

SURROGATING THE 2016 AMERICAN PRESIDENCY

Tonight was the opening of the Democratic National Convention. It was a rather stunning difference from the scenes on the street yesterday and today, where there were minimal and well behaved cops in Philly as contrasted with the warrior cop oppressive stormtrooper presence in Cleveland. From my reporter friends from the Arizona Republic, the food is totally better in Philly too. Hey, armies move on food, and cheesesteaks rule.

Is everything coming up roses? Nope. There was the whole Debbie Wasserman Schultz thing. She was well advised by our friend David Dayen to stay away and excommunicate herself from the convention podium. But, crikey, the rest simply looks beautiful. Sanders supporters marching in the streets for change, mostly unfettered and unoppressed, other voices being heard, and all relative delegates meeting and co-existing in the halls. This ain't the dysfunctional RNC bigoted shit show. That, in and of itself, would be worth this post. There is more.

Don't let cable coverage and the relentless yammer of their panels of self interested toadies fool you, the few true camera pans at the RNC showed more than a few empty seats and a far smaller crowd (especially in the upper decks) than displayed tonight at the DNC.

The real tell, in difference, was in the quality of the speakers and presentation. The only lasting memory from the RNC's opening night was the embarrassing plagiarism in Melania Trump's speech. Honestly, my bet is that is not on her, but the understaffed and idiot handlers her narcissistic, yet bumbling, husband provided. That said, it was a *res ipsa loquitur* deal and, in the end, spoke for itself. What else do you remember from that night other than Tim Tebow did not appear? I got nuthin.

The first night of the DNC in Philly, however, came with a litany of decent and well presented folks presented to a full and energetic hall. Emphasis on full. The dynamics in staging and presentation were stark. As were the quality and mental coherence of the speakers. The first electric moment came when Sarah Silverman, who along with Al Franken, was doing a bit and intro to Paul Simon singing (a geriatric, albeit mesmerizing) Bridge Over Troubled Water. Silverman and Franken had to kill an extra 120 seconds or so and she blurted out some hard, and real, truth that her fellow Bernie Sanders supporters who refuse to help Clinton defeat Trump are flat out "being ridiculous". Truer words have never been spoken.

But soon came Michelle Obama to the podium. I am not sure I have the words to describe how good Michelle was. As a convention speaker, a surrogate, a leader, a mother and as a First Lady embodying all of the above. Michelle Obama killed it. She blew the joint up. I don't know how else to describe it, but if you did not witness it live, watch the video up at top. Just do it.

Frankly, at the conclusion of Michelle Obama's speech, it was hard to see how the last two key speakers, Elizabeth Warren and Bernie Sanders, could possibly top the moment. Sadly, they could not. Liz Warren gave a great, and often in depth, speech. One that absolutely slayed Donald Trump in nearly every way. On its own, it would have been noteworthy. But sandwiched between the brilliance of Michelle Obama and Sanders, with his acolytes cheering and hers still reeling, it seemed good, but not great.

Bernie Sanders caught a little more fire, but mostly because of his young contingent of supporters. And that is not just a good thing, it is a great thing. Sanders did everything, and more, he should have done in this speech by ginning up the classic points and issues his campaign, and its followers, were built on...and then transferring them to Clinton.

It did not work perfectly, but this will be a process up until the election date on November 8. Bernie went a long way, gracefully and patiently, tonight. And, while the cheering crowd appeared to be much more than just the "Sandernistas", all of the hall seemed to get on board. That, along with Sarah Silverman telling holdout Bernie Busters to wake up and not be ridiculous, were giant steps in unifying support for Clinton over Trump.

Listen, I have been around the block a few times, and know I am supposed to lead with the headline. Sorry, this one worked up to it, and here it is. The RNC and Trump got their lousy bounce because the media, once again, cravenly portrayed what happened in Cleveland as normal, and tit for tat, with what is happening, and will happen, in Philadelphia. That is simply a ratings and craven click germinated lie. The difference is stark.

Nowhere is it more stark than in the picture painted as to the surrogates who will come out of the respective conventions to campaign for their respective candidate between now and November 8.

Um, let's see, for the GOP we have Newt, Carson, Melania, Thiel, Flynn, Joe Arpaio and Chachi Baio. I excluded Ivanka because she might actually be competent. Seriously, that is basically it for Trump surrogates. From the whole convention. Even Clint Eastwood's chair took a pass in this, the year of the Orange Faced Short Fingered Vulgarian Bigot.

Let's compare that with what came out of the Democratic Convention's first night. Sarah Silverman, Al Franken, Paul Simon, Eva Longoria, Corey Booker and, then, the big three...Michelle Obama, Liz Warren and Bernie Sanders. That is just the first night folks.

See a bit of a dichotomy in personality and credibility there?

Then picture that Clinton's road warrior surrogates will include not just the above, but

also Joe Biden, President Barack Obama and the Big Dog himself, Bill Clinton.

Elections are won in the trenches. Say what you will about Hillary Clinton, and I will probably join you on many negatives, but the Clintons do have a ground operation. And their surrogates are like the 1927 Yankees compared to the Bad News Bears for Trump and the RNC. How will Trump bolster his bench, by bringing in Roger Ailes to molest the women of America? Is there another ground plan for the Trump Juggalos?

Sure, Clinton can still muck it up and lose. She, and the DNC, have been beyond pathetic in how they have treated nearly half their party, and much of their activist base, during the primaries and aftermath. Not just ugly, but stupid. They deserve any hell they get for that, whether it comes from appropriately enraged Sanders supporters or from press reporting on hacks (THE RUSSIANS ARE COMING, THE RUSSIANS ARE COMING!!!)

Bottom line is this: Which set of surrogates would you think would do a better job spreading out over the country: Crazy Newt, Racist Flynn, Bigot Arpaio and Chachi, ... or Michelle Obama, Liz Warren, Bernie Sanders, Barack Obama and Joe Biden?

Think I will go with the latter, and I think they will reach a heck of a lot more voters who will actually engage than will the trite and petty bigots Trump will have on the public offer.

And the Dems have a laundry list of other quality surrogates who will stand up. Trump has apparent Klan worthy members like Jeff Sessions, felons like Don King and Mike Tyson, and people who seek to be them.

Who you gonna call when it comes time to vote?

Seems like an easy decision, especially when you consider that the next 30 to 35 years of ideological control of the Supreme Court hang in the balance.

WHO ARE THE NON-CELEBRITIES IN THE PANAMA PAPERS?

In the first stories about the Panama Papers, we got the names of a bunch of politicians, a few criminals, sports and other celebrities and one or two names of rich people. But in focusing solely on this kind of person, we miss the major point about tax havens. They are used by hundreds of thousands of people, including many who are not billionaires and who are not famous or otherwise newsworthy. They are commonly used by doctors, lawyers, accountants, small business owners and those who inherited money from such people.

Here's a chart from the New York Times showing the mix of people making up the top 1% in income in the US; the chart is from 2012 and uses 2007 data. The cut-off for this level is the Census Bureau figure of \$380K, while other studies put it higher. The Fed Survey of Consumer Finances, a better survey, has it at \$690K in 2007. The cut-off for the top 1% in wealth was estimated at nearly \$8.4 million in 2007. Those numbers went down after the Great Crash, but recovered smartly. By 2013, the cut-off for the top 1% in wealth was back to nearly \$8 million, and climbing.

Lisa Kiester of Duke University, a sociologist who has published on the 1% describes a group she calls the double rich in this article. These are people who are in the top 1% in both income and wealth. Their median wealth was about \$12 million in 2010, and their median income was in the range of \$1.2 million. Both have no doubt risen since then. Kiester does not give an estimate of the number of the double rich, but this New York Times article, using 2007 data, says that there is about a 50% overlap between

the two groups. There were about 117 million households in 2010 according to the Census Bureau. From that we can estimate that there are about 560,000 households making up the double rich.

