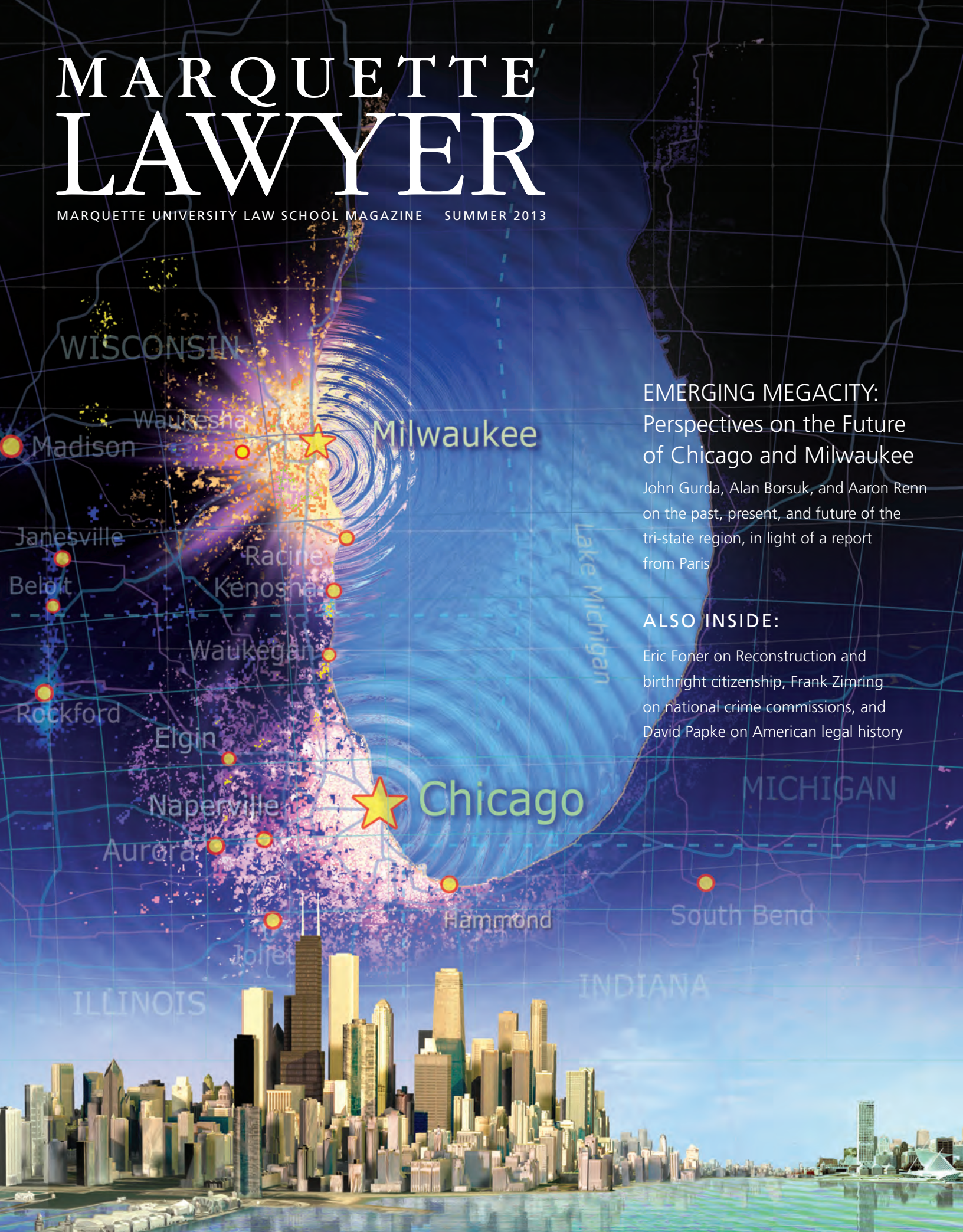


MARQUETTE LAWYER

MARQUETTE UNIVERSITY LAW SCHOOL MAGAZINE SUMMER 2013



EMERGING MEGACITY: Perspectives on the Future of Chicago and Milwaukee

John Gurda, Alan Borsuk, and Aaron Renn
on the past, present, and future of the
tri-state region, in light of a report
from Paris

ALSO INSIDE:

Eric Foner on Reconstruction and
birthright citizenship, Frank Zimring
on national crime commissions, and
David Papke on American legal history

Seeking Excellence, in This Magazine and All Else

The academic year in Eckstein Hall can seem a whirlwind. Our primary work, to understate the point, supports the academic efforts of Marquette law students. My own courses this year were the Supreme Court Seminar in the fall and Advanced Civil Procedure in the spring, but that is a small fraction of the combined contribution of the faculty, both full-time and adjunct. And even this collective work is a tiny percentage as against the time invested by the students themselves in their courses, for most of their work is outside the classroom. This direct program of legal education is the reason for the Law School's existence.



Yet the Law School's work is much broader. We take seriously our role as an engaged citizen of the communities of which we are part, and this magazine both constitutes and reflects some of that engagement.

For example, when the Marquette University History Department proposed a campuswide project, marking the sesquicentennial of the Emancipation Proclamation and reflecting more broadly

on freedom, the Law School acted. We devoted our annual Boden Lecture to the project and brought to the university and the broader southeastern Wisconsin community the renowned Columbia University historian, Eric Foner. We now bring him to you in these pages.

Our other distinguished lectures are also community events. This magazine presents the Barrock Lecture, dedicated annually to the discussion of criminal justice and delivered this year by Cal-Berkeley law professor Frank Zimring. Professor Zimring's lecture served also as a keynote address introducing our conference on one of the first national crime commissions. The next issue of the magazine will include material from two other distinguished lectures of the past academic year: Paul Clement's Hallows Lecture, "The Affordable Care Act Case in the Supreme Court: Looking Back, a

Year After," and Arti Rai's Nies Lecture in Intellectual Property, considering "Patents, Markets, and Medicine in a Just Society."

We help drive the conversation on important public policy issues even beyond these lectures. Our conference last summer with the *Milwaukee Journal Sentinel*, "Milwaukee's Future in the Chicago Megacity," gives rise in these pages to John Gurda's and Aaron Renn's essays. And it occasions Alan Borsuk's close look at the viability of the regional initiative and focus that many—including the Paris-based Organisation for Economic Co-operation and Development—are promoting for the tri-state region of which we are part. We promote no particular policy on these matters, but we ensure that especially important questions—whether there is substance to the Megacity initiative, whether there is net value in it for Milwaukee, etc.—are joined.

And our alumni, many of whom are with us at times during the year and several of whom are profiled here, remind us that the careers of today's students will be varied, indeed. They provide important models for all of us of the Marquette lawyer.

My purpose here is not to provide a table of contents for this *Marquette Lawyer*—one is available on the facing page. It is rather to suggest, first, that Marquette Law School today is an energetic, ambitious place and, second, that we are capable of channeling that energy and achieving our ambitions. We demonstrated this in building Eckstein Hall—the best law school building in the country. Our public policy initiative is something quite extraordinary: certainly there has been nothing elsewhere quite like the Marquette Law School Poll, chronicled in our 2012 magazines, so far as I am aware. Our distinguished lectures are outstanding.

In short, we seek excellence. This goal has pride of place at Marquette University, whose mission is "Excellence, Faith, Leadership, Service," and we increasingly demand it of ourselves in each aspect of our program. Let this magazine give you a sense of this—and of us.

Joseph D. Kearney
Dean and Professor of Law

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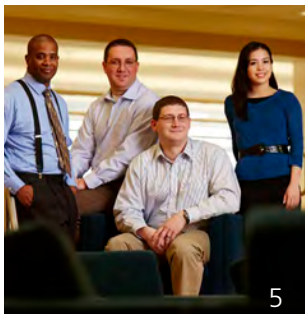
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When Rome Asks, You Head to Omaha

It isn't just his teaching that has made Gregory J. O'Meara a major part of life at Marquette Law School. His outgoing personality and his warm involvement with students and colleagues have meant that O'Meara is a big contributor to the life of the Law School more generally. O'Meara is like both a professor and a Father.

In fact, O'Meara is both a professor and a Father, and that is what lies behind his upcoming move to Omaha, Neb., to become rector of the Creighton University Jesuit community. Dean Joseph D. Kearney called O'Meara's departure "a substantial loss for our community." But, as O'Meara put it, "When Rome asks you, you say, 'Yes.'"

O'Meara, who grew up in West Bend, Wis., became a lawyer first, serving from 1985 to 1992 as an assistant district attorney for Milwaukee County. In 1992, he undertook study to become a Jesuit. "I thought I'd just get this out of my system," O'Meara said. "I ended up staying."

O'Meara was a visiting assistant professor at Marquette Law School from 1997 to 1999. He returned

in 2002, later earning tenure. He has received the James D. Ghiardi Award for Teaching Excellence three times.

In addition to serving the 43 Jesuits in the Creighton community, O'Meara will teach criminal law at Creighton University School of Law.

When you grow up in an Irish-Catholic family, he jokes, you can become a lawyer, a bartender, or a priest. He is accomplished in two out of three of those occupations. Has he ever been a bartender? Only at family gatherings and charity events, he answers. But don't look for him to explore that career. He's got big things to do in the other two roles. ■



Dedication to Principle, Family, Church, and Marquette Shaped Judge John Coffey



Many people thought first of words such as *conservative* and *tough* when they thought of Judge John (Jack) Coffey. Based on his record in nearly six decades as a judge at many levels, they were right. But that doesn't come close to explaining Coffey's record and personality

"Jack was loving, devoted, and inspiring, always putting his family and faith first," his family

said in announcing his death at 90 in November 2012. He had "an innate sense of justice and fairness."

Coffey graduated from Marquette Law School in 1948 and became a trial judge in Milwaukee in 1954, when he was 32. He was elected to the Wisconsin Supreme Court in 1978. In 1982, President Ronald Reagan named Coffey

to the U.S. Court of Appeals for the Seventh Circuit. He served on the court until January 2012, shortly after his wife, Marion, died.

Having graduated from Marquette University and Marquette Law School, Coffey was a passionate supporter of both. He also was deeply committed to his Catholic faith and attended Mass on a daily basis.

Coffey reveled in his reputation for conservatism. But he was not stuck in the past, noted Dean Joseph D. Kearney. "For example, Judge Coffey was one of the first alumni who encouraged me in the building project that led to Eckstein Hall," Kearney said. "He had attended school in Sensenbrenner Hall, but his interest always was the future of the Law School."

"I really think that he had an internal sense of fairness and justice," Michael Bettinger, who served as Coffey's law clerk from 1983 to 1985, told the *Milwaukee Journal Sentinel* after Coffey's death. "I think that Jesuit education provided a footing for all of that." ■

Veterans Want New Society to Help People in Law School and Beyond

There's a sense of camaraderie among military veterans. They don't have to have known each other in the service or even have served in the same places or time period. But there's a shared sense, as David Herring put it, that "they've given a lot and sacrificed a lot," that they were willing to put themselves in harm's way in service to their country. "That camaraderie will always be there," said Herring.

This affinity has begun to show itself tangibly and constructively among Marquette Law School students. Veterans had some sense of connection among themselves in the past, but the launch in the fall 2012 semester of the Student Veterans Society has brought the veterans together in a more cohesive way. And members are already finding the society beneficial.

For example, Eugenia Lee served in the Navy for six years and is now a 1L. The organization of veterans has been a help to her in getting off to a good start in law school, she said. The society means that she has people to network with and more-experienced students to turn to with questions. That can go for both questions all students might have and questions veterans might have specifically, such as those concerning the benefits and services they have earned. "There's a certain ability to connect with people who had similar experiences," Lee observed.

Professor Jay E. Grenig, himself a veteran, played a central role in launching the organization. He is its advisor

and a booster for the virtues of the students who are involved and the value of having the new organization.

Nick Grode, 3L, who served in the Army, is president of the society. He said that the effort has snowballed as the year has gone on. There are 25 to 30 law students who are members, and a couple dozen others who follow the group's Facebook page. Veterans who are students elsewhere within Marquette University are seeking advice from the organization on how to form similar groups.

Social programs are the ground level of the organization, Grode said. But the society wants to offer more than that. Early activities have included such things as a presentation by people involved in the newly launched "veterans court" program in Milwaukee County and a push to get members involved in veterans-oriented services in the general community. Grode said that members want the society to offer law students a pipeline to lawyers who are veterans, both in Milwaukee and beyond.

Herring, a 2L who served throughout the world during 10 years in the Army, is vice president of the society. Among his other activities, he is a student coordinator of the Marquette Volunteer Legal Clinic site in West Allis, Wis., which serves veterans and their families.

"There's a strong understanding that this group needs to give back to the broader community," he said. ■



The Law School students leading the Student Veterans Society include (left to right): David Herring, vice president; Brendan Byrne, treasurer; Nick Grode, president; and Eugenia Lee, 1L representative.

"There's a certain ability to connect with people who had similar experiences," Lee said.

Heard in Eckstein Hall

The 2012–2013 academic year brought many people to Marquette Law School who spoke to us and the broader region with wisdom, wit, and insight. Don't take our word for it. Get a sense for yourselves from this selection of observations made at lectures, conferences, and public policy programs.

"Grit, curiosity, self-control, conscientiousness, optimism. . . . What I think is clearly true is that they are underemphasized in our education system, and I think in a lot of our homes as well. I think we would benefit from putting more emphasis on it, certainly studying more this series of strengths and finding out more about how they lead to success."

— Paul Tough, November 29, 2012. The author of the best-seller, *How Children Succeed: Grit, Curiosity, and the Hidden Power of Character*, was speaking "On the Issues with Mike Gousha."

"If you can basically, without limit, put conditions on the states that, if you want this bucket of federal funds, you must agree to the following conditions, then there is no practical limit on federalism at all. The Court, by saying there is a step that Congress can go that is too far, has breathed some life into federalism and the spending power."

— Paul Clement, March 4, 2013. The former Solicitor General of the United States and lead attorney for 26 states in Supreme Court arguments in challenging the Affordable Care Act delivered the annual Hallows Lecture and here was speaking to the Medicare portion of the Supreme Court's 2012 Affordable Care Act decision.

From "The Death Penalty versus Life Without Parole," this year's Restorative Justice Initiative Conference, February 21 and 22, 2013, which included panel discussions involving family members of murder victims:

"Forgiveness was about me not letting the perpetrator mess up the rest of my life. . . . I'm far more resilient than I ever thought I was."

— Patti Drew (pictured at right), whose father was murdered in Minnesota

"Closure? There's no such thing. It's a media thing, not a victim thing."

— Paula Kurland, on the impact of the execution of the man who murdered her daughter in Texas





“When you do the right thing, the next right thing will happen.”

— Father Richard Frechette, C.P., February 5, 2013. The 2012 winner of the \$1,000,000 Opus Prize leads efforts that have provided shelter and education to thousands of children in Haiti. He was at Marquette University for Mission Week and spoke here “On the Issues with Mike Gousha.”

“The ‘war on drugs’ made a great bumper sticker, but it’s a totally inadequate answer to what is really a very complex problem. ‘Legalization’ is just as easy a bumper sticker with no more particular answer to our drug problems than ‘war on drugs.’ But right here in the middle we have a lot of things that work. For instance, in the last decade, we’ve learned more about drug prevention programs than we’ve known in a long time, and we know that drug prevention programs can work and they can be very cost-effective.”

— Gil Kerlikowske, March 6, 2013. Kerlikowske, director of the White House Office of National Drug Control Policy (aka the “drug control czar”), was speaking “On the Issues with Mike Gousha.”

“If you’re not going, the rest of us are in trouble.”

— Mike Gousha to Maggy Barankitse, February 7, 2013, upon the latter’s saying that she had made many mistakes and “I hope they will accept me in Heaven.” The 2008 Opus Prize winner established Maison Shalom in Burundi, which provides shelter and other services to more than 30,000 “family members,” and was taking part in Mission Week at Marquette.

“That darn Marquette Poll. I don’t know who does that. During the recall, I loved it; during the U.S. Senate race, I hated it.”

— Keith Gilkes, December 6, 2012. Gilkes, campaign manager for Gov. Scott Walker’s successful effort to win the June 2012 recall election and former Gov. Tommy Thompson’s unsuccessful campaign for the Senate in November 2012, was speaking at a conference, “Wisconsin 2012: The Voters Have Spoken. What Did They Tell Us?”

“Because some communities have dealt with income inequity, housing inequity, employment issues, they’ve dealt with race in ways that Wisconsin and Milwaukee haven’t. Let’s be candid about that.”

— Bevan Baker, January 17, 2013. The City of Milwaukee health commissioner was speaking “On the Issues with Mike Gousha.”

“I certainly would still see us as a purple state, and the warning to both sides is, you look at your past success and think that somehow you’ve found the magic elixir that guarantees that success forever—I would caution against that hubris.”



— Charles Franklin, December 6, 2012. The visiting professor of law and public policy and director of the Marquette Law School Poll was speaking at a conference, “Wisconsin 2012: The Voters Have Spoken. What Did They Tell Us?”



Appreciating the Nation, Citizenship, and Especially the Right to Vote

The right to vote is one of the attractions of becoming an American citizen. For Gabriela Leija, that motivation was a lot more specific than it is for most people. In 2012, Leija's "significant other" ran for a seat in the Wisconsin Assembly, and her eagerness to vote for him finally pushed her to apply for citizenship.

Leija was born in Mexico and came to the United States—and to

Milwaukee—as a five-year-old. She graduated from Milwaukee's Riverside High School and Alverno College and took a job with the public defender's office in Milwaukee. That increased her interest in becoming a lawyer—and it also led to meeting Evan Goyke, then an attorney in the defender's office (as well as, for several years, an adjunct professor at Marquette Law School, working with the "Street Law" program).

Leija said she had hesitated to apply for citizenship, largely because of the cost (the fee alone is more than \$750). But she said that Goyke's campaign made her realize "how much I was truly missing out on" as a legal resident but noncitizen.

"The United States is a wonderful country, and I'm very appreciative that my parents made the journey to seek a better life for their kids," she said.

Leija started as a part-time student at Marquette Law School in 2011 and switched to full-time in 2012. She expects to graduate in December 2014. "I love it," she said. She thought that the atmosphere would be competitive and intimidating. "It's nothing like that," she observed, saying she felt supported and helped by her professors as well as her fellow students.

As for voting for Goyke, she was sworn in as a citizen on September 20, 2012, too late to vote in the highly contested primary for the Democratic nomination in a district representing much of the central area of Milwaukee. But she was able to vote in the November election, which Goyke won easily. ■

PILS Auction Sees Record Number of Donations and Participants

It's called the Howard B. Eisenberg Do-Gooders Auction, and the record 500-plus participants at the February 15 event in Eckstein Hall have ensured a result worthy of the name. The Public Interest Law Society (or PILS), which receives the proceeds of the auction, raised more than \$40,000 at the event, which offered a record number of more than 150 donated auction items. Almost 50 students, supported by members of the Law Alumni Association Board, pitched in to make the event so successful.

Relying also on support from the dean's discretionary fund (donations received from alumni to support the Law School's greatest priorities), PILS will provide some 24 Marquette Law School students with \$4,000 stipends to support public interest work in the law this summer. Sixteen such fellowships were awarded in the summer of 2012. Each student uses the support to do at least 350 hours of law-related work in nonprofit agencies, charitable organizations, and government offices spanning Milwaukee, the state, the nation, and even, on occasion, the world. ■

Recently Published Faculty Scholarship

Paul M. Anderson, “Principles of Trademark Law,” in *Law for Recreation and Sport Managers* (Doyice J. Cotton & John Wolohan eds., 2013) (Kendall Hunt Publishing); “No Gambling Allowed: The Ban on Sports Gambling in the United States,” 3 *Global Sports L. & Tax. Reports* 24 (2012); “Title IX at Forty: Progress in Sports,” *Wisconsin Lawyer* (Oct. 2012).

Bruce E. Boyden, “Oversharing: Facebook Discovery and the Unbearable Sameness of Internet Law,” 65 *Ark. L. Rev.* 39 (2012).

Irene Calboli, “What Should They Really ‘Know’? Intermediaries, Facilitators, and the Unclear Standard for Contributory Trademark Infringement in the United States,” in *Intellectual Property Liability of Consumers, Facilitators, and Intermediaries* (Christopher Heath & Anselm Kamperman Sanders eds. 2012) (Kluwer); “An American Tale: The Unclear Territorial Application of the First Sale Rule in United States Copyright Law,” in *Intellectual Property at the Crossroads of Trade* (Jan Rosén ed. 2012) (Elgar).

Melissa L. Greipp, “General Rules of Citation,” in *Wisconsin Guide to Citation* (7th ed. 2012) (Pinnacle).

Janine Y. Kim, “*Clark v. Arizona*: The Incredible Shrinking Insanity Defense,” in *Criminal Law Stories* (Robert Weisberg & Donna Coker eds. 2012) (Foundation).

Matthew J. Mitten, *Sports Law: Governance and Regulation* (with Timothy Davis, Ken Shropshire, Barbara Osborne & Rodney Smith) (2013) (Aspen).

Kali N. Murray, *A Politics of Patent Law: Crafting the Participatory Patent Bargain* (2012) (Routledge).

Michael M. O’Hear, “Bypassing Habeas: The Right to Effective Assistance Requires Earlier Supreme Court Intervention in Cases of Attorney Incompetence,” 25 *Fed. Sent. Rep.* 110 (2012); “Not So Sweet: Questions Raised by Sixteen Years of the PLRA and AEDPA,” 24 *Fed. Sent. Rep.* (2012).

Chad M. Oldfather, “Limitations (A Response to Judge Posner),” 51 *Duquesne L. Rev.* 67 (2013); “Turtles,” 16 *Green Bag 2d* 220 (2013) (contribution

to Micro-Symposium on Orin Kerr’s *A Theory of Law*); “Triangulating Judicial Responsiveness: Automated Content Analysis, Judicial Opinions, and the Methodology of Legal Scholarship,” 64 *Fla. L. Rev.* 1189 (2012) (with Joseph P. Bockhorst & Brian P. Dimmer).

David R. Papke, *Law and Popular Culture: Text, Notes, and Questions* (2d ed. 2012) (with Christine A. Corcos et al.) (LexisNexis).

