Ilya Shapiro, who is responsible for constitutional studies at the Cato Institute, a libertarian think tank, has recently published a piece about the Obama administration’s performance in the Supreme Court.

Before going further, it should be remembered that the only substantive part of Obama’s resume prior to becoming president was that he had briefly taught a class in constitutional law at the University of Chicago. As Obama put it in a 2007 fundraiser, “I was a constitutional law professor, which means unlike the current president, I actually respect the Constitution.” If so, I don’t think that this is the type of R-E-S-P-E-C-T that Aretha Franklin was looking for.

When it comes to Supreme Court decisions, Obama’s team is doing pretty badly. The overall record is 79 wins to 96 losses[^1], a winning percentage of a little over 45%. This compares to a winning percentage for George W. Bush, the “current president” disparaged in the above quote, of 60%. Clinton came in at 63%; George H.W. Bush scored 70%; and Ronald Reagan won 75% of the time.

Lest you think that this is simply a case of a continuously falling tendency for the government to win, Reagan’s predecessor, Jimmy Carter, only scored a 68%. Overall, going back over 50 years, Shapiro reports that the government’s winning percentage (ex-Obama) is comfortably over 60%.

And this isn’t just a question of partisanship. Obama also has a much greater tendency to lose unanimous decisions, including with the votes of his own nominees, Sonia Sotomayor and Elena Kagan. Obama’s administration has lost 44 unanimous decisions, compared to 30 such losses for Dubya and 31 for Clinton. So, Obama is about 50% more likely to convince no one than his two immediate predecessors, including the above-disparaged Dubya.

When asked to explain this dismal record, Miguel Estrada, a noted Supreme Court advocate and sometimes “short lister” for high judicial appointments, denied that it was the fault of the government’s lawyers. His explanation: “When you have a crazy client who makes you take crazy positions, you’re gonna lose some cases.”

As Shapiro’s summary puts it:

> So the reason this president has done so poorly at the high court is because he sees no limits on federal – especially prosecutorial – power and accords himself the ability to enact his own legislative agenda when Congress refuses to do so. The numbers don’t lie.

I haven’t looked but I bet that Malia and Natasha Obama are walking around barefoot.

### Someone Is Listening

A consistent theme of this blog is that, if regulate we sometimes must, then it is much more effective to focus on incentives than to write a detailed rule book. The latter will only encourage “gaming” where the regulators are guaranteed always to be a day late and a dollar short.

Judging from a recent proposal of the Republican Party on financial services, which is part of Paul Ryan’s attempts to save the party from the policy vacuum that is Donald Trump, someone appears to be listening. Specifically, Congressman Jeb Hensarling from Texas, the Republican head of the House Financial Services Committee.

The gist of the proposal is to offer banks a deal. If they want to escape much of the stifling bureaucracy of Dodd-Frank regulation, then they simply have to maintain a minimum equity ratio of 10%. In the words of Hensarling, banks should “[t]hink of it as a market-based, equity-financed
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Dodd-Frank off ramp.”

Hensarling had the smarts to point out that “[w]hile a 10% leverage ratio may seem high by current standards, history suggests it is far from abnormal,” thereby quietly acknowledging that the overleveraged and disaster-prone financial system we currently have is purely a creature of government policy. He also was smart enough to point out that many community banks already meet this standard, thereby also quietly acknowledging that the regulatory burdens of Dodd-Frank fall disproportionately on smaller banks, which is certainly a factor in the growing consolidation of banking assets and is probably a factor in the recent poor rate of small business formation. Small businesses depend on local banks for funding, which is tough to provide if the bankers are buried in red tape.

Finally, Hensarling realized that his new test should discard the risk-weighting rules, which I have pointed out before are a subject of endless gaming and regulatory capture. This is a test of pure tangible equity – not goodwill, deferred tax assets or any of the other bullshit that regulators accept as “capital” but which will do absolutely nothing to protect the taxpayer in the case a bank cannot meet its obligations – compared to assets.

I hope that this proposal lives to see the light of day. Although it is not perfect, it is certainly a step in the right direction. If there is anyone who doubts this then I offer the definitive proof: the proposal has been slammed as a “wet kiss” to Wall Street by the High Priestess of Economic Ignorance[2], Senator Elizabeth Warren[3].