Kiester examines the lack of discontent with wealth and income inequality in this 2014 paper. She offers five explanations with supporting evidence from research:

1. Homophily, the tendency to hang out with people like us. We aren't often exposed to the impact or the magnitude of wealth inequality.
2. People think things will get better because they always have.
3. There is some evidence of social mobility, and it's even possible for people to think they could move into the top 1%.
4. People are too busy, distracted and stressed to care.
5. People focus on poverty, not inequality. Academics are concerned about inequality because they think huge wealth gaps lead to power imbalances that favor the rich at the expense of the rest of us. That's completely outside the scope of most people's worries about money.

Gabriel Zucman, one of Piketty's collaborators, estimates that individuals have approximately \$962 billion of unreported assets in tax havens. Source: Data figure 4 tab 1 from a spreadsheet found [here](#); click on Tables and figures included in the book. The book is *The Hidden Wealth of Nations*. For a description of Zucman's methodology see [this](#) by Cass Sunstein.

Kiester says that 56% of the top 1% by net worth were self-employed in 2010. These are people who have the means to move money into tax havens, as are the rest of the top 1%. There are hundreds of thousands of US citizens who would benefit from tax havens, and there is so much money out there by Zucman's estimate that it must be that case that tens of thousands of them have done

so.

The ICIJ and its participating groups name politicians, celebrities, and crooks who hide their wealth in tax havens, and who won't be prosecuted, but at least are shamed. But what about the huge number of the 1% who hide their wealth abroad and are not even shamed for their corruption?

This kind of disclosure would help break through the mental barriers to making inequality itself a force in politics.

Update April 15, 2016 From ICIJ:

The law firm's [Mossack Fonseca] leaked internal files contain information on 214,488 offshore entities connected to people in more than 200 countries and territories. ICIJ will release the full list of companies and people linked to them in early May.

HOW HILLARY TURNED HER SUPPORT FOR WELFARE FOR BANKS INTO AN AUTO BAILOUT ATTACK

For a campaign that has spent days insisting Bernie Sanders should not launch attacks against her, the Hillary Clinton campaign sure engaged in some dishonest hackery last night.

During the debate in Flint, Hillary attacked Bernie for "vot[ing] against the money that ended up saving the auto industry." She was talking about a January 15, 2009 attempt to withhold the second \$350 billion of TARP funding

that failed (here's the resolution); Bernie voted not to release those funds. But the vote was not directly about auto bailout funding. It was about bailing out the banks and funding what turned out to be completely ineffective efforts to forestall foreclosures.

It is true that Bush's failure to fund an auto-specific bailout meant that TARP funds got used to fund the \$85 billion auto rescue (Bush had already spent some money on the auto companies – basically just enough to ensure they'd go under on Obama's watch, but not enough to do anything to save them). But that's not what the vote was (and there might have been enough money for the auto bailout in any case).

Larry Summers' two letters in support of the additional funding (January 12, January 15) in support of the additional funding certainly didn't describe it as an auto bailout bill. He mentioned "auto" just three times between the two of them. In the January 12 letter, in support of auto *loans* to consumers, and in the January 15 letter, limits on what I believe is a reference to GM Finance (now Ally)'s Christmas holiday move to turn into a bank so it could access funding. Contemporary reporting on the vote also did not mention the auto bailout (though there had been discussion that it might be used the previous month).

Moreover, there had been an auto bailout vote in the Senate (on a bill already passed by the House) on December 11, which failed. Both Bernie and Hillary voted in support.

So while Hillary's attack was technically correct – Bernie did vote against giving Jamie Dimon more free money, which had the side effect of voting against the second installment on the fund that would eventually become the auto bailout – he did not vote against the auto bailout.

But Hillary's attack did its work, largely because national reporters appeared completely unaware that they were fighting about TARP much

less aware that there had been votes in December that directly pertained to the auto bailout. Even some local reporters now appear unaware of what went down in 2008-9. John Podesta helped matters along by sowing confusion in post-debate speeches.

Here's one of what will end up being several exceptions to the shitty reporting on this that will come too late for people to figure out what actually happened.

During the testy exchange over the auto bailout, Clinton called Sanders a "one-issue candidate" for voting against the release of \$350 billion in Jan. 15, 2009, to continue funding the bailout of the nation's banks and mortgage lenders.

Sanders joined seven Democratic senators in voting against the second wave of TARP funds. President Barack Obama ended up using some of TARP to fund the \$85 billion rescue of GM, Chrysler and their auto lending arms.

"If everybody had voted the way he did, I believe the auto industry would have collapsed, taking 4 million jobs with it," Clinton said.

[snip]

David Axelrod, a former top adviser to President Barack Obama, questioned Clinton's attack on Sanders' voting record in the middle of the debate.

"It wasn't explicitly a vote about saving auto industry," Axelrod wrote on Twitter.

U.S. Sen. Debbie Stabenow, a Clinton supporter, said after the debate that senators, including Sanders, were aware the TARP money would be used to aid the domestic auto industry.

"A lot of folks said we shouldn't do it because somehow it was helping the

banks," said Stabenow, D-Lansing. "It was the auto bailout we were talking about. I was very clear with colleagues that we had to do this."

Stabenow's comment, incidentally, is proof that the money shouldn't have been granted as it was (it wasn't spent on auto companies until much later). While she's right that there had been public discussion of spending some money on the auto bailout, there obviously was still so little limiting what the Executive could do with the money that there needed to be nothing explicit supporting the auto bailout to make it happen. The flimsiness of the guidelines is one of the things that enabled the Obama Administration to avoid providing real foreclosure relief, choosing instead to "foam the runway" for banks.

Don't get me wrong. Bernie did a number of other things at the debate that hurt him last night, such as his comment about ghettos that suggested all African Americans are poor and no whites are. I think, too, the optics of his efforts to stop Hillary from interrupting him as well as his own gesticulating while she was making responses will go over poorly.

But the auto bailout attack was a pretty shameful ploy, one that otherwise would make it fair game to really hit on Hillary's own actions in a way Bernie has not yet done. That said, it was also a probably perfectly timed attack, because it will ensure victory for Hillary on Tuesday, eliminating one of the last possibilities that Bernie might really challenge Hillary.

Update: As it turns out, Hillary should be attacking Stabenow according to her own standards, because Stabenow voted no on the first TARP vote that actually paid for the first tranche of funding to the auto companies. (Here's the second, January 2009 one.)

FLINT CRISIS: HARVEY HOLLINS NOT GIVING TASK FORCE INFORMATION THAT IMPLICATES HARVEY HOLLINS

Some weeks ago, I noted that Rick Snyder had picked his Director of Urban Initiatives, Harvey Hollins, to coordinate response with his hand-picked Task Force to respond to Flint, in spite of the fact that Hollins was intimately involved in all his prior decisions involving Flint.

First, back in early December, Snyder's hand-picked Task Force for responding to the Flint crisis met with him to tell him of their initial observations. One of their key recommendations, as made clear by a meeting summary they shared with him, was that he appoint one single person to handle the response. (See PDF 240ff)

We also believe it important that a single person or entity-potentially independent of any one particular state agency and mutually agreeable to this Task Force and you, Governor-be established to provide effective coordination of ongoing activities and reporting on the status of mitigation measures.

[snip]

Accordingly, in advance of our final report, we would like to

ensure
the independent coordinator
suggested above engage trusted
community groups to
begin rebuilding community trust
in state actions.

Snyder responded by “appointing” Harvey
Hollins, his Director of Urban
Initiatives, as that person
“independent” of the “involved state
agencies.”

You make a solid suggestion
about establishing a person who
is independent of any one of the
involved state agencies to serve
as the point person to
coordinate the ongoing work. I
am recommending that Harvey
Hollins, director of the
Office of Urban
Initiatives, carry out this
effort. Harvey is well-versed in
the issues and the challenges
faced by our cities and will be
effective in this role. Senior
members of our executive team
will continue to engage with your
task force and provide direction
and support to Harvey to ensure
you will have continued support
and cooperation.

The thing is, Hollins was in no way
“independent” of the decisions that
poisoned Flint. He has been involved at
every phase, down to coordinating
Snyder’s hush-hush water filters when he
was still trying to cover it up. So
basically Snyder just “appointed” the
guy he had “appointed” to oversee all
the decisions that got Flint poisoned in
the first place.

