



*What Can You Expect From This General Assembly?*

The authors, reviewing the history and prospects of the Indiana General Assembly, read a dual meaning into Thomas Jefferson’s familiar advice “that the government that governs least governs best.” Certainly, it is meant as a warning to government to keep its hands off private choices. But it also is a prescription for government to focus its energy and oversight on only a few tasks so that it may do them well. That a local government could become so detached, so cynical and so expansive in its public promises as to be unable to set even the most obvious civic priorities is the lesson of this hurricane season. Has that lesson been learned in gestalt at the Indiana Statehouse? In this General Assembly as in all recent ones there will be a side of the discussion insisting that our government do more and more in dealing with social issues. This presumes an endless supply of citizen sacrifice to monitor an ever-expanding state. The other side, of which this review and foundation are part, will recognize the importance of citizen oversight in a free society but also will recognize that its supply is limited.

*Silhouettes on the Horizon: Indiana ‘Develops’ its Downtowns*

It has become clear that Indiana’s economic development projects have less to do with economic goals than with political ones, e.g., extracting tax revenue from viable economic systems and giving it to failing ones. This is damaging to our communities in several ways: First, it invites corruption and cronyism; second, it supplants policies proven to encourage growth, i.e., land-use reform, assurance of property rights and relief from taxes and regulation. Nonetheless, government talks of rebuilding downtowns, cities and now entire regions as if it had ever been successful in such an effort. A historic parallel: The settlers lured to Russia in the late 18th century by Field Marshal Gregori Potemkin (the first economic development director) later would re-emigrate to America. Their Turkey Red wheat, planted on America’s Great Plains, created the enduring wealth that Catherine the Great had envisioned for her own country. The U.S. Constitution, you see, could guarantee what a Russian monarchy could not — liberty rather than mere privilege. It is a distinction that economic development directors might explore.

*Our Colleges Have Lost That ‘Aha’ Experience*

Undergraduate higher education needs to quit contemplating its navel and rediscover the ancient and lasting value of the university experience — that is, an unrelenting, unbiased and unbought pursuit of truth. • Eliminating or restricting any store, including Wal-Mart, the store that everybody loves to hate, only hurts consumers, workers and suppliers deprived of legitimate opportunities to buy, to work and to sell. • And an Indiana sheriff proves the point that those who would consolidate local governments are more interested in power than efficiency; his department has achieved its goals in cooperation with neighboring governments rather than in legalistic combination with them.

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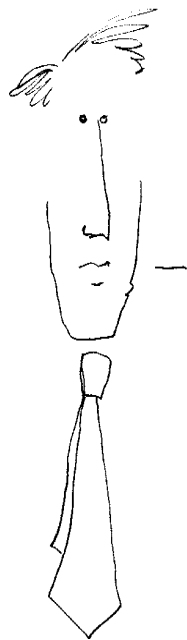
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## EDITORIAL

*Incumbents everywhere prefer to hand out debit cards than learn hydrology or economics; this is Kingfish politics in the corrupt style of Huey Long.*



*"The state is the great fiction by which everybody seeks to live at the expense of everybody else."  
(Bastiat)*

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### *Sorting Out a Crisis: Would Indiana Government Do any Better?*

Indiana is not Louisiana. Government here would do its duty. It would maintain basic infrastructure. It would man the dikes, so to speak.

Or would it?

In this issue, Dr. Cecil Bohanon and Matt Hisrich take a dispassionate look at the processes that define Indiana government. They recommend you keep a bail bucket handy.

This may not be the kind of thing that Gov. Mitch Daniels wants to hear. He thinks there has been too much finger-pointing by all sides. "It's not attractive," the governor rightly says.

Dr. Bohanon's concern, however, does not stem from a lack of virtue or good intentions on the part of government officials. Recent local and national crises have demonstrated there are plenty of competent people in public office.

"It is rather an inherent, unalterable part of the democratic process," he explains. "The irony is that the more as a society we demand and expect from government, the less we get. Only by conserving legislative attention and citizen oversight can things get better."

As government has grown larger, Indiana citizens, just as our hapless friends in New Orleans, have lost the ability to monitor officialdom. Consequently, they have little incentive now to keep informed on even the most critical matters of public policy, e.g., the structural integrity of dikes that keep homes from flooding or, closer to home, tax rates and labor laws that silently drive away investment.

Economists call this "rational voter ignorance." It is why 68 percent of us are unaware that Social Security is a major budget item and why only 15 percent can correctly identify the name of even one candidate for the U.S. House of Representatives in their district.

We vote blind, in other words. Worse, our politicians have come to count on it. "If

See 'Hard Lessons About the Political Nature of Federalism'

— Andrea Neal p. 26

voters are shallow, shortsighted and ill-informed then it is only natural that the political process often responds in a similar fashion," Bohanon notes.

Some argue that politicians who ignore our rational ignorance, who remain determined to address the critical and therefore difficult issues, are at a disadvantage.

Indeed, incumbents everywhere use their influence to avoid such lose-lose issues, preferring to hand out debit cards rather than learn hydrology or economics.

This is Kingfish politics in the corrupt style of Huey Long, legendary Louisiana political boss. It is why a self-evident observation by Rep. Mike Pence — that someone somewhere eventually will have to pay for unconstrained largess in either higher taxes or reduced services — is considered controversial on Capital Hill.

So, our self-congratulation over the emergency response to this season's hurricanes will have its limits. For in Indiana and most other states, the next challenge will not be atmospheric but economic, a business slump aggravated locally by poor fiscal policy, eroded property rights and self-defeating regulation.

*The Indianapolis Star* reported last week that we dropped two places among the states in the "cost of doing business." Is that good? The problem is we never know for sure. *The Star*, as most chain newspapers, is vague on the point, sometimes wanting more government involvement and sometimes not.

Nor can we trust our politicians to tell us. Indeed, they might not even want to know.

As citizens, however, we can demand that local government be more focused in what it presumes to do for us. As a result, our political parties, the courts and the media can more carefully oversee what is actually done.

If we fail at that, a generation of Hoosiers will wake up one morning not, perhaps, with water on their stoop but with limited job prospects in a third-tier state and nobody left to prepay a debit card. — *tcl*

# WHAT CAN WE EXPECT FROM THIS GENERAL ASSEMBLY?

*A most unromantic look at how our government works*

*Author's Note: The Indiana Legislature is subject to many pressures in this day and age. Aside from authorizing \$20 billion-plus in spending, passing and updating necessary laws, the Legislature is called to consider a myriad of issues and concerns raised by a variety of interest groups. Over the past decade, the political process here has been mired in partisan squabbling and trivialities, while major work such as tax reform and budget imbalances failed to receive the timely attention they deserved. I will not offer a blow-by-blow history or prognosis*

*of specific Indiana events. Rather, I will examine a more general question: Why do legislatures consistently fall short of expectations? To foreshadow the answer, it is not because of a lack of virtue or good will on the part of either legislators or citizens. It is rather an inherent, unalterable part of the democratic process. The irony is that the more as a society we demand and expect from government, the less we get. Only by conserving legislative attention and citizen oversight can things get better.*  
— ceb

by CECIL BOHANON

It is a lovely fall day, and you have important work to do. But a friend calls and invites you to the club for a round of golf. The group with which you play is amiable and fun; the weather isn't likely to be this nice until spring. What do you do? This decision reflects a common trade-off, one we all face on a regular basis. It is a problem that begins in grade school and continues into old age: Doing what one ought to do compared with what one wants to do.

Make no mistake about it, we sometimes go play golf. Occasionally it ends up the work we think is so important is not as crucial as we first imagine. Now and then the relaxation of a nice day actually



MAKING SENSE OF THE LEGISLATURE

enhances our performance. But those pleasant possibilities beg the question. We all know that the results of shirking do not usually turn out well. We often choose to forgo the pleasures of the sunny day and concentrate our efforts on the dull and laborious tasks that are in front of us. What keeps our nose to the grindstone? Why do we do the things we ought to do, when tempted to do the things we want to do?

The playing-golf-on-a-lovely-day problem is one that might be faced by the college student getting ready for a midterm examination; he'd rather try out the new driver than study for the math test. It is one that might be faced by a business executive;

• All voters are to be  
• monitors of elected  
• officials. This is the  
• great genius and  
• empowering legacy  
• of democracy, but  
• it is also its flaw:  
• Everyone's  
• responsibility becomes  
• no one's responsibility.  
• This phenomenon is  
• known as rational  
• voter ignorance. It has  
• profound implications  
• for the operation of  
• democracy.



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## COVER ESSAY

*As legislators and as citizens, what keeps our noses to the grindstone? Why do we do the things we ought to do when tempted to do the things we want to do?*



*"A society of sheep must in time beget a government of wolves."  
(Bertrand de Jouvenel)*

she knows she should review that data one more time before the meeting tomorrow. It is also one faced by the state legislator who really ought to expand his knowledge of an issue before he meets with the informal committee to draft that new bill. We all hope that a sense of calling and duty will tilt all three to "do the right thing." The student has a duty to his parents and others who paid his tuition, the executive has a duty to her co-workers and her company shareholders, the legislator to the constituents he is representing.

Although the call to duty can be a powerful motivator, and one that society should not be ashamed to use, we all know that it is not enough. If it were, business executives and state legislators would be given lifetime sinecures and college students would never be graded. Procedures of evaluation coupled with systems of rewards and penalties are essential to assuring good performance in almost all endeavors. Students can get bad grades, employees can be fired and legislators can fail in their bids to re-election — and thank heavens. All these tools are "fail-safes" to ensure job performance, all in some broad sense serve the same function.

Let us suppose all three of our characters dutifully forgo the pleasures of the golf course and earnestly toil away at their desks. What about the trade-offs between the activities that the student, businesswoman or legislator face? What if our collegian faces both a math test and a literature test tomorrow? What if our executive is torn between reviewing the numbers on one project or fine-tuning the strategy on another project? What if our legislator is called to consider both a bill affecting his district's road appropriations and one that will chart the state's telecommunications policies for years to come?

Of course, these are often complex decisions that turn on the specific facts on the ground, but we can surmise that the institutional mechanism that sets rewards and penalties differs between the cases. The student is deciding under a different set of rules and constraints than the businesswoman, and the state legislator is op-

erating under a set of rules and constraints that are different from either.

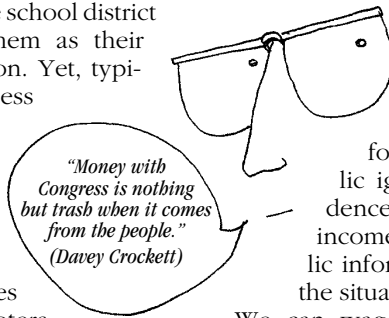
The differences among the three cases boil down to the issue of who is monitoring the actors. The student is monitored by the professor who is empowered to assign grades. The businesswoman is monitored by her boss who is typically empowered to assign or withhold pay raises, promotions, bonuses, etc. — and in the extreme is empowered to fire the employee. The legislator is to some extent monitored by his fellow legislators, the press and other forces, but in the final analysis is monitored by the voters in his district who are empowered to fire him by failing to re-elect him.

In the first two cases, the monitoring is usually direct and usually is concentrated in the hands of a single "boss" or a small group of "bosses." The professor or the supervisor directly observes and evaluates the work of the student or the junior executive. In the case of the legislator the monitoring is almost always filtered through a third party, such as press reports, and the "boss" is that rather amorphous body, the general voting public. All voters are to be monitors of elected officials. This is the great genius and empowering legacy of democracy, but it also is its flaw. For the incentives for the public-at-large to do a good job of monitoring is attenuated by the very collective nature of the public-at-large. Everyone's responsibility becomes no one's responsibility. This phenomenon is known in Public Choice literature as rational voter ignorance, and it has profound implications for the operation of democracy.

### *Extent, Reason for and Implications of Rational Voter Ignorance*

Mary and John are planning a trip on a cruise ship with the family. They have worked hard to save the money to do this. Before they make their choice Mary is likely to consult the folks at AAA on the various package options. John might do some research on the Internet and compare different companies. They may also talk to friends and family who have gone on cruises and find out about their experiences. In other words, they will invest time and resources planning and obtaining information about their trip before they go. Mary and John also have two children in the local public school.

