

# Keystone XL: Not Enough Attention to Core Issues

BY MARLO LEWIS, JR.

In the protracted conflict over the Keystone XL Pipeline, too much attention has been paid to peripheral issues and not enough to the core issues.

Peripheral issues include whether the pipeline will create many or few jobs, lower or raise Midwest gasoline prices, reduce or increase the risks of oil spills, and reduce or increase incremental greenhouse gas emissions.

Why are those issues peripheral?

Let's begin with oil spill risk and gas prices. Surely if Keystone is built, there will be incidents of leaks and spills. There will also be regional effects on gas prices.

But look at the big picture. The State Department (ultimately, that is, President Obama) is supposed to make a "national interest determination" about the pipeline. The U.S. already has more than 2.5 million miles of oil and gas pipelines. Can anyone argue with a straight face that the U.S. national interest is harmed by those pipelines? That adding another 1,179 miles of pipeline will push America over some kind of "tipping point"? That we would be better off shipping all oil and petroleum products by truck, train, and barge? Or that we would be better off simply leaving all oil in the ground?

Humanity has been there, done that. It's called medieval squalor.

Next consider the jobs debate.

Opponents like environmentalist author Bill McKibben argue that, apart from the construction jobs, which are "temporary," Keystone would create only a "few hundred" permanent jobs, because relatively few people are needed to operate a pipeline once it's up and running. This is wrongheaded in three ways.

First, construction projects are *supposed* to be temporary. An interminable construction project is an investor's worst nightmare—behind schedule and over budget.

Second, although every project-specific job is temporary, many people who work construction are in it for the long haul—it is their profession. Several thousand of them would benefit from Keystone-related work.

*(continued on page 3)*



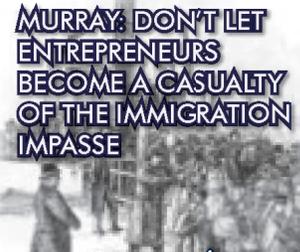
## FEATURED ARTICLES

**MINTON: DC ABUZZ ABOUT ENERGY DRINKS**



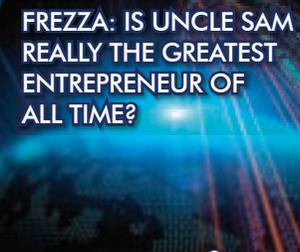
>>page 5

**MURRAY: DON'T LET ENTREPRENEURS BECOME A CASUALTY OF THE IMMIGRATION IMPASSE**



>>page 6

**FREZZA: IS UNCLE SAM REALLY THE GREATEST ENTREPRENEUR OF ALL TIME?**

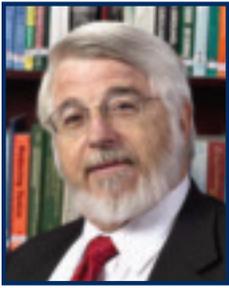


>>page 8

### ALSO INSIDE:

Ronald Coase -- A Tribute, by Fred L. Smith, Jr. . . . . 2  
 Converting the Unconvertible, by Lawson Bader . . . . . 4  
 The Good, the Bad, and the Ugly . . . . . 10  
 Media Mentions . . . . . 11  
 End Notes. . . . . 12

>>MESSAGE FROM THE FOUNDER AND CHAIRMAN



**Ronald Coase – A Tribute**

By Fred L. Smith, Jr.

Ronald Coase (1910-2013), the greatest of the Chicago School economists in my view, died on August 2. Yet, his work lives on. If it gains the recognition it merits, it will do much to enhance the quality of public debate and public policy. Coase developed a unique understanding of how solutions to real-world organizational and financing problems evolved through the voluntary interactions of individuals and firms.

As a young scholar, Coase studied how businesses in competitive markets actually survived and thrived. Coase recommended that economists look at businesses' actual practices and organizational structures, as these likely indicated rational approaches to complex competitive challenges. That approach attracted CEI to his work. In our early days, he participated in an intellectual property conference we cosponsored with Liberty Fund, in Aix-en-Provence, France.

Coase saw the economy as an evolving, spontaneously ordered system characterized by entrepreneurial creative destruction, in which firms find their way by experimenting with new organizational forms—such as for example, alternative creative financing options.

Perhaps, Coase's greatest contribution was his understanding that wealth creation stemmed from the voluntary exchange agreements of two or more parties, but that such agreements were often blocked by transaction costs. The parties had to become aware of each other, incurring search costs. They had to gain each other's trust, whether by reputation, earlier small experimental exchanges, third party guarantees, escrow accounts, or other means. They had to find ways to assure the quality of the good or service.

Ways to address those costs would have long been arrived at within mature markets, but in the entrepreneurial world, where there are no established cost-reducing models to emulate, there would be a need for a great degree of creative experimentation. These experiments would often be tentative, primitive, and clumsy, but they would make possible the great leaps

forward in institutional innovations. The realization that markets were not in static equilibrium—and should not be—if we wanted a better future, was one of the many debts we owe Coase.

