DISCOVERY INSTITUTE VIEWS

Summer 2010

New Discoveries

FOE OF "HUMAN EXCEPTIONALISM" RAILS AT WESLEY J. SMITH

When celebrity critics no longer can ignore you, you know you're making a positive difference. It happened with our Center for Science and Culture, and now it's happening with **Wesley J. Smith**, Senior Fellow of Discovery Institute's Center for Human Rights and Bioethics.

In the primary secular humanist magazine *Free Inquiry*, Princeton University Chair of "Ethics" Peter Singer recently lashed out at Mr. Smith for promoting the concept of human exceptionalism—the idea that humans hold a special place in the natural order. Singer, conversely, argues that there is no real distinction between animals and human beings. He goes so far as to argue that newborn children and the disabled hold less moral worth than animals with higher cognitive function.

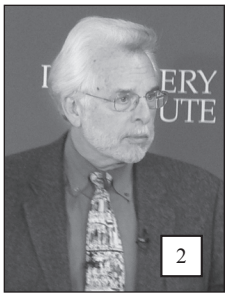
It goes without saying that Wesley's work is vitally important, but the recognition from our leading opponent confirms the effectiveness of our growing work in this field. *We are still pursuing a full-fledged Center for Human Rights and Bioethics and are seeking financial support in that endeavor*. Public funds and university grants support the attack on human exceptionalism—We rely on your private charitable grants.

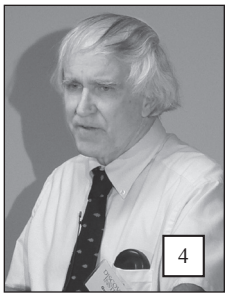
DEAR INTERNET: WE'RE FROM THE GOVERNMENT AND WE'RE HERE TO HELP

The Obama Administration and Congress—fresh from imposing a new and onerous health care mandate on Americans—now has the Internet in its crosshairs. This summer, the Administration asked the Federal Communications Commission to adopt so-called 'net-neutrality' provisions that would, in essence, regulate the Internet.

In the end, however, net-neutrality is a solution in search of a problem. The Internet, and the technology sector generally, gets along just fine without help from Uncle Sam, thank you—accounting for nearly 40% of GDP growth in the past two decades. Yet the Administration wants to make sure that *infrastructure* providers—namely the telephone and cable companies—don't discriminate against *content* providers—such as Yahoo and Google. Never

More Discoveries on Last Page





1. After speaking about his experiences in Iraq, U.S. Army Combat Engineer Koshin Mohamed (center) chats with Discovery Institute President Bruce Chapman (left) and former U.S. Senator Slade Gorton. **2.** Senior Fellow Wesley J. Smith speaks about his new book, *A Rat is a Pig is a Dog is a Boy: The Human Cost of the Animal Rights Movement*. **3.** Law Professor Phillip Muñoz speaks on "The Founding Fathers and Separation of Church and State." **4.** Granville Sewell speaks about his new book, *In the Beginning: And Other Essays on Intelligent Design.*

INSIDE

President's Letter

The War Against Strivers

By Bruce Chapman
President, Discovery Institute

Maria Coassin has operated Gelatiamo ("I Love Gelato") for 14 years in downtown Seattle. The feel of the place is modern Italy, the fresh gelato flavors are scrumptious surprises, the Venetian pastries are varied delights. With 15 employees and an expanding clientele that buy her products wholesale, Maria is a striver who has provided an amenity for her community. Despite the hard economy, she has not had to lay off any staff.

Maria was able to achieve success because of her own savings and help from her father, a baker from Italy.

The "progressives" want to tax her hard now, just as she needs capital to expand. As compensation, President Obama wants to offer people like her complicated grants wrapped in paperwork, with strings attached. Maria scoffs. She doesn't have time to learn how to play the bureaucratic game, and she is skeptical of government controls.

We need self-starters like Maria in many fields. For our civilization to prevail now, the economy not only has to grow, but to grow exponentially. A few new Microsofts or Googles won't suffice; we require many such, incited by revolutionary technologies (a next step up from the Internet, for example) and incentives that make huge advances possible. We need whole new economic ecosystems that will give vent to historic "Yankee know-how and ingenuity."

The recession, the deficit and the mind-numbing debt, and the expanding entitlements like Obamacare, assure us that even budget cutting alone cannot generate the sustainable growth the economy—and government revenues—need.

We have to have investment policies that enable people of genius and enterprise to try out their best ideas. Most will fail. But those who break through will create the wealth and jobs the rest of our society is desperately awaiting.

The risk takers, the strivers, must not be demonized or buffeted with shifting regulations and other unpredictable public policies. And they must have at least the opportunity, thanks to pro-growth tax systems, to get rich. Otherwise, we will lose them.

Today, we are moving in the opposite direction. The Obama Administration is preparing to let the top income tax rates go to 39.5 percent in January, to raise the capital gains tax rises from 15 to 20 percent, to let the Alternative Minimum Tax eat deeper into the middle class, to allow the Estate Tax to balloon, and, two years off, thanks to Obamacare, to assign a further income tax surcharge to those making over $200,000 ($250,000 for couples).

Many local and state governments are hiking their own income taxes, property and other taxes and fees.

Some 46 percent of adults pay no federal income tax, other than payroll taxes, so they unconsciously have little appreciation for the need to control spending or limit the tax burden on the minority that pay the bulk of income taxes.

Meanwhile, we have seen the rise of a very rich class, some of whom argue in favor of higher income taxes (and other taxes). Presumably, they feel very virtuous and civic-minded in adopting this attitude. But they mostly are not entrepreneurs trying to climb the greasy pole of free market success. They are people who already have arrived.

Asked once how his wealthy family makes its money, former Massachusetts Governor Bill Weld quipped, "The Welds don't make money, they have money."

Exactly. For the very rich, the income tax doesn't really tap true wealth, because that wealth isn't in income, especially not in salaries. Rather, it's in the bank, Treasuries, municipal bonds, gold, property, exquisitely arranged trusts or sturdy long-term investments. The very rich, therefore, can afford to be cavalier about rising income taxes and even rising capital gains taxes. However, the strivers cannot afford the luxury of *noblesse oblige*. For them, income is most of what they have available to develop investment capital. "High taxes and oppressive regulations," says Discovery's George Gilder, "don't stop you from *being* rich; they stop you from *getting* rich."

So, the current struggle is not conventional class warfare. Rather the struggle is between, on one side, an alliance of rent-seekers, including upper-level government "servants" with big union pensions, politicized businessmen whose prosperity depends on who they know in government, plus some of the aforementioned very rich—and on the other side, the strivers of all classes; not only those who are trying to get rich, but also those who are just trying to get ahead and remain independent.

How do you feel about people who are more successful than you, George Gilder asks. Do you envy them and want to hold them back? Or do you want to learn from them and encourage them?

We'd better get the answer straight. If we hold back the strivers, we won't just be hurting them, but ourselves—including the very people who are not successful and still need help. Societies can't do much for the poor when the poor are the majority.

The New York Times

George Washington's Tear-Jerker

By John R. Miller
The New York Times
Published February 15, 2010

Civilian control of the military is a cherished principle in American government. It was President Obama who decided to increase our involvement in Afghanistan, and it is Congress that will decide whether to appropriate the money to carry out his decision. It is the president and Congress, not the military, that will decide whether our laws should be changed to allow gays and lesbians to serve in our armed forces. The military advises, but the civilian leadership decides.

Yet if not for the actions of George Washington, whose birthday we celebrate, sort of, this month, America might have moved in a very different direction.

In early 1783, with Revolutionary War victory in sight but peace uncertain, Washington and the Continental Army bivouacked at Newburgh, N.Y. Troops were enraged by Congress's failure to provide promised back pay and pensions. Rumors of mutiny abounded.

On March 10, an anonymous letter appeared, calling for a meeting of all officers the next day to discuss the grievances. Within hours came a second anonymous letter, in which the writer, later revealed as Maj. John Armstrong Jr., an aide to top Gen. Horatio Gates, urged the troops, while still in arms, to either disengage from British troops, move out West and "mock" the Congress, or march on Philadelphia and seize the government.

When Washington learned of the letters, he quickly called for the meeting to be held instead on March 15—to give time, he said, for "mature deliberation" of the issues. He ordered General Gates to preside and asked for a report, giving the impression that a friend of the instigators would run the show and that Washington himself wouldn't even attend. He spent the next few days planning his strategy and lining up allies.

But just as the meeting of approximately 500 officers came to order, Washington strode into the hall and asked permission to speak. He said he understood their grievances and would continue to press them. He said that many congressmen supported their claims, but that Congress moved slowly. And he warned that to follow the letter writer would only serve the British cause.

The officers had heard all this before—the letter writer had even warned against heeding Washington's counsel of "more moderation and longer forbearance." The crowd rustled and murmured with discontent. Washington then opened a letter from a sympathetic congressman, but soon appeared to grow distracted. As his men wondered what was wrong, Washington pulled out a pair of glasses, which even his officers had never seen before. "Gentlemen," he said, "you must pardon me, for I have grown not only gray but blind in the service of my country."

"As his men wondered what was wrong, Washington pulled out a pair of glasses, which even his officers had never seen before. 'Gentlemen,' he said, 'you must pardon me, for I have grown not only gray but blind in the service of my country.'"

The officers were stunned. Many openly wept. Their mutinous mood gave way immediately to affection for their commander.

After finishing the letter, Washington appealed to the officers' "patient virtue" and praised the "glorious example you have exhibited to mankind." He then strode from the hall. His appearance probably lasted less than 15 minutes.

An officer quickly made a motion to thank the commander for his words and appoint a committee—all trusted Washington aides—to prepare a resolution carrying out the general's wishes. The motion passed, and the committee soon returned with a resolution damning the anonymous letter and pledging faith in Congress. The resolution was adopted by roaring acclamation and the meeting adjourned.

This wasn't the end of the Army's intransigence: several weeks later, Pennsylvania militiamen marched on Philadelphia and forced Congress to flee to Princeton, N.J. But with the story from Newburgh fresh in their minds, the mutineers quickly developed second thoughts and went home. True to his word, Washington pursued the Army's grievances, though with mixed results—Congress voted a lump-sum pension payment and disbanded the force.

