

Briefly Noted

Questioning NHTSA's 'Noisy Electric Cars' Rule

BY SOFIE E. MILLER

Early this year, the National Highway Traffic Safety Administration published a proposed rule that would require hybrid and electric vehicles to make a sound while being operated at speeds slower than 18 miles per hour. Because they use an electric motor, hybrid and electric vehicles generate less noise than conventional vehicles with internal combustion engines (ICEs), and legislators and regulators alike are concerned that pedestrians could be injured by a vehicle that they can't hear coming.

Under the 2010 Pedestrian Safety Enhancement Act, NHTSA must conduct a safety standard rulemaking to establish an "alert sound" for hybrid and electric vehicles. The act requires that the noise made by a hybrid or electric vehicle could allow a pedestrian, especially a sight-impaired pedestrian, to identify the direction of the vehicle. NHTSA is also operating under the National Traffic and Motor Vehicle Safety Act, which requires NHTSA safety standards to "be performance-oriented, practicable, and objective, and meet the need for safety. In addition, in developing and issuing a standard, NHTSA must consider whether the standard is reasonable, practicable, and appropriate for each type of motor vehicle covered by the standard."

According to agency data, hybrid vehicle crashes are 40 percent more likely to involve a pedestrian than ICE vehicle crashes. Many of those crashes occur at low speeds, when hybrid cars' noisy internal combustion engines often aren't in use. Interestingly, the biggest crash differential between a hybrid and its ICE counterpart was between the Civic hybrid and the Civic ICE, despite the fact that the Civic hybrid's internal combustion engine does not shut off even at idle and the two cars create a similar level of noise.

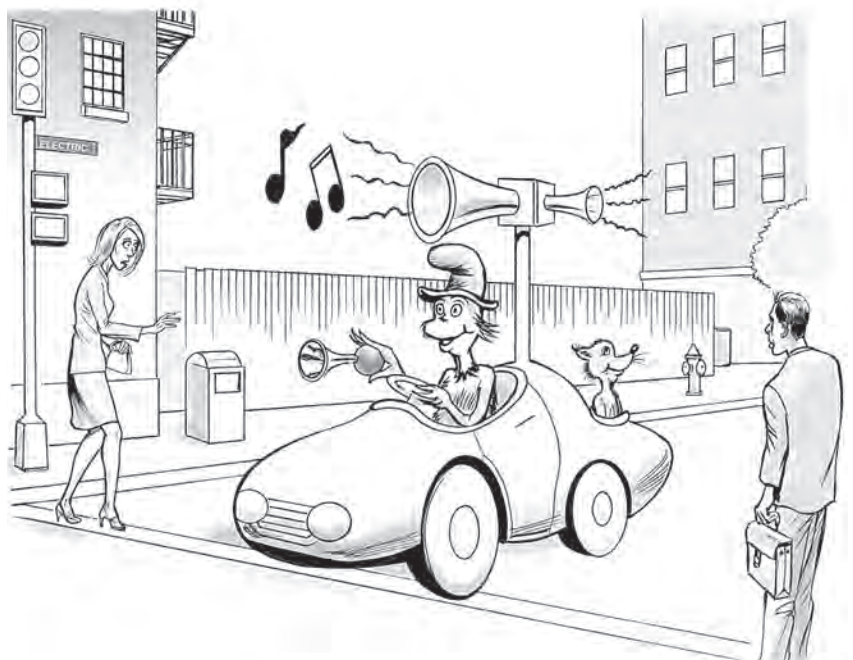
The proposed "noisy car" standard would require hybrid and

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electric cars, trucks, vans, buses, and motorcycles to produce a noise that is both detectable by pedestrians from a safe distance and recognizable in a range of ambient environments. The noise must be loud enough for a pedestrian to detect from a distance of two meters, and the noise should increase at the same rate as the vehicle's speed increases to mimic an internal combustion engine's sounds. In some noise environments, the new sound standards would make electric cars and hybrids *louder* than their ICE counterparts.

NHTSA estimates that 35 pedestrian lives would be saved as a result of this rule, at a cost of \$830,000–\$990,000 per life. The total cost estimated for this proposal is about \$25 million, adding about \$30 in cost to the production of each sound-enhanced hybrid or electric vehicle.

Given that NHTSA concedes that there are currently "no stud-



ies [that] have linked the increase in the detectability of a sound to a reduction in the risk of crashes between [electric vehicles] and [hybrid vehicles] and pedestrians," the supposed benefits from the proposed rule may be overstated. Further, NHTSA does not appear to have considered the negative health effects of noisy vehicles. On that topic, the Environmental Protection Agency claims:

Noise pollution adversely affects the lives of millions of people. Studies have shown that there are direct links between noise and health. Problems related to noise include stress-related illnesses, high blood pressure, speech interference, hearing loss, sleep

ILLUSTRATION BY KEVIN TUMA

disruption, and lost productivity. Noise Induced Hearing Loss (NIHL) is the most common and often-discussed health effect, but research has shown that exposure to constant or high levels of noise can cause countless adverse health effects.

Both the EPA and the Federal Aviation Administration have regulated noise pollution in the past. Some of the noise standards in the proposed “noisy car” regulation are so loud that they would meet FAA’s threshold for regulatory noise-remediation efforts if implemented. **R**

The Need for Retrospective Review of Regulations

BY SAM BATKINS AND IKE BRANNON

No task in government is as Sisyphean as trying to stop bad regulatory ideas from becoming law. For three and a half years, that was Cass Sunstein’s job as administrator of the Office of Information and Regulatory Affairs (the branch of the Office of Management and Budget tasked with reviewing the regulatory activities of executive agencies). He discovered early on that being the regulatory cop for the White House puts one in the cross-hairs of every single administrative agency seeking to have its regulations approved.

Sunstein was a renowned legal scholar at the University of Chicago (and a friend of Barack Obama) before entering government, and last year decamped to Harvard. He recently authored the book *Simpler: The Future of Government* (Simon and Shuster), which rationalizes his attempt to implement retrospective regulatory review while waxing philosophical about a better approach to government.

His tenure at OIRA was, from a limited government perspective, as good as anyone could have dared hope from an Obama administration that includes many regulatory mandarins deeply skeptical of the very notion of benefit-cost analysis (BCA). Sunstein may not be a professional economist, but he is sincere in wanting a smarter—if not leaner—government.

