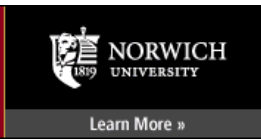




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Can States Say "No Thanks" to ObamaCare's Health Insurance Mandate?

Peter Suderman | March 9, 2010

Nancy Pelosi may be convinced that we have to pass health care reform in order to find out what's in it, but if it passes, there's at least one provision we can already count on: an individual mandate to buy health insurance. Polling shows that this requirement is one of the bill's least popular features, so it's not exactly surprising to find that states are taking action to allow individuals to bypass such requirements. More than 30 states are considering such laws, and a ban on mandatory insurance has already passed in the Virginia Senate.

Will these individual protections work? An article in TPM yesterday says that Virginia's law is "almost certainly unconstitutional" because "the Constitution's federal supremacy clause makes clear that when federal and state law conflict, federal law takes precedence."

I asked a couple of legal and constitutional scholars what they thought, and the consensus seems to be that though state laws barring mandatory insurance shouldn't be unconstitutional, it's likely that if health reform were passed and they were challenged, the Supreme Court would rule that they are. However, we don't actually know for sure, and there is legal precedent for the Supreme Court to side with a state in a federal/state dispute.

All of them also noted that, regardless of whether or not these laws and amendments eventually stand up to challenge, they're strong political signals of opposition against the insurance mandate—which is arguably the centerpiece of the Democrats' federal health care overhaul (the other key regulations don't work without a mandate).

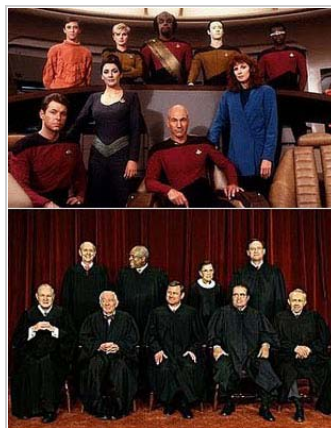
On the constitutional question, Roger Pilon of the Cato Institute says, "It isn't simply the Supremacy Clause that would make the state law unconstitutional, but rather the constitutionality of the federal statute together with the Supremacy Clause and the inconsistent state law." In other words, the Supremacy Clause alone wouldn't render Virginia's law unconstitutional. Instead, it would be struck down only if and when a federal individual mandate was passed and ruled constitutional.

Like many of those I got in touch with, Pilon thinks the better bet is that, should a mandate be enacted, it would be ruled constitutional—though he also thinks it probably shouldn't be. (For more on that, see here and here.)



There is, however, some question over whether such a ruling would actually invalidate state law. As this Wall Street Journal piece notes, "If Congress passes some version of health legislation, the federal law may preempt these state laws. But states do have the right to provide extra protections beyond what federal law guarantees. Many states, for example, have freedom of speech protections that go beyond federal law."

In Arizona, which will vote on a constitutional amendment that



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Can States Say "No Thanks" to Obama...



preserves the freedom of individuals to decline to participate in any health care system this November, the Goldwater Institute's Clint Bolick has prepared a Q & A on the issue. In it, he **notes** several legal precedents which suggest that states might be able to preserve

individual protections. In particular, he singles out a case involving a "right-to-die" law in Oregon:

In the case most closely on point, *Gonzales v. Oregon* (2006), the Court upheld the state's "right-to-die" law, which was enacted by Oregon voters, over the objections of the U.S. Attorney General, who argued that federal law pre-empted the state law. Applying "the structure and limitations of federalism," the Court observed that states have great latitude in regulating health and safety, including medical standards, which are primarily and historically a matter of local concern. Holding that the attorney general's reading of the federal statute would mark "a radical shift of authority from the States to the Federal Government to define general standards of medical practice in every locality," the Court interpreted the statute to allow Oregon to protect the rights of its citizens.

In other words, though perhaps unlikely, it's not impossible that state laws preserving an individual right to opt out could survive legal challenge. And no matter what, the existence of these laws send a fairly powerful political signal—one that will almost certainly factor into the decisions now being made by undecided House members.

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Ken Shultz | 3.9.10 @ 6:31PM | #

"I asked a couple of legal and constitutional scholars what they thought, and the consensus seems to be that though state laws barring mandatory insurance shouldn't be unconstitutional..."

