If the Supreme Court Goes Rogue

Exclusive: George Washington and James Madison, two key Framers of the Constitution, saw nothing wrong with issuing mandates to citizens (to buy muskets for a militia), but today's Republican majority on the Supreme Court seems set on going rogue and rewriting the founding document to say otherwise, Sam Parry writes.

By Sam Parry

What happens to a Republic under a written Constitution if a majority of the Supreme Court, which is empowered to interpret that Constitution, goes rogue? What if the court's majority simply ignores the wording of the founding document and makes up the law to serve some partisan end? Does that, in effect, turn the country into a lawless state where raw power can muscle aside the democratic process?

Something very much like that could be happening if the Supreme Court's five Republicans continue on their apparent path to strike down the individual mandate at the heart of the Affordable Care Act. In doing so, they will be rewriting the Constitution's key Commerce Clause and thus reshaping America's system of government by fiat, rather than by the prescribed method of making such changes through the amendment process.

The only way the five Republicans can strike down the individual mandate and with it probably the entire law is to ignore the literal and traditional interpretations of the Commerce Clause by redefining the word "regulate" to mean something it has never meant before and that the Framers of the Constitution never intended.

The plain text of the Commerce Clause Article 1, Section 8, Clause 3 is so straightforward that a middle-school child should be able to understand it. Here it is: "Congress shall have Power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

And the word "regulate" means today what it meant then, as was noted in a Nov. 8, 2011, ruling written by Judge Laurence Silberman, a senior judge on the U.S. Court of Appeals for the District of Columbia Circuit, a conservative appointee of President Ronald Reagan.

In upholding the individual mandate as constitutional, Silberman wrote: "At the time the Constitution was fashioned, to 'regulate' meant, as it does now, '[t]o adjust by rule or method,' as well as '[t]o *direct.*' To 'direct,' in turn,

included ‘[t]o prescribe certain measure[s]; to mark out a certain course,’ and ‘[t]o order; to command.’ In other words, to ‘regulate’ can mean to require action.”

So, for the individual mandate to clear the Commerce Clause hurdle it must be a regulation of commerce among the states. Everyone agrees that health care and health insurance are interstate markets. Check. Everyone also agrees that health care and health insurance are commerce. Check. There’s also no dispute that the individual mandate is a form of regulation. Check.

Judge Silberman went through the same check list and concluded that there was “no textual support” in the Constitution for striking down the individual mandate because the word “regulate” has always included the power to compel people to act.

But the law’s opponents insist that the individual mandate is a unique and improper form of regulation because it forces an American to do something that the person might not want to do it, i.e. go into the private market and buy health insurance.

Yet, in other enumerated powers, this idea of Congress having the power to compel people to act is widely accepted. Take, for example, the draft. While there is not currently a draft, there has been at many points in U.S. history and even now every male citizen, when he turns 18, is required to register for selective service. And, should the draft come back and should you get drafted, you would be legally compelled to serve.

If compelling individuals to risk their lives in war is an accepted use of congressional authority, it is hard to see the logic in striking down the power of Congress to compel individuals to get health insurance.

Washington and Madison

And, despite what the Affordable Care Act’s critics have said repeatedly, this is not the first time the federal government has ordered Americans to buy a private product.

Indeed, just four years after the Constitution’s ratification, the second U.S. Congress passed the Militia Acts of 1792, which were signed into law by President George Washington. The militia law ordered white men of fighting age to arm themselves with a musket, bayonet and belt, two spare flints, a cartridge box with 24 bullets and a knapsack so they could participate in militias.

If one wants to gauge whether a mandate to buy a private product violates the original intent of the Framers, one probably can’t do better than applying the

thinking of George Washington, who presided at the Constitutional Convention in 1787, and James Madison, the Constitution's architect who served in the Second Congress and argued for the militia law. [For more, see Consortiumnews.com's "Madison: Father of the Commerce Clause."]

So, it would seem to be a rather clear-cut constitutional case. Whether one likes the Affordable Care Act or not, it appears to fall well within the Constitution and historical precedents. By the way, that's also the view of Ronald Reagan's Solicitor General Charles Fried who said this in a March 28 interview:

"Now, is it within the power of Congress? Well, the power of Congress is to regulate interstate commerce. Is health care commerce among the states? Nobody except maybe Clarence Thomas doubts that. So health care is interstate commerce. Is this a regulation of it? Yes. End of story."

However, if Chief Justice John Roberts and the Court's four other Republicans go in the direction they signaled during oral arguments and strike down the individual mandate, they will not merely be making minor clarifications to the noun "commerce" and the adjective "interstate" – as the Court has done previously – but they will be revising the definition of the verb "regulate" and thus substantially editing the Constitution.

Amendment Process

When it comes to editing the Constitution, there is a detailed process spelled out for how you do that. It's in Article 5 of the Constitution and it's called the amendment process something in which the Judicial Branch plays absolutely no role. The process for revising the founding document requires votes by two-thirds of both the House and the Senate and the approval of three-quarters of the states.

Besides representing an affront to the nation's constitutional system, an end-run by a narrow majority of the Supreme Court taking upon itself to rewrite an important section of the Constitution would drastically alter the balance among the three branches of government.

Such an action would fly in the face of the longstanding principle in constitutional cases that the Supreme Court should give deference to legislation passed by the government's Legislative Branch and signed into law by the President as chief of the Executive Branch. Under that tradition, the Judicial Branch starts with the assumption that the other two branches have acted constitutionally.

The burden of proof, therefore, should not be on the government to prove that

the Constitution permits a law but rather on the plaintiffs to demonstrate how a law is unconstitutional.

Yet, during oral arguments this week, Republican justices pressed the government to prove that the Affordable Care Act was constitutional and even demanded that Solicitor General Donald B. Verrilli Jr. put forward a limiting principle to the Commerce Clause to speculate about what *couldn't* be done under that power.

Justice Anthony Kennedy several times raised the point that the individual mandate changes the relationship between citizens and the federal government in, as he put it, "fundamental ways" and thus the government needed to offer a powerful justification. In his questions, however, it was not entirely clear why Kennedy thought this, given the fact that Congress has previously enacted many mandates, including requirements to contribute money to Social Security and Medicare.

In the March 28 interview, former Solicitor General Fried took issue with Kennedy's question about this "fundamental" change, calling the line "an appalling piece of phony rhetoric" and dismissing it as "Kennedy's Tea Party-like argument."

Fried noted that Social Security in the 1930s and Medicare in the 1960s indeed were major changes in the relationship between the government and the citizenry, "but this? This is simply a rounding out in a particular area of a relation between the citizen and the government that's been around for 70 years."

On policy substance as well as on constitutional principle, Fried was baffled by the Republican justices' opposition to the law, saying: "I've never understood why regulating by making people go buy something is somehow more intrusive than regulating by making them pay taxes and then giving it to them. I don't get it."

A Noble Rationale

But Kennedy seemed to be fishing for some noble-sounding rationale for striking down the individual mandate. He was backed up by Justice Antonin Scalia who proffered the peculiar argument that if Congress could mandate the purchase of health care, why couldn't it require people to buy broccoli as if any outlandish hypothetical regarding congressional use of the Commerce Clause disqualifies all uses of the Commerce Clause.

This line of reasoning by the Republican justices also ignored the point that the Court's role is not to conjure up reasons to strike down a law, but rather to make a straightforward assessment of whether the individual mandate represents a regulation of interstate commerce and is thus constitutional.

In searching for a rationale to strike down the law, the Court's Republicans also ignored the true limiting principle of any act of Congress the ballot box. If any congressional majority were crazy enough to mandate the purchase of broccoli, the voters could throw that bunch out and vote in representatives who could then reverse the law.

In the case of the Affordable Care Act, Democrats won Election 2008, in part, because they promised the voters to tackle the crisis in U.S. health care. If the voters don't like what was done, they can vote the Democrats out of office in November. The pendulum of democracy can always undo or modify any law through legislative action.

However, what the Republican majority on the Supreme Court seems to be angling toward is a radical change in the longstanding principles behind the Constitution's checks and balances. The five justices would bestow upon themselves the power to not only undo legislation, which has been lawfully enacted by Congress and signed by the President, but to rewrite the founding document itself.

Sam Parry is co-author of *Neck Deep: The Disastrous Presidency of George W. Bush*. He has worked in the environmental movement, including as a grassroots organizer, communications associate, and on the Sierra Club's and Amnesty International's joint Human Rights and the Environment campaign. He currently works for Environmental Defense Fund.

Minnesota Battle Over Israeli Bonds

A legal fight is underway in Minnesota over the state's investment in Israeli bonds that are used to support settlements and other Israeli actions in the West Bank deemed illegal under international law. Sylvia Schwarz, a plaintiff in the lawsuit, explains why she's demanding the state's divestiture.

By Sylvia Schwarz

"I do not think this is a radical call," says Ronnie Barkan, of Boycott From Within (BFW), an Israeli human rights group that advocates boycott, divestment and sanctions (BDS) of Israel until it complies with international law and human rights consensus.

"Simply by investing in the State of Israel, Minnesota inadvertently supports the criminal policies of the State [of Israel], which are detrimental to both

the Palestinians and the Israelis."

Boycott From Within is one of three organizations and 24 individuals listed as plaintiffs in a lawsuit against the State of Minnesota for illegally investing in Israel bonds, bonds which are used to fund projects such as the Separation Wall (ruled illegal in 2004 by the International Court of Justice) and illegal settlement construction and infrastructure (a violation of Article 49 of the Fourth Geneva Convention.