Still, as he concedes, in the last four years the federal government has imposed new regulations costing the public billions of dollars. The OMB itself estimates the annual compliance costs for regulations issued in the last decade to be between \$57 and \$84 billion. Those eye-popping numbers almost surely represent an underestimate of the actual impact of the encroaching regulatory state: the *2013 Draft Report to Congress on the Costs and Benefits of Government Regulations* reports that fiscal year 2012 was the highest-cost year for new regulations ever, and it reached that conclusion after analyzing only 14 regulations of the 3,800 adopted.

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Analyzing the regulators | Can we be sure that the benefits to society from these regulations are worth the costs? Determining that is precisely the job description for OIRA. However, when the entities that propose the regulations are also the ones that provide OIRA with benefit-cost information, OIRA’s task can become a bit complicated. It requires a mixture of political acumen and sheerchutzpah to tell the Environmental Protection Agency “no,” especially in a Democratic administration.

Should we thank Sunstein for making things better than they could have been, or did various political exigencies manage to roll over him, leaving us with an unnecessarily costly regulatory environment? If we merely critique the original benefit-cost analyses the various agencies used to justify their proposed rules, we will add little to the debate. We can do more.

Massachusetts Institute of Technology economist Michael Greenstone noted that most regulations are subject to cost-benefit analysis only before being implemented, when any analysis depends on a variety of assumptions and forecasts of the future. While projecting costs and benefits into the future may be difficult, it ought to be straightforward to look at recently issued regulations and determine whether the resulting costs and benefits resemble those estimated by the various agencies in the initial analysis. That information could then be used to fix or repeal regulations that fail a benefit-cost standard while also refining how we do prospective BCA for future regulations.

It is easy to understand why the agencies would resist doing

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such a thing. Agencies exist to regulate, and the last thing they want to see is their handiwork unwound or their hands tied in the future in some way.

In 2011 Sunstein introduced a highly trumpeted initiative to do an ex-post review of regulations, emphasizing “Regulatory Moneyball,” or valuing metrics over political exigencies. The effort, however, was nothing that Billy Beane would have recognized: the retrospective review focused on a handful of regulatory anecdotes while ignoring thousands of other regulations that truly merited a serious ex-post analysis, such as including independent agencies that are currently exempted from OIRA’s requirements.

Opponents of thorough retrospective review should welcome the opportunity to prove their regulations return net benefits. For example, shouldn’t progressives want to know that rules designed to reduce pollution actually achieve results, or that companies have found ways to implement the measures without exorbitant costs?

That would be the ideal retrospective scenario, at least for all

“economically significant” regulations, but the White House is not practicing anything like that. Instead, it has borrowed heavily from the previous administration to claim “retrospective” synergies from simple command-and-control regulations.

A thorough examination of various retrospective reviews suggests that the government rarely reviews existing regulations to lessen burdens. Over the last three years, retrospective review has yielded potential compliance cost savings of \$3.3 billion, most of which stems from minor Medicare and Medicaid reforms and tweaks to the “Positive Train Control” rule on railway safety. The total paperwork savings from this exercise was 11.7 million hours, or one-tenth of 1 percent of total regulatory paperwork. Some notable regulatory cost reductions from this effort are shown in Table 1.

However, the savings from this retrospective review pales in comparison to the myriad rules that the administration actually *implemented* under the auspices of the order. Some of those rules are shown in Table 2. Once all “retrospective review” regulations are included, costs and paperwork hours added an additional \$11 billion in compliance costs and 5.3 billion paperwork burden hours—which is not exactly how retrospective review is meant to function.

Other countries, most notably South Korea, have done an admirable job reviewing and reforming their regulatory state. South Korea has already reviewed more than 11,000 regulations, eliminating 50 percent of them while reforming an additional 2,400. Compared to the mere 90 rulemakings our “Regulatory Moneyball” examined, it is clear we have plenty of room to try to improve.

State governments are doing better on retrospective review. In 2012, then-Indiana governor Mitch Daniels signed legislation

that codified several retrospective review principles. Three years after a regulation becomes effective in Indiana, the state’s Office of Management and Budget submits a second BCA, comparing the regulation’s actual effect on “consumer protection, worker safety, the environment, and business competitiveness” to the original estimate. The legislation did not elicit much opposition from either Democratic legislators or the populace.

Justice Louis Brandeis once commented that there is no great writing, only great rewriting. Our regulatory analysis lacks rewriting: once government implements a rule, no one pays any heed to how well—or whether—it is working and it is scarcely thought of again, except by those who must devote resources to comply. Our regulatory apparatus needs to acknowledge that we may not get it right the first time. We need to force the government regulatory bureaucracy to re-examine regulations and make an attempt to improve them whenever possible. R

Asking the Tax Code to Do Less

BY IKE BRANNON

There is a famous experiment in behavioral economics that asks the subject to imagine that he’s standing outside a football stadium just before the kickoff of a big game. The subject has both a ticket to the game and a \$100 bill, which, coincidentally, is the going rate for his ticket. The subject is then asked to consider two different scenarios: In the first, he loses the \$100 bill, but a nearby scalper offers to buy his ticket for \$100. In the second, the subject loses his ticket and the nearby scalper offers to sell him one—for a seat in the same row of the same section—for \$100. Interestingly, in the first scenario, most people choose to keep the ticket, but in the second, most people choose to keep the money.

The two different answers raise the question of why it should matter which piece of paper was lost—the \$100 bill or the ticket that can easily be exchanged for \$100. Economists say it should not matter in the slightest, but apparently it does.

This same dichotomy explains why we run so much social and economic policy through the tax code.

The first and primary focus of the tax code should be to raise revenue as painlessly as possible—the proverbial “pluck as many feathers as possible with the least squawking,” as the philosopher Colbert noted a few hundred years ago. Conducting policy with the tax code compromises that goal. It also obscures the true cost of various programs. A streamlined income tax that does not pull on thousands of policy levers would force Congress and the nation to have real debates over what we want the government to do and what it should refrain from doing.

