot of people want to live. So we thought it would be interesting to explore and celebrate cities.

They are, after all, like coral reefs, or maybe rainforests. That is, not only are cities emergent orders of the sort we often admire here at *The Freeman*, but we want to communicate the idea that human beings aren't some sort of invasive species. We are a part of nature, of course, and cities are our version of termite mounds or anthills. Cities are complex. We also think they can be fascinating and beautiful.

Cities are more than just the residue of people pursuing their lives, though. They're more, in fact, than any one of us can really comprehend, whether we're looking at them from the outside or hustling around in the streets. Order emerges somehow, and within it, each of us has to negotiate the endless tradeoffs (public or private, social or individual, desires or resources) that life brings and that city life presents with more variables.

In his strange, dreamlike book *Invisible Cities*, Italo Calvino writes,

The people who move through the streets are all strangers. At each encounter, they imagine a thousand things about one another; meetings which could take place between them, conversations, surprises, caresses, bites. But no one greets anyone; eyes lock for a second, then dart away, seeking other eyes, never stopping ... something runs among them, an exchange of glances like lines that connect one figure with another and draw arrows, stars, triangles, until all combinations are used up in a moment, and other characters come on to the scene.

These lines that connect us are the real blueprints of cities.

In our more robust interactions, we may actually contribute to the erecting of skyscrapers once locked in

#### **PERSPECTIVE**

dreams. The architects busy themselves with creating the spaces that will help us live together more closely and more comfortably, defying the scarcity of space on the surface. Then we fill and connect and reconfigure the spaces, defining ourselves and our cities in the process. It can elevate us metaphorically and physically.

And of course, none of this is possible without free exchange among consenting adults. Exchange of glances. Exchange of words. Exchange of ideas. Exchange of money. Even the urban "planners" and municipal functionaries who feast like parasites on the extended order (while fancying they can design it) have to admit that Jane Jacobs is right when she writes, "There is a quality even meaner than outright ugliness or disorder, and this meaner quality is the dishonest mask of pretended order, achieved by ignoring or suppressing the real order that is struggling to exist and to be served."

Nothing this complex and ongoing can be simply beautiful, however, and the overall order that defines a city encompasses a lot of ugliness and disorder. These are parts of life; they're particularly visible in cities, where so many lives are concentrated. But ugliness and disorder are the frequent results of actions taken by what Adam Smith called "the Man of Systems," with all his grand visions, paternalistic instincts, and bureaucratic processes.

Sometimes, though, ugliness is something dreary or unseemly that is really just in the process of becoming. And the beauty of it all can be glimpsed for a second on a fire escape, behind a clothesline on the 27th floor—at least until the cigarette is spent.

\*\*

In this month's interview, we talk to **Rod Lockwood**, who's trying to build an independent city to rescue Detroit—and all of the U.S.—from government-induced decline.

The beauty of cities emerges from paradox, says **Troy Camplin**. Understanding this fact will make us as at home in them as we should be.

Austin only seems weird, says **Max Borders**, because it's so much more interesting—and tolerant—than most other places.

The unemployment rate is determined by political realities as much as economic ones. **Wendy McElroy** has the count.

Are intellectual property rights a government-created impediment to creativity, or is all property intellectual at root? In the debut of **The Arena**, our monthly debate feature, **Adam Mossoff** and **Jeffrey Tucker** duke it out

People usually think they have Thomas Malthus figured out. **Ross Emmett** introduces "Bob" Malthus, a friend of liberty and markets.

Prohibition has driven the development of ever-stronger drugs, whereas a free market would see a proliferation of lighter options, says **BK Marcus**.

Our columnists have been bustling like cities. Sandy Ikeda says what really makes a city is the order that emerges from the lives lived within it, and it's too big for any one person to comprehend. Tom Bell says the key to keeping city streets safer is holding the government accountable in fair—that is, non-governmental—courts. Jeffrey Tucker says Atlanta's school cheating scandal is only what should be expected from the distorted incentives created by top-down impositions. Doug Bandow says the taxpayers can't afford welfare for farmers, and farmers don't need it. Sarah Skwire says a story of life in prewar Lodz, Poland, illustrates how much more complex human lives are than any philosophy or religion. And Michael Nolan says New York is home for reasons as ultimately resistant to explanation as the city itself.

**Dwight Lee** reviews a book arguing that some things are too important to be dealt with via market mechanisms.

—The Editors FEE

# The Invisible City

**SANDY IKEDA** 

talo Calvino's *Invisible Cities* is a short, often wonderful but consistently enigmatic (at least to me) novel about an extended conversation between Marco Polo and Kublai Khan. Marco tells the Khan a series of tales about fantastical cities he's perhaps only imagined.

I've always assumed that the book's title refers to that imaginary quality, since no one besides Marco himself has actually seen the cities he describes, and they likely exist only in his mind or in the words as he utters them.

A few weeks ago I hosted a couple of group "tours" of my neighborhood. These tours are called "Jane's Walks" in memory of the great urbanist Jane

Jacobs. In the course of explaining her (mostly laissezfaire) principles to the group, I realized there's another interpretation of Calvino's title that I much prefer.

It is this: A city—especially a great one—cannot really be seen. Paradoxically, the closest we can come to actually seeing one is through the imagination. Otherwise, it's invisible. Moreover, if you can fully comprehend a place, then it's not a city.

# You Don't See a City on a Map

If you think about a particular city that you know, what comes to mind? An image, a feeling, a smell, or a sound? Before we visit a city, we may look at pictures of parts of it, perhaps its famous landmarks, but these mean little to us in themselves. We may study a map of Paris to get a sense of the layout or the general shape of the metropolis. But what we are seeing is not the city of Paris but something highly abstract, abstracted not only from Paris but also from the particular reality of our lives. If, before going there, we could somehow look at a photo we will take of Paris, the scene would not evoke much from us or have much meaning (unless we could relate it to something we'd already experienced). But looking at the photo afterward,

> having been there, we feel a rush of memory, emotion, and meaning that goes well beyond the edges of the picture.

If our EXPERIENCE

of a city is limited to, as F. A.

Hayek might say, "the particular

circumstances of time and place,"

how is it possible to see or know

a city at all? We know it from

the mosaic of our experiences over

time, plus our imagination.

# **Eyes on the Street**

If the view of a city I remember is of a vista from high up, say the Eiffel Tower, I can comprehend most of the physical layout. But whether a postcard I bought or a photo I took myself,

what gives that scene meaning to me is the memory that I was there: Standing on that platform, having ridden up an endless elevator, feeling the cold and the crowd, I saw that view. The city below, however, remains distant. That's not the city I'm reliving at that moment; it's my looking out from the top of the Eiffel Tower.

In most cases, though, what we remember of a city takes place at street level. Certainly, our image of where we live is like that. As the architect Kevin Lynch explained (tinyurl. com/d39bgte), a city is a lattice of such mental images that we share with other inhabitants. A familiar city has what Ken-ichi Sasaki called a "tactility" that we sense through our entire bodies, not just our eyes (tinyurl.com/c2zunse). You can't see a city from a tower or an airplane any more than you can feel a city from a tower or an airplane.

#### So How Can We See a City at all?

If our experience of a city is limited to, as F. A. Hayek

might say, "the particular circumstances of time and place," how is it possible to see or know a city at all? Here's where Calvino comes in. We know it from the mosaic of our experiences over time, plus our imagination.

Hayek, for example, defines an "order" (and I'm paraphrasing here) as a set of relations from which it's possible to draw a reasonable inference about a part of

the order that we aren't familiar with based on our knowledge of the part that we are familiar with. So when it comes to the kind of order that a city is, we begin to know and to see a city when we become acquainted with enough places that we begin to sense the "structure" that ties them together. In this way we fill the gaps of knowledge. That

is, our imagination extrapolates from what we know and interpolates between familiar places to fill in some of the gaps we don't have a chance to see and experience.

Of course, the more complex the city, the harder it is to do this. It's easier in Purchase, N.Y., where I teach than in the neighborhood in New York City where I live.

## The Invisible Infrastructure

Our ability to creatively extrapolate from and interpolate between its parts helps make the city somewhat visible. But all these parts change in important ways before we can finish the process, which is why we can only catch glimpses of the city now and then.

But what is it exactly that we are glimpsing? What makes a great city a city is not its buildings and streets—its physical infrastructure—or even the patterns of people in public spaces. A great city, one that cannot be fully seen, is composed of the relations among those people.

Those relations—among neighbors, passers-by, shoppers, shopkeepers, cars, and pedestrians—make it possible for people to rely on one another to some degree and for everything to hang together. When it works right, people feel safe and free to move from place to place, to break old ties and form new ones, and to create new ideas and leave old ones behind.

NO HUMAN MIND can have a coherent and comprehensive vision of a city that embodies its complex dynamics containly not one that

that embodies its complex dynamics, certainly not one that can be imposed on and made to work in a free society.

The dynamic matrix of those relations, the social infrastructure of the city, is again mostly unseen. Social theorists like Jacobs try to uncover bits by careful observation and clear thinking, but that process has its limits.

# One Lesson (of Many)

One implication is that no human mind can

have a coherent and comprehensive vision of a city that embodies its complex dynamics, certainly not one that can be imposed on and made to work in a free society. A real city, like the market process, is many times smarter and more creative than a single mind. It has to be because the problems it faces are many times more complex than any person or group could begin to solve—or even imagine.

That's why central planning at the local level—concerning, for example, highways and massive housing developments—tends to be just as unsuccessful as central planning at the level of national economies. The belief in such central planning suggests a failure of imagination, especially the ability to imagine a world that cannot be seen—that is, in fact, invisible. **FEE** 

Sandy Ikeda (sanford.ikeda@purchase.edu) is an associate professor of economics at Purchase College, SUNY, and the author of The Dynamics of the Mixed Economy: Toward a Theory of Interventionism.

# Te asked our Facebook friends what makes cities so good—or why they don't want anything to do with them. Here's a sampling of what we heard.

MICHAEL VALČIĆ: Cities are great as they offer a vast division of labor brought on by amalgamation and capital accumulation.

BILLY BECK: Cities are, by far, the most prominent manifestation of the principles of division-of-labor economics. This is their central value.



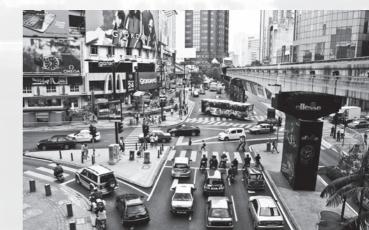


GILLIAN FOSTER: Cities promote the sharing of ideas, cultures, and trade. The first civilizations spread innovations and technology because they collected experience and knowledge from the people who passed through or migrated into the city—it is not much different today. Having many resources in a generally localized area spurs on innovation through collaboration and competition.

KEVIN BOURGUET: cities=overpopulation, traffic, pollution, crime, more expensive goods and property; the only redeeming factor is the white-collar jobs.

KURT GUTSCHICK: Individual liberties. I want a city that provides only public safety and roads. A city that allows me to choose for myself how to protect my property and family, where to send my kids to school, and how to run my own business would be a city I would move to in a second. If recent history is any indication, this would be a prosperous, safe city that people would flock to and then try and change.

CALEN FRETTS: What makes cities good, just like what makes countries good, is when they aren't presided over by control freaks. Unfortunately that means "good cities" don't really exist anywhere. Some are only "less bad" than others.



# Find us on Facebook or at FEE.org/Freeman and join the conversation!"

JOHN PALMER: We moved away from a city 17 years ago to a small town. We really enjoyed the lack of congestion and the sense of togetherness there; it was right for us at the time. But two years ago we moved back to the city: better medical care, more health care options, more variety in restaurants and shopping, concerts, theatre, and entertainment in general. These were all available to us before, but we had to drive to the city for them. And now public transportation is also a viable option for us, both inter- and intra-city.

SUSAN CVACH: I like to go into cities occasionally to shop and for medical care, and I like to leave cities to spend the bulk of my time in the wilderness. Without nature there would be no cities, and I am glad people like to cluster in cities so they are not out cluttering up the landscape. We visit each other, city and country people, and see the value in each place, and prefer our own niche. I hope city people get as much of a kick out of their place as I get from my canyon in the back of beyond.





