

Game Over: The Inside Story of the Greek Crisis

By George Papaconstantinou

CreateSpace, An Amazon Company, 2016. 326 pages, \$19.95.

Reviewed by Christopher C. Faille

Over the period 2001-2008, a bank systems engineer named Hervé Falciani compiled a list of strictly confidential information that he acquired while working in Switzerland. It included the names of more than 100,000 non-Swiss individuals, each of whom maintained Swiss bank accounts that could be useful in evading the tax authorities of their respective home countries.

Near the end of his time in Switzerland, Falciani started trying to sell this list to the highest bidder. This made him a wanted man in Switzerland (a country that derives a lot of benefit from an international reputation as a safe place for just such secrets), and he fled to France. The French refused to extradite him to Switzerland, but they did help themselves to his list. It was bandied about at the highest levels of the French government, and in time word of its existence reached all the European capitals.

In 2009, while this bandying was going on, George Papandreou and his Panhellenic Socialist Movement (PASOK) won the national election in Greece. The author of *Game Over*, George Papaconstantinou, was at the time an economic adviser to PASOK and one of Greece's representatives in the European Parliament.

Soon after PASOK's victory in those elections, Papandreou appointed Papaconstantinou as Greece's finance minister.

A Delicate Situation

In September 2010, Papaconstantinou went to Paris, in the course of a tour of the European capitals on which he discussed the precarious fiscal situation of Greece. He met with Christine Lagarde, France's finance minister, and asked her for a copy of the already infamous list. He hoped to use it to crack down on Greek tax cheats, bringing critical new euros into his country's treasury. She indicated that she'd send it to his office.

The situation was delicate. Greece, like France, wanted to remain diplomatically respectful of the sovereignty of Switzerland, which meant at least being discreet about using a document stolen in defiance of Swiss banking secrecy laws. But use it they would. Because, after all, revenue acquisition is a finance minister's line of work.

Of course Lagarde didn't do anything as gauche as to email the list to her colleague. Rather, she arranged for a package to be hand-delivered to him in his office in Athens. Inside that package was a CD-ROM of what would come to be known in the Greek press as the "Lagarde list."

The task of making discreet use of the information about the Greek depositors on the list, in order to ensure that they pay their fair share of taxes, was complicated for Papaconstantinou by the corrupt character of the enforcement administration he had available to him: the Economic Crimes Enforcement Agency (SDOE). He was afraid that, if the SDOE was involved, the news would leak, and the Swiss would become aware that he had the list. This would have been terrible timing—he was sched-

uled to meet with his Swiss counterpart in January 2011 to discuss a tax treaty and possibly gain Greece some *routine* access to such matters without the skullduggery.

Even more seriously, Papaconstantinou was concerned that someone at the SDOE might use the information to start an unofficial blackmail racket.

On the Way to a One-Word Headline

To shorten our story considerably, the issue of what use, if any, the finance ministry could get out of the information in the Lagarde list was still unresolved when, in a cabinet reshuffle in June 2011, Papaconstantinou left that ministry. He was succeeded by Evangelos Venizelos.

Although the list as Lagarde sent it to Papaconstantinou was on a CD-ROM, the list that Papaconstantinou passed on to Venizelos was on a USB stick. Papaconstantinou writes that he left the CD-ROM itself with his secretaries for safekeeping. Unfortunately, it disappeared. He also says that he did no tampering: Everything on the CD-ROM was transferred to the USB.

In the spring of 2012, a new government took over in Greece, headed by Antonis Samaras of the New Democracy Party. Although Papaconstantinou's party, PASOK, was part of the coalition supporting this government, Papaconstantinou was now a private citizen. He believed and clearly still believes that the crowd surrounding Samaras was fiscally irresponsible, and he writes with some bitterness, "The arsonists were back in charge of the fire station."

Then came a twist that led to an enormous political scandal and a sensational criminal trial. In December 2012, the government of France provided Greece with another CD-ROM with the list. Soon after, Greece's New Democracy government announced that the list on the new CD-ROM included three names that were not on the list on the USB stick that it had received in 2011 from Papaconstantinou. What is more, the missing names were those of relatives of Papaconstantinou. It certainly looked as if he had acted to help tax-cheating kinfolk escape consequences.

On Dec. 29, 2012, the largest circulation newspaper in Greece ran a one-word headline for its story on this development: “Guilty.”

A Compromise Judgment

Papaconstantinou himself, the object of that one-word judgment, was on vacation with his family in the Netherlands at the time. The idea that he had tampered with a list of tax cheats to protect family members made for such a tempting story that this wasn't far away enough. Papaconstantinou heard about the missing names on Dutch radio news.

