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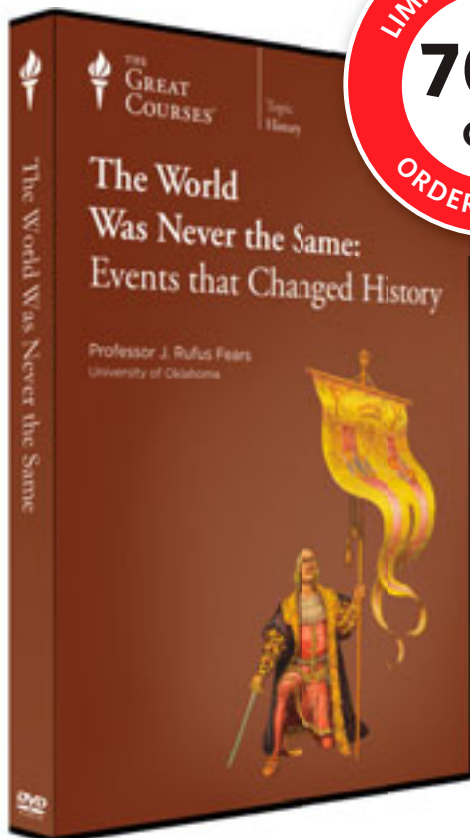
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COVER BY THOMAS FLUHARTY

Greed and Excess at the *New York Times*

One of the stranger episodes in contemporary journalism has just occurred in the pages of the *New York Times*, and what it means is a question the otherwise omniscient SCRAPBOOK would like to answer, but cannot.

It all began last Wednesday when the *Times* published an op-ed piece entitled “Why I Am Leaving Goldman Sachs” by a South African financier named Greg Smith. Like many more-in-sorrow-than-anger accounts of an awakened conscience, Smith’s essay went to considerable lengths to assure readers that the author is a gentleman of high standards and higher ideals, and that his decision to leave his friends and colleagues at the cesspool otherwise known as Goldman Sachs was not lightly taken. Mr. Smith had been at Goldman Sachs for nearly a dozen years; indeed, as he records it, since the moment he graduated from Stanford, which he had attended on “a full scholarship.” But apparently, it was a terrible strain. “I can honestly say,” he writes of Goldman Sachs, “that the environment now is as toxic and destructive as I have ever seen it.”

There is, of course, a smidgen of cynicism within the soul of THE SCRAPBOOK, which prompted us at first to exclaim, “So now he tells us!” If Smith had walked away from the pot of gold when his career was flying high, or Goldman Sachs was more conspicuously successful (say, at any time before

the financial meltdown of 2008), we might have been impressed by his predicament. But there is evidence to suggest that Smith’s disillusion coincided with a certain stagnation in his status at the firm, not to mention stagnation or worse in the firm’s profits and bonuses, and his decision to be shocked, shocked by his employer’s corporate culture might therefore be described by some as opportunistic.

THE SCRAPBOOK, by the way, holds no brief for Goldman Sachs—which might very well be as Smith describes it—and certainly does not speak with authority on this subject. The *Times* identifies its author as a “Goldman Sachs executive director and head of the firm’s United States equity derivatives business in Europe, the Middle East and Africa”—which is just as incomprehensible to THE SCRAPBOOK as, we suspect, it is to most readers.

No, what struck us with the force of a Goldman Sachs derivative was the following day’s front page of the *New York Times*. The lead story was not about Afghanistan, or the Republican campaign, or the visit of the British prime minister to Washington. It was about Greg Smith’s op-ed piece in the previous day’s *New York Times*.

“Public Rebuke of Culture At Goldman Opens Debate,” screamed the lead headline, and the subhed described “An Unusual Cry From a Financial Insider—Discussion of Greed and Excess.” In the Business

section of the *Times* there were three—count ’em, three—separate stories about the *Times*’s op-ed, and each headline was more tantalizing than the one before: “Public Exit From Goldman Raises Doubt Over a New Ethic,” “Name It; Clients Are Called It,” and THE SCRAPBOOK’s particular favorite, “Goldman Executive’s Resignation Letter Draws Backers, Detractors and Satirists.”

