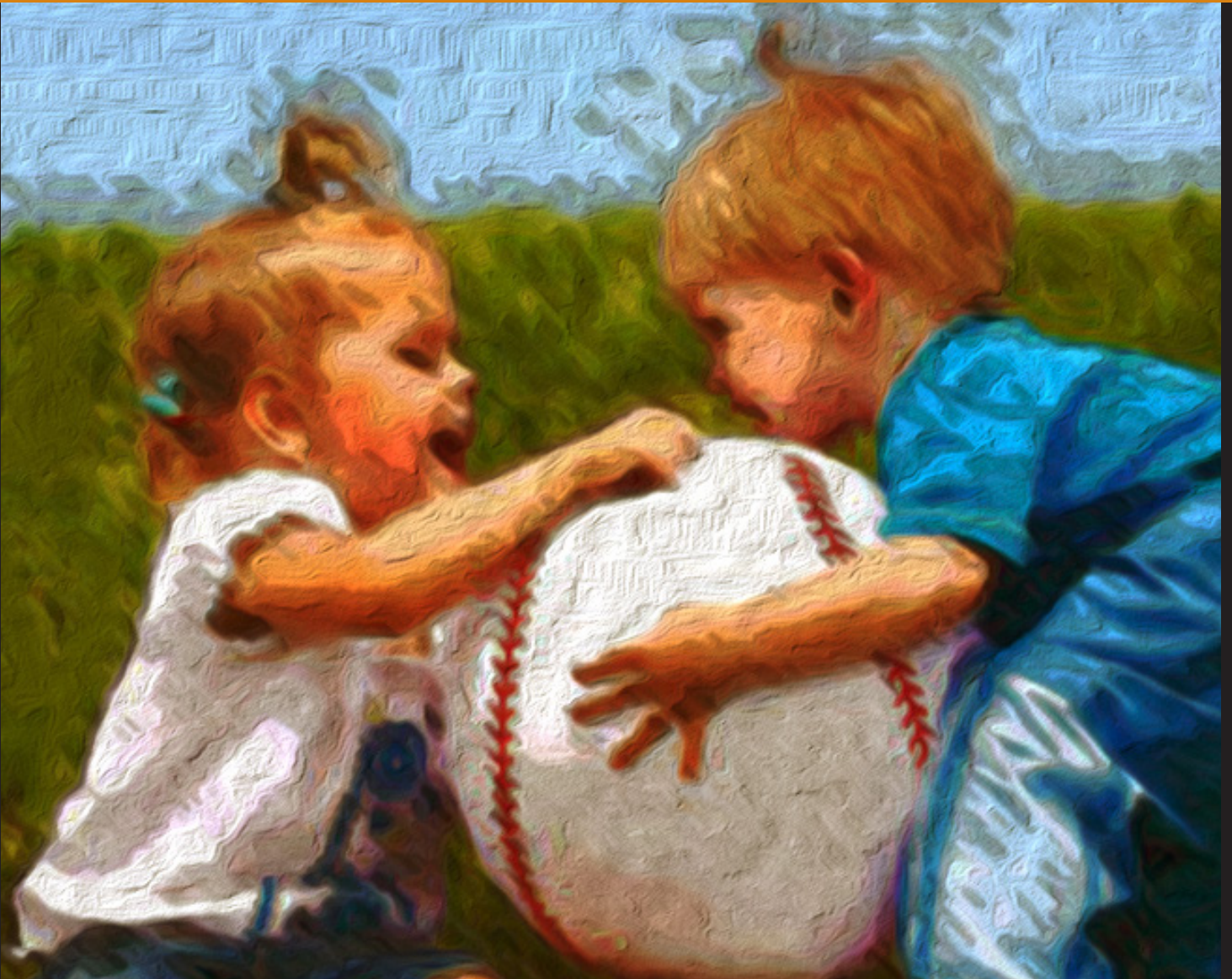


INDIANA POLICY

Review

'A future that works'



Where Character Begins — or Not

*No matter what the politicians tell you,
preschools are not all alike.*

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

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

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A FUTURE THAT WORKS

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

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

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

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THE THURSDAY LUNCH

WHEN THE LAW IS NOT THE LAW

We have found the solution and it is us

Do we put too much faith in constitutions? What if securing liberty is harder work than setting words to paper? What if we are going to have to depend on something approaching heroic political leadership?

Our foundation tried to answer that question 20 years ago this month. It filed a lawsuit against the Indiana Legislature, which had hidden a pay raise in a package of bills.

The Indiana Constitution, of course, specifically and exactly prohibits such trickery. Article IV, Section 19: “An act, except an act for the codification, revision or rearrangement of laws, shall be confined to one subject and matters properly connected therewith.”

There are obvious reasons for that. The authors suspected that future Hoosier legislators would from time to time try to slip one by the citizenry. The General Assembly that year simply confirmed the suspicion.

The court nonetheless turned its back on the case. The justices held that we had no “standing,” a term of legal art to which we will return in a minute.

Now, anyone who tries to make sense of Congress or a statehouse can imagine how better things would be today if every member had to vote up or down on each individual bill. The nation would be brimming with accountability. Reform would be a matter of course.

Justice Brent Dickson, in his minority opinion, argued that the resulting public good in itself justified taking up our case. He called the majority’s decision to the contrary “an enormous, if not a prohibitive, obstacle to citizens seeking access to the courts upon claims that the General Assembly has exceeded the limits of its constitutional powers.” He hinted that the court had abdicated its responsibility to define the extent of the powers of the political branches.

But there is more to it than that. A friend of legal talent explains: “Denying that a taxpayer has standing to bring an action against a political branch unless he can demonstrate a distinct harm particular to himself is the means by which courts have declined to intervene in what they regard as political questions.”

This so-called “political questions doctrine” is historically a measure of judicial “modesty and deference” to the political branches. And our little lawsuit, it turns out, joins a larger argument at the national level, one outlined in “Stopping a Lawless President,” a recent column by George Will. We have a president, Mr. Will admonishes the judiciary, who does not feel obligated to “take care that the laws be faithfully executed.”

Finally, the editors of *the Wall Street Journal* have added up the cost of such dereliction, particularly of allowing that same “political questions doctrine” to block the legal standing of citizens, particularly congressmen, who would otherwise sue:

To the extent individuals have not suffered concrete injuries that the courts traditionally redress, (President Barack Obama) feels he can act without consequence to create whole-cloth regulatory regimes. This makes the inherent Article I powers of Congress irrelevant, with perhaps permanent damage to the separation of powers and political accountability. If Mr. Obama gets away with it, the next president probably will, too.

We still hold, then, that the Indiana Legislature was profoundly wrong. There has been no serious counter argument, *i.e.*, that it has a right of convenience to bundle unpopular measures with popular ones and thereby render the legislative processes incomprehensible.

Nor is there any reason a majority in Indianapolis couldn’t pass a law next session reaffirming Article IV, Section 19, and then, on the signature of the governor, faithfully abiding by it.

Oh, but there is a reason, isn’t there? Our politicians, or at least the more ambitious among them, would be kings and not mere subjects of old laws. That is true to the degree that they are unabashed in ignoring the words of their own state Constitution — not refuting them, mind you, or even misinterpreting them, but simply ignoring them.

History tells us that that is concerning. The very reason legislatures and parliaments exist is to constrain the always tyrannical impulse of government. If, instead, they choose to act as governors themselves, and the judiciary thinks it unwise to intervene, your liberty is for sale or trade.

We discovered at some expense 20 years ago that there was no quick fix for that here, no lawsuit that could be filed one day and magically rebalance our political system the next. With legal and constitutional remedies blocked, representative democracy is what we have left, and it is a messy, grinding, uncertain slog — neighborhood by neighborhood, district by district, legislator by legislator.

That slog, however, has begun. Last spring’s upset-minded GOP primary is portent. Meanwhile, a friend of this foundation, the author and director Dinesh D’Souza, has described our situation perfectly:

“George Washington, Abraham Lincoln, Ronald Reagan — we don’t have them, but we have us.” — *tcl*

CHARACTER BEGINS HERE — OR NOT

Do we want preschools to begin the process of creating better students or creating more independent citizens? In either case, government has the wrong model.

by HANG LA

From the time mankind first began to organize into groups and communities, self-control surely was understood to be a desirable if elusive human attribute.

It is commonly referenced in the major religions. Buddhism teaches that if we learn self-control we can better practice mindfulness and lovingkindness in our daily lives. Proverbs warns that “a man without self-control is like a city broken into and left without walls.”¹ St. Paul lists self-control among the fruits of the spirit “against which there can be no law.”²

Adam Smith, the philosopher and founder of modern economics, argued in his *Theory of Moral Sentiments* that self-control holds a most complex and sacred position in the formation of all peoples everywhere. It is nothing less, he said, than the “reason, principle, conscience, the inhabitant of the breast, the man within, the great judge and arbiter of our conduct.”³

In recent years, Dr. Thomas Sowell, the Harlem-raised economist, has famously described self-control in the context of a “constrained vision,” a preference for the systematic processes of social mores, the rule of law and the experience of tradition, etc., where compromise is essential because there are no ideal solutions but only trade-offs.⁴

Dr. Ben Carson, who rose from poverty in a single-parent home to become a preeminent surgeon and inspirational speaker, defies a narcissistic generation and credits learning self-control as the single most important element of his early education.⁵

Whether as a philosophical or economic topic, it is a critical one for today’s policymakers, especially in a constitutional republic such as the United States in which the range of acceptable choices and the perceived responsibilities of individual citizens (aggregates of self-control) determine national direction.

This article means to survey the recent research on the complex settings that encourage the teaching of self-control. Educators are beginning to refine the time window, generally ages 3 to 5, in which this essential character attribute is first addressed — or not. And although it obviously is a process that continues for a lifetime, the first months and even days of



Lisa Barnum, graphic design

formalized education may prove opportune.

Tangentially, the paper asks certain policy questions, some begging political response, as to whether we should — or even can — rely on government (Indiana Gov. Mike Pence’s new preschool program being an example of moment) to be the institution of choice in introducing self-control to the 3-year-old mind. It may be that government funding cannot be

separated from its peculiar and varied special interests, at least not to the degree required of such a delicate task. Nor is it clear that the efficacy of such funding can be measured convincingly to justify the large public expenditure.

Dr. Cecil Bohanon, an adjunct scholar of this foundation, frames our discussion thus:

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 reinforce habits of a free society, but can we or should we rely on it to be the fount of those habits?⁶

Self-Control and Education

An officer of this foundation defined our challenge in his account of watching the opening day of preschool accompanied by a veteran educator. As the “students” entered, some eagerly and others tentatively, their attention was not on the smiling teacher welcoming them. Rather, it was on the other children and the collection of toys in the corner play area. “You can see we have a momentary advantage,” said the educator. “They



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want more than anything in the world to play with those toys and the other children across the room, peacefully if it can be arranged. They will come to understand in the next few days that they need the teacher to show them how that is done — how civilization is formed, if you will. The children, in exchange, might learn to walk in a line when they go to recess or to write a few letters of the alphabet or even to sit down for a simple test. But it is a sensitive negotiation, you must understand, and it has only just begun.”⁷

What was being observed in crude form on that first day of preschool was what Adam Smith would have recognized as the beginning of the ability “to restrain passions to maintain dignity in public and tranquility within ourselves, love for justice, humility” — that is, self-control.

For Smith, self-control was what distinguished a wise man from a weak one. In response to a difficult situation, a weak man might behave too emotionally — “like a child” — while the wise man resolved the situation calmly.⁸ A person without control over his impulses, Smith said, is not only miserable but can “disturb the peace of society.”⁹ This is supported in a predictable way by sociologists Gottfredson and Hirschi, who find that individuals who lack self-control are predisposed to crime.¹⁰ In general, self-control can be measured within defined ranges, e.g., from impulsivity and aggressiveness to sound judgment, from shows of disrespect to maintaining good manners in public.

It is important that Smith and these contemporary sociologists agree that education can foster self-control. Gottfredson and Hirschi concur that it has to be learned, often early in life — and once learned, is incorporated into the adult personality. And it is the family that first teaches children to curb their passions and heed Smith’s “great inner judge and arbiter.”

Early childhood experiences within the intimacy of a family, Smith wrote, provide “a chief and most essential part of education, without which being first implanted it would be in vain to attempt the instilling of any others.”¹¹

In sum, self-control is both a means and an end of education, beginning early in childhood and continuing throughout a person’s life. And our definition of education is not limited to formal schooling. The school, as the primary educational institution outside the home, cannot dismiss the role of the family in developing the self-control so necessary to an effective academic program. More obviously, parents, as heads of what is an essential educational institution in the home, cannot delegate responsibility in this regard; they must be heavily involved, ideally during both the early and primary years.

The understanding that the period of early childhood education is important to a child’s moral development necessarily focuses our attention on the preschool, defined here as an educational establishment providing early childhood education to children often between the ages of 3-5, before primary school.

All of which brings us to a central question: How well does our current school system perform this essential task of education, the teaching of self-control?

A Case Study in Education: The Perry Preschool Program

The move to expand preschool capacity has gained momentum in recent years. It began in large part with the study of a single preschool class of the early 1960s that seemed to find a benefit in early education — the Perry Preschool Program of Ypsilanti, Michigan.¹² But the study also called into question the very purpose of education itself.

From 1962 until 1967, a group of 123 African-American children ages 3-4 from low-income families all identified to be at risk of failing in school were randomly divided into two groups: One that enrolled in the Perry Preschool Program and the other a control group that received no preschool. The Program monitored both groups’ progress gathering data annually on their IQs, test scores and a variety of socioeconomic outcomes from ages up to age 15 with follow-up reports at ages 19, 27 and 40.¹³ The most significant outcome for our discussion here is that the preschool group was found to have better social behavior than the non-preschool group.

Analysis shows that the Perry Program improved Externalizing Behavior, an aggregate measure of aggressive and disruptive behavior as well as related ones such as lying, stealing or swearing.¹⁴ Externalizing Behavior indicates generally how well a person controls impulses; that is, self-control.¹⁵

In the Perry Project, improved Externalizing Behavior is evident in the fact that by the age of 40, only 9 percent of the preschool group had spent time in prison compared with 21 percent of the non-preschool group.¹⁶ Not only did crime rates decrease but the Perry Preschool participants also performed better in other aspects of social development, such as developing positive relationships with their family and greater involvement in their children’s education.¹⁷

There are multiple reasons given for this, some of which are:

- *Active learning* — Children in the Perry Program were encouraged to “speak up and be

Self-control may be one of the virtues necessary for a free society. Should we rely on government to ensure that it is taught to the next generation?

Can preschool significantly change the lives of disadvantaged children? Can it solve our educational and social problems?

heard.”¹⁸ The children, instead of being passive subjects, now took charge of their learning, and during the process learned how to make decisions, to solve problems and express their emotions.¹⁹

- *Quality of teacher-student interaction* — Perry Program teachers not only devoted great attention to the individual child but also cultivated a “nurturing environment” conducive to children’s love not only for learning but social and emotional development.²⁰

- *Parental involvement* — the Perry program included home visits, in which a teacher visited their assigned child’s family and instructed parents on how to support his or her social and emotional development.²¹

The Limits of a High-Quality Preschool Program

The Perry Preschool experiment showed that a good early-education program can enhance a child’s self-control. But does this make preschool a “golden ticket” to a bright future for all involved? Can preschool significantly change the lives of disadvantaged children? In sum, can it solve our educational and social problems? Before we have the answers, there are considerations to work through:

- *Methodological* — According to a Yale psychologist, Edward Zigler, the Perry Preschool Program poses a number of methodological difficulties, one of which is its inability to keep constant the “variable of maternal employment” between the intervention group and the control group.²² Since children in the intervention group had parents home during the day, they obviously enjoyed more parental involvement, not only during the preschool years but also possibly after the program had ended. As parents function as a more enduring presence than the school and as an equally important educational force, this calls into question the extent of preschool’s role in impacting these children’s self-control.

- *A Long, Arduous Process* — The results of the Perry Preschool Program underline that self-control is a lifelong process. Here is Heckman on that point: “knowledge that the program enhanced skills and improved a number of outcomes is not enough to establish that improvement in measured skills caused the improvement in outcomes” and “changes in measured skills may simply be proxy changes in unmeasured skills that affect outcomes.”²³ His argument suggests that the key to the Perry Preschool Program’s success is its ability to lay a stable foundation for the future development of self-control. By intervening at the right time and with the proper methodology (interactive

learning, parental engagement), the program helped stimulate a process in which one skill begot other skills, incidentally including self-control.

- *No Guarantees* — It is important not to interpret the success of the Perry Preschool Program as a reason to elevate preschool to a premier educational priority. The program reduced behavioral problems but it did not eradicate crime and poverty. The children in the preschool group were only less likely to be arrested, after all, and fully a quarter of them, while more likely to be employed, did not have jobs at age 40. So preschool, no matter our hopes for it, is not a miracle worker; it cannot lift every child out of every disadvantaged background into a comfortable, middle-class life.

The Weakness of a Public-School Application

Having established the complexity of learning self-control and the precariousness of preschool’s effects on self-control, we refine our question: Is government capable of replicating on a national scale the quality of models such as the Perry Program?

