

# TOWARD A MORE PERFECT UNION



## THE FUTURES ACCOUNT

**How to expand homeownership and higher-education access—while shrinking government bureaucracy at the same time.**

**BY RICHARD J. GELLES**

**I**n the last 10 years, as a social scientist and present dean of the School of Social Policy and Practice, I have slogged through the morass of government efforts to help disadvantaged citizens. Although this began as a struggle to identify a policy that would benefit disadvantaged children, I have concluded that it is a mistake to focus narrowly on the hungry, homeless, or disadvantaged child. The real face of the problem is the working and middle class. It will be Main Street that creates the jobs and opportunities that benefit the poor and those at risk of being poor. And, equally important, it is the aspiration and commitment to live on Main Street that can directly benefit all children.

**Whoever wins the White House will confront challenges and opportunities that were lost in the fog of electioneering. Penn scholars address five areas that the campaigns muddled, ignored, or failed to think big about.**

Many people aspire to the Main Street lifestyle, which includes home ownership and enough education to assure job security. Unfortunately, that lifestyle is unattainable without an education and sufficient resources for a down payment on a home. And if enough people give up aspiring to join the middle class, if education and home ownership become far out of reach, it is likely that wide segments of the population will give up aspiring to the dream. Giving up the goal of social advancement—at least as far as gaining membership in the middle class—can quickly lead to alienation. If you are not going to go to college and if a high school diploma is insufficient to assure economic advancement, why even bother to finish high school?

The task of separating good policy proposals from bad ones is complex for at least four reasons. First, most people believe “I’m from the government and I’m here to

help you” is just a big lie. Second, those on the right want no part of more big government and more spending. Third, those on the left continue to believe that more and more funding for bigger and bigger programs is the answer, despite a good deal of evidence to the contrary. Fourth, any program will have to meet the daunting challenge of being truly affordable, with a funding formula that is not merely smoke and mirrors.

Government has struggled for years to create policies that help needy citizens, and for all its well-intentioned failures, it does sometimes hit the bull’s eye. Successful programs have at least three things in common. First, they are universal, that is, they provide for a specified population without a means test or some form of complex targeting; second, they have a minimum eligibility test, like serving in the military or turning a specific age; and third, they require relatively small bureaucracies to support them.

Without a secure middle class, stimulus packages, tax cuts, short-term job programs, and stronger safety nets will not rebuild and solidify Main Street. Without a strong middle class, the United States’ economic outlook is dire. To rebuild a true Main Street that will support a consumer market economy, government policy has to look in the long term at building and securing a future.



TAMING ATTACK ADDS

EGYPT'S FUTURE

HEALTH CARE

DIGITAL PRIVACY

HOME OWNERSHIP



Toward that end, I propose a program that would offer the opportunity for higher education and homeownership to every child born in the United States.

## The Futures Account

The Futures Account builds on the work of Michael Sherraden and his concept of Individual Development Accounts. However, it is not just an antipoverty program. It would be universal, available to every child born in the United States or who is a legal resident of the United States. When he or she reaches the age of 18, access to the account is guaranteed. There would be no disqualifying factors. Even people incarcerated at the time they turn 18 would be eligible to access the account for education or housing (obviously, at a later date). People who are not mentally capable of making decisions would have a guardian appointed to allocate the funds from the account.

## The Deposit

The actual amount of the Futures Account must be meaningful as an asset. The amount I propose is based on the assumption that \$3,000 would be deposited into the account for eighteen years. The account would not generate interest; thus, a child would accumulate \$54,000 by the time he or she turned 18.

That would be enough to pay for one year of tuition and fees at an Ivy League or private university or all four years at the University of California, Los Angeles (at the 2010 cost of tuition). This amount would be enough for a 20 percent down payment on a \$270,000 home. The US Census Bureau estimated that the median sales price of a home and land in July 2009 was \$210,100, while the average was \$269,200.

In 2011, 4.4 million Americans turned 18. In the first year of implementation, the cost of providing the asset of \$54,000 to 4.4 million children would be \$237 billion. In order to be considered even remotely possible, a Futures Account would require finding a \$237 billion offset in current federal spending and in the tax code. More on that later.

## Withdrawals

Unlike the Social Security Trust Fund, the Futures Account is a real account with an annual defined obligation. Monies raised through taxes in a single year would have

to be available to pay the appropriation in the account each year. However, unlike Social Security, there would be no continuing obligation for annual payments, nor would one generation of workers pay for the benefits of a later generation.

The devil in any proposal to help children has always been that funding must be given to parents or some other guardian—the state, county, or school system. In contrast, the Futures Account is under the sole control of the individual when he or she turns 18. At that point, assets can be withdrawn from the account for only two purposes: education and housing. The withdrawal would be accomplished only by electronic transfer to a qualified educational institution or as part of a housing transaction through a lending institution. The funds are, in reality, a form of voucher for education or home ownership.

There would be no survival rights to asset accounts. If an account holder dies prior to his or her 18th birthday, or after it with an unspent balance, the assets would be returned to the US Treasury.

## Incentivizing

The Futures Account could also include incentivizing provisions based on a child's specific accomplishments before the age of 18. The most significant incentive would be a high-school graduation incentive payment of \$5,000. In 2009, 87 percent of adults 25 years of age or older in the United States had completed high school. While this is an impressive overall statistic, it still leaves 13 percent without a high-school degree. This is a population exposed to numerous risks, including poverty, a population that lacks a key credential for entry into the skilled workforce. Without unusual talents or accomplishments, those without a high-school diploma are substantially blocked from a Main Street lifestyle and Main Street security.

