INDIANA POLICY
Review
'A future that works'

The Despotic Powers

An evil eye and an unequal hand: the lurking threat to liberty in land-use regulation

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.

INDIANAPOLICY Review

Vol. 25, No. 1, Winter 2014

A FUTURE THAT WORKS

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- Emphasize the primacy of the individual in addressing public concerns.
- Recognize that equality of opportunity is sacrificed in pursuit of equality of results.

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NOV. 22, 1963

Aldous Huxley, John Kennedy, C.S. Lewis

Nov. 22 marks the 50th anniversary of the death of three highly influential people: Aldous Huxley, John F. Kennedy and C.S. Lewis. Although Kennedy — in his life and especially in his death — is the most famous of the trio, all three had an impressive impact during their lives and in the decades since.

All three have ancestral roots in Great Britain: Kennedy was a third-generation Irishman; Lewis was born in Ireland and lived in England; Huxley was from England. Kennedy was a war hero whose family connections, wealth and political aspirations led to holding office in the U.S. House, the Senate and the White House. His assassination at age 46 is considered one of the most memorable moments in 20th-century American history. Huxley and Lewis lived into their 60s, didn't have memorable deaths and are not as well known — but have arguably had a bigger influence on the world.

Huxley was an author whose most famous novel, "Brave New World," is routinely rated in the Top 100 of all time. The work covers topics from eugenics to a state-enforced class system, from the massive use of prescription drugs to euthanasia. Alongside George Orwell's dystopian novels, "Animal Farm" and "1984," Orwell and Huxley have served as prophets of a technological, totalitarian and bureaucratic society. The thoughts behind these books have influenced generations of readers in a way that is difficult to measure.

Lewis was a literature professor whose prolific writing ranged from academic to popular. He used a wide variety of genres: children's literature, science fiction, allegory, poetry and non-fiction Christian "apologetics."

Lewis' work has always had popular appeal. "Mere Christianity" is merely a series of radio addresses given on the BBC during World War II. He was on the cover of Time magazine in 1947. And the "Chronicles of Narnia" — a seven-book series that combines children's stories with strong Christian references — have been a staple of family reading for decades, selling more than 100 million copies.

More recently, his work has been a significant player in pop culture. Max McLean has had a long and successful run with his one-man play version of "Screwtape Letters." And some of the Narnia books have been the subject of high-budget films. (The first was "The Lion, The Witch and the Wardrobe.")

Lewis' books on apologetics are more influential than ever. From the "modern" logical approach of Mere Christianity to the "post-modern" narrative approach of "The Great Divorce," Lewis showed remarkable literary range as he tried to make the Christian faith reasonable and compelling — for those with eyes to see and ears to hear. Lewis' emphasis on "mere" Christianity is also important — focusing on the "mere" essentials of the faith, with its resulting pluralism and strong unity.

The religious views of all three men were also interesting. I became aware of this coincidence of deaths through a neat little book by Peter Kreeft, "Between Heaven and Hell: A Dialog Somewhere Beyond Death." Kreeft writes as if recording a discussion between the three as they await Judgment. For Kreeft, Lewis represents biblical Christianity; Kennedy represents "cultural Christianity" or a tepid deism; and Huxley represents a combination of agnosticism and pantheism.

As for Kennedy, beyond his status as a historical figure and a cultural touchstone, his political impact was also significant. From one angle, we can see echoes of Kennedy in Ronald Reagan's presidency. Both were effective with television and popular with the general public. And Kennedy's muscular (if not always effective) anti-communist foreign policy and "supply-side" economics served as precursors to Reagan's policies.

Kennedy reduced corporate income-tax rates and cut personal income-tax rates dramatically across the board. (Kennedy reduced the top tax bracket from 91 percent to 70 percent; Reagan then reduced it from 70 percent to 28 percent.) As Reagan, Kennedy noted that in the presence of high tax rates, "the soundest way to raise revenue in the long-term is to lower rates."

Likewise, Kennedy's most famous inaugural address line — "ask not what your country can do for you" — points to fiscal conservatism and relatively small government, at least by today's standards. Tellingly, in a December 1958 TV interview, Eleanor Roosevelt said that she would do all she could do to prevent a "conservative like Kennedy" from being the party's nominee. In these arenas, Kennedy's distance from the bulk of today's Democratic party is noteworthy.

But in other ways, Kennedy was a precursor for those who led the charge for larger government and greater executive branch power. Using techniques made famous by subsequent presidents, JFK (allegedly) got the IRS and the FBI to target and wiretap groups that were hostile to his administration's goals.

In a speech to the National Press Club as he campaigned for president in 1960, Kennedy argued against "a restricted concept of the presidency." Instead, a president "must be prepared to exercise the fullest powers of his office — all that are specified and some that are not." Kennedy imagined a president who would "build more schools" (an interesting role for the federal government!), "be the center of moral leadership" and who "alone . . . must make the major decisions of our foreign policy." As such, Kennedy's vision for a more powerful presidency governing a more expansive government has been prophetic as well.

As we approach the next Nov. 22, we should give consideration to the work of all three men. Kennedy's short presidency left a mixed legacy, and his assassination is still the subject of sensationalism. But the lives of Huxley and Lewis have a more enduring legacy that should receive more careful reflection. — *Eric Schansberg*

PLANNING AND ZONING

An Evil Eye and an Unequal Hand: The Lurking Threat to Liberty in Land-Use Regulation

by TOM HUSTON

Graphics: Lisa Barnum

As a young lawyer, my first encounter with the Byzantine system of governmental land-use regulation resulted from the desire of a client to expand its manufacturing plant. The plant was located in an aging and ultimately derelict industrial area on the near east side of Indianapolis with the contemplated expansion consisting of a prefabricated steel structure. The order placed and the deposit made, someone at the company thought to check a site plan to confirm that the new structure would comply with applicable zoning regulations. Much to the dismay of management, the new structure could be wedged onto the available site only by encroaching on an established side yard. This encroachment was less than two feet, but it was clear that the structure could not be built as planned without a variance from the side-yard requirements of the industrial zoning ordinance.

I appeared before the Board of Zoning Appeals confident that our variance request, *de minimus* as it was, would be granted with little fuss. What I had not anticipated was a Godly remonstrator. Not far from my client's plant were a Catholic church and school. The parish priest was not pleased with his neighbor for reasons never clear to me and sought a continuance of the hearing so that he would have time to gather witness testimony to support his contention that the proposed expansion of the plant would risk poisoning his students and should be denied on public safety grounds.

In the normal course, I would not have been troubled by a continuance. In this instance, however, the continued hearing date would fall later than the last day on which the client could cancel his pre-fab order and recover his deposit. Prudence argued against gambling that, ultimately, the board would conclude that a two-foot encroachment into an industrial side yard was not likely to poison youngsters in their classrooms a block away.

The order was canceled, the variance request withdrawn and my career as a zoning lawyer ended. I was not temperamentally suited to arguing with priests that my clients ought to have the right to poison their parishioners.

> "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."
>
> *— Justice Stanley Mathews in Yick Wo v. Hopkins, 118 U.S. 356 (1886)*

Although I could avoid direct confrontation with the arbitrariness of governmental land-use regulation by restricting my law practice, I could not avoid it as a principal in Brenwick Development, a residential land development company. Over the course of 37 years, Brenwick developed thousands of home sites in the Indianapolis market. We never had a land-use regulatory hearing, whether for rezoning or primary plat approval, at which remonstrators failed to appear. It invariably required more time and effort to get a new project approved than it did to build it, and the costs of obtaining governmental approvals were heavy — attorneys' fees, engineering fees, consultant fees, transportation surveys and drainage studies add up to big money. These costs, of course, were not absorbed by the developer. They were rolled into the cost of the lots available for purchase by home builders, thus contributing to the escalation of home prices.

A final experience has influenced my thinking on land-use regulation. For a quarter of a century I was general counsel for Indiana Landmarks. I am a true believer in historic preservation, and I have fought many battles with marauders who have tried to pillage the historic-built environment. The most loathsome of the bulldozer crowd are units of government, particularly transportation authorities. I concede to governments none of the discretion over use of property that I embrace as a right of owners of private property. Governments have a fiduciary obligation to the citizenry to be respectful of our heritage and our environment. The distribution of taxpayer dollars for the purpose of wreaking havoc on the historic-built environment is a public bane to which more conservatives should be alert. A leading cause of the loss of historic sites and structures in our communities is the flow of federal dollars, not just to governments but to private persons favored with "grants" from Uncle Sam. My best days were those on which I could make life miserable for urban developers nursing on the federal teat.

There is irony in the fact that Justice George Sutherland, who wrote the opinion of the Supreme Court of the United States affirming the constitutionality of zoning, is widely

regarded by libertarians as an exceptionally articulate and principled advocate of a liberty interest rooted in natural right. Much to their dismay, in his opinion for the Court in *Village of Euclid v. Amber Realty,*[1] Justice Sutherland affirmed zoning regulation as a reasonable exercise of the police power by local jurisdictions and consistent with the common law principle of *sic utere tuo ut alienum non laedas* (translated by Hadley Arkes as roughly "use your own for the sake of causing no injury to others").[2] Over the intervening years, the Supreme Court has never questioned Sutherland's rationale, and the cases it has decided have largely involved the arbitrary application of land-use regulation and the extent of constitutional limitations on the exercise of the right of *eminent domain.*

> 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 branches. So the Constitution pits them against each other, in the attempt not to achieve stasis, but rather to allow for the constant corrections necessary to prevent one branch from getting too much power for too long. Rather brilliant. For, in the abstract, we may envision an Olympian perfection of perfect beings in Washington doing the business of their employers, the people, but any of us who has ever been at a zoning meeting with our property at stake is aware of the urge to cut through all the pernicious bullshit and go straight to firearms.
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> *— David Mamet,"Why I Am No Longer a 'Brain-Dead Liberal,' The Village Voice, March 11, 2008*

No conservative believes (I don't purport to speak for libertarians) that there is any such thing as an absolute right of an owner to use his property for any use he may desire. The common law of nuisance imposed restrictions on the use of realty, and the pre-New Deal Supreme Court, in the era of Lochner, Adkins and Schechter, shared the view of Mr. Justice Field, dissenting in *Munn v. Illinois,* that property rights are subject to such restrictions as are reasonably required to protect "the peace, good order, morals, and health of the community."[3]

As a matter of constitutional law, the right of state and municipal governments to establish zoning regimes and regulate the development and use of land is settled, but simply because it is constitutional, it does not follow that the exercise of a right is wise public policy. A recent example of not exercising a right to the full extent of its scope as defined by the Supreme Court is the decision of several states to restrict the authority of municipalities to exercise the power of *eminent domain* for the purpose of urban "revitalization" notwithstanding that the Supreme Court in *Kelo v. City of New London* [4] held that the "public use" restriction of the Fifth Amendment (as applied to the states through the Fourteenth Amendment) does not preclude the taking of property for the benefit of private parties.

Conservatives should keep in mind that land-use regulation is hugely popular among middle-class voters. Every homeowner has visions of a scrap yard on the vacant lot across the street in the absence of rigorously enforced zoning ordinances. Although I can cite no scholarly authority, I suspect that participation in land-use regulatory hearings engages more citizens in the actual functioning of government than any civic activity other than voting.

As a political matter, I am generally disinclined to pick a fight with my neighbors that I can't win because nine people in robes are lined up against me. Accordingly, my concerns have been peripheral to the theoretical arguments against a zoning regime. Houston may prove that urban sprawl can succeed as well without zoning as with it, but I don't live in Houston. My concerns are mundane and relate to how to tame the monster, not kill him.

These concerns are rooted in four questions:

1. Can land-use regulation be reconciled with a healthy respect for the liberty interest of the individual?

2. How do we mitigate the arbitrariness of land-use regulation?

3. How do we shape land-use regulation to accommodate market changes and preferences?

4. To what extent are there market-based alternatives to governmental land-use regulation?

Every homeowner has visions of a scrap yard on the vacant lot across the street in the absence of rigorously enforced zoning ordinances.

TOM CHARLES HUSTON, A.B., J.D., an adjunct scholar of the foundation residing in Indianapolis, served as an officer in the United States Army assigned to the Defense Intelligence Agency and as associate counsel to the president of the United States. A member of the American College of Real Estate Lawyers, Huston has written and lectured extensively on real estate law and practice. He has been prominent in the historic preservation movement serving as an officer and director of Historic Landmarks Foundation of Indiana and Historic Indianapolis, Inc.; a director of Preservation Action; and a member of the Board of Advisors of the National Trust for Historic Preservation.

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Property and the Liberty Interest

John Locke and the early moderns held that ownership of property is a natural right. Thomas Jefferson's omission of the word *property* in his identification of "unalienable rights" implied no downgrading of this fundamental right. According to republican theory, the word *liberty* incorporated the right to property. As Sylvia Frey points out, "Arguing from the Lockean premise that the right of property derives from each person's right to life, Americans of the Revolutionary generation proclaimed property the necessary foundation of happiness, without which no individual could enjoy independence or free will, the most essential component of liberty. State constitutions written during the Revolutionary period invariably link the three words, liberty, property and happiness, as though each implied the other."[5]

The delinking of "property" from "liberty" commenced at Gettysburg. Liberty, as understood by those in rebellion, included a right of property in human chattels. Determined to expunge the repugnant idea, Lincoln junked "liberty" in favor of "a new birth of freedom." In Lincoln's formulation, "freedom" is not a synonym for "liberty."

It is a reformulation of the classical understanding of the nature, source and scope of the rights of man. Lincoln, without exactly saying so, downgraded the centrality of property ownership as a right derived from the nature of man.[6]

While the pre-New Deal Supreme Court has been accused by progressives of having put the rights of property and the freedom to contract above "human" rights, the truth (as Hadley Arkes well demonstrates[7]) is that the core issue in every case was the effect of regulation — whether of the use of property, the terms of employment or the engagement in trade — on individuals. This is obvious (to select but one notable example) in the case of Roscoe Filburn, who was deemed a criminal as a consequence of making home use of wheat grown on his farm.[8]

The contemporary problem is that courts and legislatures divorce the regulation of property from the consequences of that regulation on the pursuit of happiness by those affected.

This is fundamentally a legislative and not a judicial problem. It is legislative majorities rather than judges who pose the greatest threat to the liberty interest of individuals in the exercise of rights of property. As my White House colleague Lyn Nofziger used to say (after Daniel Webster), "No man's life or property is safe when the legislature is in session."

Clearly Arbitrary, Often Capricious

The authority and requirements for local planning and zoning are codified in Article 36, Chapter 7 of the Indiana Code. Representative of the rigor and precision of legislative thinking that drives land-use regulation is this statement of purpose set forth at IC 36-7-4-201:

> b) The purpose of this chapter is to encourage units to improve the health, safety, convenience and welfare of their citizens and to plan for the future development of their communities to the end: 1) that highway systems be carefully planned; 2) that new communities grow only with adequate public way, utility, health, educational and recreational facilities; 3) that the needs of agriculture, forestry, industry and business be recognized in future growth; 4) that residential areas provide healthful surroundings for family life; and 5) that the growth of the community is commensurate with and promotive of the efficient and economical use of public funds.

