# FRIENDS OF THE MIDDLE
## NEWSLETTER #51 — JAN. 13, 2012

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# Government Needs De-Regulation: People Don't Need No Stinkin' Rights!

(posted by Steven W. Baker / SteveB, Jan. 13, 2012)

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Here is a cautionary tale for you, my friends:

"Death in the Devil's Chair: Florida Man's Pepper Spray Death Raises Questions About Jail Abuse" by Radley Balco, Huffington Post

Jan. 11, 2012, (http://www.huffingtonpost.com/2012/01/11/jail-abuse-nick-christie-pepper-spray-florida_n_1192412.html)


Video: http://www.youtube.com/watch?feature=player_embedded&v=9nssw1bzBic

When he left his home in Ohio to visit his brother in Fort Myers, Fla. in March 2009, Nick Christie was already breaking down, physically and mentally. His wife Joyce was concerned about his well-being. Rightly so. By the end of the month, the grandfather of two, whose only prior run-in with the law was a DUI in the 1980s, would be strapped to a restraining chair in the Lee County, Fla. jail, coated with a thick layer of pepper spray, smothered in a "spit hood," then finally taken to a Florida hospital where, two days later, he would die.

Christie, 62, a retired boilermaker, suffered from heart disease as well as emphysema, the latter the likely result of his former smoking habit and years of exposure to asbestos. A bout with diverticulitis had forced him to cancel a fishing trip the year before, and he slipped into a depression after he was hospitalized for chronic obstructive pulmonary disease, a condition that further constricted his breathing.

Christie had been taking medication for his depression, but the doctor who was treating him had recently moved. That left no one to manage Christie's spiraling emotional state, and no one to control the possible side effects of his medication. Christie's wife worried about his trip to Florida, to the point where she contacted police in Lee County herself to ask that they keep an eye out for her husband. At her request, a captain from the Girard, Ohio police department also called Lee County officials and asked them to take Christie to a hospital if they found him.

Christie was first arrested on March 25, for public intoxication. Though there's evidence Christie had been drinking, he was also beginning his mental deterioration, and may have merely been disoriented. One fast-food worker he interacted with that night said she thought he was suffering from Alzheimer's. Though confused (he couldn't remember his wife's or brother's phone number), Christie did inform the jail attendants of his various medical conditions, and gave them a list of the medications he was taking. He was released the next day.

Christie was then arrested again on March 27, this time for misdemeanor trespassing. Nicholas DiCello, whose Cleveland firm Spangenberg Shibley & Liber has filed a civil rights lawsuit on behalf of Joyce and Christie's estate, says the second arrest was for a minor offense. "It was for trespassing at the hotel where was staying," DiCello says. "He was having another mental episode. He was bewildered, acting crazy, and so the hotel got fed up and asked him to leave. When he didn't go, they called the police."

According to DiCello, the jail staff and the staff for Prison Health Services, the private company contracted to provide medical service to the jail, ordered no advanced physical or mental health screening for Christie before he was jailed, despite the long list of medical conditions already in his file from his prior arrest. There is also no indication that anyone was made aware of Joyce Christie's notification of Lee County officials, in which she informed them about her husband's conditions. According to the lawsuit, after the second arrest, Lee County deputies locked Christie's medications in his truck. During his 43 hours in custody, he was never given medication.

Christie was uncooperative and nonsensical from the time he was arrested, but at some point after his incarceration, he became combative. Lee County deputies responded by either directly spraying him or fogging his cell with pepper spray at least 10 times. (According to police, Christie was sprayed eight times. A cell mate was sprayed two other times, which may have affected Christie.) He was never allowed to "decontaminate" -- to wash the spray off. Other inmates in the jail, who weren't targeted with the spray, told the Fort Myers *News-Press* the blasts were so strong that the secondary effects caused them to gag.

The deputies then put Christie into a restraining chair, a controversial device that binds inmates at both wrists, both ankles, and across the chest. In depositions, the other inmates, along with a deputy trainee named Monshay Gibbs, testified that Christie was sprayed at least two more times after he had been strapped to the chair. He was also stripped naked, and outfitted with a "spit mask," a hood designed to prevent inmates from spitting on jail personnel. In Christie's case, the mask kept the pepper spray in close proximity to his nose and mouth, ensuring he would continue to inhale it for the full six hours he was in the restraint chair.

According to Gibbs' testimony, Christie pleaded with the deputies, telling them he had a heart condition and numerous other medical problems, and that the spit mask made it difficult for him to breathe. Other inmates have confirmed Gibbs' account, adding that Christie began to turn purple.

When Joyce Christie heard of her husband's second arrest, she flew down to Florida to find him. "She was actually relieved to hear he had been arrested," DiCello says. "She thought they had responded to her pleas for help, that they would take him to a hospital to be treated." She eventually made her way to the Lee County jail. Joyce Christie would later learn that at one point in the night, when she was pleading with police to take her husband to the hospital, at the same time and in the same building he was being tortured to death in the restraint chair.

"She left frustrated," DiCello says. "They weren't listening to her. She didn't know what to do."

In the early afternoon of March 29, Nick Christie went into respiratory distress. He was taken to the Gulf Coast Medical Center in Fort Myers. Joyce Christie told journalist Jane Akre that according to hospital staff, her husband was so covered in pepper spray that doctors had to repeatedly change their gloves as they became contaminated. Christie would suffer multiple heart attacks over the next two days before he was finally declared brain dead and his life support was removed on March 31. Two days after Christie had been transported out of the jail, Deputy Medical Examiner Dr. Robert Pfalzgraf noted in his autopsy report that Christie still had brown-orange liquid pepper spray all over his body.

Pfalzgraf determined that Christie's heart gave out due to stress from his exposure to pepper spray. He ruled the death a homicide.

<u>The Devil's Chair</u>

"I look at this story, and all I can say is, what in the world were they thinking?" says David Klinger, a former police officer who now teaches at the University of Missouri-St. Louis. Klinger specializes in the use of force. "As a general rule, you don't use pepper spray on someone who is restrained. There might be some limited circumstances where, say, you have a suspect in handcuffs who is banging his head against the window of a patrol car. You might give him a quick burst of pepper spray. But never, never someone who is secured in a restraint chair. It just makes no sense at all."

The Lee County deputies appear to have violated accepted use of force guidelines a number of different ways, including the length of time they kept Christie strapped to the chair, pepper spraying him after he had been restrained (as well as their failure to clean the pepper spray off of him), their failure to properly evaluate him for mental and physical health problems, and their failure to allow him to take his medication.

While the Florida Sheriff's Association told HuffPost that it has no guidelines on the use of restraint chairs, there seems to be a strong consensus that the use of pepper spray, stun guns, or other compliance tools after a suspect has been restrained is at minimum excessive force, and possibly a crime.

The U.S. Court of Appeals for the Eleventh Circuit has found that pepper spraying suspects suffering mental illness is a violation of their constitutional rights, and several federal appeals courts have ruled that spraying someone who is already restrained is an excessive use of force. The state of Vermont forbids the use of restraint chairs for punishment, and requires approval from a medical professional and a mental health professional before a chair can be used. In the event that an inmate poses an immediate risk, a mental health professional is to be contacted immediately after the inmate is strapped in. The Florida Department of Juvenile Justice forbids the use of restraint chairs and pepper spray on incarcerated minors entirely.

The Florida State Prison System doesn't use restraint chairs, either. A spokeswoman told the Orlando Sentinel in 2006 that the state's Department of Corrections has determined the chairs are a safety risk, and inappropriate for prisoners with mental illness. The problem, some experts say, is that inmates with mental illness are particularly prone to "excited delirium," an escalating set of respiratory and cardiovascular symptoms that can lead to death. (Though the diagnosis is still controversial.)

Steve Yerger has been training law enforcement agencies on the use of force for 20 years, and gives what he says is the only course on restraint chairs in the country. Yerger says the complete restriction of movement to which the chair subjects inmates can trigger physiological effects -- both respiratory and circulatory -- and that the problem can be exacerbated in patients with mental health problems. "They can just go through the roof, and then they crash. You need to make sure you have constant monitoring, and that you always have medical professionals close by," Yerger says.

But inmates with mental illness are also more likely to present a threat to themselves or others, which means they're more likely to need restraint. A 2009 report by the Maryland *Frederick News-Post*, for example, found that in the previous year, 64 percent of inmates put in a restraint chair by the Frederick County Sheriff's Department had mental health problems.

While there's no universal policy on how long an inmate can safely be left in a restraint chair, the Oklahoma Department of Corrections limits it to two hours. Texas limits the time to five hours in any 24-hour period. Montana limits restraint to four hours. Iowa law also limits the time to four hours (though Iowa jails that exceed that limit appear to suffer little more than some public criticism.) Utah banned restraint chairs entirely after inmate Michael Valent died of blood clots -- the result of being strapped to a chair for 16 hours. Though in Utah too, several counties continued to use the chair after the ban.

There have been a number of deaths over the years at least in part attributed to what critics call "the devil's chair" or the "torture chair." In a 2000 article for *The Progressive* Anne-Marie Cusac documented 11 deaths, including several inmates with mental illness as well as cases in which inmates were pepper sprayed after they had been restrained. Cusac notes that in the 1999 case of James Arthur Livingston, who died after being strapped to a restraint chair in Tarrant County, Texas, the first deputy who attempted to give Livingston CPR wrote in his report, "I then removed myself from the area and walked into the sally port, where I threw up from inhaling pepper gas residue from inmate Livingston."