We at CEI recognized and learned from his observation:

*Many economists see market failure and collusion in arrangements that they do not understand and, since there is much that they do not understand, they tend to see collusion everywhere!*

CEI also worked with Coase in regard to another of his creative breakthroughs—his analysis of the challenge that declining marginal costs place upon firms. For example, airlines trying to fill empty seats or pharmaceutical firms trying to sell more pills cannot simply charge the marginal cost for each additional item, as that would lead to bankruptcy. Contra some economists' arguments for subsidies for such firms, Coase demonstrated that in the real world many firms adopt variable pricing and other creative alternatives that would be far more likely to advance consumer welfare.

CEI organized a conference on this topic and we traveled to Chicago to interview Coase on the topic. Coase, then in his 90s, graciously consented to an interview, which we presented at the conference.

Coase was a rarity—a free market theorist deeply grounded in empirical research who sought to better understand the creative strategies employed by real firms in the real world. His work has influenced the work of CEI scholars and of many of our allies. We seek to free entrepreneurial capitalism from the rigidities of state control. Free markets are competitive despite the confusion of too many economists. Our challenge to enlighten the public policy debate of that reality was aided greatly by Ronald Coase—a great man, a brilliant economist, and a person worthy of study and emulation.

*Fred Lee Smith Jr*

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## Keystone, continued from page 1

Third, the fact that pipelines require few employees to operate them is a plus, because it means they are efficient. Pipelines have a high productivity of labor compared to other methods of transporting oil. This means they are more likely to create wealth (produce more value than they consume).

McKibben and other opponents claim that if Keystone goes forward, it's "game over" for the climate. That is demonstrably false.

Cato Institute climatologist Chip Knappenberger, using a climate model emulator developed by the U.S. Environmental Protection Agency (EPA), calculated the warming effect of Keystone's incremental greenhouse gas emissions as estimated by the State Department. The global warming contribution "works out to less than 0.00001°C per year—that is one one-hundred thousandths of a degree."

Don't trust the State Department? No matter. Knappenberger continues: "And even under the assumption that all Keystone XL oil is additional oil in the global supply, the extra warming is still less than 1/10,000th of a degree per year. In other words, if the pipeline were to operate at full capacity for the next 1,000 years, it would raise the global average surface temperature by less than 1/10th of a degree!"

Blocking Keystone would have no discernible climate benefit. So what's the fight really about? This brings us to the—usually unspoken—core issues.

One core issue is whether the U.S. government should support and encourage

or oppose and thwart North America's market-driven evolution into a world-class energy producer and exporter.

Production and export of coal, oil, and natural gas has the potential to add trillions of dollars to long-term cumulative GDP and generate hundreds of billions in new tax revenues. Keystone would help realize that potential by further integrating the U.S. and Canadian oil markets.

That, I suspect, is the main reason green groups oppose it. Oil and oil companies are villains in their gloomy narrative of inexorable depletion, dependency, and decline. The prospect of fossil energy-led prosperity threatens their worldview, credibility, and influence. Whatever helps unleash the North American energy colossus, they must oppose.

Keystone supporters should push opponents to lay their ideological cards on the table. Opposition to Keystone derives from a broader antipathy to all fossil fuels. Fossil fuels are not perfect, but the alternatives favored by most Keystone foes—biofuels, solar panels, wind turbines—are not up to the task of powering a modern economy.

Comedian Stephen Colbert touched on this point when interviewing McKibben during an anti-Keystone rally in Washington, D.C.: "You're from Vermont? Did you ride your bicycle down here? Did you ride ox cart? How did you get down here? Or do you have a vehicle that runs on hypocrisy?"

McKibben had no response to this jab (however good-natured). Itinerant preachers of the eco-apocalypse like McKibben, Al Gore, and the throngs

of diplomats who attend U.N. climate conferences pursue a highly carbon-intensive life style. If even they need oil, then other folks do, too. And if oil is an essential commodity, then it should be brought to market by the most efficient means: pipelines.

An even more fundamental issue raised by the clash over Keystone relates to the role of government in society.

Thomas Jefferson's philosophical hero John Locke taught that society flourishes when government protects the "industrious and rational" from the "quarrelsome and contentious."

Keystone foes operate on a different maxim. They believe government should empower "stakeholders"—that is, activists like themselves—to upend other people's business plans and stifle wealth creation.

They think that if they just make enough noise, gin up enough protests, promise or threaten to support or oppose enough politicians, they are entitled to stop other people from taking risks with their own capital, hiring contractors, and employing workers.

The conflict over Keystone is thus at bottom a quarrel between those who want to restrain political predation in the marketplace and those who seek to practice such predation.

This is what deserves much more attention.

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# Converting the Unconvertible

BY LAWSON BADER

Here's a thought experiment: What words come to mind with the following statements?

I grew up in Marin County, California, during the late 1960s and entire 1970s. I like granola. I willingly attended a Pete Seeger concert in my youth.