This is what is known in the business as manufactured news, and while it is a long-established practice among certain publications, it has largely been confined to what the *New York Times* would call the “tabloid” press. A paper will get an exclusive interview with the mistress of a public figure, or buy a posthumous photograph of a dead celebrity, and you can forget about anything else going on in the world that day. This may be standard operating procedure at the *New York Post* or, moving downscale, at the *National Enquirer*; but this is the first time THE SCRAPBOOK has ever seen such a self-generated nonevent advertised to such an impressive degree in the news pages of the *New York Times*.

And of course, the lesson in all this is that while mistresses and Greg Smith and the *National Enquirer* and Goldman Sachs and celebrity corpses and the *New York Times* may not appear, at first glance, to have much in common, they are all in it for the same reason. ♦

Disenchantment with Obama

The timing of a *New York Times* poll showing Barack Obama’s approval rating dropping like a rock was almost too perfect. “Centrist Women Tell of Disenchantment With G.O.P.,” read the headline of a March 11 story in the *Times*. Six reporters strung together a series of interviews purporting to show that GOP opposition to Obama’s new contraception and abor-

tificant mandate was badly hurting Republicans with moderate and independent female voters. To its credit, the *Times* noted that its evidence was “anecdotal, not conclusive.”

Indeed. The following day, the *New York Times*/CBS News poll in question was released. It showed Obama’s approval at an all-time low of 41 percent—down 9 points from the *Times*’s February poll. But why? The economy was on the rebound. Was there a polling glitch? Perhaps, but a *Washington Post*/

ABC poll conducted over the same period also found Obama’s numbers dropping from February. Both the *Times* and the *Post* suggested rising gas prices were the likely culprit.

Jonathan Chait of *New York* magazine pointed to studies showing that gas prices don’t move poll numbers and offered another possible reason Obama had taken a hit. “The jobs report reflected good news, of course. But this may actually be the problem for Obama. A Democracy Corps sur-

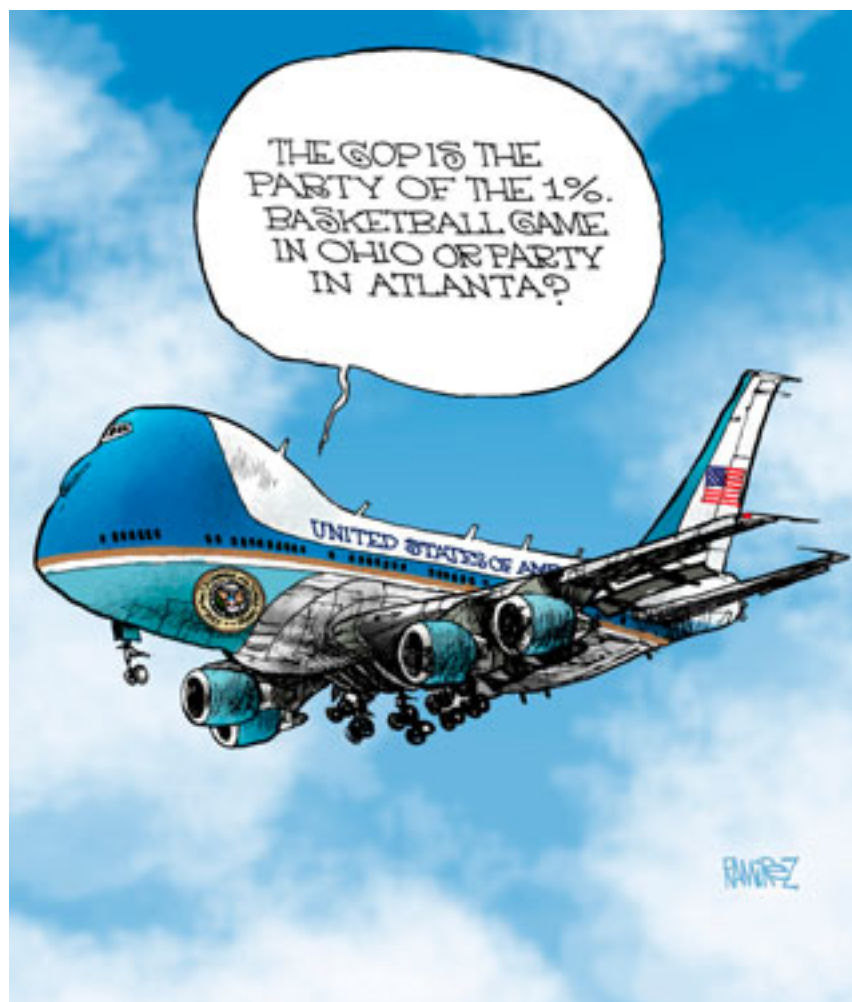
vey from last month tested elements of Obama's State of the Union address. The whole thing fared extremely well, except for one bit, where Obama boasted that 'America is back,'" Chait wrote. "Obama appeared at a factory to hail the [jobs report], and even declared later that day, yes, 'America is coming back.'"