There was yet another twist in this tale, one that must be included even in the shortest of précis. A forensic investigation of the USB stick with the shortened list showed that it was not the same USB stick as the one that Papaconstantinou had handed over. Not only is the original CD-ROM unaccounted for, but so is the USB stick to which Papaconstantinou said he had copied the contents of the original CD-ROM! So the forensics leaves open the possibility that someone else tampered with the list subsequent to Papaconstantinou's last access to it. He contends that there were many with both the opportunity and the motive to engage in such tampering and to frame him for it. “During my time as finance minister, I had upset the corrupt practices of many in the SDOE, as well as of many business and political people—many would like to see me pay for this.”

In March 2015, after a sensational trial, a court found Papaconstantinou not guilty of the felony charge of breach of faith, apparently because conviction on that charge under Greek law requires proof of damage to the state, and the tax authorities who were called as witnesses were unable to make out a credible case that Papaconstantinou's relatives whose names had been deleted from the list ever actually evaded any taxes. Thus, there was no evidence of damage to the state, and no felony under Greek law.

Nonetheless, by an 8-to-5 vote, the judges found Papaconstantinou guilty of misdemeanor tampering. They gave him a one-year suspended sentence. He walked out of the courtroom a free man. He believes that dispassionate consideration of the facts, including the chain of custody difficulty mentioned above, would have cleared him on the misdemeanor charge as well, but he is understanding of the judges' position in the midst of a “public mood for

lynching,” and he regards the outcome as an “acquittal in all but name.”

Policy Issues

There is much more to this book than its discussion of the Lagarde list and the resulting trial. Most of it discusses the Greek sovereign debt crisis that unfolded during Papaconstantinou's tenure as finance minister (and that is very much with Greece, and the Eurozone, still—the book's title, *Game Over*, is meant ironically).

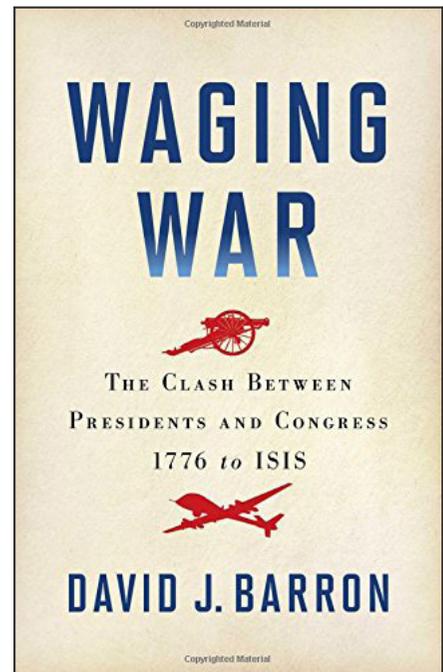
The often-tense relationships between the southern countries in Europe (Portugal, Spain, and Italy, along with Greece) and the northern countries, particularly Germany, became especially contentious in 2010, when Greece badly needed a bailout loan. When the northerners demanded of Papaconstantinou and his colleagues proof of a new budgetary austerity that would make continuing bailouts unnecessary, the domestic politics demanded that the government push back. Greece's New Democracy Party claimed that it could balance the budget without austerity and in general without inflicting any pain on anyone.

Papaconstantinou's depiction of the difficulties of navigating through such fiscal and political conditions is fine, and this book makes a valuable addition to the expanding literature on the Greek crisis.

Concluding Observation

Hervé Falciani also has a French-language memoir out, called *Seisme sur la Planète Finance: Au Coeur du Scandale HSBC* (2015). The title translates to “Earthquake on Planet Finance: At the Heart of the HSBC Scandal.” When it becomes available in English, this book may offer some of us in the Anglosphere another valuable perspective on the events behind Papaconstantinou's trial. ☺

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Waging War: The Clash Between Presidents and Congress, 1776 to ISIS

By David J. Barron

Simon & Schuster, New York, NY, 2016.

560 pages, \$30.00.

Reviewed by Louis Fisher

In analyzing the American experience from 1776 to today, David Barron concentrates in *Waging War* on several fundamental questions, starting with: “Who decides how America wages war?” Although Congress has the express power to declare war, the Framers understood that the President needed freedom to repel sudden attacks. From 1789 to World War II, Presidents who wanted to take the country from a state of peace to a state of war always came to Congress either for a formal declaration of war or specific statutory authority. The pattern from the Korean War to the present is strikingly different. Presidents Harry Truman, Bill Clinton, and Barack Obama took the country to war without seeking any congressional authorization. Instead, they sought support from the UN Security Council or from NATO allies. Barron concludes in his preface that “our past shows that constitutional crises have erupted in war only when presidents have struck out on their own and claimed an exclusive right to decide how war should be waged.”