Among the various responses is probably one of bewilderment. Some may ponder, "How did he ever become ..." leader of CEI/promoter of libertarian and free-market thought? With the additional assumption that hot tubs and the Grateful Dead may be part of my background (they are), it's not hard to presume my world view would be akin to Barbara Boxer's.

It is not. In fact, it never was. Rather, my faith in the power of market principles to address society's problems largely was borne out by the hypocritical paternalism that I saw permeate the wealthy liberal elite of the infamous hometown of my youth.

So, yes, making pat assumptions about people's world views based on political geography is superficial and shortsighted. But I want to focus on some more fundamental questions that point raises.

Are people's views immutable? In debate, do we try to take others seriously or simply try to reinforce our own views? In the give and take of policy making, are we trying to win new converts or just defeat our opponents? Can people actually change their minds about how the world works, not just how it should work?

Conversion is a funny thing. It means coming to the belief that what one once thought was right no longer seems to be. For those seeking converts, a moral crusade offers opportunities to motivate existing followers and feed their own egos. But successful conversion requires something woefully lacking in today's

political culture, both inside and outside the Beltway: intellectual humility.

We certainly have examples of politicians who have "changed sides," and not likely because of humility—from Rep. Artur Davis to former Sen. Phil Gramm to Ronald Reagan to occasional former lawmakers, such as Chuck Hagel, who take cabinet positions in the administration of presidents of the opposing party. But in how many of these instances was there ever true conversion? Reagan famously noted that he didn't so much leave the Democratic Party as the Democratic Party left him. But what about the others who have made switching parties for pure

*“[I]deas are defined not as left or right, but as good or bad.”*

political expediency an accepted practice, such as former Sen. Arlen Specter or New York Mayor Michael Bloomberg?

Does the "war" of ideas ever actually result in prisoners of war voluntarily admitting intellectual defeat and joining a different side?

Anecdotally, I know my share of conversion stories. Fred Smith, my predecessor at CEI, speaks openly about his time as an economic socialist working for the U.S. Environmental Protection Agency. I have current and former coworkers, who speak of their "youthful indiscretions" as members of Young Democrats or Greenpeace.

But let's get back to our thought experiment.

My first presidential votes were cast for Ronald Reagan. I attended Wheaton College (yes, the one where you can't

drink). I helped start a new church in Northern Virginia. Now, perhaps, I sound more like what you'd expect from these pages. That's fine. But then engage me on issues of drug legalization, alcohol privatization, gay marriage, and the Pledge of Allegiance and you might find yourself posing the same question as earlier—"How did he ever become ...."

So now we come to the "result" of the experiment. What have we learned?

Quite simply, that labels are of little use in debate. Instead, we need to recognize ideas matter and have consequences. But more than that, we need to recognize ideas are defined not as left or right, but as good or bad. Bad ideas have devastating results for human dignity and human flourishing and should be passionately opposed.

So, to the libertarians and conservatives out there trying to get heard in policy debates and gain new adherents, we can agree we're on to something—we have a winning narrative. It's intellectual and emotive. It's about an enterprising society being a peaceful society. It's about embracing a bit of humility to acknowledge we don't have answers to every problem and ensuring not every problem be addressed from a bully pulpit.

With those who will listen, engage with them and they may change their minds. With those who won't—well ... try spreading a little wheat germ in their soup, channeling Cyra McFadden's *The Serial*, playing some Doobie Brothers, and then reading the Declaration of Independence out loud. You never know.

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# D.C. ABUZZ ABOUT ENERGY DRINKS

BY MICHELLE MINTON

America's politicians and media love a good public panic. And right now they're having a field day touting the supposed dangers associated with energy drinks.

The Senate Commerce, Science, and Transportation Committee held a hearing in late July to grill energy drink makers on their marketing practices, while in May the U.S. Food and Drug Administration (FDA) announced plans to investigate the use of caffeine as a food additive, with a focus on the risks it poses to children and adolescents.

Journalists and pundits have described the products as deadly and called for restricting their sale. And most recently, the poison control center at Rutgers New Jersey Medical School made headlines by claiming that energy drinks have as much caffeine as four to five cans of soda and ought to be banned outright.

It's true that energy drinks can be dangerous if over-consumed, but that's true of any product. And campaigns against energy drinks pose a far greater danger: taking away individuals' right to make their own dietary choices.

Humans have been safely consuming caffeine in its natural form for millennia and have used caffeine extract safely for nearly two centuries. Energy drinks are a relatively new product—they have been around for less than 20 years—but their popularity has seen a recent surge.

These products often contain high levels of caffeine. Their increased use has been blamed for an increasing number of visits to the emergency room (reportedly rising from about 10,000 in 2007 to more than 20,000 in 2011), a handful of sudden deaths among young people, and a host of other health problems.

Also in November 2012, the FDA

released the records of complaints filed against three of the most popular energy drink companies since 2004. The reports, known as Adverse Event Reports, detail complaints made by consumers and their physicians about possible negative side effects linked to the consumption of energy drinks.

Of the 145 complaints, some were serious or life-threatening like convulsions, heart attacks, and 13 deaths, while others led to less serious symptoms, like sleep disorders, throat irritation, and crying.