Surely the policies of the school district are as important to them as their choice of family vacation. Yet, typically, the couple invests less time and effort engaging in detailed research about the positions and policies of prospective candidates for school board than they do investigating the attributes of cruise lines. Many voters abstain from voting in such elections or vote in ways that are incredibly dumbfounding and arbitrary.<sup>1</sup>



The state of voter ignorance about issues and candidates is a well-documented and long-standing phenomenon in politics. The Public Choice scholar, Ilya Somin, reports that in 1964 only 38 percent of the American population was aware that the Soviet Union was not a member of NATO. Sixty-two percent thought that the Soviets were part of NATO, or simply did not know (Somin 1998, p. 417). More recently, in the year 2000, only 37 percent of the population was aware that the crime rate had decreased in the previous decade, and only 15 percent could identify correctly the name of at least one candidate for the House of Representatives in their own district. In 2004, a full 68 percent of the voting public did not know that Social Security was one of the two largest federal budget items, and 78 percent did not know that the then-current unemployment rate was lower than the 30-year average (Somin 2004, pp. 6-7).

Although many educators and pundits blame voter apathy, poor education, economic distress or a variety of other factors for this appalling level of public ignorance, there is little evidence that rising education, rising income or increased access to public information do much to remedy the situation (Delli and Keeter 1996). We can wag our fingers at our fellow citizens for their lack of civic duty, but it doesn't seem to do much good.

There is, however, a straightforward explanation for the phenomenon. When John and Mary make the decision as to the cruise they have full control of the decision. They pay all the costs and they receive all the benefits. Although it is unlikely their information is ever perfect, they have a clear incentive to get an adequate amount of information and process it in a rational manner. On the other hand, when they "choose" a school board candidate they do not have full control over the choice; indeed, they share control with hundreds, often thousands, of other voters. The odds that their vote will influence the outcome of the election is minimal.<sup>2</sup> Correspondingly, there is little incentive for voters to obtain good information or process what information they obtain in a rational manner.<sup>3</sup> It isn't that John and Mary are bad or lazy or stupid, it is they have little incentive to be well-informed since their input is marginal to the outcome. They are "rationally igno-

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*Voters have little incentive to understand the actual relationship between government policies and social outcomes.*

*Finally, the reality of voter ignorance establishes incentives for legislators; indeed, a legislator who does not pander to the ill-informed voter may not survive the electoral process.*

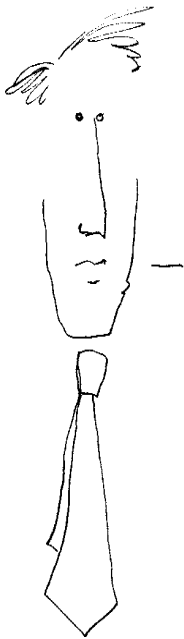
1. In the state of Oklahoma certain aspiring politicians were known to change their legal name to Will Rogers before the election. Apparently, taking the name of the famous Oklahoma humorist enhanced their vote-getting appeal. Legislation eventually was passed that forbade such name-changers from running for office.

2. Some may argue that the closeness of the 2000 election shows that the individual's vote does matter. However, a careful analysis of the 2000 election results and post-election machinations indicates that in a contested recount an individual's vote matters less than it does in traditional voting theory (see Bobanon and Van Cott 2002).

3. There is an extensive literature that argues the problem of rational ignorance on the part of voters is not an overwhelming problem in a democracy. A number of theories have been forwarded in defense of voter wisdom (see Hoffman 1998). Many such theories argue that voters take rational "shortcuts" in obtaining political information, and that these shortcut methods serve to reflect the voter interest in a reasonably effective way. In this approach voters rely on opinion leaders to shape their preferences. An example of a shortcut is a voter who relies on an organization, such as a trade union or business club; or a particular "expert" such as a journalist or public commentator to give him good information that informs his voting decision. Although there is undoubtedly some truth in this, voters do likely use shortcut methods (indeed, political ideology or philosophy itself can be seen as a rather sophisticated form of a shortcut). This shortcut theory begs the question in the final analysis, however, and simply reduces the problem to another level. How does the voter obtain good information on the quality of their shortcut? As Ilya Somin points out: "Since the whole point of relying on opinion leaders is to economize on information costs, the voter is unlikely to invest heavily in researching opinion leaders' qualifications" (Somin 1998, p.425).

## COVER ESSAY

*Interns make at least two persistent observations about the Legislature: 1) the amount of time spent on truly trivial issues; and 2) how poorly informed even the most conscientious, honest and hard-working legislators are when it comes to knowing the details of bills on which they vote.*



rant.” Why does this matter, and why does it influence the actions of legislators? The first and most obvious implication of voter ignorance is that voters are unlikely to pay a lot of attention to what their legislators do. Indeed, most voters cannot even identify who their representatives are, much less give a clear account of their policy positions or actions. Yet, the theory of democratic government rests on the notion that the people monitor the actions of their representatives. There is little incentive, however, for good monitoring.

Second, voters have little incentive to understand the actual relationship between government policies and social outcomes. Some examples: 1) Despite the overwhelming evidence that price ceilings only make shortages worse, voters typically demand legislators impose price ceilings on commodities like gasoline when prices rise; 2) even though there is a great body of scholarly literature indicating little relationship between school spending and academic performance, politicians rarely challenge and the public rarely questions the sacred cow of increased education appropriation for kindergarten through grade 12 to “ensure the future of our children”; and 3) although the general incidence of taxes has been well understood for at least a hundred years, the public still believes that inanimate business entities pay taxes and legislators of all stripes continue to perpetuate the myth in their political rhetoric (see Bohanon 2003).

Voters respond positively to tangible, clear benefits that are directly attributable to their representatives. They respond negatively to any action attributable to their representative that can be construed to impose costs or deny benefits to the voter. Successful elected representatives almost always show up for ribbon-cuttings. Few successful elected representatives make their way by proposing specific tax hikes or budget cuts, although almost all can wax on eloquently about the general need for fiscal discipline.

Third and most important, the reality of voter ignorance establishes incentives for legislators. If voters are shallow, short-

sighted and ill-informed, then it is only natural that the political process often responds in a similar fashion. Put another way, a legislator who does not pander to the ill-informed voter will not survive the electoral process.

Over the past 25 years I have had a modest degree of interaction with the Indiana political system at both a state and local level as both a citizen and as an economist. I say modest because although it is more than that of the typical citizen it is not as extensive as that of many who are dedicated to full-time political interaction. I have, however, over the years had a number of students who have been interns at the Statehouse. These students make at least two persistent observations about the Legislature: 1) the amount of time spent on truly trivial issues; and 2) how poorly informed even the most conscientious, honest and hard-working legislators are when it comes to knowing the details of bills on which they vote.

It may seem strange that the Legislature spends a lot of time passing bills commending little Audrey’s stellar performance at the local music pageant. Yet, recognizing that this is exactly the kind of local benefit that Audrey’s parents remember, exactly the kind of action that Audrey’s dad will announce at the Rotary club (and of course, publicly applaud the legislator for his interest in the matter), it is easy to see why this is a valuable use of time to the legislator. It also is easy to see how a legislator will spend time working out the fine details of bills that are of special interest to the local constituents, while ignoring the details of bills that serve a larger statewide interest. This is not because of poor intentions, not because of evil or lazy legislators, but is an institutional flaw that flows from the reality of voter ignorance.

### *Benefits of Democracy*

There are some who would object to the above critique of government as being “anti-democratic.” They argue that purveyors of such theories are in fact making an intellectual case intent on undermining the legitimacy of the Legislature and the election process. If democratically elected governments work so poorly, then why have elections at all? Why not dispense with the

“Our Founding Fathers could not foresee a nation governed by professional politicians.”  
(Reagan)

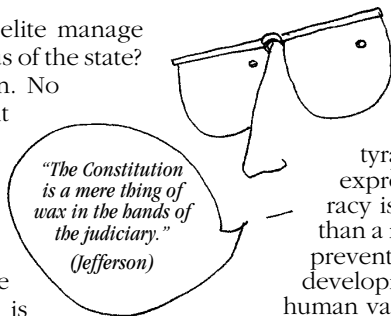
process and have an elite manage the necessary apparatus of the state?

This is a straw man. No intellectual proponent of the rational-ignorance theory of voter behavior ever advocates the abolition of democratic institutions. To paraphrase Churchill: Democracy is the worst form of government, until it is compared with the alternatives. But this visceral critique of the rational-ignorance hypothesis does serve a useful function. It invites us to think about the purpose and goal of democracy.

Many contemporary liberal and socialist political theorists have grand ideas about what democracy is supposed to do. In their view, the democratic process is seen as a way of fulfilling the ideals, the ambitions and the aspirations of individuals, of constituent groups and of society at large. Writers such as Jurgen Habermas (1990) talk of deliberative democracy — in which citizens engage in a process of dialogue where all social issues are on the table. This interactive and transformative procedure is seen as one that will provide secular salvation and collective spiritual redemption.<sup>4</sup> In this elevated view, democracy is a wider social arrangement where the collective will is somehow discerned and the general good trumps narrow and provincial interests. All human problems and grievances can be remedied by democracy.

Yet, there is another view of democracy that I dare say is a more historically authentic representation. Democracy is not about fulfilling our highest aspirations but about avoiding our worst fears. The purpose of elections, checks and balances and constitutions is to preserve God-given individual rights. As the Russian author Alexander Solzhenitsyn pointed out in the early 1990s when Russia was awkwardly moving toward a more democratic regime:

In opting for democracy we must understand clearly what we are choosing . . .



The contemporary philosopher Karl Popper has said that one chooses democracy, not because it abounds in virtue, but only to avoid tyranny . . . President Reagan expressed his thoughts . . . Democracy is less a system of government than a means of limiting government, preventing it from interfering in the development of the true source of human values found only in family and faith (Solzhenitsyn 1991, pp. 62-65).

Democracy and elections are not designed to fine-tune and perfect society. Rather, they operate as a kind of release valve that prevents the boiler from blowing up. Although voters are often fooled, are often confounded with bad information and have little incentive to make careful and deliberate decisions, we hope and pray that electoral constraints can prevent the worst abuses and misuses of power. Recently, a team of scholars examined in detail what determined the fiscal and political outcomes of countries based on their form of government (Mulligan and Sala-I-Martin 2004). The research shows that there is little difference in the fiscal outcomes of democratic or less-democratic states. Democracy does not seem to augment or constrain general public-sector size.<sup>5</sup>

What is different, however, is that the practice of torture, the repression of free speech and restrictions on religion are generally not found in democratic states. Electoral politics work much as the canary in the coal mine: It may not make the mine a healthy environment but it prevents absolute disasters from occurring.

#### *The Case for Limited Government*

Here is a final point that emerges from the discussion. Educators invest resources trying to convince students to take their responsibilities as citizens seriously. From kindergarten on, students are told that it is their responsibility to be well-informed members of the electorate. In the presence of rational voter ignorance, is this foolish? Of course not. Outlining and exhorting one

*Democracy is less a system of government than a means of limiting government, preventing it from interfering in the development of the true source of human values found only in family and faith.*

4. Hillary Clinton's talk about the "politics of meaning" is a more mainstream application of such an approach.

5. Less democratic regimes did spend more on military appropriations and interestingly, had more progressive income tax structures (Mulligan and Sala-I-Martin 2004, pp.71-72).

## COVER ESSAY

*If the number of issues on the public plate is narrow, focused and limited, then perhaps democratic process in its ideal form can flourish.*

to duty is a noble endeavor. Ordinary humans often rise above the confines of their narrow interests to pursue more lofty goals. This should be encouraged. But we are foolish if we rely on exhortations to duty to solve all our problems. Taking the duties of citizenship seriously is like any other virtue: It is a precious and scarce good, and one that ought to be used in an economizing fashion. The public can perhaps be relied on to obtain good information and use good judgment in political matters if the expectations are not excessive. This can only be accomplished if the role of government is limited.