Someone Else Is Listening, Too

With surprising speed, Theresa May has been confirmed as the new Prime Minister in the UK. This happened after her last opponent, Andrea Leadsom, dropped out of the contest for the head of the Conservative Party after a few days of media questioning demonstrated that she was singularly unprepared to head the world’s fifth largest economic and military power. Surely there is a lesson here for American politics.

And it appears that May has also been reading the recent postings of Economic Man Blog. She has wisely appointed David Davis, a prominent Brexiteer, to head up the negotiations for the departure from the EU. Davis has some serious delusions about the deal that he will be able to get, particularly on the crucial issue of free trade versus free movement of people, but it is politically imperative that someone like him be the bearer of this message to the Leave crowd.

But the really surprising move is the rapid return of Boris Johnson. Although I fully expected that we had not seen the last of the Blond Bombshell, I did not expect to find him on the frontbenches[4] until after a lengthy period in the backbench wilderness.

May’s decision to appoint him the head of the Foreign Office is particularly bemusing given his lengthy history of very undiplomatic statements about world leaders, including comparing Hillary Clinton to Nurse Ratched in One Flew Over the Cuckoo’s Nest and a prize-winning limerick[5] about President Erdogan of Turkey’s romantic feelings for a goat. All of this may have been overlooked, however, due to the desire of May to put Johnson’s feet to the fire over Brexit. As I speculated on Twitter[6], it may also be a case of her keeping her friends close and her enemies closer.

One for the Bernie Sanders Fans

I have commented before about Bernie Sander’s absurd invocation of Scandinavian social democracy as a role model for America. A recent book review in The Wall Street Journal told a great story along the same lines.
The free-market economist Milton Friedman was in Sweden. While there, a Swedish economist boasted that his country proved the superiority of democratic socialism because “in Scandinavia, we have no poverty.” To which Friedman replied: “That’s interesting, because in America, among Scandinavians, we have no poverty, either.”

This goes down as another Friedman classic, along with “sincerity is a greatly over-rated virtue” and many others.

Culture matters, folks. A great deal. It is impossible to make sense of the world, or improve it, if you deny this fact.

When Will They Get Tired Of The Predation?

The WSJ recently ran an article that claimed that BP has now paid, or reserved to pay, a total of $61.6 billion for the 2010 Gulf of Mexico oil spill. BP thinks that this will be the final bill, having finally resolved almost all of the lawsuits associated with the spill and remediated the environmental damage.

I can’t prove this mathematically, but this figure appears absurd to me. Just like the $14.7 billion figure for Volkswagen’s recent settlement of the emissions scandal, which includes payments of between $5,100 and $10,000 for each car owner in addition to an offer to buyback each vehicle at its resale price prior to the scandal or to fix it for free. Why the owners should get a make-whole buyback or fix, and an additional payment of $5 to $10K, is just one of those wonders of the US legal system that I will never understand. It is probably also a mystery to the European buyers of the same vehicles who will get absolutely nothing.

I know that the USA is the largest market in the world, but whenever I see something like this I have to ask myself: How much longer is the rest of the world going to put up with this kind of extortion? When are they going to decide that the American game just isn’t worth the predatory legal candle?

More Proof that Government Is the Problem

As I have mentioned, Italy is tottering on the brink of economic, financial and political collapse. One of the drivers is the country’s banking system, which is jammed up with non-performing loans, themselves largely the result of a dysfunctional legal system.

The Italian government wants to bail out the banks with EUR 40 billion of state funding, but this runs afoul of the new EU rules requiring a “bail in” of at least 8% of a bank’s creditors before government aid can be used. This is particularly annoying for the Italians because they were having a dolce far niente when the other governments of Europe were bailing out their banks after the Great Financial Crisis.

This new rule is very problematic for Italy because the losses would largely fall on a class of creditors which includes EUR 200 billion of bonds bought by Italian grandmothers and grandfathers. When a small Italian bank recently went tits up, one of the affected individual creditors committed suicide after he saw his retirement nest egg vanish. A few more elderly corpses and Renzi would certainly lose the referendum on constitutional reform that he has called for October of this year. And, as I have mentioned before, après Renzi, le deluge.