Critics of energy drinks companies cite this report as evidence of their inherent danger, but as the FDA itself notes, these reports are simply associations. They do not prove that the drinks caused or were even related to the patients' problems, only that a patient or a doctor reported to the FDA that energy drinks were used around the time that person's health issue arose. The reports provide no details about other factors that might have contributed to a person's condition, such as whether he or she was on medication, was drinking alcohol, or had a preexisting health condition.

And while there has reportedly been an uptick in the amount of hospitalizations related to energy drinks, again, such reports do not reveal a causal relationship. The increasing numbers are more likely related to energy drinks' increasing popularity, especially as a mixer for alcoholic beverages. People are simply more likely to be drinking energy drinks when they end up in the emergency room regardless of whether or not the energy drink contributed to their being there.

Even if energy drinks were a contributing factor in some of the 20,783 ER visits linked to their use in 2011, the number pales in comparison to that of people who ended up in the hospital due to misuse of other consumer goods.



Campaigns against energy drinks pose a far greater danger: taking away individuals' right to make their own dietary choices.

For example, grooming products reportedly caused twice as many injuries in 2011 as energy drinks, clothing was responsible for more than 300,000 trips to the ER and furniture—namely, chairs, sofas, and sofa beds—were correlated with more than 580,000 injury reports. But nobody is holding hearings and calling to ban Ikea.

Considering that nearly 3 billion 16-ounce cans of energy drinks were sold in 2009 and it's estimated that 2 percent of the population consumes them, if there were some inherent risk in the consumption of energy drinks, we should expect to see a much higher number of people falling ill. Yet, public health advocates still want the government to ban or limit-out-of-existence a product which the vast majority of people are fully capable of consuming responsibly.

Banning products and treating adults like children will not improve the health of our nation. Instead, it's a recipe for childish adults who rely on the government to tell them how to live.

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# Don't Let Entrepreneurs Become a Casualty of the Immigration Impasse

BY IAIN MURRAY

Eberhard Anheuser came to America as a soap and candle maker in 1842. When he died, his company had pioneered the pasteurization of beer. Marcus Goldman came to the United States in 1848 to work as a peddler on the streets of New York. Thirty years later, the company he founded was turning over \$30 million of commercial paper a year.

These two immigrants arrived on these shores with a few sparse belongings and went on to found two of America's iconic companies—Anheuser Busch and Goldman Sachs. Immigrant entrepreneurs helped build America, yet current immigration laws are hostile to them, and the bills currently being debated in Congress do little to alleviate that situation.

The list of companies founded by immigrants is long and storied, and includes modern tech giants as well as established icons. It includes Warner Brothers, Anheuser Busch, Goya Foods, Goldman Sachs, Paramount Pictures, Sbarro, Forever 21, Google, Intel, Sun Microsystems, Yahoo!, Yurie Systems, Kraft, Pfizer, eBay, Nordstrom, and AT&T. It's not just large businesses.

In New York City alone, 70,000 immigrants own small businesses, including 90 percent of the city's laundry and taxi services. Studies find that immigrants are twice as likely as native born Americans to found new businesses. It is not a stretch to say that immigrants are essential to America's entrepreneurial culture.

Yet our immigration system makes no allowance for entrepreneurs. The desire to start a business and provide jobs and wealth is not regarded as a valid reason to gain entry to the United States. All those recent immigrant entrepreneurs came here initially via employer or family sponsorship.

There is an E2 Visa that allows investors the chance to come here if they own 51 percent of a business and make a

personal investment of \$100,000 a year, and other higher profile visas that can be used by the very rich or established stars. Ambitious and hardworking yet penniless immigrants like Eberhard Anheuser or Marcus Goldman stand no chance under the modern system, which seems designed to exclude precisely the people America needs most—innovators, risk-takers, and visionaries.

As my former colleague David Bier finds in a new study from CEI, "America Still Needs a True Entrepreneurship Visa," neither of the immigration bills currently being discussed in Congress comes close to fixing this problem. If anything, they make the current situation worse. The Senate bill, the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), is a case in point.

To begin with, S. 744's Invest Visa (or X Visa) only applies to people who have already started a business in America and operated it for two years. Realistically, this can only be done by immigrants who already have jobs here, probably on an H-1B visa. The X Visa would require applicants to prove their intent to return to their home country—a baffling requirement for entrepreneurs.

As a temporary visa, it also requires regular renewal through our byzantine bureaucracy, unlike the entrepreneur visas in other countries like Canada. By contrast, the H-1B visa does not require applicants to show intent to return to their home countries and allows the possibility of permanent residency.