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TABLE 1

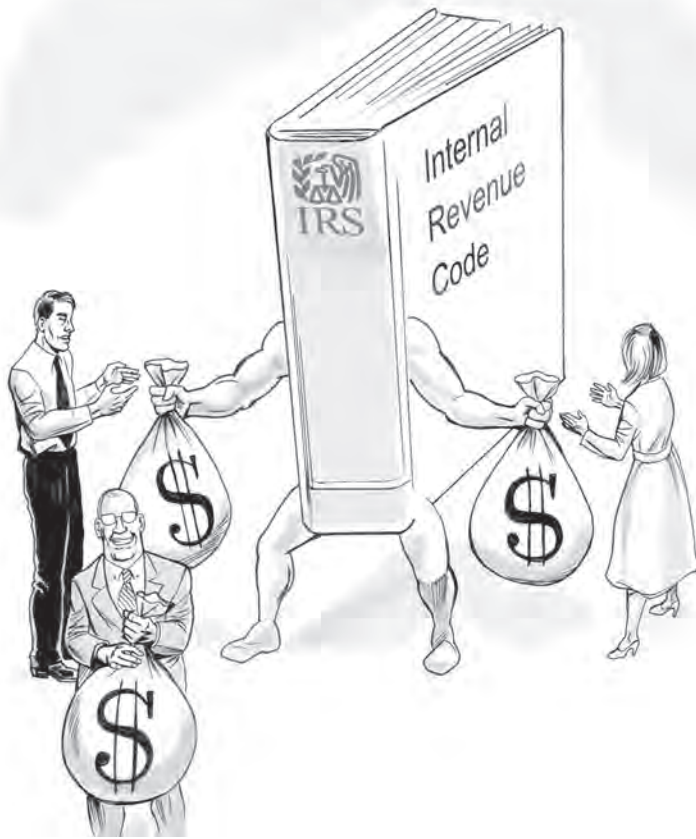
Notable Retrospective Regulations Cutting Costs

RULE	COST REDUCTION	PAPERWORK HOURS
Positive Train Control Amendments	\$645 million	3.8 million
Medicare and Medicaid Reductions	\$630 million	10,400
NESHAP for Spark Engines	\$520 million	101,772
Refueling Vapor Recovery	\$122 million	
Driver-Vehicle Inspections Reports	\$54 million	-1.6 million

TABLE 2

Notable Retrospective Regulations Adding Costs

RULE	COSTS	PAPERWORK HOURS
Efficiency Standards for Transformers	\$5.2 billion	58,320
Hours of Service of Drivers	\$470 million	
Modifications to HIPAA	\$239 million	
Health IT Standards	\$288 million	538
Changes to Medicare Advantage	\$102 million	



For instance, without the ability to deduct mortgage interest, would the government send subsidies to homeowners for the amount of their mortgage interest? If not, then why does this tax break persist, other than through inertia?

What income should be included? | While we use the tax code to incentivize all kinds of activities, the code itself does a relatively poor job of encouraging people to save. We double-tax most investment income that is not in some sort of tax-preferred account, first by taxing the money when people earn it and then, after they invest the money, taxing its returns as well. While liberals see lower taxes on capital gains and income as giveaways to the rich, most tax economists see *any* tax on this income—which is a reward for forgone consumption—as a very expensive way to collect revenue in terms of reduced growth and in terms of progressivity.

Making it easier for working families to save—regardless of the motivation—should be an essential part of any tax reform. And families of all income levels respond to savings incentives. For instance, the Harlem Children’s Zone, a policy experiment that provided a subsidy to the savings of participants in the program (mainly low-income families in New York City), showed that even families that are often considered to be incapable of setting money aside manage to do so when their returns are high enough.

I admit that it seems contradictory to criticize using the tax code to conduct social policy while advocating for another incentive. But I submit that the returns from saving should not be a part

of the tax base at all. If that is politically impossible (which I suspect is the case), then we should try to make it that as many people as possible can save without the government taking a portion of it.

We currently offer a welter of tax-preferred savings accounts for families that want to save, all of which direct the money toward specific uses: e.g., retirement, education, health care. But these all come with caps, annual contribution limits, and severe penalties for violating the strictures governing them. Those efforts could be improved. The mishmash of tax-preferred savings accounts at both the federal and state levels can be difficult to navigate, and states take advantage of their quasi-monopoly for their college savings accounts by allowing the vendors they choose to have management fees well above what other companies charge. For instance, the typical index fund charges a fee of less than 0.2 percent of assets; in the Washington, D.C. college fund, the only available index fund charges a fee a half a percentage point higher—a discrepancy that cannot be rationally explained other than via political largesse.

The George W. Bush administration’s 2006 budget proposal for Lifetime Savings Accounts and Retirement Savings Accounts is worth revisiting. Each would have allowed \$15,000 a year to be set aside in after-tax dollars, and withdrawals (after one year for the former and at age 65 for the latter) would not be taxable events. Putting retirement benefits in one account and health, education, and others in another, taxing the money upfront and allowing interest and returns to accumulate tax-free, would be a great simplification. It could be done in the context of a fundamental tax reform that makes progressive changes to the tax code elsewhere, such as by eliminating or capping various deductions or converting deduc-

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tions to a flat credit, thus preserving its political viability.

In contrast, a much bigger child tax credit—popular among many social conservatives (most notably championed by Ramesh Ponuru and Bob Stein)—is the wrong way to go. It does nothing to change savings incentives, nor does it affect anyone’s incentives to work more or do much of anything. It’s also not particularly progressive, as it would go to rich and poor alike—although if it were not made fully refundable it would go overwhelmingly to the wealthy. Again, a relevant question to ask is what would be done if such a program were administered outside the tax code: would there be any possibility of the government mailing \$7,000 checks

to every family for every child they have? If not, then why should we do this via the tax code?

It might be time to ask whether we want to include some sort of tax incentives to encourage higher birthrates. The average fertility for a woman in the United States is 1.85 births, which is below replacement rate. And it is falling, just as longevity for those who reach age 65 is growing at a rate faster than we've seen in quite some time.

Don't incentivize college | It is undoubtedly true that the "sticker price" for attending college has increased dramatically in the last two decades. My own alma mater, Augustana College, exemplifies this trend: the price for tuition, room, and board when I began school in 1984 was under \$8,000—and was under \$9,000 when I graduated. Today, the price is over \$40,000, an increase of roughly 5.3 percent annually over the last 30 years.

However, the actual price of college is much less than the sticker price of college, thanks to financial aid and the practice of colleges using aid to perfect the practice of price discrimination. Approximately 1 percent of Augustana's students pay the full price. Using the Augustana tuition—or Harvard's—as an indicator of the true cost of college presents a wildly unrealistic view.