The national movement for preschool, spawned by the success of programs like the HighScope study at the Perry Preschool, intends to make preschool fully part of the public-education system. Starting in 1965, President Lyndon B. Johnson officially incorporated pre-kindergarten (Head Start) into his national crusade against poverty. Since then, both federal and state governments have dramatically expanded their investments in preschool. Thirty-eight states and the District of Columbia spent more than \$3.7 billion on pre-kindergarten programs in 2006-2007.²⁴ Recently, the Obama administration proposed a total discretionary investment of \$750 million — more than double last year’s funding — in universal pre-kindergarten.²⁵

Academia also devotes extraordinary resources to pre-kindergarten research, evident in organizations such as the National Institute for Early Education Research and the Pew Charitable Trusts. Importantly, these researchers see government mandate as the only way to deliver the life-changing promise of preschool. And as a result, they often skip over minefields of contradictions and perverse incentives.

First, despite the clamor for expansion of pre-kindergarten, there is no clear understanding of what preschool actually entails. As Cato scholar Adam Schaeffer points out, if we keep in mind the popular definition of preschool as an “educational establishment” or formal

schooling, the Perry Program involves much more than preschool. In addition to formal academic programs, it included home visits, for example, which then made it hard to single out the effects of preschool as a source of the program's success. Similarly, two other classic experiments, the Carolina Abecedarian Program and the Chicago Child-Parent Center, provided many non-school features such as infant care, medical service, family support, parenting or tutoring up to elementary grades.²⁶ Because each of these models catered to the specific needs of the community in which it was based, each had a different aim and educational approach. Government programs, claiming to have their roots in these three models, easily become confused.

To raise a point central to this discussion, Congress has remained muddled as to whether preschool programs, specifically Head Start, should aim at children's "school readiness" or their social and emotional development as constructive citizens and healthy members of society. In the 1990s, swept along by the test score movement, Head Start suddenly abandoned an emphasis on "soft, squishy" emotional stuff for pre-literacy and math skills — a shift that critics say could "warp children's education."²⁷

The truth is, education wouldn't be education without the so-called soft, squishy social-emotional stuff. The Perry Program, Abecedarian Project and Chicago Child-Parent Center succeeded because they all integrated social-emotional development with academic training. They enabled children to learn self-control in intensive, personalized settings.

These models, taken to a larger scale without the social-emotional factor, otherwise would not be as effective. An example is the Infant Health and Development Program (IHDP), which is considered a large-scale version of the Abecedarian Project.²⁸ It delivered high-quality, early intervention to high-risk infants but failed to improve the "risky behavior" of children with lower birth weights.²⁹

Moreover, it would be impossible to provide every district, every community, with programs of the same intensiveness and multifacetedness as those provided in the studied programs. Such an investment would go way beyond Mr. Obama's suggested \$750 million. Indeed, the Perry Preschool Program costs about \$10,000 a year per child in today's dollars, more than double the current average state spending of \$4,000 a year per child.³⁰ As a result of all of this, many public preschools "fall woefully short

just at the level of basic quantifiable things."³¹ For instance, while the Perry preschool had four teachers for 25 children, public preschools have two teachers for 20 children, not to mention that some states do not even set limits on the number of children per class. Having fewer teachers reduces the amount as well as the quality of teacher-child interaction necessary to both learning generally and to learning self-control specifically. And all teachers in the Perry Program specialized in early childhood education, while many public preschool teachers get little training or lack the applicable degrees.³²

The consequence of government involvement is uneven quality with "the vast majority of (publicly funded preschool programs) considered to be mediocre."³³ As Janet Currie points out: "Quality of care is of particular concern given that in most cases the alternative to high-quality preschool is not home care but lower-quality (government) child care."³⁴

A low-quality education inevitably cannot improve children's social-emotional development and self-control, and in some cases even worsens it. Head Start, again, is the historical bad example. According to the 2010 Head Start Impact Study, there was "no evidence of impacts on any of the social-emotional development measures at the end of Head Start or at the end of kindergarten" for children entering the program at the age four.³⁵ Similarly, its 2012 Impact Study found "very few impacts on . . . cognitive, social-emotional, health and parenting practices" when Head Start children reached the end of third grade.³⁶ The program's greatest achievement in this regard, sadly, was only a slight reduction in children's aggressiveness and hyperactivity.

On the negative side of the ledger, Head Start seemed to create socialization problems in ways pertinent to a discussion of self-control, *i.e.*, its children were "more shy or socially reticent" and struggled more to get along with teachers and peers than non-Head Start children.³⁷

Preschool for All?

The above illustrates the shaky grounds on which advocates of public preschool programs find themselves in this discussion. Yet, that did not stop the federal government from expanding public investments in preschool. In his 2013 State of the Union address, Barack Obama called on Congress to expand high-quality access to preschool to every child in America,

The Perry Preschool Program costs about \$10,000 a year per child in today's dollars, more than double the current average state spending per child.

engendering a movement for universal pre-kindergarten.³⁸ Thus preschool completes the cradle-to-grave model, becoming an entitlement along with kindergarten-through-12th-grade education, Medicaid and Medicare and finally Social Security.

The losers in all these groups may be socio-economically disadvantaged children. They have the greatest risk of low self-control and therefore are in the most need of early childhood education. The designers of the Perry Preschool Program recognized this risk and sought to reduce it through lessons and parenting.

Government mandate, however, by universalizing pre-kindergarten, may be a step backward. It could actually reduce a disadvantaged child's access to the broadest range of high-quality preschools. Indeed, in California, just 49 percent of economically disadvantaged children participate in center-based programs, compared with 69 percent of non-economically disadvantaged children.³⁹

The researcher James Heckman argues that if there were to be public intervention in early childhood education, it should be limited to correcting the socio-economic disadvantages of birth. As the Perry Preschool and other experiments have demonstrated, a well-conceived intervention program acts as educational support for disadvantaged families, who may not be aware of the importance of teaching self-control or who do not know how to do so effectively. Children from other families already receive the needed "education" in the form of expert parenting or simply a stable family environment and are less likely to commit crimes or have major self-control problems — with or without public programs.⁴⁰

A Caution for Indiana

This discussion should serve as caution to Indiana's governor and lawmakers, whose hands are shaping the education of hundreds of thousands of children in the state.

Democrats in the state Senate are pushing for universal pre-kindergarten while the Republican governor, Mike Pence, focuses on low-income children.⁴¹ The research reviewed thus far, however, indicates that whether the Indiana programs are universal or targeted, they will likely fail to meet their promises.

That is because government money does not deliver significant results in the complicated and as yet poorly understood world of early childhood education. Moreover, government involvement brings with it a distorted incentive structure, especially in regard to education.

One more Head Start example: A recent report from the U.S. Government Accountability Office exposed atrocious fraud committed by Head Start centers in six states and the District of Columbia. Employees there misrepresented children's information, likely as a deliberate attempt to enroll high-income children at the expense of legitimate, low-income children.⁴²

Such corruption is a consequence of the system's misplaced accountability. Any state-funded system, instead of being accountable to parents and children, will be accountable to a bureaucracy, one that will vary wildly in its expertise and commitment to helping children. No matter how well-intentioned, pre-kindergarten will get mired in a political game in which different groups compete for public resources, power and privileges. As Jason Riley of *the Wall Street Journal*

points out, one of those groups, the teachers' union, champions universal pre-kindergarten because it will be a rich source of union jobs.⁴³

Conclusion

This paper does not mean to dismiss either the existence of high-quality public pre-kindergarten or the quality of national research on early childhood research. It concludes, however, that expanding public pre-kindergarten yields more cost than benefit — tremendously so.

If that were understood, Governor Pence would carefully weigh the costs and benefits of government-mandated and funded preschool. He would balance the uncertain benefits of early childhood education with the certain expansion of an already inefficient and bureaucratized public-education system.

This survey of the research warns that Indiana is unlikely to teach children what is most needed through public pre-kindergarten programs — that is, the virtue of self-control. The government-driven models reviewed tended to be carelessly and confusingly conceptualized. They often were only poor-quality reproductions of smaller, more controlled experiments and could not guarantee significant returns on a child's education. More importantly, the very nature of these programs predisposes them to politicization, thereby stymieing meaningful reform and wasting precious resources — not the least being the hopes and energies of low-income children and their families.

Finally, Bohanon reminds us that children have been socialized since the beginning of time outside of government's purview.⁴⁴ Indeed, the successful preschool experiments discussed here have all confirmed that family and parenting play the more crucial and direct role in the development of a child's self-control. Governor Pence and the Legislature will want to put in more thought before committing more resources.

For now, it is important to know this: The education systems that will teach our children how to follow their individual paths to becoming loving family members, helpful neighbors and constructive citizens not only rest *within* the mechanisms of a free society but constitute the means *to* such a society. Q

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Democrats in the state Senate are pushing for universal pre-kindergarten while the Republican governor, Mike Pence, focuses on low-income children. The research reviewed thus far, however, indicates that whether the Indiana programs are universal or targeted, they will likely fail to meet their promise.

SHOULD WE RESTORE BICAMERALISM?

An analysis of the states' relationship with the federal government after passage of the 17th Amendment

by GREG ZOELLER

Many in our state and nation have serious concerns with the seeming dysfunction that grips Washington. They are searching for answers to what appears to be systemic problems. These problems raise questions that go to the structure of our constitution. Overlooked by many is the role of the states within our federalist system. Our system of dual sovereignty expects states to provide a healthy check upon the federal government just as the federal government checks state government. Often, members of the Indiana General Assembly and the public raise questions involving the changes that occurred with the passage of the 17th Amendment, which provides for the popular election of United States senators.¹ This article reviews the history of the changes and attempts to answer questions about the current authority of our state legislature.

Indirect Election Under Article V

Originally, the Constitution allowed state legislatures to select senators and allowed the people to directly elect members of the House of Representatives.² The Founders established a bicameral legislature with members from each house selected through different procedures to ensure that the federal government did not trample the rights and powers properly reserved to the states.³ Federalists and anti-Federalists alike agreed that a senate composed of members selected by the states and acting as agents on the states' behalf was necessary to protect the states from an over-reaching federal government.⁴ The indirect election of senators distinguished their role from that of their colleagues in the House of Representatives: The members of the House represented the people, while senators represented the states.⁵ The indirect election of senators had several benefits for both the states and the federal government.

First and most importantly, it made the federal government more accountable to state governments. State legislatures originally selected senators to serve as the state's agents in the federal government, and act on the states' behalf.⁶ These agents performed the necessary check on the House of Representatives by ensuring that the federal government did not pass legislation that would impose onerous burdens on the states.⁷ Further, because only the Senate can ratify treaties and confirm judicial and executive branch appointees, the original system gave the states a voice in these important national issues.⁸

Second, the original method of selecting senators established true bicameralism in the federal government. The founders established a bicameral legislature to ensure that different interests and constituencies would be represented when legislation was debated. The House of Representatives represented the people, while the Senate represented the states. The best way to ensure that the federal legislature did not pass legislation that benefited special interests was to divide the legislature into different branches, with members that were selected using different systems and were delegated different functions.⁹

Direct Election Under the 17th Amendment

Despite these benefits, by the early 20th century, many people wanted to institute direct elections. According to some sources, the amendment was ratified in 1913¹⁰ to address problems with legislative selection that included senate seats going unfilled for years because of state legislature corruption, bribery and disagreement on candidates.¹¹ For instance, a conflict in Indiana between southern Democrats and northern Republicans in mid-1850s left one seat vacant for two years, paving the way for 40 years of bribery.¹² Many people also perceived the body as too elitist and too far removed from concerns about the welfare of the people.¹³ The amendment's proponents argued that it would unburden state legislatures from the time-consuming process of selecting senators,¹⁴ eliminate corruption from the selection process¹⁵ and further the goals of democratic representation.¹⁶

After the 17th Amendment was ratified, however, the federal government increasingly passed legislation that burdened the states or infringed on powers traditionally reserved to the states. Such legislation took the form of unfunded mandates,¹⁷ requirements that state governments act pursuant to federal government direction¹⁸ and infringements



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on the states' traditional police powers.¹⁹ Given these types of legislation, it is understandable why state lawmakers would be interested in holding the federal government more accountable.

State legislatures that wish to hold the federal government more accountable can either directly repeal the 17th Amendment by following the Article V processes or amend their state's primary election statute to allow state legislative caucuses to select their party's nominee.

Repeal the 17th Amendment

The most direct option is to repeal the 17th Amendment and return the senatorial selection process to the state legislatures. However, this cannot be accomplished on a state-by-state basis. The 17th Amendment can only be amended by ratifying through the Article V process a separate amendment that repeals the 17th Amendment.

Article V establishes two methods by which the constitution may be amended: Either two-thirds of both Houses of Congress propose the amendment or two-thirds of the states call a constitutional convention.²⁰ Amendments proposed by either method "shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof. . . ."²¹ A state that ratifies an amendment agrees to be bound once three-fourths of the states have so agreed.²² There is no guidance in the text of Article V or from contemporaneous expressions of its draftsmen that addresses whether a state may rescind its ratification.²³

Congress declared the 17th Amendment ratified on April 8, 1913, with the Secretary of State issuing his proclamation regarding same on May 31, 1913. At that point, the 17th Amendment became a part of the United States Constitution. There was no further action that could be taken by a state legislature regarding this matter after the ratification. A constitutional amendment "by lawful proposal and ratification, has become a part of the Constitution, and must be respected and given effect the same as other provisions of that instrument."²⁴

Therefore, the states must follow the Article V procedures to amend the 17th Amendment. One option available to state legislatures is to wait until Congress passes an amendment repealing the 17th Amendment, which would become effective if three-fourths of the states ratify it.²⁵

Another option available to state legislatures is to convene a constitutional convention and

instruct their delegates to ratify an amendment repealing the 17th Amendment.²⁶ The validity of delegate instructions have not been heavily litigated, but would likely be upheld in this context. A handful of state courts, two federal district courts and the Eighth Circuit Court of Appeals have all considered whether voters can issue binding instructions through a referendum to their senators or representatives to vote for a particular amendment.²⁷ These courts have unanimously struck down the proposed instructions.²⁸ However, these cases likely do not prohibit state legislatures from instructing delegates to an Article V constitutional convention.

The Founders intended members of Congress and delegates to constitutional conventions to act under instructions from their state legislatures, and in fact the Founders themselves acted under such instructions. For instance: The New York legislature instructed its delegates to the Continental Congress to call a constitutional convention to amend the Articles of Confederation;²⁹ once the convention had been called, the Delaware legislature instructed its delegates to not amend Article V of the Articles of Confederation, which required equal representation for each state in Congress — an instruction that played a pivotal role in the Senate's eventual structure;³⁰ and following the convention, four of the nine states required to ratify the constitution did so with the express instruction to their respective congressional delegations to amend the constitution to include a bill of rights.³¹ Based on this history from immediately before, during and after ratification of the constitution, courts would likely uphold a state legislature's instruction to its convention delegates to repeal the 17th Amendment.

However, it is important to note that in the 226 years since the states ratified the constitution, the states have never convened a constitutional convention. Therefore, the next section addresses a measure that the Indiana General Assembly could take on its own initiative that would have a similar effect to repealing the 17th Amendment without having to rely on actions in other states.

Amend Ind. Code § 3-10-1-4(a)(1)

Another option in addition to convening a constitutional convention is for the General Assembly to amend the statute that established primary elections for Senate candidates.³² Under the 17th Amendment, senators must be elected through a popular election, but the manner of choosing the party nominees that compete in the general election is left to

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the states, and states do not need to use direct primaries.³³ Indiana has chosen to use a primary election to select senate nominees for any party that received at least 10 percent of the vote in the most recent Secretary of State race.³⁴ Currently, most states, including Indiana, select their party nominees through a direct primary, while the remaining four states use party conventions in some capacity. For example, party nominees were historically chosen in Utah through party conventions, but if no candidate receives 60 percent of the vote of the delegates, the state holds a run-off election.³⁵

Indiana could amend its statute to allow each party's legislative caucus to choose their party's nominee for the general election. The people would then vote on the candidates in November at the general election in accordance with the 17th Amendment. To ensure that third-party candidates still have access to the ballot, third-party candidates could be selected by the procedures currently in place if their party has no members in the state legislature.³⁶ In addition to being permissible under the 17th Amendment and Article I, § 4, clause 1, the amended process would have several important benefits.

More Accountable for the States

Allowing the legislative caucuses to select the parties' nominees would once again allow states to hold the federal government more accountable because senators would view the states as their constituents and act in their states' interests. Viewing states as constituents would help ensure that senators did not pass legislation that would impose unfunded mandates on states, force state officials to act at the federal government's direction or infringe on traditional state police powers.³⁷ As representatives of both the people and the states, senators would have the ability and obligation to pass legislation that benefits the people in a way that does not harm the states.

Although the agency relationship would not be as direct as in the pre-17th Amendment era, the relationship would likely be stronger than in the 17th Amendment era because a senator who failed to consider his or her state's interests when deciding how to vote on legislation would risk losing the party's nomination in the next election.

It would also re-establish a greater degree of true bicameralism in Congress because the members of each house would be selected through different processes and would have to answer to different constituents, *i.e.*, members of the House would answer to the people while senators would answer to both their state legislatures and the people.

Legislative nomination would also reduce the amount of influence that interest groups could exercise over senators because senators would no longer need to raise as much money for campaigns. Before the 17th Amendment was ratified, special interests had to successfully lobby a majority of state legislators to support a particular United States Senate candidate before they could exert direct influence over the senator. The special interests would need to spread their resources around to influence a majority of legislative leaders or at least the swing voters or influential legislators.³⁸ In the current 17th Amendment era, special-interest groups only need to influence the individual senate candidate,³⁹ which they can do by providing or withholding campaign contributions during the primary and general elections. The pre-17th Amendment process therefore forced the special interests to spend more time and money than the post-17th Amendment process.