The vast majority of entrepreneurs in America would not qualify for the X Visa. The visa requires initial annual revenue of \$200,000. The average annual revenue for a startup business is \$60,000. Even for established small businesses, average revenue is \$182,000 a year. It also requires a \$250,000 investment for renewal, which is

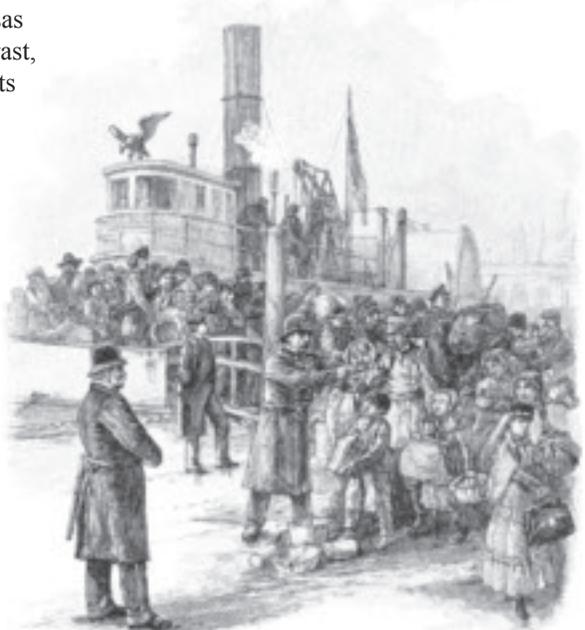
achieved by only 5 percent of current immigrant-owned businesses.

Moreover, the visa requires that the investment comes from government-approved financing sources. Sergey Brin started Google on his credit card. The House bill (H.R. 2131) is even more stringent in these requirements.

Sadly but unsurprisingly, our international competitors use America's hostility to immigrant entrepreneurs to their advantage. Canada's immigration minister Jason Kenney said in May this year, "It's really difficult for talented immigrants to stay in the U.S. permanently... If you're a young startup entrepreneur having trouble renewing your visa, come here! We offer immediate permanent residency."

America needs a genuine entrepreneurship visa, one that offers a clear path to permanent residency to any foreign-born, venture-backed founder of a new business in the U.S., without further restrictions. If we do not do this, we will see the next Anheuser Busch in Vancouver and the next Goldman Sachs in Montreal.

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# The Regulatory Improvement Commission

BY WAYNE CREWS AND RYAN YOUNG

There are regulations for everything from restaurant menus to walk-in freezers' energy efficiency. Almost no one denies that the nation's economy is saddled with some outdated and goofy regulations that have accumulated over the years. And almost no one opposes getting rid of those. Clearly some pruning is in order. The most recent print edition of the *Code of Federal Regulations* stands at 174,000 pages, spread over 238 volumes. The index alone is 1,142 pages long!

There is only one problem. The reason we say "almost no one" is that the people best positioned to do something about the problem are precisely those with the least incentive to do so—regulatory agencies themselves. No bureaucracy would voluntarily reduce the size and scope of its mission and its budget. Agencies seek to grow, in both authority and budget, so we cannot look to the regulators themselves for relief.

Instead, reform must come from outside. One such approach is the Regulatory Improvement Act of 2013, introduced by Senators Angus King (I-Me.) and Roy Blunt (R-Mo.). The bill would establish an independent Regulatory Improvement Commission to identify rules ripe for repeal and send them to Congress.

The idea goes back at least two decades, and has garnered support from across the political spectrum, from former Senator Phil Gramm (R-Texas) on the right to the Progressive Policy Institute's Michael Mandel on the left. Here's how a Regulatory Improvement Commission would work.

Congressional leadership and the president would appoint the Commission's

members.

After identifying one area of emphasis—say, technology, or food and drug safety—the Commission would comb the books for outdated, redundant, and inefficient rules in that policy area. Along the way, it would also solicit comments and suggestions from the public and affected industries.

The Commission then works those comments and suggestions into a single legislative package to be sent to the relevant congressional committees. The committees will then have up to 30 days to review the package legislation, but not to scuttle it. After that, it would head to the House and Senate floors for a vote.

There would be no log-rolling. The vote would be straight up-or-down, with no amendments allowed. This prevents vote-trading among lawmakers agreeing to save one another's pet regulations. If a member ends up taking political heat for voting in favor of the package, he or she will have plenty of company. All members can rightly say that the total benefits of the package exceed any parochial costs to one's district.

Once this process is complete in one regulatory area, the Commission then moves on to another. The cycle repeats as many times as Congress deems necessary.

This is a good start, but the process could be strengthened and improved in two ways.

First, the recommendations should automatically take effect unless Congress affirmatively votes to reject it within a specified period of time—say, 10 legislative days.

The successful military Base Closure and Realignment Commission (BRAC) of the 1990s—the inspiration for this Commission—used this opt-out approach and saved billions of dollars by

closing unneeded military bases. Opt-out eliminates potential parliamentary maneuvering to prevent the package from ever coming to a vote. The opt-in model in the King-Blunt bill could still work, but a BRAC-style opt-out would have a greater chance of successfully dealing with regulatory overreach.

Another improvement is a little outside the box. It would give a financial incentive to suggest rules to the Commission in the form of a finder's fee. Agency employees and members of the public who suggest rules that are successfully repealed could be paid, say, \$1,000 per \$1 million saved in compliance costs. Agency staff in particular have specialized knowledge that Commission members may lack. Spending some money to induce them to participate in the process could by definition save far more money than the finder's fees would cost.