**DANIEL KIAN MCKIERNAN:** Clustering in cities reduces the costs of moving things amongst participants.



KENT LALLEY: Cities, through their municipal authorities, force services on those who live in them. Many citizens begin to believe only the government can provide these services. And why wouldn't they with government-erected barriers limiting options to just one seller? It's this type of government arrangement libertarians call monopoly.

# For Safer Streets, Use Fairer Courts

TOM W. BELL



ow can we keep governments from violating our rights? Only by denying them the power to judge their own wrongs. Consider the story of Antonio Buehler and his struggle against police brutality.

## The Police Swing at Buehler; Buehler Swings Back

It started in the early hours of New Year's Day, 2012, with a woman's scream. Buehler had been serving as designated driver for his friends, driving them home from a party, when he stopped for gas at a 7-Eleven in Austin, Texas. Hearing a woman cry out in pain, Buehler turned to see two police officers pulling a female passenger from a nearby vehicle and throwing her to the ground. Buehler asked why they were using such violent tactics and began taking photos.

Finished with the woman, the officers confronted Buehler. They accused him of interfering with police procedures, wrestled him to the ground, and arrested him, too. Their report claimed that Buehler had spat on one of the officers, a felony punishable by up to 10 years in prison. Buehler countered that the officer had threatened him, had said he had "f\*\*\*d with the wrong cop this time and now you're going to f\*\*\*ng pay," and had lied to manufacture the felony spitting charge.

So matters might have remained: another case of alleged police brutality that bounces between conflicting stories and ends up going nowhere. In this case, however, a bystander had videotaped the incident. The video supported Buehler's account, as did eyewitness testimony. (If the police have better proof, they aren't saying; the Austin Police Department refused to release the dashcam video of Buehler's arrest.)

That volunteer video gave Buehler a powerful defense; a grand jury recently refused to indict him on any felony charges arising out of his arrest. But the law gives Buehler and people like him few offensive tools for combating police brutality and corruption. Buehler complained about his treatment to the Austin Public Safety Commission, the city department charged with policing the city's police, but that predictably went nowhere. And people in Buehler's position face long odds if they try filing civil suits against abusive police, hindered by sovereign immunity and the difficulties of prevailing against government agents in government courts.

Therein lies the crux of the problem: Government employees should not have exclusive power to decide claims against the government or its employees. The cure? Set up truly independent bodies to hear claims of police brutality and other abuses of office.

#### **Citizen Courts**

It stands as a fundamental principle of justice that no man can judge his own cause. John Locke cited the threat of self-judgment as a fundamental reason for the State, describing it as a way to "remedy those inconveniences of the State of Nature, which necessarily follow from every Man's being Judge in his own Case." Government courts cannot claim independence, however, when they hear claims against the government itself. Even giving judges life tenure cannot ensure their impartiality when they have been preselected by politicians and depend on government paychecks.

Apologists for the State may reply that there is no better way to resolve the private claims brought against it. Wrong. Private dispute resolution services have already solved that problem. They had to. Unlike government courts, private dispute resolution services cannot afford to treat their customers unfairly.

The American Arbitration Association, among others, follows this elegant procedure: Each of the parties to a dispute chooses a judge, those two judges agree on

a third, and together the panel of three resolves the case. This system offers a model for what I've elsewhere labeled "citizen courts": Adjudicative bodies designed to resolve disputes between the government and other parties under the same arbitration procedures that private parties customarily use in resolving civil litigation.

traditional methods of correcting police brutality and corruption. Reformers have to offer a better alternative. Simply raising public awareness about the possibility of citizen courts would strike a blow against the unjust status quo.

Buehler and other victims of police abuse should not stop at educating the public, however. If officials won't

**Calling out Police** 

Would the government give up its own courts for citizen courts? Not readily. Imagine, though, if someone like Antonio Buehler were to call out the police, challenging them to a judicial contest on level ground.

How would it work? Buehler would publicly challenge the Austin Police Department to appear before a citizen court. Assuming the police accept,

Buehler would pick an arbitrator, the Austin Police Department would pick an arbitrator, and those two arbitrators would in turn pick a third. Together, the three arbitrators would hear evidence from the parties and decide Buehler's complaint against the police (and the police's complaint against him, if they liked). A simple procedure, yes—but one that would set a new standard for fairness when it comes to resolving complaints of government abuse.

Even if the police chickened out, as they probably would, Buehler and his fellow activists would have won an important victory. It is not enough to simply criticize

EMPLOYEES should not have exclusive power to decide claims against the government or its employees. The cure? Set up truly independent bodies to hear claims of police brutality and other abuses of office.

GOVERNMENT

cooperate with citizen court proceedings, courts should proceed without them. Reformers could appoint advocates for otherwise unrepresented police and otherwise try to provide for as complete, fair, and open a process as circumstances allow. Judgments against the police would of course not be legally enforceable, but that won't stop them from carrying a lot of political weight.

It probably won't happen the first time, and it might

not happen for many more, but if enough people resort to citizen courts, officials will eventually have to take notice and take action. Reforming police practices and improving traditional remedies for victims of police abuse would in itself represent a significant achievement. If governments were to go further, though—if they would give up the inherently unfair practice of judging the claims brought against them and instead rely on truly independent dispute resolution procedures—we would win both fairer courts and safer streets.

Tom Bell (tbell@chapman.edu) is a professor at Chapman University School of Law.

# Belle Isle, City of Dreams: An Interview with Rod Lockwood

Rodney Lockwood, Jr., is the principal in a company that develops, builds, and manages apartment and senior-living communities. To date, the company has built 60 communities, totaling 7,000 apartment units housing 20,000 people, primarily in Michigan. Over the years, Lockwood watched his beloved Detroit fall into ruin thanks to the rise of unions and the welfare state. He wants to rebuild Detroit. In this interview, he describes his vision for doing so.

*The Freeman:* What is the Belle Isle concept and what motivated you to undertake it?

Lockwood: Belle Isle is a 982-acre island in the Detroit River, located between mainland Detroit and Windsor, Ontario. It is owned by the City of Detroit, [and] has historically been a beautiful public park, but has fallen into disrepair due to Detroit's financial troubles.

My vision is that it be developed into a vibrant community of 50,000 residents, borrowing ideas from Singapore, Monaco, and Liechtenstein: Singapore for its free and business-friendly markets, Monaco for its hosting a Formula One race, and Liechtenstein for its transparent, effective, and accountable government.

In my book *Belle Isle: Detroit's Game Changer*, investors purchase the island from the City of Detroit for \$1 billion and create with U.S. concurrence a commonwealth of the U.S. It will be similar to the Northern Mariana Islands and Puerto Rico, with its own tax system and laws. Over 29 years, the vision becomes reality. The purchase of the island and the infrastructure required would be funded by charging residents a one-time fee of about \$300,000.

As Belle Isle is quite small, I propose it be a walking community to be served by a monorail. By having car parking off-island at a transportation center on the Detroit side of the river, more green space can be accommodated while achieving good population density. The monorail will both circulate the island and travel across the river to



Courtesy commonwealthofbelleisle.com

the parking. The main road feature will be the Formula One racetrack, which for most of the year will be used by pedestrians and bicyclists, but annually will host the Belle Isle Grand Prix. The race will attract journalists and spectators from all over the world, thus accelerating the turnaround of Detroit's reputation.

*The Freeman:* So what will life be like and how will things work?

Lockwood: Service vehicles, such as [those for] food delivery, construction supplies and trash removal, will operate in the middle of the night, with tight noise restrictions so as to not disturb the residents' slumber. During the day, the only sounds will be the friendly chatter of humans.

Planning and architecture will be paramount. Belle Isle will be one of the most beautiful communities built, as the wealth and the tax system will enable that outcome.

Belle Isle will have homes, condominiums, offices, retail, restaurants, shopping, schools, a hospital, a sports center, performing arts—everything a community needs to be self-sufficient. I estimate about 100 coffee shops, restaurants, and bars will be there, based on the final population.

The culture will be dynamic. In addition to the Formula One race (there may be other car races, too), we will continue the existing Gold Cup hydroplane races, the Red Bull air pylon race, the Detroit Free Press Marathon, plus have a winter ice festival. My wacky favorite will be the 12-hour overnight Sled Dog Marathon, where all the bars stay open to cheer on the contestants. As we have four seasons, we have to make them all enjoyable.

Many will consider Belle Isle's government to be its best feature. [It will be] efficient, effective, transparent, trustworthy, and "at your service." In fact, in the book *Belle Isle*, the word "government" is not used. The main public building is called the Service Center.

*The Freeman:* People often mistake projects like this as being somehow utopian. But in many ways they are a pragmatic response to conditions. Is Belle Isle a pragmatic vision?

Lockwood: Very much so. The vision addresses many of the real government and social issues of today. Polls have shown a decrease since WWII of the approval ratings of virtually every government in the western world. In this country, the approval rating of the U.S. Congress is extremely low. Entitlements are eating up our budgets. Public debt is outrageously high. The courts are slow and outcomes are uncertain. Often buildings—public and private—are made of the cheapest materials without concern for the aesthetics. Every one of these issues and more would be addressed, but on a manageable scale.

*The Freeman:* To your mind what are the biggest reasons that Detroit is failing?

Lockwood: The short answer is crime, schools, taxes, and corruption. Overlay that with heavy public unionism and a lot of racism. Detroit needs to be integrated; right now it is highly segregated. Honestly, the city needs to get white people to move back. I think that is possible with

changes to improve upon the four factors first mentioned above. Belle Isle will enable it to happen within our lifetime. Otherwise it will take a very long time.

The Freeman: The Belle Isle concept is similar to startup cities, charter cities and special economic zones. The differences may lie mainly in the degree of political feasibility for such experiments—especially with respect to their proposed contexts. How politically feasible is Belle Isle?

Lockwood: Belle Isle is politically feasible. I was born and spent my childhood living in Detroit and my adult life nearby. During my lifetime, Detroit has lost nearly two-thirds of its population and has gone from America's richest city to its poorest. Detroit's problems are the national discussion—whether it is the auto bailouts, the crime rate, the legal troubles of a recent mayor, or the city's likely bankruptcy. We need a game-changer to turn this around. Belle Isle will attract an incredible amount of wealth from all over the world, people who will seek an environment that is welcoming to money and capital, that doesn't tax work or investment, and has a low-cost government that leaves you alone as long as you're not harming others. I estimate \$1/4 trillion will come there. Much of that will spill over and be either spent or invested in Detroit. Belle Isle will become a model for the world and its reputation for both political and physical innovation will put Detroit on the map again in a positive way. The political challenge is to inform and persuade the decisionmakers-Michigan and the federal government-of the benefits to Detroit of Belle Isle. But I think it has a very



Courtesy commonwealthofbelleisle.com

good chance. Belle Isle will help clean the stain of Detroit on the national psyche.

The Freeman: People who appreciate the rule of law also appreciate the idea of equality before the law—the ideas that the rules should apply to everyone equally in some jurisdiction. Is there a sense in which an "opt-out" city is an affront to the rule of law? Or would it be a distinct jurisdiction from the state of Michigan?

Lockwood: The concept that rules and laws apply equally to everyone within a jurisdiction is important. That is why my vision is Belle Isle will form its own jurisdiction, in order to allow its social and economic experiment to be tried. In doing so, it takes nothing from Michigan or the rest of the U.S.; in fact, [it] will pay for the entire value it receives from the U.S. military defending its citizens' lives and property—about \$2,000 per year per person.

The rest of the U.S. will be the real beneficiary, as it can observe whether or not the experiment works, and can do so without risking change on a much larger scale.

*The Freeman:* What would be the minimum conditions you think you would need for Belle Isle to work?

Lockwood: Belle Isle would work if it could have its own system of taxation and government, with freedom of travel between it and the mainland. It would not need its own currency, as is predicted in the book's story due to the dollar losing world reserve currency status.

*The Freeman:* How would you make the rules? What would they look like? (Give any details you like, including taxes, fees, courts, or what have you.)

**Lockwood:** A model constitution will have to be established. I like Liechtenstein as a starting point. Its Crown Prince Hans-Adam II has outlined its constitution in a recent book, *The State in the Third Millennium*. Many of the concepts for Belle Isle come from his book.