The other day, Progress Michigan revealed that MI's Department of Environmental Quality had alerted Hollins of concerns that the Legionnaires outbreak in Flint might be tied to the water switchover last March.

In the next few days, officials at DEQ exchanged some panicked emails, pretty much blaming Flint for the non-response, noting that DEQ "became peripherally aware" of the spike in Legionnaires, but also bitching about the Genesee County supervisor suggesting that it might be tied to the switch to Flint river water.

Thelen, Mary Beth (DEQ)

From: Wurfel, Brad (DEQ)
Sent: Friday, March 13, 2015 6:49 PM
To: Hollins, Harvey (GOV)
Cc: Wyant, Dan (DEQ)
Subject: Part II
Attachments: FOIA Request Flint Water.doc
Importance: High

OK D-

This is the second issue I mentioned earlier today. In December, our staff became peripherally aware that the hospitals in Genesee were seeing an uptick in Legionnaires cases.

Legionnaires is a water-borne illness. It essentially is a type of pneumonia caused by a bacteria. It is treated with antibiotics. Untreated, it can be deadly. It most often manifests in nursing homes and assisted living facilities, because the transmission is through water vapor getting into lungs – via air conditioners, vaporizers or low-flow shower heads that produce a lot of misting. You can drink water with this bacteria in it and not get sick – it has to enter the lungs in vapor.

I don't have any details on the cases, but here is what I understand to this point:

- More than 40 cases reported since last April. That's a significant uptick – more than all the cases in the last five years or more combined.
- April / May is usually the start of Legionnaires season – it proliferates in warmer months – but April also is the point at which the city switched to the Flint River as a source.

It appears that panicked email was printed out by then DEQ Director Dan Wyant's assistant, Mary Beth Thelen, then initialed by Wyant, presumably indicating he had read it.

Also included on that email, though, was Harvey Hollins.

Yesterday, the Free Press reported that, in an interview, Hollins had explained that he had decided there was not yet enough information to brief the Governor on the public health crisis potentially tied to the water.

Harvey Hollins III, director of Michigan's Office of Urban and Metropolitan Initiatives, said in an interview Friday that he received an e-mail from a Department of Environmental Quality official in March about

concerns over Legionnaires' disease in Genesee County. But Hollins said he told the e-mail's author, former DEQ spokesman Brad Wurfel, in a follow-up call, that there was not enough information for him to take the issue to the governor.

Instead, Hollins said he told Wurfel to gather more information and have the department's director bring it directly to the governor if it was warranted. Hollins said he heard nothing more about the issue until late December when local officials in Flint revealed the outbreak had recurred.

Hollins said he should not be held responsible for what some have called the state's sluggish response to the Legionnaires' outbreaks starting in 2014. The outbreaks and the city's 2014 switch to the Flint River for its drinking water are suspected of being linked, but state officials said they have yet to make a direct connection.

"I have nothing to leave over," Hollins said when asked whether he considered resigning over the issue. "When you have people who are professionals who are hired ... to do their job and it takes four months to do that, for me to leave over their missteps, I'm not going to do that,"

"I don't feel any responsibility for grown-ups who don't do their jobs," he added.

It's unclear whether the Freep asked Hollins if he felt any responsibility for the 9 people who died in this Legionnaires outbreak.

Also yesterday, one of the doctors on the Task Force with which Hollins is supposed to be coordinating communication said that it is having problems getting information – notably,

on the Legionnaires outbreak – from state agencies.

“Unfortunately, first on the list is the legionella issue,” said Reynolds of Mott Children’s Health Center, referencing spikes in the fatal Legionnaires’ disease after the city began using Flint River water in April 2014.

“Some agencies have been very forthcoming, other agencies it’s like pulling teeth to get information, and it can get real frustrating and doesn’t facilitate good communication,” he said.

Reynolds, who serves on the task force, raised his concern during a meeting of the Flint Interagency Coordinating Committee attended by Snyder and top aide Rich Baird, who vowed to help Reynolds push through any bureaucratic resistance.

[snip]

The Flint task force has been working to wrap up its investigation this month, but Reynolds said members may need to reinterview some officials because of recent developments.

“If we don’t ask the question, we don’t get the answer,” he said. “But there’s clearly information that’s being withheld.”

How curious that Hollins doesn’t seem to be terribly effective at getting the Task Force the information it needs about events that implicate Hollins.

POPE FRANCIS NAILS THE RHETORIC OF ADDRESSING CONGRESS

Pope Francis just finished his address to Congress. It was a masterful speech from a political standpoint, designed to hold a mirror up to America and provide a moral lesson.

He started with an appeal the most conservative in America would applaud, to the foundation of Judeo-Christian law (CSPAN panned to the Moses relief in the chamber as he spoke).

Yours is a work which makes me reflect in two ways on the figure of Moses. On the one hand, the patriarch and lawgiver of the people of Israel symbolizes the need of peoples to keep alive their sense of unity by means of just legislation. On the other, the figure of Moses leads us directly to God and thus to the transcendent dignity of the human being. Moses provides us with a good synthesis of your work: you are asked to protect, by means of the law, the image and likeness fashioned by God on every human face.

He then couched his lessons in a tribute to four Americans – two uncontroversial, Abraham Lincoln and Martin Luther King Jr – and two more radical, Dorothy Day and Thomas Merton (but probably obscure to those who would be most offended).

Several times he nodded towards controversial issues, as when he addressed making peace in terms that might relate to Cuba (controversial but still accepted by most who aren't Cuban-American) or might relate to Iran.

I would like to recognize the efforts made in recent months to help overcome historic differences linked to painful

episodes of the past. It is my duty to build bridges and to help all men and women, in any way possible, to do the same. When countries which have been at odds resume the path of dialogue – a dialogue which may have been interrupted for the most legitimate of reasons – new opportunities open up for all. This has required, and requires, courage and daring, which is not the same as irresponsibility. A good political leader is one who, with the interests of all in mind, seizes the moment in a spirit of openness and pragmatism. A good political leader always opts to initiate processes rather than possessing spaces (cf. Evangelii Gaudium, 222-223).

Similarly, he spoke of the threats to the family in such a way that might include gay marriage, but he then focused on the inability of young people to form new families.

I will end my visit to your country in Philadelphia, where I will take part in the World Meeting of Families. It is my wish that throughout my visit the family should be a recurrent theme. How essential the family has been to the building of this country! And how worthy it remains of our support and encouragement! Yet I cannot hide my concern for the family, which is threatened, perhaps as never before, from within and without. Fundamental relationships are being called into question, as is the very basis of marriage and the family. I can only reiterate the importance and, above all, the richness and the beauty of family life.

In particular, I would like to call attention to those family members who are the most vulnerable, the young. For many of them, a future filled with

countless possibilities beckons, yet so many others seem disoriented and aimless, trapped in a hopeless maze of violence, abuse and despair. Their problems are our problems. We cannot avoid them. We need to face them together, to talk about them and to seek effective solutions rather than getting bogged down in discussions. At the risk of oversimplifying, we might say that we live in a culture which pressures young people not to start a family, because they lack possibilities for the future. Yet this same culture presents others with so many options that they too are dissuaded from starting a family.

By far the shrewdest rhetorical move the Pope made – standing just feet from the Catholic swing vote on the Supreme Court, Anthony Kennedy, as well as John Roberts (Catholic Justices Sam Alito, Clarence Thomas, and Antonin Scalia, all blew off the speech given by the leader of their faith), with the Catholic Vice President and Speaker sitting just behind – calling to “defend life at every stage of its development.” – This brought one of the biggest standing ovations of the speech (though Justices never applaud at these things and did not here), at which point the Pope pivoted immediately to ending the death penalty.

The Golden Rule also reminds us of our responsibility to protect and defend human life at every stage of its development.

This conviction has led me, from the beginning of my ministry, to advocate at different levels for the global abolition of the death penalty. I am convinced that this way is the best, since every life is sacred, every human person is endowed with an inalienable dignity, and society can only benefit from the rehabilitation of those convicted of crimes. Recently my brother

bishops here in the United States renewed their call for the abolition of the death penalty. Not only do I support them, but I also offer encouragement to all those who are convinced that a just and necessary punishment must never exclude the dimension of hope and the goal of rehabilitation.