There are a lot of dead branches in the *Code of Federal Regulations* that need pruning. Since both regulatory agencies and Members of Congress generally detest this kind of yard work, a King-Blunt-style Regulatory Improvement Commission could be just the tool for the job. The still-struggling economy could use the help.

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BY BILL FREZZA

A new book titled *The Entrepreneurial State* that is now making the rounds gives credit to Uncle Sam for inventing many of the technologies we enjoy today, from the Internet to smartphones. It has given fuel to proponents of government grants, subsidies, and mandates for technologies like solar cells, windmills, electric cars, algae fuel, and cellulosic ethanol. Here, they claim, is justification for continued support of money-losing businesses that one day will be commonplace and profitable, yet might never exist at all without government support.

But getting past the sound bites, the case for expanded technology subsidies is based on several propositions that require examining.

First, there are the facts. What role, precisely, did the government play? After all, success has many fathers while failure is an orphan.

And then, almost as important, there are the counterfactuals. Which of these technologies would likely have been developed *without* government involvement, when would they have been developed, and how might they have turned out the same or different? What else could the nation have done with the money if the people who earned it, rather than government bureaucrats, decided how to invest it?

And finally, there are the opportunity

costs. What other “investments” made by the government at the time resulted in massive destruction of wealth through the support of dead-end technologies that diverted talent and resources away from the market?

A failure to look beyond industrial policy advocates’ cheery anecdotes and to ask the key “what if” questions can lead to very bad policies. As an antidote, I suggest reading French economist Frédéric Bastiat’s discussion in his classic essay, “What Is Seen and What Is Not Seen.”

*“How can we assess a gambler’s prowess at blackjack if we count only his wins and not his losses?”*

How can we assess a gambler’s prowess at blackjack if we count only his wins and not his losses? And how can we know if mastering blackjack is the best use of his time, talent, and money if we don’t consider what else could be doing—such as starting a business? This is especially important to consider when a high roller like Uncle Sam tries to gamble with other people’s money.

So, let’s consider the leading example of a technology claimed to be invented, or at least enabled, by government, the Internet. There is no disagreement that the Internet began life as the Advanced Research Projects Agency Network (ARPANET), a program funded by the Department of Defense to allow university researchers to more easily share data. The telecom connections between early ARPANET users—the actual physical network—was built by stitching together leased lines owned and operated by Ma Bell’s government-sanctioned telephone monopoly (more on that below).

The researchers contributed a set of conventions, or protocols, known as TCP/IP. While extremely long-lived, these basic conventions also proved grossly inadequate for the commercial Internet. That’s because ARPANET was a closed private network designed for use by a small set of trusted insiders, not an open public network populated by spammers, Russian mobsters, bandwidth hogs, and a bewildering array of applications that require more than just “best effort” delivery. So, if this government “invention” were ever to be commercialized, it would be up to the market to do the actual design work.

But it was a market that almost didn’t come into existence, because government planners and self-styled “consumer advocates” like Ralph Nader, through his Taxpayers Assets Project, fought tooth and nail to keep commercial traffic off the

fledging Internet. Instead, they envisioned the Internet as a great commons, like a public library, not to be sullied by commerce.

It took entrepreneurs like Bill Schrader, founder of PSINet, one of the first commercial Internet service providers, to badger his way past the early Internet Acceptable Use Policy, which made the majority of what we do today on the Internet illegal. (How many of us remember that the only way to get an email account was to lie about having a university affiliation?)

Would another source of seed protocols more suited to open public networks have developed had ARPANET never been sponsored by government? Most likely, yes, once the telecom market was deregulated.

Which brings us to the actual physical wires upon which the Internet is built. Had Ma Bell's telephone monopoly not been broken up in 1983, the rush to wire the country with broadband data pipes would never have happened. That is because government-sanctioned and -owned telecom monopolies were once the biggest examples of industrial policy outside the Soviet Union. AT&T and its Bell Operating companies got a 12 percent guaranteed rate of return on capital in exchange for delivering universal service—equality first, innovation maybe later. (Despite the hagiographies written about the brilliant innovations produced by Bell Labs, by the time I got there in 1978, it was a sclerotic bureaucracy plodding its way up from 2,400 bps dial-up service.)

Creative destruction was poison to Ma Bell's business model. The 20-year telecom boom, which led a ravenous crop of competitors to lay down the physical network upon which the Internet was built, happened only *after the government got out of the way*.

So by all means, read *The Entrepreneurial State*. But read it with a copy of Bastiat's "What Is Seen and What Is Not Seen" by your side.

