

June 9, 2013

Niall Ferguson chronicles how our country has degenerated.

... Seven years of data suggest that most of the world's countries are successfully making it easier to do business: The total number of days it takes to carry out the seven procedures has come down, in some cases very substantially. In only around 20 countries has the total duration of dealing with "red tape" gone up. The sixth-worst case is none other than the U.S., where the total number of days has increased by 18% to 433. Other members of the bottom 10, using this metric, are Zimbabwe, Burundi and Yemen (though their absolute numbers are of course much higher).

Why is it getting harder to do business in America? Part of the answer is excessively complex legislation. A prime example is the 848-page Wall Street Reform and Consumer Protection Act of July 2010 (otherwise known as the Dodd-Frank Act), which, among other things, required that regulators create 243 rules, conduct 67 studies and issue 22 periodic reports. Comparable in its complexity is the Patient Protection and Affordable Care Act (906 pages), which is also in the process of spawning thousands of pages of regulation. You don't have to be opposed to tighter financial regulation or universal health care to recognize that something is wrong with laws so elaborate that almost no one affected has the time or the will to read them.

Who benefits from the growth of complex and cumbersome regulation? The answer is: lawyers, not forgetting lobbyists and compliance departments. For complexity is not the friend of the little man. It is the friend of the deep pocket. It is the friend of cronyism.

We used to have the rule of law. Now it is tempting to say we have the rule of lawyers, which is something different. For the lawyers can also make money even in the absence of complex legislation.

It has long been recognized that the U.S. tort system is exceptionally expensive. Indeed, tort reform is something few people will openly argue against. Yet the plague of class-action lawsuits continues unabated. Regular customers of Southwest Airlines recently received this email: "Did you receive a Southwest Airlines drink coupon through the purchase of a Business Select ticket prior to August 1, 2010, and never redeem it? If yes, a legal Settlement provides a Replacement Drink Voucher, entitling you to a free drink aboard a Southwest flight, for every such drink coupon you did not redeem."

*This is not the product of the imagination of some modern-day Charles Dickens. It is a document arising from the class-action case, *In re Southwest Airlines Voucher Litigation*, No. 11-cv-8176, which came before Judge Matthew F. Kennelly of the District Court for the Northern District of Illinois. As the circular explains: "This Action arose out of Southwest's decision, effective August 1, 2010, to only accept drink coupons received by Business Select customers with the purchase of a Business Select ticket on the date of the ticketed travel. The Plaintiffs in this case allege Southwest, in making that decision, breached its contract with Class Members who previously received drink coupons," etc.*

As often happens in such cases, Southwest decided to settle out of court. Recipients of the email will have been nonplused to learn that the settlement "will provide Replacement Drink Vouchers to Class Members who submit timely and valid Claim Forms." One wonders how many have bothered.

Cui bono? The answer is, of course, the lawyers representing the plaintiffs. Having initially pitched for "up to \$7 million in fees, costs and expenses," these ingenious jurists settled for fees of \$3 million "plus costs not to exceed \$30,000" from Southwest. ...

Mark Steyn on the real problem at the IRS.

... It took Congressman Trey Gowdy of South Carolina to get to the heart of the matter: "With all due respect, this is not a training issue," he said. "This cannot be solved with another webinar. . . . We can adopt all the recommendations you can possibly conceive of. I just say it strikes me — and maybe it's just me — but it strikes me as a cultural, systemic, character, moral issue."

He's right. If you don't instinctively know it's wrong to stay in \$3,500-a-night hotel rooms at public expense, a revised conference-accommodations-guidelines manual isn't going to fix the real problem.

So we know the IRS is corrupt. What happens then when an ambitious government understands it can yoke that corruption to its political needs? What's striking as the revelations multiply and metastasize is that at no point does any IRS official appear to have raised objections. If any of them understood that what they were doing was wrong, they kept it to themselves. When Nixon tried to sic the IRS on a few powerful political enemies, the IRS told him to take a hike. When Obama's courtiers tried to sic the IRS on thousands of ordinary American citizens, the agency went along, and very enthusiastically. This is a scale of depravity hitherto unknown to the tax authorities of the United States, and for that reason alone they should be disarmed and disbanded — and rebuilt from scratch with far more circumscribed powers.