Minnesota is one of more than 75 state and municipalities which holds Israel bonds. Most of these bonds were purchased in the last decade, when the Development Corporation of Israel made a major sales push.

The Minnesota State Board of Investment (SBI) is a state agency which is charged with investing state retirement and pension funds. The SBI members are Gov. Mark Dayton, State Auditor Rebecca Otto, State Attorney General Lori Swanson and Secretary of State Mark Ritchie.

Boycott From Within members are all Israeli citizens living in Israel. They have publicly and enthusiastically endorsed the 2005 Palestinian civil society call for BDS against Israel to force the state of Israel to comply with international law. For this act of free speech (recognized under the International Covenant on Civil and Political Rights), they face lawsuits and civil penalties under Israel's recent "anti-boycott law."

Minnesota Break the Bonds Campaign (MN BBC), which also endorses the Palestinian call for BDS, was formed in 2006 in response to that request for international solidarity. Made up of a diverse group of people from varying occupations, histories of activism, and levels of involvement with the Palestine/Israel issue, members of MN BBC all agreed that providing accurate information to the public was a major obstacle in ending Israel's colonialism and oppression of the Palestinians.

In every respect, the news media, schools and universities, and even culture and entertainment have, until recently, ignored the Palestinian side of the issue. Palestinians, when portrayed in the media at all, have been demonized, equated with terrorists, and dehumanized.

Few stories of Israeli violence against Palestinians are reported in the media, while reports of Palestinian violence against Israelis are repeated over and over again, giving the impression that the latter occur more often than the former. (The UN Office of Coordination of Humanitarian Affairs website shows accurate statistics. See a report comparing incidents of violence versus the number of reports in the mainstream media.)

Three Main Goals

MN BBC has three main goals. The first is to persuade Minnesota to divest from its Israel bonds investments. The second goal of MN BBC is to educate every Minnesotan about the state's involvement in the human rights abuses in Palestine. Since every Minnesota taxpayer pays for the SBI's investments, every Minnesotan is actively involved in the international law violations committed by the Israeli government.

The third goal is to serve as a model for organizations in other states and municipalities that are attempting to divest of Israel bonds. MN BBC is one of the first organizations that have targeted these investments and a vast amount of knowledge and experience has been accumulated within the group.

In early 2011 it became clear to the legal minds in MN BBC that the State Board of Investment had invested in Israel government bonds in violation of Minnesota statutes, which allow investment in government securities of only one foreign country: Canada, and then only with certain restrictions.

Although this seems like an unexciting legal technicality, it is actually a stunning discovery. From available records it appears that the SBI broke the Minnesota law for Israel alone, in order to show solidarity with Israel and to single it out for special favored treatment.

Regardless of the human rights and international law violations that the money buys, regardless of the international community's disapproval of the financing of these crimes, and regardless of the prohibition under Minnesota's own statutes, the SBI showed its favoritism towards Israel by its zeal to invest Minnesota taxpayer funds in a clearly illegal enterprise.

Minnesota has trade relationships and commercial partnerships with many other countries, but in no case (until this lawsuit was filed) did the SBI break Minnesota law to invest in non-Canadian foreign government bonds, *except for Israel bonds*.

Israel defenders often ask why we single out Israel for condemnation. Other countries have equally poor human rights records. Why not decry China's or Iran's abuses? But for which other country are our own state's laws broken to make Minnesota taxpayers complicit in these human rights violations?

We repeatedly demanded that the State Board of Investment divest from Israel bonds on moral and legal grounds but it refused and even purchased more bonds. Because the law prohibits this type of foreign government investment, we filed a lawsuit. The lawsuit has three counts.

The first count states that the investments are illegal according to Minnesota statutes. The second count states that by investing in activities which are clearly illegal according to international law, the State Board of Investment is acting contrary to the U.S. and Minnesota Constitutions which state that international treaties and conventions signed and ratified by the United States, like the Geneva Conventions, are laws of the land.

The third count states that these investments expose the SBI and the Minnesota taxpayers and pensioners, who would foot the bill, to lawsuits brought against them by individuals who have been harmed by Israeli policies under the Federal Alien Tort Statute. In other words, the investments are supplying material support for oppression and Minnesota could be liable for these damages.

Money's Use

It is important to understand how these investments are used. The Bil'in Popular Committee Against the Wall and Settlements, another plaintiff on the lawsuit, is a direct victim of investments made in Israel Bonds.

Since 2004 the Bil'in Popular Committee, which is comprised of villagers from the West Bank town of Bil'in, has been holding weekly non-violent demonstrations to protest the illegal annexation of the village land by Israel for illegal settlements and an extension of the separation wall.

The annexations began in the early 1980s and now more than 60 percent of Bil'in's arable land and several water wells have been confiscated to make way for the wall and Israeli settlements. Although the protests are non-violent, they have been met with extreme violence from the Israeli Defense Forces.

Several demonstrators have been killed (including Bassem Abu Rahmah who died when Israelis fired a tear gas canister directly at his chest, and his sister, Jawaher, who died from inhalation of tear gas). Many injuries have resulted from IDF violent responses to these non-violent protests, and many people, including children, have been arrested and held without charge or trial in "administrative detention."

The confiscation of Palestinian land and resources and the movement of Israeli civilians into occupied territory are clear violations of international law. This is undisputed and acknowledged by the U.S. State Department and when U.S. loan guarantees were given to Israel between 1992 and 1997 to settle immigrants from the Soviet Union, they were expressly forbidden to be used to fund settlement activity in the West Bank.

When Israel violated this provision, the loan guarantees were cancelled. In other words, the U.S. acknowledges that Israel violates international law.

The Geneva Conventions were signed and ratified by the United States. Under the Supremacy Clause, Article 6 of the U.S. Constitution, Minnesota, as well as every other State, is obligated to uphold international treaties ratified by the federal government.

Since the money invested in Israel bonds finances projects which are in violation of a signed and ratified convention, the investments violate both the state's *and* the U.S. Constitution. Again, Israel is favored for special treatment. Minnesota would violate a provision of the U.S. Constitution for no other country.

The Fourth Geneva Convention is not the only international law which Israel violates. Israel was admitted to the UN by Resolution 273, which called for the implementation of Resolution 194, including the return of (or compensation to) the 750,000 refugees who had been ethnically cleansed from their homes within Israel between 1947 and 1949.

The call for the return of the refugees has been reaffirmed many times within the U.N. and by human rights organizations. The personal right to return to one's home is enshrined in the Universal Declaration of Human Rights. Yet Israel has never allowed any of the expelled refugees to return. This is an enormous unhealed personal and national wound for Palestinians which is expressly written into the Israeli system of law (Israel has no constitution) in order to create and maintain a Jewish majority.

A Palestinian Refugee

One of the 750,000 refugees from 1948, and another plaintiff on the MN BBC lawsuit, is my husband, Nadim Shamat. After growing up in Beirut, Lebanon, and attending the American University of Beirut, he immigrated to the United States, where I met him. As a former employee of a state agency, he is a recipient of pension funds managed by the State Board of Investment.

When Nadim was born, in 1945, my maternal grandmother was being liberated from Bergen Belsen, the Nazi concentration camp, after two horrific years of slave labor and starvation. She and my mother, the only survivors in her family, spent the next few years trying to salvage what was left of their former lives and finally made their way to British Columbia, where my parents met.

Understanding the personal and family trauma through which my family lived makes me very aware of the pain of unhealed traumas.

Because of Israel's racist laws granting special privileges to Jews and denying those privileges to non-Jews, I have the "right" to "return" to Israel any time I want (even though my background is European and the most recent of my

ancestors to live there were there at least 2,000 years ago) and take citizenship there.

I can purchase property managed by the Jewish National Fund and held for Jews only. I can live in a Jewish-only community within Israel, the West Bank, or the Golan Heights. But my husband, who was born in Jaffa, who left involuntarily, who lost all his possessions, and the community that would have supported him as he grew up, is not allowed to return to his actual homeland. Before funding Israel's racist and colonialist policies, Americans should consider the fundamental unfairness of this situation.

Each of the 27 plaintiffs on the lawsuit against the SBI gives a unique reason for the state to divest from Israel bonds (see some of the stories here.) The judge, however, has only to rule on one count in our favor: the mundane legal technicality that foreign government securities are illegal investments according to Minnesota law, and order the SBI to divest from its Israel bonds.

It appears to be such a clear legal case, and if it were any other country, it would never have required a lawsuit. But this is Israel, the country to which the U.S. gives military aid of more than $3 billion per year, more than any other country in the world.

This is Israel, whose international law violations the U.S. upholds and protects in the UN Security Council. This is Israel, to which the I.R.S. grants tax-exempt charitable status to finance ethnic cleansing through the Jewish National Fund . This is Israel, whose prime minister received overwhelming applause and 29 standing ovations in Congress that were, in the words of Thomas Friedman, "bought and paid for by the Israel lobby."

So this lawsuit, though clear and solid in its legal foundation, might not win in court. Judges are elected in Minnesota. They are subject to the same types of pressures as other elected officials. But we don't believe that a loss in court is necessarily a setback. We have made enormous strides in educating people around the state and the country about Israel and Palestine.

Our membership is growing and we have even had a presence in the mainstream media. We believe our goals of reaching out across the state and the country and bringing forth the Palestinian side of the story can only be furthered by this effort. We are committed to justice, freedom, and equal rights for all and we believe our efforts will bring Palestinians closer to this goal.