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### THE GOOD

#### D.C. Mayor Vetoes Union-Backed "Living Wage" Bill

On September 12, Washington, D.C. Mayor Vincent Gray vetoed the Large Retailer Accountability Act, a union-backed bill that would have levied an especially high minimum wage on Walmart—and Walmart alone. Although the legislation's wording seems to apply to all large retailers, it defined them so only Walmart would have been affected by the law. The law would have required it to pay at least \$12.50 per hour in wages and benefits, substantially more than the city's existing \$8.25 minimum wage. The D.C. Council failed to override the veto, but unions that supported the measure vowed to continue targeting Walmart. "Unfortunately, it is now common for unions to spend more time demonizing employers than attracting members," said CEI Editorial Director Ivan Osorio. "Is it any wonder they are dwindling in the private sector?"

### THE BAD

#### CFPB Forbids Small Businessman from Attending Meetings

As the Consumer Financial Protection Bureau (CFPB) defends its right to monitor ordinary citizens' credit card transactions, it is simultaneously denying citizens the ability to monitor the agency's most basic proceedings. In mid-September, the CFPB blocked a small businessman from attending meetings of its Consumer Advisory Board in Jackson, Mississippi. "Why do you even go to Mississippi for a meeting if you're not letting the people of Mississippi into most of it?" asked a CEI Senior Fellow John Berlau. "If the CFPB wants the trust of Mississippi and American consumers to foster transparency in markets, it must be more open in its own affairs. And it must stop nosing around in the personal financial matters of the individuals it was created to serve."

### THE UGLY

#### New EPA Rule Could Outlaw New Coal-Fired Power Plants

A proposed Environmental Protection Agency (EPA) regulation for new electric plants would, for the first time, place uniform national limits on the amount of carbon dioxide future coal and natural gas power plants are allowed to emit. It would mandate use of carbon capture and sequestration technology for coal plants that is not commercially available and will be extremely expensive even if it does become available in future decades. "EPA is correct in its analysis that its proposed rule will have no benefits but incorrect in claiming it will have no costs," said Myron Ebell, director of CEI's Center for Energy and Environment. "During the several years it will take to finalize the rule and then overturn it in federal court, no electric utility will invest in planning or building a new coal-fired power plant. American consumers and manufacturers will be denied the benefits of the low-cost electricity produced by coal."

# Media**MENTIONS**

Compiled by **Nicole Ciandella**

**Associate Director of Technology Studies**  
**Ryan Radia** breaks down the dispute between **Time Warner Cable** and **CBS**:

From Los Angeles to New York, 3 million Americans in eight U.S. cities haven't been able to watch CBS on cable for weeks, because of a business dispute between the network and Time Warner Cable (TWC). The two companies can't agree on how much TWC should pay to carry CBS, so the network has blacked out TWC subscribers since August 1. With the NFL season kicking off on September 8, the timing couldn't be worse for football fans.

Regulators at the Federal Communications Commission (FCC) face growing pressure to force the feuding companies to reach an agreement. But despite viewers' frustrations with this standoff, government intervention isn't the answer. If bureaucrats begin "overseeing" disputes between network owners and video providers, television viewers will face higher prices or lower-quality shows.

—August 27, RealClearPolicy

**Vice President Wayne Crews** explains how the **REINS Act** could help reform the regulatory process:

Democratic accountability, and legitimacy itself, requires something like the Regulations from the Executive in Need of Scrutiny (REINS) Act, "to provide that major rules of the executive branch shall have no force or effect unless a joint resolution of approval is enacted into law."

REINS is sponsored in the House by Todd Young (R-Ind.) and in the Senate by Rand Paul (R-Ky.). It passed the House; the Senate is still ignoring it.

Variants of what is now REINS emerged since the 1990s (Rep. J.D. Hayworth of Arizona, Rep. Nick Smith of Michigan, and Sen. Sam Brownback of Kansas all introduced congressional accountability legislation).

The basic idea provides for limiting regulatory agency discretion with an expedited but mandatory congressional vote on big regulations (usually "economically significant" rules with \$100 million in annual impact).

Potentially burdensome new regulation would thus become subject to legislative procedures appropriate to their magnitude, thereby "reining" in the failure to maintain constitutional separation of powers between legislation and execution.

—September 16, *Forbes*

**Senior Fellow Christopher Horner** and **Energy Policy Analyst William Yeatman** pen a letter to the editor opposing the nomination of **Ron Binz** to head the **Federal Energy Regulatory Commission**:

It should come as no surprise that industry insiders, lobbyists, and special-interest groups support Ron Binz, President Obama's choice to chair the Federal Energy Regulatory Commission (Letters, Aug. 9). They've racked up huge gains at ratepayers' expense as a result of Mr. Binz's activism. However, the supportive letter by former Federal Energy Regulatory commissioners neglects to mention Mr. Binz's record of antipathy toward three energy sources that power 91 percent of the nation's electrical grid.

As head of Colorado's Office of Consumer Counsel, Mr. Binz was instrumental in shutting down the state's lowest carbon-emitting energy source, the Fort St. Vrain nuclear power station. As chair of Colorado's Public Utilities Commission, Mr. Binz was a general in the war on coal. In 2010, while leading the charge in negotiating the terms of the \$1.3 billion controversial fuel-switching bill, the "Clean Air, Clean Jobs Act," Mr. Binz thought natural gas was a clean fuel. He now calls it a "dead end" technology.

