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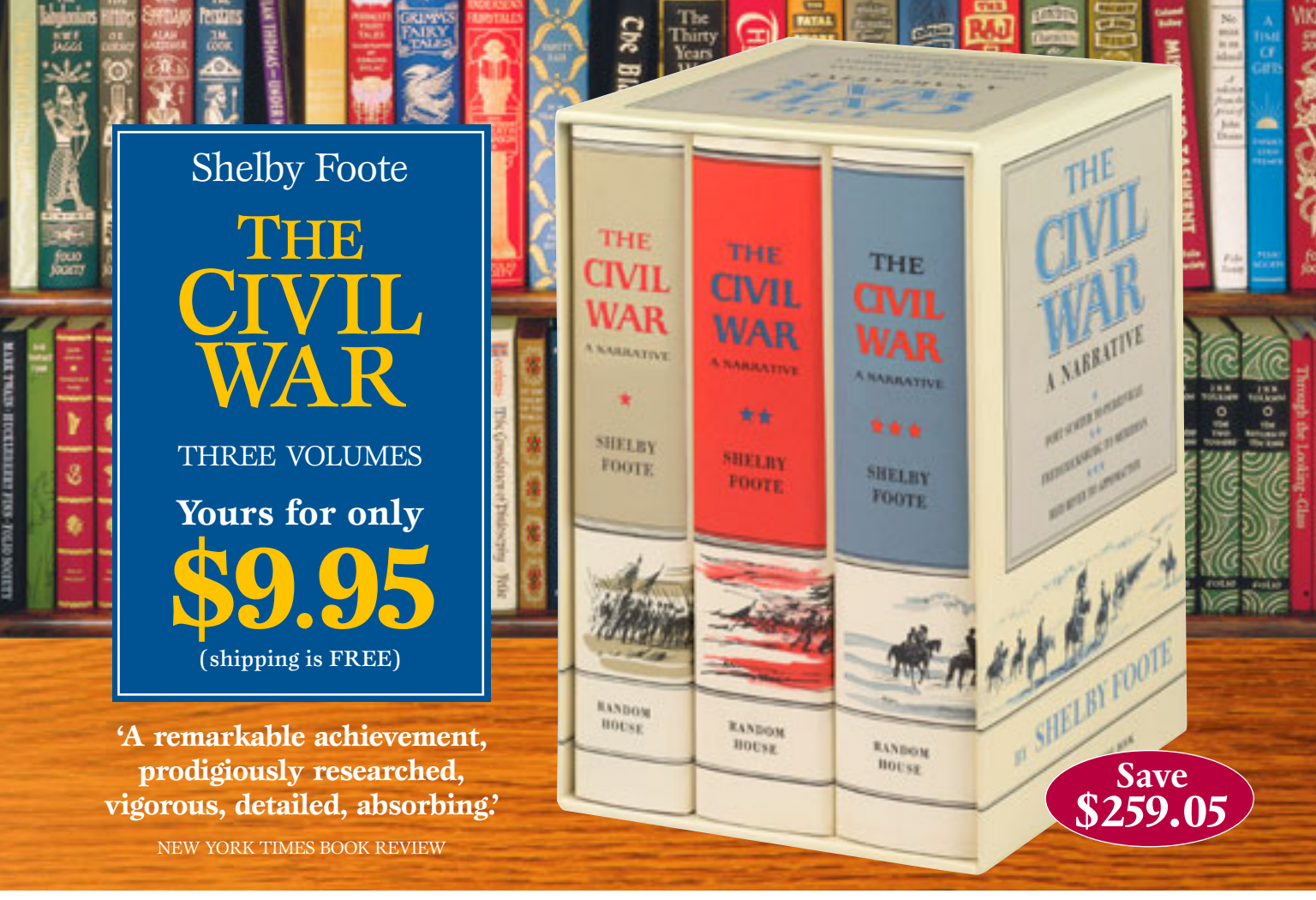

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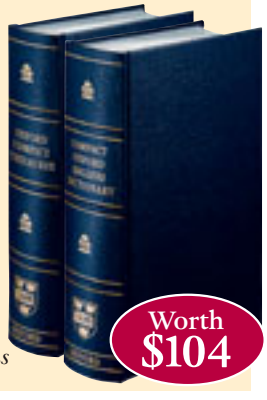

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The Disappearing Helen Thomas Awards

It's often forgotten—although The Scrapbook certainly remembers—that Stephen Colbert's famous excoriation of President Bush at the 2006 White House Correspondents Dinner was only briefly about George W. Bush. It was actually part of an extended tribute to Helen Thomas, who was still writing her Hearst column at the time, was featured in a long (purportedly comic) video with Colbert, and sat beaming at the proceedings. When Colbert finished his performance, he motioned toward his heroine with an outstretched hand, and declared, "Helen Thomas, ladies and gentlemen!"

Well, that was then. It's been less than a year since Helen Thomas urged Jews from Poland and Germany to "get the hell out of Palestine," and, after the uproar, was obliged to give up her syndicated column. Now she is writing regularly for the *Falls Church News-Press*, a suburban Washington giveaway founded by a onetime follower of Lyndon LaRouche named Nicholas Benton. How the mighty have fallen!

But far worse, in The Scrapbook's estimation, is the fate of the two awards named for Helen Thomas. As readers are aware, awards are to journalism as flies are to flypaper: There are nearly as many awards as there are eligible recipients, and you'd have to search very hard to find a journalist in America who isn't "award-winning" in some form or another.

Now, not only has Helen Thomas won her share of industry accolades over the years—not to mention more than thirty honorary degrees (Brown, Michigan State, George Washington, etc.)—but two awards have been established in her honor. There is the Helen Thomas Award for Lifetime Achievement, given by the Society of Professional Journalists, and there is the Helen Thomas Spirit of Diversity Award, bestowed by Wayne State University. Needless to say, the first recipient of the Helen Thomas Award for Lifetime Achievement (2001) was Helen Thomas.

But what looked like a promising tradition in the annals of professional log-rolling and back-scratching has come to a premature end. Several weeks ago, in a speech in Detroit, Helen Thomas explained her predicament as an independent journalist covering the nation's capital by informing her audience that "Congress, the White House and Hollywood, Wall Street are owned by the Zionists—no question, in my opinion." Which was too much, even, for Wayne State and the Society of Professional Journalists, who have now announced that their respective Helen Thomas awards will be discontinued.

Which is too bad, in The Scrapbook's view, and for two main reasons. First, as a specimen of comic relief, you can't do much better than two journalism awards named for a garrulous anti-Semite whose primary distinction as a journalist was her longevity. Two awards named for Helen Thomas should be permanent reminders to journalists of the wayward paths to prestige in their business. And second, if Helen Thomas's name is invoked to congratulate journalists, why not more awards named for colleagues of equal stature. The Walter Duranty Medal, for example, honoring the great Stalin propagandist for the *New York Times*; or the Peter Arnett/Stephen Glass/Janet Cooke/Jayson Blair/Dan Rather/Scott Beauchamp Spirit of Invention Award. Stephen Colbert could head up the search committee. ♦

Bring Back Blair

The Scrapbook intends no disrespect to British prime minister David Cameron. But the more we hear from his predecessor Tony Blair, the more we'd like him back in office, if only to explain the world to Barack Obama.

Last week, Blair testified once again before Britain's Iraq Inquiry commission, which is examining the Iraq war and the intelligence that led to it. As one might have expected, Blair defended the war and his decisionmaking. And what a defense!

In explaining the surprise at al Qaeda's decision to "mount a full-scale operation in Iraq after the removal of Saddam Hussein," Blair says that there was too little attention paid to the Iraq-al Qaeda connection because intelligence officials did not want to believe it. Blair: "In retrospect . . . the intelligence that al Zarqawi, the Jordanian AQ leader, had been in Baghdad in May 2002 should perhaps have been given more weight. But actually most of the British authorities were at pains to separate Saddam from AQ in 2002, not to link them."

Blair's testimony further explodes the prewar conventional wisdom on Iran—that Iran would seek "stability" in post-Saddam Iraq and that religious differences would keep Sunni and Shiite extremists from working together:

> As far as Iran's involvement, that was specifically assessed as unlikely given the hostility to Saddam. If anything, it was thought that whilst Iran would have a keen interest, naturally, in what happened in Iraq it would be more interested in

AP PHOTO / CHARLES DHARAPAK

promoting stability than instability.

What is remarkable, rereading the intelligence, is how fast that picture changed.

There were numerous JIC assessments. I cannot be sure I saw them all but certainly I would have been aware of their purport. The first references to Iran involving itself destructively were on 25th March 2003; then on 2nd April; 7th April, linking Hezbollah with it; then on 11th June 2003. Then a report of April 2004 suggested Iran may not be behind the attacks on the coalition. But in September 2004 this was strongly altered and it was accepted Iran was behind such attacks. On 23rd September 2004 a further report stated that the Sunni extremist presence in Iran was "substantial." This was emphasized in December 2004. A number of Defence Intelligence Staff and in-theatre reports from 2005-2007 also detailed malign Iranian activity in Iraq.

Blair says that the reports "show beyond doubt what Iran was up to." His testimony continued:

> What nobody foresaw was that Iran would actually end up supporting AQ. The conventional wisdom was these two are completely different types of people because Iran is Shia, the al Qaeda people are Sunni, and therefore, you know, the two would never mix. What happened in the end was that they did because they both had a common interest in destabilizing the country, and for Iran I think the reason they were interested in destabilizing Iraq was because they worried about having a functioning majority-Shia country with a democracy on their doorstep, and for al Qaeda they knew perfectly well their whole mission was to try and say the West was oppressing Islam. It is hard to do that if you replace tyrannical governments with functioning democracies.

Blair concluded his testimony by saying that one of the most important lessons of the Iraq war "has to do with the link between al Qaeda and Iran." The importance of that relationship has implications for security policy today, Blair said: The West cannot deal with al Qaeda without dealing with Iran. Let's hope President Obama is paying attention. ♦

Supreme Nonsense

There's an old saying here at The Scrapbook that looking for evidence of the authoritarian instincts of the left is a little like birdwatching: Once you've learned where to look, and what to look for, the landscape is suddenly full of specimens. And in unexpected places, too.

Or maybe not so unexpected. Take, for example, an extraordinary editorial that appeared in last Wednesday's *New York Times* entitled "Friends of the Court?" The "friends" in question are retired solicitors general (and former lawyers on the solicitor generals' staff) who, instead of ascending to the federal bench or moving into academia, practice law before the Supreme Court. And that's not all: Some of these ex-SGs have argued cases on behalf of "big business," and "a recent study done by scholars for the *Times* documents that, compared with other Supreme Courts since 1953, this one is 'significantly more likely to produce a conservative decision' in those cases." Most shocking of all: Of the cases on the docket this month for oral argument, the *Times* complains, "the U.S. Chamber of Commerce filed briefs in seven."

Setting aside the complaint of scholars in recent years—presumably not the same scholars who conducted that study for the *Times*—that the Court has tended to ignore important commerce cases, what the *Times* appears to be suggesting, in effect, is that the

Roberts Court should not be hearing cases that might be decided in ways the *Times* doesn't like, and that "big business" and its buddies at the U.S. Chamber of Commerce have no moral standing in the constitutional arguments that reach the Supreme Court.

What really agitates the *Times*, however, is the notion that former solicitors general—who, of course, argued before the Court on behalf of the government—might wield some unidentifiable special influence when advocating for private clients, and that justices "may unconsciously—and unfairly—defer to former solicitors general." The *Times*'s evidence for this is a recent case involving medical residents and Social Security taxes in which ex-Solicitor General Theodore Olson "slyly tweaked Justice Sonia Sotomayor and got an affectionate laugh all around."

The Scrapbook could not have reacted with greater astonishment to this passage if it had sighted a prothonotary warbler on the backyard feeder. The idea that the justices are vulnerable to influence because they may or may not be acquainted with members of the Supreme Court bar is not just insulting to members of the Court, liberal and conservative alike, but seems to argue that equal justice before the law is a matter of rendering decisions to the satisfaction of the editors of the *New York Times*.

In the meantime, The Scrapbook takes some satisfaction in the apparent fact that a mild outbreak of civility in the august chambers of the Court—a little friendly joke between George W. Bush's onetime solicitor general and Barack Obama's first appointee—seems to have sent some *Times* editorial writer into (stop the presses!) paroxysms of self-righteous rage. ♦

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The Shelves of Yesteryear

The man with the sidewalk table was selling *The Man with the Golden Arm*. Blowing on his hands, his steaming breath rising in the winter sun that slanted through Union Square, he offered almost-pristine copies of *Ship of Fools* and *The Spy Who Came in from the Cold*.

To say nothing of *Games People Play*, Eric Berne's 1964 pop-psychology bestseller, and *Kon-Tiki*, Thor Heyerdahl's 1948 account of adventure on an ocean raft. Sloan Wilson's *The Man in the Gray Flannel Suit*, Dag Hammarskjöld's *Markings*, Barbara Tuchman's *A Distant Mirror*—perhaps a hundred books, each carefully sealed in a clear plastic envelope as though it were a rare and valuable volume. As though it were a classic edition. As though it were important.

From Here to Eternity and *Peyton Place*, *In Cold Blood* and *The Making of the President 1960*, *Sophie's Choice* and *The Peter Principle*—the funny thing is that I'd read nearly all of them at my grandparents' house, one time or another. You know these books, too. Ernest Hemingway's *The Old Man and the Sea*, Patrick Dennis's *Auntie Mame*, Boris Pasternak's *Doctor Zhivago*. They were permanent fixtures of the show-off shelves the middle class used to keep in their houses: the books that announced they were serious, well-rounded people.

Not too many volumes, you understand. Bohemians and college professors, beatniks and longhairs: They might live surrounded by books—everything from Lawrence Ferlinghetti's poetry in *A Coney Island of the Mind* to Ernst Cassirer's reinterpretation of intellectual history in *The Individual and the Cosmos in Renaissance Philosophy* (both of which I read one desperately snowbound winter break while house sitting for a teacher at Georgetown). You've seen these places; a friend describes them as "graduate-student housing for people with slightly more money." The successful middle class of doctors and lawyers and bankers and such would never have allowed their beautiful homes to be overtaken by such clutter. But some books—many books, really, by today's standards—they did have to own. And to read.

DAVID GOOTHARD

The literary class distinctions in those days were delicate. Such bestsellers as James Michener's *Hawaii* and Harold Robbins's *The Carpetbaggers* were banned—but such equal bestsellers as Moss Hart's *Act One* and William L. Shirer's *The Rise and Fall of the Third Reich* were required. Yes, to Saul Bellow's *Herzog*. No, to Ian Fleming's *You Only Live Twice*. And maybe, to Louis Nizer's *My Life in Court*.

I saw them all again, in memory, while I browsed the bookseller's table on that cold New York street. The dust jacket for my grandparents' copy of *The Caine Mutiny* was blue, with silly drawings of naval officers. *The Confessions of Nat Turner* was orange, with a newspaper typeface, like an old-fashioned broadside. *Myra Breckinridge* I can't remember. My grandmother wouldn't let me read it.

Franny and Zooey, *Travels with Charley*, *Rabbit Redux*: These bestsellers didn't count as intellectual books, exactly, and they certainly weren't academic studies. What they were, really, was the highbrow end of the selections offered by the middlebrow Book of the Month Club. So I checked, and, sure enough, most of the plastic-wrapped books on the table had that little indentation on the back cover that showed they were book-club editions—making them even less valuable to buyers. Besides, all of these titles had been genuine bestsellers: thousands and thousands of copies printed. *Rare* and *collectible* are not good descriptions.

But I wanted them. I wanted them all. The display of such books on those white, floor-to-ceiling shelves built through the public spaces of the house—the living room, the parlor, that drinking room they called the library: This was how an entire class of people like my grandparents showed they were successful, cultured people. Capable of holding an intelligent conversation without making a show of intellectualism; capable of artistic appreciation without being artists.

Serious people, in other words. People of weight who nonetheless hadn't toppled over into eccentricity. The mainstay of American culture. That book table was like the altar of a cargo cult. Browsing through those old titles, I found myself wanting to call back the vanished time. To build such white shelves and to place on them such agreed-upon books. To be a person of weight, and balance, and confidence.

Rachel L. Carson's *The Sea Around Us* and John Gunther's *Inside Russia Today*. John Steinbeck's *The Winter of Our Discontent* and Jean Kerr's *Please Don't Eat the Daisies*. Edwin O'Connor's *The Last Hurrah*, for that matter. All gone, from shelves now gone as well. *Ah, but never ask, save with a tear, / but where are the bestsellers of yesteryear?*

Joseph Bottum

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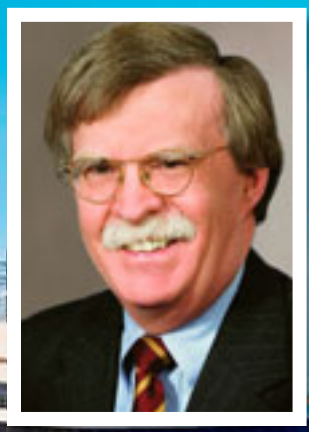

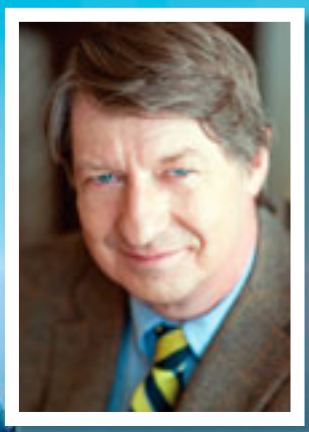

This spring, onboard guests of *The Weekly Standard* will be joined not only by popular faces from the magazine but also by two special guests: American Enterprise Institute Senior Fellow and former Ambassador to the United Nations John Bolton *and* best-selling author (and contributing editor) P.J. O'Rourke. We sail May 12 from Barcelona with stops in Lisbon, Bruges, Cherbourg, London, & more.

