

WHAT IF THE POWER WENT OUT FOR GOOD?

The Threat of Electromagnetic
Pulse and What to Do About It

Why Our Electric Grid Is Vulnerable

MUCH LIKE THE FINAL SCENES of *Raiders of the Lost Ark*, our cover story this issue involves the utterly fantastic crashing into the completely mundane. You may recall the adventure's coda: Professor Brody advises a government official that the Ark of the Covenant, now in American hands, possesses unspeakable powers that must be researched. The official assures Brody and Indiana Jones that he has top men working on it. Who? Top men. In the closing shot, we see the relic carefully crated up and stashed among thousands of similar crates in a warehouse. Bureaucratic inertia wins again.

The full powers of the Ark are unknown but we know it can melt faces, so they must be terrible indeed. The curious force described in these pages can do much worse: An electromagnetic pulse (EMP), set off by a nuclear detonation in the atmosphere or by extreme solar weather, could burn out the electric grid over many hundreds of miles from ground zero. It could take months if not years to restore electricity to up to half the continent.

Without electricity, our modern comfortable lifestyles would come screeching to a halt. Most worrisome, the communication and transportation networks that deliver food, medicine, and other necessities would be severely hampered. Many thousands, perhaps millions, of Americans could die—all because some electrons moving around in the atmosphere create a giant electromagnet in the sky for a few nanoseconds.

Now here's the part of the story that will sound familiar: Little has been done to address the risk and the reason is not merely that there is disagreement about what should be done. Fundamentally, most of the parties who could take action believe that EMP is somebody else's problem.

Power companies typically think an EMP would be caused by a nuclear detonation; that would make it an act of war, and thus a national security threat for the federal

government to deal with via missile defense. This view holds that since EMP is a low-probability, high-risk event, the electricity sector should focus on more immediate challenges like cyber security. Others believe that electric companies should take steps now, guided by standards set by government regulators, to harden the key elements of the grid so that they are shielded from an EMP.

An additional problem is that within the government, the knowledge, competencies, and responsibilities related to the problem are dispersed among different agencies. These include the Department of Energy, the Federal Energy Regulatory Commission, the Department of Defense, and the Department of Homeland Security.

Numerous ad hoc bodies have weighed in with reports, studies, and demonstration projects on EMP over the past decade. The subjects on which the experts disagree include the cost of hardening the grid (between \$2 billion and \$1 trillion), the right strategy (piecemeal v. fast track plan), and which assets should be prioritized.

One thing is certain: Talking less about the problem isn't going to solve it either. Government and industry need to get together and agree on what roles each will play in protecting the grid. By itself, that can go a long way to removing barriers to action. While taking that first step requires leadership from the President and Congress, policymakers should remember that electricity companies are likely to know more about how their assets are vulnerable than the government does.

In fact, at least one private company is already doing EMP planning. Duke Energy has launched a pilot project with Clemson University to isolate its coal, nuclear, and hydropower plants at Lake Wylie on the North Carolina-South Carolina border so that they are protected from an EMP.

It may turn out, after all, that the top men on EMP work outside the Beltway. ■



ALEX ADRIANSON edits *The Insider*. Have a story idea? Want to connect with him? Email insider@heritage.org

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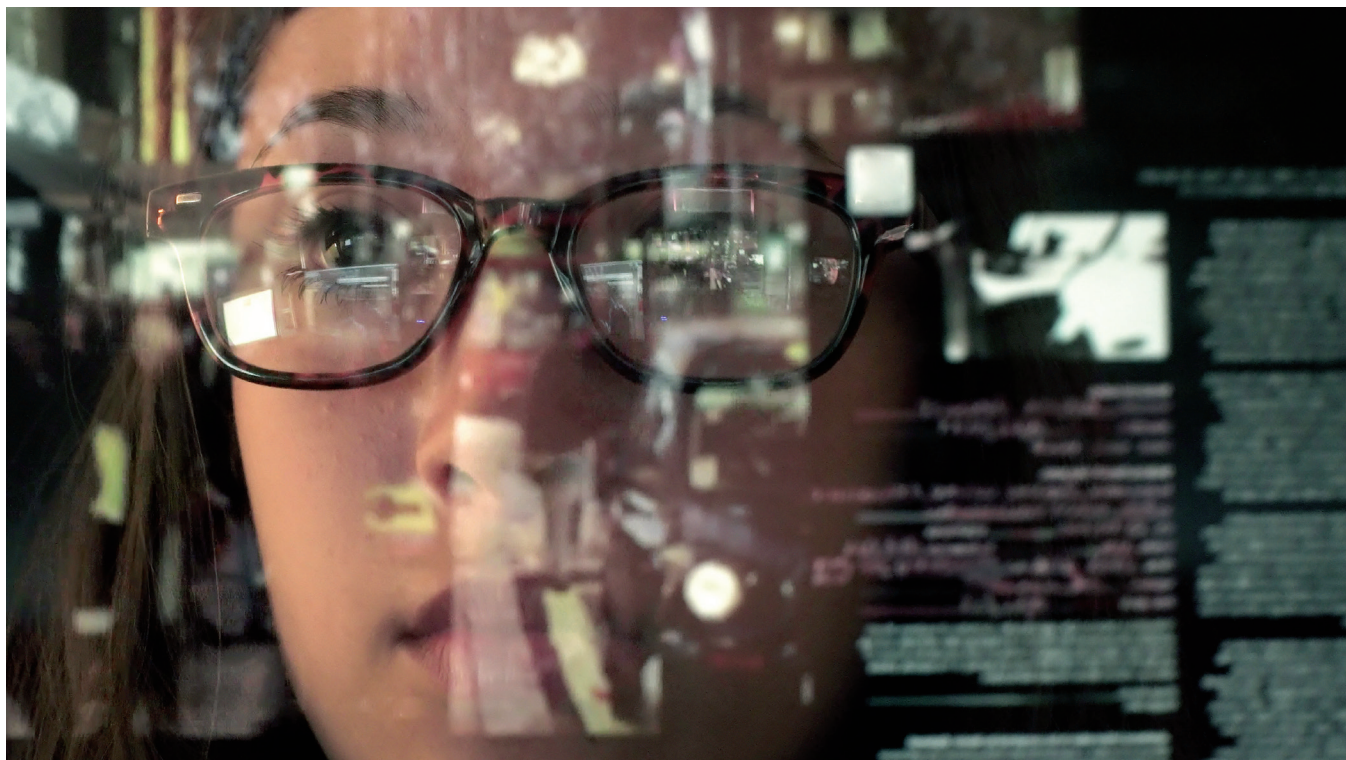
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SIMON DANNHAUER/GETTY IMAGES; SPRINGBOARD CONSULTING, LLC



What Will Dropping Net Neutrality Rules Mean for Internet Users?

ON DECEMBER 14, THE FEDERAL Communications Commission voted 3-2 to repeal the Commission's 2015 order imposing net neutrality rules. The 2015 order had reclassified broadband internet from an information service to a telecommunications service, allowing the FCC to regulate internet service providers as common carriers. The 2015 order had included rules against discriminating against content through blocking, throttling, or paid prioritization. We asked a number of experts what the repeal will mean for internet users.

ROBERT MCDOWELL

Throughout my career, I have supported federal policies that promote an open and freedom-enhancing internet. These policies were built upon long-standing and bipartisan public policy that insulated the internet ecosphere from

unnecessary regulation. Since being privatized in the 1990s, the internet proliferated explosively precisely because of light-touch government policies. In short, it blossomed beautifully in the absence of *ex ante* economic regulation, such as Title II of the Communications Act.

Prospering in the absence of heavy-handed Depression-era regulations designed for the Ma Bell monopoly, internet markets, consumers, and entrepreneurs alike were protected by nimble and strong antitrust and competition laws that traditionally have been enforced by the Department of Justice and the Federal Trade Commission. The Federal Communications Commission radically departed from that long-standing bipartisan consensus in 2015 when it classified, for the first time, broadband internet access services under Title II of the Communications Act of 1934, a law designed for phones that were held in two hands.

LAURENCE DUTTON/GETTY IMAGES

Reclassification of broadband services as “telecommunications services” under Title II has caused market and regulatory uncertainty, consumer confusion, and a slowing of investment. U.S. markets have witnessed a significant reduction in broadband investment in the two years since the FCC adopted its Title II Order. The effect is most evident in the hyper-competitive wireless market. For example, CTIA reports that wireless capital expenditures fell 17.8 percent from 2015 to 2016 alone, from \$32.1 billion in 2015 to \$26.4 billion in 2016.

The FCC’s action also stripped the FTC of its jurisdiction over broadband markets by triggering the “common carrier exemption.” By reversing its anomalous 2015 Title II Order, the FCC restored the FTC’s jurisdiction. The FCC’s decision also allows state attorneys general to continue enforcing similar state consumer protection laws to protect their constituents. In other words, the FCC repeal of the 2015 Title II Order makes clear that time-tested antitrust and competition laws continue to apply, thus giving market players in the internet ecosphere the certainty and freedom to invest, innovate, and prosper.

We all share the same goals of making sure that every American has access to open and freedom-enhancing networks—and that the United States continues to lead the world in the race to 5G. To achieve those goals, we must rely upon America’s nimble and strong antitrust, competition, and consumer protection laws to address any market failure or consumer harm.

The FCC is wise to return to the bipartisan, light-touch regulatory

structure that started during the Clinton administration and fostered the dynamic internet economy for almost 30 years.

Mr. McDowell is a fellow at the Hudson Institute and a partner at Cooley LLP. From 2009 to 2013 he served as a Federal Communications Commissioner.

JAMES GATTUSO

The Federal Communications Commission’s vote repealed its net neutrality rules like Rome destroyed Carthage. No trace was left. It was “the end of the internet as we know it,” blared identical headlines on CNN.com and MSNBC.com. “[P]rices will go up, variety and diversity will go down and the largest, best-capitalized Internet companies

will gain a significant advantage over upstart competitors” reported Rolling Stone. Cutting through the niceties, another commentary announced that FCC Chairman Ajit Pai had “killed” the internet.

Scary stuff. But all total hogwash. The regulations that were repealed on December 14 were in force a total of 30 months, from June 2015 to December 2017. That’s barely enough time for a regulator to write up a Federal Register notice.

It is not even as long as it takes for the inevitable litigation to be completed (in fact, the rules were still being considered by the Supreme Court when they were repealed).

The end of this two-year experiment in government-controlled internet service is unlikely to be noticed by users. Websites will not go dark; prices won’t rise; the internet will not die; the world will not end. As

FCC Commissioner Michael O’Rielly stated: “[F]or those of you out there who are fearful of what tomorrow may bring, please take a deep breath. This decision will not break the internet.”

In the long-run, however, there will be a difference. The much maligned internet service providers—led by AT&T and Verizon—who have funded the infrastructure of the web as it grew beyond all imagining, and who until last year were the leading capital investors in the U.S. economy, will continue investing in the internet after all. The slow-downs and the congestion with which users would have had to contend will not materialize. Innovation will continue as well—both for ISPs (such as T-Mobile, whose pro-consumer zero-rating program that provided free content to subscribers was on the FCC chopping block) and for small startups looking for new ways to challenge the big internet players such as Google and Amazon.

One prediction is likely to come true, however. The internet as we know it will change. It will grow and evolve and disrupt as it has so beneficially for the past 30 years. The internet is always reinventing itself, improving the world in the process. Let’s hope that regulators in Washington never again adopt a policy that could jeopardize that.

Mr. Gattuso is a senior research fellow in regulatory policy at The Heritage Foundation.

BERIN SZÓKA

Rolling back the Obama Federal Communication Commission’s orders means both less and more than you might think.

Remember: the FCC didn’t have any enforceable regulations on the books until 2015. Yet, somehow the internet flourished. So why *wasn’t* there rampant blocking,

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U.S. markets have witnessed a significant reduction in broadband investment in the two years since the FCC adopted its Title II Order.



content based on its own priorities might have serious concerns about its ability to attract subscribers.” In the most meaningful sense of the term, market forces demanded net neutrality.

Of course, the normal antitrust and competition laws applied to check abuse, too—at least until 2015. See, Title II reclassification deprived the Federal Trade Commission of jurisdiction: the FTC can regulate (nearly) everything *but* common carriers. Moving broadband back to Title I (only public safety FCC regulations, not economic ones) restores the FTC’s jurisdiction. A Ninth Circuit panel had suggested it might not be so simple, but the full appeals court vacated that decision.

The FTC’s baseline deception authority will work essentially the same way Title II would have: “requir[ing] ISPs to act in accordance with their customers’ legitimate expectations,” as the court put it. That’ll be even easier because the FCC will keep mandating ISP transparency (under uncontroversial legal authority). The FTC, the nation’s premiere consumer watchdog, will also have broader authority to punish practices that harm consumers or competition—joined by state attorneys general (of both parties) and the Department of Justice. If anything, net neutrality is on firmer ground now than ever.

But it won’t last. The FCC will be sued again, and will win again, for the same reasons they’ve won the last two rounds: *Chevron* deference to agencies. The next Democratic FCC chairman will reclaim broad powers over the internet. There are only two ways to stop this ping-pong match: The core of net neutrality isn’t controversial and could be codified in statute in exchange for blocking future FCC power grabs. Congressional Republicans proposed doing just that three years

throttling, and censorship by broadband companies?

Some claim it was the looming threat of FCC action over a decade the agency spent grasping for a legal basis to do *something* about net neutrality.

