

# Build the Hill: How the Resilient Entrepreneur Can Persevere

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## Abstract

Entrepreneur Jim Clark wanted to protect his privacy by building a taller fence. The government told him he could not build a taller fence. So he built a hill around his property and put his old, legal fence on top of his new, legal hill. I discuss a few examples of entrepreneurs “building the hill.” Entrepreneurs too often believe they must choose between giving up or fighting to change the rules. Sometimes a third option is best: find a nimble pivot that can achieve a goal without the drain of time and energy it takes to change the rules.

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## I. Build the Hill

When Silicon Graphics founder Jim Clark built his home in Atherton, California, no neighbors were close enough to threaten his privacy. But with development, next-door neighbors could look down into his swimming pool. The obvious solution was to build a higher fence. But that was against Atherton’s zoning laws. Clark did not fight city hall. Instead, he built a hill around his property, putting his old, short, legal fence on his new, higher, legal hill (Hamm 1998; Lewis 2000, pp. 46–47).

Clark was not the first to build the hill. Several examples illustrate the diversity of time, place, and context in which nimble pivots have overcome oppressive obstacles. In the mid-1800s, when the landlords of Scotland felt threatened by the growth of the Free Church, they

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refused to sell or rent any land to be used by the church to build places of worship. The Free Church congregation in the town of Strontian responded by paying to have a boat built that came to be known as the Floating Church of Loch Sunart (MacColl 2006, pp. 21–22). Entrepreneur Soichiro Honda evaded the Japanese law restricting postwar gasoline use by mixing gasoline with pine resin so the resin smell covered the gas smell (Gilder 1992, p. 220).

Albert Champion faced a legal fight to call his spark plug firm Champion Spark Plugs. So Billy Durant (the entrepreneur who first pulled General Motors together) told Champion that he should not fight to maintain the name for his spark plug company, but could achieve his goal by calling the company by its initials: AC Spark Plug (Pelfrey 2006).

When Rollin King envisioned a low-cost, low-price airline, he faced the high fares mandated by the federal Civil Aeronautics Board (CAB). By at first flying just within Texas, Rollin's Southwest Airlines was able to charge lower fares without being subject to CAB authority (Corkery 2014, p. 25).

Walmart's first efforts to enter the banking industry were blocked when the federal government refused to issue a federal bank charter. Instead, the company built the hill by offering banking services that did not require a charter, and by partnering with financial services companies such as Green Dot (Tabuchi and Silver-Greenberg 2014, p. B3).

Hills have been built to overcome not only government obstacles to innovation, but also nongovernment ones. A large, old, corporate bureaucracy's inertia can stifle entrepreneurial innovation in the ranks almost as much as a large, old, government bureaucracy can. Those working with or within such bureaucracies may benefit from finding ways to build the hill.

They may find inspiration from Jeff Bezos, whose early Amazon depended on using a bureaucratic book distributor to fulfill online book orders. When an order came in, Amazon would reorder it through the distributor. But Amazon was slowed down and stymied by the distributor's rule that all orders had to be for ten or more books. Amazon found out that when ten books were ordered and nine were out of stock, the distributor would go ahead and fulfill the order for the one book in stock. So Amazon found an unknown book on lichen that was always out of stock. When the company needed one book, they would order it along with nine copies of the lichen book, and the distributor would send out the one book

Amazon needed (Stone 2013, p. 37). Bezos built the hill with “*élan*” and “*devious glee*” (Brandt 2011, p. 78).

With a few compelling examples in hand, the conscientious scholar will ask where the phenomenon of building the hill fits in the taxonomy of entrepreneurship. Our ability to explain the world sometimes depends on how well we have classified what we observe. So the common practice of denigrating taxonomists as inferior to theorists may bode ill for scientific progress. The taxonomist Hodgkin did not explain or cure the disease that now bears his name. Before Hodgkin, swelling of the lymph glands was attributed to tuberculosis or syphilis. But Hodgkin noticed that some of his specimens were different, examples of what would eventually be called “*Hodgkin’s lymphoma*” (Mukherjee 2010, p. 156). Hodgkin did not know the cause or the cure, but he saw a pattern. And seeing a pattern was a key step toward its eventual explanation and (partial) cure.

