

INDIANA POLICY

review



The Rule of Law in Indiana

A TEA PARTY PRIMER

"A future that works."

*In Congress, July 4, 1776,
the unanimous declaration of the thirteen
United States of America:*



When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes: and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security.



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A FUTURE THAT WORKS

Our mission is to marshal the best thought on governmental, economic and educational issues at the state and municipal levels. We seek to accomplish this in ways that:

- Exalt the truths of the Declaration of Independence, especially as they apply to the interrelated freedoms of religion, property and speech.
- Emphasize the primacy of the individual in addressing public concerns.
- Recognize that equality of opportunity is sacrificed in pursuit of equality of results.

The foundation encourages research and discussion on the widest range of Indiana public-policy issues. Although the philosophical and economic prejudices inherent in its mission might prompt disagreement, the foundation strives to avoid political or social bias in its work. Those who believe they detect such bias are asked to provide details of a factual nature so that errors may be corrected.

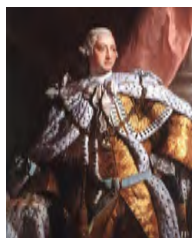
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Cover: King George III, c.1762-64 (oil on canvas), Guildhall Art
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A TEA PARTY PRIMER

Back to the future

Our cover shows King George III in full regalia — a handsome figure, intelligent and thoughtful with an earnest and trustworthy face. One can imagine him doing well in an Indiana gubernatorial race or even a presidential election.

That is not an idle thought. John Adams estimated that fewer than one-third of the colonists favored independence.

Democracy, clearly, would not have ensured liberty. It is only a relatively new, slightly more efficient means of succession. Indeed, the most successful murderers in history have been fairly and freely elected.

This is a truth that Hoosiers to their great danger have forgotten. The drift of our legislature and our courts is sad evidence of that.

On the hope that it is not too late, this issue is dedicated to refocusing our attention on what we are all about — rule of law, not of men like George or you or me or (fill in the blank).

Although Hoosiers don't like to talk about it, they aren't exactly immune to the charms of totalitarianism and centralized control.

A form of totalitarianism, socialism, began in our picturesque Wabash Valley about the time Marx and Engels were born. The first national convention of the Socialist Party of America was in proud Indianapolis in 1900. And an Indiana favorite son, Eugene Debs of Terre Haute, won six percent of the vote in the 1912 presidential campaign as the leader of the Socialist Party.

That same year, Hoosier Republicans split their vote between William Taft and Teddy Roosevelt, with the state eventually going for that penultimate globalist Woodrow Wilson.

Roosevelt's Progressive Movement most effectively pushed for income tax, socialized healthcare and against the free market. The Progressives sold socialism to Hoosiers as the "Square Deal."

So it is no surprise that two decades later 55 percent of the Hoosier vote went to Franklin D. Roosevelt, who won election on a historic platform

that institutionalized envy, promising arbitrary redistribution of American wealth. The Square Deal was repackaged into the "New Deal."

Andy Horning, whom we asked to write this "Tea Party Primer," tells us that the last U.S. president to actually cut federal spending was also the president who pushed for the largest tax cut of all time. John F. Kennedy wanted an even larger tax cut, but was assassinated (an older, less-efficient, awful means of succession).

Lest Republicans puff themselves up this November, Horning wants us to know that the administration of every president since Kennedy, regardless of party, has advanced policies in defiance of the U.S. Constitution.

"You're missing the point if you're mad at Democrats for being Republicans, or at Republicans for being Democrats," he says. "Like most Hoosiers, they've tasted the socialist tutti-frutti, loved it, and are now marching, arm-in-arm, against you. Not just because they can, but because you asked them to."

Let us get back to the choices our founders made and did not make — and why.

They did not choose to simply schedule the election of a king, as do emerging nations today (one man, one vote, once). They chose instead the enduring truth of words, a constitution, the Rule of Law. They sought to guarantee our liberty regardless of the predictable "masks in pageant" who always would be trying to win power and office or, worse, to help us.¹ Horning's summary hints at their wisdom:

- Citizens can do whatever they want to do as long as they don't harm anybody else, or take what's not theirs.
- We have need for no more government than necessary to maintain our liberty (see first item).
- We invite others around the world to emulate our success, but otherwise we leave them the heck alone.

It is important to know that to bring those words to life we don't have to write model legislation, win a majority, manipulate the currency or even vote.

As Horning reminds us, what we need, what created our prosperity in the first place, has not been taken away. It remains the law of the land, and it will work again if our elected officials, however democratic, however regal, would simply observe it. — *tcl*

Given a choice, 52 percent of Americans say they'd rather be called a good citizen than a patriot, while 28 percent prefer being known as a patriot. — Rasmussen Reports, May 12, 2010

1. The title of William Allen White's treasured 1928 portrait of American political figures, including Taft, Roosevelt and Wilson.

Indiana's Article 11, Section 12 is but one example of how state constitutions go even further in restricting political profligacy and theft: "The state shall not be a stockholder in any bank; nor shall the credit of the state ever be given, or loaned, in aid of any person, association or corporation; nor shall the state become a stockholder in any corporation or association."

Finance

During its Seven Years' War against France, England turned to baseless paper currency, or "fiat" money, to spend itself into both superpower status and unsupportable debt. This was nothing new. Swapping gold for abstract paper has fueled all the great wars and destroyed most nations that have invoked this money changers' alchemy.

Understanding this, the young King George III attempted fiscal recovery in the year after the war (1764) by raising taxes, tightening credit and banning the colonies' use of paper money.

The king's strict new monetary policies were as stifling to the colonists as were his taxes. So as the ink was drying on the Declaration of Independence, our nation's founders made their own bargain with the devil. They raised taxes and cranked out paper money. Benjamin Franklin called the rapidly deflating Continental money, in effect, a clandestine war tax.

Actually, it was theft. Very few got rich and many went broke.

With the smoke of revolution barely clearing and politicians and bankers still robbing Peter to pay Paul with phony money, the states authorized delegates to only amend the still-new Articles of Confederation. Instead, through battles of deceit, secrecy, but mostly divine intervention, the U.S. Constitution, and sound monetary policy, emerged as "the supreme Law of the Land" (Article VI:2).

Article I, Section 8 of the U.S. Constitution gives only the U.S. Congress the federal power, "To coin Money, regulate the Value thereof, and of foreign Coin . . ."

Article I, Section 10 says that, "No state shall . . . make any Thing but gold and silver Coin a Tender in Payment

of Debts . . ." Indiana's Constitution affirms sound money with Article 11, Section 7: "All bills or notes issued as money shall be,

at all times, redeemable in gold or silver; and no law shall be passed, sanctioning, directly or indirectly, the suspension, by any bank or banking company of specie payments." " . . . Specie payments" means metal

money transactions; in this case, gold or silver.

Indiana's Article 11, Section 12 is but one example of how state constitutions go even further in restricting political profligacy and theft: "The state shall not be a stockholder in any bank; nor shall the credit of the state ever be given, or loaned, in aid of any person, association or corporation; nor shall the state become a stockholder in any corporation or association." So any special rules, perks, bailouts, subsidies or exceptions given to corporations, politicians or banker-gamblers, are specifically illegal.

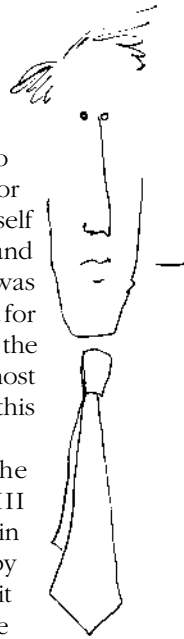
Thank goodness that these precious contracts were never amended to remove these protections. But there is, as you may have deduced, a problem.

Without amending the Constitution, specie payments were suspended decades ago. Since 1913, the private "Federal Reserve" schemers (not federal, not reserve), and not the U.S. Congress, print fiat currency while making you pay income tax to cover their appetites. International bankers, and not the U.S. Congress, now determine the value of all money and credit all over the world.

So our money is, legally and morally, both counterfeit and robbery. Our politicians and bankers are criminals, and you are their patsies.

That's apparently been OK up until now, since over 90 percent of us have voted for this lawlessness for almost a century. Now voters seem to be posturing

"On every question of construction carry ourselves back to the time when the Constitution was adopted . . ."
(Thomas Jefferson)



The author of the foundation's cover essay, "A Tea Party Primer," is Andrew M. Horning, an adjunct scholar. Horning, who helped organize the first tax protest on the governor's lawn, was the GOP candidate for the 7th Congressional seat and more recently the Libertarian candidate for governor. A businessman, he owns land near Freedom in Owen County believed to be one of the historic 40-acre plots farmed by the first free black settlers to Indiana.

for even more tragic mistakes. But if you'll consider a suggestion, here it is: Reject "financial reform" laws. Demand the Constitution, as written. It certainly isn't going back to 1776 to finally learn some lessons from it.

Education

Article 8, Section 1 of the Indiana Constitution authorizes "... a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all."

The phrase, "tuition shall be without charge," has been clarified many times over the years as meaning only tuition. So to this day, parents pay extra for books. After all, who knows what kind of non-academic nonsense would creep into the budget without written limits?

And as opposed to the numerous, free, diverse but church-run schools of the past, 19th-century socialists pushed "Common Schools" as secular primary education to prepare the common citizen for a productive working life as a young adult. Colleges and universities were specifically excluded from state funding as they are only for the very few who would need extra training for academia, engineering or science. After all, real life (and the legions of famous drop-outs, homeschoolers and un-schoolers like Bill Gates, Steve Jobs, Michael Dell, Thomas Edison, Abraham Lincoln . . .) won't wait.

To eliminate disparity between rich and poor regions, mitigate political corruption, dampen economic fluctuations and escalating costs, Article 8, Sections 2 through 7 specify funding by a single, "inviolable" and "perpetual" Common School trust fund. The fund was state-wide, not local, so only "... Taxes on the property of corporations, that may be assessed by the General Assembly for common school purposes" went into the central pot. No personal property tax was ever authorized for Common Schools.

Some of us have issues with the dubious, New Harmonian origin of Article 8. Some of us are opposed to socialized

education. But it is Indiana law today. If we don't like it, we could change it.

The question is: How is this law working for Indiana children? The answer is: It's not at all.

The Common School trust fund is long gone. Since schools now depend on local, personal property tax, the difference between rich and poor is greater than ever.

Because we have fewer, larger schools than were ever intended, children are smaller fish in larger oceans, and have far fewer chances of playing chess, or playing tuba or acting in the senior play.

Because we've replaced most community centers and gymnasiums with school-based facilities, the children who aren't tall enough for basketball, or quick enough for track, have no place to go for wholesome diversion, so they get fat and into trouble.

And while books still cost extra, taxpayers must foot the bill for cafeterias that should be replaced by lunch boxes, busing that should be replaced by walking or bicycling, and administration buildings for teachers who never teach.

We're producing graduates who can't read, can't make change, and who need college for what used to be a primary-school education. State-supported football coaches get paid more than all the top elected officials in the state put together. And most of your property tax is, technically, legally and morally, theft.

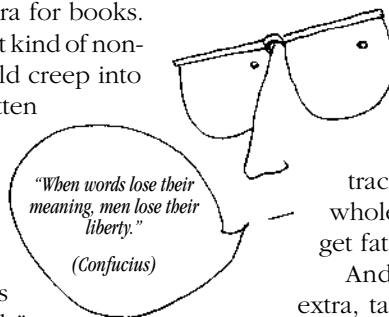
This is literally a criminal shame.

Yet we are now driving people out of their homes with tax rates twice that of medieval serfdom, replicating the tax-paid bread, circuses and gladiators of Rome, racking up the kind and scale of debts that were outlawed in ancient Egypt, and plunging headlong into authoritarianism as old as the fall of Adam.

Hoosier voters, and even our Governor himself, have actually told me to my face that we can't "go back in time" to obey the Constitution as written.

I say we need no more proof that our current school system doesn't educate. Maybe it's time to reclaim the best of

Article 8, Section 1 of the Indiana Constitution authorizes "... a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all."



Article I, Section 10 details the powers prohibited from the states, yet nothing limits Indiana or any state's authority over illegal aliens within its borders. In fact, this section's prohibition against states declaring war is restrained by, "... unless actually invaded, or in such imminent Danger as will not admit of delay."

our past in order to rise above the worst of it.

Immigration

Laws are words; let's get them straight. "Immigration" is when somebody lawfully moves from one place to another. "Illegal aliens" are those who cross borders in violation of laws. Tens of millions of illegal aliens are called an "invasion." When invasion goes on for decades while we wait for federal action, it's called stupid.

A truly federal government is allowed only a few powers. Each state is otherwise just as sovereign as other states around the world such as France or China. Article 4, Section 16 of the Indiana Constitution reserves for the Indiana legislature all necessary powers of "a free and independent state." Article 5, Section 12 says, "The Governor shall be commander-in-chief of the armed forces, and may call out such forces, to execute the laws, or to suppress insurrection, or to repel invasion." Most people have no idea that states legally have so much might.