Sylvia Schwarz is a member of the Core Team of Minnesota Break the Bonds Campaign and a plaintiff on the lawsuit against the State. She is married with two children and works as an engineer in St. Paul, Minnesota.

National Outrage over Trayvon Case

Despite attempts in the right-wing media to smear 17-year-old Trayvon Martin with references to minor school disciplinary problems, the overall reaction across the United States has been outrage over his slaying and the lack of an arrest, what Sherwood Ross calls a positive change in a nation with a long history of racism.

By Sherwood Ross

The tragic killing of Trayvon Martin in Sanford, Florida, has provoked national outrage and is also the subject of a Justice Department probe. This is a far different response from the virulent racist America of a century ago, when white America and Washington were indifferent to such episodes.

The outrage sweeping the country today over the young man’s slaying suggests something very important has changed for the better.

Back in the 1920s, when the Ku Klux Klan was at the pinnacle of its sadistic influence, as many as 1,000 lynchings of black men took place in a typical year and any national outcries against them were muted. Klansmen could murder in cold blood and go to work the next morning as if nothing had happened.

White Americans, generally, did not get upset over lynchings. Ku Klux Klan members often held posts of influence in their communities, particularly in the South. The murdered blacks had few, if any, allies in the white communities. Presidents such as Woodrow Wilson were themselves racist.

Not far from where Trayvon Martin was shot down, some six decades earlier on Christmas Eve, 1951, the NAACP’s Rev. Harry T. Moore and his wife were murdered by KKK dynamiters with a bomb planted under their bedroom.

I remember walking in a small, largely African-American protest march in Rev. Moore’s memory the following New Year’s Day through the streets of downtown Miami. Perhaps there were some sympathetic white onlookers, but I do not recall any.

Only four years later, though, the murder of 14-year-old Chicagoan Emmett Till in Money, Mississippi, for allegedly whistling at a white woman, created huge street demonstrations on Chicago’s South Side. Listening to the orators addressing the crowds, I had the welcome feeling the black community, at the

least, was not going to stand for it any more.

Too many African-American veterans from World War II were asking, “What did we fight for to be treated this way?” The outrage was fierce as Till’s killers were acquitted of his torture and murder. Till’s Mother insisted on an open casket funeral so the public could witness how the killers had brutalized her son. Protected by laws against double jeopardy, after their acquittal, the killers casually admitted their guilt and walked free.

It has been said that Till’s murder was the spark that ignited the civil rights movement. In that struggle, still unfinished, the introduction of the non-violent response by Rev. Martin Luther King created vast sympathy for oppressed black citizens.

The Montgomery bus boycott impressed the nation with their courage and determination and their struggle for equal rights and opportunities. By 1963, the climate had so changed that King’s “I Have a Dream” speech at the Lincoln Memorial generated an overwhelming positive national response.

Following this remarkable address, the civil rights cause accelerated rapidly. The continued sacrifices of both blacks and whites alike had put a large segment of America’s white population on the side of social justice.

In June, 1966, when James Meredith was shot and wounded in Mississippi, the shooter was apprehended within minutes by the local sheriff and put on trial and convicted an outcome that would have been unthinkable a decade earlier.

The day after the shooting, in my capacity as Meredith’s press coordinator, I told an NBC “Today Show” audience that his several companions planned to finish his March Against Fear, and invited people of good will to join us. Thousands from all races responded over the next few weeks so that the renewed march became, literally, a turning point and victory celebration over Jim Crow in Mississippi. (Meredith recovered sufficiently from his wounds to rejoin the march as well.)

Voting rolls were opened to blacks and we received the support of many white Mississippi residents who had been waiting for an opportunity to step forward and speak up for racial equality but had been afraid to do so.

In spite of all the civil rights movement has achieved, a descriptive term that can still be applied to black communities today, unfortunately, remains “plight.” The statistics on black-white disparities in income, housing, justice and education remain profound.

Administration after administration, including the present one, has failed to

make amends for what is now four centuries of historic racism. Trayvon Martin's death should serve to remind us of the long road that has already been traveled just as it informs us of how far we as a nation have to go.

Sherwood Ross is a Miami-based public relations consultant who was news director for a major civil rights organization in the Sixties and press coordinator for James Meredith's March Against Fear in Mississippi in 1966. Reach him at sherwoodross10@ gmail.com

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How Friedman Fixes Mideast Faults

Official Washington treats New York Times pundit Thomas Friedman as an oracle on the Middle East, but his commentary is often pedestrian and wrongheaded, as it was disastrously on the Iraq War. But Friedman has now proclaimed what must be done to reverse U.S. failures in Muslim countries, Lawrence Davidson writes.

By Lawrence Davidson

In a March 25 article entitled "A Festival of Lies," New York Times columnist Thomas Friedman expressed his frustration with American foreign policy toward Muslim countries in the Middle East. "It's time to rethink everything we are doing out there," he proclaimed.

To be sure, Friedman is not the only one frustrated by this situation, but in Friedman's case it is best to ask just what is it that he finds disconcerting about U.S. behavior?

Actually, Friedman doesn't formulate a list of his own, but instead latches on to one published in the National Review by historian Victor Davis Hanson (whose specialty is ancient warfare). Friedman tells us that Hanson is correct in all his particulars. So here is what Friedman via Hanson find frustrating about "the various American policy options" toward Iraq, Iran, Libya, Syria, Egypt, Pakistan and Afghanistan over the past few decades:

Hanson wrote, "Military assistance or punitive intervention without follow-up mostly failed. The verdict on far more costly nation-building is still out. Trying to help popular insurgents topple unpopular dictators does not guarantee anything better. Propping up dictators with military aid is both odious and counterproductive. Keeping clear of maniacal regimes leads to either nuclear acquisition or genocide, or 16 acres of rubble in Manhattan."

Friedman then notes the obvious that these sort of “policy options” cannot change the Middle East for the better. According to both him and Hanson the region is a perpetual “mix of tribalism, Shiite-Sunni Sectarianism, fundamentalism and oil oil that constantly tempts us to intervene or to prop up dictators.”

All this might make sense to some readers of the NYT, but it seems superficial and confused to me. And after all I am an historian too. My specialty is the development of U.S. foreign policy in the Middle East. So what do I find frustrating about Friedman’s frustrations?

To reduce the Middle East to tribalism, sectarianism, fundamentalism and oil is just stereotyping and inappropriate reductionism. You might as well reduce the U.S. to Christian fundamentalism, tea-party fanaticism, south-west-east sectional animosity and gas-guzzling pick- up trucks. Are they there? Yes. Are they the sum total of the U.S.A.? No. It is the same for the Middle East.

It is certainly a very good idea to stop giving so many of the region’s armies American weapons and training (and so stop “propping up” the dictators), but before you go using the savings to build “community colleges across Egypt” as Friedman suggests, you better consider that Egypt and many other nations in the region are awash in college graduates who cannot find employment.

The economies of the Middle East suffer from structural problems, part of which have to do with their ties to a Western-controlled world economy.

I can only imagine what Hanson and Friedman mean by “punitive interference without follow-up” being bad policy. Maybe they mean that when Ronald Reagan put troops in Lebanon in 1982 in support of the minority Maronite Christians’ attempt to subvert the country’s constitution there should have been sufficient military follow-up to decimate their rivals, the majority Lebanese Shiites. Keep in mind that a similar follow-up in Iraq in 2003 killed up to a million people.

Or when George H.W. Bush chased Saddam Hussein out of Kuwait in 1991 he should have followed-up with an invasion of the country then and there instead of following through with draconian sanctions that eventually helped kill up to a million Iraqi poor children.

Supposedly these “follow-ups” represent policy options that would have resulted in a better, happier and more American-friendly Middle East. This sounds doubtful to me.

And what about the supposed mistake of “staying clear of maniacal regimes” which, in turn, allows for “nuclear acquisition or genocide or 16 acres of rubble in Manhattan.” What the heck does this mean? It was not a “maniacal

regime" that launched the 9/11 attacks; the U.S. did not stay clear of the "maniacal regime" of Saddam Hussein but instead sold it the poison gas used against the Kurds; and the Iranians (who are arguably less "maniacal" than the Israelis) have no nuclear weapons program.

As for Prime Minister Benjamin Netanyahu's government in Jerusalem, Friedman only laments that "we silently watch our ally Israel build more settlements in the West Bank that we know are a disaster for its Jewish democracy."

What all this points out is that Thomas Friedman, one of the most widely read editorial writers in the country, is confused and unreliable when it comes to the Middle East. And, his relying on a conservative military historian venting in the National Review does nothing to sharpen his perception.

What is worse is that none of this prevents Friedman from telling us that the U.S. government, which he has just accused of utter failure for decades, now has the responsibility to tell the people of the Middle East some "hard truths." And what might they be?

Friedman's 'Hard Truths'

1. Tell the Afghans that the Karzai government is corrupt and will be abandoned by most of its troops as soon as we stop paying them. Alas, the Afghans already know this. What Friedman actually should be suggesting is that the U.S. government tell the U.S. people this hard truth.

2. Tell the Pakistanis that they are "two-faced" and the only reason that their military is not "totally against us" is because, again, we pay them. Alas, the Pakistanis know this. What Friedman actually should be suggesting is that the U.S. government tell the U.S. people this hard truth.