The sort of mischief inspired by this broad-brush approach to the regulation of property is obvious when, for example, you begin to contemplate the full range of opinion as to what constitutes "healthful surroundings for family life." Not a slaughter house, I gather, but what about a corner pub?

The legislature requires that plan commissions adopt a comprehensive plan "for the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of development."[9] All governmental units are expected to take the approved comprehensive plan into account in making decisions affecting development. In a growing community a statutorily compliant comprehensive plan is about as helpful as a Soviet five-year plan.

Although the legislature has provided local communities with a full box of tools to regulate the use of property, the principal ones are a zoning ordinance, a subdivision control ordinance and a sign ordinance. Zoning ordinances not only establish permitted uses within designated areas but also establish development standards that must be adhered to (such as the side yard requirement that derailed my career as a zoning lawyer). The subdivision control ordinance specifies with excruciating detail the requirements for the design, platting and development of real estate. Signs ordinances are generally straightforward and differ materially in the stringency of their requirements from one community to the next. The draftsman of a typical sign ordinance, however, is a recovering aesthete who in grad school was exposed to a photograph of a 19th-century Indiana commercial streetscape.

Aware that the one-size-fits-all character of these ordinances may result in individual hardship, the legislature has authorized boards of zoning appeals to grant variances from ordinance requirements. The burden of justifying any such variance is on the petitioner, and it is a heavy one.

The rigidity of these ordinances as applied to residential development results in cookie-cutter subdivisions that continue to be modeled on design guidelines developed by the Federal Housing Administration shortly after World War II. There is virtually no discretion for the developer except to the extent it can convince a board of zoning appeal to grant variances. Brenwick found it necessary in connection with development of a neo-traditional, mixed-use community to obtain more than a thousand variances from street-design requirements in order to calm traffic, favor pedestrians, and accommodate vistas in the design of the community.

Justice Sutherland in his decision in *Village of Euclid* embraced the notion that geographical separation of uses and lot and building-development standards are a legitimate exercise of the police power in that they have among their objects "the promotion of the health and security from injury of children and others by separating dwelling houses from territory devoted to trade and industry" and "aiding the health and safety of the community by excluding from residential areas the confusion and danger of fire, contagion and disorder, which in greater or less degree attach to the location of stores, shops and factories."[10] Advances in building design and materials together with changes in transportation and fire safety make these objects seem less compelling as reasons to implement a regime of strict land-use regulation. While the fallback justification is always "the public health, safety and welfare," the political reality is that zoning is largely a scheme by which prevailing interests determine winners and losers, exclude the undesirable and drive up prices by restricting supply. The voices never heard at a zoning hearing are those of the prospective residents who will be excluded from the community if current residents have their say. Closing the door behind you is a common gesture in middle-class suburban communities.

The means to the ends sought by the planners and their beneficiaries is not so much the designation of uses as it is the determination of density. Low density increases housing costs, consumes more land and privileges the comfortably off over the economically aspiring. The Obama administration is on to this racket and intends to exploit the class bias implicit in it by nationalizing land-use decisions. By applying fair-housing rules and conditioning government grants in such a way as to force increased density in single- and multi-family residential developments, the administration hopes to remedy the discriminatory impact on economic and racial minorities it believes is inherent in land-use regulations that require low-density development.

While the coming assault by the Obama administration on local planning and zoning ought to scare the pants off of anyone who believes in property rights and local governance, the likelihood is that it will meet less resistance than reason would anticipate. Alleging racism and offering "free" federal dollars to mitigate that racism is a combination that Democrats welcome and Republicans are too gutless to resist. Application of disparate impact analysis to the results of local residential zoning in most suburban communities will result in a "proven" case of racial and economic discrimination. Local communities are going to be hard pressed to justify existing residential patterns (which demonstrably are affected by zoning decisions) if the test is disparate impact. Any chance of defending against the blows that are about to be struck depends on judicial rejection of disparate-impact analysis and less enthusiasm by local governments for federal grants-in-aid.

Discretion and the potential for abuse arising from it are inherent in the regulatory process. This gives rise to the dilemma that to the extent you build more flexibility into the regulatory system, the broader the range of discretion becomes and the greater are the opportunities for abuse. Notwithstanding the risk, the need for flexibility to accommodate the rapid social and economic changes in our society is demonstrable. The rigid, detailed, categorical system now in place needs to be jettisoned and replaced by a simpler, more schematic and flexible system.

Market Changes

It is not unusual for development of a comprehensive plan to take 12 to 18 months. During this process, which includes input from community activists and special-interest pleaders, the planners seek to predict how their little part of the world may or should look 10 years down the road.

Most businesses have strategic plans, and there is no reason why governmental units shouldn't have them as well. Most businessmen, however, update their plans annually in light of changed circumstances. Municipalities normally update their comprehensive plans every 10 years.

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Anyone familiar with the writings of F. A. Hayek on the inability of planners to access and distill the vast knowledge required to establish and to maintain markets understands why government planning ultimately fails.

Many of the most dramatic changes over the past 30 years affecting housing were changes that few saw coming: the decline of the traditional (*e.g.,* two parents and two children) family from 80 percent of the new housing market to 25 percent; the increase in demand resulting from divorce with, for example, mom and dad each buying a house in close proximity so that the children can stay in the same school; housing formation generated by social acceptance of same-sex relationships; the accelerated downsizing by Baby Boomers not as a consequence of children leaving the nest but as a result of ownership of a second home in Florida or Arizona; the increase in gasoline prices to $4 a gallon; and, most significantly, the Great Recession during which, for example, housing starts in the Indianapolis market collapsed from more than 16,000 a year to less than 3,000.

The livelihood of real-estate developers, home builders, investors and mortgage lenders depends on reading the market and responding quickly to changes in it. The tenure of politicians and bureaucrats is rarely affected by the inability of a community to respond promptly to market changes. If buyers want smaller houses on smaller lots, a community whose zoning laws permit only large houses on large lots is going to quit growing whether that is part of its plan or not. Municipalities hostile to retail and office development will encounter budget deficits as a consequence of unanticipated constitutional caps on the taxation of residential real estate. Jurisdictions that effectively exclude the construction of apartments will unintentionally force their young adults, who in times like these cannot afford to buy a house, to live with mom and dad or move to an apartment with friends in another community.

Anyone familiar with the writings of F. A. Hayek on the inability of planners to access and distill the vast knowledge required to establish and to maintain markets, or with Jane Jacob's insight into the utility of locality knowledge available only to neighborhood residents, understands why government planning ultimately fails — no combination of planners commands the full range of information necessary to anticipate human action.[11]

Market-Based Solutions

Virtually all commercial and residential projects of any size or sophistication developed in the United States over the past 20 years are subject to a private scheme of regulation established by contract through the placement of record of covenants and restrictions (C&Rs) that run with the land, and to which every purchaser of a lot, parcel or structure in the development takes title. The degree of this regulation varies greatly among projects, but all restrict uses and impose standards and most create an association of owners to enforce the restrictions and administer any commonly owned property.

Today there are 323,600 owners associations, including condominium associations, that according to data published by the Community Associations Institute involve 63.4 million Americans.[12] The scope of power exercised by these associations is extraordinary. As Russ Guberman explained:

> Although structured as a nonprofit corporation, a homeowners associations (HOA) operates as a private government. An HOA can impose fines on those who flout its quality-of-life policies, just as a municipality can penalize those who violate its zoning, anti-smoking, or noise-control laws. An HOA also levies dues and assessments that are as obligatory as taxes and sometimes less predictable. In exerting these quasi-political powers, HOAs represent one of the most significant privatizations of local government functions in history.[13]

Membership in an owners association is not voluntary. Every purchaser of a home, lot or parcel in a community subject to C&Rs is automatically a member. An owner's use of his property is subject to the provisions of the applicable C&R whether she likes it or not. Many owners do not and, as a consequence, state legislatures have increasingly seen fit to intervene by limiting or conditioning the powers of HOAs. Since the powers are created by contract, each purchaser having voluntarily assumed the obligations imposed by an instrument of record conditioning title, such legislative intervention raises the question of abridgment of vested contract rights first addressed in the Dartmouth College case famously argued before the Supreme Court by Daniel Webster.[14]

The private scheme of regulation established by C&Rs is always subject to modification or termination upon such terms as may be stated in the governing documents. The vigor of administration is determined largely by the board of the owners association, which is elected and responsible to the owners in their collective capacity as members. It is a democratic process, but it is just as subject to abuse as the official governmental system of regulation. Reports of unreasonable and vindictive administration of OAs are frequent (the most popular among editors being enforcement of restrictions on flying flags).

Private contractual regulation is a subject that deserves more notice than I can give it here, but the point is that once you embark upon a scheme of land-use regulation, whether

public by legislation or private by contract, you encounter similar problems based on the frailty of the human condition. The alternative is a world without regulation, which is unthinkable in our time and, except in the imagination of social-contract theorists, likely never existed.

If, then, land-use regulation is simply one of the costs we pay for life in a complex system of benefits and obligations often distributed disproportionately whether measured by an economic or moral standard, then the questions are how do we identify, measure and limit abuse of the process?

I have suggested some ways to do so, but I conclude with this thought: We have long known that laws fair on their face may, as Justice Matthews wrote in his opinion in *Yick Wo v. Hopkins,* be "applied and administered by public authority with an evil eye and an unequal hand."[15]

Citizens must be alert to the administration of regulations every day, and from day to day and object through all available channels when the evil eye and the unequal hand are applied to advantage some at the expense of others.

In old age I have little faith in legislatures and hardly more in courts, but I still think elections matter.

Endnotes

1. 272 U.S. 365 (1927).

2. Hadley Arkes. The Return of George Sutherland: Restoring a Jurisprudence of Natural Rights. Princeton University Press, 1994, p. 70.

3. 94 U. S. 113, at 146 (1877).

4. 545 U.S. 469 (2005).

5. Sylvia R. Frey, "Liberty, Equality and Slavery. The Paradox of the American Revolution," in Jack P. Greene *(ed.)* The American Revolution: Its Character and Limits. New York University Press, 1987, pp. 242-243.

6. "The world has never had a good definition of the word liberty, and the American people, just now, are much in want of one," Lincoln declared four months after his Gettysburg Address." Actually, the problem was not, as Lincoln acknowledged, the absence of a definition, but the existence of two incompatible definitions rooted in disagreement over the nature of property. See Abraham Lincoln, "Address at Sanitary Fair, Baltimore, Maryland," April 18, 1864. Roy P. Basler (ed.), The Collected Works of Abraham Lincoln (New Brunswick, NJ: Rutgers University Press, 1953), 301-302.

7. Arkes, *op. cit.*

8. *Wickard v. Filburn,* 317 U.S. 111 (1942).

9. IC 36-7-4-501.

10. 272 U.S. 365, at 391.

11. Emily Washington. "The Use of Knowledge in Urban Development," Market Urbanism at *http://marketuranism.com/2012/11/15/the -use-of-knowledge-in-urban-development/* (accessed on Nov. 19, 2013).

12. Kaid Benfield. "The Tyranny of Homeowners Associations." *The Atlantic Cities,* Feb. 19, 2013 at *http://www.theatlanticcities.com/neighborhoods/2013/02/tyranny-homeowners-associations/4731/* (accessed Nov. 25, 2013).

13. "Home Is Where the Heart Is," Legal Affairs, November/December 2004 at http://www.legalaffairs.org/issues/November-December-2004/feature_guberman_novdec04.msp (accessed November 25, 2013).

14. Trustees of Dartmouth College v. Woodward, 17 U. S. 518 (1819)

15. 118 U. S. 356 (1886), at 374

Citizens must be alert to the administration of regulations every day, and from day to day and object through all available channels when "the evil eye and the unequal hand" are applied to advantage some at the expense of others.

The Noblest Triumph

"The many blessings of a private-property system have never been properly analyzed, probably because of (its) peculiar history. It is a vast subject, and an introduction of this nature can only outline those benefits. But there are four great blessings that cannot easily be realized in a society that lacks the secure, decentralized, private ownership of goods. These are: liberty, justice, peace and prosperity. The argument of this book is that private property is a necessary (but not a sufficient) condition for these highly desirable social outcomes.

Of these, the relationship between liberty and property is by now fairly well understood. Leon Trotsky long ago pointed out that where there is no private ownership, individuals can be bent to the will of the state, under threat of starvation. . . . It was the practical experience of Communism that made all the difference. Those who lived under its tyranny soon understood that without property rights, all other rights mean little or nothing. Angels and spirits surely do not need property, but human beings have not yet attained that incorporeal state.

Private property is a compromise between our desire for unrestricted liberty and the recognition that others have similar desires and rights. It is a way to be free, 'and yet secure from the freedom of others,' as the American University law professor James Boyle has written. . . . Rights are held against the state, and property is an important bulwark against state power. Ownership in a society that protects and respects property will tend to be unequal, to be sure, and for over a hundred years property has been represented as an expression of power; but like all genuine rights, property rights protect the weak against the strong. — *Tom Bethell, The Noblest Triumph: Property and Prosperity Through the Ages, St. Martin's Press*"

EMINENT DOMAIN

How could mere citizens without legal training know that the despotic power was so pervasive? How could they know it survived the Magna Carta, the Declaration of Independence and centuries of legal precedent to be handed to those who sit at desks deep in an Indiana park department and draw nature walks on a map?

by ALLEN PARIS

Graphics: Lisa Barnum

The original verbiage in the Declaration of Independence was life, liberty and property. That is unsurprising, because the original European settlers came from countries in which all the land was owned by the "realm," the king or a select few of the wealthy nobility. What is surprising is that this hard-won liberty has eroded to the point that a bureaucrat can usurp ownership of your backyard for a recreational path.

Before discussing this point, we need historical reference. The Norman kings of England could at any moment evict their subjects, then take their cattle, their crops and all of their possessions. That law, in effect from time out of remembrance, came to be known as eminent domain or "the despotic power."

Beginning with the *Magna Carta Libertatum* (the Great Charter of the Liberties of England), things changed. The common man came to acquire land — that is, land he could legally protect not only against neighbors but the crown. Indeed, John Locke, the English philosopher, wrote: "The primary purpose of government was to protect rights in property since these rights were at the basis of all liberties."

The basic right recognized by this so-called "common law" was that of sole dominion, the right to exclude others, the right against trespass, the right of quiet enjoyment, the right of free use, and so forth. By the time of William Pitt (the Great Commoner), this could be declared in the House of Commons:

> The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storms may enter; the rain may enter; but the King of England may not enter; all his forces dare not cross the threshold of the ruined tenement.

This belief in the importance of private property was transferred into America's founding principles. In fact, according to the historian Paul Johnson, the United States is the only nation founded specifically with the common man in mind — the origin of its claim to exceptionalism.

So, how high was the right of property on our list of first principles? The Founding Fathers, believing that respect for this right should be the heart of their courageous experiment in social contract, gave every legal weight to their emotional tie to property.

Thomas Jefferson, reflecting on Locke, wrote these principles into our Declaration of Independence (Benjamin Franklin is said to have only offhandedly substituted the more encompassing "pursuit of happiness" for the original "property"). Statements by the original signers include:

"Property is certainly the principle object of society . . . and is the guardian of every other right . . . for without the right to own and use and enjoy one's property free from arbitrary governmental interference, there could be no liberty of any sort . . . property must be secured or liberty cannot exist . . . the moment the idea is admitted into society that property is not as sacred as the law of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence."