The U.S. Constitution's Article I, Section 8 grants the U.S. Congress power, "To establish a uniform Rule of Naturalization." The 14th Amendment to that contract says, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside," because through the War Between the States it was assumed that each state had the right to determine who had rights of citizenship and who didn't. Of course, the proviso, "... and subject to the jurisdiction thereof" means that some are not subject to the jurisdiction of the United States; but the U.S. Constitution says nothing else about aliens, other than they can't hold federal office.

Article I, Section 10 details the powers prohibited from the states, yet nothing limits any state's authority over illegal aliens within its borders. In fact, this section's prohibition against states declaring war is restrained by, "... unless actually invaded, or in such imminent Danger as will not admit of delay." Arizona's S.B. 1070 has made news, but in fact Article II, Section

35 of the Arizona Constitution already specifically denies illegal aliens citizen rights. Article XVIII, Section 10 actually denies illegal aliens any employment rights.

So, by the existing laws (paying special attention to the federal 10th Amendment), states already have both the authority and power to maintain constitutional rights and order within their borders. No new laws, no new powers are needed.

That said, our illegal alien problems aren't about illegal aliens, their crimes or even the *Reconquista* nationalism of many.* Our problems are more fundamentally with socialism.

Even without its inevitable corruption and political oppression, socialism makes each citizen pay for others' lifestyles, accidents, schooling and healthcare. The collectivist hooks we stick into each other, even with the best of intentions, will tend to make us want our fellows to stay out of our wallets, cough up money from theirs, and die quickly, before retirement.

The hooks make us care about what others eat, drink or smoke. Hooks make us care about who others date, how others live and what others can and cannot own. Socialism is inherently, demonstrably, antisocial.

The whole point of our constitutions is to prohibit this cold, jealous existence, thank God.

Would it be so bad to keep what you earn and do what you like as long as you don't harm anyone else? If you could live like that, would you mind so much if others did, too? Well, that's already the law.

If we'd get that through our thick and militaristic skulls, we could find that Liberty and Justice for All is just as good to share as it is to keep.

Guns

Maybe Stephen Covey, the business guru, was talking about Indiana when he said, "The way we see the problem is the problem." The new "Guns at Work" law exemplifies such political myopia in extremis. Like most things we call law today, it contains lots of words — nearly

*The term *Reconquista* (*reconquest*) was popularized by Mexican writers Carlos Fuentes and Elena Poniatowska to describe the demographic and cultural presence of Mexicans in the Southwestern United States.

as many as in the whole U.S. Constitution. But unlike our simple, easily-understood-if-you'd-just-read-it Constitution, the bill invokes bizarre, anti-constitutional, self-contradicting abstractions through painful incantations:

Prohibits a person, including an individual, a corporation and a governmental entity, from adopting or enforcing a policy or rule that prohibits or has the effect of prohibiting an individual from legally possessing a firearm that is locked in the individual's vehicle while the vehicle is in or on the person's property, unless the firearm requires a certain federal license to possess.

Yet in signing this legalistic effluvium, Gov. Mitch Daniels said, "Considering the clear language of the Second Amendment of the U.S. Constitution, and the even stronger language of Article 1, Section 32 of the Indiana Constitution, protecting these rights as provided in HEA 1065 ("Guns at Work") is appropriate."

The National Rifle Association claims that the new law will "... prevent state or local government authorities from confiscating lawfully owned firearms during declared states of emergency, such as occurred in New Orleans following Hurricane Katrina."

Really? By what authority did government ever confiscate guns? Do new laws protect constitutions? From who?

The anti-gun side is undeniably passionate and persistent in their regulation, litigation and rhetoric. Former Fort Wayne Mayor Paul Helmke, now president of the Brady Campaign, once presented a seemingly reasonable challenge: "Ask why there is so much gun violence. Ask why laws to restrict access to guns are being weakened, not strengthened."

In reaction, the pro-gun advocates think they're pragmatic and clever in "moving the ball forward" by "working within the system" that they apparently believe is controlled by people like Mr. Helmke. But what are gun rights, and who really opposes them?

Article I, Section 32 of the Indiana Constitution says exactly and only this regarding weapons: "The people shall have a right to bear arms, for the defense of themselves and the state."

That is the gun law that Governor Daniels has always been legally required to execute.

Article I, Section 25 of the Indiana Constitution says: "No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution."

That means that laws such as the "Guns at Work" do not create authority. Laws depend upon constitutional authority. Read our state and federal constitutions and you'll be surprised to learn that not even courts were given any power over constitutions.

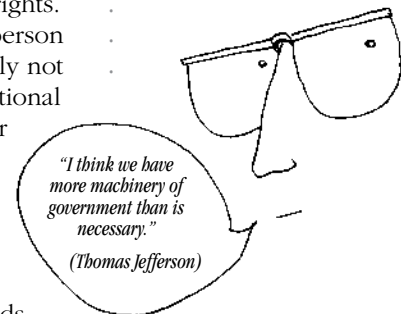
Both remain clear and un-amended regarding an individual's right to arms. Citizens already have the legal right to carry a weapon as long as it doesn't impinge upon another citizen's rights.

No agent of government, no person — not Mitch Daniels and certainly not Paul Helmke — has any constitutional authority to take away, license or even register your weapons. Our federal and state constitutions have been amended many times but gun rights, as guaranteed in writing, haven't changed.

So my dear gun-rights friends, you've long ago been given what you want. But instead of demanding what's yours, you're spitting on it. With half the effort you've put into counterproductive new laws, you could annul unconstitutional laws and actions.

Mr. Helmke, you see, is not the enemy; it's our sophistry and games that bring death by a thousand cuts. The state and federal constitutions, to which politicians, soldiers, police and new citizens swear an oath to support and defend, are still and truly the Law of the Land.

Article I, Section 32 of the Indiana Constitution says exactly and only this regarding weapons: "The people shall have a right to bear arms, for the defense of themselves and the State." That is the gun law that Governor Daniels has always been legally required to execute.



As assistant attorney general under President Ronald Reagan, I prepared a report entitled 'The Constitution in the Year 2000: Choices Ahead.' This report sought to identify a range of areas in which significant constitutional controversy could be expected over the next 20 years. As critical as I believe those controversies were, they pale in significance before the controversies that will determine whether the Constitution of 2030 bears any resemblance to the Constitution of 1787 — the Framers' Constitution that has guided this nation for most of its first two centuries and has rendered it the freest, most prosperous and most creative nation in the history of the world. Proponents of a '21st century constitution' or 'living constitution' aim to transform our nation's supreme law beyond recognition — and with a minimum of public attention and debate. — *Stephen Markman writing in the April 2010 Imprimis*

BACKING AWAY FROM THE GATES

*Journalism
and freedom*



One moment reporters could cover protests at the White House Gates as they had for decades. The next they were being pushed back by threatening, armed police shouting, "Back away from the gates."

by CRAIG LADWIG

We forget that it was a "committee of correspondence," an early form of alternative media, that came up with the idea for the Boston Tea Party. The committees were organized throughout the colonies as a way of keeping patriots informed by letter. Nobody, of course, could trust the king's newspapers.

As I review the king's newspapers today in Indianapolis and Fort Wayne, I realize we are in for a year of unrelentingly Royalist commentary — sidestepping the issue, excusing the message, parsing the text, hammering out the compromise. Those who put their faith in such posture rather than in the truth of words will learn too late that liberty is lost all of a sudden.

There was a reminder of that recently in an incident at the White House caught on video and circulated by YouTube.* One moment reporters could cover protests at the White House Gates as they had for decades. The next they were being

pushed back by threatening, armed police shouting, "Back away from the gates."

We need not blow out of proportion a stupid policing decision to appreciate there are moments in history when a journalist might feel comfortable, even noble, writing a letter like this one, criticizing obvious excesses of a regime. The next moment, though, he doesn't feel so comfortable — not at all.

"We oppose all infringements on individual rights, whether they stem from attempts at private monopoly, labor union monopoly or from an overgrowing government. People will say we are conservative or even reactionary. We are not much interested in labels but if we were to choose one, we would say we are radical. Just as radical as the Christian doctrine." — William Grimes, the Wall Street Journal, Jan. 2, 1951

I worked with editors who remembered federal agents taking reporters out of their newsroom in handcuffs under the Sedition Act for using "disloyal, profane, scurrilous or abusive language" about the United States government. And of course there was a night in 1934 in Germany when the *Schutzstaffel* and the *Geheime Staatspolizei* began pulling people from their homes never to be seen again. It was necessary, explained the authorities (all fairly elected or properly confirmed) to prevent destabilization.

The White House would say that last is an outrageous comparison. Time will tell. It is not assuring that a close friend of Barack



T. Craig Ladwig is editor of this journal. He has commented on journalism reform for the Wall Street Journal, The Kansas City Star and Editor & Publisher. In his 40 years as a journalist, he has written and edited for small-town newspapers and large metropolitan dailies.

Obama, Gov. Deval Patrick, in what he later dismissed as a “rhetorical flourish,” told a law-school commencement audience that attacks on this president “approach the level of sedition.”

If insensitivity to a right as basic as free speech does not portend tyranny, what does? And don’t tell me that tyrants can’t be thoroughly charming fellows.

All of this is the norm, please know, and not the exception. Read the morning paper. There are nominally democratic countries where they hang young people for being “enemies of God.”

Let us just say that it is important to understand how people in real life react to the application of unconstrained force by a government.

It’s not like in the movies, we can agree. Civic heroism is practically invisible outside Hollywood’s dramatic lighting, cued music and crafted scripts. In reality, we do what the reporters did at the White House. We back away from the gates.

Is it being said here that our children and grandchildren are in danger from a political class forcing them to say only the correct things? Conscripting them? Arranging their political incarceration, their extradition, even their disappearance?

Yes, absolutely — now and in all times. And if that marks you a radical, you can only say in defense that you believe liberty is an absolute. Politics is little more than an eternal struggle between those who believe that and those who do not.

Put it this way: We are not free to be half free. We must choose, especially journalists given special license and privilege to question the powerful. It is spelled out dispassionately and with great historical accuracy in the Declaration of Independence. Forget the rationalization of the moment, do you believe in liberty or not?

Many Americans today are having trouble with that question. The Washington press corps (watch the video) would avoid it altogether.

You should not be surprised. More colonials served that old tyrant King George III than in the war for independence — far more. Maybe this will help. Earlier we agreed that life is not like the movies.

Sometimes, though, the movies get life right.

“Amerika,” the 1987 television mini-series, had one of the most poorly watched prime-time audiences ever recorded. In the final segment, though, the last president of the United States hands us this jewel in his farewell address:

Totalitarianism doesn’t need armies. It only needs to control a couple of things — the media, and the ability to dispense privilege to some, and to withhold it from others. Of course, a weak and divided people helps.

But let’s go big. There is a wonderfully pertinent line in the most-popular movie of all time, “Star Wars Episode III: Revenge of the Sith.” It was delivered with a suddenness approaching the subliminal. And although millions watched, few heard the words of the beautiful Padmé. Fewer still were mature enough to recognize their profundity.

To set the scene, the supreme chancellor is announcing to the senate that extreme measures would be necessary in order to ensure security and stability. The republic would be reorganized into an empire, “for a safe and secure society which I assure you will last for 10 thousand years.”

At that promise of change, on that hope, the senate chamber filled with applause. Padmé, straining to be heard over the tumult, turns to her friend: “So this is how liberty dies — to thunderous applause.”

The reporters, long before, had backed away from the gates.

*“I can change . . . maybe, if I have to.”
(Red Green’s Possum Lodge Prayer)*

What a relief to hear that U.S. Supreme Court Chief Justice John Roberts, in Bloomington to address the Indiana University School of Law, didn’t say anything discouraging about the legality of Congress sending me other people’s money.

But before getting into that or the prospect of a royal title, a confession: As one of the every other citizen who actually pays taxes, I have had trouble getting my

We are not free to be half free. We must choose, especially journalists given special license and privilege to question the powerful. It is spelled out dispassionately and with great historical accuracy in the Declaration of Independence.

How many millions do you think Barbra Streisand or Madonna would pay to be an American countess? How does Lord Donald Trump sound?

arms around the hope and change that swept the nation this last election.

Most recently, though, with talk of a sort of Americorps for journalists, my hopes are raised. So much so that I am adopting the White House's affectation of dropping the names of techno-devices to communicate hipness and savvy.

Forty years ago, as a part-time typesetter sitting in front of my 90-character Mergenthaler Linotype, I could not imagine one day having a cash pipeline to the U.S. Treasury. They tell me, though, that newspapers and journals, like car companies and mortgage bankers, are too important to fail.

