

January 26, 2014

The Institute for Justice, a libertarian public interest law firm, is one of Pickerhead's favorite charities. All day long those folks get to sue governments! Clark Neily III, one of their senior attorneys has a new book that has received a lot of attention.

Bookworm Room has the first post.

I went to a lunch today where the speaker was Clark M. Neily, III, author of Terms of Engagement: How Our Courts Should Enforce the Constitution's Promise of Limited Government. Neily is an attorney at the libertarian Institute for Justice, a public interest organization that focuses on Constitution-centric civil liberties cases. (I know that it sounds redundant to say "Constitution-centric civil liberties cases" but I use that phrase deliberately to distinguish it from the ACLU's version of "civil liberties," which is also known as the "We hate Christians" school of thought.) The subject of his talk was the poisonous effect of the "rational basis" analysis that the Supreme Court has mandated for cases involving government infringement on an individual's right to work.

Neily is a great speaker. He speaks quickly, so you have to pay attention. Paying attention isn't a problem, though, because Neily also speaks clearly, and everything he says is interesting, with enjoyable and appropriate dollops of humor thrown in at warp speed. This is a man with a very high verbal, analytical intelligence. Even as I was listening closely to what he said, a small part of my brain was running an IQ calculator. When he started speaking, I pegged him at about 145 on the IQ scale. By the time he was done, I'd moved him up to 175. After all, his is precisely the type of intelligence the IQ test measures.

Before I begin, it behooves me to tell you that I haven't yet read Neily's book. I was planning on looking for it in the library or getting it on Kindle (because, as I've probably mentioned more than once, I'm very cheap). By the time he was done speaking, though, I wanted a signed copy and shelled out \$26 (!) just so that I could gloat about having it signed by the man himself. This disclaimer is to warn you that I'm not reviewing his book, which I assume is as interesting as the speech. The book's Table of Contents also tells me that it covers a much broader range of topics than the speech did. Finally, since I haven't done anything remotely related to Constitutional law in years, you'll have to pardon (or perhaps be grateful for) the fact that this is not a lawyerly analysis.

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If you protest a state or federal law imposing such a great burden on your profession that you cannot run a viable business, or that imposes ridiculous impediments as a predicate to holding a certain type of job, the federal court judge hearing your case will ask the government to justify the law. Fortunately, for the government, the standard, known as the "rational basis test" is so low that it requires no facts or analysis, just imagination. Worse, it turns the judge into an active part of the government's defense team. Or as Neily explains: ...

Here's George Will.

Disabusing the Republican Party of a cherished dogma, thereby requiring it to forgo a favorite rhetorical trope, will not win Clark M. Neily III the gratitude of conservatives who relish denouncing “judicial activism.” However, he and his colleagues at the libertarian Institute for Justice believe the United States would be more just if judges were less deferential to legislatures.

In his book “Terms of Engagement: How Our Courts Should Enforce the Constitution’s Promise of Limited Government,” Neily writes that the United States is not “a fundamentally majoritarian nation in which the ability to impose one’s will on others through law is a sacred right that courts should take great pains not to impede.” America’s defining value is not majority rule but individual liberty.

Many judges, however, in practicing what conservatives have unwisely celebrated as “judicial restraint,” have subordinated liberty to majority rule. Today, a perverse conservative populism panders to two dubious notions — that majorities should enjoy a largely untrammelled right to make rules for everyone, and that most things legislatures do reflect the will of a majority.

Conservatives’ advocacy of judicial restraint serves liberalism by leaving government’s growth unrestrained. This leaves people such as Sandy Meadows at the mercy of government acting as protector of the strong.

Meadows was a Baton Rouge widow who had little education and no resources but was skillful at creating flower arrangements, which a grocery store hired her to do. Then Louisiana’s Horticulture Commission pounced. ...

Paul Ryan had a WSJ OpEd calling for a different focus for the war on poverty.

... This month marks the 50th anniversary of Lyndon B. Johnson's War on Poverty. For years, politicians have pointed to the money they've spent or the programs they've created. But despite trillions of dollars in spending, 47 million Americans still live in poverty today. And the reason is simple: Poverty isn't just a form of deprivation; it's a form of isolation. Crime, drugs and broken families are dragging down millions of Americans. On every measure from education levels to marriage rates, poor families are drifting further away from the middle class.

And Washington is deepening the divide. Over the past 50 years, the federal government has created different programs to fix different problems, so there's little or no coordination among them. And because these programs are means-tested—meaning that families become ineligible for them as they earn more—poor families effectively face very high marginal tax rates, in some cases over 80%. So the government actually discourages them from getting ahead.

Poverty isn't a rare disease from which the rest of us are immune. It's the worst strain of a widespread scourge: economic insecurity. That's why concern for the poor isn't a policy niche; it goes to the heart of the American experiment. What the poor really need is to be reintegrated into our communities. But Washington is walling them up in a massive quarantine.

On this less-than-golden anniversary, we should renew the fight. The federal government needs to take a comprehensive view of the problem. It needs to dump decades-old programs and give

poor families more flexibility. It needs to let communities like Pulaski High develop their own solutions. And it needs to remember that the best anti-poverty program is economic growth.

As my friend Sen. Mike Lee (R., Utah) likes to say, we need to bring the poor in—to expand their access to our country's free enterprise and civil society. Luckily, policy makers in states and other countries are doing just that. Here's a look at some of the latest advances in the fight against poverty. ...

Thomas Sowell has a more focused look at the failures of the war on poverty.

Without some idea of what a person or a program is trying to do, there is no way to know whether what actually happened represented a success or a failure. When the hard facts show that a policy has failed, nothing is easier for its defenders than to make up a new set of criteria, by which it can be said to have succeeded.

That has in fact been what happened with the "war on poverty."