Barron is a judge on the U.S. Court of Appeals for the First Circuit; previously, he taught at Harvard Law School and served

as acting assistant attorney general of the Office of Legal Counsel in the Justice Department during the Obama administration. With Martin Lederman, he coauthored two lengthy articles (totaling 285 pages) published in the *Harvard Law Review* in 2008 as “The Commander in Chief at the Lowest Ebb.” Those articles rejected contemporary assertions that the conduct of military campaigns is beyond legislative control and pushed back against the claim that the President is entitled to unfettered discretion in the conduct of war.

The first 100 pages of *Waging War* take the reader from the Revolutionary War against Great Britain through the presidency of James Madison. With regard to the debates at the 1787 Constitutional Convention in Philadelphia, Barron says that the “fear of monarchy was persuasive,” but that delegates “seemed content to leave the full extent of the executive’s power to go it alone largely undefined.” Yet the Framers clearly repudiated the notion of a single executive taking the nation to war. Defensive actions, yes; offensive actions, no. Barron says that the draft constitution “offered little clue as to just what kind of wartime leader the delegates to the Constitutional Convention had in mind,” and “the records of their deliberations were not much more help.” Still, he acknowledges that the convention debates “do show that the delegates feared an executive with too much power over war.” The delegates “leaned hard in Congress’s favor when it came to making the crucial decision between war and peace.”

In terms of the experiences of Presidents from George Washington forward, Barron cites key precedents but often omits important actions that imposed limits on presidential initiatives. For example, he discusses Washington’s Neutrality Proclamation of 1793, which warned Americans not to take sides in the war between England and France. Missing from his discussion, however, is Washington’s warning in the proclamation that he would prosecute offenders. Remarkably, jurors sent a blunt message to Washington that criminal law in the United States is made by Congress, not by the President. They would acquit anyone put on trial. Washington got the message. He stopped the prosecutions and came to Congress for authority, which it provided the next year in the Neutrality Act. The check here to presidential initiatives came not from Congress or the courts but from jurors who

understood the Constitution better than Washington and his legal advisers.

The chapter on Thomas Jefferson’s eight years as President covers important precedents that help define executive power. In discussing the decision to prosecute Aaron Burr, Barron does not refer to Jefferson’s message to Congress on Jan. 22, 1807, describing a conspiracy in the western territory. Jefferson acknowledged that the letters he received often contained “such a mixture of rumors, conjectures, and suspicions” that neither “safety nor justice will permit the exposing of names, except that of the principal actor, whose guilt is placed beyond question.” Yet without submitting any evidence or letting the matter go to trial, Jefferson publicly identified Burr as guilty of treason, at that time punishable by death by hanging. Barron provides considerable information about Burr and his relationship with Gen. James Wilkinson, but he does not discuss the trial at Richmond, Va., where the jury found Burr not guilty.

With regard to another early presidential initiative, Barron states: “Most famously, Jefferson abandoned the theory of strict construction of the Constitution in 1803 when he was offered the chance to purchase the territory of Louisiana and beyond.” No doubt Jefferson took many liberties and found the deal “too good to pass up,” but it would be misleading to suggest that Jefferson thought he could complete the purchase through some kind of unchecked presidential prerogative. Barron does not explain that Jefferson understood he needed additional appropriations from Congress as well as Senate agreement to the treaty. He received both. Jefferson knew he was at considerable risk and could prevail only by receiving explicit legislative support.

As to military actions, Barron states that Jefferson “began to see advantages in the executive possessing an uncheckable prerogative in war,” but was “also hesitant to embrace the exercise of unchecked executive war powers.” To Barron, Jefferson’s “deft handling of the use of force against the Barbary States no doubt gave him confidence to act on his own in handling future threats to the nation’s security.” But *Waging War* omits some important limitations. After a squadron of U.S. ships engaged with Barbary forces in the Mediterranean, Jefferson reported to Congress on those actions and acknowledged that he was “unauthorized by the Constitution, without the sanctions of

Congress, to go beyond the line of defense.” Congress had to decide whether to authorize “measures of offense.” Lawmakers passed 10 statutes authorizing Jefferson and Madison to use military force against the Barbary pirates. Barron offers conflicting interpretations of Jefferson’s view of his commander in chief powers, saying that he “wanted to avoid overstepping Congress’s war powers,” but that he came “the closest of any chief executive to asserting a wartime power to trump Congress.” In fact, with regard to the Barbary wars, Jefferson asked for statutory authority and received it.

Barron explains the military initiatives that President Abraham Lincoln took after the Civil War began with Congress out of session: taking money from the Treasury without an appropriation, calling up the militia, suspending the writ of habeas corpus, and others. As Barron notes, Lincoln knew that “in some cases, he had gone beyond his lawful authority.” When Congress returned to session, Lincoln told lawmakers that the powers he exercised during their absence were not beyond “the constitutional competency of Congress.” In plain language, Lincoln acknowledged that he had exercised not only his Article II powers but also the Article I powers of Congress. Lincoln never claimed, as did Presidents after World War II, that he had access to inherent, plenary, exclusive, emergency, or prerogative powers. To his credit, Lincoln said he exercised powers he did not possess and needed Congress to pass legislation authorizing what he had done, which Congress proceeded to do. As Barron notes: “Lincoln was never fully comfortable with relying on necessity alone to justify his action, knowing—and fearing—its potentially boundless quality.”