In 2004, the *Dayton City Paper* wrote about three restraint chair-related deaths in Dayton County, Ohio, alone.

Restraint chair-related lawsuits alleging patterns of abuse have proliferated across the country, including in Iowa, Georgia (PDF), Colorado, Texas, California, New Jersey and Maricopa County, Arizona, where the chairs were finally replaced in 2006 after three deaths and several million dollars paid out in settlements.

Florida has also had its share of restraint chair problems. Four of the 11 deaths Cusac chronicles in her 2000 article took place in Florida jails. In 2007, Lake County paid out a $500,000 settlement to the family of a woman who suffocated in a restraint chair, though the settlement didn't bar the county from using the chair in the future. The state has also been the scene of a years-long, high-profile controversy following the use of a restraint chair on the daughter of the Florida State Attorney in 2005.

Like Klinger, the former police officer, Yerger says the use of pepper spray in conjunction with the chair was particularly over the line. "This is a tool for restraint, and there's no reason to pepper spray someone once they're restrained. That's punishment, and it's a form of torture. At minimum, that sort of thing should cost someone his job. And it should probably lead to criminal charges."

But the pepper spray-restraint chair combination has happened in other jurisdictions as well. Last year, a Harrison County, Indiana, officer was accused of putting pepper spray in a hood, then putting it over the head of an inmate already nude and bound to a restraining chair. In the following months, more accusations came out against the department, many again involving abuse of the restraining chair. In 2006, deputies in another Harrison County -- this one in Mississippi -- emptied an entire can of pepper spray into a hood that they then placed over the head of Jesse Lee Williams, while he was confined to a restraint chair. Williams, who was also severely beaten, later died of kidney failure.

Yerger says the other problem in Lee County is that once Christie had been securely restrained, he needed medical treatment. While the officers in Lee County were clearly out of line, Yerger says, the problem in many other cases is more a lack of training.

"Several years ago, I was researching the restraint chair for a case where I was going to be an expert witness. I found that all of these police departments across the country were using the chairs, but none of them were getting any training," Yerger says. "There's no training on the proper way to put someone into the chair, but more importantly, you have these people who have mental problems, or who are on alcohol or drugs. These are medical problems, that require medical attention. This isn't criminal behavior. But that's sometimes how it's treated."

This collection of deaths, injuries and reports of abuse involving restraint chairs has moved both Amnesty International and the United Nations Committee Against torture to call for a ban on the devices.

In her 2000 article, Cusac points to a deposition of Dan Corcoran, president of AEDEC International Inc., the Beaverton, Oregon, company which manufactures the Prostraint Violent Prisoner Chair. Corcoran acknowledges that the only testing he did of the chair before marketing it was to put some friends in it. He says the chair had never been tested in any scientific way for its effect on someone impaired by drugs, alcohol or mental illness (in fact, he specifically recommends the chair for the first two), or for other hazards like deep vein thrombosis, the sometimes-fatal blood clotting that can occur after remaining in the same position for more than a few hours.

But both Yerger and Klinger say calls for banning the chair are misplaced. They say restraint is sometimes critical when a prisoner poses a threat to himself or others, and there's nothing particularly sinister about the restraint chair. "Once you take care of the immediate threat -- and you really do need to take care of that -- then you treat the case like it needs to be treated. That means if it's someone having a mental crisis, you get them to a hospital," Yerger says.

"Any new device or piece of technology can be helpful, or it can be abused, whether it's a restraint chair, a Taser, or baton," says Klinger. "If you have officers who are willing to punish and abuse a restrained prisoner, it's going to happen whether he's in a restraint chair, handcuffs, or a restraint bed or gurney. The device isn't the problem. It's the officers."

"It's really about culture," says Yerger. "You need to instill a distinct code, especially in a correctional facility, that emphasizes control over punishment."

Yerger cites Philip Zimbardo's famous 1971 Stanford Prison Experiment which, though it later came under criticism, showed how quickly students randomly chosen to be guards in a hypothetical prison resorted to abusing students randomly chosen to be prisoners. "It's a constant thing. It has to be hammered home, over and over."

In Christie's case, that puts the bulk of the blame on the deputies and Lee County Sheriff Mike Scott, not on the restraint chair.

No Accountability

When Joyce Christie finally got a phone call in March 2009 letting her know that her husband had been taken to the hospital, the call was anonymous, and the caller didn't say what hospital. She used caller I.D. to determine the call had come from the Gulf Coast Medical Center. When she arrived, the police wouldn't let her see her husband. Fortunately, someone in the waiting room overheard her conversation and gave her the card for a bail bondsman. She left to get the bond, and only after posting bond was she allowed to see him. By then, Nick Christie was close to death. As a deputy at the hospital got up to leave, he told Christie to make sure her husband -- now with eyes taped shut and tubes protruding from his face -- showed up for his court date, or else he'd be arrested.

Scott's office conducted its own internal investigation of Nick Christie's death and, perhaps not surprisingly, found no wrongdoing on the part of any Lee County deputy. That conclusion may come back to bite the county. Municipalities have what's known as sovereign immunity from civil lawsuits. But one way to get around sovereign immunity in a civil rights case is to show that a government agency has displayed a pattern or practice of improperly training employees about citizens' rights. Since using pepper spray on a restrained inmate and neglecting to get him medical attention are both clearly established civil rights violations, in concluding that none of his officers acted outside of department policy, Scott may have given DiCello an opening.

And in fact, none of the deputies involved with Christie's death were disciplined in any way. Florida State Attorney Stephen Russell declined to press criminal charges. DiCello says that Russell's review was based almost entirely on the sheriff's department report. Samantha Syoen, communications director for Russell's office, says the investigation did use much of the sheriff department's investigation, but that the possible bias of that report was taken into consideration when deciding whether or not to pursue criminal charges. "We've prosecuted police officers before." Syoen says. "We've prosecuted judges, we've even prosecuted our own."

Syoen says the state attorney's office didn't clear the deputies involved with Christie's death, it only determined that under Florida law there wasn't enough evidence for criminal charges.

"Our office was very concerned about what happened to Mr. Christie," she said. "But the memo concluded that this would be a matter better settled at the federal level, either with possible criminal charges or with a lawsuit."

According to DiCello, the office of U.S. Attorney Robert O'Neill has yet to show any interest in the case. (O'Neill's office referred HuffPost to the FBI's Fort Myers regional office. That office did not return HuffPost's request for comment.)

Joyce Christie returned to Girard, Ohio shortly after Nick, her husband of 40 years, had died. A few days after she returned, she received something in the mail from Lee County, Florida. It was a warrant for her husband's arrest.

## FotM NEWSLETTER #51 (Jan. 13, 2012)—HYPERTEXT INDEX



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| 20120112-01 | 11:11 | Phil | Re: "5 Founding Fathers Whose Skepticism About Christianity Would Make Them Unelectable Today" (reply to SteveG, FotM Newsletter #50) |

from SteveG:

> People, on the average, do not know how to problem solve, to think for themselves, to find the answer – it is easier to say and believe the answer is because.

Not only do most people not have the ability for problem solving, most do not have the character or moral compass to lead them to implement positive action should the "light bulb" go off.

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| 20120112-03 | 13:39 | Pam | "Some Additional Reflections on My Arrest at a Romney Event in Hudson, NH" |

Something is rotten in Denmark, people.

"Some Additional Reflections on My Arrest at a Romney Event in Hudson, NH" by Matt Bieber, The Wheat and the Chaff

Jan. 10, 2012, (http://www.thewheatandchaff.com/arrest-reflections/)

About Me

My name is Matt Bieber. I study politics, religion, and public discourse at Harvard Kennedy School and Harvard Divinity School. I've drafted speeches for Vice President Biden and crafted communications strategies for NGOs in East Africa. I also spent two-and-a-half years in the corporate sector. I'm currently thinking about how to raise the quality, rigor, honesty, and inclusiveness of public conversations in America. This blog is where I share my questions and tentative answers in that area, along with some personal thoughts on obsessive-compulsive disorder. If you're into what I'm up to, you can join the email list, follow me on Twitter or Facebook, or email me directly at mbieber@gmail.com.

On Friday, January 6, I took a bus from my home in Boston to Manchester, NH. I was planning to attend a few Republican primary events, write a few posts for this blog, maybe cross-post them on HuffPo, and head home the next day.

But the famous retail politics atmosphere of New Hampshire was exhilarating. I was watching the candidates up close, trading notes with citizens and reporters about the campaigns, and then slurping up diner food while I processed my thoughts. I decided to stick around for a few more days, so I rented a car and found a family friend in Nashua who offered a spare bed.

On Monday, January 9, I drove a couple of towns over to see Mitt Romney speak at the Gilchrist Metal Fabricating Company in Hudson, NH. I walked into the big machine shop, put my backpack and jacket down on a seat near the stage, asked a neighbor to watch them, and went off to find a restroom. Afterward, I was chatting up a campaign staffer when a police officer approached. Sir, we have to ask you to leave the premises.

"Sir, is this about my backpack? I'd be happy to show you – there's nothing dangerous in there."

"No, sir – we'll explain it to you outside."

I gathered my things and walked past a group of citizens and press, humiliated and confused.

Outside, the officer said, "Sir, the campaign has identified you as someone who was at a protest at Romney's office in Manchester."

Now I was really confused. Protest? I didn't even know there had been protests at Romney's headquarters, and if there had been, I certainly hadn't been at them. (Later, after I got out of jail, I looked on the web; I still haven't found any news stories about protests at Romney's offices here, though Occupy protesters have attended several of his events.)