Matthew J. Parlow, “Equitable Fiscal Regionalism,” 85 *Temp. L. Rev.* 49 (2012); “Issues Players Face with the Collective Bargaining Process,” 8 *DePaul J. Sports L. & Contemp. Probs.* 127 (2012); “The Great Recession and Its Implications for Community Policing,” 28 *Ga. St. U. L. Rev.* 1193 (2012).

Andrea K. Schneider, “Teaching a New Negotiation Skills Paradigm,” 39 *Wash. U. J. L. & Pol’y* 13 (2012); “Becoming ‘Investor-State Mediation,’” 1 *Penn. St. J. L. & Int’l Aff.* 86 (2012) (with Nancy Welsh).

Paul M. Secunda, *Labor Law: A Problem-Based Approach* (2012) (with Jeff Hirsch) (Lexis-Nexis); “Privatizing Workplace Privacy,” 88 *Notre Dame L. Rev.* 278 (2012); “Commission-Based Reform of Occupational Pension Laws: What Can the United States and Other Countries Learn from the Ontario Expert Commission on Pensions?,” 19 *J. Soc. Sec. L. (U.K.)* 143 (2012); “The Law Review Games,” 117 *Penn St. L. Rev. Penn Statim* 1 (2012) (with Miriam A. Cherry); “Introduction: Symposium on the Constitutionalization of Labor and Employment Law,” 27 *Wis. J. Gender, L. & Soc.* 93 (2012) (with Carin A. Clauss); “Réflexions sur les Problemes de Souveraineté et de Jurisdiction dans le Droit Mondial des Prestations Sociales: ‘Le Plus Long Voyage Commence Par Un Premier Pas,’” in *Revue De Droit Comparé Du Travail Et De La Sécurité Sociale* (2012); “The Wisconsin Public Sector Labor Dispute of 2011,” 27 *ABA J. Lab. & Emp. L.* 293 (2012). ■



EMERGING MEGACITY

Perspectives on the future of Chicago and Milwaukee

Illustrations by Jean-Francois Podevin



The future of the economy in Milwaukee and the broader region is a continuing interest of the public policy initiative of Marquette University Law School. In July 2012, the Law School and the *Milwaukee Journal Sentinel* sponsored a conference in Eckstein Hall, "Milwaukee's Future in the Chicago Megacity," with support from the Law School's Lubar Fund for Public Policy Research. Mike Gousha, distinguished fellow in law and public policy, led the Law School's work. The following three articles further explore the conference's subject. Lance Pressl, an advocate of regional cooperation, said, "What you [Marquette Law School] have done in taking a leadership role has set the bar high for the other parts of the region."

Thinking and Acting (and Flourishing?) as a Region: An overview of prospects for regional cooperation on economic development, by Alan J. Borsuk, senior fellow in law and public policy, Marquette Law School — **12**

Rivalry, Resignation, and Regionalization: The relationship of Milwaukee to Chicago over time, by Milwaukee historian John Gurda — **18**

Flying Too Close to the Sun? A consideration of Chicago's proximity to (and for) Milwaukee, by Aaron M. Renn, author of the Urbanophile blog on urban affairs — **26**





Thinking and Acting *(and Flourishing?)*

An overview of prospects for regional cooperation on economic development

BY ALAN J. BORSUK

EXHIBIT 1: The Milwaukee Water Council, which aims to grow water-related businesses, changes its name to the Water Council. Trying to hide its connection to Milwaukee? No, say those involved—they just want to open the door wider to working with partners across the region, especially in Chicago. The council remains headquartered in Milwaukee, but its leaders believe that building business throughout the “megacity” that stretches along Lake Michigan from north of Milwaukee into northern Indiana will help everyone, including Milwaukee.

EXHIBIT 2: The federal government announces in late 2012 that a major center for research on battery technology will be based at the Argonne National Laboratory in suburban Chicago. From a Wisconsin standpoint, historically, such news would have been of no interest. This time, it receives significant attention in Milwaukee, with the angle that locally based Johnson Controls, a major player in the battery industry, will benefit.

EXHIBIT 3: The Alliance for Regional Development is launched in November 2012. Co-chaired by chiefs of major businesses in Indiana, Illinois, and Wisconsin, its goal is to promote a brighter economic future for the whole area, including changing the entrenched mindset of people who focus only on their immediate surroundings to one in which regional growth is the focus.

EXHIBIT 4: During a panel discussion at a conference at Marquette Law School’s Eckstein Hall, Milwaukee Mayor Tom Barrett and Toni Preckwinkle, president of the Cook County Board, both pledge their support to regional efforts to improve the economy in Chicago and Milwaukee—two cities that are so close to each other but so lacking in a history of cooperation. “I believe in the importance of regional cooperation,” Preckwinkle says.

EXHIBIT 5: A Milwaukee-area airline industry consultant proposes that people consider changing the name of Milwaukee’s Mitchell International Airport to something that includes northern Illinois, in order to attract more fliers from south of the state line and reflect the reality of who already uses the airport.

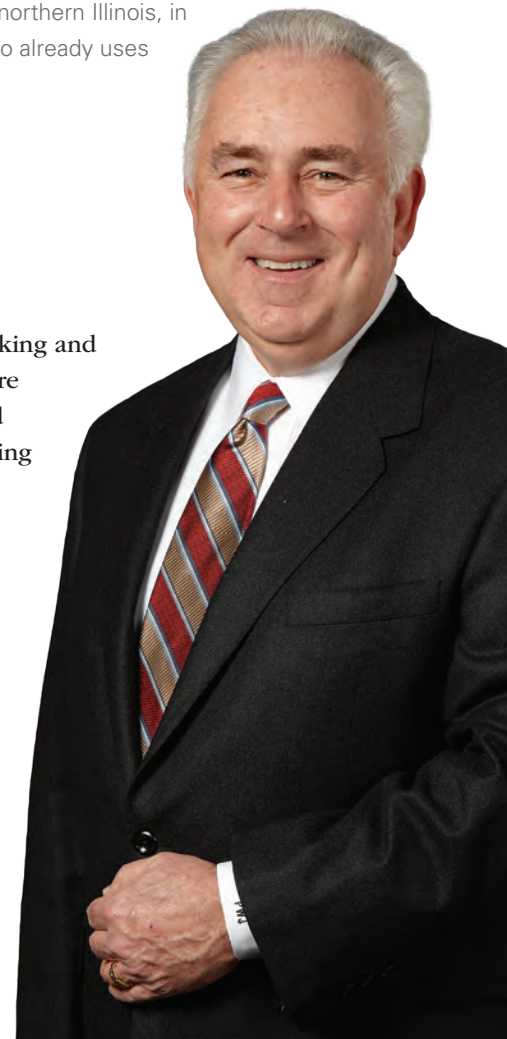
AS A REGION

These exhibits aren’t enough to make a conclusive case that regional thinking and cooperation are rising waves that will energize the economy in what some are now calling the tri-state Chicago region. But a determined group of civic and business leaders sees them as an important start. These individuals are pushing the idea that it is necessary to set aside a narrow sense of turf in favor of a broader, more united regional economic muscle-building.

“I think we’ve got a lot of momentum,” said Paul W. Jones, executive chairman of Milwaukee-based A. O. Smith Corporation, whose product line (once focused on automobile frames) includes hot water heaters and water purification equipment.

Jones is the Wisconsin chair of the regional development alliance. He has worked in Illinois and Indiana in the past and said that, in other economic development groups he has been part of, “It’s always been ‘How can we get them to build their plant here instead of across the state line?’” This time, he said, “We don’t worry about where the state line is.” The goal is for the entire region to flourish. ▶▶

Paul W. Jones



As any sports fans knows, momentum is valuable, but intangible and insufficient. Results on the playing field are what matter. To make the case that there *should* be continued development of a more regional approach to economic growth will require going beyond reports, commission appointments, conferences, proposals, and luncheon speeches.

It will require tangible wins.

The Report from Paris

The story of the new regionalism focuses in large part on a specific study. In 2005, Lance Pressl became president of the Chicagoland Chamber of Commerce Foundation. Pressl said that one starting point in the job was to compile data to see where the region stood economically. “I was amazed to find that we weren’t doing very well,” he said. Many Chicagoans assumed that the city was doing better than it really was. But one study by the Boston-based Beacon Hill Institute ranked Chicago last in competitiveness among 50 urban regions.

Pressl said he encountered a lot of resistance to the idea that change was needed in the approach to building Chicago’s economy. But, especially after the recession became intense in 2008, more people agreed that it was time to rethink things. Representatives of the Organisation for Economic Co-operation and Development (OECD), a prestigious Paris-based collaboration of 35 nations, proposed an examination of the Chicago region. The OECD study, funded in large part by the U.S. government, was the organization’s first analysis of an urban area in the United States.

There was reluctance, Pressl related, within the OECD team to include Milwaukee in the study. Was there really enough of a connection between the two? But advocates in both Chicago and Milwaukee

prevailed, and 6 southeastern Wisconsin counties (from Ozaukee and Washington Counties south) were included in the 21-county area that was the focus of the study.

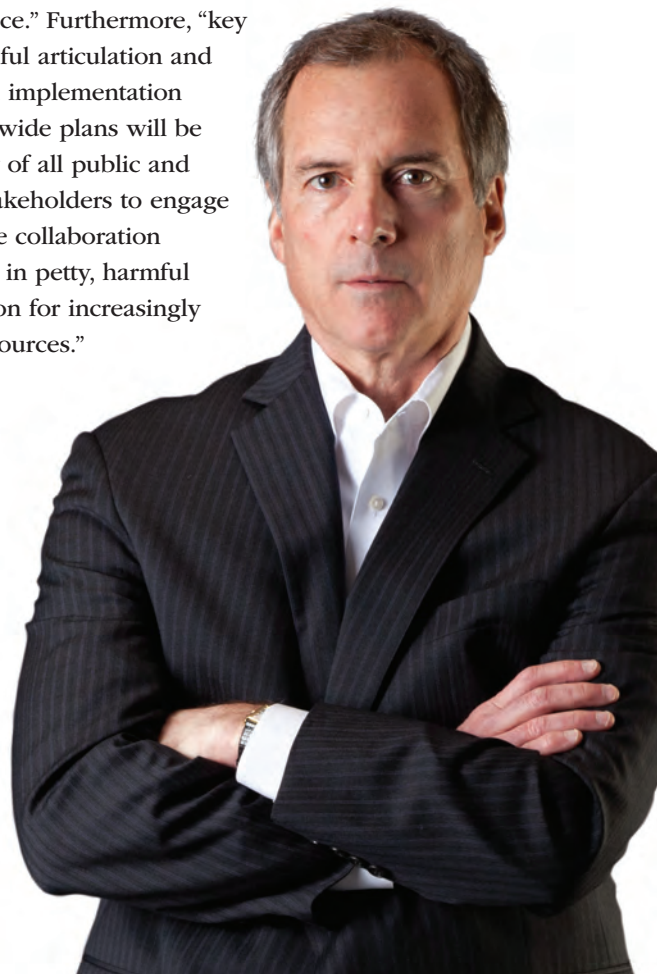
The overall theme of the 300-plus-page report, released with fanfare in Chicago in March 2012, is easy to summarize: The tri-state region has long been one of North America’s economic powerhouses. But recent growth has been among the slowest of comparable areas worldwide. That can be turned around—but only if people and institutions in the region work together.

“The reasons for the Chicago Tri State Metro-Region’s sluggish socio-economic performance are structural in nature, and linked to the lack of capacity of the region to adapt quickly to meet the imperatives of an economy in transition toward more knowledge-based, innovation-driven sectors needing to compete in the globalizing world,” the report concluded.

“It is clear that future growth will have to be focused on *region-wide* innovation systems that harness the region’s entire suite of strengths and assets, starting with its people,” the report said. The region must use its assets “in a way that recognizes that only the Tri-State Region [as opposed to subparts] will be able to compete effectively in a global marketplace.” Furthermore, “key to successful articulation and successful implementation of region-wide plans will be the ability of all public and private stakeholders to engage in genuine collaboration instead of in petty, harmful competition for increasingly scarce resources.”

“I was amazed to find that we weren’t doing very well.”

Lance Pressl



The report outlined at length an agenda for change, including these general principles:

- While the region is a commercial transit hub for all of North America, the vitality of infrastructure has slipped, and roads, rail systems, air capacity, and harbors must be improved.
- “Green” sectors of the economy offer paths to new growth. The growing concept of Milwaukee as a hub for water-based businesses was held up several times in the report as a model.
- Education and workforce development systems across the region must be coordinated and improved to become more responsive to what businesses and industries need and to avoid waste and duplication.
- And, hanging over the specific recommendations, all the parties involved in leading the region’s economy—government, the private sector, universities, and nonprofits—must learn to work together and let the big picture of what needs to be accomplished to guide them.

Reaction and Plans

So what needs to be done to build momentum for regional cooperation and pursuing the OECD recommendations? Interviews with key leaders and advocates focused on some important points.

The private sector will be the key. Don’t look to government to lead the charge. For one thing, politics are so, well, political and are inherently local. For another, business leaders are more likely to look beyond political boundaries in making plans and to see the region as a whole. As the OECD report put it, the private and nonprofit sectors in the tri-state region “are more advanced than are the federal, state, and local authorities in articulating, promoting, and pursuing a true, region-wide vision for innovation-led growth.”

Kelly O’Brien, a key advocate for pursuing regional cooperation, said, “It is imperative that this be led by the private sector.” O’Brien is senior vice president for economic development of the Chicagoland Chamber of Commerce. Milwaukee Mayor Tom Barrett similarly said in an interview, “The strength of this comes from the fact that it really is driven more from the private sector. Government certainly has a role to play, to be supportive, to complement it, to make sure that we are

always looking for opportunities.” But, he said, regional development will grow better as a natural economic process than by government direction.

Mary Lou Barrett, president of the Metropolitan Planning Council in Chicago (and no relation to Milwaukee’s mayor), said that companies look at the marketplace rather than at political boundaries. “When we get caught up on political boundaries is usually when we stumble,” she said. Barrett believes that nonprofit private organizations such as hers can help bring political and business leaders together.

The OECD report said that the tri-state region’s unusually complex maze of political jurisdictions is another reason to focus on business-sector initiative. It related that Greater Toronto has 28 local units of government, Greater London has 34, and the Paris metro region (“one of the most fragmented in the OECD”) has 1,400. The Chicago tri-state region has 1,700, the report said, which can contribute to “myopic” decision making. “A public-sector culture change is



Kelly O'Brien



Tom Barrett

required to ensure at a minimum a reduction in the ‘race-to-the-bottom’ style of competition among local and state authorities.”

Tom Guevara, deputy assistant secretary for regional affairs in the U.S. Department of Commerce’s Economic Development Administration and a strong supporter of pursuing the OECD recommendations, said that effective efforts by the private sector could overcome political resistance. “If the private sector is willing to send a strong signal about cooperation, then I think the political leaders will be more than happy to follow along with this,” he said. ▶▶

Where government involvement is clearly needed: improving transportation infrastructure. A great strength of the region's economy for decades has been as a crossroads for North America for transporting just about everything in just about every fashion—roads, railroads, ships, airplanes. But that strength has been slipping, the OECD warned, calling the absence of “tri-state multi-modal transportation planning” the biggest barrier to regional growth. Improvements need to be made soon on all fronts, the report said. “In the longer term, a regional institution may be needed to provide a convening role for key public and private sector actors to make difficult decisions across state lines on priorities for infrastructure investment.”

This is where government may have to play the most active role. It is government that builds and



Tom Guevara



Carmel Ruffolo

operates roads, airports, ports, and, for the most part, rail systems—although some involved in the new movement, such as A. O. Smith's Jones, say that it may be time for the private sector to take on meeting some of its own needs.

But transit issues trigger some of the most difficult political and cultural debates connected to regional planning, especially given the price tags on improvements. Witness the controversies over investing in passenger rail in the corridor between Milwaukee and Chicago. Or imagine a Wisconsin governor's favoring more federal spending in Illinois on road improvements because they would serve the greater good (or vice versa).

Carmel Ruffolo, director of corporate engagement and regional development at the University of Wisconsin–Milwaukee and University of Wisconsin–Parkside, said, “Transportation is an important economic development issue. It's the biggest nut to crack.”

Some early wins would help proponents. Developing successful ventures in aquaculture—such as farming of fish or aquatic plants in controlled situations—is one area that came up several times in interviews. Another: concrete steps to coordinate, across the region, workforce development and education systems related to training people for jobs and to deal with the “skills gap” mismatch in which thousands of people need jobs even as some industries have jobs going unfilled for lack of qualified people. “Other parts of the world do it better than we do,” Jones said of workforce training.

Jones also suggested coordinating effective use and improvement of the three harbors in the region: Milwaukee, Chicago, and northern Indiana's Burns Harbor. “What's wrong with a port authority that covers all three?” he asked.

Dean Amhaus, president and CEO of the Water Council in Milwaukee, said, “There's got to be one concrete piece where there is a project that everyone can say, I'm a part of that.” He suggested two possibilities: international marketing of the region and progress on transportation issues.

The region needs a new “brand.” Why? “So we don't get called the Rust Belt,” said Ruffolo. A native of Australia, she was named last fall to head the new Wisconsin Center for Commercialization Resources, a collaboration of Marquette University, the Milwaukee School of Engineering, and the University of Wisconsin schools at Whitewater, Milwaukee, and Parkside to provide resources to anyone who wants help turning an idea into a commercial product. Ruffolo said, “We know who the West Coast is, we know who the East Coast is. Who are we?”

Guevara, of the U.S. Department of Commerce, said, “I do think it's important for the private sector to look to creating a brand identity.” Such identities can have a strong impact not only in marketing a region but in giving people in the region a positive sense of the place where they live. Guevara said, “When people have a sense of identity, it's easier for them to become more invested in this and to create the kind of networks that allow for the sharing of information, solutions, creativity.”

Milwaukee's Mayor Barrett has put forward a candidate for the brand name that has attracted support: *The Fresh Coast*. “Whenever I hear the phrase ‘Rust Belt,’ it is like fingernails on a chalkboard,” Barrett said. “We have allowed this region of the country to be identified in a very negative connotation. Who likes

rust?” But *fresh coast* is “incredibly positive,” Barrett said. Lake Michigan is a common asset in the economic, cultural, and recreational life of the tri-state area and a great focus for identifying the area, he suggested.

The Long View

O’Brien said that one important step for the new tri-state alliance would be to win a planning grant from the U.S. Department of Commerce to support efforts to bring together key figures in the region to pursue the recommendations of the OECD report. But that may not be so simple. The Commerce Department’s Guevara said that the department very much supports the initiative and wants to see it become a model for other areas of the United States and globally. But, he said, the continuing struggle in Washington, D.C., over federal spending limits the department’s options.

What would Guevara like to see five years from now? Increased regional planning, he said. A role for the federal government that helps further such efforts while minimizing the bureaucracy involved in getting help in areas ranging from environmental permits to grants. An established broader identity for the region that will help lure investment and spur entrepreneurship and innovation. “All this can be achieved,” he said.

Can we really get past politics and rivalries? Guevara answered, “If the whole region wants to achieve the level of economic growth that is commensurate with its history, its resources, and its assets—and, implicitly, that means jobs—they’re going to have to.” He quoted the answer a Chicago civic leader gives to the question: “How’s the current behavior working for you?”

“Obviously, I’m always going to cheer for the University of Wisconsin in a Big Ten football game,” said Mayor Barrett. “I’m always going to be pulling for the home team, but I’m going to be pulling for the region, too.” You can do both, Barrett added. We have responsibilities to develop our own backyards, but we also need to have strong neighborhoods. “In a global sense, this tri-state region is our neighborhood,” he said.

Jones said that federal officials are tired of “state-by-state bickering.” They want regional cooperation and see the tri-state effort as a breath of fresh air. As for the alliance he co-chairs, “We’re looking at some bold ideas, but I don’t think they’re pie in the sky.”

Amhaus said, “The encouraging thing is that there is movement and there are conversations that are going on that carry the benefit of thinking like a tri-state region.”

Pressl said that implementation of what the OECD report envisions will take 15 to 20 years or more. There is no one organization to implement it, and no single step to try to take. “What we’re talking about here is connecting our assets in new and different ways to produce new and different kinds of value,” said Pressl, who is now senior policy fellow at the Institute for Work and the Economy, based in Chicago. “We have a lot to learn when it comes to doing cross-state collaboration.”

The OECD report said, “All key public and private stakeholders know what needs to be done and why it needs to be done if the region is to sustain its role as a driver of national growth and of global competitiveness.”

The issue, of course, is actually to do those things. The OECD struck an understated but encouraging note: “The Chicago-area 21-county region may be a functional area in the making.” ■

PUBLIC ATTITUDES

A large majority of Wisconsinites say that they would like to see the state’s leaders work with leaders in Illinois to promote economic development, according to results from the Marquette Law School Poll. In connection with the July 2012 conference, “Milwaukee’s Future in the Chicago Megacity,” the poll surveyed Wisconsin residents about cooperation between the two states.

Sixty-two percent said they favored political leaders cooperating, while 34 percent said Wisconsin leaders should look out for their own state first.

Asked whether they thought interstate cooperation is more likely to arise through the private sector or through public officials, 72 percent said the private sector, while 19 percent disagreed.

As to whether being close to Chicago brings opportunity for Milwaukee to benefit or poses a threat to drain business from Milwaukee, 65 percent said that it was opportunity and 23 percent said threat.

“The public attitudes are open to new innovation and efforts in this area,” said Professor Charles Franklin, director of the poll, in announcing the results. Franklin concluded that people are looking for leadership, especially from the private sector.

Additional results and details can be found at law.marquette.edu/poll.



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ILLINOIS

Rivalry, Resignation, and Regionalization

The Relationship of Milwaukee to Chicago Over Time

by John Gurda

When you fly into Milwaukee from the south—say, from Atlanta or perhaps Charlotte—the prescribed route takes you straight up the spine of Lake Michigan. If you're flying at night and lucky enough to have a window seat, the leading edge of Chicagoland appears long before you reach the lake. Somewhere over Indiana, the small towns and scattered farmsteads give way to the continuous Halloween glare of sodium-vapor lights shining up from subdivisions, shopping malls, and highways.

The glare intensifies through the Loop, which from 30,000 feet bears an odd resemblance to Legoland, and extends well into Lake County. Then a distinctive rhythm emerges: bands of relative darkness broken by pools of orange light in Kenosha, Racine, and the sprawling terminal cluster of Milwaukee. Beyond are only the randomly placed lights of rural Wisconsin set against the absolute darkness of the lake.

