Queens BAR BULLETIN

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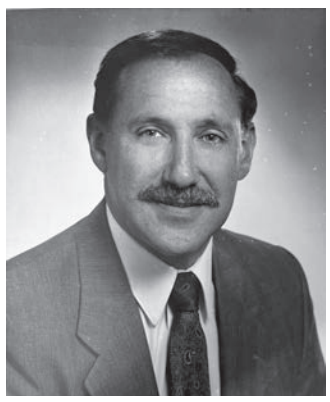
June 2025 | Volume 92, No. 7

Steven Wimpfheimer
1999-2000

IN MEMORIAM

Remembering Past Presidents Steven Wimpfheimer and Michael Feigenbaum



Michael K. Feigenbaum
1986-1987

The Queens County Bar Association and the greater legal community lost two legends mere hours apart with the passing of Steven Wimpfheimer in the evening of March 5 and Michael Feigenbaum in the morning of March 6. The two men will long be remembered and missed by those who knew them.

Steve and Mike, both 83, shared much more than just their involvement with the QCBA. Both were preeminent attorneys in their respective practice areas, active members of the New York State Bar Association and devoted family men. In a unique irony, they were also brothers-in-law, as Steve's wife Ruth is Michael's sister.

Steve Wimpfheimer graduated Brooklyn Law School in 1966 before going on to serve as a United States Army Captain in Vietnam. Steve served as a Law Assistant and Law Clerk in Queens Supreme Court prior to starting his own firm specializing in Tax Certiorari proceedings. A QCBA member since 1968, he held various positions for the association, including a term as President at the turn of the millennium, serving from 1999-2000. He remained actively involved with QCBA and the QCBA Fund in the years that followed and was serving as Second Vice President of the QCBA Fund at the time of his passing. Steve was also a member of the Nassau County Bar Association and the New York State Bar Association, where he served as a Vice President and an executive committee member of the Real Estate Section.

But Steve was much more than "just" an attorney. Steve was devoted to his family, enjoying a nearly 60-year marriage to his wife Ruth and their three children, Debbie, Bobby and Amy. He had a large family both in the United States and in Israel that he remained in regular contact with. Steve was also proud of his Jewish faith and spent many years learning as much as he could about Judaism. He devoted countless hours assisting various charitable organizations and non-profit community entities with their real estate and tax certiorari matters and supported many others with donations of his time and money.

Michael Feigenbaum was a larger-than-life figure within his professional circles, widely recognized as one of the best Trust and Estates practitioners in New York. His career encompassed nearly all aspects of the Trusts and Estates world, including serving in the Surrogate's Court law department,

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Being the official notice of the meetings and programs listed below. Due to unforeseen events, please note that dates listed in this schedule are subject to change. More information and changes will be made available to members via written notice and brochures. Questions? Please call 718-291-4500.

CLE Seminar & Event listings

JUNE 2025

Thursday, June 5	**EVENT:** Family Law Committee Annual Dinner
Tuesday, June 10	Soberlink - Lunch & Learn - 1:00 pm
Wednesday, June 11	**EVENT:** Pride in Justice - Celebrating LGBTQ+ Pride in the Court Community - 1:00 pm, Civil Court, Queens County
Thursday, June 12	LinkedIn Webinar - 1:00 pm
Thursday, June 19	*Juneteenth – Office Closed*
Tuesday, June 24	**CLE:** The Resurrection of the Common Law Negligence as a Cause of Action Against the Owner(s) of Domestic Animals Who Cause Injury to Others - 1:00 pm

JULY 2025

Friday, July 4	*July 4 – Office Closed*

SEPTEMBER 2025

Monday, September 1	*Labor Day - Office Closed*
Tuesday, September 9	Golf Outing - The Woodside Club
Tuesday, September 30	**CLE:** Celebrity Bankruptcies
	July 4 – Office Closed

*If you are unable to attend a CLE that you are interested in, you may purchase it to view at home by contacting Sasha at cle@qcba.org.

For more information on upcoming seminars, CLE's and events, go to qcba.org/CLE-Courses

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Doreen Dufficy
Abigail Farias
Konstantinos Gaisidis
Joseph L. Hunsberger
Emma Konchinski
Lauren H. Lovett
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Editor's Note

Law and Government on Today's Silk Road

By Paul E. Kerson

I took my 16-day vacation early this year. My wife of many decades, Marleen Kassel Kerson and I went on a Smithsonian Journey, "The Silk Road: A Journey to Central Asia".

Marleen is a retired Queens College professor of World History, Japanese History and Chinese History. She wanted to see some of the places she taught all those years. Also on the trip was Sue Henderson, the retired Queens College Director of Institutional Advancement and Past President of New Jersey City University.

This Editor's Note is meant to explore the roots of the relatively new Law and Government of Turkmenistan, Uzbekistan, Tajikistan, Kyrgyzstan and Kazakhstan. Before 1917, these five countries were nomadic lands, all known as Turkestan. When the Soviet Union was formed, Turkestan was conquered by the Russians and divided into these five Soviet republics. When the Soviet Union collapsed in 1991, these five Soviet republics became independent states.

This Editor's Note is also meant to demonstrate that all of the Earth's many peoples are literally cousins and that war is unnecessary so long as Colonel Sanders and General Tso and everybody else is free to compete to sell chicken and everything else on the Silk Road (See below).

The opinions in this Editor's Note are my own, not pre-approved by the Smithsonian Institution or the Queens County Bar Association, or anybody else for that matter. Any errors are also my own, although I have fact-checked everything that appears below.

And what a trip it was. Our national museum, the Smithsonian Museum in Washington, DC turned itself inside out for 23 Americans from around the country for the vacation of a lifetime.

Usually, one visits a museum and views and reads the exhibits. I always buy the book of photographs and descriptions of the exhibits at the end of the day and re-read them for years to come.

But this was something else entirely. Rather than collecting the exhibits and bringing them to Washington, the Smithsonian chartered a series of Chinese Yuotong and European Mercedes tour buses and drivers and drove us all over today's Silk Road, the ancient Asia-to-Europe trade route.

A painting of camels on the ancient Silk Road of yesteryear, and photographs of today's replacements – the Chevrolet Cobalt and Chevrolet Manas

We had two outstanding independent tour guides to keep the tour free of any official United States Government position or bias. Prof. Alexander Diener of the University of Kansas Geography Department and Aleksandr Balyasnikov, an independent tour manager from Samarkand, Uzbekistan were with us 24/7 to give lectures and answer questions. I had hundreds of questions. I hope they did not think I was cross-examining them. In retrospect, I guess I was.

1. Great Power Confrontation

We literally were on the frontier of a world economic competition. Three of the major cities of the ancient Silk Road are Khiva, Bukhara and Samarkand, all in Uzbekistan. All are dominated by General Motors Company (GM) of Detroit, Michigan and its local licensee, UzAuto Motors, 99.7% owned by the Government of Uzbekistan.

UzAuto Motors maintains Chevrolet factories in Asaka, Pitnak and Tashkent, Uzbekistan. They produce small Chevrolets under the model names Cobalt, Lacetti, Nexia and Spark, and a half-size minivan under the model name Manas (named for an historic Uzbek leader of centuries ago). The Manas was originally produced by the South Korean manufacturer, Daewoo Auto, and sold to GM and then passed on to UzAuto Motors and sold under the Chevrolet name.