But even under the most sweeping possible authority, the FCC couldn’t have stopped the abuses activists fear.

In 2015, the FCC reclassified broadband providers as common carriers (essentially, utilities) subject to Title II of the 1934 Communications Act—the framework designed for Ma Bell, and the railroads before that. In 2017, the D.C. Circuit upheld this reclassification, with one glaring caveat: “[T]he rule does not apply to an ISP [Internet Service Provider] holding itself out as providing something other than a

neutral, indiscriminate pathway—*i.e.*, an ISP making sufficiently clear to potential customers that it provides a filtered service.” So as long as they were upfront about it, broadband providers could have engaged in

“editorial intervention, such as throttling of certain applications chosen by the ISP, or filtering of content into fast (and slow) lanes based on the ISP’s commercial interests”—and Title II simply wouldn’t have applied.

The Democratic-appointed judges who wrote that decision went on: “No party disputes that an ISP could [opt

out of Title II] if it wished, and no ISP has suggested an interest in doing so in this court. That may be for an understandable reason: a broadband provider representing that it will filter its customers’ access to web

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In the most meaningful sense of the term, market forces demanded net neutrality.



ago. Democrats never engaged, and probably won't now, since this is an electoral winner for them. Or, the Supreme Court could rule that imposing broad internet regulation is a "major question" requiring a clear statement from Congress.

Mr. Szóka is president of TechFreedom, a non-partisan think tank supported by companies on both sides of the net neutrality debate.

RANDOLPH J. MAY

The Federal Communications Commission's decision to repeal the net neutrality mandates imposed on internet service providers by the Obama administration FCC is a welcome development for internet users. The Obama-era internet regulations were adopted in 2015 without any evidence of an existing market failure or consumer harm. When regulations address hypothetical instead of real problems, investment and innovation almost

always are discouraged to the detriment of consumers.

In this instance, the likelihood of ill-effects was heightened because the FCC imposed public utility-like mandates on internet service providers—the same "command and control" regulatory regime that applied to railroads in the 19th century and Ma Bell in the 20th century. The problem, of course, is that unlike those railroads and Ma Bell, internet providers operate in a largely competitive marketplace environment that is technologically dynamic.

There is no dispute that between 1996 and 2015 ISPs invested \$1.5 trillion in building out advanced broadband

networks at a time when broadband deployment and adoption were

expanding rapidly. But there is persuasive evidence that since 2015, when the FCC adopted the current public utility regime, ISP investment has declined. For example, a May 2017 Free State Foundation study estimated that capital expenditures for the 16 largest ISPs declined \$5.6 billion since 2015 and other studies show similar reductions.

In June 2017, Cisco released its latest internet traffic forecast, projecting that global IP traffic will increase three-fold over the next five years and will have increased 127-fold from 2005 to 2021. As demand for broadband bandwidth

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When regulations address hypothetical instead of real problems, investment and innovation almost always are discouraged to the detriment of consumers.



CHAIRMAN AJIT PAI speaks ahead of the vote on the repeal of so-called net neutrality rules at the Federal Communications Commission, December 14, 2017.

continues to increase exponentially, especially with the explosion of the consumption of online video, it is obvious that any decline in investment in advanced broadband networks, or even a decline in the rate of investment, bodes ill for internet users.

Also boding ill is the potential suppression of innovation resulting from public utility-like regulation of ISPs. We have a real-world example. After the FCC adopted its 2015 order, then-Chairman Tom Wheeler ordered an investigation of popular “free data” programs offered by the ISPs. These programs, popularized first by upstart T-Mobile in its effort to challenge its larger wireless competitors, allow subscribers to access certain websites without incurring data usage charges. Shortly after President Trump appointed Ajit Pai the agency’s new chairman, he terminated the investigations, which many ISPs had reported chilled their plans for other innovative offerings.

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After the FCC adopted its 2015 order, then-Chairman Tom Wheeler ordered an investigation of popular “free data” programs offered by the ISPs that allow subscribers to access certain websites without incurring data usage charges.

So, repealing the existing internet regulations is likely to benefit consumers by spurring innovation and investment. But it’s fair to ask whether, after the repeal, consumers will still be protected.

The answer is yes. Under a return to a light-touch regulatory regime, the FCC will continue to enforce transparency rules that require internet service providers to publicly disclose their practices relating to blocking, throttling, or prioritizing internet traffic. If ISPs fail to make the required disclosures, the FCC can impose sanctions. And if they fail to adhere to their representations, the Federal Trade

Commission, pursuant to its authority to prevent unfair or deceptive practices, can impose sanctions. The FTC has the experience, expertise, and institutional capabilities to carry out its consumer protection responsibilities effectively.

Moreover, the antitrust authorities will be on guard as well to rectify any anticompetitive abuses to the extent that there is a showing of the wrongful

exercise of market power. And state officials will retain their traditional powers to enforce state consumer protection laws.

So, internet users remain protected after the repeal of net neutrality regulations. And, importantly, they are likely affirmatively to benefit from the removal of regulations that discouraged investment and innovation.

Mr. May is president of the Free State Foundation, a nonpartisan free market-oriented think.

LARRY DOWNES

The short answer is nothing.

What the Federal Communications Commission has done is to return internet governance to where it was from 1996 until 2015, with the Federal Communications Commission applying a light-touch oversight to broadband, in accord with congressional intent. The Federal Trade Commission will return as principle enforcer, able once again to police ISPs under general laws of antitrust and consumer protection.

That long-standing bipartisan approach—the overwhelmingly positive results of which speak for themselves—was undone by an ill-considered and possibly illegal decision, by the FCC in 2015 to reclassify ISPs as public utilities,



ACTIVISTS PROTEST in support of net neutrality outside a Verizon store in Lower Manhattan in New York on December 7, 2017.

exposing them to the full range of federal and state regulations designed to manage the former Bell monopoly in the 1930s. At the same time, the FTC's authority was immediately cut off under a law that prohibits them from regulating public utilities.

Reclassification, the agency said at the time, was needed to give the commission legal cover to enforce specific network management restrictions against blocking, throttling, or otherwise discriminating against internet traffic for anti-competitive reasons. Federal courts had twice rejected these rules as outside the agency's congressional mandate. Yet in previous efforts to pass them, the FCC acknowledged that broadband ISPs weren't actually violating the so-called open internet principles. The rules, the agency said repeatedly, were mere "prophylactics."

Instead, increased competition and the growing leverage of dominant internet content providers was doing a near-perfect job of deterring practices that might harm the open internet—and doing so without the uncertainty, cost, delay, and regulatory capture inherent in the FCC's radical alternative.

The rules provided no benefit, but imposed considerable cost. The "prophylactic" rules—or more accurately the public utility

reclassification—resulted in dramatic decreases in infrastructure investment, just at the time when new mobile networks and U.S. global competitiveness needed more, not fewer, incentives. The 2015 order ended a run of Wall Street exuberance that saw over \$1.5 trillion in private spending during the light-touch regulation era.

With the public utility order wisely retired, internet users will in fact have considerably more protections than they did prior to 2015. That's because the FCC is leaving in place and enhancing one of the five so-called net neutrality rules—one that will require ISPs to disclose their network management practices, with those promises explicitly enforceable by both the FCC and the FTC.

Advocacy groups have been flagellating in recent weeks about the end of the internet, democracy, free speech, and whatever else they think might enrage consumers about the FCC's common-sense decision to return to a regulatory model that

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Net neutrality advocates' long-term and openly-stated goal all along has been to transform the internet into a nationalized network or quasi-governmental utility.

had worked brilliantly. The scare tactics make clear that they were never interested in enforceable net neutrality rules. Their long-term and openly-stated goal all along has been to transform the internet into a nationalized network or quasi-governmental utility. They gambled in 2015 that the next FCC chairman would share their vision. They lost.

Thank goodness they did. A quick look at the state of U.S. electricity, gas, and water utilities, mass transit systems, crumbling roads, bridges,

and other national infrastructure should make clear the obvious danger of wheels put well in motion by the FCC in 2015. The agency's swift reverse course gives consumers hope for continued innovation—even if they won't realize it until the rhetoric quiets down.

Mr. Downes is Project Director at the Georgetown Center for Business and Public Policy and the co-author of Big Bang Disruption: Strategy in the Age of Devastating Innovation (Portfolio). ■



THE USS JOHN MCCAIN, DAMAGED in a collision with a merchant vessel in the Singapore Straits, is loaded onto a transport ship that will take the destroyer to Japan for repairs.

Military Strength, Opioids, Abortion, Iran, Freedom of Conscience

U.S. military power is dwindling. Dakota Wood presents some findings of the *2018 Index of U.S. Military Strength*:

Since 2012, the Army has shrunk from 45 combat brigades to only 31. In February, Gen. Daniel B. Allyn informed the House Armed Services Committee that only a third of those brigades are considered combat ready and only three, count ‘em, *three*, would be able to deploy immediately to a combat zone. [...]

Things aren’t much better for our air and sea forces. The Heritage Foundation’s *Index of Military Strength* assesses the Air Force as being 24 percent short of the 1,200 fighter jets it needs. As for keeping the aging aircraft it does have

flying, it lacks 1,000 pilots and over 3,000 flight maintenance crew members. Only four of its 36 combat-coded squadrons are ready to execute all wartime missions.

The Navy has shriveled to 276 combat ships—the smallest U.S. battle fleet since before World War I. And the readiness of the force continues to decline. In February, Adm. William Moran, Vice Chief of Naval Operations, testified before the House Armed Services Committee that “the Navy’s overall readiness has reached its lowest level in many years.”

His testimony was subsequently affirmed by a series of accidents that revealed a deplorable decline in basic seamanship. First, the USS Lake Champlain collided with a fishing vessel. Then

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JOSHUA FULTON/ZUMA PRESS/NEWSCOM

the USS John S. McCain and the USS Fitzgerald hit cargo ships, costing 17 American sailors their lives.

All of these ships were part of the Navy's Forward Deployed Naval Forces, considered our most proficient, well-trained, and experienced force because they're operating all the time. But a report issued last month by the Government Accountability Office found that little to no dedicated training periods were built into the operational schedules. As a result, 37 percent of the warfare certifications for cruiser and destroyer crews based in Japan—including certifications for seamanship—had expired.

[Dakota L. Wood, "US Remains the World's Most Dominant Military Power. But that Power Is Dwindling Rapidly." Fox News, October 5, 2017]

Tough fight ahead on opioids. The problem of opioid abuse, which in just 2016 claimed more American lives than the Vietnam War, has deep roots. Sally Satel writes:

[F]actors beyond physical pain are most responsible for making individuals vulnerable to problems with opioids. Princeton economists Anne Case and Angus Deaton paint a dreary portrait of the social determinants of addiction in their work on premature demise across the nation. Beginning in the late 1990s, deaths due to alcoholism-related liver disease, suicide, and opioid overdoses began to climb nationwide. These "deaths of despair," as Case and Deaton call them, strike less-educated whites, both men and women, between the ages of 45 and 54. While the life expectancy of men and women with a college degree continues to grow, it is actually decreasing for their less-educated counterparts. The problems start with poor job opportunities for those without college degrees. Absent employment, people come unmoored.

Families unravel, domestic violence escalates, marriages dissolve, parents are alienated from their children, and their children from them.

Opioids are a salve for these communal wounds. Work by Alex Hollingsworth and colleagues found that residents of locales most severely pummeled by the economic downturn were more susceptible to opioids. As county unemployment rates increased by one percentage point, the opioid death rate (per 100,000) rose by almost 4%, and the emergency-room visit rate for opioid overdoses (per 100,000) increased by 7%. It's no coincidence that many of the states won by Donald Trump—West Virginia, Kentucky, and Ohio, for example—had the highest rates of fatal drug overdoses in 2015.

What's needed, she writes, is to let states try new strategies and learn from those that work:

The federal government can provide much-needed additional funding for treatment. This will be imperative if the Medicaid expansion is rolled back, as it has brought coverage to about 1.3 million substance abusers who were too poor for private insurance but not poor enough for Medicaid. But it is at the state and county levels that the real progress will be made. Locales are developing inventive modes of engagement; treatment programs are beginning to test novel kinds of incentives; and justice programs are starting to combine enforced structure with medication. As we have seen, the worst of the crisis is in small

communities where everyone knows someone who has been affected by an opioid addiction. It makes sense that the effort to find inspired solutions would be most concentrated there; we should invest in those solutions and learn from them. There won't be a master blueprint that works everywhere — this is not a problem that will ever lend itself to such a scalable solution, especially in small towns.

At least at this point, if not for the duration of this crisis, we need to allow medical professionals, law-enforcement officials, community

organizations, and the loved ones of those affected to attempt different, even radical, solutions and evaluate their effectiveness. Policymakers should support such experimentation, and fund it, but must resist the urge to pretend that better funding alone will end the scourge of opioids.

[Sally Satel, "Taking on the Scourge of Opioids," National Affairs, Summer 2017]

The good news on abortion continues.

Michael J. New:

According to the CDC, both the number of abortions and the abortion rate declined by about 2 percent

between 2013 and 2014. The decline was fairly consistent, as 30 of the 46 states reporting abortion data in both years saw their abortion numbers decline. [...]

Unsurprisingly, most of the media coverage gives much of the credit for the abortion-rate decrease to

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We need to allow medical professionals, law-enforcement officials, community organizations, and the loved ones of those affected to attempt different, even radical, solutions and evaluate their effectiveness.



increased contraception use. There is some evidence that there has been a short-term decline in the incidence of unintended pregnancies, but another key factor behind the 50 percent abortion-rate decline since 1980 is the fact that a smaller percentage of unintended pregnancies result in an abortion.

