



Book Reviews

"MR. PRESIDENT": GEORGE WASHINGTON AND THE MAKING OF THE NATION'S HIGHEST OFFICE

BY HARLOW GILES UNGER

Da Capo Press, Philadelphia, PA, 2013. 273 pages, \$25.99.

Reviewed by Charles S. Doskow

Harlow Giles Unger, whose biographies of John Quincy Adams and Patrick Henry I've reviewed for *The Federal Lawyer*, has now written a short and readable biography of our first President. His intention, however, is not to tell the entire story of George Washington's life, but to describe the creation of the office of President of the United States, to which 69 electors in 10 states unanimously elected Washington on Feb. 4, 1789, one month before the Constitution took effect. The Washington to whom Unger introduces us is not the 23-year-old colonial officer from Virginia, displaying extraordinary heroism and leadership after Braddock's disastrous defeat at Fort Duquesne in 1755; nor the imposing militia officer striding into the Second Continental Congress in Philadelphia in 1775 in full military uniform, to be elected to command the Continental Army; nor the victorious but embattled general facing down a sullen and unpaid officer corps at Newburgh, N.Y., in 1783, heading off a mutiny by the sheer force of his persona; nor even the chair of the Constitutional Convention in Philadelphia in 1787.

We are introduced to Unger's Washington on April 30, 1789, in New York City, as he takes the oath of office as President and proceeds to occupy a virtually empty office with almost nothing to do and not much staff to help him do it. (Unger is off by a day, placing the date as the 29th.) Under the Constitution he is to enforce the laws, but there are no laws to enforce; Congress has not passed any. He is commander-in-chief of the armed forces of the United States, which consisted of 560 men and officers.

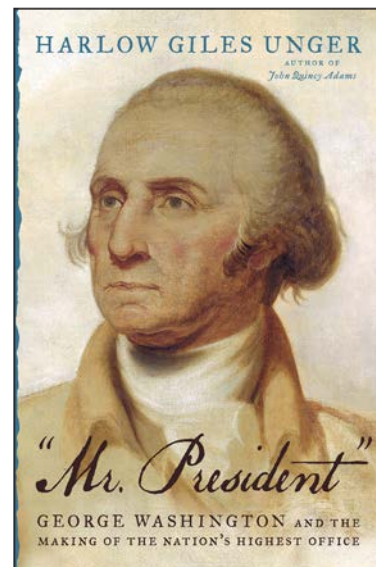
"*Mr. President*" tells the story of how Washington met the challenges, internal and external, that faced the new nation during its first eight years under the Constitution,

and his actions that shaped the office. Unger makes a large point of the lack of precedent for Washington's actions, but how could it have been otherwise? As chair of the Constitutional Convention in 1787, Washington participated in creating a framework for government that acknowledged the continuing role of the states, but defined federal power largely in skeletal terms.

The result was that the office developed as it met the challenges of the Federalist Period, as each arose. Executive privilege was established by the President's refusal to turn over to a congressional committee the confidential diplomatic papers exchanged during the negotiation of the Jay Treaty; military force was established in crushing the Whiskey Rebellion; the President's power to remove department heads without Senate consent (a matter not addressed in the Constitution and not decided by the Supreme Court until 1926, in *Myers v. United States*) was established by Congress after John Adams as vice president cast the deciding vote in the Senate.

In an appendix, Unger lists seven "pillars" of presidential power that emerged during Washington's two terms: foreign policy, executive appointments, government finances, military affairs, "legislation" by presidential proclamation and executive order, federal law enforcement, and executive privilege. Unger writes about each of these powers as if it had not been anticipated that the President would exercise them—as if the presidency were originally foreseen as a "ceremonial post." In fact, Washington was implementing the system of government that the Constitutional Convention had created. The vague language of the Constitution, a mere 3,000 words, had to be given effect by the actions of the individuals who occupied the three branches of government it created. Washington did not violate the Constitution in assuming these seven powers: He gave it effect.

At one point Unger suggests that the veto power was inserted in the Constitution to give Washington a say in legislation. In fact, the veto was a basic element of the checks and balances that the Convention was intent



on including in the nation's charter.