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2012: 'An Open Field and a Fair Chance'

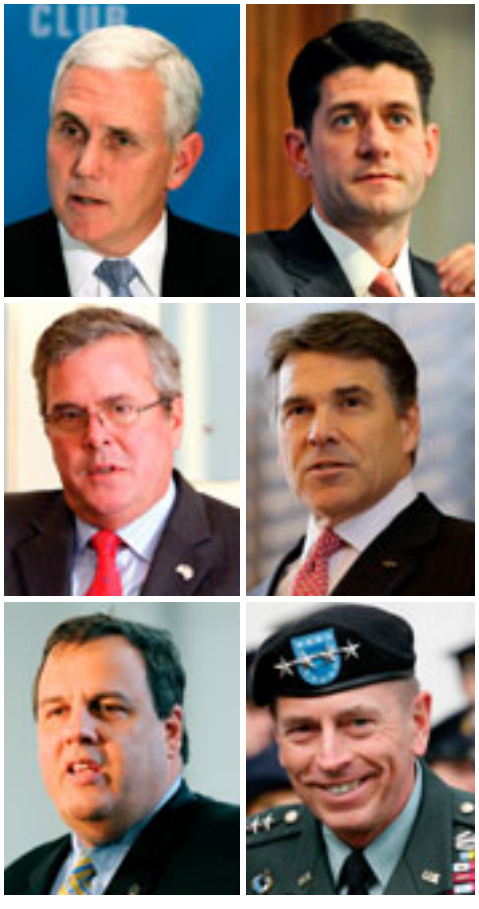
'We need a candidate!" You can't have a conversation with a Republican here in Washington without hearing that plaintive wail. Indeed, as President Obama stages a bit of a comeback, and it seems that 2012 won't be a cakewalk, the plaintive wail has become an imploring request—even a pathetic and desperate cry: "WE NEED A CANDIDATE! NOW!"

No we don't.

Or rather: Of course we do—by the summer of 2012. But not now. In fact, to get a strong candidate next year, what we need this year is lots of candidates competing. What we need in 2011 is what Lincoln called, in a different context, "an open field and a fair chance" for all plausible contestants to demonstrate their "industry, enterprise, and intelligence." We need many candidates—experienced and not so experienced, old and young, congressmen and governors, formers and futures—all making their case, in debates and on the stump, in forums big and small, addressing issues of all sorts and reacting in real time to developments of all kinds.

This vision should be easy for conservatives to embrace. Believers in the free market understand the virtues of competition, of low barriers to entry, and of lots of opportunities for (so to speak) price discovery. We know the superiority of spontaneous order to central planning. But too many GOP bigwigs in Washington who claim to have read Hayek have succumbed to the fatal conceit. They're meeting nonstop trying to determine for us all now, a year before the first primary—with limited information as to relevant candidate skills and almost no knowledge of next year's political environment—who the best presidential candidate would be.

Democratic capitalists admire Schumpeter for explaining the virtues of creative destruction. But too many donors to the party of democratic capitalism are huddling in New York this winter figuring out if there isn't some way to short-circuit this kind of healthy—if messy, to be sure—competition among entrepreneurial candidates testing their skills and their messages. Wealthy individuals who made their fortunes by defying the odds are trying to figure out who's the odds-on favorite to win the GOP nomination so they can cluster behind him. Businessmen who swear by the virtues of competition decry the fact that there will be lots of competition for the GOP nomination. Shouldn't they instead welcome the competition, even encourage it by putting a little venture capital behind several nominees to see how they do? Markets work, and political markets work too. At least, they're better than the alternative.



Mike Pence, Paul Ryan, Jeb Bush, Rick Perry, Chris Christie, and David Petraeus

PENCE, BUSH, PERRY, CHRISTIE, PETRAEUS: AP IMAGES; RYAN: NEWSCOM

Republicans and conservatives, admirers of the Founding Fathers, claim to grasp the merits of a system in which ambition counteracts ambition. Yet they shy away from the spectacle of ambition competing with ambition on the presidential campaign trail. Why not let our prospective leaders indulge their "love of fame, the ruling passion of the noblest minds"? Let them run, let them be tested, let the strongest candidate win.

So let timid souls huddle together, lamenting that there is no longer an establishment to anoint a frontrunner and make him the nominee. Let the rest of us enjoy and encourage a robust competition. And while it would be heresy to suggest that *vox Republicani populi* is in any way *vox dei*—let us say this: We prefer *vox Republicani populi* to *vox Republicani establishmenti*.

So The Weekly Standard urges everyone who suspects he or she would be the right person to defeat and replace Barack Obama to run. And of course we urge activists, donors, and citizens to get involved as they wish—but also to keep an open mind. And remember this: The 2012 GOP nomination would be a terrible thing to waste.

—William Kristol

The Health Care Congress

Something remarkable happened in Washington last week, and too few people in the media and politics appreciate it. The House of Representatives voted to repeal the Patient Protection and Affordable Care Act of 2010 less than a year after Congress passed it into law. What's more, the vote for repeal (245-189) was larger than the vote for passage (219-212). We racked our brains trying to figure out the last time a major piece of legislation was repudiated by a chamber of Congress with such speed and decisiveness. The answer is 1989, when Congress repealed the Medicare Catastrophic Coverage Act it had passed 17 months before, and President George H.W. Bush signed the repeal.

That won't happen this year. But Republicans can't buy into the narrative that the vote for repeal was merely "symbolic." It was anything but. Not only did the vote for repeal demonstrate how far the pendulum has swung, it's also part of a larger campaign against the health care law that's taking place at both the federal and state levels. As the House voted for repeal, six additional states joined Florida's lawsuit challenging Obamacare's constitutionality, bringing the total number of plaintiff states to 26. And that number doesn't include Virginia, where Attorney General Ken Cuccinelli has brought a separate suit.

Let's review some recent political history. In the two years since Obamacare appeared on the horizon, the Tea Party has become a major force in American politics. Republicans have won governor's races in Virginia and New Jersey, a U.S. Senate seat in Massachusetts, and had their best results in congressional elections since 1946.

Now, one chamber of Congress has voted for repeal, more than half the states are challenging the constitutionality of Obamacare's individual health insurance mandate, and the law remains unpopular. Health care spending and premiums continue to rise, and the president's claim that the law allows you to keep your health plan has been proven false. Can somebody remind us why the law's supporters continue to think they have the winning hand?

The truth is that if Republicans in the 112th Congress spent the next two years doing nothing but debating the health care law, beginning to dismantle it, and offering alternatives, they would have real momentum heading into the 2012 election.

The Affordable Care Act is one giant weight on President Obama's back, and he can't shake it off. When it comes to federal spending, regulation, and pro-business rhetoric, Obama has the freedom to move to the center. He can call for spending reductions, order a regulatory review, promote American exports, give speeches before the Chamber of Commerce, and powwow with CEOs. He can install Clintonites in important positions and listen to his inner Dick Morris. Indeed, he's already doing all these things.

What the president can't do is shirk responsibility for a mess of a law that was passed without public support. Which is why Republicans in Congress have a huge opportunity in front of them. They are in a position to force the president constantly to defend the worst aspects of Obamacare. They are in a position to force him to sign bills repealing parts of the Affordable Care Act, such as the provision requiring small businesses to file 1099s whenever they spend more than $600 with a particular vendor.

Obama has already conceded that the central accomplishment of his presidency could be "improved." Signing legislation that removes components from the law, or introduces free-market mechanisms and tort reform into the pre- and post-Obamacare health system, would further weaken the president's position. Every signature would be a reminder that President Obama was wrong in 2009-2010. Every fight would send a message to voters that liberal Democrats do not have a monopoly on health care policy. John Boehner will be remembered as speaker of the health care Congress.

As the fight goes on, though, it's important that Republicans don't get bogged down in budgetary nitty-gritty. The public has a tendency to tune out the conversation whenever it hears the letters "CBO." The fact is that no one actually knows how much Obamacare will cost, for the simple reason that no one knows how many people will join—or be forced to join—the subsidized health insurance exchanges. Chances are, of course, that many more people will sign up for subsidies than the bookkeepers expect. That would balloon the cost of the program and wreck the budget. The way to prevent that from happening is repeal.

How to get there? Focus on what drives opposition to the Affordable Care Act: resistance to federal control. The voters who went to town hall meetings and joined Tea Parties and voted Republican in 2010 do not like the idea of the federal government interfering with their health care arrangements. They don't want to see Medicare cut to pay for a new entitlement. They believe that taxes and regulations originating inside the Beltway hurt the economy and limit individual freedom. They do not want decisions about health care cost and availability to be determined by Kathleen Sebelius and the Department of Health and Human Services. The idea that the federal government could force someone to buy health insurance repulses them.

Attack Obamacare's taxes and mandates, and Democrats will have to play defense. Offer the public common-

sense measures to introduce competition and portability into the health insurance market, and Republicans will reap the political rewards. Let the debate rage over who knows better—the people or Washington, D.C.—and the people will win every time.

—Matthew Continetti

Hu Cares?

For all the pomp and state-dinner circumstance, Hu Jintao's visit to Washington generated little actual news. The Chinese "paramount leader" agreed to buy a few airplanes, agreed to talk a bit about human rights (with Chinese characteristics), and got some good press back home. All that our China hands could say was that the trip was a welcome punctuation to the declining relations of the past year.

That the visit was a nonevent is just as well, for the United States could use a little quiet time to rethink its basic approach to China's rise. The post-Cold War policy of "engagement" has run out of steam. China's mercantilist trade and financial practices prevent even economic engagement from fulfilling its open-markets promise. Nor has engagement made for a more open Chinese politics. Beijing remains repressive. China's expanding middle class is more often aggressively nationalistic than globally cosmopolitan.

What really constrains the prospects for engagement is that China's new wealth is fueling old geopolitical ambitions and new forms of military power. It has long been the assumption of American engagers that, with the collapse of the Soviet Union, Beijing eventually would become a "responsible stakeholder" in the American-led international system that had secured China's rapid economic development. Some even went so far as to argue that the Chinese would be fools to spurn the gift of free security, courtesy of U.S. taxpayers and the U.S. military.

These predictions have been belied by Chinese behavior over the past 15 years. During that time, Beijing's foreign policy has been to raise the costs of sustaining the American-led global order, while making common cause with a who's who of international outcasts from Mahmoud Ahmadinejad to Robert Mugabe to Hugo Chávez.

More revealing still is the pattern of China's military modernization. Diplomacy may be transactional, but force planning—the product of long-term commitments and resource allocation decisions—is the heart of strategy. And for the better part of two decades, the People's Liberation Army has shifted its focus from repelling a Soviet invasion and controlling domestic unrest to the sole problem of defeating U.S. forces in East Asia. This has been a strategic surprise to which no American administration has appropriately responded.

The policy of "engagement" is to blame for this failure. Even to mark the milestones of China's military progress is regarded by Beijing and its apologists as a threat to "the relationship" and an effort to "contain" China. Following tradition, President Obama repeatedly emphasized at his joint news conference with Hu that the United States has no desire to "contain China's rise."

Indeed, the "engagement versus containment" framework imprisons American policy in a false dichotomy. For the fact is that a security strategy based upon military deterrence—i.e., an improved U.S. military posture, revitalized alliances, and strategic partnerships—would not detract from diplomacy, trade, or other forms of exchange with China.

NEWSCOM

Last week's summit was Hu Jintao's swan song. There will be a new paramount leader in less than two years, when Hu is expected to be supplanted by Xi Jinping. When that happens, there should be an American administration ready to articulate a China policy that goes beyond "engagement."

—Thomas Donnelly

In the Dock

Get ready for two years of Obama administration oversight by the House GOP.

BY FRED BARNES

Here's what Republican Fred Upton of Michigan, erstwhile moderate, frequently accused of being a RINO, sometimes faulted for being too friendly to Democrats, said last week to members of the House Energy and Commerce Committee, of which he is the new chairman:

> We are in the middle of the largest fiscal crisis the country has ever faced. The national unemployment rate has topped 9 percent for 20 consecutive months. No one seriously thinks that we can continue on our current path of recklessness. And that path ends right here, right now, in this committee.
>
> This will be *the* austerity committee in the House of Representatives. . . . If you want to spend money on an entitlement, you need to pay for it with a mandatory spending reduction. . . . You may have a great idea for a new program. That's fine. Just tell us how you will pay for it by reducing spending.
>
> The committee will no longer consider bills that authorize spending of "such sums as may be necessary." [With that] we simply cede discretion to the appropriators. Well, no more. . . . Every program the committee authorizes or reauthorizes must have a sunset.
>
> The committee will no longer consider commemorative legislation. We all support motherhood and apple pie and successful collegiate sports teams. I would submit that none of us needs a congressional resolution to prove it. We as members and our staffs have bigger and better things to do.

My, my! That doesn't sound like a mushy moderate speaking, much less a Republican In Name Only. Upton, 57, first elected to the House in 1986, has morphed into a ferocious conservative reformer with his selection as a committee chairman. George Will has called him a "Rust Belt revolutionary." And Upton is not alone among the new Republican committee chairmen in his intense ambition to reverse the policies of President Obama and the Pelosi Congress and end the fiscal profligacy caused by Washington's unrestrained spending and borrowing.

Spencer Bachus of Alabama, mild-mannered and amiable, is tackling the Dodd-Frank Wall Street regulation bill, every page of it, as chairman of the financial services committee. He is targeting—oops, focusing on—the Consumer Financial Protection Bureau, the Volcker Rule, the "resolution authority" of the Federal Deposit Insurance Corporation, the "end user" provision for derivatives—and that's only for starters.

Which leads us to the Republican hearings strategy. It elevates the role of House committees and makes their public hearings the chief vehicle for attracting attention to the wrongheadedness of Obama's policies and—to a lesser extent, I suspect—the virtues of Republican alternatives.

It's not a particularly risky strategy, unless the media decide the hearings are witch hunts or Star Chamber proceedings. But Majority Leader Eric Cantor, the architect of the strategy, insists the hearings and the

GARY LOCKE

Fred Barnes is executive editor of The Weekly Standard.

investigations associated with them will be "very focused and deliberative." And given the hearings scheduled this week, at least, he's right.

Paul Ryan, the budget committee chairman, is bringing in an actuary and health care experts to "score" Obamacare, determine how much it will cost, and challenge the lowball figure that Democrats, by imposing gimmicks and omissions, forced the Congressional Budget Office to come up with.

Upton's committee is taking up the White House review of past regulations, which the president announced in the *Wall Street Journal* last week. Upton wants a single witness: Cass Sunstein, an Obama pal from his University of Chicago days. Sunstein may not want to appear, but as head of the Office of Information and Regulatory Affairs, he's the appropriate official to answer questions about regulatory policy.

In February, Upton plans to look into the impact of Obamacare, with testimony from governors. Then it's on to an examination of the Federal Communications Commission's embrace of "net neutrality," a policy Upton strongly opposes. After that comes a hearing on energy policy, especially on what drives up gasoline prices. And—we're still in February—a hearing on the Environmental Protection Agency's not-so-secret desire to curb greenhouse gases by administrative fiat. Quite an agenda.

There's a thread that runs through everything the committees are doing. Their investigations—Republicans now have subpoena power—and hearings are expected to concentrate on three broad topics: spurring jobs and the economy, cutting spending, and reducing the size of government (meaning Obamacare and regulations).

Cantor and his aides will make sure the committees don't stray. Cantor now meets with the committee chairmen (and chairwoman Ileana Ros-Lehtinen of foreign affairs) at the beginning of each week the House is in session. His policy director, Neil Bradley, meets with committee staff directors. And Brad Dayspring, Cantor's communications director, meets with committee press secretaries.

Republicans also have a broader goal in mind. That's to shape issues in their favor and set the stage for a Republican president to be elected in 2012.

Controlling the House but not the Senate or the White House means Republicans have limited power. They have only two ways, in Cantor's words, "to hold the administration and its activities accountable." One is to block spending sought by Obama. The other is investigations and hearings that embarrass the administration and shame it into backing off irresponsible policies.

A fair question, however, is how diligently the press will cover the hearings. You don't hear reporters talk about how they can't wait to get into a stuffy committee room to cover a hearing. Their coverage of House Republicans so far suggests they'd rather drive wedges between Republicans and the Tea Party, between House and Senate Republicans, and between bold and cautious Republicans.

There are tricks to attracting the media. When I asked Cantor whose congressional hearings had drawn press coverage and thus exerted influence, he mentioned Democrat John Dingell of Michigan, back when he chaired the energy and commerce committee.

Dingell always drew a big media turnout. His trick, at least as I understood it, was to leak the lurid findings of an investigation to a major newspaper just before a hearing on the same subject. Reporters couldn't stay away. Was it the kind of tactic that Republicans shouldn't stoop to? Maybe. But a little cleverness never hurts. ♦

The Decline of the Justice Department

Mukasey's verdict on Holder.

BY JENNIFER RUBIN

Former attorney general Michael Mukasey is not prone to hyperbole. He's a former federal judge, a meticulous lawyer, and, as he proved in succeeding Alberto Gonzales, a skilled administrator who restored morale to a Justice Department demoralized by scandals (real or concocted). He is also obviously nonplussed by the performance of his successor, Attorney General Eric Holder. In a far-ranging interview, he candidly asserts that Holder's conduct in several key respects has been "amazing." That's not meant as a compliment.

