

IN REVIEW

Defending Private Safety Regulation

◆ REVIEW BY JOHN HASNAS

In recent years, I have become leery of writing book reviews. The authors, who are sometimes people I know, have often poured their heart and soul into the book and a proper review requires me to say negative and sometimes harshly critical things about it. This usually makes me feel bad. Reviewing *The Conservative Case for Class Actions* is a welcome contrast. Finally, a book review that leaves me feeling good.

Vanderbilt law professor Brian T. Fitzpatrick has produced a well-constructed, informative, and clearly expressed argument for the value of class action lawsuits. But since reviewers are usually required to find something negative to say, I will point out that both the book's title and much of its exposition are misleadingly modest. Fitzpatrick has not given us the *conservative* case for class action; he has given us *the* case for class action. Throughout the book, he writes as though his argument is designed only for conservatives and he continually cites those he refers to as conservative scholars in support of his contentions. Perhaps this is done for rhetorical reasons. Perhaps he believes that liberals are already on board and need no convincing. Or perhaps he believes that characterizing conservatives as opposed to class action is enough to influence liberals to support them. Whatever the case, the rhetorical flourish is unnecessary. The book provides a well-reasoned argument for class action that should appeal to thoughtful readers regardless of prior ideological commitments.

While we are on the subject, I should

probably warn the reader that in using the term "conservative," Fitzpatrick is not referring to today's members of the American political right: what might be called "Trump conservatives" if that were not oxymoronic. He uses the term to refer to what might be called Reagan conservatives: a big tent conception of conservatism that includes libertarians and market-friendly social conservatives.

Having gotten that out the way, let me get on with the review.

Nonpolitical safety regulation / The best thing about this book is that it is written not for other law professors, but for a non-expert audience. Its purpose is to explain the complex subject of class action lawsuits to ordinary members of the public, something that it does extraordinarily well. In a carefully crafted series of chapters, Fitzpatrick leads the reader through an understanding of, first, how the tort system works in general, and then the specific role class action lawsuits play within the system. It does this in language that is devoid of technical jargon and easily accessible to its intended audience.

As a Torts professor, I have become inured to having misrepresentations about

virtually every aspect of the tort system widely disseminated to the public, as exemplified most notoriously by the McDonald's coffee cup case. This book is designed as an inoculation against the spread of this virus.

Fitzpatrick patiently and clearly explains that tort law is a subtle, nuanced, and powerful form of nonpolitical safety regulation. Although he never expresses it this way, what he is showing is that tort law and class action lawsuits are the market's internal regulatory mechanism. Perhaps this is why he calls his argument the "conservative" case for class actions.

In the book's early chapters, Fitzpatrick patiently and usefully explains the nature of tort law and distinguishes different referents for the term "regulation." In Chapter 2, he points out that markets need rules barring certain types of conduct in order to function. Rules prohibiting theft, fraud, breach of contract, and violence against person and property (and perhaps monopolization, i.e., antitrust law) are required for people to be able and willing to engage in market transactions. These rules constitute regulation, but they are a necessary form of regulation that all parties, even conservatives, want to see effectively enforced. Such rules can be distinguished from the unnecessary, politically created regulations that conservatives oppose.

The question then becomes, what is the most effective way of enforcing these necessary regulations? In Chapters 3 and 4, Fitzpatrick explains that rules can be enforced either publicly by designated government prosecutorial agents or privately through civil lawsuits brought by private parties represented by private attorneys. He then carefully articulates the pros and cons of each enforcement method. He begins by methodically detail-

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ing the advantages of private enforcement, presenting arguments that show that it requires smaller government, allows for self-help, has better incentives than public enforcement, makes better use of limited resources, is less centralized, and—importantly—is resistant to regulatory capture and so is less subject to political bias. One of the great virtues of the book is that Fitzpatrick backs up each contention with supporting data expressed in terms easily accessible to the lay person.

Fitzpatrick then considers the potential problems with private enforcement, such as the effect of the profit motive on plaintiffs' attorneys, the charge that it is undemocratic, and that it is applied inconsistently. He forthrightly recognizes the ways in which private enforcement through tort law departs from the ideal model of regulation. But one of the great values of this book is that he never forgets that the relevant question is always, compared to what? Once again, he appeals to data to demonstrate that public

enforcement suffers from the same or similar problems as much as, if not more than, private enforcement. Simply put, he provides a well-reasoned, clearly expressed, data-supported case for the superiority of private regulation through tort law to the public enforcement of politically derived regulation.

Having laid this groundwork, in Chapter 5 Fitzpatrick turns his attention to showing how class action lawsuits fit this nonpolitical regulatory mechanism. He begins by explaining how class action lawsuits fill a hole in the private enforcement system that results from our modern commercial society. With companies supplying goods and services to national and international markets, large corporations can do things that impose small harms on large numbers of people. Because many of these harms are so small

that the transaction costs of bringing a lawsuit would overwhelm any potential recovery, individuals acting alone cannot use the civil liability system to redress this type of harm. The class action allows the entire class of aggrieved parties to sue for the total loss suffered by all. This overcomes the transaction cost problem and renders the lawsuits financially viable. In this way, the class action provides both the needed compensation for small but widespread wrongdoing in the past and the necessary deterrence of such wrongdoing in the future.

Fitzpatrick then shows that class action lawsuits share the advantages of all private litigation over public enforcement: they require less government, allow for self-help, have better incentives than governmental agencies, make better use of limited resources, and are resistant to political biases. He admits that class actions are a more centralized form of regulation and that, along this dimension, they are more like public enforcement mechanisms

than most lawsuits. Nevertheless, he shows that they require less centralization than public enforcement, once again reminding us that the relevant question is always, compared to what?

Handling objections / Having made the positive case for class action, Fitzpatrick devotes the remainder of the book to answering what he calls conservative arguments against class action. Once again, this characterization is a bit misleading because he is addressing all significant arguments against class action.

He begins by knocking off a series of minor objections: that the small harms that class actions target are not worth the trouble of redressing, that class actions restrain liberty, that they distort substantive law, and that they pose special under-enforcement problems.

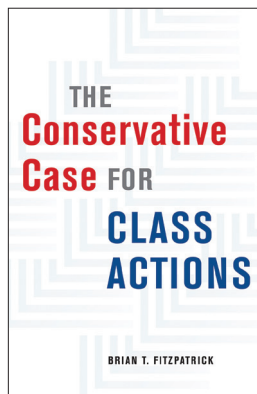
His simple answer to the first objection, that the small harms are not worth redressing, is that small harms to individuals can produce large harm in the aggregate. There is no reason to allow such wrongdoing if it is preventable in a cost-effective manner.

Fitzpatrick regards the second objection, that class actions restrain liberty, as more symbolic than substantive. Although it is true that class actions deprive inattentive plaintiffs of the freedom to sue on their own, he argues that because class action litigation is Pareto efficient, this loss is insignificant. Because all plaintiffs are better off if the litigation succeeds, and none are worse off if it fails, he claims that the loss of freedom is an entirely theoretical objection.

He treats the third objection, that class actions distort substantive law, as a red herring. If courts are skewing the substantive law to meet the procedural demands of the class action, they are behaving improperly. Although such improper judicial conduct should be curtailed, that problem does not lie with the class action.

The final objection, that class actions pose under-enforcement problems, arises from the risk that class action plaintiffs' attorneys will collude with corporate defense counsel to maximize legal fees while minimizing corporate liability. Fitzpatrick recognizes this risk, but contends the civil liability system has already adapted to it by instituting measures designed to prevent such collusion.

In the next three chapters, Fitzpatrick addresses what he considers the most significant objections to class action. The first is that the class action mechanism encourages meritless lawsuits. This, of course, is the class action version of the general knock on tort law exemplified by the McDonald's coffee cup case. Fitzpatrick spends Chapter 6 methodically undermining this critique both procedurally and substantively. He begins by detailing the various stages at which spurious claims are eliminated procedurally, explaining both the motion to dismiss and the motion for summary judgment. He once again uses data to support his description of how the system works,



The Conservative Case for Class Actions

By Brian T. Fitzpatrick
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showing that the statistics on actual class actions settlements do not bear out the claim that a significant number of meritless lawsuits survive motions to dismiss. He spends some time reviewing the putative examples of frivolous class action lawsuits advanced by critics to show that even what appear to be the most egregious examples, when correctly understood, are meritorious suits.

In Chapter 7, Fitzpatrick turns his attention to the claim that class action lawsuits benefit plaintiffs' counsel more than, and often at the expense of, the injured clients. Once again, he relies on data: in this case, a survey of every class action settlement in federal court over a period of two years. After showing that fee awards average only 15%, he goes on to demonstrate that even in cases in which the individual plaintiffs collect little, the judgments are still justified by the deterrence function they serve. He provides an interesting economic analysis of both the incentives of the plaintiffs' attorneys and the defendants that shows that, in the present system, plaintiffs' counsel are underpaid—that the system would serve its twin functions of compensation and deterrence better if courts were not reluctant to award fees on a true contingency fee basis.

Finally, in Chapter 8, Fitzpatrick confronts the criticism that class action lawsuits are not effective deterrents to corporate wrongdoing. He spends some time demonstrating that they provide specific deterrence—that they deter the specific corporate wrongdoer from engaging in similar wrongdoing in the future—by showing both that class actions provide injunctive relief and that such relief is generally effective. But he devotes most of his attention to demonstrating that class actions provide general deterrence: that they discourage others from engaging in wrongdoing similar to that of the corporate defendant. He argues that the claim that class actions are not effective in this regard is based on a recitation of the principal-agent problem that has already been resolved, and the contention that the prospects of such suits are too uncertain to motivate action

that totally ignores the legion of attorneys devoted to risk assessment. Once again, he supports his contentions with data, examining the set of empirical studies of class actions to show that almost all of them demonstrate general deterrent effects.

Better than public enforcement / In keeping with his approach of making a comparative assessment, Fitzpatrick ends his book with a final chapter examining the defects of class action litigation and possible cures for them. Although he writes as though he is addressing a series of independent defects, several of them combine into the major critique of class action litigation that Fitzpatrick has not yet addressed: that such lawsuits overdeter.


The greatest risk of overdeterrence arises from plaintiffs' attorneys' ability to exploit the discovery process. Plaintiffs' counsel with weak cases that are nonetheless substantive enough to survive a motion to dismiss can use the discovery process to go on a fishing expedition through corporate records. This can not only bolster the prospects of their present lawsuit (and provide a factual basis for future lawsuits against the defendant corporation), but also impose the significant costs of producing the requested documents and witnesses on the defendants. As a result, corporate defendants face considerable pressure to settle any suit that survives the motion to dismiss, regardless of its merit, to avoid the discovery process. (This problem is, of course, not limited to class actions, but it nevertheless provides reason to believe that low-quality class action lawsuits can yield payouts that make bringing them worthwhile.)

Fitzpatrick recognizes this and other dangers (poorly crafted statutory lawsuits, the high-risk nature of defending a class action suit, the potential misalignment of attorneys' profit motive with effective safety regulation), and proposes reforms designed to reduce them. The most interesting, and perhaps most achievable, of these is the proposal for plaintiffs to have to share the costs of discovery. He concedes that the prospects for these reforms being

adopted in the current political environment are dim. But, because his argument for class actions rests on a comparative assessment, this is not a fatal objection. He has set out to show that class action litigation *with all its faults* is a better option than public enforcement of regulations. Because he has done this, he has made his point. Recognizing that there is room for improvement in the superior option does not undermine the argument that it is the superior option.

As a final comment, I should point out that this book is much shorter than it appears. Of its 265 pages, only 129 are text. The rest consist of notes and the bibliography. This is not a criticism; 129 pages are sufficient to make the author's argument effectively without padding. This helps make the book an easy read. The extensive notes, which are typical of legal writing, may be ignored by the lay reader without loss of understanding.

Nevertheless, the notes serve a useful purpose. In describing this book as designed to reach a non-expert audience, I do not mean to suggest that it is designed to reach such an audience exclusively. The book is a work of legal scholarship. Like all legal writing, it not only presents an argument for a conclusion, but also performs a service for the profession. Attorneys use legal scholarship to help them create arguments for their clients. Legal academics use legal scholarship to advance their research. The notes in legal texts lead attorneys and legal academics to the sources they need to advance their professional work. A significant part of the value of a legal author's work is his or her research, which is transmitted through the notes to attorneys and legal academics for their use.