Of the Presidents following Lincoln, Woodrow Wilson was the first to elevate the President to a position superior to the other branches. In *Constitutional Government in the United States* (1908), he proclaimed about the President: “Let him once win the admiration and confidence of the country, and no other single force can withstand him, no combination of forces will easily overpower him.” Reaching even higher with rhetoric: “If he lead[s] the nation, his party can hardly resist him. His office is anything he has the sagacity and force to make it.” Still higher: “The President is at liberty, both in law and conscience, to be as big a man as he can.” Wilson claimed that the President was particularly dominant in external affairs: “One of

the greatest of the President's powers I have not yet spoken of at all: his control, which is very absolute, of the foreign relations of the nation." The book's title was quite strange. *Constitutional Government?* Wilson had no understanding of constitutional principles or even constitutional text.

Barron says that Wilson "was no lover of war" but "did believe in the untapped potential of the assertive exercise of executive power." As Barron points out, Wilson was convinced that, "in the modern world, America could no longer afford for the legislative branch to be the locus of policy-making power." To Barron, Wilson believed that war "provided about the only means by which presidents managed to loose themselves from the grip of Congress's control." That sounds like Wilson *did* love war, at least as a way to expand independent presidential power.

The chapter on Wilson ends with the Senate voting against the Versailles Treaty. As Barron explains, despite failing health, Wilson "barnstormed the country" in an effort to make the case for the League of Nations. Barron does not discuss the confrontation between Wilson and Sen. Henry Cabot Lodge (R-Mass.), who favored U.S. participation in the league but proposed a number of "reservations" to protect American interests and constitutional principles. The second of 14 reservations concerned the congressional prerogative to take the nation to war. Any decision by members of the league to employ U.S. military forces under any article of the treaty would require that "Congress, which, under the Constitution, has the sole power to declare war or authorize the employment of the military or naval forces of the United States, shall by act or joint resolution so provide."

Wilson opposed the Lodge reservations, claiming they "cut out the heart of this Covenant" of the League of Nations and represented "nullification" of the treaty. His principal advisers disagreed with this characterization and urged him to accept the reservations. Personal spite caused Wilson to dig in his heels. As a newspaper reported at the time, "The President has strangled his own child." Wilson had no principled objection to Lodge's position on the war power. On March 8, 1920, Wilson wrote to Sen. Gilbert Monell Hitchcock (D-Neb.) explaining why there was no need for the congressional stipulation dealing with Article 10 of the Covenant, under which the League of Nations could take military action. Whatever

obligations the U.S. government undertook "would of course have to be fulfilled by its usual and established constitutional methods of action," and there could be no objection to explaining that Congress "can alone declare war or determine the causes or occasions for war." Yet Wilson told Hitchcock that acceptance of the Lodge reservations "would certainly be a work of supererogation," by which Wilson meant it was superfluous and unnecessary. Wilson should have accepted the reservations.

The chapter on Wilson ends on page 227. From there to the last page of text are only 200 additional pages, forcing Barron to move from extensive detail and discussion in the first half of the book to more compressed treatment of the period from 1921 to 2016. The years from 1921 to 1939 are not covered at all, which means that Barron does not discuss the Supreme Court's 1936 decision in *Curtiss-Wright* that added extensive (and erroneous) dicta about the President having plenary and exclusive authority over external affairs. That decision would be cited repeatedly by the executive branch, federal courts, and scholars for decades to come to magnify presidential authority until partially corrected by the Court in *Zivotofsky v. Kerry* (2015).