Apart from strictly governmental matters, Washington adopted one practice that characterized the presidency as an American institution for a century to come: He threw open the doors of the presidential residence to the public. That, and modest dress, clearly distinguished him from the European rulers of the day and were a constant source of surprise to foreign diplomats.

Unger devotes several dramatic pages to the threat to American independence posed by Citizen Genêt, the renegade French ambassador to the United States. The young revolutionary ignored all federal authority in exceeding his commission, and left President Washington powerless to combat his influence and that of the Democratic Clubs he had, with Jefferson's support, founded and encouraged. As a result, "Washington's presidential edifice was tottering. With no law enforcement arm at his disposal, his other pillars of power seemed ready to fall, along with the American republic." Genêt's efforts to overturn the government were thwarted, we are told, only by the catastrophic epidemic of yellow fever that struck the country in the fall of 1793. Or so John Adams said.

The Constitution made no provision for political parties, which were regarded then as "factions" and inimical to repub-

lican government. But the first cabinet included Jefferson as secretary of state and Alexander Hamilton as secretary of the treasury. The clash of their views on virtually every important issue soon required Washington repeatedly to decide which of the two to support. Ultimately, Hamilton, whose conservative views were closer to Washington's instincts, and who had a long history as a military aide to Washington, won out, and Jefferson left the cabinet. But the party system had been born of their radically different views of what American society and American government should be.

Unger is not always sympathetic to his subject. He writes that Washington initially expressed disinterest in becoming President and that he was "a master at obtaining and retaining authority by either feigning reluctance for power or threatening to step down once he attained it." No doubt Washington did yearn to return to Mount Vernon and his extensive estates when the Constitution was ratified, but it is hard to believe that he doubted for an instant that he was ordained to lead the new country.

According to Unger, Henry Knox, who had been a major general in the Revolutionary War and remained a friend of Washington's, knew how to manipulate Washington by appealing to his vanity. In response to Washington's doubts about accepting the presidency, Knox assured him that, once elected by "unanimous acclaim," he would be "doubly entitle[d] to the glorious republican epithet—"The Father of Your Country." Knox was right about that. ☉

Charles S. Doskow is dean emeritus and professor of law at the University of La Verne College of Law in Ontario, Calif., and past president of the Inland Empire Chapter of the Federal Bar Association.

THE SOVEREIGN CITIZEN: DENATURALIZATION AND THE ORIGINS OF THE AMERICAN REPUBLIC

BY PATRICK WEIL

University of Pennsylvania Press, Philadelphia, PA, 2013.
285 pages, \$34.95.

Reviewed by Aram A. Gavoort

United States citizens should feel comfortable in their status as citizens. In *The Sovereign Citizen*, Patrick Weil shows how

citizenship used to be "provisional, qualified, and insecure," but now is "unconditionally guaranteed." With the Supreme Court's decision in *Afroyim v. Rusk*, 387 U.S. 253 (1967), the concept of the sovereign citizen became part of our jurisprudence, and "American citizens," Weil writes, "naturalized and native-born, were redefined as possessing sovereignty themselves." In prose that, given the nature of the material, is of necessity sometimes dense and complex, Weil carefully delineates the jurisprudential, political, historical, and sociological progression of the status of citizenship. He examines it from the time when citizenship was categorically denied to persons of disfavored races to now, when citizenship by birth is immutable save for expatriation by a citizen's request.

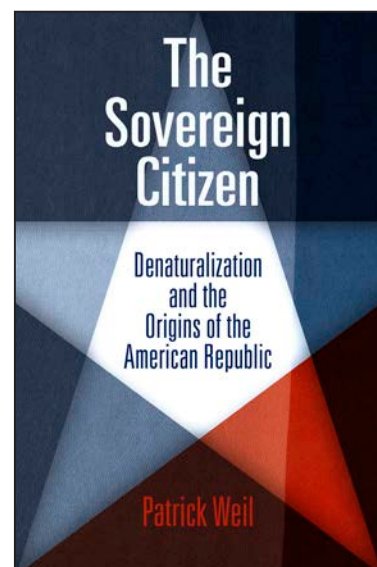
Weil discusses citizenship from the origins of the American republic to the Supreme Court's decision in *Afroyim*, which "marked Chief Justice Earl Warren's victory in an expatriation battle that had lasted almost ten years." In 1940, Congress had "extended the denaturalization power to include those Americans who had evaded the draft, joined a foreign army, or participated in foreign elections." Moreover, the security of citizenship status for naturalized citizens was tenuous at best. For many naturalized citizens living abroad, the Department of State would simply refuse to renew passports for lack of citizenship. This practice of administrative denaturalization without due process would occasionally render a person stateless. The Eighth Amendment had not yet been held to prohibit rendering a person stateless by denaturalization, and the Fourteenth Amendment's citizenship clause, which states that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside," did not provide the comprehensive protections that it does today.