I could not agree more. Even so, I must concede that the promise of an unfettered press (or blog) was decisive in convincing the framers that a constitutional republic, its leadership determined by periodic election, was feasible.

The idea was that journalists, poets, novelists and playwrights would be empowered by the First Amendment to challenge government power at every historical turn, thereby keeping individual liberty safe from any one of the three branches.

During the last presidential election, at the height of ObamaMania, the legendary playwright David Mamet described the enormity of this task in a shockingly frank article for *the Village Voice*:

The Constitution, written by men with some experience of actual government, assumes that the chief executive will work to be king, the parliament will scheme to sell off the silverware, and the judiciary will consider itself Olympian and do everything it can to much improve (destroy) the work of the other two.

In exchange for exposing chicanery and malfeasance, newspapers and other mass media enjoy legal exemptions not available to regular businesses, even their own advertisers and investors.

But the times change, I am told. The large media corporations see their role differently.

And in any case, my son can download a newspaper full of articles onto a device smaller than a playing card. It is more dependable than a delivery boy and can be kept safely in a biohazard of a backpack, all available 24/7.

Let's Get Royal," I have entitled the editorial sitting smartly in the paper carriage of my 1958 Hermes 3000 portable typewriter (on my laptop). It is my attempt to look at the Constitution with fresh hope-and-change eyes.

I ask whether it is time to repeal or just ignore the antiquated Article I, Section 9. Why not call our presidents kings and our congressmen marquesses? Could Sagamores of the Wabash be canonized? Do I qualify for a baronet?

Before scoffing, you will want to ask Sonia Sotomayor what she thinks about that — or Elena Kagan or who knows who else. Indeed, the possibility was taken seriously enough by Patrick Henry. He warned that the Constitution "squinted towards monarchy." Or by Cato writing that American presidential power "differs but very immaterially" from that of the British king:

Our posterity will find that great power connected with ambition, luxury and flattery will readily produce a Caesar, Caligula, Nero and Domitian in America.

Yes, but a presumptuous title or two won't "cause the sky to fall," as the president is fond of chiding.

How many millions do you think Barbra Streisand or Madonna would pay to be an American countess? How does Lord Donald Trump sound?

And if Washington wants to bring in some serious money, it should do the market research on expanding monopoly licenses, exclusive mineral rights or other emoluments — all revenue bonanzas specifically prohibited by what some see as a shortsighted constitution.

Is the global war on "human-caused disasters" costing too much? Just wipe from the books the expense of housing and feeding U.S. military forces.

The calculator on the desk in front of me, a 1971 Bomar 107AZ, doesn't have enough battery life to estimate the savings that could be realized by repealing the Third Amendment and allowing soldiers to be quartered in American homes.

Yes, this is going to be tough on those of you with small kitchens and teenage daughters.

Nobody, though, said change was easy — or did they?

LET'S TRANSFORM THE COLTS THE WAY WE DO PUBLIC SCHOOLS

Ultimately, we must ask if it is appropriate to tackle someone who is merely trying to get out of your way.

by JEFF ABBOTT

I am hopping mad at the Colts. I am angry because they didn't make Annual Yearly Progress (AYP). Not all their subgroups passed. Their offensive line caved in during the Super Bowl. Their defensive line didn't do well, either (no excuse about the injuries). Their defensive backs also failed because they didn't stop Drew Brees. Thus, way too many subgroups failed to make AYP. Adding insult to injury, the Colts didn't even win all their games, let alone the Super Bowl. Thus, we must categorize them as a failing team. Something has to be done. Here's my idea for the rebuilding of the Colts.

It is obvious since the Colts have not met our standard of perfection that serious reform of their organization is needed. My idea is to make the Colts like the public schools. The first thing that needs to go is Jim Irsay, the owner. I don't care that he has built up the most-winning NFL team during the last decade. It's just not the American way that the Colts have an appointed board. Let's open it up and make it an elected board so the board will be more responsive to the fans. That would be more democratic. We can have fans making decisions on behalf of the fans who pay their way.

Of course, the players union gets to fund the campaigns of these board members and make them

beholden to the union. And of course only five percent or so of the fans will even bother to vote in the election.

Next, let's lobby Congress and the legislature to pass thousands of laws to govern the Colts and let's make sure we don't have a single year go by that we don't have some new reform measure passed. After all, the Colts are not meeting standards and are failing. Next, let's create all kinds of state and federal agencies to monitor the Colts to make sure all these laws are enforced.

Next, the newly elected board should cut expenses. Economic times are tough all over. Ticket prices are too high, salaries are too high and expenses need to be cut. Let's cut team President Bill Pollian's salary or even eliminate his position. After all, it seems all he works is three days during the draft in April. Surely a knowledgeable head coach could do Pollian's job.

Next, let's make sure one of those laws gives tenure to the most-senior players—those with more than five years' experience. That will ensure we keep Peyton Manning, Reggie Wayne, Dallas Clark and some of our other superstars. Like Indiana law for teachers, we could declare that first- and second-year players are "non-permanent" with no seniority rights and must be laid off before all other players regardless of performance. After all, most Indiana school districts are

Like Indiana law for teachers, we could declare that first- and second-year Colts players are "non-permanent" with no seniority rights and must be laid off before all other players regardless of performance.



Jeff Abbott, Ph.D., J.D., an adjunct scholar of the foundation and satirist here, has been active as a college instructor for over 25 years. He now is an assistant professor at Indiana University-Purdue University at Fort Wayne. Dr. Abbott also practiced law for 17 years, specializing in school law. He taught middle school and high school, and has served in several central-office administrative positions, including 14 years as a superintendent of schools.

All we have to do is fire Coach Caldwell, retrain the players, change the playbook and presto — we will meet standards. We will win all of our games and the next Super Bowl.

giving lay-off notices to all their first- and second-year teachers. So it's only fair we treat the Colts the same. Remember, they are not meeting standards either and are failing. What? You are really worried about losing starters such as Donald Brown, Austin Collie, Jacob Lacey, Pat McAfee and Jerrod Powers? Don't worry. The rest of the players will pitch in and take up the slack. Gee . . . McAfee's job doesn't look so tough. I punted in high school and had a 42-yard average. I could do that job.

Now, we only have eight players who are non-permanents. We have 21 who are semi-permanent (three- to five-years' experience) and we must lay off most of them, too. There's not enough in the budget for them, either. So what? We only lose players like Joseph Addai, Melvin Bullitt, Pierre Garçon, Anthony Gonzalez, Clint Session and a few more who really aren't needed to meet standards.

But there is good news. There will be replacements. The NFL union contract allows any tenured player who has more than 10 years' experience to transfer to any open position on any other team. It will be so much fun to watch all these retreads from other teams wear blue and white uniforms with the horseshoe on their helmets.

The first phase of my rebuilding plan for the Indianapolis Colts called for reforms in governance and tenure. The second phase will focus on reforming the failing Colts organization in the manner that the Obama administration is reforming public schools.

The Obama administration has given failing public schools four options:

Close — close the school and transfer students; or

Turnaround — replace at least 50 percent of the school staff; or

Restart — turn the school over to a charter operator or outside manager; or

Transformation — fire the principal, provide training and coaching to teachers and make changes in curricula and instruction.

The first option of just closing down the Colts may be worth exploring. Perhaps we could turn the Lucas Oil field into one big indoor garden and let former fans spend their Sunday afternoons tending their own

plots of ground while thinking about all the great football memories the Colts gave them. Or perhaps we could turn it into a go-kart track and invite former players to be honorary starters. Personally, I am not in favor of this option. I would once again have to become a Bears fan which might bring back all those nightmares of Bobby Douglass throwing deep.

The second option, turnaround, is definitely worth thinking about, too. What a great opportunity to reduce costs. We could reduce 36 players' positions and reduce ticket prices. Anyway, 71 players are way too many. After all, we can only play 11 at a time. Maybe some of them could go both ways to further reduce the budget.

Alternatively, we could trade (replace) 36 of our least-senior players (union contract only allows us to trade players with five or fewer years of experience) to some other team for their 36 least-senior players. That could really be fun and might even let our Colts meet standards. The Lions might be interested.

Restart, the third option, also has some merits. We could turn the team over to a charter operator or some other outside manager. I like that because maybe I could run a pro football franchise, something I have always wanted to do. Surely my cronies and I could do just as well as Jim Irsay and Bill Pollian. After all, they failed to meet standards and make AYP.

The fourth option, transformation, is perhaps the best of all. Why? Like the public-school model of transformation which most school districts will select as their "reform" model, this is the most politically appealing and least disruptive. In public schools, principals don't have any real power and seldom have any real constituency since they are moved around every couple of years (or when politically expedient).

Under this option, all we have to do is fire Coach Jim Caldwell, retrain the players, change the playbook and presto — we will meet standards. We will win all of our games and the next Super Bowl. This will not be politically sensitive or disruptive. How many fans even have a jersey with Coach Caldwell's name and number on it? Three cautions should be set forth in what not to do to rebuild the Colts, however.

We need to make sure we never empower the players and coaching staff to make decisions and then have the audacity to hold them accountable. Let's avoid the trap of de-centralization. We all know that a heavy-handed bureaucracy is the best way to manage all organizations, especially pro football franchises and schools.

Next, never think about de-regulation. Can you imagine Coach Caldwell or Peyton Manning without a playbook handed down by the team's elected board of directors? What a mess that would be. We all know team rules and plays are best developed by those furthest from the playing field.

Finally, don't consider de-politicizing the Colts. We fought hard for our elected

board. I can't bear the thought that those thousands of laws controlling the Colts might not exist.

Can you imagine running the team without mandatory case-conference committees, mandatory union bargaining with year-round discussions, or public board meetings every week so board members can micromanage the team and have their day in the sun?

We just can't trust the coach and players to do the right thing. They need to be stripped of all their judgment. We can't just let them tackle anybody, you know. It has to be in the policy book as to who, when, where and in what manner they can tackle an opponent.

We just can't trust the coach and players to do the right thing. They need to be stripped of all their judgment. We can't just let them tackle anybody, you know.

The promise of charter schools is that they'll improve student performance in return for exemptions from the staffing, curriculum and budget requirements of traditional public schools. The reality is often different. According to a new study from the Fordham Institute, too many charter schools lack the operational autonomy they need to be effective. The Fordham study looked at 26 states that comprise more than 90 percent of the nation's charter schools and concluded: 'Our policy-makers and school-authorizers, by and large, have not fulfilled their part of the grand "bargain" that undergirds the charter-school concept: that these new and independent schools will deliver solid academic results for needy children in return for the freedom to do it their own way.' In Connecticut, Indiana and Michigan, for example, charter school teachers must be state certified. In Delaware, even minor changes to the curriculum have to be cleared with the charter school authorizer. New Hampshire and Tennessee ban charters from hiring their own special-education instructors. Charter teachers in Maryland and Wisconsin must be paid according to state-established salary schedules. — *the Wall Street Journal*, "Hobbling Charter Schools," May 15, 2010

School reformers generally agree that the most-important education resource is the teacher. But one of the biggest obstacles to putting a good instructor in every classroom is a tenure system that forces principals to hire and retain teachers based on seniority instead of performance. California grants tenure to teachers after merely two years in the classroom. New York, like most other states, makes teachers wait a grand total of three years before giving them a job for life. In most cases tenure is granted automatically unless administrators object, which is rare. A recent report in *the Los Angeles Times* revealed that the LA school district, the nation's second-largest after New York City's, 'routinely grants tenure to new teachers after cursory reviews — and sometimes none at all.' According to the *Times*, 'the district's evaluation of teachers does not take into account whether students are learning. Principals are not required to consider testing data, student work or grades.' . . . A New Teacher Project study last year looked at tenure evaluations in multiple states and found that 'less than one percent of teachers receive unsatisfactory ratings, even in schools where students fail to meet basic academic standards, year after year.' Less than two percent of teachers are denied tenure in LA, where the high-school dropout rate is 35 percent and growing. — *Wall Street Journal*, "No (Tenured) Teacher Left Behind," Feb. 22, 2010.

THE KOCH PRIZE

The future of higher education lies in partnerships. Over the last few years members of the Economics Department of the Miller College of Business have offered a unique learning experience for both Ball State students and Muncie residents. In partnership with the E.B. and Bertha C. Ball Center and in consultation with Indianapolis-based Liberty Fund, a number of colloquia have been offered where students, faculty and Muncie community members have examined classic economic texts and engaged in Socratic discussions about issues that arise from them. The sessions were lively, thought-provoking and idea-centered. The format allowed for open dialogue and inter-generational interaction in ways not accomplished in traditional faculty-centered lectures.