3. Tell the Saudis that they are a bunch of Wahhabi religious fanatics and dictators and that we don't want their oil. But wait, It is not the U.S. that should be telling the Saudis this. It should be the European and Japanese governments because they are the ones who buy Saudi oil. We get most of ours from Mexico and Canada.

4. Tell the Israelis that the expansion of settlements in the Palestinian West Bank will put their (alleged) democracy in danger. But he adds that "we don't tell Israel the truth because it has votes." In other words, you must first tell the U.S. Congress to forego the largess of certain special interests, or even better, tell the American people that they must change the lobby-based nature of their government.

Friedman ends by lamenting that the U.S. government has chosen to tell the easy

lie, that all is okay, to the Middle Eastern regimes it supports rather than tell them the hard truth. However, he has it wrong.

Sure, the United States hasn't gone around telling the corrupt, dictatorial, fanatical leaders of those regimes that they have made a mess of the place largely because we helped them do it. *The people of the Middle East know this. It is the people of the U.S. who do not*. We have not been lying to the people of the Middle East so much as to ourselves.

And it appears that Thomas Friedman also doesn't know these hard truths. Hence his contradictory conclusion: "we must stop wanting good government [for them] more than they do, looking the other way at bad behavior."

It is a contradiction to say that you want good government for this region while simultaneously turning a blind eye to bad governmental behavior that you yourself have underwritten. But the contradiction is there only in Friedman's version of history. In truth the U.S. has not and does not give a damn for either good government or good behavior in the Middle East. What it cares about are governments that cooperate with the United States in terms of trade, acceptance of Israel and now hostility toward Iran.

One has to wonder about Thomas Friedman. He seems to have periodic problems thinking straight. But in an oblique fashion he is on to something. There are lies aplenty when it comes to U.S. actions in the Middle East. However, they are not lies we tell to others but rather to ourselves. And from that, nothing good can come.

Lawrence Davidson is a history professor at West Chester University in Pennsylvania. He is the author of *Foreign Policy Inc.: Privatizing America's National Interest*; *America's Palestine: Popular and Offical Perceptions from Balfour to Israeli Statehood*; and *Islamic Fundamentalism*.

When Is a Hack a Hack?

Exclusive: Ronald Reagan's Solicitor General Charles Fried sees "politics, politics, politics" at play in the apparent move by the Supreme Court's Republican majority to kill health-care reform, but the Washington Post's neocon editors say it's unfair to call any of those five GOP justices a "hack," reports Robert Parry.

By Robert Parry

So what has happened to many of those conservative “strict constructionists” who insist that only a literal reading of the Constitution is acceptable and that “activist” justices can’t simply “create rights” for Americans that the Framers didn’t write down?

Apparently, because these “conservatives” hate “Obamacare” almost as much as they detest President Barack Obama they’re celebrating the hypocritical spectacle of five Republican justices on the Supreme Court demanding that new limitations be placed on Congress’ constitutionally unlimited power to regulate interstate commerce.

These self-proclaimed “strict constructionists” can’t find limitations in the actual Constitution, since none are there, so the GOP Five apparently intend to insert some new words into the founding document to post-facto (or perhaps ipso facto) disqualify the Affordable Care Act as “unconstitutional.”

Maybe, the GOP Five should just drive down to the National Archives, pry open the case holding the Constitution and pencil in some new words. After the relevant section about Congress having the power to regulate interstate commerce, the GOP Five can scribble in “except for things like purchases of broccoli, gym memberships, cell phones and health insurance.”

More likely, the GOP Five Justices Anthony Kennedy, Antonin Scalia, Clarence Thomas, John Roberts and Samuel Alito will come up with some more elegant wording that suggests a higher principle is involved.

After all, in December 2000, a subset of this group (Kennedy, Scalia and Thomas along with the late Chief Justice William Rehnquist and now-retired Justice Sandra Day O’Connor) dressed up its *Bush v. Gore* ruling with a lot of legal references.

Essentially, however, those five Republican partisans detected a previously unknown provision in the 14th Amendment requiring that when a Republican presidential candidate is in danger of losing an election, then all the voting procedures in the key deciding state must have been identical, precinct to precinct. If they weren’t and they never are the GOP candidate wins.

Post Editors to the Defense

On Friday, the Washington Post neoconservative editorial writers rallied to the defense of today’s GOP Five as men of undying personal integrity who simply have an honest difference over how to read the Constitution.

While praising the three days of oral arguments as “the Supreme Court’s civics lesson,” the Post’s editors expressed dismay over the “cynicism” of some

liberals who “were preemptively trying to delegitimize a potential defeat at the court” by making the Republican justices look “partisan, activist and, essentially, intellectually corrupt.”

How unfair, wailed the Post’s editors. While the Post suggested that the five Republicans should show some “modesty and deference to elected legislators” who fashioned the difficult health insurance compromise, the Post seemed most upset that the integrity of the GOP Five was being questioned.

“We wouldn’t assume anyone who disagrees [with the constitutionality of the law] is a hack,” the Post declared.

And one might say the Post’s editors, who treated Saddam Hussein’s possession of WMD stockpiles as a “flat fact” in 2003 and who disparaged Americans who dared question the veracity of that *casus belli*, should know something about being hacks.

In Friday’s editorial, the Post also adopted the posture that most befits a journalistic hack, the cowardly and simpleminded framing of debates as both-sides-are-equally-at-fault. The Post suggested that the four Democratic justices were somehow behaving in a partisan manner by following the actual wording of the Constitution.

“We share the disappointment that the justices on both sides of their ideological divide are, for the most part, so predictable,” the Post lamented. “That’s not, in an ideal world, how judging is supposed to work.”

No, in an ideal world or even a world where we expect a modicum of philosophical consistency we might hope that Supreme Court justices would stick to interpreting the Constitution rather than demanding extemporaneous rewrites, or “limiting principles” that the Framers chose not to include.

Serious Conservatives

We also might expect in an editorial on this important topic a reference to what the Commerce Clause actually says or an explanation of why serious conservatives, like senior Appeals Court Judge Laurence Silberman and Ronald Reagan’s Solicitor General Charles Fried, came down solidly on the side of the law’s constitutionality.

Silberman, a Reagan appointee, wrote the Nov. 8, 2011, ruling, for the U.S. Court of Appeals in Washington affirming the constitutionality of the Affordable Care Act. Silberman took pains to note the unrestricted wording of the Commerce Clause.

He wrote: “We look first to the text of the Constitution. Article I, § 8, cl. 3, states: ‘The Congress shall have Power . . . To *regulate Commerce* with foreign Nations, *and among the several States,* and with the Indian Tribes.’” [Emphasis added by Silberman]

Silberman continued: “At the time the Constitution was fashioned, to ‘regulate’ meant, as it does now, ‘[t]o adjust by rule or method,’ as well as ‘[t]o *direct.*’ To ‘direct,’ in turn, included ‘[t]o prescribe certain measure[s]; to mark out a certain course,’ and ‘[t]o order; to command.’

“In other words, to ‘regulate’ can mean to require action, and nothing in the definition appears to limit that power only to those already active in relation to an interstate market. Nor was the term ‘commerce’ limited to only *existing* commerce. There is therefore no textual support for appellants’ argument” that mandating the purchase of health insurance is unconstitutional.

Let’s hear that again: “There is therefore no textual support” in the Constitution for challenging the individual mandate as unconstitutional. At that point, “strict constructionists,” as all the GOP Five claim to be, should have begun folding their tent or got to work on a constitutional amendment to rewrite the Commerce Clause.

Instead, the GOP Five got busy “legislating from the bench,” demanding that the Obama administration provide some “limiting principle” to apply to the Commerce Clause that would differentiate health insurance (or the hundreds of other federal provisions that hinge on this clause) from Justice Scalia’s goofy what-if question about buying broccoli.

Nor did the Post’s editorialists address former Solicitor General Fried’s comments in a March 28 interview with the Post’s Ezra Klein. When asked about the “limiting principle” issue, Fried responded:

“The limiting principle point kind of begs the question. It assumes there’s got to be some kind of articulatable limiting principle and that’s in the Constitution somewhere. What Chief Justice John Marshall said in 1824 is that if something is within the power of Congress, Congress may exercise that power to its fullest extent. So the question is really whether this is in the power of Congress.

“Now, is it within the power of Congress? Well, the power of Congress is to regulate interstate commerce. Is health care commerce among the states? Nobody except maybe Clarence Thomas doubts that. So health care is interstate commerce. Is this a regulation of it? Yes. End of story.”

Tea Party Comments

Fried also criticized some of the specific comments by the Court's Republicans. "Justice Kennedy," Fried noted, "said this fundamentally changes the relationship of the citizen to the government. That's an appalling piece of phony rhetoric.

"There is an important change between the government and the system. It was put in place in 1935, with Social Security. And it said everyone has to pay into a retirement fund, and an unemployment fund. It was done when Medicare came in in the '60s.

"That's a fundamental change. But this? This is simply a rounding out in a particular area of a relation between the citizen and the government that's been around for 70 years. Kennedy's Tea Party-like argument that this fundamentally changing the relationship between government and the citizen? Well, I was very sorry to hear it."

On policy substance as well as on constitutional principle, Fried was baffled by the Republican justices' opposition to the law:

"I've never understood why regulating by making people go buy something is somehow more intrusive than regulating by making them pay taxes and then giving it to them. I don't get it."