The monorail will have a user fee, but most of the general budget will be based on a modest consumption tax of less than 10 percent and a real estate tax on land only. The basic tenet concerning taxation on Belle Isle is "Never tax that which you want to encourage, and taxes must be transparent." Thus there will be no tax on labor income, no tax on investment income, no taxes at death (on moral principles), and no tax on corporations (doesn't meet the transparency requirement). Building improvements will not be taxed either, as we want to encourage high-quality architecture and construction.

Spending will be limited to 10 percent of GDP, as opposed to the current 42 percent spent in the U.S. by local, state, and federal governments. This is possible as there will be no entitlements, with the private sector picking up the funding required for the needy and less fortunate.

The island government will have a governing council, an executive, and a system of courts quite similar to [that of] the U.S. and most states. It will also have an independent and sophisticated Anti-Corruption Group whose sole purpose is to keep government clean (as Singapore has implemented). This is a different approach to the current system where we try to catch government corruption after the fact, rather than have systems in place to prevent it.

The criminal system will be similar to [that of] the U.S., although I envision it will be simpler. The civil liability system will be different, in that complex or technical torts will be tried before a jury of three experts in that field, rather than a lay jury. Judges will be rated annually by the attorneys who appear in front of them and will be offered bonuses on their caseload and rate of overturns of decisions on appeal.

*The Freeman:* You've put a lot of thought into this. Is there a vital element in your mind?

Lockwood: Perhaps the most important aspect of the Belle Isle system will be its charity-based safety net. The government will initially take on the role of issuing ratings on charities that desire to be rated. The amount of money spent on fundraising and overhead, as opposed to that spent on the mission itself, will be considered. Citizens of Belle Isle will be free to donate to any cause they wish, but highly rated charities will be viewed more favorably. And 1 percent of GDP will be included in the Belle Isle budget to be spent on charities, as selected by the residents through an online voting system, similar to how 401(k) plan allocations are done today. I view the success of this charity system to be the most important element in Belle Isle's social experiment. I believe it will work and become the model for good governance in other locations.

There are many more ideas outlined in the book, even though it is a quick two- to three-hour read. If only half of them are implemented, people will see a big difference in their lives.

*The Freeman:* Rod Lockwood, thank you so much for your time.

Lockwood: My pleasure. **FEE** 

# The Beautiful City

**TROY CAMPLIN** 

That makes a city beautiful? It's not its parks and architecture, decorative though they may be. It's not the mannequins dressed in high fashion, or the creative window displays. A city's beauty comes from its life, from how its structures keep people teeming on the sidewalks and arterials—pulsing like blood through a body. A city's beauty comes about the same way all beauty comes about in nature: through the unity of apparently opposing phenomena.

"Neighborhood accommodations for fixed, bodiless, statistical people are accommodations for instability," wrote the great observer of cities, Jane Jacobs. In order for a neighborhood to have staying power, Jacobs thought, the people in it must constantly change. A city only becomes stable through "a seeming paradox." That is, to get a critical mass of people to stay put, a city has to have "fluidity and mobility of use." And so the neighborhood itself must change and reorganize itself in order to keep its people there. Fixedness and change. Healthy cities exemplify such paradoxes.

Cities are also products of attraction and repulsion. These forces somehow find balance. Identical businesses may repel each other, but similar businesses can attract each other. You won't typically find two hair salons next to each other, for example, but it's not uncommon to find a nail salon, a shoe store, and a clothing store in proximity. Why do fast food restaurants attract each other? And why do malls seem to keep their distance? A glance at any online map will show the shopping malls in an area to be roughly the same distance apart—close enough to each other to reduce transportation costs, far enough away to reduce competition. The presence of a mall, in turn, attracts more shopping and more restaurants nearby. These forces of attraction and repulsion work together to create a city's textures, its amenities, and its strange centers of activity.

Another apparent contradiction Jacobs finds in cities lies in their ability to reconcile the dweller's desire for both the private and the social: "A good city street neighborhood



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achieves a marvel between its people's determination to have essential privacy and their simultaneous wishes for differing degrees of contact, enjoyment or help from the people around."

These public places foster weaker social bonds and, thus, create the conditions for a public life. Weak bonds are the social forces created by private citizens who shuffle and cluster on the neighborhood street. It's the morning nod to the Bangladeshi man who minds his newsstand each day. It's thirty seconds of sports banter with the doorman at work. We end up being far more social when our weak bonds dominate our more clannish instincts—such as the bonds that hold together street gangs or let whole nations tolerate ethnic cleansing. Of course family and friendship bonds are strong, but it's not clear it's healthy to extend these to the wider society. Because we ultimately choose our bonds, a healthy mix of weak and strong bonds will originate in all the choices cities can provide. And such bonds will change with one's needs.

Still, some people think all social bonds have to be strong to be healthy—and perhaps they do in certain circumstances. But most public works projects and community "investments" are done in the name of either

# **TIRZAH**

Frederick Turner

Give me a vision of your city, friend.

Law's zodiac of idols has withdrawn
Into the royal blue of that day's dawn:
Now revelation's bans are at an end.

We're all apostles, wear the cardinal's hat
When the old Holy Fathers pass away.

Science and art as once before hold sway
(You knew I had to say something like that).

Lovers awake within their pretty rooms.

Children are hugged and safe now everywhere.
Our priests and priestesses are grown-ups too.

Now fleshly love is valued for its blooms,
Now a strange music hovers in the air;

Now death itself is but a deeper blue.

Frederick Turner is the Founders Professor of Arts and Humanities at the University of Texas at Dallas, a former editor of *The Kenyon Review*, and author of over 30 books.

blind patriotism or building strong community. The trouble is, real community emerges from the bottom up. And the strongest bonds should arise out of mutual aid and mutual interests—not be implemented by planners or inculcated by demagogues. Ironically, when urban administrators try to create stronger community through subsidy, design, or fiat, such policies only push people to become less social—sometimes even antisocial.

For example, poor people are essentially paid to crowd into housing projects. Dependency causes them to look to the State and not to their neighbors or their churches for support. Many turn to crime and find connection in gangs who have an economic interest in controlling territory for black markets. Those who venture out into the neighborhood often become targets of crime—often because planners have determined that community can be planned and subsidized. Community starts to dissolve, which prevents those weak bonds—the filaments of trust—from developing at all. In a vicious cycle, other negative effects follow: urban decay, civic apathy, and general malaise. All of it originates in the conceit that people's lives can and should be planned.

But a free and vibrant city is a place of order and disorder, of unity and diversity, of competition and cooperation. It's ordered chaos. No city is perfect, nor can it be. But as *Freeman* columnist Sanford Ikeda observes, "Great cities are Hayekian spontaneous orders par excellence." The beauty of cities is the beauty of all such orders—like coral reefs or rainforests. Adam Smith's invisible hand is a beautiful paradox, too, and the city is a living symbol of that hand at work.

Beauty can be discovered between our instincts and our reason. All spontaneous orders are both "beyond instinct and often opposed to it, and which is on the other hand [...] incapable of being created or designed by reason." While beautiful buildings are designed, beautiful cities emerge.

Why am I concerned to show that cities are places of paradox and are therefore beautiful? Hayek, after all, argued in *The Fatal Conceit* that humans, who evolved to live in smaller groups, can be quite uncomfortable in the urban centers of the extended order, despite the fact that these are beneficial. Given that Hayek was a founding thinker in the idea of spontaneous order, many would suggest we simply take him at his word. But should we?

Another in the tradition of spontaneous order, Francis Hutcheson—a teacher of Adam Smith—defined something as being beautiful if "there is Uniformity amidst Variety." This is also known as organic unity. We can apply this idea not just to objects, music, and other arts, but to

the natural world and to social systems. Beautiful works of art and literature help us to both understand and live well within spontaneous social orders. And we can find comfort in that.

From the time of the ancient Greeks when beauty was associated with the golden ratio, to Hutcheson's unity of variety, to contemporary thinkers, such as Frederick Turner, whose non-poetic works all deal with beauty, we see a recurrent theme: Beauty emerges from paradox. And the more paradoxes something has, the more beautiful it is. In the balance between strong and weak bonds, competition and cooperation, the individual and the social, ethnic and mixed communities, attraction and repulsion, in all of this variety within the city itself, we find beauty. This might very well be why we humans, beauty-seekers ourselves, are increasingly seeking out life in the city.

Troy Camplin (zatavu1@aol.com) is an independent scholar and the author of Diaphysics.

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# Keeping Austin Weird

**MAX BORDERS** 

n a watering hole near the state capitol, pretty women with tattoos find a handful of sharply dressed men who've loosened their ties. A Johnny Cash song gives way to The Clash. A rocker works his way to the bar so he can have a drink before his set. And behind them in a corner, a scrawny kid sits at a laptop writing code for a game app that will soon swallow up millions of joyous hours from people around the world.

Cross the street and discover techno thudding in some basement club. A little farther away a Stratocaster is conjuring the ghost of Stevie Ray Vaughn.

Smells from food trucks draw different people as if by invisible cords. Find smoky brisket or fish tacos among the trailers. Or sort through the culinary ecosystem for higher-end fare—Uchi's gourmet sushi or Lambert's boar ribs would do nicely. It's all just another day in Austin. If the Republic of Texas needs a capital at all, Austin will do iust fine.

Austin has always been "alternative." But SXSW—the music, film, and interactive festival—has gotten so big that some Austinites are creating SXSW off-Broadway shows

just to rebel. And that's fine. There is a secessionist streak here that may be in the DNA. If secession weren't stigmatized

by slavery, Texas might MUSTCIAN OADING AND ERMIT REQUIRED

be its own country. And Austin would be a logical place for a new constitutional convention. Call me a crazy teabagger for suggesting such a thing, but secession is just another word for "selfdetermination." And people here determine their own selves like nobody's business.

Austin made its name as one of the country's best music towns, right up there with Nashville, New York, and Los Angeles. This being Texas, it has a country-and-western vein that intersects with a desert rock vein. But it has its own spirit, evoking highways rolling over hill country, waxy trees, dusty cars, and a big sky.

But Austin is also a tech cluster. Some of your favorite habits may have started here among wily game developers. It's just one of the ways creativity manifests itself in a city far enough outside the Beltway to escape that dark gravity



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that prevents the *sui generis*—a Latin phrase meaning "of its own kind"—flowering of civilization.

When you live here, the creativity is palpable. Washington, D.C., folks ought to visit Austin at least once. They might discover they've been living in a creative desert or a spiritual abyss—a political purgatory where, upon meeting someone, you're expected to unfurl your resume before any conversation can proceed. Once you escape all those talking points in pantsuits, even for a day, you find you can breathe easier. Because in Austin, people talk about what makes them happy.

There's been an influx of relative newcomers like me in recent years. Most are from California. Notwithstanding all the bartenders wearing T-shirts that say "Thanks for visiting, now please don't move here," all people are welcome. Still, given what they did to the California they

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left, I'm frankly a little uneasy about what they might do to Texas. But for the moment, so-called "jurisdictional arbitrage" is benefiting Texas, and Austin in particular.

Yes, it's a trendy place, but that's only part of its appeal. Imagine some of the minor characters from the show *Portlandia*—only they're better-looking, some are wearing cowboy boots, they're smiling more, and they have tans. But that's just to drop in on a spaceship and look around. Once you're here a while, you discover you can subtract the Northwestern neurosis and pretension, add a heaping tablespoon of friendliness, and gain a sense that people cherish freedom here without really even being conscious of it.

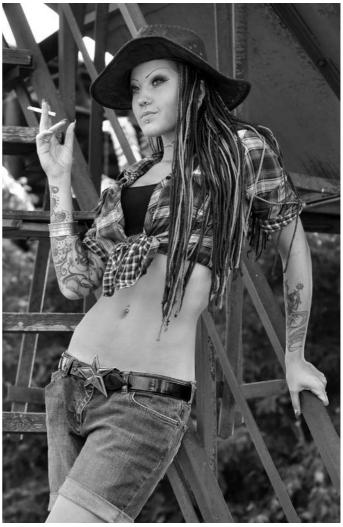
Still, you've probably heard that Austin is a mecca for self-styled progressives. At their pettiest, they'd prefer to dictate your grocery bag preferences. Plastic bags have already been taken away. Paper bags must be 40 percent recycled if they're offered at all. Just know the chicken blood that leaked into your reusable burlap sack is a small price to pay for a cleaner environment.