Finally, excerpts from the current handbook of the Cato Institute gather together the wisdom of seven centuries on the topic. They reflect my beliefs and those of other Hoosiers:

"It is no accident that a nation conceived in liberty and dedicated to justice for all protects property rights . . . property is the foundation for every right we have, including the right to be free . . . individuals are independent or free to the extent they have sole or exclusive dominion over what they hold . . . much moral confusion would be avoided if we understood that all of our rights can be reduced to property."

The Devolution of Property Rights

Our founding concept of property rights has survived through the years as these contemporary quotes attest:

An expert on Constitutional law, Richard Epstein, who believes property is the guardian of every other right, begins the discussion:

"This trinity of exclusive possession, use and disposition has long been recognized as forming the core of private property that lies at the center of social life. (Therefore) the object of the state is to preserve as much of the basic system of liberty and property as is consistent with the maintenance of peace and social order. (Furthermore) This right to exclude (others

IC 36-10-3-11
Board of park and recreation; powers

Sec. 11. (a) The board may:
(1) enter into contracts and leases for facilities and services;
(2) contract with persons for joint use of facilities for the operation of park and recreation programs and related services;
(3) contract with another board, a unit, or a school corporation for the use of park and recreation facilities or services, and a township or school corporation may contract with the board for the use of park and recreation facilities or services;
(4) acquire and dispose of real and personal property, either within or outside Indiana;
(5) exercise the power of *eminent domain* under statutes available to municipalities.

"A liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it."

— Judge Learned Hand

from your property) thus achieved the first great objective of any social order: the separation of me and thee."

Legal scholars John Drobak and Julie Strube add: "The right to own and use property, to work and better oneself economically, is one of the core essential human rights."

Presidential candidate Michael Badnarik (Libertarian Party) puts it this way:

"If the only purpose for the Constitution is to protect your rights, and if you accept my thesis that all of your rights come down to property, then it follows that the only purpose of the Constitution is to protect your property." Badnarik adds that the purpose of having new office holders take their oath of office pledging to uphold the Constitution is to have them pledge "to defend our rights and property from unlawful attack."

Justice Antonin Scalia of the Supreme Court of the United States, concludes:

"We have repeatedly held that, as to property reserved by its owner for private use, the right to exclude others is one of the most essential sticks in the bundle of rights that are commonly characterized as property. In addition to the many direct references to our rights to property in the Constitution, the Fourth Amendment protects your right to privacy, which is directly related to maintaining control of your property."

Given these strong, knowledgeable beliefs on the absoluteness of private property, we must ask how the contrary concept of eminent domain reaches into our freedoms.

Unfortunately, the despotic power has a basis in the Constitution, which included a clause that results in many "takings" of private property by government through utilization of "eminent domain."

Initially these takings were confined to essential community necessities such as forts, schools and roads. They were usually only used when no alternative existed. And fortunately through the years, our courts have used various clauses in the Constitution to uphold these original principles.

Beginning with the Progressive movement in the 1930s, however, the Supreme Court's support weakened as the majority issued more rulings allowing misuse of eminent domain.

To cite the example with which I am most familiar, Indiana statute gives the appointed boards of a park department autonomy from control by elected mayors and city councils, and it gives them authority to utilize eminent domain. Are you now beginning to understand why eminent domain was known in the 17th and 18th centuries as "the despotic power"?

Of the several problems that exist with this power, two of the most troublesome are:

The taking clause that Badnarik rightly notes was "designed to bar the government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole" has led the Supreme Court to (historically) follow this principle: At least one person should become better off and no one is made worse off, and it should create a proportionate gain for all.

Following this, Epstein warns: "We need to make certain the public gain outweighs the private harm. If it does not, people will be needlessly harmed . . . from a program that brings little benefit to the public."

Of specific relevance to a case that will be discussed in detail later in this article is this ruling of the court: "Even though there is a public interest to provide means of recreation,

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"We are well aware that the words and formalism of a constitution will do little to accomplish these goals (constitutional limitations on a government's power to confiscate property) if the citizens lack respect for constitutional principles and the country lacks structures to enforce constitutional rights."

— *Drobak and Strube*

this public proposal was insufficient to justify the limitation of the owners right."

This brings us to the first unresolved problem: When it is "necessary and essential" has never been clearly defined. Another limitation against unfair takings was written into the Fifth Amendment that requires the government to reimburse the property owner for his loss. This is the second unresolved problem: What is fair reimbursement?

To address this, the Supreme Court has issued several rulings that find a taking that leads to a loss of profit (an intangible property right) could result in an unconstitutional taking, as could those takings that violate reasonable expectations of a return on investment.

Unfortunately, several losses are usually ignored — most significantly, the property's use value. Typically, the reason a property remains off the market is that its use value exceeds its sale value, due to the fact that individuals do not merely own land, they own "estates in land," meaning they own the value of it currently and in the future. Again, neither of these values is usually taken into account. In addition, the current law disregards the cost of "forced relocation."

All of this adds to the challenges faced by the owner and leads to low-ball estimates of valuation by the government. Blackstone Law says the owner should be protected "by giving him full indemnification and equivalent for the injury thereby sustained" (an injury that may exceed the value of the property taken). It will be made obvious later in this article, though, that such protection is not being afforded at the local level. Epstein, taking both of these problems into consideration, warns that compensation based on market value ignores the owner's full losses and is not just and "causes financial harm to many people who have done no harm. . . . These are people we force to contribute for the good of society, adding an additional price to the cost of their citizenship in our country."

He concludes with this:

> Any decision to condemn private land for public use turns on two factors: the nature of the condemned land and the public necessity for its condemnation. Since the real value is greater than the 'market value' when subjective issues are at play, 'the best approach is to accept the constitutional trade-off that allows the taking only when the loss in subjective value is small and the locational necessities are great (*i.e.,* when there are no alternatives).' But, by the same token, we should deny the state the right to take when the balance runs the opposite way.

And yet, today in Indiana, our statutes give even the appointed boards of a park department, to return to the example with which I am most familiar, authority over elected mayors and city councils, authority over the democratic process itself. These officials can by fiat (the power of kings) evoke eminent domain for even an amenity as simple as a walking path.

I know that because such an officially mapped path and its evocation of eminent domain threaten the efforts of my wife and me to develop a family farm — meant to be a gift to our community — as a formal garden and arboretum.

The energy we have spent fighting for the freedom to create this has nullified the rewards of using our supposedly private property

Jamestown and Property

Four hundred years ago today, 105 men and boys disembarked from three ships and established the first permanent English settlement in North America. They built a fort along what they called the James River, in honor of their king. The land was lush and fertile, yet within three years most of the colonists died during what came to be known as 'the starving time.' Only the establishment of private property saved the Jamestown colony. What went wrong? There were the usual hardships of pioneers far from home, such as unfamiliar diseases. There were mixed relations with the Indians already living in Virginia. Sometimes the Indians and settlers traded, other times armed conflicts broke out. But according to a governor of the colony, George Percy, most of the colonists died of famine, despite the 'good and fruitful' soil, the abundant deer and turkey, and the 'strawberries, raspberries and fruits unknown' growing wild. The problem was the lack of private property. As Tom Bethell writes in his book The Noblest Triumph: Property and Prosperity through the Ages, 'The colonists were indolent because most of them were indentured servants, expected to toil for seven years and contribute the fruits of their labor to the common store.' Understandably, men who don't benefit from their hard work tend not to work very hard.

— David Boaz, "Private Property Saved Jamestown, And With It, America," Cato Institute, May 14, 2007.

altruistically — to the benefit of our neighbors. (See appendices.)

Conclusion

Badnarik argues that states do not have a right to eminent domain because the idea would negate the purpose of the Constitution.

And Drobak and Strube warn us of the consequences of citizen complacency and loss of diligence: "We are well aware that the words and formalism of a constitution will do little to accomplish these goals (constitutional limitations on a government's power to confiscate property) if the citizens lack respect for constitutional principles and the country lacks structures to enforce constitutional rights."

Finally, Judge Learned Hand warns: "Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it."

So were we naive in our expectation to use our property as we saw fit? Perhaps, but how could mere citizens without legal training know that the despotic power was so pervasive? How could we know it survived the Magna Carta, the Declaration of Independence and centuries of legal precedent to be handed to those who sit at desks deep in an Indiana parks department and draw nature walks on a map?

Well, we are learning, with the help of expensive counsel, we are learning.

In any case, it is not too late to breathe life back into the words and principles of our Founding Fathers. And yet, as Judge Hand warned, the window is getting smaller.

So discuss these issues with your legislators and your neighbors. Just because statutes grant authority to certain groups to utilize the despotic power does not make it morally right to do so. Nor does it mean they will keep that authority. As it is argued here and with determination, it must be reinstated that our constitution recognizes the inalienable rights of citizens, not government functionaries, in regard to property.

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It is not too late to breathe life back into the words and principles of our founding fathers, but the window is getting smaller. Discuss these issues with your legislators and your neighbors.

We must breathe life back into the words and principles of our founding fathers while there is time. As Judge Hand would warn, the window is getting smaller.

APPENDIX I

Letter: A Backyard Saga

Do you believe you own your land? Do you believe you control what is done with your land? Do you believe you can utilize the controls of the ballot box to restrict who can take your land through the Indiana eminent domain laws? Do you believe eminent domain can only be used to acquire your property for community necessities and never for amenities? Do you believe utilization of eminent domain requires approval of elected officials? Do you believe property ownership being declared an inalienable constitutional right by our founding fathers meant that our government would never take your land?

If you answered yes to any of these questions, you need to read on because Indiana statutes give your park department autonomy from control of mayors and city councils and gives them authority to utilize eminent domain for amenities such as building walking trails. Moreover, the courts allow this.

Please allow me to share our saga with you. It began as a dream of making a contribution to our community. My wife came to this country from post-war Germany as an adopted child of a career Army Master Sergeant. Believing in the American Dream, she has always wanted to leave something behind, something that would contribute to the greater good of the community of her adopted country.

When she had the opportunity to acquire the remaining three and one-half acres of a farm in the family since 1930, plus an additional three acres, she decided to develop it into a formal garden-arboretum in my mother's memory. It was to be left as a donation to her community as a serenity garden (in the spirit of a horticultural-therapy program for the elderly and handicapped).

Because of its unique mission, the garden would have a dedicated formal entrance to create a unique ambience and a layout customized to the needs of its special visitors with wide gentle paths and ample seating locations for rest, healing and meditation.

The city parks board has conducted a six-year campaign to seize a 35-foot strip across the front yard of this garden to continue a walking trail to the adjacent subdivision (making ours the only residence in a two-county area with such a trail going through the front yard and across the drive).

When told the road's right-of-way ended at the edge of the pavement (a 1905 law pertaining to certain rural roads) and there were no easements, the board replied with an eminent domain lawsuit.

We have fought their efforts because of the destruction such a trail would have on the ambience of our residence and on the entrance to the planned serenity garden. Everyone can understand that the landscaping and design around the front door of a home is important. And so it is with the entrance to one's property where the design serves two purposes: a welcoming banner for guests that provides a sense of anticipation for what is to come further down the drive and a banner for residents that evokes "Welcome home after a busy day — you can now kick off your shoes and relax in an envelope of comfort, familiarity and security."

Exceptionalism and Property

Asked, early in his presidency, whether he believed in American exceptionalism, Barack Obama gave a telling reply. 'I believe in American exceptionalism, just as I suspect the Brits believe in British exceptionalism and the Greeks believe in Greek exceptionalism.' The first part of that answer is fascinating (we'll come back to the Greeks in a bit). Most Brits do indeed believe in British exceptionalism. But here's the thing: They define it in almost exactly the same way that Americans do. British exceptionalism, like its American cousin, has traditionally been held to reside in a series of values and institutions: personal liberty, free contract, jury trials, uncensored newspapers, regular elections, habeas corpus, open competition, secure property, religious pluralism. The conceit of our era is to assume that these ideals are somehow the natural condition of an advanced society — that all nations will get around to them once they become rich enough and educated enough. In fact, these ideals were developed overwhelmingly in the language in which you are reading these words. You don't have to go back very far to find a time when freedom under the law was more or less confined to the Anglosphere: the community of English-speaking democracies.

— Daniel Hannan in the Nov. 15, 2013, Wall Street Journal

Everyone can understand this, except for our city government. Our new mayor campaigned on a promise of not believing in eminent domain land seizures and a promise of open government.

He vowed that if elected he would work with us to have the trail placed down side of an adjacent (publicly owned) field. This would take the path across the back of our property, a design that we approve, to enter the subdivision from its rear. (This is the route deemed more appropriate by a leader of the state Department of Natural Resources as well as by the park department director at our first civic trial on the matter.)

The mayor, however, once elected, learned of the park department's legal autonomy. He allowed his administration to begin an eminent domain lawsuit against us.

Nonetheless, we enjoyed partial success last fall when a court ruled against the seizure, but only on technicalities. The city immediately corrected its errors and started over. We had our second day in court this summer and again succeeded. The city, however, stated in court that it is prepared to begin a third assault.

This is wrong. When our state legislature established the guidelines for use of state funds for trails, they wisely added restrictions prohibiting a recipient community from utilizing eminent domain to acquire land. If a community could not get all of the path needed for a trail using legitimate means, it could not receive state money for constructing. The federal guidelines included a similar prohibition. The vast majority of our citizens would agree with the wisdom of this policy.

This, however, would not stop the Indiana Department of Natural Resources from tutoring the parks departments of local communities on ways to get around state and federal restrictions. Instead of telling them to find another route, for instance, they might be told to proceed in acquiring state or federal funds and to construct the trail up to the property line of the resisting homeowner. They could then get around the restrictions by waiting one to two years before suing for eminent domain and then utilizing local funds to construct the trail across the contested property.

This not only would represent a violation of the intent of the law but also represents an ethics violation. It is a matter that begs the attention of the Indiana attorney general. Non-elected park board appointees cannot be allowed on their own to use eminent domain to build an asphalt trail across private landscape.

In sum, my experience explains why Indiana ranks near the bottom of the column of states with regard to the percentage of citizens who "give to their community," "perform philanthropic acts" or "help their neighbors." And we are at the very bottom of those states that provide adequate public green-space and with public-health investments.

It goes without saying that if Indiana continues to oppose philanthropists, there will be less philanthropy. This is not what we need.

— Allen Paris

APPENDIX II

Letter: A Lost American Dream

If the writers of the Declaration of Independence and of the Constitution, with contemporary sources such as the CATO Institute and others mentioned in my text, are correct that property ownership is a core right that defines our nation, then we are heading in the wrong direction. It is a direction that will lead to our becoming a nation that our Founding Fathers would never recognize, never accept and never condone.

We, as Americans, raise our children to believe in the American Dream — to work hard, save, buy property — believing all the while that what we earn we get to keep. Is this dream still true as expressed in our Constitution, or has it become a fallacy, just something we pull out during election cycles?

My wife's personal American dream was to work hard developing a serenity garden that would later be turned over to a horticultural organization for public use. Now a distorted process is depriving her of that dream, bringing her to tears because she realizes the city government does not care. City government just wants to complete a project (an objective) and our property (being "just a yard)" is seen only as standing in its way. To them, we are just a pair of residents.