Let me suggest another datum to use when calculating the true cost of college: In my hometown of Peoria, Ill., there is a fine junior college called Illinois Central College where I studied under a group of uniformly excellent teachers. Today, annual tuition there is just under \$3,000. The tuition at the state's four-year universities is \$11,800. In other words, without any financial aid whatsoever, a resident of central Illinois can get a four-year degree for under \$30,000. A family with an income under \$100,000 (roughly 97 percent of all households in the area, incidentally) and students with excellent GPAs or ACT scores receive financial aid.

While it is very much true that the impending cost of college is a prime concern of most middle class families with children, using the tax code to help alleviate this has been counterproductive. It's not necessarily the job of the federal government to make private universities affordable to the middle and upper middle classes. Besides, the inelastic supply of such services means that most of the subsidies government provides are captured by the universities.

Do no harm | As a former staffer for the Energy and Commerce Committee, I am well aware of the tendency toward jurisdictional imperialism. Nowhere did the minority and majority staffs work more closely than when the chair and ranking member perceived that another committee was encroaching on their jurisdiction. But a greatly simplified tax code that stripped out the various incentives currently in place to buy a house, an energy-efficient car, home weatherization, and a thousand other myriad and sundry things would result in a tax code less costly to administer and comply with, as well as one more amenable to economic growth. It would permit us to keep the tax rates on work lower than they currently are. I have no idea what Henry Thoreau would think of our current tax code, but his sentiment to "Simplify, simplify, simplify" is certainly an apt one today. **R**

Merkel, Thatcher, and the Stony Minded Stone

BY PIERRE LEMIEUX

Speaking about executive pay, German chancellor Angela Merkel was recently quoted by *The Economist* as saying that "exorbitance cannot be allowed in a free and socially minded society." Margaret Thatcher, who died a month later, had often been blamed for her statement that "there is no such thing as society."

One might take Merkel's expression as a slip of tongue or just florid style—like if she had talked about, say, a "stony minded stone"—if her statement and Thatcher's did not represent two profoundly different visions of society. Merkel seems to consider society as a thoughtful entity with a consistent preference set, just like an individual. Thatcher knew better.

The personification of collectives is common. Just consider a few examples: An environmental and anti-globalization activist declared that "[a] healthy society decides what it will export and import." In democratic times, the collective persona is all of us: "we as a society," "we as a nation," "we as a country." "As a nation, we have repeatedly passed up the opportunity to address this issue," declared the husband of Rep. Gabrielle Giffords about gun control. "We as a country" killed bin Laden, boasted president Barack Obama.

If we decide and do things "as a society" or "as a nation," then "we" must have some collective preferences that allow us to choose what to do. Society must have preferences, socially minded or not. Few people seem to wonder where such social preferences come from, despite a long strand of scientific inquiry proving that they are of the same reality as unicorns.

Consider the dilemma: On the one hand, society's preferences cannot be totally independent of the preferences of the individuals who compose it. A society made of only non-socially minded individuals could not itself be socially minded. For social preferences to be totally distinct from the preferences of society's individual members, we have to imagine society as a sort of biological organism with its own distinct mind. Many people do seem to think this. Just one hot example: writing about the recent Boston Marathon bombing and the failure of imposing more gun controls (something that Europeans have deep problems understanding), the American correspondent of *The Economist* ranted about the British "national conscience" and the American "national psyche." Friedrich Hayek reminded us that social organicist

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theory is not only without scientific foundations, but “has almost invariably been used in support of hierarchic and authoritarian views.” So society’s preferences cannot be independent of the preferences of individual society members.

On the other hand, social preferences cannot correspond exactly to individual preferences either, if only because the latter vary from one individual to the next. Some function is needed to transform individual preferences into social preferences. Economists call this mapping a “social welfare function.”

Preference aggregation problem | Welcome to the problem of preference aggregation. People who talk of “we as a society” or of an *X*-minded society (e.g., open-minded, high-minded, God-minded) assume that society has its own preferences that can be aggregated in some way from individual preferences. But how do you do this? How do you add together the preferences of different individuals—say, some socially minded and other non-socially minded individuals? The answer provided by the academic literature on preference aggregation is that you cannot.

Paul Samuelson, the winner of the 1970 Nobel Prize in economics, showed that society cannot have, like an individual, consistent preferences between baskets of goods and services (say between different combinations of guns and butter). The social welfare function is meant to represent society’s welfare just as individual utility functions describe individual utility, but Samuelson demonstrated that such a social welfare function is impossible to define (in goods space).

The reason is simple, although the full demonstration requires some technical analysis. For society (if you allow me to speak like Merkel for a moment), any given basket of goods and services will lie on a different social indifference curve—meaning a different level of social welfare—depending on how it is distributed among the members of society. For example, whether the basket composed of one million houses and 500,000 cars is preferred to a basket of 500,000 houses and one million cars depends on how the houses and cars are distributed among individuals. If this were not true, the preferences of individuals about distribution, including crucially what an individual gets for himself, would not be taken into account. Consequently, the only social welfare function that can be assigned to society must be defined in utility space: it must be concerned with distribution among individuals.

This sort of social welfare function came to be known as a Bergson-Samuelson social welfare function. It expresses society’s preferences over the distribution of utility among individuals. The most enlightened among its users knew that it did not actually aggregate individual preferences: as Francis Bator, a Harvard University economist, put it haughtily in a famous 1957 article, the social welfare function “could be yours, mine, or Mossadegh’s.” (“Mossadegh” might have been a reference to Mohammad Mossadegh, the progressive prime minister of Iran who was overthrown in 1953, or Bator’s way of saying “Joe Smith.”)

Arrow’s theorem | Samuelson’s demonstration was in fact a special case of the more general Arrow Impossibility Theorem. In 1951, just a few years before Samuelson’s and Bator’s articles,

Kenneth Arrow (1972 Nobel Prize in economics) published his seminal work *Social Choice and Individual Values*. In the book, he mathematically demonstrated that aggregation of individual preferences into a social welfare function—even in utility space—is impossible unless one is willing to violate some conditions that seem axiomatically obvious. To simplify and reformulate, the main conditions are:

- The social preferences must be as consistent as individual preferences are. That is, if *A* is preferred to *B*, and *B* to *C*, then *A* must be preferred to *C*.
- The social welfare function must not be dictatorial in any way. That is, the preferences of some individuals for some social outcome must not win all the time, whatever the other individuals want.