Moreover, this statistic does not tell the whole story. In Detroit, only 21.7 percent of students graduated from high school in 2008, while in Baltimore the figure is a pitifully small 34.6 percent. In Philadelphia, fewer than half—49.2 percent—of students in urban high schools graduate, compared to more than 8 in 10 (82.4 percent) of students in the Philadelphia suburban high schools.

What is especially attractive is the ability to incentivize graduation without creating a new bureaucracy.

High-school graduation is not the only possible incentive. Not being convicted of a juvenile offense is another. Another plausible incentive is public service. In the last two decades, high schools, colleges, and universities have increasingly required students to engage in public service. Of course, some of the volunteerism is as much motivated by resumé building as by altruism. The problem with encouraging public service is not motivation, but elitism. Those who can “volunteer” are young men and women who can afford to do so.

## Paying for the Futures Account

For the Futures Account to become a reality, immediate tax offsets would have to be applied to the federal budget. One could argue forever about the potential long-term cost savings and economic advantages of the Futures Account, but that will not pay one cent of the first-year cost.

The obvious offsets are:

a) *Eliminate the child exemption from the tax code.* According to the Internal Revenue Service Reports, in 2002 there were 130 million tax returns filed, of which 90.6 million represented taxable returns. The average tax rate was 14 percent. Thus, nearly 70 percent of tax-filers paid an average of 14 percent of their adjusted gross income.

Not every one of the nearly 75 million children in the US are cared for by parents or caregivers who are obliged to pay taxes, so the quick math does not work here. I have neither the expertise nor knowledge of IRS data to fully calculate the possible gain in revenue the federal government would receive by eliminating the child dependent exemption. However, a cursory calculation using the figures above indicates that it would result in a total estimated increase in tax payments of \$35 billion.

b) *Reduce federal funding for college aid.* A second offset would require that the federal government get out of the college financial aid business, although the savings here would be modest. Federal funding for higher education has always been a sacred cow, especially the federal Pell Grant program, which offers need-based grants to low-income undergraduate and certain post-baccalaureate students to promote access to postsecondary education. The budget for fiscal year 2007

for Pell Grants was nearly \$14 billion. President Bush's 2009 budget request included \$95 billion for grants and loans for some 10.9 million students.

With a Futures Account in place, the Pell Grants, as well as other higher education grants and loans, along with the bureaucracy that supports them, could be phased out because they would no longer be needed. Other categorical federal fellowship and scholarship support for higher education could also be eliminated, as any means-tested aid would no longer be needed. And again, the savings would also include the elimination of a federal bureaucracy supporting such programs.

*c) Eliminate federal earmarks designed to help children.* Billions of dollars are spent annually on sacred cow programs that are supposed to aid children, and each program has an embedded constituency that would fight vigorously to protect their turf, whether or not it benefits children. In the area of juvenile justice alone there are hundreds of millions of dollars in federal spending—much of the money earmarked or designated by Congress—that provide little empirically measured benefit. My personal choice of the most outrageous example is a program that on the surface seems like a good thing: the National Center for Missing and Exploited Children. The center was created in the aftermath of the 1981 kidnapping and slaying of six-year-old Adam Walsh in 1981, after the enactment of two federal laws that focused on missing children. In 2009, the total budget for the center was \$48 million, \$37 million of which was funded by the federal government. The funding was a sole-source allocation—meaning no other organization was allowed to apply for funding for a center on missing or exploited children. Thus the funding became a yearly no-bid entitlement for the center. The executive director of the center, Ernie Allen, received a salary of \$724,363 in 2009.

The cause of missing children is certainly heart-wrenching. The problem has a face—the kidnapped and slain Adam Walsh, Polly Klass, and the still missing Etan Patz. And it has a website well stocked with compelling statistics and stories. But in the end, this is an earmarked program that draws down \$37 million per year in federal funding. Yet

the FBI estimates that only between 43 and 147 children are kidnapped and killed by strangers each year. The vast majority of missing children are either runaways or children taken as part of parental abductions. Parental abductions are technically kidnappings, but they are not like the cases of Adam Walsh, Polly Klass, and Etan Patz.

Such earmarked programs are a cancer that has spread through government over the past two or three decades, and it is a shame that no one in the legislative or executive branch has had the fortitude to excise the malignancy.

*d) Institute a value-added tax.* When all acceptable program cuts can be identified and agreed upon, Congress and the executive branch can be tested as to whether they are truly willing to commit to the future of America's children. The dreaded "T" word—tax—is the final offset. I would choose the simplest tax, one that has already been implemented in most European Union countries: a value-added tax on luxury goods.

There is an underlying logic and elegance to levying a tax on luxury purchases to fund programs for children. Taxing high-end automobiles, yachts, and jewelry would test Americans' values.

## What About Fraud?

It would be naive to believe there would be no fraud when the federal government suddenly makes \$237 billion available to 18-year-olds for the purposes of education and/or housing. The bursting of the housing bubble in 2008 and the massive increase in foreclosures opened the eyes of policymakers, the media, and the public about fraudulent practices in the home mortgage industry, as well as about the great number of people who were persuaded to purchase homes they could not afford.

Similarly, there is increasing concern about colleges and universities that enroll students who have government loans and then leave school with an impractical or incomplete education and large loan debt. With \$237 billion available for postsecondary or higher education, some forms of unethical practices are likely to crop up to defraud well-intentioned 18-year-olds.

There are other possibilities for fraud. Unscrupulous parents could persuade their adult children to purchase a home, and then force their offspring to sell and turn the

money over to them. The 18-year-old could do the exact same thing—buy and sell the home and pocket the \$54,000. Of course, the Futures Account could include a "lock-up" period during which the home could not be resold or, if resold, the \$54,000 would have to be returned to the Futures Fund or to the government. Some argue that 18-year-olds are not mature enough to invest the funds wisely, and thus could easily waste or lose the money. I reject an "investment supervision" provision because I want to avoid creating a government entity to engage in or oversee such an enterprise. Social Security funds have been allocated for decades without such government supervision. Yes, there are those elderly who make unwise decisions or who are exploited, but that is always going to be part of a free-market economy.