But as with the checkout line, Austin is a mixed bag. The same officious bohemians happy to ban bags would riot if the city fathers tried to regulate away their food trucks. And, of course, these are more or less the same people who made John Mackey a wealthy man. Whole Foods, and its value ecosystem, is just another one of Austin's strange contradictions.

"Keep Austin Weird" emblazons T-shirts and bumper stickers of the tackiest sort. But it is our mantra. It is a far sexier way to say "practice toleration" while also being a nicer way of saying "your city is boring." And to keep Austin weird is mandatory—even for the most insipid Midwesterner who wanders into town seeking his fortunes. It's not just that you might end up brewing kombucha in your basement, it's that you'd miss the weirdness terribly if it went away.

It's perhaps anticlimactic, but I'll save discussing the Austin libertarian movement for later. Suffice it to say we've got the merriest band of freedom lovers anywhere. They're young. They're many. And they're keeping Austin weird. (Free Staters, sit up and take notice: You've got some competition.)

Max Borders is editor of The Freeman magazine and director of content for The Foundation for Economic Education (FEE). He is also author of Superwealth: Why We Should Stop Worrying About the Gap Between Rich and Poor.



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# The Austin Libertarians

Austin is home to an active and growing minority of oddball libertarians. You can find vague groups and subgroups among all those individual characters.

*Media Disrupters.* The first group is a media-savvy strain. When they look at your multimillion-dollar think tank, they see mostly waste. This group is tired of the Washington-style whitepaper industrial complex whose funders keep throwing money over the guild walls out of habit. The Media Disrupters are getting impatient.

John Papola and Josh Meyers, for example, are busy building Emergent Order, a production company that will remain profitable if it continues to make great videos like "Fear the Boom and Bust" and "Fight of the Century." Word on the street is Emergent Order will soon begin production of a feature-length film.

Norman Horn found his own powerful media niche with Christian Libertarians. Even a jaded atheist like myself can appreciate Horn's outreach efforts to this religious community (or is it religious outreach to libertarians?). Whatever the case, Horn has created a home for both interesting content and a growing community. (Horn also started agitating for liberty on the UT campus as early as 2006. He's considered something of a founding father of the Libertarian Longhorns, which is large and active today.)

Jason Rink runs the Foundation for a Free Society here in Austin. Rink, a freedom evangelist originally inspired by Ron Paul, left banking to do creative work in the liberty movement. Rink is known for his work making *Nullification* and for writing *Ron Paul: Father of the Tea Party*.

Filmmaker Seth Blaustein and I have started our own annual event called Voice & Exit. The idea isn't that zany: Plan an event that includes TED-like talks about interesting ideas in free human cooperation, put some work into production value, offer an interesting experience for the attendees, and have something to show for it online. It's an ongoing experiment. But in the first year we managed to fill 250 seats and stay in the black. Per dollar spent, we've already yielded way more than any networking event where the usual suspects slap each others' backs and eat rubber chicken as the world turns.

Community Organizers. What about the activists? They're here all right. Many were inspired by the congressman from TX District 14 back in 2008.

Pierre de Rochement, founder and GM of a nanotech startup, has worked tirelessly to stop TSA scanners and institutionalized frottage at Austin Bergstrom airport. In addition to being a determined advocate for liberty, de Rochement is a brilliant scientist and his technology may be in the guts of your next mobile device.

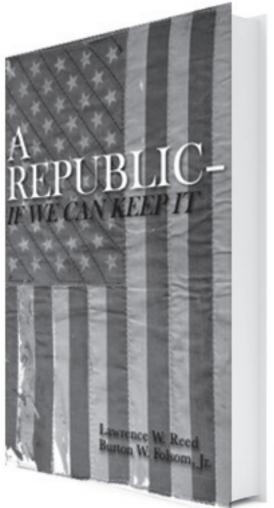
On any given Saturday night, you're also likely to find Antonio Buehler (see page 8) with a small army of volunteers. They're armed with video cameras and they patrol the city in an effort known as The Peaceful Streets Project. The group films police, mainly to keep them honest, but also to prevent abuses. The project was born after Buehler himself was arrested for filming a police stop one fateful New Year's Eve.

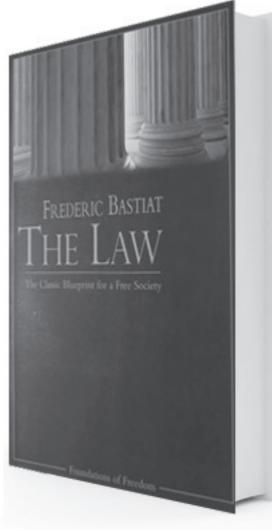
Those not checking the police are resisting the public school monopoly. Justin and Jessica Arman are running a new organization called Parents for Liberty. Both are disillusioned with the Soviet factory model of education and are currently building capabilities online that help families around the world form education co-ops.

Heather Fazio is president of a group called Texans for Accountable Government (TAG). Fazio has boundless energy and TAG is willing to work on all manner of local issues, including civil liberties, decriminalization, and constitutionally dubious sobriety checkpoints.

Natural Agorists. One group is ready to forgo economies of scale because its members think that to be authentically free is to wean oneself off the grid. Now, I like shopping at Target. Still, I appreciate those, like John Bush and his wife Catherine, who are experimenting with different ways of living. Their free-range, go-local libertarianism recalls the romanticism of Thoreau and the rugged communitarianism of Tocqueville.

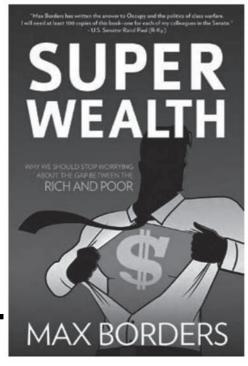
Conspiracy. Over in the fever swamps, you have the followers of radio personalities who believe everything is a conspiracy. If you are skeptical, you're probably in the pay of the Bilderberg Group and the CIA. And yet if the proverbial s\*\*t ever hits the fan, whether due to conspiracy or economic collapse, these are the people who'll have the guns, the butter, and the silver coins. (Keep your distance, but don't be cruel.)





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# Meet the Targets or Die the Death

**JEFFREY A.TUCKER** 



Sometimes a national story, reported in big venues in big ways for 48 hours, just goes away for no good reason. No lessons are learned. No insights are gained. No fundamental reforms are inspired.

That is the case with the Atlanta public school scandal, in which

investigators identified 178 teachers and principals in 44 of the system's 100 schools involved in cheating on student tests. The investigation has finally been completed and some people are going to the pen.

The response to the news was typical: Down with these lying teachers. This response taps into a feeling we all have that tests should record actual student achievement. Falsifying exam results outright, solely to make the students and system look better than they are, is the height of fraud.

But let's look a bit deeper.

What's the incentive structure behind the cheating scandal? No one at the top had ordered teachers and principals to change the tests. Bureaucrats put in place

a system designed to make kids successful by fiat. Everyone knew the rules: Teachers and principals who failed to achieve these goals, however unreasonable, would be fired. And yet when the smoke cleared, everyone simply blamed the teachers.

#### **The New Boss**

When she was hired as superintendent in 1999, Beverly L. Hall gave all principals three years to meet the state-mandated targets. They didn't. She closed 20 percent of the schools and fired 90 percent of the principals. People cheered for the obvious reason: these schools were

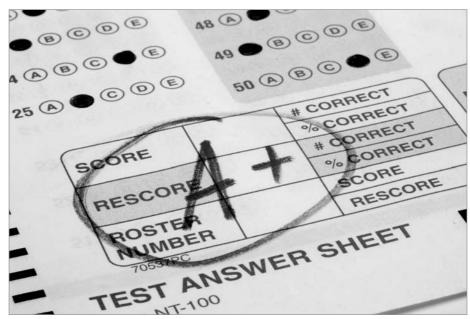
non-functioning. Someone had to pay the price.

Everyone who survived got the message and the new hires were on notice: Meet the goals or face professional death.

Then around 2004 the schools magically turned around. Scores on the exams mandated by the federal "No Child Left Behind" legislation started to rise. Dr. Hall became a national hero and fixture on the media and lecture circuits, explaining how inspiration and good management can make the difference.

Behind the scenes, the reality was very different. After collecting all the students' tests, a group of teachers nicknamed "the chosen" would meet behind closed doors. They sat in a big room and went over each test, erasers in hand, looking for incorrect answers to fix.

It sounds crude and ridiculous. Initially, according to the main witness—elementary school teacher Jackie Parks—"the chosen" were reluctant. But then the scheme started to show results. The scores showed that 86 percent of eighth graders passed math compared with 24 percent the year before. The same was true for reading: 78 percent passed versus 35 percent the year before.



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IS IT WRONG TO

cheat? Yes-but look at the

bigger picture and the inherent

problems with the system.

The problem is not the cheaters

per se; the problem is the

ridiculous idea that you can

reinvent reality by passing a law

and enforcing it.

The conspirators received nothing but praise for the results. The business community was thrilled because it drew new attention to the city and inspired investment and migration. The government was happy because everyone

wants the public schools to work.

Most importantly for those doing the dirty work, they kept their jobs. Since the cheating didn't seem to incur any penalties, but insufficient scores would have, it was an easy enough choice.

In 2010, investigators got involved. The jig was up. Now Dr. Hall may be facing 45 years in prison. 35 Atlanta-area teachers face

similar charges. As Hall languishes in jail, we should ask what this does for the kids. Do they benefit? The answer is nothing changes for them. They didn't actually become better educated in 2004 and they won't be suddenly made less proficient now. It's just the same old broken system.

# The Fruits of the System

The first response to this kind of story is: Lock 'em up. But, again, what does that actually fix? I can't help but be somewhat sympathetic to everyone involved, and that even goes for Dr. Hall.

Here's why I say this: Every government plan gives rise to cheating and manipulation. This is true for the smallest cases or the biggest. This is easier to understand if you consider more famously epic cases.

Consider an example. It is 1935 Russia. Grain crops keep failing, despite the Five-Year Plan Stalin imposed. He's sick of it. It's embarrassing. So this year, he decides to crack some skulls. Already tens of thousands have died, and everyone knows he means business. It's the same in every industry actually, from steel to cars to railways.

What happens? The new farmer or plant manager faces either professional or real death or he fudges the records.

He figures out a way to survive. And the difference between Soviet five-year plans and public school five-year plans seem to me to be mostly a difference of degree.

Are people going to cheat? Absolutely. Is it wrong to

cheat? Yes—but look at the bigger picture and the inherent problems with the system. The problem is not the cheaters *per se*; the problem is the ridiculous idea that you can reinvent reality by passing a law and enforcing it.

"No Child Left Behind" was nothing but a soft version of Stalin's Five-Year Plan. It was an attempt to reform around the edges a system that is fundamentally

wrong. It mandated that nationalized institutions, with students who are required to be there or face penalties, achieve a certain level of output or else everyone in charge gets replaced. This reform legislation was passed as a "back to basics" plan to replace the previous liberal plan that seemed to have no standards at all.

Now it stands as just another failed reform, another attempt to make reality different by passing laws and cracking skulls. It never works. So long as schools remain the province of politicians and are owned and run by the State, these reforms will continue as they have for a century. And in the same way, there will be incentives to cheat the system, no matter how strict the penalties.

The real way education is being reinvented in our time is through myriad private efforts. Home schooling, privately managed charter schools, privately owned schools, unschooling, Internet-based learning, church schools—each of these solutions is something that the political and bureaucratic class doesn't like. But they are marking out the only real path for reform that can work.

Jeffrey Tucker (tucker@lfb.org) is executive editor and publisher at Laissez Faire Books.

# Hiding the Unemployed: Disability and the Politics of Stats

**WENDY MCELROY** 

ome statistics cannot be understood without setting them within a political framework because they reflect politics as much as or more than they do reality.

The unemployment rate is an example and a cautionary tale.

According to the Bureau of Labor Statistics (BLS), the official unemployment rate for last February fell to

a four-year national low of 7.7 percent. While the White House cautiously congratulated itself, Republicans quickly pointed to what is often called the real unemployment rate; it stood at 14.3 percent.

The BLS looks at six categories of different data, from U-1 to U-6, to analyze employment every month. U-3 includes people who have been unemployed

but who have actively looked for work during the past month; this is the official unemployment rate used by the media. U-6 contains data excluded from U-3, including part-time workers and the unemployed who have unsuccessfully looked for a job in the last year; this is the real unemployment rate.