Arrow showed that these two conditions cannot hold at the same time: social preferences aggregated from individual preferences must be either inconsistent (intransitive) or dictatorial—the dictator or dictators imposing some of their preferences on others.

One of the fascinating aspects of this story is that another special case of Arrow’s theorem, called the paradox of voting, had been discovered in the 18th century by a French mathematician and philosopher, the Marquis de Condorcet, and again in the 19th century by mathematician Charles Dodgson (better known by his literary nom de plume, Lewis Carroll), and independently once again by economist Duncan Black a bit before Arrow developed his theorem. Condorcet, Dodgson, and Black found that voting, which is one of the ways to aggregate individual preferences, could lead to inconsistency, also called “cycling” because the majority could choose *A* over *B*, and later *B* over *C*, but then choose *C* over *A*.

When he realized that an electorate composed of all consistent voters may be utterly inconsistent, Black was deeply upset: “On finding that the arithmetic was correct and the intransitivity persisted,” he later explained, “my stomach revolted in something akin to physical sickness.” Arrow extended the nausea to all economists and political scientists who study the issue.

This mathematical feature of voting and other preference-aggregating mechanisms may explain, when ignorance does not suffice, the inconsistencies often exhibited by majority opinion. For example, an opinion poll taken in April (after the Boston bombing) shows that a majority of Americans both support expanded background checks for gun purchases and give a higher approval rating to the National Rifle Association than to congressional Democrats. The intuitive explanation of such inconsistencies is that different majorities support different alternatives, and some voters have, compared to the majority, distorted views of the relations between the different alternatives. They have not only different opinions, but also divergent outlooks on the world.

Condorcet, who was a classical liberal, was arrested under the French Terror and died in his jail cell on March 29, 1794. His tragic end had nothing to do with his discovery of the voting paradox—or perhaps it indirectly did, so momentous are the implications of the inescapable alternative between irrational and dictatorial political choices. If the decisions of the French revolutionary

authorities were not imposed by a few radicals, they could very well have been inconsistent.

Collectivist language | Arrow's theorem has generated a vast literature. Although the theorem was never proven false (a theorem is a matter of logic), some of its conditions were criticized—arguably without challenging its central insight. From a political economy, less technical viewpoint, Gordon Tullock argued that social and political institutions mitigate the possible inconsistencies of voting choices, rendering Arrow's theorem irrelevant. James Buchanan, on the contrary, welcomed cycles, since they prevent one majority from consistently exploiting the same minority. Another criticism, perhaps more conservative and closer to Tullock and possibly to Hayek, would see in traditional rules of conduct a way to prevent too much social heterogeneity and thus keep inconsistent preferences at bay. Consistency is purchased at the price of imposing traditions on everybody.

We may safely conclude that society does not have preferences on the basis of which it makes choices like an individual does. Further, the entity that makes political choices (in a generally irrational way) is the state, not society as such. There are real individuals who are steamrolled. There can't be an *X*-minded society, except if *X* is mutable or is imposed by some on others. Speaking of an *X*-minded society does not make scientific sense. Speaking of a socially minded one is even more absurd, as it implies a self-referential process unique to the individual mind. Similarly, "we as a society" means nothing consistent, or else it means "we who force others in the mold of our own preferences."

Perhaps Merkel was just speaking carelessly. Since she is not an economist, she has probably never heard of Condorcet, Dodgson, Black, or Arrow (in fact, many economists only have a vague clue themselves). Perhaps she was just another unconscious victim of what Hayek called "our poisoned language." "Though abuse of the word 'social' is international," wrote Hayek, "it has taken perhaps its most extreme forms in Germany where the constitution of 1949 employed the expression *societischer Rechtsstaat* (social rule of law)." This collectivist language is dangerous because it provides implicit support for the discriminatory-minded state to impose the preferences of some individuals on others. The fact that Merkel lived much of her life in East Germany did not provide the best antidote. At any rate, Thatcher was right: in the sense of a thinking and acting entity, there is no such thing as society. R

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How Much of Food Activism Is Nonsense?

BY JEFF STIER AND HENRY I. MILLER

There are plenty of people out there telling us what we should eat—and worse, trying to use public policy to make us live by their opinions. Although many of them may know how to sell books and promote themselves through newspapers and press releases, few know much about the demands of our lifestyles, the economics of food and agriculture, and most important, nutrition. Our advice: Ignore their bluster and eat a variety of foods in moderation. And resist the meddling of the nanny-state food activists inside and outside government.

Some of the food sages advise that we stay away from packaged foods or any product that is made with modern technology. There's even the popular "Paleo Diet," based on "eating wholesome, contemporary foods from the food groups that our hunter-gatherer ancestors would have thrived on during the Paleolithic era, or Stone Age." That reminds us of a cartoon depicting a group of denizens of the Stone Age who are standing around, chatting; one of them muses to the others: "I can't understand it. There's no pollution, we get lots of exercise and eat unprocessed, natural foods—but none of us lives past 30."

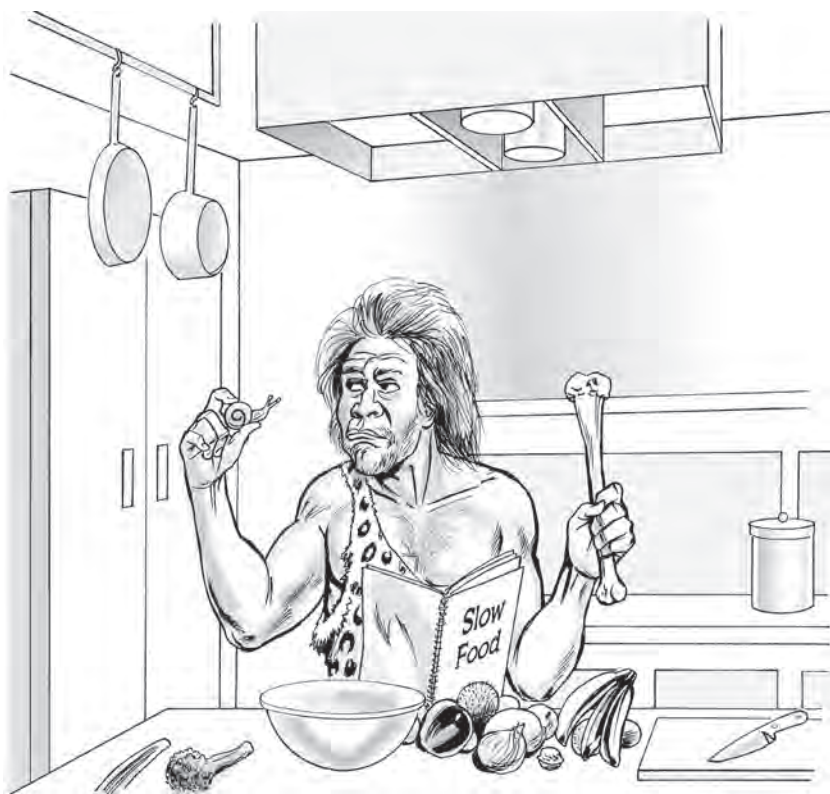
If you believe the blandishments of the self-styled food police, every food science innovation further contributes to obesity, chronic diseases, and even addiction to fat and sugar. That's nonsense, of course.