Hmmm. THE SCRAPBOOK has an alternative hypothesis. Seems to us that one poorly poll-tested phrase, uttered at a fundraiser in Houston, may have had less to do with Obama's poll numbers than a national debate that had been raging for a full week when the polls were taken.

On March 1, the Senate narrowly voted down an amendment to retain existing conscience exemptions, allowing Americans to opt out of Obamacare's new contraception and abortifacient mandate for religious or moral reasons. That week the nation was subjected to a media firestorm—online and in print, on the nightly news and the Sunday shows—about a Republican "war on women" epitomized by Rush Limbaugh's derogatory remarks about Sandra Fluke. Fluke is the 30-year-old Georgetown Law student who had testified before a congressional panel about the need for a federal mandate to force Georgetown, and other religious institutions, to foot the cost of students' birth control pills. Obama waded into the Limbaugh-Fluke flap and discussed his reasons for doing so at a March 6 press conference.

According to the *Times* poll conducted from March 7 to 11, Americans support a conscience exemption to the birth control mandate for religious institutions by a 21-point margin (57 percent to 36 percent) and support a conscience exemption for all employers by an 11-point margin (51 percent to 40 percent).

Of course, these numbers weren't mentioned in the *Times's* write-up of its own poll. That's because the numbers suggest, as Mickey Kaus wrote at the *Daily Caller*, that "Obama wasn't such a genius to pick a fight over mandated contraception coverage," a debate "he appears to be losing." ♦



LET THEM EAT CAKE AND HAVE IT TOO.

Stimulating Lobbyists

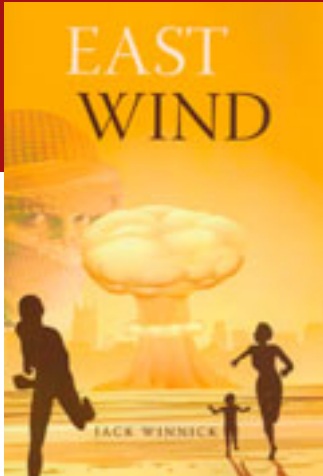
Remember the debate over the stimulus bill? Anyone with any sense at all predicted that the government's dispersing \$800 billion with a legislative leaf blower would encourage corruption. In this respect, the stimulus is a gift that keeps on giving—rather in the manner of a communicable disease. Last week we learned about the latest developments in the stimulus-funded Communities Putting Prevention to Work (CPPW) initiative, a \$650 million grant program for obesity prevention and tobacco use handed out to 30 states and the District of Columbia. Whether it will do anything about obesity remains to be seen, but the

Daily Caller reports that the program has been remarkably successful at fattening the wallets of lobbyists:

Money from some of the CPPW grants and also from the Community Transformation Grants (CTGs)—another Centers for Disease Control and Prevention program established to bolster the CPPW's efforts—have been and are being used to lobby local governments in support of policies including sugar and soda taxes.