No system could absolutely prevent fraud in the Futures Account policy. But the same arguments were raised when the GI Bill was debated in the 1940s. There must have been soldiers who used their education voucher and incurred debt for higher education that was not helpful. Some homes purchased with GI loans must have been foreclosed. But in the end, the positive results of the program far outweighed anecdotal accounts and concerns about waste and fraud.

I am certain of only two things: 1) Some young men and women will use the Futures Funds unwisely or inappropriately, and there will be unscrupulous people who will take advantage of 18-year-olds who access their \$54,000; 2) It would be a waste of government funds to create an infrastructure to police and prevent misuse of the Futures Funds.

I believe, but cannot yet prove, that the government's investing in education and an equity stake in society via homeownership will solidify the middle and the working classes and turn out to be a policy that can truly help individuals and the society at large. A program that offers a future to children—an education beyond high school and a chance to own a first home—is a program that will work. ♦

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# HEALTH CARE REFORM: THE NEXT CHAPTER

## Exploring the hurdles and opportunities created by the Supreme Court's health reform decision.

*The Supreme Court's June ruling upholding most—but not all—of the Affordable Care Act introduced new wrinkles into the United States' beleaguered effort to extend health care access to a wider swathe of its citizens. In July Gazette associate editor Trey Popp spoke with two experts at Penn's Leonard Davis Institute of Health Economics about the challenges and opportunities that lie ahead. David Grande GM'03, an assistant professor of medicine who specializes in health policy, talked about how the overturning of one of the ACA's Medicaid-expansion provisions will impact low-income citizens and hospitals. Tom Baker, the William Maul Measly Professor of Law and Health Sciences in the Law School, addressed some of the finer points of the new state health-insurance exchanges: how they'll vary from state to state, the promise and peril of privately run exchanges, and how the exchange model might create opportunities for new startups in the insurance marketplace.*

### DAVID GRANDE

#### What is the next hurdle for health care reform in the wake of the Supreme Court's ruling?

The Supreme Court threw a major curveball. They upheld everything, except they did take out one piece. The way coverage was to be expanded was through two mechanisms: one is through a big expansion of Medicaid, for very-low-income people. And the other half is through subsidizing the purchase of private coverage. The piece on Medicaid had a very big carrot and a very big stick to get the states to go along. And the Supreme Court took away the stick. The stick was, if the states don't expand their Medicaid programs as set forth in the law, they could potentially have *all* their Medicaid funding revoked. The Court took away that stick. The carrot is still there. The carrot is the federal government is going to pay 100 percent of the cost of the expansion for the first three years, and then after those three years it'll gradually go down to 90 percent—which is still incredibly generous compared to the current Medicaid program.

#### What's the formula for the current Medicaid program with regards to how much federal funds assist the state?

There's a range depending on how affluent the state is. The poorer the state, the higher the match rate; the more affluent the state, the lower the match rate. As for the top and bottom, it's 50 percent at the bottom, and up around 75 percent at the top.

#### What will happen in states that decide not to take that 90 percent deal?

When the law was written it was clearly assumed that everything would be implemented together. With the possibility that some states could decide against expanding their Medicaid program, it does leave this odd hole in the law—and in the coverage provisions—where the people who would be left out are potentially the most needy. If the state decides not to implement the health insurance exchange and the subsidized private insurance, there are provisions in the law that allow the federal government to come in and do that.

#### So who would get left out?

If you look at the coverage provisions, the cut point is 133 percent of the poverty level. If you're below that, all the coverage was supposed to happen through Medicaid. And if you're above that, up to 400 percent of poverty, all the coverage provisions work through private insurance. So in a state like Texas, if Rick Perry says, "We're not going to implement anything," the federal government could come in and set into motion a process to get people covered between 133 percent and 400 percent of poverty. But they wouldn't really have any tools at their disposal to do anything about people who are uninsured below 133 percent of poverty.

#### And right now, to qualify for Medicaid they have to be below 100 percent of poverty?

In fact, Medicaid is actually a complex maze of eligibility rules. Just being under 100 percent of poverty does not qualify you for Medicaid. There are very specific

programs with particular eligibility. So, for example, if you are a newborn child or a young child, your eligibility is different than a 10-year-old child or a 17-year-old child. If you are a pregnant woman, your income cut-off is very different than a non-pregnant woman. If you're a parent of a child, it's very different than if you're an adult without kids. So there are many adults who are way below poverty who do not qualify for Medicaid in most states right now. The new Medicaid provisions [in the Affordable Care Act] actually provide uniform income eligibility, whereas right now, it's a complete jigsaw puzzle.

#### How does the Supreme Court's ruling impact the major stakeholders in the health care system?

The assumption that this law was going to be implemented in block meant that all the players in the health care system, when they were negotiating compromises in the bill, all assumed that *all* of these coverage provisions would happen. So, hospitals, for example, agreed that some payments they currently receive to cover uncompensated care will be ended—there are current federal funding streams to hospitals to help cover the cost of uncompensated care that will go away once health reform is fully implemented. So it's ironic that if a state decides not to expand their Medicaid program, the residents of that state will still be contributing their federal tax dollars, but the state won't be reaping any of the benefits of the Medicaid program. The hospitals will be potentially worse off than they were before health reform, because they agreed to have their uncompensated-care funding cut. So the healthcare industry, I suspect, will be some of the most vocal advocates within the states to move forward with expanding Medicaid.

#### Do you have any ideas about changes that might make the law more palatable to the people who seem to be driven so crazy by it?