Our Uzbek guide Alex Balyasnikov noted that the Chevrolet Manas can fit 29 live sheep if packed right. Despite its small size, the Chevrolet Manas is the perfect replacement for the camel, as it is smaller and can carry more.

In 2024, UzAuto Motors sold 353,730 Chevrolets in a country with a population of 37,053,428 today. In 2024 GM sold 1,745,809 Chevrolets in the United States, with a population of 340,100,000 today, mostly Chevrolet Silverados, a very large pickup truck.

Because UzAuto Motors is government owned, very few other car brands are found along the Silk Road in Uzbekistan. There is also no labor union

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at UzAuto Motors plants in Uzbekistan. See Google, GM, UzAuto Motors, population, sales and production figures.

One can only conclude that GM is doing far better on the Silk Road in Uzbekistan than it is on US Interstate 80 (GW Bridge of NJ to Bay Bridge of San Francisco). With a government near monopoly on sales and no labor unions in Uzbekistan, how long will it be before GM leaves Detroit completely?

At the national border between Uzbekistan and Tajikistan, we saw a truck from Poland. On the Silk Road in Uzbekistan, we saw a truck from the Czech Republic.

Compare this Western Tilt with the section of the Silk Road in adjacent Kyrgyzstan. There we ran into the BRI – the Belt and Road Initiative – China's attempt to pave the Silk Road into a modern highway and gain economic power over the countries the Silk Road runs through.

They are doing it all wrong. The Interstate Highway System started in the Eisenhower Administration and took more than 20 years to complete. The Federal Highway Administration developed the Interstate Standard:

(a) Wide green median strips of land between the lanes in each direction, thus making head-on deadly crashes nearly impossible, and

(b) Large green and white road signs so everyone will know where they are going, also preventing accidents of people looking for the wrong exit.

Kyrgyzstan Chinese BRI with Kentucky Fried Chicken's Colonel Sanders carefully guarding the Silk Road and beckoning Kyrgyz and other Silk Road travelers.

Sometimes the Chinese follow the Interstate Standard, but usually not. Pro-Western Uzbekistan is not doing much better on their portion of the Silk Road – lots of Chevrolets but few wide green median strips or large green and white road signs.

Chevrolets have become so common in Uzbekistan that "chevy" has become the Uzbek word for car, as in "my Toyota Chevy". Note the complete contrast with Turkmenistan, where Chevrolets are banned and most of the cars on their portion of the Silk Road are Hondas and Toyotas, as is the case in New York.

The dictatorial government in Turkmenistan has decreed that all cars in their country must be painted white. No other colors allowed. Same for their government buildings – only white marble will do. Their capital city, Ashbagat, has beautiful new white largely empty government ministry buildings and lots of white Hondas and Toyotas. Surrounding Ashbagat are the run-down homes of subsistence farmers.

Also note the photo of the attitude of the Kyrgyz towards the Chinese BRI – a statue of a fierce looking dragon made of auto parts.

Also note that there is no indication of any competing Chinese General Tso's chicken, egg rolls, spare ribs or won ton soup to compete with Colonel Sanders. Why did the Chinese seek to pave the Silk Road but not use it for commerce?

I know I have lived a full life when I have seen Colonel Sanders from Kentucky guarding the ancient Silk Road. By looking at my photo of him, you too, dear readers, have now seen everything.

If, as and when the Chinese get around to opening General Tso's Chicken to compete with Colonel Sanders, there will be no need for additional tariffs or wars, as everyone on the Silk Road will be well fed. With competition, prices should come down.

2. Five Former Soviet Republics

Turkistan was a land of nomads with no central law or government until it became part of the Russian empire of the Czars bit by bit in the late 1800s and early 1900s.

After the Russian Revolution of 1917, the Soviet Union was created with 15 Soviet Socialist Republics. Turkmenistan, Uzbekistan, Tajikistan, Kyrgyzstan and Kazakhstan Soviet Socialist Republics were started at that time, divided from the land of Turkistan.

Muslim mosques, Russian Orthodox Churches and Jewish synagogues were all forcibly closed as "an opiate of the masses".

Central Asia is overwhelmingly Muslim. We toured dozens of beautifully restored mosques and newly built ones, all after "the Soviet time" which nevertheless was fondly remembered by older Central Asians as a time when everyone had free health care, free education and a paying job.

We toured the physically beautiful Russian Orthodox Christian Churches, closed during "the Soviet time" and reopened by Uzbekistan and Kazakhstan after independence in 1991.

The one remaining synagogue in Bukhara and its school has been placed in Uzbek State Government protection even though there are only 200 members left. During "the Soviet time" they were miraculously allowed to remain open as "a community center". They possess the oldest Torah in the world continuously in use – more than 1000 years old. Google says there is an older one in Bologna, Italy, but the current Bukhara synagogue President disputes this. See Google, Oldest Torah in continuous use.

The large once-thriving Bukharan Jewish community had relocated in "the Soviet time" in the 1980s to the State of Israel and – you guessed it – the home of freedom for everybody – Queens County, NY, where they built a beautiful new synagogue for the Bukharan Jewish community across the street from the Forest Hills U.S. Post Office.

In "the Soviet time" all economic decisions were made in Moscow. The 15 Soviet republics were told what to produce, what to charge and how to run their factories and farms. Five year plans were made scheduling all production five years into the future in complete ignorance of market conditions – who exactly might want to buy what five years from now.

This resulted in massive internal corruption on a scale we cannot even imagine. Factory and farm managers created documents that swore they met their quotas even when they had not. Sales goals were met on paper whether or not they were true. Actual surpluses went on the black market.

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Presented by Subin LLP

Join Us At The

2025 QCBA GOLF OUTING

Lunch and Registration beginning at 12:00 pm

Shotgun start at 1:00 pm

***** Scramble Format *****

Long Drive Contest **Closest to the Pin Contest**

**** "Fun Par Five Hole" ****

*****We will have a professional long drive golfer at the tee on a par five. Each foursome will be able to "hire" the pro to hit the drive for the foursome. The foursome receives a birdie or eagle on their scorecard and the foursome will then hit their next shot from wherever that long drive lands. The grand prize is a trip for two to Pebble Beach if any member of the foursome holes out that second shot.*****

NEW DAY!

TUESDAY, SEPTEMBER 9

WOODSIDE CLUB

225 Muttontown Eastwoods Road Muttontown, NY 11791

NEW LOCATION!

This championship course has a diverse layout that will challenge all golfers. The tees are at 6,520 yards and will make players use every club in their bag. The course, designed by renowned architect William Mitchell in 1962, has withstood the test of time, offering challenging doglegs, tree lined fairways, and very well manicured greens. Woodside's layout wraps around our beautiful clubhouse which was built over 100 years ago, the James Burden Estate. The immaculately kept course will deliver an incredible golf experience. With a slope of 141 and a course rating of 71.9, the Woodside Club offers 18 holes of challenging golf on over 100 acres of pristine land. The practice facility, featuring an 18 bay driving range, practice green and short game area, will help bring your game to the next level.