I can't imagine why this would be an important question...

If the provision is wildly unpopular (and it is), then Congress will get rid of it.

...sort of why I'm not so concerned about financial regulation--regulation tends to rise at the bottom of the economic cycle and then when things get better, Congress regains its sanity (or succumbs to pressure, however you want to look at it).

Anyway, the point is that if the provision is unpopular--and it is--then it doesn't have any legs and it won't stand. ...and the only people who should spend any time thinking about it are would be pundits and the poor souls who for unknown reasons pay attention to them.

[reply to this](#)

CrackertyAssCracker | 3.9.10 @ 8:24PM | #

Dear Cosmotarian Overlord,

It's OK if you want to do your little Cosmo-spoof sock puppet some times. I even kind of like it. But using other peoples handles isn't cool.

[reply to this](#)

Episiarch | 3.9.10 @ 6:33PM | #

Worf is Ginsberg?!? Wait, that kind of makes sense in a weird way. They would both say that prune juice "is a warrior's drink".

And who was unlucky enough to be ~~Twinky~~ Wesley?

[reply to this](#)

Pro Libertate | 3.9.10 @ 6:50PM | #

Ginsberg has also killed people on the field of honor.

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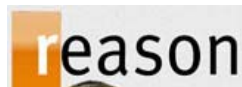
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reply to this

Episiarch | 3.9.10 @ 7:01PM | #

Worf is a putz. There, I said it. He's a race-obsessed collectivist who somehow seems to know everything about Klingon heritage even though he was raised by humans. And his son...holy shit, what an annoying little bastard. Come here, Alexander, I want to show you this airlock. You can play in there! Go ahead!

reply to this

@ | 3.9.10 @ 7:05PM | #

I thought Worf was raised by wolves. No?

reply to this

Tulpa | 3.9.10 @ 9:20PM | #

Close. He was raised by Ukrainians.

reply to this

Tulpa | 3.9.10 @ 7:13PM | #

I can't believe you would pick on Worf when both Crushers are in that picture.

reply to this

@ | 3.9.10 @ 7:18PM | #

I prefer the early Counselor Troi in her cheerleader outfit.

reply to this

Tulpa | 3.9.10 @ 7:24PM | #

Troi? Don't even talk about her. I'll never get over the fact that she outranked Data by the time the series was over. Talk about affirmative action.

reply to this

@ | 3.9.10 @ 7:34PM | #

Well, she *was* a counselor. It gets lonely in outer space.

reply to this

nobody loves the asians | 3.9.10 @ 8:28PM | #

uhm, hello, how long was Ensign Kim an ensign?

reply to this

Episiarch | 3.9.10 @ 8:49PM | #

That's his own damn underachieving fault. He didn't have his parents around to push him out there in the Delta Quadrant.

reply to this

Fist of Etiquette | 3.9.10 @ 8:59PM | #

Tuvok got busted to lieutenant and somehow got his rank back later. Captain Hepburn was all over the place. I blame change of life.

reply to this

Tulpa | 3.9.10 @ 9:14PM | #

Or Captain Picard -- after personally saving the Federation/human race/universe dozens of times -- was still getting pushed around by pencilneck admirals in the seventh season, being told that if he disobeyed the slightest part of their orders his career would be over.

reply to this

Rewrite | 3.10.10 @ 6:54AM | #

Considering that Star Fleet is a government agency, that was probably one

Can States Say "No Thanks" to Obama...
of the more realistic parts of the show.

[reply to this](#)

Rewrite | 3.10.10 @ 7:10AM | #
...at least that's how things work here in the FAA.

[reply to this](#)

Episiarch | 3.9.10 @ 7:38PM | #
The most heinous crime of TNG was that they had literally the least attractive female cast of any show outside of *Cagney and Lacey*. Why, Gene? WHY? What changed from TOS to TNG? I know...Brannon "meta-retard" Braga and Rick "douchebag" Berman.

[reply to this](#)

Tulpa | 3.9.10 @ 7:50PM | #
Excuse me? Do *Roseanne*, *Golden Girls*, and *Designing Women* ring a bell?

[reply to this](#)

Episiarch | 3.9.10 @ 7:57PM | #
I had blocked those from my memory. Thanks a bunch, you bastard.