Currently, special interest groups contribute millions of dollars to primary election campaigns, but considerably less money to nominating processes such as conventions.⁴⁰ Amending Indiana's statute would not completely eliminate the special interests' influence over senators because the interests would still be able to contribute to the candidates' general election campaigns. But it would appear to have the likely effect of reducing their influence because the candidates would no longer need to raise large sums of capital in order to wage expensive primary campaigns. Senators would also be less susceptible to special-interest influence once in office because the senators would risk not being re-nominated if they supported legislation that benefited special interests at the state's expense.

Legislative selection also would actually increase the number of residents who participate in the selection process. Voter turnout is historically low in Indiana primary contests. In the past five election cycles involving a United States Senate race, voter turnout for the primary has averaged 21 percent.⁴¹ Even in the hotly contested 2012 primary cycle, voter turnout only reached 22 percent.⁴² In contrast, voter turnout for the general election has averaged 47 percent in the past five general election cycles involving a United States Senate race, with a high of 58 percent in 2012.⁴³ Therefore, although Indiana residents would not directly select the parties' nominees, amending Indiana's statute would ensure that more residents actually participate in the selection process by voting for the individuals in the general election, state senators and representatives, who would ultimately select the parties' nominees.

Finally, legislative nomination would not suffer from the gridlocks that some states, including Indiana, experienced before the 17th Amendment was ratified.⁴⁴ The pre-17th Amendment gridlocks were primarily caused by the Election Act of 1866, which required a majority of both houses to select a candidate before he could be appointed senator.⁴⁵ When different parties controlled each house, the state legislature could become deadlocked. Under the amended statute, however, the legislative caucuses of each party would select the candidates for the general election. Thus, regardless of which party controlled each house, the parties would still be able to advance their own candidates to the general election. Gridlock between the House Democrat caucus and Senate Democrat caucus or between the House Republican caucus and Senate Republican caucus would not be as likely to occur as gridlock between chambers controlled by different parties.

In short, an amended statute would allow Indiana to enjoy some of the benefits associated with the original method of senatorial selection without depriving the people of their choice of senator.

Conclusion

State legislatures have several methods to hold the federal government more accountable. This article presents two: 1) Indiana could repeal the 17th Amendment either by ratifying an amendment passed by both houses of Congress that repeals the 17th Amendment or by calling a constitutional convention and instruct their states' delegations to pass an amendment repealing the 17th Amendment; or 2) Indiana could pass a law that allows the state Legislature to select the two candidates who will represent their parties in the general election. Although each method would achieve a similar result, if Indiana wishes to act on its own option 2, passing its own law is the most efficient option as the Article V amendment process requires action in other states as well as Indiana. Q

Endnotes

1. U.S. Const. amend. XVII ("The Senate of the United States shall be composed of two senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures. When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may

empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct. This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.") (emphasis added).

2. U.S. Const. art. I, § 2, cl. 1 ("The House of Representatives shall be composed of Members chosen every second Year by the People of the several States."); U.S. Const. art. I, § 3, cl. 1 (amended 1913) ("The Senate of the United States shall be composed of two senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.").

3. See Todd J. Zywicki, *Beyond the Shell and Husk of History: The History of the 17th Amendment and its Implications for Current Reform Proposals*, 45 CLEV. ST. L. REV. 165, 170 (1997) [hereinafter Zywicki, *History*] (citing *The Federalist* No. 51 (James Madison) (explaining that different methods should be used to select members of the two houses of Congress as a "means of keeping each other in their proper places")); Todd J. Zywicki, *Senators and Special Interests: A Public Choice Analysis of the 17th Amendment*, 73 OR. L. REV. 1007, 1014 n. 42, 1034 (1994) (citing 2 J. ELLIOT, *THE DEBATES OF THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION* 319 (1901) (remarks of A. Hamilton at New York ratifying convention) ("The equal vote in the Senate was given to secure the rights of the states. . ."); 2 J. STORY, *COMMENTARIES ON THE CONSTITUTION* 179 (1833) ("The equal vote in the Senate is, . . . at once a constitutional recognition of the sovereignty remaining in the states, and an instrument for the preservation of it. It guards them against (what they meant to resist as improper) a consolidation of the states into one simple republic.")).

4. See Zywicki, *History*, supra note 3 at 170–71 (citing *The Federalist* No. 62 (James Madison) (explaining that allowing the states to select United States Senators would give the states "an agency in the formation of the federal government as must secure the authority of the former [the states]; and form a convenient link between the two systems"); *The Federalist* No. 59 (Alexander Hamilton) (explaining that although problems might arise from allowing state legislatures to select senators, such problems were a necessary evil because to exclude the states from the federal government "would certainly deprive[] the State governments of that absolute safeguard which they will enjoy under this provision"); JAMES MADISON, *NOTES OF DEBATES IN THE FEDERAL CONVENTION OF 1787* 74 (1966) (statement

Senators would be less susceptible to special-interest influence once in office because the senators would risk not being re-nominated if they supported legislation that benefited special interests at the state's expense.

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of Roger Sherman) ("If the State [governments] are to be continued, it is necessary in order to preserve harmony between the Nation and State [governments] that the elections to the former [should] be made by the latter."); DEBATES IN THE FEDERAL CONVENTION OF 1787, S. DOC. NO. 404, 57th Cong., 1st Sess. 10 (1902) (statement by George Mason) (explaining that the national government can only be restrained from "swallow[ing] up" the state governments by "securing to the state legislatures the choice of the senators of the United States").

5. *Id.* at 172.

6. *Id.* at 170 (citing The Federalist No. 62 (James Madison) (explaining that the process of legislative selection provided "a convenient link between" the state and federal government and provided the states with agents in the federal government)).

7. *Id.* at 171.

8. Jay S. Bybee, *Ulysses at the Mast: Democracy, Federalism, and the Sirens' Song of the 17th Amendment*, 91 NW. U. L. REV. 500, 515 nn. 88, 95 (1997) (making this connection) (citing The Federalist No. 76 (Alexander Hamilton); The Federalist No. 64 (John Jay); The Federalist No. 66 (Alexander Hamilton)).

9. Zywicki, *History*, supra note 3, at 176 (citing The Federalist No. 51 (James Madison) ("In republican government, the legislative authority, necessarily, predominates. The remedy for this inconveniency is, to divide the legislature into different branches; and to render them by different modes of election, and different principles of action, as little connected with each other, as the nature of their common functions and their common dependence on the society, will admit.")).

10. The 17th Amendment was proposed by the 62nd Congress on May 13, 1912, and was declared, in a proclamation of the Secretary of State dated May 31, 1913, to have been ratified by the legislatures of 36 of the 48 States. Ratification was completed on April 8, 1913.

11. Direct Election of Senators, [http://www.senate.gov/artandhistory/history/common/briefing/Direct_Election_](http://www.senate.gov/artandhistory/history/common/briefing/Direct_Election_Senators.htm)

[Senators.htm](http://www.senate.gov/artandhistory/history/common/briefing/Direct_Election_Senators.htm), (last visited June 11, 2014).

12. *Id.*

13. S. Rep. No. 530, 54th Congress, 1st Session 10 (1896).

14. S. Rep. No. 61-961, 13 (1911) (speculating that states would be freer to take up the important business of state governance if unburdened with the task of selecting United States senators).

15. See *Id.* at 14 (positing that direct elections are easier to keep free from corruption than the process of having legislatures select United States senators).

16. *Id.* at 14-15 (arguing that support for popular election was "almost unanimous").

17. See NATIONAL CONFERENCE OF STATE LEGISLATURES, MANDATE MONITOR: CATALOG OF COST SHIFTS TO STATES (June, 2009), available at <http://www.ncsl.org/documents/standcomm/scbudg/CatalogJune2009.pdf> (citing *e.g.*, Consolidated Appropriations Act, 2008, P.L. 110-161 ("continu[ing] to under fund federal commitments to NCLB [No Child Left Behind] and IDEA [Individuals with Disabilities Education Act] [;] reduc[ing] funds for state and local law enforcement assistance and the Clean Water State Revolving Fund[; and] reduc[ing] state shares of mineral leasing revenues by 2 percent").

18. See, *e.g.*, Low-Level Radioactive Waste Policy Act, P.L. 96-573; P.L. 86-373 (requiring states to provide for the safe disposal of radioactive wastes generated within their borders). The United States Supreme Court ultimately held that the Act violated the Tenth Amendment. *New York v. United States*, 505 U.S. 144 (1992).

19. See, *e.g.*, Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq. (2012). The United States Supreme Court upheld this statute, holding that it did not violate the 10th Amendment because it did not regulate "the States as States," *Hodel v. Va. Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 287-88 (1982), even though the statute could be "characterized as a 'land use regulation' traditionally subject to state police power regulation." Annotation 2 — Tenth Amendment: Effect of Provision on Federal Powers, FINDLAW (2014), <http://constitution.findlaw.com/amendment10/annotation02.html#t41>.

20. U.S. Const. art. V.

21. *Id.* "Any amendment to the Constitution passed in conformity with Article V is as valid as though it had been originally incorporated in it[.]" *United States v. Dennis*, 183 F.2d 201 (2d Cir. 1950), *aff'd*, *Dennis v. United States*, 341 U.S. 494 (1951), *reh. den.*

22. See, *e.g.*, *Wise v. Chandler*, 108 S.W.2d 1024, 1027 (Ky. 1937) (ratification or rejection of amendment is final, just as acceptance or rejection of offer is final under contract law).

23. *Coleman v. Miller*, 307 U.S. 433 (1939) (observing that Article V contains no language regarding withdrawal or rescission of ratification once it has been provided by a state); Peter Michael Jung, *Validity of A State's Rescission of Its Ratification of A Federal Constitutional Amendment*, 2 HARV. J.L. & PUB. POL'Y 233, 276 (1979).

24. *Rhode Island v. Palmer*, 253 U.S. 350, 386 (1920). In *Palmer*, the Supreme Court was addressing seven challenges to the ratification process for the Eighteenth Amendment ("Prohibition of Intoxicating Liquors"). It is instructive that the Supreme Court found that the Article V process had been followed and

that the 18th Amendment was now a part of the United States Constitution. It could not be further amended (or repealed) except by resort to Article V. This is what later occurred. In order to effect the repeal of the 18th Amendment, the Article V procedures were utilized to ratify what became the Twenty-First Amendment (“Repeal of the Eighteenth Amendment”). “Upon the ratification of the Twenty-First Amendment [December 5, 1933], the Eighteenth Amendment at once became inoperative. Neither the Congress nor the courts could give it continued vitality.” *United States v. Chambers*, 291 U.S. 217, 222 (1934). It is evident based on the history of these two Amendments that the 17th Amendment is a part of the United States Constitution and, as such, can only be altered or repealed through Article V. A state legislature’s attempt to rescind its vote made over 100 years ago and made well after ratification would be a nullity.

25. U.S. Const. Art. V.

26. *Id.*

27. *Gralike v. Cook*, 191 F.3d 911 (8th Cir. 1999); *Miller v. Moore*, 169 F.3d 1119, 1124 (8th Cir. 1999); *Barker v. Hazeltine*, 3 F. Supp. 2d 1088, 1095 (D.S.D. 1998); *League of Women Voters v. Gwadosky*, 966 F. Supp. 52, 59 (D. Me. 1997); *Bramberg v. Jones*, 978 P.2d 1240, 1250–51 (Cal. 1999); *Morrissey v. State*, 951 P.2d 911, 916 (Colo. 1998); *Donovan v. Priest*, 931 S.W.2d 119, 128 (Ark. 1996); *In re Initiative Petition No. 364*, 930 P.2d 186, 192 (Okla. 1996); see also *Kris W. Kobach*, May “We the People” Speak?: The Forgotten Role of Constituent Instructions in Amending the Constitution, 33 U.C. DAVIS L. REV. 1, 12–16 (1999) (discussing these cases).

28. See sources cited in *supra* note 27.

29. *Kobach*, *supra* note 27 at 55 (citing 5 ELLIOT, *supra* note 3, at 96).

30. *Id.* at 56–57 (citing 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 13–14 (Max Farrand ed., 1966)).

31. *Id.* at 65–66 (citing Statement of Mr. Van Buren (1826), in ELLIOT, *supra* note 3, at 489). Rhode Island also issued explicit instructions as a condition of ratification, but by the time it ratified the constitution, nine states had already ratified, making the constitution binding on all states. *Id.* Virginia and North Carolina also issued general statements to create a bill of rights, but did not issue explicit instructions. *Id.* (citing Ratification Message of North Carolina (Aug. 1, 1788), in ELLIOT, *supra* note 3, at 248–49; Ratification Message of Virginia (June 26, 1788), in ELLIOT, *supra* note 3, at 327)).

32. Ind. Code § 3-10-1-4(a)(1).

33. U.S. Const. art I, § 4, cl. 1 (“The Times, Places and Manner of holding Elections for Senators . . . shall be prescribed in each State by the Legislature thereof.”); *Trinsey v. Comm’r of Pa.*, 941 F.2d 224, 231 (3d Cir. 1991) (explaining that the 17th Amendment’s legislative history

indicates that “the precise mode of senatorial nomination and election was to be a purely local question and that the establishment of a primary system was to be left to the states”). United States Supreme Court precedent also indicates that Senate primaries are optional, not mandatory. See *Id.* at 232–33 (explaining that according to the Court “if primaries are part of the selection process, they cannot be conducted in a manner inconsistent with the popular election mandate of the constitution”) (citing *United States v. Classic*, 313 U.S. 299, 319 (1941)) (emphasis added).

34. Ind. Code §§ 3-10-1-2; 3-10-1-4(a)(1).

35. Utah S.B. 54, enrolled during the most recent legislative session and effective on January 1, 2015, amends this process, while still allowing conventions to select nominees.

36. See Ind. Code §§ 3-10-1-2; 3-10-1-4(a)(1).

37. See sources cited in *supra* notes 17–19.

38. *Bybee*, *supra* note 8, at 541 (“[D]irect election turned the corporations attention from the legislature to the candidates themselves, lowering the costs of securing influence.”). “Direct election enabled lobbyists to focus directly on the senators rather than on the entire state legislature.” *Id.*

39. *Id.* at 541 (explaining that the 17th Amendment has made senators “amenable to the influence of powerful lobbies”); Vik D. Amar, Note, The Senate and the Constitution, 97 YALE L.J. 1111, 1129 (1988) (“By requiring Senatorial candidates to raise large amounts of money to campaign for many votes, the 17th Amendment may facilitate private interest group access to the federal government.”).

40. According to the Federal Election Commission, outside groups spent \$5.23 million during the Republican primary campaign in the 2012 Senate election. In contrast, during the hotly contested 2010 Utah Republican Senate nominating process, outside groups only spent \$350,000; \$164,990 of which was spent between the May 8 Republican convention and the June 22 run-off primary.

41. For a complete breakdown of voter turnout statistics during these election cycles, see Voter Registration and Turnout Statistics, IND. SEC’Y OF STATE, <http://www.in.gov/sos/elections/2983.htm> (last visited June 11, 2014).

42. *Id.*

43. *Id.*

44. See Direct Election of Senators, *supra* note 11 (noting that one of Indiana’s Senate seats remained vacant for two years because of a conflict between Republicans and Democrats).

45. Jeffrey D. Mohler, The Constitutional Requirements for Special Elections, 97 DICK. L. REV. 183, 189–90 n.47 (1992) (explaining the Election Act of 1866 and noting the belief at the time that the Act was the source of deadlocks).

Although Indiana residents would not directly select the parties’ nominees, amending Indiana’s statute would ensure that more residents actually participate in the selection process by voting for the individuals in the general election, state senators and representatives, who would ultimately select the parties’ nominees.

POLARIZATION: A MORAL EXPLICATION

There is a disconnect between the populace and the government, between the governed and the governor. And what is disconnected is trust, that which is acquired and maintained when each is faithful to the other.

by STEPHEN M. KING

There is no doubt about it: Political polarization is the norm in D.C. and the states. A recent Pew Research Study, “Political Polarization in the American Public,” finds that political and ideological lines of division are not limited to the political elites but are embedded in the American public itself.

More and more are identifying with the extreme Left or the extreme Right. This division, according to Pew, leads to more negative results. These include a) more negative views of the opposing party, b) a “rising tide of mutual antipathy,” c) personalization of politics; and d) less beneficial political compromise.

We are told that polarization is like the plague: Avoid it at all costs. There is nothing redeeming about split-voting, rancorous debate, mud-slinging on both sides, vitriolic accusations, slow to no movement on policy making, a divided Congress and Republicans versus Democrats. No good can possibly come about as a result.

Correct? Well, not so fast.

Lee Hamilton, former U.S. Representative from Indiana’s 9th District, wrote in November 2010: “Let’s hope that congressional leaders listen to the American people as a whole, rather than simply play to their core constituencies, because the spiraling polarization they’re engaging in is clearly turning Americans off.”

Mr. Hamilton was reacting to the heated debate of the then mid-term campaign rhetoric, rhetoric that was so divisive and so negative that public opinion polls showed strong dislike on the part of the public toward the partisan bickering and wrangling.

But dial up a campaign. Stop and listen to Barack Obama lambaste Republicans for obstructing policy progress, or hear Senate Minority Leader Mitch McConnell lay into the Democrats for the umpteenth time, and polls show Americans responding best when the rhetoric is fiercest and most deeply dividing. The American populace may say they dislike polarization, but their actions speak louder than their words.

Are there any benefits to political polarization? There may be one: Increased political awareness means increased political action.