#### The Disabled and the Unemployment Rate

Those politicians who want to take credit for lower unemployment thrust U-3 figures forward. Those who wish to deny them credit prefer U-6.

But matters may even be worse.

Now there is fresh reason to believe that even the 14.3 percent rate may be a considerable understatement.

National Public Radio (NPR) recently published

the results of a six-month investigation by reporter Chana Joffe-Walt: "Unfit for Work: The Startling Rise in Disability in America." Joffe-Walt uncovered what she called a "disability-industrial complex," which spends more on disability payouts than on welfare and food stamps combined.

About a year ago, the *New York Post* reported that "more than 10.5 million individuals" received disability each

> month, and the reserves would be exhausted in 2018. Now Joffe-Walt claims the federal government sends out approximately 14 million payments; Social Security's disability fund is expected to run out of reserves by 2016.

> On March 22, during an interview with "This American Life," Joffe-Walt explained that "since the economy began its slow, slow

recovery in late 2009, we've been averaging about 150,000 jobs created per month. In that same period every month, almost 250,000 people have been applying for disability."

Why do disability figures skew the unemployment rate? In the NPR article, Joffe-Walt explains that "the vast majority of people on federal disability do not work. Yet because they are not technically part of the labor force, they are not counted among the unemployed." They become the invisible unemployed.

welfare became a continuing cost for a state, but each person who moved onto disability saved the states money, because Social Security Disability Insurance is fully funded by the federal government.

EACH PERSON ON

# What Explains the Rise in Disability Payouts?

The precipitous rise in disability claims comes from the unintended consequences of political maneuvering.

"The End of Welfare As We Know It" was announced in 1996 when President Clinton signed a reform act intended to move people off welfare rolls and into jobs. Clinton "encouraged" the individual states to push for the transition by making them fund a much larger share of their welfare programs. To encourage the

individual recipients, the reforms also capped the length of time a person was eligible for welfare.

The incentive worked on the states, but not in the manner intended.

Each person on welfare became a continuing cost

for a state, but each person who moved onto disability saved the states money, because Social Security Disability Insurance is fully funded by the federal government.

In her NPR report, Joffe-Walt indicates how aggressively the states shifted welfare recipients onto disability. She writes, "PCG [Public Consulting Group] is a private company that states pay to comb their welfare rolls and move as many people as possible onto disability. The company has an office in eastern Washington State that's basically a call center, full of headsetted women in cubicles who make calls all day long to potentially disabled Americans, trying to help them discover and document their disabilities." A recent contract between PCG and the state of Missouri offered PCG \$2,300 per person it shifts from welfare to disability.

The incentive for individuals to leave welfare also worked, but, again, not in the manner intended.

Disability is easier to qualify for than welfare, and it has no time limit. Moreover, those on disability qualify for Medicare and other benefits, and receive payments roughly equal to a minimum-wage job. According to Joffe-Walt, only 1 percent of those who go onto disability leave to rejoin the workforce.

# **Conclusion: What Is the Actual Unemployment Rate?**

If neither the official (U-3) nor the real (U-6) unemployment rates can be trusted, then how can we ascertain a more reliable rate?

IF NEITHER THE official (U-3) nor the real (U-6) unemployment rates can be trusted, then how can we ascertain a more reliable rate?

A huge step would be to acknowledge the invisible unemployed who are not part of the current BLS calculations. They include not merely the so-called "disabled," but also those who have left the workforce for other reasons.

CNS News noted of the February 7.6 percent unemployment rate, "the number of Americans designated as 'not in the labor force' in February was 89,304,000, a record high . . . according to the Department of Labor." The economic trend-monitoring site Investment Watchblog concluded that the actual American unemployment rate—one that includes all unemployed—is around 30 percent. The site reasoned, "89 million not in the labor force = 29%, give or take, assuming the US population is 310,000,000 + official unemployment 7.7%."

It is not possible to render an entirely accurate unemployment picture. For example, the population figure of 310,000,000 used by Investment Watchblog almost certainly includes people under 16 who cannot legally work. Thus the unemployment rate may be higher. On the other hand, many "not in the labor force" could be retired or otherwise voluntarily unemployed. Not enough data are available.

It is possible, however, to reject the official unemployment rate. And it is necessary to cultivate a healthy skepticism of statistics produced by politics, as so many are.

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# Patents Are Property Rights

**ADAM MOSSOFF** 



actual inaccuracies and historical misconceptions abound in debates about patents. So let's first clear the air. As a preliminary matter, it's important to recognize that early American legislators, judges, and commentators invoked Lockean natural rights theory in recognizing that patents rightly secured the "fruits of labors" of inventors. This isn't surprising, as John Locke himself embraced inventions and writings as property rights. He endorsed copyright as property in 1695 and he approved of "invention and arts" in his chapter on property in the Second Treatise.

Some libertarians also assert that historically patents were statutory (monopoly) grants that were distinguished from "common law" court decisions that secured property rights in land, but this is myth masquerading as history. We should reject it for the same reason we reject historical myths like the "robber barons," because each uses a false account to bootstrap a normative argument. In fact, in the early American republic, courts secured patents as fundamental property rights: Judges created and applied to patents the same legal doctrines used to secure real estate, expansively protected patents, and provided constitutional protections to patents.

In a short essay, of course, I cannot fully justify patents as property rights, but I can briefly summarize the case. At root, the justification for property rights is a justification for all types of property rights, such as farms, buildings, factories, oil and gas, radio spectrum, corporations, and inventions, among others. All "property" arises from the fact that one must produce the values required for a flourishing human life. (Here, "value" is not an economic concept, it is a moral concept, referring to those things a person produces to live a flourishing life.) Thus, the "right to property" defines the sphere of freedom necessary to create, use, and dispose of these values.

All production, whether of factories, cars, computers, or new biotech drugs, necessarily starts with a process of conceptually identifying both the values one seeks to create and the means to create them. This was Locke's genius, as he was the first to recognize, albeit imperfectly, that property arises from the moral act of *productive labor*. Ayn Rand's genius was to recognize that man's mind is his basic means of survival, that production is the application of reason to the problem of survival, and thus that all property is logically *intellectual* property at root.

Rand's ethical theory makes explicit why property rights have never been limited to just physical objects: The genius and success of Anglo-American property law is that it recognized that property rights secure *values*, not physical objects. American courts have long recognized that "property ... may be violated without the physical taking of property" given any act that "destroys it or its value." (*In re Jacobs*, 98 N.Y. 98, 105 [1885].) This is the meaning of the natural rights metaphor that property rights secure the fruits—the use and profits—of one's labors. As another court explained, "A man may be deprived of his property...without its being seized or physically destroyed, or taken from his possession." (*Wynehamer v. People*, 13 N.Y. 378, 433 [1856].)

For this reason, American law justly secures property rights in novel and useful inventions—securing the right to make, use, and profit from the value created by an inventor's productive labors. Patent law thus secures the same rights in inventions as it does in securing all values created by all types of productive labors. As an American court recognized in 1845, "we protect intellectual property, the labors of the mind, productions and interests as much a man's own, and as much the fruit of his honest industry, as the wheat he cultivates, or the flocks he rears." (*Davoll v. Brown*, 7 F. Cas. 197, 199 [C.C.D. Mass. 1845].)

All property is fundamentally intellectual property, because the human mind is the ultimate root of the values we produce to live flourishing lives—and all of these values are justly secured as property rights to their creators.

What to make of this normative insight?

First, it means that property rights are not fundamentally justified as a solution to disputes over "scarce" goods. To begin the *moral justification* for property rights from the *economic concept of scarcity* leaves unanswered the questions, "Why is producing values morally justified?" and "Whence do values come?" Of course, property is a moral standard for resolving disputes, but this is only a logical corollary of the moral justification of property rights: The fruits of productive labor should be secured to their creators.

Second, property rights are objectively defined by the nature of the value secured to its owner. Thus, different types of property are secured differently under the law. Term limits and other unique legal protections or limits for patents are of no more fundamental import than other doctrinal differences in how the law secures property rights in water, chattels, land, spectrum, corporations, credit, etc. In short, neither scarcity nor term limits refute the fundamental, moral reason that patents are property rights. All property rights secure, in the words of Rand, "a man's right to the product of his mind."

Adam Mossoff is professor of law and co-director of academic programs at the Center for the Protection of Intellectual Property at George Mason University School of Law.

# THE ARENA

# Patents Are a Government Creation

**JEFFREY A.TUCKER** 



If patents for inventions were part of the free market, to make and sustain them would not require legislation, constitutions, bureaucracies, filings, armies of attorneys, and years of litigation. They would exist in the same way regular property rights exist. From time immemorial, people have owned stuff. They've used stuff. They make deals and trade. No one is harmed.

But with patents, a government agency causes them to exist. Once the apparatus is in place, you hire an attorney. You hammer together just the right claim. If it looks vaguely unique—lawyers specialize in this—three years later, you get back a sheet of paper that guarantees you an exclusive right. This is not a right for you to make a thing. It is a right for you to exclude others from making that thing.

In other words, a patent is a license to coerce third parties who may or may not know anything about your supposed invention. It doesn't matter if someone else invented your widget completely independently. You now own the government-granted right of monopoly privilege. Patents are no more or less than that.

The whole subject of "intellectual property" (IP), of which the patent is one type, confuses people who otherwise believe in property rights. IP is not a property right such as the one you own over your shoes or house or business. It is a manufactured right, one invented by legislatures and bureaucracies to back some producers over other competitive producers.

Along with tariffs, patents were the earliest form of crony capitalism. And they have been dragging down the pace of economic innovation from the beginnings of the Industrial Revolution to the present, from the steam engine through the smartphone. They throw barriers in the way of the discovery component of the market process and entangle enterprise in a thicket of lawsuits.

In a free market, a commercially successful producer with a new and economically viable product can hope to experience a period of profitability just by being the first to market. It takes awhile for others to observe the success, speculate on its continuation, roll out a new version, and get it to market. It is never enough to copy. You have to improve to beat the market leader. This is how the free market works. It is based on learning and competition, not monopoly.

Patents change everything. By granting a monopoly, the producer can prolong the period of profitability for longer than

the free market would otherwise allow. The history of invention is filled with examples of individuals and firms who get the grant and then squander massive resources to hold on to it against the attempts of "pirates" to enter the market. Eli Whitney, the Wright Brothers, Alexander Graham Bell, and Steve Jobs are all examples. (As a side note, patents have seriously distorted our perceptions of the history of invention. We need a radical reconstruction of this history that does not rely on patent records.)

Patents don't help the little guy. They help the big guy who is already successful beat back the competition. This is why writers in the classical liberal tradition have long pointed to patents as unjust, inefficient, and unnecessary interventions.

In 1851, *The Economist* stated why: "The granting [of] patents 'inflames cupidity', excites fraud, stimulates men to run after schemes that may enable them to levy a tax on the public, begets disputes and quarrels betwixt inventors, provokes endless lawsuits ... The principle of the law from which such consequences flow cannot be just."

Joining the opposition in the twentieth century have been Fritz Machlup, Ludwig von Mises, Murray Rothbard, and F. A. Hayek. (Ayn Rand was an exception.) And all of this opposition came about before the huge expansion of the patent system today that applies to seeds, software, and even time travel.

Ninety-nine percent of the patents issued are never used. Most patents just sit there like time bombs, waiting to blow up other attempts to enter the market. They don't inspire people to invent; they inspire people to use parasitic methods to stop others from inventing.

What a strange system of central planning it all is! You can't have free enterprise when the government is slicing and dicing ideas and assigning monopolistic titles to them. The purpose of property and prices is to provide for the peaceful allocation of scarce resources. Ideas, once public, are no longer scarce.

As Thomas Jefferson said in a letter from 1813, "If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea JJ ... He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me."

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# What's Right with Malthus?

#### **ROSS EMMETT**

If...we come to the conclusion, not to interfere in any respect, but to leave every man to his own free choice, and responsible only to God for the evil he does...this is all I contend for.

—Thomas Robert Malthus

am constantly surprised that defenders of liberty and free markets love to bash Thomas Robert Malthus. Maybe I shouldn't be, but consider this: Robert Malthus (his friends called him "Bob") was one of the primary interpreters of Adam Smith for the generation after Smith. Indeed, a lot of people who pick on "Thomas" Malthus get Bob Malthus wrong.