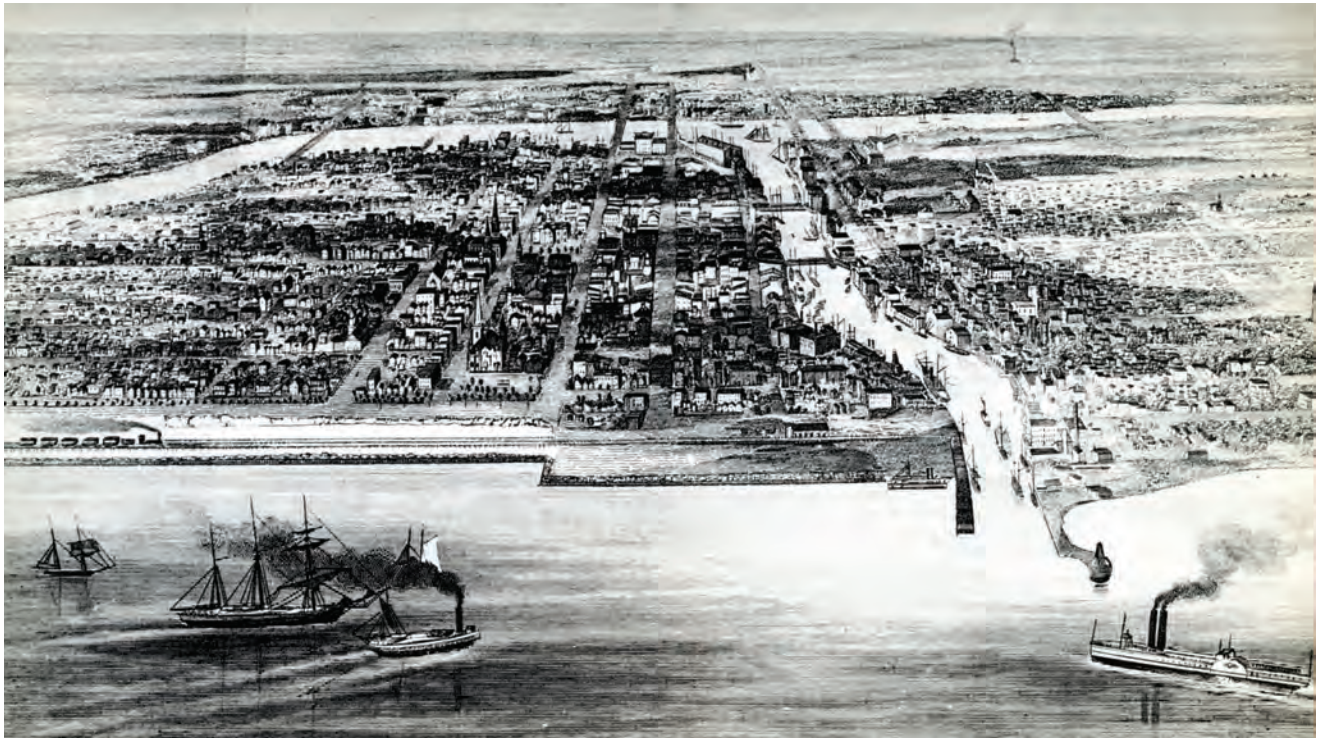
What you don't see from your window seat is borders. The foot of Lake Michigan appears as a gently curving necklace of four or five major settlements—grossly unequal in size but all distinct and each projecting its particular presence to the heavens.

If you had been able to take the same flight a century ago, in the early decades of electric lighting, the glare would have been a soft incandescent glow, barely perceptible from cruising altitude. The settlements would have been more distinct and the gaps between them much more pronounced.

If you could take the same flight a century from now, the gaps, I'm sure, would be all but gone. Our region would appear as one undifferentiated pool of light from north of Milwaukee down the broad bowl of Lake Michigan to South Bend and beyond.

My purpose here is to explore the region's progression from many to one, from individual clusters to a continuous corridor, with particular attention to the relationship between Chicago and Milwaukee. It's a story I'll tell largely from Milwaukee's point of view (I am, after all, a native son), and it's a story in three parts: rivalry, resignation, and regionalization. >>

John Gurda is the author of *The Making of Milwaukee* and numerous other books. This reflection is an edited version of his presentation at the conference held on July 17, 2012, by the Law School and the *Milwaukee Journal Sentinel*.



Bird's-eye view of Chicago, looking west from Lake Michigan, 1853. Created by George Robertson. Chicago History Museum (ICHi-38871).

It all begins with the lake, of course. Chicago and Milwaukee both came to life at the mouths of rivers with superior port potential at a time when everything traveled by water. Both settlements dreamed of prosperity as centers of commerce, exporting the farm products of their rich hinterlands and importing finished goods from the settled East. Both became, over the decades, strongholds of heavy industry as well, and they attracted a United Nations of industrial workers, from Germans and Poles in the nineteenth century to African Americans and Latinos in the twentieth. The two cities are peas of dissimilar size in the same regional pod.

Chicago and Milwaukee grew up as siblings, and they were locked in a fierce sibling rivalry that lasted for years. Both of these hopeful little settlements were after

settlers—the more the better—and whatever hindered one was believed to help the other. Chicago promoters lampooned their northern neighbor as a slow-growing, swamp-ridden outpost, and Milwaukeeans portrayed Chicago as a capital of cholera ruled by “swindlers and sharpers.”

Milwaukee had the early geographic advantage, thanks to its broader bay, deeper river, and a location 90 miles closer to the East Coast by water. For fifteen years, from 1835 to 1850, the lakeshore cities were roughly equal in size. When Byron Kilbourn became mayor in 1848, he declared that regional dominance was Milwaukee’s manifest destiny: “If New York has her Boston, so Milwaukee has her Chicago, in competition for the rich prize which nature awarded and designed to be hers.”

“Chicago and Milwaukee grew up as siblings, and they were locked in a fierce sibling rivalry that lasted for years.”



Bird's-eye view of Milwaukee, looking east toward Lake Michigan from a bluff, long since graded into a slope, at about 6th Street between Wisconsin Avenue and Michigan Street (modern-day names), ca. 1853. Created by George Robertson. Wisconsin Historical Society (WHI-6554).

Chicago begged to differ, naturally—and Chicago, soon enough, had railroads. As Lake Michigan forced overland traffic to its foot, the Windy City's marginal disadvantage in the Age of Sail became a huge advantage in the Age of Rail. The first train chugged into town from the east in 1852, and Chicago was on its way to becoming the rail hub of the entire continent.

Milwaukee was not about to cede Chicago's primacy—not yet, at least. There were repeated attempts to establish a line of “ferry steamers” between Milwaukee and Grand Haven, Michigan, a cross-lake service designed to bypass Chicago and put Milwaukee on the main-traveled route from east to west.

And Byron Kilbourn was determined to win a Wisconsin land grant for his Milwaukee-based railroad, a prize that rival rail magnates south of the border wanted every bit as badly. “Chicago has always looked upon our prosperity and progress with a sinister eye,” wrote the promoter in 1857, “and she cannot bear to see us hold such equal success with her in the contest for supremacy.” It's worth pointing out that Kilbourn, the most ethically flexible of Milwaukee's founders, was explaining why he had bribed the entire Wisconsin legislature in his quest for the grant.

Ferries did cross the lake, and Kilbourn did win the land grant, but Milwaukee finished second anyway. As

Chicago grew into its role as “Freight Handler to the Nation,” the community's population soared accordingly. Chicago was twice its early rival's size in 1860 and five times larger in 1890—roughly the same proportion that has prevailed ever since.

Although Milwaukee came in second, the would-be metropolis refused to wither in the deep shade of its neighbor. Expanding its own rail network and resisting links with Chicago's, the Cream City became the primary funnel for the agricultural wealth of Wisconsin and the farm districts near its borders. By the early 1860s, Milwaukee was the largest shipper of wheat on earth, surpassing, for a time, even Chicago.

The grain trade provided a platform for growth, a critical mass of capital and population that fueled Milwaukee's continuing economic evolution. Shipping farm products gave way to processing them—wheat into flour, barley into beer, hogs and cattle into meat and leather—and processing eventually yielded to manufacturing as the city's economic engine. Homegrown giants such as Allis-Chalmers, Harnischfeger, A. O. Smith, Allen-Bradley, Falk, Chain Belt, Kearney & Trecker, Nordberg, and Harley-Davidson made Milwaukee the self-styled “Machine Shop of the World.” As workers poured in from across the ocean to keep those factories humming, Milwaukee climbed through the ranks to

become America's sixteenth-largest city in 1890, with a population of just over 200,000.

As fast as Milwaukee was growing, Chicago was growing even faster. The Windy City's 1890 population was 1.1 million—enough people to overtake Philadelphia as the second-largest city in the country. America's "Second City" was obviously first in the Midwest, and realistic Milwaukeeans had already resigned themselves to the fact. "Milwaukee is not Chicago," wrote banker John Johnston in 1872, "but there are few cities like Chicago. Still, if Milwaukee be not Chicago, Milwaukee has grown at a rate surpassed by but a very limited number of cities in this whole Union."

As resignation replaced rivalry, Milwaukee became to Chicago what Canada was, and is, to the United States: a distinct and cohesive world of its own, but a world forever overshadowed by its gigantic neighbor to the south. Pierre Trudeau, the colorful French-Canadian who led his country in the 1970s, offered an analogy that could just as easily apply to the Chicago–Milwaukee corridor. Trudeau said that sharing a border with the United States was like "sleeping with an elephant." The beast is only vaguely aware of his smaller neighbor's presence, and when he turns over, there go the covers.

The real wonder, when you think about it, is that Milwaukee could share covers with the elephant at all. It seems surprising, even improbable, that one major

city could develop so close to an even larger metropolis. Traveling west from Chicago, there's no city of any size until you reach Des Moines, more than 300 miles away. Milwaukee lies only 90 miles north of Chicago but has three times the population of Des Moines. One looks in vain for comparable pairings anywhere in North America. Tampa–St. Petersburg, Minneapolis–St. Paul, and Dallas–Fort Worth are all conjoined twins that began under different historical conditions but function as single organisms with linked labor markets. Philadelphia–New York, Washington–Baltimore, and Boston–Providence are better comparisons, but those paired cities are located on different bodies of water and play different economic roles. Milwaukee and Chicago evolved at the same time, on the same lake, with similar ethnic groups and similar industries. Three infinitely arguable factors—the independent rail network of the mid-1800s, the explosive growth of manufacturing later in the century, and the simple fact that it was the commercial capital of a different state—enabled Milwaukee to thrive despite Chicago's proximity.

Milwaukee's relative independence should not be mistaken for autonomy. Sleeping with the elephant has had multiple impacts on the Cream City—some obvious and others less so, some positive and others not. Chicago was, first of all, an enormous market. Just as the United States has always been Canada's best customer, the Windy City absorbed a great deal of what Milwaukee



had to sell—industrial products, primarily, but also beer. Chicago had breweries as early as Milwaukee. Why did they fail to develop a national following? Because their productive capacity was destroyed in the Great Fire of 1871, and Milwaukee’s beer barons were only too happy to step into the breach. By 1887 those barons were producing five times more beer per capita than their Chicago counterparts. An average of 25 railroad cars filled with Milwaukee’s finest pulled up to Chicago’s loading docks every day of the week, and the city’s neighborhoods were dotted with saloons bearing the names of Schlitz, Miller, Pabst, and Blatz.

On the other hand, Chicago’s proximity meant that Milwaukee always came up short in the contest for regional headquarters. Just as the rich seem to get richer, tall cities tend to get taller. When public institutions such as the Federal Reserve Bank or private giants such as Prudential and John Hancock Insurance wanted to establish bases in the heartland, they naturally chose Chicago. Milwaukee didn’t get a first look, much less a second. The same dynamic applied to wholesale houses, notably the Merchandise Mart, and any number of distribution facilities. The lack of regional centers is one of the major reasons that Milwaukee has such an unassuming downtown for a metro area of 1.5 million people.

Chicago played a leading cultural role as well. For generations, Milwaukee’s performing arts scene—particularly in music and theater—was heavily German,

but the city’s reign as the *Deutsch-Athen* of America ended with the anti-German hysteria accompanying World War I. As the singing societies and theatrical troupes left the stage, culture-starved Milwaukeeans had to look south for sustenance. The Chicago Symphony Orchestra played an annual subscription series in Milwaukee that sold out for decades, and local residents flocked to performances by the Chicago Grand Opera and other visiting companies. It was not until the 1950s that Milwaukee developed an independent arts establishment commensurate with its size.

Another Chicago influence, and one that’s far less obvious, was demographic. Between 1910 and 1930, African Americans migrated from the rural South to the urban North by the hundreds of thousands, fleeing Jim Crow laws and seeking jobs. Like a gigantic sponge, Chicago absorbed the major share of the Great Migration to the upper Midwest; Milwaukee, lying squarely in the larger city’s shadow, attracted relatively few newcomers. The numbers are revealing: In 1920, African Americans made up over 4 percent of Chicago’s population and only 0.5 percent of Milwaukee’s. Thirty years later, the contrast was nearly as stark: black residents were 14 percent of Chicago’s population and just 3.4 percent of Milwaukee’s. Rapid growth would lift Milwaukee’s proportion to 14.7 percent by 1970, but its relatively late start helps explain why the city’s African-American community has found it so difficult to make economic headway. >>



“Regionalization, for better or worse, has upset the old relationships and muddied the old lines in recent decades. The evidence is everywhere.”

Of all the influences Chicago has had on Milwaukee—economic, cultural, and demographic—the most profound is probably psychological. The fact that such a huge metropolis lies only 90 miles away has encouraged a modesty bordering on meekness in its northern neighbor. Other metropolitan areas—Denver, St. Louis, and Minneapolis—St. Paul come to mind—stand alone in their regions, unchallenged for supremacy. Milwaukee gave up any dreams of supremacy more than a century ago, and the city’s subordinate status has become ingrained in its collective psyche. In the regional context, Milwaukee, like Canada, has taken on the peculiar invisibility that a younger sibling assumes in the presence of an older brother. Residents experience that status most acutely when they travel abroad. “Where are you from?” they’re asked. “From near Chicago,” they’ve learned to reply.

The result, depending on your point of view, is either an appealing groundedness—no one puts on airs in Brewtown—or a stubborn inferiority complex. Earlier I quoted banker John Johnston on Milwaukee’s secondary status in the region. Here’s the preface to that quote: “There is one thing we are deficient in here. We have not the necessary blow and brag. Not only have we not that, but we daily see men standing with their hands in their pockets whining about Milwaukee being a one-horse town, and such like talk. Such men are not worthy to live here.” In the very next sentence, Johnston identifies what he perceives as the root cause of the local angst: “Milwaukee is not Chicago, but there are few cities like Chicago.” The banker was writing in 1872, but his sentiments could have been expressed yesterday. One hundred and fifty years after Chicago passed Milwaukee by, local residents are still looking down at their shoes.

On the other hand, Chicago has long been the city that Milwaukeeans, and Wisconsinites generally, grow up loving to hate. The rivalry between the Packers and the Bears is only one expression of that attitude, and it’s perhaps the only one that’s truly reciprocal. Feelings north of the border go far beyond football. “They tell me you are wicked and I believe them,” Carl Sandburg

wrote of his adopted hometown. So do Wisconsinites. Consider this quote from the *Milwaukee Sentinel*: “We have frequently noticed that whenever any descent was made upon dens of infamy in Chicago—for the police there are subject to spasmodic action—a number of the routed scoundrels always come to Milwaukee, and crime here receives an impetus from their presence.” One such gang, the *Sentinel* surmised, was behind no fewer than 30 robberies. The article was written in 1857.

Even though they know better, even though many of them have friends or relatives living across the line, Wisconsinites tend to harbor a stereotype of Chicagoans as fast-driving, lane-changing marauders who clog the state’s highways every weekend and take over the beauty spots. If you throw in the occasional environmental lawsuit—over Chicago’s diversion of Lake Michigan water or the smog that wafts across the state line every summer—you have the makings of a durable resentment. “Flatlander” is one name Wisconsinites have for their neighbors to the south. “FIB” is a cruder epithet, and I need only mention that the “I” in the acronym stands for “Illinois.” It’s convenient, of course, to have a moral foil so close at hand. Anyone living north of the border has license to feel, by contrast with Chicago, more genuine, less tightly wound, and infinitely more honest—whatever the truth may or may not be.

The truth is that all comparisons, invidious and other, have become increasingly moot. Regionalization, for better or worse, has upset the old relationships and muddied the old lines in recent decades. The evidence is everywhere. Amtrak’s Hiawatha service has made the Milwaukee–Chicago route the sixth-busiest passenger rail corridor in the country, and the trains, with seven roundtrips daily, are busy in both directions. My wife competed for a few years in the Chicagoland Triathlon, which was held in Pleasant Prairie, Wisconsin. The lakefront marinas in Kenosha and Racine depend heavily on boaters from northern Illinois, and more than a few condos in downtown Milwaukee are owned by Chicagoans. The fact that Milwaukee lies

closer to Chicago's affluent North Shore than its grittier South Shore makes a significant difference. For Chicago residents with disposable income, Milwaukee offers a user-friendly airport, convenient access to Cubs games, and great festivals without the hassle of getting to Grant Park. Milwaukee's Irish Fest is able to bill itself as the world's largest Irish festival in part because roughly a third of its patrons come from Illinois.

But Interstate 94 is definitely a two-way corridor. Chicagoans drive up to Mitchell Field for domestic flights, and Milwaukeeans drive down to O'Hare to fly overseas. Chicagoans come to Summerfest, and Milwaukeeans go to Taste of Chicago and Ravinia Park. Chicagoans head north for a more leisurely pace and relief from congestion, while Milwaukeeans head south to experience a genuine big-city buzz. For 30 years, first as young parents and now as empty-nesters, my wife and I have taken the train south for an annual weekend in the Loop. For almost as long, I've pedaled on my own through a different section of the city every summer, using a wonderful book by Dominic Pacyga called *Chicago: City of Neighborhoods*. Chicago really is a great town to live 90 miles away from.

What I've learned from my excursions is that Chicago can be understood as Milwaukee times five. The successes are on a different scale, and so are the problems. The Loop is one of the grandest human creations on the planet, but you'll find sprawling tracts of derelict industrial land within sight of its gleaming towers. The lakefront is magnificent, but a few miles inland you'll encounter neighborhoods such as Englewood and Austin and South Chicago that seem to be hanging on by their fingernails. In demographic terms, Chicago is a majority-minority city surrounded by a ring of largely white suburbs. The identical patterns, adjusted for scale, are apparent in Milwaukee.

It is high time for Chicago and Milwaukee to recognize their similarities. It's time for the two cities to start acting more like siblings and less like strangers. Chicago needs to do a better job of acknowledging its little brother's existence, and prideful Milwaukee needs to acknowledge Chicago's place as head of the regional family. That does not mean that Brewtown has to surrender its cultural sovereignty. It does not mean installing a one-fifth replica of the Millennium Park "Bean" on the lakefront or giving Rahm Emanuel an office in city hall. It does mean taking strategic advantage of Milwaukee's location. It means, at a

minimum, improving transportation links between the two cities—a cause that was not helped when Wisconsin turned down \$810 million in high-speed rail funds. It means opening the door to new residents who work in Chicago. On a higher level, it means presenting whenever possible a united regional front in competition with other regions for employment and investment.

The relationship between Milwaukee and Chicago is, from Milwaukee's perspective, a story of rivalry, resignation, and regionalization. The cities' parallel histories have produced a family relationship and, like all family relationships, it's complicated. The frictions of the past are not going to vanish overnight, nor is the native human tendency to compete with those closest to



John Gurda

us. Vivid polarities already exist between each city and its own suburbs, and between each metropolis and its own state. How much harder will it be to bridge the gap that circumstance and tradition have created between Milwaukee and Chicago?

The task may be daunting, but the time has come to look beyond borders. Any Milwaukeean who wants to return to the supposed glories of past independence is bound to be disappointed, and so is any Chicagoan who wants to resurrect the City of the Big Shoulders. For better or worse, the old order has ended: The walls are down, the world is flat, communication is instantaneous. Every resident of the Chicago–Milwaukee corridor lives at a particular address, but each also lives in a region that is growing smaller and more interconnected every year. As the bands of darkness between the cities disappear, as the southern end of Lake Michigan glows with a continuous light, it's time for everyone to take the view from 30,000 feet. ■

Milwaukee and Chicago sit a mere 90 miles apart on I-94. Growth in both metro regions has led to near-continuous development along that corridor, which is being expanded to handle the increasing traffic between the two regions. Amtrak links downtown Milwaukee with downtown Chicago in only 90 minutes, which is shorter than some Chicago commuter rail trips. The two cities share a lakefront heritage and similar industrial history.

Flying Too Close

by Aaron M. Renn

With their closeness and parallels, the idea that there's benefit for the two cities in mutual collaboration is almost obvious. This is particularly the case for Milwaukee as it looks to differentiate itself from peer cities. What does it have that those places don't? Chicago. This idea was even the subject of an entire conference called "Milwaukee's Future in the Chicago Megacity," sponsored by Marquette University Law School and the *Milwaukee Journal Sentinel*. This essay further explores Milwaukee's relationship to Chicago. ▶▶

Aaron M. Renn, based in Providence, R.I., is an urban analyst whose writings appear at www.urbanophile.com and elsewhere.

The image depicts a futuristic, golden cityscape floating in a blue, grid-like space. The city is composed of numerous skyscrapers and buildings, all rendered in a metallic gold color. The city is positioned in the upper half of the frame, appearing to be suspended in the air. Below it, a smaller, globe-like city is visible, featuring a blue and green globe with a cityscape on top. The background is a blue, grid-like structure that resembles a space station or a futuristic city. The text "to the Sun?" is written in white, serif font, positioned in the lower left quadrant of the image.

to the Sun?

“The two regions are growing together as we speak, driven purely by market forces. It is happening on its own. The real question is what, if anything, should Milwaukee’s leaders do about it.”

Is Proximity to Chicago a Positive?

In most discussions of the topic, the increasing integration of Chicago and Milwaukee is assumed to be a positive. But we should ask whether this is so. For other examples of close cities around the country suggest that perhaps a more cautious view should be adopted.

Indianapolis analyst Drew Klacik has suggested a reason to be skeptical about Chicago–Milwaukee. He promotes a model of the Midwest as a solar system with Chicago as the Sun. His idea is that Indianapolis is Earth—it’s the perfect distance from Chicago. A place like Cleveland is like Uranus—it’s too far away and doesn’t get enough heat and light. But in this model Milwaukee is like Mercury—it’s too close to the sun and gets burned up.