Jennifer Rubin writes the Right Turn blog for the Washington Post.

Mukasey, who presided over the trial of the 1993 World Trade Center bombers, is as experienced as any American jurist when it comes to the war on terror. It is therefore significant that he finds Holder's handling of national security matters worrisome. In August 2009, Holder authorized the reinvestigation of CIA operatives who had employed enhanced interrogation techniques on terrorist detainees. It had the feel of a witch hunt: Career prosecutors who investigated the interrogators under the previous administration had concluded there was no basis for a criminal prosecution. A year and a half later, the Holder reinvestigation

is still dragging on. "I have to believe that the effect on people involved in national security is devastating," says Mukasey, "in part because the cases were closed before." Imagine the impact on a CIA operative who is told, "'There is no basis for prosecution.' And then someone shows up and says, 'Not so fast.'"

Mukasey, moreover, finds it "amazing" that Holder "conceded he didn't read the [career] prosecutors' memo" that recommended against prosecution. He remarks ruefully that "in a sense that is comforting" to CIA employees that there was not something troubling in the memo. But, of course, it is small consolation that the nation's chief law enforcement officer doesn't bother to read relevant documents before making a decision with long-term policy implications.

Disarray on matters of national security has been a hallmark of the Holder era. Mukasey is disturbed by the writings and statements of James Cole, who was appointed deputy attorney general by President Obama on December 29, after the Senate went into recess, avoiding a confirmation battle in which those writings would have received scrutiny. Even after Congress passed the Authorization for Use of Military Force Against Terrorists in 2001, Cole insisted that fighting terrorists was a matter of law enforcement—akin to fighting drug dealers and other criminals—rather than national security. Mukasey sees "real problems" with this perspective, though he concedes that Cole's "view seems to be his boss's view and the president's view."

Of course, some of the hostility towards the war on terror at the Justice Department predates Holder's tenure. The department's Office of Professional Responsibility undertook a tendentious investigation of the work done by lawyers John Yoo and Jay Bybee on the legality of enhanced interrogation techniques when the two served in the Office of Legal Counsel during Bush's first term.

Mukasey relates for the first time the extent of the malfeasance. "We got the OPR report on December 23, 2008, when everyone was getting ready to leave town for the Christmas break, at the end of the administration, with a request to comment by January 5 so it could be released by January 12." Mukasey and his deputy Mark Filip prepared a detailed letter enumerating the errors and misstatements in the OPR report, with the assurance that the letter along with the report would go to Congress. "When they sent the report, everything but the letter went up." He says with incredulity, "They said releasing the report to Congress wasn't making it 'public.'" As for the original OPR report, he observes, "My take was that it was a hatchet job. They quoted one guy who wasn't even a lawyer and someone who [had] represented John Walker Lindh [the American captured as an enemy combatant in Afghanistan]. They cited an unpublished opinion." He says succinctly of the OPR report: "It was sloppiness combined with ill will." After more than a year of additional inquest under Holder, Yoo and Bybee were finally cleared of wrongdoing by a career lawyer brought in to redo OPR's work.

Mukasey is also critical of the Obama administration's failure to devise a new legal framework (as the Supreme Court invited Congress and the president to do in the *Boumediene* case) to try unlawful combatants. "Right now we have a binary choice," he says. "There are military commissions or civilian trials." He continues, "We need something to try [war on terror detainees]. It's not that I find indefinite detention offensive," noting that there is ample legal and historic precedent for holding combatants until the end of hostilities. "We never know what the duration of hostilities [will be]. That is a bogus issue. The Germans when they marched into Poland didn't have a sign saying the war would be over in 1945." However, "what is not a bogus issue," he says, is the need for victims to see perpetrators tried and punished.

But while pursuing investigation of CIA operatives, Yoo, and Bybee, Holder's department has yet to get around to devising a legal framework suitable for the prosecution of Islamic terrorists in American custody.

With regard to the New Black Panther party controversy, incoming House Judiciary chairman Lamar Smith has dispatched a letter to Holder demanding answers to questions and documents relating to political appointee Julie Fernandes's instructions to civil rights attorneys not to pursue voter-intimidation cases or enforce provisions of federal law designed to prevent fraud against black defendants. Mukasey is flabbergasted that the attorney general would declare in a *New York Times* interview that in effect "there is nothing to see." Mukasey says, "I can't see how he would bring himself to say such a thing. There are *investigations pending*"—by the Justice Department's inspector general and Office of Professional Responsibility. The case against the New Black Panthers for intimidating voters at a Philadelphia precinct in 2008 was already won when Holder's team ordered the charges dropped; famed civil rights attorney Bartle Bull deemed it "the most blatant form of voter intimidation I've ever seen." Says Mukasey, with a measure of indignation, "It seems to me you don't whitewash such a thing."

This does revive the theme of "politicization," an accusation hurled at the Bush administration before Mukasey's November 2007 arrival

ERIC HOLDER BY GARY LOCKE

at the Justice Department. Mukasey makes a key distinction: "The president runs on policies and has the right to set them. There is a lighter hand for the Justice Department because here there is an obligation to enforce the law." That said, he cautions, there is no place for political interference in specific cases. Under his tenure, he strictly limited White House contact with Justice Department lawyers. "There was no calling from the administration to argue about individual cases."

However, it is precisely this sort of political interference and contravention of career lawyers' work that has become a fixture in Holder's Justice Department. Recalling that the Office of Legal Counsel had found it unconstitutional to extend voting rights to the District of Columbia, Mukasey remarks, "Holder went to the solicitor general" to shop for a contrary view. "That's not the purview of the solicitor general," Mukasey says. But it *is* the way a partisan attorney general evades legal decisions he doesn't like.

Indeed, Holder's civil rights division appears wholly politicized. In addition to the New Black Panthers case, Mukasey cites the recent filing by the Justice Department of a lawsuit against the Berkeley, Illinois, school district alleging that it violated the Civil Rights Act of 1964 by failing to reasonably accommodate the religious practices of a Muslim teacher who wanted to go on the hajj. "This was not a one day thing," he says, referring to the teacher's demand for an extended sojourn in Saudi Arabia.

It is ironic, in retrospect, that the Obama administration two years ago entered office vowing to respect the work of career attorneys at the DOJ, to avoid politicization, and to oversee the impartial administration of justice. The closest we have come to the impartial administration of justice in recent years was under Mukasey's tenure, when he eliminated White House meddling and allowed career attorneys to perform their jobs. No wonder he is dismayed with his successor's performance. ♦

NEWSCOM

Pelosi and the president: She'll no longer be dragging him to the left.

Free at Last

Obama enjoys life after Pelosi.

BY TOD LINDBERG

Maybe we're just more used to changes in control of the House of Representatives than we were in 1994. Bill Clinton seemed to spend months knocked back on his heels after the Democratic defeat that November. But Barack Obama has not exactly been reeling.

If anything, he seems to have found his lost groove. He's getting deals done (on taxes, arms control, gays in the military). He's garnering praise from Republicans, of all people (for the tax deal, for dropping his 2011 withdrawal timetable for Afghanistan, for his repudiation of liberal attempts to pin the attempted assassination of Rep. Gabrielle Giffords on conservative hate speech). And he's evidently winning some support back from the independents who deserted him and his party in November, with an uptick in his job approval ratings.

The conciliatory comeback seems to have defied expectations on both sides of the aisle. Many Republicans, convinced that Obama is a liberal ideologue if not a radical at heart, expected confrontation on a grand scale from now through the 2012 election: Obama would be obdurate in opposing anything Republicans proposed, and vice versa. The clash would turn the next presidential contest into a referendum on whether Republicans were a bunch of do-nothing naysayers or whether Obama was too liberal for the American electorate. Many on the left welcomed the same prospect: an Obama who would stand up and fight on principle—for their principles.

Republicans clearly learned something from the experience of 1995-96, when Bill Clinton staged his greatest comeback at their expense,

Tod Lindberg, a research fellow at the Hoover Institution and editor of Policy Review, *is a contributing editor to* The Weekly Standard.

and from observing their opponents in 2007-2010: If you engage in the politics of triumphalism, you will end up biting your own neck. Nevertheless, the last thing they expected was a conciliatory Obama, and in fact many of them couldn't believe that's what greeted them in the lame-duck session. When Obama quickly acceded to GOP demands that the Bush-era income tax rates not increase even for the highest earners, and agreed to a partial payroll-tax holiday to boot, some conservatives thought he must be pulling a fast one, tricking Republicans into agreeing to a second massive "stimulus." It was an argument the White House tried without success to deploy to calm the furor among liberal Democrats, who understood Obama's move as a cave to his opponents, pure and simple.

So is Obama now eagerly selling out his party base and cutting deals with Republicans to try to keep himself viable with an electorate that has taken a sharp right turn? Or is he trying to reinvent himself as a post-partisan voice between and above political extremes on the right and left? Or is his political strategy to shift his emphasis from big-ticket policy moves like health care reform and cap and trade to an incrementalist approach of working for small changes in the right (that is, left) direction? Or is he simply the smartest man alive, luring his opponents into some ultimate trap?

Underlying such questions is the assumption that the best place to start the analysis is with the political grand strategy of the White House. That's probably not a very good assumption. On the contrary, political strategy, if it's going to be any good, depends first on an accurate assessment of where political power lies. There are certain basic facts that have a huge impact on outcomes.

Everybody knows that John Boehner is the new speaker of the House. This is supposed to make life more difficult for President Obama. Somewhat underappreciated, however, is the fact that Nancy Pelosi is no longer speaker of the House, and that in certain key respects this has made life much easier for Obama.

This has little to do with the personalities of Pelosi and Obama, and everything to do with the architecture of power in the American political system. Simply put, the interests of the president and the House speaker are not the same even if they come from the same party. And it is extremely difficult for a party to be simultaneously a "presidential" party organized around occupancy of the White House and a "congressional" party organized around a House majority.

To be elected president, you either work from your party base to the center in order to reach the magical 50 percent-plus-one voter, or you can risk ditching part of your base in order to broaden your appeal. In 2008, Obama pulled off the neat trick of keeping his base intact while reaching well past the median voter.

To be elected House speaker, on the other hand, you have to appeal above all to the interests of the congressional majority. It therefore goes pretty much without saying that the leader of Democrats in the House is going to be substantially more liberal than any Democratic president has advertised himself while campaigning.

Nancy Pelosi was an effective speaker, in the sense that she got things done and retained the trust of her caucus—sufficiently so that they were unwilling to ditch her even after the party's epic loss in November. Pelosi as speaker was a hugely powerful figure in shaping outcomes in Washington; as minority leader, she simply is not.

Pelosi will still maintain some of the trappings of her former august station. She will still get invited to all the good meetings at the White House. She can be helpful to Obama by carrying his message to House Democrats and by refraining from opposing the White House despite her ideological leanings; an open rift between the minority leader and the White House makes for very ugly intra-party politics. But in 2009-2010, if Obama wanted to get anything done on Capitol Hill, he needed Pelosi, and he had the choice of either respecting the wishes of her caucus, or of provoking a confrontation that would split the party. Obama chose to accommodate.

A president makes such a choice in the knowledge that the Senate exerts a moderating influence on the passions of the House. Bills that pass the House en route to the Senate set a partisan benchmark; they rarely set the major terms of the final outcome. Unfortunately, the White House tends to end up associated with the more extreme partisan views of the House majority.

Accommodation with Pelosi pulled Obama away from the center he once commanded. Obama paid a price for this in the sharp drop in his approval ratings and then in his party's loss of control of the House.

Did the Democrats "overreach"? Well, what goes by the name of "overreaching" is mostly the logic of the political process at work, albeit accompanied by extravagant rhetoric as well as after-the-fact rationalization to make the outcome appear to result from an overarching "political strategy." It is, in fact, difficult *not* to overreach in such circumstances. It requires calculation, political will, and a stomach for intra-party conflict.

The political logic has changed. Republican control of the House not only liberates Obama from the leftward tug that was costing him dearly. It also pushes outcomes in the direction he needs to move in order to regain support in the center.

Now it looks like the White House is gearing up for an emphasis on deficit reduction. That makes sense in the current political environment, not so much in order to placate the Tea Party but because Obama can find common ground with House Republicans on the issue to the extent he is willing to tolerate spending cuts. House Democrats, meanwhile, will stew in the juices of powerlessness.

Obama owes liberal Democrats one large commitment: preventing the repeal of health care reform, the hill for which the majority sacrificed itself. He has the power to do exactly that through 2013. And now that Nancy Pelosi is sidelined, maybe until 2017. ♦

Diane Black celebrates her promotion from Tennessee state senate to U.S. Congress.

DIPTI VAIDYA / THE TENNESSEAN

Another Killer B in the House

Tennessee's Diane Black joins her colleague Marsha Blackburn in Congress. BY MICHAEL WARREN

In Nashville, it's a familiar scene. Anti-tax protesters take to the streets, waving American flags and carrying tea bags. Elected officials talk about the need to fight the government's "spending problem," and a local radio host calls protesters "the sons and daughters of liberty."

It may sound like a Tea Party in Music City, but this rally against a proposed state income tax took place in 2001. Diane Black, a registered nurse, was there.

"That was what I considered the Tea Party before the Tea Party became vogue," says Black, newly elected to represent Tennessee's Sixth District in Congress. Now 60 years old, Black served as a state senator from 2005 to 2010 and was a state representative when she and other legislators succeeded in preventing the income tax from becoming law in the early 2000s.

"Just as it took some pretty large measures like [the threat of] a state income tax to wake the people up in the state of Tennessee," Black says, "I think that the American public has been awakened by the knowledge of this country's direction."

Blackburn, Black, and state representative Mae Beavers—the 'Killer B's'—were the most vocal elected officials to oppose the tax plan.

Tennessee's wake-up call began in 1998 when Republican governor Don Sundquist, fresh off a landslide reelection and concerned about the cost of programs like Medicaid, risked his political capital on the income tax proposal. Amid the public outcry and opposition from within his own party, the plan failed, with disastrous results for Sundquist's political fortunes.

Black remembers being unpersuaded by the governor. "You know, there were a lot of arguments that the state of Tennessee just couldn't make it without having this income tax," she said. "If you look at Tennessee to see how we recovered [in 2002] as compared to some of these other states that were so heavily taxed, you'll see that we were able to come out of that economic downturn a whole lot sooner and better than those states."

Republican officeholders who joined to oppose Sundquist's plan, meanwhile, saw their stars rise. One was Black's current House colleague Marsha Blackburn, a state senator during the income tax battle who was elected to Congress in 2002. Blackburn, Black, and state representative Mae Beavers (now a state senator) formed a Republican triumvirate known as the "Killer B's," the most vocal elected officials to oppose the tax plan. The Killer B's marched and protested and made speeches alongside citizens, giving institutional heft to what was essentially a populist uprising.

"Folks said, 'Well, what do you think about us coming down and honking our horns?'" Black recalls. "I said, 'I love it! Come down! Let the elected officials know what you're thinking.'"

The ascendancy of the Killer B's in Tennessee politics presaged the convergence in the state of Republicans and conservative voters. Until last year, voters were still electing conservative Democrats like Blue Dogs Lincoln Davis and John Tanner; the latter declined to run in 2010 and was replaced by a Republican, while the former lost to his GOP challenger by 18 points.

Black's district had sent moderate Democrat Bart Gordon to Washington for 13 consecutive terms (and Al Gore before that) when Gordon declined to run for reelection last year. Over the years, Gordon's constituents had

Michael Warren is an editorial assistant at THE WEEKLY STANDARD.

become increasingly Republican, voting for the GOP in the last four presidential elections. The district, which curves north to south on the east side of Nashville, includes 15 counties, many of which lie in the rural heart of what was considered Democratic Middle Tennessee.

No longer. Black won all 15 counties in 2010, beating her Democratic opponent by nearly 38 percentage points. That sort of swing should have been big news, but the race went largely unnoticed by the national press. Black says her constituents' vote just makes sense.

"I think that the people's values and my values have matched," Black says.

It's a trend discernible in conservative districts across the country, says Larry Sabato of the University of Virginia: From Georgia to Idaho, conservative voters are trading conservative Democrats for Republicans. "We should change the letters from 'D' and 'R' to 'L' and 'C'," Sabato says. "We have a liberal party and a conservative party, two parties that are so distinct ideologically that voters know what they're getting."

In the Sixth District of Tennessee (still one of nine states without a personal income tax), voters knew they were getting more than a Republican. In the state general assembly, Black gained a reputation as a quick study and a wonk, notably during her service on the finance, ways, and means committee in the senate. "Looking at budgets, looking at tax issues, all of that came through that committee," Black said.

"I have told Diane for years that she should come to Congress," says her friend Marsha Blackburn. "Diane understands how to get things accomplished."

Black tells me she won because people knew her record. "The reason why I was able to carry all those counties," she says, "is that they had an opportunity to see me and knew what I had done in the past."

And if Diane Black's past is any indication of her future, it's unlikely Congress will be passing dubious tax or spending hikes without a fight. ♦

About Those Death Panels . . .

The very real threat of government health care rationing.

BY WESLEY J. SMITH

When Sarah Palin warned that Obamacare could lead to medical rationing and "death panels," supporters were outraged. Alarmism! they roared. A lie! Right-wing propaganda! Alas for supporters of the Patient Protection and Affordable Care Act, Palin's provocative sound bite was at least partly grounded in reality—which is why the term entered the political lexicon.