Similarly, the taxonomist of entrepreneurship can parse the phenomena along different dimensions, helping us to see new and useful patterns. She can parse by the desirability of the results, as when Baumol (1990) discussed productive, unproductive, and destructive entrepreneurship. She can parse by the motivation of the entrepreneur, and so discuss entrepreneurs as motivated by fame, wealth, a desire to win, or a desire to bring a project into the world (Diamond 2012, 2019). She can parse by the type of institution—*for-profit, nonprofit, governmental*—where the entrepreneurship occurs (Boettke and Coyne 2009). She can parse by the dominant activity that the entrepreneur engages in, such as innovation, arbitrage, risk-taking, or management (Casson 2002; Schumpeter 1950; Kirzner 1973; Knight 1921; Drucker 1985).

Or, most useful for understanding building the hill, she can parse by the level or tier of the entrepreneurship’s goal. In the lower tier, entrepreneurs directly create goods or services, while in the higher tiers, they provide the broader security or other infrastructure needed to create goods or services (Leeson and Boettke 2009; Adner 2012; Christensen, Ojomo, and Dillon 2019). They may also change the rules the entrepreneurs must obey (Martin and Thomas 2013; Leighton and López 2013).

The literature arising from these taxonomies is broad and rich and has gleaned many useful insights. The question asked in this paper is more modest: from the viewpoint of an innovative project entrepreneur, when is it best to spend time and effort trying to

change the rules, and when is it best to find ways to pivot around the rules—to build the hill?

## **II. A Tale of Two Rabbits**

My favorite example of building the hill involves Walt Disney. As a young man, Disney's first major cartoon character was Oswald the Lucky Rabbit. Disney had a contract with Charles Mintz, a middleman between Disney and Universal, the Oswald cartoons' distributor.<sup>1</sup> Before meeting with Disney in New York, Mintz decided to sign contracts with some of Disney's cartoonists to make the Oswald cartoons without Disney's involvement, in effect cutting the creator out of his own creation. Mintz could do this because Disney had signed a contract giving Universal ownership of the Oswald character. Disney would have liked to work directly with Universal, but Universal liked Mintz more than Disney.

This story may be an illustration of Edward Lazear's claim that to succeed, new entrepreneurs need to be jacks-of-all-trades—to have at least a threshold of knowledge in each of several key areas (Lazear 2004). They need to know enough of the basics of enough skills to stay afloat, and eventually hire specialists in some of the skills. If entrepreneurs fail to reach a minimal threshold in any key skill, they may be out of business. In the Oswald example, young Walt apparently lacked skill in contract drafting and negotiation.

He tried to remain optimistic on the train trip back from New York City to Los Angeles. He could have thought of fighting Mintz in court; instead he started sketching (Gabler 2006, p. 110). He shortened Oswald's ears and he changed Oswald's tail from short and fluffy to long and skinny. And he changed the name to "Mortimer." He showed it to his wife, who liked the mouse but not the name (Barrier 2007, p. 57; Gabler 2006, p. 112). She suggested that a friendlier name would be "Mickey."

The story of Oswald the Lucky Rabbit is one of entrepreneurial resilience. Walt Disney had trusted Mintz and Universal, and they betrayed him. Instead of giving in to discouragement, he shortened Oswald's ears and lengthened his tail to transform him from a rabbit into a mouse.

Barrier writes that in this episode, Disney "was a sort of human Brer Rabbit, constantly wriggling out of the snares set for him"

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<sup>1</sup> The account in the rest of the paragraph, of Disney losing Oswald to Mintz, is condensed from Gabler (2006, pp. 106–10) and Barrier (2007, pp. 54–57).

(Barrier 2007, p. 325). After Oswald, Brer Rabbit was the second important rabbit in Disney's career, celebrated in the now controversial *Song of the South* movie and in the still much-loved "Splash Mountain" ride in the Disneyland and Magic Kingdom parks.