Fried also took aim at the right-wing Heritage Foundation, which originated the individual mandate idea as an alternative to Democratic proposals for either a single-payer system or employer-mandated insurance, but now heatedly opposes its own concept. Fried said:

"It was comical to read the Heritage Foundation's brief attempting to explain why they were changing their position on this. Something needed to be done about this problem. Everyone understood that. So, the Heritage Foundation said let's do an individual mandate because it keeps it within free enterprise. The alternative was single payer. And they didn't want that, and I'm in sympathy with that.

"So now all of a sudden the free-market alternative becomes unconstitutional and terribly intrusive where a government imposition and government-run project would not be? I don't get it. Well, I do get it. It's politics."

When asked if the Supreme Court observers, who had initially considered the constitutional challenge to the law frivolous, had "underestimated the politicization of the Judiciary," Fried answered:

"Politics, politics, politics. You look at the wonderful decision by [federal Judge] Jeff Sutton, who is as much of a 24-karat gold conservative as anyone

could be. He is a godfather to the Federalist Society. Look at his opinion [in the Sixth Circuit upholding the law]. Or look at Larry Silberman's opinion. I don't understand what's gotten into people. Well, I do I'm afraid, but it's politics, not anything else."

Fried's "politics, politics, politics" point would seem particularly clear given the fact that the individual mandate to buy insurance was first developed by Heritage and first adopted by a Republican governor (and current GOP presidential front-runner) Mitt Romney of Massachusetts as a way to prevent "free riders" from getting health care and passing the costs to others.

Indeed, President Obama embraced the mandate idea after opposing it during Campaign 2008 because he concluded that it was the only way he could hope to win the votes of some moderate Republicans and conservative Democrats. But once Obama supported the idea, Republicans denounced it as an "unconstitutional" affront.

Then, after the law's difficult enactment two years ago, the Republicans ran to the courts to get it overturned although conservatives have traditionally decried people who seek court intervention rather than working out policy differences through the political system.

Though serious conservatives like Silberman, Sutton and Fried judged the challenge to be without merit, it received a friendly hearing by the GOP Five on the Supreme Court. It's now expected that the GOP Five will get busy behind closed doors drafting some ruling that will insert some newly invented "rights" into the Constitution.

Despite this rather obvious politicization of the federal courts, the Washington Post's editors are more upset that "some liberals" would suggest that cynical politics is at work here. Yet, however you spin what the GOP Five is doing, it sure doesn't look like the behavior of principled "strict constructionists."

TV Stations Resist Listing Ad Buyers

Among the “winners” in Election 2012 will surely be the giant corporations that own many U.S. television stations as they rake in billions of dollars in SuperPAC and other political spending for attack ads. But these stations aren’t eager to make these details easily available to the public, write Bill Moyers and Michael Winship.

By Bill Moyers and Michael Winship

Over the years we’ve been reporting on how power is monopolized by the powerful. How corporate lobbyists, for example, far outnumber members of Congress. And how the politicians are so eager to do the bidding of donors that they allow those lobbyists to dictate the law of the land and make a farce of democracy.

What we have is much closer to plutocracy, where the massive concentration of wealth at the top is protects and perpetuates itself by controlling the ends and means of politics. This is why so many of us despair over fixing what’s wrong: we elect representatives to change things, and once in office they wind up serving the deep-pocketed donors who put up the money to keep change from happening at all.

Here’s the latest case in point. The airwaves belong to all of us, right? They’re part of “the commons” that in theory no private interest should be able to buy or control. Nonetheless, government long ago allowed television and radio stations to use the airwaves for commercial purposes, and the advertising revenues have made those companies fabulously rich.

But part of the deal was that in return for the privilege of reaping a fortune they would respect the public interest in a variety of ways, including covering the local news important to our communities. If they didn’t, they would be denied their license to use the airwaves at all.

Alas, over the years, through one ruse or another, the public has been shafted. We heard the other day of a candidate for office in a Midwest state who complained to the general manager of a TV station that his campaign was not getting any news coverage. “You want coverage?” the broadcaster replied. “Buy some ads and then we’ll talk!”

That pretty well sums up the game. But hold your nose: it gets worse. The media companies and their local stations including goliaths like CBS and Rupert Murdoch’s News Corp stand to pull in as much as $3 billion this year from political ads. Three billion dollars!

And most of that money will pay for airing ugly, toxic negative ads that use special effects, snide jokes and flat-out deception to take us to the lowest common denominator of politics.

The FCC, the Federal Communications Commission, which is supposed to make sure the broadcasters don't completely get away with highway or, rather, airwave robbery has proposed to the broadcasting cartel that stations post on the Web the names of the billionaires, and front organizations many of them super PACs paying for campaign ads.

It's simplicity itself: give citizens access online to find out quickly and directly who's buying our elections. Hardly an unreasonable request, given how much cash the broadcasters make from their free use of the airwaves.

But the broadcasting industry's response has been a simple, declarative "Not on your life!" It would cost too much money, they claim. Speaking on their behalf, Robert McDowell, currently the only Republican commissioner on the FCC the other one left to take a job with media monolith Comcast – said the proposal is likely "to be a jobs destroyer" by distracting station employees from doing their regular work.

The party line also has been sounded by Jerald Fritz, senior vice president of Allbritton Communications, who told the FCC that making the information available on the Internet "would ultimately lead to a Soviet-style standardization of the way advertising should be sold as determined by the government." We're not making this up.

Steven Waldman, who was lead author of the report that led to the FCC's online proposal, quotes a letter from the deans of 12 of our best journalism schools: "Broadcast news organizations depend on, and consistently call for, robust open-record regimes for the institutions they cover; it seems hypocritical for broadcasters to oppose applying the same principles to themselves."

Hypocritical, but consistent with a business that values the almighty dollar over public service. The industry leaves nothing to chance. Through its control of the House of Representatives, it got a piece of legislation passed this past week euphemistically titled the FCC Process Reform Act. George Orwell must be spinning in his grave this isn't reform, it's evisceration.

Not only does the bill remove roadblocks to more media mergers further reducing competition it would subject every new rule and every FCC analysis of that rule to years of paper work and judicial review, enabling the industry's horde of lawyers and lobbyists, "to throw sand in the works at every opportunity" as one expert puts it.

There was a noble attempt by California Congresswoman Anna Eshoo to include in this bill an amendment that, like the FCC proposal, called for stations to post online who's putting up the big bucks for political ads. Shocker it was rejected. Score another one for the plutocrats.

There is some good news. The White House opposes this latest bid by the broadcasting oligarchy to further eviscerate the public interest. And the fate of the House bill in the Senate is uncertain at best.

In the meantime, as far as those political ads go, we're not totally helpless. Here's what you can do: Under current law, local television stations still have to keep paper files of who's paying for these political ads, and they have to make those files available to the public if requested. You can even make copies to take away with you.

So just go down to your nearest station, politely ask for the records, and then send the data online to the New America Foundation's Media Policy Initiative or to the organization of investigative journalists called ProPublica. Both have mounted campaigns to get the information online.

We'll link you to ProPublica and the New American Foundation at the "Take Action!" page on our own website, BillMoyers.com. Each is pulling together all the information on political ads they get from you and others crowd-sourcing and making it available to the entire country via the Internet.

If you're a high school teacher or college professor of journalism, have your students do it and maybe give them classroom credit for collecting the data democracy needs to work. In other words, here's a way citizens can take action even against the plutocrats who run Big Media and Congress.

Addendum: Free Press, the media reform group, also is conducting station file inspections, and has just published this easy-to-follow guide to how it's done: http://www.freepress.net/how-to-inspect-public-political-files

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What Iran Can Do to Strike Back

Israel's threats to bomb Iran have hinged on how much damage Israeli aircraft can inflict on Iran's nuclear facilities, but another worry is how much

destruction Iranian missiles can inflict on Israel, a danger that Israeli officials are downplaying, Gareth Porter writes from Tel Aviv for Inter Press Service.

By Gareth Porter

The government of Prime Minister Benjamin Netanyahu has been telling Israelis that Israel can attack Iran with minimal civilian Israeli casualties as a result of retaliation, and that reassuring message appears to have headed off any widespread Israeli fear of war with Iran and other adversaries.

But the message that Iran is too weak to threaten an effective counterattack is contradicted by one of Israel's leading experts on Iranian missiles and the head of its missile defense program for nearly a decade, who says Iranian missiles are capable of doing significant damage to Israeli targets.

The Israeli population has shown little serious anxiety about the possibility of war with Iran, in large part because they have not been told that it involves a risk of Iranian missiles destroying Israeli neighborhoods and key economic and administrative targets.

"People are not losing sleep over this," Yossi Alpher, a consultant and writer on strategic issues and former director of the Jaffee Center for Strategic Studies at Tel Aviv University, told IPS in an interview. "This is not a preoccupation of the public the way the suicide bombers were a decade ago."

Alpher says one reason for the widespread lack of urgency about a possible war with Iran is that the scenarios involving such a war are "so nebulous in the eyes of the public that it's difficult for them to focus on it."

Aluf Benn, the editor in chief of Haaretz, told IPS in an interview, "There is no war mentality," although he added, "that could change overnight." One reason for the relative public calm about the issue, he suggested, is the official view that Iran's ability to retaliate is "very limited".

Jeffrey Goldberg wrote in Bloomberg on March 20 that "Some Israel officials believe Iran's leaders might choose to play down the insult of a raid and launch a handful of rockets at Tel Aviv as an angry gesture rather than declare all-out war."