Of course, Klacik comes from Indianapolis. But is there something to this notion of being “too close to the sun”? Taking a look at other similarly situated cities suggests some indications that it isn’t always healthy to be located next to a megacity. Providence, R.I., about the same size as Milwaukee, sits just 50 miles from Boston, but shows little signs of life. Neither does New Haven, Conn., 80 miles from New York, or Springfield, Mass., 90 miles from Boston. But these post-industrial cities have struggled for reasons completely independent of megacity proximity.

A more positive example might be Philadelphia, which is 90 miles from New York and seems to be seeing a resurgence due to what we might dub the “Acela effect,” as runaway gentrification chases people from New York. Yet Philadelphia is also a near megacity in its own right. Various post-industrial cities such as Aurora, Elgin, and Joliet have seen new growth as Chicago enveloped them, but they are much closer and much smaller than Milwaukee, and in the same state as

Chicago. To the extent that they’ve benefited from being close to Chicago, it’s because Chicago has turned them into suburbs.

The key takeaway might be that Milwaukee’s proximity to Chicago is potentially either a pro or con. It is something that must be studied, and managed as well as possible, to both regions’ benefit. There is no choice to grow together or not grow together. The two regions are growing together as we speak, driven purely by market forces. It is happening on its own. The real question is what, if anything, should Milwaukee’s leaders do about it.

To show the double-edged sword of proximity, consider the case of General Mitchell International Airport. How is service at this airport, and thus for Milwaukee generally, affected by Chicago’s proximity? There are many ways. For example, to the extent that it is more convenient or has lower fares, Mitchell Airport can draw from the Northern Chicagoland region, becoming a de facto third airport for Chicago. This is a positive for Mitchell Airport and Milwaukee. However, to the extent that Chicago has better nonstop flight options, especially internationally, people may choose to drive from the Milwaukee region to O’Hare for a nonstop flight rather than connect. This potentially suppresses Milwaukee air traffic, particularly for international flights. Among metro areas with more than a million people, Milwaukee ranks only 41st in the United States in originating international air passengers per capita, according to Brookings Institution research. This is a negative for Milwaukee. But the flip side is that Milwaukeeans, by driving to O’Hare, have access to many nonstop flights that aren’t options for people in other small cities.

In short, the dynamics are complex and cut both ways. That’s why simple surface thinking will not suffice to manage this problem. It requires a lot of careful analysis and new types of thinking.

Milwaukee Must Go It Alone

Additionally, in its attempts to manage the increasing integration of Chicagoland with Milwaukee, Milwaukee should expect largely to have to go it alone. People from Chicago may come to the occasional conference, but it's unlikely that Milwaukee will capture much time and attention from Chicago's leadership. Milwaukee is much smaller. Chicago already has all the scale it needs to compete in its chosen global-city strategy. And Chicago and Illinois both have serious near-term problems that must urgently be addressed. The leadership of the Chicagoland region is mostly Chicago-focused. It can even be difficult to get Chicago and its suburbs to pay attention to each other or get on the same page—how much more so Chicago and Milwaukee. Thus the next key question to ask is this: What can Milwaukee do by itself for itself, without much help from its larger neighbor? What should Milwaukee do to try to shape its future in the Chicago megacity?

A Plan of Attack

Here are some potential ideas to explore.

1. Think “Different.”

Milwaukee is similar to Chicago but smaller; hence it can at times view itself as a little brother or “Mini-Me” version of the Windy City. But the approach of being like Chicago is not a positive for integration. Economic gains come from specialization and the division of labor. You can only take advantage of this to the extent that you are different. On a football team, not everybody can be a quarterback or a linebacker. Everybody has to know his role on the team. Milwaukee would be much better served to be a starting wide receiver to Chicago's quarterback than to settle for second-string QB.

Mike Doyle illustrated the downsides of thinking too much like Chicago in his critique of a local tourism campaign aimed at Chicagoans. One tagline from an outdoor ad was “Beer. Brats. If you had another hand, we'd go on.” But, as Doyle notes, Chicago is arguably already as good a beer and brat town as Milwaukee. Why would people make the trip for something they can already get at home?

Milwaukeeans instantly understand that you go to Chicago to get what you can't get at home. The city needs to invert that thinking to figure out what it is that you can get only in Milwaukee and not in Chicago. That is where you market your city.

Similarly, in thinking about the best way to relate to Chicago economically, Milwaukee should sort out how the two cities can have complementary specialties.

2. Promote an Expanded Labor Market.

Another area of integration is to better market the two cities as an extended labor market. This could take place in various ways. Naturally, making the sale to talent you are trying to attract to Milwaukee that Chicago is a piece of Milwaukee's value proposition is a given. There may also be people who want to live in Chicago but could potentially be attracted as employees in downtown Milwaukee. This is particularly true if a person needs to be on site only part-time, such as a software developer. Many people reverse commute from the city to the suburbs of Chicago on Metra. There's no reason they can't do it on Amtrak as well. Figuring out the addressable market and how to sell it on Milwaukee is the “to do” here.



Aaron Renn

3. Market Nearshore Outsourcing.

The move from Chicago to Milwaukee provides a steep cost gradient while maintaining good physical proximity in a way that provides opportunities for periodic face-to-face interactions. The globalized economy appears to be currently rewarding two

“If Chicago and Milwaukee can’t figure out how to generate value from the mega-region concept, it’s unlikely many other people will”

models. The first is the “flat world” model of Tom Friedman in which work travels to wherever in the globe it can be produced most cheaply. The second is the “spikey world” model of Richard Florida in which intensive face-to-face collaboration is so valuable that it forces clustering of people and businesses in locations such as downtown Chicago.

Is there an intermediate model where reducing costs is important for certain activities, but face-to-face meetings are still valuable? If so, this is where Milwaukee–Chicago would have a very strong play. Examples may be various types of legal work or business-process outsourcing. For example, Walgreens maintains an operations center in Danville, Illinois, some 135 miles to the south of Chicago along the Indiana border. This is not only lower-cost than Chicago, but it allows executives from Deerfield to make day trips, enabling much better oversight and collaboration than an overseas location would, particularly with the time zone commonality. These types of applications would be something that could be highly beneficial for economic development in Milwaukee.

4. Eschew the Amenity Arms Race.

Many cities of the same general size as metro Milwaukee spend much of their time trying to produce amenities that prove they are a “big-league city.” For many of these—stadiums, hotels, convention centers, department stores, high-end restaurants—there is a sort of “nuclear arms race” between cities in which one city after another pumps large subsidies into bolstering these high-end sectors in order to try to distinguish itself from the pack.

For Milwaukee, proximity to Chicago reduces the ability of the city to attract and support these types of amenities. Consider one example: high-end department stores. An analysis by David Holmes discovered that Milwaukee had fewer high-end department stores than regional peer cities. He also noted that when plans for a Nordstrom in Milwaukee were announced, it was reported that the city was the largest in America without one.

This is unsurprising. The incredible wealth of high-end amenities in Chicago siphons off money from high-end consumers by shifting it south. This reduces the effective capacity of the Milwaukee region to support amenities. This might be seen as a negative. However, the situation holds two key positives that also should be mentioned. The first is that, again, Milwaukee can take advantage of everything Chicago has to offer, which is something other places can’t. This is vastly more than Milwaukee could ever support by itself. And, secondly, many other cities give a lot of subsidies in attempts to lure these types of amenities. That’s money Milwaukee can keep in its pocket.

5. Avoid Other Sectors Where Proximity to Chicago Is a Disadvantage.

Consider where Milwaukee’s proximity to Chicago is a disadvantage, and avoid those sectors. This is particularly true when solutions targeting these sectors are popular and thus tempting for Milwaukee to try. For example, both Indianapolis and Columbus have focused on building tons of bulk distribution space. But because of Chicago’s terrible traffic and Lake Michigan as a barrier to the east of Milwaukee, Milwaukee may not be as good a fit for that type of business, which is a low-wage industry in any case.

6. Improve Rail Connectivity Between the Cities.

The highway linkages between Chicago and Milwaukee are already being upgraded, but the rail system requires improvement. The cities are currently linked via Amtrak’s Hiawatha service, which is subsidized by the state of Wisconsin. As noted, it provides a 90-minute journey time with seven trips per day. This route has received little investment compared to similar types of corridors, such as the Keystone route linking Harrisburg, Pa., to Philadelphia and on to New York.

Unfortunately, the state and federal political climates are not favorable to significant rail upgrades at this time. Ideally, the route would have hourly frequencies and



shorter journey times (though true high-speed rail along the lines of that found in Europe is not needed). In the meantime, Milwaukee leaders should look to explore ways to better manage the existing service. Ideas include Metra-style boarding in Chicago instead of making passengers queue in a waiting room, variable pricing to better utilize and allocate capacity, and amenities such as Wi-Fi.

Milwaukee should also establish policies favorable to curbside bus operators such as Megabus that might provide additional connectivity to Chicago.

Milwaukee Is Blazing the Trail

There has been a lot written about so-called mega-regions, from people such as Richard Florida to the Regional Plan Association of New York. The concept is that cross-regional collaboration such as between Milwaukee and Chicago is the next level of regional economy that will become a basic competitive unit in the global economy.

There's just one problem: other than building high-speed rail in these mega-regions, there's a paucity of ideas about what one would actually do to make these mega-regions work. The public policy ideas for this are few.

Milwaukee and Chicago provide an excellent test bed for the mega-region concept. They are close enough together to be nearly an economic unit in formation already, but far enough apart to truly be two metro areas with two centers of gravity. If Chicago and Milwaukee can't figure out how to generate value from the mega-region concept, it's unlikely many other people will, apart from pure market forces.

This means Milwaukee has the exciting opportunity to be a trailblazer. Given that the regions continue to grow together day by day with no intervention from the outside, this is a challenge that is coming Milwaukee's way whether Milwaukee wants it or not. Chicago may be able to ignore it, but Milwaukee has no such luxury. ■

Eric Foner is the DeWitt Clinton Professor of History at Columbia University. His books include *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party Before the Civil War* (first published 1970), *Reconstruction: America's Unfinished Revolution, 1863–1877* (1988), and *The Fiery Trial: Abraham Lincoln and American Slavery* (2010). This essay is based on Professor Foner's Boden Lecture, which was delivered at Marquette University Law School on October 18, 2012, and which annually remembers the late Robert F. Boden, dean of the Law School from 1965 to 1984. This year's lecture was part of Marquette University's Freedom Project, a yearlong commemoration of the sesquicentennial of the Emancipation Proclamation and the American Civil War.

The Civil War, Reconstruction, and the Origins of Birthright Citizenship

Eric Foner

I want to begin by alluding to an idea I generally disdain as parochial and chauvinistic: American exceptionalism. Its specific manifestation here is the legal doctrine that every person born in this country is automatically a citizen. No European nation today recognizes birthright citizenship. The last to abolish it was Ireland a few years ago. Adopted as part of the effort to purge the United States of the legacy of slavery, birthright citizenship remains an eloquent statement about the nature of our society and a powerful force for immigrant assimilation. In a world where most countries limit access to citizenship via ethnicity, culture, religion, or the legal status of the parents, it sets the United States apart. The principle is one legitimate example of this country's uniqueness. Yet oddly, those most insistent on the validity of the exceptionalist idea seem keenest on abolishing it.

The First Vote. A. R. Waud. The illustration shows a queue of African-American men: the first, a laborer casting his vote; the second, a businessman; the third, a soldier wearing a Union army uniform; and the fourth, apparently a farmer. *Harper's Weekly*, November 16, 1867. Courtesy of the Library of Congress.

HARPER'S WEEKLY

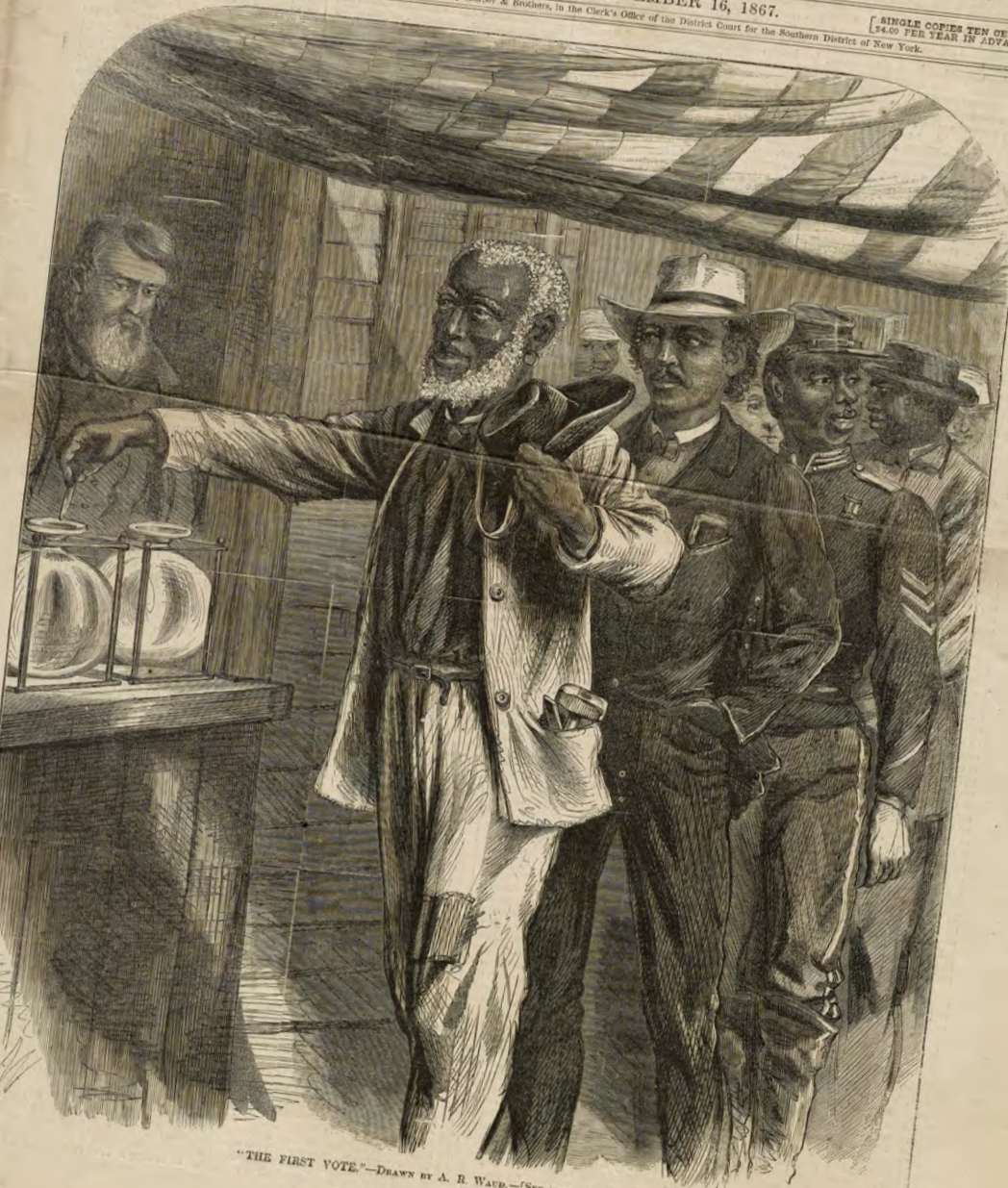
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"THE FIRST VOTE."—DRAWN BY A. R. WAUD.—[SEE NEXT PAGE.]

The debate over who is an American and what rights come along with citizenship is as old as the republic and as recent as today's newspapers. Rarely, however, does the discussion achieve any kind of historical understanding. Such understanding requires familiarity with the era of Reconstruction that followed the American Civil War, when the United States began the process of coming to terms with the war's two most important legacies: the preservation of the American Union and the destruction of slavery. One might almost say that we are still trying to work out the consequences of the end of slavery—and that the debate over birthright citizenship in part reflects this.

While I have devoted much of my career to the study of Reconstruction, I have to acknowledge that rather few Americans know much about it. Back in the 1990s, the U.S. Department of Education conducted one of these periodic surveys to ascertain how much Americans know about their history. This was a survey of about 16,000 graduating high school seniors; they were asked to say something about various historical themes or episodes, such as the westward movement or the civil rights struggle or the first use of the atomic bomb. Eighty percent could say something about the westward movement. But at the bottom of the list was Reconstruction. Only one-fifth of those graduating from high schools could say anything intelligible about Reconstruction. I had recently published a 600-page book on the era, so I found this disheartening.

But even if we are not aware of it, Reconstruction is part of our lives today—or to put it another way, some of the key questions facing American society are Reconstruction questions. These range from affirmative action to the relative powers of the state and federal governments to how best to respond to terrorism (in the case of Reconstruction, it was homegrown terrorism, in the form of the Ku Klux Klan and kindred organizations, which killed more Americans than Osama bin Laden). You cannot understand these questions without knowing something about that period nearly a century and a half ago.

Let me mention one small indication of how remarkable the era of Reconstruction was within the broad context of American history. Everyone in the world, I think, knows that Barack Obama is the first African-American president of the United States. One out of 44. More telling, however, is another statistic. Many hundreds of persons, well over a thousand in fact, have

served in the U.S. Senate. But from the days of George Washington to the present, only eight black persons have served in the Senate. That is a far worse ratio than 1/44. Of those eight, two served in the Senate during the Reconstruction period, both of them elected from Mississippi.

This example helps demonstrate that Reconstruction was a unique moment in terms of political democracy and the rights of African-American people in the long sweep of American history.

The definition of American citizenship is also a Reconstruction question. But its origins are as old as the American republic. A nation, in Benedict Anderson's celebrated definition, is more than a political entity. It is also a state of mind, "an imagined political community," with borders that are as much intellectual as geographic. And those boundaries have been the subject of persistent debate in our history.

Americans' debates about the bases of our national identity reflect a larger contradiction in the Western tradition itself. For if the West, as we are frequently reminded, created the idea of liberty as a universal human right, it also invented the concept of "race," and ascribed to the concept or term predictive powers about human behavior. National identity, at least in America, is the child of both of these beliefs. Traditionally, scholars have distinguished between civic nationalism, which envisions the nation as a community based on shared political institutions and values with membership open to all who reside within its territory, and ethnic nationalism, which considers a nation a community of descent based on a shared ethnic and linguistic heritage. France, until recently at least, was said to exemplify the inclusive, civic brand of nationhood, and Germany the exclusionary, ethnic form. Most American scholars have identified the United States with the French model. Since the time of independence, they argue, our *raison d'être* as a nation has rested on principles that are universal, not parochial: to be an American, all one had to do was commit oneself to an ideology of liberty, equality, and democracy.

In actual practice, however, American nationality has long combined civic and ethnic definitions. For most of our history, American citizenship has been defined



Eric Foner

by blood as well as political allegiance. Both ideas can be traced back to the days when a new nation was created, committed to liberty yet resting substantially on slavery. Slavery was by far the most important economic institution in the United States. Slave owners had control of the federal government for most of the period before the Civil War. Slavery helped to shape the identity, the sense of self, of all Americans, giving nationhood from the outset a powerful exclusionary dimension. Slavery made the value of American citizenship, as the political philosopher Judith Shklar has argued, rest to a considerable extent on its denial to others. Constituting the most impenetrable boundary of citizenship, slavery rendered blacks all but invisible to those imagining the American community. When the revolutionary era's master mythmaker, Hector St. John Crèvecoeur, posed the famous question, "What then is the American, this new man?" he answered: "a mixture of English, Scotch, Irish, French, Dutch, Germans, and Swedes. . . . He is either a European, or the descendant of a European." And this was at a time when fully one-fifth of the population (the highest proportion in our history) consisted of Africans and their descendants.

Until after the Civil War, there existed no commonly agreed-upon understanding of citizenship or of the rights it entailed. The Constitution mentioned but did not enumerate the "privileges and immunities" of citizens. The individual states determined the boundaries of citizenship and citizens' legal rights. The Constitution does, however, empower Congress to create a uniform system of naturalization, and the naturalization law of 1790 offered the first legislative definition of American nationality. With no debate, Congress restricted the process of becoming a citizen from abroad to "free white persons." This limitation lasted a long time. For eighty years, only white immigrants could become naturalized citizens. Blacks were added in 1870, but not until the 1940s did persons of Asian origin become eligible.

Blacks formed no part of the imagined community of the early republic. And whether free or slave, their status became increasingly anomalous as political democracy (for white men) expanded in the nineteenth century. Indeed, in a country that lacked more-traditional bases of nationality—long-established physical boundaries, a powerful and menacing neighbor, historic ethnic, religious, and cultural unity—America's democratic political institutions themselves came to define the nation. Increasingly, the right to vote became the emblem of citizenship, if not in law (since suffrage was still a privilege rather than a right, subject to regulation by the individual states) then in common usage and understanding. Noah Webster's *American Dictionary* noted that the word *citizen* had, by the 1820s, become synonymous with the right to vote.

The relationship between inclusion and exclusion was symbiotic, not contradictory. Even as Americans' rhetoric grew ever more egalitarian, a fully developed racist ideology gained broad acceptance as the explanation for the boundaries of nationality. The rhetoric of racial exclusion suffused the political language. "I believe this government was made on the white basis," said Stephen A. Douglas, the most prominent politician of the 1850s, in his debates with Abraham Lincoln. "I believe it was made by white men for the benefit of white men and their posterity for ever, and I am in favor of confining citizenship to white men . . . instead of conferring it upon negroes, Indians, and other inferior races." Even as this focus on race helped to solidify a sense of national identity among the diverse groups of European origin that made up the free population, it drew ever more tightly the lines of exclusion of America's imagined community.

On the eve of the Civil War, no black person, free or slave, whether born in this country or not, could be a citizen of the United States. This was what the Supreme Court ruled in 1857 in the famous, or infamous, *Dred Scott* decision. During the 1830s, Dred ▶▶

“Until after the Civil War, there existed no commonly agreed-upon understanding of citizenship or of the rights it entailed.”

“The crisis of the Union was, among other things,
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redefined the boundaries of citizenship.”