I explained to the officer – his name was Lamarche, and his partner's was Ducie – that there must have been some misunderstanding. Could I speak to someone from the campaign to clear this up? No. I'd have to leave immediately.

I asked about his authority to remove me. "We're working for the Romney campaign," he said. I asked if he was on-duty; he said he was. My confusion deepened. So was he working for the town of Hudson today, or for the campaign? "Both." (Later, I think I got it straight: the campaign hired the police for the day, sort of like a private security detail.)

I thought about Romney's campaign staff inside. They had mistaken me for someone else, and that was enough – I was out. They had imagined trouble and whisked it away, out of sight. And the police – my police – were being paid to do their bidding.

I asked again to speak to someone from the campaign or the company who owned the plant. The officer refused; the company had delegated authority to the campaign, and the campaign had authorized the police to remove anyone the campaign didn't want present. But wouldn't it be simple for me to just talk to someone and explain the mistake? Too many people around, the cop said. Apparently it would be too big a bother. I either had to leave the company's property or face charges for criminal trespass.

My reason-seeking brain couldn't take in what was happening. I had come here to be a part of the primary process, to see it first-hand and to write about it. I came because I was curious, and on my own nickel. I wasn't part of any protest group or in anyone's employ. Couldn't we just have a reasonable conversation and figure this out?

I asked another question or two, and the cop had had enough: "You're under arrest." He took my things, handcuffed me behind my back, searched me, and tucked me into a nearby cruiser. I could overhear him talking about going through my things, and he answered a question from the media. I was "the subject."

A few minutes later, an officer removed me from the cruiser and had me lean up against another police car and spread my legs for a second search. Two or three TV crews had their cameras trained on us; I felt ashamed in a wholly unfamiliar way. I wanted to look directly at the cameras and explain what had happened, but I feared the police officers' reaction.

I was tucked into the second cruiser and driven away. The camera crews continued filming. A protester – oh, did I mention that there was an actual protest there? – yelled, "Free the prisoner."

The holding cell at the Hudson Police Department. (I was allowed to use my own phone to make phone calls, and I snapped these pictures as well.)

At the police station, an officer put me in a cage and asked to remove my shoes, belt, and sweatshirt and place them on the floor between us. He asked me to lift my feet so he could inspect them. He did so tentatively, from a distance.

An officer named Manni and another officer processed my paperwork. As they did so, they told me not to go back to "that area" when I was released. I indicated that I understood I wasn't permitted to be on the company's land or in their facilities, but surely I could go back to the street if I so chose – it's public property, after all. Don't go back to that area, they said. If you go back, you might cause a disturbance or a riot, and you could be arrested for disorderly conduct.

I tried to keep calm and ask even-keeled questions. Were they telling me I wasn't even permitted in the street near the facility? And if so, on what grounds? (I wondered, Is the Romney campaign just permitted to cordon off a whole neighborhood?)

And then the following exchange took place. I began to ask, "If I express my First Amendment freedoms –

And Officer Manni interjected, "You'll probably be arrested."

I couldn't locate words. (I'm not entirely sure he said 'probably,' but I want to give him the benefit of the doubt.)

It was clear to me that the two officers had no interest in discussing what the law actually said, or what my rights actually entailed. I was paperwork, and they wanted to get it over with. I kept asking questions, and at one point, one of them opened up the New Hampshire legal code and read me the definition of disorderly conduct. He read the words dully, as if they were just syllables, with no interest at all in what they meant.

I asked the officer if he could help me connect what he'd just read with my situation and understand why it would be a problem to return to the street outside the event. He told me that I might return and say things that "aren't what others think." [It might have been "aren't what others believe" or "aren't what most others believe." I'm not 100% sure.] It was incredible – he actually paused before he said those words, as if searching for something politically correct to say. I don't think he realized that the words he found had so little to do with the letter and spirit of our laws and Constitution.

My cell was down the hall and to the left.

An officer returned, and I given a choice: I could either post bail or spend the night at a nearby jail and see a judge for an arraignment in the morning. Neither option seemed particularly fair: I could either pay money for not having done anything wrong, or I could go to jail and take my chances with a judge for not having done anything wrong. I wasn't sure I'd hold up very well in jail. I was already shaken and lightheaded, and my heart was still going hard.

I opted for bail, and I was brought back out to the holding cell for mug shots. (Officer Manni made sure that I knew not to smile. "The court doesn't like that. They take it as an insult.") He then took a second set of mug shots in a different room. (The first, if I remember correctly, were for the local police department's records. The second would be sent to other state and local law enforcement agencies and the FBI.)

Last came fingerprints. The prints involved no ink; instead, a digital machine captured my "finger slaps." Each time the laser-reader scanned my fingerprints and recorded the image, it read "Scan Complete!"

Officer Manni put me back in the holding cell to wait for the bail bondsman, and I sat there for the next couple of hours. At some point, he offered to let me make a call, and he allowed me to use my own phone to do so. "Can I make more than one?" I asked. He didn't care: "You're not a murderer."

So I called a journalist friend, hoping she was nearby. (I only had $16 in my wallet, and I wasn't sure if I'd need help making bail.) I called my dad, too, and a couple of other friends. Then, remembering I had internet access, I searched for news of the arrest. It had been reported by a local CBS affiliate. Unfortunately, the reporters (or the police with whom they interacted) had gotten the facts wrong. (Contrary to what the story had indicated, I had never spoken with the owner of the company where the event had been held. In fact, I had asked Officer Lamarche for that very privilege and been denied.)

I was humiliated again. There was a picture of me looking like a thousand other pictures I'd seen, being cuffed and taken away. I saw myself like I imagined others did: Just some jerk who refused to play by the rules and got himself arrested by good, upstanding policemen. And I was in a cage with no way to respond.

I sat and talked with Officer Manni. After what had felt like a tense conversation earlier, he was friendly with me – I was freezing in the holding cell, and he let me have my sweatshirt and jacket. We chatted about his time as a cop in Boston, and we joked about Hahvahd. He answered my questions about what might happen at the arraignment as best he could.

Eventually, nearly four hours after Officer Lamarche had first taken me aside, the bail bondsman appeared. He was friendly enough, though he – like some of the other policemen at the station – seemed to think I had been protesting down at the event. I explained otherwise, and he brushed it aside. What had happened or hadn't happened wasn't his concern; he was interested in getting through the procedure and making sure I didn't get in any more trouble.

He issued me an order to appear at an arraignment in Nashua on January 26th; I would face a charge of criminal trespass. I told him I didn't have enough money to pay my bail, but that I'd be happy to go to a nearby ATM and get it. He offered me a ride, and we chatted along the way.

I liked him. He didn't seem to think I was a bad guy, and he treated the whole thing matter-of-factly. I asked if there was any way this wouldn't appear on my record, and he said no. Make sure you appear at that court date, he said. He explained how things might shake out at the arraignment – what my plea options were, that kind of thing. He seemed to genuinely want things to go well for me. And when he dropped me off at my car, he had some last words of advice, "Don't hang around this area." Apparently, even hours after the event had ended, the Romney campaign and the local police were still present, nibbling away at my freedoms.

| 20120112-02 | 11:47 | Pam | "Killing the competition: How the New Monopolies Are Destroying Open Markets" |
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I encourage you all to read this ("Killing the Competition," by Barry C. Lynn, *Harper's*, Feb., 2012, http://www.harpers.org, see below), because I don't want to be the only one in the room with an exploding head. Barry Lynn describes how, since Reagan's reign, monopolies have squeezed out open competition, locking in their employees, and frightening them into silence. Silicon Valley, once the avatar of entrepreneurship, is now one of the worst offenders, right along with chicken producers, and the mighty Amazon.com. I must quote at length:

> The revolutionary achievement of the American people two centuries ago was not merely to establish an independent republic. It was to prove that every citizen in that republic could be independent, economically as well as politically. This vision was not atomistic. It was not based solely, as libertarians like to claim, on a realization of individual rights. Instead, the belief was that self-conscious, self-reliant citizens would come together as equals and use their collective power to protect their communities, their nation, and themselves. The practical challenge was to enable citizens to exchange their goods, ideas, and labor with one another as freely as possible....These open markets swiftly proved to be as fundamental to our democracy as the ballot box...distributing power among many sellers and many buyers and by promoting a more equitable distribution of wealth.

I always wondered why Woodrow Wilson was the great bugaboo of the Right. Now I know. According to Lynn, "Alexander Hamilton, the nation's first treasury secretary, attempted to use a government bailout of speculators to concentrate power in banking estates controlled by his friends and allies....And for more than half a century after the Civil War, we lost many of our markets entirely, as a small clique of men seized control of the new railroad and telegraph systems..." Here's what Wilson had to say in 1913, "Some of the biggest men in the United States, in the field of commerce and manufacture, are afraid of somebody, are afraid of something...They know that there is a power somewhere so organized, so subtle, so watchful, so inter-locked, so complete, so pervasive, that they had better not speak above their breath when they speak in condemnation of it." What was it Romney said about discussing "class warfare." "It should be talked about in quiet rooms."