Here's another congressional-subcommittee transcript highlight of the week. Senator Mark Kirk of Illinois asks the attorney general if he's spying on members of Congress and thereby giving the executive branch leverage over the legislative branch. Eric Holder answers:

"With all due respect, senator, I don't think this is an appropriate setting for me to discuss that issue."

Senator Kirk responded that "the correct answer would be, 'No, we stayed within our lane and I'm assuring you we did not spy on members of Congress.'" For some reason, the attorney general felt unable to say that. So I think we all know what the answer to the original question really is.

Holder had another great contribution to the epitaph of the Republic this week. He went on TV to explain that he didn't really regard Fox News's James Rosen as a "co-conspirator" but had to pretend he did to the judge in order to get the judge to cough up the warrant. So rest easy, America! Your chief law officer was telling the truth when he said he hadn't lied to Congress because in fact he'd been lying when he said he told the truth to the judge.

If you lie to one of Holder's minions, you go to jail: They tossed Martha Stewart in the slammer for being insufficiently truthful to a low-level employee of the attorney general's. But the attorney general can apparently lie willy-nilly to judges and/or Congress. ...

Peter Wehner says it is now obvious that some cannot be trusted with power.
... My views on President Obama are such that very little would surprise me in terms of the ethical lines he would cross in order to gain and maintain political power.

That may seem like an overly harsh judgment, so let me take a moment to explain what I mean. I have become convinced, based on what I would argue is the increasing weight of the evidence, that Mr. Obama is a man whose sense of mission, his arrogance and self-righteousness, and his belief in the malevolence of his enemies might well lead him and his administration to act in ways that would seem to him to be justified at the time but, in fact, are wholly inappropriate.

I would include as evidence to support my assertion the president's routine slander of his opponents, his serially misleading statements (including flat-out falsehoods about the lethal attacks on the Benghazi consulate), the IRS scandal and the public signals the president sent to that agency over the years, the unprecedented targeting of journalists by the Department of Justice and the attorney general's nasty little habit of misleading Congress, Mr. Obama's unusually dishonest campaign against Mitt Romney, and his overall contempt for the rule of law. He just doesn't think that rules should apply to him, that he is above all that. Those who see themselves as world-historical figures tend to do that. ...

Paul Mirengoff says one way or another, Holder lied.

... Just as damning, if not more so, is Holder's concession that he "played" the court that granted DOJ's application regarding Rosen. According to NBC's account of the interview, "Holder explained that the [co-conspirator] phrasing was necessary in order to get a search warrant."

The posted video of the interview bears this out. Holder says that various laws and guidelines "force" the government to call reporters criminals. But because reporters aren't really criminals when they are just doing their job, the laws and guidelines need to be changed.

That may be. Nonetheless, Holder has admitted that he and his agents told a court that Rosen was a "co-conspirator" not because he believed Rosen was a criminal, but because DOJ needed to use the language of criminality to obtain the desired warrant.

*As Bill Otis says, "if mere expediency [has] replaced basic truth-telling as the standard for what the Attorney General tells the court" then "there is more, not less, reason for [Holder] to resign."
...*

Two Steyns in a day. Here's a good **Corner post**.

I was chugging along buying Jack Dunphy's argument on the NSA business, "[A Small Price To Pay](#)," until I got to this bit:

There are people living in the United States right now, many, many of them, who are no less committed to jihad than the Tsarnaev brothers or Nidal Hassan.

Well, how'd that happen? How did all these Tsarnaevs-in-waiting wind up living in the United States? They were let in by the government, and many of them were let in in the years since 9/11, when we were supposedly on permanent "orange alert." The same bureaucracy that takes the terror threat so seriously that it needs the phone and Internet records of hundreds of millions of law-abiding persons would never dream of doing a little more pre-screening in its immigration system — by, say, according a graduate of a Yemeni madrassah a little more scrutiny than a Slovene or Fijian. The president has unilaterally suspended the immigration laws of the United States, and his attorney general prosecutes those states such as Arizona who remain quaintly attached to them. The ID three of the 9/11 hijackers acquired in the 7-Eleven parking lot in Falls Church, Virginia and used to board the plane that day is part of a vast ongoing subversion of American sovereignty with which many states and so-called "sanctuary cities" actively collude.