Weil painstakingly draws from several disciplines to illustrate how the Court decided a series of cases from the 1940s to the 1970s that provide greater procedural and substantive protections for citizens facing the specter of criminal and civil denaturalization. He addresses the federal government's efforts to denaturalize anarchists, Bundists, Nazis, Communists, and political agitators. He exposes how native-born and naturalized citizens

were at grave risk of having their citizenship stripped based on provisions in the Naturalization Act of 1906, the Immigration and Naturalization Act of 1952, and other statutes. Weil demonstrates how the security of U.S. citizenship has dramatically increased since World War I, the Red Scare, World War II, and the McCarthy era.

The Sovereign Citizen sets the stage for the Court's intervention by first providing an overview of the federalization of naturalization and the conditionality of citizenship. Initially, both state and federal courts were empowered to naturalize noncitizens. Humorously highlighting the abuse of this policy in late 19th-century New York City, Weil shows it to have been an utter failure and rife with rampant fraud. Hundreds of noncitizens were naturalized immediately before elections so that they could vote for party favorites. Local court clerks would collect hefty fees to line their coffers from citizenship-related judicial functions. Reform came in the form of consolidating the judicial naturalization function in the federal courts and creating an enforcement regime that eventually vested in the Department of Justice and now in the Department of Homeland Security as well. This enforcement initially resulted in a disastrous federal program of denaturalization, which provided the Court with ample fodder to confer robust Fifth, Eighth, and Fourteenth Amendment protections on citizen-defendants in denaturalization cases.

In the early 20th century, as Weil shows, people of disfavored racial backgrounds and political leanings were barred



from naturalization. People who did naturalize, and even those who were citizens by birth, could lose their citizenship if they lived abroad. Thousands of citizens were denaturalized under the Naturalization Act of 1906 and subsequent legislation.

The last third of the book—aptly titled “War in the Supreme Court”—is not fully accessible because of the density of its material. Weil analyzes each major case and squarely confronts the sometimes-public outbursts of tension among the justices. He delves into the Court’s rejection of administrative denaturalization and denaturalization by default judgment, and he uses archival evidence to colorfully detail some of the Court’s deliberations. He exposes the internal battles among the justices for the fragile majorities that gave rise to some of the pivotal decisions in the immigration and denaturalization sphere. But his discussions of more recent Supreme Court denaturalization decisions, such as *Fedorenko v. United States*, 449 U.S. 490 (1981), and *Kungys v. United States*, 482 U.S. 759 (1988), are brief.

For the most part, Weil keeps his personal views to himself until the conclusion, which serves as a reward of sorts to the reader who conquers the last third of the book. He discusses how the impossibility of removing a person’s citizenship, except at the person’s request or if he or she procured it through fraud or misrepresentation, garners more loyalty than did coercing loyalty by the threat of denationalization. He examines how the Department of Justice uses its power to denaturalize persons who procured citizenship through fraud or misrepresentation to go after persons who were war criminals or human rights abusers and who concealed the relevant facts. Weil provides nearly 100 pages of endnotes, which include data, statistics, charts, explanatory references to cases and political decisions, and the full text of some of the letters and handwritten notes that he cites. ☉

Aram A. Gavoort is a trial and appellate attorney at the U.S. Department of Justice, Civil Division and a professorial lecturer of law at The George Washington University Law School, where he teaches administrative law and government lawyering.

THE INTERLOPER: LEE HARVEY OSWALD INSIDE THE SOVIET UNION

BY PETER SAVODNIK

Basic Books, New York, NY, 2013. 267 pages, \$27.99.