That's not to say that Malthus was right about everything. But even more than Smith's, Malthus's economics built upon the idea that all humans similarly respond to incentives, and he thereby rejected the idea of natural hierarchy. Writing in a country that had excessive restrictions on labor markets—take a look at the poor laws—Malthus was an advocate of free labor markets. And Malthus argued that private property rights, free markets, and an institution that would ensure that both parents were financially responsible for the children they bore (that is, marriage) were essential features of an advanced civilization.

"Wait a minute," you may be thinking. "Are we talking about the Malthus who claimed back in 1798 in his book *An Essay on the Principle of Population* that population growth would decrease per capita well-being? Isn't this the guy who argued that the combination of population growth and natural resource scarcity would create catastrophic consequences, including disease, starvation, and war, for much of the human race? And didn't he miss the benefits of entrepreneurship and innovation, blinded as he was by the fallacy of land scarcity?"

That Malthus—let's call this one "Tom"—is more a creature of the ideological opponents of markets than of Malthus's own writings. So maybe we should revisit Malthus and see what he actually said.

It all begins with a thought experiment: What would happen to human population in the absence of any institutions? The answer is the population principle, which is the only thing most people know about Malthus. And it's largely correct. In the absence of institutions, humans are reduced to their biological basics. Like animals, humans share the necessity to eat and the passions that lead to procreation. To eat, humans must produce food. To procreate, humans must have sex. If there are no institutions, human population will behave like any animal population and increase to the limit of its ecology's carrying capacity.

#### **Bob's Model**

The biological model is simplistic; it treats humans as mere biological agents. It is this biological model that produces all the results people usually associate with Malthus's name. And it's not very far off from people's conditions when their institutions have suddenly been disrupted by things like conquest, revolution, or war. (Consider the dual problems of war and drought that resulted in famine for Ethiopians in 1983–85, for example.)

But for Bob Malthus, the biological model is only a starting point. The model set up his next concern: the incentives created by different institutional rules for families' fertility choices (in Malthus's terms: the decision to delay marriage). The comparative institutional analysis that emerged from his further investigation became the basis for his defense of the institutional framework of a free society.

But to get there, Malthus needed a more complex model of the human being, one that viewed us as more than biological agents.

His more complex model included two additional things.

The first was human reason and foresight. (Darwin's model of natural selection actually came to him when he asked, while reading Malthus, what the biological response

to the lack of foresight and reason would be.) Malthus asked, what happens when we recognize that humans have the capacity to anticipate the future and to respond to it? His answer was that individuals prudentially make changes in their choices in order to respond to potential

opportunities and threats.

The second thing Malthus introduced was a form of contractarianism and the idea of institutional incentives. When we recognize that humans can contract with others to create rules that will structure our future options, then we are building social institutions that incentivize individual actions.

Malthus first employs both of his models in his criticism of William Godwin's *Political Justice*, at the end of his original *Essay*. Using the biological model, Malthus shows that Godwin's call to eliminate all institutions would result in rapid population growth, creating the threat of a population "bomb." But then he stops short of reducing humanity to Hobbes's tragedy of the war of all against all. (Garrett Hardin went further than Malthus would in his "tragedy of the commons" article, which has had such an influence on neo-Malthusians.) Why does Malthus not draw the obvious neo-Malthusian conclusion? Because he begins to employ his complex model instead.

# **Institutions and Sustainability**

Seeing the prospect of falling into a Hobbesian state of nature, people would rather "hold a convention" and establish property rights. And then, he argues, they would fashion a rule or institution (call it "marriage") that would require parents—especially fathers—to be financially responsible for their children. These institutional moves would allow society to create a sustainable future.

The institutional considerations of his more complex theory really come out, however, in

subsequent editions of the *Essay*. In these editions, Malthus engages in a nascent form of empirical institutional analysis. Between his own travels and traveler reports from around the world, he assembles a comparative study

# **HISTORY**

Bruce Bond

Back then we put our pennies on the tracks and waited for the thunder of the boxcars to pound the Lincoln from their faces, so flat the mint of it was worthless, priceless, rare.

Those were days the full sun of Los Angeles crushed us as we thumbed the polished metal to search for evidence: a *god we trust*, a *liberty*, a date. It takes a god to kill a god, to have it drummed beneath the thrust of *this* world. But as I looked down the rails, I saw something of another, its parallels that narrowed as they rose against the heat, so close they almost met, as a man might meet the boy he was, faceless in the distance.

Bruce Bond is a Regents Professor of English at the University of North Texas and Poetry Editor for *American Literary Review*. He is the author of nine books of poetry, most recently *Choir of the Wells* (Etruscan, 2013).

of how different institutional settings handle population growth. His hypothesis is simple: Nations with civilized institutions will depend less on the positive checks on population growth because their citizens are provided with clear signals that allow prudential decisions regarding the delay of marriage. What he found was that in societies with private property rights, markets, and incentives that encourage responsible fertility choices (what he called marriage), the positive checks of disease and starvation never come into play, while in societies without those institutions, the positive checks operate in full force.

It turns out the mainstream view of Tom (as opposed to the real "Bob") was first created by opponents of markets, sustained throughout the nineteenth century by lovers of hierarchy, and resuscitated in the twentieth century by environmentalists committed to the view that there are natural limits to economic growth. These environmentalists picked out the bits they liked and scrapped the rest, as it suited their agendas.

But Bob Malthus thought institutions mattered. For Malthus, the institutions of a free society mattered for prudential fertility choices, as well as for human flourishing.

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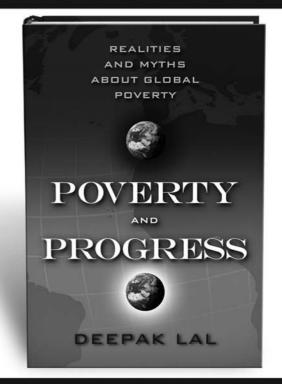
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# Why Rhett Butler's Weed Is So Strong

**BK MARCUS** 

ne of the main reasons I love economics—at least the Austrian or verbal-logical variety—is that it introduces an understanding of cause and effect in a world full of the buzz and hum of seemingly unconnected events.

Austrians don't believe in the sort of prophecy that the ancient Greeks believed in: divining the future, whether by oracular or econometric means. But they do buy the sort of prophecy that the ancient Israelites believed in: a deeper sense of cause and effect, which allowed the prophet to say, "If you keep doing X, the result will be Y."

- If you legislate an artificial price ceiling, you will make the artificially priced good scarcer. (Think fuel lines during Hurricane Sandy.)
- If you legislate an artificial price floor, you will create a glut. (Think minimum-wage laws and unemployment rates.)
- If you inflate the money supply, prices will rise wherever the new money's earliest receivers choose to spend it. (Think dot-com and housing bubbles.)

Here's one I learned later than the others:

If you prohibit a drug, the potency of that drug on the black market will increase.

In their book *Tariffs, Blockades, and Inflation: The Economics of the Civil War*, economists Mark Thornton and Robert B. Ekelund, Jr., call the more general version of this law the "Rhett Butler effect" after Margaret Mitchell's fictional blockade runner in *Gone with the Wind* (famously played by Clark Gable in the 1939 film version):

As the blockade became more severe and the relative costs of blockade-runners adjusted to the constraint, the price of luxuries relative to necessities fell within the South.

In other words, when a blockade raises the risk and the cost of the movement of goods, the return on transportation has to rise to compensate the transporters



Wikipedia.com

(less politely known as smugglers). In peacetime, it might be profitable to carry staples such as wheat, high-bulk commodities like coffee, or heavy industrial goods such as steel. But in the context of the North's blockades against the South, blockade runners could profit more from delivering smaller and lighter-weight luxuries to Confederate ports. The South thus found itself flush with things like "bonnet ribbon, playing cards, corset stays and...all kinds of personal items."

Thornton applies the Rhett Butler rule to other government prohibitions. When the Eighteenth Amendment outlawed alcohol in the United States, it raised the cost of every truck- or boatload of beer. Smuggling hard liquor delivered more bang for the buck. Thornton claims that Prohibition turned a nation of beer drinkers into a nation of high-octane boozers.

In contrast to the black market—where illegal drugs get ever-more potent—the legal and socially sanctioned drug markets produce ever-softer varieties: light beer, wine spritzers, hard lemonade, decaf and half-caf coffee. I remember 1970s subway ads all over the place for light cigarettes—filtered, milder, lower-tar—back when tobacco was less regulated and more socially acceptable. The market still provides grain alcohol, 101-proof whiskey, espresso, and extra-strength headache pills, but

diverse demand prompts producers to offer a full range of potencies to satisfy all types, from hard partiers to weekend socializers to middle-class working parents who just want a gentle pick-me-up or calm-me-down at either end of the day.

The Rhett Butler effect makes sense of the ongoing purification of heroin and cocaine and the soaring strength of marijuana over the years. One irony is that the Just Say No crowd in the 1980s was issuing dire warnings to the Boomer parents of us Gen-X teens: The pot your kids are smoking isn't the mild herb you remember from the 1960s; this stuff is a real drug!

At the time I didn't understand that it was the War on Drugs itself that had made the pot more powerful. I assume the drug warriors didn't appreciate that irony either.

So with Washington and Colorado voters making theirs the first states to legalize marijuana for adults over 21, Rhett Butler would predict a reversal of the potpotency trend. And indeed, that's exactly what Slate writer Emma Marris reports

in her March 20 article "Not *That* High":

My brother is a weed scientist...When I tell people about [his] job—that is, when I tell people who are roughly in my demographic of thirtysomething and fortysomething parents—I nearly always get the same response: "Really? Can he score me some weak weed?"

drug!

In an article that is all about how the legal market is about to produce mellower strains of marijuana, the author completely misses the boat on the Rhett Butler effect:

Clearly, there's a market segment out there that isn't

being catered to by the dope industry. And these relatively affluent customers want something more like a glass of wine at the end of the day.

So why, Marris asks, is dope so strong?

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herb you remember from

the 1960s; this stuff is a real

Because plants with big, strong buds maximize the basement grower's profit.

True enough, but why does that concept only apply to illicit weed farmers? Don't above-board operations care about maximizing profits?

> Plus, the people who grow it and sell it also smoke it, and they've got high tolerances and a deep fondness for its effects. They like it strong.

Oh, so it's cultural!

I once heard an archeologist criticizing his colleagues for attributing "ritual significance" to anything whose purpose they didn't comprehend. Understanding cultures may

be critical to understanding the world, but I think modern subculture is to many armchair social scientists what ritual is to some archeologists.

As soon as you hear that "there's a market segment out there that isn't being catered to," ask yourself what government intervention into the economy is causing the apparent market failure. That approach will serve you well whether you're talking about gasoline after a hurricane, desperate and willing people who are unable to find honest employment, or people from the PTA who wish they could score some milder stuff. **FEE** 

BK Marcus works from Charlottesville, Virginia, as a publishing consultant. He is the former managing editor of Mises.org and the founder of InvisibleOrder.com.

# Why Is There a Dole for Farmers?

**DOUG BANDOW** 



running up \$5 trillion in deficits over the last four years, Washington is borrowing another \$845 billion this year. And assuming Congress neither adds expensive new programs nor expands expensive old ones, the federal

government will run up another \$7 trillion in red ink over the next decade.

Government outlays must be cut. But when the sequester hit, reducing the \$3.6 trillion budget by a paltry 2.3 percent, much of Washington reacted in shock and horror. The savagery, the inhumanity!

Of course, the standard response to most any proposed cut is the cry, "What about the poor?" Yet most of the federal budget has nothing to do with the poor. In fact, Congress

Welfare Queens
Tyler Olson/Shutterstock.com

favors middle-class and corporate welfare, plus a plethora of lesser special interests—like the agriculture lobby.

It's obvious why welfare exists, even though Uncle Sam does a bad job of helping the poor. But why subsidize farmers because they are farmers? We don't have an engineers' support program. Or subsidies for writers. (How I wish.) There are no marketing orders for pharmacists. Or special loan programs for insurance salesmen.

Farmers have their very own Cabinet department. What accounts for the ability of people who otherwise appear

to be rugged individualists to sup so handsomely at the public trough?

