

The End of Alchemy: Money, Banking, and the Future of the Global Economy

By Mervyn King

W.W. Norton & Co., New York, NY, 2016.

431 pages, \$28.95.

Reviewed by Christopher C. Faile

At the heart of *The End of Alchemy* is a fable: a story about the “descendants” of Robinson Crusoe. (Presumably a woman was involved in making descent possible, though neither Daniel Defoe nor Mervyn King tells us about her.)

These descendants populate the shore of the island that had once been the site of the shipwreck of literary renown. At first, each adult fishes for him- or herself. Over time, though, a division of function develops, and some find that they can earn their share of the daily catch more effectively by making nets and trading the nets for fish, or for vouchers later to be turned in for fish. With these vouchers, King introduces money into his fable.

Later still, a banking system comes into existence, to ease the nets-for-fish transaction. Bankers learn to lend vouchers to the good net-makers, and to be able to make

those loans they take deposits. They learn also to use the proceeds from the loans to pay interest to the depositors, but at a rate that lets them keep some of the vouchers for themselves, thereby earning their own share of the busy island’s fish.

In time, the bankers get cleverer, and their business becomes more elaborate. The “net backed security,” or NBS, is born. Rather than sitting on the contract with net-makers for the duration of a loan, an island bank now can sell the NBS to other parties, thereby realizing the present value of the loan, and off-loading the risk that a particular net-manufacturing operation they have financed will fail. That failure becomes the problem of the holder of the NBS, not of the bank.

A Mathematical Bent

“Some clever islanders with a mathematical bent,” King supposes, go further. They develop “synthetic securities” that allow the risks of net-making failure to be recategorized and redistributed in various ways. Further, these instruments can be packaged together to become the basis of yet another generation of instruments, and so on *ad infinitum*, until it becomes utterly unclear who was exposed to what risk. The obscurity gives the impression that the risk has disappeared.

What happened next? The banking industry, which started as an intermediary serving fishermen and net-makers, became an end in itself. As the clever people learned how to give themselves large bonuses, arguments about inequality arose.

“Then one day it all collapsed,” King writes. One or more of the banks got into trouble and started selling its synthetic securities at lowered value in terms of the underlying currency—the fish vouchers. As these securities came onto the market, they lowered the value of similar securities with other issuers, causing trouble for other banks, leading to more fire sales of the once-innovative assets.

The collapse of the financial sector of the island’s economy led to a significant contraction of its base—the fishing and net-manufacturing sectors. And a good deal of harm was done all around. After a postmortem, the

islanders decided that the bankers should return to their original limited role, just lending out money and taking in deposits.

Easier said than done, you might say. But the relative simplicity of the fable helps illustrate the “alchemy” of the title of this book. The alchemy is the notion that some bankers’ stone, like the ancient “philosopher’s stone” that could turn base metals into gold or silver, can create wealth out of paper or (what is much the same thing) can make risks disappear into thin air. The way forward is toward actual science—toward something that won’t really be banking as we know it, but will be to contemporary banking what chemistry is to alchemical lore.

The European Union and the Brexit Vote

Much of this book consists of King’s thoughts as to how (not in the world of fable, but in the real world) the finance sector can be made and kept in servitude to underlying commercial realities—how it can serve as the connective tissue of those realities, so to speak, but never again acquire a dangerous centrality.

I’ll refrain from discussing most of the elements of King’s view of how this is to be done. I’ll satisfy myself with the observation that it deserves some careful attention because of who King is. He was the chief economist of the Bank of England through most of the 1990s, then its deputy governor, and then, beginning in 2003, served for 10 years as its governor. Those 10 years, of course, encompassed the global financial crisis of 2007-2009. In *The End of Alchemy*, King reflects on his experiences at the Bank of England, commingles that experience with formidable erudition, and produces weighty arguments.