At the end of the day, this is so politically contentious and charged right now I don't even think you could have a policy discussion about health reform. I think that you need to let the law start to be implemented, and tweak it as it gets implemented. I think the fundamentals are all there. The basic premise and ideas and approach makes sense. There will clearly be hiccups along the way that need to be

addressed. I think at this point the focus should be on implementing it well rather than revisiting the approach. Because implementing it well is a lot of hard work, and it could easily be implemented poorly if people don't devote the time and resources to making sure it's done well.

**What will be the signposts to tell us if things are being implemented well or poorly?**

Right out of the gate, it'll be the process of people navigating new choices in health insurance and how overwhelmed people are or how user-friendly it is—so that for people who qualify for help, it's easy for them to get help. The mere process of getting people signed up for coverage in a way that is painless is really the most immediate signpost in terms of the first stages of implementation. There will be more complex questions about making sure that participation is high. Within individual health insurance exchanges, to make sure that both low-risk and high-risk people are participating in health insurance exchanges, because at the end of the day that will help keep health insurance premiums from spiking. If these programs are set up in a way that low-risk people are not buying in, then premiums will go up. So I think some monitoring of premiums and participation, and risk of those that are buying in, is important. And then there's a longer-term issue, which is how does the ACA relate to fundamental changes in the delivery of care and reining in costs? And there are certainly major changes that are set in motion by the Affordable Care Act in terms of trying to pay doctors and hospitals in different ways, and trying to have doctors and hospitals organize care differently. But, you know, that is a project that's really indefinite in nature.

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**TOM BAKER**

**You're on a working group focusing on the new state exchanges for health insurance. What should the goals be for making these exchanges effective?**

One major goal is just having people sign up. So one simple outcome measure we'll be looking at is: out of the people who go to the website to sign up, how many do? There's a health exchange operating in the Netherlands, and in the fall of 2010 they changed how they present-

ed their choices. They used to just present all the choices on the initial screen—just a massive number of choices. But then they changed, so that they asked people a couple questions and then gave them their top few recommendations. And that dramatically increased the percentage of people who signed up. So from a behavioral-economics research perspective, this is an incredible opportunity.

**Is there anything within the Supreme Court's decision that will limit or complicate the ways these exchanges will be run?**

If a state rejects the Medicaid—which by the way would be insane, but we all know there are people out there who put ideology before practicality—there's an open question in the statutory language about what will happen to someone who's poor enough that they would qualify for Medicaid under the extension, but they don't meet the categories that the state had already agreed was on Medicaid. The Affordable Care Act treats all those people as if they're going to get Medicaid, so it doesn't discuss them in relation to the exchange. Actually, the statute doesn't even have a provision for giving them subsidies [for purchasing insurance through an exchange]. In any kind of rational approach, I think that will be regarded as an aspect of the law that Congress has delegated to the Department of Health and Human Services, and the IRS, and the Department of Labor—which are the three agencies responsible for writing rules. So as long as Obama's running the show, they're going to write regulations that will make those people get the subsidies. But if you don't have any money, you know, you can't pay even 10 dollars!

**Right now two states have exchanges up and running: Massachusetts and Utah. How are they different?**

They're really different. Massachusetts is signing up tens of thousands of people, and it's directed at individuals. Utah is directed at small businesses, and so far it hasn't signed up very many people. The Utah exchange will become what's known as a shop exchange. It wouldn't qualify as an individual exchange, though the Utah agency could expand to run an individual exchange.

**What sorts of differences are likely to emerge as more states create exchanges?**

So Massachusetts is a more active purchaser [than Utah]. They have standard plans, and they limit the number of plans to make it easier for people to choose, and to exercise quality control. Utah takes more of an all-comers approach. That'll be a difference among states. Another difference is that states will be more or less friendly to the idea of there being privately run exchanges that will be able to get the data from the public exchange and add bells and whistles and sign people up that way.

**What are the benefits and drawbacks of private exchanges?**

In the long run, it strikes me that there are real advantages to having intermediaries that are able to offer more than just health insurance. Because the basic technology for choosing between complicated financial products is similar. So if an exchange were to get really good at that, it would be a shame for them only to be able to use that technology for health insurance. Of course you'd want the exchange to be compensated based on you buying anything, not differently based on what you buy. So, appropriately done, a private exchange could be really awesome. But there's risk of the intermediaries taking advantage of consumers. I think a public exchange would be less likely to do that. A public exchange might not do a good job, but if it didn't do a good job, it wouldn't be because it was trying to steer people in ways that would make money for the public exchange.

**From the perspective of existing health insurance companies, how might these exchanges change the marketplace?**

I think this will encourage them to standardize what they're doing across markets, so that they can more easily interface with the exchanges. Depending on how states do it, it could reduce startup costs for new entrants to the market, because you don't need a sales force—you can just go through the exchange. On the other hand, there also could be consolidation. One of the things we're going to look at is how much people are willing to pay for a brand. For example, Blue Cross is on the whole a more expensive product than certain other companies. And a lean network startup Preferred Provider Organization could definitely undercut Blue Cross's price. So then the question is going to be, what's people's preference in that regard? ♦



# ARAB POWER AFTER THE SPRING

The Muslim Brotherhood has won control of the Egyptian government. An inside look at its new president suggests that the US will have to adjust to a troublesome new status quo.

BY ERIC TRAGER

“I do not think these questions are proper,” the man sitting across from me said. “I will not go through this conversation if it goes like this.”

It was August 2010 and, five weeks into my dissertation fieldwork in Cairo, I had already interviewed over 70 Egyptian opposition leaders about their personal backgrounds—where they were from, what their fathers did for a living, whether they were the first members of their family to engage politically, and the like. But this was my first research interview with a Muslim Brotherhood leader, and it was not going well.

“Such statistical information can never ever be a part of a research [interview],” he continued. “Such a methodology is not accepted to me.”