[reply to this](#)

Tulpa | 3.9.10 @ 9:16PM | #
Actually, a large part of the problem was what *didn't* change from TOS to TNG: Diana Muldaur and Marge Roddenberry.

[reply to this](#)

Councilor Troi | 3.9.10 @ 7:42PM | #
@,I am sensing deception...that you do want to see someone in a cheerleader outfit...Two people?...What? Not me....Tulpa and Epi.

[reply to this](#)

Tulpa | 3.9.10 @ 9:17PM | #
Sorry, you got fat and ugly over the past 15 years. Of course, so did I, but I was never a nerd sex symbol as far as I know.

[reply to this](#)

Episiarch | 3.9.10 @ 7:22PM | #
I like to change things up.

[reply to this](#)

The Libertarian Guy | 3.10.10 @ 10:32AM | #
Hey, now... Gates McFadden was hot.

Well, to look at... not the acting.

Hey, I dig me some redheads.

[reply to this](#)

yonemoto | 3.9.10 @ 8:29PM | #
well at least he was totally into kinky interspecies sex. which is more than i can say about most collectivists.

[reply to this](#)

Episiarch | 3.9.10 @ 8:39PM | #
I will admit that his step up to alien parasite Terry Farrell in DS9 (which I hate and almost never watched) was at least a positive thing.

[reply to this](#)

Can States Say "No Thanks" to Obama...

[The Art-P.O.G.](#) | 3.9.10 @ 8:45PM | <#>

Alien parasite Perry Farrell would've ben cool, though.

[reply to this](#)

[Episiarch](#) | 3.9.10 @ 8:47PM | <#>

You mean he isn't already?

And I'd frankly much rather look at Terry Farrell.

[reply to this](#)

[The Art-P.O.G.](#) | 3.9.10 @ 8:49PM | <#>

Terry Farrell's much easier to look at. But let's face it, Perry needs to do some sci-fi. He's not as cool as George Clinton, David Bowie, Prince or Bryan Ferry, but he's on that next level.

[reply to this](#)

[Episiarch](#) | 3.9.10 @ 8:52PM | <#>

Maybe he can be Morbo's pet on future *Futurama* episodes. After all, Perry's the one who said **we'll make great pets**.

[reply to this](#)

[The Art-P.O.G.](#) | 3.9.10 @ 8:47PM | <#>

been*, heh heh

[reply to this](#)

[dbcooper](#) | 3.9.10 @ 9:29PM | <#>

Some of DS9 (well quite a bit of it) did suck, but the Dominion wars stuff was pretty good (apart from the "prophets" stuff).

[reply to this](#)

[Kolohe](#) | 3.10.10 @ 9:07AM | <#>

Well, Rodenberry *was* always kinda suspicious of capitalism.

[reply to this](#)

[Pro Libertate](#) | 3.10.10 @ 9:21AM | <#>

I thought there were some pretty good *DS9* shows. The trick to knowing which is to use what I call the Hawk Meter. At the beginning of the show, evaluate how much Brooks is going to the Hawk well in his portrayal of Sisko. More Hawk is, of course, better.

[reply to this](#)

[Pro Libertate](#) | 3.10.10 @ 9:26AM | <#>

I liked Worf, but the way they wrote him was insane. He was raised on Earth, well after there was peace between the Federation and the Klingon Empire, by very loving parents, in a society that is so tolerant and accepting of change as to be rather sickening at times. No way, no how he was exposed to enough prejudice to make him retreat into his Klingon roots.

They sometimes did episodes where he clearly favored the Federation--not just out of duty, either. Which made the later Worf--Captain Klingon Honor--not a little ridiculous.

I think the Evil Bs didn't realize how popular the Klingon arcs would be and were scared to make him too human.

[reply to this](#)

[Joe M](#) | 3.9.10 @ 6:34PM | <#>

Suderman, you fail so bad. You can't even scrounge up a photo with the **current** line-up of the Supreme Court???

[reply to this](#)

heller | 3.9.10 @ 6:46PM | #
Gasp! What a travesty.

[reply to this](#)

Ben | 3.9.10 @ 7:14PM | #
So which one of the Supreme Court justices is Tasha Yar? I am curious to know which one of them will die at the end of this season at the hands of a hulking mass of photocopier ink.

[reply to this](#)

Tulpa | 3.9.10 @ 7:21PM | #
There were two Season 1 episodes after Tasha died. *Conspiracy* and *The Neutral Zone*.