As for Major Hasan, who needs surveillance? He put "Soldier of Allah" on his business card and gave a PowerPoint presentation to his military colleagues on what he'd like to do to infidels — and nobody said a word, lest they got tied up in sensitivity-training hell for six months.

Jack will forgive me when I say this is less good cop/bad cop than no cop/bad cop. Because the formal, visible state has been neutered by political correctness, the dark, furtive shadow state has to expand massively to make, in secret, the judgment calls that can no longer be made in public. That's not an arrangement that is likely to end well.

WSJ

How America Lost Its Way

It is getting ever harder to do business in the United States and more stimulus won't help: Our institutions need fixing.

by Niall Ferguson

Not everyone is an entrepreneur. Still, everyone should try—if only once—to start a business. After all, it is small and medium enterprises that are the key to job creation. There is also something uniquely educational about sitting at the desk where the buck stops, in a dreary office you've just rented, working day and night with a handful of employees just to break even.

As an academic, I'm just an amateur capitalist. Still, over the past 15 years I've started small ventures in both the U.S. and the U.K. In the process I've learned something surprising: It's much easier to do in the U.K. There seemed to be much more regulation in the U.S., not least the headache of sorting out health insurance for my few employees. And there were certainly more billable hours from lawyers.

By the Numbers

- **433:** Total number of days it takes in the U.S. to start a business, register a property, pay taxes, get an import and export license and enforce a contract
- **368:** Total number of days it took to do the same in 2006

- **7:** U.S. ranking, out of 144 countries, on the World Economic Forum's 2012-2013 Global Competitiveness Index
- **1:** U.S. ranking on the 2008-2009 Global Competitiveness Index
- **33:** U.S. ranking for its legal system and property rights in 2010 on the Fraser Institute's Economic Freedom index, out of 144 countries
- **9:** U.S. ranking for its legal system and property rights in 2000

Sources: 'Doing Business'; World Economic Forum; Fraser Institute

This set me thinking. We are assured by vociferous economists that economic growth would be higher in the U.S. and unemployment lower if only the government would run even bigger deficits and/or the Fed would print even more money. But what if the difficulty lies elsewhere, in problems that no amount of fiscal or monetary stimulus can overcome?

Nearly all development economists agree that good institutions—legislatures, courts, administrative agencies—are crucial. When poor countries improve their institutions, economic growth soon accelerates. But what about rich countries? If poor countries can get rich by improving their institutions, is it not possible that rich countries can get poor by allowing their institutions to degenerate? I want to suggest that it is.

Consider the evidence from the annual "Doing Business" reports from the World Bank and International Finance Corporation. Since 2006 the report has published data for most of the world's countries on the total number of days it takes to start a business, get a construction permit, register a property, pay taxes, get an export or import license and enforce a contract. If one simply adds together the total number of days it would take to carry out all seven of these procedures sequentially, it is possible to construct a simple measure of how slowly—or fast—a country's bureaucracy moves.

Seven years of data suggest that most of the world's countries are successfully making it easier to do business: The total number of days it takes to carry out the seven procedures has come down, in some cases very substantially. In only around 20 countries has the total duration of dealing with "red tape" gone up. The sixth-worst case is none other than the U.S., where the total number of days has increased by 18% to 433. Other members of the bottom 10, using this metric, are Zimbabwe, Burundi and Yemen (though their absolute numbers are of course much higher).

Why is it getting harder to do business in America? Part of the answer is excessively complex legislation. A prime example is the 848-page Wall Street Reform and Consumer Protection Act of July 2010 (otherwise known as the [Dodd-Frank](#) Act), which, among other things, required that regulators create 243 rules, conduct 67 studies and issue 22 periodic reports. Comparable in its complexity is the Patient Protection and Affordable Care Act (906 pages), which is also in the process of spawning thousands of pages of regulation. You don't have to be opposed to tighter financial regulation or universal health care to recognize that something is wrong with laws so elaborate that almost no one affected has the time or the will to read them.