In the fall of 2009, the group examined a number of writings on the nature and importance of property rights. In the spring of 2010 another partner, the Charles G. Koch Foundation, joined the effort by facilitating the visit of a prominent scholar on property rights and by funding a student-essay contest on property rights. We were delighted when the Indiana Policy Review Foundation agreed to distribute the winning student essays to a wider audience. We hope you enjoy the fruits of these Ball State students' labors. They are the product of the exciting collaborative education that is becoming the hallmark of our university's programs. — *Cecil Bobanan, Ph.D., adjunct scholar*

PROPERTY RIGHTS AND A NATION'S DOWNFALL

The lesson of Zimbabwe

*Private-property rights can
be the difference between
a thriving economy and
a thriving mortuary.*

by CHARITY MANSFIELD

There was once a nation that stood out among its neighbors. It had a flourishing economy supported by expansive rolling fields of crops. Its people merely had to look across its borders to see how fortunate they were. Unlike their neighbors, they produced enough food to sell to others. Their economy was booming and tourism was common. Then one day everything changed. The fertile fields turned barren and people began to suffer. The credit market disappeared. People starved. This is a true story of a nation that made one disastrous choice.

The story above details what happens to a society that manages to remove property rights from just one of its many markets. Property rights translate into more productive citizens and wealthier nations.

Nothing proves this theory more than Zimbabwe and its economic downfall.

The former Zimbabwe is no longer recognizable in its current state. Its success sprang primarily from a flourishing agricultural sector which composed 18.1 percent of its gross domestic product (GDP). The agricultural sector was made up of large commercial farms which were thriving and producing enough to export substantial amounts. In 2000, Zimbabwe's agricultural output amounted to 2,201,100 short tons of cereal products, including wheat, rye, oats, rice and sorghum among many others, which composed the majority of its output from non-commercial farms.

After a series of "land reforms" under the regime of President Robert Mugabe, beginning in 2001, the once-thriving farms became communal lands which no longer grew enough food to feed the nation. The supposed purpose of the reforms was to help the 850,000 poor black farmers take possession of fertile farm land owned by 4,500 white families. The reforms were

marketed by President Mugabe as a way to “help the little guy.”

In reality, land was taken from productive farmers and divided among nonproductive farmers. Some of the seized lands were overused and eroded. Others sat unplanted by those who could no longer secure credit to borrow seed for land they did not really own. Still others were placed in the hands of President Mugabe’s supporters who had little or no agricultural experience. The vast irrigation systems that once served commercial farms became the property of no one and were soon dug up for scrap metal. Between the years of 2000 and 2003, the government authorized seizure of nearly all of the commercial farms in Zimbabwe.

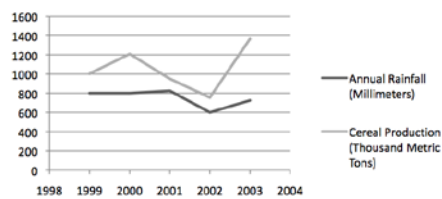
By the end of the land reforms in 2003, Zimbabwe produced a mere 843,700 short tons of cereal products; less than half of its production the year before the reforms. This information is even more significant with the realization that the commercial farms that no longer existed produced mainly cash crops such as tobacco and cotton. The years after the land reforms were the first in which much of that land was switched to the production of cereal crops; yet output of those products still managed to drop drastically. As for the output of tobacco, it averaged 482 million pounds in the years before the land reforms and dropped to 227 million pounds by 2003. This lost production is attributed to a one-third reduction in the amount of cropland used for tobacco growth.

In the years following the reforms, GDP steadily shrank as low as -10.4 percent in 2003. Inflation hit a devastating rate of 156.2 percent in 2008. The credit market collapsed as banks became unwilling to extend loans to farmers who might not be able to harvest the crops they borrowed on credit to plant. Zimbabwe once hosted a strong manufacturing sector that also suffered with the collapse of agriculture. Nearly the only sector of the economy to experience growth was the coffin industry.

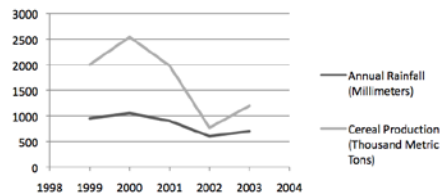
These problems are often blamed upon a drought that occurred in the years following the loss of commercial farms. While the drought may have contributed to lost agricultural production, looking at the experience of a nearby nation sheds light on this idea. Zimbabwe’s neighbor country Zambia provides a sharp contrast. Zambia is also supported by a large agricultural sector that makes up approximately 17 percent of its GDP.

While Zimbabwe saw a steady decline in GDP, Zambia was experiencing an equally steady increase. The agricultural sector continued to flourish despite slightly

Zambia



Zimbabwe



Source: Richardson, 2005 and World Resources Institute.

lower yields due to decreased levels of rainfall. In comparison, Zambia produced 1,103,300 short tons of cereal products in 2000 and 830,500 in 2003; showing a much less drastic decline than Zimbabwe experienced. Rainfall and agricultural output comparisons in both countries between the years of 1999 and 2003 are shown in the accompanying charts.

Shortly before Zimbabwe’s landscape began changing as a result of land reforms, Zambia privatized copper mines. Originally, the copper mines in Zambia were owned and run by the government.

Beginning in 1992, the government started to sell off the mines to private corporations. Not surprisingly, the industry finally began to see a profit. Since then, Zambia has privatized other sectors including banks, electrical supply and distribution, oil refineries, rail transport and textiles.

The contrast between a privatizing nation’s economic successes and another nation’s poverty marked by nationalization and theft is no coincidence. Private-property rights can be the difference between a thriving economy and a thriving mortuary. While Zambia is moving toward more private property and reaping the benefits, Zimbabwe has removed private-property rights from one sector and has been reaping the consequences for nearly a decade.

Resources

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INTERNATIONAL INTELLECTUAL PROPERTY RIGHTS AND PHARMACEUTICAL DRUGS

Current treaties allow certain countries to abuse patents.

If patent exemptions cause firms' incentives to drop low enough they may not be able to generate enough economic profits to justify innovation or to conduct research.

by LUKAS SNYDER

In a 2004 report by the National Center for Health Statistics, nearly half of all Americans use at least one prescription drug. These numbers continue to increase as the baby-boomer generation ages and healthcare becomes more important to our country. Considering the importance of pharmaceutical drugs in America, it seems important to look at a possible threat to this industry. The pharmaceutical industry faces international threats in the form of patent abuse. Although there are a number of laws and treaties controlling the production of generic forms of patented drugs, these treaties allow room for abuse of property rights and may ultimately affect pharmaceutical companies' decisions to innovate.

Today, international intellectual property rights are primarily the concern of the World Intellectual Property Organization (WIPO), a specified agency of the United Nations whose purpose is to promote intellectual property rights around the world. A report issued from their 13th session in Geneva deals with exclusion from patentable subject matter and exemption and limitations to the rights. The report discusses the circumstances under which a country may be eligible for patent exemptions. In paragraph 78, the report discusses some of the results of the Paris Convention regarding

patent exemptions. Member States are free to define the expressions "abuses which might result from the exercise of the exclusive rights conferred by the patent" or "failure to work." Other examples of such abuses may involve the refusal to grant a license with reasonable terms and conditions, or the failure to supply the national market with sufficient quantities of the patented product or demanding excessive prices for such a product.

Along with their own set of criteria, WIPO and the World Trade Organization (WTO) have established a set of rules regarding trade-related aspects of intellectual property rights (TRIPS). Under this set of laws, patent exemptions must: be limited, not provide unreasonable conflict with normal exploitation of the patent, not unreasonably prejudice the legitimate interests of the patent owner and take account of the legitimate interests of third parties. These criteria set stricter guidelines than those of the Paris Convention, but are still ambiguous and are open to misinterpretation.

The results of the Paris Convention, as supported by WIPO and the TRIPS agreement, provide vague conditions under which a country may be granted a patent exemption. These laws allow for countries to push the boundary between social welfare and economic incentives to innovate new products globally. They present a particularly interesting situation



Luke Snyder, of LaPorte, is an undergraduate in economics at the Ball State University Miller College of Business. This essay tied for second in the 2010 Koch Foundation competition sponsored by the university's economics department.

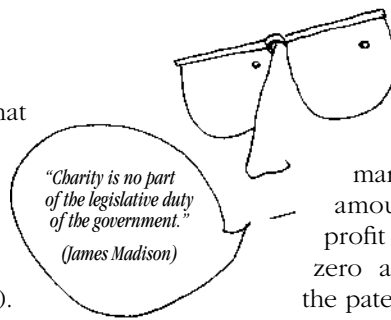
for pharmaceutical companies that invest large amounts of capital into the research of new drugs. *The Journal of Health Economics* estimates the average research cost for a new drug to be around \$403 million (2000 U.S. dollars).

Under normal market conditions, these high research costs could never be recovered due to market competition, but under patent protection the firms are allowed to behave monopolistically.

Current international treaties are worded in a way that allow underdeveloped countries to abuse patents. For example, an underdeveloped country may claim that a particular drug is being sold for excessive and unreasonable prices. Although the monopoly may be overpricing its product, it may simply be charging a fair price which off-sets its high research costs. Discrepancies regarding patent exemptions should focus on price analysis to see if a company is charging an unreasonable price, or if it is simply covering high research costs. Analysis of a firm's or industry's output and pricing decisions can help such patent-exemption debates to be resolved.

In a perfectly competitive market, a firm will receive revenues equal to the area between the supply and demand curves under the equilibrium price. The level of revenue compensates the firm for its marginal and fixed costs, but does not yield any economic profit. Under strict patent enforcement, the firm does not operate at the intersection of supply and demand, but at the point where marginal revenue intersects the marginal cost curve. The firm will then price according to where this point corresponds to the demand curve. The result is economic profit for the monopolistic firm. In our case, these economic profits serve the purpose of both compensating the firm for its research and development, and gives it an incentive to innovate. A firm will therefore only innovate if the patent can yield an economic profit greater than its research and development costs. Any economic profits remaining after deducting research costs can be viewed as the firm's overall incentive to innovate.

Countries that abuse patent exemption cause the market for patented drugs to



behave in a less-monopolistic manner. That is, the amount of economic profit drops closer to zero and the effect of the patent are lessened. If patent exemptions cause firms'

incentives to drop low enough they may not be able to generate enough economic profits to justify innovation or to conduct research.

Across the pharmaceutical industry as a whole, any increase in patent-exemption abuse will result in more firms ceasing to research and, aggregately, the industry will innovate marginally less. This sort of trade-off is certainly not what WIPO and WTO intended. The idea behind these treaties is to discourage firms from using the inelasticity of pharmaceuticals to gain excessive economic profits by charging exorbitant prices.

These treaties must be used to bring economic profits closer to an individual firm's research costs, but not below. The current international patent-exemption treaties revolve around analysis of a country and its particular situation. In order to ensure continued innovation in the pharmaceutical industry, these treaties should include an equally strong analysis of firms on a microeconomic level.

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The Journal of Health Economics estimates the average research cost for a new drug to be around \$403 million.

A COMPARISON OF PROPRIETARY AND OPEN-SOURCE SOFTWARE METHODS

From the perspective of property rights

*Property and the rights
associated with it are integral
when determining the way
society functions and how
different members of society can
interact with one another.*

by JEFFREY W. CLINE

At first glance, the concept of property may not seem important in terms of life's everyday necessities. However, a more critical reflection places property at the center of everyday life. Without a concept of property, how do humans determine which house belongs to whom, how much food goes to each person and how are a number of different resources allocated among a population? From this perspective, the concept of property and the rules that govern it are extremely important. Furthermore, these concepts reach into complex parts of society, including the development, transfer and use of goods such as software. The objective of this paper consists of two parts. The first will be to defend the importance of property rights in society. The second will be to compare the property rights methods of proprietary and open source to examine the effectiveness of each.

It will be helpful to first define exactly what is meant by the terms *property* and *property rights*. The dictionary definition of property includes all things which may be owned by individuals or groups of people, and can be divided into two main categories. The first category is tangible property, which includes objects that have a real, physical existence and have an

inherent value in them because of that existence. Examples of tangible property include such items as houses, clothes and food. The second category is intangible property, which includes things that do not have value from a real, physical existence. Instead, intangible property derives its value from what it represents. Examples of intangible property are copyrights, trademarks and patents. The legal definition of property rights can be defined as the rules and laws of a society that deal with the relationships between members of society with respect to property. Property rights provide three major contributions to society. First, they define what can and cannot be considered property and therefore what can be owned. For example, in the United States, people can no longer be treated as property and therefore cannot be owned by another member of society. Next, property rights outline the ways in which property can be transferred between members of a society. In the United States, there are certain steps individuals must follow to transfer ownership of a house from one person to another. The third contribution of property rights is to define the ways in which property can be used in society. For instance, people are allowed to treat guns as property but they are not allowed to shoot others with them whenever they

want. Property and the rights associated with it are integral when determining the way society functions and how different members of society can interact with one another. An essential factor is for members of society to know not only what they may own but also the value of what they may own. If a person is going to purchase a home, in order to make a good decision that person must know which houses are available to buy and how much those houses are worth. Another important factor is that members of society need to know the ways in which they can transfer their property and how they can make use of it. For example, a person needs to know the steps that must be taken to buy or sell a car and what can be done with that car. These two factors can greatly affect individuals' lifestyles and their quality of life. Certainly, civilizations that allow people to be owned will affect quality of life, especially of those people who are property. Also, a civilization that allows people to drive their cars in any location (*i.e.*, sidewalks, stores, parks, etc.) will offer a different lifestyle and quality of life than one which imposes restrictions on the use of cars.