TENNIS AND PICKLEBALL OUTINGS

beginning at 2:00 pm

Buffet Dinner and Awards beginning at 5:30 pm

REGISTRATION:

Golf & Cart, Brunch, BBQ Lunch, Cocktails and Dinner - $375

Golf Foursome with all above for each golfer - $1,500

Golf Foursome plus tee box sponsorship and all above - $1,650

Tennis or Pickleball, Courtside Refreshments, Cocktails and Dinner - $250

Cocktails and Dinner only - $175

******For those unfamiliar with a scramble format, everyone in the foursome hits a tee shot and then each golfer hits their next shot from the best tee shot. This continues until the ball goes into the cup. The score for the hole is a team score and no individual scores are recorded.******

Presented by Subin LLP

Join Us At The

2025 QCBA GOLF OUTING

NEW DAY!

TUESDAY, SEPTEMBER 9

WOODSIDE CLUB

NEW LOCATION!

225 Muttontown Eastwoods Road Muttontown, NY 11791

SPONSORSHIPS:

Title Sponsor (ex[illegible]ive)

"2025 QCBA Golf Ou[illegible] by ____"

SOLD!!!

Includes: Gol[illegible]orship, Tee Box and Green [illegible]g display table during brunch [illegible]ecognition from and the opportunity [illegible]he all attendees from the podium during dinner.

Dinner Sponsor - $1,600
Lunch Sponsor - $1,100
Golfer Swag Bag Sponsor - $1,000
Driving Range Sponsor - $600
On-Course Hospitality Station Sponsor - $500
Tennis and Pickleball Outing Sponsor - $500
Tee Box or Green Sponsor - $350
"Whole Hole" (tee box and green) Sponsor - $600
Golf Cart Sponsor - $350

Sponsorships are non-exclusive except the title sponsorship. All sponsorships include signage and recognition at/during the golf outing, inclusion in event marketing, registration confirmations and reminders, press releases and elsewhere as possible and appropriate. All sponsors may include promotional materials/swag to be distributed to the attendees at the golf outing registration table. Swag bag sponsor's logo will be included on the golfer swag bag. Hospitality station sponsor(s) will be recognized at each on-course hospitality stations.

You may register for your preferred sponsorships as you register for the golf outing.

Not a golfer but want to sponsor? Contact Jonathan Riegel in the QCBA Office.

Questions?
Contact Golf Outing Chair David Louis Cohen or QCBA Executive Director Jonathan Riegel

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Need An Extra Membership Directory?

Call Janice Ruiz
718-291-4500, x222
jruiz@qcba.org

For additional resources from the Lawyer's Assistance Committee, visit www.qcba.org

President's Message

By Kristen J. Dubowski-Barba

Yes, my term as president has officially begun.

I would first like to thank all of you for the warm and enthusiastic welcome I received at the Queens County Bar Association Annual Dinner and the kind messages in our Dinner Journal.

My message was and continues to be to make the Queens County Bar Association the best in the State of New York. We must be focused on the needs of the members of our profession, and in particular, the members of our Association. To accomplish this end, I need your help. I need your suggestions. I need your involvement. I cannot do this alone.

I would like to have all of our committees active and providing a forum for communication and discussion for practitioners in every area of the law. Join and be active in a committee.

We would like to provide informative and meaningful Continuing Legal Education (CLE). Make suggestions. Offer to run or assist in the preparation of a CLE program. We also need time to relax, meet socially, have a cocktail and network. Make a suggestion!

Please reach out to me. I am available. I want to meet with you. I want to know your ideas and needs. Let us work together to plan and implement the programs that will make us the premier bar association in the State of New York.

To discuss ideas and needs
or to get involved,
you can reach Kristen through
president@qcba.org

Reawakening Our Capabilities

BY FRANK BRUNO, JR.

In a mother's womb were two babies, twins. As the weeks passed and their awareness grew, the first baby asked the other: "Do you believe in life after delivery?" The second baby replied, "Why, of course. There has to be something after delivery. Maybe we are here to prepare ourselves for what we will be later."

"Nonsense," said the first. "There is no life after delivery. What would that life be?"

The second said, "I don't know, but there will be more light than here. Maybe we will walk with our legs and eat from our mouths."

The doubting baby laughed. "This is absurd! Walking is impossible. And eat with our mouths? Ridiculous. The umbilical cord supplies nutrition. Life after delivery is to be excluded. The umbilical cord is too short."

The second baby held his ground. "I think there is something and maybe it's different than it is here." The first baby replied, "No one has ever come back from there. Delivery is the end of life, and in the after-delivery is nothing but darkness and anxiety and it takes us nowhere."

"Well, I don't know," said the twin, "but certainly we will see mother and she will take care of us."

"Mother?" The first baby guffawed. "You believe in mother? Where is she now?"

The second baby calmly and patiently tried to explain. "She is all around us. It is in her that we live. Without her there would not be this world."

"Ha. I don't see her, so it's only logical that she doesn't exist."

To which the other replied, "Sometimes when you're in silence you can hear her, you can perceive her. I believe there is a reality after delivery and we are here to prepare ourselves for that reality when it comes…."

As the weeks stretched into months the twins noticed how much each was changing. "What do you think all this change means?" asked the first baby. "It means that our stay in this world is drawing to an end," said the second.

"But I don't want to go," said the first "I want to stay here always."

"We have no choice, but maybe there is life after birth!", said the second. "But how can it be?" responded the one. "We will shed our life

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IN MEMORIAM

Remembering Past Presidents Steven Wimpfheimer and Michael Feigenbaum

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as Counsel to the Public Administrator, Counsel to the County Clerk and Law Chairman to the Queens County Democratic Party. He then maintained a private practice in Queens County before becoming a partner in one of Long Island's largest firms.

Like Steve, Michael was among QCBA's longest tenured members. He graduated New York University Law School in 1965 and immediately joined QCBA following his bar admission the following year. He was a long-time volunteer both before and after his term as President in 1986-1987. Always available for advice and guidance, Michael served on the QCBA Fund's Investment Committee for the past several years. He was a member of the New York State Bar Association and served on the Trusts and Estates Section executive committee for many years.

His professional achievements notwithstanding, Michael's family was what was most important to him. He was the father to three, Laurie, Susan and Daniel, the grandfather to seven and recently became a great grandparent. His wife, Madeline, became ill a number of years ago and Michael became her primary care giver. He devoted all his energies to her care and when she became too ill to remain at home, he made sure she was receiving the best care possible and he visited with her every day.

Michael enjoyed great food and was an excellent chef in his own right. He enjoyed playing golf and tennis and the ponies.

Steve and Michael, born less than a month apart, were inextricably linked in life and in death. For over 58 years, Steve was married to Michael's sister, Ruth and their families were close.

Tributes to both men poured in following their deaths. Past President David Cohen remarked that, "Steven was soft-spoken but held on to his opinions, even if they were unpopular…He was a good friend and always ready to help as much as he could. Those of us lucky to be his friend will miss him terribly."

Past President David Adler added that Steve "directly followed me as President of the bar association and the transition could not have been more seamless. He was an extremely devoted family man and friend. Simply put, he was just a good guy!"