Who benefits from the growth of complex and cumbersome regulation? The answer is: lawyers, not forgetting lobbyists and compliance departments. For complexity is not the friend of the little man. It is the friend of the deep pocket. It is the friend of cronyism.

We used to have the rule of law. Now it is tempting to say we have the rule of lawyers, which is something different. For the lawyers can also make money even in the absence of complex legislation.

It has long been recognized that the U.S. tort system is exceptionally expensive. Indeed, tort reform is something few people will openly argue against. Yet the plague of class-action lawsuits continues unabated. Regular customers of Southwest Airlines recently received this email: "Did you receive a Southwest Airlines drink coupon through the purchase of a Business Select ticket prior to August 1, 2010, and never redeem it? If yes, a legal Settlement provides a Replacement Drink Voucher, entitling you to a free drink aboard a Southwest flight, for every such drink coupon you did not redeem."

This is not the product of the imagination of some modern-day Charles Dickens. It is a document arising from the class-action case, *In re Southwest Airlines Voucher Litigation*, No. 11-cv-8176, which came before Judge Matthew F. Kennelly of the District Court for the Northern District of Illinois. As the circular explains: "This Action arose out of Southwest's decision, effective August 1, 2010, to only accept drink coupons received by Business Select customers with the purchase of a Business Select ticket on the date of the ticketed travel. The Plaintiffs in this case allege Southwest, in making that decision, breached its contract with Class Members who previously received drink coupons," etc.

As often happens in such cases, Southwest decided to settle out of court. Recipients of the email will have been nonplused to learn that the settlement "will provide Replacement Drink Vouchers to Class Members who submit timely and valid Claim Forms." One wonders how many have bothered.

Cui bono? The answer is, of course, the lawyers representing the plaintiffs. Having initially pitched for "up to \$7 million in fees, costs and expenses," these ingenious jurists settled for fees of \$3 million "plus costs not to exceed \$30,000" from Southwest.

Canada's Fraser Institute has been compiling an "Economic Freedom" index since 1980, one component of which is a measure of the quality of a country's legal system and property rights. In the light of a case like the one described above, there is nothing surprising about the recent decline in U.S. performance. In 2000 U.S. law scored 9.23 out of 10. The most recent score (for 2010) was 7.12.

Such indexes must be used with caution, but the Fraser index is not the only piece of evidence suggesting that the rule of law in the U.S. is not what it was. The World Justice Project uses a completely separate methodology to assess countries' legal systems. The latest WJP report ranks the U.S. 17th out of 97 countries for the extent to which the law limits the power of government, 18th for the absence of corruption, 19th for regulatory enforcement, 22nd for access to civil justice and the maintenance of order and security, 25th for fundamental rights, and 26th for the effectiveness of criminal justice. Of all the former British colonies in the report, the U.S. ranks behind New Zealand, Australia, Singapore, Canada, Hong Kong and the United Kingdom—though it does beat Botswana.

The decline of American institutions is no secret. Yet it is one of those strange "unknown knowns" that is well documented but largely ignored. Each year, the World Economic Forum publishes its Global Competitiveness Index. Since it introduced its current methodology in 2004,

the U.S. score has declined by 6%. (In the same period China's score has improved by 12%.) An important component of the index is provided by 22 different measures of institutional quality, based on the WEF's Executive Opinion Survey. Typical questions are "How would you characterize corporate governance by investors and boards of directors in your country?" and "In your country, how common is diversion of public funds to companies, individuals, or groups due to corruption?" The startling thing about this exercise is how poorly the U.S. fares.

In only one category out of 22 is the U.S. ranked in the global top 20 (the strength of investor protection). In seven categories it does not even make the top 50. For example, the WEF ranks the U.S. 87th in terms of the costs imposed on business by "organized crime (mafia-oriented racketeering, extortion)." In every single category, Hong Kong does better.

At the same time, the U.S. has seen a marked deterioration in its World Governance Indicators. In terms of "voice and accountability," "government effectiveness," "regulatory quality" and especially "control of corruption," the U.S. scores have all gone down since the WGI project began in the mid-1990s. It would be tempting to say that America is turning Latin, were it not for the fact that a number of Latin American countries have been improving their governance scores over the same period.