Now, however, some are seeking to wield the term against conservatives. Case in point: The Arizona legislature recently cut its Medicaid budget because the state is in dire financial straits—a move approved by the Obama administration. When the cuts led to canceling Medicaid coverage for organ transplant surgeries, and a potential organ recipient died, death panel claims suddenly became all the fashion. For example, CBS's *HealthWatch* opined:

> There is a certain irony here. During last year's federal battle over President Obama's health care legislation, some Republicans claimed his program promoted "death panels" which they seemed to suggest would involve government bureaucrats deciding who lives and who dies. The health care bill did include language which paid doctors to offer end-of-life counseling. That was eventually removed. Facing a tough budget situation, however, Arizona has instituted what critics say is much closer to these so-called "death panels" than anything that ever appeared in the federal government's health care legislation.

Wesley J. Smith is a senior fellow at the Discovery Institute's Center on Human Exceptionalism.

Similarly, *New York Times* liberal columnist Gail Collins raged:

> Republicans kept ranting about how "Obamacare" would put the federal government between you and your doctor and try to save money by prohibiting said doctor from using the best treatments and procedures. All this came to mind when I was talking to Flor Felix, whose husband, Francisco, a 32-year-old truck driver with four kids, was denied a liver transplant because the Arizona Legislature had yanked funds for it out of a state Medicaid program.

But these and other similar columns and editorials miss the point: The Arizona Medicaid story was not grounded in conservative heartlessness or hypocrisy. It resulted from a *single-payer* health care system crashing into a budgetary brick wall. The real lesson here is that "single payer" and "death panels" go together like "See's" and "candy."

Oregon, a decidedly liberal state, provides an unequivocal example. In 1993, the Clinton administration gave permission to the Oregon Health Plan, the state's Medicaid program, to introduce rationing. The system involves a treatment schedule that lists 649 potentially covered procedures. The state pegs the number of procedures the state will cover to the available funds. Patients requiring procedures above the cutoff line are out of luck.

As of October 2010, only the first 502 treatments were covered. But even that low number doesn't tell the full story of rationing in Oregon. The Oregon Health Plan also rations covered procedures under certain circumstances. Chemotherapy, for instance, is not provided if it is deemed to have a

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5 percent or less chance of extending the patient's life for five years, meaning that a patient whose life might be extended a year or two with chemo may not receive it.

Worse, even though it is not a formally ranked procedure, assisted suicide is covered under state law. Thus, when two recurrent cancer patients were rationed out of receiving potentially life-extending chemotherapy in 2008, an administrator wrote a letter assuring them that the state *would* pay for the costs associated with their assisted suicides. Talk about a death panel!

As state Medicaid budgets become increasingly strained, some within the medical establishment are promoting formal rationing systems. Thus, the Wisconsin Medical Society recently argued that the state's Medical Assistance program should be "allocated" and "prioritized" by creating a "ranked order" of coverage. "The goal is health," the association stated, "rather than health services or health insurance," a potentially alarming prospect for those with serious—and expensive to treat—illnesses and disabilities.

Looking abroad, one should note that rationing is routine in single-payer health systems. Canada's Medicare allocates services primarily by time, forcing patients to wait weeks, or even months, to receive urgent diagnostic screenings and surgeries. A recent study by the free-market Fraser Institute found that the median wait for surgeries in Canada has grown to 18.2 weeks—141 percent longer than in 1993.

Britain's National Health Service (NHS) best illustrates the connection between stringent health care rationing and single-payer funding. Until very recently, the National Institute for Clinical and Health Excellence (NICE) determined what procedures—and which patients—would be covered by the NHS. (The new government in Britain is replacing NICE rationing with decisions made by general practitioners, creating the potential for conflicts of interest between physicians and their patients.)

In its heyday, NICE followed a complicated quality-of-life/cost-benefit formula to ration care, using a unit of measurement called the "quality adjusted life year," or QALY. Briefly, the process of determining whether a given treatment would be covered involved determining how much time a procedure might give a patient, then subtracting for low quality of life. The resulting QALY estimate was then analyzed to determine whether the predicted benefit was worth the projected cost. Some Obamacare supporters—including the *New England Journal of Medicine*—want the United States to adopt a QALY system, raising the prospect of bringing the worst aspects of single-payer rationing to federally controlled private health insurance markets.

Our current private system certainly has serious problems that need addressing. But no private insurance company would dare unilaterally deny a previously qualified patient life-saving surgery, as Arizona did. Only government can get away with something like that.

Indeed, if insurance companies fail to pay for covered care, they risk juries' awarding tens of millions in punitive damages against them in "bad faith" lawsuits—and there are plenty of trial lawyers eager to bring such cases. At the same time, government regulators of private systems are much more likely to side with patients than insurance companies, a benefit of the doubt likely to be reversed in single-payer or federally bureaucratized plans. Potential loss of market share serves to keep private carriers on the up and up—particularly in markets with robust competition, which is why expanding health insurance markets is an urgent agenda item for those seeking to replace Obamacare.

As the nation continues to debate health care reform, we should keep in mind that many Obamacare supporters see the Affordable Care Act as merely a first step on the road to a national single-payer plan. Those who oppose such a centralized system should stress that avoiding death-panel medicine in a time of strained budgets requires that we eschew both single-payer financing and federalized bureaucratic control. They should also promote cost-containment innovations, such as price competition at the source of services, and reforms that enable hard-to-insure people and workers with low wages to gain broader access to coverage or inexpensive care. ♦

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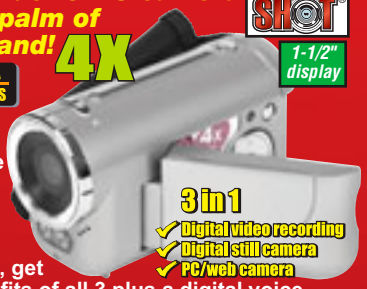

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Another Triumph for the Greens

To go with toilets that don't flush and light bulbs that don't light, we now have dishwashers that don't wash.

By Jonathan V. Last

My dishwasher is the Bosch SHE58C—an amazing machine. Stainless-steel front, concealed controls, six cycles to choose from. The manual runs a brisk 63 pages. When we got the Bosch, I read it cover to cover, highlighting and annotating as I went, marking the manufacturer's preferred method of arranging dishes and the proper way to sit utensils in the dedicated wash basket. I took some pains to relay this information to my wife, though it did not please her as much as I imagined it would.

At first, my Bosch was wonderful. Quiet as a wind's whisper, the dishes were so clean you could eat off of them. But a few months ago I started noticing problems. A fork would come out with food between the tines; a glass would have bits of grime stuck to the bottom. Surely this was a fluke? Alas, no. My dishwasher no longer shines. What went wrong?

It so happens that in the last six months, a lot of people have suddenly discovered their dishwashers don't work as well as they used to. The problem, though, isn't the dishwashers. It's the soap. Last July, acceding to pressure from environmentalists, America's dishwasher detergent manufacturers decided to change their formulas. And the new detergents stink.

One of the key ingredients in dish detergent is (or was) phosphorus. Phosphorus is a sociable element, bonding easily and well with others. In detergent, it strips food and grease off dirty dishes and breaks down calcium-based stains. It also keeps the dirt suspended in water, so it can't reattach to dishes. Best of all, it prevents the washed-away grime and minerals from gumming up the inner-workings of your dishwasher. Traditionally, phosphorus was loaded into dish detergent in the form of phosphates, which are compounds of phosphorus bonded to oxygen. (PO_4 if you're keeping score at home.) Prior to last July, most detergents were around 8 percent elemental phosphorus. Now they're less than 0.5 percent phosphorus.

The result is detergents that don't work very well. There have been a handful of stories in the media about consumer complaints. The *New York Times* noted that on the review section of the website for Cascade—Procter & Gamble's market-leading brand—ratings plummeted after the switch, with only 11 percent of consumers saying they would recommend the product. One woman in Florida told National Public Radio that she called Procter & Gamble to complain about how its detergent no longer worked. The customer rep told her to consider handwashing the dishes instead.

Some NPR commenters agreed. "Like so many others, I had disassembled my dishwasher, run multiple empty 'cleaning cycles' using all kinds of various chemical treatments, all trying to get my dishwasher 'fixed,'" said one. "We assumed that something was wrong with the machine, that it was limed up, and we tried vinegar and other remedies with limited success," wrote another. "We do wash some dishes by hand now, using more hot water than before, and also have simply lowered our standards for what constitutes 'clean.'" Another commenter complained: "I live in AZ and had the same thing happen last year when it was introduced out here. I thought it was a reaction between the 'Green' soap and the hard water. I wrote to the company and they sent me about $30 in coupons—for other items and for their non-green soap. I dumped the 3 unopened bottles plus the one I was using."

The detergents were so problematic that they caused environmental delinquency even among NPR listeners. One disappointed commenter rationalized his backsliding:

> We first heard about the new phosphate-free detergent formulations almost a year ago. Wanting to do the Right Thing we rushed out and bought some and immediately began using it. The results, although not as bad as reported by some, were still pretty underwhelming. Our dishes

Jonathan V. Last is a senior writer at The Weekly Standard.

and glassware were covered by a gritty film and so was the inside of the dishwasher. We are in Southern California and have very hard water. Adding vinegar to the rinse cycle helped *some* but still we found excessive buildup on our dishes. Disgusted with the new detergent, we decided to go back to something with phosphate. We were not able to find phosphate detergent at the supermarket, but some local discount stores sell supplies that are apparently remaindered by the manufacturers. We bought six boxes of old Cascade with phosphate—about a year's supply. We figured someone would buy it—might as well be us.

When Consumer Reports did laboratory testing on the new nil-phosphate detergents, they concluded that none of them "equaled the excellent (but now discontinued) product that topped our Ratings in August 2009."

Grace Segrist, of Mumma's Appliances in central Pennsylvania, explains that for the last five years, dishwasher technology has been walking a tightrope between efficiency and performance and the switch to phosphate-free detergents finally pushed many consumers over the edge. "The old dishwashers used 16 to 18 gallons of water during a wash cycle," Segrist explains, "and used hotter water, too." Five years ago Energy Star units arrived on the scene that use only 6 to 8 gallons of lower-temperature water. Between those changes and the new detergents, Segrist estimates that about half her customers now call in to complain about the quality of the wash. Adding to the problem is that unlike when Coca-Cola made a big to-do of switching formulas in 1985, the new dish detergents were slipped onto shelves under cover of night. "People didn't have a huge knowledge base on how phosphate-free would affect their dishwashers," she says, "so people didn't know what the problem was."

So why take out the phosphates in the first place? The environment, of course. When phosphorus gets into fresh water, it acts as a fertilizer for algae. When the bumper crop of algae later dies, its decomposition takes up oxygen in the water. And reduced levels of dissolved oxygen are harmful to fish.

But the industrial giants who manufacture dish detergent didn't decide to reduce phosphate levels on their own. They were compelled. There's nothing new about that. Governments routinely force both businesses and consumers to make trade-offs they wouldn't otherwise make. For instance, by 2014, you'll no longer be able to buy traditional, functional, cheap, incandescent light bulbs—because the government believes that compact-fluorescent light bulbs are better. What's interesting about the case of the lousy dishwasher detergent is that the new formulas *aren't* the result of a crushing federal mandate. Rather, the entire nation's dish detergent supply was changed because two politicians in Spokane, Washington, wanted phosphates banned. And now the rest of America is living with the consequences.

Running through the center of the dish detergent story is the Spokane River. Spokane County sits on the eastern edge of Washington state, hard on the Idaho border. The county seat is the city of Spokane, through which the Spokane River courses. One hundred and eleven miles long, the Spokane flows out of Idaho's Lake Coeur d'Alene, 30 miles to the east. It snakes westward along the I-90 corridor until it cuts through the heart of downtown Spokane—giving the city its glorious metropolitan waterfall—before turning north and eventually joining the Columbia River at Lake Roosevelt.

Before 1958, raw sewage from the towns along the Spokane went straight into the water. With mines and some heavy industry, this made for a messy river. So in 1958, the city built a water-treatment plant, which removed 60 percent of suspended solids from the waste and treated the water with chlorine before pumping it back into the river. This helped somewhat, but the Spokane was still less than pristine. In 1972 Congress passed the federal Clean Water Act, which stipulated that bodies of water such as the Spokane should be "fishable and swimmable" by 1983. It wasn't.

A large part of the Spokane's problems were the result of phosphorus, which entered the river from a number of

sources. There were the "point-sources"—meaning large local operations, such as the water-treatment plant, the Kaiser Aluminum works in nearby Trentwood, and the Inland Empire Paper plant. And then there were the "non-point sources," run-off from lawn and agricultural fertilizers and animal waste (which contain phosphorus), leaking septic systems, and materials washed into the sewer system, such as the detergents used by automatic dishwashers.

In 1977 the Spokane suffered a particularly bad series of algae blooms, which were followed by major fish kills. Residents filed a lawsuit against the city, which in turn agreed to remove 85 percent of phosphorus from the water leaving the treatment plant. But the fixes were slow in coming. One of the Clean Water Act's requirements was that states establish models for how much pollution its waterways can tolerate. Such mapping involves establishing a Total Maximum Daily Load (TMDL) for each type of pollutant entering a given body of water and then allocating limits to which local businesses and governments must adhere. Washington state did not begin mapping its water until 1998.

In 2000, Washington state's Department of Ecology finally got around to creating a computer model for the Spokane River. They subcontracted the work to Tom Cole, an Army Corps of Engineers consultant living in Mississippi. Cole's job was to: (1) determine what the levels of dissolved oxygen in the Spokane actually were—no easy task, since levels vary greatly by location; (2) figure out what the levels should be in nature; and (3) work backward to calculate how much phosphorus the river can handle while still keeping dissolved oxygen levels within a range determined to be acceptable under the Clean Water Act. The entire exercise was as much computer-assisted speculation as actual science. But even if the model of the Spokane's TMDL was somewhat academic, its consequences were not.

Spokane has a single water-treatment plant to handle both the city and the surrounding county. As of 2001, the plant handled 40 million gallons of wastewater per day. But because of growth, demand for the area was projected to rise to 60 million gallons per day by 2020. To meet this demand, the county wanted to build another treatment facility.

In 2003, the county completed its study for a new water-treatment plant, culminating in a plan to build a $73.4 million facility. The state Department of Ecology agreed to the scheme and indicated they would grant the requisite permits. But a few months later, Ecology changed its mind. After being threatened by a lawsuit from the Sierra Club, the department concluded that building the new plant would be a violation of the Clean Water Act. It turns out that the EPA considered the Spokane an "impaired" waterway. This may sound drastic, but the EPA found 600 bodies of water to be impaired in Washington state alone. And the EPA would not allow construction of any new plant until a TMDL plan was put in place.

Thus began Spokane's mania for phosphorus reduction. Because the county was running out of sewer capacity, it faced two choices: (1) a moratorium on all building once its water-treatment facility's capacity was reached; or (2) finding a way to mollify the EPA so it could build the new plant.

The issue came down to trade-offs. Which environmental value matters most: reduction of energy consumption, conservation of water, or elimination of phosphorus?

The ensuing negotiations took years and illustrate some of the stranger aspects of modern environmentalism. In 2004 it was determined that an average of 229 pounds of phosphorus went into the river each day. The city of Spokane went to work spending $125 million to upgrade its existing treatment plant in an effort to lower phosphorus emissions. Partly because of these improvements, by 2006 the total phosphorus discharge into the Spokane was down to 195 pounds per day. The new proposed water-treatment plant promised to filter out 99 percent of incoming phosphorus and emit only 35 pounds per day. The Department of Ecology wanted the amount of phosphorus put into the river cut to 5 pounds per day. Total.

Jim Correll, of CH2M Hill, the engineering firm hired to build the new plant, explained in 2006 that the state's requirement was not scientifically possible. "The technology does not yet exist to do anything like what we expect the DOE to require," he told the Spokane *Journal of Business*. To achieve the limits Ecology officials wanted, phosphorus emissions would have to be under 10 micrograms per liter. This was achievable only in a lab and, even then, only sometimes. Correll explained, "You can get below 10 micrograms per liter, but you can't stay there 24 hours a day, seven days a week. And the process would be horrifically expensive."

The good news was that the Department of Ecology understood that it was asking the impossible: It provided a 20-year window to achieve the new standard and allowed that after the first 10 years the requirement could be revised if no technology had arisen to satisfy the government's fiat. As the local *Spokesman-Review* reported, "Dave Peeler, the Ecology Department's water quality program manager, said even though the goals are listed in the report, the department understands that current technology may not allow wastewater dischargers to reach them."

But impossible didn't come cheap. The city of Spokane upped its own commitment to filtering phosphorus to a staggering $400 million over 12 years. (The city's entire 2006 budget was $508.8 million.) The price tag on the county's proposed water-treatment plant kept inching upwards from the original $73.4 million, finally hitting $167 million. (The plant is under construction now and set to begin operation in 2012.) Local businesses pitched in, too. Despite claiming that the phosphorus-reduction plan was "a threat to our continued existence as a viable business," Inland Empire Paper dedicated $19 million to reduce their output in an effort to satisfy the TMDL. Noting the "unattainable" standard, Doug Krapas, the company's environmental officer, explained, "We have no problem putting in the best technology we can find, but it just is not there."

It was in the midst of Spokane's phosphorus-reduction mania that two politicians got the idea to ban dishwasher detergents containing phosphates. In April 2005, one of Spokane's state representatives, Democrat Timm Ormsby, proposed a bill requiring that any dish detergent sold or distributed in the state contain less than 0.5 percent phosphorus. At the time, Ormsby didn't think the bill had much of a chance. "I thought we were up against a pretty steep challenge," he says, "given that other states had tried and failed." The bill sat stewing until, a few months later, Spokane County commissioner Todd Mielke, a Republican, proposed a phosphate-detergent ban for the county. That fall, Mielke held public meetings to try to raise support for a ban. Mielke said, "We're to the point that the technology [in sewage treatment plants] will get us 95 percent there. We have to really start to challenge ourselves to how we can come up with that last 5 percent."