David and David both reminisced about Michael as well. David Adler remembered Michael as "a big personality, a big intellect and a big heart…this is quite frankly a shocking loss to all in his orbit." David Cohen reflected on Michael's devotion to his wife and family, his many contributions to the legal world and his community and their times together, and concluded with "he will be sorely missed."

All of us at the Queens County Bar Association extend our heartfelt condolences to Steve and Michael's families, friends and colleagues.

Mazel Engages with Mayoral Candidates

BY DAVID N. ADLER

Geoffrey Mazel, Esq., QCBA's Cooperatives and Condominiums Committee co-chairperson, has been actively engaging with top mayoral candidates on key issues affecting the cooperative and condominium community in New York City in the run-up to the Mayoral primary later this month.

Mr. Mazel has held substantive discussions with several prominent candidates, including Governor Andrew Cuomo, Mayor Eric Adams, and former New York City Comptroller Scott Stringer. These discussions have focused on critical matters such as the impact of unfunded mandates, safety concerns, and quality of life issues that directly affect our co-op and condo residents.

Notably, Mr. Mazel recently organized and moderated a co-op roundtable with Governor Cuomo at the offices of Glen Oaks Village in Queens County. This event brought together representatives from over 30 cooperative boards, representing more than 25,000 co-op housing units – including many of the largest cooperatives in Queens. In addition, he participated in discussions with candidates Mayor Eric Adams at North Shore Towers and former Comptroller Scott Stringer at Beech Hills, in Douglaston, NY.

Each of these meetings has provided an important opportunity to educate mayoral candidates on the vital role the cooperative and condominium community plays in the city. It is estimated that there are more than 600,000 owner-occupied co-op and condo units in New York City, representing a significant and engaged voting bloc. According to Mr. Mazel, "We believe it is crucial that City Hall recognizes and considers the needs of this community when shaping public policy."

Geoffrey Mazel with Governor Andrew Cuomo and Mark L. Hankin

These initial meetings have laid a strong foundation for continued dialogue with city leaders. Invitations have been extended to all candidates to engage further with co-op and condo groups throughout Queens County, and we will keep you informed of future developments.

Mazel with Scott Stringer

Mazel with Mayor Eric Adams

Annual Dinner and Installation

MAY 15, 2025

PHOTOS BY WALTER KARLING

Annual Dinner and Installation

MAY 15, 2025

PHOTOS BY WALTER KARLING

Court of Appeals Restores Common Law Negligence

BY HON. GEORGE M. HEYMANN (RET)*

Part 1 of a 2 Part Series

INTRODUCTION

On April 17, 2025, the Court of Appeals, in a unanimous decision, finally restored common law negligence as a cause of action for commencing a suit against the owner(s) of a domestic animal that injures a person. (See, *Flanders v Goodfellow* [25 NY Slip Op 02261] discussed in further detail below.)

For over 100 years prior to the case of *Collier v Zambito* (1 NY3d 444[2004]), any person injured by a domestic animal, in most cases a dog, could seek remuneration via two causes of action: common law negligence and/or strict liability based on the animal's "vicious propensities". In *Collier*, the 12- year- old plaintiff, who was at defendant's house to play with her son, was "invited" to come close to the defendants' dog that was on a leash. Suddenly, and unprovoked, the dog lunged at plaintiff's face causing injury. The Supreme Court denied the defendants' summary judgment motion for dismissal, finding issues of fact as to whether they knew of the dog's "vicious propensities". It also denied the plaintiff's cross-motion for summary judgment on liability because of said issues. The Appellate Division, Third Department, reversed both motions, finding that there were issues of fact that defendants knew of their dog's "vicious propensities" and that plaintiff's evidence was insufficient to prove such propensities.

In affirming the reversals, the Court of Appeals adopted the language of the AD, which concluded that "… plaintiffs are not unduly burdened by the requirement of proof that a defendant know or should know of an animal's vicious propensities. Once such knowledge is established, an owner faces strict liability for the harm the animal causes as a result of those propensities (citation omitted). This disposition does not entitle dog owners to an automatic 'one free bite'." There could certainly be circumstances where, although a dog has not yet bitten a person, its vicious nature is apparent."

G.B. Smith, J. dissented "because a question of fact exist[ed] as to whether defendants knew or should have known of the potential of the dog to harm others".

Although this case didn't prevent the duality of lawsuits, it laid the groundwork for the elimination of common law negligence actions concerning injuries by domestic animals.

BARD v. JAHNKE

Only two years later, in *Bard v. Jahnke* (6 NY3d 592 [2006]), the Court of Appeals enhanced its position in *Collier* and drew a hard line in the sand, becoming the outlier state that no longer allowed a cause of action in negligence when an individual was injured by a domestic animal. For the next 19 years, until *Flanders*, [to be discussed further, below], *Bard* and its progeny became the law, creating a new precedence and *stare decisis*.

Bard was a carpenter hired to do some work in one of the defendants' dairy barns. At no time did he see, nor was he informed, that there was a bull named Fred who was allowed to roam the grounds freely to impregnate the cows.

About 30 minutes passed when *Bard* noticed the bull, who entered the empty barn, but for the plaintiff. The bull charged at *Bard* causing severe injuries. The AD affirmed the Supreme Court's dismissal of the case concluding that Jahnke was not liable unless he knew of Fred's "vicious propensities". *Bard* alternatively brought an action under the theory of common law negligence which up to this point had always been a cause of action option. Relying on *Collier*, this, too, was *dismissed* by the AD.

The Court of Appeals affirmed the lower court's decision concluding "[i]n sum, when harm is caused by a domestic animal, its owner's liability is determined *solely* by application of the rule articulated in *Collier*". (Emphasis added)

In a very prescient dissent, R. S. Smith stated that "[u]nder the Restatement (Second) of Torts, the owner of a domestic animal who does not know or have reason to know that the animal is more dangerous than others of its class may still be liable for negligently failing to prevent the animal from inflicting an injury. This Court today becomes the first state court of last resort to reject the Restatement rule. I think that is a mistake it leaves New York with an archaic, rigid rule, contrary to fairness and common sense, that *will probably be eroded by ad hoc exceptions*." (Emphasis added)

HASTINGS v. SUAVE

The first "chink" in the *Bard* armor occurred in the matter of *Hastings v. Suave* (94 AD3d 1171 [3rd Dept 2012]). Here, the plaintiff was driving home on a country road at approximately 1:30 AM when her car was struck by a cow that wandered off the defendant's property onto the public highway causing her great injury. The plaintiff and her husband sued in negligence rather than the theory of vicious propensities and the court dismissed the proceeding under the *constraint* of *Bard*.

"While we are obliged to affirm Supreme Court's dismissal of plaintiffs' claims against [the defendants] we must note our discomfort with this rule of law as it applies to these facts- and with this result. There can be no doubt that the owner of a large animal such as a cow or a horse assumes a very difficult set of responsibilities in terms of the animal's care and maintenance than are normally undertaken by someone who owns a household pet. The need to maintain control over such a large animal is obvious, and the risk that it exists if it is allowed to roam unattended onto a public street is self-evident and not created because the animal has a vicious or abnormal propensity. Here, plaintiff was injured not because the cow was vicious or abnormal but because defendants allegedly failed to keep it confined on farm property and instead, allowed it to wander unattended onto the adjacent highway in the middle of the night, causing this incident. The existence of any abnormal or vicious propensity played no role in this accident, yet, under the law as it now exists defendants' legal responsibility for what happened is totally dependent upon it. For this reason, we believe *in this limited circumstance, traditional rules of negligence should apply to determine the legal responsibility of the animal's owner for damages it may have caused.* However, it is not for this court to alter this rule and while it is in place we are obligated to enforce it." (Emphasis added)

Subsequent cases involving injuries caused by the actions of dogs were not accorded the same treatment as cows or horses or other such domestic animals as in *Suave*. The Tort world would have to continue to wait for yet another opportunity to have the *Bard* rule overturned.