[reply to this](#)

Episiarch | 3.9.10 @ 7:32PM | #
That's an EVIL hulking mass of photocopier ink, buddy.

[reply to this](#)

JW | 3.9.10 @ 9:57PM | #
That's an ASMATIC, evil, hulking mass of photocopier ink.

[reply to this](#)

Dan Lavatan | 3.9.10 @ 7:16PM | #
If the states want to they can just declare that every individual is their own insurance company. Congress could try and override this, but they don't have the votes to pass anything but perhaps the current Senate bill.

Since revenue bills must originate in the house, the mandate taxation portion of that bill would be unconstitutional as enacted in any case.

[reply to this](#)

Ken Shultz | 3.9.10 @ 8:28PM | #
Sorry to break in here, but I guess this is what I was trying to say up top...

Who cares about whether anything's constitutional anymore? That's so 2003!

The damn gun laws in DC, Los Angeles and New York have been unconstitutional for 40 years!

What difference does constitutional make?

Are the people who might be forced to buy health insurance they don't need and can't afford supposed to console themselves with the realization that 40 years from now some future Supreme Court might decide that oppressing them in this way is unconstitutional?

Are there more than two congressmen who will vote against something their constituents want just because it's unconstitutional?

I can see why this would matter to people on a libertarian board, but outside of our little universe--nevermind warrantless wiretaps, torture, denying an American citizen the right to a trial, the Patriot Act, etc. ...do you really think anyone in Congress cares about whether making people buy health insurance is constitutional?

[reply to this](#)

poop slinger | 3.9.10 @ 10:47PM | #
Judging by the continued nerd fest below, you can pencil a solid "don't care" as a response to all your questions.

[reply to this](#)

Pro Libertate | 3.10.10 @ 9:27AM | #
Oh, be quiet. What, we should be political all the time? It's that kind of thinking that's

[reply to this](#)

Tulpa | 3.9.10 @ 7:19PM | #

Picard = Stevens
Riker = Roberts
Data = Breyer
Troi = Sotomayor
Beverly = Ginsberg
Worf = Thomas
La Forge = Scalia
Yar = Kennedy
Wesley = Alito

[reply to this](#)

John Thacker | 3.9.10 @ 8:32PM | #

Worf = Thomas
Racist.

[reply to this](#)

Tulpa | 3.9.10 @ 9:08PM | #

Actually I was referring to Worf's sulking, silent demeanor, which reminds me of Thomas during oral arguments.

And while Worf and his brother were played by black actors, not all the Klingons were -- his mate and son were played by whites.

[reply to this](#)

JW | 3.9.10 @ 9:56PM | #

Picard = Thomas (Brooding, hairline, really runs the place)
Riker = Kennedy (Swing vote = #1, gets all the tail)
Data = Breyer (Robotic, nerdy and programmed in multiple techniques)
Troi = Stevens (THE empath on the Court)
Beverly = Ginsberg (Jews do make the best doctors)
Worf = Scalia (Will kill on command)
La Forge = Roberts (Will tell you all about the anti-matter stream if given a chance)
Yar = Sotomayor (Youngest and did Breyer in the cloak room)
Wesley = Alito ('Nuf said)

[reply to this](#)

Episiarch | 3.9.10 @ 11:13PM | #

This is uncannily accurate, JW. Have you been writing Supreme Court/TNG mashup slash fic in you spare time? Why am I asking? Of course you have.

Pervert.

[reply to this](#)

JW | 3.9.10 @ 11:16PM | #

Wait for my next installment. You and Alito will get caught in a Jeffries tube running level 1 diagnostics on each other.

[reply to this](#)

Episiarch | 3.9.10 @ 11:43PM | #

Level 1, huh? WTF does level 1 even mean? Can you answer that, Picard?
Huh?

[reply to this](#)

JW | 3.10.10 @ 7:42AM | #

Picard!? Those are fighting words, Wesley.

[reply to this](#)

Frack away | 3.9.10 @ 11:43PM | #
 JW,when do you get fucked in the ear?

[reply to this](#)

yonemoto | 3.9.10 @ 8:38PM | #
 Worf = Thomas

now that's just racist.

La Forge = Scalia

also racist.