If the number of issues on the public plate is narrow, focused and limited, then perhaps democratic process in its ideal form can flourish. Ilya Somin points out that during the period of limited federal power in the 19th century, "national politics revolved around a small set of relatively narrowly defined issues. . . . (and) politicians presented for mass consumption far more sophisticated arguments than prevail in electoral politics today." He goes on to assert that "voter knowledge and control of government will be much greater under a regime of strictly limited government power .

. . . It also leads to the counter-intuitive suggestion that the extension of government power to new areas of social life undercuts democratization rather than furthers it" (this author's emphasis, Somin 1998, pp. 434-435). To make democracy work, its scope must be narrow.

### Conclusion

Thomas Jefferson stated "that the government that governs least governs best." This is often taken, not without merit, as a libertarian motto for government to keep its hands off private choices. But it also can be seen as a prescription for government to do a few tasks quite well.

In the battle for ideas there are two competing forces. One side calls for citizens to insist their governments do more in

dealing with social issues and problems. This side seems to think that there is an endless untapped supply of citizen sacrifice to monitor an ever-expanding state. The other side, of which this review and foundation are part, recognizes the importance of citizen oversight in a free society but recognizes its supply is limited. Rather than pile more and more obligations on both citizens and the state, it is better to have a constrained and focused set of expectations about what government and democracy can accomplish.

So what does this tell us about the upcoming legislative session? Don't expect much. Indeed, if you insist on a lot, then you will surely get only a little. Q

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"That the government that governs least governs best."  
(Jefferson)

. . . It also leads to the counter-intuitive suggestion that the extension of government power to new areas of social life undercuts democratization rather than furthers it"



# WHEN BAD THINGS HAPPEN TO GOOD BILLS

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*Telecom reform died  
in a recurrent leadership vacuum*

*“If you recognize that the traditional way we looked at politics had a lot of romance in it, then Public Choice comes along and removes the romance. I think the natural outcome of that is you’re going to be more skeptical about government than you would have been otherwise.” — James Buchanan<sup>1</sup>*

by **MATTHEW HISRICH**

As the 114th Indiana General Assembly opened there was, as is always the case in the beginning, a sense of possibility in the air. By the close of the session, as is always the case at the end, thoughts had turned to things left undone. The question for all of us concerned with the legislative process is why this disappointment seems to be so unavoidable.

Medicaid reform and school finance are perennial losers in this game, not just in Indiana but in nearly every state. It almost goes without saying that these issues will be danced around while the legislature is in session, with perhaps

minor policy changes enacted. Ultimately, though, true systemic reforms are left until “next time.”

What is surprising about the 114th General Assembly in particular is that even a straightforward bill with broad support in an uncontroversial area could not reach the finish line. All knew that telecommunications reform was overdue but the fickle nature of politics here overcame common sense.

### *Time for a Change*

Over the course of the last 20 years, communications technology underwent tremendous change. Many tools once seen as cutting edge are now obsolete. In all of this time, however, Indiana’s regulatory approach has seen no major adjustment.<sup>2</sup> The result is a structure that undermines competition and places the state at an economic disadvantage. For this reason alone, many in the legislature recognized the need for an overhaul of existing regulations and had begun calling for change in recent years.

*The question for all concerned with the legislative process is why a sense of possibility turns into disappointment.*



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## COVER ESSAY

*Despite attempts to encourage competition in telecommunications, Indiana's "welfare state" approach of existing regulations breeds only dependence in the wireline sector.*

In 2004, The Federal Communications Commission (FCC) provided additional impetus for change. The Commission essentially disallowed state utility commissions from setting prices, instead calling on companies to negotiate prices among themselves.

A letter released last year and signed by all five FCC commissioners stated, "In the past, the commission has been divided on these issues. Today, we come together with one voice to send a clear and unequivocal signal that the best interests of consumers are served by negotiation."<sup>3</sup>

### *What Is the Problem?*

Indiana's antiquated regulatory approach takes an economic toll on consumers and businesses in the state. A quick review of where Hoosiers stand relative to their neighbors makes this clear.

Indiana trails 22 other states in the number of high-speed Internet connections,<sup>4</sup> and lags 20 states in the number of wireless subscriptions<sup>5</sup> despite ranking 14th in population.

This is by no means due to lack of demand. From 1999 to 2003, wireless subscriptions doubled, rising from 1.3 million to 2.6 million.<sup>6</sup>

In contrast, the number of wirelines in Indiana fell from 3.7 million to 3.6 million during the same time period despite an increase in population.<sup>7</sup>

The problem is that despite attempts to encourage competition, the "welfare state" approach of existing regulations breeds dependence rather than meaningful competition in the wireline sector. At the same time, the approach treats traditional phone companies as monopolists in an era where wireless communications are becoming the dominant form of communication.

The Indiana Utility Regulatory Commission (IURC) has long set rates on wholesale pricing for network access among the lowest in the nation, stacking the deck against traditional wireline providers. Despite a recent rate increase, Indiana's rates still rank 45th-lowest in the nation.<sup>8</sup> Incumbent service providers who own the network therefore earn less revenue with which to invest in upgrades and new services, while competitors have less incentive to build facilities of their own.

State government data indicate that 70 percent of the lines billed by competitors in 2002 were serviced in whole or in part by an incumbent network, up from 40 percent in 2000.<sup>9</sup> There also has been a corresponding decline in the proportion of lines served by competitors' own facilities. Local competitors in Indiana used their own facilities to service a mere 30 percent of their customers in 2002, down from 60 percent in 2000.<sup>10</sup>

Current laws prescribe a host of mandates on telecommunications providers that are unnecessary at a time when consumer options are so plentiful. Incumbent companies must offer nine specific services irrespective of consumer demand. They essentially are forced to offer flat rate service.<sup>11</sup> Incumbents also are prohibited from niche marketing as they must offer their services to every segment of the market in which they are licensed.

But that's just the beginning. Incumbent firms are locked into inflexible pricing schemes that prohibit them from even applying for a rate increase for basic local services more than once every 18 months.<sup>12</sup> (Under alternative regulatory plans, rates are capped for about three years.) And, following the FCC's ruling that companies should be free to negotiate rates among themselves, the IURC demanded to review in its entirety the first voluntary agreement to be reached. Such tactics show a complete disregard for the operations of the private sector.

### *A Straightforward Piece of Legislation*

In recognition of the changing climate of telecommunications, both Idaho and Iowa approved telecom deregulation measures during their most recent legislative sessions. In Indiana, a House bill was designed to deregulate telecommunications but died along with more than 100 bills as a result of a walkout near the end of the session.

A Senate bill took up where the House bill ended by merging broadband deployment with telecom reform. The bill consisted of three main components: 1) a statewide broadband exploratory committee; 2) a rural broadband grant program; and 3) general telecommunications reform.

The telecommunications reform component focused primarily on reining in the IURC and creating an environment more

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conducive to investment in Indiana. Specifically, the legislation stated that:

- Voice over Internet Protocol (VoIP) services are not a public utility and therefore not subject to IURC jurisdiction.

- The IURC does not have jurisdiction over advanced and broadband services or information services.

- The IURC does not have jurisdiction over any nonbasic telecommunications service.

- Incumbent local exchange carriers must continue to offer a flat monthly rate with unlimited local calling for basic telecommunications services.

- After June 30, 2010, The IURC will not have jurisdiction over pricing, terms and conditions for basic telecommunications service.

- The IURC does not have jurisdiction over basic telecommunications services in an exchange area if 50 percent of the households have access to broadband.

- The IURC must establish reasonable pricing for unbundled network elements, the resale of telecommunications services and interconnection.

- The IURC must biennially identify and eliminate telecommunications regulations no longer necessary due to advances in technology and competition.

- Duties to provide dual-party relay services for the hearing and speech impaired must apply to providers of advanced, broadband and other Internet services.

- The IURC retains jurisdiction over the provision of 211 services.

- The IURC retains jurisdiction over the rates that may be charged by an incumbent local exchange carrier to a pay phone service provider.<sup>13</sup>

The bill had support outside of the Legislature. Supporters included the Indiana Manufacturers Association, Indiana Chamber of Commerce, Indiana Telecommunications Association (40 small Indiana telecom companies), SBC, Verizon, Sprint, Indiana AFL-CIO, CWA Local 4900, Women Impacting Public Policy, and Custom Electronic Design and Installation Association.

The concept of telecom reform generally and the components of this bill specifically seemed to have support among legislators as well. The House voted 74-22 for the legislation. The mood in the Senate also

seemed to favor deregulation with three of the four conference committee members backing the bill.

#### *What Went Wrong?*

Three out of four conference committee members proved to be one too few. Despite having survived a dramatic walkout by Democrats and various incarnations, telecommunications reform in the end could not make it past the one person it needed most.

The chairman of the Senate Economic Development and Technology Committee originally introduced the Senate version of telecom law as a broadband initiative. From the moment deregulation was added to that bill, the senator appeared ill at ease.

“I don’t think it is going to stay in its current version,” he told *the Muncie Star-Press* in April. “We have plenty of time to negotiate that.”<sup>14</sup>

Time ran out, however, negotiations fell through, and the failure of compromise meant the failure of all three components within the bill.

#### *Public Choice 101*

What can explain such an outcome? A Nobel prize-winning economist, James Buchanan, is one of the founders of a school of thought known as Public Choice. Its premise is to challenge misconceptions regarding public policy and in the process develop a better model for understanding behavior. Or, as Buchanan plainly states, “It is nothing more than common sense, as opposed to romance.”<sup>15</sup>

Buchanan labels his approach as common sense because rather than assuming that rational behavior ends at the Statehouse doors, Public Choice asserts that individuals behave in the same manner whether in the public or private sector.<sup>16</sup>

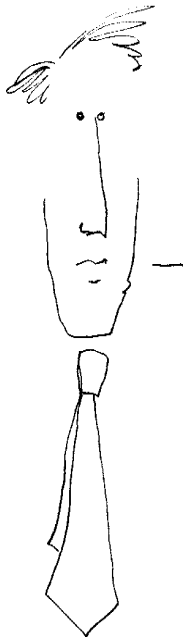
“If the individual is motivated by personal benefits and costs when making decisions as a consumer, worker or investor,” explains economist David Johnson, “that individual is going to be motivated by personal benefits and costs when making decisions in the voting booth, in the halls of Congress, and in the conference rooms of the bureaucracy.”<sup>17</sup>

Applying this perspective to the 114th General Assembly may provide some an-

*Despite having survived a dramatic walkout by the Democrats, telecommunications reform in the end could not make it past the one person who mattered.*

## COVER ESSAY

*A large group of legislators may well agree in principle with a piece of legislation, but if there is no champion whose pet interest is tied to the bill, then there is little hope of success.*



*"One of the greatest delusions is evil can be cured by legislation."  
(Thomas Reed)*

swers to the question of why telecom reform failed.

### *The Free-Rider Problem*

One of the first issues to arise in the context of individuals — and individual parties — acting in their own best interest has to do with levels of commitment. The incentive of individuals is always to maximize benefits and minimize costs. As a member of a group, this can translate into a situation in which not everyone pulls his own weight if the assumption is that a task will be accomplished or a goal attained regardless.

Perhaps the most recognizable example is group projects in school. It is rare for there not to be at least one "free rider" — if not more — someone who lets others pick up his slack simply because he can get away with it.

In politics, then, consensus within a group can become problematic. There is a danger within a broad coalition such as the one in favor of telecom reform that few or even none of the actors will emerge as a champion of the cause. As well, in a session filled with new laws and regulations affecting each of the coalition members in varying ways, each may have its own area of focus despite agreeing in principle with another party on another issue.

If it is true in politics that the squeaky wheel gets the grease, and if few of the wheels in any particular coalition are squeaking all that much, then we should not be surprised that legislators lack incentive to fight for passage of the measure at hand. The same principle applies to those on the receiving end of the lobbying. A large group of legislators may well agree in principle with a piece of legislation, but if there is no champion whose pet interest is tied to the bill, then there is little hope of success.