During the public meetings, the Soap and Detergent Association (today the American Cleaning Institute) pushed back. A representative from Procter & Gamble explained to the people of Spokane that the company had tried selling phosphate-free detergents in Arizona and Europe in the 1990s. It was a debacle. Product complaints increased by 600 percent, consumers drove across state lines to get the original formula, and the company took losses of $300 million on the effort.

What's more, it wasn't clear how environmentally friendly phosphate-free detergents would be on balance. Because they're less robust, they often cause people to wash dishes by hand, wasting water. (Given the efficiency of modern dishwashers, handwashing tends to use far more water.) Or people might run the dishwasher twice, wasting water and electricity. It was the phosphorus in detergents, after all, that allowed modern dishwashers to function well using smaller amounts of cooler water. In other words, the issue came down to trade-offs. Which environmental value matters most: reduction of energy consumption, conservation of water, or elimination of phosphorus?

Different people and different communities might well choose different trade-offs. And even if you did prioritize phosphorus reduction, no one knew for certain how much dishwasher detergent actually contributed to the problem. Advocates of the ban claimed—without hard evidence—that 15 percent to 20 percent of all the phosphorus entering Spokane's water-treatment plant came from dishwashers. But a 2003 study done in Minnesota concluded that only 1.9 percent of the phosphorus there was the byproduct of household dish detergents.

To their credit, most of the folks pushing the detergent ban made clear that getting rid of phosphates in detergent wasn't going to fix the problem. "Anything we can do is good," said Jani Gilbert, a spokeswoman for the Department of Ecology, "but I also want people to understand it's not going to solve the river's problem." Rick Eichstaedt, a lawyer representing the Sierra Club in talks with the state and the EPA, admitted that "from a Spokane River cleanup perspective, it's not going to solve the problem, and in fact, it's not the major source of the problem."

Ormsby and Mielke were working on parallel tracks: Ormsby searching for Democratic support in the house for a statewide ban; Mielke looking for Republican support on the ground for a local ban. It was only a matter of time before the two men found each other. And when they did, the idea became a freight train.

Mielke, who served for five years in the state legislature before becoming a corporate lobbyist, was widely respected by Washington Republicans. When he joined forces with Ormsby, support for the phosphate ban took off in the house. It passed by a vote of 78 to 19 with such strong bipartisan support that both the speaker and the minority leader voted for it. The legislative strength of the bill surprised Lisa Brown, the Democratic majority leader in the state senate, who quickly became engaged. She knew a winner when she saw one. And it didn't hurt that she, too, hailed from Spokane. With Brown muscling it along, the bill passed in the senate just two weeks later, 41 to 7.

Four weeks after that, on March 27, 2006, Governor Chris Gregoire signed the ban into law. The new law made it illegal to sell or distribute traditional dishwasher detergents in Spokane and two other counties beginning in 2008, and in the rest of Washington state beginning in 2010. At the signing ceremony, Gregoire acknowledged that the ban might seem like overkill to outsiders. "Some people think this is a minor issue," she said, "unless you live in Spokane."

Ormsby never realized that what might be good for Spokane and Washington state was about to become the rule for the whole country. "I didn't imagine that it was going to catch on like this," he says. "It was gratifying to see that

it had national implications. But to be honest, I never imagined it would turn out this way."

With the genie out of the bottle in Washington state, environmental activists in other states began lining up to pass their own bans. By 2010, 15 other states had passed bans, but that turned out to be mere environmental showmanship. Because before the ink was even dry on the Washington law, the detergent manufacturers quietly threw in the towel. Instead of manufacturing two sets of product—one for Washington state and another for the rest of America—the industry giants agreed among themselves to move to phosphate-free detergents nationwide by July 2010. "We recognize that the train has stopped. We can't fight this anymore in the United States," said Jan Wengler, the director of government affairs for Reckitt Benckiser, the company that makes Finish and Electrasol.

And so it came to pass. In 2008, there was a brief spasm of outrage when Spokane took up the ban. There were newspaper stories about Spokane housewives driving across the Idaho border to buy detergents that actually worked. The green lobby tried to calm the populace. Representative Ormsby assured the public that the new phosphate-free detergents worked just as well as the old ones. "I'm not an automatic-dishwasher owner," he said, championing the new detergents. "I'm a handwasher, but I know from doing an unscientific poll among family members, they have no complaints." He also explained that the ban helped demonstrate that Washingtonians had "an enlightened view of what goes down the drain."

Jacob McCann, president of the pro-ban Washington Lake Protection Association, told the local papers that his group was having difficulty getting consumers to be more enlightened. He said that WLPA members had taken to stalking the aisles of grocery stores and pushing the new detergents face-to-face. "We try to talk to people in the soap aisle," McCann said, "and give them a little push to try the phosphate-free detergents."

Idaho's *Lewiston Morning Tribune* ran the somber headline "Officials tout low-phosphate soap: Washington residents urged to make extra effort." Confronted with widespread consumer complaints, the director of Washington's Department of Ecology, Jay Manning, could only say, "We hear you." The *Morning Tribune* went on:

> The agency acknowledged that some people may be getting poor performance from phosphate-free detergents because Spokane water is very hard, thanks to lots of minerals that cause it to be resistant to soap. Residents were urged to make a little extra effort to benefit the environment. "While manufacturers are working to increase the quality and effectiveness of phosphate-free detergents on the market, we want to thank those Spokane-area residents who are complying with the new law and going the extra mile to protect the Spokane River from algae blooms and fish kills," Manning said.

The forces of environmentalism didn't flinch. "Probably, people will store up on the no-no detergents before they come off the shelves," the Department of Ecology's Jani Gilbert noted serenely. "That's okay, because sometime soon they will run out [of the old detergents] and need to buy the detergents that protect the environment."

Which is exactly what has been happening across the country since last July, when the last box of phosphate-full detergent was sold somewhere out in the great American heartland.

Some government-imposed bans are easier to get around than others. For instance, if you want a toilet with a 3.5 gallon flush tank, as opposed to the American-mandated 1.6 gallon tank, you can drive to a Canadian hardware store on your next vacation, or find a friend in the hardware salvage business. The government says that you can't have a showerhead with more than 2.5 gallons per minute of flow—but you can pull the shower head's restrictor valve or, if you're creative, put multiple shower heads on the same water line. And before the government outlaws incandescent bulbs in a few years you'll be able to stock at least a 10-year supply without much effort or trouble. But good home dishwasher detergent is now banished from all of North America. Unless you're willing to conduct home chemistry experiments that involve titrating certain industrial-grade cleansers into your dishwasher soap, the experience of high-efficiency, low-labor, automated, hassle-free dishwashing is something you'll be able to reminisce about with your grandkids as you scrape the plates before putting them into machines that don't quite work they way they used to.

The ratchet will keep turning. The anti-phosphorus lobby began by agitating against phosphates in laundry detergent. In the early 1990s they were banned, though an exception was made for dish detergents. Now phosphates are banned in dish detergents, too, though these bans make an exception for commercial dish detergents, which still contain phosphates. Surely they are next in line for improvement. And after that? Last January the Washington state legislature took up a proposal to ban phosphates from residential lawn fertilizers. It passed in the senate, but stalled in the house. The bill, which would have required neighbors to inform on one another, was sponsored by the Democratic majority leader, Lisa Brown. We probably have not have heard the last of it.

Spokane places a particularly high value on phosphorus reduction and, as Governor Gregoire observed, the ban might make sense there. But benefits never

come without costs. Aside from the very real costs in time and aggravation imposed on millions of Americans who must adapt their dishwashing techniques even in parts of the country without a phosphate runoff problem, there are environmental costs to the ban. To people living in places where water is more scarce—say, Nevada or California—the ban might make less sense. Not that it matters anymore. We're all living in Spokane now.

When it's all tallied, Spokane County will have spent several hundred million dollars to remove about 150 pounds of phosphorus a day from the river. Sure, that money might have been spent on other public goods. But at least the voters there knew what the trade-offs were, and chose cleaner water and healthier fish over personal convenience. Or did they?

The ban itself, it turns out, has helped the river very little. A year after it went into effect, supporters conveniently forgot their promises of reductions in the 15 percent to 20 percent range and trumpeted news that phosphorus flowing into the city's water-treatment plant had declined by 10.7 percent, to just 181 pounds per day. Buried in the accounts was a remark by the plant's manager admitting that because the new phosphorus filtration system was so efficient, nearly all of the in-flowing phosphorus was getting filtered out anyway. So the reduction of phosphorus actually making it *into the river* as a result of the detergent ban is much, much smaller. Still, he chirped, "Any phosphorus reduction you can see there is going to have benefit to the river."

That was the idea, anyway. Last month the University of Washington released a study suggesting that some of the phosphorus being discharged into the Spokane River never actually worked as fertilizer for algae to begin with. It seems that not all phosphorus is alike. Some of the effluents making their way into the river contained phosphorus in complex molecular forms which are not bioavailable. Algae lack the enzymes necessary to break down this phosphorus, meaning it is essentially harmless. The study was a useful reminder that all science is settled. Until it's not.

For some of the people in Spokane this revelation may be welcome news. The Inland Empire Paper Company, for instance, which has spent millions fighting for its continued existence, contends that by the standards of bioavailability, only 9 percent of the phosphorus it releases helps algae grow. Perhaps the new study will spur the environmental bureaucracy to grant Inland Empire Paper a reprieve.

But for the rest of America, there's no going back. So we might as well press forward and get to work. Those dishes aren't going to clean themselves. ♦

A Respite From Regulations?

By Thomas J. Donohue
President and CEO
U.S. Chamber of Commerce

The single biggest obstacle to job creation, U.S. global competitiveness, and the future of free enterprise is a regulatory tsunami that is unprecedented in recent history. The new health care law, for example, creates 159 agencies, commissions, panels, and other bodies. The Dodd-Frank financial regulatory law includes more than 550 rulemakings, suggested rulemakings, reports, and studies. The list goes on and includes more than 100 new labor rules and EPA's effort to regulate greenhouse gas emissions. Taken together, federal regulations fill 150,000 pages of fine-print text and cost Americans $1.7 trillion a year.

That's why the U.S. Chamber welcomed President Obama's executive order—which initiates a review of excessive, inconsistent, and redundant regulations—as a positive first step in what we hope is a broader reform effort. The next step will come when the administration backs up its intentions with an aggressive, concrete plan to pare back the growing regulatory state.

To help the U.S. economy grow and remain globally competitive, we need a regulatory overhaul. This will require the replacement or repeal of outdated and ineffective regulations, as well as those that the president labeled as "just plain dumb." The use of realistic cost-benefit analyses based upon quality data is also essential, as is congressional action to reclaim some of the authority that lawmakers have delegated to the agencies and to provide rigorous oversight.

The Chamber is concerned that the executive order only reinforces an existing Carter-era law—ignored by federal agencies—mandating the periodic review of regulations that have a significant economic impact upon a substantial number of small businesses. A provision of the Clean Air Act—requiring a continuous evaluation of potential loss or shifts of employment due to regulations—has likewise been brushed aside. So, to an extent, the administration is just reinventing the wheel when what matters is turning it.

This critique of an ever more challenging regulatory landscape, however, doesn't mean that business opposes all regulations. To the contrary, smart regulations are necessary to define the rules of the road. Regulations can also have a positive impact in such areas as the environment, workplace safety, and consumer protection. But the reach of the regulatory state has grown far too long.

In the months ahead, the Chamber will work with the White House, Congress, and the federal agencies to advance commonsense regulatory reform measures. We're going to be in this fight for the long haul, because smarter, less burdensome regulations foster growth and job creation.

U.S. Chamber of Commerce
Comment at www.chamberpost.com.

Targeting the Police

The Holder Justice Department declares open season on big city police departments

By Heather Mac Donald

In 2000, a deputy attorney general in the Clinton administration slapped the Los Angeles Police Department with federal oversight. A 1994 law gives the Justice Department the authority to seek control of police agencies that have engaged in a "pattern or practice" of constitutional violations. Justice's attorneys never uncovered any systemic constitutional abuses in the LAPD as required by the 1994 law, despite having commandeered hundreds of thousands of documents (and having lost 10 boxes of sensitive records). Nevertheless, for the next decade the LAPD would operate under a draconian federal "consent decree"—a nominally consensual agreement overseen by a court—governing nearly every aspect of its operations, at a cost of over $100 million in contracting fees and in manpower diverted to mindless paper-pushing.

The deputy attorney general who forced federal control on the LAPD in 2000 was none other than Eric Holder, who now presides over a Justice Department determined to make the Los Angeles consent decree the model for its future oversight of police departments. The current assistant attorney general for civil rights, Thomas Perez, told a conference of police chiefs in June 2010 that the Justice Department would be pursuing "pattern or practice" takeovers of police departments much more aggressively than the Bush administration, eschewing negotiation in favor of hardball tactics seeking immediate federal control. Perez has hired nine additional attorneys to beef up his division's search for alleged police agency racism and to sue agencies that don't capitulate to federal demands.

To see what lies ahead for the nation's police, one need look no further than the Los Angeles Police Department's past and present travails with the Justice Department.

Heather Mac Donald is a contributing editor to City Journal *and the author of* Are Cops Racist?

The LAPD consent decree was a power grab from day one. The first thing DOJ demanded as part of its new authority over the LAPD was the collection of racial information on every stop the L.A. officers make—even though the corruption scandal which provided the pretext for the consent decree had nothing to do with race or alleged "racial profiling."

The 180-clause decree mired the LAPD's operations in red tape, apparently on the theory that if cops are left to actually fight crime, rather than writing and reviewing reports, they will run amok violating people's rights. Today, an L.A. officer can hardly nod at a civilian without filling out numerous forms documenting his salutation for later review. If he returns fire at a gang-banger, his use of force will be more intensely investigated for wrongdoing than the criminal shooting that provoked the officer's defensive reaction in the first place.

The LAPD spent approximately $40 million trying to comply with the decree in its first year and close to $50 million annually for several years thereafter. It pulled 350 officers off the street to meet the decree's mountainous paperwork requirements. Nevertheless, it struggled to meet the fanatical standards for compliance imposed by the federal monitor overseeing the decree, who demanded that virtually 100 percent of the arbitrary deadlines for filing reports be met on time, regardless of whether the supervisors who missed their deadline by a few days were otherwise occupied with a triple homicide investigation. In 2006, the federal court to which the monitor reported deemed the department out of compliance with the decree and extended its term. In 2009, the court ended federal control on many of the decree's provisions, yet continued federal oversight on issues relating to "biased policing," among other matters, until January 2011. And now the Justice Department, facing the potential final expiration of the consent decree this month, has made its most preposterous charge against the LAPD yet, in a desperate last-minute bid to retain its power over the force.

GARY LOCKE

According to DOJ's civil rights division, the LAPD does not investigate racial profiling complaints with sufficient intensity. The department seems to tolerate a "culture that is inimical to race-neutral policing," say the federal attorneys. These accusations are nothing short of delusional. The LAPD is arguably the most professional, community-oriented police agency in the country, having been led for most of the last decade by modern policing's premier innovator, William Bratton. Moreover, it investigates every racial profiling allegation with an obsessive thoroughness that stands in stark contrast to the frivolity of most profiling accusations. There is no racial profiling complaint so patently fabricated that the department won't subject to days of painstaking investigation through multiple chains of command. A complainant can outright admit making up the profiling charge in retaliation for being arrested, and the LAPD's special profiling investigation body, the Constitutional Policing Unit, will continue diligently poring over his complaint as if it had been made in good faith. After the department logs a whopping average of 100 hours on each complaint, devoting more resources to these knee-jerk accusations than to any other kind of alleged officer misbehavior, the LAPD's civilian inspector general will audit the department's work with a two-part, 60-question matrix, subjecting claims made by arresting officers to a reflexive skepticism unmoored from reality. The goal of this Byzantine process? To find any possible way not to dismiss complaints as unsubstantiated.

The LAPD pulled 350 officers off the street to meet the consent decree's mountainous paperwork requirements.

A recent profiling allegation and its disposition are typical. A driver who had been cited for tinted windows denied in his racial profiling complaint that his windows were tinted and claimed that he was only stopped because he was black. He said that he was detained for an excessive 45 minutes. The arresting officers estimated that the stop lasted 15 minutes; electronic records revealed that it lasted a reasonable 18 minutes. Department personnel interviewed the complainant twice; the arresting officers were closely interrogated; and the Constitutional Policing Unit canvassed local businesses around the stop for video of the interaction. The CPU then made an appointment to photograph the driver's car to confirm that his windows were not tinted; the driver failed to appear at the appointment and later called the LAPD to say that he wanted no further contact from the department on his profiling complaint.

Leaving aside the devastating hole that the complainant blew in his own credibility by withholding his car, the complaint was logically problematic to begin with. If the driver's windows *were* tinted, the cops could not have seen his race, especially since the stop occurred at midnight. Indeed, the complainant himself reported that he had to keep his window rolled down during the stop so that the officer could see into the vehicle. But if the windows were *not* tinted, it strains credulity that an officer would cite a driver for a violation that could be so easily disproven simply by presenting the car.