I hope the Pope's general pro life call, emphasizing the death penalty rather than abortion, will get people who claim to be pro-life to consider all that that entails.

That led – past his expected appeal to stop shitting on Eden and start taking care of the poor – to what was probably the worst received line in the speech, a call to stop trafficking in arms.

Being at the service of dialogue and peace also means being truly determined to minimize and, in the long term, to end the many armed conflicts throughout our world. Here we have to ask ourselves: Why are deadly weapons being sold to those who plan to inflict untold suffering on individuals and society? Sadly, the answer, as we all know, is simply for money: money that is drenched in blood, often innocent blood. In the face of this shameful and culpable silence, it is our duty to confront the problem and to stop the arms trade.

The Pope went into a Chamber where large numbers are funded by arms merchants and told them they were relying on “money that is drenched in blood.” Very few applauded that line.

Still, the message was about the duty of legislators to serve the common good and on several issues, the Pope avoided directed confrontation, preferring an oblique message that might be interpreted differently by people

of all political stripes. Amid the rancor of Congressional debates – about Planned Parenthood, about defunding government (and with it, harming the poor the most), about Iran – it was a remarkably astute message.

Mr. Vice-President,

Mr. Speaker,

Honorable Members of Congress, Dear Friends,

I am most grateful for your invitation to address this Joint Session of Congress in “the land of the free and the home of the brave”. I would like to think that the reason for this is that I too am a son of this great continent, from which we have all received so much and toward which we share a common responsibility.

Each son or daughter of a given country has a mission, a personal and social responsibility. Your own responsibility as members of Congress is to enable this country, by your legislative activity, to grow as a nation. You are the face of its people, their representatives. You are called to defend and preserve the dignity of your fellow citizens in the tireless and demanding pursuit of the common good, for this is the chief aim of all politics. A political society endures when it seeks, as a vocation, to satisfy common needs by stimulating the growth of all its members, especially those in situations of greater vulnerability or risk. Legislative activity is always based on care for the people. To this you have been invited, called and convened by those who elected you.

Yours is a work which makes me reflect in two ways on the figure of Moses. On the one hand, the patriarch and lawgiver of the people of Israel symbolizes the need of peoples to keep alive their sense of unity by means of just legislation. On the other, the figure of Moses leads us directly to God and thus to the transcendent dignity of the human being. Moses

provides us with a good synthesis of your work: you are asked to protect, by means of the law, the image and likeness fashioned by God on every human face.

Today I would like not only to address you, but through you the entire people of the United States. Here, together with their representatives, I would like to take this opportunity to dialogue with the many thousands of men and women who strive each day to do an honest day's work, to bring home their daily bread, to save money and –one step at a time – to build a better life for their families. These are men and women who are not concerned simply with paying their taxes, but in their own quiet way sustain the life of society. They generate solidarity by their actions, and they create organizations which offer a helping hand to those most in need.

I would also like to enter into dialogue with the many elderly persons who are a storehouse of wisdom forged by experience, and who seek in many ways, especially through volunteer work, to share their stories and their insights. I know that many of them are retired, but still active; they keep working to build up this land. I also want to dialogue with all those young people who are working to realize their great and noble aspirations, who are not led astray by facile proposals, and who face difficult situations, often as a result of immaturity on the part of many adults. I wish to dialogue with all of you, and I would like to do so through the historical memory of your people.

My visit takes place at a time when men and women of good will are marking the anniversaries of several great Americans. The complexities of history and the reality of human weakness notwithstanding, these men and women, for all their many differences and limitations, were able by hard work and self- sacrifice – some at the cost of their lives – to build a better future. They shaped fundamental values which will endure forever in the spirit of the

American people. A people with this spirit can live through many crises, tensions and conflicts, while always finding the resources to move forward, and to do so with dignity. These men and women offer us a way of seeing and interpreting reality. In honoring their memory, we are inspired, even amid conflicts, and in the here and now of each day, to draw upon our deepest cultural reserves.

I would like to mention four of these Americans: Abraham Lincoln, Martin Luther King, Dorothy Day and Thomas Merton.

This year marks the one hundred and fiftieth anniversary of the assassination of President Abraham Lincoln, the guardian of liberty, who labored tirelessly that "this nation, under God, [might] have a new birth of freedom". Building a future of freedom requires love of the common good and cooperation in a spirit of subsidiarity and solidarity.

All of us are quite aware of, and deeply worried by, the disturbing social and political situation of the world today. Our world is increasingly a place of violent conflict, hatred and brutal atrocities, committed even in the name of God and of religion. We know that no religion is immune from forms of individual delusion or ideological extremism. This means that we must be especially attentive to every type of fundamentalism, whether religious or of any other kind. A delicate balance is required to combat violence perpetrated in the name of a religion, an ideology or an economic system, while also safeguarding religious freedom, intellectual freedom and individual freedoms. But there is another temptation which we must especially guard against: the simplistic reductionism which sees only good or evil; or, if you will, the righteous and sinners. The contemporary world, with its open wounds which affect so many of our brothers and sisters, demands that we confront every form of polarization which would divide it into these two camps. We know that in the attempt to be

freed of the enemy without, we can be tempted to feed the enemy within. To imitate the hatred and violence of tyrants and murderers is the best way to take their place. That is something which you, as a people, reject.

Our response must instead be one of hope and healing, of peace and justice. We are asked to summon the courage and the intelligence to resolve today's many geopolitical and economic crises. Even in the developed world, the effects of unjust structures and actions are all too apparent. Our efforts must aim at restoring hope, righting wrongs, maintaining commitments, and thus promoting the well-being of individuals and of peoples. We must move forward together, as one, in a renewed spirit of fraternity and solidarity, cooperating generously for the common good.

The challenges facing us today call for a renewal of that spirit of cooperation, which has accomplished so much good throughout the history of the United States. The complexity, the gravity and the urgency of these challenges demand that we pool our resources and talents, and resolve to support one another, with respect for our differences and our convictions of conscience.

In this land, the various religious denominations have greatly contributed to building and strengthening society. It is important that today, as in the past, the voice of faith continue to be heard, for it is a voice of fraternity and love, which tries to bring out the best in each person and in each society. Such cooperation is a powerful resource in the battle to eliminate new global forms of slavery, born of grave injustices which can be overcome only through new policies and new forms of social consensus.

Here I think of the political history of the United States, where democracy is deeply rooted in the mind of the American people. All political activity must serve and promote the good of the human person and be based on respect

for his or her dignity. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness" (Declaration of Independence, 4 July 1776). If politics must truly be at the service of the human person, it follows that it cannot be a slave to the economy and finance. Politics is, instead, an expression of our compelling need to live as one, in order to build as one the greatest common good: that of a community which sacrifices particular interests in order to share, in justice and peace, its goods, its interests, its social life. I do not underestimate the difficulty that this involves, but I encourage you in this effort.

Here too I think of the march which Martin Luther King led from Selma to Montgomery fifty years ago as part of the campaign to fulfill his "dream" of full civil and political rights for African Americans. That dream continues to inspire us all. I am happy that America continues to be, for many, a land of "dreams". Dreams which lead to action, to participation, to commitment. Dreams which awaken what is deepest and truest in the life of a people.

In recent centuries, millions of people came to this land to pursue their dream of building a future in freedom. We, the people of this continent, are not fearful of foreigners, because most of us were once foreigners. I say this to you as the son of immigrants, knowing that so many of you are also descended from immigrants. Tragically, the rights of those who were here long before us were not always respected. For those peoples and their nations, from the heart of American democracy, I wish to reaffirm my highest esteem and appreciation. Those first contacts were often turbulent and violent, but it is difficult to judge the past by the criteria of the present. Nonetheless, when the stranger in our midst appeals to us, we must not repeat the sins and the errors of the past. We must resolve now to live as nobly and

as justly as possible, as we educate new generations not to turn their back on our “neighbors” and everything around us. Building a nation calls us to recognize that we must constantly relate to others, rejecting a mindset of hostility in order to adopt one of reciprocal subsidiarity, in a constant effort to do our best. I am confident that we can do this.