To us, though, it is more than a yard; it is our American Dream, and we are more than just residents — we are citizens.

The decision about what should be done on our property should be ours, not that of the local government or its appointees. Again, we have a right to believe in our dreams and a right to pursue them and to fulfill them.

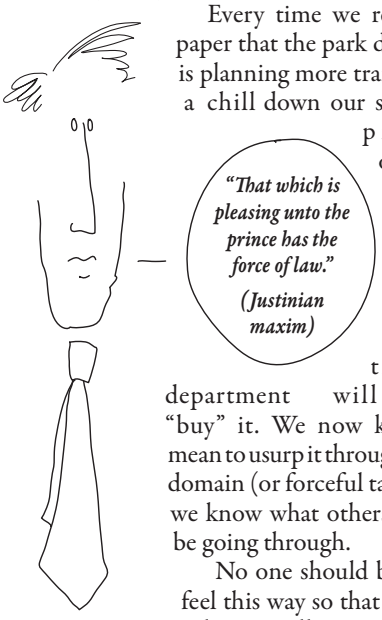
As mentioned in my text, Benjamin Franklin is credited for substituting the words "pursuit of happiness" for the original "property." But our property is critical in our pursuit of happiness, and the government's indifference to that fact is ripping our hearts out.

Today, our sons and daughters in the military are far away from home risking their lives to protect our freedoms and to protect the American way. Little do they know, however, what is happening to the American way or how the American dream is being debased.

My experience explains why Indiana ranks near the bottom of the column of states with regard to the percentage of citizens who "give to their community," "perform philanthropic acts," or "help their neighbors." And we are at the very bottom of those states that provide adequate public green-space and with public health investments.

We have learned that if state statutes give an official power, eventually that power will be used. Even so, as Americans we feel it is demanded of us to act when we believe an injustice is being done.

We came home to small-town Indiana, believing it was the bastion of conservatism in which, by being a small town, the importance of maintaining community and family ties is recognized, where citizens accept the principle that you do not know where you are going if you do not know your past, where the ties to family land is a basis for knowing who you are. Ask any Indiana farmer, and you will be told this is a sacred pact. Our society is abandoning those principles.



Every time we read in the paper that the park department is planning more trails, it sends a chill down our spines. The property owners are told if they do not want to donate their land, the park department will have to "buy" it. We now know they mean to usurp it through eminent domain (or forceful taking), and we know what others will soon be going through.

No one should be made to feel this way so that others can take a stroll. Remember, the public may "wish to have" a walking path, but the Constitution does not grant "wishes" or "wants." The distinction is why the Pilgrims came to this land.

We have learned that if state statutes give an official power, eventually that power will be used. Even so, as Americans, we feel it is demanded of us to act when we believe an injustice is being done.

We believe in the Constitution and its Fourth Amendment that gives us in our homes a promise of the right of privacy and the right of security. We believe as well in the Fifth Amendment that gives us the right to property. The words of the law are meaningless, though, if a government of men can take what it wants, opening your yard, if not your home, to strangers.

How did this come to be? We were dismayed that no elected officials we contacted knew of the law that allowed taking land for trails.

We were told, "That can't be." City council members assured us that "this won't happen in Franklin; that is not who we are." Sneaking it into Indiana statutes was as egregious as what was more famously done to Mrs. Susette Kelo, the Supreme Court complainant from New London, Conn.

Our summary question is whether the American dream is still alive or is it merely an ideal to be included in campaign speeches. Government oppression cannot co-exist with the belief that we are free and can pursue our dreams without interference.

We pray, though, that the dream in fact is alive and that our experience is an aberration.

— Allen Paris

China and Property

China is studying new ways to measure the size of its economy to reflect ambitious reform plans that will make it easier for farmers to sell their land and to take into account property values. The new methods, which dovetail with a blueprint for reforms agreed on at a key meeting of Communist Party leaders last week, are likely to increase the size of China's economy, already the world's second largest, according to the National Bureau of Statistics. 'We need to revise the method of calculating the size of our domestic economy to make it conform with a new economic structure, the latest economic developments and . . . international standards,' the statistics bureau said. Officials didn't specify how much the new calculations might change China's headline numbers. China's Communist Party leaders unveiled a broad program of reforms last week. One of their objectives was to make it easier for farmers to sell the right to use some of their land. Farmers don't currently own their land, but they have the right to use it. Among a number of changes outlined in a document released last Friday, China's leaders pledged to boost income for rural residents by giving them more property rights, allowing them to mortgage their property and envisioning experiments in allowing farmers to sell their land. Given the rapid growth in the property market, land and property values have risen sharply.

— Liyan Qi in the Nov. 18, 2013, Wall Street Journal

INDIANA AT 200

ANDREA NEAL

For the past 10 years, the foundation has distributed Andrea Neal's biweekly essays on Indiana public-policy issues. Twenty-five Indiana newspapers have routinely published her column, making her one of the most widely read opinion writers in the state. Beginning with the spring 2013 journal her essays began focusing on another passion — Indiana history. Neal will produce 100 columns before December 2016 that describe Indiana's most significant historical events, generally in chronological order, tying each to a place or current event in Indiana that continues to tell the story of our state. — *tcl*

William Henry Harrison Shaped Indiana From Vincennes Home

Nov. 18 — In the history books, William Henry Harrison was the first president to die in office, but Hoosiers should remember him as the man who shaped the Indiana Territory.

Indiana was a territory for 16 years before it became a full-fledged state. Following a multi-step process set out in the Northwest Ordinance, citizens first had to get practice in governing, grow in population, petition for statehood, be accepted into the union and write a constitution.

Like a conductor directing an orchestra, Harrison oversaw much of the process from his governor's mansion in Vincennes, the territorial capital chosen because it had a sizable population and was conveniently located on the Wabash River. In the process, he negotiated 10 treaties with Native Americans, bringing the land firmly under U.S. control.

The Indiana Territory was much larger than what became Indiana. Carved out of the Northwest Territory in 1800, it included Indiana, Illinois, Wisconsin and parts of Minnesota and Michigan. At the time, some 12,000 Native Americans and 6,000 settlers lived there. By 1816, Indiana had been whittled down to its current size and had 64,000 residents.

Harrison was a native Virginian and a military man who was named territorial governor by President John Adams in 1800. He moved to Vincennes in January 1801 and got to work writing laws, appointing public officials, improving roads and directing Indian affairs.

In 1804, Harrison built a governor's residence sturdy enough to function as a fort. It was the first brick home in Indiana and became known as Grouseland because of the abundant game birds in the area.

As the pursuit of statehood progressed, power shifted away from a powerful executive, Harrison, to a democratic legislative branch. In 1811, the Legislature asked Congress for permission to write a state constitution and be admitted to the union.

By this time, the territory hoped to be financially self-sufficient. It wasn't yet, so plans were put on hold. War broke out, and statehood was further delayed.

In the War of 1812, Harrison was named commander of the Northwest Army and resigned his governor's post to concentrate on battling the British.

In 1813, President James Madison appointed Thomas Posey as Harrison's replacement. That same year, the legislature passed the State Capital Act, moving the territorial capital to Corydon, which would become the new state capital.

In 1815, the assembly again petitioned Congress for statehood, and this time all went according to plan. In December 1816, President James Monroe signed a resolution admitting Indiana to the union.

For the 12 years he served as governor, Harrison was synonymous with the Indiana Territory, and Grouseland functioned as the White House of the West. Today the mansion appears much as it did in the early 19th century and is "a cultural treasure in Indiana," says historian James Fadely. "It embodies the history and culture of the early Indiana Territory within its walls."

Of the four meeting places of the legislature, one still stands: a two-story red house initially built as a tailor shop. Other sites are within a block of each other and are open to the public as living reminders of Indiana's beginnings.

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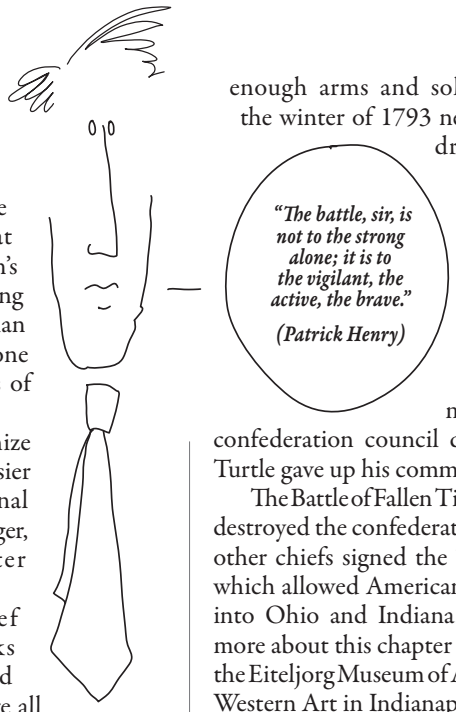
Miami Chief Little Turtle's name ranks with Abraham Lincoln and Benjamin Harrison as a figure all Hoosiers should recognize. He died four years before Indiana statehood, so there's no way to know if Little Turtle would have embraced or dismissed as patronizing the title "first great Hoosier."

'Little Turtle' Led in War and Peace



Nov. 4 — For 30 years, he was a dominating figure on the Indiana frontier, at first resisting the white man's encroachment and later giving in to the inevitable. The historian Calvin Young called him "one of the greatest Indian chiefs of all time."

"Some day we will recognize him as our first great Hoosier and an American of national importance," wrote Otho Winger, historian and Manchester College president, in 1942.

Indeed, Miami Chief Little Turtle's name ranks with Abraham Lincoln and Benjamin Harrison as a figure all Hoosiers should recognize. He died four years before Indiana statehood, so there's no way to know if Little Turtle would have embraced or dismissed as patronizing the title "first great Hoosier."

Known by his people as Me-she-kin-no-quah, Little Turtle was born on the banks of the Eel River about five miles east of modern-day Columbia City. A historic marker at the site lists his birth year as "c. 1747."

When the American Revolution ended in 1783, Great Britain ceded to the new United States the territory northwest of the Ohio River, including present-day Indiana. Immediately white settlers poured in.

Little Turtle organized a confederation of tribes — including Miami, Potawotami and Delaware — that for a time seemed capable of resisting pioneer migration into their hunting grounds. "He fought back against them in the only way he knew how," Winger wrote. "With small bodies of Indian warriors gathered from along Eel River and the Wabash, he would make raids along the Ohio."

This frontier violence was one of George Washington's thorniest problems when he became president in 1789. In 1790, he assigned Gen. Josiah Harmar to capture the Miami capital at Kekionga near present-day Fort Wayne. Little Turtle's men stopped Harmar in his tracks. A year later, Gen. Arthur St. Clair led 2,000 soldiers against the natives in western Ohio. It was one of the worst defeats in U.S. military history.

The next time, Washington directed Gen. "Mad Anthony" Wayne to lead an expedition and persuaded Congress to provide him with enough arms and soldiers. Wayne spent the winter of 1793 near Greenville, Ohio, drilling his army for battle. Little Turtle spied on the activities and concluded the natives stood no chance against "a general who never sleeps." He advised fellow Indians to make peace, but the confederation council disagreed, and Little Turtle gave up his command.

The Battle of Fallen Timbers in August 1794 destroyed the confederation. Little Turtle and other chiefs signed the Treaty of Greenville, which allowed Americans to settle peacefully into Ohio and Indiana. Hoosiers can learn more about this chapter on Indiana history at the Eiteljorg Museum of American Indians and Western Art in Indianapolis.

Little Turtle died in Fort Wayne in 1812 and was remembered with affection by U.S. political leaders. To others, however, his acceptance of federal policy toward Native Americans was seen as a sellout.

Historian Winger took the former view. "He already had the record of defeating more American armies than any other Indian chief. He was now to acquire the greater reputation of being most interested in ways of peace and civilization."

Hoosier Values Were Set In the Northwest Ordinance

Oct. 21 — Indiana became a state in 1816. Its political values, moral compass and physical boundaries were shaped by the Northwest Ordinance of 1787.

The ordinance spelled out how new states would be added to the Union and the rights that would be guaranteed to citizens.

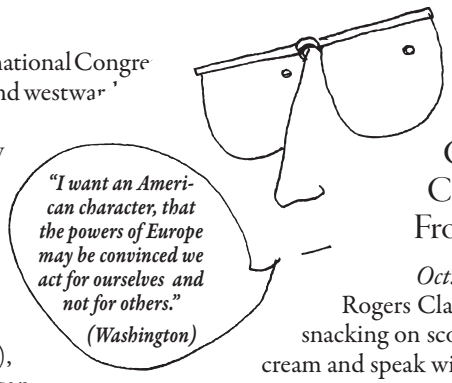
John J. Patrick, professor emeritus of education at Indiana University, calls the ordinance "a brilliant policy for governing a vast area north and west of the Ohio River — a liberal and innovative plan for colonial administration and national development."

The document "is indisputably at the core of the American civic heritage, one of the most important political legacies we have," Patrick said.

When the United States won the American Revolution, the 13 original states gained massive new lands stretching west to the Mississippi River and north to the Great Lakes. The Northwest Ordinance was one of

several laws passed by the national Congre governing land division and westwa migration.

It dealt specifically with the Old Northwest — the Midwest today — out of which "not less than three nor more than five States" were to be carved. The result? Ohio (1803), Indiana (1816), Illinois (1818), Michigan (1837) and Wisconsin (1848).



The ordinance set forth a process by which territories would elect legislatures, write constitutions and apply to the national government for statehood. It guaranteed new states would enter the union "on an equal footing with the original states" and specified their probable geographic borders.

The Ohio River became Indiana's southern boundary. The northern perimeter was a moving target for decades. After Ohio was admitted to the Union in 1803 and the Michigan Territory created in 1805, the boundary line was set at the southern tip of Lake Michigan. In 1816, the line was shifted 10 miles further north so Indiana could claim a bit of lake shore.

The governance procedures set forth in the ordinance were as far-sighted as its commitment to individual dignity. Consider these enlightened promises:

• Freedom of religion: "No person . . . shall ever be molested on account of his mode of worship or religious sentiments."

• Education: "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

• Respect of Native Americans: "The utmost good faith shall always be observed towards the Indians; . . . in their property, rights, and liberty, they shall never be invaded or disturbed."

Sad to say, the promises were not always kept. Throughout the Northwest Territory, federal treaties stripped Native Americans of their homeland, and slavery existed despite the written ban. The 1800 federal census recorded 135 slaves in the Indiana Territory and 163 free blacks. Regular funding for public schools did not occur until after the mid-19th century.

Patrick laments that the typical high-school textbook contains less than a page on the Northwest Ordinance, calling it a seminal document in American history.

Many of its principles made their way into the Indiana Constitution of 1816. Though the ordinance was superseded by other laws, Hoosiers can take pride in its formative influence.

George Rogers Clark: Indiana's Frontier Hero

Oct. 7 — If not for George Rogers Clark, we Hoosiers might be snacking on scones with jam and clotted cream and speak with cockney accents.

An exaggeration perhaps, but as Kelley Morgan points out, "George Rogers Clark was almost singlehandedly responsible for the U.S. gaining the Old Northwest Territory."