Given Washington's near universal popularity, word of his speech spread rapidly, and civilian control of the military soon became a central priority in the formation of the young Republic. Six years later the new country adopted a Constitution that implicitly recognized civilian control.

But powerful armies often make their own rules, and many nations have succumbed to military control despite strong constitutions. In the United States, it was the story of Newburgh and Washington's iconic status in our early years that so firmly established a tradition of civilian control in the minds of both our military and civilians. That tradition continues, a testament to our first, finest and most political general. ■

John R. Miller, a senior fellow at the Discovery Institute and a visiting scholar at the Institute of Governmental Studies at the University of California at Berkeley, is working on a book on George Washington and the Newburgh conspiracy.

PUGET SOUND Business Journal

Let's Build Transport System on Common Ground

By Bruce Agnew
Puget Sound Business Journal
Published April 30, 2010

Fueled by gas tax increases and voter approval of Sound Transit's second phase, the red cones are out for $8 billion in transportation-related construction—the most in state history. In a dreary economy, you would think that would be cause for political consensus on how to keep this job-creating monster well fed.

Instead there is a nasty aftertaste from the state legislative session with small businesses feeling particularly over-taxed and over-regulated. Republicans and Democrats try to gain advantage while the Tea Party holds its protests, and the latest Pew Center poll shows confidence in elected leaders at an all-time low of 25 percent.

Meanwhile, decisions made on the Alaskan Way Viaduct and State Route 520 are being challenged by Seattle's mayor while the structurally challenged South Park Bridge is closing and cuts in transit service are looming.

It is a perfect time to put aside differences on decisions already made and find common ground for creation and retention of jobs. No other cause is greater or more urgent.

Start with the viaduct. The cobbled-together State Route 99 waterfront coalition of business, labor, maritime and (some) environmental groups that supported the deep-bore tunnel for the viaduct replacement and backed Gov. Chris Gregoire and the Legislature has stayed together and gained strength.

The Port of Seattle Commission's support for $300 million to take down the viaduct and continuing low bids for state transportation projects have steeled the coalition's resolve and allowed it to focus on reaching out to fragile maritime businesses wary of the tunnel as well as transit advocates still waiting for their part of the deal.

The coalition could be a valuable ally in Olympia for the mayor and Seattle City Council in completing projects such as the Mercer Corridor in South Lake Union, begun under the voter approved "Bridging the Gap" initiative. The coalition also could be open to new ideas from the mayor on transit, bike and pedestrian investments.

Similarly, Seattle and Eastside leaders could find common ground on the State Route 520 and Interstate 5 bottleneck. Mayor Mike McGinn wants light rail planned now on the SR 520 corridor. A broad-based coalition is equally steadfast that delay to add light rail will kill jobs. It notes that engineering decisions have been made and a popular vote set the rail corridor for Interstate 90.

How do we convince folks trying to save their houses that they need to raise their taxes (again)—and that they need to pay additional tolls as our society rightly moves to alternative fuels and electricity to power transportation while we undercut its basic funding from petroleum taxes?

Getting people out of cars does not have to mean rail. New mobility hubs at the University of Washington and park-and-ride lots, including South Kirkland, are incorporated into the state Transportation Department's 520 plan. They can transform the dead space of park-and-ride lots into a multi-modal hub of housing, retail and transportation choices including carpools and Microsoft's Connector (and you can plug in your new electric car).

Let's find common transit ground and move on to a bigger challenge advanced by the mayor—the prospect of a wider State Route 520 dumping cars onto an already overtaxed I-5.

According to the state transportation department, rebuilding the underlying support system for the I-5 corridor from Northgate to Seattle's central business district is an expensive and necessary project we can no longer avoid.

Good ideas have been floated. More direct access north and south transit ramps from 520 is one such idea. Another is tolling the center reversible lanes and making them transit friendly and bi-directional 24 hours to relieve bottlenecks at Northgate and at I-90 when the switch in direction is made daily.

An I-5 makeover adds billions to the package. Assuming Seattle and suburban communities can rally around an investment list for new transportation projects, other daunting challenges remain. Voters approved transportation tax increases because they believed better transportation would relieve their daily job commute and give them more time with their families. In many parts of the region (I-5 in Everett and Tacoma and I-405 around Bellevue), it has. And they believe in transit, as evidenced by the second Sound Transit vote.

But now there are fewer jobs and congestion has eased. How do we convince folks trying to save their houses that they need to raise their taxes (again)—and that they need to pay additional tolls as our society rightly moves to alternative fuels and electricity to power transportation while we undercut its basic funding from petroleum taxes?

While infrastructure investment is one of the best government programs, it carries with it an obligation to spend smarter. We will take up the issue of reforming our transportation planning, financing and operations in a future article. ■

Bruce Agnew is director of the Cascadia Center for Regional Development at the Discovery Institute in Seattle.

THE WALL STREET JOURNAL

Why Antagonize China?

By George Gilder
The Wall Street Journal
Published February 4, 2010

The revitalization of Asian capitalism is the most important positive event in the world in the last 30 years.

While attempting to appease a long list of utterly unappeasable foes—Iran, North Korea, Hamas, Hezbollah, and even Hugo Chávez—today the U.S. treats China, perhaps our most crucial economic partner, as an adversary because it defies us on global warming, dollar devaluation, and Internet policy.

It started last June in Beijing when U.S. Treasury Secretary Timothy Geithner lectured Chinese Premier Wen Jiabao, who recoiled like a man cornered by a crank at a cocktail party. Mr. Geithner was haranguing the Chinese on two highly questionable themes, neither arguably in the interests of either country: the need to suppress energy output in the name of global warming—a subject on which Mr. Geithner has no expertise—and the need for a Chinese dollar devaluation, on which one can scarcely imagine that he can persuade Chinese holders of a trillion dollars of reserves. This week in a meeting with Senate Democrats, President Obama continued to fret about the dollar being too strong against the yuan at a time when most of the world's investors fear that the Chinese will act on his words and crash the dollar.

Meanwhile, Secretary of State Hillary Clinton and the president's friends at Google are hectoring China on Internet policy. Although commanding twice as many Internet users as we do, China originates fewer viruses and scams than does the U.S. and with Taiwan produces comparable amounts of Internet gear. As an authoritarian regime, it obviously will not be amenable to an open and anonymous net regime. Protecting information on the Internet is a responsibility of U.S. corporations and their security tools, not the State Department.

Yes, the Chinese are needlessly aggressive in missile deployments against Taiwan, but there is absolutely no prospect of a successful U.S. defense of that country. Sending them $6 billion of new weapons is a needless provocation against China that does nothing valuable for the defense of the U.S. or Taiwan. Yes, the Chinese have also spurned America's quixotic effort to herd the gangs of anti-Semitic, anti-American oil-dependent felines at the United Nations to undertake an effective program of economic sanctions against Iran.

"The Chinese revitalization of Asian capitalism remains the most important positive event in the world in the last 30 years. Not only did it release a billion people from penury and oppression but it transformed China from a communist enemy of the U.S. into a now indispensable capitalist partner."

A foreign policy of serious people at a time of crisis will recognize that the current Chinese regime is the best we can expect from that country. The Chinese revitalization of Asian capitalism remains the most important positive event in the world in the last 30 years. Not only did it release a billion people from penury and oppression but it transformed China from a communist enemy of the U.S. into a now indispensable capitalist partner. It is ironic that liberals who once welcomed appeasement of the monstrous regime of Mao Zedong now become openly bellicose at various murky incidents of Internet hacking.

Nonetheless, with millions of Islamists on its borders and within them, China is nearly as threatened by radical Islam as we are. China has a huge stake in the global capitalist economy that Islamic terrorists aim to overthrow. And China, like the U.S., is so heavily dependent on Taiwanese manufacturing skills and so intertwined with Taiwan's industry that China's military threat to the island is mostly theater.

Although some Taiwanese politicians still dream of permanent independence, Taiwan's world-beating entrepreneurs have long since laid their bets on links to the mainland. Two thirds of Taiwanese companies, some 10,000, have made significant investments in China over the last five years, totaling some $200 billion. Three quarters of a million Taiwanese reside in China for more than 180 days a year.

With Taiwan, greater China is the world's leading actual manufacturer and assembler of microchips, computers and network equipment on which the Internet subsists. Virtually all U.S. advanced electronics, as eminent chemist Arthur Robinson reported last month in his newsletter Access to Energy, are dependent on rare earth elements used to enhance the performance of microchips and held in a near global monopoly by the Chinese firm Baotou Steel Rare-Earth Hi-Tech Company in Mongolia.

The U.S. is as dependent on China for its economic and military health and economic growth as China is dependent on the U.S. for its key markets, reserve finance, and global capitalist trading regime.

It is self-destructive folly to sacrifice this core synergy at the heart of global capitalism in order to gain concessions on global warming, dollar weakening, or Internet politics.

How many enemies do we need? ■

Mr. Gilder is a founder of the Discovery Institute and author of The Israel Test.

The American Spectator

Survival First, Lawfare Second

The Perils of Suicide-Pact Legalism

By John C. Wohlstetter
The American Spectator
Published March 26, 2010

Our Constitution and laws did nothing to protect us on September 11, 2001. International law did nothing either. Rather, intelligence, behavioral profiling at airport security, locked cockpit doors, F-16s on patrol overhead, could have protected us. Excessive legal constraints have already cost us dearly: In late 2001 a Predator drone had Taliban spiritual leader Mullah Omar in its gun-sights. But by the time administration lawyers finished debating what was legally permissible the high-value target was off-screen. How many lives would have been saved had Mullah Omar been taken out then? By how much would Taliban operations have been degraded, deprived of their charismatic leader?

The Obama administration has followed Bush policy in several cases. Most notably, after the Karachi capture of Mullah Omar's top military commander, Mullah Bandar, the Pakistanis, who know not Miranda from Miss Manners, interrogated him.