Nevertheless, the LAPD's inspector general Nicole Bershon, after reviewing the voluminous case history, concluded that the accused officer should not be cleared of the profiling charge and that the department should reopen the investigation—though there was nothing more to investigate. Because the car's windows had not been inspected, she said, the officer's claim that he could not see the driver's race before stopping him could not be adjudicated. Bershon, however, rehabilitated the *driver's* credibility on a wholly speculative theory: Because the sergeant who logged the profiling charge asked the driver in passing if he was making the complaint to avoid paying the tinting fine, the complainant lost confidence in the process, Bershon hypothesizes, and as a result went AWOL with his car. Of course, the complainant had already shown enough confidence in the process to sit for two interviews. It was only when it came time to present his car that his painful disillusionment, in Bershon's imaginary scenario, manifested itself.

Predictably, Bershon criticizes the intake sergeant for questioning the complainant's motives, however flippantly. In an ideal world, to be sure, no police officer would ever express the slightest personal opinion in his interactions with civilians. But a station house is not an ideal world; it is peopled with human beings whose daily exposure to the full, sorry range of human behavior breeds in them a certain degree of cynicism. Regrettably, that cynicism occasionally breaks through the surface. The notion of cutting officers any slack for such failings, which, in light of their public service, are in any case relatively minor, is of course out of the question.

It is this insanely credulous and costly process for investigating racial profiling complaints that the Obama Justice Department claims to find insufficiently rigorous, in a disturbing harbinger for other police departments. The most damning flaw of the LAPD's elaborate anti-profiling apparatus, from DOJ's perspective, is that it corroborates almost none of the already minuscule number of racial profiling complaints that the department receives each year. (In 2009, the department received 219 racial profiling

complaints out of nearly 200,000 arrests and over 580,000 citations.) To the Washington attorneys, the paucity of confirmed complaints proves that the investigative process is inadequate, if not in bad faith, since it is a given to the Justice Department staff that the LAPD, like every other police department, routinely violates people's rights. The possibility that the vast majority of Los Angeles officers are operating within the law is simply not acceptable.

Such a preordained conclusion is not surprising, since the career attorneys who investigate police departments for constitutional violations are possibly the most left-wing members of the standing federal bureaucracy. They know, without any felt need for prolonged exposure to police work, that contemporary policing is shot through with bias. In 2002, for example, a career attorney in the policing litigation section tried to bury a rigorously designed study that showed that black drivers on the New Jersey Turnpike speed at twice the rate of white drivers, a finding of great relevance to DOJ's then-pending charge that the higher stop rate of black drivers on the turnpike was the exclusive result of biased policing by New Jersey State Troopers.

The speeding study was eventually leaked to the press, and the attorney who had tried so hard to suppress it—to the point of hiding its conclusions from his political bosses—resigned. The career staffers who remained, however, were just as committed to the idea that racial disparities in the rate of contact between the police and civilians *must* reflect officer misbehavior towards minorities, rather than varying propensities for law breaking on the part of different racial groups. During the Bush administration, political appointees to the civil rights division reined in the staff's eagerness to investigate police departments for racial profiling, since the profiling studies routinely served up by the ACLU and other activist organizations were based on laughably bogus methodology. Now that those appointees have left the Justice Department, however, the staff attorneys in the policing section are back in control. And the current assistant attorney general for civil rights, after declaring that civil rights advocacy groups will once again function as the "eyes and ears" of the department, has publicly embraced the advocates' specious methodology for measuring biased law enforcement actions.

Civil rights activists invariably use population data as the benchmark for police activity—measuring the rate of police stops for various racial groups, say, against the proportion of those groups in the local population. If the stop rate for a particular group is higher than its population ratio, the activists charge bias. Such a population benchmark could only be remotely appropriate, however, if racial crime rates were equal. They are not. In Los Angeles, for example, blacks commit 42 percent of all robberies and 34 percent of all felonies, though they are 10 percent of the city's population. Whites commit 5 percent of all robberies and 13 percent of all felonies, though they are 29.4 percent of the city's population. Such crime disparities—which are repeated in every big city—mean that the police cannot focus their resources where crime victims most need them without disproportionate enforcement activity in minority neighborhoods, but it is crime, not race, which determines such police deployment.

This September, Assistant Attorney General for Civil Rights Perez announced a litigation campaign against school districts for so-called "disciplinary profiling"—disciplining black students at a higher rate than white students. He used student population ratios as the benchmark for appropriate rates of student discipline. "The numbers tell the story," he said. "While blacks make up 17 percent of the student population, they are 37 percent of the students penalized by out-of-school suspensions and 43 percent of the students expelled."

Get ready for hours of paperwork: an anti-gang sweep in L.A. County.

NEWSCOM

Actually, those numbers don't tell the story. The real story behind black student discipline rates is higher levels of violence and misbehavior in school, a reality Perez ignored completely. DOJ's future assessment of police stops and other enforcement actions will likewise inevitably ignore higher rates of black crime.

DOJ's assertion that the culture of the LAPD is "inimical to race-neutral policing" exploits this same blindness to the facts of crime. The Justice Department has seized on a single exchange between two cops who were caught on tape discussing a profiling complaint brought against a fellow officer. One says: "So what?" The other responds that he "couldn't do [his] job without racially profiling." To the feds, this exchange can have only one meaning: These and

other cops are randomly hauling over blacks and Hispanics to harass them. But if the officers were involved in gang enforcement, as almost any officer patrolling in the city's southern and eastern sections will likely at some point be, attention to a suspect's race and ethnicity is unavoidable, since L.A.'s gangs are obsessively self-defined by skin color. Until Los Angeles gangs give up their fealty to racial identity, they can expect police officers trying to protect the public from their lethal activities to take their race and ethnicity into account in identifying them.

The greatest beneficiary of the coming campaign against police departments will be the police monitoring business. Police monitors, paid for by the locality but reporting to a federal court, range from attorneys to former police officials; they are ostensibly jointly selected by the locality and the Justice Department, but repeat business depends on not antagonizing their DOJ backers. The industry has already perfected such fee-generating practices as billing eight hours to summarize a one-hour meeting. Detroit's federal monitor collected from $120,000 to $193,000 a month for her services, for a cool $13 million, which Detroit is now trying to recover after discovering that she consorted with the mayor during her tenure as monitor. The New Jersey State Police spent $36 million to build the racial profiling monitoring system demanded by the Clinton Justice Department and $70 million running it. Oakland's federal monitor pulled in nearly $2 million for her two most recent years overseeing the financially strapped department, which now allocates 35 officers for internal affairs investigations, but only 10 for homicides. Oakland's monitor previously worked for DOJ's pattern or practice section and has just been rehired there, where she can be expected to impose similar staffing priorities on other departments. Now that Assistant Attorney General Perez intends to revive the L.A. model of indefinitely renewable, rigidly prescriptive consent decrees (which Bush officials had tried to streamline), the monitoring business can expect to clean up even further.

There *are* police departments that could benefit from expert advice from actual police professionals on such issues as use of force, but these are unlikely to draw the attention of the Justice Department. Five-man departments in rural areas where the police chief is the mayor's brother-in-law may well have developed questionable habits, such as walloping suspects who talk back to their arresting officers. Perez has said that he wants to pursue "high-impact" cases, however—meaning big-city departments with a national media presence, even if those departments are already permeated by layers of internal and external safeguards against abuse. DOJ's attorneys are homing in on the New York Police Department, for example, having recently convened a closed-door session with the city's anti-cop advocates to discuss the multicultural NYPD's alleged failings toward immigrant populations.

If the Justice Department were serious about police reform, it would publish its standards for opening a pattern or practice investigation so that police agencies could take preventive action on their own. It has never done so, however, because it has no standards for opening an investigation; the initial recommendation to do so is based on the whims of the staffers, such as: "I feel like going to Seattle and my Google sweep picked up a few articles on the police there" or "My buddy at the NAACP Legal Defense and Educational Fund called me and asked us to open up an investigation in Des Moines." Once the federal attorneys show up in town, for what can be a multiyear fishing expedition through thousands of documents, they rarely disclose to the police department what exactly they are looking for. Meanwhile, the local press engages in a frenzy of speculation about which racist practices the feds are investigating and pressures the department to cave in to federal control.

While DOJ pursues the phantom of widespread police racism, the real abuse in minority communities gets no attention from the civil rights division. In Los Angeles on Halloween 2010, five-year-old Aaron Shannon Jr. was showing off his Spiderman costume in his family's South-Central backyard when he was fatally shot by two young thugs from the Kitchen Crips gang. Aaron was randomly selected in retaliation for an earlier gang shooting; his family had no known gang ties. DOJ's pattern or practice attorneys had nothing to say about such grotesque violence even as they were rebuking the LAPD for its alleged inadequacies investigating profiling complaints. And if the LAPD had stopped known gang members around the Shannon home after the Halloween homicide in order to seek intelligence about the shooting, every stop the officers made would have been tallied against the department in DOJ's racial profiling calculus, simply because the Kitchen Crips and their rivals are black.

Though reform police chiefs like William Bratton and the NYPD's Ray Kelly have brought crime down to near record lows over the last decade and a half, violence continues to afflict minority communities at astronomically higher levels than white communities. For the last two decades, the public discourse around policing has focused exclusively on alleged police racism to avoid talking about a far more serious and pervasive problem: black crime. If a fraction of the public attention that has been devoted to flushing out supposed police bias had been devoted to stigmatizing criminals and revalorizing the two-parent family, the association between black communities and heavy police presence might have been broken. Instead, the Obama Justice Department promises a further retreat from honesty. ♦

Yeats in Love

'A woman won or a woman lost'

BY MICHAEL DIRDA

William Butler Yeats (1865-1939) composed poetry about history and Ireland and the occult, about swans and gyres and ancient Byzantium, but fundamentally he almost always wrote about love. At the end of his life, a seventysomething smiling public man, he intended "Politics" to be the last of his published poems:

How can I, that girl standing there,
My attention fix
On Roman or on Russian
Or on Spanish politics?
Yet here's a travelled man that knows
What he talks about,
And there's a politician
That has both read and thought,
And maybe what they say is true
Of war and war's alarms,
But O that I were young again
And held her in my arms!

Nearly anyone who reads Yeats quickly learns that the love of his life was that firebrand of the Irish Republican cause, the sternly beautiful Maud Gonne, but that he married the oddly named George Hyde-Lees, who was apparently able to communicate with the spirit world. Through her mediumship, Yeats was given the "metaphors for poetry" that led to "The Second Coming"—*What rough beast, its hour come round at last, / Slouches towards Bethlehem to be born?*—and to the work of his single greatest collection, *The Tower*.

But as Joseph M. Hassett reminds us in this deeply informed and fascinating book, Yeats's poetic development is reflected in his relationships to a long series of "muses." Olivia Shakespear—whose daughter Dorothy became the wife of Ezra Pound—first introduced the poet to physical love; the actress Florence Farr functioned as a demanding White Goddess as she played Yeats off against her other Irish admirer, Bernard Shaw; and the married Gonne inspired a troubadour yearning that lasted for a quarter century: *I strove / to love you in the old high way of love*.

W.B. Yeats and the Muses
by Joseph M. Hassett
Oxford, 264 pp., $110

Mr. and Mrs. William Butler Yeats, ca. 1920

BETTMANN / CORBIS

And then there was Maud Gonne's daughter Iseult. Yeats was virtually her foster father, but found himself drawn to the free-spirited and deeply intelligent young woman, and not just as her intellectual mentor. Fearful of continuing his obsessive and vain pursuit of women named Gonne, Yeats suddenly revolted against his role of the sighing courtly lover and married the steady and secure Hyde-Lees. She, Hassett implies, cleverly stressed that a passionate marital relationship—there was much talk of orgasms—would allow him access to the spirit world and renew his creative energies.

A decade later, though, Yeats began to suffer from impotence and endured the notorious Steinach operation in an effort to restore his physical powers. Technically, this was unsuccessful, according to the testimony of his physician, but as Hassett writes, "It seems indisputable . . . that the aftermath of the operation witnessed an increase in Yeats's sexual desire, paving the way to a new burst of poetry—and conduct—in which sexual desire is valued for its own sake." During this period Yeats entered into passionate if unsatisfying liaisons with the troubled young actress Margot Ruddock and the liberated novelist Ethel Mannin.

Michael Dirda is the author, most recently, of Classics for Pleasure.

Yet even then, Yeats's romantic pilgrimage wasn't over. In his very last years, he explored ever more deeply the feminine in his own nature through an intense intimacy with the lesbian Dorothy Wellesley, while a final relationship with Edith Shackleton Heald helped catalyze the late poems in which Eros and Thanatos begin to merge. In them Yeats's desire turns more and more toward a yearning for quiet and peaceful sleep. Nonetheless, he can still produce, in "News for the Delphic Oracle," some of his most shockingly graphic lines: *Belly, shoulder, bum, / Flash fishlike; nymphs and satyrs / Copulate in the foam*.

Yeats and the Muses is an exceptionally lucid work of criticism, but one that nonetheless requires the reader to pay attention. Hassett, a specialist in Anglo-Irish literature, may quote Joyce Carol Oates one moment and Edward Said the next. He links individual poems (and drafts of poems) to particular women, and he can, at times, seem slightly over-programmatic in outlining Yeats's erotic and poetic evolution. Some chapters, like that devoted to Wellesley, are strongly speculative; others almost straightforwardly biographical. Florence Farr, for example, was a leading member of the occult Hermetic Order of the Golden Dawn, learned to recite Yeats's verse to the accompaniment of a stringed instrument called the psaltery, became the lover of the New York lawyer John Quinn (who helped support James Joyce and other modernists), and ended her days pursuing spiritual truth in Ceylon.

Above all, as Hassett makes clear, and as any reader knows, Yeats was a great poet of praise: He celebrated the muses in his life, and not just because each allowed him access to otherworldly knowledge and power. As Hassett repeatedly shows, the women Yeats loved were strong, independent, and accomplished. Some he slept with, some he didn't. He once asked himself: *Does the imagination dwell the most / Upon a woman won or woman lost*?

In many ways, Yeats's collected poems are his never-ending exploration of just that haunting question. ♦

B&A

Heaven and Earth

Their conflict and harmony in the life of Galileo.

BY DAVID GUASPARI

In 1610, Galileo published *The Starry Messenger*, a brief report of wonders seen through his state-of-the-art telescope: mountains on the moon, vast multitudes of stars invisible to the naked eye, moons circling Jupiter, earthshine (the illumination of our moon by sunlight reflected from Earth). It promised a future work to refute "those who argue that the earth must be excluded from the dancing whirl of stars" and show that it is "a wandering body surpassing the moon in splendor, and not the sink of all dull refuse of the universe."

Galileo
by John Heilbron
Oxford, 528 pp., $34.95

Galileo
Watcher of the Skies
by David Wootton
Yale, 354 pp., $35

Earth was a "sink of all dull refuse" according to then-dominant Aristotelian cosmology and physics, whereby each of the four elements (earth, water, air, fire) composing terrestrial objects has a proper place and, unless obstructed, proceeds by "natural motion" toward it. The proper place for the element earth is the center of the universe. The coarse and gross objects in which it predominates are heavy because they naturally move toward that center and thereby accumulate on Earth. Bodies composed of these four elements are confined to the region between Earth and the moon —the "sublunary sphere"—which, since the four can metamorphose into one another, is the domain of change and decay. The sun, moon, planets, and stars —which circle Earth in the superlunary heavens—are composed of the fifth element, unchanging ether.

The Aristotelian account is consistent with Ptolemy's geocentric model of the universe, but cannot be reconciled with a scarred and pitted moon, an Earth that shines like a star, or a planet having moons of its own. *The Starry Messenger* tells us, says David Wootton, that "the earth is a heavenly body and the heavens contain earthly bodies."

The 400th anniversary of its publication has been the occasion for two substantial biographies of Galileo, both scholarly but accessible to the general reader.

John Heilbron depicts a Renaissance humanist: not only a great scientist but a skilled musician and artist; a polemicist, literary stylist, poet, and playwright; a brilliant debater; a lover of wine. He shows us Galileo's intellectual and social circles, complicated politico-theological intrigues, court spectacles intended "to stupefy every viewer with their grandeur," and the chaos within Galileo's (at best) semifunctional family. David Wootton provides an intellectual biography concerned primarily with the development of Galileo's scientific ideas. He gives lucid accounts of the intellectual stakes in Galileo's scientific controversies and striking interpretations (and reinterpretations) of important historical questions. Scholars will evaluate the book's novelties; to this nonscholar, most of its pages ranged from absorbing to dazzling.

A quick example: Galileo's contemporaries had good reasons to be cautious about astronomical evidence from telescopes. Its reliability could not be directly verified by comparing telescopic images of the heavens with close-up observation by the naked eye; nor could it be inferred from experiments with terrestrial objects—since similarity of the celestial and terrestrial realms is precisely the matter in dispute. But, says Wootton, Galileo faced a more radical

David Guaspari is a writer in Ithaca.

difficulty because he lived in a culture unlike our own, one in which seeing was *not* believing. Sight was the most easily deceived of the senses—what was perspective drawing but systematic trickery?—so why trust it "to provide information on a world [we] would never touch, hear, or smell"?

When *The Starry Messenger* appeared, Galileo was a 46-year-old mathematics professor at the University of Padua who had published nothing significant. Yet he had by then made all his major discoveries and founded the very notion of an experimental science. How had he thought his way out of the Aristotelian physics and Ptolemaic astronomy of his teachers and mentors? Answers must be conjectural: We lack not only published work but, for some important periods, even notes and papers, and those that survive can be difficult to date.

Galileo dedicated his booklet to the grand duke of Tuscany and became the duke's official mathematician and philosopher—giving up a lifetime position at Padua and the protection that the powerful Republic of Venice would have offered against the Roman Inquisition. Principally, Heilbron and Wootton agree, he wanted access to the Jesuits so that he could convert the intellectual world of Rome to Copernican astronomy.