I will focus now on one particular thread in this tapestry: the former governor’s views on the prospect of Britain’s departure from the European Union (EU). (This book was published before Brexit—the exit of the United Kingdom (UK) from the EU—passed.) Efforts at preserving the EU and at creating analogous unions elsewhere are, in King’s view, not at all the solution to what ails the financial world and may indeed be

part of the problem.

His country's electorate voted to exit the EU on Thursday, June 23, 2016. In the weeks running up to that vote, advocates of departure repeatedly cited certain passages from this book (as serialized in the *Daily Telegraph*) as a warning from a distinguished authority that the Eurozone was about to explode, and that Britain would be best served by getting out of the way in time.

Let me pause to define some terms. The EU is a group of 28 nations with a commitment to open borders among its members—open, that is, to the movement of goods or people. It is by design no more difficult for a German to trade with Austrians, or to move into Austria, than it is for a resident of Connecticut to trade with New Yorkers or to move into New York. The EU also shares an economic regulatory system, covering, for example, the authorization of the use of genetically modified crops, the testing of medicines for safety and efficacy, and the creation of marketing and disclosure rules designed to protect investors in collective investment schemes. The existence of 28 distinct national systems addressing such matters, when many individuals and businesses even of quite modest size routinely transact business across national lines, would have been a great burden through recent decades, and it is safe to say that people of all member states, including Britain, have benefitted from the economy of scale inherent in avoiding that multiplicity of regulation. King does not dispute this. But risks go along with those benefits.

Another definition: The Eurozone is not the EU, but is a smaller group of nations, consisting of 19 states within the EU that have adopted a common currency, the euro, and that have representation in the deliberations of the European Central Bank (ECB). Britain has never been part of the Eurozone. But this hasn't saved it from the fallout of Eurozone crises. More than half of the UK's trade with the rest of the EU is in financial services. Decisions made in Frankfurt, the home of the ECB, have an instant impact on Britain and, indeed, are generally made in consultation with whoever is holding King's former position at the head of the Bank of England. Further, there is a sense in Britain, especially among the English, that the constant crises in the Eurozone have been driving migration into across the Channel into England.

Such facts have given rise to a general sense that, if Britain is to stay in the EU at

all, and especially if it is to have an important role in collective decisions important to the whole continent, it will have to go further: It will have to adopt the euro, work within the ECB, and generally abandon national sovereignty to the extent those measures suggest.

Monetary Unions: King's Examples

In a fascinating discussion, King makes the case that, historically, monetary unions that comprise more than one sovereign state have all run into trouble. In 1866, four European nations (France, Belgium, Italy, and Switzerland) created a "Latin Monetary Union" (LMU). Two years later Spain and Greece came on board. The members tried to coordinate their money systems through a bimetallic standard, where each member's treasury coined both gold and silver. But a gap soon opened between the official exchange rate and the market rate of the one metal vis-à-vis the other, and the national governments competed to exploit this difference by exporting silver and importing gold. Obviously it's impossible for everybody to be a net exporter of silver, so this competition was of the zero-sum sort. The LMU had effectively disbanded by 1878. This resulted from, as King summarizes, the competition between "political will and economic reality."

The early history of the United States, which King also cites in this connection, tells a different but consistent story. Yes, the former colonies did manage to come together in 1787 with one currency, one national treasury, and soon (due to the insistence of the first secretary of that Treasury, in a tale now told on Broadway), one central bank. But this illustrates only that a monetary union can work if it is coupled with a "collective federal fiscal policy." It can survive and prosper only with the instruments that Alexander Hamilton had: direct taxation and decisions about key initiatives on spending, subsidization, and so forth being made at the federal level. The parts of the whole have to be willing to give up sovereignty and to become much more than merely a monetary union.

The Hamiltonian Path for Europe

King doesn't mention it, but of course Hamilton's generation didn't decisively settle the degree to which the states had abandoned sovereignty. A bloody war would be necessary for that. Still, King makes a sound point about a Scylla and a Charybdis. Either the separate political wills dominate an effort at monetary union, in which case the union will

meet the fate of the LMU, or a *central* political will develops that dominates the separate wills, as it did over time in the United States.