But two recent decisions starkly diverge from the war focus of the Bush years. By instantly tossing the Christmas Flight 253 bomber into the criminal justice system, before ascertaining whether he acted alone or in concert with Islamist groups, the opportunity to probe the bomber's knowledge of Yemeni terrorist connections was cut off by the Miranda warnings and intervention of defense counsel. The defendant's testimony is now only be obtainable via a plea agreement, in which event the Obama administration will have sacrificed full punishment for a would-be mass murderer, to gain intelligence it could have gained by pursuing trial in a military tribunal, where pre-trial interrogation can be much more thorough.

The mere 50 minutes' interrogation given the Flight 253 bomber before he was Mirandized is a travesty—the decision was taken without the knowledge of any senior intelligence or homeland security official, let alone the White House. Intelligence 101 requires serial interrogation based upon assembling prior knowledge, comparison with other sources for verification, with interrogators working to gain full trust of an isolated detainee given no right to remain silent. Worse, defendant's intelligence is evanescent and thus likely actionable only for a short time. Five precious weeks were lost before the defendant resumed talking.

"Our Constitution and laws did nothing to protect us on September 11, 2001. International law did nothing either. Rather, intelligence, behavioral profiling at airport security, locked cockpit doors, F-16s on patrol overhead, could have protected us."

Far worse, the administration may still hold a criminal trial for the 9/11 plotters at the same time that it plans to try other top terrorists by military tribunal. Team Obama's defenders, such as Senate Judiciary Chairman Patrick Leahy, hail the decision as giving America a chance to showcase how its criminal justice system can try (and convict) terrorists with full due process, and thus presumably garner some international goodwill as an added benefit.

We have seen this movie before. In the mid-1990s Sheikh Omar Abdul Rahman and nine-co-conspirators were convicted in federal court of plotting to blow up New York City landmarks, and given long sentences. In the bargain, Osama bin Laden learned that he was on a terror watch list, as were other top confederates. The upshot was that a valuable source of clandestine intelligence was compromised, as key al-Qaeda members were warned that they were being watched.

Whatever goodwill we may have earned did us no good in 1998 when al-Qaeda bombed our Kenyan and Tanzanian embassy building, nor during the 2000 bombing of the USS Cole in Aden harbor, let alone on September 11, 2001, when the worst terror attack ever carried out on American soil finally forced America to strike back.

A 9/11 criminal court trial could easily be to be the 21st century's first O.J. trial. Forgotten is how one of the conspirators in the first World Trade Center bombing, Sayed al-Nosair, was acquitted in the 1990 shooting of Jewish militant Rabbi Meir Kahane despite conclusive evidence. Forgotten is that the 20th hijacker trial of Zacharias Moussaoui nearly ended in disaster. A Clinton appointee judge nearly dismissed the case. After a guilty plea by defendant, a jury declined to impose the death penalty, due to one juror who concealed a core conviction against capital punishment.

Fortunately for America's fortunes in the Civil War and World War II, past Presidents put security first and legalism second—"lawfare" as a tactic did not come into vogue until recent years. Not that everything earlier leaders did was justified, but certain things are defensible, in light of history. The late Chief Justice William Rehnquist, in his magisterial account of wartime suspension of civil liberties, *All the Laws But One* (1998), detailed the ups and downs in the seesaw battle of national security and civil liberties. The cliché that the two are completely compatible, publicly subscribed to by politicians across the political spectrum, gives way to the complex interplay of wartime conflict.

Justifying his April 1861 suspension of the writ of *habeas corpus*—despite the Constitution's reservation, per Article I,

section 9, clause 2 of that power to Congress, and then only in cases of rebellion or invasion, when public safety requires it—President Lincoln asked in a July 4, 1861 message to a special session of Congress: "Are all the laws, but one, to go unexecuted, and the government itself to go to pieces, lest that one be violated?"

Lincoln later imprisoned Union antiwar "Copperhead" leader Cornelius Vallandigham in 1863. This undercut the Copperhead push for a compromise peace that would have permanently sundered the Union. Vallandigham was convicted in one day, by a military commission applying martial law to a civilian. Lincoln defended this action by stating, "Must I shoot a simpleminded soldier boy who deserts, while I must not touch a hair of a wily agitator who induces him to desert?" In March 1863 Congress passed the Habeas Corpus Act, ratifying Lincoln's decisions while adding limited protections for those detained.

Perhaps the capstone case in the Civil War and its immediate aftermath was the military commission treason trial of Indiana Copperhead Lambdin Milligan. In *Ex Parte Milligan* (1866) the Supreme Court granted a writ of *habeas corpus* to free Milligan from military prison, on the grounds that as a civilian he could not be tried in a military court in a non-combat zone, given functioning civil courts there. The Supreme Court has not to date fully accepted former President Bush's stance that today's combat zone includes the entire United States.

World War II saw the landmark *Korematsu v. United States* (1944) addressing the internment of 112,000 Japanese-Americans denied individual trials, in detention camps away from the West coast's concentration of war industry and military facilities. Sporadic Japanese raids on targets in California, Oregon and Alaska had heightened official anxiety.

Fred Korematsu's conviction was overturned in 1983, and compensation paid survivors and families. Few defend the decision today. Noteworthy in *Korematsu* is dissenting Justice Frank Murphy's footnote detailing how England in World War II created 112 alien tribunals to hear 74,000 individual cases involving German and Austrian nationals residing in England, detaining only 10,000. Murphy's reference implies that the United States could have held individual hearings too.

Most of the foregoing episodes are well known. But consider a little-known tale from World War II, told in *A Man Called Intrepid*, the 1976 book about Sir William Stephenson, the secret envoy between President Franklin Roosevelt and British Prime Minister Winston Churchill, and thus privy to many a dark secret.

In the spring of 1941 a desperate drama unfolded, beginning with the May 21 breakout of the German battleship *Bismarck* into the North Atlantic, leaving all shipping at risk. Churchill alerted FDR, warning that the super-ship and the heavy cruiser *Prinz Eugen*, both spotted off the coast of Norway, "could alter the whole course of the war."

The Brits sent a veritable fleet plus several squadrons of airplanes to go after *Bismarck*. But they were to obtain the help of America, too—without which the ship might have made it safely to a port in occupied France and taken shelter under air cover. On May 22 *Bismarck* engaged two British battleships, damaging *Prince of Wales* and sinking the best Brit ship afloat, the celebrated *Hood*, with a direct magazine hit; the ship sunk in three minutes with all but three of 1,400 hands. FDR remarked, when told: "The *Hood* sunk? It's the end of 'Rule Britannia.'" The huge warship slipped her pursuers and was not located for 30 hours. It was spotted by a Coast Guard cutter, nearing France; a PBY Catalina reconnaissance plane then took off from Scotland with a mixed British-US Navy crew and fixed *Bismarck*'s position. On May 27 the great ship was sunk off France's Atlantic coast.

America was legally a neutral, yet directly aided a combat operation. Members of the plane that fixed the ship's position, sealing its fate, were American, *operating under direct authorization from the President of the United States*. Reconnaissance information was communicated to the British, enabling their ships to corner and sink the *Bismarck*. Germany did not go to war, officially, with America until after Pearl Harbor, which was bombed December 7, 1941. *More than months before we were at war with Germany we committed what normally is considered an act of war*.

FDR understood the implications, asked adviser Robert Sherwood on May 24: "Suppose the *Bismarck* does show up in the Caribbean? We have some submarines down there. Suppose we order them to attack her and attempt to sink her? Do you think the people would demand to have me impeached?"

Commanders in chief must make messy choices of the kind that make lawyers, by their training, temperamentally inclined to decline legally risky courses of action. Thus in 1940 Churchill had advance warning from code-breakers that the Germans were going to bomb Coventry. Lacking a cover story to explain how, without code breaking, England could have learned of the raid Churchill remained silent, and hundreds of innocent civilians perished. The benefit of continuing to use Enigma code to strategic advantage was too great, and in Churchill's war calculus justified the wrenching sacrifice. Thus Churchill's famous dictum, "In war truth is so precious she should always be attended by a bodyguard of lies."

Historian Arthur Herman, writing on Guantanamo detention in *Commentary*, recounts senior policy advice offered during an episode regarding sending a terrorist to foreign soil for interrogation, the practice called "rendition" invented during the Clinton administration:

> *According to Richard Clarke's memoir, Against All Enemies, Vice President Al Gore cheered them on. Clarke tells the story of Gore coming to a 1993 NSC meeting where the idea of "extraordinary rendition" was proposed. While White House Counsel Lloyd Cutler had his doubts, Gore had none. "That's a no brainer," Clarke says Gore declared, "Of course it's a violation of international law. The guy is a terrorist. Go grab his ass."*

Perhaps wisest of all among Supreme Court Justices as to national security matters was Robert Jackson, whose tenure encompassed the Second World War and the Korean War. Dissenting in a 1949 free speech case, *Terminiello v. Chicago*, Justice Robert H. Jackson wrote these oft-quoted words:

> *The choice is not between order and liberty. It is between liberty with order and anarchy without either. There is danger that, if the court does not temper its doctrinaire logic with a little practical wisdom, it will convert the*

Survival First, *continued on next page*

constitutional Bill of Rights into a suicide pact.

Jackson had offered such practical wisdom in *Korematsu*, dissenting from the Court's upholding of wartime detention of Japanese Americans, explaining why the Court would have been better advised to stay out of the internment case entirely:

Much is said of the danger to liberty from the Army program for deporting and detaining these citizens of Japanese extraction. But a judicial construction of the due process clause that will sustain this order is a far more subtle blow to liberty than the promulgation of the order itself. A military order, however unconstitutional, is not apt to last longer than the military emergency. Even during that period a succeeding commander may revoke it all. But once a judicial opinion rationalizes such an order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes. All who observe the work of courts are familiar with what Judge Cardozo described as 'the tendency of a principle to expand itself to the limit of its logic.' A military commander may overstep the bounds of constitutionality, and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution. There it has a generative power of its own, and all that it creates will be in its own image. Nothing better illustrates this danger than does the Court's opinion in this case.

Like Lincoln and FDR, the Framers understood the limits of Constitutions. In Federalist 41 James Madison—whose leading role at the 1787 Philadelphia Grand Convention made him "Father of the Constitution"—set limits to its reach:

The means of security can only be regulated by the means and the danger of attack. They will, in fact, be ever determined by these rules, and by no others. It is in vain to oppose constitutional barriers to the impulse of self-preservation. It is worse than in vain; because it plants in the Constitution itself necessary usurpations of power, every precedent of which is a germ of unnecessary and multiplied repetitions.