Agricultural economist Jayson Lusk captured the zeitgeist well, observing that some journalists, columnists, celebrity chefs, and cookbook authors have conspired to create a distorted, dystopian picture of modern agriculture by promoting the view that "the prescription for our ailments is local, organic, slow, natural, and unprocessed food, along with a healthy dose of new food taxes, subsidies, and regulation."

Evocative prose | The campaign to demonize the food industry is at the same time both radical and mainstream, which is a recipe for trouble.

Activists' attacks on those who produce processed food are radical because they are trying to achieve not only a fundamental change in the way we eat, but also, in the words of the movement's guru, author Michael Pollan, a revolution in "the division of domestic labor." By that he means that if you don't have the

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inclination or time to both shop and cook for yourself—preferably from scratch—the food industry will “exploit” you by selling inherently harmful processed food.

Those views are also in a sense mainstream because Pollan’s books are best sellers, influence public policy, and are regular fodder for “food activists.” For example, according to *New York Times* food writer Mark Bittman, Pollan, in his earlier books, “so cogently analyzed production and nutrition.”

To dispel any doubt that a lot of food activism is elitist nonsense, consider Pollan’s rhapsodizing in *The Omnivore’s Dilemma* about the “literary experience” that is part of shopping at Whole Foods. Much of the food, he observes, is

“certified organic” or “humanely raised” or “free range.” But right there, that’s the point: It’s the evocative prose as much as anything else that makes this food really special, elevating an egg or chicken breast or bag of arugula from the realm of ordinary protein and carbohydrates into a much headier experience, one with complex aesthetic, emotional, and even political dimensions.

It’s interesting that fats don’t get to share in the literary, heady experience.

Convenience and food elitism inevitably conflict. In his new book, *Cooked: A Natural History of Transformation*, Pollan calls for a tax on all “prepared” foods. Bittman, who often functions as an amen-corner and sycophant for Pollan, dutifully echoes, “A tax on prepared food, but not on raw ingredients, is [a] good idea.” Yes, we’ve come that far down the slippery slope: if soda taxes represent public policy that serves the public interest, let’s use the same tool to discourage any non-raw foods sold at supermarkets, which,

according to the mantra, are by their very nature harmful.

Fortunately, there’s at least one voice of reason among the food glitterati. Jacques Pépin—chef, restaurateur, TV star, and author of *Fast Food My Way*—uses “the supermarket the same way you use a prep cook in the restaurant—slicing mushrooms, washing spinach. The supermarket does the work now.... It’s more convenient.” Supermarkets not only slice your veggies when you don’t have time to, they offer choices of ingredients (such as veal stock) or entire meals that tend to be more wholesome than the busy person’s alternative, fast food.

Industrialized food | Food technology has been a boon in so many ways, but sometimes it seems that countering opposition to it is like arguing about religion. Pasteurization is a good example. Used to kill bacteria in dairy products, juices, and canned foods, it lengthens their shelf-life and lowers the likelihood of food poisoning. And yet a few diehards insist that pasteurization destroys much of the nutritional value of milk and advocate the consumption of raw milk, although public health authorities are unanimous in recommending against it and it is widely prohibited. (Young children, the elderly, people with compromised immune systems, and pregnant women are particularly susceptible to the pathogens found in raw milk.)

A less obvious but equally ubiquitous example of technology’s applications to foods is quick-freezing, a process invented by Clarence Birdseye during the 1920s. He commercialized a method for flash-freezing food products in convenient packages and preserving the original taste. Frozen foods have come a long way. Not only are they convenient, but often they compare more favorably to fresh foods nutritionally than one might think. In 2007, scientists in the Department of Food Science and Technology at the University of California, Davis, reviewed the scientific literature about the effects of food processing on nutrition. A surprising finding was that the “loss of nutrients in fresh products during storage and cooking may be more substantial than commonly perceived. Depending on the commodity, freezing and canning processes may preserve nutrient value.” They concluded that “exclusive recommendations of fresh produce ignore the nutrient benefits of canned and frozen products.”

This explains why “industrialized food,” sold by big companies that can afford to invest in expensive state-of-the-art technology to freeze vegetables where they are picked, is often more nutritious than the “fresh” lettuce and carrots you pick up on your way home from work. The lettuce and carrots may have been sitting in distribution centers or loading bays for a week after being trucked to the city. Even produce from a farmers’ market might have spent a day or two in hot weather from the time it was picked until you select it. Suddenly, the Pollan tax looks less appetizing.

Inasmuch as they’re convenient, nutritious, and reduce waste, it’s no surprise that frozen foods are popular. Frozen vegetables racked up \$5.7 billion in sales last year while frozen fruit sales were \$422 million, according to the American Frozen Food Institute. Pollan’s proposed tax would serve only to make frozen

foods less competitive and discourage their consumption.

Food elitism might sell to some, but often it fails to work for real people who, for a variety of reasons, can't always cook hand-picked, locally grown, organic, humanely raised, cage-free, fair trade, sustainably produced food—or who, after a day's work, just want to relax and enjoy dinner instead of seeking some sort of existential apotheosis. Nutrition advice should be geared to those who are health conscious, not just image conscious. **R**

Food Safety: A Market Solution?

