

Calill And The Carbolic Smoke Ball Company, Redux

There are many frivolous lawsuits brought nowadays. **This** is not one of them:

A Kentucky woman who thought she won \$100,000 in a radio station giveaway is suing for breach of contract after learning that her prize was actually a Nestle's 100 Grand candy bar. According to the below June 22 Circuit Court complaint, Norreasha Gill, 28, claims that she was listening to Lexington's WLTO-FM on the evening of May 25 when host DJ Slick announced that he would award "100 Grand" to the tenth caller. When Gill, the pregnant mother of three children, was that tenth caller, the radio host told her she could pick up her prize the following day at WLTO's studio. She subsequently learned that the contest was a "joke"

WLTO-FM's lawyers will undoubtedly be studying the classic and elegant case of **Calill v. Carbolic Smoke Ball Company**:

We are dealing with an express promise to pay £100 in certain events. Read the advertisement how you will, and twist it about as you will, here is a distinct promise expressed in language which is perfectly unmistakable - "£100 reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the influenza after having used the ball three times daily for two weeks according to the printed directions supplied with each ball."

We must first consider whether this was intended to be a promise at all, or whether it was a mere puff which meant nothing. Was it a mere puff? My answer to that question is No, and I base my answer upon this passage: "£1000 is deposited with the Alliance Bank, shewing our sincerity in the matter." Now, for what was that money deposited or that statement made except to negative the suggestion that this was a mere puff and meant nothing at all? The deposit is called in aid by the advertiser as proof of his sincerity in the matter - that is, the sincerity of his promise to pay this £100 in the event which he has specified. I say this for the purpose of giving point to the observation that we are not inferring a promise; there is

the promise, as plain as words can make it.

Read the whole thing. The parallels are eerie and, if the facts are as reported, WLTO doesn't have a leg to stand on.

However, the plaintiff is asking for *punitive damages*. And that is frivolous and unjust. She should get her hundred grand plus costs and not a penny more. If she wins punitive damages, it will be an injustice almost as great as if she lost the case altogether. The whole idea of punishment where there has been no crime should be anathema to any civilised society.

Thu, 06/23/2005 - 20:55 | [digg](#) | [del.icio.us](#) | [permalink](#)

Wow Editor!

Thanks for homing in on the important issues and ignoring the trivial stuff like the Real ID Act or the supreme court's decisions on medical marijuana and imminent domain.

However, it could be **The World** doesn't focus on these issues because the data might contradict their theories. i.e. that democracy, far from being a way to get rid of bad ideas, is an excellent way of assuring that bad ideas are institutionalised.

by a reader on Sat, 06/25/2005 - 03:48 | [reply](#)

Democracy is bad...?

Compared with what? Casting runes?

by [David Deutsch](#) on Sat, 06/25/2005 - 03:59 | [reply](#)

Focus

I guess that, being in the UK, **The World's** editors are a bit removed from the Real ID Act and recent US Supreme Court decisions, and so it's understandable that they don't focus on it as much as americans might.

I suspect that they would oppose them, but they would also be aware that these developments have sparked considerable public interest in these issues and are likely to cause many people to support reforms. Democracy isn't perfect or swift to come to the best conclusions, but it seems better than alternative systems of organizing institutions that wield power.

Even the National Review, a pretty extreme conservative magazine, has come out **against** the medical marijuana decision. So, I think that better ideas *can* spread, and democracy can lead to the correction of mistakes, eventually.

The World is doing its part to help spread good ideas so as to help democracy along toward progressing.

What are *you* doing?

What alternative are you proposing?

Gil

by **Gil** on Sat, 06/25/2005 - 06:28 | [reply](#)

Re: Wow Editor!

The principle of avoiding punishment where there has been no crime conflicts directly with both ID cards and the war on marijuana. So the post was actually quite relevant to your examples.

(Don't know what imminent domain is and wikipedia's offline for now)

by **Tom Robinson** on Mon, 06/27/2005 - 22:36 | [reply](#)

Eminent Domain

Tom, try "eminent domain", or anything about the recent Kelo decision.

[Here](#) is a pretty good op-ed article about it.

Gil

by **Gil** on Wed, 06/29/2005 - 05:01 | [reply](#)

Re: Democracy is bad...?

Collective ownership of a monopoly (in this case a monopoly on the use of force) is good? Compared with what? Collective ownership of the entire economy? It seems to me the world's entire view of democracy revolves around Popper's flawed views on the matter. The views of previous and subsequent thinkers have been largely ignored. e.g.: An economist has calculated that the odds of an individual being in an accident going to vote are greater than the odds of that individual having an effect on the outcome of the election. Did Popper think that individuals must act in conflict with their own self interest for bad ideas/policies to be corrected?

These are types of question that the World will not confront because it conflicts with the World's pre-existing world view.

by a reader on Thu, 06/30/2005 - 02:22 | [reply](#)

re: Focus

Oh come on! The editor(s) can cite some obscure Kentucky ruling, but "are a bit removed from the Real ID Act and recent US Supreme Court decisions"?

by a reader on Thu, 06/30/2005 - 02:29 | [reply](#)

Re: Democracy is bad...?

The problem with not specifying an alternative system for comparison, when one claims that democracy is bad because it has property X, is that one is then blinded to possibilities such as:

- All institutions for human interaction have property X.
- In all institutions for human interaction, there is a tradeoff between property X and property Y, and you dislike Y even more than X. (Here I am thinking partly of the no-go theorems of decision theory such as Arrow's theorem, which it's well worth looking up on Google.)
- As above, but substituting 'all institutions that have yet been proposed' for 'all institutions'.
- Although institutions without the property X or worse are possible, they cannot function in the absence of evolved knowledge that does not yet exist in people's minds. Thus, to give an analogy, merely enacting a copy of the US Constitution for Iraq today would not, in reality, secure the rights and freedoms described therein. Similarly, on the supposition that there exists a better system than, say, US democracy, merely abandoning democracy and declaring that the better system is now in effect would not actually cause the better system to come into effect. X would still be there, and worse.

by [David Deutsch](#) on Thu, 06/30/2005 - 06:28 | [reply](#)

Democracy is bad...

especially when compared to capitalism, i.e. the market.

by a reader on Fri, 07/01/2005 - 18:48 | [reply](#)