Our world is facing a refugee crisis of a magnitude not seen since the Second World War. This presents us with great challenges and many hard decisions. On this continent, too, thousands of persons are led to travel north in search of a better life for themselves and for their loved ones, in search of greater opportunities. Is this not what we want for our own children? We must not be taken aback by their numbers, but rather view them as persons, seeing their faces and listening to their stories, trying to respond as best we can to their situation. To respond in a way which is always humane, just and fraternal. We need to avoid a common temptation nowadays: to discard whatever proves troublesome. Let us remember the Golden Rule: “Do unto others as you would have them do unto you” (Mt 7:12).

This Rule points us in a clear direction. Let us treat others with the same passion and compassion with which we want to be treated. Let us seek for others the same possibilities which we seek for ourselves. Let us help others to grow, as we would like to be helped ourselves. In a word, if we want security, let us give security; if we want life, let us give life; if we want opportunities, let us provide opportunities. The yardstick we use for others will be the yardstick which time will use for us. The Golden Rule also reminds us of our responsibility to protect and defend human life at every stage of its development.

This conviction has led me, from the beginning of my ministry, to advocate at different levels for the global abolition of the death penalty. I am convinced that this way is the best, since

every life is sacred, every human person is endowed with an inalienable dignity, and society can only benefit from the rehabilitation of those convicted of crimes. Recently my brother bishops here in the United States renewed their call for the abolition of the death penalty. Not only do I support them, but I also offer encouragement to all those who are convinced that a just and necessary punishment must never exclude the dimension of hope and the goal of rehabilitation.

In these times when social concerns are so important, I cannot fail to mention the Servant of God Dorothy Day, who founded the Catholic Worker Movement. Her social activism, her passion for justice and for the cause of the oppressed, were inspired by the Gospel, her faith, and the example of the saints.

How much progress has been made in this area in so many parts of the world! How much has been done in these first years of the third millennium to raise people out of extreme poverty! I know that you share my conviction that much more still needs to be done, and that in times of crisis and economic hardship a spirit of global solidarity must not be lost. At the same time I would encourage you to keep in mind all those people around us who are trapped in a cycle of poverty. They too need to be given hope. The fight against poverty and hunger must be fought constantly and on many fronts, especially in its causes. I know that many Americans today, as in the past, are working to deal with this problem.

It goes without saying that part of this great effort is the creation and distribution of wealth. The right use of natural resources, the proper application of technology and the harnessing of the spirit of enterprise are essential elements of an economy which seeks to be modern, inclusive and sustainable. "Business is a noble vocation, directed to producing wealth and improving the world. It can be a fruitful source of prosperity for the area in

which it operates, especially if it sees the creation of jobs as an essential part of its service to the common good" (Laudato Si', 129). This common good also includes the earth, a central theme of the encyclical which I recently wrote in order to "enter into dialogue with all people about our common home" (ibid., 3). "We need a conversation which includes everyone, since the environmental challenge we are undergoing, and its human roots, concern and affect us all" (ibid., 14).

In Laudato Si', I call for a courageous and responsible effort to "redirect our steps" (ibid., 61), and to avert the most serious effects of the environmental deterioration caused by human activity. I am convinced that we can make a difference and I have no doubt that the United States – and this Congress – have an important role to play. Now is the time for courageous actions and strategies, aimed at implementing a "culture of care" (ibid., 231) and "an integrated approach to combating poverty, restoring dignity to the excluded, and at the same time protecting nature" (ibid., 139). "We have the freedom needed to limit and direct technology" (ibid., 112); "to devise intelligent ways of... developing and limiting our power" (ibid., 78); and to put technology "at the service of another type of progress, one which is healthier, more human, more social, more integral" (ibid., 112). In this regard, I am confident that America's outstanding academic and research institutions can make a vital contribution in the years ahead.

A century ago, at the beginning of the Great War, which Pope Benedict XV termed a "pointless slaughter", another notable American was born: the Cistercian monk Thomas Merton. He remains a source of spiritual inspiration and a guide for many people. In his autobiography he wrote: "I came into the world. Free by nature, in the image of God, I was nevertheless the prisoner of my own violence and my own selfishness, in the image of the world into which I was born. That world was the picture of Hell, full of men like

myself, loving God, and yet hating him; born to love him, living instead in fear of hopeless self-contradictory hungers". Merton was above all a man of prayer, a thinker who challenged the certitudes of his time and opened new horizons for souls and for the Church. He was also a man of dialogue, a promoter of peace between peoples and religions.

From this perspective of dialogue, I would like to recognize the efforts made in recent months to help overcome historic differences linked to painful episodes of the past. It is my duty to build bridges and to help all men and women, in any way possible, to do the same. When countries which have been at odds resume the path of dialogue – a dialogue which may have been interrupted for the most legitimate of reasons – new opportunities open up for all. This has required, and requires, courage and daring, which is not the same as irresponsibility. A good political leader is one who, with the interests of all in mind, seizes the moment in a spirit of openness and pragmatism. A good political leader always opts to initiate processes rather than possessing spaces (cf. *Evangelii Gaudium*, 222-223).

Being at the service of dialogue and peace also means being truly determined to minimize and, in the long term, to end the many armed conflicts throughout our world. Here we have to ask ourselves: Why are deadly weapons being sold to those who plan to inflict untold suffering on individuals and society? Sadly, the answer, as we all know, is simply for money: money that is drenched in blood, often innocent blood. In the face of this shameful and culpable silence, it is our duty to confront the problem and to stop the arms trade.

Three sons and a daughter of this land, four individuals and four dreams: Lincoln, liberty; Martin Luther King, liberty in plurality and non-exclusion; Dorothy Day, social justice and the rights of persons; and Thomas Merton, the capacity for dialogue and openness to God.

Four representatives of the American people.

I will end my visit to your country in Philadelphia, where I will take part in the World Meeting of Families. It is my wish that throughout my visit the family should be a recurrent theme. How essential the family has been to the building of this country! And how worthy it remains of our support and encouragement! Yet I cannot hide my concern for the family, which is threatened, perhaps as never before, from within and without. Fundamental relationships are being called into question, as is the very basis of marriage and the family. I can only reiterate the importance and, above all, the richness and the beauty of family life.

In particular, I would like to call attention to those family members who are the most vulnerable, the young. For many of them, a future filled with countless possibilities beckons, yet so many others seem disoriented and aimless, trapped in a hopeless maze of violence, abuse and despair. Their problems are our problems. We cannot avoid them. We need to face them together, to talk about them and to seek effective solutions rather than getting bogged down in discussions. At the risk of oversimplifying, we might say that we live in a culture which pressures young people not to start a family, because they lack possibilities for the future. Yet this same culture presents others with so many options that they too are dissuaded from starting a family.

A nation can be considered great when it defends liberty as Lincoln did, when it fosters a culture which enables people to "dream" of full rights for all their brothers and sisters, as Martin Luther King sought to do; when it strives for justice and the cause of the oppressed, as Dorothy Day did by her tireless work, the fruit of a faith which becomes dialogue and sows peace in the contemplative style of Thomas Merton.

In these remarks I have sought to present some of the richness of your cultural heritage, of

the spirit of the American people. It is my desire that this spirit continue to develop and grow, so that as many young people as possible can inherit and dwell in a land which has inspired so many people to dream.

God bless America!

EVEN MILLIONAIRE WORKERS LIKE TOM BRADY NEED SOLIDARITY

President Obama's at a labor breakfast in Boston today. He offered this message.



Alison King 
@alisonkingNECN

 Follow

Obama: Even Tom Brady is glad he belongs to a union. They had his back. And if Brady needs a union - we definitely need unions.

Clearly, the President is pandering to his audience. Bostoners like Brady, unlike much of the country.

But it's an important point, one which has been missing from a lot of the coverage of DeflateGate. Brady will play on Thursday not just because he had better lawyers than the NFL, nor because Roger Goodell is a douchebag who's not even competent at being a tyrant, but also because he's a member of a union that had negotiated certain rules with the bosses, one of which was that certain kinds of violations get treated a certain way (in this case, that equipment violations involve a team fine, but no suspensions).