### *Redistribution of Wealth*

This champion — and indeed all legislators — can be expected to act with one primary consideration in mind, namely, "How will my actions affect my chances for

re-election?" Often, this boils down to crafting, voting for and working toward the passage of legislation that imposes a relatively small burden on a broad section of society in exchange for concentrated benefits for the legislator's constituents. A similar approach can be utilized to gain the support — or avoid the wrath of — powerful special interest groups, corporations and donors that may play a role in future campaigns.

So despite the pressing need, there simply was no champion for regulatory reform in telecommunications. There was one, however, for an issue less pressing — statewide broadband.

The broadband project was in fact statewide wealth redistribution. That is, Indiana's urban residents would receive redundant service while subsidizing a larger, rural geographic area. It goes without saying that the legislative champion of such a proposal would be from the rural communities.

Supporters of telecom reform became resigned to the broadband measure when it was made clear that their measure could not proceed without the backing of this rural champion. Nonetheless, once public scrutiny of the questionable broadband provisions emerged, the champion bolted and the house of cards collapsed.

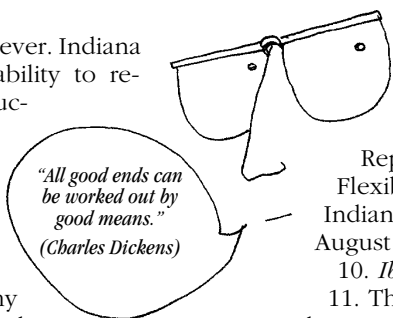
### *What Does the Future Hold?*

Indiana's past — much like its present in the areas of emerging technology — differs from its recent history in that innovation and few restrictions were the order of the day. If Hoosiers wish to restore a vibrant telecom sector, then they must unshackle the market and allow it to work on their behalf.

Unfortunately, the lessons learned from the 114th General Assembly are likely to apply to the 115th, the 116th and on down the line: Individual personalities will play as much a factor in what ultimately gets passed as the will of the people. Obtaining key committee assignments and, most importantly, re-election, will trump all else.

None of this, of course, precludes the passage of telecommunications reform, but what it does mean is that passage cannot be tied to economic benefits, general welfare or any other rationale related to the residents of Indiana.

All is not lost, however. Indiana residents have the ability to realign the incentive structure of elected officials. By impressing upon their leaders that re-election may very well hinge upon their actions regarding the state's economy and assuring them that there will be consequences for petty politics, Hoosiers can reclaim their authority over their representatives. In so doing, the benefits of an active citizenry will spill over far beyond this one sector of the economy.



The fewer tasks that government has, the more likely government will do an adequate job. The only way to ensure this is to limit its scope and domain — the classic argument for limited government, the one on which this nation is founded.

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*The lessons learned from the 114th General Assembly are likely to apply to the 115th, the 116th and on down the line: Individual personalities will play as much a factor in what ultimately gets passed as the will of the people.*

## YOUR PROPERTY IS NOW ON THE DOCK

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*And bigger, more concentrated  
local government isn't going to help matters*

*The planning  
community is  
attempting to trivialize  
the importance of Kelo  
vs. New London by  
claiming the Court  
simply validated  
what state and local  
governments have  
been doing for  
50 years.*

• **by SAM STALEY**

• *Summary of Remarks Before the Eminent  
• Domain Study Commission, Indiana  
• Statehouse, Aug. 10:*

• **I** hope my comments will help clarify  
• key issues in the debate over eminent  
• domain and perhaps even give the commit-  
• tee some guidance in developing effective  
• public policy for the state of Indiana on its  
• use.

• I should mention from the outset that I  
• will be approaching eminent domain pri-  
• marily, but not exclusively, from the per-  
• spective of economic development. I will  
• not address the legal aspects of its use  
• except in addressing the ways federal and  
• state courts have provided state and local  
• governments with relatively more or less  
• discretion in its use. I will leave legal issues  
• to attorneys who specialize in this area of  
• property law.

• *Kelo vs. New London and Local  
• Government Discretion*

• The U.S. Supreme Court has left the door  
• wide open for individual states and cities to  
• use eminent domain for a wide range of  
• purposes. The majority opinion in *Kelo vs.*

*City of New London* was quite clear that  
federal courts would not invalidate takings  
of private property by state and local gov-  
ernments as long as those governments  
followed proper administrative procedures.  
In essence, the federal court said that “pub-  
lic use” could be, from a public policy  
perspective, anything the majority of a local  
government considered important to the  
public health and welfare.

Many in the planning and economic  
development community have attempted to  
trivialize the importance of this decision by  
claiming the U.S. Supreme Court simply  
validated what state and local governments  
have been doing for 50 years.

In 1954, the U.S. Supreme Court upheld  
the use of eminent domain in *Berman vs.  
Parker* because it determined that the re-  
moval of urban blight served a “public  
purpose.” “Public use” was no longer  
limited to public services and facilities with  
broad access or use by the public. Support-  
ers of broad discretionary authority for local  
government use of eminent domain claim  
*Kelo* simply validated the practice estab-  
lished in *Berman*. I don't believe this is  
accurate. While *Kelo* did put a federal



*The foundation testified this summer before two interim study committees of the state  
Legislature. An adjunct scholar of the foundation, Samuel R. Staley, Ph. D., addressed the  
committee on eminent domain and the committee on Marion County consolidation. Dr. Staley  
is director of the Urban Futures Program for the Reason Public Policy Institute.*

judicial stamp of approval on eminent domain for economic development purposes, most state and local governments were at least bound by one substantive limit — they had to make a determination of “blight” before the power could be used. As Sandra Day O’Connor noted in her dissent in *Kelo*, a blight determination at least required local governments to show that the current land use was having a negative impact on the community or neighborhood. In the original meaning, urban blight also meant that the neighborhood would not likely turn around without direct government intervention.

Kelo removed this limitation at the federal level. In essence, the court said a public use was anything a legislative majority said would benefit the community more broadly. This could be something as narrow as a project that raises more tax revenue than the current use, even if the current use is both viable and thriving. Communities could use eminent domain to seize a Motel 6 or Holiday Inn if they believed a Ritz-Carlton could generate more tax revenues.

In short, Kelo laid down legal reasoning that transformed the term “public use” to “public benefit.”

#### *Judicial Protections for Private Property*

Critics of Kelo are correct when they say that that the new standard makes all private property vulnerable to a taking by government with virtually no substantive constraints. States and localities are bound by procedural requirements, and are required to pay compensation to the land owner, but there is no longer any practical presumptive right to private property. Indeed, the U.S. Supreme Court even allows the transfer of property seized by local governments to be transferred over to new private owners at steeply subsidized rates as long as the local government publicly decides it serves a public benefit.

These concerns are not hypothetical or unique to the circumstances surrounding Kelo. In *Eminent Domain, Private Property and Redevelopment: An Economic Development Analysis* (<http://www.reason.org/ps331.pdf>), I document with economist John P. Blair examples where cities have declared entire neighborhoods “blighted” because houses had one-car rather than

two-car garages, were too small or too old. In many cases, the public benefit is dubious at best. In Mesa, Arizona, for example, property with a long-time family business was targeted by another business owner. The city condemned the property so it could be redeveloped by another private business.

Closer to home, eminent domain is being used to bulldoze long-time homes and businesses for parking lots for the new Colts stadium, even though research shows the public benefits of sports stadiums are dubious at best.

#### *Eminent Domain and Development*

So, the time is ripe for the General Assembly to look carefully at the use of eminent domain for economic development purposes. In deliberating on the potential benefits of eminent domain, however, state legislators should keep its role in economic development in perspective.

In an article for *The Indiana Policy Review*, Vol. 16, No. 2, I observe that private property rights are at the core of market economies. Protecting those rights is an essential task of government. To the extent the General Assembly makes those rights less stable and less secure, economic development will suffer.

Economic development relies on the spontaneous development of private businesses and the willingness of people to move into homes where their lifestyles and livelihoods are secure. Now these questions will arise:

- How secure can someone’s home or business be when state and local governments can seize their property and transfer it to someone else on the basis of a simple legislative majority?
- Will someone buy a home in a deteriorating inner-city neighborhood, invest thousands of dollars in its renovation, or make a long-term commitment to the community if their property can be seized at the whim of the local government or redevelopment authority for high-profile projects with questionable benefits?

Oddly enough, no one questions this reasoning when it comes to large investments by large corporations. Their property rights are usually secured by contracts or development agreements with local gov-

*The new standard makes all private property vulnerable to a taking by government with virtually no substantive constraints. Cities are free to declare entire neighborhoods blighted because houses have one-car rather than two-car garages.*

*The public-use constraint is no longer practically binding on Indiana government.*

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ernments; the idea that a large company would invest in a state or city where their plant could be bulldozed at any time if another company provides a better offer to the local government seems absurd. For some reason, we fail to recognize that families and businesses of all sizes use the same calculus.

### *Proper Scope for Eminent Domain*

Looking at property rights and economic development this way does not imply that eminent domain can never be used. On the contrary, eminent domain may be necessary. But the Founding Fathers (and the U.S. Constitution) envisioned that those circumstances would be rare and the power would be used only when there was a clear and obvious public benefit.

Thus, they placed two significant constraints on its application:

- Just compensation to ensure there was a financial cost to seizing property and the

victims of eminent domain would be made financially whole.

- Public use, meaning the public had broad access to the service provided or that a public service would be provided that could not (or would not) be provided by the private sector.

The public-use constraint has been seriously eroded through judicial interpretation. In fact, I believe it is no longer practically binding on state and local government.

The General Assembly must also keep in mind that a number of alternatives to using eminent domain for economic development purposes exist, including:

- Market purchases of land.
- Phasing development to accommodate properties at different times in the development cycle.
- Purchasing easements or options for future development.
- Lowering taxes.

### *Time to Curb Abuse of Eminent Domain*

Will the typical property owner have much hope going up against a well-financed, well-connected developer who covets his land? Are there instances in which communities can make a legitimate case for seizing property even though it involves transferring ownership from one private party to another?

A legislative study committee began trying to answer such questions this week. Lawmakers listened to three hours of testimony during a hearing in Indianapolis. They plan to meet again next month before making recommendations in October.

The issue doesn't involve typical eminent domain cases in which governments take land to build roads or schools. And it only touches on cases such as Conseco Fieldhouse or the new football stadium, where government retains ownership of the facilities although their primary tenants are private enterprises.

In the Kelo case, the city of New London took land from homeowners so that a developer could build a hotel, offices and a convention center on the site. The city's goal was to maximize land use to increase tax revenues.

Current Indiana law allows governments to take land for private development if the property is designated as blighted. It's a definition that has the potential for abuse, and lawmakers should tighten the language during next year's session.

They also should ensure that any property owner who loses land through eminent domain is fairly compensated, especially when a private developer is involved in the taking.

The Supreme Court has delegated to state and local leaders the responsibility to be fair and judicious in deciding to take private property. To protect Hoosiers' rights, legislators need to better clarify the rules under which the powerful tool of eminent domain can be deployed.

— Editorial (excerpt), *Indianapolis Star*, Aug. 12



- Lowering regulatory barriers to development and investment.
- Streamlining planning, zoning and permit approvals.
- Providing public infrastructure in a timely and efficient manner.
- Mediating land disputes or acquisitions among private property owners.
- Providing loans, grants and tax incentives.

So, what guidelines should state legislators consider? I suggested four in the last issue of this journal:

1. *Require Use for Public Use.* The “public benefit” criterion adopted by the U.S. Supreme Court is so vague it lacks any meaningful constraint on government seizures of private property. The General Assembly should consider criteria that, at a minimum, require eminent domain to be used when: a) the general public benefits from general access to the service or facility; and b) the private sector cannot provide the public service or facility even though significant benefits will accrue to the community through its development.

2. *Use as a Tool of Last Resort.* Eminent domain should be used only when all other reasonable and voluntary approaches have been exhausted and the failure to acquire the property will prevent the project from moving forward. Eminent domain should not be considered “just another tool” for economic development purposes with the same standing and legitimacy given to other strategies and approaches such as tax incentives.