What is the process at work here? Perhaps this is a victory from beyond the grave for classical Western political theory. Republics, after all, were regarded by most ancient political philosophers as condemned to decadence, or to imperial corruption. This was the lesson of Rome. Democracy was always likely to give way to oligarchy or tyranny. This was the lesson of the French Revolution. The late Mancur Olson had a modern version of such cyclical models, arguing that all political systems were bound to become the captives, over time, of special interests. The advantage enjoyed by West Germany and Japan after World War II, he suggested, was that all the rent-seeking elites of the pre-1945 period had been swept away by defeat. This was why Britain won the war but lost the peace.

Whatever the root causes of the deterioration of American institutions, smart people are starting to notice it. Last year Michael Porter of Harvard Business School published a report based on a large-scale survey of HBS alumni. Among the questions he asked was where the U.S. was "falling behind" relative to other countries. The top three lagging indicators named were: the effectiveness of the political system, the K-12 education system and the complexity of the tax code. Regulation came sixth, efficiency of the legal framework eighth.

Asked to name "the most problematic factors for doing business" in the U.S., respondents to the WEF's most recent Executive Opinion Survey put "inefficient government bureaucracy" at the top, followed by tax rates and tax regulations.

All this should not be interpreted as yet another prophecy of the imminent decline and fall of the U.S., however. There is some light in the gloom. According to the most recent United Nations projections, the share of the U.S. population that is over 65 will reach 25% only at the very end of this century. Japan has already passed that milestone; Germany will be next. By midcentury, both countries will have around a third of their population age 65 or older.

More imminently, a revolution in the extraction of shale gas and tight oil, via hydraulic fracking, is transforming the U.S. from energy dependence to independence. Not only could the U.S., at least for a time, re-emerge as the world's biggest oil producer; the lower electricity costs

resulting from the fossil-fuel boom are already triggering a revival of U.S. manufacturing in the Southeast and elsewhere.

In a functioning federal system, the pace of institutional degeneration is not uniform. America's four "growth corridors"—the Great Plains, the Gulf Coast, the Intermountain West and the Southeast—are growing not just because they have natural resources but also because state governments in those regions are significantly more friendly to business. There are already heartening signs of a great regeneration in states like Texas and North Dakota.

"In America you have a right to be stupid—if you want to be." Secretary of State John Kerry made that remark off the cuff in February, speaking to a group of students in Berlin. It is not a right the founding fathers felt they needed explicitly to enshrine. But it has always been there, and America's leaders have frequently been willing to exercise it.

Yes, we Americans have the right to be stupid if we want to be. We can carry on pretending that our economic problems can be solved with the help of yet more fiscal stimulus or quantitative easing. Or we can face up to the institutional impediments to growth I have described here.

Not many economists talk about them, it's true. But that's because not many economists run businesses.

National Review

[The All-Seeing State](#)

The inevitable corruption of the permanent bureaucracy

by Mark Steyn

A few years ago, after one corruption scandal too many, the then Liberal government in Canada announced that, to prevent further outbreaks of malfeasance, it would be hiring 300 new federal auditors plus a bunch of ethics czars, and mandating "integrity provisions" in government contracts, including "prohibitions against paying, offering, demanding or accepting bribes." There were already plenty of laws against bribery, but one small additional sign on the desk should do the trick: "Please do not attempt to bribe the Minister of the Crown as a refusal may offend. Also: He's not allowed to bribe you, whatever he says." A government that requires "integrity provisions" is by definition past the stage where they will do any good.

I thought of those Canadian Liberal "integrity provisions" passing a TV screen the other day and catching hack bureaucrats from the IRS Small Business/Self-Employed Division reassuring Congress that systems had now been put in place to prevent them succumbing to the urge to put on Spock ears and moob-hugging blue polyester for the purposes of starring in a *Star Trek* government training video. The Small Business/Self-Employed Division had boldly gone where no IRS man had gone before — to a conference in Anaheim, where they were put up in \$3,500-a-night hotel rooms and entertained by a man who was paid \$27,500 to fly in and paint on stage a portrait of Bono. Bono is the veteran Irish rocker knighted by the Queen for his tireless campaign on behalf of debt forgiveness, which doesn't sound the IRS's bag at all. But don't worry, debt forgiveness-wise Bono has Africa in mind, not New Jersey. And, as Matthew Cowart

tweeted me the other day, he did have a big hit with “I Still Haven’t Found What I’m Looking For,” which I believe is now the official anthem of the IRS Cincinnati office.