Scott, a slave of Dr. John Emerson of Missouri, resided with his owner in Illinois, where state law prohibited slavery, and the Wisconsin territory, from which it had been barred by the Missouri Compromise. He married another slave, Harriet Scott, and in 1846, after returning to Missouri, the Scott family, by now consisting of husband, wife, and two daughters, went to court claiming that residence on free soil had made them free. In time, the case made its way to the Supreme Court. Chief Justice Roger B. Taney, supported by six other members of the court, concluded that the Scotts must remain slaves. No black person, Taney declared, could be a citizen of the United States, and thus the Scotts had no standing to sue in court.

The case could have ended there. Taney, however, went on to argue that because the Constitution “distinctly and expressly affirmed” the right to property in slaves, slaveholders could bring them into the federal territories. The Missouri Compromise—repealed three years earlier by the Kansas-Nebraska Act—had therefore been unconstitutional.

Much of Taney’s opinion consisted of an historical discussion purporting to demonstrate that the founding fathers had not recognized black persons as part of the American people. The framers of the Constitution, he insisted, regarded blacks, free and slave, as “beings of an inferior order, and altogether unfit to associate with the white race . . . and so far inferior, that they had no rights which the white man was bound to respect.” (This statement, Thaddeus Stevens later remarked, “damned [Taney] to everlasting fame; and, I fear, to everlasting fire.”) States could make free blacks citizens if they wished, but this did not require the federal government or other states to recognize them as such—in other words, the Constitution’s comity clause did not apply to them. No state could unilaterally “introduce a new member into the political community created by the Constitution”—a community, according to Taney, limited to white persons.

Taney’s denial of black citizenship did not lack for legal precedents. Before the Civil War, virtually every state, North as well as South, excluded free blacks from some fundamental rights. Only five states, all in New England, allowed blacks to vote on the same basis as whites. Outside New England, nearly every state court that ruled on the question before 1857 concluded that free blacks should not be considered citizens of either the state or the nation. Four attorneys general, including Taney himself during Andrew Jackson’s presidency, had taken the same position.

Dred Scott may have been the law of the land, but it was not the only definition of citizenship circulating at the time. If slavery spawned a racialized definition of American nationality, the struggle for abolition gave rise to its opposite, a purely civic version of citizenship. The abolitionist crusade insisted on the “Americanness” of slaves and free blacks and repudiated not only slavery but the racial boundaries that confined free blacks to second-class status. Abolitionists, black and white, pioneered the idea of a national citizenship whose members enjoyed equality before the law protected by a beneficent national state. Having developed this alternative reading of the Constitution, abolitionists responded bitterly to the *Dred Scott* decision. James McCune Smith, a black physician, author, and antislavery activist, carefully dissected Taney’s reasoning, citing legal precedents going back to “the annals of lofty Rome” to demonstrate that all free persons born in the United States, black as well as white, “must be citizens.”

Many Republicans agreed. The Republican legislatures of New Hampshire, Vermont, New York, and Ohio adopted resolutions recognizing black citizenship in their states, joining Massachusetts, where state courts had long affirmed this position. Maine’s legislators adopted a resolution declaring the *Dred Scott* decision “not binding, in law or in conscience, upon the government or citizens

of the United States.” When the U.S. State Department in 1858 refused to issue a passport to the black physician John Rock of Boston on the grounds that he was not an American citizen, the *Springfield Republican* condemned the action as an insult to the entire state of Massachusetts. This was a minority view before the Civil War. But as a result of the Civil War and Reconstruction, the abolitionist vision of a uniform national citizenship severed from race became enshrined in the laws and constitution.

This was a remarkable change in Anderson’s “imagined community,” the definition of America itself. How did it come about?

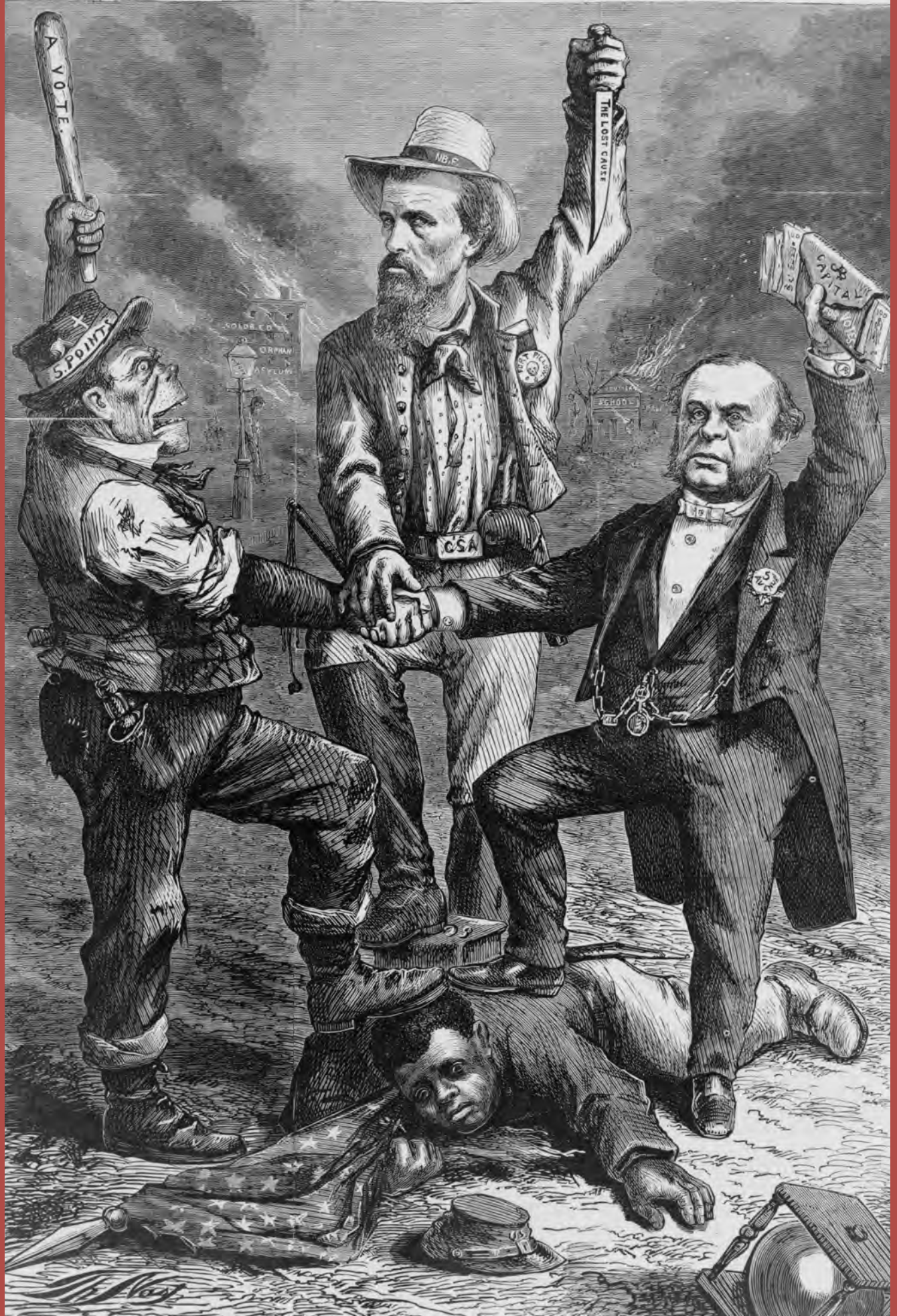
The crisis of the Union was, among other things, a crisis of the meaning of American nationhood, and the Civil War a crucial moment that redefined the boundaries of citizenship. Mobilization for warfare often produces an emphasis on national unity, and throughout our history wars have galvanized disempowered groups to lay claim to their rights. Women and American Indians received the right to vote in the aftermath of World War I; eighteen-year-olds did so during the Vietnam

War. The Civil War created the modern American nation state. Inevitably, it propelled the question, “Who is an American?,” to the forefront of public discussion. “It is a singular fact,” Wendell Phillips wrote in 1866, “that, unlike all other nations, this nation has yet a question as to what makes or constitutes a citizen.” The war produced the first formal delineation of American citizenship, a vast expansion of citizens’ rights, and a repudiation of the idea that these rights attached to persons in their capacity as members of certain ethnic or racial groups, rather than as members of an undifferentiated American people.

The most important thing that put the question of black citizenship on the national agenda was, of course, the destruction of slavery. Indeed, late in 1862, Attorney General Edward Bates issued an opinion affirming the citizenship of free black persons born in the United States. Bates had asked the advice of the distinguished jurist and political philosopher Francis Lieber, who responded that there was “not even a shadow of a doubt” that American citizenship included blacks. Bates agreed. The *Dred Scott* decision, he boldly declared, had ▶▶



Celebration of the Abolition of Slavery in the District of Columbia by the Colored People, in Washington, April 19, 1866. F. Dielman. Courtesy of the Library of Congress.



"We regard the Reconstruction Acts (so called) of Congress as usurpations, and unconstitutional, revolutionary, and void."—Democratic Platform.

“no authority” outside the specific circumstances of that case. Bates added that citizenship did not imply either equality before the law or political rights (women and children, after all, were citizens). Nonetheless, Secretary of the Treasury Salmon P. Chase, who had requested Bates’s ruling, immediately dispatched it to Louisiana, where free black activists had been demanding civil and political rights. The opinion, a striking change in public policy, was published early in December 1862. “It properly precedes and ushers in,” wrote Horace Greeley’s *New York Tribune*, “that other great act which is to come from the president on the 1st of January”—the Emancipation Proclamation.

Of course the opinion of one attorney general can be modified or retracted by the next. Even more important in putting the question of black citizenship on the national agenda was the service of 200,000 black men in the Union army and navy during the final two years of the Civil War. By the end of the war, it had become widely accepted that serving in the army staked a claim to citizenship for African Americans. Lincoln himself, who though deeply hating slavery had never supported the political rights of black Americans, by the end of his life had changed his mind and was advocating the right to vote for some African-American men. In his last speech, in April 1865, he singled out as most deserving free blacks who had education (“the very intelligent”) and the soldiers (“those who have served nobly in our ranks”).

Lincoln, of course, did not live to put into effect a plan of Reconstruction. That task fell to his successor, Andrew Johnson, a strong contender for the title of the worst president in American history. Johnson lacked all of Lincoln’s qualities of greatness. He was deeply racist; he was incompetent; he had no sense of public opinion; he was inflexible, incapable of dealing with criticism, and unable to work with Congress. Johnson thought black people now free should go back to work on the plantations and have nothing to do with public affairs. He set up new governments in the South in the months after the Civil War, controlled by white southerners, with

blacks having no role whatsoever. They enacted a series of laws known as the Black Codes to define the freedom that African Americans now enjoyed.

These laws gave the former slaves certain rights, such as the right to have their marriages recognized in law and to own property, but no civil or political rights, and in fact they required adult black men at the beginning of each year to sign a labor contract to go work for the year for a white employer. If you did not do that, if you wanted to work for yourself, you would be deemed a vagrant, subject to arrest and fine and then being sold off to somebody who would pay the fine.

The significance of these Black Codes lies not in their effectiveness, for they were soon invalidated by the Civil Rights Act of 1866, but in their political impact. They turned northern public opinion against Johnson’s plan of Reconstruction. They alarmed the victorious Republican Party, which controlled Congress, into thinking that the white South was trying to restore slavery in all but name. In 1866, Congress very quickly decided that Johnson’s policy needed to be changed. It enacted one of the most important laws in American history, the Civil Rights Act of 1866. This law is the origin of the concept of civil rights as a point of law or jurisprudence. It is the first law to declare who is a citizen of the United States and to say what rights they are to enjoy.

The Civil Rights Act states that anybody born in the United States (except Indians, still considered members of their own tribal sovereignties) is a citizen of the United States—black people, of course, included, although this portion of the law says nothing explicitly about race. Then the law spells out the rights that these citizens are to enjoy equally without regard to race—making contracts, bringing lawsuits, and enjoying “full and equal benefit of all laws and proceedings for the security of person and property.” The list did not include the right to vote, which remained a state prerogative. Essentially the law protected the rights of free labor, which the Black Codes had so egregiously violated. Its language establishing the principle of legal equality was interesting: all citizens were to enjoy the above rights



“We regard the Reconstruction Acts (so called) of Congress as usurpations, and unconstitutional, revolutionary, and void.”—

Democratic Platform. Thomas Nast. *Harper’s Weekly*, September 5, 1868. Courtesy of the Library of Congress. The illustration shows a man with a belt buckle, “CSA” (Confederate States of America), holding a knife, “The Lost Cause”; a stereotyped Irish American holding a club, “A Vote”; and the man on the right wearing a button, “5 Avenue,” and holding a wallet, “Capital for Votes.” Their feet are on an African-American soldier sprawled on the ground. In the background, “A Colored Orphan Asylum” and a “Southern School” are in flames.

in the same manner “as enjoyed by white persons.” In other words, the idea of whiteness, a strict boundary of exclusion before the Civil War, was now invoked as a foundation, a baseline, for the rights of others. Whiteness was suddenly no longer a privilege but a standard applicable to all. The law also states that no state law or, intriguingly, custom can deprive any citizen of these fundamental rights. And it authorizes federal district attorneys, Freedmen’s Bureau officials, and aggrieved individuals to bring suits against violations.

The principle of equality before the law was a repudiation of the legal history of the United States for the first seven decades of the republic. Before the war, as Congressman James G. Blaine later remarked, only “the wildest fancy of a distempered brain” could envision an act of Congress conferring upon blacks “all the civil rights pertaining to a white man.” Every state in the Union before the Civil War had laws that discriminated against black people. Even Massachusetts, which came closest to the ideal of equality, would not let blacks join the militia. Now those state laws were abrogated. President Johnson, of course, vetoed the bill, and singled out extending citizenship to black Americans as particularly offensive. It constituted, he claimed, discrimination against whites: “the distinction of race and color is by the bill made to operate in favor of the colored and against the white race.” Congress thereupon passed the bill over Johnson’s veto—the first important measure in American history to become law in this manner.

But of course a law can be repealed by the next Congress, so very soon Congress put these principles into the Constitution through the Fourteenth Amendment, the most important change in our Constitution since the Bill of Rights. The amendment is long and complicated. But its first section again announces this principle of birthright citizenship: that any person born in the United States and “subject to the jurisdiction thereof” is a citizen of the nation and of the state where he or she resides. Lately, there has been much debate over whether the children of undocumented immigrants are included—are they subject to the “jurisdiction” of the United States? Of course they are. The debates in Congress make clear that the language was meant to exclude Native Americans and two other tiny



Glimpses at the Freedmen—The Freedmen’s Union Industrial School, Richmond, Va.—From a Sketch by Jas E. Taylor. 1866. Courtesy of the Library of Congress.

groups: children born in the United States to diplomats and children fathered by members of occupying armies (fortunately, the latter case has not arisen since the amendment’s ratification). There was much talk from the amendment’s opponents about whether it covered children of Chinese immigrants, since the parents could not become naturalized citizens, and of gypsies. One senator said he had heard more about gypsies during the debate than in his entire previous life. Lyman Trumbull, chair of the Senate Judiciary Committee, made it crystal clear that Chinese, gypsies, and anyone else one could think of were, in fact, included.

The amendment goes on to guarantee these citizens legal equality. It bars the states from depriving them of “life, liberty, or property, without due process of law” or “the equal protection of the laws.” This latter language had momentous consequences. The word *equal* is not in the original Constitution (except with regard to states having equal numbers of senators). It is introduced in the Fourteenth Amendment. The amendment makes the Constitution what it has become more recently but never was before: a vehicle through which aggrieved groups who believe that they lack equality can take their claims to court. For decades, the courts have used the Fourteenth Amendment to expand the legal rights of all sorts of groups, not just the descendants of the slaves. Most recent, perhaps, was *Lawrence v. Texas*,

in which the Supreme Court in 2003 overturned a Texas law criminalizing homosexual acts by consenting adults as a violation of the guarantee of “liberty” in the Fourteenth Amendment.

The language of the first section is vague, intentionally so. Unlike the Civil Rights Act, the amendment does not list specific rights. Its main author, Congressman John Bingham of Ohio, started this way and then stopped, fearing that he would inadvertently leave out important rights. Instead, he used the language of general principles, leaving it to future Congresses and courts to work out their precise meaning. But the underlying purpose was clear. As the Republican editor George William Curtis wrote, the Fourteenth Amendment was part of a process that changed the federal government from one “for white men” to one “for mankind.”

The Fourteenth Amendment also marks a significant change in the federal system—that is, in the relationship between the federal government and the states. The Civil War had crystallized in the minds of northerners the idea of a powerful national state protecting the rights of citizens. What the Republican Carl Schurz called the “Constitutional revolution” of Reconstruction not only put the concept of equal citizenship into the Constitution but empowered the federal government to enforce it. You can see this if you compare the Fourteenth Amendment to the Bill of Rights, which begins with the words, “Congress shall make no law,” and then lists the liberties Congress cannot abridge.

The Bill of Rights was meant to restrain the federal government. It was based on the idea that the main danger to liberty was a too-powerful national state. It had nothing to do with the state governments. States could abridge freedom of speech, and they did before the Civil War. One could hardly give an abolitionist speech in South Carolina. But such restriction by the state did not violate the First Amendment. Massachusetts had an established church into the 1820s. But the Bill of Rights is about the federal government. Only in the twentieth century would the Supreme Court embark on the process of “incorporating” the Bill of Rights to the states, on the grounds that most of the civil liberties guaranteed in the first ten amendments are included in the privileges and immunities of citizens that the Fourteenth Amendment bars states from abridging.

Now consider the final section of the Fourteenth Amendment: “The Congress shall have power to enforce this Amendment by appropriate legislation.” From “Congress shall make no law” to “Congress shall have power.” Now the federal government is seen as the protector of individual rights while the states are seen as more likely to violate them. (Slavery, after all, was a creature of state law.) The Fourteenth Amendment makes the federal government, for the first time in our history, what the great abolitionist senator Charles Sumner called “The Custodian of Freedom.” The principle of birthright citizenship, establishing a single standard for membership in the national community, was part of this broader nationalization of political power and of national consciousness brought on by the Civil War.

The Fourteenth Amendment said nothing about the right to vote, but soon thereafter Congress decided that there had to be new governments in the South and that these governments had to be based on manhood suffrage. Before the Civil War, only a handful of black men could vote anywhere in the Union. Suddenly black men in the South were given the right to vote and to hold office, principles extended to the entire nation in the Fifteenth Amendment.

This inaugurates the period we call Radical Reconstruction, when new governments came to power in the South. They created public education systems, tried to rebuild the southern economy, passed civil rights legislation, and sought to protect the rights of black laborers on plantations. Black men held public office in Reconstruction at every level, from the two senators mentioned above to members of state legislatures, justices of the peace, sheriffs, school board officials, etc. Most power remained in the hands of white Republicans, but the fact that about 2,000 African-American men held elective office was a significant change in the nature of the American political system.

Reconstruction was a time of a remarkable experiment in democracy, but of course it was short-lived, and there followed a long period when the rights protected by the constitutional amendments were flagrantly violated in the South and indeed much of the rest of the nation. One part of this long process of retreat from the egalitarian impulse of Reconstruction was a sharp narrowing of the rights that came along ►►

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with being an American citizen. In this, the Supreme Court led the way.

Interestingly, one aspect of the retreat revolved around whether women could claim the full rights of citizenship. Reconstruction, declared the Universalist minister and suffrage leader Olympia Brown, offered the opportunity to “bury the black man and the woman in the citizen”—that is, to end the tradition of using accidents of birth to define citizens’ rights. Yet when women tried to employ the Fourteenth Amendment to press their right to vote, they found the courts unreceptive. Citizenship, declared Chief Justice Morrison Waite in 1875, did not automatically bring with it the suffrage: it meant “membership of a nation and nothing more.”

The Court’s argument regarding women was part of a more general narrowing of the definition of citizenship. This began with the *Slaughter-House* decision of 1873 and continued with *United States v. Cruikshank* (1876), the *Civil Rights Cases* (1883), and eventually *Plessy v. Ferguson* (1896). There is no time to summarize these cases except to note that while blacks remained American citizens, that status did not prevent them, once Reconstruction ended, from being subjected to persistent violence without federal redress, being barred from places of public accommodation, being subjected to racial segregation in every aspect of their lives, and losing the right to vote in the southern states.

After the end of Reconstruction, the egalitarian impulse faded from national life, and the imagined community was reimagined once again. Indeed, what came to be seen as the “failure” of Reconstruction was widely attributed to “black incapacity,” strongly reenforcing the racialist thinking that reemerged to dominate American culture in the late nineteenth century. The retreat from the postwar ideal of colorblind citizenship was also reflected in the

resurgence of an Anglo-Saxonism that united patriotism, xenophobia, and an ethnocultural definition of nationhood in a renewed rhetoric of racial exclusiveness. America’s triumphant entry onto the world stage as an imperial power in the Spanish-American War of 1898 tied nationalism more and more closely to notions of Anglo-Saxon superiority, displacing in part the earlier identification of the United States with democratic political institutions (or defining those institutions in a more and more explicitly racial manner).

While violated with impunity, however, the Fourteenth and Fifteenth Amendments and Civil Rights Act remained on the books, as what Charles Sumner called “sleeping giants” in the Constitution. They would awaken decades later to provide a legal basis for the civil rights revolution. Indeed, no significant change in the Constitution resulted from the civil rights revolution. What was needed was for the existing Constitution to be enforced. Eventually it was, a century after Reconstruction.

We Americans sometimes like to think that our history is a straight line of greater and greater freedom. We began perfect and have been getting better ever since. Actually, our history is a more complicated, more interesting story of ups and downs, of progress and retrogression, of rights that are gained and rights that are taken away to be fought for another day. As Thomas Wentworth Higginson, who commanded a unit of black soldiers in the Civil War, wrote when Reconstruction began, “Revolutions may go backward.” Reconstruction was a revolution that went backward, but the fact that it happened at all laid the foundation for another generation, a century later, to try to bring to fruition the promise of a nation that had moved beyond the tyranny of race. Birthright citizenship is one legacy of the titanic struggle of the Reconstruction era to create a nation truly grounded in the principle of equality. We should think long and hard before altering or abandoning it. ■

Barrock Lecture | Franklin E. Zimring

The Accidental Crime Commission: Its Legacies and Lessons

On October 4 and 5, 2012, Marquette Law School held a conference on the Wickersham Commission—so named after its chairman, George W. Wickersham, a former attorney general of the United States. The occasion—the 80th anniversary of the conclusion of the commission’s work—provided an opportunity to reflect on the federalization of law enforcement in the intervening decades. The conference’s keynote address was the Law School’s annual George and Margaret Barrock Lecture on Criminal Law, delivered by Franklin E. Zimring, the William G. Simon Professor of Law and Wolfen Distinguished Scholar at the University of California, Berkeley. Professor Zimring’s lecture will appear in the *Marquette Law Review*. This is an abridged version.