3. *Use When Faced With Imminent Public Endangerment.* Eminent domain should properly be used if public health and safety are endangered by the current use of the property, and its seizure will materially reduce the danger to public health and safety.

4. *Ensure That Private Benefits Are Incidental to the Projects.* Eminent domain should not be considered as an alternative strategy for acquiring land and property for private development. All private property owners should shoulder similar burdens and costs to ensure a level playing field.

### Consolidating Governments

*Summary of remarks before the Marion County Consolidation Study Commission*

*Aug. 10 at the Government Center in Indianapolis:*

My focus here will be on lessons we can learn from the academic research and experiences of other cities when they have consolidated local government functions.

Unfortunately, the positive experiences of individual cities have been spotty at best. In fact, I believe a general belief has emerged among scholars that city-county government consolidations yield little in the way of efficiencies in local government or benefits for economic development purposes.

City consolidations are now promoted for reasons other than efficiency, including:

- Better regional land-use planning.
- Coordinating regional infrastructure investments.
- General economic development.
- Redistribution of resources and income to low-income neighborhoods and central cities to improve regional equity.

But, even in these cases, we find more cases of cities falling below expectations than those meeting or exceeding them.

The political support for consolidation depends in part on an important myth: Bigger is better. Most of the arguments rest on the belief that better applications of “scientific management” will result in efficiencies and cost savings. This is an outdated approach to organizational management more suited to a 1950s automobile plant than a 21st-century city.

The general lack of savings and efficiencies among consolidated cities can be attributed to a number of factors, including:

- The difficulty of coordinating larger departments over larger geographic areas.
- Significant transition costs, such as re-programming computer systems, upgrading computers, reorganizing human resource management systems, re-aligning personnel.
- Adding more staff at middle-management levels.
- Fewer competitive pressures for cost savings.
- Longer than anticipated transition periods.
- More highly politicized policy decisions insulated from voter accountability.

In short, governments are large, complex bureaucracies, and managing them

*The arguments for consolidating governments rest on an outdated approach to organizational management, one more suited to a 1950s automobile plant than a 21st century city.*

*Indiana Policy Review  
Fall 2005*

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*Smaller governments tend to be more nimble, flexible and responsive. In fact, efficiencies of scale for many public services occur at relatively small population sizes, not large, geographically and politically diverse regions.*

efficiently is difficult under the best of circumstances. Consolidation creates even larger, more complex bureaucracies that are even further displaced from accountability (however imperfect) at the ballot box.

Smaller governments tend to be more nimble, flexible and responsive. In fact, efficiencies of scale for many public services occur at relatively small population sizes, not large, geographically and politically diverse regions.

Before cities consider consolidation, they should ensure that the proper performance-based management systems will be in place to achieve the forecasted savings. Most cities don't. They tend toward across-the-board consolidation without considering the important differences in the kinds of services provided by cities and counties. (See article by Sheriff Jim Herman.)

Local government reform efforts would be better focused on determining which services should be regionalized and which ones should remain local instead of seeking comprehensive and integrated consolidations.

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### *The Beauty of the Bribe*

Assume that there is a single consumer who wants a unique widget, and is willing to pay up to \$50 for it. Further assume that producing this widget costs \$20 in labor, \$10 in capital (the use of machines, equipment, buildings) and \$5 in normal profit. For the sake of simplicity, suppose that there is only one firm that can produce the widget. Both the consumer and the producer will be better off if the widget is produced and sold at a price between \$35 and \$49.99. Value created is \$15, and will be shared between the consumer and the producer depending on the exact price agreed upon. This is the best situation. Now, if the state effectively prohibits production of the widget, value lost is \$15. This is the worst case. And here comes the second-best: any bribe to a state official (usually by the producer) of less than \$15 would allow production to go ahead and a value of \$15 to be created (although part of the value is diverted to the state official).

The term "bribe" is usually meant to describe a situation where the exchange is secret, because the bribed is contractually forbidden to sell what he sells. Offering bribes is generally legitimate, but accepting them is often not. For example, restaurant waiters may accept the bribes called tips that regular customers give them, while purchasing managers are usually (although not always, or in all countries) forbidden to take gifts from suppliers.

Now consider public bribes, that is, bribes paid to state officials. It is easy to understand why the state wants to forbid its officials to accept bribes. Either the state acts in the general interest, and public bribes can lead some officials to act against the public interest. Or the state acts against the public interest, that is, it favors some interests at the expense of other individuals' interests, and letting its officials be bought off by harmed interests would go against public policy. Whether the state's reasons for prohibiting its officials to accept bribes are legitimate or not, the economics of bribes suggests that they are not harmful to the general welfare: under a state that acts in the public interest, there is little that the subjects can gain with bribes.

## SILHOUETTES ON THE HORIZON

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*Grigori Potemkin is alive and well  
working in the ecodevo department  
of your city hall*

by **RON REINKING**

Two decades into municipal economic development — “ecodevo” in city hall parlance — it is reasonable to ask a question or two. Why, for instance, isn’t it working and why hasn’t anybody noticed?

And as troubling as a policy failure may be, isn’t the lack of definition in such a critical public discussion even more troubling?

For economic development today can mean anything from moving food-service jobs from one area of town to another to counting tire stores within driving distance of the airport. And in place of the roads and sewers of previous generations, there is talk of convention centers, sports stadiums and even music halls, all with only dubious economic benefits.

Nowhere outside of public education do we tolerate such a gap between intentions and results. Yet, politician af-

ter politician has taken office on the promise to revitalize Indiana’s downtowns and inner cities. Indeed, they need cite nothing more than civic pride to justify the commitment of millions of dollars in present and future tax revenue.

There is a historic analogy that helps explain both the futility and the unaccountability of all this. It is the Potemkin Village, the wooden silhouettes of buildings meant to fool Catherine the Great of Russia into thinking her unrealistic development plans were progressing.

Field Marshal Grigori Potemkin (who can be thought of as the first ecodevo director) was commanded to populate the steppes of the southern Ukraine. For this, Potemkin recruited Mennonites from Germany on the promise they would be protected from religious persecution. They also were permitted to retain their culture,

· *The Russian field*  
· *marshal was a genius*  
· *at producing — for a*  
· *politically prescribed*  
· *time — the trappings*  
· *of wealth and progress.*



Ronald L. Reinking, an adjunct scholar of the foundation, is a Fort Wayne Certified Public Accountant. He is the author of “Grab Your Wallet; City Hall Is Getting Into the Hotel Business,” *The Indiana Policy Review*, spring 2005.

· Indiana Policy Review  
· Fall 2005

## THE OUTSTATER

*Fort Wayne's Grand Wayne Center, which has lost \$7 million since 2000, is typical of other Indiana public projects justified by supposed secondary contributions to the local economy.*

language and laws. They were Potemkin citizens, one might say.

For Potemkin was a genius at producing the trappings of wealth and progress — for a politically prescribed time, at least.

It was Potemkin who organized Catherine's fabulous Crimean tour of 1787, convincing her that the country was alive with agriculture and commerce and strong enough to enter a war.

Some say he propped the silhouettes of sham villages on the horizon to impress the Czarina as the royal train sped by. Others say it never happened. Whatever, the hodge-podge of immigrants and desperates in the actual villages that Potemkin assembled did not thrive.

Potemkin, as any present-day politician bent on taking credit for economic growth, exaggerated all that he did. His career is summed up in this encyclopedia reference:

Potemkin spared neither men, money, nor himself in attempting to carry out his gigantic schemes for the Ukraine, but he never calculated the cost. More than three-quarters of the design had to be abandoned when but half-finished.<sup>1</sup>

### *A Potemkin Center*

If the Potemkins of Fort Wayne do not care to calculate the cost of government-driven development, there are those at my foundation who do.

For example, the Grand Wayne Center is held up as the pluperfect example of how ecodemo can work. The center, recently expanded, is meant to serve as a focal point for what is left of the city's downtown

community. Boosters of the project are quick to note that the center's 30-year financing bonds were paid off 17 years early.

What is not reported is that without heavy tax subsidies the bonds would have defaulted. Fully 82 percent of its revenues came from city, county and state subsidies, grants, etc.<sup>2</sup> Others might mention the lost community revenues from tax rebates and other privileges given the center but denied a private enterprise.

Nonetheless, there is an underlying public belief that the center is an asset contributing to the city as a whole. It cannot be said, however, that the center enjoys operational profits. It remains subsidized by public monies. (Editor: The accompanying charts show how little actual development is occurring.)

Indeed, the center is most accurately thought of as a mere bricks-and-mortar extension to the city-county building, with little more economic value than, say, a parking garage.

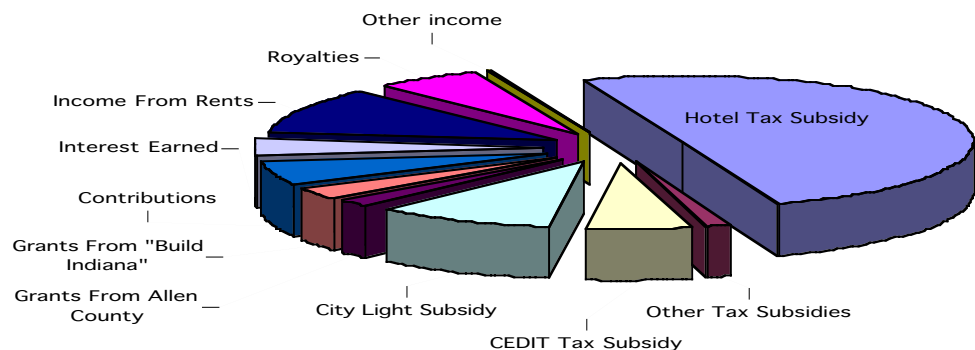
Following is a budgetary profile of the center's operations (2000-2004) prepared for the Indiana Policy Review Foundation.<sup>3</sup> It is typical of many recent Indiana public projects justified by supposed secondary contributions to the local economy.

### *The Grand Books*

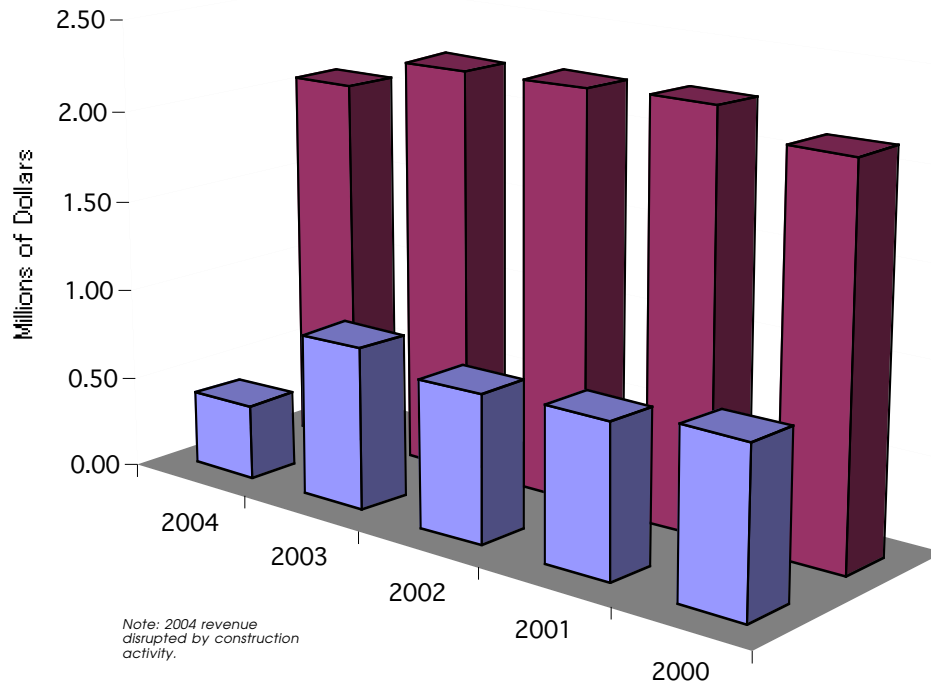
- Operating revenues of the Grand Wayne Center absorb only 35 percent of operational expenses. A \$7-million deficit has accumulated since 2000.