I think that when I began my association with Friends of the Middle I was rather naive. I probably still am, but not as much as before. I have learned a lot through these discussions, and one tentative conclusion I have come to is, neither our economic nor our political systems are to be trusted. All the powers-that-be distort language in a sort of double-speak. They've been doing it forever, as George Orwell was well aware. Some of Lynn's examples are, "Corporate monopoly? Let's just call that the 'free market.' The political ravages of corporate power? Those could be recast as the essentially benign workings of 'market forces.'" Silly me. I thought the age of the Robber Barons was over. I thought "trust busting" was a fait accompli. I thought bribery and political payoffs were endemic in banana republics or corrupt dictatorships; I didn't want to see what was going on in my own country. I expect those ordinary Russians waiting on a train platform for their ride home didn't want to see the political prisoners being carted off to the the gulag in those same trains either. So often I have looked back at history's "evil doers" and wondered, What were they thinking? Didn't they realize the harm they were causing when they infected uninformed prisoners with syphilis, or when workers were tied down in company towns, burdened with debt to the company store they could never repay, or when dynastic families tried to outdo each other by building fabulous palaces in Newport and calling them "summer homes?" I believed such "legal" abuses were relics of less enlightened times. Now I realize that we have learned nothing, absolutely nothing from the mistakes and injustices of the past. We have the same lessons to learn all over again, and nothing lasts forever. Not even the U.S. of A. We don't have to fail, but I believe we will.

"The best lack all conviction and the worst are full of passionate intensity." —W.B. Yeats

"Killing the competition: How the New Monopolies Are Destroying Open Markets" by Barry C. Lynn, *Harper's*

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Fear, in any real market, is a natural emotion. There is the fear of not making a sale, not landing a job, not winning a client. Such fear is healthy, even constructive. It prods us to polish our wares, to refine our skills, and to conjure up—every so often—a wonder.

But these days, we see a different kind of fear in the eyes of America's entrepreneurs and professionals. It's a fear of the arbitrary edict, of the brute exercise of power. And the origins of this fear lie precisely in the fact that many if not most Americans can no longer count on open markets for their ideas and their work. Because of the overthrow of our antimonopoly laws a generation ago, we instead find ourselves subject to the ever more autocratic whims of the individuals who run our giant business corporations.

The equation is simple. In sector after sector of our political economy, there are still many sellers: many of us. But every day, there are fewer buyers: fewer of them. Hence, they enjoy more and more liberty to dictate terms—or simply to dictate.

Over the past four years of financial collapse, many of us have come to view markets as a fantastical scam: a giant mechanism geared to transfer our hard-earned dollars into the hands of a few select bankers. And when it comes to the Wall Street markets we rely on to trade our equities and debt and commodities, this sentiment is not all wrong.

But as every previous generation of Americans understood, a truly open market is one of our fundamental democratic institutions. We construct such markets to achieve some of our most basic rights: to deal with whom we choose, to work with whom we choose, to govern our communities and nation as we (along with our neighbors) choose.

And so, as every previous generation of Americans also understood, monopolization of our public markets is first and foremost a political crisis, amounting to nothing less than the reestablishment of private government. What is at stake is the survival of our democratic republic.

This rush back to the feudal past is nowhere more evident than in that region of California we have so long viewed as the incubator of our future.

Until recently, few places in the world could boast of markets as open as those of Silicon Valley. Yes, large corporations thrived here for decades. But true denizens of the Valley would rarely let themselves get caught inside those walls. Why should they? Their skills were portable, venture capital was abundant, and California refused to enforce the "non-compete" agreements that tech firms elsewhere often used to control their employees.

It was in Silicon Valley that America's entrepreneurs seemed to rediscover their roots—or rather, their primal rootlessness. Serial founders staked out tech venture after tech venture, in much the way Daniel Boone once cleared homesteads as he wandered from Carolina to Kentucky to Missouri. And behind these pioneers swarmed freelance engineers and cowboy coders, hardly distinguishable from the first-generation entrepreneurs and soon in direct competition with them.

These days the Valley is once again abuzz. Headlines report bulging wallets and a smorgasbord of new perks. Venture capitalists hum down Route 101, and angel investors lurk and listen in the bars. But instead of a disruptive melee like that of the late 1990s, with its diversity of players and voices, the overwhelming tendency today is a further consolidation of power by the already powerful.

During the past decade, a few giants have managed to fence in market after market for hardware, software, and content. Some did so simply by buying up their competitors. Oracle CEO Larry Ellison once said that acquiring another company was "a confession that there's a failure to innovate." But Ellison himself decided to opt for the more reliable profits that come from buying one's competitors, which in Oracle's case included PeopleSoft, Siebel, BEA, Sun Microsystems, and more than sixty other firms. During the same period, Google—even while branding itself as the dreamiest of inventors—vacuumed up close to a hundred companies, including such core components as YouTube, DoubleClick, and ITA.

John D. Rockefeller, whose Standard Oil ruled the energy industry for decades, liked to present his predations as acts of altruism. "We will take your burdens," he would tell his target. "We will unite together and build a substantial structure on the basis of cooperation." But all understood perfectly the ultimatum hidden in the honeyed words: Join or be crushed.

So, too, today's lords of the Valley, who enjoy the power to choreograph competition among the latest generation of upstarts and then buy whom they please, when they please. Yet this de facto license to govern a trillion-dollar industry—and with it, entire swaths of the American economy—appears to have left these high-tech headmen unfulfilled. Or so we learned when the Justice Department complained in 2010 that senior executives at Apple, Google, Intel, Pixar, and two other corporations had "formed and actively managed" an agreement that "deprived" the engineers and scientists who work for them of "access to better job opportunities."

Even in those reaches of society long accustomed to the rule of the few, the fact that some of the biggest and the richest had agreed not to poach one another's workers managed to shock. In an editorial, the New York Times wondered "What Century Are We In?" Yet in the Valley itself, from those most directly affected, we've heard only the rarest of whimpers. The anger is there. But it's tamped down by fear.

To see how these employees react to their bosses getting busted for running a labor cartel, I recently toured Apple's hometown of Cupertino, California. I strolled the Infinite Loop, the road encircling the six edifices at the heart of the empire. I wandered the side streets lined with low-slung buildings adorned with discreet Apple logos. I ambled down North De Anza Boulevard to the center of town. All around I saw Apple employees, easily identifiable by the white badges dangling from their necks or clipped to their pants pockets. And I approached many of them to ask what it felt like to work in the company's town.

An older fellow named Steve, with scraggly white hair, told me he had read all about the settlement, and that the news had come as no surprise. "They treat us like dirt," he said before unleashing a string of curses. "Market capitalism should be a two-way street, no? If they get to make us compete against one another, then they too should have to compete." At this point Steve walked off. He'd like to talk more, he said. But his contract renewal was coming up, and someone might see him with me.

At a crossroads just south of Apple headquarters, in front of a Valero gas station, I caught up with John, who was speed-walking to the dentist. "Of course I don't like it," he told me, and proceeded to recount the facts of the settlement in detail. "But what can we do? It's not like anyone ever dares to speak about it. I mean, they actively encourage us not to talk to one another. It's all taboo."

Outside the Bagel Street Café, in the lines for the shuttle buses that carry employees north to San Francisco, at BJ's Restaurant and Brewhouse, I come upon the same urge to talk, followed by the same mumbled apologies as prudence takes hold. Sometimes the fear kicks in almost instantaneously. One employee actually spun on his heel, jumped back into his pickup truck, and sped away, though not before hissing that "even if I did know anything, I wouldn't ever be able to talk about it."

Eventually I did find one employee willing to speak up. Last spring, a San Francisco law firm announced plans to file a class-action lawsuit against Lucasfilm and the six corporations named in the DOJ settlement. Such lawsuits require at least one person to publicly represent the class, and finally a former Lucasfilm software engineer named Siddarth Hariharan stepped forward. After some back-and-forth with his lawyers, Hariharan (who also goes by the name Neil Haran) agreed to discuss how the masters of these estates treat their tenants.

Over lunch in San Francisco, Hariharan, dapper in a stylish sport coat, starts by telling me all the reasons he loved his job, especially the opportunity to take part in sprawling, complex projects. Sure, the pace was grinding, the hours crazy. One team, he recounts, worked for 110 hours per week for nine months straight. But "everyone believed they were making something important."

Hariharan says his attitude began to sour after Lucasfilm completed a particularly ambitious project. The very next day, he says, shaking his head, executives came in and "fired almost everyone." These were employees who hadn't had a day off in months. "People were running around the office," says Hariharan, whose own job was not affected. "They were running around crying. It was a bad sight."

He pauses, and looks at me. "Then, on top of that, I hear they were conspiring to lock people in a box?" It was the allegations about the labor cartel, Hariharan says, that angered him sufficiently to join the lawsuit. "It's simple," he says. "If you do something bad, you should be punished."

Many entrepreneurs and workers in Silicon Valley want to speak out, Hariharan believes. Many would love to restore the open job market of the early 1990s. But for most, "it would be career suicide." Even Hariharan might have thought twice if he hadn't already established himself as an independent entrepreneur. "I'm not rich," he says, "but I never have to work for anyone else again. So I felt I had to do something. I had to stand up for those who couldn't."

No matter how adept Silicon Valley CEOs have become at corralling the men and women who actually make what they sell, they are still relative beginners when it comes to manipulating fear for profit. To get a sense of what the future may hold for America's computer engineers—and, for that matter, our teachers, lawyers, and doctors—I recently drove through a notch in the Allegheny Mountains into West Virginia's Sweedlin Valley. There I visited with poultry farmers who supply birds to a plant in Moorefield owned by the Brazilian food giant JBS. (The largest meat processor in the world, JBS operates the plant under the name Pilgrim's.)