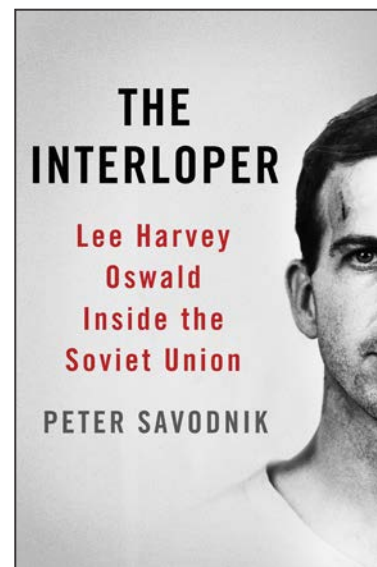
Reviewed by Henry S. Cohn

In *The Interloper*, Peter Savodnik takes an incisive and detailed look at Lee Harvey Oswald’s two and half years in the Soviet Union. Written in a clear and uncomplicated style, *The Interloper* has three parts: first, Oswald’s early biography, second—the major section—the time he spent in the Soviet Union, and third, his unstable behavior that turned to violence after his return to the United States in 1962.

Born in 1939, by the age of 17 Oswald had moved 20 times. Unsettled for all of his short life, he engaged in “repeated attempts to flee from his old life and to insert himself into a new one”—hence, Savodnik’s title, *The Interloper*. Oswald’s less-than-three years in the Soviet Union were among his longest in any one place, and his failure to thrive there pretty much forecast that he would never turn his life around.

Oswald’s mother was an emotionally disturbed woman from whom he would periodically try to distance himself. They traveled throughout Texas and New York in the 1940s and 1950s, until Oswald joined the Marine Corps in 1956 at age 17. While in the Marines, he began to learn Russian and to study Marxism. After he resigned from the Marines in 1959, he told officials that he was going to study in Switzerland, but he actually traveled to Helsinki and then to Moscow.

The Soviets had no use for him, because he had no special knowledge about the United States, and he appeared to be a troublemaker. Officials rejected his pleas to stay and, on Oct. 21, 1959, told him that his visa would expire in two hours and that he had to leave the country immediately. But two things saved him from deportation. First, Oswald tried to commit suicide and was allowed to stay in Moscow for healing and psychological evaluation. Second, Nikita Khrushchev had just come to power and was looking for a new understanding with President Eisenhower. He had recently returned from a visit to the United States. Khrushchev’s attempts to promote international good will would eventually end with the Soviet’s seizure of Francis Gary Powers after his failed U-2 flight, but



Oswald, luckily for him, arrived during the period of détente. Savodnik’s discussion of the thawing of the Cold War is entertaining, especially his reporting of the “kitchen debate” between Vice President Nixon and Khrushchev, which occurred on July 24, 1959, less than three months before Oswald arrived in Moscow.

The authorities became worried that forcing Oswald to leave might provoke an incident with the United States. On Jan. 7, 1960, the KGB moved Oswald from Moscow to the remote city of Minsk, 420 miles away. The U.S. State Department effectively closed his file and officially forgot about him, thinking that he “may have been naturalized in the Soviet Union or otherwise ... expatriated himself.” Minsk was one of the oldest cities controlled by the USSR, but it had been completely leveled by the Germans in World War II and then rebuilt. The Minsk where Oswald was placed in 1959 was a new city, with a population having few ties to the original Minsk. Its people were loyal Soviet citizens who had an innate fear of America and who had no problem cooperating with the KGB.

At first Oswald did not realize that he was in a bubble, under the watchful eye of the KGB. He was given a beautiful apartment, normally reserved for multiple families. The KGB found him employment at a radio and television factory. Here Oswald became a metal-lathe operator.

Gradually, Oswald realized that this was not for him, and a friend warned him that he was being kept on a short leash by the KGB. In addition, he met a beautiful woman, Ella German, who worked at the factory and often ate lunch with him. After what seemed

to him an enjoyable New Year's eve celebration with Ella in cold, snowy Minsk, Oswald proposed to her, but she turned him down. In later years, she said that she had felt no romantic attraction to Oswald.