Both President John F. Kennedy, who launched the proposal for a "war on poverty" and his successor, Lyndon B. Johnson, who guided the legislation through Congress and then signed it into law, were very explicit as to what the "war on poverty" was intended to accomplish.

Its mission was not simply to prove that spending money on the poor led to some economic benefits to the poor. Nobody ever doubted that. How could they?

What the war on poverty was intended to end was mass dependency on government. President Kennedy said, "We must find ways of returning far more of our dependent people to independence."

The same theme was repeated endlessly by President Johnson. The purpose of the "war on poverty," he said, was to make "taxpayers out of taxeaters." Its slogan was "Give a hand up, not a handout." When Lyndon Johnson signed the landmark legislation into law, he declared: "The days of the dole in our country are numbered."

Now, 50 years and trillions of dollars later, it is painfully clear that there is more dependency than ever. ...

Moody's has rated Yeshiva University's bonds as "junk." **TaxProf** has the story. Moody's Investors Service has said bonds issued for Yeshiva – a highly respected Jewish university in Manhattan – are junk.

But administrators say they are working diligently to make the university sustainable, and some faculty, driven by the notion that the university is unique and has assets and a future beyond the eye-popping short-term math, believe the institution is or can eventually be solid. ...

... University officials told Moody's they expect an "equally poor performance" this year and at least three more years of shortfalls, which come on top of several years of previous shortfalls that average about 16 percent of the institution's operating budget. Moody's said the shortfalls were driven by operations at Yeshiva's Albert Einstein College of Medicine campus.

Yeshiva University's 2012 tax return lists President Joel's compensation as \$1,242,424, and eleven other salaries in excess of \$600,000.

Free Beacon tells us about union creeps living large at Disney.

Union bigwigs representing some of the nation's lowest paid workers are holding their annual board meeting at one of Florida's ritziest resorts just months after increasing membership dues.

The United Food and Commercial Workers union, which represents 1.4 million workers, is holding its annual board meeting at Disney's Grand Floridian Resort, where "Victorian elegance meets modern sophistication."

Two-hundred-fifty union officials are attending the 11-day conference ending Jan. 25, although not all are staying at the Grand Floridian. Resort rooms start at \$488 per night before taxes and can exceed \$2,000 if officials opt for a two Bedroom Club Level suite. ...

... The union spent more than \$500,000 to host its 2011 board meeting at the Hyatt Regency Coconut Point Resort & Spa in Bonita Springs, FL—home to a "championship golf course and world-class spa"—according to UFCW's 2012 Department of Labor filings. The union also spent more \$155,000 for a conference at Asheville's Omni Grove Park Inn, a Four Diamond resort that has earned praise from Conde Nast Traveler, Golf Magazine, and Wine Spectator in recent years. ...

... UFCW does not just shell out big bucks for hotel accommodations. International President Hansen received more than \$350,000 in salary and other disbursements in 2011, while nine other union honchos pulled down more than \$220,000 on the year. ...

Andrew Malcolm with late night.

Conan: Michelle Obama says she might consider getting plastic surgery. Said, "If Barack's popularity keeps dropping, I do not want to be recognized."

Conan: Legal experts say if Justin Bieber is convicted of a felony, he could be deported back to Canada. They also say if he's found to have cocaine in his system, he could be elected mayor of Toronto.

Leno: Justin Bieber is in trouble for throwing eggs at a neighbor's house. Could be big trouble. The DA wants to charge him as an adult.

Letterman: Police raid Justin Bieber's house after his altercation with a neighbor. Now there's a five-day waiting period for him to buy eggs.

BookWorm Room

Can federal courts ever become zealous defenders of individual rights under the Constitution?

by Bookworm

I went to a lunch today where the speaker was Clark M. Neily, III, author of *Terms of Engagement: How Our Courts Should Enforce the Constitution's Promise of Limited Government*. Neily is an attorney at the libertarian Institute for Justice, a public interest organization that focuses on Constitution-centric civil liberties cases. (I know that it sounds redundant to say "Constitution-centric civil liberties cases" but I use that phrase deliberately to distinguish it from the ACLU's version of "civil liberties," which is also known as the "We hate Christians" school of thought.) The subject of his talk was the poisonous effect of the "rational basis" analysis that the Supreme Court has mandated for cases involving government infringement on an individual's right to work.

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If you protest a state or federal law imposing such a great burden on your profession that you cannot run a viable business, or that imposes ridiculous impediments as a predicate to holding a certain type of job, the federal court judge hearing your case will ask the government to justify the law. Fortunately, for the government, the standard, known as the "rational basis test" is so low that it requires no facts or analysis, just imagination. Worse, it turns the judge into an active part of the government's defense team. Or as Neily explains:

Unlike strict and intermediate scrutiny, it does not involve a search for truth but rather an exercise in creativity. Instead of trying to determine what the government is *really* up to, as they

do in other cases, judges applying rational basis review are required to accept — and even help invent — purely imaginary explanations for the government's actions. (p. 50.)

Here's how this standard played out in a real case that is near and dear to Neily's heart. Sandy Meadows was a Baton Rouge, Louisiana, widow with one marketable skill: she could arrange flowers. We're not talking the fancy flower arrangements you see in the lobby of deluxe hotels. She put together the little posies at the local supermarket and was paid a livable salary to do so. Unfortunately for Meadows, the state of Louisiana requires that florists — with a florist defined as anybody who assembles more than two flowers and sells them — to have a license.

Meadows took the license test five times and failed it five times. Lest you think she was an ignoramus, she wasn't. She didn't have a problem with the 50 written questions. Her problem was with the practical exam. In Louisiana, anyone who wants to put together posies for profit must assemble four arrangements that are then judged, not by some bureaucrat (which would be bad enough), but by a panel of florists who are given a chance to size up potential competition. That's where poor Meadows failed every time. She wasn't alone. I believe Neily said that the floral panel passed only 37% of test-takers. Neily compared this to Louisiana's State Bar pass rate, which is 61%. In other words, it's easier to become a lawyer in Louisiana than to become the gal who puts together bouquets at the local Piggly Wiggly.