In sum, *The Conservative Case for Class Actions* is an engaging book on a timely subject that is well-organized and clearly written. It makes a strong case that the optimal form of market regulation is the private civil liability system including class actions, which is what makes it entirely fitting that this review should appear in a journal named *Regulation*. 

Ignoring the Tyranny of the Majority

REVIEW BY PHIL R. MURRAY

Bhaskar Sunkara is the creator and editor of *Jacobin* magazine, arguably the United States's most prominent socialist periodical. In 2019 he released *The Socialist Manifesto* to describe what he believes life would be like in a socialist society and how to achieve that society. I read this book in an effort to better understand what a socialist thinks.

Improving the world/ Sunkara looks at the world and recoils at its economic conditions. "What I am certain about," he writes, "is that we live in a world marked by extreme inequality, by unnecessary pain and suffering, and that a better one can be constructed."

There is no doubt that economic inequality exists. The nature of that inequality, whether it is of opportunity or of outcome, and whether it is a graver problem than poverty, are the vital issues. Hardship also exists, but the issue is whether there is more hardship today than there was in the past and whether life is more difficult in capitalist societies than in socialist societies.

Given this undesirable situation, Sunkara believes that democracy is the solution. He has in mind voting his preferred candidates into office and "extending democracy radically into our communities and workplaces." He sees few drawbacks to democracy. Will voters determine which restaurants will be in the community? Or whether *Time*, *Sports Illustrated*, and *Jacobin* are on the newsstand? But then, doesn't market capitalism already do this?

Consider how Sunkara thinks democracy will improve the workplace. In his first chapter, "A Day in the Life of a Socialist Citizen," he imagines that you take a job at a pasta sauce company. You earn \$15 an hour bottling sauce and management respects you. After a year, your productivity rises 25%. You ask for a raise and get one, but it is only 13%. Emboldened by your accomplishment, you petition

management to raise the pay of another worker. Management declines, but your effort leads to a union that's intended to improve conditions for all workers. However, the union is no match for the bogeyman of globalization; competition from producers in India reduces your company's profits and jeopardizes your job. Management responds by automating the production process, and automation is another bogeyman. Although you keep your job, you work more, lack input in company decisions, and envy earning 2% of what management earns. From this, Sunkara concludes that your life would be better without capitalism.

Labor and investment / The author defines capitalism as "a social system based on private ownership of the means of production and wage labor." A definition of capitalism that incorporates private ownership is conventional; one that emphasizes wage labor is not. Socialists are skeptical of markets to begin with and downright hostile to the labor market. The author claims, "The market under capitalism is different because you don't just choose to participate in it—you have to take part in it to survive." In fact, there are alternatives to participating in markets. If property rights are not established

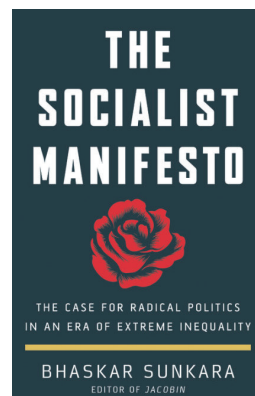
or enforced, one may hunt and gather. That alternative is neither good nor realistic. Nevertheless, it is plausible that individuals enter markets because the benefits outweigh the costs.

Socialists dislike a competitive labor market because "all you have is your ability to work." They believe that workers are at a disadvantage: workers need jobs more than the capitalists who own the land and tools need workers. On behalf of a typical worker, Sunkara reasons that because "you're subject to the dicta of your bosses," the relationship "feels oppressive." Socialism presumably relieves the oppression.

Sweden exemplifies his idea of good socialism. In his "slightly idealized version of Sweden," a citizen has "social rights" to education, "great health care, affordable housing," unemployment benefits, "state-funded retraining," and more. He envisions how life can be even better. In the author's socialist utopia, the "traditional labor market and capital markets" do not exist. Workers do not toil for wages. They earn "minimum incomes" plus a share of the profits from the companies they help run. A "workers' council" considers job characteristics at each company in order to determine the minimum incomes, which vary by occupation within a firm.

In a wage table the author provides, inspired by "a Yugoslav work-point system," the manager at the top earns about four times the minimum income of a manual laborer at the bottom. Sunkara assumes that a majority of workers will accept those disparities because they are less than what we observe in today's labor market.

There are at least two taxes in the socialist utopia. An income tax pays for government-guaranteed health care, education, etc. A tax on "capital assets" serves two purposes: One is to transfer income from capital-intensive firms to labor-intensive



The Socialist Manifesto: The Case for Radical Politics in an Era of Extreme Inequality

By Bhaskar Sunkara
276 pp.; Basic Books, 2019

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firms so that firms will earn similar after-tax profits, which means workers will earn similar shares of after-tax profits. The other purpose is to raise funds for investment. Sunkara explains, “Applicants are judged on the basis of profitability, job creation, and other criteria including environmental impact.” Government officials will do the judging. If there is a shortage of funds and no interest rate to allocate them, those seeking funds will argue that their projects are more profitable, create more jobs, and produce cleaner air and water.

It is unclear how government officials will decide between projects that show tradeoffs in those criteria. Will government officials fund a project that is more profitable and less favorable to the environment, or one that is less profitable and more favorable to the environment? In the event of a surplus of funds, “some of the money can always be directly transferred back to taxpayers to stimulate demand.” A reader may doubt the efficacy of government officials allocating funds for capital expenditures; the Solyndra boondoggle comes to mind. “All these outcomes entail trade-offs,” Sunkara admits, “and these trade-offs are political decisions.” But the author does not explain why tradeoffs in the socialist utopia are preferable to tradeoffs in actual capitalism.

In contrast to common grumbling about work, socialists look at the labor market and see “exploitation.” Sunkara writes:

It’s easy to understand this concept on production lines. If you’re bottling a hundred curry pasta sauce jars an hour, sixty of those might be necessary to pay your wages and other overheads, but every jar after that is a surplus. Some goes directly into a capitalist’s pockets, but much of it is reinvested into production to keep firms competitive. Socialists call this exploitation.

Workers probably do not mind a capitalist earning a profit, even if they begrudge the size of the profit relative to their wages. Whether workers view wage labor

as exploitation is debatable. For instance, workers who want a share of the profits can buy stock. They also can quit their jobs and search for better ones. How can a socialist believe that workers in capitalist society are exploited when capitalist production provides higher standards of living?

Encouragingly, Sunkara sees exploitation in socialism too. In the author’s utopian socialist society, one of the workers becomes disgruntled. “Capitalism is the exploitation of person by person; socialism is the exact opposite,” he writes.

Reform or revolution? The history of political movements is the largest part of the book. The history begins with Karl Marx and Friedrich Engels. Sunkara quotes from Engels’s 1845 book *The Condition of the Working Class in England* to make the point that people did dangerous jobs and lived in squalor during the Industrial Revolution. He reiterates Marx’s condemnation of profiteering and the reinvestment of profits without input from workers.

Then he describes how political parties in various countries tried to implement socialism. Socialist activists argued among themselves over whether to reform the existing economic system or revolt against it. In the early German socialist movement, Eduard Bernstein eventually advocated “reforms.” We can imagine the reforms included legal minimum wages, legal maximum hours of work, and social security. Rosa Luxemburg, another German socialist, favored revolution: “She likened the struggles of those who tried to gradually bring about change within capitalism to the plight of Sisyphus.”

This history features political operatives such as Lenin and Stalin and Mao and Deng Xiaoping. Entrepreneurs are absent. Either there are no entrepreneurs in the history of socialism because socialist governments repressed them or Sunkara omits their contributions to highlight the struggles for political power.

Sweden One reason contemporary American socialists hold up Sweden as a model is that the history of socialism in Sweden

was not treacherous like it was in the Soviet Union and China. Early Swedish socialists, according to Sunkara, “didn’t capitulate to the market as it was but made a radical attempt to change how it operated.” Following World War II, employers, unions, and the country’s Social Democrats struck a deal: Employers gave up the ability to negotiate wages at the industry level. In return, unions restrained their demands for higher wages. Unions and the Social Democrats got wage equality, full employment, and welfare benefits.

The system worked so well that Social Democrat Ernst Wigforss declared it to be a “provisional utopia.” It indeed proved to be provisional. Sunkara admits:

Social democracy was always predicated on economic expansion. Expansion gave succor to both the working class and capital. When growth slowed and the demands of workers made deeper inroads into firm profits, business owners rebelled against the class compromise.

Swedish voters ousted the Social Democrats from power in 1976. Sunkara suggests that the socialists’ support for nuclear energy cost them victory. He alludes to bad fiscal policy. Government spending, he reports, was “almost 70 percent of GDP.” He neglects to report the confiscatory tax rates that financed so much spending. Astrid Lindgrin, author of the *Pippi Longstocking* books for children, penned a fable that mocked the leaders of the Social Democratic Party because she faced an income tax rate of 102%. American progressives with an affinity for Swedish socialism cannot expect American voters to tolerate excessive welfarism more than Swedish voters did in 1976.

Policy agenda Sunkara endorses the policies of Vermont independent senator and Democratic presidential candidate Bernie Sanders: guaranteed employment, government-provided health care, and the Workplace Democracy Act. He does not explain how these policies would work. He does

not anticipate and rebut objections. He believes that passing socialist legislation would produce abundance: “We can also guarantee access to nutritious food, safe and secure housing, free child care, and public education at all levels.”

Sunkara does give attention to political organizing. He intends to generate “a renewal of class antagonism and movements from below.” He aspires to recruit union members, teachers, nurses, and environmentalists.

He recognizes that the U.S. Constitution will hinder the achievement of his goals. He dreams of eliminating the Senate, the filibuster, the Electoral College, and federalism. Despite his expectation that these maneuvers will cause a “crisis,” he remains optimistic. Following the crisis, socialist society will end “suffering,” “exploitation,” environmental degradation, and war. Those outcomes, according to the author, are why we should have socialism.

Conclusion / Prosperity, environmental quality, and peace are worthy goals. The question is whether democratic socialism is the way to attain them. According to the World Bank, the number of people in the world living in extreme poverty fell from 1.9 billion in 1990 to 715 million in 2015. Sunkara thinks this progress is more the product of expanded democracy than expanded capitalism.

Exploitation is, of course, unacceptable. But he believes that profits are evidence of exploitation. He ignores that whenever and wherever profiteering is prohibited, workers suffer. Sunkara says voting for socialism will reverse global warming, but he omits what all must happen between those two events.

Among many admissions that capitalism does some good in the world and that socialism has an ugly side, he concedes that “the way to prevent abuses of power is to have a free civil society and robust democratic institutions.” Perhaps the greatest critique of his socialist thinking is that he ignores the tyranny of the majority and the role of economic freedom in preserving civil freedom. R

The One-Percenter State

BY PIERRE LEMIEUX

Jonathan Rothwell’s latest book—he himself calls it a manifesto—is a big endeavor. It aims at persuading people on the left that “the extreme inequality that exists in the contemporary United States and other countries is not the result of well-functioning markets,” but, on the contrary, of “political inequality and corrupted markets.”

In other words, “well-functioning markets—characterized by mutually beneficial exchange among political equals—lead to egalitarian outcomes with respect to income and well-being.”

As the subtitle indicates, the book defends certain moral and political values, but it is based on an extensive review and analysis of the empirical evidence on inequality. The author, who holds a doctorate in public affairs from Princeton University, is the principal economist at Gallup and a senior fellow at the Brookings Institution.

Income and wealth inequality have been prominent topics in the media and public debates for several years now. It’s commonly said that, in the United States, the top 1% (about two million individuals) in the pre-tax income distribution increased their share of all pre-tax income from 10% to 20% between 1980 and 2014. Several recent studies, reviewed by Rothwell, argue that this estimate exaggerates inequality, but few analysts dispute that it has been increasing. The threshold to get in the one-percenter group is an annual income of \$477,500 (or \$268,937 if we consider only the top 1% in labor income). Rothwell emphasizes that all these numbers are estimates that are very difficult to calculate not only because data are limited but also by the very nature of complex constructs like income, wealth, and inequality.

Among the ideas debunked by *A Republic of Equals* is the frequent claim that the growth in inequality has been caused by globalization. Only 16% of one-percenters in the United States work in trade-oriented, goods-producing sectors. In rich countries, most people, including the rich,

work in services. In America, two-thirds of the one-percenters work in health care, education, public administration, finance, real estate, and business services. Rothwell also argues that “trade protectionism is immoral from the perspective of justice”—poorer individuals are the people most harmed by protectionism.