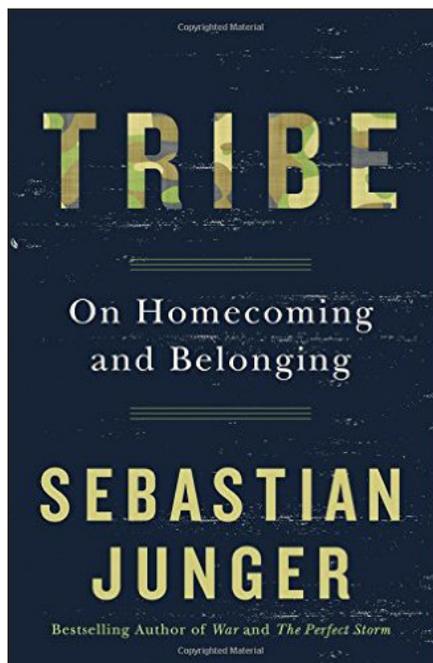
With regard to the Korean War, which began in 1950, Barron correctly states that "Truman even went so far as to start, for the first time in the country's history, a full-blown foreign war. He did so on the basis of nothing more than his own say-so and the blessing of the United Nations." Presidents Clinton and Obama followed that precedent with their military initiatives against Haiti, Bosnia, and Libya, bypassing Congress and seeking resolutions of support from the UN Security Council. Barron notes that in the late fall of 1950, "after months of setbacks in Korea," matters grew more difficult because of "the entry of the Chinese Communist army into the conflict." Barron does not explain that the Chinese entered because President Truman and Gen. Douglas MacArthur decided to send U.S. and allied forces northward toward the border with Manchuria. According to Barron, Truman "confronted a true emergency, given the prospect of a Chinese invasion." There was no such emergency. Moving troops north provoked the Chinese to intervene.

Barron devotes only a few pages to President John F. Kennedy. One sentence refers to "the Bay of Pigs," but the book contains

no analysis of the marked failure of that covert action and how it led to the Cuban Missile Crisis the following year. Chapter 15 analyzes the war in Southeast Asia, which Congress supported by passing the Gulf of Tonkin Resolution in August 1964, supposedly in response to two attacks by North Vietnam on U.S. vessels. Barron doesn't mention it, but the second attack—widely questioned when first reported—never occurred. It consisted of some signals from the first attack that were delayed. When released, they were incorrectly interpreted to be a second attack. The United States went to war on the basis of something that did not happen. For the heavy costs to the United States and Southeast Asia, the Vietnam War discredited both Presidents Lyndon Johnson and Richard Nixon.

Chapter 18 covers four presidents (Jimmy Carter, Ronald Reagan, George H. W. Bush, and Bill Clinton) and is only 16 pages long, giving Barron inadequate space to analyze military commitments over those 24 years. The Iran-Contra Affair is dealt with in less than two pages. Although the index contains many references to the War Powers Resolution, *Waging War* has no analysis of how its 60-90 day limit applies to Obama's military action against Libya in 2011 and against the Islamic State from 2014 forward. Chapter 20, devoted to the war against Iraq in 2003, provides no coverage of the six claims that Iraq possessed weapons of mass destruction, with all six claims found to be empty. In the 12-page epilogue, only four pages are available to evaluate military actions by President Obama, including (1) commitment of additional troops to Afghanistan; (2) intervention in Libya that led to regime change and a country broken economically, legally, and politically; (3) involvement in Iraq and Syria; and (4) the multiyear commitment against the Islamic State. ©

Louis Fisher is scholar in residence at the Constitution Project and visiting scholar at the William and Mary Law School. From 1970 to 2010, he served at the Library of Congress as senior specialist in separation of powers at the Congressional Research Service and specialist in constitutional law at the Law Library. He is the author of 24 books, including Presidential War Power (University Press of Kansas, 3d ed., 2013). For more information, see <http://loufisher.org>.



Tribe: On Homecoming and Belonging

By Sebastian Junger

Twelve (Hatchette Book Group), New York, NY, 2016.
171 pages, \$22.00.

Reviewed by Elizabeth Kelley

The July 16, 2016, edition of *The Marshall Project* carried a story with the headline, “Did the Cop Killers Have PTSD?” The story cited *Tribe: On Homecoming and Belonging* by Sebastian Junger. Junger is the co-director of the film, *Restrepo*; the bestselling author of *War*, *The Perfect Storm*, *Fire*, and *A Death in Belmont*; and a regular contributor to *Vanity Fair*. Expecting from *The Marshall Project* headline to learn more about veterans and post-traumatic stress disorder (PTSD), I began reading *Tribe*. I discovered that *Tribe* is not just an extended essay on what it means for us to treat one another as a member of a tribe. In addition, as Junger writes in the introduction:

This book is about why that sentiment is such a rare and precious thing in modern society, and how the lack of it has affected us all. It's about what we can learn from tribal societies about loyalty and belonging and the eternal human quest for meaning. It's about why—for many people—war feels better than peace and hardship can turn out to be a great blessing and disasters are sometimes remembered

more fondly than weddings or tropical vacations. Humans don't mind hardship, in fact they thrive on it; what they mind is not feeling necessary. Modern society has perfected the art of making people not feel necessary. It's time for that to end.

Why, then, should a lawyer, particularly one busy with client demands and other responsibilities, read *Tribe*? Because, with the legal profession undergoing tremendous upheaval due to economics and technology, and its members subject to high rates of substance abuse and job dissatisfaction, *Tribe* can provide guidance.