BY PAUL SCHWENNESEN

Food safety made the news in 2012 when salmonella outbreaks linked to tainted cantaloupes and mangos sickened nearly 400 Americans and caused three deaths. Usually, blame for such outbreaks is placed on menacing, profit-driven corporations. Too-lax food safety laws and underfunded, understaffed government food inspection agencies let them get away with murder. However, as a member of the U.S. meat industry, I want to suggest two other culprits: the United States' system of command-and-control food regulation and the public's trusting embrace of it.

In fairness, the command-and-control viewpoint isn't illogical. The American food supply is one of the safest in the world. We have access to an abundance of food (3,700 kilocalories per day) at very low prices, and food poisoning is exceedingly rare (a 0.0035 percent incidence rate, according to Centers for Disease Control data). A strict regulatory environment, it would seem, is the recipe for creating food we can trust, and a stricter one could only be an improvement.

But I submit that the current system fails to tap creative, market-based incentives to further improve food safety. As a result, we are settling for mediocrity—focusing on meeting government-established minimum safety levels. While this theory is not empirically defensible (no alternative U.S. food safety system is allowed to exist), if we consider the history of U.S. food regulation and its economic incentives, we'll find reasons to think that we can do better.

Background | Food safety in the United States is regulated by no fewer than 15 federal agencies and thousands of separate procedures at all levels of government. At the broadest level, food safety is the responsibility of two federal agencies, the U.S. Department of Agriculture (which oversees meat and poultry) and the Food and Drug Administration (which monitors packaged food and produce, as well as medications). The FDA owns the majority of regulatory oversight—covering roughly 85 percent of the U.S. food supply—at a cost of nearly \$1 billion a year. The USDA (specifically the Food Safety Inspection Service)

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has a far more limited role, charging \$1.2 billion to monitor the national meat supply.

Federal food safety oversight has existed for a very long time. Its apotheosis was Congress's passage of the Pure Food and Drug Act and Federal Meat Inspection Act in 1906, but the very first laws granting federal food inspection power were passed in 1891. Food safety, in living memory, has never been managed by anything other than a bureaucracy.

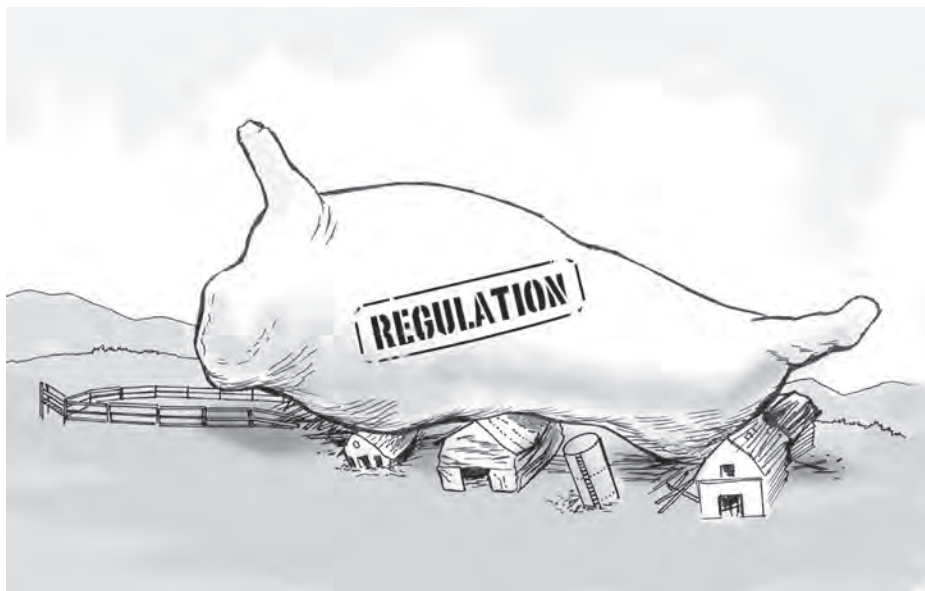
And that bureaucracy has expanded greatly in the intervening decades, right up to today. The FDA has announced sweeping implementation of new policies within the somewhat moldered Food Safety Modernization Act that was passed two years ago. The largest overhaul of food safety regulations in almost a century, the act proposes to tighten an allegedly too-lenient food inspection system. In addition to gaining a \$1.4 billion appropriation and 5,000 new employees, the FDA hopes to mandate a series of structural business alterations—more than 50 regulations in all—that will “establish risk-based standards” to improve public health. How can one argue against that?

Consolidation | Well, one argument is that the new rules will likely continue the consolidation of the food industry, economically trample smaller food providers that can be the source of innovation, and promote regulatory capture—industry gaining control of the government agencies that supposedly oversee it. After all, this has happened before.

Around the turn of the 20th century, when the nation's first federal food laws and regulations began to appear, small meat packers were overjoyed (and lobbied heavily for their adoption) because they believed that federal oversight would break the back of the National Packing Company, the “Beef Trust” formed by giant meat packers Swift, Armour, and Morris. The small packers' sentiments were understandable; in the mid-1860s, the Chicago packing houses handled 29 percent of all cattle marketed, but by 1883, following the advent of refrigeration, that share had increased to 40 percent. For small packinghouses, previously enjoying the lion's share of processing, the trend was ominous. The temptation to counter structural economic changes with structural regulatory ones proved impossible to resist.

After a successful campaign by small packers to generate federal oversight (the Meat Inspection Act of 1891, as well as the Sherman Antitrust Act of 1890), they nonetheless continued to lose market share. The industry, originally characterized as “competitive with ease of entry” and consisting of “relatively large numbers of firms in each community,” increasingly became dominated by conglomerates. By 1904, the “big four” Chicago packers had gained roughly 50 percent market share. Not only had the desired rules failed to re-democratize the meat industry, the “Beef Combines” actually got bigger.

Not surprisingly, J. Ogden Armour, the great meatpacking industrialist, was quick to pronounce support for additional government safety regulations; after all, they always seemed to improve his bottom line. He expressed great pleasure at the passing of mandatory meat inspection requirements for domestic processors, tell-



ing the *New York Times* in 1906: “Nobody in the country will give the law heartier support than we will. As we have said from the first, we always have believed in stringent meat inspection.” The “stringent inspection” labels gave his company a convenient marketing front in the era of Upton Sinclair’s *The Jungle*, while simultaneously erecting significant barriers to entry by upstart competition.

In a strange echo of the past, a January 2013 *New York Times* article observed that “the food industry cautiously applauded” the latest FDA proposals. The article quotes a Grocery Manufacturers Association statement that “Consumers expect industry and government to work together to provide Americans and consumers around the world with the safest possible products.” Armour couldn’t have said it better himself.