- Total operating revenues cover only 68 percent of paid wages for the years studied.

*Where Fort Wayne's Grand Wayne Center Gets its 'Profit' (2000-2004)*



■ Total operating revenues ■ Total operating expenses



- Lease costs, interest costs and property taxes are not reported in the financial statements of the center.

- Since 2000, more than 18 million dollars in tax subsidies, grants and contributions have financed the Grand Wayne Center.

- Payments of \$2.1 million dollars were made to the Visitors Bureau and the Redevelopment Commission with the center's funds. These transactions are not reported as operational costs but as capital transfers.

- Operational management and financing of the center lacks accountability and responsibility as a result of basic governance structure.

The original project was financed with \$31,985,000 in bonds issued by the Fort Wayne Development Authority.

Nonetheless, the expansion project was overseen by the Fort Wayne Redevelopment Commission. And although a Redevelopment Commission project, the center continues to be operated on a day-to-day basis by the Fort Wayne Convention and Tourism Authority. Moreover, the center expansion was partially financed under the authority of the Professional Sports and Convention Development statute.

- All sales taxes collected and all employee payroll withholdings are isolated and directed to secure the lease and financing commitments. There is no contribution to the local tax base from these sources.

- The center doesn't pay property taxes.

- Finally, we can find no empirical evidence substantiating political claims that the center or adjacent hotels have been instrumental in promoting investment.

### Conclusion

Municipal economic development projects have more to do with political goals than economic ones.

This is damaging to a community in several ways: First, it invites corruption and cronyism; second, it supplants policies proven to encourage growth, *i.e.*, land-use reform, assurance of property rights and relief from regulation and control.

It is a historic irony that Potemkin's Mennonites later would emigrate to America. The seed sacks of Turkey Red Wheat they carried to the Great Plains created the enduring growth that Catherine the Great had envisioned for her own country.

The American constitution could guarantee what a Russian monarchy could not — liberty rather than mere privilege.

It is a distinction that ecodemo directors might explore.

### Endnotes

1. Editors. [www.answers.com/topic/Grigori Potemkin](http://www.answers.com/topic/Grigori_Potemkin). Posted Aug. 7, 2005.

2. Ron Reinking. "Grab Your Wallet; City Hall Is Getting Into the Hotel Business." *The Indiana Policy Review*, Spring 2005.

3. Robert Lister, executive director of the Grand Wayne Center, in response to a foundation request of May 9, 2005, pursuant to Indiana Code 5-14-3 *et seq.*

• *There is no reason to believe political claims that the Grand Wayne Center (see chart above) or adjacent hotels have been instrumental in promoting private investment downtown.*

## COLLEGES HAVE LOST THAT 'AHA' EXPERIENCE

*The historic, unrelenting, unbiased and unbought pursuit of truth*

*Can the bastions of the irrelevant, the politically correct and the obscure, be reformed?*

by CECIL BOHANON

More than ever, Indiana is looking to its universities and colleges to be engines for economic growth. State-supported schools in particular are expected to generate graduates with marketable skills that command high salaries. Taking Silicon Valley as a model, many hope that Indiana universities will be incubators for new technology that will generate the high-paying jobs that keep well-trained graduates in the state.

Those of us on the front lines of higher education quite naturally ask what this implies for university teaching. In an age when universities often are portrayed as bastions of the irrelevant, the politically correct and the obscure, does the curriculum of higher education need a total makeover to respond to contemporary challenges?

I recently had a conversation along these lines with Prof. Kenneth Minogue of the London School of Economics.

When considering the essence of what the university experience is supposed to be, he referred to the ancient Greek philosopher-scientist Archimedes. The

King of Syracuse had been told his crown was made of pure gold but suspected he had been cheated. "Give me evidence one way or another," the King told Archimedes.

Archimedes, while taking a bath, realized that gold is denser than baser metals. This implied a given weight of gold would displace less water than an equal weight of a less valuable metal. All the king needed to do was find a volume of pure gold equal in weight to his crown and see if it displaced less water than the crown. Archimedes was so excited he ran through the streets in his bathrobe proclaiming, "Eureka, I have found it!"

To Professor Minogue's way of thinking, this is the great goal of university education. Not, mind you, to have students parading around the streets in their bathrobes, but to have students experience that great "aha," that great flash of insight, the exhilaration and joy that is found in "putting it all together."

To some, this educational goal may seem quaint, simplistic and outdated. We need our college graduates to know the details of accounting or marketing, not airy-



Cecil Bohanon, Ph.D., an adjunct scholar of the foundation, teaches economics at Ball State University.

fairy stories of ancient Greeks. But maybe not.

At the Miller College of Business at Ball State, we have been asking business leaders for a number of years what they are looking for in college graduates. In the fall of 2003, I had the privilege of discussing this issue with the business-laden advisory board to the college. Interestingly, what they told us was in line with what other colleges of business are hearing.

The business communities' concern with recent graduates is not that they are technically incompetent. The students are well-versed in their major areas of study. Accounting graduates know accounting, marketing graduates know marketing. However, what graduates lack is the ability to integrate knowledge from a variety of areas. They lack the ability to see problems from the overall perspective of the business.

The advisory board listed a number of desired attributes for graduates. Businesses are looking for graduates who have broad knowledge, who have an ability to make connections and see the larger picture. They want graduates who are self-starters, who can think analytically and logically, make inferences and reach conclusions.

In short, businesses are looking for graduates who can access knowledge from many sources to solve real-world problems. Of course, this is exactly what Archimedes did. Education that emphasizes general problem-solving may be more valuable to students, business and the state than many might imagine. This is corroborated by evidence indicating economics majors, trained in more general, interconnected and abstract ways of thinking typically command higher salaries in the long run than majors in more applied fields of business.

The great purpose of higher education historically has been the unrelenting, unbiased and unbought pursuit of truth. We may do many things in the academy, but if we do not emphasize this pursuit and teach the necessary scholarly and critical methods of arriving at truth we will fall short. Perhaps undergraduate higher education needs not so much to reinvent itself



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as much as rediscover its ancient and lasting values.

### Wal-Mart: The Yankees of Retail

by Eric Schansberg

In sports, many people love to hate a successful team. The Yankees, Cowboys and Lakers have a large number of avid fans, but they also have the most vocal opposing fans. It reminds me of Wal-Mart, its fans and its critics. Wal-Mart is a company with more than a million satisfied workers, millions of eager owners (shareholders) and hundreds of millions of avid customers. But it's also a company with a lot of enemies who have a surprising level of venom for it.

One key difference with athletics: sports is a "zero-sum game" — if your team wins, my team loses. With Wal-Mart or any standard market activity, the result is a positive-sum game — as consumers, workers, suppliers and Wal-Mart engage in untold billions of voluntary, mutually beneficial trades.

I've also become convinced that part of the hatred toward Wal-Mart is elitism. Ironically, Wal-Mart is both a huge corporation and a tremendous friend of the poor. Its stores are disproportionately staffed by relatively low-skilled people. Its products are bought disproportionately by those with below-average incomes. And its longer lines favor those for whom money is more valuable than time. But for many of its critics, Wal-Mart is a convenient target because they are snobs who would never set foot in such a "low-brow" shopping environment. Going back to sports for an analogy: Wal-Mart is similar to bowling and NASCAR — immensely popular activities at which wealthier people often sniff their noses.

While some of the complaints about Wal-Mart may have merit, most are based on a failure to recognize the workings of competitive markets. Wal-Mart is accused of exploiting workers in a variety of ways. But how can they maintain an active labor force with that reputation? Wal-Mart is accused of seducing the poor to buy their product. But are poor people being attracted by low prices or allured by some

HIGHER EDUCATION

*If colleges and universities do not teach the necessary and historic methods of arriving at truth, they will fall short.*

— Bohanon

COMMERCE

*Of Wal-Mart's enemies, unions understandably want a piece of its pie. But Wal-Mart would not be nearly as competitive if it had to pay the artificially high wages demanded by unions — or to deal with the inevitable inefficiencies associated with union representation.*

— Schansberg

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## CONSTRAINED VISION

COMMERCE

*The teacher unions are boycotting stores because of Wal-Mart's support for publicly funded vouchers.*

— Schansberg

magic formula they're piping through the ventilation? Wal-Mart is accused of forcing American communities to accept box-like buildings. But cities are free to negotiate more suitable arrangements with Wal-Mart — and many have done so. Wal-Mart is accused of making huge profits. But it's also a huge company with prolific sales and its 3.6 percent profit margin is well within the norm.

The newest complaint is that workers at Wal-Mart rely on government welfare programs — from Food Stamps to Medicaid. The complaint is expressed as Wal-Mart depending on the government and bilking taxpayers. But this purposefully confuses the welfare recipient with his employer. In fact, Wal-Mart should be praised for giving employment opportunities to less-skilled workers. How would the worker (and taxpayers) be better off if Wal-Mart didn't employ that worker? The cause of the low earning power is the worker's relatively low productivity — not some grand conspiracy to keep wages, somehow, artificially low.

Of Wal-Mart's enemies, unions understandably want a piece of this (huge) pie. But Wal-Mart would not be nearly as competitive if it had to pay the artificially high wages demanded by unions — or to deal with the inevitable inefficiencies associated with union representation. Besides, workers are voting with their feet by exhibiting their willingness to work for Wal-Mart every day.

Likewise, the most recent protests have come from the teacher unions — as they encouraged people to boycott Wal-Mart at the start of this school year. Of course, the teacher unions want Wal-Mart to become unionized. And they're upset that Wal-Mart's foundation has financed charitable scholarships for the poor and has supported publicly-funded vouchers. The former is most amusing. When you see people getting upset at charity, you know their selfish interests are being harmed.

Forcibly eliminating or restricting Wal-Mart — or any retail store — would hurt consumers, workers and suppliers who would be deprived of legitimate opportunities to buy, to work and to sell. The beneficiaries of such restrictions are



James A. Herman, a long-time member of the foundation, is Sheriff of Allen County.

the retailers who would not need to compete with Wal-Mart. Producers always benefit from restricting their competition — whether farmers or textile companies, whether the post office or the public schools.

While professional golfers would love legislation that prohibited Tiger Woods from entering tournaments — or allowed him to play with extra weights strapped to his legs — the better answer is not working to eliminate or reduce Tiger, but rising to his level.

### Cooperation, not Consolidation

by Jim Herman

There has been much in the news lately encouraging cooperation between city and county government. Most times disappointment, failure, turf battles and stalemates are words used to describe the cooperation — or lack thereof — by these two entities. I take exception to the current trend depicting the two governments always as antagonists. I would like to point to a few success stories in the communications field. Until recently, the Allen County Sheriff's Department and the Fort Wayne Police Department were on two different radio systems. We could not talk to each other and we used different radio codes. Communication between the two was through telephone. A city police officer would call his dispatcher to relay a message to a county dispatcher; the county dispatcher would relay the message to the county officer. It often resembled the game "telephone." Precious minutes were often lost because for two officers to talk, four people had to be involved.

Where are we now? Through cooperation, the city and the county together purchased a new radio system that is state-of-the-art. We now are on the same system with the same radio codes and officers talking to each other directly. They can be put on talk groups when all are working on the same assignment. They also can communicate with each other through mobile data terminals (computers). The County Dispatch Center can take calls for the city and vice versa. Both dispatch centers can communicate through data terminals, radio or telephone. The centers are next door to each other separated by a glass wall, but



they can walk through a door if need be and communicate directly.

For all practical purposes, we have a combined system that operates well and, in fact, has some redundancy built in so that if things become really busy on one side, calls can be taken by the other side. In New York City, when the twin towers fell, the one thing that became apparent was their lack of ability for emergency responders to communicate with one another. They still can't. We can. This system is head and shoulders above what most counties have.

The police officers on both sides of the fence cooperate every day working hand-in-hand to get the job done. We have a combined communications system, with city and county dispatchers working together well.