But Uzi Rubin, who was in charge of Israel's missile defense from 1991 to 1999 and presided over the development of the Arrow anti- missile system, has a much more somber view of Iran's capabilities.

The "bad news" for Israel, Rubin told IPS in an interview, is that the primary

factor affecting Iran's capability to retaliate is the rapidly declining cost of increased precision in ballistic missiles. Within a very short time, Iran has already improved the accuracy of its missiles from a few kilometers from the target to just a few meters, according to Rubin.

That improvement would give Iran the ability to hit key Israeli economic infrastructure and administrative targets, he said. "I'm asking my military friends how they feel about waging war without electricity," said Rubin.

The consequences of Iranian missile strikes on administrative targets could be even more serious, Rubin believes. "If the civilian government collapses," he said, "the military will find it difficult to wage a war."

Rubin is even worried that, if the accuracy of Iranian missiles improves further, which he believes is "bound to happen," Iran will be able to carry out pinpoint attacks on Israel's air bases, which are concentrated in just a few places.

Some Israeli analysts have suggested that Israel could hit Iranian missiles in a preemptive strike, but Rubin said Israel can no longer count on being able to hit Iranian missiles before they are launched.

Iran's longer-range missiles have always been displayed on mobile transporter erector launchers (TELs), as Rubin pointed out in an article in Arms Control Today earlier this year. "The message was clear," Rubin wrote. "Iran's missile force is fully mobile, hence, not pre-emptable."

Rubin, who has argued for more resources to be devoted to the Arrow anti-missile system, acknowledged that it can only limit the number of missiles that get through. In an e-mail to IPS, he cited the Arrow system's record of more than 80 percent success in various tests over the years, but also noted that such a record "does not assure an identical success rate in real combat".

The United States and Israel began in 2009 developing a new version of the Arrow missile defense system called "Reshef" – "Flash" – or "Arrow 3", aimed at intercepting Iranian missiles above the atmosphere and farther away from Israeli territory than the earlier version of the Arrow. The new anti-missile system can alter the trajectory of the defensive missile and distinguish decoys from real missile reentry vehicles.

Until last November, the Arrow 3 system was not expected to become operational until 2015. And that plan was regarded by U.S. Missile Defense Agency (MDA) as probably too ambitious, because such a system would normally take a decade from conception to deployment.

But Xinhua news agency reported in November that Israeli Air Force officials said they expected Arrow 3 to become operational by mid- 2013, cutting even that abbreviated timeline for development of the system in half.

Nevertheless, the ability of the Arrow 3 system to shoot down an incoming missile still has not been announced, although an Israeli official said March 1 that such a test would take place after the meeting between President Barack Obama and Prime Minister Netanyahu.

In December 2008, Western intelligence sources were reported by Israel's Ynet News as saying the improved version of the Shahab 3 missile had gone into production earlier that year and that Iran was believed to be able to produce 75 of the improved missiles annually.

Gen. Gabi Ashkenazi, then IDF chief of staff, told a visiting congressional delegation in November 2009 that Iran already had 300 missiles capable of hitting Israeli targets, according to a U.S. State Department cable released by WikiLeaks.

Those reports suggest that Iran now has roughly 450 missiles that can reach Israel, half of which are improved models with much greater precision. Even if only one-fifth of those missiles get through Israel's missile defenses, Israeli cities could be hit by at least 100, most of which are able to hit targets with relative accuracy.

The Netanyahu government has sought to minimize the threat of Iranian retaliation for an Israeli strike against Iran in part by likening war with Iran to those fought against Hezbollah and Palestinian rockets in recent years, which have resulted in relatively few Israeli civilian casualties. That was the message that Israeli military officials conveyed to the Israeli news media after an escalation of violence between the IDF and Palestinian armed groups in Gaza earlier this month.

Columnist Zvi Barel of Haaretz speculated on March 11 that the purpose of the escalation, provoked by the IDF assassination of Zuhair al- Qaisi, the secretary-general of the Popular Resistance Committee in Gaza, was to show the Israeli public that Israeli missile defense system could protect the population against rockets that the IDF linked to Iran.

Barel went even further. "After Iron Dome demonstrated its 95 percent effectiveness," he wrote, "there is no better proof to Israel's citizens that they will not suffer serious damage following an assault on Iran."

The success of the Iron Dome against short-range rockets from Gaza is irrelevant, however, to what could be expected from a relatively untested Arrow

system against Iranian ballistic missiles aimed at Israeli targets.

Gareth Porter is an investigative historian and journalist specialising in U.S. national security policy. The paperback edition of his latest book, *Perils of Dominance: Imbalance of Power and the Road to War in Vietnam*, was published in 2006.

Nature of Self-Defeating Convictions

One of the curious realities of modern America is how many people especially white males have been propagandized into siding with a “free-market” power structure that treats them like tissue paper, to be used and thrown away. Poet Phil Rockstroh says he encounters many such confused souls in his native South.

By Phil Rockstroh

Although I have resided in New York City for many years, I was born in the Deep South. On a daily basis, I negotiate Manhattan’s gridded streets and avenues, yet, in many ways, the terrain of my heart still winds like an Indian trail through a pine forest. I visit the South on a regular basis; the stain of red clay will never be scoured from my soul.

To this day, I retain close ties to a number of Southern friends and contacts who did not ventured far from home. As the years trundled on, I’ve witnessed the quality of life and emotional well-being of these friends, hailing from both laboring and middle-class origins, experience a steep, accelerating decline.

I’ve gazed upon the tormented faces of men I know, now deep in middle age, who are facing the prospect of never again holding a steady job that affords them a sense of dignity. As a consequence, all too many of these men — men who I thought I knew well — have been rendered sullen, spiteful, and, much to my heart’s duress, an unreachable shell of their former self.

As their economic prospects diminished, their denial and displaced rage grew malignant. In the case of a couple of my friends, their resistance to reality became so vast, toxic, and all-encompassing that any attempt at dialog proved prohibitive.

Emblematic of this situation is my strained-to-the-limit friendship with Vince (not his real name) who, due to the carnage inflicted on the U.S. laboring class by so-called free market “values,” has been chronically under or unemployed

since the Wall Street bankster-perpetrated crash of late 2008.

Yet Vince remains stubborn in his refusal to connect his dismal plight with the reality-resistant political notions he clutches. To this day, he describes himself as a "conservative libertarian – a proud believer in the values of the free market." This conviction, coming from a member of the laboring class, is analogous to a slave proclaiming he is a believer in the auction block and the verities of his master's whip.

Worse, as the day-to-day humiliations exacted by the corporate state continue to inflict deeper, more emotionally debilitating wounds, the more Vince reacts like a wounded animal lashing out at all but those who bestow him with the palliative of rightwing demagogic lies that distort the source of his suffering by means of directing his rage at a host of scapegoats i.e., phantom socialists (and, of course, their OWS dirty hippie dupes) whose, schemes, he insists, have denied him his rightful place among the serried ranks of capitalism's legion of winners.

My apologies to Vince and all of his likeminded brethren of my native region: Although we rose from the same Southern soil, I've never had a knack for telling reassuring lies for conjuring the sort of displaced emotional resentments and engaging in the brand of bigot-whispering that is the stock and trade of contemporary red-state conservatives.

Conversely, I have shown some promise in encouraging people to embrace the reality of their circumstances, and passing on the hopeful news that they are stronger than they know. Withal, the act of carrying the burden of denial in a marathon flight from feelings of angst and despair is the force that exhausts one's energy and demoralizes one's spirit.

This is why such a large number of those whose lives have been degraded by the deprivations of the present economic order will not focus their anger at Wall Street grifters: If capitalism, by the very nature of the system, allows a swindlers' class to not only legally exist – but to thrive – then it follows that there must be something flawed about the nature of capitalism itself.

Accordingly, a depressing revelation waits at the margins of Vince's (and other downtrodden true believers in the existence of free-market fairy dust) sense of awareness: that the energies of one's life have been devoted to the maintenance of an elaborate lie; not only have your labors been for naught – but your sacrosanct convictions have laid the groundwork for the crime that was committed against you. You have spent your life as an accessory to your own robbery.

Your faith in capitalism has left you in a similar position to the followers of

a fanatical cult who were instructed to stand upon an isolated hilltop, so that, at midnight, as prophesied by their charismatic leader, their ranks will be lifted to heaven upon chariots of glinting gold but who now stand stoop-shouldered before the breaking dawn, shivering into the cold light of day.

Rather than admit error, one's pride can compel one to blame phantom enemies for humiliating circumstances. Thus, as Vince's prospects shrank, his gun collection grew to mini-armory proportions.

Perhaps, he believes the weapon's heft in his hands will stem the inexorable drift of his life into purposelessness; perhaps, his firearms will bestow a sense of security, in a life buffeted by uncertainty; perhaps, if he squints down the site of his rifle long enough, he can target the phantoms that made off with his hopes.

Vince, old buddy, the solution is a great deal more accessible than that. To mitigate feelings of hopelessness attendant to isolation, the simple act of starting a conversation is helpful. The doable act of leaving the house and attending an OWS function can serve to transform gut-gnawing rumination into fruitful dialog thus, Vince, you will become enjoined in an ongoing conversation – a collaboration between your soul and the soul of life.

In this way, we can become part and parcel of the story of our times, part of a living tale, unfolding in the eternal present that will affect the future in ways unseen.