[reply to this](#)

yonemoto | 3.9.10 @ 8:38PM | #
 dammit john thacker.

[reply to this](#)

captain grumpy | 3.9.10 @ 7:55PM | #
 How the hell do you follow these comments (for want of a better word)

[reply to this](#)

The Art-P.O.G. | 3.9.10 @ 8:09PM | #
 You grab the horns. Then you hold on like hell.

[reply to this](#)

JW | 3.9.10 @ 9:58PM | #
 How do you what?

[reply to this](#)

Tulpa | 3.9.10 @ 11:07PM | #
 Personally I prefer to close with a clockwise swirl, but you might want to change that up.

[reply to this](#)

Jerry | 3.9.10 @ 8:50PM | #
 At Reason's Hit & Run, you don't follow the comments, the comments follow you.

[reply to this](#)

Jamie Kelly | 3.9.10 @ 9:30PM | #
 All your comment are belong to us.

[reply to this](#)

IceTrey | 3.9.10 @ 8:01PM | #
 If a Federal mandate is ever judged constitutional it will be time for the Second Revolution.

[reply to this](#)

Fist of Etiquette | 3.9.10 @ 8:53PM | #
 If a Federal mandate is ever passed, the ranks of the Amish will grow astronomically.

[reply to this](#)

Jamie Kelly | 3.9.10 @ 9:29PM | #
 So, if I REFUSE all down the line to get health insurance, I will eventually be tossed into jail where large men with pus-sores on their dicks will butt-fuck me until I scab over and get AIDS? Pretty fair trade.

[reply to this](#)

JW | 3.9.10 @ 9:46PM | #

Knock it off, Jamie. This is a Star Trek thread.

[reply to this](#)

Pro Libertate | 3.10.10 @ 9:33AM | <#>

Health insurance and *Star Trek* can be discussed simultaneously. As demonstrated by **Vice President Takei**:

How is this relevant to our healthcare plan? Well, let me quote the president:
 "George, when I watch *Star Trek*, and Sulu or some other character gets injured, do they have to pay Dr. McCoy for medical treatment? Hell, no!" And you know what? He's right. I never did pay Dr. McCoy! It was free! And no one can deny that the crew of the Enterprise got the best care in the entire galaxy, can they?
 [applause]

[reply to this](#)

Fist of Etiquette | 3.10.10 @ 7:18AM | <#>

Health care courtesy of the Department of Corrections.

[reply to this](#)

Tulpa | 3.9.10 @ 10:17PM | <#>

OK, enough with the complaining about the wrong-door SWAT raids -- how about **wrong-door foreclosures?**

[reply to this](#)

Almanian | 3.9.10 @ 10:35PM | <#>

Oops!

[reply to this](#)

Almanian | 3.9.10 @ 10:37PM | <#>

And in a slight - yet related - threadjack, why does everyone keep calling this guy in the news "Massa"??

Sounds racist to me.

[reply to this](#)

Tulpa | 3.9.10 @ 10:57PM | <#>

He's altering the deal. Pray he doesn't alter it any further.

President Barack Obama said Tuesday he'll bring in high-tech bounty hunters to help root out health care fraud, grabbing a populist idea with bipartisan backing in his final push to overhaul the system.

The bounty hunters in this case would be private auditors armed with sophisticated computer programs to scan Medicare and Medicaid billing data for patterns of bogus claims. The auditors would get to keep part of any funds they recover for the government. The White House said a pilot program run by Medicare in California, New York and Texas recouped \$900 million for taxpayers from 2005-2008.

[reply to this](#)

JW | 3.9.10 @ 11:14PM | <#>

The auditors would get to keep part of any funds they recover for the government.

What could possibly go wrong?

"But, it was only a dental checkup!"

"Right. You said the same thing last year. Denied!"

[reply to this](#)

rctI | 3.9.10 @ 11:14PM | <#>

Why wouldn't you want an end to fraud?

[reply to this](#)[Episiarch](#) | 3.9.10 @ 11:16PM | <#>

The auditors would get to keep part of any funds they recover for the government.

This is just such a spectacularly bad idea that I have to assume he's joking. Right? Oh wait, I forgot that Obama hasn't yet done a single thing right, honestly, or well. Sigh.

[reply to this](#)[JW](#) | 3.9.10 @ 11:19PM | <#>

They could save a lot of time if they hired the same companies that speed and red light cameras.