Many fervent advocates of the EU would concede this much of King's analysis, and they would hope that the EU will follow the Hamiltonian path, though of course they would also hope and expect that a European Fort Sumter won't be part of the process.

King's point here is that the British public in particular (and that of other nations involved) was being led unwillingly down the path to membership in a gradually more centralized and centralizing EU. An elite was pushing for such a path, not the large body of the people who saw the pre-Brexit degree of integration for what it is not, namely a sustainable status quo. The large body of the people, to the extent that they had long supported the EU and the Eurozone in many member states, had been under a delusion. King would probably see Britain's exit from the EU as the end of that delusion.

King cites an anonymous British acquaintance who said to him "that he wouldn't mind if the UK adopted the euro provided that we could keep our own interest rate." It doesn't work that way. The ECB, a creature of the Eurozone, sets the interest rate.

Fearing Reaction

King charges that leaders in Britain "have for many years failed to make clear the nature of this choice" between the Hamiltonian path on the one hand and the eventual reassertion of national sovereignty, as occurred in the case of the defunct LMU, on the other. Brexit indicates that voters caught on and reacted.

And it's not just in Britain: "Voters in a growing number of countries have turned away from center-left and center-right parties toward more extreme parties that still respect national sovereignty. There is a limit to the economic pain that can be imposed in the pursuit of a federal Europe without a political counter-reaction."

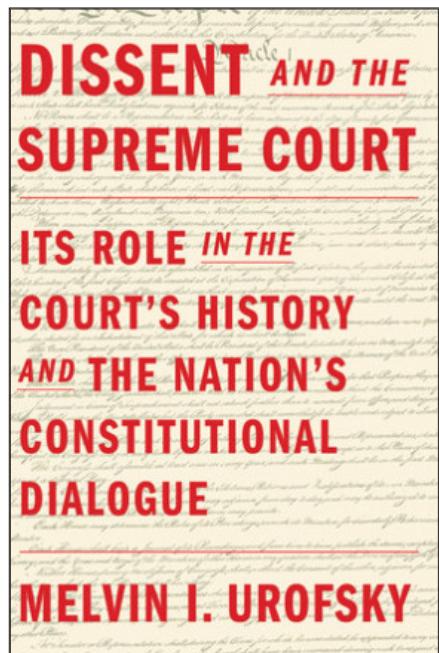
In short, though he doesn't put it this way, King probably welcomes Brexit because it will eliminate the temptation to enter the smaller Eurozone, and he probably would welcome a more general unravelling of the Eurozone, too, for fear that the unravelling will be nastier the longer it is delayed.

It is as if the elites of the nations of Europe have been shaking a can of carbonated soda. It is better to stop shaking now, open the can, and endure the resulting mess than

to continue shaking and make something more explosive inevitable at a later date.

Putting King's points in a somewhat different way, we might say this. The EU, with its Eurozone core, has become a forum for muddling through from one crisis to the next. This government-by-crisis is a hindrance, not a help, to the participant nations. It is better for them to endure an inoculation sort of crisis, that of departure, than the slow wasting disease of endless crises hereafter. The Brexit vote indicates that historians of posterity will have a lot of data by which to judge the validity of that case. ◎

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Dissent and the Supreme Court: Its Role in the Court's History and the Nation's Constitutional Dialogue

By Melvin I. Urofsky

Pantheon Books, New York, NY, 2015.

528 pages, \$35.00.

Reviewed by John C. Holmes

Prior to the Civil War, members of the Supreme Court were extremely reluctant to issue dissents. During Chief Justice John Marshall's tenure, from 1801-1835, of 1,187 opinions, only 87 had dissenting or concurring opinions. Generally, the Court felt that it needed unanimity to maintain its prestige in the eyes of the other two branches of government. President Andrew Jackson is said to have stated, "John Marshall has made his decision; now let him enforce it." The comment is probably apocryphal, but Jackson did ignore the decision in question. Chief Justice William Howard Taft stated, "I don't approve of dissents generally, for I think in many cases where I differ from the majority, it is more important to stand by the Court and give its judgment weight. . . ."