In today's world, an important piece of property and the rights associated with it is software. Before discussing proprietary and open-source software methods it will be beneficial to state what exactly software is. Computers are comprised of a functioning collection of two components. These components, called hardware and software, provide different services to the computer system. Hardware includes the physical components of a computer that are necessary for it to function. Examples of hardware include hard drives, processors, circuitry, etc. Software refers to the programs and instructions that run and direct the resources of the hardware in order for a computer to perform. Humans

determine what computers can do by the software chosen to be installed on them. The software is created by humans through writing source code. Source code begins at a high-level language that is used for writing code by programmers. Examples of programming languages include Java, Lisp and Perl. After the code is written, the language used by programmers is then translated into language which is usable by computers.¹ Source code is the lifeblood of software and software is an absolute necessity for the functionality of computers. Based on previously mentioned definitions of property, software can be seen as tangible property whose physical existence is valuable because it essentially allows computers to function. Source code can be seen as intangible property because it is a linguistic manifestation of a physical product — software.

If software and source code are property, then there must be property rights to govern them. There are essentially two ways of looking at these specific pieces of property in terms of property rights. The first is referred to as the proprietary-software method, which generally has three characteristics. First, the source code and software is developed by a team of programmers within an organization or firm. Second, the software is released sporadically, is relatively expensive and does not come with access to the source code. Third, end users are restricted from modifying or redistributing the software. The second way to view property rights governing software and source code is called the open-source software method, which is also generally defined by three characteristics. First, the source code and software is developed by two groups. One group is a team of programmers who may or may not be affiliated with an organization or firm. The other is the

Software can be seen as tangible property whose physical existence is valuable because it essentially allows computers to function. Source code can be seen as intangible property because it is a linguistic manifestation of a physical product — software.

The Charles G. Koch Charitable Foundation was established in 1980 by Charles G. Koch, chairman of the board and CEO of Koch Industries, Inc. The mission of the foundation is to advance social progress and well-being through the development, application and dissemination of the Science of Liberty™. The foundation primarily supports research and education programs that analyze the impact of free societies, in particular how they advance the well-being of mankind.

Proprietary organizations do not release the source code with their product. People can use the software, but that is the extent of their ownership. Open-source communities release the source code with their product, which offers a more complete transference of property rights.

end user of the software. Second, the software is released frequently, for free or at a relatively low cost and comes with access to the source code. Third, end users are not restricted from modifying or redistributing the software.²

The two views of property rights for the governance of source code and software are starkly different. To compare the two methods, differences between development, transference and use will be analyzed. When it comes to development of good source code and software, interest in the problem the software will solve is a key factor. Teams within proprietary organizations do not often choose the kind of software to be developed, and may be disinterested in the project. Conversely, open-source communities choose the kinds of problems that interest them that they want to solve by writing software.³ Software development is an extremely complex process that requires lots of time and effort. Development teams within proprietary organizations are limited in number. Therefore, the workload for each member is large and takes time to complete. On the other hand, open-source communities have access to a large pool of developers thanks to the Internet. As long as there is enough interest in a particular project, the workload is divided into smaller amounts per person and can often be completed more quickly. Despite the amount of time and effort that go into creating quality software, releases always have bugs in them. Proprietary organizations typically have long periods of time between release dates, so bugs found by users take a relatively long time to resolve. In contrast, open-source communities release their software early and often, so that bugs can be found and worked out as quickly as possible.⁴ Because of these factors, the open-source development style can be much more effective in generating value given enough interest in the project and access to a large pool of developers via the Internet.

When looking at the transference of rights to end users, the cost and level of property-right transference is important. The cost of software and source code is important to both developers and end users of the product. Proprietary organizations

typically price their software relatively expensively. This is done to cover their costs of development, release and maintenance in order to remain profitable. Open-source communities typically make their software available for free or at a relatively low price. This is because they are usually comprised of groups of people who are not as driven by a profit motive.⁵ The completeness of the transference of a property right associated with a product is also important to end users. Proprietary organizations do not release the source code with their product. People can use the software, but that is the extent of their ownership. Open-source communities release the source code with their product, which offers a more complete transference of property rights.⁶

The way in which property can be used has a profound effect on users. The level of individual discretion toward the use of an object is an important essence of property. Proprietary organizations do not allow users to modify their software for use in other applications or problems, whereas open-source communities do. The way in which property can be redistributed is also an important factor in terms of transference and use. Proprietary organizations license their software so that users are not allowed to redistribute the software under any circumstance. Open-source communities mostly license their software under the General Public License (GPL), where users can modify and redistribute the software under two primary conditions. First, the distributor must make known from whence the original source code came. In other words, it must be known what source code was used, combined or modified to make the new software being distributed. The second condition is that any derivative software made from code originally licensed under the GPL must also be licensed under the GPL.⁷

While the open-source method may not be successful when extended to all areas of software, it in many cases has been more successful at giving the most people access to the most amount of property rights of quality software. If there is any doubt, there are several real-world success stories that can back the claim. Sendmail is an open-source email management and transfer program that powers almost 80

percent of the world's mail servers. Apache commands the web-server market, as more than 65 percent of all active websites use it. Perhaps the most-famous example is Linux, which is the operating system for a third of all active web servers. Searching the web on Google uses a cluster of about 10,000 computers running Linux. Amazon, E*Trade and Reuters all use computer systems running Linux. The Internet and other computer systems are increasingly being built on open-source software.⁸ There may always be a place for proprietary software in society. For now, open source is making significant headway, which may be a call to reconsider the property rights surrounding software.

Endnotes

1. Information about hardware, software and source code came from Chopra and Dexter, 2008, p. xiii.
2. A more-detailed discussion on the properties of proprietary and open source can be found in Chopra and Dexter, 2008, pp. 40-42.
3. This assertion is based largely on the discussion of Lesson 1 in Eric Raymond's book. Raymond, 2001, p. 23.

4. Raymond's argument for the importance of users to decrease development time and the debugging process is more extensive and can be found in Raymond, 2001, pp. 26-36.

5. For more explanation and arguments regarding this line of thought, see Weber, 2004, p. 113.

6. See note 7 below.

7. Weber discusses open-source GPL licensing regarding release of source code, software modification and redistributing in Weber, 2004, p. 84.

8. A fact check and elaboration of these claims can be found in Weber, 2004, pp. 6-7.

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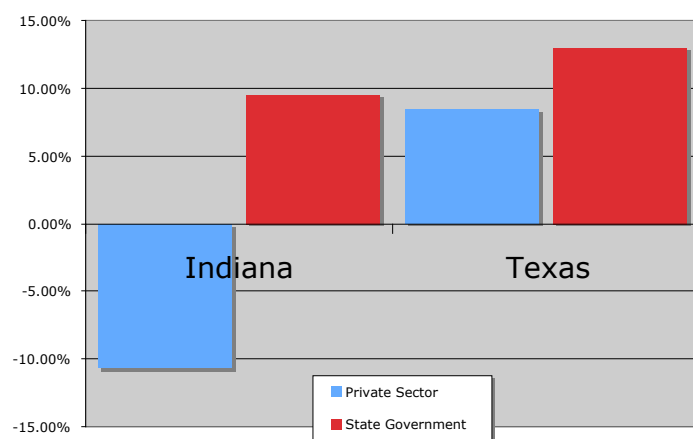
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The open-source development style can be much more effective in generating value given enough interest in the project and access to a large pool of developers via the Internet.

The 'Perry Doctrine': A Texas Alternative

The federal government wants to be the epicenter of all thought and policy and one-size-fits-all. It's very clear that we have very, very different ideas about the structure of this country and how it should work. The tea parties are a reflection of that. I think they are highly economic-driven. At the end of the day, it is about the economy that's really what drives people. Government is basically saying, 'I don't care how hard you work. We are going to take more of (your money), because we know best how to redistribute it around the country.' It really irritates a lot of Americans. — *"The Perry Doctrine," an interview with Texas Gov. Rick Perry, Newsweek, April 26, 2010*

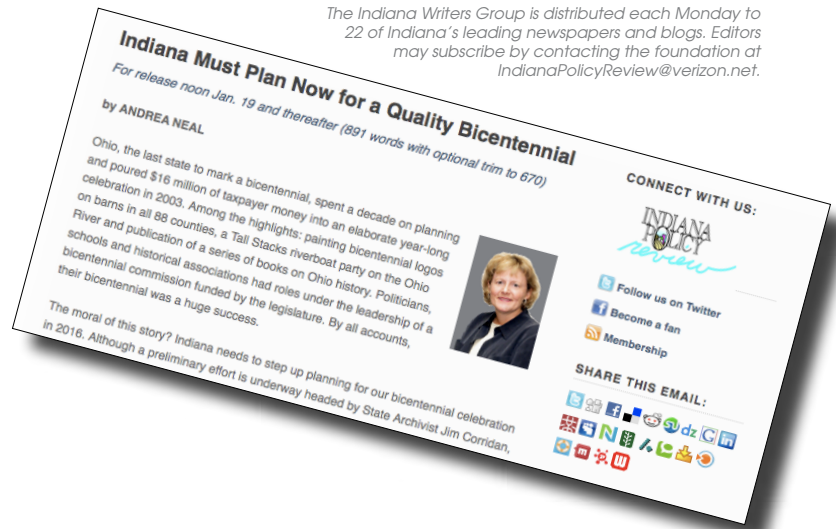
Percentage Change in Employment from January 2000 to January 2010 (in thousands)



Information was taken from the Bureau of Labor Statistics Current Employment Statistics on April 2, 2010

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*“Regarding the line items
in their budgets, our
cities are not asking the
critical question: Is this
something that government
should be doing?”*

— Ladwig

SEPTEMBER BANKRUPTCIES FOR INDIANA MUNICIPALITIES?

by CRAIG LADWIG

(May 5) — A tour of the state with municipal policy experts left us convinced that few if any Indiana cities will institute the necessary budget corrections in time to avoid crises next year.¹

Talks with civic leaders, elected officials and editors in seven Indiana cities suggest that we are more likely to follow the recent example of Harrisburg, Pa. That is, we will still be arguing about minor budget cuts when the gates of Chapter 9 bankruptcy begin to close.²

And it gets worse. Dr. Eric Schansberg, an adjunct scholar with the Indiana Policy Review Foundation, wrote recently that too many state and local governments will react to these shortfalls by applying tax rates that further diminish economic activity and reduce property values, thereby actually decreasing tax revenues. So instead of solving the problem, “this will increasingly squeeze lawmakers into increasingly unpleasant choices,” Schansberg says.

Dr. Sam Staley, another foundation scholar, believes that many cities are running up against what he calls the “10-Percent Rule.” The concept, although more psychological than fiscal, is worth

understanding in the context of Indiana municipal politics.

First of all, property-tax caps, generally lower tax revenue and increased costs have brought our cities to a historic point (projected budget shortfalls of 10 percent or more). It is a point where old remedies and fixes no longer work.

“The nut of this rule of thumb is that it takes at least a 10-percent change in something to motivate a meaningful change in behavior or direction,” Dr. Staley told the editorial boards of several Indiana newspapers. “By ‘meaningful,’ I mean a change in direction or behavior that is strategic and involves a realignment of priorities or resources.”

Staley reminds us that 10 percent is an upper bound. He says that good managers start rethinking priorities at five percent or even lower, especially if the shortfall has continued over time.

The concern is that Indiana cities, many of them facing much larger shortfalls, seem content to address their crises with incremental and short-term policy tweaks. Regarding the line items in their budgets, they are not asking the critical question, “Is this something that government should

be doing?" Maj. Ryan Cummins, a former finance chairman for the Terre Haute City Council and someone I consider an expert on Indiana municipal budget policy, shares this concern. He predicts that as annual budget discussions pick up this spring and summer some Indiana city councils will realize they face virtual if not actual bankruptcy by their fall budget deadlines.

Cummins dismisses as ineffectual the familiar "press-release economics" of cuts in phone use, gasoline and overtime. Even cutting out staff deadwood with the promise of improved departmental efficiency won't be enough. He believes that Indiana cities must face the fact their budgets are dominated by employee compensation (80 percent in his city). Successful local government, Cummins says, will shed not only jobs but entire departments.