Now, how is it possible that otherwise cautious Italian grannies and grandads were coaxied into buying EUR 200 billion of risky bank debt? Here is where the government comes in. Part of the explanation is the archaic, highly protected and highly regionalized Italian banking system. This simultaneously made the local banks more prone to disaster (since they are not diversified and were
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driven into riskier lending by the excess supply of banking services) and somehow more comforting to their local clients. But the other part of the explanation is...yes, wait for it...because there are strong incentives for purchasing these kinds of bonds in the Italian tax code.

The private sector screws up all the time, but in a comparatively small-scale and self-correcting way. If you really want a colossal failure, that requires the government.

Hollande Channels John Edwards

You remember John Edwards, the 2008 candidate for the Democratic nomination for the presidency. He was featured in an earlier blog on hypocrisy for his strongly left-wing political views and his $400 haircuts. Supposedly, when feeling down during the 2008 campaign, Senators McCain and Lieberman would perk themselves up by watching this video of their colleague Edwards having his hair done, set to the song “I Feel Pretty” from West Side Story.

Given the sparsity of hair on the addled pate of François Hollande, the Socialist President of France, we have to say that he has bettered Edwards.

It turns out that Hollande has engaged a personal hair stylist for the entire five-year term of his presidency. The stylist, who travels with Hollande, is paid €9,895 (about $11,000) per month by the French taxpayer. The total bill for Hollande’s current term will be about €500,000, although based on recent polls, where he is setting new records for unpopularity, there will not be a reprise.

The unemployment rate in France has been above 10% pretty much continuously since Hollande took office. There is a good chance that the percentage of government debt to GDP will hit triple digits under Hollande’s stewardship. Youth unemployment in France sits at over 23%.

How do these people dare pretend that they are more capable of running our lives than we are able to do it ourselves? There is certainly something in the quest for political power that brings out the worst among us.

Johnson/Weld Get Game

Almost immediately after my last blog bemoaning their performance on CNN (see #FeelTheJohnson here), Johnson/Weld have dramatically upped their game with two pretty damn good campaign ads, one appealing to disaffected supporters of Bernie Sanders and one targeting voters looking for an alternative to ClinTrump. And the ads seem to be working: both Mitt Romney and Jeb Bush are publicly mulling a vote for Johnson/Weld.

Let’s hope that this is the new standard. Among other things, the quality of these ads tells me that the money is starting to flow.

Roger Barris

Weybridge, United Kingdom

I Wish That I Had Said That...

“It says a lot about our relationship with Hillary Clinton that she seems well on her way to becoming Madam President because she’s not getting indicted....And that’s the corkscrew way things go with the Clintons, who are staying true to their reputation as the Tom and Daisy Buchanan of American politics. Their vast carelessness drags down everyone around them, but they persevere, and even thrive” by Maureen Dowd, writing in the New York Times and showing a fine flair for F. Scott
Fitzgerald, although “carelessness” is certainly overly generous in this context

[1] Shapiro admits that there is an element of judgment in these figures. In his words: “To be sure, this isn’t an exact science, with some judgment calls to be made about certain cases that aren’t pure wins or losses for either side. The Supreme Court also used to hear many more cases, so the last 20 years or so are statistically less significant.”


[3] Although in general I find Donald Trump’s name-calling to be childish and counterproductive, I have to say that it is difficult not to like his “Pocahontas” moniker for Warren. This summarizes her pretty well.

[4] For my American audience which may be unfamiliar with the term, the governing political party in the UK is divided between members of the cabinet (“frontbenchers”) and ordinary Members of Parliament (“backbenchers”). As you would expect from a country which has an indigenous condiment called “brown sauce,” this nomenclature comes from their seating positions in Parliament.

[5] Yes, it’s true. He actually won £1,000 with a limerick that, among other things, used “wankerer” to describe Erdogan. (This was a bit of cheating since the proper English word for a masturbatory idiot is “wanker,” but this cannot be made to rhyme with “Ankara,” the capital of Turkey.) The backstory is that Erdogan recently badgered the German government into using a 19th century law to prosecute a comedian who went public with a highly defamatory, and equally bestial, poem about Erdogan. This violation of free speech prompted The Spectator magazine to sponsor an Erdogan Offensive Poetry contest. You have to love this kind of stuff.

Ok, you have been patient. Here is the limerick:

There was a young fellow from Ankara
Who was a terrific wankerer
Till he sowed his wild oats
With the help of a goat
But he didn’t even stop to thankera.

[6] @EconomicManBlog. I am enjoying the drive-by shootings of Twitter more and more these days.