Dissents are important not only in attempting to change the opinions of other justices in the case at hand, but also to influence future cases. Dissenting and concurring opinions are directed not only at fellow or future justices, but at lower court judges, members of Congress and the executive branch, administrative agencies, the legal academy, and the public. In *Dissent and the Supreme Court*, Melvin I. Urofsky writes, "Two of the most highly regarded opinions in the twentieth century—Justice Brandeis in *Whitney v. California* (1927) and Justice Jackson in *Youngstown Sheet & Tube Co. v. Sawyer* (1952)—were concurrences and in the long run proved far more influential than the majority view."

Dissent and the Supreme Court focuses on dissents that have had the greatest impact, such as, in Urofsky's summary at the end of the book, "Stephen J. Field, seeking to expand the meaning of due process. . . . John Marshall Harlan I, objecting to the segregation that flowed directly from slavery. . . . Oliver Wendell Holmes Jr., breaking from a past that allowed constraints on free speech. . . . Louis D. Brandeis, reaching back into the origins of the Fourth Amendment to find a right to privacy. . . . Wiley Rutledge, demanding that the victor's treatment of the vanquished adhere to traditional ideas of due process. . . . [And] Hugo L. Black, . . . arguing that in order to have a fair trial, a defendant needed the benefit of counsel."

"The dissents in the *Slaughterhouse Cases*," Urofsky writes, "completely changed both the intent and the meaning of the Fourteenth Amendment." This 1873 Supreme Court decision grew out of Louisiana legislation that required that, for sanitary reasons,

all slaughtering in New Orleans would have to be done in one slaughterhouse, which every butcher could use for a small fee. This legislation had been adopted by a racially integrated legislature dominated by Republicans, and white New Orleans, Urofsky implies, would reject any law it passed, even one to make New Orleans a healthier and cleaner city. A group of butchers hired former Supreme Court Justice John Archibald Campbell (he'd resigned to join the Confederate government) to challenge the law. He argued that § 1 of the 14th Amendment prevented the state from compelling butchers to slaughter only in a certain place and only upon payment to a favored group. In a 5-4 decision, Justice Samuel Miller disagreed, finding that the "pervading purpose" of the 14th Amendment was "the freedom of the slave race . . . and the protection of the newly made freeman." It did not otherwise generally limit the state's police power.

Justice Stephen J. Field, dissenting, argued that the police power had to be exercised in a way consistent with the constitutionally protected rights of citizens. The health of the city might require removing slaughterhouses from within the city, "but no such object," Field wrote, "could possibly justify removing such buildings from a large part of the State for the benefit of a single corporation." Urofsky writes, "This assertion that the state could only use the police power when it could prove a direct relation between the statute and the health, safety, and welfare of the community would have an important bearing during the Progressive Era, when conservative jurists used this argument to strike down protective legislation. . . ."

Urofsky devotes a long chapter to two great dissenters: Oliver Wendell Holmes and Louis Brandeis, who served on the Court together. They usually agreed with each other, but, Urofsky writes, "The liberals who rejoiced when they saw 'Holmes and Brandeis dissenting' rarely recognized that Holmes's soaring rhetoric and Brandeis's inexorable fact-laden logic arose from different worldviews. Both men believed in judicial restraint. . . . Holmes, however, voted as he did out of skepticism, not believing in the reform measures [that he upheld]." Brandeis, by contrast, was idealistic—a political progressive who fervently supported the New Deal.