The broiler industry was one of the first in which the generation of monopolists unleashed by Ronald Reagan succeeded in replacing open markets with vertically integrated systems designed to be controlled by a single local buyer. The men who rule America's chicken-processing plants have therefore had decades to master the art of setting individual farmers—who still own the land, equipment, and liabilities—against one another. And the goal of this competition is not merely to extract the most work from each individual, but also the most capital.

The concept of such competitions—or "tournaments," as the industry calls them—is generally credited to the economist Edward Lazear, who served as one of George W. Bush's top advisers and now teaches at the Stanford Graduate School of Business. The idea, first laid out in a 1981 paper titled "Rank-Order Tournaments as Optimum Labor Contracts," is straightforward enough. Rather than pay all workers at the same rate for any particular task, Lazear wrote, why not set up a "labor market contest," in which those who produce more also get paid more per task or per piece? Such a system of reward (and, for those at the bottom, punishment) would, he claimed, increase the incentive to work harder.

The problem with Lazear's theory becomes clear when we recall some of the basic characteristics shared by all real markets. Most important is an equality between the seller and the buyer, achieved by ensuring that there are many buyers as well as many sellers. Second is transparency. Everyone sees the quantity and quality of the product on offer, and the price at which each deal is done. A third characteristic is a tendency to deliver egalitarian outcomes. On any given day, once the supply of a product has been hauled to market and appraised, all sellers receive roughly the same price per unit. Offer a seller less than the prevailing price, and you walk away empty-handed. Demand more from buyers, and your goods sit untouched.

Lazear repeatedly uses the term "market" to describe his tournaments. But his theory has almost nothing in common with how open markets actually function. For starters, he assumes that the sellers of goods and services must have, for all intents, nowhere else to go. A 2003 study of tournament theory by economists Tom Coupé, Valérie Smeets, and Frédéric Warzynski, which builds explicitly on Lazear's work, makes this point painfully clear. "Tournaments take place," the authors explain, "in the context of an internal labor market with no explicit role for outside options."

The political aim of tournaments, in other words, is exactly opposed to that of real markets. Citizens structure markets, first and foremost, to protect individuals from massed capital. Lazear's tournaments are designed to maximize return to capital. They do so precisely by setting individual citizens against each other, like cocks in a pit.

This sounds bad enough. But when I sit down with poultry grower Mike Weaver in his snug rambler to learn how such tournaments work in practice, he seems astonished at my naïveté. "That's not even the half of it," he begins.

Weaver, a former fish and game officer who can raise flocks as large as 94,000 birds on his farm, slides a "settlement sheet" across the table. It records the amounts JBS paid to seventeen farmers who delivered their flocks to the plant on one particular day. The company, he shows me, paid the top-ranked chicken grower 63 percent more per pound than it paid the bottom-ranked grower. "Naturally," he says, "this sort of differential will tend to make a man work harder to stay ahead of the next fella."

What makes the system truly insidious, Weaver adds, is that the whole competition takes place without any set standards. "There is no baseline," he explains. For one thing, JBS requires the farmers to procure from the company itself all the chicks they raise and all the feed they blow into the houses. Yet the quality of the chicks and the feed can differ tremendously, from day to day and from farm to farm.

What's more, the full-grown chickens are weighed after being trucked off the farm. The farmer is not allowed to see whether the figure on the scale is accurate—nor can he tell whether the chickens he's being paid for even came from his farm. He is simply expected to take the money he is given and say thank you.

As much as he resents being forced into a gladiatorial relationship with his neighbors, Weaver says an actual tournament with a level playing field would be "far better than what we have now." Under the current regimen, the processors "don't just force us to compete against each other. They rig the competition any way they like. They can be as sloppy as they wish or as manipulative as they wish. We are entirely subject to the company." After a moment, Weaver modifies his statement. "Really, we are entirely subject to the foreman at the plant, to the technician who keeps a watch on us. Those men can make us and they can break us, and they know it."

His face reddens. "The market in this valley is very simple to understand. They give preferential treatment to those who kiss their ass."

For the local community, the outcome of this arrangement can be devastating. Traditionally, farmers have tended to join politically with their neighbors. But Weaver, who heads the local poultry-growers association, says nowadays many farmers end up viewing their neighbors as rivals. Most of the 400 or so farmers who sell into the Moorefield plant "try to resist such feelings," he says. But over time, the system wears them down.

It also makes them highly reluctant to speak out in public. "Most of the farmers are afraid to say boo for fear the companies will take away their chickens," Weaver tells me. The processors "know we have our house and our land in hock to pay for the equipment. They know we are honorable people who won't walk on a promise. And they exploit this."

Weaver has learned this from bitter experience. In 2010, he spoke at two Department of Agriculture hearings on the consolidation of the packing and processing industries. Ever since, he tells me, the foremen have rated his chickens near or at the bottom, after years of ranking them near the top. This costs him thousands of dollars per flock.

"I can't prove a thing," Weaver says when I ask if there's any way to verify that the company is retaliating against him for speaking out. "That's the beauty of the system. They know everything and we know nothing. They get to decide what's real."

Like Hariharan, Weaver dares to talk openly only because he possesses a measure of financial independence. "I can speak because I don't need the company," he says. "They can cut me off tomorrow and I have enough saved up so I won't go flat-out bankrupt." But this is not true for many of the farmers who sell chickens to the Moorefield plant, he adds. "They have nowhere else to go. They have to take what they're given."

The revolutionary achievement of the American people two centuries ago was not merely to establish an independent republic. It was to prove that every citizen in that republic could be independent, economically as well as politically.

This vision was not atomistic. It was not based solely, as libertarians like to claim, on a realization of individual rights. Instead, the belief was that self-conscious, self-reliant citizens would come together as equals and use their collective power to protect their communities, their nation, and themselves.

The practical challenge was to enable citizens to exchange their goods, ideas, and labor with one another as freely as possible. And so Americans mastered the political art of making public markets, and used their new legislatures to closely restrict trading companies, industrial estates, and other forms of private corporate government.

These open markets swiftly proved to be as fundamental to our democracy as the ballot box. They buttressed our system of checks and balances, both by distributing power among many sellers and many buyers and by promoting a more equitable distribution of wealth. They helped to foster open debate and prodded citizens to speak out against competitors who bent or broke the rules.

Right from the beginning, however, these markets proved hard to keep.

George Washington's administration was barely a year old when Alexander Hamilton, the nation's first treasury secretary, attempted to use a government bailout of speculators to concentrate power in banking estates controlled by his friends and allies. (Hamilton later touched off the Whiskey Rebellion with a tax that steered the distilling business away from yeoman farmers to local landlords.) And for more than half a century after the Civil War, we lost many of our markets entirely, as a small clique of men seized control of the new railroad and telegraph systems, then consolidated their power over many other important sectors of the economy.

By 1913, the apex of the plutocratic era, President Woodrow Wilson was decrying the rule of fear that had been imposed on the American entrepreneur and worker. "Some of the biggest men in the United States, in the field of commerce and manufacture, are afraid of somebody, are afraid of something," Wilson said. "They know that there is a power somewhere so organized, so subtle, so watchful, so interlocked, so complete, so pervasive, that they had better not speak above their breath when they speak in condemnation of it."

Yet in two great pushes—during the early years of the Wilson Administration, and then during the Second New Deal in the 1930s—the American people succeeded in restoring many of the open markets we had lost. Even as the lords of industry and the prophets of socialism joined hands to defend the "scientific" rationalization of productive activities, the people forced their representatives to enact law after law designed to disperse power.

Adapting the principles of eighteenth-century republicanism to the industrial landscape of twentieth-century America proved to be remarkably easy. Where there was no compelling reason to concentrate power—as in retail, agriculture, services, and light manufacturing—the goal now was to promote a wide distribution of both property and opportunity.

In practice, this required not merely heading off further monopolization, but unwinding many existing powers. The legislation used to achieve these ends—including the Packers and Stockyards Act and the fair-trade laws of the 1930s, which allowed manufacturers to set minimum retail prices for their goods—are seldom recalled today. However, their long-term impact was profound. In the 1920s, the five largest beef packers controlled upward of 70 percent of the U.S. market; by 1975, that figure had dropped to roughly 25 percent. In 1933, the four largest grocery chains controlled 27 percent of the market; by 1982, that figure had dropped to 16 percent.

Where some concentration of capacity and control was viewed as necessary—as in heavy industry—the goal was not to break up the monopolies. Instead, markets were restructured to ensure that at least three or four companies competed to make any particular product. In 1945, for instance, the government forced Alcoa to share its aluminum monopoly with Kaiser and Reynolds. This also meant restraining the power of the capitalist over these quasi monopolies, mostly by reinforcing the rights of the worker, the engineer, the local community, and the small investor.

This bottom-up reconstruction of our economy was one of the great political achievements of the twentieth century. At a time when every other industrial nation of the world was engineering corporatist structures that tended toward authoritarianism, the United States went in the opposite direction. It was, arguably, a second American Revolution.

By the 1970s, however, our open markets were under siege once again. And this time, the assault was more subtle, and camouflaged by myth, euphemism, and outright falsehood. The generation of Rockefeller and Morgan had acknowledged its power openly and defended that power on its merits, such as they might be. Yes, they had centralized control over entire industries, and yes, they ruled their realms as despots. But they claimed to wield such power for one purpose only: to organize production and trade more efficiently. And wasn't efficiency a great benefit to the commonweal? Such honest impudence, in turn, made it easier for citizens to identify and beat back the political threat.