Heilbron's Galileo is an artist. His genius as an observer lay in the ability to *interpret* what he saw, and it was skill in drawing and perspective and chiaroscuro that helped him recognize changing contrasts visible on the surface of the moon as plays of light and shadow on a mountainous landscape. His first known public lecture discussed the geometry of Dante's hell. He loved Ariosto's *Orlando Furioso* and his critical essay on Ariosto and Tasso is still read. Heilbron finds significance in what Galileo criticizes about Tasso (an alleged poverty of invention) and admires in Ariosto ("the realistic treatment of the marvelous"). He suggests that Galileo could not respond to Tasso's psychological depth, preferring to judge fictional characters (as he judged real-life friends and opponents) in black and white terms—and that this preference for surfaces is one psychological root of his physics of "accidents" rather than "essences," of laws rather than causes.

Heilbron traces the evolution of Galileo's early scientific views from notes and drafts for an abandoned work on motion. These ridicule many Aristotelian propositions but argue primarily within a framework of Aristotelian (or Aristotle-friendly) categories such as natural motion. Heilbron imagines a dialogue between Galileo and an alter ego to illustrate how Galileo might have arrived at his radically different physics, rejecting not only Aristotle's answers but also his questions. Galileo developed not a *dynamics* that explains what causes motion but a quantitative *kinematics* that relates different measurable properties of motion: time, distance, speed.

A central concern is what we would now call free fall. He produces different deductions that begin from different (and incompatible) hypotheses, but conclude with the same law relating time and distance of fall. From this, according to Heilbron's dialogue, he draws a moral: Mathematical exploration shows its power by leading to a precisely formulated kinematic law; that law is verified by experiment; and the fact that it could be deduced from different hypotheses, corresponding to different underlying causal mechanisms, shows that consideration of causes can be deferred. The role of experiment is merely illustrative, "conclusive when it confirms a quantitative rule, but only an inconvenience when it does not." Laws describe ideal, artificial, situations. Disagreement with experiment may simply show that ideal conditions are too difficult to reproduce.

I am grateful that Heilbron lays out these arguments in detail but found some of them difficult to follow. Pulling rank as a professional mathematician, I'd say that he sometimes gives us the words without the music, allowing those details to obscure essentials. (An unsound argument of Galileo's is sometimes identified as such only in an endnote.) Wootton says his account is novel in emphasizing Galileo's "reluctant empiricism," "early Copernicanism," and "private irreligion." The reluctance, also illustrated in Heilbron's dialogue, comes from a deep-seated preference for deductive reasoning over empirical tests. Wootton argues that the never-resolved tension between that gut feeling and Galileo's wish to ground knowledge in sensory experience was a fruitful one.

Galileo's Copernican views were formed not merely early in his life but well before the empirical evidence was compelling, when all available astronomical data were consistent with Tycho Brahe's geo-heliocentric model:

A German view of the Copernican universe

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The moon and sun circle Earth, and the planets circle the sun. Tycho's system had the scientific advantage that a stationary Earth did not require a radically new physics to explain everyday motion on Earth and the political advantage of being theologically orthodox. Yet something other than science must account for Galileo's adamant insistence that Copernicus provided not merely the best astronomical model but the *truth*. Here, says Wootton, his science and irreligion were mutually supportive, each a rejection of the view "that the world was made for man, and that man was made in the image of God." (He finds the psychological roots of that rejection in Galileo's relations with his Gorgon-like mother.)

Against the commonly accepted view that Galileo was a pious Catholic, Wootton claims to establish a "very strong presumption" that he was not even Christian. The question is important not only to Galileo's story but also to the significant body of scholarship on the Christian roots of the scientific revolution. Wootton's arguments include the fact there is little record of Galileo expressing piety except when his piety was questioned and the claim that Galileo's old and close friend Benedetto Castelli did not believe him to be Christian. The evidence for that claim is a letter Castelli sent to the aged Galileo expressing joy on hearing that Galileo had accepted Christ. The letter mentions the parable of the laborers in the vineyard and Luke's account of the thieves crucified beside Jesus, both of which are traditionally understood as stories about last-minute conversions.

Wootton calls this letter his strongest argument, and it seems strong to me. But contrary evidence exists; for example, Galileo's pilgrimage to the House of the Virgin Mary in Loreto in thanks for recovery from an illness, his request (accepted) that the Holy Office of the Inquisition not require him to confess to having lapsed from the behavior of a good Catholic. Let the scholars weigh in.

Wootton's close readings are typically illuminating, but can seem a stretch, as when he interprets Galileo's youthful satire *Against the Wearing of the Toga* in light of his conclusions about Galileo's irreligion. This poem, mocking the requirement to wear academic robes, declares that in the golden age we were all naked and clothing was invented by the devil for concealment and deceit. Wootton argues that, since Genesis presents clothing not as diabolical but as "the first expression of shame," it associates nakedness with the state of Eden. And therefore, by praising nudity, Galileo says there is no such thing as sin (or salvation): "His aversion to the wearing of the toga is only a pretext for a poem which attacks Christianity itself." To Heilbron it is, more plausibly, an exercise in a bawdy, anticlerical genre.

Looming over any account of Galileo's life is his trial, whose crucial events unfolded over many years. In 1616, seven decades after its publication, Copernicus's *On the Revolutions of the Celestial Spheres* was placed on the Index of Forbidden Books pending "correction" of several sentences, so that it would present the heliocentric system as a "hypothesis" rather than a "truth." Galileo, a conspicuous advocate for Copernicus, was warned that a heliocentric model must not be held or taught as true. The main theological sticking point was not a moving Earth, something merely anti-Aristotelian, but a stationary sun—which contradicted, for example, the biblical story where Joshua asks the Lord to make the sun stand still.

Galileo Galilei

In 1623, Galileo's longtime acquaintance and admirer Maffeo Barberini became Pope Urban VIII, received him royally, and encouraged him to complete the works eventually published as the *Dialogue on Two World Systems* and *Two New Sciences*. (Wootton characteristically asks why only *two* systems —Ptolemy and Copernicus, but not Tycho—and sees a rhetorical strategy: demolish Ptolemy in a way that presents Copernicus as the only alternative.) The pope's approval came with a condition. The *Dialogue* must conclude by affirming his view that astronomy and theology could not be incompatible because astronomical models could be neither true nor false. The observed phenomena can be explained by many different models, and God could choose any of them, so to insist on one was not only to go beyond the evidence but to limit God's omnipotence. Permission to publish the *Dialogue* was obtained without close scrutiny of all the final text, which put the pope's views in the mouth of the dullard Simplicio.

The book was published in 1632. The Inquisition soon issued a summons. According to a document then retrieved from the Vatican archives, Galileo had (in 1616) received not just a friendly warning to observe the difference between a "hypothesis" and a "truth" but a formal injunction forbidding him even to discuss Copernicus hypothetically (though a document in Galileo's possession seemed to contradict that). He was charged with disobeying that injunction.

Vincenzo Maculano, the Inquisition's commissioner general, held an informal, unrecorded meeting with Galileo, intended to let Galileo off the hook without undermining the tribunal's authority. Galileo agreed to plead guilty of *appearing* to defend Copernicus; he expected no punishment except the banning of his book. Wootton speculates on the details of that meeting: Galileo would surely have been threatened with torture, but that threat was present all along —torture being a best practice in both civil and ecclesiastical inquiries. What new threat could have changed Galileo's mind? Additional charges, Wootton suggests. He backs that up with detective work, finding in

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the Vatican archives a recommendation that Galileo be investigated for denying the fundamental dogma of transubstantiation. Wootton argues that the recommendation, although not part of the trial record, preceded the trial and was not pursued because Maculano used it as a bargaining chip.

The pope insisted that Galileo be found guilty of "vehement suspicion" of heresy—thereby making Copernicanism retrospectively heretical—and be required, humiliatingly, to abjure. The *Dialogue* was banned and Galileo placed under house arrest for the rest of his life, spent mostly at his villa in Arcetri. There he continued to work, smuggling out *Two New Sciences* for publication in 1638. Of course, Copernicus did not ultimately need Galileo's help. And you don't need to be a Copernican to live in the new mental world Galileo introduced in this volume, the truly revolutionary book that founds modern mathematical physics.

Heilbron and Wootton agree that the collision between Galileo and Urban, though not inevitable logically, may have been so psychologically. It was not a conflict, Wootton says, of impersonal forces and institutions but a falling-out between friends. Given the state of knowledge, the limitation to teach Copernicanism as a useful hypothesis, and not a demonstrated truth, was perfectly reasonable. Galileo overreached and brought his troubles on himself: "In the world of Counter Reformation Italy, heresy often went unpunished; disloyalty and ingratitude . . . were never tolerated." Heilbron puts it symbolically: The Latin title of Galileo's booklet can be translated as *Starry Messenger* or *Starry Message*. Galileo originally thought of himself as reporting a message, but in his "megalomaniacal middle age" came to see himself as a prophetic messenger, or a knight errant in his favorite poem.

A lay reader can find much pleasure and profit in either of these volumes, which are mind-expanding in a way that popular accounts of current physics and cosmology cannot be. They invite us to recapture, imaginatively, the position of someone who has not—as you almost surely have—adopted modern science as an unexamined prejudice. ♦

B&A

Germany's Conscience

The martyrdom of Dietrich Bonhoeffer.

BY SKYLA FREEMAN

His end is what most people recall of Dietrich Bonhoeffer: the creeping light of first dawn in a barren yard of Flossenbürg concentration camp where he —theologian and spy, pastor and conspirator —was hanged until dead by a thin wire. Mere days before, Bonhoeffer and his fellow captives heard the great booming march of American guns across the German landscape, and dared to hope for freedom. But he met a different freedom on that chill morning, one for which he was well prepared.

Bonhoeffer
Pastor, Martyr, Prophet, Spy
by Eric Metaxas
Thomas Nelson, 608 pp., $29.99

With such a story, it is tempting to view Bonhoeffer's life exclusively through the lens of his death, and more than one chronicler of his story has done so. It is as if, peering through history with a 20/20 hindsight machine, we see him from boyhood ordained to die, a born martyr if there ever was one. Yet this discerning biography tells the story of a life lived, not in fear of death, but in defiance of it. Bonhoeffer, the author of *Christology*, plainly saw his life this way, and it is tempting to think that he would have agreed with Winston Churchill: "Although prepared for martyrdom, I prefer that it be postponed." *Bonhoeffer* is a rich, colorful portrait textured with the small brushstrokes of daily living—a humane portrait of a humane man.

It is remarkable that the depleted soil of the German church should have born such hardy fruit as Dietrich Bonhoeffer. That the Bonhoeffer family, on the other hand, produced Dietrich should have surprised no one in particular. His grandfather was chaplain to Kaiser Wilhelm II and his great-grandfather was the venerable theologian Karl August von Hase. This ancestry, and his mother's attitude of private piety, nurtured a religious devotion untainted by the morally crippled German church. Though prayers were frequently on the lips of the eight Bonhoeffer children, they were seldom recited inside a *kirche*; little Dietrich was of the church but not in it. That status as an informed outsider would give him a critical eye and shield him from a growing religious anti-Semitism.

The official German church of Bonhoeffer's childhood (later the Third Reich's German Evangelical Church) would prove itself slavishly devoted to moral corruption. Under the Nazis it set out to renovate extensively both heaven and hell. A deified Hitler joined the triune God in a new holy quadruple; Satan's lair gained several additions through the vilification of the imperfect, the handicapped, the Jews, and other "inferior races." Pastors swore oaths not to God but to the Führer, and the virtues of racial purity and power usurped faith, hope, and love.

All of this would come to pass under Hitler's rule, but the seeds for such malignant growth had been sown many years earlier. The church of Bonhoeffer's time pined for its prestige under the Kaiser; like Israelites of old, they clamored for a king. To their delight, the new Saul (named Adolf) seemed destined to restore their earthly glory.

Had Bonhoeffer's view of Christendom extended no farther than the borders of Germany, he might have been tempted to join his contemporaries in

Skyla Freeman is a writer in Washington.

imagining themselves the exclusive heirs of an Aryan Christ (the bleaching of Jewish Jesus was a favorite Hitler parlor trick). Eric Metaxas convincingly makes the case that Bonhoeffer's extensive travels, primarily to Italy and the United States, instead impressed upon him an awareness of the church as an international body of saints, not subject to theological tailoring for any party or people. In Rome, he witnessed the communion of saints, many of whom, rather critically, looked nothing like the *Volk*. The tribes of the world gathered under St. Peter's dome, and though a devout Lutheran, Bonhoeffer was deeply moved. Further visits to churches in Harlem and the Jim Crow South sharpened his vision.

Ironically, Bonhoeffer's perspective on racism and the humanitarian obligations of the Christian church are so common in the 21st century as to seem natural, obvious, even banal. Modern readers are tempted to overlook the deeper conflicts and presume upon his good character. Yet his beliefs were far from foregone conclusions in the 1930s and early '40s: Anti-Semitism was widely accepted in the West, and the nightmare of the concentration camps yet undreamed-of by most. Of the millions murdered by the Third Reich, Bonhoeffer is remembered, deservedly, for his bravery and compassion—but as a bit of a riddle as well. What led this peaceful pastor, in his contemporary Eberhard Bethge's words, to cross the "borderline between confession and resistance"? How did pacifism and assassination dwell so comfortably in the conscience of one man?

While many German Christians lamented the Nazis' exultation of racial blood above the blood of Christ, even the defiant Confessing Church failed to address the larger persecution. Numerous histories, such as Saul Friedlander's *Nazi Germany and the Jews*, have faulted the Confessing Church for failing to see past their own cloisters. But Bonhoeffer, a radical even among his own kind, rejected the churchyard as a boundary for Christian compassion: The material and spiritual worlds were conjoined, he argued; and thus, the obligations of the church stretched far beyond the steeple's shadow. Bethge summarizes his views: Bonhoeffer "testifies to God's 'no'—Christ cannot endorse slave holders in brutal societies. And he testifies to God's 'yes' to people who are victims of false imperial gods." His devotion to social justice would have resounding consequences.

SCRIPPS HOWARD PHOTO SERVICE / NEWSCOM

The litmus test for these converging ideas came in 1939. Bonhoeffer had waged a protracted and failing crusade against the Nazis on German soil; now, as a pacifist facing the draft, he must cede ground or face execution. Setting sail for the safety of America the summer before the war, he was briefly counted among the blessed: Millions more would fail to escape, or like his sister and Jewish brother-in-law, do so by the skin of their teeth. But he felt no relief upon reaching the New World, writing, "I have made a mistake in coming to America. I must live through this difficult period of our national history with the Christian people of Germany. . . . [I must] share the trials of this time with my people." He wrote again that he felt "grasped" by God, driven to go back. In a Gethsemane moment, he chose to accept the cup, whatever draught it might contain. He would return to Germany, to the aid of his countrymen and the Jews. In a poem written shortly before his death, he dwelled on the finality of that decision:

Should it be ours to drain the cup of grieving
even to the dregs of pain, at thy command,
we will not falter, thankfully receiving
all that is given by thy loving hand.

The taste would be doubly bitter. Bonhoeffer deeply loved his country, and it would offer him hemlock. He was a prisoner of the state for more than two years. The Nazis were for a long time unaware of his involvement in the budding assassination plot; the Gestapo arrested Bonhoeffer after tracing monies bribing Swiss authorities for the escape of seven Jews. In a moment of darker comedy, they became convinced of Bonhoeffer's entanglement in a money-laundering scheme, for who would willingly aid and abet the escape of a Jew? The lesser charges protected his greater purpose, and for a time, his life.

By the spring of 1945 the plot to kill Hitler had failed, and Bonhoeffer, along with most of the conspirators, was executed. At Flossenbürg his body, stripped and burned, mingled with the ashes of Jewish victims—a final resting place, Metaxas notes, that Bonhoeffer would have counted an honor.

Years before, during a sermon delivered in London, Bonhoeffer had said of Christianity, "That is just what is so marvelous, that we can transform death." His death—premature, brutal, and unjust—was thus transformed: Out of defeat came victory. This was the "costly grace" of Bonhoeffer's writings, the triumph of a good so great it muted mortality. ♦

B&A

Dance of Death

The brief transit, and long descent, of the King of Pop.

BY JAY WEISER

The crowd had drifted away from the first-anniversary Michael Jackson memorial in his Gary, Indiana, boyhood home. The deindustrialized city had hoped for some Elvis-in-Graceland-style tourism, but 2,500 attendees might not cut it. *This Is It*, a movie of spliced-together rehearsal tapes from the death-defying, bankruptcy-deferring comeback concert marathon that never began, has come and gone. It turned out not to be it: As the Jackson estate rises from insolvency, it plots yet more exhumations from the vaults. Jackson himself, having largely stopped recording and performing in the two decades before his death, funded his high-spending professional afterlife through endless reissue compilations. The zombie Michael Jackson of his "Thriller" video, technically adept but mechanical, disconnected, and voracious, was the real thing.

All the world loves a self-destructing entertainer, so the continuing fascination with Jackson follows the path smoothed by Billie Holiday, Judy Garland, and Kurt Cobain. Unlike them, Jackson's bizarre life had become more famous than his music. (Whole libraries have been filled with Jackson pathographies, so I will steer clear except as they affected his work, without endorsing jaw implants, retro-Byzantine detachable noses, Bubbles the Chimp, hyperbaric chambers, private Ferris wheels, or reckless leveraging of the Beatles' catalogue.) In death, the faded star was recast as a pop revolutionary; in life, Jackson, too, had pumped the myth of transcendence, but he never delivered.

Jay Weiser is associate professor of law at Baruch College.