Consolidation continues today. In 1970 the top five beef companies controlled about a quarter of overall market share. Today, the top four command over 80 percent—despite all of the hype about “locavore” dining. The reasons for this consolidation are manifold, including consumer price consciousness, economies of scale, and complicated horizontal integration across the industry. But lest it go unnoticed, regulatory accretion over this period has also increased. Those costs weigh on all meat packers, of course, but they often are fixed costs, which means they weigh more heavily on smaller producers. Reams of paperwork, expensive tests, constantly updated procedures, and risk create barriers-to-entry that heavily burden small processors and discourage would-be entrants. As a result, small meat packers in the United States are disappearing as quickly as small family farms; according to a USDA assessment, the number of cattle slaughter plants declined by over 42 percent from 1996 to 2003 “as plant size increased and smaller plants closed.”

There is a powerful and inverse correlation between strength of regulation and competition in the food industry. As the rules become increasingly onerous, the tendency toward centralization grows.

So what? | It can be argued that the loss of small packers (and, by extension, the small-scale farms and cattle operations that supply them) is a regrettable but necessary cost of improving the safety of

the nation’s food supply. However, I believe that consolidation (generated by intense regulatory pressures) actually leads to *less* safe food.

Food is so vital and prevalent, and mishandling of it so potentially devastating, that the subject of food-borne illness falls into that treacherous low-probability/high-consequence psychological category where reason is waylaid by emotion. As a result, we are wary of any proposal to ease or alter the regulation of food, believing such change can only lead to catastrophic results. It is far better, we are tempted to believe, to make food safety the responsibility of government inspectors and rulemaking bureaucracies. But the evidence for this belief is surprisingly weak and we should wonder what could be gained from competition between food providers who would have to earn the public’s trust.

There are, after all, plenty of consumer goods that have the capacity to seriously inconvenience or kill us, yet their safety is left largely to market mechanisms backed by civil liability. A computer virus can affect worker productivity every bit as much as a stomach virus, and yet we find computer companies producing remarkably “clean” products each and every day without submitting to government-approved protocols or mandated inspection regimes like we find in the food sector.

Well over a million companies worldwide currently operate under industrial quality improvement doctrines such as ISO 9000 or Six Sigma. Those tools and standards, spontaneous and non-governmental, are an effective way for companies to implement the one overarching rule of business: *don’t hurt customers*. Though it flies in the face of conventional wisdom, businesses actually “behave” because they want to remain competitive, not because they feel a duty to follow rules. Continual process improvement, enhanced product reliability, and superior safety are what make companies competitive; their striving toward perfection gains loyalty and, ultimately, market share. It is fascinating to note, for instance, that the Six Sigma standards of quality control require a 99.99966 percent error-free rate (3.4 defects per million). As good as our food system is, it doesn’t come close to that rate of excellence.

Someone might reasonably object that nothing currently prevents food providers from competing on food safety. Government regulations enforce a minimum safety level, after all, not a maximum. To look at a different industry, Volvo has built its reputation and market share on the notion that its cars are especially safe. But the food industry suffers from a version of moral hazard that makes it difficult for individual producers to compete on safety. Because the industry is so highly regulated, final responsibility for safety is perceived to rest with the regulator rather than the business owner. Compared to computer companies, whose market shares are wholly dependent on their reputation for quality, food companies can rest on the crutch of government-sponsored certification because consumers seem to assume that certified companies are all equally safe. Government’s emphasis on over-

sight effectively erases the advantages of differentiation, creating “pooled” commodity products in which it is difficult to compete on a basis of safety or quality. Hence, government food safety regulation both creates a high barrier to entry and low returns for existing producers who try to differentiate themselves on safety.

Testing my theory | Imagine for a moment what the food world would look like if food safety were a competitive advantage in a relatively unregulated sector. The Volvo of the food world, vying for an “ultra-safe” reputation, would find a profitable niche. Small companies could demonstrate (through third-party quality assurance, a sophisticated testing regime, or something completely unthought-of as yet) that its product was measurably safer than its competitors.

Arguably, this is already happening to a small degree, as growing public concern over “industrial” food has opened a window for small, local food companies to develop customer loyalty through claims of superior safety. But like the debate over western public lands and hunting (i.e., private landowners find themselves unable to charge significant rents for private land access because so much “free” access exists nearby), these attempts are swamped by a giant state-manipulated production system. The competitors in this space are registering a slight murmur of consumer dissatisfaction rather than the persistent drumming roar that I believe a competitive market would unleash.

If we could get the incentives right, corporate self-interest would be instantly harnessed for the greater public good. If food safety were a serious competitive advantage, companies would engage in a continuous striving for the next-higher grade, or a “seal of approval,” or a “four-diamond” rating. Instead, under the current regime producers aspire only to an “Inspected—Passed” stamp; companies have little reason to strive to be the best they can be.

As the new FDA rules go into effect, the time is ripe to try an experiment. I suggest that we establish a pilot program in which small food companies can select to be regulated under the current regime or opt for a “Not Government Regulated” label coupled with their own private regime. The latter firms would have to earn customers’ trust, and customers would determine which firms do things well. This system would tap the latent power of markets to manage food safety instead of relying on the blunt instrument wielded by administrators.

Contrary to popular myth, markets are very good at giving us what we want. I posit that food safety in a relatively unregulated sector would soon surpass the regulated sector as innovation and competition were unleashed—but only if given the chance.

Regulations are good for imposing minimums, but not for creating excellence. Since our food safety “problem” is clearly in the vanishing margins, excellence is called for. This will only be attained when incentives exist to urge our producers (and consumers) to peak performance. R

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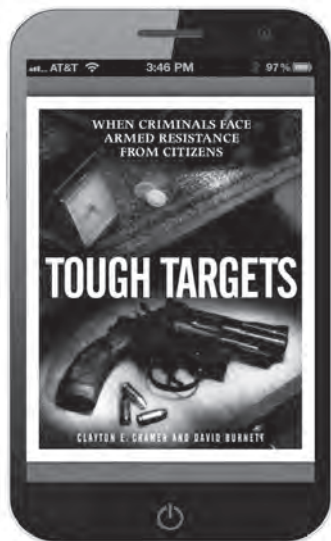
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