Egalitarian market / The first crucial argument in *A Republic of Equals* is that human inequality is mostly due to environmental factors, not genetics. Rothwell’s review of the statistical and genetic evidence suggests that only 13%–40% of the variation in cognitive ability between individuals is explained by genes. (The 40% figure comes from studies of twins, but more recent genomic studies have revolutionized the field and gravitated to the lower bound.) The so-called Flynn effect—the fact that measured IQ has increased with time—would be unexplainable with a purely genetic explanation of cognitive ability. This is a complex and controversial topic, but many readers will be persuaded by Rothwell’s argument that most human differences are explained by environmental factors such as education, family, or where one lives.

According to the author of *A Republic of Equals*, education plays a major role in cognitive ability and the acquisition of useful character traits. He cites much evidence that IQ, measured by standard tests, increases with education. Unequal access to education is then viewed as a major impediment to cognitive ability and, thus, to future income and health. (This claim clashes head-on with Bryan Caplan’s thesis in his 2018 book *The Case Against Education*, which argues that

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education does not contribute much to increasing intellectual abilities, but only to revealing or signaling them, and that individuals spend too much time in school. See “A Degree Too Far,” Fall 2018.)

Rothwell demonstrates the absence of any significant difference between the cognitive abilities of different racial groups. Jews’ and Asians’ abilities have been exaggerated while blacks’ have been underestimated. Citing tests done at the time, he notes that “Northern black people had higher IQs than recent Jewish immigrants in the 1920s.” It is only during the last half-century that the IQs of Jews and Asians have surpassed those of whites and blacks. Rothwell provides much evidence for this fascinating claim. “No group of people,” he writes, “has persisted in maintaining sustained levels of high status for long enough periods for population genetics to explain their success.”

The individuals who show better results at IQ tests or in life success have simply invested more in education. But why have they done this? Because—if I read Rothwell correctly—their circumstances incited them to and because they did not believe that their futures were genetically predetermined. The children of immigrants, who often overtake the natives, are a case in point.

If individuals have natural abilities that vary only within a narrow range, one would expect that, in a context of free exchange, their productivity would not diverge wildly. This implies that their remuneration also would not vary wildly because economics demonstrates that, in a free market, remuneration follows productivity: more productive persons are paid more because they contribute more to what consumers want. One is paid the “value of his marginal product,” as economics textbooks say. Free markets, Rothwell writes, establish a “merit-based egalitarianism.”

He calculates that the current variations in remuneration are much greater than those in cognitive capacity and personality. Personality is measured by character traits, notably extroversion/enthusiasm, self-discipline/dependability, and anxiety. Crunching the data from a large Bureau

of Labor Statistics survey, he estimates that individual differences in cognitive ability and personality (the combination of which he calls “merit”) explain less than half of the existing level of income inequality.

The second crucial argument of *A Republic of Equals*, then, is that inequality comes from “barriers to free exchange, put in place by powerful interest groups”—and approved, promoted, and enforced by governments. Without those barriers, “inequality in income would fall by half,” Rothwell claims, and the need for government redistribution would be drastically reduced.

The exploitative state/ Rothwell persuasively claims that inequality is mainly caused by the exploitative state (though he does not use that term). Besides such interventions as business subsidies, trade protectionism, and

overreaching intellectual property protection, he argues that the state generates inequality in two main ways: zoning laws and the anticompetitive privileges granted to elite professionals. The state blocks market access to many people.

Zoning falls under the jurisdiction of local and state governments. It was introduced in 1916 in New York City as a way to keep immigrants and blacks out of white neighborhoods through restricting construction of apartment houses, the height of buildings, and housing density. Without such coercive laws, it was just too tempting for white residents to rent apartments or sell houses to blacks offering higher prices to compensate for discrimination. The free market is an efficient mechanism against discrimination.

The federal government itself intervened in favor of housing segregation by proposing standard zoning guidelines. It also practiced “red-lining”—that is, assigning poor credit ratings to neighborhoods that did not meet accepted racial and ethnic charac-

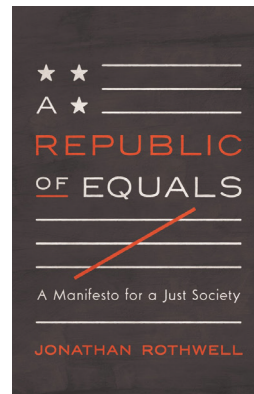
teristics. Rothwell could have added that, in the last quarter of a century, the feds have turned 180 degrees and started punishing banks for *not* lending in poor and minority neighborhoods. Note also that until the civil rights movement, governments offered little protection against the segregationist intimidation and violence often used to keep blacks out of white neighborhoods.

The consequence of these political restrictions to equal housing access are still with us. Blacks are concentrated in poorer neighborhoods with more crime, detrimental influences on children and teenagers, and bad schools. Rothwell cites research to the effect that moving out of a segregated neighborhood before age 13 increases college attendance by 2.5 percentage points.

According to Rothwell, much of the current discrimination against black Americans finds its source in their

segregated neighborhoods. Blacks are subject to more searches and more abuse by police. Young, unarmed black men are three to six times more likely than their white counterparts to be shot by police. Blacks are charged with more crimes than whites, even in the categories of crimes that they commit less, such as drug crimes. That’s another fascinating argument in *A Republic of Equals*: there is apparently no evidence that black males age 18–30 use or sell drugs more than whites of the same age. Yet, Rothwell estimates that the odds of these black men being arrested on drug charges are 3.8 times higher than their white counterparts.

It is not only by repressing the most disadvantaged individuals that governments have contributed to inequality; it is also by protecting the most advantaged, including the one-percenters. The real “evil rich,” as some people would say, may not be the ones who immediately spring to their minds, and not for the reasons they suppose. Consider that “just 25% of total top



*A Republic of Equals:
A Manifesto for a Just
Society*

By Jonathan Rothwell
392 pp.; Princeton University Press, 2019

one-percent income comes from stocks” and that “executives are a small minority of top earners.” On the other hand, elite professionals constitute more than one-fourth of the richest 1% and they benefit from government protection of their markets.

Physicians, surgeons, and dentists constitute 8%–16% of the one-percenters, depending on data sources. They are protected against competition by powerful professional corporations—the equivalent of medieval guilds—such as the American Medical Association and its local affiliates, which have obtained licensure laws restricting the supply of their competitors (be they other doctors, nurses, midwives, or other health practitioners). This cartel also imposes a monopolistic model for the production of doctors’ services: the standard honoraria system and the interdiction of many forms of medical businesses. In the United States, the probability of making it to the top 1% if you are a physician or surgeon is 22%.

A similar analysis applies to lawyers, who are the second most protected category of professionals. The public laws obtained by their professional organizations (the American Bar Association and its state equivalents) guarantee them a monopoly for most legal services, pushing up their fees. As a consequence, lawyers account for more than 7% of the one-percenters in America. (Washington state’s recent creation, after a hard-fought battle, of a limited license for non-lawyers to provide legal counsel and prepare documents in the field of family law has opened a small breach in the lawyers’ monopoly. The results of this policy change suggest that many legal services can be offered for half the price of a full-fledged, cartel-protected lawyer.)

About 10% of American one-percenters work in the securities and investment industries, mostly in investment banks and hedge funds. These people are not protected by specific professional corporations, so they are a different sort of “elite professionals.” But Rothwell believes that the market in which investment banks and hedge funds operate is “fundamentally not competitive.” The reason is that federal regulation prevents individual investors, except very

wealthy ones, from investing in hedge funds and forbids the latter to advertise. With pension funds and other institutional investors as their main customers, hedge funds face attenuated competitive pressures, allowing them to charge much higher fees than other investment funds and to enrich their one-percenter owners and traders.

Rothwell could have better developed this argument. The careless or biased reader may get the impression that the lower level of regulation for hedge funds (as the counterpart for keeping ordinary individual investors at bay) is to blame. But Rothwell does identify the real culprit:

The bottom line is that the SEC’s authentic but misplaced concern for ordinary Americans has resulted in the wholesale transfer of trillions of dollars from plumbers, pipefitters, teachers, automakers, and families with retirement accounts to super-elite billionaires. Rich investors, like other elite professionals, are given privileged access to markets.

All in all, considering financial sector managers, professional and other business

His trust in the state depends partly on his political philosophy. And therein lies the Achilles heel of Rothwell’s manifesto.

service managers, health care professionals and managers, as well as legal service providers, Rothwell calculates the *increase* of their incomes from 1980 to 2015 accounts for 98% of the total income increase of the one-percenters over that period. If this estimate is correct, it is a crucial fact.

Trusting Leviathan / Despite Rothwell’s technical virtuosity and identification of real problems, his analysis and manifesto could—and should—have gone further. After the horrors of government intervention he depicted, he still trusts Leviathan too much. He seems to assume that

politicians and government bureaucrats have disinterested intentions, which they dutifully translate into effective policies. Perhaps he thinks the past horrors he described were one-time mistakes.

His trust in the state depends partly on his political philosophy. And therein lies the Achilles heel of Rothwell’s manifesto. As he explains, he follows the philosophy of the late Harvard philosopher John Rawls. “I define a just society,” Rothwell writes, “as one that grants and defends the basic liberties of individuals, while it maximizes the welfare of the least advantaged members under conditions of political equality and provides equitable opportunities for everyone to do the work that naturally suits them.” Such principles of justice (liberty, equality of opportunity, and justice for the least advantaged), he argues, are consistent with what science shows is man’s “innate sense of fairness and reciprocity.”

The danger of this philosophy lies in the conflict between, on one hand, equal liberty and, on the other hand, attack on those who happen to have been favored by birth, good parents, entrepreneurial flair, or just plain luck. Rothwell insists that he is not against making money by serving others in the market, but only against inequality that is not justified by “merit”—that is, by differential cognitive abilities and character traits. But there is more than merit in life. A great

entrepreneur or a great singer does not make his fortune, or at least not all of it, by “merit,” but through providing better than others what consumers value most. It is true, however, that Rothwell finds half of current inequality justified, making his criticism more muted, and more reasonable, than others’.

James Buchanan’s egalitarian and contractarian theory would provide a solid foundation for Rothwell’s ideas. Buchanan, an economics Nobel laureate, favored a wide margin of “equality of opportunities” and expressed appreciation for Rawls’s theory. But contrary to the Harvard philos-

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opher, Buchanan understood the ever-present danger of Leviathan. Moreover, instead of looking for some “just society,” as philosophers have been doing for two and a half millennia without a resolution in sight, Buchanan took individual consent as the foundational moral-political value. (See Buchanan’s 1975 book *The Limits of Liberty: Between Liberty and Leviathan*.) As political philosopher Anthony de Jasay would say, this approach makes a lesser demand on our moral credulity.

On the more radical side, de Jasay provides an important perspective that is missing from Rothwell’s philosophical reflections: how slippery the concept of equality is. Equality in one dimension—say, “merit”—implies inequality in another—say, the liberty to leave one’s money to one’s children or offer consumers what they want. (See “The Valium of the People,” Spring 2016.) Many analysts believe that the decline in marriage among the non-rich explains part—perhaps most—of the increase in inequality during the past half century. An equal right to marry or equality of “merit”—will the real equality please stand up? Equality is more difficult to identify than Rothwell seems to believe.

It is worth noting that the argument for classical liberalism or libertarianism does not require the sort of natural equality or quasi-equality defended by Rothwell. Formal, legal equality is what matters.

Another question that needs clarification is, what are these “public goods” that must be “provided to all through public funding and on an equitable basis” (assuming we know what “an equitable basis” means)? Rothwell’s list includes security (the usual suspect), education, and “the infrastructure of commerce and production (e.g., roads, bridges, ports, environmental resources, telecommunications).” Granted, Buchanan’s concept of public goods is also wide, but Rothwell’s looks even wider when he adds “protection from injury or disease through healthcare, and relief from poverty, job displacement, and disability.” Buchanan’s theory incorporates built-in features that are more effective at preventing an indefinite expansion of public goods.

And what is “society”? It does not think, speak, or act in any meaningful (non-metaphorical) sense. It cannot grant anything. Nor is it “a just society” that “protects its most vulnerable members by drawing from the resources of its strongest”; it is the state, which is not the same thing. Perhaps one can conceive of the state as created by a social contract, à la Buchanan or Rawls, but much prudence is required—a lesson from Buchanan’s work. We may wonder what a “just society” or “the justice of a society” means. An individual can be just, but can a society?