Recent research in Indiana University’s Department of Sociology suggests that polarization has in fact increased since the 1980s; at the same

time, argues Kyle Dodson, a sociology graduate student there, political participation has increased.

Examining National Election Studies data of presidential elections between 1960 and 2008, Dodson found that between 1960 and 1980 there was a decrease in most forms of political behavior and activity. He accounted for this decline as a result of decreasing “social involvement” on the part of the average voter.

However, between 1980 and 2008 the trend reversed: As political polarization increased, political behavior and activity increased. Dodson contends that there is a relation “between the growing partisanship of political parties and the perceived increase in political rudeness and incivility.”

So, what observers such as Lee Hamilton see as negative regarding polarization — decreasing political and policy activity on the part of Congress — researchers such as Dodson see as the provision of “relevant (political) information that both voters and politicians can learn and grow from.”

No doubt, increasing levels of polarization increase the political rhetoric. Ideological divides and conformity to non-mainstream ideas are on the increase.

Some would argue that the recent victory of Dave Brat in Virginia, upsetting the incumbent House Majority Leader Eric Cantor, was a boon to the rise of right-wing populism, introducing a more acceptable brand of political ideology for Libertarians, some moderate Democrats and Tea Party Republicans.

The real question, though, is this: What does the American populace want? If Dodson is correct, it means more political activity and potentially increased civic engagement.

That has to be a good thing.



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The Link Between Trust and Liberty

"Democracy never lasts long. It soon wastes, exhausts and murders itself." — John Adams

When asked what the Founders created in Philadelphia, Benjamin Franklin replied: "A Republic, madam, if you can keep it."

Much has been written in the last few years regarding the contemptuousness and division of the American political system. Thomas Mann and Norman Ornstein in *It's Even Worse than It Looks* lay the blame for political polarization and ineffectual governing at the feet of the Republicans as a whole, and specifically the Tea Party. They brand the Republican Right as extremists unwilling and unable to work with Democrats, especially with President Obama, to achieve lasting good and promote the public interest.

Amy Gutman and Dennis Thompson in *The Spirit of Compromise* are more conciliatory. They contend that political compromise is lost, swallowed up by inflated egos and the constant demand to campaign rather than govern. Thus, politicians are ensnared in their own trappings of power and prestige, foregoing the needs of the public. Only a return to the true "art" of compromise can save the Republic.

E.J. Dionne Jr.'s newest book, *Our Divided Political Heart*, comes closer to the truth of the problem: "Americans can't agree on who we are because we can't agree on who we've been." He points out that American tradition is not rooted in "radical self-reliance and self-interest, but a balance between our love of individual freedom and our devotion to community."

Thus, "hyper individualism" is the poison infecting the American political system. Dionne heralds the federal government's position in society while chastising his liberal brethren's distortion of the benefits of Progressivism.

More recently, two former politicians, Sen. Olympia Snowe (R-Maine) and Rep. Dan Glickman (D-Kansas), co-chairs of the Bipartisan Policy Center's Commission on Political Reform, released a document outlining 60 "concrete and achievable" recommendations that will enable the federal government to better govern "regardless of the deep ideological divides that exist both among lawmakers and the American public."

With that, we can return to John Adams and Benjamin Franklin. Their thoughts quoted above go deeper than any of this, of examining philosophical and ideological divides or blaming one party over the other.

And they are deeper than suggesting quick political fixes such as increasing voter participation or ensuring a fair process for

drawing congressional districts or reforming the filibuster and Senate debate.

Adams and Franklin, like most of the Founders, understood that our nation was birthed in liberty — and for liberty to survive, political trust was necessary.

Liberty today is ebbing away. The reason is not solely because we have a Congress that has abdicated its responsibility for lawmaking. Nor is it because we have an executive branch that has disregarded its constitutional obligation to "see that the laws be faithfully executed." Nor even because a judiciary has superintended its constitutional responsibility to "interpret" the laws in light of the parameters of the written Constitution.

These things have happened, but they are the result of the problem, not the problem itself.

Government is responsible for adhering to the wishes of the people. Yes, that indeed is true, but the people are responsible to the government for maintaining civic awareness and engagement.

The problem, then, is deeper: It is a disconnect between the populace and the government, between the governed and the governor. And what is disconnected is trust, that which is acquired and maintained when each is faithful to the other. Faithfulness is a moral concern.

Perhaps Charles Carroll, a signer of the Declaration of Independence, comes closest to all of the truth:

Without morals, a republic cannot subsist any length of time; they therefore who are decrying the Christian religion, whose morality is so sublime and pure (and) which insures to the good eternal happiness, are undermining the solid foundation of morals, the best security for the duration of free governments.

Money and Speech

Do the recent Supreme Court decisions in *Citizens' United* and *McCutcheon*, both regarding campaign-finance reform, contribute to political polarization? Or do they enhance the opportunity for greater political speech and thus encourage greater civic engagement?

Citizens United was, and still is, a highly controversial decision put forth by the Court in June 2010. Essentially, the Court ruled unconstitutional portions of the McCain-Feingold law that prevented corporations (and in effect labor unions, too) from spending money to broadcast what is termed "electioneering communications."

McCain-Feingold, also known as the Bipartisan Campaign Reform Act of 2002, placed restrictions on when and how corporations

Between 1960 and 1980, there was a decrease in most forms of political behavior and activity. However, between 1980 and 2008, the trend reversed: As political polarization increased, political behavior and activity increased. This may turn out to be a good thing.

Only quid pro quo corruption, *e.g.*, bribery, can be legislated against. Giving money in order to “gain access to” or “influence” elected officials does not constitute corruption.

could spend money advocating for the election or defeat of a candidate, requiring full disclosure of donors.

With minimal exceptions, the Court ruled that corporations and unions have the First Amendment right to free speech just as any person does, and this right includes the ability to spend unlimited funds.

In *McCutcheon* (2014), the Court ruled that all “aggregate limits” related to campaign-finance spending and contributions were unconstitutional, thus allowing individuals to contribute as much as they want to candidates for federal office, political parties and even political-action committees, or PACS.

In the majority opinion, Chief Justice John Roberts argued that “there is no right more basic . . . than the right to participate in electing our political leaders.” This includes, the majority said, making campaign contributions. Only quid pro quo corruption, *e.g.*, bribery, can be legislated against. Giving money in order to “gain access to” or “influence” elected officials does not constitute corruption.

Dissent in both cases was strong. Justice Breyer in *McCutcheon* stated unequivocally that the decision “eviscerates our nation’s campaign-finance laws, leaving a remnant incapable of dealing with the grave problems of democratic legitimacy . . .” The ability to give unlimited amount of money, he contended, isolates the vast majority of Americans from participating in the American democratic process.

What do these cases on campaign finance portend for the future of American democracy, specifically the politically divisive culture in which we currently live?

The Founders knew that changes and challenges would and should come to the constitutional framework they laid forth. Nothing, it seems, is — or perhaps, should be — sacrosanct in the vulnerable world of democratic experimentation.

So, when it comes to campaign-finance reform, polarization does not have to be the norm.

Grassroots attempts at challenging the status quo are under way. States such as Maine, Arizona, Oregon, North Carolina, New Mexico and Delaware are part of a coalition of states and localities that sponsor more dramatic changes to the post-Citizens United campaign-finance world in which we now live.

By promoting full public financing, complete disclosure, matching grants and fixed subsidies, these and other states engage in “clean elections” or “clean financing.”

Indiana, supported by organizations such as the National Conference of State

Legislatures and nonprofit groups such as the Brennan Center for Justice, is among those states continuing to experiment with a variety of ways to reduce what it considers to be the negative effects of large and largely unregulated amounts of private dollars into state and federal campaigns and elections. Efforts are even under way to propose constitutional amendments to repeal *Citizens’ United*.

This kind of political action doesn’t sound like either political inactivity or polarization to me. Rather, it sounds like individuals, interest groups and organizations actively and energetically pursuing challenges and options to campaign-finance reform.

Polarization of ideas is one thing; polarization of action is quite another. Where Congress cannot act, state legislatures, governors, citizens, groups and organizations can and should act.

Tip O’Neill famously remarked that “all politics is local.” He was right. He could have gone one step further: All politics that engages and enlightens the public is local and productive.

50 Years of ‘Progress’

“Political polarization,” “divided government” and “Washington gridlock” have been on the rise for the last 15 years. Public calls for compromise and de-emphasis on centralized government stand out in public opinion polls; yet, nothing changes, and the old order of governance marches on.

What is wrong? What can be done to significantly and decisively make changes for the better? Polarization and gridlock are only the symptoms; the problem runs deeper.

Doris Kearns Goodwin’s newest book, *The Bully Pulpit*, describes, in part, Theodore Roosevelt’s disdain for the “old order Establishment Republicans” and his preference to seek change through the influence and power of the executive office, using his energy and charisma as lightning rods.

Throw into the mix the work of Progressive Era journalists led by S.S. McClure, who sought to expose the societal evils wrought by the “capitalist hordes,” and Goodwin’s re-telling of these events and people and ideas leaves no doubt that central government would soon play a stronger role, both through legislation and regulation, than ever before.

The last 50 years plus have aptly demonstrated this. The original Progressive Era was the first of four waves of government statism, the other three being FDR’s post-recession reinvention of the executive office’s policy and regulatory expansion; LBJ’s social welfare-state explosion;

and the post-2001 “re-nationalism” of domestic federalism, beginning with George W. Bush’s “No Child Left Behind Act” and his expansion of Medicare insurance coverage, which culminated in Barack Obama’s Affordable Care Act.

In fact, I contend that, combined with weakened civic awareness and engagement, governmental and political gridlock today is the result of cathartic governmental dysfunction, including the unimpeded growth of federal regulation and governmental oversight, the breakdown of constitutional federalism, unbridled expansion of presidential power, legislative apathy and judicial oligarchy.

With each successive decade of an ever-increasing federal government presence in the lives of Americans (policies and practices championed by both Republicans and Democrats), the inevitable politicalization of policy priorities has superseded the need of promoting both individual liberty and the greater public good.

The result is a rising frustration and deep-seated resentment on the part of the populace toward the very institution that produced the laws and regulations that were touted as benefiting the people.

So, what is the answer? A hint: It isn’t more government — at least not the kind and type that is on display in Washington, D.C. or in some cities (*e.g.* New York and Seattle) and states (*e.g.* Massachusetts) across the nation.

The answer is two-fold: 1) Unleash the creative and innovative power of the people (*i.e.*, re-emphasize self-governance over central governance); and 2) re-establish the proper role of the limited function and role of federal government.

Here are two examples are worth exploring:

Gavin Newsom, former mayor of San Francisco and current Lt. Governor of California, and Newt Gingrich, former Speaker of the House, agree on one thing: the enhanced and purposeful use of digital and information technology by citizens and governments will work to break down the rigid bureaucratic structures that largely inhibit sound public policy.

Newsom focuses specifically on the use of social media and its facilitation for open access to politicians and administrators in reforming local governments. Gingrich expands the picture, arguing that technological advances in communication and transportation, for example, are critical to ending “hyper-regulation” and statutory policies, such as Obamacare, that de-emphasize the role of citizens and their power of creation and innovation.

And yet, civil government is a natural and necessary institution. It provides justice, promotes freedom and secures order. The problem is that when civil government exceeds its natural evolution, it not only infringes upon the equally natural rights and liberties of the very people it is established to protect, but it’s misappropriation of authority and abuse of power lead to the gridlock we witness today.

Public problems do not mean government problems. The public is far more expansive than the organ of civil government; it includes family, business, commerce, education and even church.

Each of these institutions of authority and governance are critical to addressing the myriad of public problems. And each should be thoroughly engaged in the process of governing; the job should never be left to government alone, especially not de facto unchecked central government authority.

For gridlock and polarization will only be addressed when the power of human creativity and innovation are combined with the resources and organization of institutions of governance.

Public problems do not mean government problems. The public is far more expansive than the organ of civil government; it includes family, business, commerce, education and even church.

Why did the Framers create a federal government of limited and enumerated powers — leaving everything else to the states and ‘the people’? Why did they provide for so many veto points and counter-majoritarian institutions — frequent House elections, the Senate, federal courts? These were checks against the rise of what James Madison called ‘an unjust and interested majority’ that might enact its ‘rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project.’ Madison understood that misguided ‘projects’ could spring from good intentions as well as evil ones. And the Constitution has protected us from many of them over the years. To be sure, its conservative tilt has not always served the country well. Among the many national problems that festered absent national decision-making, slavery was the worst. Messed-up health care is another. Conversely, the Constitution, as amended and as capaciously interpreted by the Supreme Court, accommodated many necessary changes, incremental and otherwise, that the Framers did not foresee or mistakenly abhorred — like the paper money in your pocket. Social-change legislation on a grand scale, however, of the kind progressives routinely promise, has come in only a few brief, extraordinary periods when reformers managed to dominate Washington: Reconstruction, the early New Deal, the Great Society. Progressives thought the 2008 election of Barack Obama, along with a Democratic House and Senate, presented another such opportunity. They overestimated their purchase on a polarized electorate and underestimated the inevitable counter reaction. By its nature, comprehensive legislation upsets the status quo and therefore mobilizes those with a stake in it. — *Charles King in the July 23, 2014, Washington Post*

Indiana limestone is considered to be some of the best for construction.

It is more durable than other types, has consistent neutral color and can be cut into large blocks or carved in fine detail.



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.



The Fame of Indiana Limestone

(July 14) — It is one of Indiana's best-kept secrets: Limestone quarried from three Indiana counties is responsible for some of America's most impressive structures. It was used to build the Empire State Building, the Pentagon and the Indiana state capital. It bedecks the Biltmore Estate in Asheville, N.C., the Tribune Tower in Chicago and the Greystone Mansion in Beverly Hills.

According to the Indiana Limestone Institute of America, "Indiana limestone projects exist in every American city, in smaller towns and villages, in Canada and in every type of atmosphere."

Here's why. Although limestone is sedimentary rock that can be found anywhere there was an ancient sea, Indiana's is considered to be some of the best for construction. It is more durable than other types, has consistent neutral color and can be cut into large blocks or carved in fine detail.

Its superior quality may have something to do with the way it was pushed and tilted during the great upheaval that created the Appalachian Mountains. Whatever the cause, "the stone is remarkable in the uniformity of its texture and in its freedom from impurities and large fossils," states a 1944 history of the Indiana limestone industry by Joseph Batchelor.

Deposits of Salem Limestone, the official name used by geologists, protrude along a narrow belt from Greencastle to New Albany. Except for long-abandoned quarries at Salem in Washington County and Corydon in Harrison County, commercial production has occurred

exclusively in Owen, Monroe and Lawrence counties.

The first quarry opened at Stinesville in 1827. Its stone initially was used in the immediate vicinity for bridge foundations, door sills and tombstones; the arrival of the railroad in the 1850s guaranteed a national market.

Demand increased in the 1870s after fires in Boston and Chicago destroyed wooden structures and showed the wisdom of building with stone. An estimated 53 quarries were in operation as of 1893. Their reputations lured skilled stonecutters and carvers from England, Scotland and Italy.

The quarries enjoyed a surge in demand in the 1920s thanks to technical advances in quarrying and fabrication, and into the 1930s due to federal projects coming out of the Great Depression. In 1928, Indiana mills sold 413,601 cubic yards valued at \$17 million. According to Batchelor, there were 33 quarries, 22 saw mills and 48 cut stone mills in operation that year, the high point for the industry. When glass, metals and synthetic building materials became popular later in the century, limestone began to lose market share.

Today, 14 stone quarries in Monroe and Lawrence counties produce 118,000 cubic yards of limestone annually and \$26 million in revenue. Although the industry is small compared with its heyday, its future is secure because the limestone supply is considered limitless.

Hoosiers who are interested in learning more can travel the Indiana Limestone Heritage Trail, which features 40 different sites in Lawrence and Monroe counties. There's also a walking tour of Indiana University, home to one of the largest architectural collections of Indiana limestone buildings anywhere. Brochures can be downloaded here.

The neighborhood east of downtown Bloomington called Vinegar Hill demonstrates use of Indiana limestone through several architectural periods, from Greek Revival to Art Deco. Many of the homes there were built by big names in the limestone industry, including master carvers whose decorative skills were reflected in carvings, ornamental panels and sculptures adorning the facades.

The National Road

(June 30) — A drive across Indiana on the National Road is a trip back in time. This was the route taken in the 19th century by pioneers hauling household goods west in Conestoga wagons, by stagecoaches carrying mail and by farmers moving crops to markets.

Today it's paved and known as Highway 40. Though it looks nothing like the primitive roadway it replaced, relics are everywhere. In Centerville, two original mile markers still stand. In Cambridge City, tourists can visit the Huddleston Farmhouse that served as a rest stop for weary travelers. In Stilesville, unmarked graves remember 12 who died of food poisoning en route from Ohio to California gold fields.

The National Road is called "the road that built the nation," and, in many ways, it built central Indiana.

"Really, the road was designed for economic development at a time that term hadn't been coined yet," says Joe Frost, community preservation specialist with Indiana Landmarks and executive director of the Indiana National Road Association.

The National Road was the country's first federal highway, authorized by Congress in 1806 and designed to facilitate westward migration. Construction began in Cumberland, Maryland, in 1811.

Laborers wielding axes, hoes and shovels cleared the path. They cut trees, removed stumps, leveled hills and broke rocks. They laid surface materials. The most advanced was macadam, a blend of pebbles and crushed stone; more typical were wood planks and packed dirt.

Work on the Indiana section began in 1827 at Richmond and ended 156 miles later at Terre Haute in 1834. The cost was half a million dollars.

