

February 4, 2014

Finally, [Peggy Noonan](#) gets it.

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I watched at home and thought: They hate it. They being the people, whom we're now supposed to refer to as the folks. But you look at the polls at how people view Washington—one, in October, had almost 9 in 10 disapproving—and you watch a Kabuki-like event like this and you know the distance, the psychic, emotional and experiential distance, between Washington and America, between the people and their federal government, is not only real but, actually, carries dangers. History will make more of the distance than we do. Someday in the future we will see it most vividly when a truly bad thing happens and the people suddenly need to trust what Washington says, and will not, to everyone's loss.

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A [FL LawProf](#) says the president cannot ignore laws.

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people who entered this country illegally, the president defied the Immigration and Nationality Act, which states that any alien who is "inadmissible at the time of entry" into the country "shall" be removed. ...

And a [Daily Beast](#) article says he can't ignore the truth about the good wages women are actually getting.

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What is wrong and embarrassing is the President of the United States reciting a massively discredited factoid. The 23-cent gender pay gap is simply the difference between the average earnings of all men and women working full-time. It does not account for differences in occupations, positions, education, job tenure, or hours worked per week. When all these relevant factors are taken into consideration, the wage gap narrows to about five cents. And no one knows if the five cents is a result of discrimination or some other subtle, hard-to-measure difference between male and female workers. In its fact-checking [column](#) on the State of the Union, the Washington Post included the president's mention of the wage gap in its list of dubious claims. "There is clearly a wage gap, but differences in the life choices of men and women... make it difficult to make simple comparisons."

Consider, for example, how men and women differ in their college majors. Here is a list ([PDF](#)) of the ten most remunerative majors compiled by the Georgetown University Center on Education and the Workforce. Men overwhelmingly outnumber women in all but one of them:

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[Virginia Postrel](#) defends art majors.

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Jillian Kay Melchoir posts on the felons who are obamacare navigators. In CA, of course.

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WSJ

[Meanwhile, Back in America . . .](#)

The growing distance between Washington and the public it dominates.

by Peggy Noonan

The State of the Union was a spectacle of delusion and self-congratulation in which a Congress nobody likes rose to cheer a president nobody really likes. It marked the continued degeneration of a great and useful tradition. Viewership was down, to the lowest level since 2000. This year's innovation was the Parade of Hacks. It used to be the networks only showed the president walking down the aisle after his presence was dramatically announced. Now every cabinet-level officeholder marches in, shaking hands and high-fiving with breathless congressmen. And why not? No matter how bland and banal they may look, they do have the power to destroy your life—to declare the house you just built as in violation of EPA wetland regulations, to pull your kid's school placement, to define your medical coverage out of existence. So by all means attention must be paid and faces seen.

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Supposedly people feel great rage about this, and I imagine many do. But the other night I wondered if what they're feeling isn't something else.

As the president made his jaunty claims and the senators and congressmen responded semirapturously I kept thinking of four words: *Meanwhile, back in America . . .*

Meanwhile, back in America, the Little Sisters of the Poor were preparing their legal briefs. The Roman Catholic order of nuns first came to America in 1868 and were welcomed in every city they entered. They now run about 30 homes for the needy across the country. They have, quite cruelly, been told they must comply with the ObamaCare mandate that all insurance coverage include contraceptives, sterilization procedures, morning-after pills. If they don't—and of course they can't, being Catholic, and nuns—they will face ruinous fines. The Supreme Court kindly granted them a temporary stay, but their case soon goes to court. The Justice Department brief, which reads like it was written by someone who just saw "Philomena," suggests the nuns are being ignorant and balky, all they have to do is sign a little, meaningless form and the problem will go away. The sisters don't see the form as meaningless; they know it's not. And so they fight, in a suit along with almost 500 Catholic nonprofit groups.



Everyone who says that would never have happened in the past is correct. It never, ever would have under normal American political leadership, Republican or Democratic. No one would've defied religious liberty like this.

The president has taken to saying he isn't ideological but this mandate—his mandate—is purely ideological.

It also is a violation of traditional civic courtesy, sympathy and spaciousness. The state doesn't tell serious religious groups to do it their way or they'll be ruined. You don't make the Little Sisters bow down to you.

This is the great political failure of progressivism: They always go too far. They always try to rub your face in it.