—August 22, *Wall Street Journal*

**Policy Analyst Trey Kovaacs** explains how state and local pension funds are routinely mishandled:

A recent Associated Press investigation found that 20 states provided public



pensions to private-sector individuals who work as lawyers, trade association executives, and athletic event sponsors, who supposedly advance some state interest. Worse, most of the private employees receiving this inappropriate public aid are lobbyists who are at odds with taxpayer interests. Many of them use their political influence to advocate for increased state spending and weakening taxpayer protections.

—September 21, McClatchy-Tribune News Service

**Senior Fellow Marlo Lewis** responds to a **National Academy of Sciences** report that supposedly provides "clear evidence" of significant man-made climate change:

The NAS researchers pointedly echo the famous declaration by the United Nations-sponsored Intergovernmental Panel on Climate Change (IPCC) that the "balance of evidence suggests a discernible human influence on global climate." With this new study, the authors claim to clinch the case. The IPCC, we're supposed to believe, has been right all along.

With the IPCC now issuing the first segment of its latest mammoth study on the same topic, readers should take the NAS pronouncement with a large grain of salt—and the IPCC report, too. This is an attempt to change the subject and ignore the elephant in the room: the crisis in "consensus" climate science arising from the growing mismatch between model-predicted warming and observed warming.

The urgent issue in climate science today is not whether man-made global warming is real but whether the climate models that scientists use to predict it are realistic enough to assess future climate change and inform public policy. And scientists themselves are pointing this out.

The real, observable evidence increasingly shows that the models, which are no more than computer simulations based on the data and assumptions that scientists currently think are relevant, are way out of line with the changes that scientists are able to measure. And the gap is widening.

—September 26, Fox News



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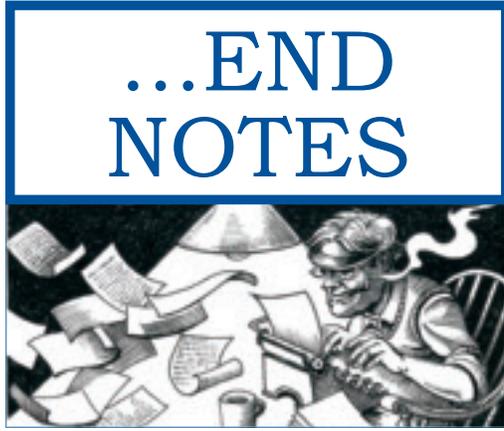
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**School Board Bans Student Runners from Streets, Sidewalks**

In Radford, Virginia, the local school board recently voted to prohibit its high school cross-country team—the incumbent state champion—from running anywhere on city streets or sidewalks. Previously, the team practiced at a park across the street and often ran in hilly, low-traffic residential neighborhoods to build endurance. The team will now be bussed to a farm 30 minutes away. Outraged runners and their parents demanded answers, noting that there had been no recorded student athlete injuries on city property in recent memory. An outreach meeting has been scheduled by the school board to explain the shift in policy.

**Pentagon FOIA Requests Backlogged by Broken Fax Machine**

The Office of the Secretary of Defense (OSD) accepts Freedom of Information Act (FOIA) requests in three forms: mail, fax, and an outdated online interface that appears to be designed to deter requests. Most FOIA requests to the OSD are submitted by fax. Until the end of August. A company that specializes in submitting FOIA requests to various government agencies reports that faxes submitted to the agency’s FOIA office began coming back as undeliverable. The reason: The OSD’s one fax machine was broken. The OSD currently has over 1,000 backlogged FOIA requests. Fortunately for the record-seeking public, after three weeks, the OSD has managed to replace its fax machine.



**Going off the Rails on the Lazy Train**

Government transit workers, generally unionized, are notorious for their low productivity and high take-home pay. But one New York Metro-North machinist takes the cake. According to a scathing report from the Metropolitan Transportation Authority’s inspector general, train machinist Scott Newman was observed doing absolutely nothing work-related over four consecutive shifts. Newman collected \$70,000 in base salary plus \$17,000 in overtime. His workday activities ranged from going to multiple fast food restaurants and stores to sitting in his truck in the Metro-North parking lot.

Four other machinists were found to be similarly shiftless. “As disturbed as we are by the lack of integrity and failed work ethic of the idle road machinists, we are even more troubled by the lack of management, supervision, and oversight by the foremen and supervisors that allowed this inactivity to take place,” said MTA Inspector General Barry Kluger.

**Taking the Constitution out of Constitution Day**

At Modesto Junior College, a student was prevented from handing out copies of the U.S. Constitution on Constitution Day, September 17. Student Robert Van Tuinen was instructed that he needed to fill out a form to obtain permission from the appropriate administrators to hand out copies of America’s governing charter. Van Tuinen was also told that he would only be permitted to distribute copies of the Constitution in “that little cement area” adjacent to the student union, which functions as the college’s Orwellian “free speech zone,” and only on a day that was not already reserved by other students.