Still, I've learned, on an individual basis, I remain powerless against red-state belligerent ignorance of the collective variety. My experiences as a Southerner inform me the process of change will be difficult, because only cultural earthquakes alter the course of streams of surging stupid.

Sure, start a dialog with even the most obtuse tea-bagger sort attempt to convince him that the views he clutches are self-defeating try to disabuse him of his calcified bigotry – but don't be optimistic about the outcome of your efforts.

Trouble is: Depressingly large numbers of people have invested a great amount of time, energy and identity in the maintenance of their reality-defiant attitudes. There is just too much fragile self-esteem, bulwarked by brittle pride, at stake.

While self-doubt is the worthy adversary of the wise, belligerent ignorance is the dubious ally of those who fear and resist self-awareness. Often, a journey

towards self-knowledge and an attendant awakening to the nature of one's condition can be unnerving and painful. The process is fraught with free-floating anxiety and weighted with saturnine regret.

If I've made numerous life-determining choices based on my acceptance of proffered falsehoods, then I have lost many years constructing my life accordingly. The grief can be overwhelming. What alms does one chant into the grieving dawn on the morning after one's illusions have died?

This is why so many choose to spend their hours commuting through life in the company of the corpse of capitalism. Accordingly, the nation resembles the Bates Motel its spree-killer government reflected in the acts of its murder-prone citizenry e.g., Staff Sgt. Robert Bales and guarded gate, vigilante flake George Zimmerman.

When a system of governance loses its purpose for existence (when the system becomes a mindless self-perpetuating monster) its sustaining lies will be internalized and acted on by those governed. Militarized police units lower truncheons upon the heads of peaceful demonstrators, as individuals, unhinged by displaced grievances, mirror official policy in tragic acts of rage engendered by hopelessness.

We live in a culture that worships the god of violent death; of course, its sermons will be played out beyond the confines of its official temples, in the form of hideous bacchanals of spilled blood. The chickens come home to roost, and they are heavily armed and in the thrall of a violent psychotic episode.

Vince simply cannot wrap his corporate/police state colonized mind around the fact that, as is the case with any nation containing the vast amount of wealth inequity extant in the U.S., the elite will utilize the services of the police to achieve less than noble ends that police repression and violence will be exercised at a level equal to the lack of legitimacy of the governing class.

As we have witnessed in the case of the OWS movement and its encounters with police authorities, when members of the citizenry challenge the corrupt arrangement, dissenters will be met by brutal methods intended to crush those perceived as a threat to the existing order.

To Vince and any others still holding the quaint notion that the governing class of the U.S. possesses legitimacy, the actions of the NYPD testify to the contrary; their ongoing, brutal suppression of those attempting to exercise their right to dissent should disabuse you of that noxiously innocent fantasy.

When justice has been banished from the precincts of power, it must be reclaimed in the commons. Hence, occupy defiance. Make yourself at home on the premises, because, if you are outraged by oppression and you long for a more just world, you will be spending a good deal of your time in this location.

Vince, one day, upon your arrival, I hope to meet you there.

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A Judicial War on Democracy

Exclusive: Comments on the U.S. Supreme Court's three-day debate over the Affordable Care Act have focused on the damage the five Republican justices are expected to do to President Obama by striking down his prized new law. But the bigger story may be their judicial war on democracy, says Robert Parry.

By Robert Parry

James Madison and other Framers of the Constitution had their concerns about the potential excesses of democracy thus explaining the six-year Senate terms and the intricate system of checks and balances but they also trusted in democracy and the ability of the people's government to fashion national solutions to serious problems.

That was one of the reasons Madison and the Framers granted Congress an unlimited power to regulate interstate commerce, trusting that political leaders operating within the democratic process would recognize the needs of their time and apply this broad authority as necessary "to promote the general Welfare" of the American people.

But the spectacle that has unfolded over the past three days before the U.S. Supreme Court marks an historic reversal of this longstanding trust in democracy, as the Court's narrow right-wing majority prepares to eviscerate the Commerce Clause as part of a broader assault on the principles of representative democracy and on the Framers' philosophical belief in the value of government itself.

These five Republican justices John Roberts, Antonin Scalia, Clarence Thomas,

Anthony Kennedy and Samuel Alito appear poised to effectively rewrite the Constitution's Commerce Clause in order to justify thwarting the judgment of elected officials who enacted the Affordable Care Act in 2010.

If the GOP Five continue on this presumed course toward striking down "Obamacare," it also would become the latest front in what looks to be a right-wing judicial war on democracy with the Supreme Court's Republicans serving not as fair-minded arbiters of the Constitution but as a black-robed rear-guard of an ideological army.

Bush v. Gore

The first major battle of this judicial war on democracy was the *Bush v. Gore* decision in December 2000, overturning the will of the American electorate, which favored Al Gore both nationally and apparently in the key state of Florida.

The Court's Republican partisans first enjoined the state of Florida from continuing a recount so the result would not undermine George W. Bush's "legitimacy" once the Court could figure out a rationale for handing him the Presidency. Then, they got to work coming up with some "constitutional" excuse.

The President's power to appoint federal judges was of particular importance to Justice Sandra Day O'Connor, who was eager to retire so she could tend to her ailing husband. As reporter Mollie Dickenson learned in the days after the November 2000 election, O'Connor had been distraught on Election Night to hear the TV networks initially declare Gore the winner in Florida.

Dickenson reported that O'Connor, at an Election Night party, was "visibly upset – indeed furious – when the networks called Florida for Vice President Al Gore." The justice declared that "this is terrible" and gave others attending the party "the impression that she desperately wanted Bush to win," Dickenson wrote.

In that same article, dated Dec. 11, 2000, the day before the Supreme Court ruled on *Bush v. Gore*, Dickenson quoted a former high-ranking Justice Department official in the Clinton administration as grasping the Court's conflict of interest over the President's appointment power.

"The Supreme Court's vote is a totally self-interested vote," the former official said. "They are ensuring that they will remain in the majority, even increase their majority."

Still, Gore remained confident that the Supreme Court and especially O'Connor would uphold the "rule of law" and allow the legally mandated Florida recount to proceed. Gore apparently couldn't get his brain around the emerging reality of a

judicial process thoroughly infected by partisanship and ideology.

Behind the scenes, O'Connor was collaborating with Justice Anthony Kennedy in cobbling together a ruling that relied on a tortured interpretation of the 14th Amendment to justify awarding the White House and the power to appoint federal judges to the popular-vote loser, George W. Bush.

The key part of the ruling approved on a 5-4 vote cited the Amendment's "equal protection of the law" principle to throw out the recount because of Florida's variant voting standards across the state. The Court then gave the state a laughable two hours to fix the problem and complete a new recount.

The ruling, with Kennedy as the principal author, had turned the 14th Amendment on its head because the recount was an attempt to reduce the discrepancies in Florida's voting processes, which included antiquated equipment that undercounted votes in poor and minority precincts while state-of-the-art equipment in richer and whiter precincts had far fewer lost votes.

By blocking the recount, the Court, in effect, ensured that the votes of wealthy whites had more "equal protection" than those of low-income retirees, blacks and Hispanics. In other words, the five Republican justices used the 14th Amendment to guarantee greater racial and social-class discrimination in the Florida vote count, not less.

Also, by allowing only two hours to fix the problem and conduct the recount, the GOP justices ensured that the state's Republican officials working under the gaze of Gov. Jeb Bush could declare his brother, George W. Bush, the winner of Florida's electoral votes and thus the Presidency of the United States. [For details, see *Neck Deep*.]

Appointment Power

After Bush took office, things did look up for the Judiciary's right-wing faction, which benefited from a steady stream of reinforcements, new conservative judges who strengthened the Right's ideological battle lines in the federal courts.

Also, when right-wing Chief Justice William Rehnquist died on Sept. 3, 2005, Bush replaced him with right-wing Chief Justice John Roberts. When Justice O'Connor finally stepped down on Jan. 31, 2006, Bush filled her seat with an even more conservative justice, Samuel Alito.

Still, there was that pesky thing called democracy that couldn't always be thwarted, especially if the victory margins were too big. So, after President Barack Obama won Election 2008 and brought in a Democratic Congress, the

Republican majority on the Supreme Court had to swing into action with a powerful counter-attack to protect the GOP's crucial financial supply lines.

On Jan. 21, 2010, the five justices – Kennedy, Roberts, Scalia, Thomas and Alito – pushed through the *Citizens United* decision, clearing the way for the ultra-rich to effectively buy elections through unlimited spending on attack ads against disfavored candidates. Again, Justice Kennedy was the author.

Though right-wing billionaires had already created powerful artillery batteries in the form of a massive media infrastructure and influential think tanks, they now could pour millions and millions more dollars directly into campaigns through SuperPACs.

This combination of saturation propaganda from the Right's media, think tanks and SuperPACs guarantees that many Americans will rally to the Right's banner even when that means lining up against their own interests and on the side of powerful corporations and the wealthy.

It also appears that even on those rare occasions when the Democrats can muster the votes in the House and a super-majority in the Senate to send an important bill to the desk of a Democratic President, the Republicans on the Supreme Court will fulfill their role as a reserve army in black robes, a last line of defense waiting to do whatever is necessary to win the day even if the Constitution becomes collateral damage.

That is the significance of what has played out over the past three days. Based on the tone and tenor of the questions, it seems the five Republican partisans are engaged in another flanking maneuver against democracy, to wipe out a duly enacted law.