Farming remains hard work, but lots of Americans work hard. True, farming gets romanticized more than most other jobs. Some city folk have a sentimental view of a way of life they never have experienced. Imagine the hardy frontier family creating a new life and bounty in the wilderness! Of course, this scenario has nothing to do with rural life today. And even if it did, that would be no reason to

tax away the earnings of some hardworking Americans to give to other hardworking Americans.

Nor do agriculture subsidies do much to save family farms, which capture the most public attention. Despite ample government funding, small family farms are disappearing. Their number has dropped 70 percent since Uncle Sam went into the farm business during the Great Depression.

Today agriculture is big business, made even bigger by federal intervention.

Another argument is that food production is essential and business is unpredictable. True, but Americans fed themselves before there was a Department of Agriculture. They fed themselves before there was a U.S. government. Even today two-thirds of American farm production, such as meat, fruit, and vegetables, is not subsidized. New Zealand got rid of all farm supports in 1984, and its farmers prospered.

In fact, government's role in agriculture almost always has been pernicious. Throughout history political authorities have stolen farmers' crops and imposed price controls on food. The twentieth-century communist experiments in collectivized agriculture led to mass starvation and death.

Nor are farmers the only businessmen vulnerable to changing markets. As columnist Robert Samuelson noted, "Technological upheaval and foreign competition have convulsed countless industries and their workers: autos, steel, entertainment, newspapers and many more."

The last argument is that judicious State intervention can improve food production. It's an inside joke by rural politicians determined to deliver ever-more taxpayer loot to their constituents. Uncle Sam manages to simultaneously keep prices up, drive prices down, generate massive surpluses, and create terrible shortages. Washington pays dairy farmers to add milk cows and then to slaughter milk cows.

The result is not orderly markets. According to the Heritage Foundation, "Subsidies are intended to compensate farmers for low prices that result from an oversupply of crops, but granting larger subsidies to farmers who plant the most crops merely encourages them to plant yet more crops, driving prices even lower and leading to calls for larger subsidies. Furthermore, while paying some farmers to plant more crops, the Conservation Reserve Program pays other farmers to plant fewer crops." Only an idiot—or a congressman—could design such a system.

The mishmash of bizarre programs and regulations—non-recourse loans, set-asides, deficiency payments, risk coverage, marketing orders, direct payments, price supports, disaster relief, and more—has but one objective: to transfer tens of billions of dollars annually to farmers.

Uncle Sam is playing reverse Robin Hood. A recent Heritage Foundation study noted that in 2009 farmers had a net worth of nearly a million dollars, twice the national average. Average farm household income in 2010 was more than \$84,000, despite significantly lower living costs. In that year, farmers earned more while other American households earned less—\$65,500—than in the year before.

Most federal subsidies are production-based, so they are designed to enrich the wealthiest farmers. The majority of agriculture payoffs go to farms with average annual revenue exceeding \$200,000 and net worth around \$2 million.

The Agriculture Department forecasts that farm income this year will be the highest in four decades. In March the *New York Times* reported that "farmers are receiving record prices for their land." Despite last year's drought, land prices have doubled in both Iowa and Nebraska since 2009. Yet farms fail at just one-sixth the rate of other enterprises.

The Republican Congress attempted to transform the system with the 1996 "Freedom to Farm Act," but legislators quickly retreated, lavishing more and more on farmers. There was a time when Americans might have felt rich enough to fritter away their earnings on people who were wealthier than average simply because they were farmers. But as Samuelson pointed out, "If we can't eliminate the least valuable spending, then we will be condemned to perpetually large deficits, huge tax increases or indiscriminate cuts in many federal programs, the good as well as the bad."

Farmers have grown comfortable on the federal dole. However, they would adapt if forced to operate in the marketplace like other businesses. My Cato Institute colleague Chris Edwards observed that "many industries have been radically reformed in recent decades with positive results, including the airline, trucking, telecommunications, and energy industries." Ending farm subsidies similarly would leave "a stronger and more innovative industry."

Washington is bankrupt. It's time to eliminate farm welfare.

Douglas Bandow (dbandow@cato.org) is a senior fellow at the Cato Institute and the author of a number of books on economics and politics. He writes regularly on military non-interventionism.

# What Money Can't Buy: The Moral Limits of Markets

by Michael Sandel

Farrar, Straus and Giroux • 2012 • 244 pages • \$27.00 hardcover; \$15.00 paperback

#### **DWIGHT R. LEE**

Space doesn't permit me to discuss the dozens of examples Michael Sandel uses to convince the reader that markets are crowding out "nonmarket values worth caring about." So I confine myself here to a concern I have with only a few of his examples in *What Money Can't Buy*.

Consider tradable pollution permits. Although Sandel says he was originally against tradable pollution permits, he tells us that he has since "reconsidered his views... to some extent." He still worries, however, that "a global market in the right to pollute may make it harder to cultivate the habits of restraint and shared sacrifice that a responsible environmental ethic requires." This leads Sandel to make an interesting distinction, though one he applies in a way that reflects my overall concern with his examples.

The distinction is one between fees and fines. According to Sandel, a fee doesn't reflect moral disapproval, although fines do. He illustrates this difference with an example of childcare centers in Israel that tried to encourage parents to pick their children up before closing time by charging them for being late. The counterintuitive result was that more parents showed up late. Sandel's explanation is that the parents saw the late charge as a fee rather than a fine. Such a system allowed them to pay teachers for working longer without feeling guilty about the inconvenience imposed.

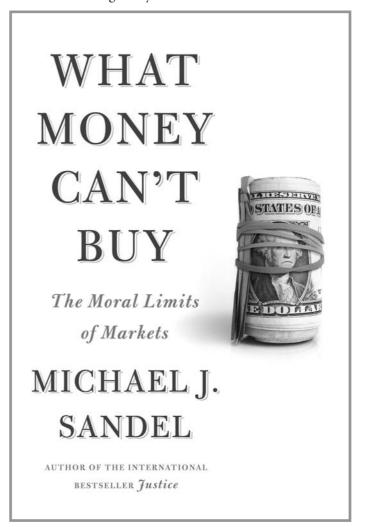
This explanation is reasonable as far as it goes, but it doesn't go far enough.

From the standpoint of mere economics, the most obvious point is the late charge was probably too low. Fees, or prices—whatever you want to call them—work properly only when they reflect the cost of providing the services being purchased. There would have been no problem with late pickups if the charge had covered the

cost imposed. Parents would still arrive late, some later and more frequently than others—but only when they valued being late at least as much as the cost being imposed onto others.

The subtler problem with the late charge in this case is one Sandel does not consider completely.

The late charge may indeed have been a mistake for



the childcare centers, even if it had covered all of the cost, because it changed the way parents related to the teachers. The relationship between a childcare center and the parents they serve is far more personal than one that exists between, say, a car-rental outlet (which has always had late

DOES

marketplace?

charges) and its customers. To remain in business, a childcare center has to charge for its services. But childcare providers must also convey a sense of personal concern for the parents' children. That goodwill for the center will surely be more valuable than a few extra dollars received from late charges. Indeed,

late charges are likely to erode that goodwill, which is probably why they were (one can assume) quickly dropped.

The more personal the relationship between parties to an exchange, the more appropriate it is for the medium of exchange to be affection and concern, and the less appropriate it is for it to be money.

Indeed, your mother-in-law might be deeply offended if you offered her \$200 for the wonderful meal she prepared for you and your family, because she values being appreciated for the love and generosity she has for your family far more than any monetary value of the meal. This is clearly a situation in which Sandel is correct: Monetary payments can reduce the value realized from an exchange. And this finding might also apply, though to a lesser degree, to the childcare example.

The problem with Sandel's discussion of pollution permits and other examples, however, is that he sees them as supporting his contention that impersonal exchanges of the market are increasingly crowding out cooperation based on mutual understanding and shared sacrifice even though many of his examples involve large numbers of widely dispersed people who can hardly enjoy personal relationships with one another, much less close ones. Recall Sandel's worry that a global market in pollution rights might undermine the "shared sacrifice" needed for a responsible environmental ethic. Markets are the only possible way to motivate billions of people to share in the sacrifice of reducing global pollution in a way that maximizes the reduction for the sacrifice incurred. (And that's only if one agrees with the economic claim that a

SANDEL

really think that extending

the morality of the family

over large populations can

replace the cooperation of the

global carbon market is likely to mitigate climate change).

Does Sandel really think that extending the morality until we encounter Sandel's criticism of Sir Dennis

of the family over large populations can replace the cooperation of the marketplace? One might think this result unlikely

Robertson. The latter thinks a major advantage of markets is that they "economize on love." That is to say, the market does most of the heavy lifting and allows us to be loving and altruistic where it counts most: closer to home. Sandel dismisses Robertson's argument by saying it "ignores the possibility that our capacity for love and benevolence is not depleted with use but enlarged with practice."

This response ignores the difference between the depth and breadth of love. And Sandel never indicates any recognition that, even if each of us could love deeply many millions of others, the resultant social cooperation he is hoping for still couldn't be realized without the information only market prices can provide. (I'll pass over the problem that it's hard to love anyone via any coercive state monopoly.)

Allow me to close by complimenting Sandel on writing a book that is sure to be widely read and appreciated. He has taken a position with which almost everyone superficially agrees and supported it with easy-tounderstand arguments and examples (despite the failure of many of those examples). Many readers will be left with the impression that they have had a profound intellectual experience. **FEE** 

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# **Built on Sand**

**SARAH SKWIRE** 

The Brothers Ashkenazi is a novel about a lost world, written in a lost world. Set in the late nineteenth and early twentieth centuries in the bustling Jewish mill town of Lodz, Poland, and written in 1937, it is at once a depiction of the lively Eastern European Jewish world that disappeared during World War II and a production of a flourishing 1930s immigrant Yiddish literary culture that could not imagine the horrors of the Holocaust.

A sprawling family saga, *The Brothers Ashkenazi* is the story of Max and Jacob Ashkenazi, who navigate the multi-

layered world of Lodz from two very different angles. Max is the stereotypical businessman and dealmaker, focused for nearly all his life on using his considerable intelligence to accumulate as much wealth as possible and become "The King of Lodz." From the time he is a child, playing cards for money under the table when he is supposed to be studying the Torah, to when he is an adult

running a fabric mill and finding ways to cut workers' salaries, use ever-cheaper materials, make workers pay for their own candles, and arrange unsavory side deals, Max's obsession is accumulation. He sacrifices everything to his drive for more—even his marriage. He lends endless money to his father-in-law, intentionally calls in the debts precisely when he knows that his father-in-law will be unable to pay, and claims his factory as payment. His wife, like much of the older generation in Lodz, is horrified:

"To do such a thing to your own father-in-law? Where's the justice therein?"

"Idiots!" their younger counterparts sneered. "Justice isn't a commodity in Lodz. It isn't wool or cotton."

But Lodz isn't just commerce. Lodz is also sexuality and family life. Representing that side of Lodz is Max's twin brother Jacob. Jacob has none of Max's mercantile talents and none of his sharp intelligence, but he has a zest for life and for pleasure that makes him fun to be around. That zest also leads him into trouble, as his fondness for luxuries, parties, and women leads him down the all-too-predictable path to poverty. His charm and good luck, however, always swoop in to save him.

Singer's novel is not a mechanistic counterposing of

two stereotypes—the wicked capitalist and the admirable spendthrift. Max, after all, is not all wicked, and Jacob certainly is not all good—he has a disconcerting fondness for his teenage niece, for example. Each brother is complicated in his own right, and they operate against the complex background of Lodz itself. Lodz contains approaches to the world that offer alternatives to Max's

Lodz itself. Lodz contains approaches to the world that offer alternatives to Max's strictly commercial approach to life and Jacob's more playful outlook. There is, first of all, the alternative of religious devotion. Lodz is peopled by Jews of all kinds—from the most traditional Hasids to the more modernized Jews who arrive as refugees from Moscow. Again, this is no simple portrayal where the purity of an ancient faith is contrasted against the decadence of a modern society, or vice versa. Singer's portrayal of Judaism offers us portraits of Jews of great learning and little faith, little learning and great faith, and every option in between. Nothing in Lodz

A good example of this religious complexity is Maximilian Flederbaum, who "despite all this wealth and awesome power ... felt that he owed all his success to the

is simple. Nothing in Lodz is clear.

critiques any and all simple and systematic answers to the problem of being human. Markets are not enough. Merriment is not enough. Religion is not enough.

lucky three-kopeck coin given him by the Kazimierz Rabbi. He tormented himself with the fact that he wasn't repaying this debt properly." As a result of his torment, Flederbaum gives an enormous amount of money to charitable causes so that poor Jews can have "money for Hanukah candles, for free infirmaries, for burial societies. He sent wagonloads of flour for the Passover matzos, and during periods of unemployment, he set up free soup kitchens." He also builds a Jewish hospital, where the Jews of Lodz will be able to have kosher food, wear their tzitzit (ritual fringes), and not be expected to bow to crosses and icons. His torment and his charity, however, do not mean that he will hire Jews to work in his factory. They won't work on Saturday, after all.