There is no big social pot from which money—that is, resources—can be freely taken. Takings always come from specific individuals. The challenge is to justify them. I suggest that Rothwell is prisoner of a philosophical approach that does not really provide such justification. And if there is no justification for takings, politics is just a choreographed combat to grab resources, where the most powerful win at the expense of the others.

Regulatory failures/Regulation, Rothwell writes, “should be designed to make markets function optimally.” Yes, but how do we know it will do this? Among the examples of Rothwell’s tolerance for “smart” regulation, he seems to blame a lack of it for mortgage lenders targeting minorities before the Great Recession. He does not mention that, under the Community Reinvestment Act, the federal government was pushing banks to lend to poor and minority neighborhoods. It’s first and foremost the federal government that, in the name of “social justice,” was pushing mortgages on potential homebuyers who could not afford them.

Another example is Rothwell’s apparent tolerance for licensure of hair braiders, manicurists, cosmetologists, nail technicians, plumbers, midwives, and a host of other occupations under weak justifications concerning public health and safety. An occupational license often requires an unblemished criminal record, which as Rothwell himself acknowledges is not easy to maintain in some disadvantaged groups.

He cites a sociologist apparently claiming that this low-level licensing, instead of preventing disadvantaged people from trying their hand at the market, actually helps women and blacks “because it clarifies the skills, credentials, and pathway needed to gain entry.” Come on! Leviathan bans people from working, and we should applaud with gratitude when it provides a narrow pathway to work that it has otherwise blocked?

I also find Rothwell’s discussion of certain “restrictive covenants” disappointing. He specifically writes of contracts whereby homeowners of a given neighborhood contractually obligated themselves to not sell their houses to non-whites. Rothwell equates those contracts to mob violence against blacks or to government-organized segregation. As appalling as the contracts were, his equivalence goes too far. The restrictive covenants were private contracts over private property. The homeowners who signed them were not obliged to do so. The contracts were declared unconstitutional in 1948, but they had probably already been, or were being, superseded by government-imposed zoning, which is a much more efficient way of restricting who can live where.

In this matter as in others (think of free speech), one must distinguish the private domain from the public domain. Rothwell should understand this. Governments have continued to use zoning to segregate neighborhoods, directly or indirectly (through density restrictions), intentionally or not.

Who are the real enemies of free market exchange? His analysis often shows that they are governments. For example:

In 1936 the [Federal Housing Administration] created a manual that advised how mortgage appraisers should evaluate homes. It explicitly stated that restrictive covenants, combined with exclusionary zoning to prohibit multifamily housing, offered the best protection of a home’s value and should get the highest appraisal.

It is tempting to believe that this sort of interventionism cannot be espoused

by democratic governments. Obviously, it can be, and it often is. Majoritarian governments often amplify, instead of smothering, the mob's prejudices. Zoning is more local and more democratic (that is, majoritarian) in the United States than in Europe (as Rothwell notes), and for that reason it is more responsive to local property owners who want to reduce the supply of housing and boost the price of their own properties.

Nudging Rothwell forward / Why should we trust government with the power to coercively impose the latest fad in social engineering? Even if one specific fad happens to look just, the next one may not be. Rothwell reminds us of the horrible eugenics fad that started in the Progressive Era and didn't subside in some states until well into the second part of the 20th century. It led to the coercive sterilization of more than 60,000 Americans that good bureaucrats, empowered by good politicians, deemed to be feeble-minded, defective, or socially inadequate. (See "Progressivism's Tainted Label," Summer 2016.) Even assuming that government potentially amplifies the amount of goodness in the world, it also certainly amplifies the consequences of errors.

The best solution is to let individuals be free to make their own private choices, even when, to some of us, they appear unwise or bigoted. The only clear restriction should be that private actions not cause direct harm to others—"harm" being taken in a restrictive, perhaps only physical, sense. There is much of this enlightened approach in Rothwell's interesting book. Many people who don't understand the benefits of free markets, and even some who do, can learn much from *A Republic of Equals*.

My criticism is meant to nudge Rothwell and his ideological companions forward. Don't grant the state new glorious missions; on the contrary, humble it! Don't extend government powers, limit them! Don't grant government the power to discriminate among citizens! *A Republic of Equals* offers plenty of examples of the harm that government coercion has done. R

What Went Wrong in 2008, As Told by a Keynesian

◆ REVIEW BY VERN MCKINLEY

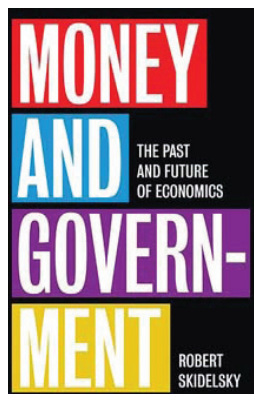
To get a balanced view of the lessons from the 2007–2008 global financial crisis, the well informed must read what a full range of authors have to say about what caused the crisis and what primary lessons should be drawn from it. I have tried to do that not only by reading and reviewing volumes by those repulsed by the ensuing

government interventions, but also by those favorably disposed to them. Books such as Atif Mian and Amir Sufi's *House of Debt* ("House of Flawed Analysis," Winter 2014–2015), Adair Turner's *Between Debt and the Devil* ("When Intervention Fails, Intervene," Spring 2016), and Binyamin Appelbaum's *The Economists' Hour* ("Milton Friedman Caused the Financial Crisis and Other Tales," Winter 2019–2020) fall into the latter category. All those authors blame blind faith in the market and the deregulation bogeyman, among other causes, for the financial crisis.

British economic historian Robert Skidelsky falls into the latter camp. Skidelsky is a John Maynard Keynes scholar and has published a three-volume biography of the economist. He is also a professor at the University of Warwick.

History / "History of Economic Thought" is the daunting title of Part One of Skidelsky's book *Money and Government*, and he does his level best to deliver on that promise. This part traces through the origins, value, demand for, and quantity theory of money, the gold standard, and bimetallism. It closes with a review of the economic role of the state and mercantilism.

It has been quite some time since I



Money and Government: The Past and Future of Economics

By Robert Skidelsky
512 pp.; Yale University Press, 2018

read a book with sections so deeply reminiscent of my undergraduate economics courses. Much of the discussion has a textbook feel to it, complete with explanatory equations, diagrams, and graphs. For those familiar with many of these topics through prior study, these chapters likely provide much more background material than necessary to understand the later discussions of the global financial crisis and how Skidelsky believes it changed the role of government.

Rise and fall of Keynes /

Skidelsky describes the pre-Depression era "old macroeconomy" as resting "on a tripod of gold, balanced budgets and free trade." He summarizes much of his life's study of Keynes in Part Two of *Money and Government*:

The Great Depression set off a period of experiments in thought and policy. Keynesian economics was the most successful of the results.... It was partly a revolution in monetary policy, involving a break with the gold standard. It was partly a revolution in fiscal policy, which involved abandoning the balanced-budget rule.

Keynes played a high-profile role in the

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assessment of the then-building Depression from his perch on Britain's Macmillan Committee on Finance and Industry. Skidelsky explains that Keynes' work on the committee "shook his faith in monetary policy.... Now his emphasis shifted to fiscal policy, with monetary policy in a purely supporting role."

Keynes's *General Theory of Employment, Interest and Money* grew out of that work. The book, according to Skidelsky, "was to explain precisely why the classical theory was wrong.... Keynes called the book the 'general' theory, because he took uncertainty to be the general case, with full information as the special case." Again, Skidelsky's explanation of the contrast between Keynes's model and the classical models, along with Skidelsky's discussion of the fiscal multiplier, reads like an economics text.

A case study of the "era of Keynes" follows, with the period of full-employment Keynesianism during the 1940s to about 1960 (stage one), growth Keynesianism during the 1960s (stage two), and stagflation Keynesianism during the 1970s (stage three).

The last section of Part Two transitions into monetarism. Skidelsky does not spend much time on Milton Friedman, but he does judge Friedman to be a dishonest scholar as far as economic policy goes:

The motivation for [Friedman's] work was thoroughly political. Friedman restated neo-classical economics in order to expel the expanded Keynesian state from the economy. Shrinking the state was the scarcely avowed aim of his economics.

The crash and after / To Skidelsky, the financial crisis demonstrated a "back to the future" moment for Keynesian policies: "It forced activist—that is, discretionary—responses from governments that were partly experimental, but that also involved using old tools which had become rusty through neglect."

After providing some general details about the stages of the crisis, he describes the "energetic government responses" that

he apparently approves of:

Governments strengthened deposit insurance, recapitalized and nationalized banks with public funds, and bought toxic assets.... Recapitalizing banks was a fiscal operation, involving governments raising vast sums in the bond markets. It was governments, not central banks, learning from Keynes, not Milton Friedman, that prevented a slide into another Great Depression.

Skidelsky provides some surprising conclusions about the financial crisis in his chapter "What Was Wrong with the Banks?" He does come down hard on what he describes as deregulation in the financial sector as a primary cause of the crisis. This includes criticism of increasing financial innovation in securitization, collateralized debt obligations, credit default swaps, and special purpose vehicles. He writes: "From the 1960s onwards, government gradually relinquished their control over banks and put their faith in market discipline.... They were allowed to do everything," referring to banking activities on both the funding and investment sides.

Surprisingly, he also criticizes some of the government interventions in housing policy in the run-up to the crisis:

Governments also encouraged banks to lend for political purposes. The root of the 2008-9 financial crisis lies in the American housing market and, specifically, in the government's attempts to make home ownership accessible to low-income families.... It was the combination of deregulation and government subsidy of bank credit to low-income households which proved toxic.

Conclusion / With rousing flare and noting that it was "the deregulated global market that collapsed in 2008 to 2009," Skidelsky leaves us with a final chapter that proposes one new or expanded government program after another. In the area of fiscal policy, he primarily calls for a budget-driven strike against weak growth: "The focus should

shift from fighting inflation to fighting stagnation. This means using the budget to revive growth, and monetary policy to support fiscal policy."

Skidelsky argues that a State Investment Bank is needed because of the poor performance of the private banking sector in the lead-up and throes of the financial crisis:

The Investment Bank would be capitalized by the state, and empowered to borrow an agreed multiple of its capital for approved purposes; that is, the state would determine the Bank's strategic direction, and the managers would have full operational independence. Depending on the Bank's mandate, such purposes might include investments in energy efficiency, long-term loans to small enterprises and start-up companies through a network of local banks, and support for private venture capital initiatives like Fintech.

He argues that central bank mandates should be expanded to include not only objectives related to output and price stability, but central banks should also be able to "tell the government that fiscal policy is needed" in cases where a central bank policy rate hits its lower bound. He urges that "fiscal and monetary policy should be coordinated, not separated."

Skidelsky also favors an increase in the intensity of the fight against income inequality:

Optimists and pessimists alike abstract from the problem of automation.... Workers displaced by machines will need to be guaranteed a replacement income. An unconditional basic income guarantee, financed by taxation, will probably be needed in the transition to a less work-intensive future.

He also makes the case that protective trade measures should be ratcheted up given that it is "the primary duty of a government to protect its own people from danger and misfortune." After detailing the individual arguments for protection, he concludes:

The pressure for Protection is growing. The main reason is that domestic protections for the less educated and less skilled have been progressively eroded at the same time as the speculative power of finance has been enlarged. The result is a substantial increase in insecurity.

Putting aside my disagreements with Skidelsky on economic policy issues, I believe he tries to take on too much in *Money and Government*. As a result, in many parts of

the book his analysis is scattered and lacks depth. Throughout the book, but especially in the closing chapter, he strings together one cursory review of a topic after another, taking on big issues in two or three pages rather than giving them the time and explanation needed. While writing this review, I sometimes struggled to determine which of the many subjects that he covered to highlight. The book would have benefited from deeper focus on fewer topics, as the flow of ideas does not always hold together well. **R**

book, again, is an exercise in bleak realism. After going through the statistics, he writes:

So, in deciding whether you want to be a professor, ask: Am I willing to spend the majority of my working life teaching mostly mediocre undergraduates, knowing that for the vast majority, my class will impart no increase in their reasoning or writing skills? You might end up with a better teaching situation than that, but that's the typical deal.

It Beats Working for a Living

◆ REVIEW BY ART CARDEN

Georgetown University philosopher Jason Brennan has, in a career of just more than a decade, published more books than some people have read. These aren't half-baked vanity projects, either; his books come from major academic presses (e.g., Oxford, Princeton, Routledge, Cambridge) and are cited frequently.