It took Congressman Trey Gowdy of South Carolina to get to the heart of the matter: “With all due respect, this is not a training issue,” he said. “This cannot be solved with another webinar. . . . We can adopt all the recommendations you can possibly conceive of. I just say it strikes me — and maybe it’s just me — but it strikes me as a cultural, systemic, character, moral issue.”

He’s right. If you don’t instinctively know it’s wrong to stay in \$3,500-a-night hotel rooms at public expense, a revised conference-accommodations-guidelines manual isn’t going to fix the real problem.

So we know the IRS is corrupt. What happens then when an ambitious government understands it can yoke that corruption to its political needs? What’s striking as the revelations multiply and metastasize is that at no point does any IRS official appear to have raised objections. If any of them understood that what they were doing was wrong, they kept it to themselves. When Nixon tried to sic the IRS on a few powerful political enemies, the IRS told him to take a hike. When Obama’s courtiers tried to sic the IRS on thousands of ordinary American citizens, the agency went along, and very enthusiastically. This is a scale of depravity hitherto unknown to the tax authorities of the United States, and for that reason alone they should be disarmed and disbanded — and rebuilt from scratch with far more circumscribed powers.

Here’s another congressional-subcommittee transcript highlight of the week. Senator Mark Kirk of Illinois asks the attorney general if he’s spying on members of Congress and thereby giving the executive branch leverage over the legislative branch. Eric Holder answers:

“With all due respect, senator, I don’t think this is an appropriate setting for me to discuss that issue.”

Senator Kirk responded that “the correct answer would be, ‘No, we stayed within our lane and I’m assuring you we did not spy on members of Congress.’” For some reason, the attorney general felt unable to say that. So I think we all know what the answer to the original question really is.

Holder had another great contribution to the epitaph of the Republic this week. He went on TV to explain that he didn’t *really* regard Fox News’s James Rosen as a “co-conspirator” but had to pretend he did to the judge in order to get the judge to cough up the warrant. So rest easy, America! Your chief law officer was telling the truth when he said he hadn’t lied to Congress because in fact he’d been lying when he said he told the truth to the judge.

If you lie to one of Holder’s minions, you go to jail: They tossed Martha Stewart in the slammer for being insufficiently truthful to a low-level employee of the attorney general’s. But the attorney general can apparently lie willy-nilly to judges and/or Congress.

This, incidentally, is at the heart of the revelation (in a non-U.S. newspaper, naturally) that hundreds of millions of Americans’ phone records have been subpoenaed by the United States government. In 2011, Eric Holder’s assistant attorney general Todd Hinen testified to the House Judiciary Committee that “on average, we seek and obtain Section 215 orders less than 40

times per year.” Forty times per year doesn’t sound very high, does it? What is that — the cell phones of a few Massachusetts Chechens and some Yemeni pen-pals? No. The Verizon order will eventually be included as just another individual Section 215 order, even though it covers over a hundred million Americans. Ongoing universal monitoring of mass populations is being passed off to Congress and the public as a few dozen narrowly targeted surveillance operations. Mr. Hinen chose his words more carefully than his boss, but both men are in the business of deceiving the citizenry, their elected representatives, and maybe the judges, too.

Perhaps this is just the way it is in the panopticon state. Tocqueville foresaw this, as he did most things. Although absolute monarchy “clothed kings with a power almost without limits” in practice “the details of social life and of individual existence ordinarily escaped his control.” What would happen, Tocqueville wondered, if administrative capability were to evolve to bring “the details of social life and of individual existence” within the King’s oversight? Eric Holder and Lois Lerner now have that power. My comrade John Podhoretz, doughty warrior of the *New York Post*, says relax, there’s nothing to worry about. But how do I know he’s not just saying that because Eric Holder’s monitoring his OnStar account and knows that when he lost his car keys last Tuesday he was in the parking lot of Madam Whiplash’s Bondage Dungeon?