Judged by its initial mission, and by its influence on the problems that inspired its creation, the Wickersham Commission created in 1929 by President Herbert Hoover was an unmitigated failure. The president had created the commission as an apologist for, and in an attempt to reform, the federal law that created and administered the prohibition of alcohol in the United States in the years after 1919. Remembered now as the very first national commission on crime, both its primacy and its focus are urban legends in substantial part. It wasn’t the first national crime commission—that was appointed by President Calvin Coolidge in 1925. And it wasn’t really created as a national commission on crime. The lion’s share of crime is the province of state and local government: state criminal codes and prisons, county courts and sheriffs, and municipal police. But the primary focus of the Wickersham Commission was on prohibition and on the observance of the federal Volstead Act. This not only was a guarantee that prohibition would remain the commission’s central focus, but it also provided a potential diversion from much of the illegitimacy, corruption, and lawlessness of the local governance of crime in America.

A Different Country

The United States of 1929 was a very different nation from 1969 or later, in ways that would have doomed any examination of crime and law enforcement short of a very radical critique. For starters, the United States was dominated by legal systems that were overtly racist, ranging from Jim Crow horrors in the south to the more subtle but pervasive forms of race discrimination in housing, education, and miscegenation law through

most of the north. And lynching was still not an uncommon practice in much of the American south until the middle of the 1930s—one national count averaged 17 cases per year in the decade between 1926 and 1935.

A national commission to study crime and justice thoroughly in this era would need the likes of W. E. B. Du Bois and Norman Thomas rather than the good Republican burghers and establishment lawyers that manned the Wickersham Commission. And even a true blue-ribbon commission on prohibition would, by the early 1930s, have had to acknowledge that the “great experiment” was beyond any hope of redemption. If Herbert Hoover had designed this enterprise as the launching pad for a new, improved version of the Volstead Act, the commission’s task was hopeless from day one.

And not just because Hoover had appointed the wrong commission or waited a bit too long. The changes that had overtaken the prohibition experiment in its short career were so profound that the nation that had created the push for prohibition was not the same nation in which the experiment was conducted. The temperance movement had its roots in an America of towns and rural areas, the United States of the turn of the twentieth century. Most of the nation’s population lived outside urban areas in 1900, and much of



Franklin E. Zimring



“How did this hopeless venture end up being viewed as a precedent-setting and positive contribution to the ways in which the national government learns about crime and criminal justice?”

the population in rural areas and small towns feared and distrusted the big cities, which were expanding dramatically with industrialization, and the surge of immigration that greatly diversified the national landscape between 1890 and 1920. The 1920 census was the first time that the number of persons living in urban areas equaled the number living in rural areas.

So the occasion for this conference in 2012 is a bit of a mystery. How did this hopeless venture end up being viewed as a precedent-setting and positive contribution to the ways in which the national government learns about crime and criminal justice? I will provide my take on this question in three installments. Part I will describe how the commission was structured and staffed and the broad ambitions of the commission's work on crime, police, and prosecution. Part II will propose four important innovations in Wickersham that later commission efforts adopted. And Part III will consider governmental alternatives to blue-ribbon commissions and how they have functioned in recent history.

I. Futility Is the Mother of Invention

I suspect that the impossibility of the commission's original mandate may have helped to remake it into the enterprise we remember and honor. Unlike the Coolidge Administration's slapdash commission on crime in the mid-20s, the Wickersham effort had significant financial resources—the initial budget of \$250,000 in 1930 dollars was quite substantial, and the final expenditure, close to \$500,000, was the inflation-adjusted equivalent of just under \$7 million in 2012. President Hoover and many of its members considered it an important undertaking. The commitment of Hoover to science and empirical data probably motivated the resources that made Wickersham more than a gesture. The resources and standing of this blue-ribbon institution became an opportunity for sustained analysis of issues and phenomena tangentially related to prohibition and the federal criminal justice system, issues such as crime and criminal justice in the broader American landscape.

The substantial resources available to the Wickersham Commission provided the opportunity to avoid one of the central academic complaints that greeted the early Coolidge commission, that the commission lacked “expert knowledge” and “special experience.” What the Coolidge commission lacked was a staff and therefore any substantive research. With financial resources, the new commission could employ a staff and fund papers by expert consultants.

And this the Wickersham Commission did with precedent-setting energy. The vast majority of the consultant papers published by the commission were not about prohibition or its enforcement but about crime and criminal justice. Both the methodology of Wickersham in generating expert reports and the volumes produced by the commission's experts are the enduring legacy of Wickersham. Depending on experts and deferring to expert judgment had profound impact not only on how commissions did their work but also on the substance of commission reports. This was the key innovation of the commission, what I shall call the “Wickersham model.” And this methodological legacy had a substantial impact on the many commissions that used methods close to the Wickersham model a generation later in the golden age of national commissions.

With very few exceptions, the Wickersham commissioners were not radical progressives, but the staff and consultants that produced Wickersham's reports were emerging and established pantheons of social science (Clifford Shaw and Henry McKay), social services (Miriam Van Waters and Edith Abbott), and the legal academy (Zechariah Chafee and Sam Bass Warner). Only two of the eleven commissioners were academics (Roscoe Pound and Ada Comstock), but the lion's share of the staff reports that are the permanent record of the commission is the work of academics and reform-oriented lawyers.

One other important contrast between staff members and consultants on the one hand and commissioners on the other was demographic. The median

age of 13 authors or coauthors of staff/consultant volumes was 41, and only 3 of the 13 were over age 45 in 1929 when the venture was launched. By contrast, the median age in 1929 of the 11 members of the commission was 58, and only 1 member was under 50 when appointed.

The generational difference between staff and members and the academic orientation of the experts writing reports made the emphasis on staff effort into a shift from an older, establishment, practitioner orientation (perhaps still reflected in brief commission reports) to the lengthy, empirical studies of the social scientists and the reform-oriented briefs of the policy-oriented lawyers.

The two reports on prohibition that were separately issued in January 1931 might have been an arresting example of the difference in tone between commissioners and staff experts. The two reports combined extensive and powerfully written observations of the costs and ineffectiveness of prohibition in the 1920s with a rather unenthusiastic endorsement of continued efforts to modify and improve prohibition itself.

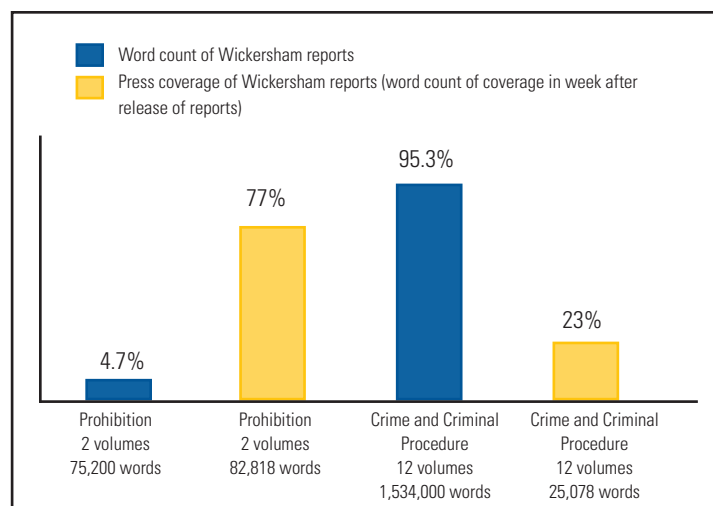
Franklin P. Adams famously celebrated this mixed message in a brief poem, the only published poetic critique of national commission output that I have encountered:

*Prohibition is an awful flop.
We like it.
It can't stop what it's meant to stop.
We like it.
It's left a trail of graft and slime,
It don't prohibit worth a dime,
It's filled our land with vice and crime.
Nevertheless, we're for it.*

Part of the dissonance of these reports' findings and their conclusions must be attributed to the need to respect Herbert Hoover's wishes. But why then the hard-hitting analysis of costs? Perhaps this came in part from the influence of staff on this documented history, since staff did most of the work and much of the writing. And the documentation in the 1931 report was integrated into the arguments for repeal that were a major theme in the two years after it was issued. The report is credited by later observers with aiding the cause of repeal.

After the January 1931 release of the prohibition materials, the next release of Wickersham reports came in late April (crime statistics), with the next 11 volumes being issued between June 7 and August 23, 1931.

The figure below illustrates the uneven patterns of public attention to the work product of the commission. The *New York Times* published a word count of all the commission's publications in August of 1931, which the figure below compares to level of news coverage provided by the *Times* in the week after reports were issued.



While the prohibition reports were less than 5 percent of the published product of the commission and only 2 of its 14 reports, they received the majority of immediate public attention. The prohibition reports accounted for more than three-quarters of the verbiage on Wickersham in the *New York Times*. While none of the other reports generated more than a small fraction of the ink of the prohibition materials, the distribution of attention to the rest of the reports did reflect the appetite for controversy and scandal. The report on lawlessness in law enforcement got twice as much coverage as the next-most-discussed non-prohibition report (6,932 words versus 3,626 for the volume on prosecution). The more important contrast is that “lawlessness” in law enforcement got more than ten times the attention that was accorded to the other report on police, which was released earlier. Even before electronic journalism, there was evidence of the adage, “If it bleeds, it leads.”

What was to eventually commend this effort as a model of governmental research in crime and criminal justice was not what commanded public notice in the early 1930s.

II. The Wickersham Model: Four Elements

The Wickersham Commission is not normally regarded as a major landmark in the march toward the repeal of prohibition. A recent history of the end of prohibi- ▶▶

tion, *Last Call* (2011), has only three references to the commission's work in its index and regards the reports as of minor influence. But Wickersham had more influence on the methods and functions of national commissions. When I speak of the "legacies" of the Wickersham exercise, I am trying to identify four ways in which the structure and focus of this early commission of inquiry set precedents that can be observed in the cluster of national commissions that operated a generation later in the United States.

I stop short of demonstrating that the similarity in structure was a clear case of cause and effect. The four features of interest in this regard are (1) staff dominance, (2) an emphasis on empirical research, (3) a preference for long-range perspective instead of targeting a finite number of discrete policy proposals, and (4) an explanatory and retrospective orientation that often makes such reports into ceremonies of adjustment to changes that have already happened rather than proponents of change.

1. Staff Dominance

The formal relationship between commissioners and staff in Wickersham and all other such bodies is hierarchical—the commission selects the staff and the staff works for the commission. But, in fact, once the staff members have been selected by the commission, they tend to exercise considerable power over the work of a commission. There are three features that maximize the impact of staff in Wickersham and every other American effort I know of—numbers, expertise, and authorship. In a well-funded exercise like Wickersham, there are more staff than commissioners, and the staff may also devote more time to the enterprise than persons nominated to commission status because of the latter's other prominent positions, which will often restrict their participation in commission efforts. The two academics on the Wickersham Commission were both busy administrators—the dean of a law school and the president of a college. The academics on staff were presumably less preoccupied with administrative duties.

Then there is the matter of expertise. The staff have been selected for their expertise in specific areas—August Vollmer for law enforcement, Edith Abbott for immigrants and crime, Miriam Van Waters for young offenders, etc.—so that their credentials create substantial influence.

Finally, in American commissions, it is the staff who write most of the official prose. All but one of the

enormous subject-matter reports of Wickersham were authored by staff (the apparent exception being *The Causes of Crime* tome), and staff reports visibly dominated the output of the commissions on crime (1967) and on violence (1969). The author of a report generates what real estate agents call "sweat equity" for determining the substance of the report. If you write the report, you have real influences on what it says.

So the power of commissioners and senior staff is extremely important at the front end of the commission process—because they determine who will staff the process. But once an expert staff has been selected, the balance of power shifts to the staff.

The most prominent exception to that U.S. commission pattern of staff dominance is quite consistent with the influence of authorship on outcome. During the era of government commissions on pornography, the British Home Office appointed a committee chaired by Professor Bernard Williams, a moral philosopher from Cambridge University. This low-budget committee was of exceptionally high intellectual quality, and Bernard Williams, the committee chair, wrote much of the report.

All of my short list of the causes of staff dominance were on display in the Wickersham experience and would become also the pattern of operation in the commissions of the 1960s and 1970s. This may not be the result of later efforts explicitly modeling themselves on Wickersham so much as the natural result of the same processes that produced staff influence in 1930 doing so again in the U.S. commissions on crime, violence, and pornography. But either way, the Wickersham Commission was a preview of coming attractions for the national commissions that followed.

2. An Emphasis on Empirics

The Wickersham Commission produced 14 volumes, a total of 1.6 million words. We have already seen that 95 percent of that verbiage didn't directly concern prohibition. But what kinds of perspective and ambition produced this verbal landslide? To impose a verbal construct from the current era, what Wickersham became was the first "data-driven" analysis of issues in crime and justice by a governmental commission in the United States. And the staff dominance I just mentioned was an important cause of this emphasis on empirics in two senses. The academics and reform-oriented lawyers who were on staff believed in empirical research, and they had the time and energy to gather the data and write the reports. So the enterprise was data-driven because the staff were data-driven. And this was a feature of most if not all of



Professor Franklin E. Zimring delivers the Barrock Lecture in Eckstein Hall's Appellate Courtroom on October 4, 2012.

the policy commissions on crime and violence that were clustered in the 1960s and early 1970s.

3. *Taking the Long View*

One other feature of the Wickersham endeavor that has been repeated in later efforts is an emphasis on long-range perspectives rather than specific, discrete policy choices. On almost all the topics considered, the aim of the reports produced was to comprehend the phenomena and systems being considered rather than to focus on arguments for specific policy change (the possible exception here is criminal statistics). The emphasis in Wickersham on perspective rather than a specific policy program was overdetermined. President Hoover's position on prohibition certainly wasn't broadly popular with either commissioners or staff. And everything the staff reported on the problematics of enforcement in prohibition pointed in the opposite direction from Hoover's hopes. Perspective was the only refuge in the extraordinarily complicated politics of prohibition in 1931.

And most of the other social science topics considered by Wickersham staff reports—crime and immigration, juvenile delinquency, the impact of disorganized city neighborhoods on crime rates—were efforts to create broad understanding rather than to mobilize legal change. On the procedural side of the commission's agenda, for topics such as police corruption and the third degree, it was the level of government of this federal commission rather than the lack of a policy agenda that restrained the commission's action agenda. There were no direct levers available to the national government in 1931, such as federal financial aid or

constitutionally based reversals of state criminal convictions, as carrot or stick for state and local compliance with federal standards. Shortly after Wickersham, one of its staff lawyers, Walter Pollak, argued the winning side of *Powell v. Alabama* (1932), the beginning of federal court controls on state criminal process.

More striking than the orientation to perspective that Wickersham adopted is the fact that most of the later commissions also favored broad understanding and policy instead of centering attention on a specific reform. The 1967 crime commission, generally regarded as the most successful of the genre, was organized around long-term development in areas such as police, crime statistics, juvenile justice, and organized crime. Both the civil disorder (Kerner) and violence (Eisenhower) commissions argued for enormous changes in American society and government, but each was committed to change of such breadth that no specific law or session of a legislature could serve as a focus of activity.

At the other end of the spectrum, there were commissions on pornography and gambling that did not seem intent on arguing for *any* sharp changes in policy.

There have been, in other words, very large differences in the orientation of national commissions to social and legal change, yet an overarching similarity in the sense that no commission report in the modern era was centered on a finite list of specific changes as the core of an action agenda.

4. *The Commission as Ceremony of Adjustment*

The central inconsistency identified in the Franklin P. Adams poem about Wickersham was the sustained documentation of the failures and social cost of prohi-



bition combined with the absence of any explicit recommendation by the commission to repeal the prohibition amendment and legislation. But a more generous reading of Wickersham's work on prohibition is that its extensive documentation of cost and ineffectiveness provided a foundation for many supporters of prohibition to accept the inevitable repeal of prohibition two years later when it came. In this sense, the commission's fact finding was much more important than its divided and convoluted policy recommendations. Further, if this is an accurate reading of Wickersham's historic function on prohibition, then it was an important precedent for another common function of later national commissions—what can be called the creation of a ceremony of acceptance and social adjustment to changes that are taking place.

The most remarkable example of this “ceremony of adjustment” function relates to the commissions of inquiry on pornography that popped up all over the developed world after the late 1960s. The United States had a national commission in the late 1960s that reported in 1970. Great Britain had one that reported in 1979. Canada had a Special Committee on Pornography and Prostitution in 1985, and Attorney General Edwin Meese commissioned a second report on pornography in the United States that reported in 1986.

And what did all these commissions recommend as legislative action? Not much at all. Because that wasn't the primary social and political function of the inquiries. Most of the commissions followed rather than preceded the widespread availability of pornography. Only the 1970 pornography commission was issued prior to the theatrical release of *Deep Throat* in the United States (1972). The commissions were investigations of the effect of a new status quo that was emerging in most developed countries—all the social science was intended to reassure publics that Western civilization could survive *Debbie Does Dallas*. Even the Meese Commission, created to reassure conservative constituencies that pornography was harmful and objectionable, did not urge broad legal change but was, rather, an attempt to discredit the moral claims of liberals.

And the national commission on gambling in the 1990s was similarly more concerned with regarding the growth of gambling as survivable than with advocating any path-breaking legal changes.

In its own precedent-setting and peculiar fashion, perhaps the Wickersham Commission's mixed teachings on prohibition were an attempt to explain and justify the formal undoing of alcohol prohibition that was by then looming on the American horizon.

III. The Commission That Never Was

The cluster of national commissions that reported on problems of crime and violence in the 1960s and 1970s is now itself a generation or more removed from contemporary American government and public policy discourse. There are, to be sure, a number of commissions of inquiry appointed by federal and state governments to consider particular subjects—and some of the topics come close to crime and violence. But we had no national commission on school violence in the wake of Columbine to parallel the Eisenhower Commission on Violence (1969) and the Kerner Commission on Civil Disorder (1968). (The commission to investigate the September 11 disaster is the exception that proves the rule on this: it was a body, like the Warren Commission, asked to confirm an official historical account and not consulted for policy.)

It appears that what I would call a broad national commission approach to surveying policy options in areas such as crime, drugs, violence, and race has passed from the American scene. The last major attempt

that I would put in this category was President Clinton's “Initiative on Race.” And that isolated effort came two decades after any sustained use of commissions of inquiry about crime policy. Why?

There are two alternative explanations for the decline of the national policy commission. One theory is the commission departed because it failed as a useful enterprise. The other theory is that commissions came to be regarded as a threat to governmental policy orthodoxy. The most important evidence that the day of the national commission had passed by the late 1980s concerns the drug emergency and the



New York City Deputy Police Commissioner John A. Leach, right, watching agents pour liquor into the sewer following a raid during prohibition, ca. 1921. *New York World-Telegram* and the *Sun Newspaper* Photograph Collection. Courtesy of the Library of Congress.

“ Indeed, the 1980s and 1990s witnessed almost everything a government is expected to do with novel and threatening problems *except* appointment of a high-level national commission on drug policy, and this was hardly an accident.”

public moral panic over drugs during the decade after 1985. That decade witnessed the ascendance of drugs to number one on a list of citizen-nominated “most serious problems” nationally, multiple layers of federal and state legislation, the creation of a national drug control agency with a drug czar, and annual editions of a glossy national drug control “strategy” to energize and reassure the population.

Indeed, the 1980s and 1990s witnessed almost everything a government is expected to do with novel and threatening problems *except* appointment of a high-level national commission on drug policy, and this was hardly an accident. The annual report of the nation’s drug czar was designed as the opposite of a national or citizens’ commission; it was an official document under the control of the executive branch policy makers in the field. It was, to borrow a phrase from a famous Argentine film, *The Official Story*. A presidential commission of any degree of independence was probably considered too great a risk to generate unwelcome conclusions. In that same pattern, as Marquette Law Professor Michael O’Hear has reminded me, the federal sentencing commission created in the 1980s keeps empirical evaluations of sentencing as “in house” efforts rather than tolerating external review.

The absence of a real national commission on drugs did not escape public notice. Walter Cronkite, near the end of a long and distinguished career in news reporting and analysis, concluded an hour-long special broadcast on drugs in 1995 with the following:

It seems to this reporter that the time has come for President Clinton to do what President Hoover did when prohibition was tearing the nation apart: appoint a bipartisan commission of distinguished citizens . . . , a blue-ribbon panel to reappraise our drug policy right down to its very core, . . . a commission with full investigative authority and the prestige and power to override bureaucratic concerns and political considerations . . . and present a comprehensive drug policy for the future.

Cronkite’s view of the Wickersham Commission was informed by nostalgic distortions of epic proportions. After all, a majority of the commissioners had maintained their support of the Eighteenth Amendment.

But more than nostalgia suggests that a Wickersham-style analysis of the War on Drugs in 1990 or 1995 (or ever) might have destabilized the major elements of drug prohibition for at least an important segment of the public and would hasten rather than retard the pace of policy change. And there is support in the history of Wickersham for this view. The pro forma support of prohibition by most commissioners did not count for much in public or legislative opinion. The powerful fact-finding in the report on prohibition probably had greater impact. Much as the Franklin P. Adams poem quoted earlier may have been intended to make fun of the commission, the poem accurately portrayed a mixed message that many on the commission staff and some commissioners wanted to make a part of the public record of the prohibition experience. Any such forceful cost accounting of the modern war on drugs would provide little comfort to the drug control authorities. Whatever its flaws, the candor and balance of Wickersham on prohibition enforcement makes William Bennett’s first *National Drug Control Strategy* look like the front page of Soviet-era *Pravda* by comparison.

While the absence of a national commission on drugs in the late 1980s makes it clear that the age of the presidential commission on crisis problems in crime had passed, what is less clear is whether the drug emergency of the mid-1980s played an important role in pushing commissions off the national agenda or whether the lack of a 1980s drug commission was merely a result of the fact that the age of “policy” commissions on crime had already come to an end.