In a hearing to examine President Obama's proposed Fiscal Year 2013 budget for the Department of Health and Human Services, HHS Secretary Kathleen Sebelius testified before the House Energy and Commerce Committee's subcommittee on health that she knew of the lobbying efforts but

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that they were acceptable—because the lobbying was taking place at the local level, and because the language governing the grants restricted grantees only from lobbying the federal government. She went on to add, however, that under the proposed budget local lobbying would be prohibited.

Translation: Using tax dollars to lobby for nanny-state regulations is probably illegal, but our esteemed HHS chief is going to tell Congress that she thinks it's legal, hope no one makes an issue of it, and promise to make sure it doesn't happen in the future just to cover her bases.

Quick, someone get Sebelius a copy of Title 18 of the U.S. Code, Section 1913. It wasn't hard for *Daily Caller* reporter Caroline May to find: "No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation." ♦

Unsafe at Any Speed

On March 10, former Florida congressman Alan Grayson, chiefly remembered for his noxious rhetoric against Republicans and for having his political career ablated by Rep. Daniel Webster, ran a red light and crashed his Mercedes into an Orlando city bus. The accident sent three of the bus passengers to the hospital. Grayson was on his way to a \$1,000-a-plate fundraiser (he's hoping to return to Congress). Headlining the event were anti-vaccination crusader and Hugo Chávez booster Robert F. Kennedy Jr. and *Curb Your Enthusiasm* actress Cheryl Hines. We're tempted to add something pithy about Alan Grayson, but sometimes the metaphors are obvious enough. ♦

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Europe's Drinking Problem

The announcement made news on both sides of the Atlantic: "A meeting of 21 scientists in Parma, Italy, concluded that reduced water content in the body was a symptom of dehydration and not something that drinking water could subsequently control," the London *Telegraph* reported last November. As a consequence, "producers of bottled water are now forbidden by law from making the claim [that water hydrates] and will face a two-year jail sentence if they defy the edict." It took the EU three years to arrive at this decision.

Not that we should be so surprised. After all, the European Union regulates the shape and size of condoms. It is also fiercely vigilant when it comes to name protection: When 3,200 bottles of André "California Champagne" ended up in Belgium, customs officials had them smashed, for there is no such thing as champagne from California—only sparkling wine. When I mentioned this to an EU parliamentarian, he told me it's no joke—not only does champagne have to come strictly from the Champagne region of France, but parmesan must be authentic Parmigiano Reggiano and Black Forest ham must come from Germany's Black Forest. What's next? Bologna from Bologna? (The answer is yes.)

The water ruling was roundly criticized. A conservative member of the European parliament told the *Telegraph*, "The euro is burning, the EU is falling apart and yet here they are: highly paid, highly pensioned officials worrying about the obvious qualities of water and trying to deny us the right to say what is patently true."

I couldn't agree more—but I do understand how it came to this. The

bureaucrats and scientists don't believe water is a source of hydration because they themselves do not drink water—or not a lot of it, anyway. Aside from alcohol, Europeans just don't drink much. While Americans have been advised to consume eight glasses of water a day, I imagine the typical European drinks one. San Pellegrino is sold in 200 ml bottles, which can be finished in about two



swigs. At hotels and hostels, juices come in the glasses we reserve for tequila shots. At a B&B in France, I practically emptied a pitcher of multi-vitamin juice clearly meant to supply the whole dining room (I stood by the buffet table continuously pouring and drinking). In many parts of the continent, the words "free refill" have yet to be uttered. And nowhere will you find ice. "It's too cold," explained a German friend of mine. "You can't taste anything." (I suspect it hurts his teeth, too.) How often do Americans complain their cold beverage is too cold? Ever?