In his latest book, due out this May, he distills and synthesizes the advice on working in higher education that he has collected and implemented from mentors like Duke political scientist Michael Munger and University of Arizona political philosopher David Schmidtz, as well as revelations Brennan has had himself. He tells us what he calls "unpleasant truths about the world's best job."

I firmly agree that being a college professor is the world's best job and is good work if you can get it. You don't go into academia for the money, but the salaries are sufficient to put full-time faculty members safely within the upper middle class. And the non-pecuniary benefits for which most of us go into this line of work are simply unbelievable. We get to write, speak, read, and teach about subjects we find fascinating. Except for the time we spend in regularly scheduled classes, we basically get to make our own schedules. The intellectual tasks are cognitively difficult, but a lot of what we call "work" is what the rest of the world calls "leisure."

It is, in other words, *Good Work If You Can Get It*. Brennan explains what one must do to get it.

Bleak realism / Some academics write as if entering the academy is like gambling and getting a tenured position is a matter of luck. But Brennan notes:

Academia is not a perfect meritocracy, but it's not a lottery, either. The winners understand the system; the losers tend to make the same basic mistakes over and over again. My goal here is to help readers understand why the winners win, and the losers lose.

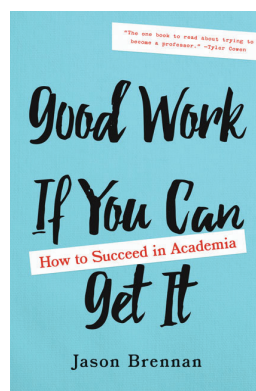
Presumably, those who take his advice will be more likely to find themselves among the winners. The

It's an uncomfortable truth, but a truth nonetheless.

Predictably, academic life is so appealing that the competition to get into it is insane and borderline debilitating. This reminds me of Gordon Tullock's argument that *something* has to change in order to equalize rates of return in different occupations. In academia, it's the "publish or perish" culture. This is, of course, a predictable consequence of the massive supply of doctorate-holders relative to demand. If wages aren't very flexible and jobs have more-or-less fixed characteristics, how, one wonders, should institutions distinguish between dozens of applicants for a single job? A tenure-track faculty member can be a multi-decade,

multimillion-dollar commitment for a college or university. It behooves hiring committees to choose wisely. They rely on a lot of sorting mechanisms, like pedigrees and publication records. Something has to change so that the marginal entrant is essentially indifferent between academia and the best alternative. That's why "academia is a cult of busy."

Maybe it's not fair. Brennan's task is not to evaluate the goodness or badness of the system relative to some kind of unattainable ideal. Rather, he is looking to advise potential graduate



Good Work If You Can Get It: How to Succeed in Academia

By Jason Brennan

192 pp.; Johns Hopkins University Press, 2020

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students based on the incentives as they are and the world as it is, and hence he offers us his guide to succeeding in academia—which he has done spectacularly.

As he points out, the aspiring academic is “competing against three hundred to one thousand people who are the best in the world at what you study.” Importantly, information is costly and if a hiring committee has a pile of diamonds sitting in front of them, they don’t have much of an incentive to hunt for diamonds in the rough. It’s your job not only to make sure you’re a diamond, but to *make it absolutely clear to others* that you’re a diamond.

Types of jobs / The book has just four chapters. In the first, Brennan asks his readers, “Do You Really Want an Academic Job?” and explains the on-the-ground facts about how many jobs there are and what it takes to get them. Most of the research gets done at major research universities, obviously, which is where we are trained. Most of us, however, will spend our careers at institutions where teaching and service are much more important.

He offers a discussion of the kinds of institutions and jobs that are out there and repeatedly reminds his readers that his “goal is to tell you what it’s like, not how it should be.” For that, I suspect, he will find himself tarred as a bourgeois apologist for the neoliberal, corporate university or something like that—but I don’t think that would be fair. He builds on the work he did with Phillip Magness for their 2019 book *Cracks in the Ivory Tower* on the ethical morass of higher education (see “Incentives in the University,” Summer 2019) and notes that, contrary to what you might read in the trade press (the *Chronicle of Higher Education*, *Inside Higher Ed*), the academy is not being “adjunctified.”

Brennan offers an analogy to the Olympics that he attributes to his men-

tor, Schmidtz. What would you think of someone who loudly proclaims that he is training for the Olympics and yet does nothing that *looks* like training, instead goofing off because “after all, the Olympics aren’t for another few years?” We are, unfortunately, surrounded by graduate students who aren’t thinking about tomorrow and who are like our alleged Olympian. Importantly—and this, I think, is one of the reasons so many people fail to move from “aspiring graduate student” to “tenured professor”—you have to make yourself work even when you don’t want to and even when no one is looking over your shoulder.

Brennan is explicit about what professors do and what they are expected to do. He recounts a story about a graduate school colleague who said he didn’t like teaching and didn’t like research, he

You have to make yourself work even harder when you don’t want to and even when no one is looking over your shoulder.

just wanted to sit and think about philosophy. That is not, as Brennan points out, what we get paid to do. A professor’s job is to teach and to create new knowledge. Academicians tend to be a rather self-absorbed bunch and Brennan throws some cold water on our inflated self-images. Why, one might wonder, would a college or university choose to hire *you* to sit in your office, stare at your navel, teach poorly, and produce no original scholarship when it could, for a similar price, get someone who will teach at least competently and produce at least *something*? I have said before that irony is a faculty member at a liberal arts college complaining about students having a sense of entitlement. Brennan disabuses his readers of the notion that the world owes us something. While he doesn’t get into this specifically, there is an important ethical question we must ask: are we

doing right by our students, donors, taxpayers, and others if we expect them to feed, clothe, and shelter us in exchange for doing essentially nothing? To ask that question is to answer it.

The job you want / The second chapter is titled “Success in Graduate School Means Working to Get a Job.” A lot of students think the goal of graduate school is to graduate. However, graduation is one step among many in the goal of actually getting a tenure-track job (which is in turn a step toward earning tenure, which is in turn a step toward promotion to full professor, which is usually going to be a prerequisite for the Rich Benefactor Chair in Your Discipline at Prestigious University).

It requires backward induction: know where you want to end up (in an academic job!) and what it takes to get there (publications). Consider the aphorism, “Dress for the job you want, not the job you have.” Brennan’s exhortation is to take a clear-eyed look at what, exactly, we are getting ourselves into as graduate students and scholars, and not lose sight of it.

Teaching and writing / In Chapter 3, he explains “How to Be Productive and Happy.” Brennan is, as far as I can tell, both. It is perhaps surprising that so many academics are *unproductive* and *unhappy*. Frankly, it is because we manage our time and energy poorly and because we fail to keep things in perspective. As he puts it, “Academia is a cult of busy.”

He explains how email is the enemy of productivity as well as why you should say “no” to more things—service “opportunities” in particular—when they get in the way of you doing your most important work. He goes on to explain some principles of great teaching, again employing what we know about diminishing marginal returns. He gives two pieces of advice that, if followed, will substantially increase the quantity and quality of your academic output and, therefore, your likelihood of success in academia: “Writing is thinking,” and “Write first, edit second.”

Overwork, Brennan explains, is the

enemy. You don't make good choices or do good work when you're tired. He is an economic literate among philosophers—a distressingly rare bird—and he points out how a couple of basic economic ideas help us out: diminishing marginal returns and the idea that we've optimized when marginal benefit is equal to marginal cost. Think about how you work when you are tired. My guess is poorly. Knowing when to stop requires maturity most of us are still learning.

Getting a job / Chapter 4 explains “The Academic Market, Tenure, and the Job Market Outside Academia,” along with a discussion of exit options for people who have read the book and decided that the academic life is not for them. Again, this is a guide to succeeding in a fiercely competitive enterprise where people have a lot of options other than you.

How many unread books do you have on your desk? How many journal articles do you have in your “Read Me” folder that you'll get to *someday*? Think about that as your competition. You must convince a potential colleague to read your paper when she could read any of a practically infinite number of others or just watch TV. If you realize that you're competing with a re-read of *The Theory of Moral Sentiments*, the latest issue of your field's top journal, and the new season of *Stranger Things*, your task becomes a bit clearer.

Some of the best advice I ever got was at a teaching conference after my first year teaching at Rhodes College. I paraphrase: “Don't do what you need to do to get tenure. Do what you need to do to get a better job.” That is likely a superset of what will get you tenure.

Conclusion / I hate to sound clichéd, but *Good Work If You Can Get It* is the kind of book every aspiring academic should read. Some might decide to do something else with their lives and that is fine. (I had a student decide not to pursue a doctorate after I hosted a reading group on Deirdre McCloskey's *The Bourgeois Virtues*.) We would spend less time spinning our wheels. The academic enterprise would

become more efficient and more effective.

Brennan's book is, to use its own description, “a no-punches-pulled, frank, data-driven book telling you what academic life is like and what it takes to succeed in academia.” It is also, perhaps, a useful read for well-meaning friends and family members who don't know how aca-

demia works. (We've all had the “Why don't you just teach at [nearby university]?” conversation over the holidays.) As he notes, the choices people are making *right now* will manifest themselves in consequences a decade or two or three down the road. His book is refreshing and, I think, a valuable service to the academy. R

Antitrust, Apple, and the Publishing Business

◆ REVIEW BY SAM BATKINS

Of all the noise policymakers and the press make about antitrust law today, concern about “bigness” consumes most of the oxygen. Rarely is there a conversation about anticompetitive practices, price fixing, or the costs and benefits of attempting to break up certain companies.

In *United States v. Apple*, Cleveland State law professor Chris Sagers cuts through this noise with a careful look at America's antitrust history as well as the publishing business in the United States. To some extent, the title of the book should emphasize “competition” because, at times, the *Apple* case is only tangential to the author's larger argument that antitrust has failed because American politicians “doubt markets extensively.”

For the uninitiated on the *Apple* litigation, the firm is alleged to have engaged in an unlawful price-fixing scheme in which it and five major book publishers conspired to fix and raise the price for electronic books in a bid to compete against Amazon. When Amazon learned of these agreements, it sent a letter to the Federal Trade Commission asking regulators to investigate. The publishers quickly bailed on the agreements and settled

the case with regulators, but Apple has fought on, defending the legality of its arrangements.

To date, all the courts that have heard the case have found that Apple violated the Sherman Antitrust Act by conspiring with the publishers to fix and raise electronic book prices. However, many commentators have scoffed at the decisions, arguing they effectively knocked out Amazon's largest competitor in the electronic book market. They claimed the decisions were anticompetitive because they grant Amazon an effective monopoly in the market.

For interested readers, Sagers's work is more about the evolution and dynamics of antitrust law than a comprehensive dive into the *Apple* case. The details of the litigation don't appear until about midway through the book. Prior to that is an extensive history of U.S. antitrust law, the publishing business, and even a history of electronic

United States
v.
Apple
Competition
in America
Chris Sagers

United States v. Apple: Competition in America

By Chris Sagers

336 pp.; Harvard University Press, 2019

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books beginning in 1930. (Apparently, an entrepreneur named Bob Brown envisioned a “reading machine” that would facilitate high-speed reading via microfilm.) Those eager to tackle the intricacies of the publishing business and antitrust will find Sagers’s work offers plenty of specific detail.

On antitrust, perhaps the reason the *Apple* case receives relatively little attention in the book is because the conspiracy was regarded as a horizontal price-fixing scheme. Under precedent, these arrangements are per se illegal no matter how reasonable the prices were when fixed. Although some argued Apple’s arrangement was solely designed to compete against Amazon, it allegedly was not “competition on the merits.” Rather, Sagers argues Apple conspired with publishers to fix prices in a bid to weaken Amazon’s business. Lower courts noted the price-fixing scheme also raised electronic book prices, costing consumers money. As the Supreme Court has written, “Price and competition are so intimately entwined that any discussion of theory must treat them as one.”

Broadly, for policymakers and the public, many assume being large or having a “monopoly” is de facto illegal. Of course, generating a monopoly through innovation is hardly illegal, and indeed many Americans praise the technological developments companies deploy on a routine basis. Acting in a monopolistic fashion or anticompetitively is what triggers policymakers and regulators. There are pages and pages of antitrust scholarship largely devoted to whether installing a default internet browser or acquiring too many “competitors” should trigger antitrust scrutiny—all issues Sagers covers in *U.S. v. Apple*.

Fixing v. growing / The claims against Apple stand in stark contrast to the myriad of antitrust claims now floating around Capitol Hill. Today, growing large and staying big are seemingly deemed the worst crimes American companies can commit. Foreign regulators have a field day leveling fines against “bigness”; federal and state regulators are actively involved in investiga-

tions over “bigness” today and Capitol Hill holds oversight hearings nearly every week on the subject of antitrust. The United States appears to be turning a major corner on antitrust law without any real indication of where we are going next.