When the state has the power to know everything about everyone, the integrity of the civil service is the only bulwark against men like Holder. Instead, the ruling party and the non-partisan bureaucracy seem to be converging. In August 2010, President Obama began railing publicly against “groups with harmless-sounding names like Americans for Prosperity” (August 9th, a speech in Texas) and “shadowy groups with harmless-sounding names” (August 21st, radio address). And whaddayaknow, that self-same month the IRS obligingly issued its first BOLO (Be On the Look-Out) for groups with harmless-sounding names, like “tea party,” “patriot,” and “constitution.”

It may be that the strange synchronicity between the president and the permanent bureaucracy is mere happenstance and not, as it might sound to the casual ear, the sinister merging of party and state. Either way, they need to be pried apart. When the state has the capability to know everything except the difference between right and wrong, it won’t end well.

Contentions

[Obama Can’t Be Trusted with Power](#)

by Peter Wehner

I agree with Jonathan’s [post](#) both in terms of substance and the media response to the NSA/surveillance stories.

On the former: the PRISM program, in the right hands and used with discretion, can be justified based on the threats to America. But in the wrong hands—in executive branch hands that have abused power and punished political enemies—it has the potential to be misused. Which brings me to the current chief executive.

My views on President Obama are such that very little would surprise me in terms of the ethical lines he would cross in order to gain and maintain political power.

That may seem like an overly harsh judgment, so let me take a moment to explain what I mean. I have become convinced, based on what I would argue is the increasing weight of the evidence, that Mr. Obama is a man whose sense of mission, his arrogance and self-righteousness, and his belief in the malevolence of his enemies might well lead him and his administration to act in ways that would seem to him to be justified at the time but, in fact, are wholly inappropriate.

I would include as evidence to support my assertion the president's routine slander of his opponents, his serially misleading statements (including flat-out falsehoods about the lethal attacks on the Benghazi consulate), the IRS scandal and the public signals the president [sent](#) to that agency over the years, the unprecedented targeting of journalists by the Department of Justice and the attorney general's nasty little habit of misleading Congress, Mr. Obama's unusually dishonest campaign against Mitt Romney, and his overall [contempt](#) for the rule of law. He just doesn't think that rules should apply to him, that he is above all that. Those who see themselves as world-historical figures tend to do that.

I also agree with Jonathan that "no one should be under any illusion about whether they [those at the *New York Times*] will press this or any other issue if they thought the president was in any real trouble. Their pious disclaimers notwithstanding, partisanship will always trump principle at the *Times*." That is true of many other liberals in the press as well. The degree to which a substantial number of the elite media are in the tank for President Obama varies—but that they are in the tank is unquestionable.

With all that said, however, I do believe that the controversy over the National Security Agencies and its surveillance techniques could politically damage the president and his party, at least in this respect. This issue—unlike the IRS/DOJ/Benghazi scandals that are engulfing the administration—has ignited a revolt among some of Mr. Obama's core supporters. They are downright angry at the president for what they (rightly) consider to be a betrayal of his previous promises. And anytime a president is dealing with an issue that is fracturing his base without winning over swing voters, it's not good for him.

This doesn't mean that in an election liberals would vote for Republicans. But it might well mean that their enthusiasm for the Democratic Party will be dampened, that fundraising falls off, and that the willingness to work for Democratic candidates is reduced. And in a mid-term election, those things matter.

We're still a long way off from the 2014 mid-term election, of course. But the last four weeks or so have been damaging ones for the president, in ways that could be durable. Certain impressions—having to do with incompetence, hypocrisy, dissembling and contempt for the rule of law—are beginning to harden. That can't be good for Mr. Obama or his party. And just think; we're only a little over four months into the president's second term.

It can get worse. And my guess is it will.

Power Line

[Eric Holder clinches the case for his resignation or removal](#)

by Paul Mirengoff

Eric Holder's interview with Pete Williams of NBC News is, as [John says](#), a classic. It seems to me that Holder's statements during the interview nail down the case that he lied to Congress or to a court.