So, what is the lesson from these build-the-hill examples? It is *not* that entrepreneurs should never fight for something they care about. Sometimes, to avoid being bullied or to improve the rules, it is necessary to draw a line in the sand and stick by it. But, often, entrepreneurs can make more progress by being alert to clever ways to achieve their goals without direct conflict. "Pick your fights and do not pick too many" is a good lesson.

That entrepreneurs can pivot around oppressive legal obstacles does not justify complacency. The time entrepreneurs spend to pivot around legal obstacles is time they cannot use to overcome the obstacles presented by physics and biology. The cleverness of the pivot should not blind us to its cost. Seeing this, principled entrepreneurs should vote, advocate, and donate to reduce legal obstacles.

But perhaps the most important lesson from these build-the-hill examples is the importance of perseverance for those who seek to make a difference in the world. When someone steals your rabbit, find a way to keep drawing.

While Walt Disney lived, he tried to create in his company a spirit and culture of perseverance and innovation. With his death in 1966, that spirit and culture proved hard to sustain. This outcome would not have surprised the great economist Alfred Marshall, who observed that the decline of a once-great company usually starts with the death of its entrepreneur founder (Marshall [1920] 1961, p. 300). What *would* have surprised Marshall was the passionate devotion that many customers and employees felt for the spirit and culture of Walt's company.

So when the Walt Disney Company's CEO Michael Eisner jeopardized that spirit and culture, Walt's nephew Roy, along with Steve Jobs, organized a coup that culminated in 2005 with the ouster of Eisner and the installation of Bob Iger as CEO (Isaacson 2011, p. 438). The following year, Universal-NBC wanted to hire Disney-ABC's sportscaster Al Michaels. Iger said that in return for Michaels, the Walt Disney Company wanted Universal to sign back the contractual rights to Oswald. So in 2006, after seventy-eight years of exile, Oswald the Lucky Rabbit returned home to the Walt Disney Company (Lang 2012).

Unfortunately, the Walt Disney Company's treatment of Walt's other rabbit, Brer, shows that Iger was not as true to the spirit and culture of Walt Disney as Roy Disney and Steve Jobs had hoped. In African American folk tales, the king of pivot is the resilient trickster Brer Rabbit. When Brer Fox catches him and threatens to skin him, Brer Rabbit says that is fine, but "please, please, don't throw me into the briar patch!" Brer Fox then throws him into the briar patch, and Brer Rabbit escapes.

Some have criticized Brer Rabbit for the way he talks, but what is important about Brer Rabbit is his spirit, his actions, and his example. He was a spunky, hopeful, unprivileged little guy who persevered. He has been explained, defended, and even celebrated (Gladwell 2013; Gates and Tatar 2017). Yet during Iger's tenure as CEO, Brer Rabbit's scenes from "The Song of the South" were kept entombed in the Walt Disney Company's vaults.<sup>2</sup> More recently, the Walt Disney Company even announced plans to exile Brer Rabbit from his home in Splash Mountain (Diamond 2020).

We can speculate what Walt Disney would have done when cancel culture came for Brer Rabbit. He would have sought a pivot to save the rabbit who is the exemplar of pivoting resilience. But being a principled man, if no pivot could be found, Walt Disney would have drawn a line in the sand.

### **III. Conclusion**

When the Carmel Planning Commission told Clint Eastwood he could not build a retail-office complex building next to his Hog's Breath Inn restaurant, he got mad, sued them, and settled out of court (UPI 1986). But he stayed mad and ran for mayor to defend the principle that government should unbind entrepreneurs. He won the election in a landslide and famously got a law passed to allow the sale of takeout ice cream cones on Carmel's main street (Lindsey 1986a, 1986b, 1987). But he spent a lot of time on his routine mayoral duties (AP 1986; Lindsey 1987), which raises the question: How many great Clint Eastwood movies did he (and we) forego as the opportunity cost of his efforts to change the rules?