Reacting with distress and anger, Oswald continued to hope that Ella would change her mind. But when she did not, he turned to a pharmacist, Marina Prusakova, who lived with her aunt and uncle and sought to escape from her narrow Minsk life. America and Americans appealed to her. At this point, after some soul searching, Oswald decided to return to the United States. Savodnik intriguingly sets out the life Oswald might have chosen for himself as a long-term Minsk resident, advancing to the supervisory level at the factory, with his children attending college in Minsk. But it was not to be. Oswald contacted the U.S. embassy, received his passport again, and arranged for Marina to obtain an exit visa from Soviet officials.

Returning to the United States, Oswald did not feel at home, especially because the country had changed direction under John F. Kennedy, who had been elected President two years before and, in his inaugural address, had called for militancy against the Soviet Union. Oswald once again sought to move on, approaching the Cubans and the Soviets, looking for entry into Cuba or a return to the USSR. Both the Cubans and the Soviets rejected Oswald's petitions. The result, according to Savodnik, was the assassination of Kennedy, which was also an act of suicide by the wretchedly unhappy Oswald.

In researching *The Interloper*, Savodnik had access to Soviet archives that were released after the fall of the Soviet Union. He also interviewed Oswald's former friends in the Soviet Union, or relatives of these friends. One friend, Pavel Golovachev, had died, but Savodnik interviewed his sister and his son. Pavel was the son of a World War II hero and was given the best treatment available in Minsk. But Pavel was a rebel trying to break away from his father's structured life. He played a part in destroying the utopian vision that Oswald initially perceived in Soviet communism. Another acquaintance, Ernst Titovets, an accomplished scientist who was comfortable with life in Minsk, had mixed feelings about Oswald and suspected that Marina "was a plant deliberately inserted into Oswald's life for the express purpose of reporting

intimate details." Savodnik interviewed Titovets and made use of Titovets' memoir, *Oswald: Russian Episode*. Savodnik traveled to Israel to interview Ella German, a Jewish refusnik, who settled there and is now a grandmother. She often thinks of what her life would have been like if she had responded favorably to Oswald's proposal.

Savodnik is in the "Oswald acted alone" camp. Believing that Oswald was the lone perpetrator, for Savodnik the real question is what motivated him. To answer this, he relies on Priscilla Johnson McMillan's classic book, *Marina and Lee*. Just after his suicide attempt, Oswald had been given a room at Moscow's luxurious Hotel Metropol, where he was living in self-imposed isolation. McMillan was staying at the same hotel, and, learning of Oswald's presence, she knocked on his door and asked for an interview, to which he agreed. McMillan picked up the story again soon after the Kennedy assassination, when she realized that she had interviewed the alleged assassin four years before. In 1977, after years of research and discussions with Marina, Johnson published her book, in which she described Oswald's increasing mental illness after he left the USSR.

Savodnik also follows Gerald Posner's 1993 book, *Case Closed*. The books are factually similar, but Posner devotes only parts of two chapters to Oswald's stay in the Soviet Union, and Savodnik's of course has more up-to-date information. Along with Posner, Savodnik rejects all conspiracy theories. He demonstrates that, contrary to Norman Mailer's *Oswald's Tale: An American Mystery*, Oswald was not a misunderstood genius. Nor was he a dunce, used as a "Manchurian candidate" to assassinate the President. A theory current after the shooting was that the Soviets had not sent back the real Oswald, but a double. This was disproved when Marina allowed Oswald's body to be exhumed and tests were run.

To Savodnik, Oswald was a mentally unstable man, whose Soviet adventure pushed him over the edge. As Savodnik states, his failure in the Soviet Union was "monumental and devastating" for him and, we can add, for the world as well.©

Henry S. Cohn is a judge of the Connecticut Superior Court.

BIG PICTURE ECONOMICS: HOW TO NAVIGATE THE NEW GLOBAL ECONOMY

BY JOEL L. NAROFF AND RON SCHERER

John Wiley & Sons, Inc., Hoboken, N.J., 2014. 234 pages, \$34.95.

Reviewed by Christopher Faille

The authors of *Big Picture Economics* want to convey a simple message through a wide range of illustrations and applications. Their message is that the wisest words in economics are these: "It depends."

They have in mind especially questions of the form, "what will happen as a consequence of X?," where X can be population growth in Britain, the outsourcing of manufacturing jobs from Western to Eastern economies, or the spread of the practice of hydraulic fracturing in the United States. Joel L. Naroff and Ron Scherer answer "it depends" in each of these instances and in each of many others. Context is all.