Neily, on behalf of the Institute of Justice, took on Meadows' case . . . and lost. He lost because the "rational basis" test meant that the government could come up with any nonsense it wanted to justify a monopolistic licensing requirement and, when the judge wasn't convinced by the government's arguments, he was able to come up with his own, even sillier, reason for having the state put its giant thumb firmly on the scale on the side of florists.

As Neily explained it, the judge rejected the government's argument that a poorly-tied bouquet might fall apart in a bride's hands, spilling flowers at her feet, and causing her to trip and injure herself at her own wedding. Apparently that was too silly even for the judge to contemplate. Instead, the judge had his own theory, and that won the day: the florist license was necessary to protect against "contaminated soil." The judge was unmoved by the fact that nothing in the requirements for becoming a florist, or in the written exam, made mention of contaminated soil. The mere possibility that contaminated soil existed in the judge's mind meant that it could have existed in the legislature's mind when it passed the law, and there you had it — a rational basis for destroying a person's livelihood.

Meadows, incidentally, died in abysmal poverty thanks to the fact that the state of Louisiana, with the complicity of the federal judiciary, stole her livelihood.

Louisiana, of course, isn't the only place where states play favorites when it comes to the right to work. As I drove back from the lunch, I called my sister, an Oregon resident. She loves living in Oregon, but complains frequently about the fact that it is so heavily regulated one practically needs a license to sneeze. In exchange for the story about poor Meadows, my sister told me that, in Oregon, you need a license to "serve" alcohol. By this she did not mean that you need a license to work as a bartender or that a business establishment needs a license if it wants to sell alcohol to the public. What my sister meant is that, if you're the waiter who brings the wine from the kitchen to the diners' table or the martini from the bar to that same table, you need a license to do so. God alone knows what the "rational basis" for that is, but I can readily tell you the practical basis: alcohol is often the most expensive part of a meal, so the server who brings it to the table gets the biggest tips.

There is nothing whatsoever in the Constitution that gives a limited government the right to put irrational hurdles in the way of people's right to a job. The irrational hurdles come about because certain professions get the bright idea that they can lower competition (and increase profit) if they convince the government to mandate a license as a prerequisite for doing the work they do. Black women braiding hair in Washington, D.C.? They better stop braiding unless they get an expensive education, and apply for an expensive license, thereby assuring those getting their hair braided that the woman knows how to do dye jobs too. Incidentally, don't kid yourself that the politicians who pass this legislation do so because they have a principled belief that, if they don't, the Apocalypse will be minutes away. They do it because they're paid to do it in the form of campaign donations. There's nothing wrong with this . . . provided that the judges do their job.

So where do the judges stand in all this? In theory, the judges should be a bulwark against this type of unconstitutional activity — except that they're not. Instead, they bend over backwards to keep the laws on the books. Part of the problem is that they feel constrained by the Supreme Court's "rational basis test." Neily pointed out, though, that at least two appellate court panels have basically said that "rational" must have one foot grounded in reality. If the government's lawyers can come up only with manifestly ridiculous theories involving Martians and tripping brides, these courts indicated that they were not required to lend a hand.

The bigger problem with the judges, which is one that [George Will addresses in a column published just today](#) about Neily's book, is that too many judges are willing to give too much deference to state legislators. The judiciary, after all, is the only branch of government given the task of protecting the Constitution. Legislators aren't too concerned with the constitution. They're concerned with passing laws, especially those that they're paid to pass. The judges, whether because they're passive, or Leftists, or unthinking, or wrongheaded, are abandoning their constitutional responsibilities.

Incidentally, you should ignore the column title at the Washington Post, which suggests that courts should engage in judicial activism, a concept that is anathema to conservatives and libertarians. Judges are not activists when they follow the Constitution. They are activists only when they ignore or re-write it. The column title was a WaPo addition, that has nothing to do with Will's or Neily's argument that judges need to step up and protect the Constitution — and, by doing so, to protect individual liberty against government overreach.

I've long thought that government-created monopolies are bad things. I've had a lot of time to think about this, too, since I've been a member of California's State Bar for more than 30 years, a "privilege" that costs me several hundred dollars a year, much of which is used to promote political causes that I deeply dislike.

My main grumble with the Bar, though, has always been the requirement that we have to take 25 hours of "minimum continuing legal education" classes every three years in order to keep our jobs. One could argue that this isn't such an onerous requirement. Thanks to the internet, I was able to get all 25 hours done for \$49. In the beginning, though, back in the mid-1980s, it was a very expensive proposition. Big firms could circumvent the cost by having a senior lawyer "teach" a room full of assembled junior lawyers.

Sole practitioners, however, weren't so lucky. They had to go out hunting for classes, and those classes were costly, ranging from \$50 to \$200 per hour. Oh, and back in the day, you needed 12 hours a year. As far as I could see, the only benefit flowed to the MCLE providers, who had

a captive audience mandated to buy their goods. (Hmmm, sounds like Obamacare, doesn't it?) Once I figured out that MCLE was a scam, I began to realize that the State Bar was a scam too — and an unconscionable monopoly as well.

If it were up to me, membership in the State Bar would be voluntary. It would be something that the “better” class of attorney could boast about, just as they could boast about the myriad expensive classes they took in their specialty. Bar membership would be a marketing advantage, rather than a monopoly. In the old days, pre-internet, one could argue that the State Bar was the only reliable purveyor of necessary information about whether a person was qualified to be a lawyer, but that's bunk nowadays. I imagine that, were the bar to disband today, tomorrow there would be dozens of websites offering consumers information about lawyers and law firms.