The Fort Wayne police chief and I have studied the feasibility of combining further and have decided there would be no improvement. Others feel combining everything is the way to go regardless of improving service or saving money. This leads me to believe that control is the real issue. Control is necessary but so is responsibility. While the county has responsibility to the city, the opposite is not true.

Research tells us that combination governments fail much more often than succeed, and successful ones generally do not save money nor do they improve service.

If combining fails, do you go back to the way things were working? Probably not since no one wants to take a step backward. So you spend more money to make it work in a different way and if that doesn't work . . . who knows?

UNIGOV

*Others feel combining everything is the way to go regardless of improving service or saving money. This leads me to believe that control is the real issue.*

— Herman

### *A New Orleans Perspective*

We are now reaping the benefits of a welfare state. For more years than most can remember, we have been told by those holding office that they will take care of us. We have provided food, clothing and shelter to the extent that the recipients became entirely dependent on government resources to live. They have reached the point that no longer do they have the knowledge to take care of themselves. They will sit there and drown or go hungry, and curse the fact that the government has not gotten them out of this mess. When it is all said and done, there is but one person who is responsible for me, and that is me. The responsibility falls to me to take care of my family, not the government. Society, not government, has an obligation to provide care and sustenance to those who, because of age or physical impairment cannot take care of themselves, but able-bodied people who stand around and complain that no one is doing anything for them deserve whatever the fates cast in their direction. Life is hard, and you either get tougher or you get washed away — it is as simple as that. Politicians will never, ever take care of you — they only want one thing from you, and that is to stay in power as long as they can. In a situation like Katrina, they will stand in front of the cameras and microphones and denigrate everyone above them in government to take the eye off of their pathetic efforts. This is a situation that they have created, and now the good citizens of the area will have to step in and clean up the mess that has been created by the politicians. It won't happen overnight, but it will happen — there are too many good people who live in that area for it not to happen. I love the people of New Orleans and the surrounding parishes, but I despise the politicians . . . I just . . . hope that when the area is rebuilt, they stay away from the massive welfare system they had before — absolutely no good comes from welfare. It depletes available resources, making it ever more difficult for what passes as government to respond to the true needs of the community.

— Robert Johnson, retired New Orleans police captain, quoted in the Sept. 12 *Federalist Patriot* No. 05-37

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## HARD LESSONS ABOUT THE POLITICAL NATURE OF FEDERALISM

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*And the last of the power politicians: J. Roberts Dailey*

*“In situations like (Katrina), the response of the federal government is at the request of the local government. That is how protocol works. The protocol is based on the custom of federalism.”*

— Brian J. Nickerson,  
Pace University’s Institute for Public  
Policy and Management

by ANDREA NEAL

After the bodies are recovered and debris cleared from New Orleans, the federal government will no doubt accept blame for an agonizingly slow response to the devastation of Hurricane Katrina. As a teacher of American History, I hope the blame ends there.

Glued to my television set over the past few days, I have watched as one person after another — both ordinary folk and elected officials — have misstated the role of the federal government in emergency response. Some have attacked the feds for not coming to New Orleans before the hurricane hit to force people from their homes to safety.

There are historic, political and philosophical reasons that federal troops didn’t march south the minute meteorologists forecast a Category 4 storm.



“It would be unprecedented,” says Professor Brian J. Nickerson of Pace University’s Institute for Public Policy and Management in New York City, an expert in emergency preparedness in America. “In situations like this, the response of the federal government is at the request of the local government. That is how protocol works. The protocol is based on the custom of federalism.”

In our federal system, power is shared by local, state and federal governments and each has distinct spheres of influence. There is overlap, to be sure, but the feds traditionally oversee national security while state and local governments do natural disasters. Complicating the lines of authority, each branch of government has different roles. Once invited, the President may order troops in, but only Congress can spend money. In



*Andrea Neal, M.A., formerly editorial page editor of the Indianapolis Star, writes a weekly column for the foundation as an adjunct scholar. Neal won the “Best of Gannett” award for commentary and was recognized three years in a row as Indiana’s top editorial writer. She holds the National Award for Education Writing and the National Historical Society Prize.*

the absence of a single, centralized authority, coordination in any catastrophe is a challenge.

"The biggest problem we have is inherent in our system of federalism, a system that is intentionally designed to be fragmented, for good reasons, because we are fearful of centralized authority," Nickerson says. "It creates a situation where any type of governmental effort at centralization or coordination is going to be an uphill battle. You are almost going against the forces of the political nature of federalism."

Since the terrorist attacks of Sept. 11, 2001, federal and local emergency planners have tried to make coordination a priority. State governments have passed laws to clarify lines of responsibility. Congress created a new Department of Homeland Security to coordinate intelligence, law enforcement and response efforts. "Incidents like New Orleans clearly demonstrate that we've got quantum leaps ahead of us," Nickerson says.

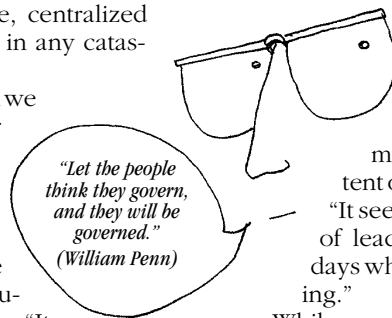
Ironically, he says, the federal focus has been on terrorism, not natural disasters, despite the fact the "first-responder" community has always seen weather as a greater threat. Under any scenario, the assumption is "the federal government would come in after the event and provide resources necessary for local responders to get the job done. . . . Most models assume that local responders are on their own for the first 24 to 36 hours."

What about a situation such as New Orleans when local governments were themselves incapacitated by the disaster and local law enforcement officials were unwilling or unable to reach the scene?

"Most planning models never go to that extreme, never take into account the highest level of catastrophe," Dickerson notes.

Now they will. Like all adversity, Katrina has taught valuable lessons.

"I think, first and foremost, it will reemphasize at a national level that it's not just terrorism, it's natural events and disasters we have to pay attention to," Nickerson says. "Lesson No. 2 is we have a long way to go yet at any level of federal-state coordination in this area."



When the timeline of last week's events is established, Nickerson suspects the federal government will be at fault for not moving quickly once the extent of the tragedy became known. "It seems to me there was a vacuum of leadership around the first few days when these events were unfolding."

While some may use Hurricane Katrina to justify more sweeping national powers in an area traditionally considered local domain, Nickerson thinks it unlikely the federal government would ever be granted preemptive power.

"If we want more order we are going to need more centralized government, more federal control, perhaps more involvement (in forced evacuations). Do we want that for the sake of maintaining social order, potentially at the risk of individual liberty?"

For most Americans, the answer is no. The people of the Gulf Coast — socked first by forces of nature, then by the political forces of federalism — may well have a different answer. (Sept. 7)

#### *Dailey Wielded Power Without Apology*

In the obituaries remembering the late Indiana House Speaker, J. Roberts Dailey, one word repeatedly appears: power.

"As speaker of the House, Dailey was not afraid to wield power," said his hometown newspaper, *the Muncie Star Press*.

Dailey "used the powerful speaker's position to stave off the creation of a state lottery," noted the Associated Press.

*The Indianapolis Star* recalled Dailey's adamant opposition to legislation allowing banks to operate branches across county lines — a position that put him at odds with fellow Republican Gov. Robert D. Orr.

Dailey, who often stopped bills he disliked by declining to assign them to committee, permitted this one to progress to the floor. There, in a highly unusual move for a speaker, he stepped down from the podium to appeal to his colleagues. The bill lost, prompting Orr to declare in 1984, "the speaker is the most powerful man in Indiana government" when the legislature is in session.

*Dailey "is the most powerful man in Indiana government" when the legislature is in session.*

— Gov. Robert Orr, 1984

## ANDREA NEAL

*The legislative process has been “democratized” since Dailey. Under House Speaker Brian Bosma, Republicans have a reasonable expectation that their bills will be heard, whether Bosma agrees personally with them or not.*

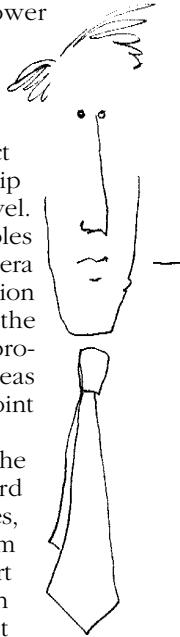
Dailey exercised power without apology, not for the sake of doing so but because he believed it the right thing to do. In many ways, his conduct mirrored that of Speaker Tip O’Neill at the federal level. Although ideologically poles apart, both reflected an era in which political position and seniority dictated the course of the legislative process, preventing many ideas from ever getting to the point of an up-or-down vote.

While O’Neill used the speaker’s job to reward friends and punish enemies, Dailey saw it as a platform from which he could exert the upper hand in policymaking. He almost single-handedly kept the lottery out of Indiana for years, decrying the something-for-nothing mentality behind gambling. His unpopular position eventually cost him reelection in 1986.

There’s nothing inherently wrong with leadership using power to advance partisan goals, notes Robert L. Dion, assistant professor of political science at the University of Evansville.

“It’s worth distinguishing between a speaker who allows his majority party caucus to thwart the efforts of the party out of power — that is a very old story — and a speaker who refuses to allow his own party to advance a particular policy because he personally opposes it. The latter instance is much more rare, but it is not unknown. Think of (Tony) Blair, who essentially told the Labour Party that he wanted to go to war and he would step down as prime minister if his party didn’t back him up. Clearly, Labour was opposed to the Iraq War, but they didn’t want to lose their popular leader.”

Old-fashioned by today’s standards, neither Dailey nor O’Neill could be compared to a Boss Cannon or a Czar Reed. Rep. Thomas Reed, U.S. House member from Maine, introduced procedural changes at the end of the 19th century that strengthened legislative control by the majority party and increased the power of the speaker



and the Rules Committee. Ten years later, lawmakers revolted and reduced the speaker’s power.

Since Dailey’s day, the legislative process has been “democratized” further. Under House Speaker Brian Bosma, R-Indianapolis, fellow Republicans (though certainly not Democrats) have a reasonable expectation that their bills will be heard, whether Bosma agrees personally with them or not.

Bosma’s use of unilateral power is rarer and more restrained. These days, the public would consider arrogant the high-handed way in which Dailey acted on principle. At the time, however, Dailey was well-regarded by both peers and the public.

Dailey himself blamed his gambling stance for his defeat, proving, in Dion’s words, “there is some rough justice” as the political process plays out:

Our system of separated powers is designed to make things hard to pass in the first place. Layered on top of this is the historic development of our legislatures. We have tended to empower the leader of the party in power to determine which bills get heard first and which ones get heard at all. The voters pick a particular party, based on some understanding of its general policy stances, and if they approve of its performance, they return them to office for more of the same, or turn them out of office if they don’t like it. Having some form of leadership in the organization helps to increase efficiency and provide order, rather than a free-for-all.

Dailey understood this dynamic so he used his power to the maximum during the brief window in which he was the most powerful man in Indiana. (*Aug. 17*)

*Even George Washington  
Didn’t Always Get his Way*

John Roberts looks to have it easy compared to what John Rutledge endured.

When George Washington picked Rutledge to be chief justice in 1795, the Senate refused to consent. Rutledge had alienated most Federalist senators with his

“We hang the petty thieves and appoint the great ones to public office.”  
(Aesop)

opposition to Jay's Treaty, a foreign policy initiative approved just a few months earlier.

Rutledge was a successful lawyer and an essential member of the Constitutional Convention of 1787, they acknowledged. He had been governor of South Carolina and even served as an associate justice from 1789 to 1791.

But his politics (he had tried to talk President Washington into rejecting the treaty) had become intolerable. So, on Dec. 15, 1795, the Senate rejected him, 14-10. Shortly thereafter, Rutledge attempted suicide by jumping off a wharf into Charleston Bay. He survived the incident, but became a recluse.

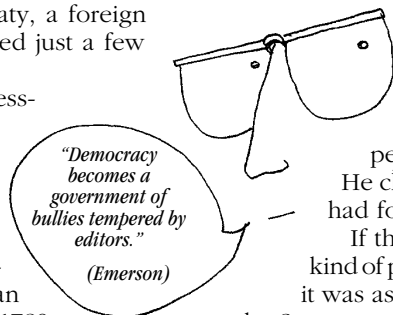
The story of John Rutledge was appropriate as confirmation hearings neared for Roberts, President George W. Bush's nominee for chief justice.