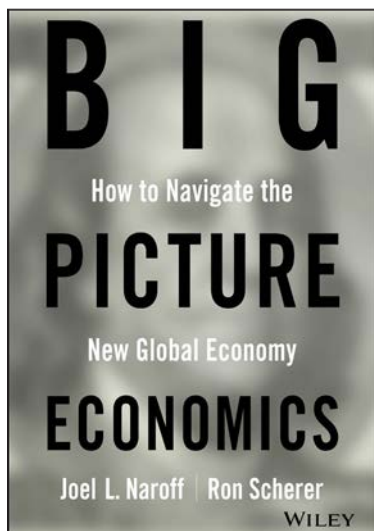
Navigation of the global economy requires that we—all of us and any one of us—think like a cautious economist, looking always to the question of what depends upon what else, what is the context of any alarming, or heartening, development.

Naroff and Scherer have a lot of experience thinking about such matters. Naroff has twice been recognized by the National Association of Business Economists as its top economic forecaster (in 2007 and in 2011). Scherer recently retired from *The Christian Science Monitor*, for which he had reported on economic issues for 37 years.

From Malthus to Grantham

Let's look first at their take on Malthusian population theory. Thomas Malthus famously argued that "though human institutions appear to be the obvious and obtrusive causes of much mischief to mankind, they are, in reality, light and superficial in comparison with those deeper-seated causes of evil which result from the laws of nature." The deepest seated of all causes of evil in his analysis is the tendency of the human population to outstrip its food supply.

Naroff and Scherer contend that Malthus failed to account for the context of this supposed race between procreancy and food. The context was and is the state of agricultural technology. Even in Malthus' own day, the late 18th century, there was a good deal of debate about alternative systems of crop rotation, Charles Newbold patented the first cast-iron



plow, and by one estimate irrigated acreage worldwide increased to more than 19 million by 1800. Technology can bring water where it is lacking, and it can exclude water from places that have too much of it, as the Dutch have long understood. In either case, as Naroff and write, technology can allow “land that was farmable but not reachable to be brought into productive use.”

Naroff and Scherer acknowledge that Malthus wasn't entirely wrong. Is population growth a problem? It depends. “Those countries or regions where the ability to bring new farm land into productive use was limited ... continue to this day to face problems meeting the food needs of their population. But the Malthusian theory had little relevance for much of the world where farmland could expand and machinery was available.”

Though I can't argue with the wisdom of the appeal to context, I have to say that I consider their discussion of the population issue rather superficial. At an investment conference in 2011, Henry Wilkes, a prominent London-based asset manager, opined that the world population would grow by 2.7 billion between that time and 2050. The population in 2011 was about 7 billion, so he was postulating a 40 percent increase. Likewise, Jeremy Grantham, a well-known Boston-based investment strategist, has said that in his view the “days of abundant resources and falling prices are over forever” due, precisely, to population pressures.

My point is that savvy observers of agricultural land and commodity prices have reached neo-Malthusian conclusions in recent years, and a case can be made that technology has only suspended the force of the population pressures Malthus described—suspended them at various times and places, it is true,

but not repealed them. Those pressures have survived these periods of suspension and come back at us again.

Let's proceed, though, to another subject from Naroff and Scherer's book: East is East, West is West, and manufacturing jobs are mobile.

What Are the Consequences? It Depends

In their discussion of this point, Naroff and Scherer focus especially on the bilateral relationship between China and the United States, as paradigms of the East and West respectively. The authors agree with the common observation that the outsourcing of manufacturing activities to China from the United States has caused a winnowing of the size of the American middle class. But they believe that the middle class will survive—the winnowing will not become an extinction.

They give three reasons for this view. First, they suspect that the outsourcing trend has reached or is nearing its natural conclusion. “Over the next decade, it may actually be more expensive to produce in China and ship to the United States than [to] produce many of those same products in the United States.” This is due in part to the increase in wages in China.

Second, due to that same increase in wages, the Chinese middle class is growing and developing a taste for products that U.S.-based companies might send them. “The Chinese consumer market, which was relatively small 20 years ago,” write our authors, “will be massive in 20 years.”