Morgan is interpretive manager at Falls of the Ohio State Park in Clarksville, where a representation of Clark's retirement home overlooks the falls with stunning views of the Ohio River.

A native of Tennessee, Morgan was unfamiliar with Clark until coming to Indiana, and she laments that so few Americans know his story. "I think George ended up being overshadowed by his younger brother William" of Lewis and Clark fame.

George Clark was born in 1752 in Virginia and was a lifelong friend of President Thomas Jefferson, with whom he shared passions for science, zoology and the culture of Native Americans.

At age 20, Clark went west on a surveying trip and claimed land for himself and friends in what would become Kentucky. Life was tense there because of constant warfare with Native Americans and British laws against westward settlement. In June 1776, his fellow citizens asked Clark to lobby the state of Virginia for military assistance and stronger political ties.

The charismatic redhead proved persuasive. Virginia, though preoccupied with the coming war for independence, granted Kentucky status as a county and supplied 500 pounds of gunpowder.

By 1777, Clark realized that the British were inciting Native American harassment of settlers, including paying bounties for prisoners and scalps. The Virginia legislature granted Clark a commission as lieutenant colonel and permission to gather troops.

Clark set his sights on capturing British forts in the Old Northwest, the territory that would become Ohio, Indiana, Illinois, Michigan and Wisconsin.

Virginia Gov. Patrick Henry authorized Clark to attack the British fort of Kaskaskia (Illinois) in French-occupied territory on the Mississippi River. Clark set up a supply base at the Falls of the Ohio. Clark and his men

The governance procedures set forth in the Northwest Ordinance:

• ***Freedom of religion: "No person . . . shall ever be molested on account of his mode of worship or religious sentiments."***

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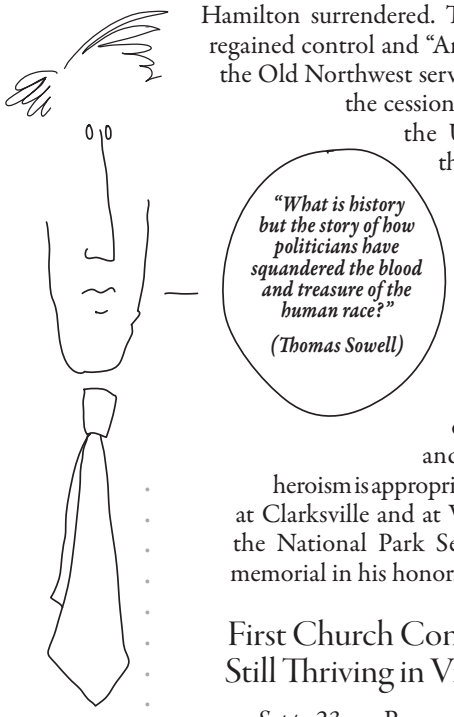
Scholars agree the Jesuits were the first to bring Christ to what is now Indiana. Founded in 1540 by Saint Ignatius Loyola, the Society of Jesus is an order of priests whose primary mission field back then was pagan lands.

surprised Kaskaskia on July 4, 1778, taking the fort and town without firing a shot. In the coming months, Clark rallied support from the French while planning another bold move against the British at Fort Sackville in Vincennes.

"On February 23, they surprised Vincennes," according to the Indiana Historical Bureau account. "Clark ordered that all of the company's flags be marched back and forth behind a slight rise to convince the British that there were 600 men rather than under 200. They opened fire on the fort with such accuracy that the British were prevented from opening their gun ports."

On Feb. 25, British officer Henry Hamilton surrendered. The British never regained control and "American claims in the Old Northwest served as the basis of the cession of these lands to the United States at the Treaty of Paris in 1783."



Clark spent much of his personal fortune on the war effort and was never repaid; he died in poverty and obscurity. His heroism is appropriately remembered at Clarksville and at Vincennes, where the National Park Service operates a memorial in his honor.

First Church Congregation Still Thriving in Vincennes

Sept. 23 — Roman Catholics claim bragging rights to Indiana's oldest church. Jesuit missionaries visited the French fort at Vincennes within months of its establishment in 1732. A resident priest, Sebastian Meurin, arrived in 1748. People have been worshiping at St. Francis Xavier Church ever since.

"If the French built a fort, there was a chapel," says the Rev. John Schipp, parish priest at the Old Cathedral for the past 19 years. "They not only wanted to trade, they wanted to invite the natives to become Christians."

Scholars agree the Jesuits were the first to bring Christ to what is now Indiana. Founded in 1540 by Saint Ignatius Loyola, the Society of Jesus is an order of priests whose primary mission field back then was pagan lands.

Whenever the French built a military or trading post in the New World, a church followed. Unlike the Protestant churches built by later pioneers, who focused on the moral and social needs of their immediate communities, the Jesuits' concern was outward.

"The records of St. Francis Xavier's church . . . show from April 1749, and for a half century after, the greater part of the entries of baptisms, marriages and funerals were of Indian converts," notes the "History of Old Vincennes and Knox County, Indiana" by George E. Greene.

Although the church today has a stable membership of 350 households, its beginnings were rocky, reflecting the political turbulence of the times. When the area came under British control in 1763 at the end of the French and Indian War, the Jesuits were expelled, and the congregation relied on lay leadership for two decades, says Richard Day, congregation historian.

During that time, the Illinois-based Rev. Pierre Gibault would travel to Vincennes to check on the parish. Day tells of a visit in 1769 when Gibault was "greeted by a desperate crowd crying, 'Save us, Father; we are nearly in hell!' "

During the American Revolution, Gibault sided with the revolution. On July 20, 1778, he persuaded the people of Vincennes to pledge loyalty to the United States and to turn over their fort to George Rogers Clark. Gibault assumed leadership of the parish after the war.

A bronze statue of Gibault, "Patriot Priest of the Old Northwest," stands in front of the church to mark his role in the capture of the Northwest Territory from the British. In 1970, Pope Paul VI elevated the church to the rank of basilica due to its religious and historic significance.

The parish's earliest written record is from April 21, 1749. Its first building was a log shelter with bark roof, replaced twice before the current red brick structure went up in 1826.

Located steps away from the George Rogers Clark National Historical Park, the church is open daily for self-guided tours and group tours by appointment with the Vincennes/Knox County Convention & Visitors Bureau (800-886-6443). Next to the church is the French and Indian Cemetery, which contains mostly unmarked graves of 4,000 residents of early Vincennes.

Bison Made Indiana's First Road

Sept. 8 — Bison made Indiana's first highway. It started at the Falls of the Ohio near modern-day Clarksville where the beasts came together to cross the Ohio River at its shallowest point.

It ended near Vincennes where they scattered to graze on Illinois prairie grass.

If you look closely, you can still see signs of the Buffalo Trace. "You kind of have to know what you're looking for," says Teena Ligman, public-affairs specialist for the U.S. Forest Service. She describes the remnants as trail beds or trenches that, to an untrained eye, might appear to be the work of human labor rather than hooves.

Archaeologists aren't sure exactly when the trail appeared, but they suspect thousands of bison traversed it during their seasonal migration from Kentucky salt licks to feeding grounds on the prairie. The trail's width ranged from 12 to 20 feet across.

The 1910 book "Early Indiana: Trails and Surveys by George R. Wilson" puts the matter in historic perspective: "The trails and traces were great highways over which civilization came into the wilderness. Wild animals often followed the trails, trappers followed the game and settlers followed the trappers."

It's fitting that the buffalo — more accurately called bison — is featured so prominently on Indiana's state seal. Until 1800 or so, bison were abundant over large portions of what would become the Indiana Territory and the state of Indiana.

In 1720, the historian Charlevoix, who had traveled extensively in New France and across the Great Lakes region, wrote:

"All the country that is watered by the Oaubache (Wabash), and by the Ohio which runs into it, is very fruitful. It consists of vast meadows, well watered, where the wild buffalo feed by thousands."

Settlers mistook the animals for buffalo because they looked so much alike, but it was a misnomer; the American bison is a distant relative.

Surveyors in the 1800s often drew the trace and adjacent buffalo wallows on Indiana maps. A 1910 history of Dubois County by Wilson described the wallow remnants as "big circular patches, where the grass was greener, thicker and higher than anywhere else around." Wallows were essentially huge mud puddles dug out by bison in order to take cooling baths.

Although the bison disappeared, their route was put to good use. Archaeologists believe it served as a trade route for Native Americans. Pioneers followed it west. In the early 19th century, a stagecoach line ran the length of the trace from New Albany to Vincennes. Much of it was eventually paved over as U.S. 150.

Today, there's scant evidence of the trace. There's a spot off State Road 37, about six miles south of Paoli, where motorists can see trenches in both directions. Probably the best way to experience the trace is on the Springs Valley Trail in the Hoosier National Forest southeast of French Lick. A segment of the trail follows the trace, and attentive hikers may notice other remnants and signs of wallows from centuries ago.

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The World of English Freedoms

The American Founders were arguing not for the rejection but for the assertion of what they took to be their birthright as Englishmen. They were revolutionaries in the 18th-century sense of the word, whereby a revolution was understood to be a complete turn of the wheel: a setting upright of that which had been placed on its head. Alexis de Tocqueville is widely quoted these days as a witness to American exceptionalism. Quoted, but evidently not so widely read, since at the very beginning of "Democracy in America," he flags up what is allowed the national characteristics of Europe's nations the freest possible expression. Just as French America exaggerated the autocracy and seigneurialism of Louis XIV's France, and Spanish America the ramshackle obscurantism of Philip IV's Spain, so English America (as he called it) exaggerated the localism, the libertarianism and the mercantilism of the mother country: "The American is the Englishman left to himself." What made the Anglosphere different? Foreign visitors through the centuries remarked on a number of peculiar characteristics: the profusion of nonstate organizations, clubs, charities and foundations; the cheerful materialism of the population; the strong county institutions, including locally chosen law officers and judges; the easy coexistence of different denominations (religious toleration wasn't unique to the Anglosphere, but religious equality—that is, freedom for every sect to proselytize—was almost unknown in the rest of the world). They were struck by the weakness, in both law and custom, of the extended family, and by the converse emphasis on individualism. They wondered at the stubborn elevation of private property over raison d'état, of personal freedom over collective need.

— Dan Hannon in the Nov. 15, 2013, Wall Street Journal

Indiana has lost 28,000 middle-income households. The good news, though, is that upper-income households have increased by 25,000 while lower-income household have only increased by 2,000.

THE BIWEEKLY

CECIL BOHANON

The State of the Middle Class: Contrasts in the Red, Blue States

Nov. 25 — Recent census data indicates that, although the total number of households in the United States increased between 2008 and 2011, the number reporting an earned annual income of $35,000 to $100,000 actually decreased by 676,000. This is significant because it confirms the narrative of middle-class decline.

I have always thought that if middle-class decline is accompanied by a decline in households with lower income (under $35,000) and an increase in upper-income households (above $100,000), then hooray for middle-class decline. The national data, however, reveals an increased number of lower-income households (967,000) and an increased number of households with upper income (1,847,000). So the news is decidedly mixed.

To conservatives and libertarians, the decline in the middle class is somewhat problematic — but we are not as apoplectic about the issue as progressives. To our more left-leaning friends, the pulling apart of the income distribution is a disaster that calls for massive government intervention. Those of us who are less than politically correct, however, say income distribution is kind of like the weather: It is of interest, but we suspect there is little that the government can do about it that is useful. Oh gee, I forgot: According to progressives, we can "save the planet" from sure doom by installing windmills and solar panels everywhere — which will, they argue, also restore the middle class.

The census data is also parsed state by state. Indiana's population has essentially been stagnant over this time frame. The data shows that the Hoosier state has lost 28,000 middle-income households. The good news, though, is that upper-income households have increased by 25,000 while lower-income households have only increased by 2,000. In my opinion, this beats the national trend.

Interestingly, the red-state, mid-continental energy belt of North Dakota to Oklahoma has bucked the national trend and actually has seen a decline of 42,000 low-income households coupled with an increase of 13,000 middle-income households and an increase of 107,000 high-income households. Could it be that developing "evil" carbon energy reduces poverty and strengthens the middle class?

No state has more clean-energy mandates than California. The state is a bastion of blue-state progressive politics with a public sector that raises revenue from a highly graduated income tax, tightly regulates business enterprise and offers the Left's dream of government programs to help those in need.

The middle class and poor are said to need California-like policies to deliver economic "justice" — except that facts have a funny way of getting in the way of rhetoric.

California's middle-class household numbers declined by 72,000 while its upper-income households increased by 115,000 and lower-income households increased by 234,000. More rich folks, a lot more poor folks and a decline in those in the middle: Isn't this what progressives hate?

Compare this with the biggest, reddest, most gun-toting, execution-driven, regulation-averse, low-tax, redneck state of Texas. The Lone Star state saw an increase of poor households of 57,000 with an increase of middle-income households of 144,000 and an increase of 256,000 upper-income households. It seems the middle class thrives in a state where policies are ever so unenlightened.

Of course, state-level public policy is not the only factor that influences the growth or decline of households of particular income levels. But the anecdotal pattern is clear: The blue-state concern is less of a problem in the red states. Maybe limited government, low taxes and low-cost carbon-based energy increase economic growth and lead to a more equitable distribution of income.

Adam Smith and the Rationale For a Pre-School Education

Nov. 11 — The Indiana legislature will likely consider expanding statewide pre-kindergarten programs for children at risk. Informing the discussion will be an extensively studied 1960s pre-K experiment, the Perry Program

Cecil Bohanon, Ph.D., an adjunct scholar with the foundation, is a professor of economics at Ball State University.

from Ypsilanti, Mich. Its findings suggest we reexamine a forgotten goal of early education.

In the Perry Program, researchers assigned 123 three-year-old children from low-income black households to either a control group or a treatment group. Those in the treatment group participated in a two-year program that included five-day-a-week sessions and weekly home visits. Those in the control group had no contact with the program.

There have been 40 years of detailed follow-ups on the life outcomes of participants in both groups. Although those who participated in the pre-K program showed no increase in IQ, they did better in the job market, had better health behaviors and were less likely to engage in criminal activity than those who did not participate in the program.

Nobel prize-winning economist James Heckman and colleagues offer additional evidence from the Perry data in a recent article in the American Economic Review. They conclude that the impact the pre-K program had on reducing students' externalizing behaviors was the key factor in explaining the outcome differences.

"Reducing externalizing behaviors" is fancy social-science jargon for increasing self-control. In other words, evidence from the most valid and reliable study shows that the primary benefit of pre-K lies in its ability to increase a child's skills in interacting with peers and teachers. Learning to control one's resentments, constrain one's anger and follow the rules at age four seem to be a key to keeping a job, not committing a crime and staying off addictive substances at age 40. Interestingly, the Perry program intentionally emphasized self-control as one of its primary goals.

None of this would come as a surprise to the father of economics, Adam Smith. In fact, these conclusions are foreshadowed in Smith's 1759 treaties "Theory of Moral Sentiments." In this work, Smith heralds the role of self-control, which he calls self-command, in human interactions.

He sees self-command not only as a cardinal virtue in itself but as adding "lustre" to all other virtues. He notes that "a very young child has no self-command" but that when the child "enters into school" it "naturally wishes to gain the favour" of its schoolmates and in order to do so must "(moderate) not only its anger, but all its other passions."