Sure, slapping down a per se price-fixing scheme and awarding millions of dollars in damages might seem like an easy remedy under existing law. With current rhetoric, however, vows to “break up” a big firm are uttered without much thought of how, when, what will be left, and how consumers would be affected by these actions. Even today, the notion of “consumer benefit” is being abandoned in public discourse.

The Supreme Court addressed some of these developments in its 2018 decision in *Ohio v. American Express*. In that case, the Court examined the effect of American Express’s prices not only on merchants, but also on consumers. So-called two-sided markets are common in the United States and the Court found American Express’s business practices, as a platform between consumers and merchants in a two-sided market, did not violate antitrust law even though prices rose for merchants. On the other side of the market, the Court found consumers largely benefited.

Following that decision, virtually every tech platform and many other companies are clamoring to claim they operate in two-sided markets. After all, defining the relevant market is key in antitrust law. Perhaps a company operated anticompetitively on one side of the market, but if the other side produced pro-competitive effects, who can complain? For those reasons, the *Amex* case remains unpopular for those who want to fundamentally change antitrust law in the United States. This is one of many reasons there are proposals to undo *Amex* through legislative means.

Competition v. collusion / For Sagers, the *Apple* case might be somewhat less interesting given the title of the book and his determination that Apple was on the wrong side of current antitrust law. According to him, the government needed to show only two major elements for the

courts to rule against the company: that the defendants conspired with each other and that Apple coordinated the conspiracy. That is, Apple worked with the publishing companies to agree on prices. The courts were convinced on both counts.

Companies frequently partner and deploy their comparative advantages to compete and gain market share. Faced with Amazon’s Kindle and its dominant position in the bookselling market, it’s easy to see why potential competitors might join to conjure another option for consumers. According to the courts, however, this solution from book publishers and Apple was a joint agreement on prices, which is per se illegal under federal law.

Sagers notes that many legal observers were critical of government intervention in *Apple* because, when regulators acted to break up the business model, they made the market more concentrated. He rejects this criticism and notes that Apple and its allies fixed prices above what Amazon had set despite Apple having a great deal of infrastructure already in place. For example, the publishers were willing to work with Apple and it needed only to develop an electronic book app on its iPad—also already in place to compete at scale. Sagers argues forcefully that just because Apple entered the market as a competitor does not mean it improved the market. He claims new entrants are only helpful if they can lower prices for consumers or raise quality so that the quality-adjusted price is lower than before.

Perhaps this is why comparisons to current antitrust law are so difficult. Yes, in certain segments of the economy there are dominant market players, but proving consumer harm is nearly impossible when countless services are free. How would a new competitor offering similar services—free to consumers—improve consumer welfare? For critics of the status quo, what distinguishes two market players that each offer free services and control half the market from one player that controls the whole market?

Yet, people get an “icky” feeling about monopoly, so perhaps the lack of provable

consumer harm is prompting politicians to shift to privacy policy as a way to tame perceived leviathans. By creating a privacy right in consumer data—and some libertarians might argue such a right should be protected—policymakers can start to regulate around antitrust law. However, regulators might forget that complex regulatory regimes often benefit the incumbent players, so we're back to square-one on taming big companies for the sin of being too big.

Sagers does lob several notable charges against current antitrust policy. In the early portion of the book, he laments that antitrust policy failed when it allowed these companies to grow too large in the first place. During recent congressional hearings, witnesses and policymakers have asked Americans to imagine a world without the Instagram acquisition, without the Whole Foods acquisition, and without the sale of Zappos. One set of hypotheticals deserves another: Imagine a world where U.S. regulators break up the largest and most successful companies because they grew too large, after which foreign companies enter and dominate the U.S. market. What assurances exist that consumers would benefit from such forced teardowns of several trillion dollars' worth of market cap? Until policymakers answer that question, antitrust law might be "broken," but so are populist attempts to fix it.

Conclusion/ Sagers's work is an intriguing and well-researched dive into the evolution of antitrust law in the United States and the broader publishing business. As his history recounts, there have been plenty of twists and turns in antitrust over the last century.

In today's environment, the more important issue might be where antitrust policy is going. To many, even some conservatives and libertarians, there is a strong desire to alter the current policy. The details really haven't been worked out yet, but few can doubt there are profound implications for American competitiveness, consumers, and millions of employees if policymakers get it wrong. R

Clearing Our Minds of 'Cant'

◆ REVIEW BY GEORGE LEEF

Several years ago, economics professor Daniel Klein of George Mason University began an effort to revive the word "liberal" in American political discourse, rescuing it from its erroneous association with big, interventionist government and restoring its original meaning of liberating people from the clutches of coercive institutions.

Deirdre McCloskey's latest book, *Why Liberalism Works*, gives Klein's project a gigantic boost.

She explains over and over that what most Americans call "liberalism" is an ugly morass of authoritarian beliefs and policies that threaten to slow or even reverse what she calls "the Great Enrichment." Thanks to (true) liberalism in the last three centuries, ordinary people have enjoyed a huge increase in their standard of living, roughly 3,000%, she calculates. Lamentably, few people connect their prosperity and freedom to liberal philosophy and economic policies.

McCloskey writes,

I began to realize around 2005 or so that a liberal "rhetoric" explains many of the good features of the modern world compared with earlier and illiberal regimes—the economic success of the modern world, its splendid arts and sciences, its kindness, its toleration, its inclusiveness, its cosmopolitanism, and especially its massive liberation of more and more people from violent hierarchies ancient and modern.

But there are ominous clouds. She continues:

From the Philippines to the Russian Federation, from Hungary to the United

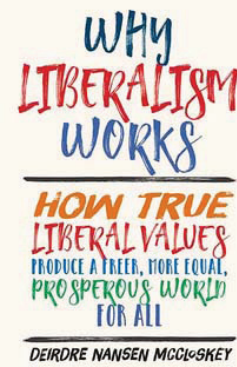
States, liberalism has been assaulted recently by brutal, scare-mongering populists. A worry. Yet for a century and a half, the relevance of liberalism to the good society has been denied in a longer, steadier challenge by gentle or not-so-gentle progressives and conservatives.

Time to speak up.

Indeed so and speak up McCloskey does. The book is a collection of 50 fairly short pieces written over the last decade (some interviews, some magazine articles, some book reviews, some short essays) that advance her argument that people should stop giving power to the enemies of liberalism. Naturally, there is a considerable degree of overlap between the pieces, but that isn't a bad thing: many readers will take her point more fully for having heard it repeated and made from different angles. What makes the book especially effective, though, is her

bright and open writing style. She can go from quoting Adam Smith to referencing a *Dilbert* cartoon in a breath. The chapters never sound like a professor's lectures, but instead like conversations with a very learned, very earnest individual who asks for your attention.

McCloskey approaches the project of advancing the case for liberalism from a unique perspective. She grew up on the



Why Liberalism Works: How True Liberal Values Produce a Freer, More Equal, Prosperous World for All

By Deirdre Nansen McCloskey

400 pp.; Yale University Press, 2019

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illiberal side, receiving the standard academic schooling for aspiring economists, which means obsessing over the many alleged failures of the free market while turning a blind eye to the harm that interventionist governments often do. In a delightful chapter entitled “Deirdre Became a Modern Liberal Slowly, Slowly,” she writes that as a student she favored “a pity-driven coercion in the style of Keynes, Samuelson, and Stiglitz.” One of her college roommates, an engineering student, read Ludwig von Mises as a diversion from his class work and “learned more of the economics of a free society” than she did in hundreds of class hours revolving around “Keynes and slow socialism.” Thus, she can say to progressives (my wording): “I

Conservatives will be discomfited by her sarcastic blast at policies that take away the liberty of people to immigrate and seek to better themselves.

was long in your camp, but now I see that I was mistaken. Please consider my reasons for having changed my mind.”

One more thing. In the book, Deirdre mentions on just a very few occasions that she was born Donald but decided that she wanted to live as a woman. She does not lean on the LGBT crutch to claim increased knowledge, but among some readers her change may give her more “street cred” as a critic of big government.

Devastating shots/ McCloskey’s chapters extol true liberalism and attack statism across a wide front. One issue is the freedom to move and work. Conservatives will be discomfited by her sarcastic blast at policies that take away the liberty of people to immigrate and seek to better themselves. She writes:

Under High Liberalism, as under feudal hierarchy, I am to have a liberty to regulate, through the government’s monopoly of coercion, your behavior in

ways beneficial to me or my assigns. I am to have for example a liberty to prevent your entry into my trade, forcibly backed by the police. My customers would be benefited by such an entry, but I can stop it, thank God. For example, I am to have a liberty to stop Juan Valdez from coming to my country to trade peaceably with me, by a law forcibly backed by ICE.

Progressives who favor immigration and hate ICE (Immigration and Customs Enforcement) might smile at seeing their right-wing enemies smitten, but McCloskey is just as devastating when she takes on their pet ideas.

What about inequality of wealth? Isn’t it obvious that the government needs to do something to even it out? No, she replies. Wealth acquired through commercially tested betterment (a more accurate way of explaining things than the term “capitalism,” she contends) is not only

fairly earned, but also benefits the consuming masses much more than the business owners. She notes that those owners keep only about 2% of the social value of the gains they produce. She writes:

Look at your computer. Or Walmart. Two percent of the social gain arising from Walmart’s early mastery of bar codes and big-scale purchasing—great betterments compared with older models of retailing—left a lot of money for the children of Sam and Bud Walton. But the rest of us were left with the 98 percent.”

Instead of griping about wealth earned in business, she suggests that progressives ought to look at the consequences of statist policies:

You should indeed worry about inequality when it is achieved by using the government to get protection for favored groups. It is what a large government, well worth capturing in order to get the

protection, is routinely used for, to the detriment of the bulk of its citizens.

Remember the furor over Thomas Piketty’s 2013 book *Capital in the Twenty-First Century*? Egalitarians proclaimed it a masterful work that crushed opponents of redistributionist policies. McCloskey is unfazed by his assault on liberalism. She observes:

The only countries in which Piketty finds actual, substantial rise in inequality are the United Kingdom, the United States, and Canada. The three cases can be explained by government policies foolishly favoring the rich, such as making it crazy-difficult to build new housing in London, which drives up the price of existing housing, owned by the rich. “Capitalism” didn’t cause the disaster of London housing. A half-socialism did.

That’s just one of the numerous instances where she informs progressives that conditions they complain about are the results of economic interventions they are responsible for.

Piketty isn’t the only anti-liberal writer whom she criticizes. Others include economist Mariana Mazzucato, whose 2013 book *The Entrepreneurial State: Debunking Private vs. Public Sector Myths* itself receives a debunking, and historian Nancy MacLean, whose *Democracy in Chains* hatchet job on the truly liberal James Buchanan gets called out. (See “Buchanan the Evil Genius,” Fall 2017.)

Other progressive beliefs that fall before McCloskey’s scythe include: that the West became rich because of imperialism (colonies were actually an economic drain), that minimum wage laws help poor people (they were clearly designed to harm the poor’s chances for advancement), that we face a cataclysm unless we adopt draconian environmental policies immediately (the green manifestoes would cause needless harm, mostly to the poor), and that fairness for homosexuals requires much more government intervention (liberalism is best for them and all other groups).

Perhaps the biggest of all illiberal misconceptions is that we can rely on good, competent government to solve all manner of social ills. McCloskey warns readers that such governments are very rare. Government power attracts those who see it as a means to get what they want by taking from others. She wants progressives and conservatives (especially economists) to remember that fact when they claim that the way to solve some problem is to enact a law or create a new government program.

Conclusion / *Why Liberalism Works* is an argumentative tour de force, but I must register a couple of minor dissents.

On education, McCloskey correctly notes that government-run schools badly serve poor communities. Instead of arguing for a separation of schooling and state, however, she favors a system of vouchers funded by taxpayers. Why do we need to have even that much state involvement? I don't think she has considered how well a purely voluntary approach to the funding of education for the poor would work and how vouchers open the door to government meddling at the behest of the special interests she so regularly denounces.

Similarly, when it comes to dealing with natural disasters, she says that taxpayers should pay for cleanup and recovery to help the unfortunate victims, even after noting that the most effective immediate help after Hurricane Katrina came from Walmart and Home Depot. Why must government step in where insurance, free enterprise, and charity are ready and able? Elsewhere, she advises us to "stop digging in statism" and I'd suggest that it would help in that respect to get the state out of the relief business.