Meanwhile, back in America, disadvantaged parents in Louisiana—people who could never afford to live in places like McLean, Va., or Chevy Chase, Md.—continue to wait to see what will happen with the state's successful school voucher program. It lets poor kids get out of failed public schools and go to private schools on state scholarships. What a great thing. But the Obama Justice Department filed suit in August: The voucher system might violate civil rights law by worsening racial imbalance in the public schools. Gov. Bobby Jindal, and the parents, said nonsense, the scholarship students are predominately black, they have civil rights too. Is it possible the Justice Department has taken its action because a major benefactor of the president's party is the teachers unions, which do not like vouchers because their existence suggests real failures in the public schools they run?

Meanwhile, back in America, conservatives targeted and harassed by the Internal Revenue Service still await answers on their years-long requests for tax-exempt status. When news of the IRS targeting broke last spring, agency officials lied about it, and one took the Fifth. The president said he was outraged, had no idea, read about it in the papers, boy was he going to get to the bottom of it. An investigation was announced but somehow never quite materialized. Victims of the targeting waited to be contacted by the FBI to be asked about their experience. Now the Justice Department has made clear its investigation won't be spearheaded by the FBI but by a department lawyer who is a campaign contributor to the president and the Democratic Party. Sometimes you feel they are just laughing at you, and going too far.

In the past five years many Americans have come to understand that an agency that maintained a pretty impressive record for a very long time has been turned, at least in part, into a political operation. Now the IRS has proposed new and tougher rules for grass-roots groups. Cleta Mitchell, longtime attorney for many who've been targeted, says the IRS is no longer used in line with its mission: "They're supposed to be collecting revenues, not snooping and trampling on the First Amendment rights of the citizens. We are not subjects of a king, we are permitted to engage in First Amendment activities without reporting those activities to the IRS."

All these things—the pushing around of nuns, the limiting of freedoms that were helping kids get a start in life, the targeting of conservative groups—all these things have the effect of breaking bonds of trust between government and the people. They make citizens see Washington as an alien and hostile power.

Washington sees the disaffection. They read the polls, they know.

They call it rage. But it feels more like grief. Like the loss of something you never thought you'd lose, your sense of your country and your place in it, your rights in it.

NY Times

Presidents Cannot Ignore Laws as Written

by Elizabeth Price Foley

As every grade-schooler knows, Congress has sole authority to make laws. The president has a corresponding duty to "take care that the laws be faithfully executed." When one branch of government exceeds its authority, separation of powers is violated, and representative government breaks down.

Presidents have power to fill gaps or ambiguities in laws passed by Congress. They do not, however, have power to ignore laws as written. For example, when President Obama unilaterally raised the minimum wage for federal contractors' employees, he directly contravened the Fair Labor Standards Act, which says that "every employer shall pay to each of his employees" a minimum wage of \$7.25 per hour.

President Obama has shown a penchant for ignoring the plain language of our laws. He unilaterally rewrote the employer mandate and several other provisions of the Affordable Care Act, failing to faithfully execute a law which declares, unambiguously, that these provisions "shall" apply beginning Jan. 1, 2014. Similarly, in suspending deportation for a class of young people who entered this country illegally, the president defied the Immigration and Nationality Act, which states that any alien who is "inadmissible at the time of entry" into the country "shall" be removed.

The only strength gained by unilateral presidential lawmaking is raw speed: policies can be implemented more swiftly by unilateral presidential action than by congressional deliberation and debate. But the dangers are many, and should counsel any American — of whatever political persuasion — that such dispatch comes at a high constitutional cost.

When the president fails to execute a law as written, he not only erodes the separation of powers, he breeds disrespect for the rule of law and increases political polarization. The president's own party — for example, the current Democrat-controlled Senate — will face intense pressure to elevate short-term, partisan victory over defending constitutional principles. If partisan preferences prevail, Congress will be unable, as an institution, to check presidential ambition and defend its lawmaking prerogative.

Once such precedent is established, damage to the constitutional architecture is permanent. The next president of a different party will face similar pressures and undo all the previous actions. He will initiate a new round of unilateral lawmaking, satisfying his own political base. The law will fluctuate back and forth, and our legislature will become little more than a rubber stamp for a single elected individual, which is not how representative government is supposed to work.

Elizabeth Price Foley is a professor of constitutional law at Florida International University College of Law. She is the author of ["The Tea Party: Three Principles."](#)

Daily Beast

[No, Women Don't Make Less Money Than Men](#)

It's the bogus statistic that won't die—and president deployed it during the State of the Union—but women do not make 77 cents to every dollar a man earns.

by Christina Hoff Sommers

President Obama repeated the spurious gender wage gap statistic in his State of the Union address. "Today," he said, "women make up about half our workforce. But they still make 77 cents for every dollar a man earns. That is wrong, and in 2014, it's an embarrassment."