So went my only in-person meeting with Mohamed Morsi, who was elected Egypt’s first civilian president this June. The prickly engineering professor, who at the time headed the Brotherhood’s political division, mostly refused to answer questions about himself, and was especially unwilling to discuss his reasons for joining the Muslim Brotherhood in the first place.

For Morsi, talking about his personal life entirely missed the point. Understanding the Brotherhood, he intimated, required appreciating its work in Islamicizing society to build an Islamic state in Egypt—the most populous Arab country—from the ground up. Rather than focusing on the personal, he wanted me to focus on the organizational.

“What we do is religious education,” he told me. “We try hard to show and explain and implement the meanings of Islam ... what’s the meaning of a comprehensive Islamic regime—for everything, in politics, in economics.”

According to Morsi, the Brotherhood had scattered local cells—known as “families”—all over Egypt, which were engaged in various social activities that encouraged people to live proper Islamic lifestyles.

“More important than [joining the Muslim Brotherhood] is to really be a good Muslim,” he said. “To understand Islam, apply Islam, practice Islam, convey the message of Islam—the realistic one, the comprehensive one—to others.”

At one point in the conversation, I started asking about the Brotherhood’s plans for the future. Hosni Mubarak was reportedly ill, so I asked Morsi: If Mubarak dies tomorrow, will the Muslim Brotherhood run a presidential candidate?

“No, because society is not ready,” he replied. “Our society is not ready yet to really defend its worth.”

In other words, until it had succeeded in Islamicizing Egyptian society, the Brotherhood would not seek total power.

Two years and a popular uprising later, the Muslim Brotherhood’s strategic vision has changed considerably. While the Brotherhood continues to operate its Islamist-oriented social services, it is primarily focused on achieving political dominance through the ballot box. And it has been astoundingly successful. It won the winter 2011 parliamentary elections, controls the presidency, and recently appointed Egypt’s next governing cabinet.

To be sure, the Brotherhood does not yet have complete political control. In lieu of a constitution, President Morsi’s authority remains ill-defined, and the military junta that has ruled Egypt since Mubarak’s ouster remains Egypt’s most powerful institution. But Morsi’s electoral victory, and the Brotherhood’s quick emergence into Egypt’s halls of power, still gives it tremendous leverage for shaping Egypt’s future. So how will it act?

Perhaps my August 2010 interview with Morsi provides some insight. For starters, the Brotherhood remains committed to Islamicizing Egyptian society as a first step towards building an Islamic state. Its newfound political power, its leaders say, merely gives it new tools for expediting this process. Thus, on the campaign trail, Morsi fre-

quently promised to “implement the *sharia*” if elected, and the Brotherhood has used its dominance of Egypt’s constitution-writing committee to ensure that the “principles of the *sharia*” remain the primary source of Egyptian legislation. And though Morsi’s new cabinet is mostly comprised of holdovers from the former cabinet and technocrats, Morsi has chosen fellow Muslim Brothers to run ministries that provide social services—such as the ministries of education, housing, manpower, youth, and information. The Brotherhood’s theocratic ideas will thus penetrate society more deeply.

Moreover, Morsi will likely remain beholden to the Brotherhood, rather than attempting to chart his own path. After all, Morsi’s presidential platform—the “Renaissance Project”—was drafted by high-ranking Muslim Brotherhood officials, and members of the “Renaissance Project” team advised Morsi on picking the cabinet ministers best suited to implement it. Meanwhile, the Brotherhood has mobilized its local “families” nationwide to support Morsi’s first 100 days by picking up trash, directing traffic, and providing public safety. The Brotherhood has further signaled its willingness to call its members to mass protests in Tahrir Square if the military junta attempts to curtail Morsi’s authority.

For these reasons, Morsi cannot be viewed as a typical head of state. He remains a cog within a much larger—and quite secretive—organization, and his presidency will likely be a vehicle for advancing the Brotherhood’s organizational goals, rather than a platform through which Morsi comes into his own. This would accord with the man I encountered two years ago: a Muslim Brother first, Mohamed Morsi second.

This will create a host of challenges for Washington. For starters, the speed with which a cohesive, theocratic organization has won power will significantly dampen prospects for democratization in Egypt—especially since there is still no party that can challenge the Brotherhood’s mobilizing prowess. The Brotherhood has also sent worrying signals on civil liberties. In conversations, Muslim Brotherhood parliamentary leaders have told me that they will not tolerate criticism of the *sharia*, and the

Brotherhood is using its control of the Shura Council (Egypt's upper parliamentary house) to install its own members in the country's influential state media. It should be noted that, within the Brotherhood during the last five years of Mubarak's rule, Morsi served as the enforcer, ousting less ideologically rigid members. As president, Morsi is likely to amplify the Brotherhood's most undemocratic instincts.

Moreover, Morsi's tight attachment to the Brotherhood makes it highly unlikely that he will act cooperatively with the United States on key American interests. In this vein, Morsi used his post-election Tahrir Square address to call for the US to release Omar Abdel Rahman, the "Blind Sheikh" convicted for his involvement in the 1993 World Trade Center bombing. Morsi has also sent worrying signals about his commitment to Egypt's peace treaty with Israel: he has previously called Israelis "killers" and "vampires," and, when Egypt's Ministry of Foreign Affairs responded on Morsi's behalf to a congratulatory message from Israeli President Shimon Peres, Morsi denied having sent it. Finally, Morsi intends to upgrade Egyptian-Iranian relations, which have been nearly nonexistent since Iran's 1979 revolution, and has signaled his desire to visit Iran (though, to be sure, the military junta might pressure him against doing so).