As a councilman and a finance chairman, for example, Cummins questioned whether citizens truly want their government to own cemeteries, swimming pools, parks and golf courses. And do they care whether the emergency personnel who answer their 911 calls are municipal union firefighters or comparably trained and equipped private contractors?

How does such a discussion begin? A good start is the introduction of "core-functions" legislation. Such proposals are being considered in several states as a way to organize that discussion around the question of "what, exactly, is the job of city hall?" A necessary condition if the discussion is going to be constructive rather than postured is an honest and independent media.

Kim Thatcher, a sponsor in Oregon, began her campaign with nothing more than loose agreement that government "can't and shouldn't do everything."

"Our system of budgeting wasn't working," she explained recently to the American Legislative Exchange Council. "Instead of agencies pestering lawmakers for more and more money, we first needed to establish what the core functions of

Don't follow the lemmings into municipal funds. This sector is going to see a lot of pain, and it has nothing to do with federal tax brackets. It has to do with the fact that states and cities are having trouble paying their bills.

Defaults on tax-exempt bonds are the highest since my *Distressed Debt Securities Newsletter* began tracking defaults in 1983. In 2009, 183 issuers defaulted on \$6.3 billion in tax-exempt debt. The majority of these defaults involved entities with taxing power (like the 99 Florida Community Development Districts). It's only a matter of time before you start seeing defaults on the general obligation debt of state and local governments.

Lavish government pensions are the problem, as *Forbes* has well documented. Policemen, firemen and jail clerks retire young and collect inflation-adjusted pensions. There is far from enough money set aside to cover benefits already earned. The result is that the government employer will find itself paying two cops instead of one: the one who is now pounding the pavement and the one who was doing the job before.

— Richard Lehmann in *Forbes Magazine*, May 24, 2010

government were and then decide how to divvy up the available funds." Her list of core functions serves as a talking point for an Indiana discussion.

Will everyone agree with a given set of core functions arranged in a set priority? Surely not. Our group certainly wouldn't. But a list forces office-holders to justify alternative positions through cost-benefit analysis rather than factional politics. That in itself might introduce the accountability needed to spur city halls to quit doing what doesn't work and start doing what might work.

Endnotes

1. In March and April, the author, Dr. Sam Staley and Major Ryan Cummins visited either individually or together seven Indiana cities of every size, including agricultural-based county seats, mid-sized college towns and metropolises. All three men were contributors to the foundation's journal, "The New Indiana City." Ron Reinking, a certified public accountant and another contributor, joined the group for one of the visits.

2. Chapter 9, Title 11, United States Code: A Chapter 9 bankruptcy is available only to municipalities. It is a form of forced reorganization rather than a liquidation.

"Ryan Cummins believes that Indiana cities must face the fact their budgets are dominated by employee compensation (80 percent in his city). Successful local government, Cummins says, will shed not only jobs but entire departments."

— Ladwig

"Looking into the future, state and local governments will likely apply tax rates to diminished economic activity and reduced property values — decreasing tax revenues. This will increasingly squeeze lawmakers into increasingly unpleasant choices."

— Schansberg

A Post-Primary Look at our Prospects

by ERIC SCHANSBERG

(May 3) — It's always hazardous to speculate about the future, especially in politics and economics. But I have a few ideas about our economic and political future and want to get them on the record.

The most obvious point is that we have no clear idea where things will go politically in 2010, 2012 and 2014. Will voters "punish" the Democrats for the continuing recession, going against the public's will on healthcare, etc.? And if the GOP gains seats or even control of Congress or the presidency, what will they do with it?

Moving to a more subtle point: As I've often written, the chief problem in healthcare is over-insurance. Consumers pay about 10 percent of the overall tab. So, they pay little attention to costs. Health insurance is forced to cover all sorts of things that take it away from the role of traditional insurance — to cover rare, catastrophic events. (That's the primary reason it's so expensive.) But in recent years, the market for health insurance has been limping toward standard insurance — as co-pays and deductibles have increased markedly.

Under ObamaCare, we can expect premium increases to accelerate, which will accelerate the move toward catastrophic insurance. The fascinating thing here is that the market may get us to a far better place before coverage of the uninsured begins in 2014. If so, then it will be extremely difficult to hold the promised status quo. Either you'll have individuals with privately-financed catastrophic insurance who are being heavily taxed to provide Cadillac coverage for others. This would be politically unacceptable. Or you'll have phenomenally expensive Cadillac coverage for all. This would be prohibitively costly.

Consider also the "cultural" changes already underway in healthcare. When I addressed a group of local CEOs a few weeks ago, one told the story of an employee whose son had broken his finger. The doctor said they'd X-ray it. But the parent slowed him down and asked what

he would do if the finger were broken. The doctor replied: "Put it in a splint." The parent's reply: "Well, let's just put it in a splint now." The point? The parent was thinking much more carefully about the cost of the service, because it was going to come out of her pocket.

Consider another example: allergy shots. With low-deductible policies, allergy shots are virtually free. Under a high-deductible policy, one will likely pay the full "cost" — about \$25 a shot. I'm not positive, but I'd guess that the marginal cost of providing an allergy shot is not \$25. I'm more certain that most people will be unwilling to pay that much. So, the price will come down dramatically or this industry will wither. The point? The market will see large-scale changes in the next few years — in particular, reducing costs in some sectors — as people bear the costs of their activities.

Finally, under BushaNomics and now ObamaNomics, the government continues to insist on redistributing money from one party to another — and kicking the economy when it's down. For the macroeconomy, the healthcare legislation was rough, since it increased costs for business. Beyond that, since no one knows what the healthcare legislation will do, it failed to reduce risk and uncertainty — a key concern for businesses making capital investments and expanding payroll. As a result, the macroeconomy is even less likely to emerge from its 27-month Bush-Obama funk. Of course, that's important in its own right. People will continue to suffer unemployment, reduced income, and so on.

But consider the impact on state and local governments. State and local budgets are already under significant strain — modest in some states and tremendous in others. In southern Indiana, New Albany closed four schools; in Fort Wayne several more. In Kansas City, they shut down nearly half of their public schools. In California, tuition at state universities increased by 32 percent (since the subsidies to higher education were reduced).



D. Eric Schansberg, Ph.D., an adjunct scholar with the Indiana Policy Review, and the editor of SchansBlog, is a professor of economics at Indiana University Southeast.

Looking into the future, state and local governments will likely apply tax rates to diminished economic activity and reduced property values — decreasing tax revenues. This will increasingly squeeze lawmakers into increasingly unpleasant choices.

The FED, Interest Rates And Hoosier Bicycles

by MARYANN O. KEATING

(April 27)—This last winter the Federal Reserve System (FED) reported that it was raising the discount rate, a type of interest it charges banks, from .5 percent to .75 percent. What does such action have to do with interest rates in Indiana?

Joe, who mows lawns, offers his brother Bill a loan of \$100 to buy a bike on the agreement that Bill will pay him back \$110 in one year. In this case, we have a lender, Joe, a borrower, Bill, the principal, \$100, and a yearly rate of interest, 10 percent. Ben Bernanke, chairman of the FED, is not consulted. From reading only the newspaper headlines, however, one might conclude that the FED controls interest rates. This is not true.

Some states have a usury limit, which is the highest rate that can be charged by one person, other than licensed financial organizations, lending to another. In Indiana, at present, there is no usury limit. If Joe and Bill do not specify the rate of interest and end up in court, then the Indiana “legal rate” of 10 percent could apply.

In formal financial markets, in Indiana and elsewhere, literally a million different interest rates prevail from the miserable .20 percent earned on shared savings at the local credit union to the egregious 22 percent payments on credit card balances.

Yet, economists, the press and folks in general talk about “the” interest rate.

It is helpful to think of a large number of different interest rates — car, mortgage, bond, CD, credit card, etc. — as threads

running parallel inside the body of a snake. Slithering along a path, the body of a snake loops up and down.

Similarly, when interest rates in Terre Haute go up or down, interest rates in South Bend are sure to follow. Lenders in one area will place their loanable funds where they earn the highest return, and borrowers will seek loans offering the lowest rate of interest. The market arbitrages more or less to a single rate for a financial instrument with the same risk, tied to maturity and collateral. The range of rates tends to move (with some lags) up and down together.

Interest rates not only converge geographically but do so as well between types of financial instruments. If many lenders are willing to provide funds for mortgages, the mortgage rate for borrowers is low. If some of these lenders decide to remove their funds out of the mortgage market and put them in another market, for example auto loans, earning higher interest, then borrowers will pay higher rates on mortgages. Thus, the market keeps all interest rates moving within a band. Analysts, knowing that all interest rates move together, follow and report changes in just one or two interest rates.

What causes the whole band of interest rates to go up or down? Changes depend on the supply and demand for loanable funds. If the demand for loans increases or the supply of funds decreases, interest rates will rise. If the demand for loans decreases or the supply of funds increases, interest rates will fall. Other than the FED discount rate, most interest rates are negotiated by borrowers and lenders in the market.

The FED does not dictate interest rates, but admittedly it has some powerful tools with which to affect them. The FED can increase or decrease the supply of loanable funds available in private markets. The rise in the discount rate suggests that the FED has begun to tighten up on the supply of funds. This could lead sometime in the coming months to higher interest rates in most markets.

Realizing that the FED influences but does not control interest rates is not merely an academic distinction. Given very low interest rates, it may be impossible for the FED to lower them further even if it wished to do so. Similarly, the FED

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— Keating



Maryann O. Keating, Ph.D., an adjunct scholar of the foundation, is co-author of *Microeconomics for Public Managers*, Wiley/Blackwell, 2009.

"However many census workers are added, private-sector employment will fall by that amount or more. Everyone knows there is 'no free lunch.' Well, there's no free census either."

— Deitsch and Van Cott

may be unable to exercise any pressure on increasing interest rates if businesses and households refuse to borrow. Some economists believe that FED action follows rather than leads markets in determining interest rates.

In general, however, whenever the FED exercises its power to reduce loanable funds, interest rates rise. Why might the FED be moving to take away the punch bowl now? The party has barely begun. Unemployment may not be increasing at the same rate, but it still exceeds nine percent of the labor force. Purchasing orders are up, but property-for-sale signs still line the streets. Higher interest rates discourage business investment and consumer spending. Higher interest rates also increase the cost to taxpayers of financing government debt. Finally, interest rate increases are not politically popular.

Why, though, would the FED act to discourage borrowing? The simple answer is that inflation, a sustained increase in the general price level, is rearing its ugly head.

High interest rates, initiated by the FED, are undesirable but inflation can be even more harmful to the economy, particularly to financial markets. Would you be willing to lend me your money at a five-percent mortgage to buy my dream home in Granger or Carmel when prices there are rising at 10 percent? Probably not. You would either purchase the house yourself or provide your hard-earned savings to someone willing to offer an interest rate compensating you with normal return (plus the rate of inflation).

So if interest rates increase in the coming months it will be due to both a rising rate of inflation as well as contractions in the supply of funds engineered by the FED. Bill, if he really wants that bike, should accept the terms of brother Joe's loan offer. Bike prices may soon increase. Also, Joe, considering higher returns offered elsewhere and realizing the credit risk of a loan to Bill, might just withdraw the offer.



Clarence Deitsch, (at right) Ph.D., and Norman Van Cott, Ph.D., are professors of economics at Ball State University.

Lying and Stealing our Way Toward a Census

by CLARENCE DEITSCH
and NORMAN VAN COTT

(April 20)—Government types tell us that the 2010 Census helps Americans two ways. First, adding 800,000 or so census workers to the federal payroll will reduce our country's unemployment rate. Second, American neighborhoods will receive more "government money" to the extent they participate in the census.

The first benefit is bogus — the government is lying. However many census workers are added, private-sector employment will fall by that amount or more. Everyone knows there is "no free lunch." Well, there's no free census either. More public-sector output, the census in this case, comes at a cost of less private-sector output, *i.e.*, housing, clothing, food. Census workers are part of the cost of the census, not a benefit.

All the dollars paid to the census workers come from taxing Americans. Even dollars coming from borrowing or the printing press have taxes hiding behind them. Uncle Sam's ability to borrow traces to his ability to levy future taxes, and the inflation that follows upon fired-up printing presses in effect taxes peoples' desire to hold or use money. Taxes, in all their permutations, shrink private markets — always.

The second alleged benefit, getting more government money for our neighborhoods, is an endorsement of theft. It will not be "government money" that our neighborhoods tap into when census forms are returned. It will be money taken from Americans in other neighborhoods. They would have Americans believe that we can stand in a circle with our hands in each others' pockets and end up wealthier.

Just the opposite happens: we'll be poorer, not only because federal bureaucrats always cut a generous slice of the tax pie for themselves but also because federal funding for state and local government goodies spread their cost across all Americans. This gives people an incentive to overindulge in these programs. Why not? Others are picking up most of the tab.