Mind you, I keep wondering why the NFL, after having been embarrassed with the BountyGate, Ray Rice, and Adrian Peterson disciplinary procedures, would adopt an even more abusive approach with Brady, when they were dealing with an alleged crime that wasn't even as serious or as politically unpopular as the others (setting aside how much most people hate the Pats, of course). It's possible they did so because they got so far ahead of themselves when they launched an investigation – and leaked highly derogatory and false information – in response to rumors about overinflated balls that they were left with no choice but to double down. But partly, the serial leaks feel like part of the plan here. In which case, I think it at least possible the NFL went after Brady so hard because he has always been active in the Players Association, and was the named plaintiff in 2011 when the players sued the NFL on anti-trust grounds.

Tom Brady may look like a hero, a badass quarterback, or a cheat to fans (depending on whom you're asking), but maybe to every owner not named Kraft, he looks like a union rabble rouser?

I don't know the answer to that, but as the league appeals Judge Berman's ruling, I hope some people ask whether the NFL is just acting so stupid because they are that stupid, or whether there's something more going on.

In any case, the President may have been pandering. But his point is sound. If even millionaire workers like Tom Brady need a union – need solidarity with other workers to achieve some measure of justice – then we all probably could use more of it.

Happy Labor Day! Go Patriots!

Update: As a number of people are noting, the NFL released a graphic asking which QB will be in next year's Super Bowl that left the reigning champ off.

A TALE OF CELEBRITY BON VIVANT CIVIL SERVANTS AND ACCESS JOURNALISM



There
is a
distinct
problem
in
this
country
with
excess

ive inbreeding of politicians, lobbyists and journalists. In a country where so many are now ruled by so few in power, it is becoming, if not already become, the biggest threat to American democracy. I would add in corporations, but, heck, who do you think the politicians, lobbyists and journalists represent at this point?

Now, corporations and their money through their mouthpiece lobbyists have long had a stranglehold on politics, whether through the corps themselves or their wealthy owners. But the one saving mechanism has historically been claimed to be the "Fourth Estate" of the American press who were there on behalf of the people as a check on power. But what if the Fourth Estate becomes, in fact, part of the power? What then?

What if the crucial check on federal and state power is by journalists who are little more than stenographers clamoring for access and/or co-opted social friends and elites with the powers that be? What if the sacrosanct civil servants of this country are nothing but Kardashian like

skills out for a free gilded ride before they leave office to cash in with private sector riches befitting their holiness?

Golly, if only there was an example of this incestuous degradation. Oh, wait, get a load of this just put up by Kate Bennett's KGB File at Politico:

In a generally stay-at-home administration, one member of the Obama Cabinet is proving to be the toast of the town. Jeh Johnson, the oh-so-serious-on-the-outside secretary of Homeland Security, is fast becoming Washington's No. 1 social butterfly, dining out at posh restaurants like CityCenter's DBGB, as he did last week with a small group that included Amy Klobuchar, Steny Hoyer, CNN's Jim Sciutto, the New York Times' Ashley Parker, author Aaron Cooley, and lobbyist Jack Quinn and his wife Susanna.

For a guy who's been running a 24/7 war against terror since 2013, Johnson seems to have a lot of time to trip the light fantastic. He can often be seen enjoying regular catch-up sessions with BFF Wolf Blitzer at Café Milano (back table, naturally); and mingling at black-tie soirées, such as the Kennedy Center Spring Gala, the Opera Ball, or a champagne-fueled VIP garden party at Mount Vernon to toast French-American relations, all of which Johnson attended—and stayed at beyond the requisite cocktail-hour schmooze.

Story Continued Below

"There's rarely an invitation he'll turn down," says an aide to Johnson, who prefers to remain anonymous, of his boss's penchant for spending three-to-four evenings a week at social functions — and actually enjoying them.

I am not going to bother to dissect that, it speaks all too clearly for itself. And it is hard to figure which is more pukeworthy, the bon vivant civil servant or the elitism displayed by the supposed watcher last bastion journalists. It is all of the same cloth.

What's wrong in Washington DC? Here you go. When the pathology on the boneyard of American democracy is run, this vignette will appear.

Maybe this is why Tom Vilsack could find a spare couple of hours out of one of his days to explain in a deposition why he and the Obama Administration knee jerkily demanded Shirley Sherrod's resignation based upon a crank fraudulent video by a schlock like Andrew Breitbart.

Because "Executive Privilege" now means "Privileged Executives" who can party all night with their elitist journalistic pals and screw the rest of the government, and people it serves, during the day. Just like the Founders envisioned obviously.

LESSONS FROM THE FCIC FINAL REPORT IN FHFA V. NOMURA

The ruling of Judge Denise Cotes in Federal Housing Finance Administration v. Nomura Holding America, Inc., is a 361 page description of the fraud and corruption that went into just one group of real estate mortgage-backed securities. FHFA was formed after the Great Crash to oversee Fannie Mae and Freddie Mac. These two entities were the actual buyers of the RMBSs offered by Nomura Securities International, Inc., and RBS Securities, Inc., then known as Greenwich Capital Markets, Inc. The Court finds that a number of statements in the offering materials

were false at the time of the offering, in violation of Section 12 of the Securities Act of 1933. It awarded a judgment in the amount of \$806 million, and required FHFA to tender return of the securities.

This Reuters story is typical of the coverage of the decision, in the “we knew that” mold. Peter Eavis of the New York Times wrote a clearer explanation, pointing out that this decision undercuts any argument that Wall Street banks did not break the law in the sale of RMBSs. This is the first paragraph of the decision:

This case is complex from almost any angle, but at its core there is a single, simple question. Did defendants accurately describe the home mortgages in the Offering Documents for the securities they sold that were backed by those mortgages? Following trial, the answer to that question is clear. The Offering Documents did not correctly describe the mortgage loans. The magnitude of falsity, conservatively measured, is enormous.

In this post, I’ll look at several aspects of the case: 1) the legal framework; 2) the discussion of the due diligence tracks the findings of the Financial Crisis Inquiry Commission in its Final Report; 3) the individual liability holdings; 4) the role of the Credit Rating Agencies; and 5) loss causation.

! . The Legal Framework.

The main theory of liability in this case is the Securities Act of 1933, 15 USC § 77a et seq., specifically Section 12. The operative language says that a person who

offers or sells a security (whether or not exempted by the provisions of section 77c of this title, other than paragraphs (2) and (14) of subsection (a) of said section), by the use of any

means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission

is liable to the purchaser for any loss arising from the misrepresentations. The plaintiff has to prove that the offering materials contained an untrue statement of a material fact, and that the purchaser did not know about the falsehood. Sellers can defend by proving that they did not know and “in the exercise of reasonable care could not have known” of the falsehood. Sellers can also reduce their damages to the extent they bear the burden of proving that the losses of the buyer were not caused by the falsehood. The defendants did not claim that Fannie Mae and Freddie Mac knew that the offering materials were full of falsehoods. Thus, the main focus of the decision is the falsehoods in the offering materials.

2. The Due Diligence Defense and The Final Report of the FCIC

If the Defendants exercise reasonable care in preparing the offering materials, they are protected from liability. In fact, the risks of failing to exercise due care are so great that investors believe that financially strong sellers of securities wouldn't take the risk of selling unless they had done good due diligence. Of course, our dominant ideology, neoliberalism, preaches that markets, whatever they might be, police themselves, and securities laws are unnecessary. Here's a lovely example from John

Spindler, now a business law professor at the University of Texas (it's not on his CV). The Final Report also calls out this bizarre idea, beginning at P. 171 (.pdf page 198).

The Final Report looks at the due diligence across the universe of securitizers in Chapter 9, page 156 (.pdf page 184). It says that the securitizers did little or no due diligence themselves. Instead, they farmed it out to third parties. These vendors examined a sample of loans from a pool, and reported whether the loans met the guidelines that the originators claimed to follow, whether they complied with federal and state laws, and whether the valuations of collateral were reasonably accurate. They also looked for compensating features that might outweigh the defects. The sample loans were graded, and the securitizers could use these grades to kick out loans, or they could waive the defects, and in either case, they could use the information to negotiate the purchase price for the pool.