Statistics from the Guttmacher Institute are instructive on this point. In 1981, the research group found that 54 percent of unintended pregnancies resulted in an abortion. That number declined during the 1990s and fell to 42 percent by 2011.

[Michael J. New, “U.S. Abortion Data from 2014 Show Pro-Life Progress,” *National Review*, November 27, 2017]

Iran has misbehaved since the nuclear deal. And President Trump now has an opportunity to correct the Obama administration’s blunder, writes Arthur Herman:

Instead of becoming a stabilizing force, Obama’s Iranian partners have triggered instability and mayhem

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According to the CDC, both the number of abortions and the abortion rate declined by about 2 percent between 2013 and 2014.

across the region, including sparking a proxy war with the Saudis over Yemen, stoking a vicious civil war in Syria, while also taking U.S. sailors hostage and giving the Taliban the weapons to kill Americans in Afghanistan—not to mention threatening Israel with annihilation.

With the revival of demonstrations in Iran, however, President Trump has an

unprecedented opportunity to reset the U.S. policy toward the Islamic Republic. He’s already signaled his displeasure with the Iran nuclear deal; his tweets warning the mullahs that “the world is watching” are a further signal that he understands that the fate not only of Iran, but peace in the Middle East, depends on whether those demonstrators succeed or fail—and that the U.S. can act to help them succeed.

What steps can Trump take? First, reimpose all the sanctions against Iran that were lifted as part of the nuclear deal, especially against anyone that does business with the Iranian Revolutionary Guard Corps, the brutal elite mainstay of the Tehran regime.

Second, make it clear to the European Union and others who sit silent for fear their lucrative post-sanction deals with Tehran will fall through if the regime topples, that they will be held accountable to Washington and to history, if they stand by while one of the most despotic regimes in history once again crushes out the hopes of its citizens.

Third, show unflinching support for the demonstrators and show that America, and the world, are indeed watching and hails their effort to create a new life for themselves based on democracy and freedom.

[Arthur Herman, “Trump’s Iran Opportunity—Give the Mullahs a Push,” *Hudson Institute*, January 2, 2018]

Are unpopular views still protected by the First Amendment? Do

public accommodation laws require commercial bakers to provide wedding cakes for same-sex weddings? Or does the First Amendment’s protection against compelled speech extend to the making of wedding cakes? Robbie P. George and Sherif Girgis explain why cake shop owner Jack Phillips should prevail in the case *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.

If wedding cakes are expressive, whether by words or mere festive design, what’s their message? We can tell by their context since, as the court notes, a symbolic item’s context “may give meaning to the symbol.” Thus, the court found that an upside-down flag with a peace sign carried an antiwar message—protected as speech—because of the context of its display. Likewise, a wedding cake’s context specifies its message: This couple has formed a marriage. When the specific context is a same-sex wedding, that message is one Mr. Phillips doesn’t believe and cannot in conscience affirm. So coercing him to create a cake for the occasion is compelled artistic speech.



JACK PHILLIPS, owner of Masterpiece Cakeshop, is fighting for the First Amendment rights of expressive businesses to decline to use their craft to support messages with which they disagree. The Colorado Civil Rights Commission has fined him for refusing to bake a cake for a same-sex wedding.

Note that this argument wouldn't cover *all* requirements to make artistic items. The law may force photographers to do photo portraits for Latinos as well as whites since that doesn't yet force them to create art bearing an idea they reject, which is all the compelled-speech doctrine forbids. But custom wedding cakes carry a message specific to each wedding: This is a marriage.

Can Colorado justify its compulsion anyway? Some say yes: Fighting discrimination—disfavored conduct, not speech—is the general goal of Colorado's public-accommodations law. And if that goal is legitimate, they continue, so is every application of this law.

Remarkably, given how commonly one encounters this answer, the court has explicitly considered and rejected it twice. In *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston* (1995), the court held that while anti-discrimination laws do not “as a general matter” violate the First Amendment, they do when “applied in a peculiar way” that burdens speech. In that case and in *Boy Scouts of America v. Dale* (2000),

First the government said there was sexual-orientation discrimination, both times under its public-accommodations laws. The goal in both was to fight discrimination rooted in opposition to “homosexual conduct.” Still, the court said both times, this generic goal could not justify coercion that interfered with the content of anyone's expression.

In these cases, after all, the precise act being targeted just is the speaker's choosing (“discriminating”) among which ideas to express—exactly what the First Amendment exists to protect. As the court put it in *Hurley*, the “point of all speech protection” is “to shield just those *choices of content* that in someone's eyes are misguided, or even hurtful.”

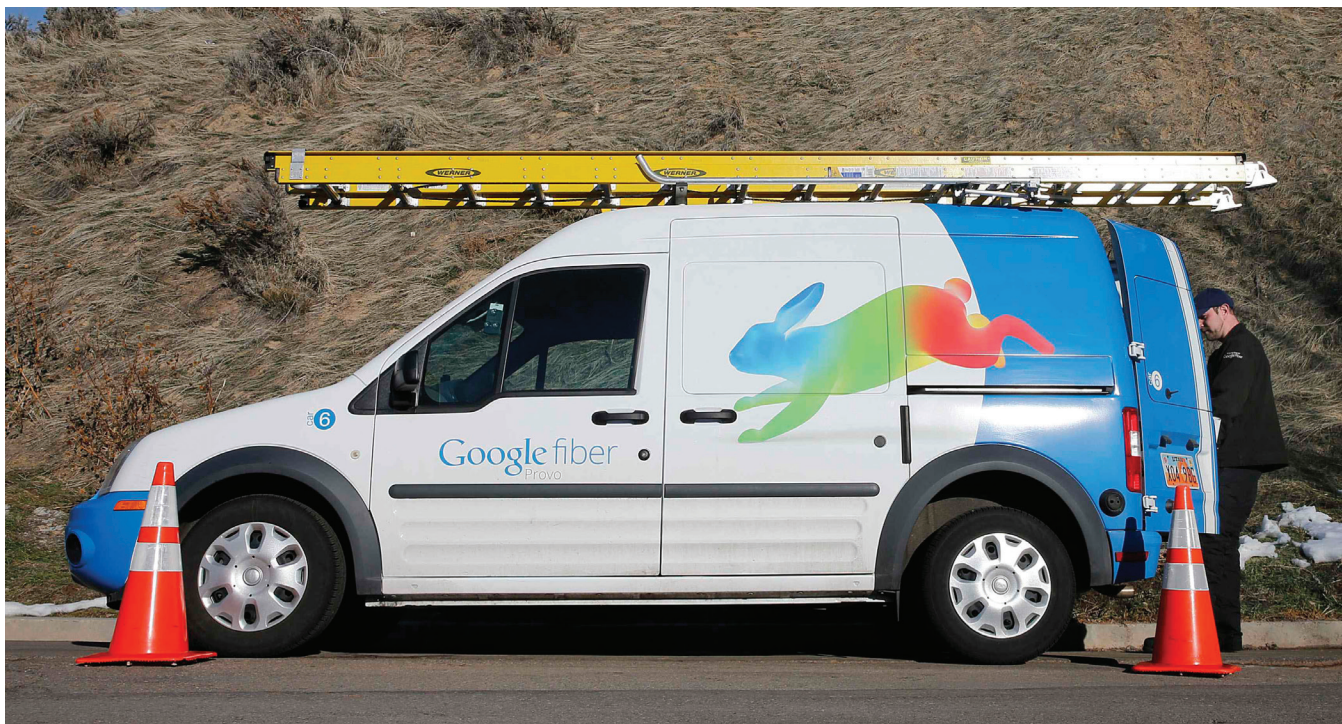
[Robert P. George and Sherif Girgis, “A Baker's First Amendment Rights,” *New York Times*, December 4, 2017]

You want a free and open Internet?

Eliminate government barriers to more competition. Too many local governments, writes Ryan Radia, want to use permitting as a cash cow:

When a firm wishes to deploy wireline broadband to residents of an existing community, it typically must navigate a complex web of municipal and state regulations that govern the use of public rights of way. Although some governmental oversight over projects that entail digging up public roads or other public lands is appropriate, the processes by which companies must obtain permits and pay fees to obtain permission for such projects is often extremely complex and costly. The result is that only firms with deep pockets and extensive experience dealing with local and state officials are typically willing to pursue large-scale broadband deployment initiatives.

On a few recent occasions when a company has sought to deploy wireline broadband on a limited scale, the towns in which such networks have been built are those that have committed to offering a simple permitting process, reasonable fees, and streamlined access to public rights of way. For instance, when Google



announced plans to deploy a fiber-optic residential broadband service known as “Google Fiber” in 2010, the company solicited applications from U.S. communities and ultimately selected Kansas City as its first deployment site.

Google’s passive approach to broadband buildout stands in contrast to the traditional method employed by telecom providers, who typically go from town to town soliciting permission to deploy new broadband infrastructure. If a city insists on onerous terms as a prerequisite for allowing a company to deploy broadband there, the provider might simply skip over that city—as happened in Alexandria, Virginia, in 2010 when Verizon announced it could not reach an agreement with the city regarding the proposed deployment of Verizon’s FiOS broadband network.

[Ryan Radia, “Improving America’s Broadband through Competition, Not Regulation,” *Competitive Enterprise Institute*, December 7, 2017]

North Korea is a state-sponsor of terrorism. And that explains why the Trump administration put North Korea back on the United States’ list of state sponsors of terrorism. Bruce Klingner writes:

Since being dropped from the terrorism list, Pyongyang has conducted repeated cyberattacks against government agencies, businesses, banks, and media organizations. It has also engaged in: threats of “9/11-type attacks” against U.S. theaters and theatergoers; assassination attempts against North Korea defectors, human rights advocates, and South Korea intelligence agents; and numerous shipments of conventional arms bound for terrorist groups Hamas and Hezbollah. Earlier this year, North Korean agents used VX, the most deadly nerve agent, to kill Kim’s half-brother in a crowded civilian airport.

Returning North Korea to the terrorist list enables Washington to invoke stronger financial transaction

licensing requirements under 31 CFR Part 596 and remove North Korea’s sovereign immunity from civil liability for terrorist acts. Re-designation also requires the U.S. government to oppose loans to North Korea by international financial institutions, such as the World Bank, International Monetary Fund, and Asian Development Bank.

Moreover, the designation adds to the moral suasion of international efforts to further isolate North Korea—diplomatically as well as economically. In recent years, a growing list of countries, banks, and companies have curtailed their business relationships due to North Korea’s violations of U.N. resolutions, the abysmal working conditions imposed on its overseas laborers, and its human rights violations, which the U.N. says constitute “crimes against humanity.”

[Bruce Klingner, “What Trump’s Designation of North Korea as a State Sponsor of Terrorism Will Mean for Country’s Future,” *The Daily Signal*, November 21, 2017]



The Liberal Media: Call Them Names or Call Them Up; It's Your Choice

BY HERB BERKOWITZ

FEW THINGS SEEM TO BUG American conservatives more than the (liberal, biased, dishonest—choose whatever adjectives you want) mainstream media.

You know who I'm talking about: *The New York Times*, *The Washington Post*, the TV networks and their progeny, and the frequently holier-than-thou progressive print and online opinion platforms and blogosphere.

And that just scratches the surface. From coast to coast, in red and blue states alike, most big city newspapers, most state capital newspapers, and many small- and mid-sized newspapers lean Left, as do most environmental reporters and publications, many of the people writing on education and health care, and many of those reporting on statehouse politics and foreign policy. Even the popular large-circulation

women's magazines fall into this category. In the case of editorial and opinion pages, in print and online, it's permissible. But the same biases also can be seen in news coverage as well.

For example, news reporters—even when they're trying to be fair and objective (which is most of the time, I think)—are more prone to aggressively challenge individuals and organizations on the Right than individuals and organizations on the Left.

What they write often ends up being slanted. A recent Associated Press story, for example, led with the following: "Charter schools are among the nation's most segregated, an Associated Press analysis finds—an outcome at odds, critics say, with their goal of offering a better alternative to failing traditional public schools."



DAILY BRIEFING at the White House.

This suggests that the mission of charter schools, at least in part, is to create a learning environment with a different racial or ethnic makeup than the public schools in the community, an outcome I've never seen suggested. Parents don't choose charter schools so their children can sit in classrooms with higher percentages of kids from other racial and ethnic backgrounds; they choose charters because they think they'll provide a better education. The entire premise of the story, which was likely "pitched" to AP by anti-charter school activists, is cockeyed. You can find similarly slanted

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Start building relationships now and, when you have something important to peddle, they're much more likely to pay attention.

Institute. Our counterparts on the Left rarely are labeled; they're just the Center for American Progress, Center for Budget and Policy Priorities, and Economic Policy

stories such as this—on budget, economic, environmental, foreign policy, legal, and social issues—every day.

Another problem: While reporters don't mean to call us names, they routinely do, usually by labeling us or suggesting that we're bought and paid for by our donors.

We're the "right wing" or "conservative" Americans for Prosperity, Competitive Enterprise Institute, John Locke Foundation or Pacific Research

Institute. This even applies to the Southern Poverty Law Center, to which the media turn as the reigning authority on U.S. "hate groups," a designation the SPLC has obligingly bestowed on a number of perfectly respectable organizations on our side, such as the Family Research Council. You see how the game is played?