Third, Naroff and Scherer expect that the Chinese currency (called the “yuan” or the “renminbi” depending on context) will rise against the U.S. dollar. That should help companies that have dollar-denominated costs but Yuan-denominated revenues, namely exporters from the United States to China.

Given this big picture, then, Naroff and Scherer see the United States retaining its own middle class in large part by retooling itself to sell to the Chinese middle class.

Fracking

Big Picture Economics also reviews the controversy over a technique for getting oil or natural gas out of the ground, formally known as hydraulic fracturing, less formally known as fracking. They describe it thus: “After a well is drilled, the company hoping to produce oil or gas injects fluid—such as water and acids—as well as solids—such as sands—to create tiny fractures in shale formations that contain hydrocarbons.”

As a consequence of the growth in output made possible by those tiny fractures, the Energy Information Administration estimates that the United States will soon become a net exporter of natural gas, with most of the export going to Canada or Mexico by pipeline. Some of it will also go overseas aboard tankers after liquefaction. This may well assist in the general retooling of the United States toward export-based industries.

What's the catch? Although many people and communities object to fracking on safety grounds (from threats to the local water supplies to a possible increased risk of earthquake), Naroff and Scherer barely mention such concerns. To them the major “con” on the pro/con ledger for fracking is something that requires a much more macro understanding of the issue than that.

The problem with fracking is that it may succeed too well, and thereby extend the era of hydrocarbons. They quote a geologist, Michael Arthur, as saying that fracking offers a “really cheap resource,” but one that, if made available globally, would constitute a disincentive to investment in renewables, such as geothermal or solar power, which as a consequence would start making a substantial contribution to the power grids of the industrialized world that much more slowly.

The bottom line for their Context-is-All philosophy is this: “[A]nyone who looks at energy or inflation or interest rates has to look at the changing context of energy production if their business decision is to make any sense.” ☉

Christopher Faille graduated from Western New England College School of Law in 1982 and became a member of the Connecticut Bar soon thereafter. He is at work on a book that will make the quants of Wall Street intelligible to sociology majors.

IN THIS TIMELESS TIME: LIVING AND DYING ON DEATH ROW IN AMERICA

BY BRUCE JACKSON AND DIANE CHRISTIAN

University of North Carolina Press, Chapel Hill, NC, 2012.
241 pages, \$35.00.

Reviewed by Thomas Holbrook

I ain't going nowhere. I ain't coming from nowhere. I'm right here, right now, always.

—Thomas Andrew Barefoot (put to death Nov. 30, 1984)

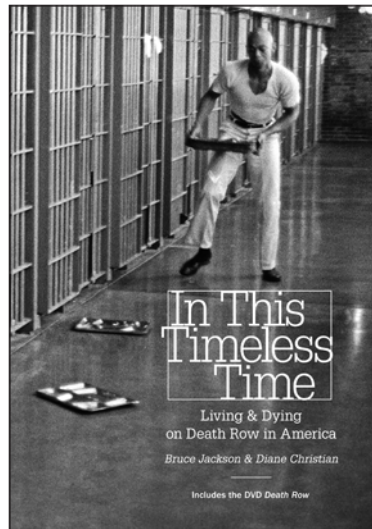
Have you ever thought of what it is like to live on Death Row?
 Do you care? Do you really want to know?
 We're kinda like an idling car slowly running out of gas
 We really don't know how much time we will have to pass
 Do you know what it's like to cry inside or to wake up in the dark of night
 Afraid you'll die without a fight?
 We all live with one fear or another
 Mine is how this hurts my mother
 To see the pain behind her eyes
 She can't just hide it no matter how hard she tries.
 What makes this time so hard to bear,
 Is knowing so many people just don't care
 You all know we're here to die
 We ask for help but you won't try
 You just don't care about us as men
 You think your killing ain't a sin
 So we go on in this timeless time
 And the law makes our people the victims of our crime.

—Donnie Crawford (Texas execution number 569, paroled April 2, 1991)

First, simply as a book, *In This Timeless Time* is as close to perfection as a publisher can produce: in layout, design, presentation of photographs and text, typography, paper stock, appropriateness to subject matter, and all other essentials. A DVD of the 1979 film that began the authors' efforts is included with the book. The book's handsomeness augments its rhetorical power.