Lodz also offers the reader a vision of the political as the revolution arrives. Having systematically shown that commerce and family and religion don't provide clear truths, Singer proceeds to do the same for politics. When a communist May Day demonstration turns from a workers' protest against a vicious factory overseer into a bloody pogrom where Jews are slaughtered, beaten, and raped by their "class comrades," there is little else to say about the promises of politics. Even the Jewish communist ringleader who organized the revolt begins to wonder, "Maybe man was essentially evil. Maybe it wasn't the fault of economic circumstances ... but the deficiencies of human character." But by the next morning, the seductions of ideology are such that, "Like his pious father, whose faith in the Messiah nullified all contemporary suffering, Nissan reaffirmed his faith in the validity of his ideals and pushed aside all negative thought." Those ideals lead directly to the deaths of several innocents, to the execution of one of the Ashkenazi brothers, and to the endless suffering of the other.

What should we make of *The Brothers Ashkenazi*, then? It is a novel that critiques any and all simple and systematic answers to the problem of being human. Markets are not enough. Merriment is not enough. Religion is not enough. Red flags are not enough. Human nature, or the forces of history, or the long dark story of persecution that troubles groups of outsiders like the Jews, seems destined to tear everything apart, no matter what dreams of stability they cling to. It is a dark vision, and *The Brothers Ashkenazi* is not just a historical novel, but a cautionary tale.

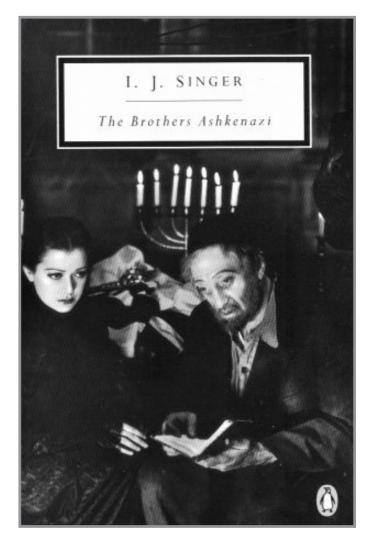
The novel's final words leave us as unsettled and wary as the Jews of Lodz and elsewhere must have been when it was published:

"Sand," they complained, shielding their eyes from the pursuing dust. "Everything we built here we built on sand."

In the swiftly falling dusk, a flock of birds formed in the shape of a crescent and cawed against the ominous sky.

#### FEE

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# Why Brooklyn Is Home

#### MICHAEL NOLAN

If you've come here from anywhere else on Earth and spent two years living here ... and you still love it? You are a New Yorker.

—Anthony Bourdain

really imagine living anywhere else, at least not in the United States. That must mean I love it, so that must mean I'm a New Yorker. This would have mattered deeply to me a few years ago. There are a lot of us transplants trying to put as much distance as possible between ourselves and wherever our childhoods were spent for us, which can lend the matter of being "a true New Yorker" particular urgency. But after five years of trying to wrest a good life from this city, I don't really have much patience for the topic anymore. It's as much my city as it is anybody else's, and I have the tax returns to prove it. What I don't have is a simple account of what I want from this city or what I get from it.

The five-year milestone passed about a month after another: 10 years since I left Indiana for good. The latter means more to me, and that took me by surprise. I've been trying to make some sense of it. For one thing, the fact that New York isn't Indiana isn't much of a factor anymore in why I prefer the former. I still go back regularly to visit family, who, along with several friends, are making fine lives for themselves there. I could move back myself and probably be happy, mainly because I wouldn't be poor, like I was when I left.

And there are times when I wish I was sitting on my parents' porch watching a summer storm bruise the western horizon, or flying down an empty freeway, the car filling with sweet cornflower air and affordable cigarette smoke. Or sitting around a bonfire with my dad, having cigars and talking about nothing in particular. All of those things are unavailable to me in New York. I don't fault anyone who figures that their personal equivalents—say, the air up in the mountains, or the community out in the bayou, or whatever—are far too

valuable to give up for the chance to live in the most overhyped city on the planet.

## I [kvetch] New York

If this doesn't sound like love, that's because it's not. For one thing, I won't attach something like love to something as abstract, convoluted, and indifferent as a whole city. Incidentally, I disagree with people who say a city isn't the buildings or the subways or the location—it is those things, but only in combination with the people trying to live there. Take a bunch of buildings and remove the people and what you got is ruins. But take all those people and have 'em wander around without buildings and what you got is the Book of Exodus. Put them both together and you're really cooking, but it doesn't make much sense to me to say that I love what results.

And besides, cities as such call up a mix of emotions in me; individual cities each have their own proprietary blends. I can still summon something that I cannot name, tied to my first glimpse of Chicago as I approached in my grandparents' Datsun. Even going to downtown Indianapolis, at one time, seemed like a pretty big deal. Maybe there's something like love in there somewhere, but I'd use another word if English had it.

So this thing I got going on with New York, it's personal and I don't think there is any such thing as a case for or against it. I bring this up half because New York's status (and aforementioned overhype) means everyone in the U.S. has an opinion about this place, and a lot of them include resentment. Often justifiably.

But the other half is because I'm constantly having this very conversation with myself. I have worked from wherever I could get online for almost a decade now, so where I live is much more a matter of choice than necessity. That means that I'm choosing to put up with New York, and I wonder quite often what I'm paying for and whether it's worth it.

The answers to both questions shift regularly. This shouldn't be a surprise; phrasing exactly what I want out of New York has never been a simple proposition. I want a life here, and a life is a big, messy, indeterminate (if not quite open-ended) thing. Besides, over the last decade, I somehow got 10 years older, for which I blame the CIA. It's changed how I value the things I used to be shooting for.

I could do up a list of things I like about New York: the density of good record stores, the fact that every band and movie stops by here if they can make it, the endless diversity of well-stocked bars for every mood and occasion, the quality of food one can take for granted even at price points roughly equivalent to the Olive Garden. The museums and the theaters. There's the architecture. There are the artists I love who are from or who made their careers in New York (Kurt Vonnegut and David Letterman, also ex-Hoosiers, have particular significance). There's the history. There's the riot of languages and people and fashions, the healthy stress of knowing I'm surrounded by more talent, intelligence, and hustle than nearly anywhere else on the planet—and then the payoff

of having people like this from whom to construct my social world. And you can be unhappy sometimes and air your grievances. We've all got plenty, after all.

I could contrast New York with other cities, but that seems pointless, except to catalogue all the ways New York fits together more of what I want than anyplace else I can think of. The closest substitutes would require at least a 40 percent raise to justify the move (I'm looking at you, San Francisco), have the wrong climate (New Orleans, Miami, all of Texas), are too far away from anybody I know (Boise and Denver) or too close

to them (Cincy, Louisville, and probably even Chicago), or are just irredeemably lousy in all respects (screw you, D.C.).

## Offers I Can't (but Maybe Should) Refuse

The thing is, though, it always feels like I'm living under the authority of the mafia—and that's before you get into political theory or read literally any story at all about people like Vito J. Lopez. This mafia—or this alliance of mafias—might be somewhat less in my face than the Cosa Nostra variety, especially since I'm white, so stop-and-frisk only fills me with disgust and shame; it does not raise the specter of arrest for simply leaving my apartment.

But the thugs and weasels running this place still insert themselves between me and all the wonderful things about this city, extracting one toll after another. None of these schmucks was necessary in order for any of those wonderful things to come about. But I have to cough up or they'll get violent fast.

Being subject, at all times and in all places, to the whims of the powerful is the fundamental condition of everyone who lives in New York. (For the gory details, see tinyurl. com/cg4ns2a.) But that's nothing all that new. The city goes on anyway. It still feels like freedom itself just to walk the streets.



Andrew F. Kazmierski/Shutterstock.com

What saves New York is that it's far too big, too crazy, too multifaceted, and ultimately too productive of a city even for an authoritarian blowhard like Giuliani or Mike "Little Big Gulp" Bloomberg to ruin completely. That, and the simple fact that, to quote Walker Percy, "Here there is no one to keep track": You can slip into anonymity, move from one lifestyle to another, and it doesn't much matter what the neighbors think. Given what it was like growing up in the land of John Mellencamp (he'll always be "The Coug" to me), this alone is worth a solid 25 percent of my income—which, incidentally, is going to be higher here than in most other places.

In the meantime, there is a sense—unlike anywhere else I've ever lived—in which we're all in it together. This has nothing to do with being part of an organic whole. We all have our own hustles. But you can count, by and large, on people to help out when you need it. I was here as a tourist during the last transit strike, in 2005. Most of what I heard about was commiseration and community. In some cases, people were even allowed to miss work rather than walk a few miles in subzero weather; it's a powerful kind of decency that can penetrate even Midtown corporate offices.

During Hurricane Sandy, this was even more pronounced. It wasn't necessarily always friendly, but neither did public order dissolve into rioting and looting, and people started reaching out to make preparations and offer support before the storm even hit.

More generally, you can't live here without getting the feeling, from time to time, that "the city" is one great, unified thing—that it has selfhood, almost—that is separate from and occasionally hostile to you. It feels sometimes like the pigeons themselves are the carriers of random fortune, and the skies are full of them, and they've all got the trots: Once in a while, you're going to get dumped on. Even for trust-fund babies, these things might as well be as immutable as the weather. Consolidated Edison is a nightmare from which we've all been unable to wake. Taxi drivers and bicyclists seem like two rival armies of pedestrian-hating gremlins who've managed to arm themselves. It stinks in the summertime. The cops only come into your life when they're hassling you about

something—you're on your own for protection. The subway system seems like a social experiment dreamed up by the Taxi & Limousine Commission that eventually gained sentience out of sheer disgust. It still hasn't made up its mind about whether its passengers are parasites or prey, so it abides us. For now.

There's next to nothing you can do about most of it but take your lumps or leave. But at least, as New Yorkers go (and it seems like I should have DeNiro in here somewhere), there are a lot more Archibald Tuttles running around than there are Travis Bickles.

# The City that Always Everything

Every time the taxi pulls out of LaGuardia—every single time—en route to my place, I get a little thrill that I get to come back to all of this. It's never been like that anywhere else. Ultimately, it's home. None of the handful of other places I've lived in my adult life have ever deserved the name. This one more or less demands it. This collection of favorite neighborhoods, habitual walks, the screeching J train overhead, the smell of barbecue and roasting pavement underneath, the reggaeton clouting me in the gut from passing traffic, the bars where they don't measure out the bourbon, the ones where they let you smoke in the basement, the guy who cuts my hair and sounds like Chico Marx, the hipsters and all the ways I still can't bring myself to hate them, the view from the Williamsburg Bridge of a Saturday morning in early October, the smell of roasting chestnuts on 42nd outside Grand Central a couple weeks before Christmas, the first time it gets warm enough to have brunch outside and just stay there all day just for the hell of it—all of this somehow adds up to a world I can create for myself here and noplace else.

Maybe when I decide the world deserves another Nolan or three, I'll have to pull up stakes to afford a big enough place. And if you ask me what I think in mid-July or so, you'll want to make sure there are no children around. But for now, I'm sticking around and, despite everything, feel lucky I get to make that choice.

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When FEE was established in 1946, it was the only free-market institution in America. It did everything to keep the flame of liberty alight through some very dark times. The freedom movement is now diverse, strong and numerous with institutions and think-tanks in every state and across the globe. In light of this change, FEE works with other organizations, leveraging our capabilities and providing a pathway for our alumni to grow and find their niche in the liberty movement. Community is important to FEE and to our students.

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