Oh, and by the way, did I mention that we're funded by "corporate interests," or by large chemical, pharmaceutical, or energy companies—or even worse, by the Koch brothers? Yet, there's rarely any mention of the other side's funding.

What can we do about this media malpractice?

The Trump White House responds in kind, calling the media names—the "failing New York Times," for example—and accusing them of manufacturing "fake news."

Perhaps the White House can afford to play such games. The White House has a unique platform and a captive audience. After all, journalists are required to cover every move the president makes, including every twitch of his Twitter finger.

The rest of us don't have that luxury: We have to sell our ideas—and even when the media are not hostile or skeptical, they typically show little interest in what we believe or what our research shows.

Is there anything we can do to change that?

The answer, of course, is yes; and you should have started doing it yesterday.

Media relations should be a continuing, permanent activity and a major part of any communications program. And frankly, the best way to get mainstream journalists to care about what you do, what you think, and what you have to say is to get them to care about you, and trust you.

You do this by establishing relationships with people: reporters, editorial writers, columnists, op-ed editors, talk show hosts, bookers, producers, and anyone else in the news business who might be helpful to you—even if they're unrepentant lefties.

Get to know their job responsibilities, what their typical day is like, what the best time (and the worst time) is to contact them, and what subjects or angles most interest them.

Get to know their likes and dislikes, and their spouses' or significant others' likes and dislikes. You'll probably discover shared interests: in art, music, sports, restaurants, the local dog rescue.

If they work for a newspaper or magazine, read it—and read it regularly. If they work in radio or television: listen, watch. Don't wait

until you have something to pitch to contact them. Start now. For the cost of an occasional cup of coffee or a sandwich or two, even the smallest organization with the tiniest budget can have an ongoing program.

But be mindful that their time is limited. The mainstream media have been battered financially in recent years. This has resulted in waves of buyouts and layoffs.

Newspapers that had five or six editorial writers in the past, each with a specialty, may now have just one or two trying to do it all. Reporters may be covering several beats. While the *Times*, *Post*, *The Wall Street Journal* and a few others still have large staffs, most others don't. So try to find ways to spend time with journalists without taking up their work time. Invite them to your house for dinner, for example. Offer to take them to a ballgame. (Even if they turn you down, they'll probably remember the offer.)

Start building relationships now and, when you have something important to peddle, they're much more likely to pay attention. You'll know, through trial and error, who's open-minded and accessible and who's a lost cause. Your time is limited and valuable as well, of course; so don't waste it on the jerks—regardless of their ideology—who are always “too busy,” perhaps because they consider themselves too important, to meet with you.

When I was at The Heritage Foundation, people would ask me what I thought of various public relations firms. I couldn't tell them.

I would say: “I don't know anybody in PR. All my friends are journalists.” And many of these friends, then as now, are left of center.

Which raises an obvious question: Do you pitch stories differently to left-leaning reporters and opinion-writers than to neutral and right-leaning reporters? Of course you do.

You might send them both a copy of the same report and the same news release, but the notes you send them—or the conversations you have with them—probably will differ, both in language and tone. You would never say to a left-leaning reporter: “This will drive the lefties crazy.” But you might say that to a conservative writer who you know well.

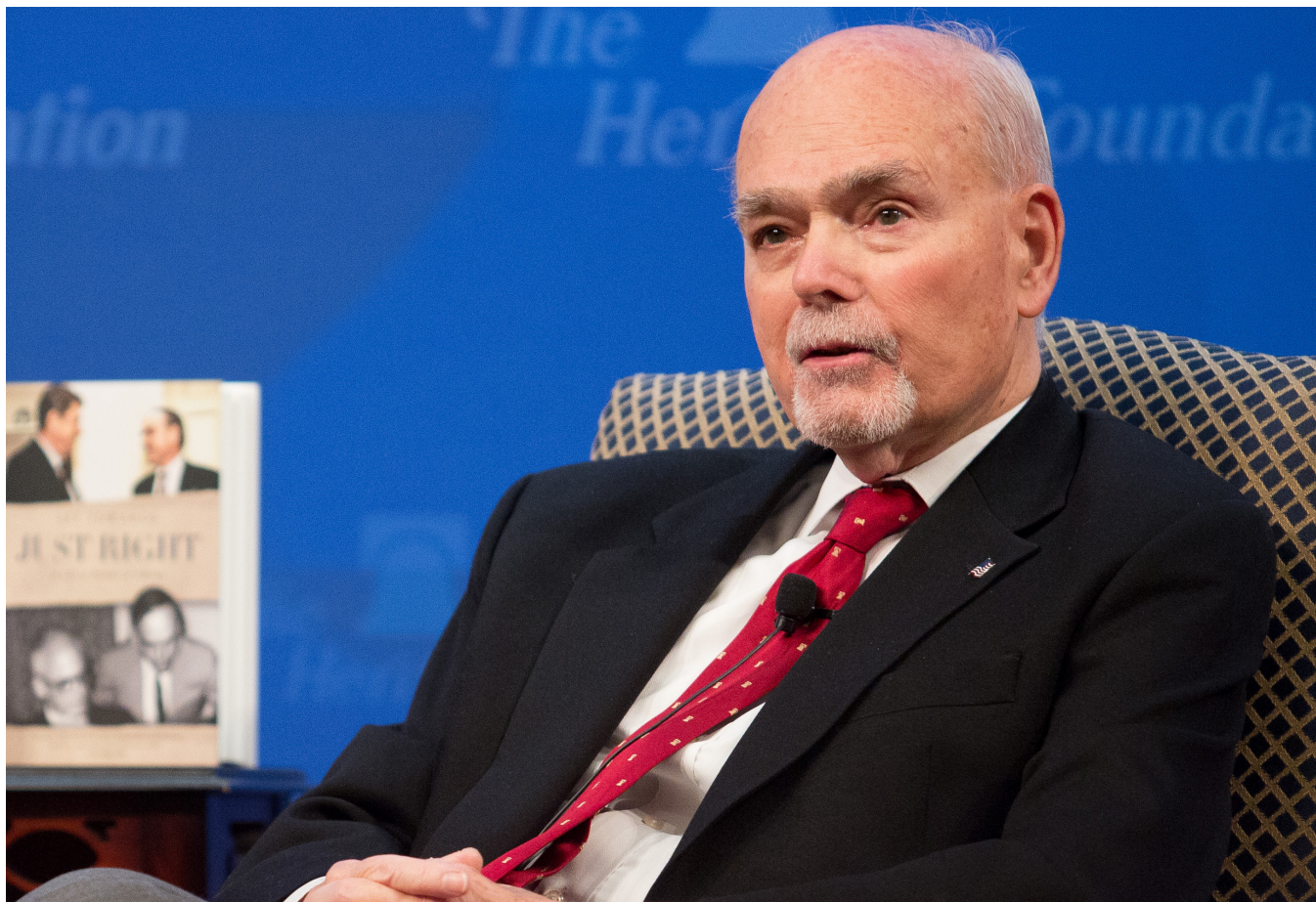
Most of the people who work for the mainstream media are left of center, and proud of it. But that doesn't mean you can't establish a productive working relationship with at least some of them.

The choice is yours: You can call them names, as the White House does, or you can call them up, as I've chosen to do. The latter option is much more pleasant and productive. ■

Mr. Berkowitz is a public relations consultant residing in Wilmington, N.C. He headed The Heritage Foundation's communications program from 1977 to 2002. Since 2003 he has worked with his daughter, Jennifer Berkowitz Schell, president and CEO of Proactive Solutions, Inc., a public relations firm based in Santa Fe, N.M.

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The best way to get mainstream journalists to care about what you do, what you think, and what you have to say is to get them to care about you, and trust you.



A Life in Pursuit of Liberty: A Conversation with Lee Edwards

IN NOVEMBER OF 1956, LEE EDWARDS, then a young expat in Paris, heard the news that Soviet tanks had rolled into Budapest. At that moment, he decided to devote his life to fighting the communist menace and supporting freedom fighters however he could. Along the way, he helped activate conservative-minded youth and counseled the conservative movement's leaders, including Barry Goldwater. Today he wants to make sure that the world doesn't forget communism's crimes and that young conservatives know the history of their movement.

Edwards founded the Victims of Communism Memorial Foundation, which unveiled the Victims of Communism Memorial in Washington, D.C., in 2007. He has written biographies of Barry

Goldwater, William F. Buckley, Jr., Ronald Reagan, and Edwin Meese III, as well as numerous histories of the conservative movement. His latest book is an autobiography, *Just Right: A Life in Pursuit of Liberty*. We sat down with Edwards to talk about his life at the intersections of anti-communism, conservatism, and history.

THE INSIDER: You've written a lot on the history of the conservative movement, but you've also made some of that history. Is there a particular accomplishment of which you are most proud?

LEE EDWARDS: I think I'm probably most proud of the memorial to the victims of communism. As you know I've always been—since early, early

WILLIS BRETZ

on—an anti-communist. After the Hungarian Revolution in 1956, I determined I'd do whatever I could to help anyone resist communism and further freedom. After the fall of the Berlin Wall, people were beginning to sort of push aside or not remember or want to consider the victims and crimes of communism.

I said we've got to do something, and that's when my wife Anne said: "What we need is a memorial to the victims of communism."

"Terrific idea," I said and began working to bring that about. It took us some time. That was January of 1990, and it was some 17 years later that we dedicated the memorial to the more than 100 million victims of communism. We hoped that it would become a place for people to visit, to remember victims, to lay wreaths, to say prayers, to have candlelight vigils—and all of those things have happened. National leaders have come from all over the world to our memorial there on Capitol Hill to lay wreaths. So that is the thing I'm most proud of.

Ti: You identify the three pillars of your conservatism as Catholicism, individualism, and anti-communism and then you go on to say that your anti-communism is the root of your conservatism. Could you explain that?

LE: Well I should say that it comes first for me. I'm sure there are others who would say, "I'm a traditional conservative first," or they would say, "I'm a libertarian first." I was not well-read in conservative literature in my twenties. I had not read *The Conservative Mind*. I had not read *The Road to Serfdom*, but I was already an instinctive anti-communist through not only my own thinking and writing, but through my father. He had been a reporter for the *Chicago Tribune*, covering many of the famous congressional hearings about communism and anti-communism.

Those involved people like Richard Nixon and Joe McCarthy. So, by being an anti-communist, of course I was not only against something—that is to say the tyranny of communism—but I was for something. I was for freedom; I was for the individual. So one could say that OK, to be an anti-communist, you also have to be a libertarian, and also have to be a traditional conservative, but the wedge issue for me was anti-communism.

Ti: Middle-aged conservatives tend to think of the modern American conservative movement as starting with Bill Buckley & Co. But when you were coming of age, Buckley had written maybe one book. So I'm curious, who did you read in that period that moved you in a conservative direction?

LE: At that time, I was not doing that much in the way of reading. I was a political activist. So if I thought there was a need to do something, I would get involved either with an organization or be a part of an event, or I would work to make something happen. And it was really more instinctive on my part—opposing the tyranny of communism and trying to promote freedom in the best way that I could.

Probably the one little book that I read that did make a difference for me—and for many, many others—was *The Conscience of a Conservative* by Barry Goldwater. That was published in 1960, but I was already an anti-communist by that time. But the book did give me a foundation in conservative thought. One of the things that Goldwater talks about in that first chapter of *The Conscience a*

the Conservative is that there are two sides to man: There's the spiritual side and there's the economic side. They're both important, but, he says, the superior side is the spiritual side. That resonated with me because by that time I had become a Catholic.

Ti: What do you make of the recent revival of interest in socialism?