The Final Report says that vendors reported very high defect rates, and that securitizers waived in a high percentage of the defective loans. The originators then put the kicked-out loans into other pools proposed for sale. Disqualifying defects were discovered in 28% of the loans examined by one vendor, Clayton Holdings, for the 18 months ending June 30, 2007. Of those, 39% were waived in, so that 11% of defective loans were included in purchased pools. The samples were small, as low as 2 or 3%. There seems to be little effort to find the defective loans in the non-sampled portion, so it's reasonable to assume that a similar or higher percentage of loans in the entire pool are defective.

Judge Cote follows a similar pattern. Nomura had no written procedures for evaluating loans. P. 48. After it won a bid for a pool, it conducted a review of the loans, relying on the information contained on the loan tape provided by the originator of the loans in the pool. The

loan tape is actually a spread sheet containing information about the loans, including FICO scores, debt to income ratios, loan to value ratios, owner-occupancy status and other important data. P. 31. Nomura sent the loan tape to its vendors to conduct reviews for credit, compliance with originator's stated underwriting guidelines, and valuation. The due diligence was done on a sample, in the range of 25-30%, but it was not a random sample, so the results could not be extended to the entire loan pool.

Of the loans submitted beginning in 2006 and the first quarter of 2007, one vendor graded 38% as failing to meet the originator guidelines. Nomura waived in 58% of those. It also had very high kickout rates for the pools it purchased. That means that of the examined loans, about 22% had major defects, again not counting the unexamined loans. With high kick-out rates, the number of defective loans remaining would be much higher.

The offering materials for these RMBSs all claimed that the loans met the originator guidelines with some exceptions. Judge Cote says this was a false statement, and that there was no showing that the defendants had done the kind of investigation required to avoid liability.

3. Individual Liability.

The Judge looks at the liability of the five individual defendants in part IV.b.3. P. 234. These are the officers, directors and signatories of the entities responsible for the filing of the offering materials. The ruling is harsh:

All five Individual Defendants testified at trial. The general picture was one of limited, if any, sense of accountability and responsibility. They claimed to rely on what they assumed were robust diligence processes to ensure the accuracy of the statements Nomura made, even if they did not understand, or, worse, misunderstood, the nature of

those processes. Not one of them actually understood the limited role that due diligence played in Nomura's securitization process, and some of them actually had strong reason to know of the problems with the diligence process and of the red flags that even that problematic process raised.

Each Individual Defendant made a point of highlighting the aspects of Nomura's RMBS business for which he claimed to have no responsibility. None of them identified who was responsible for ensuring the accuracy of the contents of the Prospectus Supplements relevant to this lawsuit, and, as this group of Individual Defendants furnished the most likely candidates, the only logical conclusion is that no one held that responsibility.

A detailed explanation of this summary follows. Apparently securitizers have terrible memories.

4. Misleading The Credit Rating Agencies

FHFA did not claim the ratings were false, but that the ratings were not based on accurate information about the actual collateral for the RMBSs. The Court found that the defendants gamed the credit rating agencies models by submitting only the loan tapes prepared by the originators, even when they knew that the loan tapes were full of errors that would affect the final rating. Page 202. The Court found that the ratings depended on factors like the loan to value ratio and the debt to income ratio. The Court found that the LTV ratios were lower than represented by Nomura in 18-36% of the loans, and that many LTV ratios were above 100%, which skewed the models of the credit rating agencies and bought Nomura undeserved AAA ratings. This is a nice piece of lawyering by the legal team at Quinn Emanuel.

The FCIC is not so forgiving towards the Credit

Rating Agencies:

The Commission concludes that the credit rating agencies abysmally failed in their central mission to provide quality ratings on securities for the benefit of investors. They did not heed many warning signs indicating significant problems in the housing and mortgage sector. Conclusion to Ch. 10 at .pdf 240

But there's no point in shooting at the credit rating agencies. They have a get out of jail free card from the judiciary, which says that they are just giving opinions and are protected by the First Amendment.

5. Loss Causation.

The defendants argued that they didn't cause the loss. They claimed that it was the housing market crash. Judge Cote cites a recent decision from the Second Circuit, *Fin. Guar. Ins. Co. v. Putnam Advisory Co., LLC*, – F.3d –, 2015 WL 1654120 at 8 n.2

... there may be circumstances under which a marketwide economic collapse is itself caused by the conduct alleged to have caused a plaintiff's loss, although the link between any particular defendant's alleged misconduct and the downturn may be difficult to establish.

Judge Cote tells us that the Second Circuit cited the Final Report of the FCIC for the proposition that the housing crash was linked to the "shoddy origination practices concealed by the misrepresentations" in the Nomura offering materials. Those shoddy practices contributed to the housing bubble, and were factors in the Great Crash. Crucially, she writes at 332:

Defendants do not dispute this. They do not deny that there is a link between the securitization frenzy associated with those shoddy practices and the very

macroeconomic factors that they say caused the losses to the Certificates. This lack of contest, standing alone, dooms defendants' loss causation defense, which, again, requires them to affirmatively prove that something other than the alleged defects caused the losses.

6. Conclusions

The legal team at Quinn Emanuel did a nice job of preparation. The people who prepared the testimony of the expert Dr. William Schwert deserve a special mention: that was really smart. See page 204 and previous material.

It looks like the Quinn Emanuel team and the Judge were deeply informed by the Final Report, and used it as a road map to digging up and presenting evidence of the fraud and corruption in the securitization process. It's a terrible shame the spineless prosecutors at the Department of Justice couldn't grasp the point of the Final Report. That is, unless the prosecutors did understand, and the decision was made by the neoliberals at the top, Lanny Breuer and Eric Holder, and the banker's best friend, Barack Obama.

THE NEOLIBERAL INHABITANTS OF MONT PELERIN

In this post, I talked about the intersection of neoliberalism and neoclassical economics. There is a lot of talk on the left about neoliberalism, and a number of ideas about what

it is. For me, neoliberalism refers to the general program of a group of economists, lawyers and others loosely grouped around the Mont Pelerin Society. This description is used by Philip Mirowski in his book, *Never Let a Serious Crisis go to Waste*. Mirowski did a Book Salon at FDL, [here](#); the introduction gives a good overview of the book, and Mirowski answers a number of interesting questions.

The writer Gaius Publius provides an historical perspective here. Classical liberalism is based on the idea that property rights are central to the freedom of the individual, an idea espoused by John Locke, as the Theologian Elizabeth Bruenig explains [here](#).

John Locke's 1689 discussion of property in his *Second Treatise on Civil Government* establishes ownership as a fundamental relationship between the self and the outside world, with important implications for governance. In Locke's thought, the justification for private property hinges upon one's self-ownership, which is then applied to other objects. "Every man," Locke writes in the *Second Treatise*, "has a property in his own person: this no body has any right to but himself." Through labor, Locke continues, the individual mixes a piece of herself with the outside world. Primordial self-ownership commingles with material objects to transform them into property.

In this view, property is the central element that structures individual lives and then society as a whole. Those who have it are entitled to total control over it, just as they are over their own person. Perhaps they should even be in charge of operating the state. When you think about that era, you can see why that formulation would be popular: it solved the problem facing newly rich merchants and others under a monarchy. They were in constant danger that royalty would seize their property from

them without fair compensation. Locke's argument provides a framework to limit the power of the monarch. It also explains the relation between slaves and owners, and women and men. And, as Bruenig points out, it can be extended to justify protection of property with the same force allowed in self-protection.

The defense of property from interference by the State leads directly to the idea of small government. Government shouldn't interfere with markets any more than it should interfere with any other use of property. The combination of these ideas leads to the principles of classical liberalism: nearly absolute personal freedom for those with property, and a tightly limited sphere of government action. This is the classical formulation of liberalism.

It lasted until the Great Depression and the New Deal. Franklin Roosevelt was faced with the rich on one side, and with angry and miserable workers on the other. These workers and unemployed people, and most of the citizenry were looking at the massive damage done by capitalists and their capitalist system, and saw that the system did not work for them. They were listening to the leftists of the day, socialists and communists; independent smart people like Francis Townsend; and powerful speakers and populists like Huey Long and Father Coughlin. The elites were frightened of the power of these people to inform and structure the rage of the average citizen, and FDR was able to force them to capitulate to modest regulation of the rich and powerful and their corporations, including highly progressive tax rates.

