



## Comment on the Commentary of the Day

by

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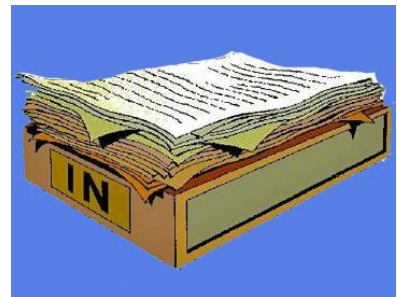
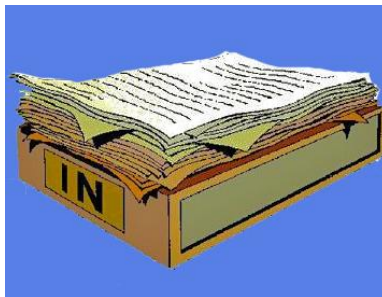
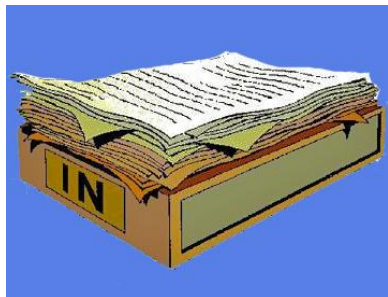
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**Disclaimer: The following "Letters to the Editor" were sent to the respective publications on the dates indicated. Some were printed, but many were not. The original articles that are being commented on may or may not be available on the internet, and if they are, they may require registration or subscription to access. Some of the articles being commented on are syndicated, therefore, they may also have appeared in other publications.**

21 April 2013

Editor, Washington Times

Dear Editor:

Prominent Republicans, including Sen. John McCain and Rep. Peter King, want to deny Boston bombing suspect Dzhokhar Tsarnaev his Miranda rights by holding him as an enemy combatant ("Republicans want Boston bombing suspect treated as enemy combatant, sparking Miranda debate," April 21).

Beware. As dangerous and evil as Mr. Tsarnaev might be, he could never pose as great a threat to the republic as that which is posed by government officials impulsively circumventing well-established Constitutional procedures in the name of public safety.

The late Robert Bork – a conservative icon – was frequently likened to Sir Thomas More as depicted in Robert Bolt's 1960 play, "A Man for All Seasons." Conservatives, therefore, should pay special heed to More's insistence on the importance of the rule of law – an insistence famously portrayed in a scene in which More explains to his son-in-law (Will Roper) why he, More, as Chancellor of England, will not use arbitrary measures to subdue the traitorous Richard Rich:

"ROPER: So, now you give the Devil the benefit of law!

"MORE: Yes! What would you do? Cut a great road through the law to get after the Devil?

"ROPER: Yes, I'd cut down every law in England to do that!

"MORE: Oh? And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man's laws, not God's! And if you cut them down (and you're just the man to do it!), do you really think you could stand upright in the winds that would blow then?

"Yes, I'd give the Devil benefit of law, for my own safety's sake!"\*

Sincerely,

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and  
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21 April 2013

Ms. Ellen \_\_\_\_\_

Dear Ms. \_\_\_\_\_:

You object to my favorable mention, on my blog, of Richard Epstein's criticism of mandated paid sick leave. The crux of your objection is that Epstein "ignores the likelihood for businesses to pay for the expenses of [paid sick leave] from their profits." You concede that businesses might respond as Epstein argues, but regard such a response as "not likely" because "businesses need workers."

With respect, I believe that the possibility that you regard as a "likelihood" is a practical impossibility, if only because few firms consistently earn abnormally high rates of return. But there's a deeper problem with your assumption that government can create benefits for workers merely by mandating that such benefits be supplied.

Suppose government were to mandate that workers receive the out-of-pocket costs of their paid-sick-leave packages not from their employers but from supermarkets. Every worker who takes sick leave would present a voucher to a supermarket. The voucher would be from his or her employer and would entitle that employee to receive from a supermarket a bundle of cash equal to the wages that the worker would have earned had he or she worked rather than taken time off.

Is it conceivable to you that supermarkets would simply absorb these higher mandated costs without taking countervailing actions – such as raising the prices charged for groceries and by limiting the number of people who shop in their stores? (Supermarkets, after all, need customers.) I assume that you agree with me that supermarkets would indeed react in ways that their customers find disagreeable. So, then, why are you a fan of mandated paid-sick-leave policies of the sort that Epstein criticizes?

I realize that my supermarket hypothetical isn't fully analogous to the paid-sick-leave policies that you endorse. But my hypothetical is nevertheless relevant because it exposes as naïve the assumption that government can arbitrarily impose higher costs on businesses without those businesses reacting in ways that shift much of the burden

of the mandated higher costs from themselves onto others, such as consumers or workers.

Firms as employers are no more likely than are firms as retailers to absorb without negative reactions higher mandated costs.

Sincerely,  
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and  
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24 April 2013

Editor, The Wall Street Journal  
1211 6th Ave.  
New York, NY 10036

Dear Editor:

The caption to the video that accompanies my review\* of Cass Sunstein's book "Simpler" reads "Cass Sunstein says that the act of choosing is a muscle that gets fatigued. The more choices people have to make, the more likely they are to make bad ones."

That sentence is indeed an excellent summary of Prof. Sunstein's thesis. Yet it is a thesis fundamentally at odds not only with my own, but with the thesis of many other people who are not so enamored with the alleged promise of a nanny state.

We say, in contrast to Prof. Sunstein, that "the act of choosing is a muscle that gets stronger with exercise. The more choices people have to make, the more likely they are to make good ones" (assuming, of course, that government socializes neither the benefits nor the costs of such choices).

What a bleak and condescending opinion Prof. Sunstein has of ordinary people.

Sincerely,  
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1 May 2013

Editor, Christian Science Monitor:

Dear Editor:

Tim Sandefur convincingly argues that Obamacare is unconstitutional ("Obamacare faces new legal challenge: Its 'tax' still violates the Constitution," April 30). Here, though, is yet another reason for the courts to strike down Obamacare: it violates the 5th amendment's due-process clause.

Everyone concedes that, as Mr. Sandefur reports, "Obamacare was passed hastily, by lawmakers who admitted they had not read the bill." In what universe is due process of law served when legislators vote for legislation that they have not read? Because, as is our habit, legislation is regarded as law - and because the process that bestows upon legislation the lofty status of law is deliberation and majority votes in Congress - surely a bill passed by legislators who admit to being ignorant of the contents of the bill cannot reasonably be said to have become law through a procedure deserving the description "due process."

While the due-process clause has never been interpreted to nullify legislation in the way that I propose here, I submit that my suggested application of that constitutional clause is reasonable and wholesome in light of the courts' history of interpreting constitutional language expansively. If, as the Supreme Court has held, the commerce clause can be read to govern farmers growing wheat for their own consumption, then the due-process clause can be read to govern legislators who do not read the bills they impose on their own constituents – bills that, in some real measure, deprive Americans of liberty and property.

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and

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