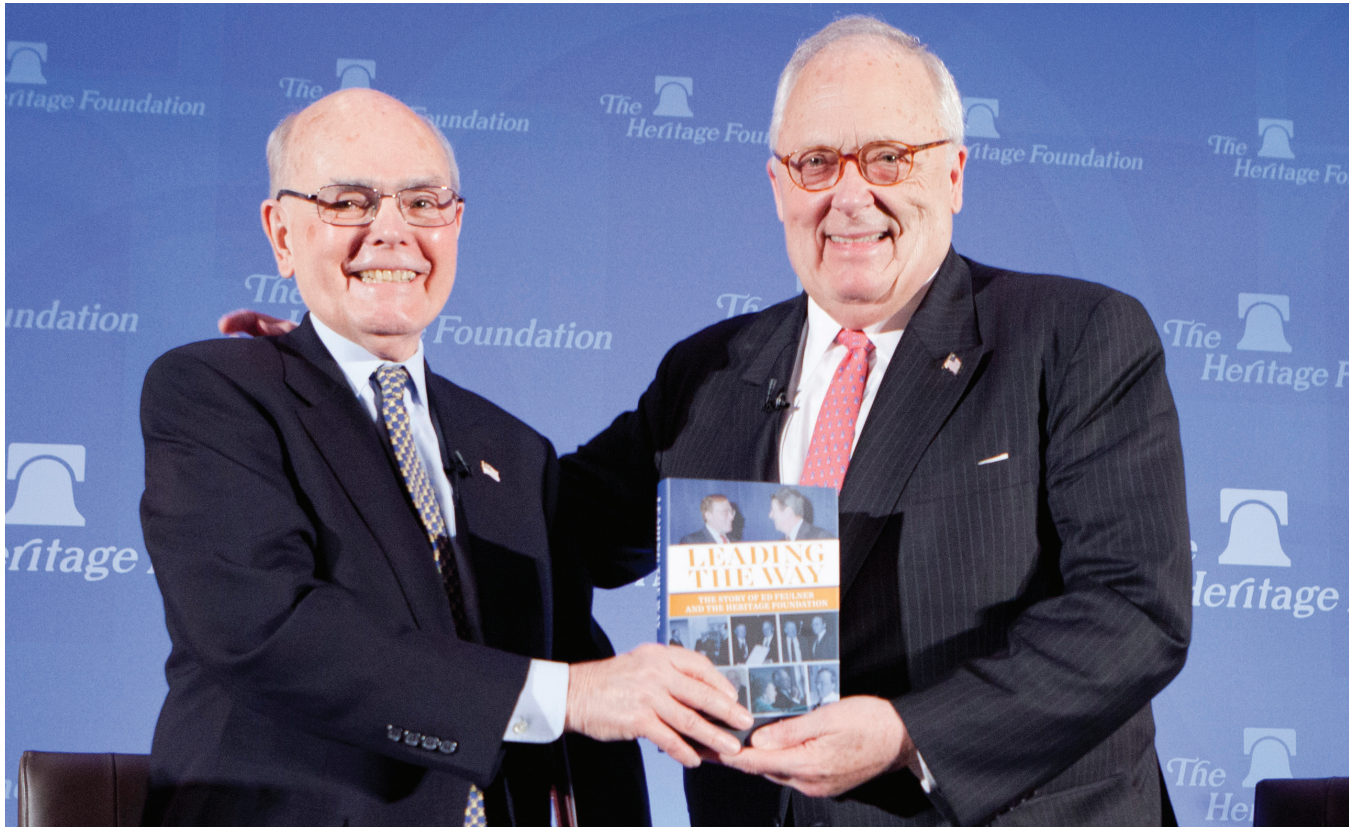
LE: It is something that is—I won't say inevitable—but a logical continuation of what liberals/progressives have been trying to do for well over a century, starting way back with Woodrow Wilson, the

first progressive. He was followed by TR—Theodore Roosevelt—who was followed by FDR, and then Truman, and then finally reaching its apex—hopefully—with Barack Obama with his version of socialized medicine. You can see that there was this steady progression where the government was becoming bigger and bigger and more and more intrusive. It began getting into all aspects of our lives, not only economic but social and political aspects.

Because the counter movements—the counter attacks by conservatives—were not sustained from decade to decade, the liberals have been able to advance on all fronts more successfully than we have been in countering them. The two exceptions were Calvin Coolidge in the 1920s and Ronald Reagan in the 1980s.

Ti: Are we teaching the right lessons about socialism and connecting the dots between socialism and communism?

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After the Hungarian Revolution in 1956, I determined I'd do whatever I could to help anyone resist communism and further freedom.”



LEE EDWARDS with then-Heritage Foundation president Ed Feulner at the launch of his book, *Leading the Way* in 2013.

LE: I don't think we are, and I think that's unhappily clear. A recent survey by YouGov showed that a large plurality of millennials would be more comfortable living under socialism than living under capitalism. I think the number was something like 46 percent. That's disturbing; that's alarming; that's dangerous for this country. And so clearly we have not done a good enough job of educating that generation and other generations as well. There's been this acceptance of socialism as an option. You know the cliché—communism has never failed because it's never been tried. You hear that argument, and it's absurd because Communism has been tried in 40 different countries over a century, and it's failed in every single instance because it's a god that has failed.

Ti: Your organization, the Victims of Communism Memorial Foundation, has had a long term goal of building a museum. Can you tell us where that effort stands?

LE: Twenty years ago when we got started, we talked about building a museum and then what happened was that reality set in. We realized a museum was a multi-million-dollar project, so we shifted over and made our priority the memorial. We dedicated the memorial in 2007. Since then, we've been building the organization. We have a brilliant young executive director, Marion Smith, who's doing a fantastic job. We just had a great event at Union Station marking out the 100th anniversary of the Bolshevik Revolution and pointing out over and over again

that communism was the god that failed. But now—looking ahead to the next decade or perhaps the next two decades—we're going to take a serious look at what needs to be done to build a world-class museum of research and remembrance about the victims and the crimes of communism. That's going to be a very expensive project, but given what we've been able to accomplish, and with the people we have led by Marion, I think that it's an achievable goal over the next decade or so.

Ti: Some folks say: Well, anti-communism was fine for Lee Edwards's generation, but conservatism has to move on in order to remain relevant to younger generations. What do you say to that argument?

LE: I think there's some validity to that point of view. There's no question about it that communism, as represented by and led by the Soviet Union, was a clear and present danger. They were out to "bury us" to quote Khrushchev. They were a clear and present danger, no question about that. We met that challenge over the course of some 40 years. Finally, along came the right leader, Ronald Reagan, who in the immortal words of Margaret Thatcher "won the cold war without firing a shot."

Now, where do we stand today? Is there a similar clear and present danger? I think there is, and I think it is radical Islam. They are out to bury us. In a recent report, The Heritage Foundation counted almost 100 terrorist plots since 9/11. Many of those have been foiled by measures we have taken, including the Patriot Act and its provisions for better cooperation between intelligence agencies. So that to me is a present danger and must be met with a little more vigor and a little more commitment than it has been in the recent past under President Obama.

But, at the same time, we must keep in mind that there are still five communist regimes in the world, and together those countries have more than a billion and a half people. One of those five is China, where there has been some economic liberalization, but it is still totalitarian in politics and human rights. On the list of communist countries, you should also include North Korea, Vietnam, and Cuba. And then you would include a country that is often overlooked, unhappily, and that is Laos. Laos has had a communist regime for 40 straight years now and in many ways life there is almost as difficult as it is in North Korea.

TI: You've known most of the giants in the conservative movement. Which ones have inspired you the most?

LE: Well, I think I've been inspired by all of them in one way or another, starting with Barry Goldwater, who was my first political hero. His willingness to stand up in 1964 and run for president knowing that he could not win was extraordinary. Here was somebody who stood up for principle under the most extreme pressures and sacrificed himself for the cause. By, as he put it, offering a choice and not an echo, he inspired many of us to get into politics.

I learned from Ronald Reagan. Here was a man just as principled as Barry Goldwater, but a little more pragmatic, a little more willing to bend with the typhoon that comes along, as he put it. He said, I'm a 70 percent kind-of guy; I will take 70 percent of what I want right now if I can come back for the other 30 percent later. He said, I'm not like some who like to go over the cliff with the flags flying and the band playing. So we learned, first of all, principle from Barry Goldwater, and then a principled pragmatism from Ronald Reagan.

And then somebody who we admired for his ability to write, to lecture, to debate, to be a TV host, to be a good friend and mentor was Bill Buckley. As a young conservative, I identified more with Bill Buckley than I did Goldwater or Reagan who were political figures. Because Buckley was more of a communicator, more of a popularizer as I call him, I probably saw or tried to be as much like him as I possibly could.

TI: On a personal level, from whom did you learn the most?

LE: I had an opportunity to get to know Walter Judd. Dr. Judd was a medical missionary in China in the 1920s and the 1930s and later

a congressman for 20 years. Then he was what he called a "missionary for freedom" as a radio broadcaster and lecturer and debater. For 20-some years I knew him and worked with him, and I wrote a biography about him.

He took an anti-communist position at a time when that was not the most popular way to go. He stood up for the alternative of Taiwan as opposed to the alternative of mainland China. He was a man of faith. He was a family man, a father, a good husband. So in so many ways I could see it was possible to have a political career and at the same time be a good Christian, to be a good person, to stick by certain ideas, and to implement them. You didn't need one or the

other, you could be both, so that was inspirational for me.

TI: I know you've become a better-read conservative since your bohemian days in Paris. In fact, a couple of years ago, you wrote a book called *Reading the Right Books: A Guide for the Intelligent Conservative*. In your opinion, what's the most underappreciated book in the conservative canon—a book that everyone should read but not enough people have heard of?

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We have to pull together, work together, to resist this really eerie, unsettling, acceptance of socialism by too many young Americans. I think the only way to do that is for us to concentrate on what we agree on as conservatives.

LE: That's an interesting way of putting it. I would say the *The Roots of American Order* by Russell Kirk.

The magisterial book everyone refers to, and properly so, is *The Conservative Mind*, by Kirk. That is an extraordinary piece of intellectual history. He saw connections that nobody else saw. He could see a connection between Burke and John Adams and T.S. Eliot, and Abraham Lincoln, and Hawthorne, and on and on and on. And what he did with that one book was to establish that there is a conservative tradition in America. Up until that time all the liberals all said there is only one tradition, the liberal tradition. Kirk said no—there is also a conservative—and he proved it with that one book.

And also by Kirk is *The Roots of American Order*, in which he traces the roots of Western order back 2,500 years. He tells the story of five cities and the ideas they represent. He begins with Jerusalem and the idea of a supreme being. He goes to Athens and the idea of a political philosophy. He goes to Rome and the idea of a senate and of a rule of law. And he then goes to London and the idea of a parliament and the idea of elected representation. Then he winds up in Philadelphia where we find the ideas of separation of powers and checks and balances in a written constitution. Kirk draws this direct line all the way back 2,500 years. It's a wonderful way of showing that we, in America, rest on Western civilization.

TI: Do you see any intellectuals today who are doing a good job of carrying on the work that Kirk, and Buckley, and Richard Weaver, and Frank Meyer started?

LE: Yes, I do. We had one here in this very office. That's Matthew Spalding, who is now over at Hillsdale College's Kirby Center. I think Charles Kessler, editor of the *Claremont Review*, does a marvelous job. I think that Bradley Birzer at Hillsdale is doing outstanding work, as is James Ceaser down at the University of Virginia. There are younger intellectuals

and academics who are coming along, including David Azerrad, a brilliant, even mesmerizing, public speaker on the Founding and Progressivism; and Arthur Milikh, equally brilliant about the Founders and Alexis de Tocqueville. Jonah Goldberg is an effective popularizer and very much a Buckley type. And then you have old timers, if you will, who are still turning out good work like George Will, Charles Krauthammer, Victor Davis Hanson. So we have, I think, a very strong lineup of thinkers and interpreters of the conservative canon.

TI: Some people say civility has taken a beating in recent years. Do you recall the political battles of the '60s, '70s,

and '80s being more civil compared to today?

LE: I think that civility was more honored and practiced back when I first got into politics in the '50s and

the '60s and the '70s when I was truly active. I think that's because there were moderates in both parties, if you look at it politically. Also, within the conservative movement, you had a Frank Meyer and a Russell Kirk, who even though they disagreed quite emphatically, were able to come together in the face of a common enemy, which was the Soviet Union externally and liberalism here at home.

But the discourse we have today reflects the divided nature of America. And that division is strongly ideological and philosophical. There is less willingness to make compromises. The liberals are saying: Look, we are getting closer and closer to our goal of an administrative state. We're not going to compromise now. And the conservatives are saying: Wait. Yeah, we agree we are close to seeing an all-powerful administrative state. We've got to stop it. We've got to resist every single possible measure that helps you liberals achieve your goals, which we think would be terrible for the country.

TI: You've worked both in the media and with the media over the years. Do you see any changes in the way the media operate and the way they cover politics today compared to when you first started off?

LE: Let me give you one example. My father, as I said, was a reporter for the *Chicago Tribune* for 50 years. He came to Washington in the 1930s and covered it through the 1970s. He covered every president from FDR to Nixon. In the 1950s and 1960s he knew that Jack Kennedy was a serial philanderer and adulterer. He knew it. It was known by the Washington press corps.

And I once said to him: "Well, Dad, you know, the *Chicago Tribune* is a conservative paper, always for Nixon rather than Kennedy. And yet, you

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Here was somebody who stood up for principle under the most extreme pressures and sacrificed himself for the cause.

By, as he put it, offering a choice and not an echo, Goldwater inspired many of us to get into politics.

have never written a story about his philandering; neither has anyone else. Why not?"

And he said that there was an unwritten rule among journalists that we would not write about the private doings of a senator or a congressman or even a president so long as it did not affect his public performance. So the fact that Kennedy was going around sleeping all over the place did not seem to effect, materially, what kind of a senator he was or what kind of a president he was.

They would not publish anything about a politician just for the sake of a headline. Today, of course, you'll get stampeded if you don't publish the story first before anybody else. The old idea that the public does not have the right to know everything has just been thrown overboard. Now, they say the public has the right to know about a politician's private conduct, because it goes to the question of character rather than performance. A big difference, and not for the good, I don't think.

TI: As you reviewed materials, such as your diary, for your autobiography, did you discover anything that surprised you?

LE: Well, I was surprised because I had not gone back and read that diary for a long time. I never used that diary before in my writing. I never quoted from it. I never consulted it. The 1964 campaign was the only time I ever kept a diary. I thought it would be interesting to record my reactions to events as they happened.

I was surprised to re-read my reaction to Goldwater's famous quote "Extremism in the defense of liberty is no vice." I thought I remembered that I had been excited about that line, that I had been jumping up and down about it. In point of fact, I wrote in my diary that this was going to seal our defeat. I would



SENATOR BARRY GOLDWATER at the Republican National Convention, ca. 1976.

have counseled against using that language. So that was a reversal of what I thought. There were young conservatives at the time, who were jumping up and down about it saying: "This is terrific, we love it." But I was not one of them, although I thought I was.

TI: What is your advice to the conservative movement today?

LE: Well, I've written a big piece about this which I think is going to be in *National Affairs* soon. I call for a new fusionism. And I really, really think this is what we must strive to achieve. The country is so divided and the conservative movement is so divided—or at least showing serious division. I don't want to say that it's an impossibly wide chasm, but it's getting more and more serious.