In response to these developments, the Obama administration has opted to engage the Brotherhood, apparently hoping to embed Morsi and his organization in a pattern of relations that will prevent the Brotherhood from behaving too irresponsibly. Given the strategic importance of Egypt, that is perhaps the only option for the time being. Yet Washington must also prepare for the strong possibility that the Brotherhood will not act cooperatively. The Brotherhood, after all, has spent the past 84 years trying to enact its theocratic, domineering agenda for Egypt, and Morsi's election provides an opportunity that the Brotherhood is unlikely to forgo. ♦

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## REVIVING PRIVACY

**In the midst of the "great 21st-century privacy giveaway," Anita Allen makes a case for restoring our right to seclusion—whether we want it or not.**

**BY TREY POPP**

**I**n February of this year, an Iowa City web developer named Nick Bergus stumbled across one of the most bizarre bargains in the history of Amazon.com. For \$1,495, plus \$20.95 shipping, one of the online marketplace's third-party merchants was offering a 55-gallon drum of Passion brand personal lubricant.

Bergus wasn't the first person to find the obscene quantity hilarious. One customer review by a self-proclaimed "Fertility Specialist for Pachyderms" lauded the vat—used in concert with a Barry White CD—as "exactly what we needed to help rebuild elephant populations all over sub-Saharan Africa." But Bergus did something a little different than write a mock review of his own. He posted the link to Facebook as a joke: "A 55-gallon drum of lube on Amazon," he wrote. "For Valentine's Day. And every day. For the rest of your life."

Then, as most of us do after forwarding a stray bit of web humor, he more or less forgot about it.

A week later, as Bergus recounted on his blog, a friend sent him a screenshot of something unexpected: that 55-gallon drum, alongside the smiling face of its new spokesman: Nick Bergus. In accordance with Facebook's terms-of-use agreement, the company had transformed his post into a product endorsement, paid for by Amazon. Soon friends from every corner of Bergus's life (and who knows how many strangers) were seeing the advertisement—or "sponsored story," in Facebook jargon.

Bergus expressed his annoyance with admirable restraint. "That's what you sign up for when you make an account," he wrote. "But in the context of a sponsored story, some of the context in which it was a joke is lost, and I've started to wonder how many people now see me as the pitchman for a 55-gallon drum of lube."



For Anita Allen, the Henry R. Silverman Professor of Law and professor of philosophy, it would be hard to find a sharper example of how our notions and expectations about privacy have changed in the last century. But it's useful to establish a baseline, and it just so happens that Allen has one at the ready.

In 1905, the Supreme Court of Georgia considered a lawsuit brought by Atlanta resident Paolo Pavesich against the New England Mutual Life Insurance Company. Without his awareness or consent, New England Mutual had used Pavesich's photographic likeness in a newspaper advertisement. Pavesich argued that his privacy had been violated. The court agreed, and the jurists did not mince words. Their opinion situated the right to privacy within the right to personal liberty. When a man's privacy has been invaded, they wrote, "he is no longer free, and ... is in reality a slave without hope of freedom, held to service by a merciless master."

"I love that quote," Allen says. "That's the very first time a US state supreme court ever recognized a right to privacy. And what did they compare it to? To slavery. Clearly, in their mind it was hugely important to recognize that privacy is this basic foundational good without which we might as well be slaves."

Clearly Nick Bergus didn't view Facebook's quite similar intrusion in such stark terms. Which raises several questions. When did Americans stop caring so much about their privacy, and why? Do we truly realize how much of our personal information we're exposing? And for all we gain by doing so—individually



tailored product recommendations by Amazon, the chance to reconnect with long-lost acquaintances, Groupon discounts—what might we be losing?

Allen explores these and other questions in her latest book, *Unpopular Privacy*, and reaches a provocative conclusion: We are losing, or stand to lose, so much that government should foist certain types of privacy upon us even if we don't want them.

"Privacy is so important and so neglected in contemporary life," she contends, "that democratic states, though liberal and feminist, could be justified in undertaking a rescue mission that includes enacting paternalistic privacy laws for the benefit of uneager beneficiaries."

When Allen calls privacy a "basic foundational good," she puts it on par with some of the most sacred ideas in American life. "For example, we think that it's nice to have options in the future—so things that preserve options, like education, are very basic goods," she explains. "I think privacy, like education, is one of those things that can actually hold our futures open for us. Because in the absence of privacy, it may be the case that other people may have so much presumptive

control over information about us, they have control over our lives."

"Suppose that when you're in your 20s," she continues, "you load up your Facebook page and your tweets with stories about your hard-drugging and your sexual promiscuity, and your all-nighters and your lack of regard for people of other races, and your sexism and your homophobia.

"I think it's perfectly normal for young people to experiment with their lives when they're young," she adds. "In the past, those experimentations and in some cases mistakes were forgiven and forgotten. But technology has meant that our current beliefs, statements, and behaviors are preserved in perpetuity. So without privacy, we don't have the ability to keep open futures that might otherwise have been open. So suddenly I can't run for office, I can't be a public schoolteacher, I can't work in a church, I can't work in a daycare center, I can't have a job in corporate America—because I'm associated now and for all time with behaviors and beliefs that were purely a part of my life at one point, but would otherwise be forgotten, if not forgiven."

If it sounds like Allen thinks we need privacy protections designed to save us from ourselves, that's part of it. But we

may also underestimate our need to be saved from others. (Even others who are motivated purely by friendship, as this photo-shy writer discovered when a friend's younger brother tagged a picture with my name on his Facebook page, whose lax privacy settings made it available to the entire Googleverse.)

The idea that the US is deficient in the area of information-privacy laws may strike some people as odd—and indeed Allen concedes that we have a "vast sweep" of existing protections. Federal statutes broadly protect the privacy of telephone and email communications, as well as the privacy and security of medical and financial information. To that list can be added school records, credit reports, motor vehicle records, computer files, video rental histories, and more. But there's a catch. Nearly all of them permit adults to "waive or alienate their privacy rights" in each area.