On the surface, the Rutledge tale confirms a Senate tradition of independent judgment in the exercise of its constitutional duty to offer advice and consent to Supreme Court nominations.

It also refutes the oft-stated belief that what happened to Robert Bork in October 1987 was unprecedented. Bork was the distinguished appeals judge picked by President Reagan to replace retiring Lewis Powell in 1987. On paper, Bork had impeccable credentials: as a lawyer, Yale University professor and U.S. solicitor general. But he was felled by a hostile Senate because of his political views on issues involving privacy and the First Amendment.

Here's what's important to understand about the Rutledge debacle. It was the exception during Washington's tenure as president, not the rule. Washington made a record 14 nominations to the high court and got his way almost every time, even as the political divisions in Congress heated up during his second term.

"Washington's most enduring legacy to the Supreme Court was the precedent he established in his selection criteria for the nomination of justices," Sweet Briar College Professor Barbara A. Perry notes in the Oxford Companion to the Supreme Court of the United States.



He had no litmus test but he "insisted that his nominees be political and ideological soul mates," Perry says. He sought out people of talent and integrity. He chose justices "with whom he had forged personal ties."

If the President picked the right kind of person for the Supreme Court, it was assumed by the Founders that the Senate would usually accept him. The President and the Senate are not "co-equals" in the confirmation process as the liberal advocacy groups, People for the American Way and Alliance for Justice, constantly claim. The writings of Alexander Hamilton make clear that the President was given the upper hand to insulate the process from the political gaming that characterized the legislative branch.

What is the Senate's role in the confirmation process? Far more than a rubber stamp, it is the Senate's job to make sure the nominee is qualified and will join the court without preconceived notions as to how he might rule in any particular case. If the Senate has abused its "advice and consent" role in recent decades, it is not by rejecting nominees such as Bork, but by turning confirmation hearings into a circus and by attempting to force nominees into answering questions on hot-button issues such as abortion.

In fact, only 22 of 147 Supreme Court nominees since George Washington's time have even addressed senators in person. The Founders would have been dismayed in 1991 when the Democratic-controlled Judiciary Committee grilled Clarence Thomas for several days, treating him more like a guest on the Maury Povich show than like a presidential nominee for high office.

Senate Judiciary Committee Chairman Arlen Specter, R-Pa., has pledged that the upcoming hearings for Roberts will be "full, fair and complete."

Most talk of filibustering has been quickly quashed. That's wise. It is the Senate's job to control its political impulses and to treat President Bush's nominee with respect and decorum. It can reject him, as it did John Rutledge, but it mustn't hijack the process through gamesmanship. (Aug. 16) Q

*If the Senate has abused its "advice and consent" role in recent decades, it is by turning the confirmation hearing into a circus.*

## THE AMAZING WORLD OF INDIANAPOLIS POLITICS

*We may need to ask more probing questions than 'Are we giving you enough money, Mr. Irsay?'*

*Does it make sense to subsidize a sports stadium on one side of town and dismiss police officers on the other side?*

by FRED MCCARTHY

The public discussion of Indianapolis's organizational and financial problems is beyond belief. The negotiations between the Capital Improvements Board (CIB) and the Colts consist mostly of the CIB saying, "Are we giving you enough money, Mr. Irsay?"

While this continues on the west side of town, on the east side the mayor is dismantling municipal government piece by piece as an economy measure. He is more interested in keeping a professional football team in town than in the well-being of his constituents.

Yet, not a single media, political or business leader is willing to step forward and say, "Stop." Public funds are public funds, regardless of the specific tax source. We must not take on a billion-dollar debt to build a football stadium when we cannot afford to maintain public-safety forces. There is a connection.

Indianapolis has many fine institutions and facilities of which we should be proud. We need defer to no other city in our cultural, educational and business organizations.

It becomes ever more obvious, however, that Indianapolis cannot afford to continue to pay blackmail to the National Football League and its member teams. And despite all the absurd hype and hyste-

See 'Silhouettes on the Horizon'  
— Ron Reinking, p. 19

ria, the presence of a football team does not make this a world-class city. (July 4)

*The Truth Slips Out?*

Some months ago we started to hear a new idea. It went like this: We need to expand the convention center, which would necessitate *building a new stadium*, which would be an integral part of the convention center itself.

Now, the CIB is amending that sentence to focus on those four words — "building a new stadium" — making that the primary purpose of the project. There is little doubt in my mind that this has been their intention from the start.

A headline in the July 27 issue of *the Indianapolis Star* seems to have been a slip. It reads, "Details Hold Up Colts' new Stadium." This confirms what some of us have thought all along — that references to expansion of the convention center are a feint meant to deceive the taxpayers of Indianapolis, at least as far as the Colts and the CIB are concerned. The stadium is *the* project.

That is further strengthened by a quote in a *Star* column of July 29. One of the details at which the Colts are balking is a \$3 ticket tax as part of the funding of construction.

"Charles Schalliol, the state budget director, said lack of a ticket tax could mean



*Fred McCarthy, a former president and CEO of the Indiana Manufacturers Association, is a particularly savvy Indianapolis citizen and a longtime member of the foundation. McCarthy is the editor of Indytaxdollars, an Internet site reviewing his city's public policy decisions at www.indytaxdollars.typepad.com.*

trimming some features of the stadium or the companion Indiana Convention Center expansion,” the report stated.

Does anyone want to hazard a guess where such trimming would take place when it becomes necessary? Secret negotiations apparently have already given the Colts everything but the right to re-name the city itself. (*July 30*)

#### *More of the Same*

Someone has defined insanity as doing the same thing over and over and expecting different results. It is frightening to find the leadership of a great city following that pattern.

The great city is, of course, Indianapolis.

A report on the radio this morning told us the CIB is advancing several millions of public dollars for the purpose of demolition of buildings to make room for the new Colts playpen.

Presumably these buildings were at one time on the property tax assessment rolls, making a positive contribution to the city’s general fund from which the police department is operated.

This morning’s paper tells us the mayor is planning to fire 48 police officers because he cannot find the dollars to pay them out of that same general fund. So while the source of the property tax is being decimated by one city agency, another is firing public safety personnel for lack of property tax funds.

What’s worse, the whole scenario is a continuation of the disastrous city policy carried out for the last two to three decades.

We are told the property tax base in the “older city” (read “downtown”) is decreasing, *i.e.*, bringing in less revenue. (It apparently has never occurred to the math sharks at city hall that various grants, subsidies, abatements, use of Tax Increment Financing and outright removal of property from the rolls will have that effect.)

A quarter century of pouring public money into private subsidies may have brought more people into the downtown pubs, but it has left the municipal treasury in dire straits — at least that part of the municipal treasury which supports those programs have the right to expect. But, don’t worry, folks. We can still subsidize those millionaires out of that other pocket.

Is there an impeachment procedure for mayors? (*Aug. 9*)

#### *Kinda Scary*

In February 2004 we wrote a sarcastic set of suggestions for the Indianapolis mayor in handling his fiscal problems. They were, in fact, so far off the wall, even by our own standards, that we never attempted to have them published.

Four days ago, however, *the Star* reported that the pork package known as the Federal Transportation Act included the following: “\$15.7 million for a new transit center on the southern edge of downtown Indianapolis.”

In light of this, here is what we came up with a year and a half ago:

One last item, probably not really of financial relevance as far as building the stadium, but might help fill it. All IndyGo bus routes which come downtown should be required to use the stadium as the transfer point, thereby making sure that the occasional fan who does not want to drive will not have to walk far from the bus stop to the stadium.

That’ll learn me, darn me; you throw out a crazy idea and some stranger to common sense runs with it — at the expense of the taxpayer, naturally.

At the risk of having this happen again, we’ll now repeat the suggestions that originally preceded the item above:

- The police department is currently a headache for you in trying to finance their outlandish salary demands. A simple council enactment, requiring all citizens to acquire appropriate weaponry allowing them to take responsibility for the safety of their own lives and property, would allow you to eliminate the department. A small, part-time force would have to be retained to handle traffic at game time, of course.

- If still more money is needed, a similar council enactment could require every property owner to acquire fire extinguishing equipment befitting the size, type of construction and occupancy. The fire department then could be written off, too. Removal of the huge, speeding trucks would be a plus in lessening the danger to other motorists — particularly those who might be on their way to a game. (*Aug. 15*)

*Why is it important to maintain Indianapolis public safety? Well, to manage game-day traffic.*

## ABUSES AND USURPATIONS

*“The police chief boasted that 7,000 more military, police and other law officers on the streets had made New Orleans ‘probably the safest city in America right now.’”*

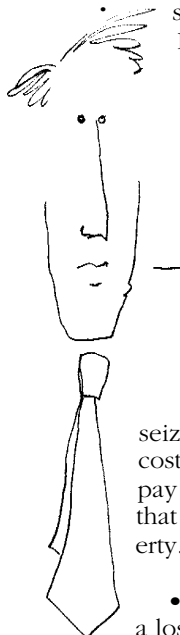
— Associated Press, Sept. 8

- When Gov. Mitch Daniels is fully rested from his trip to Japan, where he was entertained by the most important executives of some of the world’s largest firms, he will want to see Urschel Laboratories in Valparaiso. The company, in its fourth generation of family management, makes food-processing equipment. Here is *the Indianapolis Star* reporting the recommendations of Federal Reserve Bank economists:



Urschel is exactly the kind of small-to-medium-sized business that states should be encouraging, rather than going after huge projects.

- And if Valparaiso is too far away, the governor might visit the N.K. Hurst Company, home of “Hurst HamBeens,” in the shadow of the Statehouse for 57 years. He will want to get over there before the plant is bulldozed to make way for Colts Stadium parking. Rick Hurst, president of the



*“A civilization that feels guilty for everything it is and does will lack the energy and conviction to defend itself.”*

(Jean Revel)

family-owned business, told *the Star* in September that the state didn’t even try to negotiate. Instead, he was sent an official letter detailing the government’s intent to seize his property. Hurst estimates it will cost taxpayers more than \$7.5 million to pay him to leave his current location, and that doesn’t include the cost of the property.

- Terre Haute City Council members, at a loss for ideas on how to bring jobs back to their city, took a housekeeping break at the Sept. 8 meeting. With applauding police officers and firefighters filling the chambers, the council approved raises and benefits even higher than that recommended by the Democrat mayor.

It was left to Councilman Ryan Cummins, a member of this foundation, to say that three members of the Council had direct

ties to the police and fire departments. “It is obviously a blatant conflict of interest for a city employee to sit on the fiscal body and have the ability to debate and vote on these particular matters that they have interest in,” he told WTHI television.

Not in Terre Haute. One councilman, a Fire Department safety inspector who was persuaded to vote for his own pay raise, told reporters the charge was bogus. Why? Because he wouldn’t be the only firefighter getting the money.

Now, Terre Haute investors, step right up and get in line.

- Professor Don Schmidt, a founding member and a Fort Wayne city councilman, reportedly has a lone quotation on his office wall. It is from Abraham Lincoln and is dated 1864:

Property is the fruit of labor; property is desirable; it is a positive good in the world. That some should be rich shows that others may become rich, and hence is just encouragement to industry and enterprise. Let not him who is houseless pull down the house of another, but let him work diligently and build one for himself, thus by example assuring that it will be safe from violence when built.

- The last issue described a failed public housing project in Fort Wayne as a “scheme.” A member in good standing with organizational knowledge of the project tells us that a better description would have been “a good deed punished.”

- Of the Indiana Republicans who won election in the class of 1994, none sponsored bills last session that would cut government spending on net. One of them, Rep. Mark Souder, even deconstructed his term-limits pledge. As *the New York Times* notes, the Republicans of 1994 “have lowered their battle cry to a whimper; instead of demanding that federal agencies be put out of business, they are fighting among themselves over small-bore questions of what to cut and what to keep.”