Back in the 18th century, Samuel Johnson advised a friend, "Clear your mind of cant," meaning sanctimonious and hypocritical notions. As much as any recent book I can think of, McCloskey's will help readers clear their minds of cant. This book would be an ideal gift for any progressive or conservative who is willing to listen to challenging counterarguments. R

When a Credit Boom Leads to Doom

◆ REVIEW BY VERN McKINLEY

Of the many explanations for financial crises over history, one that does not seem very controversial is that there must first be a run-up in private debt, which ultimately triggers the crisis. In *A Brief History of Doom*, Richard Vague emphasizes the need to focus on the growth of private debt in detecting that a crisis

is near or has already begun.

In researching the book, Vague applied his skills as a partner at Gabriel Investments. He organized a team of analysts to unearth credit data for dozens of financial crises around the world over the past 200 years. He is also the author of the 2014 book *The Next Economic Disaster: Why It's Coming and How to Avoid It*, which relies on many of the same theories about the causes of financial crises as his current book. In the earlier book, he advanced the idea that China might soon face financial disaster and that U.S. debt levels showed that banks are still vulnerable and need to accelerate the pace of debt restructuring above what they had already done in the post-crisis period.

A simple thesis / In his introduction, Vague states his theory of financial crises: "Widespread overlending leads to widespread overcapacity that leads to widespread bad loans and bank (and other lender) failures." To research those relationships, he explains that he has studied dozens of crises from 1819 to the present, with most of the focus on the United States, but he also "detours" to crises in the United Kingdom, Germany, France, Japan, and China. In almost every case he has researched, the financial crisis was "preceded by extraordinary growth in private debt, especially in ratio to" gross

domestic product.

One useful standardized presentation format that he relies on to demonstrate this sequence of events is what he calls a "crisis matrix." For each instance of a financial crisis studied throughout the book, a matrix displays total federal debt and total private debt, with the latter further broken down into business, household, mortgage and commercial real estate debt. The numbers are shown in both nominal terms and as a percentage of GDP for the period in the run-up to a crisis (for example, from 1923 to 1928 in the case of the Great Depression).

These matrices are limited by the vagaries of the historical data that are available. The data for the U.S. cases of instability are similar across crises, with some extra details customized to the concentrated risks featured in each crisis. The Great Depression matrix adds a line item for broker loans and the Great Recession matrix adds a line item for subprime loans.

After the initial chapter devoted to explaining his theory, the subsequent chapters fall into a pattern. They each focus on a single case study of a financial crisis that Vague categorizes as follows: the Jazz Age lead-up to the Great Depression, the 1980s decade of greed, the crisis in Japan during the 1990s, the industrial age of the early 19th century, the railroad crises of the late

A Brief History of Doom

Two Hundred Years of Financial Crises



Richard Vague

A Brief History of Doom: Two Hundred Years of Financial Crises

By Richard Vague

240 pp.; University of Pennsylvania Press, 2019

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19th century, and the 2000s global mortgage and derivatives crisis. These chapters include numerous tables and graphs tracking elements focused on the up-and-down cycle of private debt: first the initial start of a growth cycle, followed by high debt levels, and then the pull-back as the crisis runs its course. These data are supplemented by the crisis matrices. There is no source for the data cited in most cases, so I assume that much of the analysis is original research by Vague and his team.

Dissecting the booms / I have read dozens of historical books that have been published over the past decade on financial crises. Vague's case study chapters distinguish themselves from those books to the extent that the data he presents in the tables, graphs, and matrices, combined with the narrative, provide a unique perspective that is not available in other historical reviews.

Of all the chapters in *A Brief History of Doom*, the one I found both unique and most persuasive was his case that private debt drove the railroad crises era of 1847–1907. He writes, “Railroads incurred massive debt to establish and maintain their operations, but the debt required for the land sales and housing and commercial construction in the towns and farms along railroad routes was every bit as large and often larger.” A series of graphs in the chapter reveals the “connection between railroad overexpansion and financial crisis that often occurred” in this era. In particular, the chapter's first graph visually shows the correlation between public land sales and miles of railroad built, superimposed on the timing of the crises from 1819 to 1907. A regular pattern is discernible: once the level of land sales and the miles of railroad built spikes, there is always a coincident or lagging crisis around the point of the spike. Vague proceeds to break down the private debt run-up in individual crises during the era: 1847, 1857, 1866, 1873, 1882, 1893, and 1907.

I have studied this era in detail and I am not aware of any other researcher who has made this connection between the railroads and the many financial crises throughout

much of the century. Such references are usually limited to the bankruptcy of Union Pacific Railroad in 1893 and the challenges its restructuring presented during that year's financial panic.

The other chapters provide useful information and support Vague's overall thesis on the build-up of private debt in the run-up to crises, but the data do not present as stark an image and the chapters are not as unique in comparison to other historical research. Presenting data to explain the lead-up to the Great Depression is well-trodden ground. He presents a none-too-surprising graphic with U.S. private debt beginning to move upward around 1922 and peaking in 1929. Another analysis of broker loan data shows a simi-

The tables, graphs, and matrices, combined with the narrative, provide a unique perspective that is not available in other historical reviews.

lar trajectory. Moving to the Great Recession, he describes the crisis as “inevitable before it was obvious, although few had noticed.” He offers many elements of the oft-repeated crisis narrative set out in other histories that understates the role that government policy played in the building up of debt in the run-up to the crisis.

In the real world / In his concluding chapter, Vague reveals his solution to preventing future crises. Unfortunately, it does not involve government stepping back from ill-advised interventionist policies and letting markets clear. Instead, he writes:

With what we know of financial crises, they can be foreseen and prevented ... while the boom is growing. Some have asked me, Why bother—shouldn't we let the free market run its course, and aren't those who misbehave getting their just deserts [sic]?

His answer focuses on a paternalistic

approach to public policy to protect those who get caught up in the fallout from a crisis: “No. It is never just those who misbehave that suffer the consequences. Thousands upon thousands of innocent people get hurt along the way.”

Vague's preferred policy response begins with “measuring growth in the ratio of private debt-to-GDP as an early warning sign. The surest strategy for early detection of a financial crisis is this: *monitoring the aggregates*.” He wants some mechanism to assure that “a central authority is keeping careful, ongoing records of all lending activity, including aggregate and sector-level information on instruments that are derivatives of loans.” On the federal level, this sort of analysis is part of what is called macropru-

dential policy, a form of intervention that aims to limit the supposed procyclical tendencies of markets. Vague does not say which central authority would be involved. Based on the current structure of the bureaucracies in

Washington, one likely candidate would be the Financial Stability Oversight Council, a body with representatives from all the major financial sector authorities.

Vague also does not explain how this intervention might work in practice, thereby ignoring many practical challenges with implementing this framework. These would include determining the precise timing and form of any intervention intended to counteract a boom in lending activity. With lags in the availability of data and the additional time it would take a central body to first deliberate, then determine that there is a bubble, and then agree on an intervention, the window for having the right effect might have already passed. This form of intervention is centrally planned lending policy, pure and simple. It seems that Vague has succumbed to what Hayek called the fatal conceit: the idea that if we just get enough smart people together in a room working for a central authority, then we can solve all manner of the world's problems, including the elimination of financial crises. R

Let's Travel That Road Again

BY PIERRE LEMIEUX

Reading Stanford classicist Walter Scheidel's *Escape from Rome*, one is struck by how human history is in large part a history of violence, war, looting, and atrocities. The Roman empire, which lasted from about 200 BCE to the 5th century CE, committed its share of the standard atrocities against vanquished people, including

enslaving and killing civilians. It did, however, provide security to both Roman citizens and allied populations, which together comprised about three-quarters of Europe's inhabitants. The book is mainly concerned with the western, or European, part of the empire; the eastern part, under its capital Constantinople, survived until the 15th century.

With its 670 pages, including 65 pages of instructive endnotes, this scholarly and remarkable book also shows the incredible diversity and richness of human history since antiquity.

Scheidel explains how the Roman empire established its dominion and how its fall affected the rest of Western history and especially the crucial event that was the Industrial Revolution in 19th century Europe. What distinguishes Western Europe from other parts of the world is that it was wholly dominated by an imperial government only once. Using counterfactuals or "rewrites of history" (what would have happened if, say, Rome had not, early on, conquered most of the Italian peninsula?), Scheidel argues that only unusual or accidental conditions allowed the empire to dominate Europe.

Polycentrism vs. empire / To review this book, it is useful to first discuss what happened *after* Rome fell, and then look back on how those events were rooted in the empire.

After Rome fell to barbarians in the 5th century CE, Europe splintered into numerous local polities such as small kingdoms, aristocratic domains, urban communes, and city-states. It never again fell under imperial government, except partly and briefly

under Charlemagne in the 9th century and Napoléon in the early 19th. What happened in Europe after the 5th century is what Scheidel calls the "First Great Divergence," as other parts of the world—China prominently—continued to be dominated by empires. According to medievalist Joseph Strayer, "By the year 1000 it would have been difficult to find anything like a state anywhere on the continent in Europe."

Decentralized Europe proved very resilient, even at an early stage. In the 13th century, for example, Mongol forces attacked Russia and the east of Europe, "sacking most of the principal cities ... and killing their ruling families." They proceeded to Poland, Hungary, and Austria, and then retreated back. Why? Combined with the difficulty of finding grass-land for their hundreds of thousands of horses, the 100,000 or so mounted warriors confronted a major hurdle: Europe's "intense armed fragmentation" meant that a multitude of stone castles and fortified cities had to be conquered one at a time, if that was even possible. Moreover, given Europe's fragmentation, "there was no central governments to offer surrender."

By the 16th and 17th centuries, some European states had become quite large and their ruling families tried to form empires. Yet, Europe remained relatively fragmented and none of its states ever had a serious chance of forming a continental

empire. Contrary to the Chinese imperial state, the "extractive capacity" of European states was constantly hampered. Polycentrism was visible not only in the competition between European states but also in their domestic institutions. European kings had to bargain with independent aristocrats and other intermediary powers, often even with parliaments of sorts. Europe had become a system of fractured and competitive states.

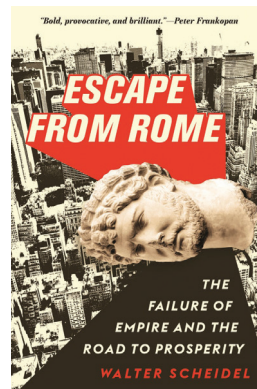
The Great Escape / Among the institutions that developed in Europe, in contrast to those of the paradigmatic case of imperial China, Scheidel mentions (but perhaps underestimates) private property rights

and contracts. He does put his finger on another important factor: "Latin Europe's competitive state system offered exit options to minorities, dissidents, and material and human capital." For example, fragmentation enabled traders to choose among different routes, pushing down tolls.

The Enlightenment's "culture of knowledge" that was necessary for the Industrial Revolution was itself a product of European polycentrism. The Industrial Revolution marked the beginning of the "Second Great Divergence," which unleashed unprecedented

economic growth and continued to separate freer countries from sclerotic empires. (See "From the Republic of Letters to the Great Enrichment," Summer 2018.) The Industrial Revolution led to the "Great Escape" from economic stagnation and poverty.

Scheidel fumbles a bit when he tries to answer the question of whether the Industrial Revolution could have happened elsewhere in the world. Is he trying to avoid the accusation of Eurocentrism, a serious offense against political correctness? Regardless, he rightly praises the Great Escape:



Escape from Rome: The Failure of Empire and the Road to Prosperity

By Walter Scheidel
670 pp.; Princeton University Press, 2019

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Humanity paid a staggering price for modernity. ... It was ceaseless struggle that ushered in the most dramatic and exhilaratingly open-ended transformation in the history of our species: the “Great Escape.” Long may it last.

The book’s main question is, what was the influence of the Roman empire on the Great Escape? Or, as the author puts it in his epilogue, “What have the Romans ever done for us?” Nothing or close to nothing, he answers. In short, “the Roman empire made modern development possible by going away and never coming back.” The escape from Rome cleared the way for European polycentrism, a “shackled Leviathan” (an expression attributable to Daron Acemoglu and James Robinson), and the Great Escape.

If the Romans did anything for us, it is that “their empire, by turning to Christianity, laid some crucial foundations for much later development.” Those foundations were common religious values and Latin as a common elite language. But “in the end, competitive fracture may well have mattered more—or rather, *even* more—than residual cultural unity” (Scheidel’s emphasis).