"Is the right to privacy simply the right to choose privacy if we want it?" Allen asks. "Or is it also a right to *experience* privacy?"

In *Unpopular Privacy*, Allen surveys statutory and case law pertaining to a broad range of privacy-related regulations, from prohibitions on nude dancing to the



## HOW TO FIGHT FALSE POLITICAL ADVERTISING

**W**idespread agreement isn't something you'll see much of between now and Election Day, but observers of every political stripe are unanimous in one expectation: that the 2012 presidential race will be the most costly and negative in history. The rise of the Super PAC in the wake of the Supreme Court's Citizens United decision cast a nasty shadow over the Republican primaries. As the general election campaign heats up, all signs point to another rash of deceptive advertisements created by mega-funded groups that are nominally independent of the candidate receiving their no-holds-barred support.

Kathleen Hall Jamieson has a way to fight back.

The law requires television stations to air commercials produced by candidates for federal office (who must appear in them and personally state that they approve the message). But Super PAC ads are another story.

"Most people don't know that television stations don't have to take third-party ads," says Jamieson, the Elizabeth Ware Packard Professor of Communication at the Annenberg School. "And they don't know that they have the right to correct them."

That's where FlackCheck.org comes in. A brainchild of the Annenberg Public Policy Center (APPC), which Jamieson directs, FlackCheck evaluates the claims in every third-party ad within 48 hours of its first airing. For

ads that don't pass the Pinocchio test, staffers swing into action.

"We post a video on the site that says: 'These stations are airing this ad, and the fact-checkers have said it's wrong for these reasons,'" Jamieson explains.

The next step is up to you. Punch your email address into FlackCheck.org, and the site will send you a weekly newsletter rounding up the third-party bunk. If your local station is among those airing it, click on a button to email the station's general manager a request that the ad be taken down or corrected.

"When the station owners live in the community, they're really subject to the norms of the community," Jamieson says. "We're trying to contact everyone in the corporate groups, as well as the people at the local level to say to both sets of people: 'Look, there are real community norms here, [and] we're trying

coerced privacy requirements of the US military's now-repealed "Don't Ask, Don't Tell" rule for gay and lesbian service members. She finds many instances—including those two—of laws whose imposition of mandatory privacy "merit suspicion as illiberal impediments to personal choice." But when it comes to information-privacy in the era of Facebook and cloud computing, Allen advocates a more paternalistic form of protection than US lawmakers have opted for to date.

The best way into her argument is through the eyes of a child—or more accurately, through parental anxieties about children's vulnerability on the Internet.

"I think that the first generation of Internet pioneers believed that the Internet could regulate itself, or that technology would figure out ways to make the Internet a safe and effective domain—we didn't need government regulation," Allen says. "Over time, we came to the conclusion that maybe children need a little more protection."

Congress responded to that perceived need via the Children's Online Privacy Protection Act (COPPA), which became law in 2000. COPPA prohibits commercial website operators from collecting personal information from children

under 13 without first obtaining the verifiable consent of a parent or guardian. This was an aggressive response to the unarguable reality that although the Internet may be a powerful resource for education, exploration, and personal growth, it also exposes its users to any number of potential dangers, from sexual predators and emotional injury (as the rise of online bullying has shown), to financial ruin and identity theft.

"While the law [COPPA] is paternalistic, coercive and draws arbitrary lines," Allen writes, "its moral and political legitimacy are by now scarcely in doubt."

In the years since COPPA was conceived, much has changed in the online environ-

ment, including the rise of social networking sites like Facebook, which launched in 2004. At the same time, web-based companies have gained a powerful ability to amass our personal information as we move through the digital realm. The full extent of their capacity to learn about us is poorly understood by most adults. Joseph Turow C'72 ASC'73 Gr'76, the Robert Lewis Shayon Professor at the Annenberg School for Communication, addressed the ramifications before a Senate subcommittee (and in these pages) two years ago:

"Americans now live in a world where what we buy, what we tell our friends, how we spend our leisure time, where we walk or drive, and more is collected, ana-

**"I think this idea of radical transparency is being shoved down our throats, and the throats of young people, by large corporate concerns for whom radical transparency reaps benefits ..."**

**to express a community norm, which is that we should not elect or defeat based on deception.**

**"We're not arguing for the feds to regulate it," she adds. "We're trying to increase the likelihood that people know [stations] have the right [to edit ads for accuracy], and increase the likelihood that they'll act on it."**

**FlackCheck.org launched in February. By the six-month mark it had facilitated more than 24,000 contacts with nearly 1,000 stations. Because conversations between television stations and advertisers are private, there is no definitive way to measure the impact of all those emails, but some ads have indeed been corrected.**

**"We've worked very hard at FactCheck.org to try to help journalists" correct lies, Jamieson says, referring to the APCC's eight-year-old, non-partisan project to reduce deception in American politics. "But the deception still gets through, because there are**

**people who watch the programming but don't watch the news."**

**To the question of whether there are simply too many fresh falsehoods in every new ad to police in this manner, Jamieson answers no.**

**"People think every ad has a new deception," she says. "Not at the presidential level. They standardize their message, and they just run repeatedly, confident that they'll override the fact-checking."**

**She hopes FlackCheck will make it harder for them to pull that off.**

**"It's not controversial," Jamieson says. "You know, nobody wants to stand up and say, 'I want my candidate to be elected on deception.'"**

**She adds, "We don't necessarily think we're going to change votes. We think we're going to make it more likely that campaigning forecasts governance. And that's an important function for campaigning in a democracy." ♦ —T.P.**

lyzed, and linked to information about our gender, income, age, occupation, and other demographic information," he wrote ["Expert Opinion," Sept/Oct 2010]. "Companies you never heard of are creating these profiles about you without your knowledge or permission. The information is bought, sold, rented, and auctioned by entities that use it to decide what commercial messages you get, what discount coupons you receive, and what prices you pay for products and services. In the interest of attracting audiences, media firms are beginning to consider how they can use at least some of those data to tailor the news, information, and even entertainment you receive."