As the road moved west, settlers followed, crossing the Allegheny Mountains to settle the rich farmland of the Ohio River Valley. Towns popped up along the way; taverns, inns and stagecoach businesses flourished. Indiana's population more than quadrupled between 1820 and 1840, and many arrived via the National Road.

The prosperity was short-lived. By the late 1830s, Congress faced money problems, and the project was suspended as the road reached Vandalia, Illinois, short of its intended terminus at St. Louis.

The federal government began surrendering ownership of the road to states, which implemented toll roads to pay for upkeep within their borders. Indiana was essentially broke and handed operations over to private companies.

Road usage continued to drop as the railroad emerged in the 1850s as the preferred mode of transit. It wasn't until the invention of the automobile in the early 20th century that the road was reborn as U.S. 40 — this time paved with asphalt, which attracted a new wave of commercial activity. That ended with the development of the interstate system in the 1960s, which again diverted traffic.

Today the road is a tourist destination, recognized as an All-American Road by the Federal Highway Administration because of the 200 years of history it illustrates.

It's called a "scenic byway," says Frost, but a more fitting adjective is dynamic. "There are layers of history. You have picket towns, row houses, rolling countryside, suburban sprawl."

Free Blacks Migrated to Indiana

(June 16) — Like other pioneers, free African-Americans came to Indiana in search of land and liberty and, for the most part, found both. Beginning in the 1820s and continuing until the eve of the Civil War, they migrated in family groups to Indiana and established farming societies that valued hard work, education and faith.

More than a dozen such communities were formed before 1860. Greenville Settlement, founded in 1822 in Randolph County, is believed to have been the first. Others developed in Grant, Rush, Gibson and Vigo counties.

One of the most prominent was Roberts Settlement in Hamilton County. Although most of its residents shared the Roberts surname, the Waldens, Winburns, Gilliams and others came, too.

Their journey began in two slave states, North Carolina and Virginia, where the families lived as free people of color before the Revolutionary War. Most were a mix of African, Native American and English descent, and "it appears that the African element came from the earliest generation of slavery," according to historian Stephen A. Vincent.

By the early 19th century, their freedom was uncertain. Three slave revolts had occurred within 100 miles of their homes, including the famous Nat Turner Rebellion that resulted in the deaths of 60 white people. In response, southern states rushed to place restrictions on the rights of free blacks. Some decided to leave the South for the Midwest, where slavery had been prohibited since the Northwest Ordinance of 1787.

The founders of Roberts Settlement spent time in western Ohio and Rush County before settling permanently near modern-day Arcadia. In July 1835, Hansel Roberts, Elijah Roberts and Micajah Walden purchased the first homesteads. Historians believe they intentionally located near neighborly Quakers and Wesleyans, the abolitionist branch of the Methodist church.

By 1870, the community consisted of 300 people on 2,000 acres of productive farmland that included a school and a church. "They strongly valued both religion and education," Vincent said.

More than a dozen communities of free blacks were formed before 1860. Greenville Settlement, founded in 1822 in Randolph County, is believed to have been the first. Others developed in Grant, Rush, Gibson and Vigo counties.

In the beginning, Indiana University was called the Indiana Seminary, but it wasn't a religious training ground in the sense that that word is used today. In early 19th-century parlance, "seminary" referred to a place of general learning that offers coursework beyond reading, writing and arithmetic.

Even in free Indiana, life was difficult. Black pioneers faced the typical hardships of wilderness as well as prejudice and hostility from white citizens. In 1841, a free black in Hamilton County was abducted and sold into slavery, much like the case of Solomon Northup told in a recent Oscar-winning film, "12 Years a Slave." In 1851, Indiana's newly drafted constitution prohibited black immigration, language that was not formally removed until 1881.

Theirs is a story of perseverance, said Bryan Glover of Noblesville, descendant of Elijah Roberts, who notes that succeeding generations achieved remarkable success as educators, doctors and ministers.

As job opportunities expanded in the early 1900s and urban life beckoned, family members dispersed. Their sense of purpose, however, remained. Vincent writes, "In essence, they were able to leverage the advantages of their Roberts Settlement upbringings as they moved to towns and cities, much as their parents and grandparents had leveraged theirs in the migration from North Carolina to the western frontier."

Today only the church and pioneer cemetery remain, preserved through private donations from descendants. A family reunion has been held there annually since 1925 on the Fourth of July, and plans are in the works to more widely share the settlement's story and artifacts with students of Indiana and African-American history.

IU Began as a 'Seminary' in 1820

(June 2) — When the first classes were held in 1824, Indiana University had one professor, 10 male students and no building to call its own. The only subjects offered were Latin and Greek. Today, more than 3,000 professors teach 47,000 students on a campus graced by limestone buildings and woodland paths. Undergraduates choose from more than 150 majors.

And that's just at Bloomington. IU has campuses throughout the state and an operating budget of \$3.3 billion. Its founders would surely marvel at the size and scope of the tiny school they launched in the Monroe County wilderness.

In the beginning, it was called the Indiana Seminary, but it wasn't a religious training ground in the sense that that word is used today. In early 19th-century parlance, "seminary" referred to a place of general learning that offers coursework beyond reading, writing and arithmetic.

The Indiana General Assembly created the Indiana Seminary in 1820, naming six men to serve as its trustees. One of them, David H. Maxwell, wrote in 1821 that it was to be a "humble" school where "the elementary parts of an education can be had."

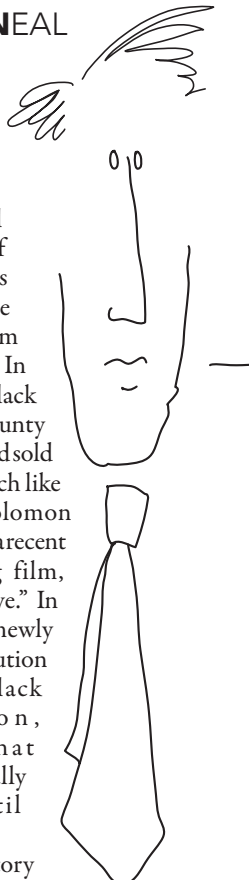
It didn't stay humble. In 1828, the legislature turned the seminary into a college and in 1838 gave it university status. In 1852, an act of the legislature declared IU "the university of the state." After a fire destroyed its sciences building in 1883, the school moved to its current location on the east side of Bloomington so it could expand to accommodate more buildings and more students.

Early histories say that was the plan from the beginning — IU was destined to be the state university mentioned in Article IX, Section 2, of the 1816 state constitution: "It shall be the duty of the General Assembly ... to provide, by law, for a general system of education, ascending in a regular gradation, from township schools to a state university, wherein tuition shall be gratis, and equally open to all."

More recent scholarship suggests turning Indiana Seminary into the flagship university was Maxwell's idea that he pushed strategically through the legislature.

There's good reason to believe the intended site for lawmakers' proposed "University of Indiana" was not Bloomington but downtown Indianapolis. That story has been obscured by time, memory and Indiana University's own telling of its creation story, historian Howard E. McMains noted in a 2010 article in the Indiana Magazine of History.

Consider that designer Alexander Ralston's 1821 mile-square plan for Indianapolis platted locations for the statehouse, county courthouse, public market, governor's mansion and a state



"Children should be educated and instructed in the principles of freedom."
(John Adams)

university. All the elements came to pass except the university. The intended site now is a green space called University Park.

Although IU today is internationally known, it experienced lean times along the way. "A lawsuit in the 1850s nearly ended the institution," McMains writes. "The Civil War reduced enrollment to a mere handful of students." As late as the 1920s, McMains says, there was talk of moving the institution to the state capital.

Herman B. Wells, IU's acclaimed president from 1938 to 1962, is credited with transforming the university into one of the country's top research and professional training institutions.

Although IU is Indiana's oldest four-year university, it is not the state's oldest school of higher learning. Vincennes University gets that title, established under an 1800 Act of Congress organizing the Indiana Territory.

Marquis de Lafayette Was A Big Hit in Jeffersonville

(May 19) — A half-century after the Declaration of Independence was issued, the Frenchman who helped the United States win the American Revolution returned to this country on a victory tour. It was a landmark event for cities on his itinerary. Jeffersonville, Indiana, was one of them.

The 1824-25 visit to the United States by the 67-year-old Marquis de Lafayette, last surviving general of the Revolutionary War, dominated headlines for a year. The closest modern equivalent would be a visit from the Pope.

Congress had voted to invite the aging war hero to the United States to thank him for his service to the Continental Army and to reinvigorate republican spirit as a new generation of political leaders moved into power. President James Monroe sent the official invitation. Cities and states that desired his presence passed special legislation.

In January 1825, the Indiana General Assembly adopted a resolution urging Lafayette "to visit this state, at the seat of Government, or such town on the Ohio River as the general may designate."

Accompanied by his son, George Washington Lafayette, the marquis arrived in the United States in August 1824. He spent the fall and winter touring New England, Philadelphia and Baltimore, with an extended stay at Washington, D.C.

In the spring, he went southward to New Orleans. He then headed north to St. Louis before traveling back east on a route that passed through Nashville, Louisville, Cincinnati, Pittsburgh, Buffalo and many small towns.

Lafayette took a day trip to Indiana while in Louisville, crossing the Ohio River to Jeffersonville on May 11, where he was "greeted on the Indiana shore by a salute of thrice 24 guns, discharged from three pieces of artillery stationed on the river bank," according to Baird's History of Clark County, Indiana.

Military officers escorted Lafayette to the home of the late Indiana Territory Governor Thomas Posey, a mansion that overlooked the river. Gov. James B. Ray and veterans of the Revolution were there to meet him. Lafayette attended a public reception followed by a 3 p.m. dinner held outside on a 220-foot-long table decorated with roses and other flowers.

A banner proclaimed "Indiana welcomes LaFayette, the Champion of Liberty in Both Hemispheres!," a reference not only to Lafayette's role helping the colonists but his subsequent, less successful effort to bring equality and freedom to his own country during the French Revolution.

After dinner, guests offered toasts to the United States, its friends, the memory of George Washington and "Major General LaFayette united with Washington in our hearts." Lafayette wished the best to Hoosiers, saying, "May the rapid progress of this young state, a wonder among wonders, more and more evince the blessings of republican freedom." The dinner concluded around 6 o'clock and Lafayette was escorted back to Louisville.

Lafayette's visit inspired the citizens as well as the naming of a city. Kathy Atwell, executive director of the Tippecanoe County Historical Association, said, "Our understanding is that the founder of Lafayette, William Digby, was a great admirer of the Marquis de Lafayette. Digby founded our city in 1825 when the Marquis was doing his hero's tour."

Notably, Fayette County was named after Lafayette at its founding in 1818, seven years earlier, an indication of the general's enduring popularity.

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Where does it come from, this curious idea that elective government should mirror the country in terms of race and sex rather than opinion? Behind all the talk of 'looking more like the country' and 'culling middle-aged white men' and 'pale, male and stale' is the implication that the role of the legislature is to reflect rather than to represent. Authoritarian governments have occasionally toyed with such a model. Salazar's fascist regime in Portugal gave formal representation to different sectional interests: trade unions, municipalities, charities, universities and so on. Mussolini did something similar. And, of course, Marxism is premised on the idea of collective class interests.

— Dan Hannan, July 16, 2014, *London Telegraph*

Legislators are good at directing spending and tax breaks to specific constituencies. They are not so good at restraining these tendencies even though such restraint is in the long-run interests of all their constituents.



CECIL BOHANON

*Spend the Surplus?
Been There, Done That*

(July 21) — Back in 1998, the state of Indiana had more than \$1.3 billion in surplus funds in its general account. This was about 57 days of state spending. The state had total surplus funds of more than \$2 billion that was over 24 percent of its annual operating revenues. I remember the cries of the time: The state should not be a bank, social spending has been cut to the bone and must be increased, taxes should be cut in the presence of such a “structural” surplus, and, of course, education spending should be increased at all levels. Oh yes, I remember it well: I was cranking out spreadsheets to make a case for property-tax cuts.

Fast forward six years. The state of Indiana’s fiscal year-end report of June 30, 2004, was frightfully different. The surplus in the general account was a mere \$200,000. This would cover about 10 minutes of state spending. Although the report showed that the state had total surplus funds of more than \$500 million (about 5 percent of its annual operating revenues), this was all based on an accounting “trick” of payment delays. State payments originally scheduled in fiscal year 2004 were deferred to fiscal-year 2005. The close-out statement for 2004 included funds the state owed to schools and universities but had not yet distributed. Absent this accounting gimmick, the state was technically bankrupt to the tune of nearly \$180 million.

Over the last 10 years, Indiana has slowly crawled out of its fiscal hole. This is truly remarkable because the economic downturn of 2008-09 was much more severe than the downturn of 2001-02. The state now has just over \$1 billion in surplus funds in its general account that would cover about 26 days of state spending. The state has total surplus funds of just

over \$2 billion, which is just under 14 percent of its annual operating revenues.

We now hear the cries we heard 16 years ago. Every spending constituency insists it has been shortchanged and treated unfairly. Newspapers and blogs are full of stories of schools not repaired and social services not provided. My local newspaper’s editorial page chided the state for its “vast cash reserves.” I am reminded of the immortal words of the great Yogi Berra: “It’s déjà vu all over again.”

Indiana’s near-brush with bankruptcy in 2004 was not a pretty site. Yet its seeds were sown by the overly rosy assessment of the state’s financial standing in the late 1990s as much as the economic downturn of 2001-02.

Legislators are good at directing spending and tax breaks to specific constituencies. They are not so good at restraining these tendencies even though such restraint is in the long-run interests of all their constituents.

Reserve cushions are necessary to avoid draconian cuts or debilitating tax increases in times of crisis. And make no mistake, we never know when or how a crisis will ensue. No one saw the 9/11/2001 attack coming; few forecast the magnitude of the 2008 meltdown — yet both wreaked havoc with our state’s finances.

Next year’s current budget estimates project a small increase in dollar reserves in the state’s general account. These reserves would cover about 25 days of state spending. The estimates also project total reserves of just over 14 percent of operating revenue for 2014-15. This is not excessive hoarding. A spending spree now risks a future state financial crisis; let’s not do that one again.

Religious Witness and Public Policy

(July 7) — Long before anyone had heard of the “religious right,” there was a “religious left” using its resources, influence and prestige to lobby the public sector to promote so-called progressive public policies. And it continues to influence; I saw it in full force on a visit to Rhode Island last month when an ecumenical group joined forces with a national denomination’s conference to rally for an increase in the minimum wage. As a free-market economist and a rather traditional Christian, I wish churches would stay out of politics. It gives me the willies when anyone tries to wrap their

Cecil Bohanon, an adjunct scholar and syndicated columnist with the foundation, is professor of economics at Ball State University, earning his doctorate from Virginia Polytechnic Institute and State University in 1981. Dr. Bohanon received Ball State’s Outstanding Young Faculty Award in 1984 and the Dean’s Teaching Award in multiple years. In 1990, he was awarded Educator of the Year by Delta Sigma Pi and was the Virginia Ball Fellow in 2009. During that fellowship, he directed his students to complete the documentary film “Increasing the Odds,” which won an Emmy Award for best photography.

political position as God's will — and make no mistake, a clerical collar under an activist banner sends that impression. At a substantive level, few public-policy issues are simple "morality plays" in which the forces of good are pitted against the forces of evil.

Advocates of an increased minimum wage, for example, argue that it is a moral issue. They cite a Congressional Budget Office (CBO) study indicating that increasing the wage from \$7.25 an hour to \$10.10 an hour "would lift 900,000 people out of poverty."

What they fail to note is the same CBO study indicates that such an increase would reduce employment by roughly 500,000 workers, which would lead to "decreases in earnings for workers who would be jobless because of the minimum-wage increase."

Economists have known for generations that the minimum wage has consequences that go beyond the simplistic rhetoric of a "living wage." Raising the minimum wage helps some people and hurts others. The workers who keep their jobs note that their lot is improved, but those whose income goes to zero are surely worse off. I'm skeptical that there is definitive metric, Christian or secular, to properly weigh the benefits of lifting some from poverty while driving others deeper into poverty.

Another issue that is dear to the heart of the religious left: U.S. immigration policy. "Progressive" Christians aid immigrants — both legal and illegal — and call for less-restrictive immigration policies. Classical liberals (aka libertarians like me) are sympathetic to calls for more-open borders. But please let us be clear about the trade-offs: Some domestic residents will be made worse off.

There are millions of folks currently living outside the United States who would jump at the chance to work in our country at minimum-wage or sub-minimum-wage jobs. Many currently take incredible risks to come to our country, and many more would surely arrive if we adopted an open-border policy. Open immigration, however, would increase the supply of less-skilled workers, which puts downward pressure on the wages of less-skilled U.S. natives. Indeed, the only way both new immigrants and less-skilled natives could all have a shot at working is if the existing minimum-wage were lowered or abolished.

Open immigration coupled with an increased minimum wage is hardly a recipe for ushering in a messianic reign of social justice. Quite the opposite: The number of unemployed would skyrocket, and the shadowy underground labor market would grow. While some low-

income households would benefit, many of our poorest citizens would be harmed.

Faith, by definition, is not scientific or systematic. It is as the apostle says "the substance of things hoped for, the evidence of things unseen." We are all vulnerable to letting our faith in God, Jesus, Allah or the Spirit mingle uncritically with our political prejudices and passions. We make our political positions "little gods" — impervious to evidence, discussion or modification. I confess my guilt in that regard.