Either way, the drug warriors of the 1990s would have been right to fear the impact of a national commission. No matter their biases and political sensitivities, the staff and the members of such commissions usually have a commitment to fact gathering and to the importance of ▶▶

their problem in the larger national landscape. Perhaps we overdosed on national commissions in the era of Warren and Katzenbach and Kerner and Eisenhower, perhaps we tended to overstate the acuteness of the problems put before commission bodies and to call for too many resources and too much change to remedy these selected national problems. But in a political system and public consciousness that find problems easy to ignore, sustained attention on important chronic problems will often serve the public good.

A Dangerous Thought Experiment

One interesting test of the value and limits of commissions of inquiry as a public policy tool is a “thought experiment” along the lines suggested by Walter Cronkite. Imagine that President Clinton had appointed a national commission on drug control in 1997 (prudence suggests the year after rather than the year before a presidential election). What sorts of questions might such a body have asked? What sorts of research might have emerged? What types of policy changes might this commission have considered and recommended? What short-range and longer-range policy changes might have occurred in its wake?

Like many thought experiments, there is considerable room for different assumptions and presumed effects in the future that we are asked to imagine in my Cronkite

commission experiment. And it is easy to use a mythical national commission as a magical mechanism that will change public prejudices and overcome persistent political logjams. Walter Cronkite seemed to be hoping for some such magical transformation with his televised plea in 1995.

My own view of the impact of our imaginary drug commission is much less optimistic than Cronkite’s but still leaves ample room to see a National Commission on Drug Control as a public benefit well worth its modest costs. It could settle some factual questions, resolve disagreements about costs and outcome of public programs, and clarify difficult choices. It could outline the nature of the drug problems we had best learn to live with and perhaps identify other problems that are not inherently part of government’s ongoing involvement in drugs.

It could do many of the modest but important things that the Wickersham staff and commissioners accomplished in 1931. And that, in my judgment, would be a considerable improvement on the public relations puffery that executive government now manufactures. The commission of inquiry model that Wickersham brought to American crime and criminal justice probably served the public interest far better than some of its recent alternatives. If so, this conference is well-timed for serious students of the American future. ■

David Ray Papke

Exploring Socio-Legal Dominance in Context: An Approach to American Legal History

Professor David Papke of Marquette University Law School traveled with his family to Uganda last summer. He spoke by invitation at Makerere University, Stawa University, and the Law Development Centre in Kampala. This is an abridged version of his speech at Stawa.

One of the courses I teach annually at Marquette University Law School is American Legal History, and I was asked if I would discuss that course today. It’s a semester-long course, so I really couldn’t summarize it in just an hour or so. But I think I can describe how I approach the subject matter of American legal history.

My approach rests on the assumption that law does not somehow stand above and apart from social life.

Law, in my opinion, is not self-contained, not self-generating, and not even distinct as a cultural construct. Hence, I teach legal history as intertwined with social history. I try to examine how law grows out of a given social context and also how law contributes to that context. Particularly interesting to me are questions involving the relationship of law and an era’s dominant interests. I try in my course to explore socio-legal dominance in context.

I have three illustrations of this approach, but let me suggest at the outset what justifies the approach. If we think about how law interacted with social life in the past, I believe, we can better understand law and theorize about law in the present. I am also persuaded that if we articulate the relationship between law and dominant groups in the



David Papke in Uganda.

past, we can better grasp how law relates to comparable contemporary groups. This is admittedly a critically minded approach to legal history. As I consider law's place in social context, I am consciously undermining any thought that law is autonomous, that it has a truth in itself. My interrogating, judging, and condemning law's relationships to power in the past are designed to engender a critique of law's relationships to power in the present.

Law and the Displacement of the Native People

My first illustration involves law and the displacement of the Native People, a process that dates to the colonial period. European countries colonized what is today the eastern seaboard of the United States from roughly the 1590s until the end of the Revolutionary War in 1781—a period of almost 200 years. Native People preceded, interacted with, and fought against the European colonists. North America was not “empty” and waiting to be filled up by people with white skins. An estimated 5 to 7 million Native People lived in what would become the United States, and hundreds of tribal cultures and languages were alive and vibrant.

Many of the Native People on the eastern seaboard were decimated by disease carried by the Europeans and also in wars with the Europeans. An estimated 90 percent of the Native People on Cape Cod, to cite just one example, died in a chicken pox epidemic in the early 1600s. Europeans' wars against assorted tribal groups, meanwhile, started literally in the first decade of settlement and continued until American independence, at which point Americans became the war makers. Europeans often justified their war making on the grounds that the Native People were heathens who resisted the true Christian God.

Disease and war could be discussed at much greater length, but law was also extremely important in the

displacement of the Native People. Indeed, I'd argue that law was as important as disease or war in this displacement. There were a half-dozen European colonizers on the eastern seaboard—the Dutch, French, Spaniards, Swedes, etc.—but early in the period the colonies of those Euro-

peans powers were taken over by the English Crown. As a result, the law was, for the most part, English law.

This “law of displacement” begins with charters. The English Crown was prepared to grant legal charters to Englishmen for parts of North America. The charters were of different kinds, but suffice it to say that the Crown authorized English individuals, groups, or trading companies to take control of parts of North America. The same approach, I might mention in passing, had been used in Ireland in the 1500s. Both the Native People of North America and the Irish a century earlier were taken by the English to be nomadic, uncivilized, and lacking the type of government that could claim and control the lands. This was an important argument for the English: Since the Native People did not have governments that could “subdue” the land, the Native People had only a “natural right” to the land. This was not the equivalent of a legally protectable “civil right.”

Beyond the legal charters, English property law was crucial in the displacement of the Native People. The law devoted to the land—to so-called “real property”—was perhaps the single most developed part of the English common law. Landowners were said to own individual plots of land from the center of the earth to the heavens. Owners of individual plots were also said to have a “bundle of rights” that went along with their land. They had the right to enjoy and use their land and to exclude people they did not want on their land. Landowners could also control, convey, sell, or rent their lands as they saw fit.

In the North American colonies, the English Crown granted charters, and then the holders of the charters gave or sold small parts of the land to individual Englishmen. Soon, almost all of the land was divided up and owned by individual people, and this might literally have been incomprehensible to many of the Native



“ Soon, almost all of the land was divided up and owned by individual people, and this might literally have been incomprehensible to many of the Native People.”

People. Most did not share the English sense of private ownership of the land. They might recognize hunting and farming rights for an area of land for a particular tribe, but most of the Native People did not subscribe to individual or family ownership of particular plots of land. Individual Native People did not imagine that they could buy and sell land, because they did not think of the land as something they could own individually. Indeed, many saw the lands and the wild animals—nature—as their god. How do you sell pieces of god?

Law and American Slavery

My second illustration of law's relationship to power in context involves American slavery. When Americans think about slavery, the “slavery to freedom” narrative often springs to mind, and law plays a positive, almost heroic role in that narrative. To be sure, President Lincoln did issue the Emancipation Proclamation during the Civil War, and the Congress did end slavery through the Thirteenth Amendment to the Constitution. However, we should also recognize the relationship of law to the “slave society” that preceded the Civil War. In the decades preceding the Civil War, this “slave society” stretched across the American South from the Atlantic seaboard all the way to Texas, and throughout this large region, law was coordinated with and supportive of the institution of slavery.

The “slave society” had as many laws, lawyers, and courts as any other part of the country. The “slave society” was certainly not “lawless,” much less anarchic. What's more, the American South subscribed as much to a rule of law ideology as did other parts of the country. At least in theory, law was supposed to be neutral, and people were supposed to use it in objective and fair ways to solve problems and resolve disputes. The chief problem is that law in various ways served power in the “slave society” and especially the interests of the slave owners.

As in the displacement of the Native People, property law was particularly important. There have been many nations and tribal groups with slaves in world history, but slavery has usually been understood as a

status or condition. In the American South, meanwhile, slaves were defined under the law as private property owned by non-slaves. In addition, the law's definition of slaves as property changed over time. Early on, slaves were defined as real property, and they were seen as connected to the land almost like a barn or a tool shed. Over time, though, the southern states came to define slaves as chattel or personal property, something comparable to tools or equipment. The change was made because personal property was easier to legally transfer in the marketplace than was real property. By the time of the American Civil War in the 1860s, the selling of slaves, buoyed as it was by the law, had become the South's second-largest business, second only to the production and sale of agricultural crops, especially cotton.

Beyond considerations of property law, allow me to mention the law of civil rights and liberties. All of the slave states had constitutions, and they made clear that the slaves had no fundamental rights and liberties. Furthermore, slaves for the most part did not have what we sometimes refer to as “secondary rights,” that is, rights related to such things as marriage, procreation, parenting, education, and privacy.

The denial of these secondary rights helped make it possible to sell and to control the slaves. So, for example, while slaves in some areas developed an informal marriage ceremony that took the form of two slaves jumping over a broom in front of witnesses, this ceremony went unrecognized by the state. Among other things, allowing slaves to marry would have complicated the sale of slaves in the marketplace, especially if children were involved. Slaves were also denied the secondary right of education, especially as the Civil War approached. In Georgia it was even a crime to teach a slave to read or write. The ability to read and write, it might have occurred to slave owners, could fuel rebelliousness and stir revolt. With the slave population burgeoning and exceeding the white population in some areas, the South was, in historian Lawrence Friedman's terms, a “kingdom of fear.” The denial of secondary rights helped make the situation less frightening for those in power.

Law and American Industrialism

My third and final illustration of exploring socio-legal dominance in context involves American industrialism. My focus here is on the decades following the Civil War. There had been some industrial development earlier (e.g., the building of grain and textile mills on the rivers of the Northeast in the 1820s and 1830s), but the greatest period of industrialization occurred in the decades following the Civil War. According to the historian Charles Beard, “With a stride that astonished statisticians, the conquering hosts of business enterprise swept over the continent; twenty-five years after the death of Lincoln, America had become . . . the first manufacturing nation of the world.”

By this point in history, the United States stretched from one ocean to another, and abundant resources—coal, timber, iron ore, etc.—facilitated industrialization. Then, too, there was an immense internal market. Industrial goods could be not only produced in the United States but also sold there. What’s more—and by this point in my lecture you won’t be surprised to hear this—law also played a large role in advancing industrialization. Law helped to make industrialization more viable, and this over time generated huge profits for the large industrial capitalists.

The first thing to note is the “corporation,” which is, among other things, a legal construct. A corporation has advantages over traditional business partnerships. It is more permanent than a partnership, and, unlike a partnership, a corporation shields founders and shareholders from any personal liability for the corporation’s debts and losses. The corporation is also an extremely effective legal construct for attracting investors and aggregating financing for large-scale ventures.

Corporations existed in the first half of the nineteenth century, but they were different from what evolved. The earliest corporations tended to have a public purpose of some sort—bridges, toll roads, even railroads; they almost seemed sometimes like agencies of state governments. This changed in the final decades of the nineteenth century, as incorporation came to be almost exclusively a profit-seeking strategy. Those who incorporated saw the step as more of a right than a privilege, and some states set up special licensing agencies to move things along more quickly. By 1900, the corporate legal form was dominant in American industry, and corporations produced fully two-thirds of the nation’s manufactured goods.



John Papke

Giraffes block the road on another part of Professor Papke’s trip.

Law also played a major role in structuring the relationship between the corporations and those corporations’ workers—in particular, what is often called “organized labor.” By the end of the nineteenth century, state governments had ceased to criminalize organized labor, and organized labor was growing increasingly able to mount protests, strikes, and boycotts, much to the dismay of the corporations. The corporations, as a result, turned to the civil courts and to the law of injunctions to thwart organized labor. The corporations could and did ask courts to enjoin unions when they went on strike or organized a boycott. One legal historian has estimated that between 1880 and 1930 courts issued as many as 1,800 injunctions against organized labor. Another legal historian has said that that number is much too low and that, really, it is closer to 4,300. In this context, the injunction against a labor organization became an effective tool to use against workers, greatly enhancing corporate power in the relationship between management and labor. When in 1894 the Pullman Company prevailed against the striking American Railway Union, union president Eugene Debs, reflecting on the various court orders and injunctions that had been issued, said, “The men went back to work, and the ranks were broken, and the strike was broken up by the Federal courts of the United States.”

Conclusion

Each of the three narratives I have shared continues into the present. History is the engine of the present, and legal history is the engine of contemporary law. In particular, the Native People who have not blended into the general population live on impoverished reservations, with the largest of those reservations being



located in the western part of the United States. Personally, I think of the Native People as conquered and living under the thumb of their conquerors, and I remind you of the important role law played in this.

As for the slaves, they were freed by the Civil War and by amendments to the United States Constitution in the 1860s, and today the descendants of the slaves—known as Negroes, then as blacks, then in the present as African Americans—have the rights and privileges of white citizens. A man who identifies as African American is our president. But still, the average African American is much poorer than the average white American, and the majority of African Americans live in older, rundown parts of the cities. Political equality, in other words, has not brought socioeconomic equality along with it. One of the keys to this, even in the present, is that African Americans were once defined by the law as property and also subjugated by law.

Some factories, meanwhile, are still operating, but the overall scene is quite different from what it once was. Much of American industry has closed down or moved to foreign countries where labor is cheap, and the American economy is now more of a service

economy than a manufacturing economy. Organized labor is in decline, and membership in unions is much smaller than in the past. Starting in the days when industrial capitalism was at its peak, workers were never able to acquire equal bargaining power. Disadvantaged by this inequality, the largest unions rarely spoke of the struggle between “labor” and “capital” and focused instead on more modest goals such as incrementally higher wages, better job security, improved working conditions, and collective bargaining. I assign law a major role in these developments.

I’ve tried with my three illustrations to demonstrate how one might approach American legal history. I’ve cast my approach as an exploration of socio-legal dominance in context. In employing this approach, I try to avoid being unduly reductive, and I disdain claims and even implications of determinism. But still, I insist that (1) law is a product of and contributor to a given context, (2) law tends to especially aid those with power, and (3) law, in general, is best conceptualized as socio-legal in nature. If we are able to grasp these matters while considering the past, we are more likely to appreciate them in the present. ■

Joseph D. Kearney

Remarks at the Investiture of Circuit Judge Lindsey Grady

On August 17, 2012, Dean Joseph D. Kearney spoke at the investiture of Lindsey Grady, L’00, as a judge of the Milwaukee County Circuit Court. The court session occurred in the ceremonial courtroom of the Milwaukee County Courthouse.



Liam and Lucy Grady have the right spirit at the judicial investiture of their mother, Lindsey Grady (Chief Judge Jeffrey A. Kremers is in the background).

Justice Bradley, Chief Judge Kremers, and May It Please the Court. When Lindsey Grady (or Lindsey Canonie, as she then was) and I first encountered one another, it is hard to say who was the more inexperienced—or, if I may be candid, the more ignorant. This was the spring of 1998. On Lindsey’s side of the argument, if you will, she was a first-year law student, enrolled in civil procedure. That makes for a rather powerful case: a first-year law student, let us stipulate, does not know much. But my own claim is also strong: I had never taught

civil procedure before. Indeed, as a first-year law professor, I knew rather little myself.

We muddled through together. Then and since, no doubt like Judge Grady, I have learned a number of things, some of which perhaps I appreciated when my teaching began, but not so strongly as is the case now. Permit me to note two of those things that strike me as especially relevant today.

The first is the great tradition of which both Judge Grady and I are heirs. Even just in that first year in Milwaukee, Dean Howard B. Eisenberg had introduced me to Judge Pat Sheedy, then chief judge of this court and a Marquette lawyer, class of 1948, an exemplar of both Marquette and Wisconsin legal tradition.

But how much more I have learned about that tradition as the years have gone on. Thus, in 2003, the first time that I spoke in this courtroom, as I delivered the address at the Milwaukee Bar Association's annual Memorial Service, I spoke of many, including Judge George Burns, a Marquette lawyer, of our class of 1953. He was, as many of you here know, an especially well-regarded Milwaukee County judge.

This led me also to learn of his father, the late George Burns, of the Marquette Law School class of 1914. He was not a judge, but he practiced law in Milwaukee for 62 years. And the 1914 class picture, which today hangs just outside my office, shows Mr. Burns next to his classmate, one Francis X. Swietlik. This latter man had so much regard for the importance of the local judiciary that he left the Marquette Law School deanship to become a Milwaukee County judge. Please know that Judge Swietlik had served as dean for 19 years before he made that move. So I am not making any announcement here that I will stand for the next vacancy on this court.

These are meaningful people to me—from those I have known to those I have learned of by listening to others tell of them. Whether from Janine Geske, another great Marquette lawyer who served on this court, or Tom Shriner, not a Marquetter but a person who has served the bar here so well, both of whom spoke at this year's memorial service, or Tom Hammer, a Marquette lawyer and Marquette law professor much involved in the work of this court, I have learned about the great tradition of the courts in Milwaukee County and, more specifically, the people who have judged and practiced in them. To have one of my former students now become a judge is both humbling and inspiring. Judge Grady must help to continue the tradi-

tion in her new capacity. I have no doubt that she will, in part because I know that she, too, remains committed to learning.

The second thing that I have learned—or had strongly emphasized to me—over the past decade and a half is the importance of family. Lindsey Canonie gave me a small sense of that as a law student. One day after class in 1998, she came up to me and said that her father would be in town later in the week; she wondered whether it would be all right if he sat in on our next civil procedure class. She must have seen the terror in my eyes: she quickly reassured me that he was not a lawyer but, rather, a businessman. I mean, it was one thing for me to muddle through, as a first-year law professor, with first-year law students; but an experienced practicing lawyer's being in the room with us would have been, well, unhelpful.

So I invited Tony Canonie in but, nonetheless, kept a close eye on him. He was a model guest, appearing to smile at all my jokes. (That is the only criterion for being a model guest or audience, I would emphasize to you.) Indeed, he sent me a very nice note afterward: I believe that I made sure that it ended up in Dean Eisenberg's hands. Perhaps I figured that it would be impressive because Mr. Canonie, like Howard, is a great fan of the Chicago Cubs (I regret to say).

The relevant point was how impressed I was that Lindsey wanted her father to be a small part of her Marquette Law School experience. Now that I know her so much better, I am scarcely surprised. Not only her husband, Bill, a Marquette lawyer himself, but their children, Lucy and Liam, were all great participants in her campaign for judge. I know this personally because one evening I ran into Bill, Lucy, and Liam on the campaign trail, as I was accompanying my wife, Anne Berleman Kearney, to an event in her own campaign for the Whitefish Bay School Board (mercifully, unopposed this time). I thought them maybe a closer family (as our children were at home), but, looking back, I realize that, in fact, it was that Bill and Lindsey's children are younger—and thus less able to exercise free will.

In all events, to conclude this second point (and my remarks), it is well to be part of a great tradition—that of the Marquette Law School or of the Milwaukee County Circuit Court. But there is no substitute for being part of a great family. Warm congratulations not only to Judge Lindsey Grady but also to the entire Canonie and Grady families. This is a great day for them—and for all of us. Thank you. ■

Tom Morrison: Admiral Sails Far, Steering “People, Money, and Facilities”



Tom Morrison, L'77, says that he learned a lot of lessons he might not have expected in a career as a lawyer for the U.S. Navy and as associate dean at George Washington University Law School. Here's one very pertinent example:

Don't put the mechanicals inside the building. Put them on the roof.

That was his firm advice when Dean Joseph D. Kearney invited Morrison to stop in at a meeting with Marquette University Architect Thomas P. Ganey and Professor Michael K. McChrystal during a visit to Milwaukee a few years ago. Morrison looked at the plans for what is now Eckstein Hall. He had been deeply involved in renovation of the George Washington University Law School buildings.

“I got pretty good at it,” he says. “One thing I learned after eight years of renovation is that you never have enough room.” When he looked at the Eckstein Hall plans, he recalls, he realized that there wouldn't be any room to expand the building outward in the future because of the property it would be on. So he urged creating as much room as possible inside. At his strong recommendation, the heat, ventilation, and air conditioning went on the roof, even though this change of plans was expensive. And in the space where they were initially to go? That's the fitness center now. So

thank Tom Morrison, the many of you who benefit from that facility.

Morrison is a man with a ton of stories: How his advice helped shape the mid-1990s television series, *JAG*, based on the Navy's Judge Advocate General (JAG) Corps. About his work in Washington as a liaison between Congress and the Navy. How he was on the set for the filming of the famous scene in *A Few Good Men*, where Jack Nicholson says—to Tom Cruise's “I want the truth!”—“You can't handle the truth!” And many more.

Morrison grew up in the Chicago suburb of Maywood and got his bachelor's degree in 1969 from Marquette. He was also commissioned into the Navy through the ROTC unit at Marquette, and in 1974 he was invited to be in the first group of Navy sailors who could get their way paid to law school if they agreed to join the JAG Corps for six years. “It was the end of the Vietnam conflict, and lawyers were not coming into the Navy,” he says. Was Morrison interested in law school until then? “Absolutely not.” And it was already July. But Marquette Law School offered him the chance to enroll for that fall.

“What I got out of Marquette Law School was a tremendous education in the law that served me so well for the next 20-some years, which I spent as a Navy lawyer,” Morrison says. Early in his work, he was assigned as a special U.S. Attorney for Hawaii. On



• **Marquette law degree:** 1977

• **Professional status:** Retired after career in Navy JAG Corps and at George Washington University Law School

• **Family:** Married, three grown children, two grandchildren

Valentine's Day 1978, about nine months after graduating from law school, he argued several cases before the U.S. Court of Appeals for the Ninth Circuit in San Francisco. Being able to do that at that stage of his career showed how well-prepared he was when he left law school—and how he had great opportunities as a Navy lawyer.

Morrison retired from the Navy in 1998 with the rank of rear admiral. His accomplishments included work as a trial and environmental lawyer, in the recruitment and assignment all over the world of hundreds of lawyers, and as a military personnel and operations expert. He had been, in essence, the managing partner in the JAG Corps, or the chief operations officer of a worldwide law firm with 43 offices.

Morrison then became associate dean for administrative affairs at George Washington University Law School in Washington, D.C. He retired last year. What did the Navy and law school jobs have in common? In both, he said, he dealt a lot with “people, money, and facilities”—and he did things he relished.

One other aspect of Marquette's impact on Morrison: As an undergraduate, he met the woman who became his wife. He and Karen have been married 40 years and have three children and two grandchildren. The senior Morrisons live in Springfield, Virginia, south of Washington.

As for Eckstein Hall, Morrison plays down his role but says, “I think you've come up with a great law school. The end result is absolutely outstanding.” ■

1956

Claude Kordus has been elected to the board of directors for Cal-Bay Systems in northern California.