What is wrong and embarrassing is the President of the United States reciting a massively discredited factoid. The 23-cent gender pay gap is simply the difference between the average earnings of all men and women working full-time. It does not account for differences in occupations, positions, education, job tenure, or hours worked per week. When all these relevant factors are taken into consideration, the wage gap narrows to about five cents. And no one knows if the five cents is a result of discrimination or some other subtle, hard-to-measure difference between male and female workers. In its fact-checking [column](#) on the State of the Union, the *Washington Post* included the president's mention of the wage gap in its list of dubious claims. "There is clearly a wage gap, but differences in the life choices of men and women... make it difficult to make simple comparisons."

Consider, for example, how men and women differ in their college majors. Here is a list ([PDF](#)) of the ten *most* remunerative majors compiled by the Georgetown University Center on Education and the Workforce. Men overwhelmingly outnumber women in all but one of them:

1. Petroleum Engineering: 87% male
2. Pharmacy Pharmaceutical Sciences and Administration: 48% male
3. Mathematics and Computer Science: 67% male
4. Aerospace Engineering: 88% male
5. Chemical Engineering: 72% male
6. Electrical Engineering: 89% male
7. Naval Architecture and Marine Engineering: 97% male
8. Mechanical Engineering: 90% male
9. Metallurgical Engineering: 83% male
10. Mining and Mineral Engineering: 90% male

And here are the 10 *least* remunerative majors—where women prevail in nine out of ten:

1. Counseling Psychology: 74% female
2. Early Childhood Education: 97% female
3. Theology and Religious Vocations: 34% female
4. Human Services and Community Organization: 81% female
5. Social Work: 88% female

6. Drama and Theater Arts: 60% female
7. Studio Arts: 66% female
8. Communication Disorders Sciences and Services: 94% female
9. Visual and Performing Arts: 77% female
10. Health and Medical Preparatory Programs: 55% female

Much of the wage gap can be explained away by simply taking account of college majors. Early childhood educators and social workers can expect to earn around \$36,000 and \$39,000, respectively. By contrast, petroleum engineering and metallurgy degrees promise median earnings of \$120,000 and \$80,000. Not many aspiring early childhood educators would change course once they learn they can earn more in metallurgy or mining. The sexes, taken as a group, are somewhat different. Women, far more than men, appear to be drawn to jobs in the caring professions; and men are more likely to turn up in people-free zones. In the pursuit of happiness, men and women appear to take different paths.

But here is the mystery. These and other differences in employment preferences and work-family choices have been [widely studied](#) in recent years and are now documented in a mountain of solid empirical research. By now the President and his staff must be aware that the wage gap statistic has been demolished. This is not the first time the *Washington Post* [has alerted](#) the White House to the error. Why continue to use it? One possibility is that they have been taken in by the apologetics of groups like the National Organization for Women and the American Association of University Women. In its 2007 *Behind the Pay Gap report*, the AAUW [admits](#) that most of the gap in earnings is explained by choices. But this admission is qualified: “Women’s personal choices are similarly fraught with inequities,” says the AAUW. It speaks of women being “pigeonholed” into “pink-collar” jobs in health and education. [According to NOW](#), powerful sexist stereotypes “steer” women and men “toward different education, training, and career paths.”

Have these groups noticed that American women are now among the most educated, autonomous, opportunity-rich women in history? Why not respect their choices? For the past few decades, untold millions of state and federal dollars have been devoted to recruiting young women into engineering and computer technology. It hasn’t worked. The percent of degrees awarded to women in fields like computer science and engineering has either stagnated or significantly *decreased* since 2000. (According to Department of Education data, in 2000, women earned 19 percent of [engineering](#) BA’s, and 28 percent in [computer science](#); by 2011, only 17 percent of engineering degrees were awarded to females, and the percent of female computer science degrees had dropped to 18.) All evidence suggests that though young women have the talent for engineering and computer science, their interest tends to lie elsewhere. To say that these women remain helplessly in thrall to sexist stereotypes, and manipulated into life choices by forces beyond their control, is divorced from reality—and demeaning to boot. If a woman wants to be a teacher rather than a miner, or a veterinarian rather than a petroleum engineer, more power to her.