"The Court's rationale, that because al-Qaeda is a stateless party the conflict is local, was a crashing *non sequitur* that could only be sustained in a parallel universe of Alice-in-Wonderland legalism where, per Humpty Dumpty: 'When I use a word, it means just what I choose it to mean—neither more or less.'"

Writing in Federalist 36, Alexander Hamilton proclaimed:

And as I know nothing to exempt this portion of the globe from the common calamities that have befallen other parts of it, I acknowledge my aversion to every project that is calculated to disarm the government of a single weapon, which in any possible contingency might be usefully employed for the general defense and security.

Hamilton proved to have been an optimist. In a series of rulings from 2004 to 2008 the Supreme Court conferred rights upon *unlawful* combatants greater than those given *lawful* combatants in prior conflicts. In World War II America held 400,000 German prisoners of war—the vast majority lawful combatants, by standards of the day—and no *habeas corpus* writ was granted. In *Hamdan v. Rumsfeld* (2006) the Supreme Court, in tossing out the Military Commissions Act, treated the war with al-Qaeda as one local in scope, despite bombs bursting all over the globe, so that it could apply Common Article 3 to terror detainees. (The Court's rationale, that because al-Qaeda is a stateless party the conflict is local, was a crashing *non sequitur* that could only be sustained in a parallel universe of Alice-in-Wonderland legalism where, per Humpty Dumpty: "When I use a word, it means just what I choose it to mean—neither more or less.")

In *Boumediene v. Bush* (2008) the Court applied *habeas corpus* to Guantanamo Bay by stretching the definition of sovereignty beyond legal authority to pure physical control; such reasoning would hold Lebanon, whose government hasn't controlled its full territory for more than three decades, as not legally sovereign. (Lakhdar Boumediene, the Algerian detainee who won that case, was released to French custody in May 2009.) It may be said of the Supreme Court's performance since September 11, 2001 what Lincoln acidly noted in his 1862 Executive Order No. 1:

The judicial machinery seemed as if it had been designed, not to sustain the Government, but to embarrass and betray it.

In insinuating itself so deeply into wartime captivity and thus extending the judicial power to areas hitherto deemed the province of the legislative and executive branches the Supreme Court has partially disarmed us by constraining how elected branches conduct the war, and extended judicial power into areas historically—rightly—reserved for the other branches. *It is in wartime above all that Americans are entitled to expect that decisions potentially affecting the outcome of the war be taken by those elected and thus accountable, rather than appointed judges insulated by life tenure.*

Nor have the lower courts, and even military courts, been exempt from suicide-pact rulings. In November 2001—while the fires were still smoldering at ground zero—the Foreign Intelligence Surveillance Court ruled that the USA Patriot Act, passed weeks before and designed to tear down the "wall" that compartmentalized intelligence

gathering and domestic law enforcement, did not do so. Instead the Court reinstated the wall. One year later the Foreign Intelligence Court of Review reversed, holding that the Act had in fact done exactly what its language said: tear the wall down, which drafters blamed for much of the confusion in tracking terrorists prior to 9/11.

In August 2004 an al-Qaeda detainee rose during his combat status review hearing and asked to address the tribunal. He began by stating that he would describe his role in the 9/11 attacks. The presiding judge cut him off and said his evidence would not be heard. After conferring with his two bench mates, the judge reversed himself. Too late: the defendant said that he had since lost his train of thought.

In January 2007 a federal judge ruled that a Baghdad call between insurgents, whom our forces wanted to tap in search of three soldiers taken hostage, required a warrant for interception per the Foreign Intelligence Surveillance Act. The judge so ruled because the call, routed over the Internet through the United States, was thus a *domestic* intercept. Had the identical call been routed through international links only, the judge would have ruled no warrant was needed. The decisions that routed the call through the states were taken serendipitously in milliseconds, via "hot potato" routing by a series of digital computers. Months later, Congress did correct this interpretative absurdity, as not intended by the drafters of the original law.

Which brings us back to the 9/11 trial. If held in New York, what might be in store for a 9/11-terror trial next to Ground Zero? How about a Muslim militant getting on the jury by concealing his radical beliefs, voting for acquittal? How about an anti-death penalty juror preventing imposition of capital punishment? How about a juror enraged by "torture" at Guantanamo? How about Osama bin Laden issuing a *fatwa* (religious decree) calling for killing jurors who vote to convict KSM, and their families as well? Are we ready for twelve jurors, should they convict, being put into the Witness Protection program?

What if the judge excludes crucial evidence allegedly obtained via enhanced interrogation techniques that President Obama has called torture? And what of contamination of the trial by President Obama's statement that defendants will be convicted and executed? What if, to win a conviction with vast American prestige at stake, the prosecution accedes to judicial rulings applying the Sixth Amendment Confrontation Clause that require disclosure of potentially sensitive material?

A civilian jury pool will include people profoundly anti-death penalty, viscerally anti-Guantanamo, plus those sympathetic to militant Islam. Muslim jurors cannot legally be excluded from selection. A hung jury means a retrial. Going back to a military tribunal would look like bait-and-switch. Will serial juries hang the case? It takes one juror of twelve to hang a verdict, while it takes twelve jurors to hang a defendant. And what if, due to evidence excluded, jurors reluctantly acquit?

An acquittal will seem to many like a verdict of innocence. That there is no such verdict in American law is a mystery to many Americans. Will Muslims worldwide know better? Will *al-Jazeera* tell them? O.J. was found liable in a civil wrongful death case after having been acquitted in the criminal case. Jurors can think someone probably guilty, and acquit in a criminal case, while other jurors can later decide that there probably was a crime. The two verdicts are consistent under American law. Try to sell that to deeply suspicious Muslim youth around the globe.

Neither acquittal nor a hung jury would legally prevent us from continuing to hold defendant as an unlawful combatant. But global political pressure will prove intense, with acquittal or a hung jury treated as a finding of innocence. Legal niceties will fall by the wayside. Even our European allies, beset by restive Muslim populations, will press us to give in. And *jidahi* worldwide will be hugely energized.

The administration is committing the classic fallacy of mirror-imaging how others will interpret events. Audiences in a Cairo café, in a Karachi *madrassa*, in "Londonistan" include countless people who think that 9/11 was an inside job, carried out by the government as 4,000 Jews stayed home from work. To believe that they will accept a verdict of guilty—even if the trial runs smoothly—is a leap of blind faith.

What will likely transpire is a reverse Eichmann trial. Nazi war criminal Adolf Eichmann was tried in 1961 before an audience of Americans and Europeans—hardly anyone else had television then. Even in America and Europe, most people relied on newspapers; the main visual was movie newsreels shown in theaters. Outside the West, virtually no one then had access to television. Eichmann had been instrumental in carrying out Hitler's genocidal design that led to the Holocaust. He was a faceless, bloodless bureaucrat.

KSM's plans killed 3,000 on 9/11, not six million—he aspired to the latter, but failed to achieve his goal. Unlike Eichmann, he may prove charismatic to millions worldwide. If his courtroom oratory is suppressed, Muslims will see a kangaroo court, the niceties of American legal process notwithstanding. Reporters today will obsess on whether full due process rights have been granted. Every ruling adverse to defendants will risk media challenge, thus pressuring the trial judge to resolve close calls in favor of the defense, as in ordinary criminal trials. In short, a public-relations catastrophe may well air 24/7 in today's global media circus tent. And this will occur not long after the end of a war, but during an ongoing conflict.

There are, to be sure, some trials better sent to civilian courts. Complex financial terror network cases need the expertise that top federal prosecutors bring. But detainees captured on the field of battle are better suited for military courts. As this article goes to press it looks as if KSM will not be tried in a New York courtroom after all, and

Survival First, *continued on page 18*

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WHAT THE U.S. LOSES WHEN ISRAEL LOSES

By Bruce Chapman | Discovery Blog

Here is what you are not getting right now, even from that section of the media in America that is still pro-Israel: Israel is as important to the U.S. as the U.S. is to Israel. To the extent we damage our most reliable Middle Eastern ally, we are damaging ourselves.

George Gilder's *The Israel Test* is the one book out now that tells, extensively, how Israel matters to both the U.S. economy--especially in the cutting edge high tech field--and to America's strategic aims. It treats the cultural and historical reasons for U.S. support of Israel, but others do that, too. What matters, and what is missing from our national discussion, is how vital Israel is to American inventive prowess, manufacturing relevance and national defense. Israelis even have invented a device to let soldiers see through walls to activities that might be going on in a building they are about to inspect!

Start with Intel, then go on to Apple, Microsoft and many other U.S. companies. All have major facilities in Israel. Gilder says of the Intel chip, "It could as well advertise 'Israel Inside'."). Continue with fabulous start-ups like Easychip (full disclosure, I own shares in this company). Overall, Israel is second only to the U.S. in new tech companies, and first in the world on a *per capita* basis.

Read the complete article at www.discoveryblog.org.

TERRORIST ATTACK IN THE CAUCUSES BY… ANTI-MUSLIM EXTREMISTS

By Yuri Mamchur | Russia Blog

As some around the globe attempt to retaliate against Muslim extremists via cartoons of Mohamed on Facebook, in the Russian city of Stavropol anti-Islamic Russian nationalists radio-detonated a self-made bomb. The target of the May 26 attack was the Center for Sports and Culture, where a Chechen band "Vainah" was supposed to perform. Seven people died, and dozens were injured in the attack. The victims were common people dining at a nearby café.

The region is heavily populated by Christians and Muslims, ethnic Russians, Chechens, and other Caucasian nations ("Caucasian" in Russian means a person from the Caucasus, rather than a white person, and, in fact, word "Caucasian" often replaces the word "black" in everyday language.) Local authorities and the Russian federal government are concerned about potential ethnic-based clashes. No matter how upsetting Islamic jihad is to all of us, blowing up innocent people is definitely not a rational response. Russia Blog extends condolences to the affected families.

Read the complete article at www.russiablog.org.