It is a book of three parts: "Pictures," by photographer Bruce Jackson; "Words," about the subject, Ellis Prison, a special Texas prison; and "Working," describing the experiences of Jackson and writer Diane Christian as they worked in that prison, the prison near Huntsville, Texas, called "The Walls." The Walls contains the "Death Row" where all Texas executions took place at the time of writing. It's a prison of approximately 600 men waiting for possible execution in that "timeless time" that inmate Donnie Crawford described.

The reasons they are there are quite clear: "There was nothing ... that distinguished the men on the Row under sentences of death from the men and women doing time for murder in Ellis and other units in the system, a fact pointed out to us many times by guards, convicts, wardens, and even the present and former directors of the prison system. ... The only differences anyone could point to were race and class of the victim (hardly anyone was



on Death Row for killing a black person). ..."

And of course there are anomalies: One prisoner was executed after refusing a plea bargain to a life sentence. He refused because he was innocent, and so proven after his execution. So he stayed on death row and was executed. And the matter of time. This is, the author tells us, "the one prison in which everything happens outside of official time. Every other prisoner in the penitentiary is *doing* time. The condemned are suspended in a period between times when the official clocks are running. The clock stops the moment the judge announces the sentence of death; it resumes when the sentence is carried out." Hence the title of this book.

The U.S. Supreme Court has twice tried to "eliminate or significantly reduce unfairness in the application of the death penalty," yet "the death penalty remains unfair and capricious." Almost all the evidence in this book shows this to be so, none more so than the eight chapters of the longest section of the book, "Pictures," each chapter usually a two-page spread, each spread with one side text and the facing page photographs of inmates or staff. Through them we visit "The Row," "Food," "In the J-23 dayroom," "A volleyball game in the cage," "Hands and mirrors" (stunningly bleak), "Eight who were resentenced to life and are now doing time," "Three who are still there, one who was resentenced to life and then paroled, and one who was set free after twenty-one years and then exonerated," and "Twelve dead men" (we see here 12 men who have been put to death since the photos were taken.) There are few nice or unthreatening people here; each is a convicted murderer.

In the "cage," only four inmates at a time—of 600—could play a low-ceilinged version of volleyball in this lone instance of any "recreational facilities." Later, even this was taken

away. Each inmate is in a cell about the size of a small bathroom, with no sight of adjacent prisoners. In "Hands and mirrors" we see photos of inmate attempts at communication. Because they can't see one another, they have jury-rigged small mirrors from various shards and small possessions, cantilevered out on rolled papers (or whatever) not so that they can see into the adjacent cell, but so that they can get a partial glimpse of a neighbor's face. With the ingenuity of human beings, some have even contrived chess or backgammon boards hanging between adjacent cells, so that even though they, side by side, can't see each other, each can see his neighbor's hands as he makes his moves. The view from each 5-foot by 9-foot cell is only straight ahead through the cell front. Each cell contains a suspended bunk bed, a small sink, a small shelf or bookcase, and an open toilet. Death row prisoners eat only in their cells, alone. There is a dayroom where up to four prisoners at a time can gather, infrequently. Inmates once had an outside view, but after the area became the prison's death row, the transparent glass panes were replaced with frosted glass—each of 3,120 panes.

In the book we gain a certain sympathy for many of the men, but as we learn the backgrounds of some of them we check our opinions. One inmate, since executed, was known to inmates as "Candyman," a seemingly affectionate sobriquet ... until we learn that he was executed because he killed his son with cyanide-laced Halloween candy to collect the insurance payoff.

Many of these men are now dead through the power of the state; others are out on the street. Consider that when you meet them as you go through this book, and decide whether you'd change their treatment in any way.

Though in no manner sensationalistic, this is not a book for the squeamish. These are not pictures that most people "outside" wish to see, and fewer still would wish to read the words that accompany their pictures. Yet those outside should make an effort to look into this book, to decide if what they see and read is too harsh, too lenient, or just about right. Those outside, after all, are responsible for what they are seeing, and so as citizens they should exercise responsible oversight. ☺

Dr. Holbrook served as an editor in the Congressional Research Service at the Library of Congress until his retirement. He dedicates this book review to David Owen, professor, Syracuse University.