Entrepreneurs too often view their only options as giving up or fighting to change the rules. Through a few compelling examples, I

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<sup>2</sup> Neither Oswald the Lucky Rabbit nor Brer Rabbit were important enough to Bob Iger to receive any mention in his autobiographic account of his years as CEO (Iger 2019).

have shown in this paper that sometimes a third option is best: to find a nimble, out-of-the-box pivot that can achieve a goal without the drain of time and energy it takes to change the rules.

The cost of this third option would be high if it implied that rules and institutions cannot improve. In fact, entrepreneurial pivots, rather than direct frontal assaults, often result in improvements (Henrekson and Sanandaji 2011; Olopade 2014; Tusk 2018; Thierer 2020). The growth of email, and of private package delivery services, has made the United States Postal Service increasingly irrelevant. Those who created email did not first run for Congress in order to repeal the post office's mandated monopoly on first class mail. Perhaps few will notice when the lights of the post office are eventually turned off, just as few noticed when the lights of Western Union's telegram service were turned off (Bloomberg 2006).

But when an entrepreneur cannot persevere by pivots, and when more is at stake than ice cream cones, then fighting to change the rules may be the only way to persevere.

## References

- Adner, Ron. 2012. *The Wide Lens: A New Strategy for Innovation*. New York: Portfolio.
- AP. 1986. "Eastwood Is Sworn in as Mayor of Carmel." *New York Times*, April 16, p. A23.
- Barrier, Michael. 2007. *The Animated Man: A Life of Walt Disney*. 1st ed. Berkeley: University of California Press.
- Baumol, William J. 1980. "Entrepreneurship: Productive, Unproductive, and Destructive." *Journal of Political Economy* 98(5, part 1): 893–921.
- Bloomberg News. 2006. "First Data Unit Scraps Telegrams." *Omaha World-Herald*, February 2, 9D.
- Boettke, Peter J., and Christopher J. Coyne. 2009. "Context Matters: Institutions and Entrepreneurship." *Foundations and Trends in Entrepreneurship*, 5(3): 135–209.
- Brandt, Richard L. 2011. *One Click: Jeff Bezos and the Rise of Amazon.com*. New York: Portfolio/Penguin.
- Casson, Mark. 2002. "Entrepreneurship." *Concise Encyclopedia of Economics*, 1st ed. Indianapolis: Liberty Fund.
- Christensen, Clayton M., Efosa Ojomo, and Karen Dillon. 2019. *The Prosperity Paradox: How Innovation Can Lift Nations Out of Poverty*. New York: Harper Business Press.
- Corkery, Michael. 2014. "Rollin King, 83, Pilot Who Helped Start Southwest Airlines." *New York Times*, June 29, p. 25.
- Coyne, Christopher J., Russell S. Sobel, and John A. Dove. 2010. "The Non-Productive Entrepreneurial Process." *Review of Austrian Economics*, 23(4): 333–46.
- Diamond, Arthur M., Jr. 2012. "The Epistemology of Entrepreneurship." *Advances in Austrian Economics*, 17: 111–42.
- Diamond, Arthur M., Jr. 2019. *Openness to Creative Destruction: Sustaining Innovative Dynamism*. New York: Oxford University Press.