People of faith quite naturally look to their faith to inform their perspective on public policy. May we all, left or right, Republican or Democrat, conservative, libertarian or progressive, approach our religious witness in the public sphere with humility and charity. Let us not make a false idol out of our politics.

7 Things to Like About the World Cup

(June 23) — The key to enjoying any sport is to fully embrace the addiction. To a non-golfer watching grown men walk down a fairway to club a small ball toward a green is perverse torture. The true golfer, however, embraces the tension before the hit, observes the swing with care, relishes the ball's flight to green and joins the crowd in the oohs and aahs that follow. Looks like madness to an outsider—and it is an exquisite, diverting and addicting form of madness.

To the uninitiated, soccer surely seems the same. For those of us who have caught the bug, however, the World Cup is lovely summertime diversion. Here are seven things I like about it:

1. There are three games a day: one at noon, one at 3 o'clock and one at 6 o'clock. The announcers don't switch between games. You and the whole world focus on one game and only one game.

2. There is lots of action but little scoring. In soccer, 11 men kick a round white ball down a field and try to get it into a large netted goal. However, they must get around 11 other men who are intent on a) keeping them from doing this and b) gaining control of the ball and getting it in the goal at the other end of the field. Both teams have a 12th player charged with guarding the entrance to the goal. So most attempts to get a goal fail. Like basketball, something is always happening, but, unlike basketball, there isn't constant scoring. In fact, it is unusual to have more than five goals made by both teams combined. A typical score is 1-0. This means you can go check the chicken on the grill and probably not miss any scoring.

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It looks like Hoosiers are an unhappy, frustrated and whiny lot. On the other hand, we stay put.

3. You can follow the game without completely understanding the rules: Slugging another player isn't allowed and gets the offending player kicked out. But as the point is to get the ball in the goal, it's pretty easy to follow the action even if you aren't quite sure why one team gets a free kick or why the shaving cream boundaries are where they are.

4. Like the Olympics, you get profiles of foreign countries. Teams from all continents are represented, so you benefit from a tour of the world.

5. You know when the game will end. Unlike a baseball game that can go into extra innings, soccer is timed: 45 minutes per half. Unlike basketball or American football, there are no time outs. Rather, the refs at their discretion add anywhere between one to five minutes to the clock. If a game starts at 6 p.m., you can be sure it will be over by 8 p.m.

6. The rest of the world calls it football or futbol. We use "football" to describe our uniquely American game that obsesses universities and colleges. There is an easy way around the ambiguity. Our game is pronounced football. What we call soccer is pronounced foootball.

7. My teenagers and their friends are into it: Usually dad isn't welcomed to their gatherings, but, in this case, I'm allowed as long as I sit at the back of the room and stay quiet.

Like fine whiskey, soccer is an acquired taste. This is at least the seventh time in my lifetime when soccer or futbol has been on the verge of becoming a mainstream sport of the United States. More than 8 million watched the recent U.S.-Ghana game, and 39 percent of all households say they will watch at least one game.

We'll see, but until after July 13th, I'm not available during match times.

Do Hoosiers Want to Be Hoosiers?

(June 9) — A basic assumption of economics is the Axiom of Revealed Preference. This is fundamental to economic analysis and distinguishes it from other branches of the social sciences. In a nutshell, the axiom says: "What someone does tells us more about what they value than what they say." Interesting, it is similar to what I learned in Sunday School in Oklahoma — talk is cheap; actions are what matter.

For a mundane example, suppose a friend tells you he really prefers black coffee to coffee with cream. OK, but you observe at coffee break that he always adds creamer to his coffee. What are you to conclude about his "true" preferences? Economists would argue that he reveals by his actions his preference for cream in his coffee.

Recently the venerable Gallup organization asked residents of each of the fifty states "...if you had the opportunity, would you like to move to another state?" A full 50 percent of Illinois residents indicated a desire to move, making it first in the nation for dissatisfaction, followed by Connecticut, Maryland and Nevada, which came in at 49 percent, 47 percent and 43 percent. The Hoosier state came in 13th, tied with Arizona and Georgia at 38 percent. Maine, Hawaii and Montana all tied for last place at 23 percent. Looks like our fair state is filled with a lot of dissatisfied folks.

But Gallup followed up with a second question. "Looking ahead, how likely is it you will move to a different state in the next 12 months?" In this reckoning, the rubber hits the road — and although not quite to the point of actually revealing the residents' actual preferences — the question is tied with more concrete action.

The survey indicates that 20 percent of Nevada residents say they are extremely, very or somewhat likely to move in the next 12 months, making it first in the nation for those who indicate they actually have plans to move from the state.

Compare this with the 49 percent of Nevada residents who indicated they would like to move. Illinois and Arizona residents tied for third with 19 percent indicating they were likely to move in the next year, again much lower than the percentage who said they want to move.

Where did we end up? The Hoosier state tied for 47th with Minnesota, Texas, West Virginia and Pennsylvania with only 9 percent of residents indicating a likely move in the next year. So the Hoosier gap is huge — many complain about Indiana but a remarkably small number say they plan to move. Of course, actual migration data will fully reveal preferences, but we will not know these numbers until several years in the future.

One of my students calculated the ratio of percentage indicating a desire to leave to the percentage indicating they are extremely, very or somewhat likely to leave in the next 12 months for each state in the Gallup survey. By this metric, Indiana ranks No. 1 at 4.22 — that is, for every Hoosier with a rather concrete plan to leave, there are 4+ who say they want to leave. The national average is 2.54.

Is that a good or bad reflection on our state? On the one hand, it looks like we are an unhappy, frustrated and whiny lot. On the other hand, we stay put.

Perhaps this is a new definition of a Hoosier: A loyal but complaining fellow. Q

BACKGROUNDEERS

Expert commentary on Indiana issues of moment.

Airbrushing' Confederate History in Indianapolis

(July 15) — Indianapolis was the site of a large prisoner of war camp during the Civil War. Camp Morton housed thousands of Confederate soldiers captured on southern battlefields, many of whom died from disease, wounds and maltreatment. They were buried in an unmarked mass grave in Greenlawn Cemetery.

In 1912, the federal government erected a monument to mark the graves and identify the individuals buried there. Among the dead Confederates was William Blythe, a great-great-grandfather of former President Bill Clinton.

As the city expanded, plans were made to close the cemetery and relocate the graves to Crown Hill Cemetery. In 1928, for reasons that are not exactly clear, the Confederate Monument was moved to Garfield Park. A few years later, the Confederate dead were moved to a specially designated plot at Crown Hill, and a new burial monument was erected.

Over the years, the original monument in Garfield Park has been ignored and has deteriorated. A move is now underway to restore it and, according to *the Indianapolis Star*, this restoration movement is the subject of some controversy.

The headline in the print edition of *the Star* differs from the on-line story and was deliberately provocative:

“Group Wants to Restore Monument Honoring Confederate Fighters, but Some Question the Effort.”

This question arises inevitably from the inaccurate characterization of the monument: It does not “honor” Confederate fighters, and it was never intended to do so. That ought to be obvious to anyone who can read the inscription on the monument: “Erected by the United States to mark the burial place of 1616 Confederate soldiers and sailors who died here while prisoners of war and whose graves cannot now be identified.” It is a grave marker, not a Confederate memorial.

That doesn’t deter the Rev. Charles Harrison: “It’s a very painful history for us. Many in our community believe that a lot of

the problems we’re enduring as a people is [sic] the result of slavery. I believe it should be left to rot and go away.”

It is not exactly clear how destruction of this grave marker that has gone largely unnoticed and unremarked upon for over a century will help relieve the anxieties that beset the reverend, but he likely speaks for that “side of history” that progressives insist is always inevitable.

In recent years, objections have mounted to military bases being named for Confederate officers (Fort Lee, Fort Benning, Fort Bragg, etc.). Schools and parks bearing names of Confederate veterans are being renamed, and statues are being relocated.

This move to purge the American landscape and American culture of any public memory of the Confederacy and those who fought on its behalf is part of what may be called the “airbrush history movement,” modeled on the Stalinist practice of airbrushing from photos the images of purged comrades and rewriting official Soviet history to eliminate any reference to those who ended up on the wrong end of Stalin’s six-shooter.

This assault on the unvarnished history of our Civil War may, I concede, end up being the least of our worries in this regard. The new Common Core history standards relegate Washington and Franklin to the dark shadows of our revolutionary history and make mincemeat of the lesser Founders. While there is no evidence that a multicultural society can live together in harmony, few pause to ponder the consequences of disfiguring our shared experience.

History — the good, the bad and the ugly — is, as the American scholar Richard Weaver observed, the “minutes of the last meeting.” It is going to be tough going when no one is around who has bothered to read them. — *Tom Charles Huston*

Overlooking the Working Poor

(July 3) — The Pence administration is calling for a review of the Indiana tax code. The top goals are to simplify the code and to promote economic development. But another

“While there is no evidence that a multicultural society without a unifying and common history can live together in harmony, few pause to ponder the consequences of disfiguring our shared experience.”

— HUSTON

BACKGROUNDERS

“By far the most onerous burden comes from FICA payroll taxes on income that are used to support the Social Security and Medicare of current retirees. These take 15.3 percent of every dollar earned by the working poor — more than \$3,000 annually from a head of household at the poverty line.”

— SCHANSBERG

worthy goal, one that would boost the Indiana economy, is missing.

First, if the government is going to take our money, then it should do so as gently as possible. The U.S. income tax code is notoriously burdensome in terms of the billions of hours and dollars required to complete the paperwork. Governments will tax our money, but they shouldn't unnecessarily tax our time, too.

Second, all things equal, fiscal and regulatory policies should minimize the damage to the economy and increase the possibilities of economic development. It is important for policymakers to strive for this goal.

But while Indiana's leaders are looking at tax reform, they should achieve one other goal: eliminating the income-tax burden on working-poor households.

These days, it is common to make loud but vague complaints about the “gap between the rich and the poor.” Related to that, it is popular to advocate a higher minimum wage.

But a higher minimum is a mixed bag, just to name two reasons among many:

First, the minimum wage has both benefits and costs. By artificially increasing the price of less-skilled work, it will be less attractive to firms. Depending on the context, firms may respond by increasing prices to consumers or reducing other forms of compensation (*e.g.*, free uniforms, discounts on products). But if these are not sufficient, firms will eliminate jobs.

It's a shame to help some vulnerable people by harming other vulnerable people. This hurts those who lose jobs — short-term and then long-term, by taking away their opportunities to build skills, cutting off the first few rungs of the economic ladder that would allow them to move to the middle class.

Second, the minimum wage is poorly-targeted — it impacts middle-class teens and the elderly, as well as heads of households in poverty. Policy prescriptions should be as precisely targeted as possible, limiting the costs of the policy and concentrating the benefits of the policy appropriately.

Fortunately, there is a better policy alternative: eliminating taxation on working-poor households. By far the most onerous burden comes from FICA payroll taxes on income that are used to support the Social Security and Medicare of current retirees. These take 15.3 percent of every dollar earned by the working poor — more than \$3,000 annually from a head of household at the poverty line. It always amazes me that so-called champions of the working poor rarely talk about this devastating policy issue. Of course, the governor can't do much about a nasty federal policy, but

he shouldn't add to those burdens by continuing to impose state income taxes on the same vulnerable people. At present, Indiana is one of a handful of states that imposes taxes on hard-working, lower-skilled, heads-of-households at the poverty line.

A decade ago, Indiana added an earned income tax credit (EITC) to offset much of this burden, but Indiana legislators should take the next step. They should remove all working-poor households from the tax rolls, freeing up the EITC to do what it was designed to do: subsidize working-poor households.

Poor households would have more money in their pocket — without the risk of being priced out of the labor market by a higher minimum wage. This would be a win-win for the working poor and the Hoosier economy.

— D. Eric Schansberg

Hobby Lobby Demystified

(July 2) — The much-awaited Supreme Court decision in *Burwell vs. Hobby Lobby* came down this week. The Court ruled in a 5-4 decision that the 1993 Religious Freedom and Restoration Act (RFRA) does cover “closely held” corporations, even if those corporations are for profit.

At the center of the controversy was Hobby Lobby's contention that the for-profit, closely held corporation, owned by the Green family, should not, based on exercise of religious freedom, be required to offer several types of abortifacient drugs and services, which are the moral equivalent to supporting abortion and would thus be religiously offensive to the Greens.

The federal government had to demonstrate 1) that RFRA was not a substantial burden and 2) there was indeed a “compelling government interest,” *e.g.*, women who desired to purchase these abortifacient drugs and services would no longer be able to do so. The government lost on both grounds.

Many on the Left screamed foul, led by Justice Ruth Ginsburg's lengthy dissent. She overreacted, claiming that a “wave of companies” will demand to opt out of “blood-transfusion coverage, the minimum wage and anti-discrimination laws.”

Nancy Pelosi, the always calm voice of the liberal Left, declared the ruling “an outrageous step against the rights of America's women.” *The New York Times* editorial board called it a “deeply dismayed decision” that would “deny many thousands of women contraceptive coverage vital to their well-being and reproductive freedom.” But the Left was simply wrong — again.

First, the decision was narrowly tailored to address closely held corporations, or corporations that are owned and operated by a small number of individuals, such as the Green Family in the case of Hobby Lobby. (Interestingly, according to the Internal Revenue Service, 90 percent of all corporations in the U.S. are defined as closely held corporations.)

Second, RFRA's two main legal elements were not met: 1) the government may not "substantially burden a person's free exercise of religion" and 2) the burden had to further that "compelling government interest."

Should a person or closely held corporation place their religious beliefs on the back burner? No. The Court recently ruled in *Citizens United* that corporations had the First Amendment right to free speech, *i.e.*, spending money on campaigns. So why shouldn't the corporation also be able to exercise its First Amendment religious freedom right?

The Left also claims that it is not a burden on the Hobby Lobby or the Green family. *The New York Times*, again, claims that it is a "perfectly reasonable" requirement that all employer health plans provide birth-control methods approved by the Federal Drug Administration.

How, might one ask, is this a "perfectly reasonable" requirement, particularly when the requirement means an employer must provide a drug or service that is the equivalent of killing or leading to the death of an unborn fetus? Perhaps this is reasonable to individuals, organizations, groups and even governments that do not place a high value or worth on human life. For those of us who do, however, such as the Green family and Hobby Lobby, the burden is extremely high. The government is operating off the bounds of its legal and moral authority.

This decision is one more blow to Barack Obama and his progressive policies — including the Affordable Health Care Act, a labyrinth of binding rules and regulations that inhibit the freedom of individuals and companies to secure the best and most-affordable health-care insurance possible.

Allowing the free market to operate properly and humanely, as it does in so many other policy areas, will produce the best results. Those will happily include not restricting a person or corporation's right to exercise First Amendment freedoms. — *Stephen M. King*

A New Generation's Constitutional Perspective

(June 11) — Caesar had Brutus, Manning has Patriot fans and state Sen. David Long has Sheila Kennedy.

Ms. Kennedy, a law and public-policy professor at Indiana University-Purdue University at Indianapolis, made comments over the weekend pooh-poohing Senator Long's goal of restoring fiscal sanity to the federal government through a state-led constitutional amendment process.

Before we look at her argument, here is the background:

Congress, as spelled out in Article V of the U.S. Constitution, can propose constitutional changes by a two-thirds vote of each house. If Congress fails to act, however, the people who desire constitutional reform, the states themselves, by a two-thirds majority (34 states), can call a convention for proposing amendments, which then must be ratified by three-fourths of the states.

Twenty-four of the required 34 states have called for the overwhelmingly popular basic fiscal reform of a federal balanced-budget amendment. Thanks to Senator Long and other state legislators across the country, the nation is well on its way to what might become the most significant fiscal reform in American history. (For a detailed analysis, see my "A Constitutional Moment," pp. 2-9 in the summer Indiana Policy Review.)

So, what is Sheila Kennedy's beef with Senator Long? She argues that such a convention would be unconstrained in its scope and could morph into a runaway convention, one controlled by special interests that could radically alter our constitutional structure.

It is a tired argument, and Kennedy tips her hand when she misleadingly refers to the Article V process as a "constitutional convention." The appropriate term is a "convention for proposing amendments." It would almost certainly be limited to the drafting and proposal of a single amendment such as that federal balanced-budget amendment.

A law professor should know this, thus the bulk of the argument rests on Kennedy's claim — get this — that Americans are too stupid to understand our Constitution, and therefore it is too dangerous to amend.

Wow, what a slap in the face to those legal scholars who see Article V as a constitutional safety valve, wisely added to the Constitution by framers who realized that Congress might become so dysfunctional and hidebound that it would not reform itself, especially when it comes to seeking treatment for a spending addiction.

Indeed, you can think of the Article V balanced-budget amendment process as an intervention, and leaders like David Long as the concerned relatives who are not going to let Uncle Sam drink himself to death.

"The Court recently ruled in *Citizens United* that corporations had the First Amendment right to free speech, *i.e.*, spending money on campaigns. So why shouldn't the corporation also be able to exercise its First Amendment religious freedom right?"

— KING

“OK, let me get this straight: Americans are too stupid to understand our constitution (as Sheila Kennedy documents from her experience as a civics educator) but somehow come election day we magically become smart enough to elect the right people?”

— WATTS

The move toward the Article V process stems from a broad realization that Congress and the president, with short-term election-cycle mindsets, have grown comfortable with permanent deficits and ceaseless debt accumulation. At the same time, they have become masters of the electoral game of buying off key voting and lobbying constituencies with increasing doses of “other people’s money.”