[reply to this](#)[Frack away](#) | 3.9.10 @ 11:40PM | <#>

Why?

[reply to this](#)[Health Secretary Piett](#) | 3.9.10 @ 11:22PM | <#>

Bounty hunters? We don't need their scum.

[reply to this](#)[Comrade Zero](#) | 3.9.10 @ 11:53PM | <#>

It'll work out just as well as asset seizures and the TSA.

[reply to this](#)[Comrade Zero](#) | 3.9.10 @ 11:55PM | <#>

It's as clumsy as it is stupid (gotta get the reference in somewhere!)

[reply to this](#)[R C Dean](#) | 3.10.10 @ 10:13AM | <#>

Umm, they are already doing this. There are at least three programs up and running right now where private audit firms are going through Medicare bills, and collecting a contingency fee for every bill they throw out.

Oddly, they aren't required to identify underpayments, or required to fund a portion of the underpayments that are identified.

Asymmetrical incentives will lead to distorted results.

[reply to this](#)[TP](#) | 3.10.10 @ 6:46AM | <#>

1. The State of New Jersey hereby claims sovereignty under the Tenth Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government. This resolution serves as notice and demand to the federal government, as our agent, to cease and desist, effective immediately, mandates that are beyond the scope of these constitutionally delegated powers.

I recently came across [this](#) piece of proposed legislation from my State Senator (who is a Dentist by trade, and a Democrat). It seems pretty vague, since there are no specific mandates enumerated in the text of the legislation, just this: *A number of proposals from previous administrations and some now pending from the present administration and from Congress may further violate the Constitution of the United States;*.

[reply to this](#)[Rewrite](#) | 3.10.10 @ 7:01AM | <#>

I hate to spoil the nerd fest, but doesn't it seem a little odd that so many of us Libertarians (mea culpa) are fans of Star Trek when it is a show about a multi-world government run space program? Just sayin...

[reply to this](#)[@](#) | 3.10.10 @ 7:19AM | <#>

Not a fan. But did enjoy the hologram deck episode wherein Troi gets raped by hoodlums in an apocalyptic Earth scenario, only to be avenged by a Charles Bronson mirage. That's what she gets for all that bad advice.

[reply to this](#)[Fist of Etiquette](#) | 3.10.10 @ 9:06AM | <#>

Wait, we weren't supposed to be rooting for the Ferengi?

[reply to this](#)[Grand Moff Tarkin](#) | 3.10.10 @ 7:51AM | <#>

Retreat? In our moment of triumph? I think you overestimate their chances.

Oh, excuse me, am I in the wrong thread?

[reply to this](#)[WTF](#) | 3.10.10 @ 7:54AM | <#>

"the Supremacy Clause alone wouldn't render Virginia's law unconstitutional. Instead, it would be struck down only if and when a federal individual mandate was passed and ruled constitutional."

Exactly. And a federal mandate directing all individuals to purchase ANYTHING is patently unconstitutional. I don't give half a flying fuck if Pelosi doesn't believe that yes, indeed, you heinous bitch, we are serious as a fucking heart attack, but show me in the Constitution where the federal government is empowered to direct the American people to buy anything.

Fuck them with a splintered mop handle.

I will back my state (Virginia) all the way on this issue - at some point, the states have got to start standing back up to Congress and telling the federal overlords enough is enough and they've gone too far.

At a certain point, how will they enforce their little mandate, if the states refuse to go along with the scheme?

[reply to this](#)[wylie](#) | 3.10.10 @ 8:37AM | <#>

I hate to spoil the nerd fest, but doesn't it seem a little odd that so many of us Libertarians (mea culpa) are fans of Star Trek when it is a show about a multi-world government run space program? Just sayin...

The whole gov't-in-startrek thing didn't occur to me until i was into my 20's, and by then it was already entrenched as a part of my world.

It killed some of the magic, for sure, but it also gave me a better appreciation for the depictions of local gov't and economic activity in DS9.

Can you believe there's still illegal drugs in 2375?

[reply to this](#)[Pro Libertate](#) | 3.10.10 @ 9:50AM | <#>

It was vaguer what kind of government they had on *TOS*, of course. And credits were used, so some sort of market still existed. It wasn't until *TNG* that the crap got overt.

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