INTERNET WISDOM FOR A NOVICE

By Hance Haney | Disco-Tech

Rep. John D. Dingell, Jr. (D-MI), Dean of the U.S. House of Representatives, Chairman Emeritus of the Energy & Commerce Committee (1981-95 and 2007-09) in a letter last week to young FCC Chairman Julius Genachowski regarding Genachowski's proposal to apply telephone-style regulation to the Internet:

I fear your "third way" risks reversal by the courts, especially given the scope of its efforts to expand the Commission's authority. It also puts at risk significant past and future investments, perhaps to the detriment of the Nation's economic recovery and continued technological leadership. More importantly, it may paralyze more holistic regulatory efforts to keep the Internet open to consumers, advance cybersecurity, protect consumer data privacy, and ensure universal access to and deployment of broadband.

Dingell advised Genachowski to abandon an administrative proceeding and work instead with Congress to secure the necessary statutory authorities to permit the "appropriate and effective regulation of broadband."

Although I may be a conservative blogger, personally I consider Dingell -- whom I have met and have observed for many years -- as a national treasure. Few if any in Congress can confront a witness like he can, for one thing. Though I don't always agree with him, he strikes me as like Obi-Wan Kenobi and Yoda or Dumbledore in the wisdom, ability and integrity departments.

We'll see what Genachowski thinks.

Read the complete article at www.disco-tech.org.

PASSENGER FERRY FUTURE FOCUS OF CASCADIA EVENT

By Mike Wussow | Cascadia Prospectus

Seattle's Center for Wooden Boats was the setting Thursday evening for a gathering of passenger-only ferry advocates, including those from Kingston and King County, Wash., and the U.S. federal government.

Discovery's Many Blogs

excerpts of what you've been missing ...

The well-attended event (followed by an Ivar's Seafood-sponsored reception) was organized within the specific context of a new passenger-only service between Kingston and Seattle, and a broader context of supporting more service throughout the region. The Port of Kingston will launch passenger-only service between Kingston and Seattle this fall.

Capital funding for the new link came from the U.S. Federal Transit Administration. The Port has also developed public-private partnerships to cover initial operating costs. It will, as reported in the Kitsap Sun, "cater to commuters" at first, cutting down on travel times for those who commute to Seattle.

Read the complete article at www.cascadiaprospectus.org.

HOW NASA'S JET PROPULSION LABORATORY PUNISHED DAVID COPPEDGE FOR HIS VIEWS ON INTELLIGENT DESIGN

By Robert Crowther | Evolution News and Views

David Coppedge has worked on the Cassini mission since 1997. In 2000 he earned recognition for excellence, receiving the important role of "Team Lead SA" (system administrator), a role he held until his demotion in 2009.

SAs oversee 200 Unix workstations, several high-capacity data storage units, networking equipment, and other specialized computing equipment across America and Europe. He has a wide breadth of knowledge about technical aspects of Cassini's computers and networks and was heavily involved in all the mission operations. Coppedge has been a faithful and highly regarded JPL employee for many years, has led tours of the lab and has served as an outreach speaker presenting the Cassini findings to civic and astronomy clubs and school groups.

Now, though, this exemplary employee has been demoted. Why? Did he do something to jeopardize the mission? No. Was he guilty of incompetence? No. Was he lazy or just lackadaisical in his work? No. David Coppedge's sin was a thought crime, the mere willingness to challenge the ruling authority of Darwinian evolution. In conversation he asked colleagues if they'd be interested in watching a documentary that dealt with evolution and intelligent design. For this he was harassed and discriminated against.

Read the complete article at www.evolutionnews.org.

ASSISTED SUICIDE: WHY NOW?

By Wesley J. Smith | Secondhand Smoke

Legatus Magazine asked me to write a piece on the recent successes in assisted suicide advocacy. I said yes, I wrote, and it is now out.

I begin with a brief recitation of the history of modern assisted suicide advocacy, starting with the failed attempt to place a legalization initiative on the 1988 California ballot, through legalization by the Montana Supreme Court in 2009. Then, it is on to the primary subject of "why now." From my column:

A question amidst all of this Sturm und Drang naturally arises: Why now? After all, 100 years ago when people did die in agony from such illnesses as a burst appendix, there was little talk of legalizing euthanasia. But now, when pain and other forms of suffering are readily alleviated and the hospice movement has created truly compassionate methods to care for the dying, suddenly we hear the battle cry "death with dignity" as "the ultimate civil liberty."

In fighting assisted suicide since 1993, I have often pondered the "why now" question. I've found two answers: First, the perceived overriding purpose of society has shifted to the benefit of assisted suicide advocacy, and second, our public policies are driven and defined by a media increasingly addicted to slinging emotional narratives rather than reporting about rational discourse and engaging in principled analysis. Add in a popular culture enamored with social outlaws, and the potential exists for a perfect euthanasia storm.

Read more at www.firstthings.com/blogs/secondhandsmoke/.

WHAT DOES BUSINESS OWE THE WORLD?

By Jay W. Richards | The Enterprise Blog

Since the 1970s, business ethics has talked about this thing called "corporate social responsibility," which implies that corporations have responsibilities to society, the public good, and so forth, over and above their well-defined business interests. Milton Friedman disputed this idea early on. In 1970, he wrote a famous article in the New York Times Magazine arguing that the only responsibility a business had was to make a profit. But most people suspect that there's more to the story. We all have various responsibilities to others, after all, and these are not suspended when we enter our place of business.

But the question of corporate responsibility continues to vex thoughtful analysts. Unfortunately, in the intervening years, "corporate social responsibility" has too often become a euphemism for various fashionable left-wing causes, and a justification for all manner of political regulation of business on behalf of societal "stakeholders" (as distinct from shareholders). These causes are rarely in the economic interest of the corporations. Companies well-attuned to cultural fashion have figured out how to appear to conform to the ever-changing norms of corporate social responsibility, but not actually to do so. And such duplicity, in turn, gives activists incentive to call for greater government regulation over business, always in the name of society's interests.

Read the complete article at http://blog.american.com/.

When Animals Sue

Don't Laugh. It Could Happen.

By Wesley J. Smith
National Review Online
Published March 3, 2010

Should animals, like indigent criminal defendants, be provided with legal representation by the state? It could happen. As *Time* has reported, on March 7, voters in Switzerland will decide whether to give "domestic creatures ... the constitutional right to be represented by (human) lawyers in court."

What? Treating animals at law as if they were human? Don't laugh. Lest we be tempted to dismiss the referendum as just the latest European post-modernistic folly, the effort to open our own courtrooms to animals is quietly advancing. Indeed, "animal standing," as the issue is usually called, is at the very top of the animal-rights movement's policy wish list.

But animals *suing*? For most people, the very idea is a surreal fantasy out of a *Far Side* cartoon. But from the viewpoint of animal-rights ideologues, nothing could be more logical. The dogma of animal liberation demands the *obliteration* of all animal industries and, eventually, the eradication by attrition of all domesticated animals. As Wayne Pacelle stated in 1993 before being appointed to his current post as head of the Humane Society of the United States, "One generation and out. We have no problem with the extinction of domestic animals. They are the product of human selective breeding."

What could further the eradication goal more dramatically than allowing domesticated animals to sue their owners in court? The real litigants, of course, would be animal-rights activists—committed true believers who would use the raw power of litigation to force animal industries to their knees.

Imagine the chaos: hundreds of animal lawyers, filing thousands of lawsuits, leading to hundreds of thousands of depositions, forcing industries to spend tens of millions of dollars on lawyers and legal costs defending their husbandry. No animal industry would be safe, and many would not survive.

Animal standing also has a philosophical purpose. The ultimate goal of animal rights is not merely the improved treatment of animals; that effort is properly called animal welfare. Animal-rights dogma holds that there is no moral distinction to be made between animals and humans, and therefore what is done to an animal should be viewed as if it were done to a human.

"The ultimate goal of animal rights is not merely the improved treatment of animals; that effort is properly called animal welfare. Animal-rights dogma holds that there is no moral distinction to be made between animals and humans, and therefore what is done to an animal should be viewed as if it were done to a human."

One way to achieve societal acquiescence in this view would be to transform at least some animals into legal "persons." As animal-rights-crusading law professor Stephen Wise wrote in *Drawing the Line: Science and the Case for Animal Rights*, convincing the courts to grant "practical personhood" to chimps and other higher mammals would open the courtroom door to animals, a move he described as "the first and most crucial step toward unlocking the cage" to all animals generally:

> *On what non arbitrary ground could a judge find the [profoundly disabled] girl has a common law right to bodily integrity that forbids her use in terminal biomedical research, but that Koko [a gorilla] shouldn't have that right, without violating basic notions of equality? Only a radical speciesist could accept a baby girl who lacks consciousness, sentience, even a brain, as having legal rights just because she is human, yet thinkingest, talkingest, feelingest apes have no rights at all, just because they're not human.*

In other words, activists are striving for human/animal moral equality by working from both ends toward the middle: Granting personhood to animals would open the door to legal standing and the destruction of animal industries, while granting animals the right to sue would result in their elevation to legal personhood. From the activists' perspective, it doesn't matter which comes first, the chicken or the egg.

Disturbingly, animal standing has friends in very high places who are not animal-rights activists. None other than Harvard law professor Laurence Tribe, in a 2000 speech extolling Wise's work, supported animal standing.

Proclaiming a "deep intuition that chimps and dolphins and dogs and cats are infinitely precious—like ourselves," Tribe lent his reputation to the cause of granting animals the right to sue:

> *Recognizing the animals themselves by statute as holders of rights would mean that they could sue in their own name and in their own right. . . . [G]iving animals this sort of "virtual voice" would go a long way toward strengthening the protection they will receive under existing laws and hopefully improved laws, and our constitutional history is replete with instances of such legislatively conferred standing.*

When Animals Sue, *cont. on next page*

The Seattle Times

FCC Should Focus on Spurring Investment, Not More Regulation

By Hance Haney
The Seattle Times
Published May 2, 2010

An open Internet where broadband providers do not block access to websites or discriminate between content or applications isn't a vision. It's a description of the unregulated Internet we already enjoy today. Those in Washington, D.C., who want to change it could stymie it instead and damage the economy.