A free society requires that its citizens practice self-control. The second verse of the hymn "America the Beautiful" calls on our nation to "confirm thy soul in self-control, thy Liberty in law." And the Russian Nobel laureate Alexander Solzhenitsyn defined freedom as "self-restraint."

As Professor Smith suggested in 1759 and Professor Heckman confirms in 2013, the habits of self-control are established early on. It would seem straightforward that offering a well-defined pre-K program emphasizing habits of self-control is a good use of public resources.

Yet we have reason to pause. All schools, public or private, strive to reinforce virtues, but a child's education neither starts nor stops at the schoolroom. Self-control may be one of the virtues necessary for a free society. Nevertheless, it seems ironic to use the coercive mechanism of government — yes, taxes are coercion — to set up programs to teach self-control to groups that social scientists tell us lack self-control.

We are left with this question: Public schooling may re-enforce habits of a free society, but can we or should we rely on it to be the fount of those habits?

Is Government Redistribution An Obligation of Biblical Justice?

Oct. 14 — For those of us of the Jewish or Christian faith, the prophet Micah provides a succinct summary of our personal and social obligations in the eye of the Almighty: "… and what doth the Lord require of thee but to do justly, and to love mercy and to walk humbly with thy God" (Micah 6:8 KJV).

I have an obligation to respect the rights of my neighbor, including her right to her income and property. I must pay my bills to those who provide me goods or services. I must abide by the contracts I enter. This is to do justly. Correspondingly, I have reason to expect to be treated justly. My neighbor must respect my rights, including my right to my income and property.

It is never quite that simple, though, which is why government codifies, regularizes and enforces the rules of economic exchange and justly requires both my neighbor and me to pay taxes to support the state. Even so, to use the coercive power of the state to take my neighbor's income or property to simply fulfill ends that I desire is on its face the antithesis of justice. And it doesn't matter whether those ends are my own enrichment or the enrichment of someone else I deem worthy of my neighbor's wealth.

Pure redistribution of income through the state may be many things, but it is not justice.

Note that Micah's dictum also calls us to love mercy. If my neighbor is in need, I should give him aid and comfort. I should rally others in the community to help him.

Self-control may be one of the virtues necessary for a free society. Nevertheless, it seems ironic to use the coercive mechanism of government — yes, taxes are coercion — to set up (pre-school) programs to teach self-control to groups that social scientists tell us lack self-control.

A recent study by the Congressional Budget Office indicates that for every additional dollar earned by a single mom in this income range, she takes home only 5 to 33 cent in additional disposable income. In other words, her additional taxes coupled with benefit losses implies that she faces a marginal tax rate of 66 to 95 percent.

So is it possible the coercive power of the state can be morally used to promote the ends of mercy?

Even the most libertarian among us agrees that there are times and circumstances the state may be the best instrument of mercy (think military evacuation before or after a natural disaster). Reasonable people can and will disagree about how far this should go (that has something to do with walking humbly with God). But please, let's not call income redistribution justice. It is mercy.

This rendering of the biblical passage is at odds with the prevailing entitlements-as-social-justice view that permeates the left, including the Christian left. In that view, we all have "rights" to food, clothing, housing and even Internet access. But surely one can see that those "rights" are only ensured by violating someone else's right to income or property, which makes such action morally ambiguous at best.

When I graduated from high school, I had the opportunity to move for the summer to my brother's fraternity house in Atlanta, Ga. Jobs were readily available there, and the option was appealing. I informed my parents that if I moved to Atlanta, they were obligated to give me an allowance of $40 a week (in 1973 dollars) because they would no longer incur the expense of my living at home. They both laughed at me — and my mother informed me by saying "Son, the world does not owe you a living."

I did spend that summer in Atlanta, I did get a job there and my parents did send such aid as they thought necessary and appropriate. I also took away a great lesson: I was responsible for earning my own bread.

We all receive help, aid and comfort from our families, friends, teachers, mentors and community. We should all give aid to others in our capacity as parents, friends, co-workers and neighbors. But this is the domain of mercy. To elevate it to a matter of justice is misguided and counterproductive.

Obamacare's Problem Is There's no Bootstraps

Sept. 30 — Government programs designed to help the poor are usually means-tested. This implies that recipients only get the benefits if their income earnings are sufficiently low. Most see this as a good thing because it ensures that persons who do not need the benefits don't get them. It seems daft to tax middle-class and wealthy citizens to provide benefits to middle-class and wealthy citizens; programs for poor folks should benefit poor folks.

Applying a means test to benefits, however, opens up a can of worms: It is a huge incentive problem for the very people we are trying to help.

When supply-side economists talk about tax disincentives, they are usually referring to the high marginal tax rates that well-off entrepreneurs face when contemplating new ventures. And yes, there is a lot of evidence that high marginal tax rates on the wealthy do discourage business investment, but the very rich do not face the highest marginal tax rates. That honor goes to the working poor.

Consider a single mom with two children who earns between $10,000 and 20,000 a year. Her household is eligible for a number of government benefits, including earned income-tax credits, child-tax credits, food stamps, free or reduced school lunch fees and other benefits. The problem is, if she earns additional income, almost all of those benefits get reduced.

A recent study by the Congressional Budget Office indicates that, for every additional dollar earned by a single mom in this income range, she takes home only 5 to 33 cents in additional disposable income. In other words, her additional taxes, coupled with benefit losses, implies that she faces a marginal tax rate of 66 to 95 percent. Why take on those extra hours of work or enter into that training program if the rewards are that small?

My progressive friends have a pat answer: Extend the benefits farther up the income ladder. But then we have the same situation on the next rung of working taxpayers.

Of the many objections to Obamacare, the one I find most compelling is it increases marginal tax rates for both lower- and middle-income earners. A traditional family of four with earnings of $50,000 per year gets a generous health-insurance subsidy under Obamacare. They will lose 15 cents of that subsidy, however, for every additional dollar earned. Add on a federal marginal tax rate of 15 percent, payroll taxes of 7.5 percent, and state and local taxes, the middle-income family will face a marginal tax rate of 40 percent or more for every dollar earned.

A few years back, I was on the board of a local charitable organization. Several of us on the board worked hard to secure the resources necessary to open a transitional housing facility for homeless female-headed families. As we were putting the final touches on the facility, we showcased it to a black female minister on our board who had been involved in other projects. She heartily approved of our work but made a remark I'll never forget: "Don't make it too nice, or you'll never get them to leave."

There are two competing philosophies of government-provided benefits for the poor: Conservatives and classical liberals (libertarians) believe they should be temporary, limited and frugal; progressives seem to believe they should be permanent, expansive and comfortable.

Those of us in the first camp are routinely accused of being harsh, cruel and heartless. Yet, incentive traps are an inevitable part of government programs when the benefits are permanent and generous. They knock out the bottom rungs of the economic ladder — and that is both debilitating and cruel to the poor.

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Universal Benefits: The Impulse to McGovern

Sept. 16 — The impulse to redistribute income did not begin with the Obama administration. In the 1970s, when income was seemingly more equally distributed, progressives called for increased government income redistribution.

There are two ways for government to redistribute income from the rich to the poor. The first is through universal benefit programs. The second is through means-tested benefit programs, which will be addressed in future columns as well as why government should be doing any of this at all.

A universal benefit gives everybody a government benefit. Since all enjoy the goody, getting rid of it is politically problematic. That is why presidents Franklin D. Roosevelt and Lyndon Johnson made sure that all old folks got Social Security and Medicare benefits; they knew it would make the programs popular and untouchable.

To pick another example, many developing countries subsidize bread-making to make it available to all at below-market prices. As the poor spend a large part of their income on bread, there is likely some redistribution to the poor even though millionaires get cheap bread, too.

The problem with these universal transfers is that they are costly. A recent *Wall Street Journal* article on fuel subsidies in developing countries noted that they cost up to 10 percent of national Gross Domestic Product (GDP).

Someone has to pay for the subsidy for bread or fuel or whatever. In the final analysis, it is ordinary citizens who bear the taxes to pay for the subsidies. On average, the taxes required to support the subsidies exceed the benefit of the subsidies. In sum, a universal benefit is an odd and costly way of helping the poor.

One of the more famous and ill-fated universal benefit programs was a plan by the 1972 Democratic presidential candidate, George McGovern, to give every man, woman and child in the United States $1,000. At the time, it was considered hare-brained; McGovern lost in a landslide.

There is one good aspect of a universal benefit that McGovern's scheme illustrates well: The poor don't lose the benefit if they earn more income. This is redeeming because it imposes no direct penalty to work effort. Translated into 2013 dollars, the $1,000 per person universal grant is around $5,600.

Under the plan, a family of four would receive a guaranteed income of about $22,400. Any additional income earned in the household does nothing to reduce the government grant amount in any way. All four-person households get $22,400 as base income, and they don't lose a penny of it if they earn millions of dollars.

But like the fuel subsidies, such a program is incredibly costly. A back-of-the-envelope calculation shows that the U.S. Treasury would pay out around $1.8 trillion if the proposal were in place in 2014. That is more than 10 percent of projected 2014 GDP, 60 percent of all projected federal revenues for 2014 and 128 percent of projected federal personal income-tax revenue for 2014. To finance a $5,600 universal per-person guaranteed minimum income would require a doubling of everybody's federal income-tax rates. This would introduce major disincentives to work.

Of course, part of this McGovernlike income scheme could be financed by reductions in other government programs designed to help the poor. I suspect the shrinkage in these other programs would be much less than necessary to avoid large tax increases. I bet there would be a hew and cry to hire an army of social workers to help the poor manage their newly found minimum income.

But again, the gut reaction to a universal guaranteed minimum income is that it makes no sense. Why tax Mr. Average Joe citizen just to give him his money back? If public policy is supposed to help the poor, why issue annual checks to millionaires? Why not tailor the benefit to the poor?

The good point about universal transfers is that they can be designed to generate minimal disincentive effects — you don't lose them when you earn. The bad point is that their expense is ghastly — requiring tax rates that would inevitably crush incentives to produce.

To finance a $5,600 universal per-person guaranteed minimum income would require a doubling of everybody's federal income-tax rates. This would introduce major disincentives to work.

THE FOLLY OF INDIANA RAIL

"The cost-benefit analysis performed by an outside firm for the Indiana Department Transportation shows that having the Indiana taxpayer foot the subsidy bill for the Hoosier state is a terrible deal."

— DEHAVEN

by TAD DeHAVEN

Nov. 27 — For more than 40 years, Amtrak has relied on a billion dollars or more a year in taxpayer handouts running slow, and often late, passenger trains. Indeed, the man considered to be the "father" of Amtrak, Anthony Haswell, has recently said that he is "personally embarrassed over what I helped to create."

Passenger trains can still offer pleasure, but are otherwise obsolete as a means for moving people from point A to point B. Rails are great for moving freight but just can't compete with buses, cars and planes when it comes to convenience and cost. Even worse, Congress treats Amtrak as a form of pork barrel, sending trains with an insignificant number of riders to remote areas of the country.

Congress did, however, take a step in the right direction in 2008 by requiring the states to pay the subsidies for short-distance lines by 2013 or else the lines would be discontinued. That was a win for federalism: federal taxpayers shouldn't pay for activities that benefit a particular state.

The Hoosier state, which provides rail service between Indianapolis and Chicago four days a week, was one of the lines. Until recently, the state resisted what it absurdly claimed to be a federal "unfunded mandate." Congress didn't mandate that the states assume the subsidy burden and keep the lines in operation. Indiana and other states were given a choice.

At the last second, the Pence administration chose to use Hoosier tax dollars to keep the Hoosier state in operation. In a deal reached with Amtrak, Indiana will split with local governments that have stops along the route the $2.7 million needed to continue the line for another year. The line's occupancy rate is under 50 percent, but the governor claims that the agreement "will make Hoosier jobs more secure and preserve an important transportation link for Indiana."

The cost-benefit analysis performed by an outside firm for the Indiana Department of Transportation shows that having the Indiana taxpayer foot the subsidy bill for the Hoosier State is a terrible deal. Whether service is continued as is or services are improved, the analysis shows that Indiana taxpayers would be on the hook for millions of dollars annually with minimal benefit. For example, under the four improved service options considered, the study found "no appreciable highway congestion delay savings" and "no airport congestion delay savings."

Tad DeHaven is co-editor of www.downsizinggovernment.org. Previously he was a deputy director of the Indiana Office of Management and Budget.

Indianapolis Transit

by RANDAL O'TOOLE

Oct. 21 — The Carmel Chamber of Commerce says that Indianapolis needs a regional transit system — which inevitably means higher taxes — so Indianapolis can compete with communities such as Minneapolis and Salt Lake City. In fact, since 1990, the Indianapolis urban area has grown more than twice as fast as the Minneapolis or Salt Lake urban areas, and faster than any other major urban area in the Midwest, so Indianapolis seems to be competing just fine without those higher taxes.

The chamber would like you to believe that spending more tax dollars on transit means better transportation, but that's far from true. It is important to understand that transit can have two quite different goals: first, moving people who, for one reason or another, can't drive, and second, getting people who can drive out of their cars.

Indianapolis transit at present mainly provides service for the former — those who can't drive. But the need for that is small. The Census Bureau says that just 7 percent of Indianapolis-area households lack cars, and just 17,000 workers live in households that don't have cars (nearly half of them drive to work alone anyway, presumably in borrowed cars).

Nearly all of the region's carless households are in Indianapolis itself and won't benefit from regional transit. Advocates of regional transit, then, are mainly interested in promoting the second goal: getting people, and particularly suburbanites, out of their cars. Ever since Ralph Nader's 1965 book "Unsafe at Any Speed," Americans have been barraged with claims from

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anti-auto groups that cars are evil, gas-guzzling, polluting monsters. There may have been some truth to that in 1965, but since then auto fatality rates and air pollution have declined by more than 80 percent, and cars today are 40 percent more energy efficient.

Nationally, cars and transit are about tied for energy consumption per passenger mile. IndyGo actually uses more energy and releases more greenhouse gases per passenger mile than the largest sport utility vehicles.

And transit, especially transit aimed at getting people out of their cars, costs a lot more than driving. Americans spend about 25 cents a passenger mile on driving, including all subsidies to highways. Transit typically costs four times that much, and those costs only rise when cities start running empty transit vehicles to suburbs where people have three cars in every driveway.

Worse, the costs of regional transit are so high that most cities with regional transit systems have had to cut bus services to those who lack cars and need transit the most. Atlanta, Los Angeles and the San Francisco Bay Area are just some of the regions where transit riders have suffered in order to build a regional transit system.

This doesn't mean IndyGo can't be improved. Contracting out bus routes to private operators can save up to 50 percent of the costs, allowing IndyGo to provide more service without higher taxes. Suburban cities that want to send buses into downtown Indianapolis should be allowed to do so.

Increasing taxes to create a regional transit system, however, will provide no significant transportation benefits; it will actually hurt Indianapolis' competitiveness.

Hold That Minimum Wage

by TYLER WATTS

Oct. 9 — Building on recent fast-food strikes, an Indiana University law professor, Fran Quigley, a leader of the "Raise the Wage Indiana" movement, made an appeal for higher minimum wages in the Indianapolis Star. His reasoning, though, runs counter to my work experience as a young man and that of many others he professes to help.