DOERR v. GOLDSMITH

Two years later, in *Doerr v Goldsmith* (25 NY3d 1114 [2015], it was highly anticipated that, based on the facts of that case, the Court of Appeals would finally recognize the injustice that *Bard* has caused. In this case, a boyfriend and girlfriend were playing with their dog on a roadway in Central Park used for bicyclists and pedestrians alike. As they sat on each side of the path allowing the dog to run back and forth between them, a cyclist was racing toward them and saw the dog up ahead. He yelled out to the defendants to hold the dog. At the last second, the boyfriend let the dog run loose across the roadway causing it to get hit by the cyclist who then fell on the ground and was severely injured.

In a memorandum decision, the Court denied recovery to the plaintiff. "Under the circumstances of these cases and in light of the arguments advanced by the parties, Bard v Jahnke (6 NY3d 592 [2006]) constrains us to reject plaintiffs' negligence causes of action against defendants arising from injuries caused by defendants' dogs (see *Bard*, 6 NY3d at 596-599; see also Bloomer v Shauger, 21 NY3d 917, 918 [2013]; Smith v Reilly, 17 NY3d 895, 896 [2011], revg 83 AD3d 1492 [4th Dept 2011]; Petrone v Fernandez, 12 NY3d 546, 547-551

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Court of Appeals Restores Common Law Negligence

BY HON. GEORGE M. HEYMANN (RET)*

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[2009]; Collier v Zambito, 1 NY3d 444, 446 [2004]). We decline to overrule our recently reaffirmed precedent (see *Bloomer*, 21 NY3d at 918; *Petrone*, 12 NY3d at 547-551). Furthermore, our holding in Hastings v Sauve (21 NY3d 122 [2013]) does not allow plaintiffs to recover based on defendants' purported negligence in the handling of their dogs, which were not domestic farm animals subject to an owner's duty to prevent such animals from wandering unsupervised off the farm (see *Hastings*, 21 NY3d at 124-126)". (Emphasis added)

In the intervening years to the present, I'm sure countless numbers of individuals have been seriously injured by domestic animals but had no recourse unless they could prove that the defendant was strictly liable for the conduct of their animal and had knowledge of its "vicious propensities", a difficult standard to achieve. As I stated in previously published articles, why not give injured parties the opportunity to appear before a judge or jury to determine whether, for example, a dog was just doing what dogs do, or whether it was the negligent conduct of its owner that created the situation that allowed it to act in a negligent or vicious manner and/or knew of its vicious propensities? Justice demands nothing less.

Many of the lower courts, both at the trial and appellate level, have struggled with the *Bard* rule, seeking to narrow or distinguish its application or to use the "wandering animal" exception in *Hastings* to create a liability that currently doesn't exist. *Bard* held that dogs, cats and household pets did not fall within the statuary definition of "farm animals".

A striking example of the inequity of continuing the *Bard* rule was *Scavetta v Wechsler* (149 AD3 [1st Dep 2017] where "the primary question raised [was] whether a negligence claim may be asserted against a defendant who attached a dog's leash to an unsecured bicycle rack, which was put into motion when the dog dragged it through the streets and into the plaintiff, causing injury. We answer in the negative, *on constraint* of the Court of Appeals' *Bard* rule that " '[w]hen harm is caused by a domestic animal, its owner's liability is determined *solely* by application of the rule'… of strict liability for harm caused by a domestic animal whose owner knows or should have known of the animal's vicious propensities" (Citation omitted), quoting Bard v Jahnke, 6 NY3d 592, 599 [2006]). Therefore, we must affirm the order of the motion court, which, inter alia, granted defendant's motion for summary judgment dismissing the complaint". (Emphasis added)

To be continued in the next edition of the Queens Bar Bulletin

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The Practice Page

Bifurcation and Trifurcation

BY HON. MARK C. DILLON
Serves on the Appellate Division, Second Department

Bifurcation occurs when a court directs that a full trial be divided into two parts, the first being that of liability and the second being that of damages. The relevant Uniform Rule in the supreme and county courts is Uniform Rule 202.42. It bears the caption of "bifurcated trials," and says in the first portion of the first sentence of the first subdivision that judges are "encouraged" to order them. "Encouraged" does not mean "must" or "shall." The encouragement to utilize bifurcation applies when "it appears that bifurcation may assist in a clarification or simplification of issues and a fair and more expeditious resolution of the action" (Uniform Rule 202.42[a]). The First Department generally does not bifurcate trials. The other three departments within the state generally do bifurcate, consistent with the urging of Uniform Rule 202.42(a).

Bifurcation typically contemplates that liability will be tried first, for the obvious reason that if liability is negated, a damages trial, with all of its attendant time, trouble, and expense, would become altogether unnecessary. Additionally, even in the absence of a defense verdict at the liability trial, a verdict determining issues of liability among multiple parties might drive a settlement of the action, rendering the damages trial unnecessary.

Counsel may ask questions about both liability and damages at the jury voir dire, where it is anticipated that the same jury will hear all parts of the case (Uniform Rule 202.42[c]). Uniform Rule 202.42(e) provides that if there is a verdict in favor of the plaintiff on liability or in favor of the defendant on a counterclaim, the damages trial "shall" be conducted immediately before the same judge and jury. But "shall" does not necessarily mean "shall," as the court retains the discretion under the Uniform Rule to find such procedures impractical, stating those reasons on the record.

Since bifurcation is not mandatory, courts necessarily have the converse authority to order a unified trial in a given case, which will typically occur where issues of liability and damages are so intertwined that they are inseparable (*Mujica v Nassau County Correctional Facility*, 231 A.D.3d 1046 [2d Dep't. 2024]; *Barron v Terry*, 268 A.D.2d 760 [3d Dep't. 2000]). This is commonly seen in the area of medical malpractice. But bifurcation may be inappropriate in certain general personal injury actions as well, such as under the circumstances which existed in *Castro v Malia Realty, LLC*, 177 A.D.3d 58 (2d Dep't. 2019) (opinion by Scheinkman, P.J.) and *Carpenter v. County of Essex*, 67 A.D.3d 1106 (3d Dep't. 2009). *Castro* is a leading analytical opinion of then-Presiding Justice Scheinkman of the Second Department, which makes clear that the decision of whether to bifurcate is not guided by a hard-and-fast presumption but is left to the sound discretion of the trial courts on a case-by-case basis, and that bifurcation should not be used inflexibly.