Toward the beginning of *Tribe*, Junger cites a 2015 *George Washington Law Review* survey of more than 6,000 lawyers that found that “conventional success in the legal profession—such as high billable hours or making partner at a law firm—had zero correlation with levels of happiness and well-being reported by the lawyers themselves.” How did we reach this point? Junger cites data from colonial times showing that some white people captured by Indians had no desire to return to their homes. They found appealing a simpler life, where equality and group loyalty were core values. Even then, “civilized” members of society were on a treadmill of work and financial obligations and more work. This caused the disintegration of group loyalty and feelings of isolation among many, and was responsible for high suicide rates. In modern times, the erosion of group loyalty is responsible for fraud such as insurance, tax, and welfare fraud, which in other eras and in other cultures would have been considered sins against the tribe. And this fraud has become acceptable. Junger emphasizes that, following the recent recession, virtually no indictments were issued against Wall Street executives.

By extension, the fact that we no longer function as a tribe bound by intense loyalty has led to the high rates of PTSD following the wars in Afghanistan and Iraq. As Junger notes, “The vast majority of traumatized vets ... return from wars that are safer than those their fathers and grandfathers fought, and yet far greater numbers of them wind up alienated and depressed.”

Obviously, trauma is an extremely complex phenomena, and Junger tries to unpack it. There is not a simple cause-and-effect relationship between experiencing trauma and suffering its symptoms. Indeed, Junger notes

data from the Blitz in London during World War II to show “the positive effects of war”.

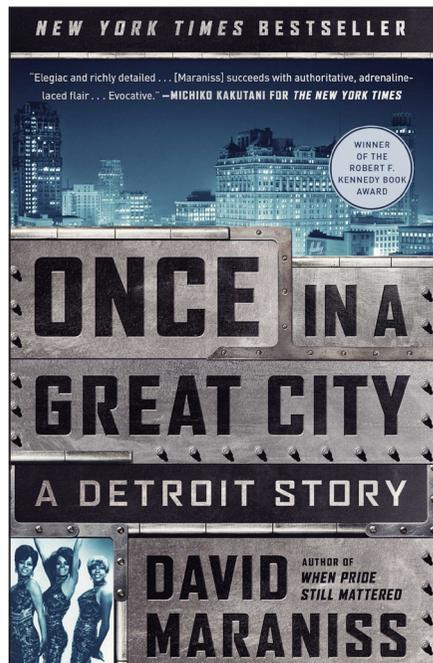
On and on the horror went, people dying in their homes or neighborhoods while doing the most mundane things. Not only did these experiences fail to produce mass hysteria, they didn't even trigger much individual psychosis. Before the war, projections for psychiatric breakdown in England ran as high as 4 million people, but as the Blitz progressed, psychiatric hospitals around the country saw admissions go down. Emergency services in London reported an average of only two cases of “bomb neuroses” a week. Psychiatrists watched in puzzlement as long-standing patients saw their symptoms subside during the period of intense air raids. Voluntary admissions to psychiatric wards noticeable declined, and even epileptics reported having fewer seizures. “Chronic neurotics of peacetime now drive ambulances,” one doctor remarked. Another ventured to suggest that some people actually did better during wartime.

Similarly, in New York City following Sept. 11, 2001, rates of violent crime, suicide, and psychiatric disturbances decreased. Junger also shows that people can suffer from PTSD even if they have not actually experienced trauma. His own panic attacks after he returned from covering the war in Afghanistan is a case in point.

Tribe has no endnotes or footnotes, which makes for rapid reading, but makes it impossible to know the source of its many factual statements. This would present difficulties if I wished to cite some of these facts in an article, brief, or presentation. And sometimes, I don't know whether a statement is an assertion by Junger or something that is attributable to a source.

At the end of *Tribe*, Junger tells of an obituary he read in *The New York Times* about a man who, during an economic downturn, assembled his employees, asked them if they would be willing to take a 10-percent pay cut so that he would not have to fire anyone, and relinquished his own salary. It is this ability to treat others as members of a tribe that has made the legal profession strong. It is this muscle that we need to continue to flex. It is this quality that we need to encourage and reward in others.

Elizabeth Kelley is a criminal defense lawyer based in Spokane, Wash., and she has a nationwide practice representing persons with mental disabilities. She is serving her third term on the board of the National Association of Criminal Defense Lawyers. She has been appointed to the National Advisory Committee of The ARC's National Center on Criminal Justice and Disability. She hosts two Internet radio shows, *CelebrityCourt* and *AuthorChats*. She can be reached at ZealousAdvocacy@aol.com.



Once in a Great City: A Detroit Story

By David Maraniss

Simon & Schuster, New York, NY, 2016.

441 pages, \$32.50 (cloth), \$17.00 (paper).