So I say that we must bring together all these different straws. We must have a series of debates, a series of discussions—private and public—in which we try to agree on certain basic ideas. We have to pull together, work together, to resist this really eerie, unsettling, acceptance of socialism by too many young Americans. I think the only way to do that is for us to concentrate on what we agree on as conservatives and that would be that we're opposed to socialism and that we come together. I think that will, in turn, help to encourage the country to come together.

Implicit in that idea though is that there must be the right leadership. I'm not saying that we need someone exactly like Ronald Reagan, but it has to be somebody who consciously works, as Reagan did, to unite people and not divide them. ■

WHAT IF THE POWER WENT OUT FOR GOOD?

The Threat of Electromagnetic Pulse
and What to Do About It

BY MICHAELA DODGE AND THOMAS WILSON



MOST EVERYONE HAS EXPERIENCED A temporary power outage. It's always inconvenient, but when it stretches out for hours or even days, the loss of electricity can become highly problematic.

If you own a backup generator, you might get through it without much inconvenience. Otherwise, no television, internet, video games, hot showers, air-conditioning, microwave oven, or espresso maker. No charging your cell phone when it dies. With a gas stove, you can still cook. Maybe you catch up on your reading—by flashlight.

If a blackout lasts more than a few days, you'll need to make sure you stay supplied with fuel for your generator. Or buy more batteries for your flashlight. Maybe you think about getting a hotel room down the road.

Of course, if a prolonged blackout is not limited to your neighborhood but is area-wide, then you will have to drive further to find comfort. Other people will do the same and the roads will be clogged. Back-up generators can do only so much—and for only as long as they remain fueled. Gas stations without backup power won't have working pumps. Bank ATM machines could be down. Street lights and traffic lights may not be working, adding to the traffic woes. Maybe you think it's time to take that trip to the Bahamas—if you can get to the airport and obtain a ticket.

As inconvenient as a blackout might be, it's just the starting point for understanding how difficult life could become if the United States were struck by a large electromagnetic pulse (EMP)—such as would be generated by the detonation of a nuclear bomb in the upper atmosphere. An EMP would threaten not just the power lines that distribute electricity to homes and businesses; it would threaten anything that is conductive—anything made of metal—with a current and voltage surge capable of overloading circuits. Your back-up generator won't power a refrigerator—or any other appliance—whose circuits have been fried. After an EMP, your computer will be probably toast, too.

One can imagine the possible cascading difficulties. Refrigeration systems could quickly fail and food reserves will spoil for lack of long-term backup power. Retailers, unable to process credit card transactions, will demand cash—at least as long as they have things to sell. Without computers to manage inventory, retailers will have difficulty keeping critical goods—like food and water—on the shelves. Pharmacies might not be able to restock prescription medicines. Compounding the inventory problem is the inability to manage traffic that will quickly cripple the roads. Your car will go only as far as the gas in your tank will take you (because, remember, gas pumps need electricity to operate). Garbage might go uncollected. Landlines will be gone. Your cell phone might work for as long as it can hold a charge. (Whether there are signals to receive is another question.) Hospitals and emergency responders will eventually be over-



BLACKOUT IN NEW YORK, NY. The Empire State Building in New York City remains dark during a power outage on August 14, 2003.

whelmed by these problems. And help may be hundreds of miles away, and a long, long time coming.

It sounds like dystopian science fiction, but an EMP has been a real possibility for as long as nuclear weapons have been deployable. What is perhaps different now is how increasingly dependent the American way of life is on access to electricity. Although experts debate the scale and long-term consequences of an EMP event, there is enough evidence to conclude that an electromagnetic pulse could cause tremendous damage to the electricity-based lifestyle on which we all depend. (For more information about the possible consequences of an EMP, see the National Geographic documentary, *American Blackout*, or visit SurviveTheBlackout.com.)

From Where Do EMP Events Come?

An EMP event can affect the United States through an act of warfare or terrorism, or as a result of large solar storms. The most powerful and dangerous type of EMP event occurs

MICHAEL PEREZ/KRT/NEWSCOM

when a nuclear weapon is detonated 30 miles or higher in the earth's atmosphere. Such a nuclear explosion produces gamma rays, which sheer electrons off of air molecules. These electrons are then moved in a corkscrew pattern by the Earth's magnetic field which produces a magnetic pulse lasting nanoseconds to seconds. This electromagnetic pulse radiates outward and downward from the burst point toward the earth's poles, producing current and voltage surges that could damage electronics hundreds of miles from ground zero.

The disruptive potential of a nuclear explosion was vividly demonstrated in the 1962 Starfish Prime test in which a U.S. nuclear bomb, detonated above Johnston Island in the South Pacific, disrupted electrical systems like lighting, circuit breakers, and alarms over 870 miles away in Hawaii. Closer to the blast site, the effects on unprotected electronic equipment were far more damaging.

Another potential cause of an EMP-like event is fluctuations in solar activity. Much like cyclical changes in the weather, scientists have observed variations in the sun's thermal activity. One major flare in the 19th century, known as the Carrington Event for its namesake observer, astronomer Richard Carrington, emitted an electromagnetic shockwave that, upon reaching Earth, caused telegraph machines to spark and fail. Some even shocked their operators. The world in 1859 did not depend very heavily on electricity so the effects were relatively confined. U.S. scientists from the National Academies have suggested that a solar flare today on the scale of the Carrington Event would result in tremendously greater electronic disruption at a cost of \$1 trillion to \$2 trillion. Solar storms like the Carrington Event are not one-off flukes. One will occur again in the future and when it does we should not be caught off guard.

A radio-frequency weapon, sometimes referred to as an E-bomb or electromagnetic bomb, causes the least potent type of electromagnetic pulse. The scale of damage would be far more confined than a nuclear explosion, but such an attack would be harder to prevent because E-bombs are smaller and less technologically demanding than nuclear weapons, and therefore easier to conceal. In 1993, the U.S. military released the results of an E-bomb test that successfully shut down engine controls 300 meters away. This technology has been continually refined since that time and it is highly likely that U.S. adversaries possess similar capabilities.

Consequences of EMP Events

The consequences of EMP events vary depending on the type of event. The damage depends primarily on the location and strength of the blast. In the worst case scenario, EMP has been likened to a lightning strike, only stronger and far more dispersed. All forms of electrical power within a certain radius, by some estimates up to half of the continental United States, could be affected. The electronic surge could disable phones and internet service, heating and cooling systems, water and sewage provision, refrigeration, transportation (cars, trains, planes), and automated transaction machines (ATMs). In short, all the means by which modern life has become more efficient, more convenient, and more secure could come crashing to a halt. The interconnectivity of power and electronics on which we depend could perversely serve to further spread the damage along power lines and satellite antennae.

Looking at the experience of other power outages in modern American history helps shed light on what the results of an EMP might look like. In the aftermath of multiple lightning strikes on a Con Edison substation in 1977, New York City endured a day-long blackout that resulted in extensive property damage, looting, and over 3,000 arrests. Though costly and disruptive—estimates put the blackout's price tag at \$346 million—New York City's single "Night of Terror" would pale in comparison to protracted outages caused by an EMP.

The potential long-term consequences may be better represented by the 2003 blackout in the northeastern United States and Canada. Here the cascading effects of power failure were put on display as equipment failures originating in Ohio triggered further blackouts in New York, Maryland, Pennsylvania, Michigan, and Ontario. Residents were advised to boil water because water treatment systems were no longer functioning; without traffic lights, long lines of commuters backed up as they attempted to make their way home; cellular, cable, and internet services were all disrupted; and industrial production was shut down. Some auto plants in Detroit were closed for over a week. The disruption caused an estimated \$6 billion to \$10 billion worth of damage. Still, even this event was relatively contained and limited in comparison to the effects of nuclear-triggered EMP strike. Generators continued to work and in major urban areas power was restored more quickly.

The case of Puerto Rico after Hurricane Maria, where much of the population struggled without electricity for

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As inconvenient as a blackout might be, it's just the starting point for understanding how difficult life could become if the United States were struck by a large electromagnetic pulse.



months, underscores the potentially deadly consequences of an EMP event. The lack of power compromised health and sanitation services for many. Bacterial infections—some resulting in death—rose sharply following the loss of power. Of course, the death toll would undoubtedly be worse were it not for the hundreds of millions of dollars in assistance and tens of thousands of volunteers and workers present to help distribute aid and rebuild infrastructure.

We've been vulnerable to a manmade EMP for a long time—really ever since ICBMs could deliver a nuclear bomb to detonate 30 miles above the earth's surface. But we are more vulnerable now than ever for three reasons. First, we rely on computers to do more things than ever before. Second, electronics using semi-conductors are more vulnerable to an EMP than are the older electronics based on vacuum tube technology. Third, the nature of the threat changed since the days of the Soviet rivalry during the Cold War. Today, terrorists and rogue states such as North Korea may see the threat of an EMP or E-bomb attack as the great equalizer between the powerful and the weak.

What to Do?

EMP events are high impact, low probability events. Taking measures to improve awareness, enhance our defenses, better secure our infrastructure, and promote intra-governmental cooperation is essential to staying ahead of the threat. It's the difference between facing an event that costs millions of dollars versus one that costs trillions and mitigating the nightmare scenarios described above.

Successfully implementing any such plan requires recognizing that there is a role for citizens and electric utilities, as

well as state and federal government agencies. An effective EMP preparedness strategy would implement the following policies:



1. Increase Public Awareness: For the wider public to care enough about EMP threats that they are willing to support preventative measures, they must first understand the threat. Local, state, and federal agencies—as well as the private sector—could do more to educate the public about the dangers. Armed with this information, communities and individuals would be better able to make necessary contingency plans to survive for a certain period of time without electricity.



2. Advance U.S. Missile Defense Capabilities. Shooting down a nuclear warhead before it fulfills its objective is the best way to defend against the devastating consequences of an EMP. More investment in missile defense capabilities would best protect the United States from a nuclear EMP attack while also offering protection from nuclear weapon attacks. Improving missile defense protection of the East Coast of the United States would be especially worthwhile since the area is relatively more vulnerable than the West Coast, and since the East Coast electric grid is the most densely interconnected part of the grid. To this end, Congress's decision in the most recent National Defense Authorization Act to authorize \$13.8 billion for missile defense,



\$4.4 billion more than President Trump's budget requested, suggests there is a growing bipartisan desire to improve our missile defense capabilities.



3. Identify and Protect National Security Infrastructure.

Addressing the EMP threat is a complex task that will need to take place on many levels. At the top, Congress and the President need to start the process by identifying energy infrastructure that is key to national security and ensuring that it is hardened to resist the effects of EMP. For example, Air Force One has been designed to withstand the electromagnetic pulse of a nuclear bomb. Other critical defense installations receive similar protection.



4. Increase Information Sharing Between Industry and Government.

Absolutely critical to equipping the electric industry's preparedness is controlled access to classified government information on the EMP threat as well as seeking partnerships between companies and federal research laboratories. These laboratories can contribute expertise in modeling and simulating the EMP threat since the United States no longer conducts nuclear weapon experiments. One encouraging sign on this front is the Department of Energy's 2017 Electromagnetic Pulse Resilience Action Plan, which prioritizes greater testing and sharing of knowledge

between industry and government agencies. In order to develop effective and efficient solutions, utilities need an accurate understanding of the challenge and what infrastructure—transformers, substations, sections of the grid, and computer systems among them—ought to be prioritized. The Maine legislature recently requested an analysis of their grid—a good first step on the way to greater security.



5. Develop Clear Lines of Communication for Crisis Scenarios.

The Department of Homeland Security (DHS) needs to develop clear lines of communication with the electricity sector for crisis situations. If an EMP event took place tomorrow, there would be no standard operating procedures in place to guide public-private action in responding to the crisis. DHS should work in concert with industry as well as state governments to ensure that there is a clearly understood set of practices for delivering information and dealing with the major outages caused by EMP events. They should use opportunities like the Grid Security Exercise (GridEx) spearheaded by the North American Electric Reliability Corporation to test these communications. A better established chain of command and communication strategy will enable superior crisis management that restores the grid more quickly, saving lives and money in the process. ■

Ms. Dodge is a senior policy analyst at The Heritage Foundation. Mr. Wilson was an intern at The Heritage Foundation in the fall of 2017.

How to Reduce Conflicts Over Public Lands in the West

BY SHAWN REGAN

THE DEPARTMENT OF THE INTERIOR IS BY far the nation's largest landowner. It manages 500 million surface acres, or more than one-fifth of all U.S. land. It also oversees the development of oil, gas, and other subsurface mineral resources on more than 700 million onshore acres and more than 1.7 billion offshore acres. Moreover, the department's Fish and Wildlife Service exerts authority over millions of acres of endangered species habitat on private land, and its Bureau of Indian Affairs is responsible for overseeing and managing Native American lands.

The department's turf is concentrated in the American West, prompting some to refer to Interior as the "Department of the West." In the Lower 48's 11 westernmost states, the Interior Department's three main land management agencies—the Bureau of Land Management, Fish and Wildlife Service, and National Park Service—control 201 million acres, or 27 percent of the total land area. Due to these large landholdings, many western land issues—from livestock grazing and energy development to timber harvesting and recreation—are matters of federal policy rather than merely of state or local concern, yet they occur thousands of miles from the Interior Department's headquarters in Washington, D.C.