Consider the case of Indiana. Hoosiers comprise about two percent of the population of the United States. Assuming they pay the same percentage of federal taxes, it follows that a \$10-million federally funded program in Indiana costs Hoosiers \$200,000. For the program to be economically worthwhile to Hoosiers, then, its benefits need only exceed that figure even though it costs \$10 million, the other \$9.8 million being paid by other Americans.

The shortfall between benefits to Hoosiers and the programs' true costs is important. It's the stuff of lower national living standards, especially when projected across a myriad of other such programs across all 50 states. Bridges to nowhere, anyone? Sure, when someone else is paying.

Some might think we've forgotten the U.S. Constitution's requirement that there be a census every 10 years. Not true. The requirement appears in Article 1, Section 2, which says nothing about unemployment reduction or encouraging Americans to use Uncle Sam to steal from each other. It just says to conduct an "enumeration" — a census. End of story. In our book, that's reason enough for a census.

Are we surprised by this year's census tactics? Not really. Don't forget that left-liberal jurists and pundits have been telling Americans for decades that the Founding Fathers' original constitutional intentions should be ignored. The Constitution, say these jurists and pundits, is a "living, breathing" document that means anything we want it to mean.

Could it be that this is why the current census effort is packaged in lies about employment gimmicks and theft promotion? Why not, if the alternative is honoring the Founding Fathers' original intent? The implications of the latter are unthinkable, at least for the Left.

But what a sad commentary on America. Given a choice between simply adhering to the Constitution as opposed to lying and encouraging people to steal, our opinion "leaders" opt for the latter.

Rosy Projections for State Pensions

by MARYANN O. KEATING

(April 15) — Each time Indiana promises future payments to a state

employee, it creates a liability for taxpayers. If total monies in state pension funds, accumulated each year by employer and employee contributions, are insufficient to meet promised benefits, state constitutions generally provide explicit guarantees that public-pension commitments will be paid in full. Also, state employees could make it difficult for politicians if promised benefits are impaired. If promised benefits become a hardship, Indiana could apply to the federal government for assistance, as California has done recently.

Before evaluating Indiana state-wide pension commitments, let's look at pensions from an individual's point of view.

No doubt, most of our parents holding jobs outside the home were offered "defined-benefit pensions." This means each year after retirement they receive some dollar amount, generally based on some percentage of their working salaries loosely adjusted for inflation. Most private and government employees now are offered "defined-contribution pensions." This means that the total amount accumulated at retirement, including employer and personal contributions, has to last us through our final years.

Let's assume that it takes about \$40,000 to keep our household operating each year, and that we can count, please God, on approximately \$15,000 in Social Security benefits. Therefore, in retirement, we will need to withdraw about \$25,000 each year out of our accumulated pension funds to supplement Social Security. Assuming that we will live about 20 years beyond retirement, a very crude estimate would be to simply divide the total balance we have in our pension fund at retirement by 20 and hope the amount exceeds \$25,000. But this ignores the fact that in retirement we will continue to earn interest on the fund balance. How much would we need in order to meet our \$25,000 goal?

The mathematics of this problem is quite messy, but my software package comes to the rescue.

Most of us, including Ben Bernanke, chairman of the U.S. Federal Reserve, are clueless about the yearly return we can expect to earn on accumulated pension funds. It could be five percent, or three percent, or one percent a year, or

"If total monies in state pension funds, accumulated each year by employer and employee contributions, are insufficient to meet promised benefits, state constitutions generally provide explicit guarantees that public-pension commitments will be paid in full."

— Keating

“Why would states underestimate future commitments to certain groups of state employees? Part of the reason is that current pension-fund accounting rules permit the states to focus on returns from the expected value of future earnings rather than on current balances.”

— Keating

whatever. Let us know immediately if you can guarantee us an eight-percent return. If fact, during the past two years, most of us with “defined-contribution pensions” saw not an increase but a decrease in our balances.

But let’s maintain optimism. Using the present value formula in my software, if the expected interest rate were five percent, we would need to have \$312,000 at retirement to withdraw \$25,000 from our pension each year for 20 years. We would need \$372,000 at three percent, and \$451,000 at one percent. (This is getting complicated.) And, what if the cost-of-living increases due to inflation? And, what if our taxes increase?

Now we return to guaranteed state pensions. Those state employees with “defined-benefit” pensions, indexed for inflation, can concentrate on living a long life and need not worry about interest rates or fund balances. Admittedly, the state could default or lower the formula for benefits, but most of us do not expect or wish this to occur. However, the ordinary taxpayer does have to be concerned if Indiana’s state employment funds are not accumulating assets sufficient to meet defined-benefit commitments.

Two economists, Robert Novy-Marx and Joshua Rauh, calculated the present value of “defined-payment pensions” for each state and compared them with pension assets accumulated. They then ranked states, all of which had significantly underestimated, according to this study, the present value of promised payments to those enrolled in their “defined-benefit pensions.” This is one ranking in which you want to be near the bottom. Indiana, with two “defined-pension plans,” is ranked 36 out of 50 states. At the end of 2008, Indiana held 15.5-billion dollars in two pension funds. The state of Indiana estimated the present value of these future commitments at 36.4-billion dollars; the researchers estimated them at 62.4-billion dollars; the gap between the value of the pension fund and the higher estimated commitments exceeds three times the amount of Indiana’s tax revenue collected each year.

Why would states underestimate future commitments to certain groups of state employees? Part of the reason is that

current pension-fund accounting rules permit the states to focus on returns from the expected value of future earnings rather than on current balances. The states’ estimations are approximately correct if accumulated state pension funds were to be invested in assets expected to earn on average eight percent in yearly returns. On the other hand, the Novy-Marx and Rauh study calculates the present value of a state’s future commitments by using the interest rate on U.S. Treasury notes, a rate considerably lower than eight percent but one considered risk-free.

At a minimum, we should expect Indiana to be sensitive to risk and different rates of return.

Now, how does all this affect the ordinary Indiana taxpayer approaching retirement? First, given the uncertainty of state pension plans to meet future benefit payments, a resident could compensate for the uncertainty of his or her future tax obligations and balance total risk by placing personal funds in low-risk assets earning lower returns. Second, a resident could save more to enable him or her to pay the needed tax increases to better fund or rescue state pension funds. Finally, if Indiana in the future limits commitments, he can count on a good number of Hoosier neighbors working long enough to assist him in bearing the burden.

It’s Never Too Late for Redistricting

by ANDREA NEAL

(March 30) — The 2010 legislature came and went without reforming the redistricting process, but lawmakers aren’t off the hook. If electoral maps to be drawn in 2011 are to have any credibility with voters, legislators will have to follow a more transparent and honest process than has been used before.

As required every 10 years after the census, the next General Assembly will draw state legislative and congressional districts. Voters should pin candidates down on this issue before the fall elections. Anyone who refuses to make a



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“no-gerrymandering” promise doesn’t deserve to be elected.

Gerrymandering has been around forever, but the computer age has aggravated its anti-democratic traits. All it takes is good software, political data and the voting histories of citizens, and legislative districts can be designed that will favor one party at the expense of the other indefinitely.

The term dates back to the early 1800s when Gov. Elbridge Gerry of Massachusetts signed off on a legislative district that resembled a salamander. Within no time, the word gerrymander had become a verb, meaning, “to shape a district to gain political advantage.” In gerrymandered districts, voters don’t pick their political leaders; politicians pick their voters.

A modern example is Indiana congressional district 4, which stretches from north of Lafayette to south of Bedford with twists and turns that extend from Fountain County on the west to Johnson County on the east. The 5th district, which goes from Huntington to Shelbyville, is similar.

A few states like Arizona, in efforts to avoid blatant gerrymandering, have turned over the job of redistricting to independent commissions comprised of people appointed by the political parties or representing non-partisan organizations.

A simpler remedy is to leave the task to the legislative branch but set strict criteria that will prevent gerrymandering in the first place.

Senate Bill 80, which passed the Senate but died in the House, would have required new legislative maps to be as compact as possible, respecting county and township lines, preserving traditional neighborhoods and communities of interest and protecting minority voting rights. It would also have prohibited the use of political data, such as incumbents’ addresses, in drawing maps.

Secretary of State Todd Rokita, who has advocated this approach, has designed maps using neutral criteria and proven that compact districts that would pass constitutional challenges can easily be made. Although naysayers claim it’s too late to enact legislation to govern the 2011 redistricting process, there is absolutely no reason why the next session could

not and should not adopt the standards set in S.B. 80.

Rokita is running as a Republican for U.S. House District 4 but intends to follow the issue closely even though he will no longer be in charge of Indiana’s elections. “When the legislature comes back and actually does design maps, the voters and taxpayers are going to have something to compare it to,” he notes. He is encouraging organizations and citizens’ advocates to do the same thing he did: design compact maps that follow county and township boundaries, using the new census numbers, and compare them to what the legislature comes up with.

Rokita is encouraged by statements from Gov. Mitch Daniels that he would veto any reapportionment bill that did not follow objective guidelines. Surely lawmakers would not be so brazen as to try to override that.

Voters need to get as excited about this as they did over property taxes, which led to a grass-roots revolt that forced the legislature to submit to the voters a referendum on the matter of tax caps.

If a district is drawn 70 percent favoring one party, the general election is irrelevant. Opposition candidates aren’t taken seriously, can’t raise money or get their views aired, and voters don’t have a real choice.

If voters are given fair, open and competitive elections, many of the other problems of modern politics — excessive partisanship, too many incumbents and too much pork — will disappear. There is no more important issue for the next legislature.

The Folly of Press-Release Economics

by TAD DeHAVEN

(March 23) — A stint as an Indiana budget official gave me a first-hand view of how policymakers use taxpayer money to serve their political self-interests. So when an Indianapolis news channel discovered that the state’s economic-development agency was taking undeserved credit for job creation, I was probably the least-surprised person in the state.

If there is one issue that resonates with voters today it is jobs. As government at all levels grows in size and scope,

“The computer age has aggravated (gerrymandering’s) anti-democratic traits. All it takes is good software, political data and the voting histories of citizens, and legislative districts can be designed that will favor one party at the expense of the other indefinitely.”

— Neal

“When I was a deputy director at OMB, the governor’s chief advisers ignored internal suggestions that the state pursue the creation of an independent auditing agency along the lines of the U.S. Government Accountability Office.”

— DeHaven

“Indiana has created more than 100,000 new jobs in the past five years — at least that’s what the governor and Indiana’s Economic Development Corporation (IEDC) want you to believe. But *Channel 13 Investigate* discovered Indiana’s real job numbers are a tightly kept secret. And the governor and IEDC want to keep it that way.”

— Bob Segall of Channel 13 WTHR Indianapolis, reporting on the March meeting of the IEDC, <http://www.wthr.com/Global/story.asp?S=12550137> (last viewed June 2, 2010)

voters become conditioned to look to policymakers as the source of economic development. And because simply cutting taxes means less money for politicians to spend on vote-buying programs, targeted subsidies to businesses have become popular. They buy favorable press at a cheaper price.

Indiana is no exception. The Indiana Economic Development Corporation (IEDC) uses subsidies in an attempt to lure businesses and jobs to the state, or to keep them here. The IEDC might not admit it, but most businesses already know where they are going to locate before they contact the agency. Businesses consider a myriad of factors including demographics, transportation logistics and workforce capabilities when choosing where to set up shop. Although the tax and regulatory climate is an important consideration, IEDC handouts are just that — handouts.

Because a governor will get credit for creating jobs, businesses know they can extract taxpayer money from the state for these subsidies. After a company reaches an agreement with the IEDC, the administration issues a press release. For the high-profile deals, it arranges a choreographed ribbon-cutting ceremony at the company’s facilities. The company helps fulfill its end of the bargain by telling the press that the administration’s support sealed the deal.

Witnessing this charade from inside the administration of Gov. Mitch Daniels led me to coin the phrase, “press-release economics.” Not everyone in the administration, however, bought into the IEDC scheme. My former agency, the Office of Management and Budget (OMB), was responsible for monitoring the performance of state agencies, including the IEDC. And as we



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knew to be the case with many of the state programs, the IEDC’s claims were known to be inflated. It is implausible that the rest of the administration, including the IEDC itself, didn’t know about the fuzzy math.

The administration’s political chicanery, however, has now come back to bite it. A recent WTHR Eyewitness News investigation into IEDC shined a light on the job-creation claims. When reporters tried to visit some of the companies celebrated in IEDC press releases, they found empty fields, vacant lots and deserted factories.

According to the investigation, “as many as 40 percent of statewide jobs listed as so-called economic successes have not happened — and most of them never will.”

The governor told reporters that the IEDC’s numbers were audited. Independently? That would be news to me.

When I was a deputy director at OMB, the governor’s chief advisers ignored internal suggestions that the state pursue the creation of an independent auditing agency along the lines of the U.S. Government Accountability Office.