- Diamond, Arthur M., Jr. 2020. "Disney Should Rethink Removing Brer Rabbit from Splash Mountain." *Orlando Sentinel*, July 7, p. 9A.
- Drucker, Peter F. 1985. *Innovation and Entrepreneurship*. New York: Harper & Row.
- Gabler, Neal. 2006. *Walt Disney: The Triumph of the American Imagination*. 1st ed. New York: Alfred A. Knopf.
- Gates, Henry Louis, Jr., and Maria Tatar, eds. 2017. *The Annotated African American Folktales*. New York: Liveright.
- Gilder, George. 1992. *Recapturing the Spirit of Enterprise: Updated for the 1990s*. Updated ed. New York: ICS Press.
- Gladwell, Malcolm. 2013. *David and Goliath: Underdogs, Misfits, and the Art of Battling Giants*. New York: Little, Brown.
- Hamm, Steve. 1998. "Jim Clark Is Off and Running Again: Can the Founder of Netscape and Silicon Graphics Ring up Another Blockbuster?" *Businessweek*, Oct. 12, p. 64.
- Henrekson, Magnus, and Tino Sanandaji. 2011. "The Interaction of Entrepreneurship and Institutions." *Journal of Institutional Economics*, 7(1): 47–75.
- Iger, Robert. 2019. *The Ride of a Lifetime: Lessons Learned from 15 Years as CEO of the Walt Disney Company*. New York: Random House.
- Isaacson, Walter. 2011. *Steve Jobs*. New York: Simon & Schuster.
- Kirzner, Israel M. 1973. *Competition and Entrepreneurship*. Chicago: University of Chicago Press.
- Knight, Frank H. 1921. *Risk, Uncertainty and Profit*. Boston: Houghton Mifflin.
- Lang, Derrick J. 2012. "Disney Image Displayed for First Time in 40 Years." *Omaha World-Herald*, March 18, p. 2E.
- Lazear, Edward P. 2004. "Balanced Skills and Entrepreneurship." *American Economic Review*, 94(2): 208–11.
- Leeson, Peter T., and Peter J. Boettke. 2009. "Two-Tiered Entrepreneurship and Economic Development." *International Review of Law and Economics*, 29(3): 252–59.
- Leighton, Wayne A., and Edward J. López. 2013. *Madmen, Intellectuals, and Academic Scribblers: The Economic Engine of Political Change*. Stanford, CA: Stanford University Press.
- Lewis, Michael. 2000. *The New New Thing: A Silicon Valley Story*. New York: W. W. Norton.
- Lindsey, Robert. 1986a. "Eastwood Marks Landslide Victory." *New York Times*, April 10, p. A20.
- Lindsey, Robert. 1986b. "The Talk of Carmel; As Clint Eastwood Runs for Mayor, Small-Town Race Hangs on Big Issue." *New York Times*, March 25, p. A20.
- Lindsey, Robert. 1987. "Carmel-by-the-Sea Journal; Eastwood's Law and (Mostly) Order." *New York Times*, Sept. 1, p. A10.
- MacColl, Allan W. 2006. *Land, Faith and the Crofting Community: Christianity and Social Criticism in the Highlands of Scotland 1843–1893*, Scottish Historical Review Monographs. Edinburgh: Edinburgh University Press.
- Marshall, Alfred. (1920) 1961. *Principles of Economics*. Variorum ed. Vol. 1. London: Macmillan for the Royal Economic Society.
- Martin, Adam, and Diana Thomas. 2013. "Two-Tiered Political Entrepreneurship and the Congressional Committee System." *Public Choice*, 154(1/2): 21–37.
- Mukherjee, Siddhartha. 2010. *The Emperor of All Maladies: A Biography of Cancer*. New York: Scribner.

- Olopade, Dayo. 2014. *The Bright Continent: Breaking Rules and Making Change in Modern Africa*. New York: Houghton Mifflin Harcourt.
- Pelfrey, William. 2006. *Billy, Alfred, and General Motors: The Story of Two Unique Men, a Legendary Company, and a Remarkable Time in American History*. New York: AMACOM.
- Schumpeter, Joseph A. 1950. *Capitalism, Socialism and Democracy*. 3rd ed. New York: Harper and Row.
- Stone, Brad. 2013. *The Everything Store: Jeff Bezos and the Age of Amazon*. New York: Little, Brown.
- Tabuchi, Hiroko, and Jessica Silver-Greenberg. 2014. “Finding a Door into Banking, Walmart Prepares to Offer Checking Accounts.” *New York Times*, Sept. 24, p. B3.
- Thierer, Adam. 2020. *Evasive Entrepreneurs and the Future of Governance: How Innovation Improves Economies and Governments*. Washington, DC: Cato Institute.
- Tusk, Bradley. 2018. *The Fixer: My Adventures Saving Startups from Death by Politics*. New York: Portfolio.
- UPI. 1986. “Around the Nation; Mayor Eastwood Ousts ‘Unfriendly’ Planners.” *New York Times*, June 5, p. A16.