The Court of Appeals held in *Rodriguez v City of New York*, 31 N.Y.3d 312 (2018) that a plaintiff may obtain summary judgment against a defendant on liability by proving the defendant negligent, without having to prove the absence of comparative negligence. Where summary judgment is granted, the issue of the plaintiff's comparative negligence is left for trial as an offset to the damages (CPLR 1411, 1412). Those post-motion cases do not need to be bifurcated, as the plaintiff's comparative negligence may be folded into what would have been the damages trial. Bifurcated trials will continue to be seen as robustly as ever in parts of the state that utilize them, where summary judgment motions are not made by parties prior to trial or where, if made, are unsuccessful.

On very rare occasion, a reverse-bifurcation may make sense where damages should be tried ahead of liability, as illustrated in *Harari-Raful v. Trans World Airlines, Inc.*, 41 A.D.2d 753 (2d Dep't. 1973). *Harari-Raful* involved claims against the defendant airliner arising from an in-flight highjacking. International conventions limited recoveries at the time to $75,000 per passenger, absent the defendant's willful misconduct or negligence. The plaintiff sought damages on various causes of action that well exceeded $75,000. Relatedly, the plaintiffs sought discovery of the defendant's anti-highjacking program which the defendant opposed as containing highly-confidential information. The court directed a trial on damages to first determine whether an award would exceed $75,000. If not, the contested discovery as to the issue of willfulness and the anti-highjacking program would become immaterial to the action. If damages were to be found greater than $75,000, discovery was to broadly proceed as contemplated by the trial court, followed by a trial on liability.

Trifurcation refers to a multi-defendant three-phased trial addressing 1) whether there is any liability of the defendants at all, 2) the apportionment of the parties' respective liabilities if liability exists, and 3) the trial on damages. The CPLR and Uniform Rules make no explicit reference to trifurcation. CPLR 4011 and CPLR 603 implicitly grant courts the discretion to determine the sequence of trials, including the severance of claims or parties and the separation of issues. However, trifurcation is not an approach favored by the Court of Appeals, which once stated that "[i]t is preferable, and sometimes essential, that issues of liability be resolved at one stage of the trial" (*Greenberg v City of Yonkers*, 37 N.Y.2d 907, 909 [1975]).

The assessment of punitive damages is, in effect, a form of bifurcation or trifurcation. Where punitive damages are an issue at trial, the jury receives the usual instructions from the court about liability and, when tried separately, damages. The damages instructions merely elicit a verdict on whether punitive damages should be awarded, without asking the jury to set any particular amount. If the plaintiff prevails on liability and compensatory damages and the jury answers "yes" to punitive damages, a separate trial is then conducted as to the financial circumstances of the defendant, which influences the amount of punitive damages which may then be awarded to punish the defendant for reprehensible conduct (*Gomez v Cabatic*, 159 AD3d 62 [2d Dep't. 2018]; *Rupert v Sellers*, 48 AD2d 265 [4th Dep't. 1978]. See also 1 PJI 2:278 Comment, Caveat 3]). This protects the jury's separate compensatory award from being prejudicially tainted by evidence of the defendant's finances.

While bifurcation and trifurcation are terms with generic dictionary definitions, we in the legal profession understand them as matters of trial procedure.

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Editor's Note | Law and Government on Today's Silk Road

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By 1991, this "system" collapsed. There was no more Soviet Union with Moscow dictating quotas and sales goals that were works of fiction,

"They pretend to pay us and we pretend to work" had become the national motto.

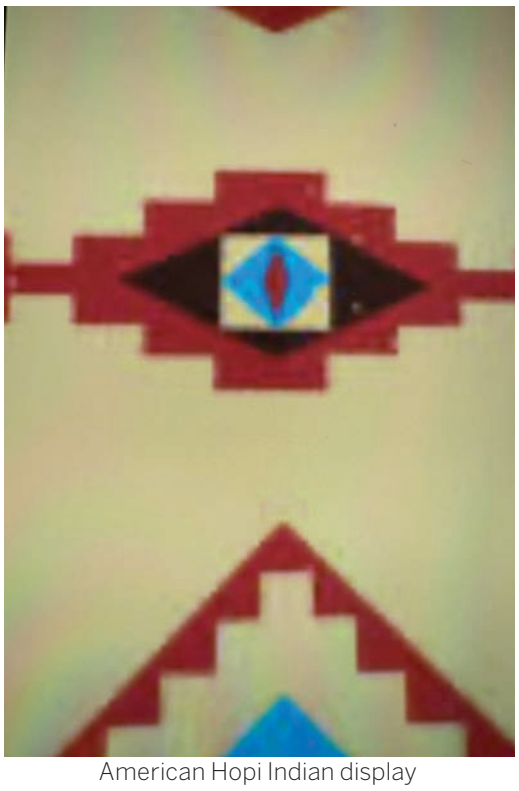
Shuttered mosques, churches and synagogues only added to the cynicism of a series of peoples overwhelmed with corruption and constant government lying.

The Aral Sea was drained to irrigate fields of cotton and vegetables to meet unrealistic sales goals. The deliberate destruction of the Aral Sea was called "one of the planet's worst environmental disasters" in 2011 by United Nations Secretary General Ban Ki-Moon. See Google, Aral Sea.

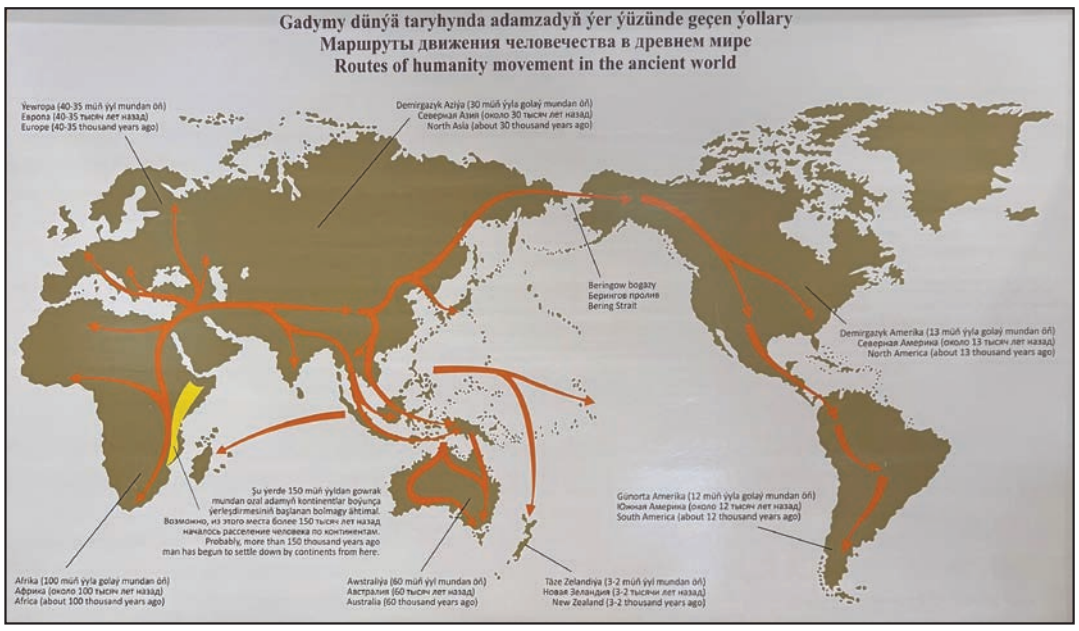
Thus, Turkmenistan, Uzbekistan, Tajikistan, Kyrgyzstan, and Kazakhstan got independence in 1991 even though they did not ask for it or demand it. Nomadic tribesmen ignored the Soviets as much as they could.