According to [NBC's account of the interview](#) [note that NBC's written account does not appear to track word-for-word the video of the interview NBC posted along with its account], Holder said:

I don't like [using the term "co-conspirator" to describe reporters] because it means that me as a government official, and who has great respect for the press, is in essence saying that the reporter who is doing his or her job, and doing that very important job, is somehow branded a criminal.

So Holder admits that he branded Fox News' James Rosen a criminal.

I understand [Orin Kerr's argument](#) that deeming someone a criminal isn't the same thing as deciding to prosecute that individual. But I think it's dishonest to say (as Holder, in effect, said to Congress) that there was no *potential* for the prosecution of someone the Department of Justice had branded a criminal and whom it was investigating.

I agree with [Bill Otis](#) that "the outcome of an investigation conducted with even minimal integrity depends, not on pre-existing personal or political inclinations, but on what the evidence turns up." Thus, "every serious investigation. . .holds in it. . .a potential prosecution" of those being investigated.

Just as damning, if not more so, is Holder's concession that he "played" the court that granted DOJ's application regarding Rosen. According to NBC's account of the interview, "Holder explained that the [co-conspirator] phrasing was necessary in order to get a search warrant."

The posted video of the interview bears this out. Holder says that various laws and guidelines "force" the government to call reporters criminals. But because reporters aren't really criminals when they are just doing their job, the laws and guidelines need to be changed.

That may be. Nonetheless, Holder has admitted that he and his agents told a court that Rosen was a "co-conspirator" not because he believed Rosen was a criminal, but because DOJ needed to use the language of criminality to obtain the desired warrant.

As Bill Otis says, "if mere expediency [has] replaced basic truth-telling as the standard for what the Attorney General tells the court" then "there is more, not less, reason for [Holder] to resign."

One last point. To defend Holder's veracity requires contradictory views of the role of subjectivity in evaluating the truth of statements. It may be possible to defend Holder's statement to Congress that he was not involved in a potential prosecution of Rosen because, subjectively, he had no predisposition actually to prosecute Rosen.

But giving the same prominence to alleged subjective feelings undermines the veracity of Holder's application to the court. After all, Holder has now admitted that, subjectively, he did not consider Rosen a co-conspirator in criminal activity.

National Review

No Cop/Bad Cop

by Mark Steyn

I was chugging along buying Jack Dunphy's argument on the NSA business, "[A Small Price To Pay](#)," until I got to this bit:

There are people living in the United States right now, many, many of them, who are no less committed to jihad than the Tsarnaev brothers or Nidal Hassan.

Well, how'd that happen? How did all these Tsarnaevs-in-waiting wind up living in the United States? They were let in by the government, and many of them were let in in the years since 9/11, when we were supposedly on permanent "orange alert." The same bureaucracy that takes the terror threat so seriously that it needs the phone and Internet records of hundreds of millions of law-abiding persons would never dream of doing a little more pre-screening in its immigration system — by, say, according a graduate of a Yemeni madrassah a little more scrutiny than a Slovene or Fijian. The president has unilaterally suspended the immigration laws of the United States, and his attorney general prosecutes those states such as Arizona who remain quaintly attached to them. The ID three of the 9/11 hijackers acquired in the 7-Eleven parking lot in Falls Church, Virginia and used to board the plane that day is part of a vast ongoing subversion of American sovereignty with which many states and so-called "sanctuary cities" actively collude.

As for Major Hasan, who needs surveillance? He put "Soldier of Allah" on his business card and gave a PowerPoint presentation to his military colleagues on what he'd like to do to infidels — and nobody said a word, lest they got tied up in sensitivity-training hell for six months.

Jack will forgive me when I say this is less good cop/bad cop than no cop/bad cop. Because the formal, visible state has been neutered by political correctness, the dark, furtive shadow state has to expand massively to make, in secret, the judgment calls that can no longer be made in public. That's not an arrangement that is likely to end well.



"THAT'S OBAMA'S NEW GUY... HE SEES YOU WHEN YOU'RE SLEEPING...
HE KNOWS WHEN YOU'RE AWAKE...."