At the end of the talk, I asked Neily how he expected any turnaround to happen in the courts. After all, the Supreme Court itself is the author of the instruction that judges use the “rational basis” standard, complete with creative writing, in their approach to state-mandated monopolies. Moreover, especially since Harry Reid destroyed the filibuster specifically to pack the federal courts, we can expect that there will be more judges on the bench, rather than fewer, who will always give obeisance to Big Government.

In answer, Neily said two things: First, he thinks that the American people can only be pushed so far towards big government, before they push back in sufficient numbers to force a change in politics that will eventually be reflected in the courts. He doesn't see this happening instantly, but rather posits a 30 or 40 year trend toward more respect for the Constitution and individual liberty. Let me just say, “From his lips, to God's ear.” Second, he told me that he discusses in his book some practical ideas for speeding the trend towards liberty, and you can be assured that I'll check those ideas out.

All in all, although Neily kept his speech brief, it was sufficiently packed with interesting ideas and information to sustain a long telephone call with my sister, and an even longer blog post for all of you. I look forward to reading [Terms of Engagement: How Our Courts Should Enforce the Constitution's Promise of Limited Government](#), and getting even more information about the way America's federal courts have abdicated their role as the Constitution's guardians.

Washington Post

[Judicial activism isn't a bad thing](#)

by George F. Will

Disabusing the Republican Party of a cherished dogma, thereby requiring it to forgo a favorite rhetorical trope, will not win Clark M. Neily III the gratitude of conservatives who relish denouncing “judicial activism.” However, he and his colleagues at the libertarian [Institute for Justice](#) believe the United States would be more just if judges were less deferential to legislatures.

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should take great pains not to impede.” America’s defining value is not majority rule but individual liberty.

Many judges, however, in practicing what conservatives have unwisely celebrated as “judicial restraint,” have subordinated liberty to majority rule. Today, a perverse conservative populism panders to two dubious notions — that majorities should enjoy a largely untrammelled right to make rules for everyone, and that most things legislatures do reflect the will of a majority.

Conservatives’ advocacy of judicial restraint serves liberalism by leaving government’s growth unrestrained. This leaves people such as Sandy Meadows at the mercy of government acting as protector of the strong.

Meadows was a Baton Rouge widow who had little education and no resources but was skillful at creating flower arrangements, which a grocery store hired her to do. Then [Louisiana’s Horticulture Commission](#) pounced.

It threatened to close the store as punishment for hiring an unlicensed flower arranger. [Meadows failed to get a license](#), which required a written test and the making of [four flower arrangements](#) in four hours, arrangements judged by licensed florists functioning as gatekeepers to their own profession, restricting the entry of competitors. Meadows, denied reentry into the profession from which the government had expelled her, died in poverty, but Louisianans were protected by their government from the menace of unlicensed flower arrangers.

What Louisiana does, and all states do in conferring favors through regulations that violate individuals’ rights, is obviously unjust and would be declared unconstitutional if courts would do their duty. Their duty is to protect individual liberty, including the right to earn a living, against special-interest legislation. Instead, since judicial abdication became normal during the New Deal, courts almost invariably defer to legislatures’ economic regulations, which frequently are rent-seeking by private factions.

Courts justify dereliction of judicial duty as genuflection at the altar of majority rule, as long as the court can discern, or even imagine, a “[rational basis](#)” for a regulation — even if the legislature never articulated it. Never mind the absurdity of the fiction that a majority of Louisianans know about, let alone care about, licensing flower arrangers.

Conservatives clamoring for judicial restraint, meaning deference to legislatures, are waving a banner unfurled a century ago by progressives eager to emancipate government, freeing it to pursue whatever collective endeavors it fancies, sacrificing individual rights to a spurious majoritarian ethic.

The beginning of wisdom is recognizing the implications of this fact: Government is almost never disinterested. Today’s administrative state is a congeries of interests, each of which has a metabolic urge to enlarge its dominion and that of the private-sector faction with which it collaborates. As Neily says, “Much of modern constitutional law depends on denying — or at least ignoring — the realities of the political process.” [Judge Janice Rogers Brown](#) of the U.S. Court of Appeals for the District of Columbia Circuit [says of “rational basis” jurisprudence](#): “The judiciary justifies its reluctance to intervene by claiming incompetence — apparently, judges lack the acumen to recognize corruption, self-interest, or arbitrariness in the economic realm — or

deferring to the majoritarian imperative,” which means “the absence of any check on the group interests that all too often control the democratic process.”

This process, Neily rightly insists, is not self-legitimizing, which is why judicial passivity is inconsistent with constitutional government. Between 1954 and 2002, [the Supreme Court invalidated](#) 103 of the 15,817 laws that Congress passed — 0.65 percent. It struck down about 0.5 percent of federal regulations and less than 0.05 percent of state laws. Neily says, “In light of history, experience, and common sense, it is implausible to suppose the federal government hits the constitutional strike zone 99.5 percent of the time.”

Neily argues that to say that judicial invalidations of legislative acts should be rare is no more sensible than saying NFL referees should rarely penalize players for holding. Conservatism’s task, politically hazardous but constitutionally essential, is to urge courts to throw as many flags as there are infractions.

WSJ

[A New Direction in the War on Poverty](#)

It's time to for a new approach, says Rep. Ryan

by Paul Ryan

One day at Pulaski High School in Milwaukee, a fight broke out between two students. The staff separated them, but one of the students, a young woman named Marianna, refused to relent. She continued to fight—now with the staff—and to cause a stir. Then a call went out over the school radio for "Lulu" to respond. Soon, Marianna began to calm down. Once she arrived, Lulu quickly defused the situation. Of all the people at Pulaski High—all the teachers and administrators—only one person got through to Marianna that day, and it was Lulu.