Reviewed by Joshua A. Kobrin

Jeffrey Eugenides, who has set several of his novels in Detroit, once said that “most of the major elements of American history are exemplified in Detroit, from the triumph of the automobile and the assembly line to the blight of racism, not to mention the music, Motown, the MC5, house, techno. All made in Detroit.” David Maraniss, in *Once in a Great City: A Detroit Story*, makes the same point. However, rather than a contemporary study of the ailing city or a comprehensive history of its rise and fall, *Once in a Great City* provides the snapshot that its title suggests. Maraniss focuses on the period

between the autumn of 1962 and spring of 1964, which he calls “a time of uncommon possibility” and “the crucial months between composition and decomposition.” This was its zenith, when Detroit looked to be the rising city of the future, but was instead about to commence 50 years of severe decline.

Maraniss’ book might have been a more singular endeavor had he written it 10 years ago, before Detroit’s fall spurred numerous books on the city’s history, its industrial decay, and its status as an underdog town. A television commercial exploiting that status—Chrysler’s 2011 Super Bowl ad featuring Eminem and a gospel choir performing in downtown Detroit—inspired Maraniss to write *Once in a Great City*. A native of Detroit, Maraniss left the city when he was six, but he was still deeply moved by the ad. So he returned to tell a story about how “so much of what defines our society and culture can be traced to Detroit, either made there or tested there or strengthened there.”

Like Maraniss, I love Detroit. But my roots don’t go nearly as deep. I lived there for a yearlong clerkship in 2008-2009, during what was arguably the city’s nadir, in contrast to the early-1960s zenith about which Maraniss writes. During my year in Detroit, General Motors and Chrysler declared bankruptcy, Mayor Kwame Kilpatrick resigned after pleading guilty to obstruction of justice, and the Lions went 0-16. At the time, it looked as though things had hit rock bottom. But the bottom was actually four years away, when Detroit became the nation’s largest municipality to declare bankruptcy.

Nevertheless, I enjoyed living in Detroit. My investment was admittedly minimal; I knew I would be leaving 12 months after I arrived. But, in those 12 months, I saw firsthand the creativity and passion that Detroit’s citizens—both long-term and newly arrived—had for their home and its cultural institutions. Chefs opened restaurants, public art thrived, and investors began to see opportunity in abandoned buildings downtown. I lived walking distance from a beautiful 1920s-era “Oriental style” theater, a major league ballpark, and one of the best art museums in America. Everywhere I went were reminders of the city’s contribution to American music, civil rights, and industry. It’s easy, however, to appreciate the past when you don’t have to worry about the future.

This appreciation for Detroit history may have colored both my enjoyment of, and disappointment with, *Once in a Great*

City. Maraniss ably captures so much of what made Detroit a vital American city. He reminds readers that, in 1963, U.S. automotive sales were at an all-time high, Walter Reuther’s powerful United Auto Workers was helping to bankroll the civil rights movement, and the city had a charming young mayor, who was “partial to the New Frontier politics of JFK.” That mayor, Jerome Cavanagh, described his city as one “which will continue in the future to be as it has in the past—the envy of every other metropolitan area.” And, although these were statements of a politician, they were not completely fanciful. Between 1960 and 1963, the United States enjoyed “a period of minimal strike activity unparalleled in modern peacetime.” In 1964, Detroit was aiming to host the Democratic and Republican political conventions and was the U.S. Olympic Committee’s candidate city for the 1968 summer games. And Ford was about to release a new and exciting car that would change the industry. Code-named Project T-5, Lee Iacocca would eventually call it the Mustang.

But, even as he describes a city on the rise, Maraniss also shows that the writing was on the wall. In 1963, an academic report entitled, “The Population Revolution in Detroit,” concluded that the city’s declining population would result in the most “productive” taxpaying citizens leaving the city. These residents were headed to the suburbs, which had new housing, shopping centers, and offices. Furthermore, although the report had what Maraniss calls “a racial component”—the exodus would greatly increase the percentage of minorities in the city—the report suggested that “African-Americans who had the resources to move and could find housing in the suburbs, would do so with the same urgency as whites.” Maraniss notes that this report appeared “four years before Detroit was rocked by rebellion and riot in the summer of 1967.”

Such population shifts, however, were not unique to Detroit. For this reason, a deeper analysis, connecting how events in early-1960s Detroit set the stage for Detroit’s current challenges, might have added greater relevance to this book. But, with the exception of fleeting references to Detroit’s future, Maraniss never connects the dots.