The White House should stop using women’s choices to construct a false claim about social inequality that is poisoning our gender debates. And if the President is truly persuaded that statistical pay disparities indicate invidious discrimination, then he should address the wage gap in his own backyard. Female staff at the White House [earn 88 cents](#) on the dollar compared to men. Is there a White House war on women?

Bloomberg

Obama Fails Art History and Economics

by Virginia Postrel

President Obama had a perfectly fine message for young people when he spoke at a General Electric plant in Wisconsin yesterday: Learning a skilled trade can be just as lucrative and worthy of respect as getting a college diploma. Unfortunately, that's not what he said.

Instead, he [took a cheap shot](#) at the favorite punching bag of people who deride higher education in general and the liberal arts in particular. He attacked art history. "I promise you, folks can make a lot more potentially with skilled manufacturing or the trades than they might with an art history degree," he said.

It was the cheapest of cheap shots because, as [I noted in a column two years ago](#), almost no one majors in art history. Art history majors account for less than 0.2 percent of working adults with college degrees.

It was also a cheap shot because art history isn't a major naive kids fall into because they've heard a college degree -- any college degree -- will get you a good job. It's an intellectually demanding major, requiring the memorization and mastery of a large body of visual material, a facility for foreign languages, and the ability to write clearly and persuasively. And it's famously elitist.

In fact, the reason pundits instinctively pick on art history is that it seems effete. It's stereotypically a field for prep school graduates, especially women, with plenty of family wealth to fall back on. In fact, a New York Times analysis of Census data shows that art history majors are [wildly overrepresented among those in the top 1 percent of incomes](#). Perhaps the causality runs from art history to high incomes, but I doubt it.

If the president had been serious about his message, he would have compared learning a skilled trade to majors that are actually popular, such as communications and psychology. It would have been much braver and more serious to take on the less-rigorous majors that attract lots of students. But it wouldn't have gotten a laugh.

National Review

California's Obamacare Scandal

Officials say a criminal record should not keep someone from getting a job. But why this job?

by Jillian Kay Melchoir

At least 43 convicted criminals are working as Obamacare navigators in California, including three individuals with records of significant financial crimes.

Although some of the offenses are decades old, and although convicted criminals account for only 1 percent of the 3,729 certified enrollment counselors in the state, Californians still have good cause to be concerned about their privacy.

Even a single crooked navigator could do significant harm to the public. That's because when navigators sign consumers up for health insurance under the Affordable Care Act, they have access to lots of private information, including Social Security numbers, home addresses, and financial data — basically, everything on the wish list of identity thieves and fraudsters. Navigators also are likely to work with a population that is more vulnerable than average.

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These statistics raise a delicate and controversial issue. On the one hand, it's in the public interest to give former criminals the chance to reform themselves and make a living in the legitimate economy. On the other hand, innocent consumers deserve adequate protection of their private information, especially when they're being compelled to buy something.

Last year, California's Republican lawmakers unsuccessfully requested that Covered California establish a policy forbidding anyone with a prior conviction, regardless of the date, to work as a navigator.

Assemblyman Brian Nestande, a Republican from the Inland Empire, says, "One person can do tremendous harm with access to that type of information, and you run that possibility with people with clean records, so you certainly don't want to up your odds by mixing in people with criminal records. . . . You can have somewhat of an argument if someone did one thing a long time ago, but to have a repeated offense of forgery — that's a huge red flag. That person should not be allowed access to this type of information."

Covered California's spokesman, Dana Howard, explained the exchange's logic in hiring navigators with criminal records: "These charges are old. People make mistakes. They paid their debt to society. They rehabilitated themselves. And so they apply, and they meet the qualifications. We do not see them as a threat."

But other official correspondence suggests the opposite. In December, Covered California wrote me a letter explaining why it could not release the public records I had requested about its navigators' criminal histories, offering statistics as a compromise. It cited "deliberative process privilege," and it also claimed that releasing the records would violate the privacy of the navigators. (Odd, isn't it?, that the criminal navigators' privacy rights are apparently valued more than consumers' privacy rights.)

Here's the interesting part, though: "All of these documents are nondisclosable because 'the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record,'" a lawyer for the insurance exchange wrote, citing California Government Code §6255. "Disclosing the names and criminal records of individuals applying to assist in Covered California's push to enroll vast numbers in health insurance by March 31,

2014, is likely to discourage participation in this critical program and thus harm the people of California.”

Translation: If Californians had the same information as their insurance exchange’s bureaucrats regarding navigators’ criminal records, they’d be scared off — and that would undermine the political goal of high enrollment.