The movement to shield innovative, computer-enhanced communications services from stifling legacy telephone regulation dates back to a key decision by the Federal Communications Commission (FCC) during the presidency of Jimmy Carter.

Progress continued under the administration of Bill Clinton, when the FCC concluded that there was no evidence that laws enacted by Congress had any intention of expanding traditional telephone regulation to new and advanced services and refused to regulate broadband services provided by cable operators.

During the Bush administration, the FCC made clear that broadband services provided by telecommunications carriers were entitled to equal treatment.

A federal appeals court ruled only a few weeks ago that the FCC had exceeded its authority when it tried to apply a so-called Network neutrality regulatory principle to a case involving Comcast and BitTorrent.

An FCC hearing in Seattle recently gathered public testimony in an effort to overturn this successful bipartisan policy favoring competition and private investment over regulation and public subsidies. It is a quixotic quest.

> "The best way to nurture the Internet is to sustain current levels of private investment in expanded network capacity."

For one thing, FCC jurisdiction isn't necessary to protect consumers, because the Federal Trade Commission guards against deceptive business practices and applies the antitrust laws to protect competition. FCC jurisdiction could also negatively impact jobs and investment.

A recent study by the Brattle Group concluded that more than 65,000 jobs could be put in jeopardy economywide in 2011 as a result of Net-neutrality regulation, with the total economywide impact growing to almost 1.5 million jobs affected by 2020.

Already 95 percent of Washington state households have access to high-speed Internet access services at various speeds. A significant network upgrade capable of delivering 100 megabits per second could cost $350 billion nationwide, according to FCC staff. Much of that investment will have to come from private industry, officials have conceded. There are no federal dollars available for such programs.

Broadband providers invested almost $60 billion in 2009 alone in broadband networks. Vigorous competition, rapidly changing technology and regulation are the principal risks for any investor in broadband. The prospect of pervasive regulation would make it nearly impossible for investors to assess the relative risks and rewards of further investment.

Therefore, the best way to nurture the Internet is to sustain current levels of private investment in expanded network capacity. Regulation cannot compel private investment, but it can discourage it by creating uncertainty and risk for investors. ■

When Animals Sue, *cont. from prev. page*

Cass Sunstein, President Obama's "regulations czar," also supported animal standing prior to his becoming part of the administration. In 2000, writing in the *UCLA Law Review*, Sunstein advocated amending federal and state animal-welfare laws to permit private "individuals"—by which he meant both human and animal—to bring suit against abusers "to supplement currently weak agency enforcement efforts."

Of all the ubiquitous advocacy thrusts by animal-rights advocates, successfully obtaining legal standing for animals could prove the most significant. First, it would accomplish a major animal-rights goal of profoundly undermining the status of animals as property. Second, it would create utter chaos in animal industries, which would also badly damage the general economy, much of which depends on the use of animals and animal byproducts. Most significantly, on an existential level, the perceived exceptional nature of human life would suffer a body blow through the erasure of one of the clear definitional lines that distinguish people from animals—the belief in human exceptionalism.

This is the future for which animal liberationists devoutly yearn. Considering our crazy cultural history of the last 50 years, and given the energetic commitment of animal-rights activists, their abundant resources, and the intellectual support they have received already from some of society's most influential thinkers, it would be complacent folly to blithely assume, "It can't happen here." ■

Wesley J. Smith is a senior fellow in human rights and bioethics at the Discovery Institute. His current book is A Rat Is a Pig Is a Dog Is a Boy: The Human Cost of the Animal Rights Movement.

THE ENTERPRISE BLOG

When to Doubt a Scientific 'Consensus'

By Jay Richards
The Enterprise Blog
Published March 16, 2010

Anyone who has studied the history of science knows that scientists are not immune to the non-rational dynamics of the herd.

A December 18 *Washington Post* poll, released on the final day of the ill-fated Copenhagen climate summit, reported "four in ten Americans now saying that they place little or no trust in what scientists have to say about the environment." Nor is the poll an outlier. Several recent polls have found "climate change" skepticism rising faster than sea levels on Planet Algore (not to be confused with Planet Earth, where sea levels remain relatively stable).

Many of the doubt-inducing climate scientists and their media acolytes attribute this rising skepticism to the stupidity of Americans, philistines unable to appreciate that there is "a scientific consensus on climate change." One of the benefits of the recent Climategate scandal, which revealed leading climate scientists manipulating data, methods, and peer review to exaggerate the evidence of significant global warming, may be to permanently deflate the rhetorical value of the phrase "scientific consensus."

Even without the scandal, the very idea of scientific consensus should give us pause. "Consensus," according to Merriam-Webster, means both "general agreement" and "group solidarity in sentiment and belief." That pretty much sums up the dilemma. We want to know whether a scientific consensus is based on solid evidence and sound reasoning, or social pressure and groupthink.

Anyone who has studied the history of science knows that scientists are not immune to the non-rational dynamics of the herd. Many false ideas enjoyed consensus opinion at one time. Indeed, the "power of the paradigm" often shapes the thinking of scientists so strongly that they become unable to accurately summarize, let alone evaluate, radical alternatives. Question the paradigm, and some respond with dogmatic fanaticism.

We shouldn't, of course, forget the other side of the coin. There are always cranks and conspiracy theorists. No matter how well founded a scientific consensus, there's someone somewhere—easily accessible online—that thinks it's all hokum. Sometimes these folks turn out to be right. But often, they're just cranks whose counsel is best disregarded.

"Many false ideas enjoyed consensus opinion at one time. Indeed, the 'power of the paradigm' often shapes the thinking of scientists so strongly that they become unable to accurately summarize, let alone evaluate, radical alternatives."

So what's a non-scientist citizen, without the time to study the scientific details, to do? How is the ordinary citizen to distinguish, as Andrew Coyne puts it, "between genuine authority and mere received wisdom? Conversely, how do we tell crankish imperviousness to evidence from legitimate skepticism?" Are we obligated to trust whatever we're told is based on a scientific consensus unless we can study the science ourselves? When can you doubt a consensus? When should you doubt it?

Your best bet is to look at the process that produced, maintains, and communicates the ostensible consensus. I don't know of any exhaustive list of signs of suspicion, but, using climate change as a test study, I propose this checklist as a rough-and-ready list of signs for when to consider doubting a scientific "consensus," whatever the subject. One of these signs may be enough to give pause. If they start to pile up, then it's wise to be suspicious.

(1) When different claims get bundled together.

Usually, in scientific disputes, there is more than one claim at issue. With global warming, there's the claim that our planet, on average, is getting warmer. There's also the claim that human emissions are the main cause of it, that it's going to be catastrophic, and that we have to transform civilization to deal with it. These are all different assertions with different bases of evidence. Evidence for warming, for instance, isn't evidence for the cause of that warming. All the polar bears could drown, the glaciers melt, the sea levels rise 20 feet, Newfoundland become a popular place to tan, and that wouldn't tell us a thing about what caused the warming. This is a matter of logic, not scientific evidence. The effect is not the same as the cause.

There's a lot more agreement about (1) a modest warming trend since about 1850 than there is about (2) the cause of that trend. There's even less agreement about (3) the dangers of that trend, or of (4) what to do about it. But these four propositions are frequently bundled together, so that if you doubt one, you're labeled a climate change "skeptic" or "denier." That's just plain intellectually dishonest. When well-established claims are fused with separate, more controversial claims, and the entire conglomeration is covered with the label "consensus," you have reason for doubt.

(2) When ad hominem attacks against dissenters predominate.

Personal attacks are common in any dispute simply because we're human. It's easier to insult than to the follow the thread of an argument. And just because someone makes an ad hominem argument, it doesn't mean that their conclusion is wrong. But when the personal attacks are the first out of the gate, and when they

seem to be growing in intensity and frequency, don your skeptic's cap and look more closely at the evidence.

When it comes to climate change, ad hominems are all but ubiquitous. They are even smuggled into the way the debate is described. The common label "denier" is one example. Without actually making the argument, this label is supposed to call to mind the assertion of the "great climate scientist" Ellen Goodman: "I would like to say we're at a point where global warming is impossible to deny. Let's just say that global warming deniers are now on a par with Holocaust deniers."

There's an old legal proverb: If you have the facts on your side, argue the facts. *If you have the law on your side, argue the law. If you have neither, attack the witness*. When proponents of a scientific consensus lead with an attack on the witness, rather than on the arguments and evidence, be suspicious.

(3) When scientists are pressured to toe the party line.

The famous Lysenko affair in the former Soviet Union is often cited as an example of politics trumping good science. It's a good example, but it's often used to imply that such a thing could only happen in a totalitarian culture, that is, when all-powerful elites can control the flow of information. But this misses the almost equally powerful conspiracy of agreement, in which interlocking assumptions and interests combine to give the appearance of objectivity where none exists. For propaganda purposes, this voluntary conspiracy is even more powerful than a literal conspiracy by a dictatorial power, precisely because it looks like people have come to their position by a fair and independent evaluation of the evidence.

Tenure, job promotions, government grants, media accolades, social respectability, Wikipedia entries, and vanity can do what gulags do, only more subtly. Alexis de Tocqueville warned of the power of the majority in American society to erect "formidable barriers around the liberty of opinion; within these barriers an author may write what he pleases, but woe to him if he goes beyond them." He could have been writing about climate science.

Climategate, and the dishonorable response to its revelations by some official scientific bodies, show that scientists are under pressure to toe the orthodox party line on climate change, and receive many benefits for doing so. That's another reason for suspicion.

(4) When publishing and peer review in the discipline is cliquish.

"Alexis de Tocqueville warned of the power of the majority in American society to erect 'formidable barriers around the liberty of opinion; within these barriers an author may write what he pleases, but woe to him if he goes beyond them.' He could have been writing about climate science."

Though it has its limits, the peer-review process is meant to provide checks and balances, to weed out bad and misleading work, and to bring some measure of objectivity to scientific research. At its best, it can do that. But when the same few people review and approve each other's work, you invariably get conflicts of interest. This weakens the case for the supposed consensus, and becomes, instead, another reason to be suspicious. Nerds who follow the climate debate blogosphere have known for years about the cliquish nature of publishing and peer review in climate science (see here, for example).