Today, our overlords not only refuse to defend the power they hold—they deny that it is even possible for any American to accumulate such power. And to make such an absurd claim stick, they (or the more politically sophisticated of the academic economists in their employ) have undermined our language itself. Their most impressive act of lexical legerdemain was the coinage of various misnomers, some so audacious as to be worthy of Orwell's Ministry of Truth. Corporate monopoly? Let's just call that the "free market." The political ravages of corporate power? Those could be recast as the essentially benign workings of "market forces."

Even more dangerous was the transformation of *efficiency* into the highest economic good. For centuries, dating back to the British East India Company's promise to manage our tea trade for us, Americans have used antimonopoly action and law to protect our liberties as producers. Along the way, we learned to distrust most talk of efficiency as a justification for reducing the number of buyers. It was this very sentiment that inspired Justice Louis Brandeis to celebrate the political and economic virtues of "friction" in a 1926 Supreme Court decision.

Little more than a generation ago, however, economists of the "Chicago School" began to publish studies claiming that the enforcement of our antimonopoly laws was harming the interests of that defenseless figure, the American consumer, by promoting "wasteful" competition. After Ronald Reagan took office in 1981, his new head of antitrust enforcement, William F. Baxter, swiftly abandoned efforts to promote competition and promised instead a policy "based on efficiency considerations." The goal now was to promote the "welfare" of the consumer, theoretically by increasing his or her access to cheap goods.

No gun was ever fired, no protest ever mounted, no direct attack on our antimonopoly laws was ever unleashed. Yet the most fundamental purpose of these fundamental laws—to protect the liberty of the citizen and to ensure the safe distribution of power—was flipped on its head by the innocent-sounding substitution of a few key terms. And in the three decades since, the impact of this rhetorical sleight of hand has only grown. The "consumer welfare" framework has provided its creators with exactly the cover they need to write their efficiency argument straight into the mainstream of American law and to erect their private corporate governments right in the town square of the American political economy.

To understand the true architecture of power in our America of 2012, we must set down the hymnals of the economists and speak directly to those of us who strive every day to make, to grow, to build, to serve—but who find that some immense power blocks their way.

Take the craft-beer brewer I met recently in Chicago. Worshipped by his ever-thirsty fans, he grinned proudly for a photo shoot as I watched from the sidelines. But in the privacy of the hotel hallway, he whispered about how

Anheuser-Busch InBev is slowly strangling his company. The multinational colossus controls much of the beer distribution in the United States and has a huge influence over who rides those rails. "When I want to get my beer on a store shelf, I don't call the retailer," he explains. "I have to beg ABI."

The backstory in brewing is much the same as in Silicon Valley. In 1978, the production of beer in America was divided among forty-three firms, with the biggest controlling only a quarter of the market. Today, more than 1,750 companies make beer in this country. But ABI and MillerCoors have locked down more than 90 percent of the U.S. market. This gives them the power to jack up prices almost at will. More important, it gives this cadre of capitalists the ability to decide which American craft brewers thrive and which don't.

Or take the advertising executive who recently told me about her decision to ditch her career and become a teacher. Over the course of a decade, this executive steadily accumulated responsibility as she moved from Wunderman to Omnicom to Young & Rubicam, confident she was destined for a corner office. Then, a couple of years ago, she hit a wall. "Every place I wanted to work was already owned by WPP," she said, referring to the British giant that controls Y&R and many other firms. "And I realized that to move, I'd need the approval of some grand poobah."

Again we encounter the familiar story. Well into the 1980s, power on Madison Avenue was dispersed among more than a dozen large agencies and scores of vibrant smaller firms. But over the past thirty years, four sprawling holding companies—WPP, Interpublic, Omnicom, and Publicis—swallowed up almost the entire industry. WPP alone controls more than 300 ad agencies, including such once iconic shops as the Grey Group, Ogilvy & Mather, and Hill & Knowlton. And the four giants vigorously shore up this power with strict non-compete employment contracts.

You'll hear the same thing if you talk to the musicians who find themselves subject to the caprices of Live Nation. Or if you talk to the legions of doctors watching helplessly as hospital corporations begin to regulate medical services across entire regions. Where only a few short years ago these citizens controlled their own destinies, they wake today to find themselves the de facto chattel of some domestic (or increasingly, foreign) lord.

But perhaps the best way to understand the true structure of America's political economy in the twenty-first century is to talk to some of the people who publish, edit, and write books in America.

These days, most articles on the book industry focus on technology. The recent death of the retailer Borders is depicted as a victory of Internet sales over brick-and-mortar stores, the e-book market as a battle between the Kindle e-reader and the iPad. But if we look behind the glib narrative of digitization, we find that a parallel revolution has taken place, one that has resulted in a dramatic concentration of power over the individuals who work in this essential, surprisingly fragile industry.

A generation ago, America's book market was entirely open and very vibrant. According to some estimates, the five largest publishers in the mid-1970s controlled only about 30 percent of trade book sales, and the biggest fifty publishers controlled only 75 percent. The retail business was even more dispersed, with the top four chains accounting for little more than 10 percent of sales. Today, a single company—Amazon—accounts for more than 20 percent of the domestic book market. And even this statistic fails to convey the company's enormous reach. In many key categories, it sells more than half the books purchased in the United States. And according to the company's estimates, its share of the e-book market, the fastest-growing segment of the industry, was between 70 and 80 percent in 2010. (Its share of the online sale of physical books is roughly the same.)

Not surprisingly, then, we find the same sort of fear among our book publishers as we do among the chicken farmers of the Sweedlin Valley. I recently sat down with the CEO of one of the biggest publishing houses in America. In his corner office overlooking a busy Manhattan street, he explained that Amazon was once a "wonderful customer with whom to do business." As Jeff Bezos's company became more powerful, however, it changed. "The question is, do you wear your power lightly?" My host paused for a moment, searching for the right words. "Mr. Bezos has not. He is reckless. He is dangerous."

Later that same day, I spoke with the head of one of the few remaining small publishers in America, in a tattered conference room in a squat Midtown office building. "Amazon is a bully. Jeff Bezos is a bully," he said, his voice rising, his cheeks flushing. "Anyone who gets that powerful can push people around, and Amazon pushes people around. They do not exercise their power responsibly."

Neither man allowed me to use his name. Amazon, they made clear, had long since accumulated sufficient influence over their business to ensure that even these most dedicated defenders of the book—and of the First Amendment—dare not speak openly of the company's predations.

If a single event best illustrates our confusion as to what makes an open market—and the role such markets play in protecting our liberties—it was our failure to respond to Amazon's decision in early 2010 to cut off one of our biggest publishers from its readers.

At the time, Amazon and Macmillan were scrapping over which firm would set the price for Macmillan's e-books. Amazon wanted to price every Macmillan e-book, and indeed every e-book of every publisher, at $9.99 or less. This scorched-earth tactic, which guaranteed that Amazon lost money on many of the e-books it sold, was designed to cement the online retailer's dominance in the nascent market. It also had the effect of persuading customers that this deeply discounted price, which publishers considered ruinously low, was the "natural" one for an e-book.

In January 2010, Macmillan at last claimed the right to set the price for each of its own products as it alone saw fit.* Amazon resisted this arrangement, known in publishing as the "agency model." When the two companies deadlocked, Amazon simply turned off the buttons that allowed customers to order Macmillan titles, in both their print and their e-book versions. The reasoning was obvious: the sudden loss of sales, which could amount to a sizable fraction of Macmillan's total revenue, would soon bring the publisher to heel.

> *For most of the twentieth century, manufacturers enjoyed the right to set minimum prices for their products. In 1975, however, Congress shifted this right to the retailer and the trading company, theoretically to enlist these powers in the fight against inflation. In 2007, the Supreme Court's decision in Leegin Creative Leather Products v. PSKS, Inc. shifted at least some of the right to price back to the producer, in an act that surely heartened Macmillan's legal team as it went head-to-head with Amazon. Many other nations, including France, Germany, Japan, and Switzerland, forbid discounting by publishers and booksellers.

This was not the first time Amazon had used this stratagem. The retailer's executives had previously cut off small firms such as Ten Speed Press and Melville House Publishing for bucking their will. But the fight with Macmillan was by far the most public of these showdowns.

In the late 1970s, when a single book retailer first captured a 10 percent share of the U.S. market, Congress and the regulatory agencies were swift to react. As the head of the Federal Trade Commission put it: "The First Amendment protects us from the chilling shadow of government interference with the media. But are there comparable dangers if other powerful economic or political institutions assume control…?"

In the intervening years, however, we have failed time and again to protect our open market for books. We did nothing as the super chains rolled up retail. We did nothing as six enormous conglomerates—four of them foreign-owned—absorbed many of our publishers. These failures are inexcusable. Yet always we could reassure ourselves that the absolute worst had not come to pass, that there was still some competition in our market for books, that no sovereign boss had emerged.

Today, by contrast, a single private company has captured the ability to dictate terms to the people who publish our books, and hence to the people who write and read our books. It does so by employing the most blatant forms of predatory pricing to destroy its retail competitors. It does so by gathering up massive amounts of information about the most private thoughts, interests, and habits of the American citizen. And all the while, this new sovereign justifies its exercise of raw power in the same way our economic autocrats always do: it claims that the resulting "efficiencies" will serve the interests of the consumer.

Meanwhile, all these manipulations—as audacious as any ever pursued by the antique bosses of steel or oil—have raised only the rarest murmurs of concern from Congress, the Obama Administration, and the FTC. (Antitrust enforcers in Washington and Brussels did launch investigations. Blinded, however, by the Orwellian framework of "consumer welfare," they have mostly taken aim at the publishers, for daring to seek some control over the prices of their own products.)