Quigley trots out the usual advocate research, plus celebrity endorsements and, finally, a plea for basic fairness, complete with hard-up stories that paint an image of minimum-wage earners struggling to feed their children. He dismisses any and all research to the contrary, suggesting that opponents of a minimum-wage increase are nothing but bought-and-paid-for shills of multinational corporations.

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The problem for Quigley is that for each of his arguments an equal and opposite argument can be produced. For example, for each left-wing think tank or academic study "proving" that minimum wages have no effect on employment, a right-wing think tank or academic study "proving" otherwise can be shown. For every Nobel Prize-winning economist in Quigley's corner, at least one with the opposite view is in the other corner. For every CEO advocating higher minimum wages, a hundred large- and small-business operators advocating free-market pricing of labor can be found.

Finally, when Quigley makes his ultimate argument that higher wages for the low-income workers are simply a matter of fairness, I can turn the tables and state that it is fundamentally unfair for government policy to stick entrepreneurs with higher costs, much of which must ultimately be borne by their products' consumers — including minimum-wage earners.

Fortunately for most of us, the current federal minimum wage of $7.25 affects only a tiny segment of the U.S. labor market. The vast majority of workers are worth much more, which means they're not in the market for minimum-wage jobs.

But for those workers whose labor is not (yet) worth this arbitrary minimum — typically teens and under-educated young adults — the minimum wage becomes a binding price floor. The basic effect predicted by Econ 101, with a price floor set significantly above the market-clearing price, is a surplus of the good or service. This shows up in labor markets as unemployment.

How does Quigley explain the fact that the teen unemployment rate is currently near 23 percent, and has consistently hovered at about three times the overall unemployment rate? He can't, because there is no way around this economic reality: If you mandate higher and higher prices for a good or service, at some point people are going to buy less of it.

Yes, smaller changes have smaller effects, which can be hard to capture in the data, especially given that about 99 percent of U.S. workers earn above the minimum wage (hence the sometimes ambiguous research findings). But Quigley is talking about forcing a sudden 45 percent increase in the cost of the lowest-tier labor supply in the U.S. — far larger than the "modest" pay hikes that, according to Quigley's favored academic studies, don't cause discernible unemployment effects.

"How can you explain the fact that the teen unemployment rate is currently near 23 percent, and has consistently hovered at about three times the overall unemployment rate? You can't, because there is no way around this economic reality: If you mandate higher and higher prices for a good or service, at some point people are going to buy less of it."

— WATTS

"I don't mean any offense, but I have always thought that moderates were a dependent class. Like the yellow strip down the middle of the road, their position is determined by the width of the ideological pavement."

— HUSTON

The upshot is that higher minimum wages, like all price controls, make liars out of otherwise honest, hard-working folks and throw sand in the gears of the price system. Forcing me to ask for far more pay than my skill, education and experience justify does not help me; rather, it can hurt my current and future job prospects by shutting me out of those entry-level jobs necessary for young workers to build valuable on-the-job experience.

Economics notwithstanding, advocates such as Quigley will keep trotting out anecdotes about struggling low-wage workers in an ongoing attempt to shame a minimum-wage hike out of politicians. Well, let me close with an anecdote of my own.

My first summer job paid me $1 an hour, far below the then-current $4.25 federal minimum. Then again, I was 10 years old, and not capable of much other than sweeping up and being a gofer on construction sites. But by age 18, I had eight years of experience, could perform all manner of construction tasks, and earned about $10 an hour.

My friends, who were just starting their working lives, struggled to find work at minimum wage. And by my late 20s, I had acquired enough skills to easily pick up my own jobs, earning from $20 to $30 per hour, allowing me to support a family of four while I was a full-time graduate student in one of the highest cost-of-living regions in the country.

So count me as one of the lucky few who was able to completely bypass the debilitating effects of Quigley's minimum wage.

Think of Yourself as Moderate? Prepare to Lead a Hard Life

by TOM HUSTON

Nov. 19 — I don't have a thing against moderates. Indeed, some of my best friends are moderates. I am confident that they are genuine moderates because they assure me that they are. They are leery of extremists (whom they associate with the Tea Party and evangelical snake handlers), but they still invite me to an occasional cocktail party. That, I think, demonstrates that they also are tolerant.

The faculty at Indiana University fingered me as a right-wing extremist when I introduced Sen. Barry Goldwater to a full house at the University auditorium. I asserted that Franklin D. Roosevelt was guilty of criminal negligence in not warning Admiral Husband E. Kimmel at Pearl Harbor that the Pacific fleet might be in danger. I suspect there are still a few old-timers squirreled away in nursing homes in Bloomington who get the shakes when my name comes up in the course of discussion about the perils of snake-handling.

As a student, I never had much sense about the proprieties of introductions in an academic community. Having offended half the faculty during that Goldwater presentation, I ticked off the rest of them the following year when I introduced Gov. George Wallace of Alabama as a candidate for the Democratic presidential nomination in the forthcoming Indiana primary. I did realize at the time that it was in bad taste to call attention to the party with which segregationists identified.

President Richard Nixon once introduced me to the prime minister of Australia as his resident liberal. He thought it was a joke, but the prime minister didn't get it. Neither did my wife.

Actually, the president thought I was a progressive conservative, which he regarded as a compliment. I thought it was cause for questioning where I had gone wrong. *National Review* publisher Bill Rusher had a ready answer to that question: I had gone off the rails when I went to work for Dick Nixon. Bill thought I was a conservative sellout, which was worse than being a progressive conservative, but not by much.

J. Edgar Hoover referred to me in conversations with his staff as "that hippie intellectual." I think he got that impression because I had long hair, and I spoke in complete sentences. Liberals never accused me of being an intellectual. When I showed up at the I.U. Student Union Building for initiation into Phi Beta Kappa, the preeminent liberal don looked at me with surprise and asked what I was doing there.

I don't mean any offense, but I have always thought that moderates were a dependent class. Like the yellow strip down the middle of the road, their position is determined by the width of the ideological pavement. Widen the road and the yellow strip shifts. As the political distance between conservatives and progressives increases, moderates are forced to shift ground to stay centered. Where they end up depends largely on which strip of pavement, left or the right, is the widest.

Moderates today are not the same as those I tangled with 50 years ago. On economic issues they are more conservative and on social issues more liberal. That may be a badge of honor, but

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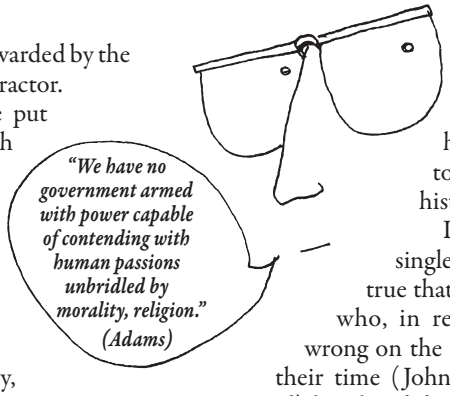
they didn't earn it. It was awarded by the ideological pavement contractor.

Moderates tend to be put off by fighting words, such as "have a blessed day." Conservatives and progressives, on the other hand, are fine with them. Conservatives, particularly those associated with radical groups like the Tea Party, have a weakness for such provocative statements as "Obama is a failed president." Progressives are not reluctant to respond in kind: "Just shut up."



Goldwater didn't think that moderation in pursuit of liberty is a virtue, but what did he know? After all, he got swamped in the general election, which delighted moderate Republicans. Progressives denounced Ronald Reagan as a right-wing extremist until he died, at which point he became the model of moderation in contrast to those Republican extremists who were still breathing.

It's tough out there in the middle of the road, ducking reckless extremists as they speed by. I concede that someone has to do it — just not me.

Getting 'Right' With History

Nov. 15 — I am ornery enough to never worry about whether I am on the right side of history. On the other hand, James H. Madison, an Indiana University historian, writes in the Nov. 4 issue of the *Indianapolis Business Journal* that he is worried that Hoosiers may fail to get right with history by incorporating a ban on same-sex marriage into the Indiana Constitution. It is not clear to me how he knows that embracing same-sex marriage is necessary to align our destiny with the forces of history, but he seems quite confident about what history demands on this subject.

Professor Madison has a purpose in recruiting history for this particular political battle, and it is not to better understand the past. It is to discredit the opposition to same-sex marriage. It is not enough to argue that defenders of traditional marriage are wrong as a matter of public policy. That argument begs discussion. No, it is necessary to claim that they are wrong by the objective, indisputable judgment of history rightly understood. This is, of course, a conclusion, not an argument, and it is intended to cut off discussion. Why, he implicitly asks, should anyone be taken seriously who elects to be on the wrong side of history?

I have tried to think of someone of note who staked out a stark position on a controversial social, political or religious issue and thought to himself, "What a joy it is to be on the wrong side of history."

I can't come up with a single example. It is certainly true that there were men of note who, in retrospect, were terribly wrong on the most important issue of their time (John C. Calhoun comes to mind), but they did not will to be wrong. What for such men was a dimly perceived future is for the self-confident seer a cloudless past.

Whittaker Chambers famously thought that in abandoning the Communist Party he was leaving the winning side for the losing side, but he didn't believe that the winning side was the right side. For him, it was not merely reasonable but morally imperative to choose the losing side, at least insofar as his contemporaries were the judge of such things.

In his opinion for the Supreme Court holding the Defense of Marriage Act unconstitutional, Justice Kennedy claimed that the only purpose of the act was "to demean" gays. That is a remarkable charge to make against the members of Congress who voted for it and the President (Bill Clinton) who signed it. It is, however, typical of the tenor of an argument that would have simply been inconceivable a mere generation ago.

Closing down debate is now standard operating procedure on the left. Once Progressives decide that a "right" exists, the cloture motion is filed and the discussion is over. These strong-arm tactics are no big secret. We see them employed every day from protestors shouting down speakers whose opinions are unwelcome to a university president picking sides in a contentious and largely partisan constitutional dispute.

The shame is that these tactics work because most people prefer to avoid nastiness, and timidity is seen as a virtue on the right. A credentialed and respected historian plays fast and loose with the discipline of his profession because he figures he won't be called on it, certainly not by his peers.

Whittaker Chambers saw it coming. In March 1954, he inquired of a friend:

"Why . . . has the right scarcely a voice that speaks for it with authority or conviction — or without the curse of faint apology?"

That remains the question on any side of history.

"It is not clear to me how he knows that embracing same-sex marriage is necessary to align our destiny with the forces of history, but he seems quite confident about what history demands on this subject."

— HUSTON

The Sheriff: An Anglo-Saxon Remnant

'The first fundamental is property; that is, right and title to your own lives, liberties and estates, which none may usurp.' — William Penn, 1679

The sheriff can be a drag on central authority; indeed, it is historically built into the job.

Dec. 23 —Sheriffs, please understand, are different from the tawdry mix of ambition and vanity that makes up local officialdom. Sheriffs are precursors of our constitutional republic and its attendant democracy. They arose in first-century Anglo-Saxon England or even with the Norse. They were the natural, chosen leaders of their communities (shires), their title dating back to Alfred the Great.

Sheriffs in this Alfredian mold spoke truth to power. They kept local order, but more important to this discussion they represented to the king the legitimate interests and concerns of common folk — primarily regarding the protection of property and individual liberty, both unique to our Anglosphere.

The character built into the office was wisely carried over to the legal codes of colonial American government by William Penn and others.

Today, not so much. Sheriffs in metropolitan counties appear most concerned with protecting a system of double-dip pensioning. A friend, retired from law enforcement here, remembers observing one of the state's first Special Weapons and Tactics team go through its drills. He thought at the time that he might have seen the last of the traditional Indiana sheriffs. Future deputies, he fears, will be mere pension-chasing employees, indistinguishable from policemen, restaurant inspectors, meter readers and other hired muscle for the city, county or state.

And yet, the sheriff still stands strong in rural America. A recent quote from a Colorado sheriff protesting his state's new gun laws is representative: "In my oath it says I'll uphold the U.S. Constitution and the Constitution of the State of Colorado. It doesn't say I have to uphold every law passed by the Legislature."

Clearly, the sheriff can be a drag on central authority — again, it is historically built into the job. Local politicos, therefore, are tightening a fiscal noose around the office, reducing it to something resembling an armed postmaster. And it is no accident that legislatures long ago forced sheriffs into term limits.

Nor is it a statistical quirk that sheriffs who choose an Alfredian role are routinely the big vote getters in their counties. The electorate senses that the local sheriff, anachronism though he may seem to be, is more on its side than the rest of officialdom — the only hope, perhaps.

Finally, sheriffs are mentioned prominently in the Magna Carta, the earliest expression of limited government. Fourteen sheriffs or former sheriffs were either in an advisory capacity in the writing of the Magna Carta or were direct participants. And of the document's 63 clauses, 27 are directly concerned with the sheriff and his office.

So as we watch the elect in Washington and Indianapolis assume the despotic power of kings, crime closes in on our businesses and homes. We look for at least one more sheriff with that old-fashioned true grit.

We will know him by how he treats private property and individual liberty.

Strapped Local Government? Let's Try Setting Some Priorities

Dec. 6 — Did you hear the howls of pain throughout Indiana from local officials on announcement that the Pence administration would phase out their golden goose, the business personal-property tax? The governor thinks it will level the playing field, attract investment and create jobs.

The anguish is genuine. The amount of revenue to be lost — about a billion a year statewide — means that county and city officeholders won't be able to finesse this. They may have to set priorities; they may have to decide what local government should and should not be doing — and then explain their determination to a constituency.

If you trust that your representative is doing this already, you may want to double-check. In my county, public officials have reduced responsibility to a scheme: 1) a budget crisis is spotted on the horizon; 2) the political and fiscal costs are carefully tallied; then 3) everybody sits tight until the only option remaining is to raise taxes.

Legislators, alas, are in on it. Even the Republicans operate on a "revenue-neutral" basis, meaning government must be compensated for every lost tax dollar.

Even before the governor could make his announcement, Sen. Brandt Hershman,

R-Buck Creek, the chairman of the Senate Tax and Fiscal Policy committee, issued a warning: "Absent finding a replacement revenue source that mitigates the impact (of cutting the tax), we have to be cautious."

Instead of guarding his revenue stream, Mr. Hershman might introduce "core functions" legislation. It is being considered in several states as a way to organize the discussion around a critical question, "What, exactly, is the job of local government?"

Oregon state Rep. Kim Thatcher began a campaign to identify core functions there with nothing more than loose bipartisan agreement that government "can't and shouldn't do everything."

"Our system of budgeting wasn't working," she told 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 government were and then decide how to divvy up the available funds."

Ryan Cummins, an adjunct of the Indiana Policy Review Foundation, already has a list of core functions for Indiana. As a former Terre Haute councilman and finance chairman, Cummins travels the state asking citizens if they 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?

Finally, Indiana needs a new model of public official, one who does not reflexively seek to enlarge government and test budgets to the breaking point. A nominee would be Judge Dan Heath of the Allen County Superior Court.

About the same time the governor was proofreading his press release, Judge Heath was going over details of a contract to privatize food service at his county's juvenile center. Heath and his staff spent months negotiating the price points on the contract as well as squaring it with a stack of federal and state regulations.