Perhaps Californians should consider themselves lucky that their navigators are required to submit to background checks at all — there is no such requirement in the ACA itself, and in as many as 31 states, no screening is mandated.

In California, however, certified enrollment counselors must pass a fingerprint-based criminal-background check conducted by the state Department of Justice. Applicants with potentially disqualifying convictions undergo individual legal review before a hiring decision is made, and they have the chance to appeal it within 60 days.

The problem is, a background check isn’t worth much unless it’s paired with an assessment process that screens out applicants who pose a risk to the public. In California, an applicant is disqualified only if he or she has “been convicted of or has a pending charge for a crime of moral turpitude that is substantially related to the qualifications, functions, or duties of the job.”

Furthermore, even though applicants are required to self-report prior offenses, records show that 21 prospective certified enrollment counselors who later proved to have criminal convictions failed to do so — and were approved anyway.

The fraud and forgery convictions, though disclosed by the applicants themselves, are the most worrying. Covered California’s Howard tells me, “There isn’t any law that says we should consider financial crimes as something that will follow you through the rest of your life, and therefore you should not have a job. That’s just not appropriate.”

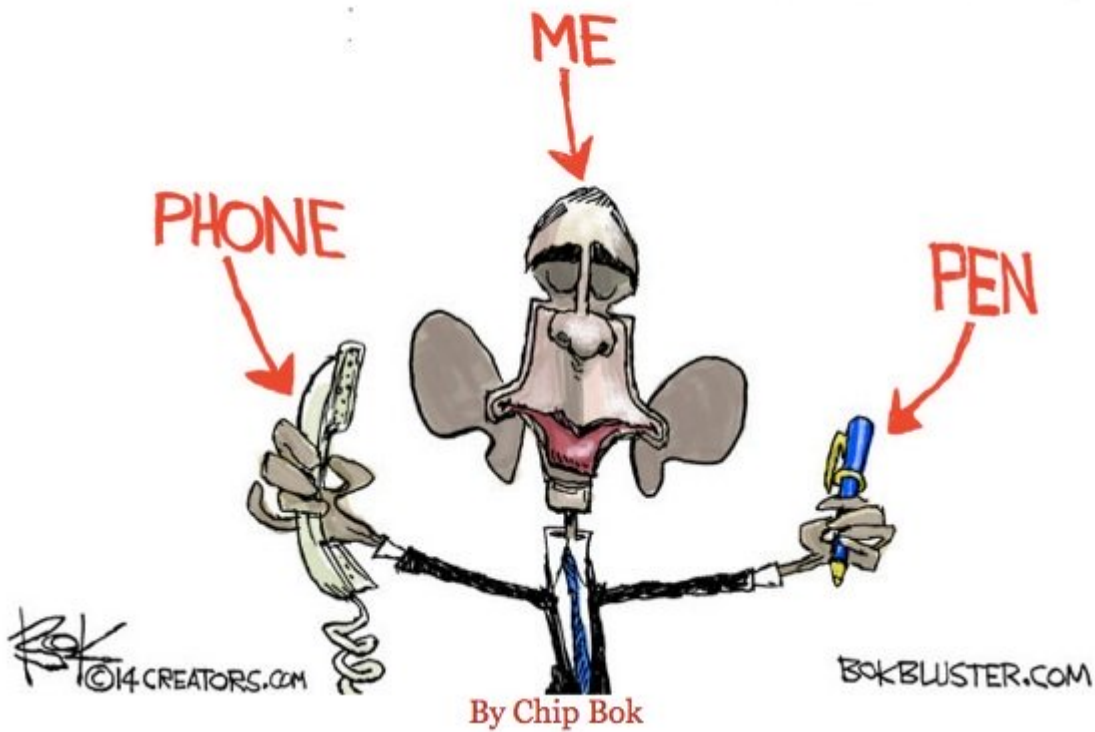
But in some other states’ exchanges, financial crimes such as fraud and forgery are automatically disqualifying. And though no long-term statistics are available, the three-year recidivism rate for people convicted of fraud or forgery in California is a whopping 52.8 percent, according to a brand-new report from the state Department of Corrections and Rehabilitation.

“Somebody with multiple counts of forgery — it is in their nature to commit crime,” says identity-theft expert Robert Siciliano, CEO of BestIDTheftCompanys.com. “They see crime as the path of least resistance to make a living, and it would only make sense that they would gravitate toward a profession with this kind of access.”