So when Kennedy professes fear that an Article V convention might be “hijacked by special interests,” you should wonder if she’s been living in a cave. Has she seen the interest-group dynamics on display in the current legislative process? From the GM and Chrysler bailouts to Solyndra to farm subsidies to Obamacare, Washington, D.C. is a parade of special interests getting their way at the expense of the general welfare.

Kennedy goes on to say that we already have a process for reform — elections. “Just throw the bums out” is her simplistic advice.

OK, let me get this straight: Americans are too stupid to understand our constitution (as Kennedy documents from her experience as a civics educator) but somehow come election day we magically become smart enough to elect the right people?

Give me a break. Kennedy would not propose a constitutional amendment aimed at imposing fiscal discipline on Washington because the average person is deficient civically. Instead, she would rely on those same civic deficients to send the right people to Washington to fix the problem that the prevailing interests there don’t want fixed.

Again, Senator Long and hundreds of other informed and civic-minded leaders have another idea: Let’s use a constitutional provision created for just this moment: a state-led convention for proposing amendments with the sole purpose of ending the deficits, reining in the debt and preserving our economic prosperity into the future.

If one recognizes that our current problem arises mainly from a systemically overspending federal government, one understands that the solution must also be systemic — *i.e.*, a change in the underlying rules by which the system operates. That in a sentence is what Article V is about.

I sense that Sheila Kennedy is someone who, although talking about the dangers of deficits and debts placing a “burden on our children and grandchildren,” is comfortable with her little slice of state largesse. It is not surprising that she is reluctant to change the status quo.

On the other hand, I am one of those children whom Kennedy professes to care so much about. I say this to her generation, the one responsible for the mess of entitlement spending and crony capitalism: Bring on the radical constitutional change. It is our last, best hope for halting the crazy train of reckless government spending before it wrecks our economy and my economic future. — *Tyler Watts*

The Quandary of Wind Farms

(May 4) — Talk about conflicted: What is a free-market disciple to think about the prospect of wind farms?

That’s the discussion I had with Craig Ladwig, editor of *The Indiana Policy Review*, and a decided fence sitter when it comes to wind farms.

For those unfamiliar with IPR, they’re a conservative bunch, but with a definite libertarian bent. They don’t much care for economic-development incentives, such as tax abatements, but they don’t like the state income tax either.

Ladwig references Enlightenment-era thinkers such as John Locke frequently. The idea that property rights are the basis of English Common Law, and therefore of Western capitalism as we practice it in the United States, is a common thread.

The IPR crew — Ladwig and his cohorts Eric Shansberg, Cecil Bohanon and Andrea Neal — elevate property rights to somewhat of a sacred status, and view any attempt by government to lay hands on said property with deep suspicion.

“I think we worry more about the process — is [a wind farm] paying for itself or not?” Ladwig said recently. “We’ve been subsidizing wind farms for a long time now, and they don’t seem to be paying off in the way they’ve been promised.”

There is the concern that government subsidy is never as nimble as free-market forces, that any economic incentive for building wind farms lies in the extra money kicked in by taxpayers.

If we’re going to incentivize something, Ladwig asks, shouldn’t we be looking at solar energy?

“I understand we’re making some real progress on solar cells, to the point where we’re able to build houses that are energy self-sufficient. Why don’t we shift over to that?” he said.

“The problem with wind is with the product. I don’t take any stock in whether they kill eagles or are an eyesore; they just don’t have a good product.” — *Scott Smith*

The Unintended Consequences Of Pill Policy: Doctors as Police

(May 26) — My libertarian bent makes me skeptical of any government program, especially one that is thrown together to “solve” a crisis. The particular crisis I’m writing about is the marked increase in the abuse of prescribed pain medication in our country.

Before the 1980s, doctors in our country rarely prescribed strong pain medication for chronic pain. These highly potent opioids were mostly reserved for acute injuries like chain-saw wounds and those dying in agony . . . say from bone cancer.

But about that time, there were some lawsuits that contended for treatment of chronic real pain — disabling arthritis, nerve damage from chronic diseases such as diabetes, weird causes of agony with strange medical names such as *tic douloureux*. Heretofore, people were expected to just suck it up and suffer in silence, stuck out of sight in their bedrooms.

A long story shortened, the sufferers won their suits and the courts ordered us doctors to have enough compassion for those in misery to use our highly effective pain medications to help return some semblance of quality to their lives. Well, nothing motivates like a malpractice suit.

I am pretty certain that this required behavior change was the right thing to do — but no good deed goes unpunished. Fast forward 20 years: Florida becomes a hotbed of prescription pain-pill abuse. Fortunes are being made there and elsewhere by unscrupulous doctors writing thousands of doses on each prescription in exchange for bags of unmarked 50s and 100s.

Needless to say, these megadoses aren’t being used for grandpa’s bad back. Whatever pleasure that drug abusers get from taking 30 pills at a time sometimes gets mixed with too

much Jack Daniels and their party is over — permanently. Now we have a crisis that makes the nightly news.

And big government loves to solve a crisis. The Drug Enforcement Administration (DEA) and then the legislature hammer the pharmacies and the doctors with stringent new requirements. Here in Indiana, Gov. Mike Pence signed legislation last year that provided doctors with an on-line manual of close to 200 pages. It includes new “guidelines” we must follow to write grandpa his prescription of three pain pills a day. And grandpa has to come in every few months to be treated like any other drug offender out there on probation.

So we doctors are now the police. Not surprisingly, few of us care to brave this ongoing storm. We now usually send patients to the “pain clinics” springing up all over.

I have to admit that it has worked in a way. The prescriptions for pain killers and the abuse of pain pills have plummeted; our government can claim a big victory there. But I’m not sure anyone has pointed out the possible relationship to the concomitant explosion in the use of heroin. Do we think it is an unrelated coincidence that the pill abusers have happened to stumble on a cheaper and “better” drug high?

In my practice over the years I’ve had numerous occasions to rub shoulders with intelligent, wily, motivated drug abusers. We usually become aware of their shenanigans in a few visits and show them the door. But I know they are certifiably smarter about how to abuse the system than your average doctor — and maybe even than your average politician.

I will close by pointing out that the DEA is nothing if not adaptable. It has recently approved a home-use device that allows people to quickly reverse those fatal heroin overdoses becoming so commonplace.

Ain’t progress wonderful? — *Bruce Ippel*

“I’m not sure anyone has pointed out the possible relationship to the concomitant explosion in the use of heroin. Do we think it is an unrelated coincidence that the pill abusers have happened to stumble on a cheaper and ‘better’ drug high?”

— IPPEL

Since the sequencing of the human genome in 2003, what is known by geneticists has increasingly diverged from orthodoxy, even as social scientists and the mainstream press have steadfastly ignored the new research. Nicholas Wade, for more than 20 years a highly regarded science writer at *the New York Times*, has written a book that pulls back the curtain. It is hard to convey how rich this book is. It could be the textbook for a semester’s college course on human evolution, systematically surveying as it does the basics of genetics, evolutionary psychology, *Homo sapiens*’s diaspora and the recent discoveries about the evolutionary adaptations that have occurred since then. The book is a delight to read — conversational and lucid. And it will trigger an intellectual explosion the likes of which we haven’t seen for a few decades. The title gives fair warning: “A Troublesome Inheritance: Genes, Race and Human History.” At the heart of the book, stated quietly but with command of the technical literature, is a bombshell. It is now known with a high level of scientific confidence that both tenets of the orthodoxy are wrong.

— *Charles Murray in the May 2, 2014, Wall Street Journal*

THE OUTSTATER

What Indianapolis isn't telling you.

Our problem is a society
that classifies diversity
without honoring
pluralism, that imagines
that to merely treat people
equally is the same as
to make them equal.

The 9 States of Indiana: Diversity Inside Out

(July 17) — A friend received a coveted invitation to join what at the time was an all-male club in Fort Wayne. He declined, but not for the reason you might think.

He had no objection to the club's various exclusionary clauses, believing the right to assembly was absolute. His concern, rather, was that the club was changing its bylaws.

There was a motion on the table to admit women; he wanted to know what kind of women they might be.

The successful female applicant, as it turned out, was only secondarily interested in the club's mission. She was mostly interested in just being there, in breaking a historic sex barrier, in shaming the old guard — Hillary Clinton, that is, not Sarah Palin.

With its membership in flux, the club lost reputation in all quarters. The friend chose a different club.

This came to mind reading a column this week by Dan Hannan, a member of the European Parliament, writing for the London Daily Telegraph. Hannan asks how can it be progress to include persons of different skin tones or sex if you insist they hold similar opinions?

"The last thing exponents want is actual pluralism," Hannan argues. "They want more Muslims, but not Muslims who hold Islamic views about, say, the definition of marriage. They want more black people, but not black

people who get ideas about prospering outside a redistributionist economy. They want more women, but not more Margaret Thatchers."

Not so coincidentally, gentrification has become the demographic pattern of our age. Three years ago, this foundation identified and mapped nine regions of Indiana that, to a remarkable degree, are made up of individuals who are socioeconomically similar. It's a good bet that if the study were repeated, the findings would be more pronounced.

Interestingly, in California there is a proposal headed for the ballot to split that state into six little ones, each with a more common citizenry, its own government and its own collection of elected officials, including congressional representatives.

None of this is the way it's supposed to work, not after three generations of social engineering and diversity training. Once Washington ordered the social barriers down, we were supposed to meld into one big happy country — borderless even. Instead, we gravitate toward those regions that best match our political and social makeup.

The easy answer is that we're still bigots, sexists, racists, partisans and greed-driven capitalists. Perhaps what is needed is for the Jesse Jacksons, the Saul Alinskys and the Debbie Wasserman Schultzes to tighten the thumbscrews another turn.

But the true problem, Hannan suggests in rebuttal, is a society that classifies diversity without honoring pluralism, that imagines that

Silicon Valley venture capitalist Tim Draper submitted signatures on Tuesday to put a measure on the ballot that would split California into six separate states. The campaign announced the development with a tweet Tuesday. Draper, who recently spoke at the Commonwealth Club in San Francisco, said that a state as big as California needs to be broken up to be more representative and more competitive. 'With six, you do get a good sense that you can drive 45 minutes in any direction and maybe be part of a different state and it keeps those states on their toes,' he said. According to the 'Six Californias' plan, each of the six states would have its own government and own collection of elected officials, including congressional representatives. Much of the Bay Area, including Santa Cruz and Monterey, would become the state of Silicon Valley under the proposal. The northernmost counties would become Jefferson; some North Bay counties would become part of North California, an area that stretches through Sacramento to the Sierra; Stockton, Fresno and Bakersfield would be among Central California's largest cities; Los Angeles, Ventura and Santa Barbara would end up in West California; and San Diego would become the major city in South California. The proposal is largely dismissed by opponents, however. — CBS News, July 15, 2014

to merely treat people equally is the same as to make them equal.

Such thinking, once institutionalized, is the opposite of liberty. It commands you to accept your neighbors' viewpoint not because it is compelling but because it is doctrine. That is why they built the Berlin Wall. That is why a Singapore works but a Yugoslavia or a Lebanon implodes.

Be grateful that in a free country — perhaps even in California still — there are options when the bylaws are changed, when the views of others are imposed by a tyranny of minority or majority.

You can join a different club.

Happy Alternatives?

(July 9) — At a certain age, it becomes difficult to tell whether people are kidding you.

The other day I heard someone say that government troops were prepared to confront seemingly law-abiding American families — something about objecting to foreign nationals being forced into their communities. I mistook it for a joke.

In my embarrassment I was forced to remember making the same mistake back in the 1970s. They would come to our editorial board meetings to tell us about better ways, different ways, of doing things. I thought they were joking, too.

Particularly, they thought the nuclear family was passé. They presented alternative models — put them into action, actually, and in numbers that were impressive. They were excited about a model headed by a single mother, newly empowered in the workforce, in the divorce court and, most importantly, in the social-welfare system. Indeed, they spoke about giving aid to anyone down on their luck — able-bodied men even, regardless of citizenship, few questions asked.

For the first time, politicians argued successfully that only governments should have guns. And they had begun to think globally, our borders being only lines down the middle of cultures. Our industry, once such a cause for pride, began to be seen as contrary to environmental stewardship.

We of the stiff-necked Midwest didn't know what to think. We wondered aloud whether changing the structure of our society might produce different results. No, they said, everything would work out fine, happier even. We couldn't be sure, though; it didn't sound good.

Today, keeping track of the alternative families and lifestyles is dizzying. It is truly

hard to imagine a plan for life, however bizarre or irresponsible, that would not be defended as intrinsic to the American way. To suggest otherwise is to commit bigotry or worse — and, to an increasing degree, become subject to civil if not criminal penalty.

And yet, it was a reasonable question, wasn't it? At least way back then? That different ways of doing things might produce different results? Unexpected ones? Odd or disagreeable ones? Dangerous ones?

Nobody likes to think about that now, much less talk about it. Nonetheless, intrepid researchers of some credibility (Charles Murray, Thomas Sowell) have piled up books describing the calamity of this social experimentation. Markers of a failed civilization identified by Arnold Toynbee and other historians seem to be falling into place. These grim thoughts are not seriously refuted even as they are carefully ignored.

The social experimenters, their theories now policy, have felt a need of late to back up their political gain with scientific data. *The Washington Post* and *New York Times* this week published glowing reports of an Australian research paper. *The Post* headline read: "Children of Same-Sex Couples Are Happier and Healthier than Peers."

Really? Well maybe, but not really. The authors pretty much willed the desired results to print. And most fitting to the point here, their study was self-reported — that is, based on the subject's own assessment of how he or she thought the child was doing.

No, they aren't kidding. That's what they call facts.

The Soccer-Football Dust-Up

(July 3) — Has the World Cup got you down?

The United States isn't the big guy on the block there. And if you are a football fan (mostly conservatives), you are being dragged into unflattering debates with irritatingly informed soccer fans (mostly liberals). And although of global import, it all seems depressingly petty considering the real problems facing Indiana and the nation.

As a student of both sports (my one son played soccer and the other football), maybe I can help.

First, please know that this conflict stretches back thousands of years. The contrasting strategies of the two "games" have determined the rise and fall of civilizations. Their discussion is anything but petty.

The late John Keegan, military historian, argued that there are two forms of warfare

We of the stiff-necked Midwest didn't know what to think of the alternative social models. We wondered aloud whether changing the structure of our society might produce different results.

THE OUTSTATER

The western way of war has prevailed in recent centuries — with the huge economic, scientific and industrial capacities needed to support it. Football, which for these purposes should be thought of as the leather-helmet or even rugby variety, is its manifestation.

that have shaped the world: eastern (think soccer) and western (think football). And if the connection with the respective sport is not obvious, let me break it down:

Soccer tests the mental if not physical skills required of the eastern form of war. Made up primarily of lightning-fast cavalry, it features a continuous ebb and flow in the action, the winning side not always being apparent. Its innovations include the stirrup, chariot and compound bow. Tactics utilize a mobile force using feigns, including false retreats followed by counter attacks, assorted diversionary movements to isolate and achieve numerical superiority, and finally, encirclement of what is left of the opposing army — all tactics you can see play out on any soccer field.

Since the expulsion of the soccer-mad Moors from Spain, however, it has been the western way of war that has prevailed — with the huge economic, scientific and industrial capacities needed to support it. Football, which for these purposes should be thought of as the leather-helmet or even rugby variety, is its manifestation.

Here, more than in soccer, there is concern about weather, terrain and a uniform playing field. Football tests both the mental and physical skills required in western warfare, foremost being complete discipline in the face of pretty certain hurt or ruin, and the courage and strength that implies.

Tactics revolve around a set-piece battle rather than a shifting field. The opponents face each other in phalanxes — historically, infantry in the middle, cavalry on the sides with artillery to the rear. (It is interesting to know that the tactic Alexander the Great used to conquer the world is indistinguishable from the trap block executed on any football field on any Friday night.) Innovations include effective body armor, the short sword, the pike square, the long bow and, most recently, the nuclear bomb.

Which brings us to the profound difference. It is one thing to ride down from the hills, shoot a few arrows and ride back up again; it is another to stand toe-to-toe and hack at each other with axes and broad swords, your retreat blocked by cavalry waiting to run you down and chop off an arm or a head.

Fortunately, modern football rules have eliminated most of that. The fact remains, however, that the western way is a brutal thing while the eastern way is “a beautiful thing,” as soccer fans like to say.

Perhaps, though, that is only true relative to its alternative — and perhaps then only superficially.

That last statement intrigued Keegan. He theorized that the western way prevailed precisely because of its ugliness, its awfulness; no sane society wanted to endure it on a regular basis. Eastern warfare, by contrast, with its calculated rather than certain risk, was more or less constant.

And this, perversely, gave western societies greater time to develop between periods of utter horror and devastation — to develop concepts such as absolute private property, individual rights, agricultural techniques, a common law, constitutional government, respect for scientific achievement, etc.

Feel better?

‘Redskins’ and Fort Wayne Hypocrisy

(June 23) — Hooray to *the Fort Wayne Journal Gazette* for reprinting June 22 its classic editorial decrying what a long line of its editors has found to be the offensive use of “Redskins” in sports names. This famously progressive newspaper, though, will want to go further.

At question is the name of the newspaper’s hometown, proudly if thoughtlessly incorporated into its own masthead. Fort Wayne, of course, is named to honor Gen. “Mad Anthony” Wayne. You should know that this was a man who . . . well, he actually attacked Indians as a profession and did so with unregistered guns, although his only recorded command at the Battle of Fallen Timbers was “bayonet the (expletive deleted).”