Although Holmes dissented in only one out of every 33 cases, he is best remembered for his dissents, particularly in free speech

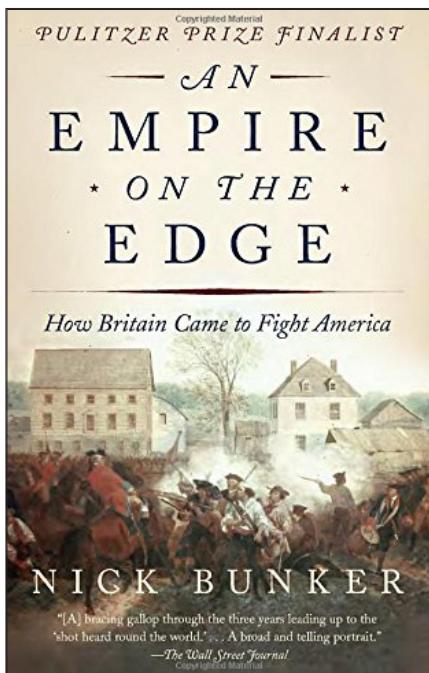
cases. His most famous free speech case, *Schenck v. United States* (1919), in which he wrote probably the two most famous judicial statements about free speech—that the First Amendment “would not protect a man in falsely shouting fire in a theatre and causing a panic” and that the government may punish speech only when it creates “a clear and present danger”—was a majority opinion that upheld the conviction of a man for engaging in what today would be protected speech. In *Abrams v. United States* (1919), however, he issued a famous dissent, writing that “when men have realized that time has upset many fighting faiths, they may come to believe … that the ultimate good desired is better recognized by free trade in ideas—that the best test of truth is the power of thought to get itself accepted in the competition of the market. . . .”

Urofsky recognizes the late Justice Antonin Scalia as one whose ideas and powerful legal reasoning have had a major impact on judicial and academic dialogue. Scalia was outspoken in his frequent dissents and carved out a niche as an originalist in interpreting the Constitution. Nevertheless, Scalia’s influence on the Court did not match the fervor of his writing. Urofsky writes, for example, that “[c]ommentators viewed Scalia’s bitter dissent [in *United States v. Windsor*, the 2013 decision that struck down the Defense of Marriage Act] less as an accusation that the majority was wrong than as a futile cry against changes with which he did not agree.”

Urofsky writes that he asked his colleagues in the field of constitutional history what modern dissents they thought would have staying power. Their responses varied enormously, but three dissents stood out: William Brennan’s in *McClesky v. Kemp* (1987), Scalia’s in *Morrison v. Olson* (1988), and Ruth Bader Ginsburg’s in *National Federation of Independent Business v. Sibelius* (2012). These cases argued, respectively, that statistical evidence of racial prejudice in the imposition of the death penalty should be admissible, that the appointment of an independent counsel outside the executive branch is an unconstitutional violation of separation of powers, and that the individual mandate clause of the Affordable Care Act should be upheld under Congress’ commerce power and not only under its taxing power. (Ginsburg’s opinion was actually a concurrence, but she disagreed with the majority opinion on the Commerce Clause issue.)

Dissent and the Supreme Court is clearly written and a significant contribution to the literature on constitutional law. ◉

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An Empire on the Edge: How Britain Came to Fight America

By Nick Bunker

Alfred A. Knopf, New York, NY, 2014.
429 pages, \$30.00 (cloth), \$17.95 (paper).

Reviewed by Neysa M. Slater-Chandler

At last! An acknowledgement that the American Revolution started in Rhode Island! And I thought that only Rhode Islanders were taught that in grade school. But now I have it in writing. So, settle in with a cup of tea and enjoy American history as seen from across the Atlantic.

I hope that I have piqued your curiosity. *An Empire on the Edge* reflects Nick Bunker’s background as a journalist and investment banker in England. His book, which could have been titled, *An Empire Distracted: How Britain Came to Lose America*, grabs the reader’s attention from the start with a cautionary tale of the Amer-

ican frontier, about Fort Charters, in what is now Illinois: “Handsome to look at but far too costly to maintain, the fort was built on weak foundations, the British had acquired it without a cogent plan for its future, and in time, it was bound to collapse. In other words, the post symbolized Great Britain’s plight in North America as a whole, a continent she did not comprehend and could not hope to rule in its entirety.”