1961

Philip R. Brehm received the Brown County Bar Association's Lifetime Achievement Award at a luncheon in October in Green Bay.

1968



Frank J. Daily has been appointed by the Wisconsin Supreme Court to serve a three-year term on the Wisconsin Judicial Commission. Daily is a retired senior

partner from Quarles & Brady, where he was part of the firm's product liability, toxic tort, and personal injury litigation practice group.

1979

Timothy L. Bailey was sworn in as a circuit court judge in Broward County, Fla., on January 18, 2013.

James A. Wynn, a judge of the U.S. Court of Appeals for the Fourth Circuit, has been named to the American Bar Association's Task Force on the Future of Legal Education. He has chaired the judicial division of the ABA and was one of the drafters of the 2007 ABA Model Code of Judicial Conduct.

1981



Kay N. Hunt is chair of the appellate section at Lommen Abdo, Minneapolis. She also serves as an adjunct professor at the University of St. Thomas School of Law.



1982

Joseph S. Heino recently released a book titled *Intellectual Property for the Medical Professional*. He is a shareholder with Davis & Kuelthau in Milwaukee.

Kathleen A. Gray has been selected as a Fellow of the Wisconsin Law Foundation. She is a partner in the Milwaukee office of Quarles & Brady and is a member of the firm's trusts and estates practice group.



Jerome M. Janzer has been reelected to Reinhart Boerner Van Deuren's board of directors for a three-year term. In addition to being CEO of the firm, Janzer co-chairs Reinhart's real estate

practice and is a member of the firm's business law practice.

1984

Tracey L. Klein, Milwaukee, has been named co-chair of Reinhart Boerner Van Deuren's health care practice.

1985



Mark A. Cameli was honored as "Citizen of the Year" at the nineteenth annual Columbus Day Awards Banquet, sponsored by the Justinian Society of Wisconsin. He is a shareholder in the

Milwaukee office of Reinhart Boerner Van Deuren and chairs the firm's white-collar litigation and corporate-compliance team.

Peter M. Roan has joined the Los Angeles, Calif., office of Crowell & Moring. He is a partner in the firm's health care group and focuses his practice on business litigation in the health care and insurance industries.

1987

Steven M. Biskupic has opened Biskupic & Jacobs in Mequon, Wis. The firm will concentrate on complex business disputes, government investigations, appellate work,

and white-collar criminal defense. Biskupic was with the Milwaukee office of Michael Best & Friedrich and previously served as U.S. Attorney for the Eastern District of Wisconsin.

1990



Jeffrey A. Pitman, Milwaukee, has been elected president of the Wisconsin Association of Justice for 2013. His firm, Pitman, Kyle, Sicula & Dentice, focuses on representing victims of serious injury and nursing home abuse and neglect.

Paul F. Heaton has been elected a shareholder at Godfrey & Kahn. He is with the firm's Milwaukee office and is part of the litigation practice group.

1992

David Beine has been named general counsel of Hydrite Chemical Co., Brookfield, Wis. David and his wife, Paula (Vander Putten) Beine, Bus Ad '89, live in West Bend with their five children.



Christine Liu McLaughlin was named "Woman of the Year" by the National Association of Professional Women and a "2012 Woman of Influence" in the Inspiration category by

the *Milwaukee Business Journal*. McLaughlin is a shareholder in Godfrey & Kahn's labor, employment, and immigration practice group.

1993

Michael G. Goller, Milwaukee, has been named chair of Reinhart Boerner Van Deuren's tax practice.

1994

Michael H. Doyle has been named vice president for institutional advancement at Loras College in Dubuque, Iowa. He has been part of the college's advancement division since 2007.

1995

Shawn M. Eichorst has been named athletic director at the University of Nebraska. Eichorst previously was athletic director at the University of Miami in Florida.

David B. Schulz, Milwaukee, has been named chair of Reinhart Boerner Van Deuren's banking and finance practice.

1998

Michael P. Cotter and his wife, Julie, welcomed their son, Thomas Daniel Cotter, on June 25, 2012. Cotter is with the Walworth County Corporation Counsel in Elkhorn, Wis.

1999

Brian C. Randall has been named one of 2013's "Forty Under 40" by the *Milwaukee Business Journal*. He is a shareholder at Friebert, Finerty & St. John.

2000

Lindsey Grady was sworn in as Milwaukee County Circuit Court Judge for Branch 23 on August 1, 2012, and has been assigned to the misdemeanors division. Grady was elected to the position on April 3, 2012.

Phillip R. Rangsebsin has joined the Office of Legal Counsel for the Wisconsin Department of Health Services as an attorney. He is also an officer in the Judge Advocate General Corps, U.S. Army Reserves. He was mobilized in 2010–2012 at Fort Sam Houston, Texas, where he served as the deputy regional counsel for the Office of Soldiers' Counsel, Region II, assisting soldiers with medical legal issues.

John Martin Yackel, Wausau, Wis., has been appointed to the Lincoln County Circuit Court, Branch 2, by Wisconsin Governor Scott Walker.

Rebecca Cameron Valcq has been named one of 2013's "Forty Under 40" by the *Milwaukee Business Journal*. She is regulatory counsel for We Energies.



Wendy Selig-Prieb: Life After the Brewers



“What woman doesn’t want to meet a woman who sells great clothes?” So meet the woman who said that: Wendy Selig-Prieb, president of Worth New York, which sells high-end clothes to “women of influence” online and through trunk shows.

Yes, that’s the same Wendy Selig-Prieb who was CEO of the Milwaukee Brewers baseball club in the late 1990s and early 2000s, years in which, on the one hand, Miller Park was constructed but, on the other hand, the team consistently had losing seasons. She has no regrets about what she did then or what she is doing now.

“I am really fortunate because I love what I do and I really love where my life is at,” Selig-Prieb says. “I wouldn’t trade a day of any part of my life.”

After leaving the Brewers, Selig-Prieb, L’88, her husband, Laurel Prieb, and their daughter, Natalie, moved in 2005 to Scottsdale, Arizona. Selig-Prieb said that she had few friends in Arizona upon her arrival, had been a happy customer of Worth New York, and thought that selling clothing in the personalized manner the company uses would be a good way to meet women. The work also matched what she calls her entrepreneurial streak, and it allowed her to lead a “more balanced” lifestyle, including a lot of time with her daughter, who is now 14 years old and in ninth grade.

Selig-Prieb developed one of the most successful Worth businesses in the country. She was approached in 2012 by executives of the parent company, the Worth Collection, Ltd., to become president of the brand. The brand operates through about 300 agencies across the country and has revenue approaching \$100 million a year.

“I did a lot of soul-searching,” Selig-Prieb said. She didn’t want to give up a life that she thought well balanced, but she loved the business and the clothes. She felt that the company was helping provide opportunities empowering women—“which has always been a passion for me.” So her answer was “Yes.” She continues to live in Scottsdale but travels often to New York.

Her passion for baseball remains strong, as is no surprise not only in light of her own past but given

that she is the daughter of baseball commissioner Allan H. “Bud” Selig and that her husband is the Vice President for Western Operations for Major League Baseball. She said she watches almost every

Brewers game on television or, occasionally, in person. “I’m so excited about where the franchise is today, the success both in terms of attendance and on the field,” she says. During her time as CEO, Doug Melvin was hired as general manager, and the franchise’s minor league farm system was revitalized. The farm system has produced players such as Prince Fielder, Rickie Weeks, and Corey Hart.

“My heart and soul will always be with the Brewers,” she said. Selig-Prieb played an important role in the building of Miller Park, the retractable-roof stadium that opened in 2001. The effort was highly controversial and the politics intense. How does she feel about the stadium now? “I love it,” she says. “It is absolutely the right ballpark for Milwaukee and Wisconsin.”

Now 52, Selig-Prieb practiced law at Foley & Lardner before becoming general counsel for the Brewers. She says, “I absolutely believe that my legal training, my legal background, even though I am not practicing, is something that helps me all the time in business. One of the great things about law school is, whether ultimately it’s in private practice, whether you go into politics, whether into business, it truly provides a background that you benefit from every day.”

Selig-Prieb says that one of the things she learned from the tough times she went through heading the Brewers was the courage of her convictions. “If you do the right thing, in the long run it will turn out,” she says. “In the short run, sometimes you go through pain. But you have to have that vision and that conviction.” ■

• **Marquette law degree:** 1988
 • **Professional status:** President, Worth New York
 • **Family:** Married, one daughter



Jim DeJong: A Life Well Founded

- **Marquette law degree:** 1978
- **Professional status:** President, O’Neil, Cannon, Hollman, DeJong & Laing
- **Family:** Married, two grown children

“I grew up a P.K.,” Jim DeJong says. A preacher’s kid. Son of the pastor of Presbyterian churches in Portage and then Fond du Lac, Wisconsin, in the 1950s and 1960s.

Certain values tend to become ingrained in you with that background: Family and church, for sure. A general sense of doing things that will last, that are solid and good. A deliberate, careful approach to the path of your life, both professionally and personally: DeJong (pronounced “dee-young”) calls this following “the law of the harvest—don’t decide to plant a seed on Friday and expect to harvest on Monday.”

You can see that philosophy at work in DeJong’s career. He left Fond du Lac to go to Carroll College in Waukesha, graduating in 1973. He returned to Fond du Lac to work for a bank, and, after a couple years, enrolled at Marquette Law School, intending to return to Fond du Lac.

In 1976, in his second year of law school, he got a position as a clerk at a small Milwaukee law firm specializing in serving businesses. After graduating in 1978, he stayed on at the firm. Thirty-five years later, he is president of what is known as O’Neil, Cannon, Hollman, DeJong & Laing, a firm with 36 attorneys. It’s been a lot of fun, he says, partly because of the firm’s insistence on observing a “no-jerks” policy in hiring.

The firm’s “sweet spot,” as DeJong puts it, is working with closely held companies of all sizes. DeJong’s own practice has focused on would-be buyers and sellers of businesses. Even if that means,

by definition, that he is involved in situations in which people are going through big changes, his approach is to help them do it in a way that is steady and carefully grounded. His advice for those selling a business starts with having your house in order and having a realistic handle on the value of the business. The fewer surprises there are, the better.

His personal life is also marked by steady commitment to good principles and goals. His wife, Patty, is also originally from Fond du Lac. They are strongly involved in their church, Crossroads Presbyterian in Mequon, where Jim was elected an elder 10 years ago. They have lived in Mequon for many years, and it was there that they raised their children—twins, who are now in their mid-20s. Their daughter got married at Crossroads; their son plans to be married there.

As volunteers, Jim and Patty have been involved in civic arts efforts, including the Lakefront Festival of the Arts, Friends of Art, and the United Performing Arts Fund. Jim is a trustee of his alma mater, now known as Carroll University.

At 61, DeJong is not looking to retire, but he says he might change his work style a bit. A priority now: Making sure he and his partners have built something that will last. “We couldn’t be happier with where the firm is positioned,” he says, and from the way he speaks of his work, his family, and his life in general, there is no doubt that he would say the same for all of it. ■

2001

Michael P. Maxwell co-presented a national webinar, "Bankruptcy Basics Boot Camp," sponsored by National Business Institute. He is a Chapter 7 trustee in the Eastern District of Wisconsin.

2002



John T. Reichert has been elected a shareholder at Godfrey & Kahn. He is with the firm's Milwaukee office and is part of the banking and financial institutions practice group.

2003

Kevin Kreuser has been named assistant general counsel of P.F. Chang's China Bistro, Inc., based in Scottsdale, Ariz. His work focuses on international development, intellectual property, contracts, and data privacy and security. He and his wife welcomed their second child, Hudson Thomas Kreuser, on July 16, 2012.

Kirk L. Deheck has been elected shareholder at Boyle Fredrickson in Milwaukee. He has been with the firm since 2006 and focuses his practice on the preparation and prosecution of patent and trademark applications and on intellectual property opinions and enforcement.



Michelle R. Pierce has been promoted to vice president, managing attorney at Assurant Health in Milwaukee. She has been with Assurant Health since 2003.

Patrick J. Fleis has become a partner at Ryan Kromholz & Manion in Brookfield, Wis. His practice focuses on the medical and chemical arts, mainly directed toward patent procurement and client portfolio management.

Natalie R. Remington has been appointed to the Wisconsin Supreme Court's Appointment Selection Committee. She is with the Milwaukee office of Quarles & Brady.

2004



Robert W. Habich has been named a shareholder at Reinhart Boerner Van Deuren. He is part of the firm's office in Waukesha, Wis., and focuses his practice on real estate law.

David A. Strifling has rejoined the Milwaukee office of Quarles & Brady as of counsel in the environmental practice group.



Maria L. Kreiter has been appointed to the Milwaukee Bar Association Foundation Board of Directors. Kreiter is a member of the litigation practice group at Godfrey &

Kahn's Milwaukee office. Her practice focuses on complex business litigation.

Rachel Monaco-Wilcox has been named one of 2013's "Forty Under 40" by the *Milwaukee Business Journal*. She is an assistant professor and chair of the Justice Department at Mount Mary College.



Paul M. Ratzmann has been named a senior attorney at the Bloomfield Hills, Mich., office of Rader, Fishman & Grauer. His practice focuses on patent prosecution with an emphasis on

mechanical and electromechanical components. Ratzmann was a patent attorney in Milwaukee and, previously, a product development engineer with General Electric, where his research in medical equipment and components resulted in 11 patents.



Thomas J. Krumenacher has been elected to partnership at Quarles & Brady. He is with the firm's Milwaukee office and is a member of the intellectual property practice group.

2005



Andrew P. Beiffuss has been elected to partnership at Quarles & Brady. He is with the firm's Milwaukee office and is a member of the litigation and corporate services practice groups.

Beth Conradson Cleary received the Young Alumna of the Year Award from the Alpha Sigma Nu Danihy Alumni Club of Southeastern Wisconsin. She currently serves as deputy director of the retirement system for the City of Milwaukee.

Anthony Cotton was sworn in for a second term as a member of the board of directors of the National Association of Criminal Defense Lawyers (NACDL) at the association's 54th annual meeting in San Francisco, Calif. He is a trial attorney at Kuchler & Cotton in Waukesha, Wis.

Sven E. Skillrud accepted the position of director, executive compensation, with Time Warner Cable Inc. and relocated to Charlotte, N.C. He previously was a senior associate attorney with Godfrey & Kahn in Milwaukee.

2006

Mathew D. Pauley has been accepted as a Fellow of the California Health Care Foundation's Health Care Leadership Program. He is the first clinical ethicist accepted into the fellowship program in the foundation's 12-year history. Pauley is the director of medical bioethics for the San Bernardino County Service Area at Kaiser Permanente.



Randall H. Green was recently named shareholder at Meyer Capel in Champaign, Ill. He focuses his practice on business and real estate transactions. >>

SUGGESTIONS FOR CLASS NOTES may be emailed to christine.wv@marquette.edu. We are especially interested in accomplishments that do not recur annually. Personal matters such as wedding and birth or adoption announcements are welcome. We update postings of class notes weekly on the Law School's website, law.marquette.edu.

2007



Sara (Scoles) and **Todd Krumholz**, Dallas, Tex., welcomed their first child, Harper Jeane, on August 6, 2012.

Jacob A. Manian has joined the firm of Fox, O'Neill & Shannon in Milwaukee, as an associate in its litigation practice. Manian was previously an assistant district attorney and principal assistant corporation counsel with Milwaukee County.

Susan M. Roth has been named a partner at Kohn Smith Roth in Milwaukee. She focuses her practice on criminal defense.

Laura S. Platt recently published an article, "Informed Consent: Taking the Medicine Out of Medical Malpractice," in *Risky Business*, the newsletter of the Wisconsin Society for Healthcare Risk Management. Platt is an associate in the medical liability and employment law practice groups at Cassidy Schade, in its offices in both Milwaukee and Libertyville, Ill.

2008

Peter B. Harbach has become a partner at Hooper Law Office in Appleton, Wis. His practice is dedicated to estate and wealth transfer planning, long-term care planning, and veteran pension planning.

Christopher J. MacGillis and his brother, **Ryan S. MacGillis**, L'10, announce the expansion of MacGillis Wiemer, with a new Wauwatosa, Wis., address.



Joseph F. LaDien has joined the Milwaukee office of Mallery & Zimmerman as an associate. LaDien practices with the office's litigation group and is president of the Milwaukee Young Lawyers Association.



Katherine Peckham has joined Fredrikson & Byron in Minneapolis, Minn. She is part of the firm's trusts and estates group and focuses her practice on minimizing estate, gift, and

generation-skipping transfer taxes for individuals and families.

2009



Stacy A. Alexejun has joined the Madison office of Quarles & Brady as an associate in the firm's commercial litigation group. Before joining the firm, she served as a law clerk to Justice

Annette Kingsland Ziegler, L'89, of the Wisconsin Supreme Court.



Allison Cimpl-Wiemer was appointed to the Association for Women Lawyers board of directors. She is an associate in the Milwaukee office of Quarles & Brady and a member of the firm's commercial litigation group.

Patrick J. Bodden has joined the Milwaukee office of von Briesen & Roper. He advises individuals and business owners in all aspects of personal and business planning.

2010

Danica Zawieja, Keshena, Wis., received the 2012 U.S. Attorney National Crime Victims Service Award for the Eastern District of Wisconsin. She is a domestic violence and sexual assault prosecutor for the Menominee Indian Tribe of Wisconsin.

2012



Stephane P. Fabus has joined Hall Render Killian Heath & Lyman as an associate in the firm's Milwaukee office. She is part of the health practice group.

Noelle A. Bobbe has joined the Milwaukee office of Quarles & Brady as an associate. She is with the firm's real estate practice group.

Rebeca M. López has joined the Milwaukee office of Godfrey & Kahn. She is part of the firm's labor, employment, and immigration practice group.

Alumni Awards

Helping others: That's a common denominator among the four Marquette lawyers selected by the Law Alumni Association Board to receive awards this spring. Each has earned a reputation for success in legal or corporate settings, and each has a record of service to others.

Alumnus of the Year



John S. Shiely, L'77.

Shiely went to law school because he thought that the background would assist in a corporate career. He was right. "My Marquette Law School experience was invaluable to me in a corporate environment that has been ever more impacted by legal and regulatory challenges,"

he says. Shiely served as chairman, CEO, and president of Briggs & Stratton, the Wauwatosa-based manufacturer. He also co-authored a book, *The EVA Challenge: Implementing Value-Added Change in an Organization*, has studied corporate governance at Harvard Law School, and guest-lectures on mergers and acquisitions at Marquette Law School. Shiely sits on several corporate boards. His numerous charitable activities include serving as chair of Children's Hospital of Wisconsin. A lifelong rock music fan, he also sits on the board of the Rock & Roll Hall of Fame in Cleveland.

Lifetime Achievement Award



Margadette Moffatt Demet, L'50.

Demet prefers not to meet her clients' opposing parties in court. She'd rather meet them in a conference room for mediation. Demet's practice has concentrated on estate planning, probate and trust work, family, elder, and disability law, and she is a certified mediator. That includes

work as a volunteer mediator at children's court. "The problems faced in many of these cases cannot easily be solved in the courtroom," she says. "When we are able to bring parties together in mediation, they often craft creative solutions and actually commit to making them work." Demet has served as a leader in professional organizations and has been a volunteer in numerous Milwaukee-area efforts, including those of several Catholic organizations. "I am an Ignatian Associate and take seriously the vows of fidelity to the Gospel, apostolic availability, and simplicity of life," she says.

Howard B. Eisenberg Service Award



Kristin A. Occhetti, L'07. During a summer externship as a law student at the Legal Aid Society, Occhetti says that she was surprised to discover the demand for such services as basic estate planning. The experience was a launching point for her passion for pro bono work. An associate at Quarles & Brady,

she has undertaken hundreds of hours as a volunteer lawyer. That includes continuing to work with the Legal Aid Society and pioneering the Milwaukee Bar Association Pro Bono Hospice Program. She also co-chairs the Children's Hospital Pro Bono Guardianship Program and the Milwaukee County Guardianship Assistance Program. "What I have learned from my time at Marquette is that no matter what area of law you practice, there are always opportunities to assist those less fortunate than you," she says.

Charles W. Mentkowski Sports Law Alumnus of the Year



Eryn M. Doherty, L'00.

A love of sports and an eagerness to follow in her father's footsteps as a lawyer led Doherty to Marquette Law School and its sports law program. But add in her love of movies and television if you want to identify the roots of Doherty's career. Doherty

worked in labor law after graduation, thinking that it could lead to a position in the sports industry. She worked as an attorney for the National Labor Relations Board before joining Fox Entertainment Group as senior attorney for labor relations. She then moved to Sony Pictures, where she is assistant general counsel/executive director in labor relations. Doherty, who lives in Santa Monica, Calif., has volunteered for the Leukemia and Lymphoma Society and Big Brothers, Big Sisters of Greater Los Angeles.



DARK MONEY.

Join us this fall when Professor Heather Gerken takes up “dark money” and the future of political parties in the Boden Lecture. Mark your calendar or follow this magazine for Marquette Law School’s outstanding annual lecture series.

SPRING 2013

HALLOWS LECTURE

March 4, 2013

*The Affordable Care Act
Case in the Supreme Court:
Looking Back, a Year After*

Paul D. Clement
Bancroft PLLC
Former Solicitor General
of the United States

NIES LECTURE in Intellectual Property

April 10, 2013

*Patents, Markets, and
Medicine in a Just Society*

Arti K. Rai
Elvin R. Latty Professor of Law
Duke Law School

Upcoming

FALL 2013

BODEN LECTURE

October 7, 2013

*Dark Money and the
Future of Political Parties:
The Real Problem with
Citizens United*

Heather K. Gerken
J. Skelly Wright Professor
Yale Law School

BARROCK LECTURE in Criminal Law

November 18, 2013

Nancy J. King
Lee S. and Charles A. Speir Professor
Vanderbilt Law School

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Dear Chicagoland Reader,

You have a stake in the economic future of the Chicago region. And you want, we believe, useful and insightful information on the region's future beyond the daily headlines. That's why we are sending you this issue of *Marquette Lawyer* magazine. This past year, Marquette University Law School, together with the *Milwaukee Journal Sentinel*, convened a symposium, "Milwaukee's Future in the Chicago Megacity." This magazine includes two provocative papers arising from that conference, plus an overview of the prospects for regional economic cooperation in the tri-state region. I think you will find these articles—and the rest of the magazine—well worth your time.

Joseph D. Kearney
*Dean and Professor of Law
Marquette University*