Leviathan and general welfare / Despite Scheidel’s vast historical and economic knowledge, his understanding of Leviathan and of the requirements of general welfare could be improved. He notes that European states, especially in the North Sea region (mainly the Netherlands and Britain), came to be dominated by the commercial class. He claims that those states were useful in actively promoting development and mercantilism with the help of institutions like banks, public debt, and central banking. Missing is an explanation of why interventionism can be bad under an empire but good under an ordinary state, which after all is only a smaller empire.

Scheidel writes of “the Roman laissez-faire style of provincial governance.” He sometimes seems to believe that

“laissez-faire” only means low rates of formal taxes. But laissez-faire as usually understood means low *real* taxes, and those include military conscription and other forms of government extraction that were common in the Roman empire. Laissez-faire means little or no government. Roman citizens and allied populations did face low nominal tax rates, but the empire was a very militarized society, a “war machine” in which 10%–15% of Roman citizens and members of dominated societies were conscripted for at least six or seven years. The system survived because continuous foreign wars were enriching the elite.

At other times, Scheidel grants that imperial laissez-faire even under Rome was not really laissez-faire: “However benevolent, restrained, or feeble the state, the specter of asset requisition never went away, and both endemic corruption and maintenance-oriented traditionalism were the norm.”

A related aspect of Scheidel’s questionable understanding of laissez-faire concerns his claim that protectionism helped European states prepare for the Great Escape. He admits that European elites “prized war and state interests over citizen welfare.” But how could policies focused on producers’ interests result in general prosperity? Economic growth not directed by consumers is not economic growth. Does he mean that, in the logic of institutions, one had to come before the other?

Moreover, if protectionism was good for Europe’s polycentric states, why was it bad for China, as he suggests? Chinese emperors forbade international trade in many ways over the centuries, from banning private international trade to forbidding the construction and operation of large oceangoing ships. Is it that a little protectionism is good and more protectionism is bad? This is not consistent with economic analysis.

Scheidel may exaggerate the benefits of colonial trade for Europe compared to what the benefits of *free* trade (which basically means freedom to import) would

have been. Adam Smith’s evaluation of colonialism was very negative. Scheidel sometimes seems to harbor an implicit theory of economic growth that favors businessmen over consumers and taxpayers: “Whether empire paid overall is a moot point as long as it benefited the entrepreneurial class.” But perhaps he argues that the actions of the entrepreneurial class were necessary to sidestep the collective-action problem of dispersed consumers and taxpayers and start prosperity rolling.

Scheidel understands the danger of rivalry between ordinary states. In a footnote, he points out that interstate competition is “a euphemism for pointless warfare and consumer-unfriendly protectionism.” There were “443 wars in Europe between 1500 and 1800.” But he suggests that war promoted economic growth—a thesis that is difficult to defend from an economic (that is, consumer-friendly) viewpoint. It is useful to reflect on what Smith wrote in *The Wealth of Nations*: “Little else is requisite to carry a state to the highest degree of opulence from the lowest barbarism, but peace, easy taxes, and a tolerable administration of justice.”

Given the centrality of Britain in the Industrial Revolution (and the importance of the Scottish Enlightenment), Scheidel notes that it matters that, by then, the country was independent. British entrepreneurs would otherwise have been (more) restrained by an empire’s natural conservatism. This is indeed the main argument for a system of independent states as opposed to a large empire: it preserves the possibility of liberty.

Extensions / Let’s not idealize the state. Its main, and perhaps only, benefit is to prevent a worse state, even a domestic one, from taking over—like a castle during a Mongolian invasion. Anthony de Jasay advanced this idea in his 1985 book *The State*. But the state is still dangerous. Scheidel observes that, in Europe, “smaller states with functioning representative institutions were able to impose higher

tax rates than larger absolutist states.” This in turn reminds us of Bertrand de Jouvenel’s argument in his 1945 book *On Power* that therein lies the danger of democratic institutions: democracy can increase state power. When the state is perceived as “we the people,” the rulers can argue that “we” can do to ourselves what “we” want, while in fact the two “we” don’t refer to the same group.

Scheidel does not draw implications from European history for current world affairs. The reader may draw his own. One implication might be that Brexit is good because it allows an escape from an empire, although it must be admitted that the European Union is a loose empire: the

proof is that it allows secession. If one denies this characterization of the EU, wouldn’t one have to think of the United States as an empire? Yet, the idea in the EU that it is a “civilization-state” looks dangerously imperial. *The Economist* recently wrote that this term is in vogue in China and Russia, but also implicitly in European political speech (“Huntington’s Disease and the Clash of Civilisation States,” January 2, 2020).

Another implication of the weaknesses of empires compared to decentralization: there is no reason to fear that the Chinese empire presents any economic challenge to freer economies so long as those societies remain freer.

Scheidel paraphrases Dutch historian Jan Luiten van Zanden as saying that the ascent of industrialized and democratic Europe “occurred in a political vacuum” of “weak or non-existent states” resulting from failed imperial projects. Similarly, French sociologist and historian Jean Baechler wrote that “*the expansion of capitalism owes its origins and its raison d’être to political anarchy*” (Baechler’s emphasis). Do you smell a perfume of anarchy? From the polycentrism that followed the escape from Rome, can’t we hope for an ultimate development different from little Leviathans just replacing a big one? Perhaps we should travel the escape route again. R

Working Papers ♦ BY PETER VAN DOREN

A SUMMARY OF RECENT PAPERS THAT MAY BE OF INTEREST TO REGULATION’S READERS.

Soda Taxes

■ “The Impact of Sugar-Sweetened Beverage Taxes on Purchases: Evidence from Four City-Level Taxes in the U.S.,” by John Cawley, David Frisvold, and David Jones. October 2019. NBER #26393.

Regulation has published both articles (“Would Soda Taxes Really Yield Health Benefits?” Fall 2010; “Slim Odds,” Spring 2011) and Working Paper reviews (Winter 2017–2018, Spring 2019) on the effects of soda consumption on obesity and the effects of soda taxes on reducing soda consumption and body weight. The joint conclusion is that supportive evidence for the importance of soda consumption in weight gain is weak or non-existent and the taxation of beverages has not reduced soda consumption because of substitution of lower- for higher-priced soda or purchases outside the local jurisdictions that have imposed soda taxes.

This study differs in several ways from those previously discussed. First, it examines the effect of soda taxes in the four largest cities to enact them (Philadelphia, Oakland, San Francisco, and Seattle). Second, it examines the universe of retail purchases by a panel of households with children six months before and after enactment of the tax rather than the more commonly used data for soda sales at national chain stores. And third, it uses two control groups: a demographically matched national comparison group, as well as the households in each metropolitan area outside of each of the four cities that imposed the taxes.

Despite those differences, this study’s results mirror those of the previous studies. Across the four cities, an increase in the beverage tax rate of 1¢ per ounce decreases household purchases

of taxed beverages by 53.0 ounces per month, or 12.2%. That may sound large, but the health effect is small: a reduction of 5 calories per day per household member and eventual reduction in weight of just 0.5 pounds after three years.

Even those small results require qualification. The consumption reduction arises only when standard errors are clustered at the household level, which adjusts for potential correlation in errors within households over time but does not adjust for correlation in errors across households within geographic areas. As a result, the standard errors could be biased toward zero. When standard errors were clustered by geographic areas, the standard errors increased, as did the confidence intervals: the estimate is no longer statistically significant at the 5% level because the 95% confidence interval ranges from a decrease in purchases of 93.35 ounces to an increase in purchases of 41.74 ounces.

The second qualification is that the decreased consumption was solely the result of the data from Philadelphia. Oakland, Seattle, and San Francisco showed no effect. And Philadelphia taxes diet sodas and teas and energy drinks along with regular soda.

Public Equity in Decline

■ “Public versus Private Equity,” by Rene M. Stulz. November 2019. SSRN #3486578.

In 1975, the United States had 4,927 publicly traded firms. That number rose over the next two decades, peaking at 7,576 in 1997. But by the end of 2018 the United States had only 3,613 listed firms. In addition, public firms have returned capital

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to shareholders on net; from 1998 to 2016, U.S. firms repurchased shares in excess of share issuance by \$3.6 trillion.

Over that time, the use of private equity has increased rapidly. The number of companies backed by private equity funds in the United States doubled from 2006 to 2017. Private equity net asset value has grown at twice the rate of public market capitalization globally.

This study argues these changes have come about because of the increased importance of intangible rather than physical assets in business. Public markets can value intangible assets. Many firms, such as Apple, have extremely high stock valuations relative to their tangible assets. But young firms with no track record whose success depends mostly on investments in intangible assets are likely to have difficulty raising funds in public markets. If they do succeed, they are likely to be constrained by public market investors who find it difficult to assess whether the firm is spending the money effectively. Thus, Instagram and WhatsApp—which had few employees or hard assets and yet large valuations—were privately bought, whereas Best Buy—which had just 24 stores and earnings of \$7 million in 1987—nonetheless went public that year.

Policy changes have also increased the supply of private equity. Securities Regulation D in 1982 allowed partnerships such as private equity funds or hedge funds to have up to 100 investors. In 1996 that cap was raised; by 2012, a private firm could have 500 shareholders without having to go public. That year, Congress passed the Jumpstart Our Business Startups (JOBS) Act that increased the threshold to 2,000 shareholders. So, both the supply of and demand for private equity have increased.

Smoking

■ “E-Cigarettes and Adult Smoking: Evidence from Minnesota,” by Henry Saffer, Daniel Dench, Michael Grossman, and Dhaval Dave. December 2019. SSRN #3503054.

Minnesota became the first state to tax electronic cigarettes in August 2010, implementing a tax rate of 35%. The rate increased to 95% in July 2013. This study examines the effect of that tax on smoking and e-cigarette consumption using data from the Tobacco Use Supplement of the Current Population Survey for the years 1992–2015. The study compares smoking in Minnesota relative to a synthetic control group of all other states weighted to have consumption trends similar to Minnesota before 2010.

After the large tax increase on e-cigarettes, the rate at which traditional cigarette smoking declined in Minnesota was reduced relative to the synthetic control group. Traditional smoking was 0.8 to 0.9 percentage points higher in Minnesota than in the synthetic control group. Almost all of difference was the result of a decrease in quitting among existing smokers rather than an increase in smoking initiation. In 2014 there were 600,000 adult

smokers in Minnesota and the e-cigarette tax deterred 32,400 smokers from quitting.

Using those findings, the study estimates that nationwide taxing of e-cigarettes at the same rate as regular cigarettes would deter 2.75 million smokers from quitting over the next 10 years, which is around 25% of the estimated 11 million smokers that will quit over that time.

Risk Analysis

■ “Be Cautious with the Precautionary Principle: Evidence from Fukushima Daiichi Nuclear Accident,” by Matthew J. Neidell, Shinsuke Uchida, and Marcella Veronesi. October 2019. NBER #26395.

The Precautionary Principle argues that “until safety is established through clear evidence, we should be cautious.” (See “The Paralyzing Principle,” Winter 2002–2003.) In accordance with that principle, the Japanese government shut down all nuclear power plants in Japan in March 2011 following the tsunami, loss of cooling capacity, and resulting nuclear core meltdown at a nuclear plant in Fukushima.

But the decrease in nuclear power came with an increase in electricity prices (38% in the Tokyo region) to cover the cost of imported fossil fuels used to substitute for nuclear generation. The increased electricity prices reduced electricity use and increased mortality from reduced heating in homes. From 2011 to 2014, higher electricity prices resulted in 1,280 additional deaths in Japan’s 21 largest cities. And 1,232 deaths occurred because of the massive forced evacuation of the Fukushima area following the accident. In contrast, the estimated cumulative deaths that will occur from excessive radiation exposure because of the reactor meltdown is 130.

Immigration

■ “A Market for Work Permits,” by Michael Lokshin and Martin Ravallion. December 2019. NBER #26590.

Many people outside the United States seek to work here, but the legal right to do so is very limited. The demand is so large that a vast illegal market exists to facilitate entry. Many U.S. citizens dislike illegal immigration and have elected national officials who favor tighter restrictions on immigration.

This paper proposes that Americans who do not wish to work could rent out their right to participate in the U.S. labor market to foreigners in a secondary market. The monies immigrants currently pay smugglers to enter the United States would instead go to U.S. citizens. This proposal would decentralize the decision of how much immigration there should be and would pay those Americans who perceive losses from immigration, thus reducing the politicization of the issue.

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