Jackson matured (if that is the word) in an America of millenarian, but contradictory, aspirations. With the early sixties surge of integrationist and first-wave feminism, true believers abandoned pluralism for the belief that we were all alike under the skin,

Michael Jackson in London, 1974

and that when the shackles of discrimination were lifted, Americans would be as one. No sooner had the integrationist wave crested with civil rights legislation than Black Power and second-wave feminist radicals proclaimed exactly the opposite: Racial and gender differences were essential and unbridgeable, the System inherently oppressed Afrikans and womyn, and separatism was the answer.

Into this world came 10-year-old Michael Jackson, the child star of Motown's last major hit act, the Jackson Five. He turned out to be uniquely unsuited for either messianic dream, whether as a lab specimen for racial blending through skin lightening and plastic surgery, or as a low-testosterone Britney Spears, dressed in comic-opera military outfits while posturing as a crotch-grabbing black thug. As his lyric went in "Wanna Be Startin' Somethin'" (1982):

It's too high to get over
Too low to get under
You're stuck in the middle

In the *Dreamgirls* myth, Motown was an inauthentic sellout; the true artists were dark-skinned and soul-oriented. In fact, Motown was at the hybrid heart of American popular music, its African-American performers performing for audiences of all races. The Motown sound fused African-derived rhythms, dense arrangements based on European harmonies, and love lyrics descended from the Great American Songbook. Its in-house choreographer, Cholly Atkins, had been part of a successful Swing Era "class act," specializing in a refined, tuxedo-clad tap (itself a blend of Irish clog dancing and African rhythms and structures). That, of course, was also stock-in-trade for Fred Astaire, who lived near Jackson and was friendly with him in the last decade of the older dancer's life.

After Jackson broke away as a solo act, he shed the harmonic lushness in favor of a lighter version of James Brown's polyrhythmic funk. While exponentially layering the rhythm, Brown collapsed the already simplified lyrics of rock into a series of sexual tag lines and guttural grunts, shouts, and moans. Jackson's breathier version employed whispers, shrieks, and omnipresent hiccups in suggestively titled songs like "Don't Stop 'Til You Get Enough" (1979) and "Rock With You" (1979). Despite the occasional overwrought ballad—"She's Out of My Life" (1979)—and unlike Brown and "hot" performers going back to Sophie Tucker, Jackson downplayed the sex. At most, he obliquely declared forbidden yearnings, such as "In the Closet" (1991)

ANWAR HUSSEIN / WIREIMAGE / GETTY IMAGES

and the searching, forgiveness-seeking "Human Nature" (1982), perhaps his best vocal performance.

Although lyrics returned to American popular music with a vengeance as rap emerged in the 1980s, Jackson's lyrics (for which he was often credited as author) were rarely coherent. Instead, the lines were hooks with a sharp point, filled with predatory women who were falsely claiming paternity—"Billie Jean" (1982) repeats that "the kid is not my son"—or sex-crazed groupies—"Dirty Diana" (1987)—or, simply, "Dangerous" (1991). Like many American musicians, he worked in a variety of styles, but was most devoted to musically barking "Leave Me Alone" (1987) at his perceived exploiters.

These feelings of exploitation justified Jackson's ever-growing entitlement, whether stiffing merchants on shopping sprees, calling a Sony executive racist in a record-promotion dispute, or pursuing underaged bedmates. Rousseau may have been the first to believe that artists and intellectuals were simultaneously outside society's moral bounds and holy keepers of Truth; Jackson, part of this lineage, sought apotheosis as a childlike, proto-Obama unifier, taking the integrationist dream one step beyond. In the "Beat It" (1982) video, Jackson's community organizer phase, the mere presence of his enlightened being brought peace to warring street gangs. The troubles of black urban America resolved, he used rock (an idiom lifted by whites from black artists almost intact) for utopian integrationism, proclaiming, "It don't matter if you're black or white" ("Black or White," 1991). "Heal the World" (1991) anticipated Barack Obama's 2008 St. Paul postprimaries speech, its soaring folk-rock chords backing a megalomaniacal message: "There's a place in your heart and I know that it is love." Sincerity was the only thing needed to save the dying little children of the song.

Jackson's absolute humorlessness departed from the double-edged essence of American popular music, which mocked ardor as it limned it, from Bessie Smith's blues, to Lorenz Hart's cynical love songs, to Ruth Brown's "girl with a tear in her voice," to the Beach Boys' "Help Me Rhonda," to country's cheating songs, to hip hop's parodies of male hypersexuality. Lacking the emotional capacity, Jackson couldn't access this

Michael Jackson at Super Bowl XXVII, 1993

STEVE GRANITZ / WIREIMAGE / GETTY IMAGES

work. Instead, there were ever-more-expansive claims about Jackson as *the* pathbreaking racial crossover pop star, which would have surprised James Reese Europe (the African-American orchestra leader for white dancers Vernon and Irene Castle in the early 1900s), Ethel Waters, and Johnny Mathis, among many others.

Without an adult emotional life, but believing in his transformative destiny, Jackson turned to the more earnest American tradition arising out of Protestant hymns and their Africanized descendants, 20th-century gospel songs. This earnest tone had infiltrated secular music starting in the 1930s: Alan Lomax, affiliated with the Popular Front, sought utopia in "primitive" traditions, untainted by commerce, such as Appalachian music. In fact, Appalachian and African-American strains had always mingled: Louis Armstrong played obbligato behind Jimmie Rodgers on "Blue Yodel No. 9" (1930), Ray Charles did a classic country album, and New Yorkers passing through the Times Square subway station on Thursday mornings can often hear the Ebony Hillbillies playing bluegrass, an improvised music with jazz roots.

The Popular Fronters, however, would not brook musical miscegenation. Sincere-sounding Stalinist folkies like Pete Seeger appropriated Appalachian angst for protest songs about the impurities of American society in the 1940s. They were followed in the 1960s by folk icons like Bob Dylan and Joan Baez. Like Seeger's, Jackson's faux-purity masked menace: In his early vocal for the title tune of *Ben* (1972), Jackson sings with genuine, child-like feeling that his friend is misunderstood but the singer will stick with him no matter what. In the film, a lonely, bullied boy befriends the eponymous rat, who leads an army of killer rats that attack humanity. In their deranged way, both the song and movie lament the failed integrationist dream—why can't humans and rats all just get along?—and justify the seventies' separatist violence.

As his popularity slid, Jackson's hostility became more overt. The "Bad" video (1987) played off African-American meanings for the word as both sociopathic and admirable,

looking back to the Stagger Lee ballads of the early 20th century about a destructive, reckless, admirable black outlaw. But despite Jackson's endless assertions that "I'm bad," his megalomania ("And the whole world has to answer right now just to tell you once again who's bad"), and graffiti-spraying, garbage-can-tossing backup dancers on location in a Brooklyn subway station, Jackson isn't convincingly bad in any sense. By this point, notwithstanding his black leather outfit and handcuffs-and-chains belt, Jackson's radical plastic surgery and skin-lightening (tastefully highlighted with eyeshadow) signaled Diana Ross rather than thugdom.

"Bad" is Jackson's most coherent dance. He creates a syncopated line based on head pops and angular arm movements over the funk polyrhythms. Where Fred Astaire's dancing had blended ballroom/ballet smoothness with tap's rhythmic displacements, "Bad" is built on short, abrupt movements on the backbeat or its subdivisions, loosened with swing-based rhythms in the bridge. The thug chorus moves in lockstep with Jackson in each segment, creating tension, until he bursts through the crowd, generating a counter-rhythm or taking a solo break as they freeze. Where Motown groups like the Temptations used dance to communicate ease and sexual availability—and the less sexualized Gene Kelly and Nicholas Brothers communicated an acrobatic ebullience—"Bad" is about tight control relieved by destructive explosions.

And apart from "Bad," the music videos have surprisingly little dancing. Jackson more or less created the music video genre, using new technology to develop a visual poetry, but he couldn't always knit it together. In "Black or White," the dancing fragments reveal that Jackson had stopped developing. They are scattered among quick camera cuts, including a mini-family story, headshots of smiling, hair-shaking multiracial models, lip-syncing child rappers in an urban street scene, and black and blond babies sitting on top of the earth. Jackson is often concealed behind backup dancers in colorful ethnic costumes set in wildly shifting world locales. Where Astaire limited his technical razzle-dazzle, saying that "either the camera will dance or I will," Jackson preferred spectacle and set out on a destructive quest to top himself.

MTV played the music videos free to promote CDs and concerts. Jackson's high production values could only be justified by massive sales, yet he became more extravagant as his popularity waned. Where *Thriller* (1982) had domestic sales of 20 million albums by 1984, *Bad* (1987) and *HIStory* (1995) sold a successful, but comparatively tiny, 6 million albums each. (As Carl Bialik has noted in the *Wall Street Journal*, claims that Jackson sold 750 million albums during his lifetime are exaggerated by several hundred million albums.) Yet Jackson spent an estimated $1 million on the "Bad" video and tens of millions on mid-1990s video projects. To market the mostly recycled *HIStory* (1995), Jackson shot a video in Hungary, using marching local soldiers as backup "dancers."

Indeed, apart from "Bad," Jackson's only major dance video was "Thriller," a homage to classic movie musicals, complete with a boy-girl mini-plot and title sequence crediting Jackson as coproducer, cowriter, and co-choreographer. At 13 minutes, "Thriller" is almost as long as Gene Kelly's climactic *American in Paris* ballet. It was the 25-year-old entertainer's apotheosis—and his Rosebud. Nominally a horror movie spoof, it is an essay on the abyss behind the celebrity façade. It opens with a movie-within-a-video, a 1950s-style horror scene where Jackson asks a girl to go steady, and immediately after she accepts, becomes a werewolf who tries to slash her to death ("I'm not like other guys," he explains). As she screams, the video cuts back to a theater where normal Michael Jackson—well, almost normal considering his early-stage facial alterations and red leather neo-sci-fi getup with Joan Crawford shoulder pads—and the unnamed girlfriend are sitting. She's frightened; he explains that it's only a movie. Leaving the theater, they hold hands. But he's no Rock Hudson: They seem to have pumped Jackson with Xanax to force the vapid, presumably flirtatious, dialogue out of his mouth. As Jackson and Anonymous Female Romantic Interest leave the theater, Jackson launches into the song. In the walk sequence that follows, Jackson does his best sustained dancing on video, effortlessly moving around her with all kinds of rhythmic displacements and arm movements, including a witty, stiff-legged backwards monster walk.

It's charming. They reach a cemetery, where they are confronted by zombies ("demons closing in on every side"), and with no transition, Jackson himself is suddenly revealed as one with goggling white eyes. Zombie Michael, unlike Normal Michael, is engaged enough to lead a production number. The zombie chorus's makeup and costumes are elaborate, but they dance in grinding lockstep with Jackson, almost exclusively on the beat and its subdivisions, with few of the contrasts of the later "Bad." It turns out to be a dream. Normal Michael—still spaced out—reappears to comfort the girl; but in the last shot, his eyes change from normal back to werewolf Michael's cat eyes: He *is* a monster.

Jackson's identity in "Thriller" is wildly unstable, switching between normal and demon five times. The multiple identities may have been influenced by Astaire's satire on his own image, "Puttin' On the Ritz" from *Blue Skies*. There, Astaire's smoothness is disrupted by a menacing multiple mini-Astaire chorus line, far upstage, who pull him into a jerking, frenetic production number that suddenly stops with hostile glares from the lead and mini-Astaires.

"Thriller" lacked this subtlety: It shared neither *Blacula's* Black Power revenge fantasy nor *Night of the Living Dead*'s integrationist dream, with its virtuous African-American hero organizing the citizenry against the undead. "Thriller" inverts *Night of the Living Dead*: Jackson, it implies, really *was* a zombie all along. ♦

B&A

Ignoble Experiment

Prohibition couldn't work, and it didn't.

BY KEVIN R. KOSAR

The dawn of the 20th century was an exciting time in the alcohol trade. Distilleries, many Jewish-owned, poured forth millions of gallons of liquor. Breweries headed by enterprising Germans with names such as Busch, Pabst, and Ruppert did booming business. Vineyards tended by Italians and others thrived from Virginia to Missouri to California, and the quality of their wine made Europe fret. Consumers had more choices than ever.

Then came Prohibition. In December 1917, Congress passed a resolution proposing to amend the Constitution to ban the "manufacture, sale, or transportation of intoxicating liquors." A little over a year later, 36 states had ratified the Eighteenth Amendment, and the ban took effect on January 16, 1920.

Prohibition is often thought of as a sudden American freakout, a bit of craziness imposed by a fanatical few fundamentalists. Not true. Prohibition was an international phenomenon. Lloyd George attacked drink relentlessly, famously declaring in 1915 that Britain was "fighting Germans, Austrians and Drink, and as far as I can see the greatest of these foes is Drink." Great Britain, Canada, Norway, Russia, and Sweden all enacted anti-drink measures. And as Daniel Okrent shows in this garrulously readable volume, Prohibition was a long time coming in the United States. Agitation had begun in localities and states a century earlier.

He writes: "By 1830 American adults were guzzling, per capita, a staggering seven gallons of pure alcohol a year," the equivalent of 1.7 bottles of hooch per week. The alcohol industry did itself no favors; it peddled whiskey as a cure for every conceivable illness and sold beer as a health tonic for mothers and children. Unscrupulous booze barons bought off newsmen and politicians.

Last Call
The Rise and Fall of Prohibition
by Daniel Okrent
Scribner, 480 pp., $30

Contraband beer being dumped into the streets (1925)

Temperance began largely as a social movement. Advocates used education, moral suasion, prayer, and shame to encourage responsible consumption. When this failed to achieve widespread effect, the movement turned to politics and, increasingly, demonization of anyone who had anything to do with alcohol. Maine was the first state to ban drink in 1851, and others followed. Gentle Temperance gave way to bellicose Prohibitionism and Carrie Nation's hatchet-wielding vandalism.

A diverse coalition promoted it. Christians supported it in droves. So, too, did women, who sought to curtail irresponsible and vicious behavior by men and to draw support to women's suffrage. Progressives denounced liquor because it retarded social progress and individual enlightenment. Big Business thought sobriety would make for greater productivity, while socialists believed working men would throw off their "false consciousness" if they were not stewed. Racists and nativists saw Prohibition as a tool for controlling blacks and punishing immigrants, Roman Catholics, and the "hyphenated Americans" who ran many of the beverage companies. The U.S. Senate did itself no honor when it held hearings, in 1918, accusing brewers and German-Americans of being disloyal propagandists doing the Kaiser's bidding. And then there were the assorted health nuts and killjoys who saw booze as poison and liquid lust.

Of course, as a national policy, Prohibition was patently mad. It was impossible for the federal government to police drinking over a three million-square-mile land mass. Americans had been imbibing since they had landed on North America's shores and were not about to quit cold turkey. Politicians often honored the law in the breach: President Harding openly sipped Scotch and soda while congressmen had bootleg whiskey delivered to their Capitol offices. Criminals got rich, and as many as 45,000 Americans might have died from poisonous liquor concocted in shabby stills.

Prior to the Noble Experiment, the federal government received 30 percent of its revenue from alcohol taxes; to solve the revenue problem the anti-alcohol crowd pushed through the Sixteenth Amendment in 1913. When the American economy collapsed 16 years later, income tax remittances plunged. Federal revenues dropped more than 50 percent between 1930 and 1932. In more ways than one, the country no longer could afford Prohibition. On December 5, 1933, the Twenty-First Amendment was ratified and Prohibition ended. Alcohol flowed legally and the tax dollars began rolling in. The anti-alcohol movement quickly dissipated, as did the crime wave it spawned. Although the Depression continued until the outbreak of World War II, better days had come. ♦

Kevin R. Kosar is the author, most recently, of Whiskey: A Global History.

HULTON ARCHIVE / GETTY IMAGES

"Eager to soothe tensions, President Barack Obama and Chinese President Hu Jintao shared an unusual and intimate dinner Tuesday night. . . . Underscoring the desire for candor, the White House said there were no official note-takers at the dinner and offered no readout of the discussions." **—Washington Post, *January 18, 2011***

RECORDED TRANSCRIPTS, JANUARY 18, 2011
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(cont'd)

and that's why the vice president is not invited.

PRESIDENT HU: In my country, such people would simply … disappear.

PRESIDENT OBAMA: That's interesting. But Hu, what most concerns me is this stealth fighter you have.

PRESIDENT HU: And what concerns me is this movie "The Fighter" that you have. Is this like "Rocky"? I really liked "Rocky."

PRESIDENT OBAMA: I am sure we can arrange a screening for you of "The Fighter."

PRESIDENT HU: Actually, I already own it on DVD. Good quality plus bonus material. I just want to know if it's worth watching.

PRESIDENT OBAMA: Well, um, I don't know. I haven't seen it. But if we can talk candidly for a moment about North Korea.

PRESIDENT HU: You know Kim Jong Il—he's a big fan of movies too. But bad movies. Naughty movies! Snuff! Very bad.

PRESIDENT OBAMA: I most certainly agree he is a bad person and he needs to be contained, his weapons program curtailed—

PRESIDENT HU: You know who else is bad?

PRESIDENT OBAMA: Who?

PRESIDENT HU: Me? Why am I bad?

PRESIDENT OBAMA: I didn't say you are bad. I think your translator—

PRESIDENT HU: My translator is bad? Maybe he is better translating large boulders into smaller stones beginning tomorrow. But what I need to know now is who gives the first speech at our state dinner.

SECRETARY CLINTON: According to my notes, Hu's on first.

PRESIDENT OBAMA: You just said that to cause trouble, didn't you?