FDR and the Democrats embraced the term liberalism, and the meaning of the term changed to include a more active state, to some extent guided by Keynesian economic theory. In this version of liberalism, the government becomes a tool used by a society to achieve the goals of that society. People who stuck with the old definition of small government coupled with massive force in the protection of property and

rejected all Keynesian ideas were labeled conservatives.

The reformulation of the definition of liberal did not sit well with a segment of the conservatives. Friedrich Hayek and his rich supporters launched the Mont Pelerin Society in 1947. The point of the MPS is to preserve and extend classical liberalism, in an effort to prevent FDR-style liberalism from turning the US and other countries to socialism or something even worse. It is a diffuse group, not secretive, but it doesn't seek publicity. It seems to content itself with publishing papers and having meetings at which like-minded people can talk to each other and feel good about their brilliance.

The name neoliberal comes from their desire to recapture the glory of small government capitalism. This is from a speech delivered by Edwin J. Feulner, the outgoing president of the group, in 1998:

But with the onset of Progressivism and the New Deal, many Americans became attracted to a political philosophy that was diametrically opposed to Jefferson's. The new statist philosophy had great faith in public man, but was deeply distrustful of private man. It maintained, quite incorrectly, that the uncoordinated activities of ordinary individuals were bound to culminate in economic catastrophes like the Great Depression, and it looked to an all-good, all-wise and increasingly all-powerful central government to set things right. In the view of these statisticians – who brazenly hijacked the term "liberal" to describe their very illiberal philosophy – what we Americans needed was more government, not less.

The FDR socialists and communists brazenly hijacked the term "liberal" to cover their assault on the principles of small state

property protection. That gives you some idea of the resentment of the neoliberals. They have a strong sense of entitlement, and they cling to grudges for decades. Hayek was perhaps most famous for his book *The Road to Serfdom*, written in the wake of World War II, a screed warning against socialism. That wasn't going to happen, but it fit neatly with the resentment of the filthy rich capitalists who never forgave the Class Traitor FDR.

The Statement of Aims of the MPS is here. It describes a limited choice: Communism or Free Market Capitalism This stark choice has

... been fostered by the growth of a view of history which denies all absolute moral standards and by the growth of theories which question the desirability of the rule of law. It holds further that they have been fostered by a decline of belief in private property and the competitive market; for without the diffused power and initiative associated with these institutions it is difficult to imagine a society in which freedom may be effectively preserved.

This statement shows why the filthy rich love neoliberalism: it feeds their sense of self-glorification. That it lends itself to exploitation for their cash benefit is a lovely side benefit.

NEOLIBERALISM AND

NEOCLASSICAL ECONOMICS

I'm new here as a poster, so I'll start by describing my interests. As you may know from my work at Firedoglake under the name masaccio, I'm interested in the way the economy actually works. That's why I like the work done by Thomas Piketty and his colleagues on wealth and income inequality: he has collected, refined and organized huge piles of data and made both that data and his analysis public. Piketty's book, *Capital in the Twenty-First Century*, tells us that we can and should insist on data as a source of analysis, not the enormous array of cute stories mainstream economists like to tell us from their armchairs. Trickle-down, life-cycle consumption, pay based on marginal productivity, free markets, and most of the neoclassical economics taught in Econ 101 to pretty much the entire college population for decades, all of them are clever, easily explained in sophomore level calculus, and wrong.

The two parties cooperated to implement self-regulating financial markets, both through the gradual abolition of Glass-Steagall, and to gut regulatory agencies. They laid the groundwork for the Great Crash, and the cheats and thugs on Wall Street did the rest. Then the elites and their pet economists insisted that the solution lay in pumping money into the banking system with no thought of criminal investigation, let alone prosecution, and only the weakest forms of re-regulation, insuring that the criminals would not be deterred and would have plenty of ways to bring on the next disaster.

US voters were angry about the bailouts, but their wrath turned onto the victims of the

fraudulent lending schemes and the interest rate swaps and the other financial innovations that the Alan Greenspan and Robert Rubins enthusiastically supported. Does your city or your school district have an interest rate swap? I live in Chicago, and our school district has a bunch. The Chicago Tribune estimated they will cost us \$100 million that should be going to education but instead is going to the con artists on Wall Street. The cuts to education here are painful and unnecessary. The same is true all over the country

But it was bad luck homeowners who really got cheated. First, there were knowingly fraudulent loans, then knowingly fraudulent foreclosures, and now possibly knowingly fraudulent delinquency claims.

The vast majority of the public thinks this is just fine. Screw the victims, help criminal banks is a strange goal, but the worst part is that victims of this economic system frequently do blame themselves.

This outpouring of hostility towards the losers in the economic struggle should be seen as a natural consequence of neoliberalism. In that worldview, the market is an indifferent referee, doling out rewards to the successful, and pushing the losers off the playing field into the outer darkness. Everyone is required to be the entrepreneur of themselves, investing their money or their parents' money or borrowed money in their own human capital in the hopes of beating out some other poor bastard for some bad job that pays poorly. If they win, they might get to retire. If they lose, there's always bankruptcy, except for taxes and student loans, and they are trash. It's a bleak world.

Neoclassical economic theory is the linchpin of neoliberalism. It provides a theoretical underpinning for the harsh world it envisions. In this world, humans are seen solely as consumers and producers. These calculating creatures are rational optimizers, constantly using the markets to achieve their own personal

highest utility. It's an evil, reductive idea, but notice how well it corresponds to the self images of the people described by Jennifer Silva in her book *Coming Up Short*, which I discussed here. The encouraging thing about the people Silva talked to is that they see themselves as having agency, they see themselves as having problems, but they are convinced they can do something about those problems.

The middle class is shrinking. Social class mobility is falling. But no one seems interested in the possibility that the economic system is the problem. The Republicans love it, and the Democrats do too, only not quite as much: they offer timid solutions like Elizabeth Warren's suggestion that we reduce the interest rate on student loans, or increase the minimum wage to \$10.10 per hour. These are not the kinds of changes that will make a significant difference in anyone's life. They will do nothing to dilute the power of the richest 16,000 US families. And yet these represent the extreme left in politics.

In the 1920s, there was widespread intellectual ferment around alternatives to capitalism, socialism and communism, and that forced questions about capitalism to the surface. As the Great Depression deepened, the rich and politicians were afraid that the working class and the unemployed would find those ideas superior to capitalism. Eventually they were forced to compromise a tiny bit, creating a more or less regulated system of markets. Even the conservative hacks on the Supreme Court (the Court is full of conservative political hacks almost all the time), bent to the will of the people, and allowed a range of FDR's initiatives to stand. In some cases, for a while, the hacks even enforced those laws, though that ended years ago.

Partially regulated capitalism was a major force for the creation of what Piketty calls the Patrimonial Middle Class. This group, 40% of the population, roughly the 50th to 90th percentiles

of wealth, at one time had enough wealth to live comfortably in retirement and leave an inheritance to their children. That group is dwindling. The bottom 50% of the population has little or no net worth. Piketty calls them the Lower Class. The top 10% he calls the Upper Class and the top 1% he calls the Dominant Class. The Upper class is taking all the money produced by the economy. These are the people who can make major donations to politicians and thus acquire influence they can turn to their cash benefit.

The Lower Class is becoming more and more angry as the recovery stomps their faint hopes into the dirt. The Middle Class is shrinking, and I hope is beginning to think that maybe it's not their fault. Things won't change until enough people figure out the connection between the economic myths they've been taught and the social and political institutions that enforce those myths, and structure their understanding of their place in the world. If Silva's people are right, if Middle and Lower Class people do have agency, and if they learn to see through the smoke and mirrors of the neoliberals and their academic lapdogs, they can enforce demands that will actually improve their lives.

I like to think of this process as the way you'd peel an octopus off an aquarium wall: one tiny sucker at a time. Eventually it comes off, but it's a lot of work, and the octopus resists with all its strength.

which is Piketty's actual term