If Great Britain could not comprehend North America, it particularly could not comprehend how far its colonies had departed from the mother country’s ethos. Throughout *An Empire on Edge*, Bunker shocks his reader with tales of the British elite’s lush spending, gambling at cards, debt, and decadence. All this occurred while the colonial elite primly justified profits gained from smuggled goods, unpaid taxes, and exploited human beings. Time and tide wait for no man, and try as it might to quarantine illegal activity to the “little republics” of New England, Great Britain failed to realize that the flame destined to ignite a revolution had already been lit.

Great Britain was ill-prepared from the start to impose its will. Gen. Thomas Gage, British commander in chief, was responsible for a landmass from Nova Scotia to the Bahamas with a force of only 6,000 men, which Bunker tells us, was only half as many as the British kept in Ireland. By the time the British army withdrew from frontier outposts such as Fort Charters, Great Britain’s authority “began to evaporate entirely, in the realm of ideas, in the courts of law, in the meeting-houses of religion, and along the coast.” The Royal Navy fared little better, as Rear Adm. John Montagu was left to cover the Atlantic seaboard from Labrador to Florida with two dozen small coastal ships.

Rhode Island alone has more than 400 miles of coastline, so interdicting smugglers even there would tax the small fleet. Narragansett Bay, fertile waters for smugglers, supported “organized crime on an enormous scale.” But, as Bunker notes, “[f]or simple economic reasons, the contraband trade had come to be woven into the fabric of everyday life, just as it was in Europe and the British Isles, with the only difference being that in the English Charnel cognac took the place of rum.” Greed and graft were two sides of the same coin: The captain of a successful revenue ship would share in the profits from the sale of a captured smuggler ship and its cargo. In 1772, the aggressive Royal Navy Lt. William

Dudingston patrolled the waters of Narragansett Bay in command of the ship the *Gaspée*. He was authorized to search every vessel, thereby impeding the flow of smuggled molasses, potentially wrecking the trade in rum, and upsetting local Rhode Island families such as the Browns and the Greenes (including one Nathanael, later to trade in his ledgers for a uniform as Washington's youngest general and a most trusted commander).

On the evening of June 9, 1772, the colonists rushed the *Gaspée* and burned it to its waterline. In this they were ably assisted by the British, who had refused to pay for coastal pilots. The *Gaspée* gave chase to the smaller *Hannah*, which scooted past a sandbar, and the *Gaspée* grounded in two feet of water to await the tide. *Hannah* arrived in Providence "in time for supper," and a group of angry raiders consisting of the "maritime elite" of Providence (including members of the Brown and Greene families) set off in long boats bolstered by a legal opinion from Rhode Island Chief Justice Stephen Hopkins. Hopkins held that the *Gaspée*'s captain was acting unlawfully, as he had failed to show the governor his orders and his commission from the king, which Bunker reports made the *Gaspée* in the colonists' eyes "little better than a pirate ship herself."

And you never heard of this event that occurred a full 18 months before the Boston Tea Party? What may be missing from today's history curricula was certainly yesterday's headline on both sides of the Atlantic, and, remember, Bunker is a journalist at heart. News traveled quickly between Providence and Boston, and across the Atlantic, where the British were appalled at the utter gall of the colonists. Some would declare the burning of the *Gaspée* as an act against the Crown, an act of treason that foreshadowed the even more treasonous Boston Tea Party.

Treason? Yes; enter the lawyers and a superb reason for lawyers to read this book. It seems that, even in the 18th century, governments and businesses made few moves without consulting their attorneys. Bunker tells us that, "[t]hroughout the American crisis, the British cabinet asked for legal advice about every decision they made." Try as it might to bring the Providence, and later the Boston, rabble to trial, reality intervened: "If the men who destroyed the *Gaspée* were publicly deemed to be traitors, then Great Britain had to bring them to trial and hang them...." A move to direct Adm. Montagu to detain suspects in the *Gaspée* incident

failed, as "the law did not permit the military to arrest civilians on land without a warrant from a judge."