In reality, the Turkmen, Uzbeks, Tajiks, Kyrgyz, and Kazakhs were tribes, just like the Han Chinese. Carleton College Prof. Adeeb Khalid describes the governments of these countries this way:

Tajik Archaeology Museum



American Hopi Indian display



Turkmenistan National Museum

"...the independent countries of Central Asia are national states of indigenous populations. Islam represents part of the national cultural heritage that they profess to promote. With the turn to Sinicization, China is without question the national state of the Han..." See Khalid, Central Asia, Princeton University Press, Princeton, NJ, 2021, page 494, pages 393-433.

3. The Turkmen and the Hopis

Our Turkmenistan guide, Elias Jummiyev, believes that the American Hopi Indians of Arizona were, in reality, Turkmen descendants. Recall that American Indians were once Asians who crossed the Bering Strait starting 12,000 years ago.

In the Turkmenistan National Museum, we saw a map of human development of 155,000 years. Humanity started in Africa, moved to Europe, Asia, Australia and New Zealand and then on to North and South America. *(See the photograph of this map reproduced with this Editor's Note.)*

No one needed a Green Card, visa or passport in all those 155,000 years until approximately 120 years ago.

I set out to find out if Elias Jummiyev was right about this. *(Adjacent photos show the Turkmenistan flag of five indigenous Turkmen tribes. Note the tribe with three building blocks of each side of a pyramid. Note the Tajik Archaeology Museum's display of the same design. Note the Lotte City Hotel Tashkent Palace's same display. Finally, note the American Hopi Indian display of the same design on their artwork in Arizona.)*

Lotte City Hotel Tashkent Palace

Turkmenistan Flag

The following thought occurred to me – how to understand the striking similarities of the following Governments:

(a) King Charles III, King of the United Kingdom of Great Britain and Northern Ireland, Canada, Australia and of his other Realms and Territories, King, Head of the Commonwealth and Defender of the Faith
(b) The Han Chinese,
(c) The Turkmen,
(d) The Uzbeks,
(e) The Tajiks,
(f) The Kyrgyz,
(g) The Kazakhs, and
(h) The Hopis of Arizona

What is the most striking similarity? If you are not a Member of the Tribe, you are not eligible to become the Chief under any circumstances. All of the above have governments derived strictly from heredity.

If you think King Charles III is a mere figurehead, think again. Has British, Canadian and Australian foreign policy ever differed among the three of

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Editor's Note

Law and Government on Today's Silk Road

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them? Compare this zero level of disagreement with American treatment of the King who speaks our same English language in 1776-83 and 1811-1812. No hereditary chief for us.

How are the Arizona Hopis governed today? The website of the Hopi Tribal Government tells us that the Hopi Tribal Council "has the power and authority to represent and speak for the Hopi Tribe, and to negotiate with federal, state and local governments, and with councils or governments of other tribes."

Who sits on the Hopi Tribal Council? 22 representatives of six Arizona Hopi villages. How are these 22 representatives selected? By appointment of the Village Kikmongivi (Chief) or selected by community consensus. The Tribal Council picks its Chair.

The Hopi Tribal Government model is more or less repeated by the majority tribes of Turkmenistan, Uzbekistan, Tajikistan, Kyrgystan, Kazakhstan, the Han Chinese and the British Monarchy (with the modification of an elected Parliament beneath the King), who is also the hereditary King of Canada and Australia (with different elected Parliaments) and 11 other Realms.

This is not democracy, communism, socialism, dictatorship or any other form of government we currently understand. Rather, it is the hereditary tribal self-perpetuating government that has governed most of humanity for most of its 155,000 years of existence.

It is only in understanding hide-bound tribe-oriented government that we can understand our own chaotic, disorganized, loud, inconsistent and wildly successful governments– local, state and federal –generally acting in organized conflict with each other.

4. The American Imagination

How can such a messy system with very few hereditary tribes be such a success?

Why is it that we Americans have invented the steamboat, the steam railroad, the sewing machine, the cotton gin, the electric stove, the refrigerator, the photoelectric cell, plastic, synthetic fibers, the assembly line, electric power, the light bulb, the phonograph, the storage battery, the dictaphone, the motion picture, the airplane, the airport, the spaceship, rockets, the telegraph, the telephone, the cell phone, the trans-Atlantic cable, antibiotics, the Salk vaccine, the power loom, the credit card, the tractor, gasoline, the interstate highway, the photocopying machine, the supermarket, the internet, the transistor, the microwave, the Kodak camera, the streetcar, the global positioning device, the personal computer, the traffic light, email, the hearing aid, the laser, the pacemaker, the smallpox vaccine, the green revolution, penicillin, air conditioning, air traffic control, Uber, Lyft, Via, self-driving cars, artificial intelligence and the laptop? Radio, automobiles, television and cable television were perfected on a grand scale. See Google, American Inventions, and Paul E. Kerson, "Only the Beginning", *The New York Times*, Sunday, Sept. 10, 1989.

If you study this list, you cannot help but conclude that these inventions, taken together, constitute the entire modern world. All of these inventions have been adopted by the hereditary societies of our planet. The cities of Tashkent, Ashgabat, Bishkek, Almaty, Bukhara, Samarkand, Khiva and Penjikent looked modern, prosperous and well-run.

It is most important to understand that from the dawn of humanity 155,500 years ago until 1789, humanity had NONE OF THE ABOVE and got around on dirt roads with only horses and camels to help them. To communicate, they mostly had to shout or wait for a rare copy of a book or newspaper to be delivered by horseback.

What happened in 1789 that propelled the world forward like a freshly launched rocket? Some geniuses met in Philadelphia and New York and wrote the following:

> "Congress shall have the power...to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries"
>
> "Congress shall have the power...to establish an uniform Rule of Naturalization, and uniform laws on the subject of bankruptcies throughout the United States..."

These most important laws of all time are from the United States Constitution, Article I, Section 8, clauses 8 and 4.

This meant that the most imaginative and ambitious people on earth were invited to come here and settle the new country, and bring their new ideas, where they could build a better mousetrap and get wealthy. If their ideas did not work, U.S. Bankruptcy Courts would be established to let one try again. And so it came to pass that the U.S. Patent and Trademark Office, the U.S. Copyright Office, and U.S. Citizenship and Immigration Services acted together to keep the new inventions flowing – the milk and honey of imagination that got the world off its camels and horses and on to jet airplanes, that shrank the planet into airports in every major city, all built from the American imagination.

Could any of the above listed inventions have happened in a hide-bound hereditary tribal society, where one is encouraged to do things as they have always been done?

The proof is in the evidence. In 1789, we were all still using horses and camels to get around very slowly.

5. A Solution Going Forward

So, we should strike a deal with the Han Chinese and every other tribal society. We, the chaotic, loud, messy society with few hereditary tribes will provide you with all kinds of new ideas, and you, with greater tribal discipline, can carry them out in organized production. War will become as unnecessary as it is undesirable. In trading new ideas for new production, everyone benefits enormously.