"Lulu" is Mrs. Louisa, one of five youth advisers in Pulaski High's Violence-Free Zone program. Along with program head Andre Robinson and site supervisor Naomi Perez, they work as a band of roving mentors. On a typical day, you'll find them walking the halls in black polo shirts. They chat with students, break up fights and help with homework. Most of them are recent alumni who grew up in the inner city, and they have the scars to prove it. They've been part of gangs. They've seen violence firsthand.

But they don't have education degrees or state certification. They have something more important: credibility. The youth advisers understand what the students are going through because they've had the same struggles. That credibility creates trust, and so the students listen to them. In the two years since the program started, suspensions at Pulaski High are down by 60%, and daily attendance is up by nearly 10%. Fourteen gangs used to roam the school grounds; today, they've all but disappeared. The school tried all sorts of things to keep students safe—more police presence, more cameras. But only this program worked.

Mrs. Louisa, Mrs. Perez and Mr. Robinson aren't just keeping kids in school; they're fighting poverty on the front lines. If you graduate from high school, you're much less likely to end up poor. According to the Census Bureau, a high-school graduate makes \$10,000 a year more, on average, than a high-school dropout, and a college graduate makes \$36,000 more. Ever since

that day at Pulaski High, Marianna has improved her grades and now she is looking at colleges. Yet for all its professed concern about families in need, Washington is more concerned with protecting the status quo than with pursuing what actually works.

This month marks the 50th anniversary of Lyndon B. Johnson's War on Poverty. For years, politicians have pointed to the money they've spent or the programs they've created. But despite trillions of dollars in spending, 47 million Americans still live in poverty today. And the reason is simple: Poverty isn't just a form of deprivation; it's a form of isolation. Crime, drugs and broken families are dragging down millions of Americans. On every measure from education levels to marriage rates, poor families are drifting further away from the middle class.

And Washington is deepening the divide. Over the past 50 years, the federal government has created different programs to fix different problems, so there's little or no coordination among them. And because these programs are means-tested—meaning that families become ineligible for them as they earn more—poor families effectively face very high marginal tax rates, in some cases over 80%. So the government actually discourages them from getting ahead.

Poverty isn't a rare disease from which the rest of us are immune. It's the worst strain of a widespread scourge: economic insecurity. That's why concern for the poor isn't a policy niche; it goes to the heart of the American experiment. What the poor really need is to be reintegrated into our communities. But Washington is walling them up in a massive quarantine.

On this less-than-golden anniversary, we should renew the fight. The federal government needs to take a comprehensive view of the problem. It needs to dump decades-old programs and give poor families more flexibility. It needs to let communities like Pulaski High develop their own solutions. And it needs to remember that the best anti-poverty program is economic growth.

As my friend Sen. Mike Lee (R., Utah) likes to say, we need to bring the poor in—to expand their access to our country's free enterprise and civil society. Luckily, policy makers in states and other countries are doing just that. Here's a look at some of the latest advances in the fight against poverty.

- In welfare, rely on simplicity and standards. In 2012, Great Britain approved a far-reaching reform called the Universal Credit. The government is now putting this idea into practice, and it's going through a rough patch. But the basic concept is sound. Britain collapsed six means-tested programs into one overall payment. And unlike the old programs, which abruptly cut off once a family made a certain amount of money, the Universal Credit tapers off gradually. But the payment isn't a giveaway. Every recipient, except the disabled, must either have a job or be actively looking for one.

We have some experience with this idea in our own country. In 1996, Congress required people on welfare to work, and the results were encouraging. Child-poverty rates fell by double digits. The trouble is, we haven't applied this principle far enough.

- In education, give teachers more control, and give parents a choice. Some of the most exciting work in education has occurred in Indiana. Three years ago, then-governor Mitch Daniels shepherded through the legislature several bold reforms.

Before the reforms, union-negotiated contracts required teachers to earn compensation based on seniority, not performance, and the contracts dictated all aspects of the classroom experience, from the humidity level in the school to the number of hours a teacher must spend with students. Under the new laws, teachers' pay is based on performance. In exchange, they have more control over the classroom. Collective bargaining covers only wages and benefits, so teachers can tailor the curriculum to the needs of their students.

Low-income families are also now eligible for tuition vouchers on a sliding scale, and the reforms allow parents unhappy with a low-performing public school to turn it into a charter school with the approval of their local school board.

- In job training, put people who need jobs with people who create them. The problem with federal job-training programs is that they often train workers for jobs that don't exist. According to a 2012 report by Sen. Tom Coburn (R., Okla.), the Job Corps spent up to \$76,000 per trainee, and the trainees didn't necessarily like where they ended up. The program placed culinary students as pest-control workers and nurse assistants as cashiers.

Last year, Gov. Scott Walker (R., Wis.) started the Wisconsin Fast Forward initiative, which will allow employers, rather than the state, to develop job-training programs. Employers will apply for state grants and train workers in the skills they need. The state will seek out programs that offer broadly applicable credentials, like a certificate from a trade organization, and keep tabs on their performance to see if they improve hiring and wages.

Other areas ripe for reform include health care, criminal justice and federal regulations. After all, the cultural antibodies that heal communities are already present and hard at work. For policy makers, the question is, how do we spread their influence? What barriers do we remove? What incentives do we put in place? And to whom do we look for guidance—government bureaucrats or community leaders?

For 50 years, we've been going in the wrong direction, and liberals want to march on. Some in Washington insist that you're concerned for the poor only if you're committed to a path that has failed the poor. But the question isn't whether we should do more or less of the same. It is which new direction will work best.

Jewish World Review

Fact-Free Liberals Part III

by Thomas Sowell

Since this year will mark the 50th anniversary of the "war on poverty," we can expect many comments and commemorations of this landmark legislation in the development of the American welfare state.