(5) When dissenting opinions are excluded from the relevant peer-reviewed literature not because of weak evidence or bad arguments but as part of a strategy to marginalize dissent.

Besides mere cliquishness, the "peer review" process in climate science has, in some cases, been consciously, deliberately subverted to prevent dissenting views from being published. Again, denizens of the climate blogosphere have known about these problems for years, but Climategate revealed some of the gory details for the broader public. And again, this gives the lay public a reason to doubt the consensus.

(6) When the actual peer-reviewed literature is misrepresented.

Because of the rhetorical force of the idea of peer review, there's the temptation to misrepresent it. We've been told for years that the peer-reviewed literature is virtually unanimous in its support for human-induced climate change. In Science, Naomi Oreskes even produced a "study" of the relevant literature supposedly showing "The Scientific Consensus on Climate Change." In fact, there are plenty of dissenting papers in the literature, and this despite mounting evidence that the peer-review deck was stacked against them. The Climategate scandal also underscored this: The climate scientists at the center of the controversy complained in their emails about dissenting papers that managed to survive the peer-review booby traps they helped maintain, and fantasized about torpedoing a respected climate science journal with the temerity to publish a dissenting article.

(7) When consensus is declared hurriedly or before it even exists.

A well-rooted scientific consensus, like a mature oak, usually needs time to emerge. Scientists around the world have to do research, publish articles, read about other research, repeat experiments (where possible), have open debates, make their data and methods available, evaluate arguments, look at the trends, and so forth, before they eventually come to agreement. When scientists rush to declare a consensus, particularly when they claim a consensus that has yet to form, this should give any reasonable person pause.

In 1992, former Vice President Al Gore reassured his listeners, "Only an insignificant fraction of scientists deny the global warming crisis. The time for debate is over. The science is settled." In the real 1992, however, Gallup "reported that 53% of scientists actively involved in global climate research did not believe global

Scientific 'Consensus,' *cont. on next page*

Scientific 'Consensus,' *cont. from prev. page*

warming had occurred; 30% weren't sure; and only 17% believed global warming had begun. Even a Greenpeace poll showed 47% of climatologists didn't think a runaway greenhouse effect was imminent; only 36% thought it possible and a mere 13% thought it probable." Seventeen years later, in 2009, Gore apparently determined that he needed to revise his own revisionist history, asserting that the scientific debate over human-induced climate change had raged until as late as 1999, but now there was true consensus. Of course, 2009 is when Climategate broke, reminding us that what had smelled funny before might indeed be a little rotten.

(8) When the subject matter seems, by its nature, to resist consensus.

It makes sense that chemists over time may come to unanimous conclusions about the results of some chemical reaction, since they can replicate the results over and over in their own labs. They can see the connection between the conditions and its effects. It's easily testable.

But many of the things under consideration in climate science are not like that. The evidence is scattered and hard to keep track of; it's often indirect, imbedded in history and requiring all sorts of assumptions. You can't rerun past climate to test it, as you can with chemistry experiments. And the headline-grabbing conclusions of climate scientists are based on complex computer models that climate scientists themselves concede do not accurately model the underlying reality, and receive their input, not from the data, but from the scientists interpreting the data.

This isn't the sort of scientific endeavor on which a wide, well-established consensus is easily rendered. In fact, if there really were a consensus on all the various claims surrounding climate science, that would be really suspicious. A fortiori, the claim of consensus is a bit suspicious as well.

(9) When "scientists say" or "science says" is a common locution.

In *Newsweek*'s April 28, 1975, issue, science editor Peter Gwynne claimed that "scientists are almost unanimous" that global cooling was underway. Now we are told, "Scientists say global warming will lead to the extinction of plant and animal species, the flooding of coastal areas from rising seas, more extreme weather, more drought and diseases spreading more widely." "Scientists say" is hopelessly ambiguous. Your mind should immediately wonder: "Which ones?"

Other times this vague company of scientists becomes "SCIENCE," as when we're told "what science says is required to avoid catastrophic climate change." "Science says" is an inherently weasely claim. "Science," after all, is an abstract noun. It can't say anything. Whenever you see that locution used to imply a consensus, it should trigger your baloney detector.

(10) When it is being used to justify dramatic political or economic policies.

Imagine hundreds of world leaders and nongovernmental organizations, science groups, and United Nations functionaries gathered for a meeting heralded as the most important conference since World War II, in which "the future of the world is being decided." These officials seem to agree that institutions of "global governance" need to be established to reorder the world economy and massively restrict energy resources. Large numbers of them applaud wildly when socialist dictators denounce capitalism. Strange philosophical and metaphysical activism surrounds the gathering. And we are told by our president that all of this is based, not on fiction, but on science—that is, a scientific consensus that human activities, particularly greenhouse gas emissions, are leading to catastrophic climate change.

We don't have to imagine that scenario, of course. It happened in Copenhagen, in December. Now, none of this disproves the hypothesis of catastrophic, human induced climate change. But it does describe an atmosphere that would be highly conducive to misrepresentation. And at the very least, when policy consequences, which claim to be based on science, are so profound, the evidence ought to be rock solid. "Extraordinary claims," the late Carl Sagan often said, "require extraordinary evidence." When the megaphones of consensus insist that there's no time, that we have to move, MOVE, MOVE!, you have a right to be suspicious.

(11) When the "consensus" is maintained by an army of water-carrying journalists who defend it with uncritical and partisan zeal, and seem intent on helping certain scientists with their messaging rather than reporting on the field as objectively as possible.

Do I really need to elaborate on this point?

(12) When we keep being told that there's a scientific consensus.

A scientific consensus should be based on scientific evidence. But a consensus is not itself the evidence. And with really well-established scientific theories, you never hear about consensus. No one talks about the consensus that the planets orbit the sun, that the hydrogen molecule is lighter than the oxygen molecule, that salt is sodium chloride, that light travels about 186,000 miles per second in a vacuum, that bacteria sometimes cause illness, or that blood carries oxygen to our organs. The very fact that we hear so much about a consensus on catastrophic, human-induced climate change is perhaps enough by itself to justify suspicion.

To adapt that old legal aphorism, when you've got decisive scientific evidence on your side, you argue the evidence. When you've got great arguments, you make the arguments. When you don't have decisive evidence or great arguments, you claim consensus. ■

Jay Richards is a Senior Fellow at Discovery Institute and a contributing editor of The American.

THE WALL STREET JOURNAL

Cap and Trade for the Internet

The FCC's Regulatory Plan Will Reduce Investment in New Bandwidth

By George Gilder
The Wall Street Journal
Published March 15, 2010

Under Chairman Julius Genachowski, Al Gore's old friends at the Federal Communications Commission are out to reinvent the Internet. In the name of a bogus crisis in broadband deployment, the FCC is today lathering on an array of network stimuli and subsidies as part of a new "National Broadband Plan" that will transform this current font of U.S. economic growth into a consumer of taxes and a playground for pettifogs.

This subsidy plan comes on top of previous ill-defined "network neutrality" requirements that would bar carriers from charging different prices for different forms of Internet content. Whether spam, TV programs, pornography, stolen video, movie downloads, streaming games, cyberwar intrusions or sensitive voice services, carriers of Internet packets could not discriminate among them.

"Network neutrality" is a new form of expropriation that parallels the "unbundling" regulations that precipitated the telecom crash of 2000 by requiring owners of last-mile links to homes and offices to share their lines with rivals. Like unbundling, it is demanded on the assumption that the U.S. is lagging in broadband because of abuses by the telecom carriers.

Since 2001, on both the federal and state levels, the U.S. has led the world in telecom deregulation. With business investment flooding into this arena, the U.S. has accomplished a broadband miracle, with residential bandwidth up 54 fold, wireless bandwidth to consumers up 542 fold. With some $4 trillion in investment in information infrastructure and software since the crash of 2000, including nearly $500 billion in 2008, the U.S. has moved from the back of the pack in broadband Internet to world leadership in Internet bandwidth and commerce.

The new broadband surge has created a heyday for such companies as Google, MySpace, Facebook, Apple, Twitter, Hulu and eBay's Skype that ride virtually free on the Internet. Supporting the neutrality campaign with new-found friends in Washington, however, Google and its allies are now more focused on neutralizing possible competition than on keeping up the broadband bonanza.

In practice, actual network neutrality and access are determined not by the laws of the land but by the laws of network abundance and scarcity. With sufficient investment in bandwidth, carriers will have no economic incentive to exclude content from an unaffiliated provider. When bandwidth is scarce, carriers will have to allocate, ration and set priorities regardless of what the rules say, slowing everything down to the lowest common denominator. Network neutrality is particularly inappropriate for the booming wireless sector, which is the hope of underserved rural areas and needs to prioritize packets because wireless bandwidth always tends to be scarce.

What ultimately makes bandwidth scarce is Wall Street's reluctance to back the companies doing the investment. Nothing can so wither broadband investment as murky mandates from Washington. As Bret Swanson of Entropy Economics has shown, corporations critical of network neutrality invest some 10 times more on networks than do net-neutrality supporters. This is a campaign by free riders to continue the free ride.

Investment in the Internet is now in jeopardy. With capital gains taxes set to rise next year, overall investment in information technology is down some 12% since 2008, IPOs languish, and venture capital is drying up.

The response from Washington is more calls for a "public option" Internet, built by the feds and by states and municipalities to compete with the private networks neutered and neutralized by the new rules. As we've seen in Europe, which has adopted a policy of suing U.S. companies such as Microsoft and Google that are surging ahead of the continent's national champions, these public-option networks inevitably become bottlenecks for needed innovation.

The FCC's new regulatory regime amounts to a kind of cap and trade for the Internet: It will cap Internet growth and restrict Internet trade. The likely winners are lawyers and special interests leeching off the telecom and Internet industries. A 2007 study by the Brookings Institution's Robert Crandall, William Lehr and Robert Litan estimated that every one percentage point increase in broadband subscriptions by U.S. households yields nearly 300,000 new jobs. Do we really want to jeopardize this industry's cornucopia of growth? ■

Mr. Gilder is a fellow at the Discovery Institute.

Survival First, *continued from page 9*

that a deal may be in the works on future trials. But the lawfare mindset that created this mess remains deeply seated in the Obama administration.