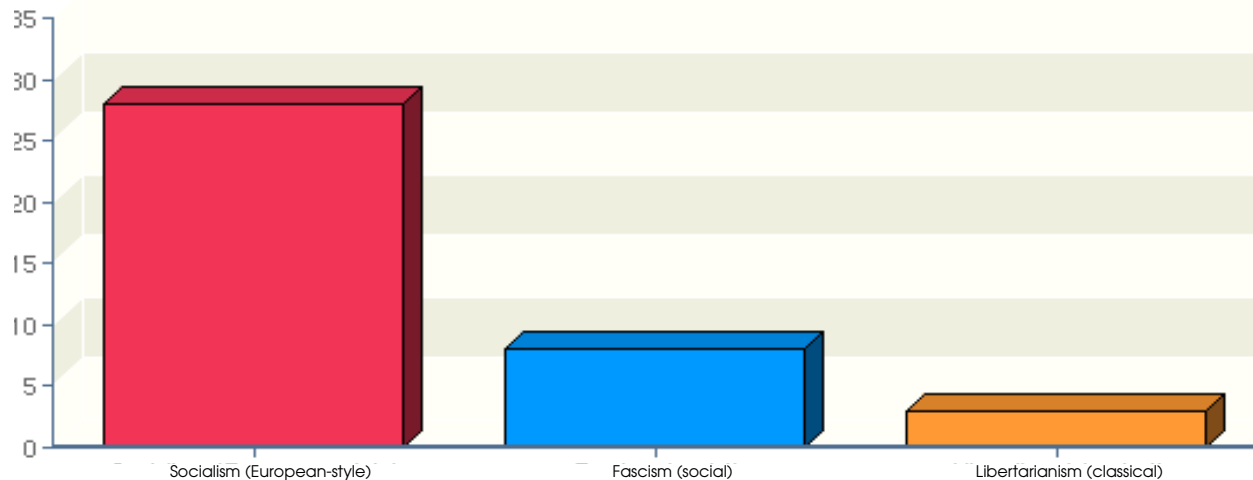
The position of the IEDC director is that no taxpayer money is being lost because his agency audits the companies to make sure they fulfill the terms of their agreements with the state. The director, however, has so far refused to release any details to the public that would support this contention.

In summary, Indiana doesn’t need a politicized economic-development bureaucracy to create a welcoming environment for businesses. One alternative would be to eliminate the state’s corporate income tax, which has a relatively high 8.5-percent rate.

The revenue loss could be offset at least in part by shuttering the IEDC and eliminating targeted tax breaks.

The governor, of course, might have to forgo some press releases. The long-term benefits to the state, though, should be worth the political sacrifice.

THE REALITY CHECK



SOCIALISM, FASCISM AT THE GATES?

As usual, there was some confusion over the options in our quarterly survey of the membership (*see disclaimer below*). Several respondents expressed uncertainty about “social fascism.” The definition used in this office is a “hard” socialism dating back to the New Deal and early social republics and democracies.

It is a form of economic corporatism based upon a “partnership” between capital and labor interest groups as well as between the market economy and state intervention. Ring a bell?

“European-style socialism” seemed better understood as a “soft” or Fabian socialism where free markets are gradually compromised in the interests of social and political goals. A smattering confused “classical liberal” with its usurper, contemporary anti-capitalist attempts at wealth redistribution.

Nobody was confused, however, about their feeling that Indiana and America are headed for a bad place, and headed there at a pretty good clip. There was a consensus as well that the problems are too big and too systemic to be solved by the governor’s budget genius or, politically, more jiggling with the GOP lineup.

European-Style Socialism (72 percent)

“As Madam Thatcher once said, ‘The problem with socialism is that eventually you run out of other people’s money.’”

“The idea of cradle-to-grave entitlement has caught on fully. The lure of votes has overcome common sense, as it so often does.”

“Statist solutions from this administration are bad for the country in general, *i.e.*, socialized medicine, and for Indiana in particular, *i.e.*, cap and trade.”

**Q: In your opinion which
“-ism” most threatens
the well-being of Indiana
citizens?**

“We have moved away from trusting individuals to choosing what is best for them and putting these decisions into the hands of government. The long-run consequence will be a loss of liberty.”

“We are fast becoming an entitlement society. When a majority of the populace is dependent upon the federal government for subsistence, the government will be able to dictate its will upon the people.”

“More programs paid by fewer participants, fewer taxpayers paying more and more, less incentive to earn more . . . and the president says there is some point where you have made enough money — duh?”

Social Fascism (21 percent)

“There’s not much left that isn’t controlled, regulated, promulgated, illegal or politically incorrect.”

“Fascism is the most tyrannical of regimes. Force and might are kept in check even under socialism. Classical liberalism abhors violence.”

“We are sliding into a centralized autocratic government and experiencing severe economic and social regimentation. Now we are beginning to see forcible suppression of opposing viewpoints. Do you know of a desert island for sale anywhere?”

“The first ‘-ism’ is the one that’s happening to us right now (and it’s more widespread in other parts of the nation than in Indiana), and I don’t know what it’s called, but it’s when there are enough fools who are so spoiled that they’re willing to risk their children’s future for their own present-day comforts.”

“Social fascism is nothing more than political correctness. We are castigated for speaking the truth, or expressing an unpopular opinion . . . or an opinion that conflicts with the accepted rubric of the mainstream media and the self-appointed intelligentsia.”

“The federal government’s involvement in all aspects of our life is killing the economy. Also, we must take power back from the Federal Reserve so that we can control the issuance of money.”

“Fascism is the most tyrannical of rulers. Force and might are kept in check even under socialism.”

People who know about opinion surveys don’t think much of ours. The sample is inherently biased and so small as to be little more than a focus group. The questions, sometimes confusing, are casually worded and transparently drive at one point or another. That said, we have learned to trust our membership and eagerly anticipate their opinions about this or that. This quarter, the survey was opened by 180 members, correspondents and friends (persons on its monthly newsletter list) between May 11 and May 13) using SurveyGizmo. There were 41 completed questionnaires for a response rate of 23 percent.

THE DESTINIES OF THOSE WHO SIGNED

From an essay on the signers of the Declaration of Independence by Rush H. Limbaugh Jr., distributed by the Federalist Magazine

• **Francis Lewis** — A New York delegate saw his home plundered and his estates, in what is now Harlem, completely destroyed by British soldiers. Mrs. Lewis was captured and treated with great brutality. She died from the effects of her abuse. • **William Floyd** — Another New York delegate, he was able to escape with his wife and children across Long Island Sound to Connecticut, where they lived as refugees without income for seven years. When they came home, they found a devastated ruin. • **Phillips Livingstone** — Had all his great holdings in New York confiscated and his family driven out of their home. Livingstone died in 1778 still working in Congress for the cause. • **Louis Morris** — The fourth New York delegate saw all his timber, crops and livestock taken. For seven years he was barred from his home and family. • **John Hart** — From New Jersey, he risked his life to return home to see his dying wife. Hessian soldiers rode after him, and he escaped in the woods. While his wife lay on her deathbed, the soldiers ruined his farm and wrecked his homestead. Hart, 65, slept in caves and woods as he was hunted across the countryside. • **Dr. John Witherspoon** — He was president of the College of New Jersey, later called Princeton. The British occupied the town of Princeton, and billeted troops in the college. They trampled and burned the finest college library in the country. • **Judge Richard Stockton** — Another New Jersey delegate signer, he had rushed back to his estate in an effort to evacuate his wife and children. The family found refuge with friends, but a sympathizer betrayed them. Judge Stockton was pulled from bed in the night and brutally beaten by the arresting soldiers. Thrown into a common jail, he was deliberately starved. • **Robert Morris** — A merchant prince of Philadelphia, delegate and signer, raised arms and provisions which made it possible for Washington to cross the Delaware at Trenton. In the process he lost 150 ships at sea, bleeding his own fortune and credit dry. • **George Clymer** — A Pennsylvania signer, he escaped with his family from their home, but their property was completely destroyed by the British in the Germantown and Brandywine campaigns. • **Dr. Benjamin Rush** — Also from Pennsylvania, he was forced to flee to Maryland. As a heroic surgeon with the army, Rush had several narrow escapes. • **William Ellery** — A Rhode Island delegate, he saw his property and home burned to the ground. • **Edward Rutledge** • **Arthur Middleton** • **Thomas Heyward Jr.** — These three South Carolina signers were taken by the British in the siege of Charleston and carried as prisoners of war to St. Augustine, Fla. • **Thomas Nelson** — A signer of Virginia, he was at the front in command of the Virginia military forces. With British General Charles Cornwallis in Yorktown, fire from 70 heavy American guns began to destroy Yorktown piece by piece. Lord Cornwallis and his staff moved their headquarters into Nelson's palatial home. While American cannonballs were making a shambles of the town, the house of Governor Nelson remained untouched. Nelson turned in rage to the American gunners and asked, "Why do you spare my home?" They replied, "Sir, out of respect to you." Nelson cried, "Give me the cannon!" and fired on his magnificent home himself, smashing it to bits. But Nelson's sacrifice was not quite over. He had raised \$2 million for the Revolutionary cause by pledging his own estates. When the loans came due, a newer peacetime Congress refused to honor them, and Nelson's property was forfeited. He was never reimbursed. He died, impoverished, a few years later at the age of 50. • **Abraham Clark** — He gave two sons to the officer corps in the Revolutionary Army. They were captured and sent to the infamous British prison hulk afloat in New York harbor known as the hell ship "Jersey," where 11,000 American captives were to die. The younger Clarks were treated with a special brutality because of their father. One was put in solitary and given no food. With the end almost in sight, with the war almost won, no one could have blamed Abraham Clark for acceding to the British request when they offered him his sons' lives if he would recant and come out for the king and parliament. The utter despair in this man's heart, the anguish in his very soul, must reach out to each one of us down through 200 years with his answer: "No."



Emanuel Gottlieb Leutze, oil on canvas, 1851

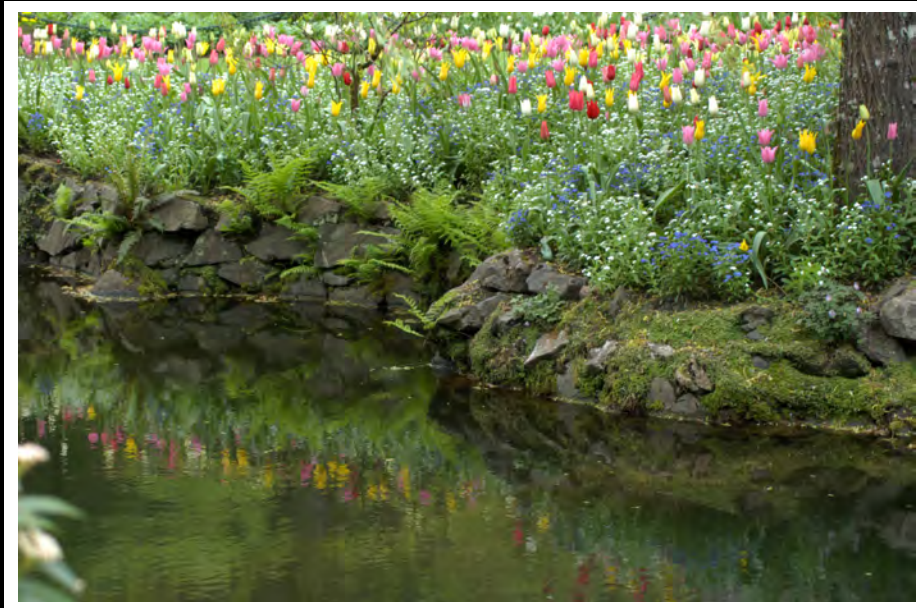


Thomas Hoepker, photograph, Sept. 11, 2001

Please Join Us

In these trying times, those states with local governments in command of the broadest range of policy options will be the states that prosper. We owe it to coming generations to make sure that Indiana is one of them. Because the foundation does not employ professional fundraisers, we need your help in these ways:

- Annual donations are fully tax deductible: individuals (\$50) or corporations (\$250) or the amount you consider appropriate to the mission and the task ahead. Our mailing address is PO Box 5166, Fort Wayne, IN 46895 (your envelope and stamp are appreciated). Be sure to include your full street and e-mail address. You also can join at the web site, <http://www.inpolicy.org>, using your credit card or our PayPal system.
- Bequests are free of estate tax and can substantially reduce the amount of your assets claimed by the government. You can give future support by including the following words in your will: "I give, devise and bequeath to the Indiana Policy Review Foundation (insert our address and amount being given here) to be used to support its mission." A bequest can be a specific dollar amount, a specific piece of property, a percentage of an estate or all or part of the residue of an estate. You also can name the foundation as a contingency beneficiary in the event someone named in your will no longer is living.



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