"Move fast and break things." That is the motto of Silicon Valley. The Han Chinese, King of Great Britain, Uzbeks, Tajiks, Turkmen, Kyrgyz, Kazakhs and Hopis would never tolerate such a motto.

And as we are structured, Washington cannot control Silicon Valley, Hollywood, Detroit or Atlanta. Everywhere we went we saw Coca-Cola and Pepsi signs, televisions, Chevys, Cell phones, and laptops - none of it controlled from Washington, DC.

This idea is a modification of the economic philosophy of David Ricardo (1772-1823), a Member of the British Parliament. He called it Comparative Advantage, and he explained it as follows:

> "Nations should specialize in producing goods for which they have the lowest opportunity cost relative to other goods...
>
> Nations should concentrate resources only in industries where they have the greatest efficiency of production relative to their own alternative uses of resources." See Google, David Ricardo, Comparative Advantage.

There is no possible way that David Ricardo could have predicted that the then brand-new United States would become the best nation in history at producing the ideas for new inventions, far outpacing every other country.

Ideas are not grapes, or corn, or wheat, or timber, or wine. If he were alive today, David Ricardo would update his theory of Comparative Advantage.

If ideas for new products and services are largely with one country, certainly the more disciplined hereditary states should do production, while the United States concentrates on invention. Because the population of the United States is largely free of hereditary restraints in thinking creatively, this is the division of labor that makes the most economic sense in the 2000s. This means the United States should invest in laboratories and universities and hereditary states should invest in factories.

This explains why iPhones are designed in California but produced in China. It explains why the hereditary state of Japan is better at building car factories than the polyglot United States.

Give chaotic, disorganized, loud, inconsistent and messy America its due. It is the home of thousands of new ideas not likely in more disciplined tribes – and that has made all the difference.

Reawakening Our Capabilities

BY FRANK BRUNO, JR.

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cord, and how is life possible without it? Besides, we have seen evidence that others were here before us and none of them have returned to tell us that there is life after birth."

And so, the one fell into deep despair saying, "If conception ends with birth, what is the purpose of life in the womb? It is meaningless! Maybe there is no mother at all."

"But there has to be," protested the second baby. "How else did we get here? How do we remain alive?" "Have you ever seen our mother?" said the one. "Maybe she lives in our minds. Maybe we made her up because the idea made us feel good."

While one raved and despaired, the other resigned himself to birth. He placed his trust in the mother. Hours passed into days and days fell into weeks, and it came time. And both knew that their…birth was at hand. And both feared what they did not know.

And as the one was the first to be conceived, so he was the first to be born. The other followed after. And they cried as they were born out into the light. They coughed up fluid, and they gasped the dry air; and when they were sure that they had been born, they opened up their eyes and they found themselves cradled in the warm love of the mother. They lay open-mouthed, awestruck at the beauty of the mother whom they had never seen before.

Found circulating on the internet, it is either an old French story or credited to Henri J. W. Nouwen or "adapted from the writings of Pablo Molinero." Delivered as a public service without a clear idea of its origins or even the meaning… there is more to come.

If I could offer just one piece of advice on how to support someone in your life who is going through a hard time, it would be this: It's not about what you say. It's about how you say it. When someone has gone through something difficult, their nervous system is likely still in a state of dysregulation – what we call survival mode. In this state, the rational, thinking brain is not fully operating, the emotional and sensory parts of the brain are out front.

Your loved one or client won't always remember what you said – but they'll remember how you made them feel. According to the "Albert Mehrabian Rule," only 7% of communication is verbal. The other 93% is body language, tone, and presence.

How can you actually support someone in survival mode? Offer undivided attention – your presence matters more than your advice. Speak with a soft, kind tone – your voice can signal safety. Let your eyes be gentle and expressive – even without words, your gaze says "I'm here."

These simple cues help a frozen or overwhelmed nervous system thaw. The heart-face connection is rooted in something deeply biological: humans survive through connection.

When we are in community, we regulate. When we are seen and held without pressure, we begin to heal. Saying the right thing is always appreciated but being the regulated presence that says, "I can be with you in this" makes the impact. Let's show up in this way.

Craving a call back to simpler times? Can we go back to a world that felt more fun, more joyful and more…simple? One with less bombardment from advertisers, politics, or scandals, less constant availability. Less remotes to work my TV, cable and streaming services? Less Echo, Siri and Alexa – I have three remotes to watch television and have three voice assistants roaming around my home. I am waiting for the litter robot to come alive and the AI to take control.

Maybe for you, it looks like a time before technology invaded every aspect of our lives. Maybe it was before the weight of the world felt so heavy. Maybe it is even some younger, past chapter that feels softer in your memory. That feeling we are all picking up on has a name. It's called nostalgia. Maybe it was my midlife crisis or the mushrooms or the talk therapy or daily meditation or Chi Kung but I have been reminiscing about my childhood. Playing in the backyard, on the grass or in the above ground pool or below the wooden deck that I made into a clubhouse. Thoughts of wiffleball and around the world basketball have given way to hashtags, devices, platforms and content.

Perhaps the start of the summer activated a deep, nostalgic longing for me, one that quite honestly, I avoided for much of my adult life so far. This year, I am leaning in fully to the free, childhood play that once made me feel so alive: Catching fireflies, playing in the dirt, sipping from the hose, running around barefoot and being creatively free. Nostalgia is not indulgent or something to avoid. In fact, it is an extremely powerful coping tool – one that harnesses the power of our creative brain for good. We don't have to wish ourselves back to better times – we can use the power of our creative brain to build them right now. Our brains understand more through feeling, image and story than through facts. Visualize – take a moment and let your brain drift back to a time when life felt easier. Simpler. More carefree. Take in the smells, sounds, environment and even people that float into your memory. Notice how your internal world just shifted – even a tiny bit. Lighter? A little bit happier? More connected? Nostalgic thoughts can feel like a warm hug from the past. Our brain's beautiful ability to remember life with softness around the edges or to even create pleasant memories that never existed in the first place.

Nostalgia increases activity in our brain's reward circuits – releasing oxytocin and boosting dopamine, the same neurotransmitters associated with connection, pleasure, and trust. It's also activating areas linked to self-reflection and memory integration, helping us make sense of who we are and where we have been. Nostalgia is about accessing memories that remind us what it feels like to be human, to feel joy, freedom, wonder, and connection.

It's a portal – not a time machine. Nostalgia is one of the most powerful tools to access our creativity in a safe way. It increases psychological safety – that grounded feeling you need before your brain can take risks, connect dots, and create something new. Stress narrows our thinking, while nostalgia re-opens it.

Stress typically triggers what's known as a "threat response" in the brain, narrowing our attention and limiting our creative, divergent thinking. Nostalgia, on the other hand, acts as an emotional buffer, activating positive feelings, social belonging and a sense of identity, all elements that open up our creative brain. Basically, nostalgia doesn't just bring us comfort – it kicks off momentum. By remembering who we were, we reawaken what we are capable of. It remembers your creativity as a strength, not a regression. It lets you tap into a version of yourself that felt free, present, and alive - but without asking you to go backwards. Essentially, it reconnects you with joy, meaning, and possibility. And the best part? You don't need to overthink it. You just need to feel.

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