For example, although he explains how certain members of the Detroit City Council tried—and failed—to pass a fair housing bill, Maraniss misses the opportunity to make

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& Gas Corp.), 544 B.R. 607 (Bankr. S.D. Tex. 2016) (bankruptcy court denied defendant's motion to vacate prior adverse judgment and accompanying memorandum opinion based on settlement while appeal before district court; settlement not conditioned on vacation of judgment and opinion and bankruptcy court declined to vacate the judgment as no reason was offered to do so and, as to memorandum opinion it rejected the contention that limiting fallout from adverse rulings sufficed under *U.S. Bancorp*, explaining as follows:

“Water Quality was a party to the settlement. Without its own participation in the settlement, the matter would not have become moot by settlement. The Supreme Court squarely faced this issue and determined that the voluntary participation of a party in the settlement was the most significant factor outweighing vacatur based on mootness. With respect to the public interest, none is effectively argued by Water Quality. This Court's Memorandum Opinion concerned an issue that could be repeated (i.e., a policy issued by Water Quality to a Texas insured). The principal holding is that the notice provision in a policy issued to a Texas resident is governed by Texas law. The Court does not understand how the public interest could favor the elimination of an opinion that provides guidance on the rights and duties of the parties in such a situation. If the Court erred, the remedy should have been through appeal—a right voluntarily waived by Water Quality in the settlement.”).

³⁷*Id.*

³⁸*Id.*

³⁹*Id.*

⁴⁰*Major League Baseball Props. Inc. v. Pacific Trading Cards Inc.*, 150 F.3d 149 (2d Cir. 1998).

⁴¹*Motta v. District Dir. of I.N.S.*, 61 F.3d 117 (1st Cir. 1995).

⁴²*Id.*

⁴³*Bd. of Trs. of the Univ. of Ala. v. Houndstooth Mafia Enters. LLC*, No. 7:13–1736–2016 WL 706022 (N.D. Ala. Feb. 23, 2016).

⁴⁴*Id.* at *2.

⁴⁵*Id.*

⁴⁶*Id.*

⁴⁷*Id.* at **2–3.

⁴⁸*Id.* at *3.

⁴⁹*Id.*

⁵⁰*Id.*

⁵¹*Id.*

⁵²*Id.* at **5–6.

⁵³*Id.* at *6.

⁵⁴*Id.*

⁵⁵*Id.*

⁵⁶*Id.* at *2.

⁵⁷*Id.* at *6.

⁵⁸*Id.*

⁵⁹*Id.* at *8.

⁶⁰*Id.*

⁶¹*Id.*

⁶²*Id.*

⁶³*Id.* at **7–10.

⁶⁴*Threadgill v. Armstrong World Indus. Inc.*, 928 F.2d 1366, 1371 and n.7 (3d Cir. 1991) (“...it is clear that there is no such thing as ‘the law of the district.’ Even where the facts of a prior district court case are, for all practical purposes, the same as those presented to a different district court in the same district, the prior resolution of those claims does not bar reconsideration by this Court of similar contentions. The doctrine of *stare decisis* does not compel one district court judge to follow the decision of another. Where a second judge believes that a different result may obtain, independent analysis is appropriate.”) (internal quotation omitted; additional citations omitted; italics in original).

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broader arguments about this outcome (aside from the fact that it might have hurt Detroit's chances of hosting the Olympics). Likewise, the story of Reuther's role in Detroit is fascinating, but only through quick asides do readers get a sense that his particular political coalition—“the New Deal-Fair Deal-laborite orbit”—was already in decline. Maraniss mentions that, in 1964, at-large elections left open “the possibility that a white candidate might prevail” in filling the only African-American seat on Detroit's City Council. But he never mentions that the at-large election system plagued Detroit politics—where council members had no geographic allegiances—until 2012.

Instead of explaining these connections between the Detroit of the 1960s and that of today, Maraniss highlights esoteric links that reflect his interests. Berry Gordy was “devel-

oping a system” at Motown's music studios, just as Vince Lombardi (the subject of another Maraniss book) had with the Green Bay Packers. Early ad copy for the Mustang touting it as a “BRAND NEW IMPORT ... FROM DETROIT” brings Maraniss back to the Chrysler Super Bowl commercial, which used a similar catchphrase.

Fans of legal and judicial history will find interesting tidbits in these pages. The nomination of Detroit's police chief George Edwards to the Sixth Circuit provoked recriminations that will be familiar to anyone who follows the nomination process today. A prominent attorney named Damon Keith makes several cameos a few years before his nomination to the Eastern District of Michigan (and his later elevation to the Sixth Circuit, where he still serves from chambers in Detroit). Yet Maraniss misses the opportu-

nity to tell the reader of Keith's later role as a trailblazing federal judge.

In this manner, the book's visit to Detroit—like mine in 2008–2009—is not long-term. It's a singular glimpse that reminds readers of Detroit's former glory but provides limited context for its current state. Yet, even without a deeper analysis connecting the two, it is still worth seeing Detroit through Maraniss' eyes. Whether you love the city or just have a passing interest in the challenges it currently faces, *Once in a Great City* reminds us of Detroit's importance in American history. Though some of its people, buildings, and sites are gone, others remain a vibrant part of Detroit, which, though diminished, is still a great city. ☉

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