The actual signing of the "war on poverty" legislation took place in August 1964, so the 50th anniversary is some months away. But there have already been statements in the media and in politics proclaiming that this vast and costly array of anti-poverty programs "worked."

Of course everything "works" by sufficiently low standards, and everything "fails" by sufficiently high standards. The real question is: What did the "war on poverty" set out to do — and how well did it do it, if at all?

Without some idea of what a person or a program is trying to do, there is no way to know whether what actually happened represented a success or a failure. When the hard facts show that a policy has failed, nothing is easier for its defenders than to make up a new set of criteria, by which it can be said to have succeeded.

That has in fact been what happened with the "war on poverty."

Both President John F. Kennedy, who launched the proposal for a "war on poverty" and his successor, Lyndon B. Johnson, who guided the legislation through Congress and then signed it into law, were very explicit as to what the "war on poverty" was intended to accomplish.

Its mission was not simply to prove that spending money on the poor led to some economic benefits to the poor. Nobody ever doubted that. How could they?

What the war on poverty was intended to end was mass dependency on government. President Kennedy said, "We must find ways of returning far more of our dependent people to independence."

The same theme was repeated endlessly by President Johnson. The purpose of the "war on poverty," he said, was to make "taxpayers out of taxeaters." Its slogan was "Give a hand up, not a handout." When Lyndon Johnson signed the landmark legislation into law, he declared: "The days of the dole in our country are numbered."

Now, 50 years and trillions of dollars later, it is painfully clear that there is more dependency than ever.

Ironically, dependency on government to raise people above the poverty line had been going down for years before the "war on poverty" began. The hard facts showed that the number of people who lived below the official poverty line had been declining since 1960, and was only half of what it had been in 1950.

On the more fundamental question of dependency, the facts were even clearer. The proportion of people whose earnings put them below the poverty level — without counting government benefits — declined by about one-third from 1950 to 1965.

All this was happening before the "war on poverty" went into effect — and all these trends reversed after it went into effect.

Nor was this pattern unique. Other beneficial social trends that were going on before the 1960s reversed after other bright ideas of that decade were put into effect.

Massive "sex education" programs were put into schools, claiming that this was urgently needed to reduce a "crisis" of teenage pregnancies and venereal diseases. But teenage pregnancies and venereal diseases had both been going down for years.

The rate of infection for gonorrhea, for example, declined every year from 1950 through 1959, and the rate of syphilis infection was, by 1960, less than half of what it had been in 1950. Both trends reversed and skyrocketed after "sex education" became pervasive.

The murder rate had been going down for decades, and in 1960 was only half of what it had been in 1934. That trend suddenly reversed after the liberal changes in criminal laws during the 1960s. By 1974, the murder rate was more than twice as high as it had been in 1961.

While the fact-free liberals celebrate the "war on poverty" and other bright ideas of the 1960s, we are trying to cope with yet another "reform" that has made matters worse, ObamaCare.

TaxProf Blog

[Yeshiva University's Bonds Downgraded to 'Junk'](#)

by Paul Caron

Moody's Investors Service has said bonds issued for Yeshiva – a highly respected Jewish university in Manhattan – [are junk](#).

But administrators say they are working diligently to make the university sustainable, and some faculty, driven by the notion that the university is unique and has assets and a future beyond the eye-popping short-term math, believe the institution is or can eventually be solid.

Faculty have dealt with a half-decade of frozen pay – though they received a slight increase this year – and a decrease in the university's contributions to their pension funds. Faculty searches are in jeopardy. President Richard Joel is [reportedly ready to sell buildings and cut programs](#). ...

Yeshiva's model may be preferable for some Jewish families, particularly parents of high-achieving female students, said Ruth A. Bevan, the director of Yeshiva's international affairs program. The party schools of the day are just not a good fit for the children of modern Orthodox parents. "I don't think there is any Orthodox parent that wants put to his or her child into that kind of situation, so YU remains a haven, it's a safe environment for students to be in," Bevan said. "We don't have drugs, we don't have alcohol, we don't have staying out all night – that just doesn't happen at the university." ...

Moody's sees an institution without much liquidity, that relies on credit to support operations and with "severe cash flow deficits leading to financial resource erosion." A [draft of Yeshiva's 2013 financial statements](#) show the university spent \$716 million last year -- a whopping \$146 million more than it brought in, and a shortfall the size of some smaller institutions' entire budgets.

University officials told Moody's they expect an "equally poor performance" this year and at least three more years of shortfalls, which come on top of several years of previous shortfalls that average about 16 percent of the institution's operating budget. Moody's said the shortfalls were driven by operations at Yeshiva's Albert Einstein College of Medicine campus.

Yeshiva University's 2012 tax return lists President Joel's compensation as \$1,242,424, and eleven other salaries in excess of \$600,000.

Washington Free Beacon

Living Big on the Backs of Grocery Baggers

UFCW honchos staying at \$488/night Disney World resort for annual board meeting

by Bill McMorris



Grand Floridian Resort / Disney World

Union bigwigs representing some of the nation’s lowest paid workers are holding their annual board meeting at one of Florida’s ritziest resorts just months after increasing membership dues.

The United Food and Commercial Workers union, which represents 1.4 million workers, is holding its annual board meeting at Disney’s Grand Floridian Resort, where “[Victorian elegance meets modern sophistication](#).”

Two-hundred-fifty union officials are attending the 11-day conference ending Jan. 25, although not all are staying at the Grand Floridian. Resort rooms start at [\\$488 per night before taxes](#) and can exceed [\\$2,000](#) if officials opt for a two Bedroom Club Level suite.