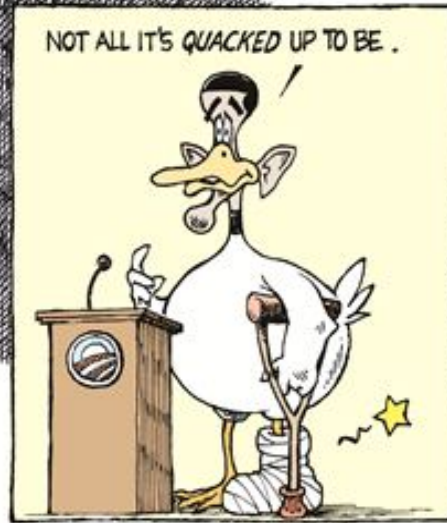
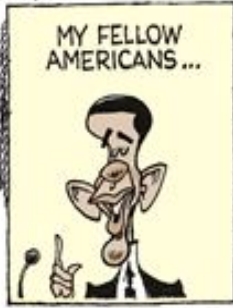


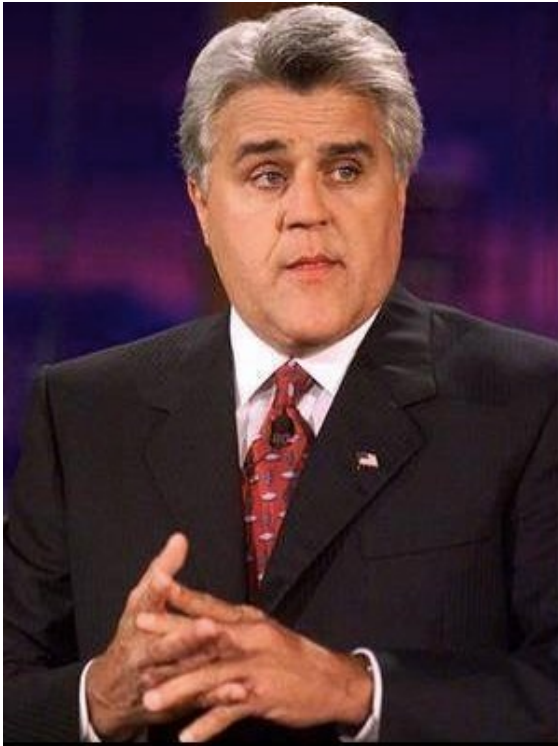
ANOTHER CRUISE SHIP WITH EVERYONE GETTING SICK ONBOARD

THREE BRANCHES OF GOVERNMENT



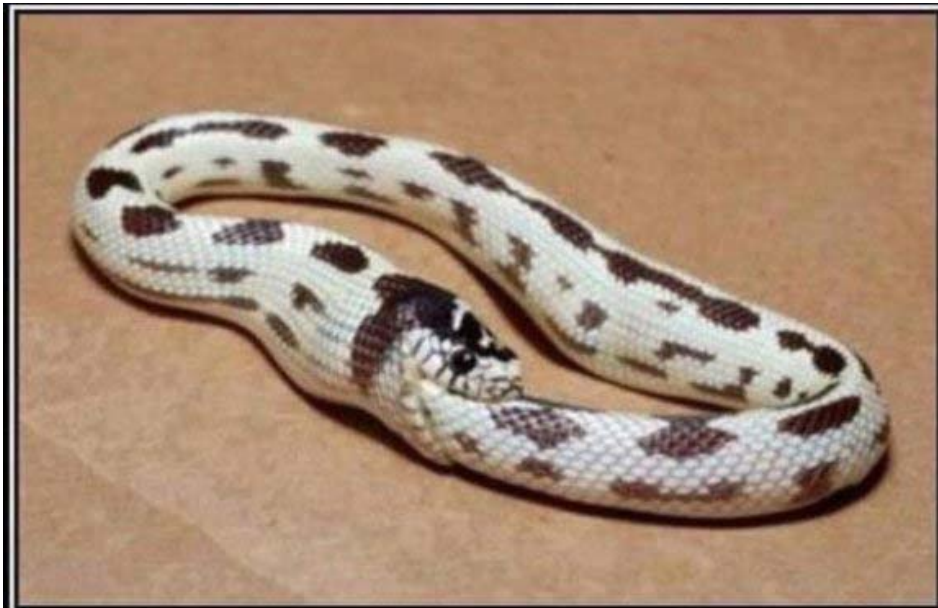
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**ONLY THE FEDERAL
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**A Nation Trying to Tax
Itself Into Prosperity**

Yeah, it's that kind of smart.