And what about the name of our state itself, in fact an offensive mischaracterization of Native Americans. How can the sensitive in the newspaper’s executive suite overlook “Indiana” as a stereotype, applied by exploiting Europeans, based only on skin color and the ignorant assumption that the disparaged were people of another continent entirely?

One more thing, as a full-blooded journalist (both my parents are of newsroom descent), I find offensive the use of “Journal” in the trademarked *Journal Gazette*. The shallowness of its public-policy positions makes a mockery of a noble professional heritage. We are a long-suffering, ink-stained, overworked and underpaid people with a lineage going back to giants like Martin Luther and Ben Franklin but also winding its way through the New Journalism of writers such as Tom Wolfe and Hunter S. Thompson.

Indeed, Mr. Thompson, founder of my generation’s Gonzo Journalism, could have had in mind the *Journal Gazette* when he said: “With the possible exception of things like box scores, race results and stock market tabulations, there is no such thing as Objective Journalism;

the phrase itself is a pompous contradiction in terms.”

A Discredited Politician Would Save Us from Authoritarianism

(June 17) — Some of us used to complain that our politicians rarely returned to Indiana after leaving office. There will be fewer such complaints now that former Rep. Mark Souder has so firmly replanted himself here.

Suffering only from obsessive political personality disorder, Souder returns undaunted by scandal, fully pensioned and comfortably ensconced in academia. And although forced to forgo his Washington staff and trappings, he seems generously supplied with platforms from which to lecture us on how the world could be if only everyone were as insightful as he.

Most recently, Mr. Souder stuck a knife in the back of a fellow Republican, Richard Mourdock, for voicing the concern that America is tempting authoritarianism. Souder, the college professor now, listed eight touchstones of authoritarianism and pronounced Mourdock’s concerns ignorant. And as is his wont, he went further:

“Some extremists who have bought into this sloppy thinking that we are soon to be Nazi Germany are now panicked and bullying politicians to meet in a new Constitutional Convention. Ignorance piled upon ignorance.”

You can try to read through Souder’s justifications for such harsh judgment — but you also might save the time; they are the disjointed spouting-offs of the boor at morning coffee. (Reason No. 1 that authoritarianism isn’t at our door: “We did not lose a World War. A significant percentage of our young, productive men are not dead.”)

It is wiser to concentrate on what politicians today, retired or not, don’t seem to understand: What makes America work. Dr. Tyler Watts, an economist and someone Souder might dismiss as a sloppy thinker, has a more useful list of touchstones:

1. Primacy of the Individual — Are individual citizens ultimately sovereign over themselves and their justly acquired property, and may they employ (or not employ) their persons and estates in any manner they wish, so long as they do not interfere with like rights of all others?

2. Representative Government — Are the people, individually, ultimately sovereign, with

legitimacy in government arising from them and only delegated to the state apparatus (courts, police, etc.) by a representative process? And does the individual citizen retain ultimate control of the governing bodies this process may establish?

3. Common Law — Is the law seen as ancient and universal, given by nature or God? Does it pre-exist the state and thus the judiciary’s job is not to create law but merely to discover and apply this pre-existing law? Is the role of the legislature, then, a modest one of affirming settled legal principles and establishing rules for hard and novel cases by statute?

4. Rule of Law — Is the law supreme, as reflected in the ancient dictum “no man is above the law”? Does it treat all citizens equally, *i.e.*, are they entitled to the same legal procedures, such as trial by jury for capital offenses, and for privileges such as habeas corpus and the right to remain silent?

Each of us would score our local government differently on such profound questions. Few, though, would trust an out-of-office politician to score it for us. And, by the way, would it be authoritarian to suggest that politicians, if they insist on retiring here, stand mute, restricted to club or garden?

Tulley Blew it, not Mourdock

(June 10) — Matthew Tulley, *the Indianapolis Star* columnist, leans on a tautology in his June 9 blast in what he imagines is the direction of Indiana conservatives.

In “Richard Mourdock Blows it Once Again,” he lectures the former GOP Senate nominee that there is nothing, nothing comparable to Hitler’s atrocities, certainly nothing on the American political left.

Well yes, and historical analogies in political discourse are a famously loose discipline. But Hitler, by Tulley’s logic, could not be compared to Stalin because the former was a national socialist and the latter an economic socialist — entirely different things, entirely different mustaches, entirely different concentration camps.

Uncritical readers of *the Star* must think that tyranny cannot overcome them so long as their democratic representative promises to apply it only gradually and Tulley gets the interview.

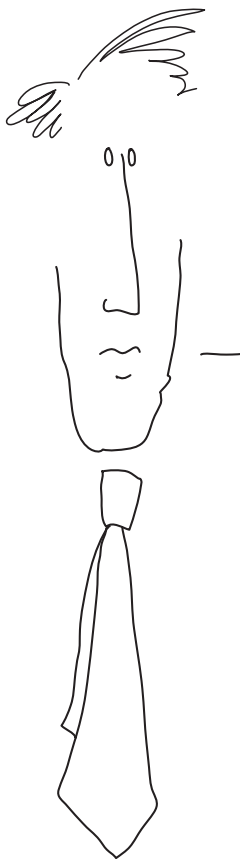
And don’t try to compare Tulley to Mourdock. The one is held accountable to his words. The other is not.

The Bergdahl Delusion: Man Overboard

(June 6) — This generation is going to have to study war some more, alas. Even admirals

Uncritical readers of *the Star* must think that tyranny cannot overcome them so long as their democratic representative promises to apply it only gradually and Tulley gets the interview.

As a reality check, imagine how today's three-star pentagon spokesman might try to explain the culmination of an operation in which the United States lost more than 30 percent of its combatants. That was typical in World War II, Korea and Vietnam. They called them victories.



"It is our true policy to steer clear of permanent alliances with any portion of the foreign world."
(Washington)

today don't seem to know how it works outside their politically corrected service academies.

Rear Adm. John F. Kirby, the Pentagon spokesman, commented the other day that . . . wait, they assign admirals as flacks now? Isn't that expensive?

Anyway, Rear Admiral Kirby doesn't think the American military leaves anyone behind. "When you're in the Navy, and you go overboard, it doesn't matter if you were pushed, fell or jumped," he said the other day in justifying the prisoner exchange for Sgt. Bowe Bergdahl. "We're going to turn the ship around and pick you up."

Well, yes, that happens in the movies, Admiral Kirby. Maybe the new Navy is more capable, but the "man overboard" drills in which I participated aboard the old U.S.S. Ranger were not confidence-producing in that regard. Petty officers would mock the official concern by saying that, in actuality, as soon as we hit the water, the Navy would wire our parents to advise them that we had drowned on an unauthorized swim.

As a reality check, imagine how today's three-star pentagon spokesman might try to explain the culmination of an operation in which the United States lost more than 30 percent of its combatants. That was typical in World War II, Korea and Vietnam. They called them victories.

The admiral nonetheless fantasizes that his Navy is spinning about in the world's oceans picking up overboard sailors (depressingly common). The vision belies military reality. There is more to war than Hollywood scripts commanding division-level attention to the rescue of last surviving sons ("Saving Private Ryan") and artistic masterpieces ("The Monuments Men").

My father is one of the only U.S. Naval aviators to survive a catapult failure during a carrier takeoff in the Pacific Theater of World War II. It was unusual enough to have been written up in *Time* Magazine. That was because the others were killed by the crash, drowned, chewed up by the screws or lost at sea as the fleet sailed by them to its battle station.

Moreover, when his night-fighter squadron went out on a mission, it was understood that if

enemy submarines came into the area, the fleet would turn off its lights. That could mean the death of dozens of aviators who would have to ditch as they ran out of fuel circling the carrier, if they could even locate it — and that was after successfully completing even the most dangerous of missions.

So, does Admiral Kirby mean we should keep the lights on for a Sgt. Bergdahl?

We of the old Navy fear that is exactly what he means.

A Political Culture

(June 4) — Indiana politicians settle so comfortably into the role of placeholders. When events reveal a policy void, they rush to fill the space where leadership otherwise might be.

This week, one of them noted that the Department of Veteran Affairs (VA) doesn't work. "If we are to correct the VA's flaws, we must change its culture," he explained in a news release.

No explanation was needed. Veterans know the culture of government when they see it, even in surgical scrubs — the long, senseless lines waiting for this chit or that, the cold, uncaring eyes of the clerk holding our Catch-22 paperwork.

So our politicians proudly describe the water in which their constituency drowns. They miss the point that we want things changed, systemically so, revolved right side up.

That, however, requires historical and economic understanding, management savvy and actual work — not only from the politician(s) but also from a differently skilled staff, one organized to govern wisely and not just flip issue after issue.

And it requires political risk. It means abandoning a narcissistic faith that government is magical (to crib from a Peggy Noonan commentary on Barack Obama). It requires more than just incanting the secret words of the publicist.

For the culture that our politicians must change is their own.

Why Municipal Unions?

(May 31) — A pointed exchange during a recent council meeting in my hometown served to demarcate the two sides of what will be a statewide, city-by-city debate over municipal collective-bargaining. And it did so without emotionalism, ideology or self-serving posture.

The flow of the argument forced the council to see the issue through the eyes of the only

people who really matter — the city's most productive employees.

It started when a councilman asked a particularly tough and complex question: Was it a good idea to outsource managerial control to a third party (a union), whose interest might be independent of, or even adverse to, the public interest, especially when government is being used to create an artificial labor monopoly?

A lawyer for the union sidestepped by asking — reflexively, some thought — whether it was a good idea to attack city workers.

So there it sat on the council table, the defining question: Would city workers be hurt without a public-sector union? And if so, would all workers be hurt or just certain workers? And if only certain workers, which ones?

Ryan Cummins, a former appropriations chairman on the Terre Haute Common Council, likes to turn such questions on their head. It is a city's resignation to collective bargaining that hurts its employees, he says, and it hurts the productive employees most, both now and in the future.

Cummins, who writes and speaks on this topic for the Indiana Policy Review Foundation, prefaces his presentations by saying that "the sky should be the limit" on any public employee's salary. Indeed, in some parts of the world, master teachers in government schools earn six-figure checks.

"Every government employee should be competing with every other employee for tax dollars," Cummins says. "What a police officer must accomplish is different from a firefighter; their compensation should reflect what they do and to what standard."

As Cummins would have it, when the time comes to review compensation, the individual or group making the strongest commitment to increasing standards, to greater efficiencies, to stronger productivity, should be compensated more. The individuals or groups unable to make such a commitment should expect to see their compensation unchanged or even reduced.

In sum, city employees win with potentially higher compensation while citizens win with more value for their tax dollars.

Workers in public-sector unions, in contrast to those in private-sector unions, have no such advantage. They are denied the rewards of productivity by the leveling mechanism of politically delineated rules. They work at the proverbial Red Banner Tractor Factory, where all parts and workers are treated as if they were interchangeable.

The folly of such an arrangement would be obvious if it weren't so politically incorrect to say aloud: This type of union makes its money off the marginal worker; that is, the one who

could not cut a better deal for himself on the basis of standards, efficiency, productivity and commitment. It is this worker whom the union leadership serves, not the more productive one.

The management distortion is aggravated when public-sector unions gain influence over mayors and councilmen whose jobs should be the efficient provision of public services. It is at that point that they cease to be unions and become political machines.

There is a last consideration: Where mandatory collective bargaining takes hold, it is the marginal employee who is encouraged while the productive employee is discouraged. If it weren't for individual work ethic, sense of duty and personal loyalty, the worst would stay and the best would eventually leave.

Most Indiana cities can credit only luck that they have municipal workers, police and firefighters guided by those character traits. Otherwise, mediocrity would rule.

That wouldn't matter to the union leader, or to the hired mouthpiece, or to the pandering councilman or to the pensioned sluggard. But it would matter to the productive city worker — and it should matter to us.

The Low Bar of the Veteran

(May 21) — Has anyone noticed that the people expressing surprise that the Veterans Administration (VA) not only failed its charges but also shunted them aside were not the veterans themselves?

No, surprised were the wives, the sisters, the children, the whistle-blowers and other well-meaning innocents. The actual veterans, those still alive, expected as much. Their bar for outrage, after years of dealing with government bureaucracy in its various forms, was set far, far lower.

My last (I hope) visit to a VA physician, newly arrived by her accent, found my hopes raised by her description of a particularly effective new medicine. She used it daily. Wondrous results. No more hip pain.

Could I have some? I could not. It was not on the official list of medicines. She would write a prescription for something else. Aspirin salve. Sort of like horse liniment.

Appreciation for my even nominally private physician (should I be able to keep him) compounded immediately. And I knew better than to complain to my kind VA doctor doing the best the system would allow her to do.

But I could see what was down the road, and it wasn't pretty. My health and I were largely on our own. Nor would it matter how mad a president might get about it all. — *tcl*

The folly of public-sector collective bargaining would be obvious if it weren't so politically incorrect to say aloud: This type of union makes its money off the marginal worker; that is, the one who could not cut a better deal for himself on the basis of standards, efficiency, productivity and commitment.

Q. Compared with your expectations, how is the Pence administration doing?

Members' assessments of the Pence administration fell short of their expectations. With only one respondent saying that the governor had done "quite a bit better" than expected, more than half said either "somewhat worse," "quite a bit worse" or "a great deal worse." About 40 percent found his performance "somewhat better" (the largest single group) but a number of those qualified that by indicating their expectations had been low.

Comments

- **"THIS IS A** difficult question to answer, sitting in Northwest Indiana because the press here rarely covers anything constructive regarding Republicans. Mike Pence is a better governor than he was a candidate but Republicans are usually better at running the office than running for the office; Democrats are the reverse."
- **"MR. PENCE** seems to have a lot of problems with employees committing ethical lapses. For example, the highway department official that helped his family make money buying and selling land near the I-69 extension."
- **"WHETHER OR NOT** you like Mitch Daniels, he came into the governor's office with force, with a vision and with a plan. I sense none of these with Mr. Pence. He is convinced he is presidential material and is thereby hobbled. Where are we going, Governor Pence? Articulate a defined plan. I still want to believe that he is a solid conservative, but he needs to demonstrate courage on issues that can separate Indiana from the 'usual crowd,' inspire other states (and people) and secure a future for Indiana based on smaller, more-dispersed government."
- **"MR. PENCE** doesn't listen to other elected officials at the local level — cities and counties — even in his own party."
- **"THE GOVERNOR'S** misrepresentation of education and healthcare initiatives, along with a lukewarm push against the legislative leadership to increase tax cuts, leave me grasping and gasping for something to get excited about."
- **"HE IS LOW KEY.** I expected more movement from the governor. He doesn't seem to be a mover and a shaker. The state is in good financial shape — no complaint there. He's different than Daniels, and this may add to the 'somewhat-worse' box."
- **"THE CRAZY THING** is we still do not have a ban on project labor agreements. Somehow, we have forgotten that the liberals will never vote for us. So let's forget the Left and get the economy moving and create jobs."
- **"ALTHOUGH HE'S DONE** a good job, the liberal media casts him in a less than favorable light. He's better than most other governors I've known, but the teachers and school administrators give him an 'F' grade simply because he's conservative and knows how much fat there is in school budgets. We could give the schools the entire state treasury and they'd still cry. In other areas, he gets favorable ratings from the people of Indiana."
- **"I EXPECT** all politicians to serve their own best interest with an eye only on the next election. Mr. Pence at least isn't flagrantly pandering."
- **"HE HAS COME** a long way since his days at IPR. He used to be a principled defender of limited government and property rights. Now, not so much."
- **"I EXPECTED** a bold, across-the-board, conservative agenda with the governor leading the way with historic GOP super-majorities in both chambers. That didn't materialize after his election. Some of the blame rests with the Legislature but we expected more conservative ideas and proposals from governor."
- **"HE NEEDS** to work on helping Indiana attract good jobs. Don't spend so much time on national politics."
- **"WE HAVE TO BE CAREFUL** not to set expectations so high that all conservative governors automatically appear to be failures. 'Don't let perfect be the enemy of good,' as they say. My disappointment isn't so much in what he has done as his only modest success in using the bully pulpit to promote conservative principles."
- **"MY EXPECTATIONS** were quite low, so any small progress seems better. Some of my worries, however, have been realized."
- **"I EXPECTED** the governor to show his Tea Party colors after he became more comfortable in office. And though he has tried to fund statewide preschool, which is badly needed in this poorly educated state. He throws barbs at the president and fights with the superintendent of public instruction as expected. What I didn't expect was the hubris he's shown while courting favor for a presidential run."
- **"I ALWAYS** have low expectations of governments and governors. The Pence administration has certainly not surprised me in this regard."
- **"I EXPECTED** a much easier path for him in the Legislature, given his background. Proposals to eliminate business personal-property taxes are harmful to local units of government and lead nearly everyone to believe that there is a hidden agenda."

Thirty-five of the 154 correspondents contacted completed this quarter's opinion survey conducted Aug. 2-4 for a response rate of 23 percent.

People who know about opinion surveys don't think much of ours. The sample is inherently biased and so small as to be little more than a focus group. The questions, sometimes confusing, are casually worded and transparently drive at one point or another. That said, we have learned to trust our members and eagerly await their thoughts on this and that.

THE DESTINIES OF THOSE WHO SIGNED

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

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



Emanuel Gottlieb Leutze, oil on canvas, 1851



Thomas Hoepker, photograph, Sept. 11, 2001

Please Join Us

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

• **ANNUAL DONATIONS** are fully tax deductible: individuals (\$50) or corporations (\$250) or the amount you consider appropriate to the mission and the 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.

INDIANAPOLICY

Review

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