Not that there have been no warnings at all. In his capacity as head of the Authors Guild, novelist Scott Turow has repeatedly condemned what he says is Amazon's intent to, as he put it recently, "drive paper publishers out of business." Oren Teicher, who heads the American Booksellers Association, told me that "Amazon is threatening the whole ecosystem of how ideas are created, how they are developed, how they are sold."

In the event, Amazon did turn Macmillan's buttons back on (but only after more than a week). And it did allow publishers to price their own e-books (though not their physical books). Still, there is little doubt the individuals who run Amazon got exactly what they wanted. They displayed the full extent of their dominance to the people most directly subject to it.** They proved to those same people that most of the American public no longer understands the nature—or the political danger—of that dominance.

> **In December, the e-commerce giant continued its assault on brick-and-mortar merchants by offering promotional discounts of up to $5 to customers who scanned the prices of products in a store and then purchased them online at Amazon. This tactic, which Amazon defended in the name of "price transparency," elicited loud protests from retailers as well as Senator Olympia Snowe (R., Maine), who called it "an attack on Main Street businesses."

In rare moments of disquiet, we like to assure ourselves that all shall turn out well. Surely some Schumpeterian upstart will emerge, as if by magic, to disrupt Amazon's reign. Or Apple or Google will choose to intervene, in some fashion that avoids the political dangers posed by Amazon's control, even though these firms wield powers at least as awesome as the online retailer's.

Then we drift back into our private utopias, there to marvel at all the wonders of modern technology and the freedoms that await us if only we are patient and trust the great corporations to deliver what they promised. And truth be told, it is an amazing world we live in. I mean, who would ever have imagined that one day we'd be able to read Common Sense right on our Kindles?

For years, America's upper-middle classes—of all political leanings—have tended to gaze on our political economy with a certain smug self-confidence. Even as our new masters imposed their rule over the markets once run by our farmers and small shopkeepers, and smashed the unions that empowered industrial workers and flight attendants to bargain as equals with their bosses, we turned away.

Servility, our political fabulists assured us, was for the little person. For our refined skills, competition was becoming every day only more intense. America, or at least our cozy enclave within it, was being transformed into a "free-agent nation."

Well, it's clear now that we never quite managed to slip the hold of the ancient truths. It was 150 years ago that Alexis de Tocqueville condemned top-down, long-distance control over any task that a community or individual could manage just as easily on its own. Observing the widespread sycophancy of French society under the July Monarchy, he noted how men routinely subjected to such power become accustomed "to set their own will habitually and completely aside; to submit, not only for once, or upon one point, but in every respect and at all times. Not only, therefore, does this union of power subdue them compulsorily, but it affects their ordinary habits; it isolates them, and then influences each separately."

And so our new masters administer us in America today. They use their great nation-spanning and world-spanning corporations to isolate us as individuals, and then to pit us against our neighbors. They capture and hide away the information that until recently spilled from our open markets. And so they shatter our ability to speak coherently to one another from a base of common experience, to process even the most rudimentary of economic and political facts.

To step outside the open market is to step outside the rule of law and to come under the rule of whim. To step outside the open market is to step outside the rule of reason and to enter a realm of nonsense. We have a choice in America today. We must learn how to make real markets once again—or bend our knees, perhaps forever.

| 20120112-05 | 20:14 | Art | Re: "Killing the competition: How the New Monopolies Are Destroying Open Markets" (reply to pm, above) |
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As always well said Pam. You know, none of this should surprise any of us. Companies have one goal, MAKE MONEY. Individuals, who are functioning parts of the company, may have some noble thoughts about caring for other aspects of the issue such as jobs, safety of product etc, but the company collective thought has one motive, PROFIT, the more the better. Nothing wrong with that but when the Supremes make company collectives for the purposes of political intervention, people, that presents a problem.

If my premise is right, then, when you think about it, one way to better assure the Company continues to make money is to eliminate the competition.

Makes sense and again from a corporate point of view, nothing wrong with that. If this Company is the only one to make this product, it has a lock on the price and availability.

Following this line of logic now goes to several well written and presented articles on capitalism, the general consensus being it is the best form of economic application since it encourages initiative and competition. Here is the issue, however, capitalism, if practiced to the ultimate end, eliminates all other competition if possible and eventually become no longer really competitive. We saw this in the United States back in the late 19th century when companies like Standard Oil formed vertical monopolies and others like railroads became horizontal monopolies.

People like Teddy Roosevelt made their names as Trust Busters. During that period the country was in many ways in a similar shape to what it is now (hint - the Great Depression is 1929 wasn't the only economic depression this country ever went through )and it may be that we need similar action now.

I think only by a combination of encouraging capitalism coupled with government (AKA - the people) oversight can we really make progress. Otherwise we are back to the basics, dog eat dog, survival of the fittest and the hell with the rest.

Now which party will best correct the imbalance. Apparently Romney doesn't think there is an imbalance, just envy.

| 20120112-04 | 16:40 | SteveG | Fw: CREDO Action Petition: Tell President Obama to Investigate the Banks! |
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from CREDO Action:

Wall Street greed fueled the housing bubble, and it's not hard to find evidence of what appears to be widespread and pervasive fraud by the biggest players in the mortgage industry.

Yet, despite the work of a handful of brave state attorneys general, there has been an astonishing lack of investigation into the misdeeds and outright crimes that caused the financial crisis.

The investigations that do exist have barely begun to scratch the surface.

And without meaningful investigations, there won't be any accountability for the Wall Street crooks who drove our economy off a cliff.

Tell President Obama: Announce a full investigation into the cause of the housing bubble and foreclosure crisis. Click here to sign the petition:

> http://act.credoaction.com/campaign/obama_banks/.

The collapse of the housing bubble caused trillions of dollars in homeowner equity to evaporate, which directly led to our economy grinding to a halt.

And the ensuing wave of foreclosures — caused in no small part both by predatory loans designed to fail and out-and-out foreclosure fraud — has destroyed communities across the country and shrank the tax base of local governments right when there was the most need for the services they provide.

Yet with all the resources at its disposal, the Department of Justice and other federal entities have yet to announce a full investigation of the cause of this man-made economic catastrophe.

Quite the opposite. Thus far the president's advisors have been pushing for a bad settlement with the banks that lets them off the hook . But a bad settlement has been stopped so far by courageous progressive attorneys general supported by an army of grassroots activists like you.

We now have an opportunity to change the White House's strategy as the reelection campaign heats up, and get the president to come out on the right side of this issue.

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| 20120112-06 | 20:51 | SteveBA | Re: "5 Founding Fathers Whose Skepticism About Christianity Would Make Them Unelectable Today" (reply to Art & SteveG, FotM Newsletter #50) |

Most who came here from England were seeking religious freedom, you may remember that the church of England was very powerful and persecuted the puritans and others. The last thing they, founding fathers, wanted was the state dictating their beliefs. Fortunately we have freedom of religion so we can have Unitarians as well as Southern Baptists. Quoting our first presidents as a slam on religion is not convincing to me. They are dead and the church lives on.

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| 20120112-08 | 22:07 | Art | Re: "5 Founding Fathers Whose Skepticism About Christianity Would Make Them Unelectable Today" (reply to SteveBA, above) |

Interesting point but don't think fleeing the oppression of the Anglican Church is why most people came to the colonies, only a few.  Need to keep the facts straight.

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| 20120112-09 | 22:17 | SteveG | Re: "5 Founding Fathers Whose Skepticism About Christianity Would Make Them Unelectable Today" (reply to SteveBA, above) |

I have read the article several times, similar articles numerous times, the constitution a couple of times, and the Treaty of Tripoli a few times – in no way have I interpreted anything said as a slam on religion.  All of us die and of course they have died.  When you say the church, I assume you mean all religions and that is accurate and pretty much always will be.  Our federal government recognizes 30 plus religions including atheism and Wicca.  My relatives came to the US in the early 1600's from England – none because of religious persecution.  Other branches came from the Netherlands and Germany – again because they wanted.   Christmas was not declared a federal holiday in the US until 1870.

Pertinent Documentation:

http://www.virginiaplaces.org/religion/religiongw.html.

http://www.adherents.com/people/pa/John_Adams.html.

http://www.monticello.org/site/research-and-collections/jeffersons-religious-beliefs.

http://www.infidels.org/library/modern/john_murphy/jamesmadison.html.

http://www.fordham.edu/halsall/mod/paine-deism.asp.

http://www.stephenjaygould.org/ctrl/treaty_tripoli.html.

| 20120112-07 | 21:42 | Bill | Re: Yet Another Tax Scam: Most Businesses Pay Zero (reply to SteveB, FotM Newsletter #50) |
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Your assertion that corporations don't pay taxes isn't accurate. I understand your interpretation, that taxes are assessed after the corporation's expenses are met, but if you examine this a bit deeper, I think you'll retreat from this assertion. Let me suggest that the fault in what you assert is the erroneous assumption that a corporation can control the prices it charges to its customers. Follow this, please: What a corporation must do to survive, or at least to remain a rational enterprise, is earn a reasonable rate of return, one comparable to similar enterprises.

Circumstances or poor decision-making by management may result in the corporation having a sub-standard return after expenses and taxes. Can the corporation, whether a C or and S, simply jack up the prices of its products or services to remedy a rate of return that is sub-standard? If it happens to enjoy a monopoly, it could. Most businesses, despite their efforts to identify their products as irreplaceable or unique, aren't without competition and can not raise prices without consequences in the market.