This centralization is largely a result of the Progressive Movement of the early 20th century. During that time, the nation's natural resources were believed to be best managed not by locals but by experts, primarily located in Washington, D.C. This view, however, has since been widely rejected. Nonetheless, our federal land institutions—many of which were created during that earlier time—still largely reflect the Progressive-Era belief in centralized control.

The department's centralized structure is outdated and impractical. As economist Robert Nelson has observed, the Interior Department today in effect serves as "a planning and zoning board" for large areas of the rural West, a function typically reserved for local and state governments. Across vast swaths of western states, the Interior Department is responsible for seemingly local issues as determining the appropriate number of livestock that should be grazed, which roads and trails should allow for which uses, and where resource development or conservation is most appropriate. In today's diverse and pluralistic society with its various conflicting demands on natural resources—both for traditional "Old West" resource uses as well as for "New West" environmental values—it is increasingly difficult and impractical for a cen-

tralized department to resolve competing and ever-changing demands effectively.

These challenges, as well as other common problems associated with large-scale bureaucracies such as the Interior Department, render our federal land management system both costly and inefficient. The federal government generally loses money managing valuable natural resources on federal lands, while state agencies that manage similar resources consistently generate net revenues. This is in large part because federal land agencies are burdened by what some land managers have referred to as "analysis paralysis" brought about by a "Gordian knot" of bureaucratic red tape, which increases management costs and hinders agencies' abilities to respond to changes or resolve competing demands.

Moreover, the Interior Department's various (and often conflicting) mandates, as well as its ever-expanding missions, create a lack of clear direction for many of its agencies—and lack of direction contributes to the immense conflict, litigation, and political controversy that surrounds so many public land issues. Today, federal land management is more likely to provoke acrimony and lawsuits than to encourage cooperation among competing users or a sensible balance of multiple land uses. Decisions often are made by bureaucrats in Washington, D.C., rather than by local managers, or settled in courts rather than resolved cooperatively between competing user groups. Either way, it is a recipe for conflict.

The Interior Department dramatically affects the lives of millions of Americans in western states. Congress is right to look for ways to restructure or reform the department to ensure that it is better connected to the people and communities most affected by public land policies and to make it more effective at carrying out its core missions. The ideas discussed below would help accomplish those goals, while also improving the overall management and stewardship of federal lands and natural resources.

Greater Flexibility for Local Managers

Federal land management has become increasingly controversial in recent years, leading even to calls to transfer large amounts of federal land to state ownership. While a large-scale land transfer is unlikely, the Interior Department could adopt new land management approaches that allow for more local decision-making while retaining federal ownership. In particular, the department could grant local land managers greater flexibility to develop locally responsive management solutions while still remaining accountable to certain federal environmental and economic standards.

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Our federal land institutions still largely reflect the Progressive-Era belief in centralized control.

There is precedent for this. For instance, the 2014 Farm Bill authorizes the Bureau of Land Management (BLM) and the Forest Service to enter into “Good Neighbor Authority” agreements with states to cooperatively manage certain areas of federal land. The federal government retains ultimate decision-making authority, and any management actions must comply with the National Environmental Policy Act (NEPA) and other federal laws, but the on-the-ground management can be implemented by the states, often much more effectively than by the federal government. The state of Idaho, for example, has used this authority to conduct critical forest restoration and thinning projects on federal lands.

As another example, the BLM is currently conducting several pilot projects that will implement a flexible system of “outcome based” grazing. The core concept is that instead of having the BLM manage every aspect of grazing on a particular federal allotment—such as determining the proper amount of livestock to be grazed and the optimal timing and length of the grazing season—the agency can define certain desired outcomes for an area and then let local land managers (in this case, the grazing permit holder) meet those outcomes however they can.

This innovative approach to land management—defining outcomes and decentralizing control—could be expanded across various agencies in the Interior Department. For example, some have proposed implementing a charter land management system. Charter lands or forests would be owned by a federal land agency but managed by a chartered entity, similar to the way charter schools function within the larger public education system. The lands would be governed by a board of directors unique to each land unit, such as a grazing district or forest. Boards of directors could be elected or appointed and would be responsible for managing resource and recreation uses within charter area boundaries.

As with charter schools, the guiding principle for charter lands would be freedom with accountability. Charter lands would be freed from the restrictions of one-size-fits-all regulatory mandates—such as land-use planning requirements and restrictive hiring practices—that produce waste and inefficiency, but they would be held accountable through boards of directors as well as federal oversight, combined with stringent standards for charter land performance. Individual land boards would be overseen by a national charter board that would, in turn, oversee and monitor their perfor-

mance, ensuring accountability while maintaining management flexibility.

Another strategy is to adopt public-private partnerships that outsource routine management operations of various public lands to the private sector while maintaining public ownership and oversight. Over the past three decades, similar arrangements have proven successful for the U.S. Forest Service, which uses private operators to manage and maintain many of its campgrounds. These partnerships involve performance-based contracts designed so that federal agencies define site rules, parameters for visitor fees, management goals, and maintenance expectations. The contracted lessee collects visitor fees, maintains resources and facilities, and pays a portion of receipts back to the managing agency.

This approach gives private managers strong incentives to exercise good stewardship and to ensure high-quality visitor experiences, since they depend on the revenues they earn to cover costs. Yet they are also held accountable by their contract with the public land agency providing oversight.

A third management innovation is a national park franchising system. If a proposed tract warrants national park status, it could be granted the national park title but be owned and operated under private or nonprofit management. Franchised parks would exist under the National Park Service umbrella, but be individually and uniquely designed and managed by nonprofit organizations, businesses, or individuals.

A franchise park could work as follows: The National Park Service sets franchise requirements, and interested

parties then create management plans aligned with those requirements. Some franchise parks could also be required to become financially self-sufficient, whether funds were acquired through user fees, partnerships, or donations. A franchise system could give park units the flexibility to manage for local priorities as determined by on-the-ground managers, the protection and status provided by the national parks brand, and the incentives to meet visitors’ desires at low cost.

The Tallgrass Prairie National Preserve in Kansas is one national park unit already managed in a similar way. The park unit is run by a public-private partnership between The Nature Conservancy and the National Park Service. The Nature Conservancy owns the vast majority of the land in the park, but co-manages the park with the NPS in accordance to the latter’s standards.

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Local park managers, not politicians in Congress or bureaucrats in Washington, D.C., are in the best position to identify which maintenance projects are most critical. To do so, the agency should explore ways to rely more on park visitors for revenue.



Grant Park Managers More Authority to Address Local Maintenance and Operational Needs

Interior Secretary Ryan Zinke has said that reducing the National Park Service's deferred maintenance backlog is one of his top priorities. The maintenance backlog refers to all maintenance projects that were not completed on schedule and therefore have been put off or delayed. The cost of eliminating the current backlog is estimated to be \$11 billion—nearly four times the total agency budget last approved by Congress.

Merely increasing the Park Service's budget, however, is unlikely to resolve the issue. In fact, an overreliance on federal funding has likely made the problem worse because lawmakers would rather create new parks or acquire more land than fund routine maintenance projects. The number of park units managed by the Park Service has grown significantly over the past decade—from 390 in 2006 to 417 today. Meanwhile, the agency's overall budget, as well as the amount of funding devoted to maintenance projects, has remained relatively constant. With more parks but little or no additional funding, the agency's resources are stretched thin.

To address the root of this issue, the National Park Service should seek to become less dependent on politically driven federal appropriations. Local park managers, not politicians in Congress or bureaucrats in Washington D.C., are in the best position to identify which maintenance

projects are most critical. To do so, the agency should explore ways to rely more on park visitors for revenue, as the National Park Service has recently proposed. Today, the Federal Lands Recreation Enhancement Act (FLREA) allows parks to retain most of the user fees they collect. Allowing more of the same would help local park managers

address critical maintenance needs without relying so much on congressional appropriations.

More could be done to give park managers the flexibility they need to address critical maintenance issues. The FLREA originally expired in 2014. Since then, Congress has granted temporary renewals on an annual basis. Congress should permanently reauthorize the FLREA to enable federal land agencies to collect user fees and to expand the discretion of park superintendents to set their own fee schedules without having to obtain additional approvals from Congress or the secretary.

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The Interior Department today in effect serves as “a planning and zoning board” for large areas of the rural West, a function typically reserved for local and state governments.

Make Grazing Permits into Tradable Rights, Even for Conservation Purposes

The Interior Department is responsible for managing a vast system of federal rangelands in the West. The BLM administers nearly 18,000 grazing permits across 155 million acres of public lands. In 2015, these lands provided 8.6 million animal unit months of forage for livestock while also being managed for recreation, conservation, and other multiple-use purposes.

Today's grazing policies, however, encourage conflict rather than negotiation among competing interest groups. Ranchers have gradually had their grazing permits revoked, as public-land policies have shifted in favor of conservation and recreation and away from grazing, timber harvesting, and other traditional resource uses. Today, the BLM authorizes only half as much grazing on federal rangelands as it did in the 1950s. Increasingly, ranchers and environmentalists are pitted against each other in a zero-sum battle over the western range.

At their core, such conflicts result from poorly defined grazing rights and restrictions on trading them. Current policies do not recognize grazing permits as a secure property right, nor do they allow grazing permits to be transferred for non-grazing purposes. This means that environmental and other competing interest groups have little or no way to bargain with ranchers to acquire grazing permits. As a result, disputes must be resolved through litigation or political battles instead of through negotiation or cooperation among local users.

Today's grazing policies date back to the Taylor Grazing Act of 1934. The act requires that grazing permits be attached to specific "base properties"—or private properties that the government deems qualified for grazing privileges. The presence or absence of a grazing permit can significantly affect a ranch's property value. When these properties are bought and sold, the new owner pays for the grazing permit, which is capitalized into the value of the base property.

The law, however, never clarified whether grazing permits are secure property rights. Instead, it refers only to "grazing privileges" while also stating, somewhat vaguely, that those privileges "shall be adequately safeguarded." The result has been a decades-long fight over the nature and security of grazing rights in the West. Because grazing permits are attached to private properties, and restrictions on those permits can directly affect the value of a ranch, it's no surprise that ranchers feel threatened by actions that reduce grazing on public lands.

To address these points of contention, grazing policies should be reformed to encourage contractual solutions instead of litigation and conflict. Specifically, Congress should clarify that a grazing permit constitutes a secure property right (or a forage-use right) to a portion of the federal rangeland. In addition, it should make those rights transferable, even for non-grazing purposes such as conservation or recreation.

Several changes would help make this possible. First, under the current system, ranchers are required to graze livestock on their allotments at their permitted levels or they risk losing their grazing privileges—in other words, it's "use it or

lose it." If a permittee abandons grazing activities on a significant portion of an allotment, the BLM may be obligated to transfer the permit to another rancher willing to use the allotment for grazing.

Second, the base-property requirement raises the cost of trading grazing permits and restricts who can hold grazing permits. Groups seeking to acquire grazing rights must purchase or already own qualifying base properties to which grazing privileges can be assigned. Removing these requirements would allow permits to more easily be transferable to their highest-value uses, whether that's grazing, conservation, or recreation.

When property rights are secure, enforced, and transferable, disputes among competing users are more likely to be resolved peacefully, cooperatively, and in a mutually beneficial manner. Clarifying grazing rights and making

them transferable for non-grazing purposes would go a long way toward encouraging more cooperation and less conflict over the use of the western range.

Adopt Market-Based Measures to Boost Revenues While Protecting Local Environmental Values

As mentioned earlier, the Interior Department oversees mineral development on vast amounts of federal subsurface lands. These lands account for 21 percent of U.S. oil production and 16 percent of natural gas production, and these resources generate billions of dollars for national and state treasuries.

The department is charged with responsibly developing energy resources on federal lands to best meet the present and future needs of the public, while also ensuring that taxpayers receive a fair return on energy production. But uncertainty and delays arising from agency processes, as well as conflicting values with respect to energy extraction and the environment, have contributed to a relative decline in the development of federal oil and gas resources. Oil and gas development on private and state lands has boomed over the last decade, but oil production on federal lands has increased only slightly, and natural gas production has actually declined.

Federal lands containing oil and gas sometimes also offer significant cultural, recreational, and other environmental

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At their core, such conflicts result from poorly defined grazing rights and restrictions on trading them. Current policies do not recognize grazing permits as a secure property right, nor do they allow grazing permits to be transferred for non-grazing purposes.



THE HOBACK BASIN, WYOMING. In 2013, the Trust for Public Land purchased the oil and gas lease rights for 58,000 acres in the Hoback Basin in order to preserve the wilderness landscape. Laws requiring leaseholders to use or relinquish their rights make this kind of transaction impossible on most federal lands.

assets. This sparks conflicts over resource use—a main cause of the relative slowdown in energy development on federal lands. Market-based approaches, however, have the potential to reduce such conflicts, bringing local environmental values more directly into the oil and gas leasing process and promoting cooperation between energy developers and environmental groups.

The most direct market-based approach to resolving such competing demands would be to open oil and gas lease auctions to recreational, environmental, and conservation interests. Lease terms could explicitly allow individuals or groups seeking to withhold resources from development to hold a lease on terms similar to those that apply to energy developers. When development threatens local environmental values, such groups could coordinate to purchase and hold the development rights to a given property.

Current policies discourage this cooperative approach by requiring that leaseholders must intend to develop their energy leases. Leaseholders who do not intend to develop oil and gas, essentially forfeit their lease rights. Under current BLM policies, therefore, environmental and other non-development-related interests have few options but to seek administrative delays and further promote the politicization of public land management.