The crown's attorney general, Edward Thurlow, also addressed the question of venue. Because colonial witnesses would be presumed to be liars, and a colonial jury could not be trusted to convict, the raiders (if ever actually identified) could be hauled into an English court, tried, presumably convicted, and hanged. When the American newspapers got hold of the plan "to ship a suspect away to face a hostile English court, packed with loyal supporters of King George," the outrage not only reached the rebels in Boston, but it also "put an end to the peace and quiet" in Virginia and eventually found its way into the writings of Thomas Jefferson. (Thurlow would later put an end to moves to prosecute the Boston Tea Party participants for treason as relying too heavily on hearsay.) The stage was set for further colonial acts of disobedience.

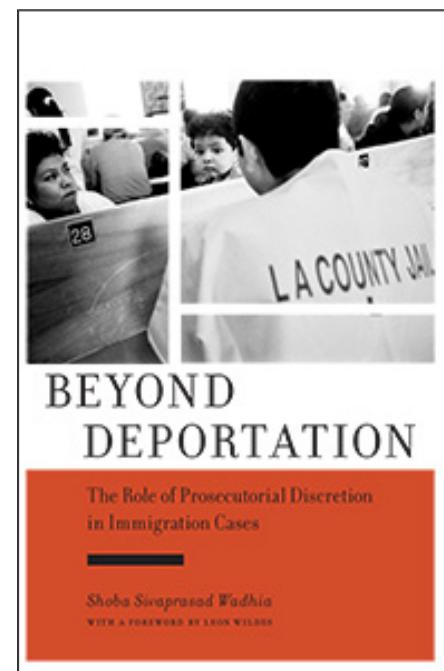
Bunker tells us that the "clumsy" response to the *Gaspée* incident steeped Americans in animosity and distrust until the atmosphere boiled over into the Boston Tea Party. Perhaps the greatest revelation to me is that the Boston Tea Party really was about the tea, and Bunker relies on his understanding of the banking world well as on Admiralty and Treasury documents to make his argument. It is a tribute to Bunker's writing style and firm grasp of global economics that the several chapters tying together European weather patterns, the British East India Company, contraband cargoes, and tea as a commodity and an economic force are informative and easy to digest.

Bunker buries his lead in a footnote on page 403, revealing just why the history lesson goes down so well: "The approach adopted in *An Empire on the Edge* has involved not only a re-examination of the British political papers ... and the addition of new ones, but also a close reading of the newspapers of the period. In order to trace the interaction of events on each side of the ocean as the war drew near, one has to reconstruct the flow of news as accurately as possible and this can be done using the press reports that survive." This fresh take on old news makes this work an enjoyable and informative read.

I was fortunate to hear Bunker speak about his book when he received the George Washington Book Prize in May 2015 at Mount Vernon. His enthusiasm for the sub-

ject, his ability to engage the reader (and the listener), and his storytelling turn analysis of 18th-century economics, cross-Atlantic hegemony, and tea into a page-turner of political intrigue, colorful personalities, and treason. ☺

*Neysa M. Slater-Chandler is a native Rhode Islander who grew up several miles from the site of the *Gaspée* incident on land once owned by the Brown family. She now lives in the Mount Vernon section of Fairfax County, Va., on land once owned by George Washington. She dedicates this review to her father, who shared his June 9th birthday with the anniversary of the *Gaspée* incident. Slater-Chandler is a U.S. government attorney, and the views presented here are her own.*



Beyond Deportation: The Role of Prosecutorial Discretion in Immigration Cases

By Shoba Sivaprasad Wadhia

New York University Press, New York, NY, 2015.

240 pages, \$55.00.

Reviewed by R. Mark Frey

On June 23, 2016, the U.S. Supreme Court issued its eagerly anticipated opinion in *United States v. Texas* which, to much surprise, consisted of a mere nine words: "The judgment [of the lower court] is affirmed by an equally divided court." The result left

many wondering what's next in this contentious lawsuit involving President Obama's Nov. 20, 2014 executive actions: Deferred Action for Childhood Arrivals (expanded DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). As for the details of the litigation, suffice it to say that prosecutorial discretion looms large in the debate between the two sides.