The consequences? Selling less. (A further note: If a company has some degree of monopoly and/or ability to extract economic rents, the competitors will move in and take it away. Is such competition perfect? No, but it's there. Drug companies are probably the most notorious in hanging on to economic rents gained from proprietary drugs that are winners, but patents only last so long.

Back to rates of return: The shareholders in a C corporation that is not earning something close to the return that other corporations in the same market earn, may not want their corporation to pay taxes, but the taxes will still be due, despite that sub-standard return. Q. E. D. that corporations are not free to reimburse their tax bill via prices charged to their customers. Earnings of an S corporation, of course, are not taxed at the corporate level but inure to the shareholder(s), who is taxed at individual rates. The same logic applies.

If your assertion were accurate, I think I can tell you that there would be many, many fewer corporations that go bankrupt.

I think you also contemplated sales taxes. In almost all states, the retailer acts as a conduit for the state with the retailer retaining a modicum of the tax as compensation for collecting it. The unfair dimension dimension, of course, of sales taxes is that people pay the same rate, regardless of their financial status, although states typically ameliorate this unfairness through exemption food and medicine from being subject.

I've written more than I should, but it's just not accurate that corporations are always able to unload their obligations on someone else.

| 20120112-10 | 23:05 | SteveB | Re: Yet Another Tax Scam: Most Businesses Pay Zero (reply to Bill, above) |
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I'm really happy to be challenged on this one. Especially in the lead article, I try to be as provocative as possible (while adhering to truth) in the way I state things, and it’s a disappointment when I don’t stir-up any controversy. If I’m not challenged, how am I ever going to develop my talents as a gadfly and a pr*ck? It’s hard to find challenges right now, especially with most of the Right apparently afraid of me.

I have to admit that this is a kind of complicated subject that both of us have to over-simplify a little to explain. I believe both our points are valid. Let me try to explicate.

I believe, first of all, we have to try to look at this "problem" from a different perspective, outside of any normal investor or accounting comfort zones, from (I hate to say it) "outside the box". We need to look at business taxes with an entirely fresh view, and let's see if any truth resides. We seek the ultimate dark heart of capitalism, even Conrad would shudder.

Foundation

1. Your arguments assume a free marketplace, mine do not. From a businessman's perspective, I believe we have a real mix of monopolies and free markets and things in between. Also, a business can differentiate it's product to the point where it has no competition. Apple achieves this to a degree. Intel, Microsoft, Google, and Oracle achieve this to the point of nearly complete monopoly, in some cases.

2. Businesses don't operate alone. They operate, more or less loosely, as a community. A community that sets prices based on an awareness, at a minimum, of competitors' pricing.

3. Remember, except for the personal compensation of its employees and owners, a corporation only pays taxes on profit. This "profit" is a highly fluid commodity. Most businesses can manipulate their taxes by manipulating their profit. In the case of small business, profit can be a wildly misleading figure, because of that great outing to Aspen, or that company car or jet.

4. Competitors in a market generally face similar tax situations. If taxes go up or down for one, they generally do the same for all. This reduces pricing competitiveness slightly. All the businesses in a market must make enough money for investors and workers to remain. All must get over similar tax hurdles to accomplish this.

5. As you point out, there is not only competition in the marketplace, but also the all important competition for investment, in the first place. Taxes are always important considerations here. Why not in business and pricing too?

6. The customer is always going to pay for the total costs of the business, including taxes. Otherwise, if that money has to come from somewhere else, the business if failing, at least temporarily. What other pot of money is there to pay taxes from? More investor money? Not good. The businessman's pocket? You're going to hear a lot of screaming.

7. A business that can't set its prices high enough to make a profit and pay its taxes won't be in business long (unless it's an airline).

Structure ("Happy Spices" Spice Cabinet Company)

I tried to generalize in the article instead of talking about personal experience, which might have weakened my points a little. Let me correct that now. This is a case from a recent venture.

I wanted to start a company manufacturing wooden spice cabinets for people to mount on their kitchen walls. They would have doors to keep out the sun, shelves just right for spice bottles, and bright colors to fit any décor. There is some competition in my marketplace, but nothing exactly like mine. All they sell are metal things that take up counter space, or cumbersome things that attach to the inside of cabinet doors. So I have competition in general, but not in particular. This is often the case in business. And, usually, I can differentiate my product from my competition to give me more of a monopoly situation where I can truly set prices. That is the case with my spice cabinets. They have competition, but not exactly.

So, the first thing I did was to see a need in the marketplace for my product. Then I sat down and designed a spice rack. Actually, I designed four different models. Then I had a prototype made of the biggest model, mounted it on my kitchen wall, and continued to do market research, especially among our visitors, who were seemingly impressed. Everything looked good. I still didn't know how much the products would cost me to manufacture or how much I could sell them for, but I was beginning to hone in on these all important numbers.

I went back to my guy, David, at the local factory here in Santa Cruz, Bolivia. It's actually as much a bunch of craftsmen as a factory, but I guess I don't need that level of detail here. I tried to pretend I was Wal-Mart. I said, "Look, a*s-hole, let's get serious. I need 4000 spice cabinets, of this mix of models, with a contract for future work, and I need these prices or you won't get any of my business." That's not exactly what happened, but let me use that as a representation of a business negotiation. That's the rough and tumble we engaged in, over a period of days, until we both thought we had the best deal possible. Now I had production costs. My distribution costs were worked-on in parallel, so that duck was in order.

Now it was time to think about selling price. You are right, competition introduces limits to pricing. But, in the case of this example at least, customer needs, expectations, money available, etc., played just as large a role. Regardless of what similar products sell for, regardless of what my total costs (including taxes) might be, what will customers actually reach into their pockets to pay? And is that amount enough for me to make a profit? More market research. Still not much investment made, right? Right!

Once I have the product manufactured and actually being sold, I can experiment a little with prices to try to find the sweetest spot for me on the supply/demand curve. But I can't do that yet. I also don't want to invest a bunch of money, then learn I have to sell the product for a loss. Now is the time to learn such things, and taxes must always be part of the equation.

Yet, it's not as simple as an equation. I wish it were. But pricing, to me, is almost as much of an art as a science, especially where a small business, such as mine, lacks the big marketing, risk assessment, accounting, etc. departments of a large corporation. First, I thought about my customers (What will they pay?), then about my distributors (What do they need?), then about my competitors (What do they sell and for how much?), then about my costs. The answer gradually became clear. I could sell my top-of-the-line cabinet, like the one in my kitchen, for 300 *bolivianos*, the two medium ones for 200 *bolivianos* each, and the small one for 150 *bolivianos*. I became pretty sure that I could sell thousands of cabinets at these prices in a city of 2 million. And I could probably adjust prices a bit, later. What will the market bear? That's always an important thing to discover.

But…could I make the investment and make a profit given all the realities of my pricing limitations, costs, the marketplace, and my exact, effective tax situation? Here in Bolivia they make the tax situation very simple because many small businessmen can't read or write. It's a flat 13% on sales, less the 13% you pay for cost of sales. In the U.S. it's more complicated. There, specific tax rates for personal income, corporate income, capital gains, retained profits, etc. would not only play into pricing decisions (see below) but even decisions as to what kind of legal structure is best for the company. Taxes are always an important consideration in any business decision in the U.S. This is actually further evidence that the cost of taxes is built into pricing.

Now it's just math. Can I make a profit? If so, how much? And what is important to me is: **how much <u>after</u> taxes**? There are competing investments (always) with different tax structures. None of these investments can be analyzed in lieu of the tax aspects. That would be like trying to decide whether to invest in municipal bonds without taking into account that you don't pay taxes on the income.

Looking at all this, I try to project out what things might look like for the first year. I would need to invest $X to make $Y. $Y must be <u>after</u> taxes, else I'm comparing apples to oranges with my other investment alternatives. Also important is the assessment of relative risk of the investment alternatives. Obviously, spice cabinets, in a city where they essentially don't exist yet, present a greater risk than municipal bonds (usually). How do I not take taxes into account too?

The day of reckoning finally comes. The numbers look pretty firm and for me, and I think to most small businessmen at least, there are two vital aspects to these figures:

1. What return can I expect on my investment for what period?

2. What return can I expect on my time?

Since "return" for all practical, if not accounting, purposes must take taxes into consideration, then taxes are just another business expense like labor or cost of goods or overhead that is paid by the customer.

At this time, I might decide that the return on investment is not worth the risk. I might learn that I could make money, but only at the rate of, say, $10/hr. Then I might say, "Scr*w it," or I might say, "Man, with these taxes, I'm going to have to charge higher prices. Then recompute everything based on that. In this analysis, taxes would be treated just as cost of capital, cost of goods, labor, overhead. Taxes are built into prices automatically and inevitably—always. Just as the other costs of doing business are.

And if taxes go up while I'm making and selling my product, I may have to raise my prices. Just as with any of my expenses, I have a little cushion built into the analysis. My prices can sustain modest cost increases, but not more drastic. Taxes too. This proves that taxes are just a normal business expense built into prices.

It doesn't matter that I have competition and am not completely free to set prices, that does not remove taxes as a cost of doing business, a cost that is passed on to the customer via pricing. The business MUST pass the taxes on. It has no other viable alternative in the long run.

Therefore, as radical as it sounds, **the customer (buyer) pays all the taxes. The business pays none or it's in trouble.**

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—Friends of the Middle,
Steven W. Baker (SteveB), Editor/Moderator

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