Inventing Law

Though the Constitution sets no limits on the power of Congress to regulate interstate commerce since the Founders trusted in the future judgment of elected officials to make reasonable decisions for the good of the country the GOP Five apparently intend to fix this oversight by the Framers.

The GOP Five apparently will amend the Constitution by fiat, inserting new restrictions in the Commerce Clause and then judging that the health-care law is outside those limits. [See Consortiumnews.com's "GOP Justices Ignore the Founders."]

Underscoring this intent, the Republican justices spent their third day of oral arguments musing about what to do with the remainder of the Affordable Care Act once they strike down its central feature, the individual mandate to buy

insurance, as a violation of their newly invented constitutional limitation on the Commerce Clause.

This need for the GOP Five to rewrite the Commerce Clause was driven home by a straightforward U.S. Appeals Court ruling by a conservative senior judge, Laurence Silberman, who bluntly endorsed the constitutionality of the Affordable Care Act by noting the absence of any limitation on congressional regulation of national commerce.

In a Nov. 8, 2011, ruling, Silberman, an appointee of Ronald Reagan, wrote: "We look first to the text of the Constitution. Article I, § 8, cl. 3, states: 'The Congress shall have Power . . . To *regulate Commerce* with foreign Nations, *and among the several States,* and with the Indian Tribes.'" [Emphasis added by Silberman]

Silberman continued: "At the time the Constitution was fashioned, to 'regulate' meant, as it does now, '[t]o adjust by rule or method,' as well as '[t]o *direct.*' To 'direct,' in turn, included '[t]o prescribe certain measure[s]; to mark out a certain course,' and '[t]o order; to command.'

"In other words, to 'regulate' can mean to require action, and nothing in the definition appears to limit that power only to those already active in relation to an interstate market. Nor was the term 'commerce' limited to only *existing* commerce. There is therefore no textual support for appellants' argument" that mandating the purchase of health insurance is unconstitutional.

Silberman's accurate and indeed obvious statement that there is "no textual support" in the Constitution for challenging the individual mandate as unconstitutional should be especially striking to "strict constuctionists," as all the GOP Five claim to be. "Strict construction" means to follow the words of the Constitution precisely.

For decades, this principle of "strict construction" has been a central talking point for the Right, which has accused "activist judges" of divining new constitutional "rights" which are not explicitly stated.

Some of those right-wing complaints are baseless since the Courts in, say, striking down racial segregation in the South have simply followed the clear language embedded in constitutional provisions such as the 14th Amendment and, significantly, the Commerce Clause.

In such cases, the Right also has argued that these issues should be left up to the elected branches of government and it is not up to the Supreme Court to intuit new "rights" in the Constitution. Except it appears when the process goes against the Right. Then, it's up to the Court to invent new "rights" and declare

duly enacted legislation to be in violation of those “rights.”

That is precisely what the GOP Five were signaling in their three days of acting more like a pundit panel on Fox News than as jurists entrusted with the profound responsibility to act as a fair arbiter of the law.

Goofy What-Ifs

On the second day of oral arguments, with their goofy what-if questions about Congress forcing Americans to buy broccoli, gym memberships, cell phones and other silly items, the Republican partisans were signaling that they were not only going to second-guess Congress and the President but the Framers as well.

Though Madison and the other Framers had left the power to regulate interstate commerce open-ended understanding that the nation might face challenges unforeseen in the late 18th Century Kennedy and other GOP justices demanded that the Obama administration present some limitations to the Commerce Clause.

When U.S. Solicitor General Donald B. Verrilli Jr. wouldn’t play their what-if game, Kennedy and the others indicated that they would take it upon themselves to invent those limits, presumably to insure that no future Congress can require Americans to buy broccoli, gym memberships, cell phones or health insurance.

The Republican justices then got down into the reeds of legislative minutiae discussing what other parts of the law should be dumped and what scraps might be kept. Sometimes, the Court’s debate sounded like a college bull session as some know-it-alls declare how they would solve some nettlesome problem if they were king.

As Washington Post columnist E.J. Dionne Jr. noted they acted like “they were members of the Senate Health, Education, Labor and Pensions Committee. Senator, excuse me, Justice Samuel Alito quoted Congressional Budget Office figures on Tuesday to talk about the insurance costs of the young.

“On Wednesday, Chief Justice John Roberts sounded like the House whip in discussing whether parts of the law could stand if other parts fell. He noted that without various provisions, Congress ‘wouldn’t have been able to put together, cobble together, the votes to get it through.’ Tell me again, was this a courtroom or a lobbyist’s office.

“One of the most astonishing arguments came from Roberts who spoke with alarm that people would be required to purchase coverage for issues they might never confront. He specifically cited ‘pediatric services’ and ‘maternity services.’”

Justice Antonin Scalia also let his right-wing ideological uniform peak out from

under his black robes when he dressed down Verrilli for noting that the United States has accepted the principle of providing medical treatment for a person who is injured or stricken with a sudden illness.

“We’ve obligated ourselves so that people get health care,” Verrilli said, drawing a riposte from Scalia: “Well, don’t obligate yourself to that.”

In other words, what the world saw over those three days was the intrusion of five right-wing justices into the democratic process on behalf of an Ayn Rand-style “free-market” capitalism which says that lesser people or at least those with lesser money should be allowed to die untreated and that the people through their representatives in Congress shouldn’t be allowed to do anything about it.

It might be noted here that when “free-market” champion Ayn Rand contracted lung cancer, she snuck into the Medicare system, using a revised spelling of her first name and her husband’s last name, to get government-paid-for medical care.

It also might be noted that the individual mandate was a conservative idea devised by the right-wing Heritage Foundation and embraced by Republicans, such as former House Speaker Newt Gingrich and former Massachusetts Gov. Mitt Romney.

Embraced that is until President Obama tried to demonstrate bipartisanship by reversing his earlier resistance to the idea and adopting the individual mandate as a way to expand health coverage and contain rising costs within a system of private health insurance companies.

Then, the individual mandate suddenly became an “unconstitutional” affront to American “liberty,” even though conservative jurists like Silberman could find nothing in the Constitution or in court precedents to make it so.

Before the Supreme Court’s ruling comes down in June, it is possible that Kennedy or another member of the GOP Five might have some second thoughts about the course they’re on possibly after a shame-inducing flashback of their lofty pronouncements about “judicial restraint” and their beloved “strict construction” of the Constitution.

But the writing seems to be on the wall that the five Republicans on the Supreme Court will take out the Affordable Care Act as part of their larger judicial war on democracy.

Robert Parry broke many of the Iran-Contra stories in the 1980s for the Associated Press and Newsweek. His latest book, *Neck Deep: The Disastrous Presidency of George W. Bush,* was written with two of his sons, Sam and Nat, and can be ordered at neckdeepbook.com. His two previous books, *Secrecy & Privilege: The Rise of the Bush Dynasty from Watergate to Iraq* and *Lost History: Contras,*

***Cocaine, the Press & 'Project Truth'* are also available there.**

Health Law Dispute Hinges on Timing

Exclusive: After three days of oral arguments before the U.S. Supreme Court, most analysts agree that the five Republican justices are likely to deliver a body blow to Democratic President Obama by declaring his landmark health-reform law "unconstitutional." But the key issue is really quite narrow, Sam Parry says.

By Sam Parry

So, the defining legal argument over health-care reform comes down to whether the federal government has the power to determine WHEN individuals will be charged for the health care services that they will, over the course of their lives, require.

After the Supreme Court's oral arguments about the Affordable Care Act on Tuesday, that timing question appeared to be the single constitutional question left to answer, but it obviously was a big one because the Act would require people to sign up for insurance and not wait for a medical emergency to get it.

Everyone in the courtroom seemed to agree that Congress has the authority to require Americans who are otherwise uninsured to buy insurance at the point of sale i.e. when they are in the emergency room and in need of medical care. That authority is clearly granted to Congress under the Commerce Clause of the Constitution you are transacting, therefore you can be regulated. (That appeared to be the consensus, though Justice Clarence Thomas, as usual, didn't say anything, so it's hard to guess what he's thinking.)

In other words, this is not a question over whether you interpret the Commerce Clause as granting a broad or a more limited power to Congress. The issue is whether Congress has the authority to require that individuals buy insurance before they need the medical care that, everyone knows, they will require at some undetermined point in the future.

It's a question of timing. It's a "when" question, not an "if" question. Plain and simple. That's because the health care market, unlike every other market, is:

—Universal: Virtually all of us will need medical care at various points in our

lives;

–Unpredictable: We have no way of knowing when we'll need medical care; and

–Expensive: The cost of providing medical care has skyrocketed to the point that most Americans simply can't afford it without some form of insurance. And when Americans can't pay for their own care, those costs get shifted directly to the rest of us who do have health care insurance.

So, when do we force Americans to pay for their health care? Is it before they get sick, or after they get sick? That's the only significant question left for the Supreme Court to decide, pertaining to the individual mandate. But it may be the issue that the five Republican justices cite to gut the law and essentially send the country back to square one in the health-care debate.

Everything else including broccoli is an intellectual sideshow that serves to set the outer limits of the theoretical debate over boundaries of congressional authority. They are perhaps entertaining debates, but they are not germane to the Affordable Care Act, which makes no mention of broccoli and which hinges on the use of an individual mandate to rationalize a market that is, everyone agrees, badly malfunctioning. (Though, again, where not exactly sure where Justice Thomas stands on anything.)

Sam Parry is co-author of *Neck Deep: The Disastrous Presidency of George W. Bush*.