A market-based approach to protecting local environmental values would reduce conflict and help ensure energy resources are developed only when they are likely to be more valuable to the public than other competing values. Moreover, such an approach has some precedent on federal lands. In

2013, the conservation group Trust for Public Land purchased an energy company's federal oil and gas lease rights to 58,000 acres in Wyoming for a total of \$8.75 million.

This win-win deal was possible thanks to a provision in the Wyoming Range Legacy Act that allows groups to purchase and retire federal oil and gas lease rights from willing sellers. The provision, however, applies only to certain federal lands in Wyoming. Similar authority could be expanded to allow lessees to voluntarily sell their lease rights for conservation purposes, enabling mutually beneficial market exchanges to occur to resolve conflicts over resource use.

Conclusion

Much could be done to transform the Department of the Interior so that it can better address the challenges it faces in the 21st century. Some of the changes discussed here could be implemented by the Interior Department itself, while others would require congressional action. But in every case, the proposals would help restructure the department to make it more effective, more responsive to the needs of local communities and local land managers, and better able to help resolve conflicting demands through local cooperation instead of political conflict and litigation. ■

Mr. Regan is a research fellow at the Property and Environment Research Center. This article is adapted from his testimony on December 7, 2017, before the Subcommittee on Oversight and Investigations of the Committee on Natural Resources of the U.S. House of Representatives.



APRIL

1-4 Association of Private Enterprise Education 43rd Annual Meeting, Caesars Palace, Las Vegas

4 Are We Good Enough for Liberty? Kansas Policy Institute, Petroleum Club, Wichita, 6 PM

4-5 Pressing Issues in Land Management, Institute for Humane Studies, Center for Growth and Opportunity at Utah State University, Westin, Las Vegas

5 The People Versus Democracy, American Enterprise Institute, Washington, D.C., 5 PM

5 Three Stack Approach to Marketing and Messaging Academic Research & Ideas, Atlas Network, Caesars Palace, Las Vegas, 8 AM – 3 PM

6-7 Standing Up for Faith and Freedom, Young America's Foundation, Reston, Va.

6-8 Indianapolis Leadership Conference, Intercollegiate Studies Institute, Columbia Club, Indianapolis

7 Center of the American Experiment Annual Dinner, Minneapolis Convention Center, Minneapolis, 5:30 PM

9 Cardinal Conversations: Anne Applebaum and Ted Koppel on “Real and Fake News”, Hoover Institution, Stanford, Calif., 7 PM

11 Compulsion in Religion: Saddam Hussein, Islam, and the Roots of Insurgencies, Foreign Policy Research Institute, National Liberty Museum, Philadelphia, 6:15 PM

11 Buchanan Speaker Series: Markets in Education, Mercatus Center, Center for the Arts, Concert Hall Grand Tier III, George Mason University, Arlington, Va., 5 PM

12 Conversations with Tyler: David Brooks, Mercatus Center, Founders Hall, George Mason University, Arlington, Va., 6 PM

13-14 Conservative Leadership Conference, Civitas Institute, Marriott Crabtree Valley, Raleigh, N.C., 1 – 4 PM

17 Communism in Cuba, Its International Impact, the Democratic Resistance and U.S. Cuba Policy, Acton Institute, Grand Rapids, Mich., Noon

17 An Evening with the Alabama Policy Institute, The USS Alabama Hanger, Mobile, 6 PM

17 Sixth Annual Executive Branch Review Conference, Federalist Society, Mayflower Hotel, Washington, D.C.

18 American Pravda: My Fight for Truth in the Era of Fake News, Heartland Institute, Arlington Heights, Ill., 5:30 PM

19 Chicago Luncheon Featuring Rev. Robert Sirico, Acton Institute, University Club of Chicago, Chicago, Noon

19-22 Evaluating the Idea of Social Justice, Acton Institute, CityFlatsHotel, Holland, Mich.

19 The Future of Corporate Taxation in a Digital World, American Enterprise Institute, Washington, D.C., 11 AM

20-22 Fort Lauderdale Leadership Conference, Intercollegiate Studies Institute, Riverside Hotel, Fort Lauderdale

24 The Future Can’t Wait, Center of the American Experiment, DoubleTree Park Place, Minneapolis, 7 AM

25 World Intellectual Property Day Celebration, Institute for Policy Innovation, Rayburn House Office Building, Washington, D.C., 10:30 AM – 1:30 PM

26 Russia, the EU, and the Lands in Between, Foreign Policy Research Institute, Present Day Club, Princeton, 6 PM

26 Founder’s Night, Independence Institute, EXDO Event Center, Denver, 6 PM

27 Spring Task Force Summit, American Legislative Exchange Council, Amway Grand Plaza, Grand Rapids, Mich.

MAY

2-3 Ninth Annual American Federation for Children National Policy Summit, The Mayflower Hotel, Washington, D.C.

3-6 Lights, Camera, Liberty! Atlas Network & Taliesin Nexus, Doubletree Los Angeles Downtown, Los Angeles

5 5th Annual Otis McDonald Memorial Second Amendment Lecture & Practice, Federalist Society, The Range at 355, Bolingbrook, Ill., 7:30 AM – 11 AM

8 Detroit Luncheon Featuring Rev. Robert Sirico, Acton Institute, Detroit Athletic Club, Detroit, Noon

8-9 Better Skills, Better Jobs, Philanthropy Roundtable, Federal Reserve Bank of Dallas, Dallas

MAY (CONTINUED)

10 Navigating the Global Financial System amid Terrorist Networks, Arms Smugglers, Sanctions, and Money Laundering, Foreign Policy Research Institute, Merion Cricket Club, Haverford, Pa., 7 PM

10-12 Toward a Free and Virtuous Society: The Moral Case for Market Economics, Acton Institute, Le Pavillon, New Orleans

16-18 Environmental Change in the West: Resolving Competing Demands, Institute for Humane Studies and Property & Environment Research Center, Bozeman, Mont.

17 Can a Capitalist Society Also Be a Caring Society? A Dialog Between Economists and Pope Francis, Acton Institute, Grand Rapids, Mich., Noon

17 Milton Friedman Prize for Advancing Liberty Biennial Dinner, Cato Institute, Cipriani, New York City

23 Cardinal Conversations: Christina Sommers and Andrew Sullivan on "Sexuality and Politics", Hoover Institution, Stanford, Calif., 7 PM

24 AFF Gala, America's Future Foundation, Nationals Park, Washington, D.C., 7 PM – 10 PM

24 Canterbury Medal Gala, Becket Fund, The Pierre Hotel, New York City

28-30 Oslo Freedom Forum, Human Rights Foundation, Oslo

29-30 Europe Liberty Forum, Atlas Network & Center for Political Studies, Comwell Conference Center, Copenhagen

JUNE

1-2 Which Institutions Best Support Prosperity in Texas and Beyond? Institute for Humane Studies & Texas Public Policy Foundation, Omni Austin Hotel Downtown, Austin

5-8 Resource Bank, The Heritage Foundation, Marriot Harbor Beach Resort, Fort Lauderdale

6 Authoritarianism in Europe in the 20th Century—and the 21st, Foreign Policy Research Institute, National Liberty Museum, Philadelphia, 6:15 PM

7-9 Road to Majority, Faith and Freedom Coalition, Omni Shoreham Hotel, Washington, D.C.

7-9 FEECon, Foundation for Economic Education, Hyatt Regency, Atlanta

11 5th Annual Links for Liberty, Illinois Policy Institute, Mistwood Golf Club, Romeoville, Ill.

14-15 Latin America Liberty Forum, Atlas Network & Fundacion para el Progreso, Santiago

19-22 Acton University, Acton Institute, Devos Place Convention Center, Grand Rapids, Mich.

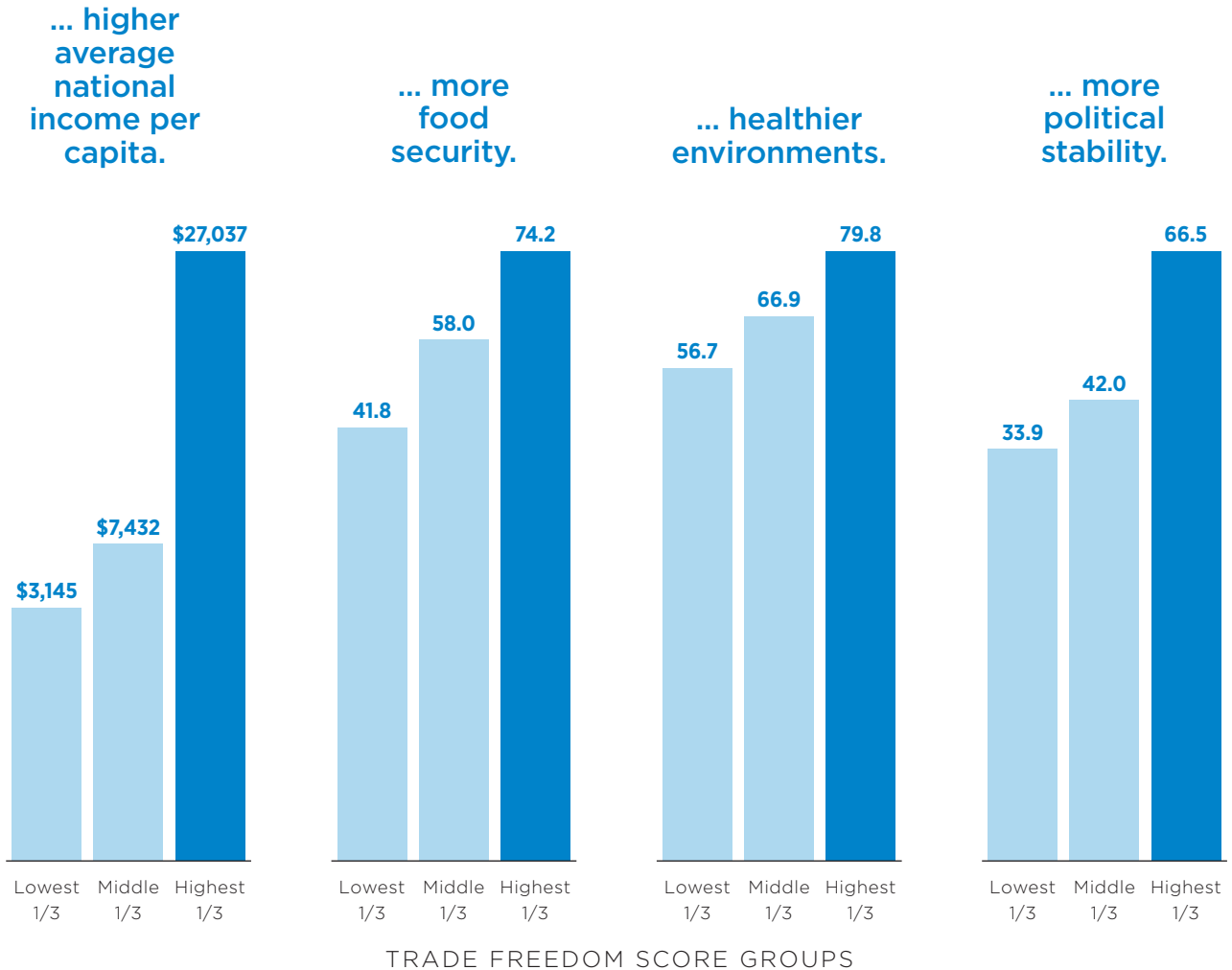
20-23 June High School Conference at the Reagan Ranch, Young America's Foundation, Reagan Ranch Center, Santa Barbara, Calif.

23-29 The Foundations of Liberty, Institute for Humane Studies, Bryn Mawr College, Bryn Mawr, Pa.

28 Competitive Enterprise Institute 2018 Annual Dinner, Marriot Marquis, Washington, D.C., 6 PM

The Benefits of Free Trade

Nations with freer trade policies also have ...



SOURCES:

- Trade freedom score groups: Heritage Foundation calculations from the *2018 Index of Economic Freedom*.
- Income per Capita: World Bank, "GNI per Capita, Atlas Method (Current US\$)," <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD> (accessed October 20, 2017). Data compiled for 163 countries.
- Food Security: *The Economist* Intelligence Unit, "Global Food Security Index 2017," <http://foodsecurityindex.eiu.com/Resources> (accessed October 31, 2017). Data compiled for 110 countries.
- Environment: Yale University, "2016 Environmental Performance Index," <http://epi.yale.edu/> (accessed October 18, 2017). Data compiled for 173 countries.
- Political Stability: World Bank, Worldwide Governance Indicators, "Political Stability, and Absence of Violence/Terrorism," 2016 data, <http://info.worldbank.org/governance/wgi/#reports> (accessed Oct. 23, 2017). Data compiled for 183 countries.

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They Shut Down Paradise, and Closed Up the Parking Lot

National parks have to close whenever Congress fails to pass funding for the government. Does it make sense that parks should be tied up with political disputes over the entire federal budget?

One solution is to convert parks to a franchise system that puts their operation into private hands. Such parks would still be run according to National Park Service requirements. Ideally they would also be self-sufficient financially, which could remove the need to close them down whenever the government runs out of money.

That's a just one minor example of how local control of federal lands produces more flexible and efficient management for the public benefit. To learn more, see our feature beginning at page 34.

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**CLOSED
YELLOWSTONE PARK
GOVERNMENT
SHUTDOWN
NO VISITOR ACCESS**