In the end, he expects to see savings for his county's taxpayers in excess of $50,000 a year. And that figure does not include the fact that they will no longer pay related taxpayer-funded pensions years into the future.

These are at least a few ways that Republicans can help their governor make good on his pledge that his tax cut need not "unduly harm local government's abilities to meet obligations." Democrats will have to set their own priorities, of course, if they can find any.

Restarting the Education Discussion

Nov. 5 — Resolved: That all Indiana students should receive the best possible education.

The problem is that this obviously worthy goal is pursued at the statehouse with a failed assumption — that our school districts operate the same way, apply the same standards with the same parental support, all with the same bureaucratic apparatus supervising the same assembly line of interchangeable teachers.

That all is a figment of John Dewey's imagination. As such, it is being exposed by the Common Core debate. Indeed, state Sen. Scott Schneider and Hoosiers Against Common Core are doing something remarkable. For the first time in 20 years, public attention is focused on how the education system works rather than how educats want you to think it works.

In so doing, opponents of Common Core have won the debate over applying national standards to individual Indiana school districts. To actually change anything, however, they must defeat the chimera that is the Indiana Department of Education.

Standardization, even in the name of civil rights or scholastic rating, national or local, with every promise of common goodness implied, has two dangerous outriders — legalese and bureaucracy. They codify false hope and promise.

Because it is written somewhere in Indianapolis, because it is law, we are expected to believe that our districts and schools are equal. We are told that our budgets are applied with the same effect for every student of every race, family background and income level; that union membership and academic credentials ensure that the best teachers are rewarded and the worst ones discouraged; and that our students with equal and innate abilities graduate with equal and actual prospects.

If you believe that is the case, you can quit reading right here. Just be quiet and eat your spinach.

But if you read on, don't expect the Democrat to be blamed. It was the Republicans who installed the A+ program, outrageously ineffective even by government standards. Then they gave us the seemingly eternal and useless ISTEP testing.

Those were only the first wastebaskets of good education intentions — reforms on paper only. After decades of it, plus millions of utterly lost dollars and a couple of generations of squandered public support, we are left with a junk system. Ask any of the thousands of families fleeing it via the new but still-limited voucher programs. Ask them about the

"Our system of budgeting wasn't working. Instead of agencies pestering lawmakers for more and more money, we first needed to establish what the core functions of government were and then decide how to divvy up the available funds."

— KIM THATCHER

Our good fortune is that, with the exception of always-progressive Bloomington and want-to-be-progressive Fort Wayne, Smart Growth hasn't taken hold with Hoosiers, a determinedly not progressive, even recalcitrant, lot.

difference in the stories they hear each night about their children's day in school.

So, why not try real reform? Why not abandon the impossible, which is equality of results? Why not replace it with the achievable, equality of opportunity? What if we set individual school boards free of the Indiana Collective Bargaining Act? What if we allowed the faculty of each school to define its own education missions, compete for its own students?

In short, at least in regard to reorganizing the education system, let's try inequality.

The Indiana Policy Review Foundation, beginning in 1990, published detailed plans, written by a range of education experts, to dismantle and reform the Indiana public-school system. None involve trapping students in inadequate schools.

Rather, all involve returning management prerogative to individual school buildings. All negate or eliminate central control and mandatory collective bargaining. All allow students to carry their current or even increased education allotment "in their backpacks" to the school that they and their parents decide is best for them. In sum, the experts recommend we make our school system unequal — unequally excellent.

Before reviewing the volumes of research and scholarship that support such a shocking idea, try first to imagine how it might change everyday education discussions.

One changed discussion would be in the teachers' lounge. What if faculty members were able to use their skills to win a districtwide education niche for their school, i.e., for advanced math, for fine arts, for marketable trade skills or, perhaps most appealing, for a traditional well-rounded education?

Another changed discussion would be the one at your kitchen table. What if you and your student could choose any curriculum in any school in the district, including the one around the corner?

The current system contends — nay, commands — that neither the teacher nor the parent is capable of making such important decisions. That argument is made, absurdly, even as our top-down system heads toward the fate of its archetype, the Red Banner Tractor Factory. Parents know their children; teachers know their students. Give them choices in a free market.

The insistence on state-mandated education may be absurd, but it is entrenched. Some years ago, officers of our foundation sat down with a powerful GOP senator with influence in both legislative houses. We asked him to read the results of a 14-month study that analyzed the debilitating effects of the Indiana Collective Bargaining Act. He in effect shoved it back across the table, saying, "I couldn't get that out of committee."

That may be true, but it was neither an excuse nor an explanation. Getting good policy out of a committee is a political responsibility; failure has political repercussions. An opportunity was missed back then to begin a legislative discussion that by now would be bearing fruit.

Senator Schneider would restart that discussion. Wish him well.

Sometimes it Pays to Be 'Not Smart'

Oct. 28 — You may not have heard this good news about the Indiana economy: The state has avoided as a whole the mistakes that result in local housing bubbles. And this, among other reasons, is why Indiana remains a relatively good place to live.

This was not intentional, alas, as will be explained, but it nonetheless gives us an advantage.

Wendell Cox, a public-policy consultant who writes on this topic for *The Indiana Policy Review*, describes the situation in a recent *Wall Street Journal* article. He argues that Florida has done things wrong while Texas (and by accident Indiana) has done them right — that is, keep local real-estate markets free of the so-called "Smart Growth" plans.

Those of us condemned to cover planning-and-zoning meetings know that Smart Growth has been a green fad for decades. To preserve urban as opposed to suburban aesthetics, not to mention saving the planet, it calls for restrictive land-use policies to limit municipal expansion, prohibiting new housing except in small sections of already dense metropolitan areas. The promise is a more perfect and sustainable city. The reality is a dearth of affordable housing.

Cox confirms what common sense could only suspect, that the municipal planning-and-zoning crowd was glossing over the ruinous costs of a high-minded vision. That cost turns out to be the disruption of the competitive market for land and a resultant increase in prices for a hapless citizenry as demand rises sharply in relation to supply.

"These higher prices get passed along to prospective homeowners in higher housing costs — often made even pricier by various other regulations and fees," Cox notes. "The rapidly escalating house prices, in turn, create the potential for extraordinary profits for speculators — or property 'flippers.' Jumping into the real-estate market in considerable numbers, they increase the excess of demand over supply, driving prices higher still, until a

bubble begins to expand." Thus, from 1995 to 2006, the median house price in Florida relative to median household income in its four largest metro areas rose 93 percent to a multiple of 5.2, compared with the national postwar norm of 3.0. By contrast, in Texas, which rejected Smart Growth, the median multiple rose only 32 percent over the same period to 3.2.

And a report by the Kelly School of Business found that, even as the price-to-income ratio in Florida more or less doubled between 2000 and 2005, Indiana's ratio held steady, rising just two-tenths of a percentage point between 2000 and 2005. That is a smaller increase than all but four states.

"Indiana and Michigan had the nation's lowest price-to-income ratios in 2010 while Ohio's was the fourth-lowest, suggesting that this region offers some of the most affordable housing in the country," the report concluded.

Never heard any of this? Well, that's because most municipal planners and zoners here are still determined to "pull us into the 21st century," as they might say. Their position almost to the person is that progress, recession or not, requires more prohibitive zoning, more restrictions on the use and sale of private property, more Smart Growth.

Our good fortune is that, with the exception of always-progressive Bloomington and want-to-be-progressive Fort Wayne, Smart Growth hasn't really taken hold with Hoosiers, a determinedly not progressive, even recalcitrant, lot.

When everyone is heading in the wrong direction, it pays to be a bit slow — even not smart — if you want your local economy to grow.

Ready for a 'Convention of the States'?

Oct. 17 — It seems this week that the entire Eastern Seaboard has risen up to warn us against overreacting to what is viewed as the forgivable excesses of a determined government searching for a common good — sacrifice is the price of progress, reasonableness is only fair, omelets are made with broken eggs, etc.

But for the sake of discussion, let's pretend our system of government really is "in a bad way," as my Depression-era grandfather used to say. Particularly, let's pretend that gradual changes in political incentives over the last century — more rapidly over the last few decades — have inadvertently worked to favor, even reward, the unprincipled in office over the principled.

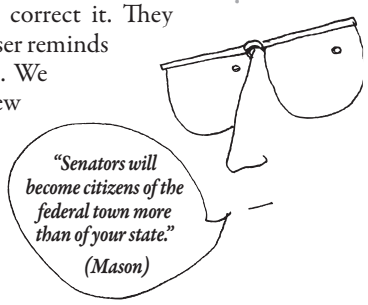
This is Jonathan Martin of the New York Times summarizing Robert Kaiser's new book, "Act of Congress":

"Congress is dominated by intellectual lightweights who are chiefly consumed by electioneering and are largely irrelevant in a body where a handful of members and many more staff do the actual work of legislating."

So, let's say that is right; where do we go from there?

The first question is, how have the political incentives changed? A short list might include the progressive income tax, wealth distribution for "social justice," politicized monetary policy, the year-round Congress (made possible by air-conditioning), multi-issue legislation and continuing resolutions, a relativist judiciary promoting equality of results over equality of opportunity, the degradation of private property, the regulation of political contributions, the rise of the professional politician and his consulting attendants, and a general unaccountability and detachment from a constitutional republic.

If all of that has led to the current situation, we could not count on the same men who created such a mess to correct it. They would be mediocre, Kaiser reminds us, and favored to boot. We would have to look for new leadership, new ideas, structural reform.



One of the newest ideas in front of us would be one of the oldest. It is a state-led "convention for proposing amendments" authorized by Article V of the U.S. Constitution, not to be confused with the more worrisome national constitutional convention. The process, never tried, is nonetheless prescribed by the Founders as a way to reattach an errant democracy to a foundation of law rather than men.

This spring, the Indiana Policy Review Foundation plans to explore this and other constitutional remedies at its quarterly seminar. Invited would be Indiana Sen. Jim Buck, chairman of the American Legislative Exchange Council (ALEC) Tax and Fiscal Policy Task Force, and Sen. David Long, president pro tem of the Indiana Senate, both early advocates of the state-convention remedy. Indeed, Indiana in 1957 was the first to apply for a convention under Article V (specifically to propose a balanced-budget amendment).

The main elements of such a convention are explained by ALEC in a recent handbook:

• Just as other parts of the Constitution grant Congress certain listed (enumerated) powers, Article V also grants enumerated powers. Article V grants them to named assemblies (conventions and legislatures).

"Congress is dominated by intellectual lightweights who are chiefly consumed by electioneering and are largely irrelevant in a body where a handful of members and many more staff do the actual work of legislating."

— JOHANTHAN MARTIN

Twitter is not only useless to the political class but anathema to it. The professional politician is in the business of winning elections, not finding better ways to inform an electorate.

• Proposing amendments through a convention, as in Congress, is still only a method of proposing amendments. No amendment is effective unless ratified by three-fourths (38) of the states.

• A convention for proposing amendments has precisely the same power that Congress has to proposed amendments. Its power to propose is limited by the subject matter specified in state applications.

There are hundreds of questions that must be answered before the required number of state legislatures follow Indiana's lead and apply for a convention on one or more common amendments.

Surely it would be a hard slog through the deepest political mud, one requiring the best qualities that men can muster in the most trying of times and against despotic power requiring the provision of new guards to liberty and security — if any of that rings a bell.

Twittering Away the Political Discussion

"Joe Biden (@VP) has a little more than 179,000 followers. But fakers.statuspeople.com reports that 27 percent are fake. It reads like an official Twitter account, with very little personal engagement." — Bill Murphy, Jr., www.ink.com, May 29, 2013

Oct. 10 — Career politicians have met their match, but it may not be healthcare, the shutdown or even the debt ceiling. I bet on Twitter. They are embarrassingly bad at it.

Marketing experts tell us that users of Twitter fall into two groups, roughly those who might subscribe to the Wall Street Journal and those who pass notes in class.

The one is made up of serious miners of information. They use customized lists that produce Twitter feeds rivaling the hourly briefings of a CIA cell. The other, teenagers primarily, uses Twitter with casual abandon inside a small social circle. Its members send messages — every few seconds if not supervised — that are inchoate and mysterious but mostly just inane. This last group, oddly, includes a subset of powerful politicians.

One would think that Twitter would be just the tool for representative democracy. Not so. The celebrity, the sex fiend, the dyspareunian, the dyskinesian and the narcissist — they all seem to be tweeting to legitimate niches. Reading the tweets of politicians, though, you wonder who they imagine is following their tweeting. (The Twitter account of Anthony Weiner is one place where these worlds collide.)

In preparation for this article, tweets of leading Indiana politicians were collected over several months. They have been thrown away — a waste of good computer memory.

Our staff had a great time at (@blank) with the (@blank) this afternoon!

I congratulate newly sworn-in (@blank).

Groups like (@blank) work to break cycle of poverty.

Really impressed by (@blank) staff.

Visiting (@blank) to tour and connect on education. They do amazing work.

What a day to celebrate our nation's freedom. Just thinking about all who have defended that freedom for many generations. So thankful.

Please, do they think that's how Lady Gaga got 40 million followers? Free men and women in the nanosecond world of the Internet don't have time for a politician's folderol.

Clearly, the method of the professional politician, i.e., statism justified by a progressive vision, is at odds with the diverse, individual-driven reality of Twitter. Here is Michael Malone writing on a tangential point for *Forbes:*

> Whatever else it is, progressivism holds a top-down, mass-control, limited-freedom political philosophy that has only grown more anachronistic as the decades have passed, and as, ironically, technology itself has increasingly supported de-centralized, networked and bottom-up institutions. Corporations learned that a generation ago (or they disappeared). In successful corporations today, management works best when it is the servant of employees and customers: Look at the backlash from a billion users every time Facebook or Twitter tries to impose some new rule from above. … That leaves progressivism the last true bastion of late 19th-century command-and-control thinking. It can build as many websites and social networks as it likes, but as long as it tries to impose mass solutions from the top in a world of personalized solutions from the bottom, it is doomed to fail — and our nation continues its slide into debt and enfeeblement.

The takeaway is that Twitter is not only useless to the political class but anathema to it. The professional politician is in the business of winning elections, not finding better ways to inform an electorate. He needs to obfuscate and manipulate — hard to do within a 140-character limit in front of potentially tens of millions of fact-checkers.

So, you can dismiss as laughable a claim that your elected representative has a legitimate Twitter following other than dependent members of his immediate family and paid retainers. The truth is that insightful, instant, widely assessable, compressed and spontaneously honest digital mass communication is not going to be his thing. — *tcl*

THE DESTINIES OF THOSE WHO SIGNED

Emanuel Gottlieb Leutze, oil on canvas, 1851

Thomas Hoepker, photograph, Sept. 11, 2001

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 soul, must reach out to each one of us down through 200 years with his answer: "No."

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 immediate tasks ahead. Our mailing address is PO Box 5166, Fort Wayne, IN 46895 (your envelope and stamp are appreciated). You also can join at the website, http://www.inpolicy.org, using your credit card or the PayPal system. Be sure to include your e-mail address as the journal and newsletters are delivered in digital format.

• **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.

"The Battle of Cowpens," painted by William Ranney in 1845, shows an unnamed patriot (far left) firing his pistol and saving the life of Col. William Washington.

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An Indiana Journal of Classical Liberal Enquiry
Observing its 25th Year