When UFCW officials are not meeting to discuss the union’s progress in its [battle against Walmart](#), they [can](#) “relax in the sumptuous lobby as the live orchestra plays ragtime, jazz and popular Disney tunes. Bask on the white-sand beach, indulge in a luxurious massage and watch the fireworks light up the sky over Cinderella Castle.”

A union spokeswoman confirmed that union leadership had been in Florida “all this week” for the meeting, but declined to elaborate how many people are attending the retreat, nor would she confirm that they were staying at the Grand Floridian.

A receptionist at the hotel confirmed that union President Joseph T. Hansen was staying at the resort. *Washington Free Beacon* phone calls to Hansen's hotel room went unanswered.

The meeting comes just months after UFCW leadership decided to raise dues payments at its 2013 convention.

"Delegates did not make this decision lightly ... we fully understand the challenges that our members face as a result of the impact of the recession," UFCW Local 5 president Ron Lind said in a letter addressed to his California members. "The majority of the revenue from this increase will be sent directly to the International union."

The international union has run up a number of lavish tabs on luxury accommodations in recent years.

The union spent more than \$500,000 to host its 2011 board meeting at the Hyatt Regency Coconut Point Resort & Spa in Bonita Springs, FL—home to a ["championship golf course and world-class spa"](#)—according to UFCW's 2012 Department of Labor filings. The union also spent more \$155,000 for a conference at Asheville's [Omni Grove Park Inn](#), a [Four Diamond resort](#) that has earned praise from Conde Nast Traveler, Golf Magazine, and Wine Spectator in recent years.

The UFCW also spent more than \$24,000 at the Hammock Beach Resort in Palm Coast, a Forbes Travel Guide [Editor's Pick](#). The UFCW National Headquarters spent nearly \$9,000 at The Palm Restaurant, a world-class steakhouse in Charlotte.

UFCW does not just shell out big bucks for hotel accommodations. International President Hansen received more than \$350,000 in salary and other disbursements in 2011, while nine other union honchos pulled down more than \$220,000 on the year.

Union leaders weren't the only ones to receive generous paydays compliments of UFCW members. MSNBC host Ed Schultz received \$20,000 for appearing at a 2011 conference. He pulled in more than [\\$200,000](#) for such appearances that year.

UFCW has been a staunch critic of lavish living through OUR Walmart, a worker center subsidiary of the union that has campaigned for higher wages and benefits at the nation's largest employer. The union and OUR Walmart sponsor Walmart1Percent.org to highlight the Walton family's wealth.

"The Waltons have these riches thanks to the hard work of their own employees and all of us taxpayers," the [website says](#).

Labor watchdogs criticized the UFCW's gilded spending habits, pointing out that the union is only able to spend \$61 million on "representational activities," \$13.2 million on "political activities and lobbying" and \$1.9 million on air travel because of the dues workers pay.

"At a time when labor bosses are hiking union dues on working men and women, it is telling that they have decided to splurge on a luxurious retreat at a swanky, high-end Florida resort," said Ryan Williams of Worker Center Watch. "The decision to hold this event at such an extravagant location highlights the true priorities of the people who are in charge of the UFCW."

Union leadership was careful to avoid mentioning some of its more lavish spending when it informed members of the \$36 dues hike in October, focusing its appeal on the union's political goals.

"Our battles against the spread of Walmart and other low-wage, non-union retailers as well as the defense against anti-worker political forces continue to drain our resources. We must continue to fund these and other efforts," California union executive Ronald Lind said in his letter.

One source familiar with the retreat said that kind of appeal was easier for a worker to swallow than telling them that their dues were going to pay for a swanky resort.

"The board members are hitting up their members for higher dues while they're living high on the hog," the source said.

IBD

Late Night Humor

by Andrew Malcolm

Conan: A Japanese company has bought the Jim Beam Whiskey distillery for \$16 billion. Of course, this morning, the Japanese company woke up in an alley and said, "I did what?"

Fallon: Yesterday, a Southwest Airlines plane with more than 100 passengers actually landed at the wrong airport in Missouri. On the bright side, at least passengers met up with their luggage.

Conan: Manufacturers are testing a new drug that increases a woman's sex drive. The drug is actually taken by men, and it makes them do the dishes.

Fallon: Gov. Chris Christie unveiled his 2014 agenda this week. Asked what he plans for the next year, Christie said, "I'll close that bridge when I get to it."

Conan: A Southwest Airlines flight landed at the wrong airport in Missouri earlier this week. A Southwest spokesperson said, "Close enough."

Fallon: Michelle Obama turned 50 years old the other day. She had a great party--especially when she blew out the candles on her birthday cake.

Conan: Leonardo DiCaprio left his girlfriend at home to take his mother to the Golden Globes. Then, he dumped his mother for a younger, hotter mom.

Fallon: French President Hollande had an affair with a much younger actress. Under French law he could face up to 30 high-fives.

Leno: During that George Washington bridge scandal a two-block drive took an hour. In LA we call that making pretty good time. People kill for that kind of movement on the 405.

Letterman: Tremendous Golden Globes show--3 hours of actors thanking their agents. Meryl Streep didn't win, so her goons shut down the Ventura Freeway.

Letterman: New vending machine is out to give you piping hot burritos. Nothing says fine dining like D-4. It's for people who believe Taco Bell is too snooty.

Conan: Police are investigating that Justin Bieber egg-throwing incident. You know you're a real gangster when police raid you looking for something from the dairy aisle.

Leno: Today was the fifth anniversary of Capt. Sully landing safely in the Hudson River. To celebrate, a Southwest pilot tried to land in the Hudson, but ended up in the Potomac.

Conan: Michelle Obama says she might consider getting plastic surgery. Said, "If Barack's popularity keeps dropping, I do not want to be recognized."

Conan: Legal experts say if Justin Bieber is convicted of a felony, he could be deported back to Canada. They also say if he's found to have cocaine in his system, he could be elected mayor of Toronto.