Prosecutorial discretion has a vague, elusive, almost chimerical quality to it, a quality that induced Penn State law professor Shoba Sivaprasad Wadhia to seek an understanding of its use in the immigration realm. Her inquiry encompassed such questions as, what is prosecutorial discretion and how did it develop and evolve in the immigration context? What are its features and how do they relate to one another? What framework do they create as a whole, and how could it be improved upon?

Beyond Deportation is comprehensive, first expounding on the historical development of prosecutorial discretion as seen in attorney Leon Wildes' work during the 1970s to prevent John Lennon's and Yoko Ono's deportations, as he sought to bring to light the Immigration and Naturalization Service's less than transparent use of prosecutorial discretion.

The book then moves on to an exposition of prosecutorial discretion itself, its basis in law, and its implementation in the immigration realm. Prosecutorial discretion, explains Wadhia, "refers to a decision by a government employee or attorney or the immigration agency (as opposed to the judge) to abstain from enforcing the immigration laws against a person or group of persons." A favorable exercise of prosecutorial discretion serves as a temporary form of relief from removal (deportation) for those meritit while enabling an agency to focus its limited resources on removal of the "truly dangerous."

The authority for prosecutorial discretion in the immigration sphere derives from section 103(a) of the Immigration and Nationality Act, as amended by the Homeland Security Act: "The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens...." The agencies empowered to enforce those laws include Customs and Border Protection (CBP), Immigration and Customs Enforce-

ment (ICE), and United States Citizenship and Immigration Services (USCIS). The thousands of employees working at these agencies make decisions daily in their dealings with individuals affected by our nation's immigration laws.

These decisions, according to Wadhia, encompass up to 25 forms of prosecutorial discretion. To name a few, they involve whether to allow a person lacking proper travel documents to enter the United States through the "parole" mechanism; whether to arrest an individual; whether to issue and file a Notice to Appear with the immigration court (Executive Office for Immigration Review), which formally initiates removal proceedings; whether to join a motion to terminate removal proceedings; and whether to issue a stay of removal after the individual has been ordered removed.

Wadhia draws parallels to the exercise of prosecutorial discretion in the criminal law realm, in which prosecutors balance resources and the public interest in deciding whether to file charges and what charges to file.

Prosecutorial discretion involves decisions made on an individual basis, each case involving an evaluation of both positive and negative features. In the immigration context, those features typically involve two key components: an economic one that weighs the agency's priorities for removal against its limited resources, and a humanitarian one that considers factors such as whether the individual is married, has children who are U.S. citizens, and has good moral character, as well as whether the individual or family members face medical problems, and whether the individual is a victim of a natural disaster, domestic violence, or other serious problem.

Other forms of humanitarian prosecutorial discretion, applied to groups rather than individuals, while still requiring a case-by-case assessment, include Extended Voluntary Departure (now more typically known as Deferred Enforced Departure), immigration parole, and Deferred Action, such as Deferred Action for Childhood Arrivals..

Prosecutorial discretion plays a key role in the immigration realm and will continue to do so in the coming years. Its elucidation and development since the days that John Lennon and Yoko Ono fought their deportation is significant. Wadhia suggests, however, that the system could be improved even more with greater oversight through judicial

review, and greater transparency by formalizing the system more. I cannot disagree with her assessment.

Beyond Deportation is a significant contribution to the literature on immigration law and policy. It connects the different aspects of prosecutorial discretion that have arisen over the years in various nooks and crannies of the immigration bureaucracy, providing readers (be they legal scholars, attorneys, students, or the general public) with a comprehensive conceptual framework for understanding the place of this mechanism in our immigration system. Both sides of the debate growing out of the *United States v. Texas* lawsuit would do well to read this book. ◉

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