One explanation for why those once-private realms are now exposed to such exhaustive scrutiny, without our knowledge, is that most of us have given legal consent for the intrusion—by clicking *agree* boxes for the privacy policies of the websites we frequent. A few years ago, researchers at Carnegie Mellon decided to estimate how long it would

take to read the online-privacy policies (which vary widely) that the average American encounters in a year. Assuming an eight-hour workday, they concluded that it would take 76 days. Nationwide, this would represent 53.8 billion hours of our collective time—if any of us actually bothered to read them.

For Allen, this brave new world raises a question. “Are children the only population for whom the Internet poses significant difficulties?” she asks. “I think that it’s not just children for whom the technology is mysterious. And learning how it works is time-consuming and maybe beyond the ken of most of us, even most of us with PhDs.”

In other words, why limit COPPA protections to children under 13? Considering how quickly (and with how little reflection) our culture has embraced an ethos of radical self-disclosure, Allen believes the time for prudence has come. In terms of crafting robust privacy protections, that means coming to grips with a clash between some classic liberal values and the reality of how life on the Internet works.

“There’s no doubt whatsoever that freedom of contract, that great libertarian value, is not a good model for the Internet,” Allen says. “We cannot negotiate every time we go online to buy a book or a table or a shirt, or to give to charity, or to go to our children’s school to find out how they’re doing in school. Every time we go online we can’t negotiate [separately] with all of the businesses, all the government agencies. So we need to have some ground rules. And unfortunately, we’ve not seen schools and businesses and government consistently adhering to kinds of fair-information practices, or other [data-protection] norms that would ensure that we’re not going to get taken advantage of.”

Partly because everyone’s playing “technology catch-up,” Allen doesn’t think any country has figured out how to protect Internet users from peril. The European Union has a stronger data-protection framework than the United States, including restrictions on data transfer that “cannot necessarily be waived by individuals who consent to disclosure.” But the EU has lately gotten pushback from some member states who favor looser rules.

How might Congress catch up to the needs, as Allen sees them, of citizens who have fallen into the habit of opting out of privacy protections?

“Arguably stronger privacy laws would require firms seeking to disclose personal data to provide notice and consent about the use of the data on an informed *opt-in* basis, and forbid certain disclosures altogether. This would entail letting data subjects know in advance what a firm would like to do with their data and seek affirmative permission.” [Emphasis added.]

In recent years the world has been enthralled with quite a different idea, one sometimes characterized as “radical transparency.” As Facebook founder Mark Zuckerberg has expressed it, “More transparency should make for a more tolerant society in which people eventually accept that everybody sometimes does bad or embarrassing things.”

Whatever comes of Allen’s case for a new legal framework around information privacy, she hopes more people will come to question that formulation, and rediscover the rewards of seclusion.

“It’s interesting,” she says. “The people who were the Internet pioneers were all about the value of anonymity. Remember that first generation—they wanted anonymous unregulated opportunities on the Internet. They didn’t want radical transparency. I think this idea of radical transparency is being shoved down our throats, and the throats of young people, by large corporate concerns for whom radical transparency reaps benefits ...

“The question is, what are we getting out of it? I think some of us are getting a lot of frustration, a lot of drama in our social lives. Our whole lives are like middle school playgrounds now.”

Which takes Allen one step further, remembering the playgrounds—literal and metaphorical—that shaped her into the scholar she has become. Her life, she believes, testifies to the way the experience of privacy, in and of itself, can be an engine for creativity and moral strength.

“My intellectual life has been so enriched by privacy,” she muses.

“Being able to seclude myself from other people, being able to have those quiet—even secret—moments, has been the number one thing which has made

it possible for me to be the successful scholar that I’ve grown up to be. But for those opportunities in childhood to move away from the hullabaloo of the family and the neighborhood, to read, to write and reflect in my journal ... those kinds of moments for reflection, for rumination, for reading, for internal debate and discussion, for prayer—those things were enormously important for shaping me into the academic I’ve become.”

At the end of *Unpopular Privacy*, after citing the prudent if self-interested advice of John Adams that it pays to hide things whose disclosure would lead to disgrace or dishonor, Allen brings up the well-known (if less well-heeded) passage in the Gospel of Matthew concerning almsgiving. In it Matthew counsels almsgivers not to “sound a trumpet before you, as the hypocrites do ... so that they may be praised by others. Truly, I tell you, they have received their reward.”

For Allen, that is a commentary on the most profound value of privacy.

“The Bible represents the privacy of certain kinds of ritual acts as being important because, in effect, if you’re bragging about the fact that you’re helping the poor, or that you’re pious, you’ve already got your reward: being able to manipulate peoples’ opinions about you,” she says. “But there’s something good about giving to the poor even if no one knows you’re doing it, something good about fasting and being prayerful even when no one knows you’re doing it. And privacy, to me, is kind of like that. It’s one of those things that just being the reserved, modest person, it’s a good character trait—whether or not other people observe it within you.”

She hopes that our prying, confessional culture will see the pendulum swing toward the rediscovery of those deep rewards—and laments what might happen if it does not.

“I think that young people today who are deprived of those opportunities, because of the constant interruption, and expectations of social media, and a noisier busier world,” she begins, and then pauses. “It’s going to be a little harder for kids to develop the kinds of intellectual lives and scholarly virtues that society has come to rely upon, for our creative artists and scientists and philosophers.” ♦