Fallon: 'American Idol's' 13th season. Starts with thousands, narrowed to 20, then 10, five until finally, there's only 1 person...left watching the show.

Leno: Justin Bieber is in trouble for throwing eggs at a neighbor's house. Could be big trouble. The DA wants to charge him as an adult.

Letterman: Police raid Justin Bieber's house after his altercation with a neighbor. Now there's a five-day waiting period for him to buy eggs.

Conan: A new study shows that heavy drinking can speed up memory loss in middle-aged men. Not only that, but a new study shows that heavy drinking can speed up memory loss in middle-aged men.

Conan: Oprah's movie "The Butler" was not nominated for Best Picture. Oprah is said to be very disappointed, but she's being comforted by her 700 real butlers.

Fallon: Trace Adkins was on a country music cruise and got into a fight with a Trace Adkins impersonator. Nasty brawl! I heard it took five Elvises to pull them apart.

Fallon: New research has found that having a drink every day can hurt your memory. Or as that's also known, "the point."

Leno: Health experts warn that pot smoking can cause apathy. They did a poll and found pot smokers could care less.

Leno: Southwest Airlines is bringing back one of its most popular promotions: 2 for 1. Buy a ticket to one airport, they'll take you to two others.

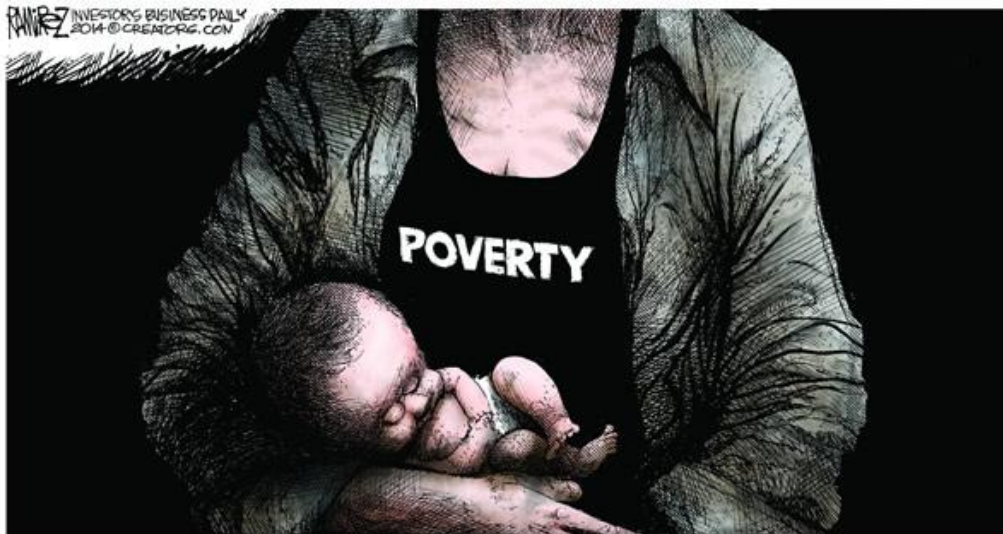
Letterman: The Academy Award nominations are out. Meryl Streep was nominated. About time. Woody Allen was nominated, which means we'll get another angry tweet from that Sinatra kid.

Letterman: A lot of people think the new Pope has gone power crazy. I heard a couple weeks ago he had his uncle executed.

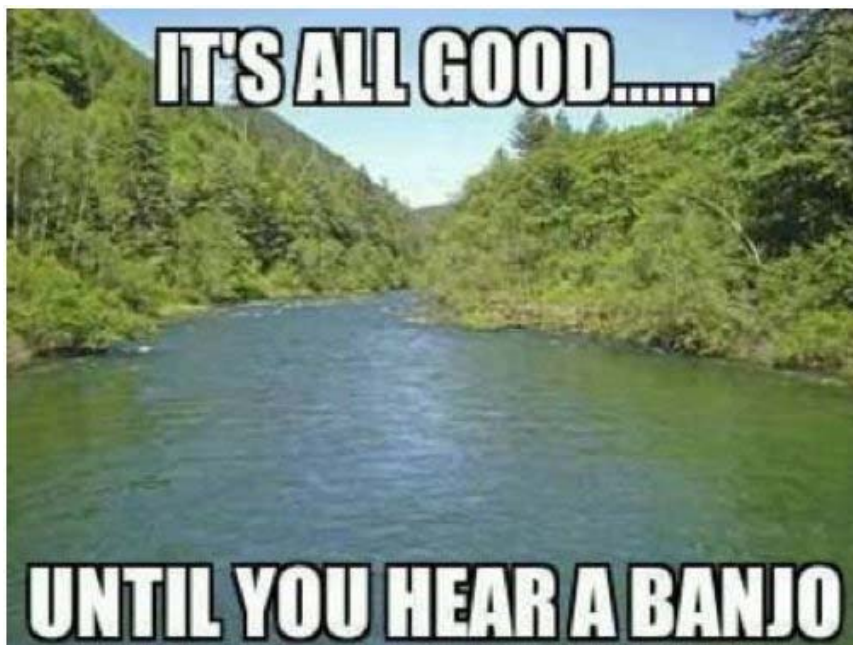
Leno: Did you see this? President Obama wants all the private phone data collected by the NSA stored with a third party. The bad news: The third party is Target.

Fallon: New data says sex actually makes you smarter by improving brain function. Confirms what I've always believed -- Stephen Hawking is a slut.

Conan: The Patriots and the 49ers were bummed about losing out on the Super Bowl until they realized now they don't have to go to New Jersey.



The SINGLE PARENT



**EVERYDAY, THOUSANDS OF INNOCENT
PLANTS ARE KILLED**



**BY VEGETARIANS
HELP END THE VIOLENCE.**

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