A lawfare mindset does not ask whether we should try terror detainees at all. As unlawful combatants they have no such legal entitlement. Even the administration concedes it can hold detainees after an acquittal (unlikely though in real life that may be). In giving trial rights to terrorists that soldiers fighting lawfully did not enjoy in earlier times we are not helping ourselves. To believe that jihadists would leave the battlefield if we give everyone due process strains credulity—doing so before 9/11 did not stop 9/11.

Thomas Jefferson famously called the cast of the 1787 Constitutional Convention "an assembly of demi-gods." But they were not Gods. And our Constitution is not a Quranic literal recitation of the Word of God. It is not a Bible. It is a broad charter of government that, as Madison noted, cannot cover every exigent circumstance. As Chief Justice John Marshall put it in *McCullough v. Maryland* (1819), such would "partake of the prolixity of a legal code… Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated."

In the face of WMD threats, a President must put survival first. The Roman maxim *Inter arma silent leges* ("In war the laws are silent") may be too strong for today's society. But suicide-pact legalism can sacrifice life and liberty in the name of sacralizing the Constitution and the pronouncements of the Supreme Court.

The latter is especially troubling, because the Supreme Court is not, as popular myth holds, the final arbiter of matters constitutional or otherwise. Its interpretations of (or encrustations upon) the Constitution can be reversed per Article V's amending process. Its interpretational "judicial gloss" superimposed upon federal statutes can be reversed by Congress passing a new law. And as Presidents Lincoln showed, in wartime its rulings can be disregarded, if as Commander-in-Chief the President perceives a grave risk to national security.

Yet despite such checks on the Court's power, in practice they are often ineffective. Since the first ten Amendments were ratified as the Bill of Rights in 1791 there have been but 17 more Amendments that have won ratification, only three since 1961. Congress does occasionally override the Supreme Court. It did so when, after the Court invalidated sections of the Detainee Treatment Act of 2005, Congress passed the Military Commissions Act of 2006. But the Court threw out key parts of that statute too, and Congress then threw in the towel.

Thus a willful Court often can get its way, judges being accountable officially to no one due to the sinecure of life tenure given "good behavior." As Chief Justice Charles Evans Hughes quipped in 1907: "We are under a Constitution, but the Constitution is what the judges say it is, and the judiciary is the safeguard of our liberty and of our property under the Constitution."

America's legal tradition merits respect, but survival trumps law, or there is no society to argue over what the law is or what it should be. What we call "law" is in effect a body of unilateral constraints that bind us but not our enemies; ditto for international law and "our values." We may legitimately decide to so constrain ourselves, but often we do so at increased risk that our enemies will take advantage of such latitude to inflict grievous harm upon us. Giving *unlawful* combatants more rights today than *lawful* combatants enjoyed historically is unnecessary and unwise.

In the event, after a WMD strike martial law will apply without question. Only its duration, administrative caprice and scope are uncertain. Let one terrorist nuke detonate in an American city, killing hundreds of thousands (let alone several, killing millions), and then ask Americans whether any tool should have been spared in the sacred names of our laws, Constitution and values, lest we violate the "human dignity" of senior al-Qaeda captives. Charles Evans Hughes also said: "[The] war power of the national government is the power to wage war successfully."

The terrorists have only three ways they can beat us: our technology, our media and our laws. They wish to use our technology, our fishbowl global media and our suicide-pact legal system as forms of judo against us. Civil libertarians are using privacy lawfare to turn us against our security technology. We need not acquiesce in this. We must take any and all measures to deny Islamists possession of nuclear weapons or other forms of WMD. We must use targeted security technology. We must use global media to actively counter efforts to turn opinion against us—such as when Taliban use human shields, and then claim that we are responsible for civilian casualties after we strike. And above all, we should deny those who would destroy our civilization access to our legal system to use as a weapon against us.

Massachusetts Senator Scott Brown put it perfectly in his January 19 special election victory speech:

> *And let me say this, with respect to those who wish to harm us, I believe that our Constitution and laws exist to protect this nation—they do not grant rights and privileges to enemies in wartime. In dealing with terrorists, our tax dollars should pay for weapons to stop them, not lawyers to defend them.*

No country ever won a war because it had the best legal system. Nor has any country ever won a war because it engaged in full disclosure of sins real or imagined. Despite controversial acts during the Civil War, Abraham Lincoln is honored as our greatest President. FDR remains widely revered despite imperfect Constitutional fealty. Few would say that America's historic wartime sins matched the mass atrocities perpetrated by our adversaries. No reasonable person today would assert that America's post-2001 sins come close to matching the atavism of al-Qaeda and the Taliban. War choices are usually among greater and lesser evils.

Put simply, via suicide-pact "lawfare" cases, lawyers and judges can lose a war; they cannot win one.

President Obama should immediately take steps to put protect our war effort from destructive lawfare lawyering: place top terror trials in military commissions, and place intelligence needs before prosecuting terrorists. If the federal courts continue to insinuate themselves into war cases, setting aside executive and legislative programs, Congress should deprive civilian courts of jurisdiction in battlefield cases. If the Supreme Court orders that such cases be tried in civilian courts, Congress should refuse to fund them , and we can then hold terrorists as unlawful combatants. ■

John Wohlstetter is a senior fellow with Discovery Institute's Technology and Democracy Project. He also authors the blog, Letter from the Capitol.

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More Discoveries ...

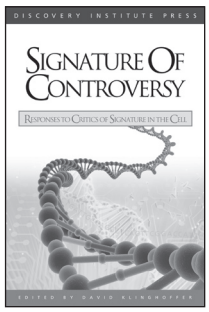
New Discoveries, *cont'd from page 1*

mind that there has not been a single reported case of major abuse in the United States. Should net-neutrality become law, it opens the door to further government intervention, and ultimately new taxation, of course.

Discovery Institute's Technology and Democracy Project Chairman **George Gilder** and Senior Fellow **Hance Haney** are defending the free market principles that have generated so much wealth and prosperity in this field. Through legislative testimony, written reports, op-eds and meetings with decision makers we are working to forestall a new and unnecessary regulatory quagmire.

FREE DIGITAL BOOK: *SIGNATURE OF CONTROVERSY*!

Discovery Institute Press is pleased to announce the release of its first *digital-only* book, *Signature of Controversy*, available via download at *www.discoveryinstitutepress.com*. This free publication, authored by **Steve Meyer** and edited by Discovery Institute Senior Fellow **David Klinghoffer**, responds to criticisms of *Signature in the Cell*.



Here's a teaser: One chapter is titled "On Not Reading Stephen Meyer's Signature in the Cell". The chapter exposes Dr. Francisco Ayala, a biologist at the University of California (Irvine), who managed to write a critique of Dr. Meyer's book without actually reading it. Not only did he not read the book, he even got the title wrong, referring to it as *Signature **of** the Cell*! And there are others as well.

You won't want to miss reading this outstanding (and entertaining) publication. Simply visit the website, fill out a quick form and we'll send you a secure Internet link. It's that easy!

IN BRAZIL, IT'S "ASSINATURA NA PILHA"

That's Portuguese for *Signature in the Cell* (or at least a close approximation). Dr. **Steve Meyer** recently spoke in Sao Paulo, Brazil at the invitation of Mackenzie Presbyterian University, one of Brazil's oldest and most prestigious colleges. Hundreds of students and faculty participated in the discussion and a number of media were present. The lecture was also transmitted live by streaming media from the university website. This is the latest example of our outreach to international audiences—outreach that has included conferences and/or lectures in Turkey, Israel, Italy, the U.K. and a number of other countries.

GETTING THE MOST OUT OF OUR NATIONAL RAIL SYSTEM

Be on the lookout for a new report from Discovery Institute's Cascadia Center outlining a strategy for investment in the nation's rail corridors. The report, authored by Cascadia Senior Fellow **Ray Chambers** and edited by **Mike Wussow** is set for release later this month. The report will explain the role that public/private partnerships can play in leveraging the massive growth in federal outlays for freight and passenger rail improvements. While we (mostly) applaud this overdue investment, we are deeply concerned about throwing money at a broken system.

Discovery Institute President **Bruce Chapman**, who served as a member of the Amtrak Reform Council in the late-1990s, argued—unsuccessfully—for the privatization of Amtrak. Still, there are opportunities in specific regions, including the Pacific Northwest, where public/private partnerships can help enhance livability and improve economic competitiveness. The Cascadia Center will continue to educate policymakers and opinion leaders on these opportunities in order to maximize the effectiveness of infrastructure funds.

HAS THE U.S. SOURED ON RUSSIA? NOT NECESSARILY

Despite legitimate U.S. concerns about Russian motives in Iran and the Middle East, several signs of encouragement with respect to the U.S./Russia relationship remain. Chief among them is continued U.S./Russian cooperation in the war in Afghanistan. Unbeknownst to most Americans, Russia is a key partner in the war effort, allowing the United States continued access to its rail systems and airspace. That—according to **Yuri Mamchur**, Director of Discovery Institute's Real Russia Project—was just one topic of conversation at the 29th Annual **World Russia Forum**, sponsored jointly by the Real Russia Project, the American University in Moscow and the Eurasia Center.

The conference was held in Washington, D.C., April 25-27. Participants in the discussion included U.S. Senator Carl Levin (D-MI), U.S. Representative Bill Delahunt (D-MA) and Deputy Assistant Secretary of State Daniel Russell. The latter singled out Discovery Institute, praising our efforts to foster deeper cooperation between Russia and the United States.

DR. JAY WESLEY RICHARDS – THE SEQUEL

Discovery Institute is pleased to announce the return of **Jay Richards** to Discovery Institute. Dr. Richards, who worked at Discovery from 1999 to 2006, is the co-author with Guillermo Gonzalez of *The Privileged Planet* and author of *Money, Greed and God*, among other publications. He has spent the past three years at the Acton Institute in Grand Rapids, Michigan, where he served as Director of Acton Media and a Research Fellow. While there he produced two documentaries: *The Call of the Entrepreneur* and *The Birth of Freedom*—both of which have been featured on PBS affiliates around the country. Jay will serve as the Director of Research and Senior Fellow for Discovery's Center for Science and Culture, helping to craft curriculum for our summer scholars program and supporting our development efforts.