In the summer of 1993, I lived with a host family in Trier, Germany. Rarely did I see them drink water—

and never tap water. In the morning it was coffee. For lunch there might be *Sprudel* (sparkling water). And at dinner there was beer or wine, followed by coffee. My host mother (who still sends me Christmas cards) went out of her way to get me orange juice, which came in a paper carton that required scissors to open. She insisted on leaving the open container on the kitchen counter in case her husband was inclined to try it—his teeth couldn't handle anything refrigerated. Needless to say, the juice went sour by day three.

On one occasion, I went biking with my host parents' daughter and her husband through the Eifelwald and up a small mountain. The Germans were racing through the forest, and I tried my best to keep up. But when I came speeding down a hill and needed to make a sharp left, I instead went straight off the side, crashing into a thicket of branches and twigs. Luckily nothing was broken, but I was fairly cut up and covered in splinters. Part of my bike (which was pink!) had crumpled. By the time the son-in-law had doubled-back to see what had happened, I was playing it off as a minor mishap. The blood running down my leg said otherwise.

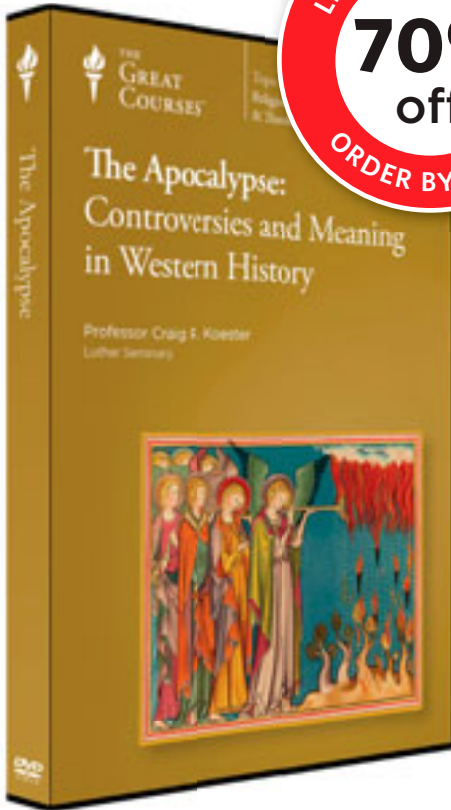
More embarrassed than hurt, I insisted we go on. The son-in-law said that just up the trail was an inn where I could get patched up and quench my thirst. The last leg of that trip was all uphill, and I remember the flies buzzing about me. But at long last, we reached the top, and I collapsed into a chair.

Now if you're guessing the Germans ordered bottles of water to rehydrate themselves and me, you'd be mistaken. Instead, the waitress came out with glasses containing a bright yellow liquid resembling Gatorade. But it was not Gatorade. Rather, it was something called a *Viez-Limo*: a mixture of lemonade and apple wine—and no ice.

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The Man Who Likes Mandates

Why is there still so much resistance among Republican primary voters to Mitt Romney, the likely but not inevitable GOP nominee? Perhaps the deepest reason is this: At a moment in history when we need a bold commitment to reform, a fundamental willingness to limit the state and revitalize self-government, Romney's achievements and qualifications seem out of step with the times.

Consider a revealing debate moment. It's not from this year's campaign but from 2008, when Obamacare did not yet exist. Here's an exchange from the debate among Republican candidates at St. Anselm College in New Hampshire on January 5 that year:

CHARLIE GIBSON: Governor Romney's system has mandates in Massachusetts, although you backed away from mandates on a national basis.

MITT ROMNEY: No, no, I like mandates. The mandates work.

FRED THOMPSON: I beg your pardon? I didn't know you were going to admit that. You like mandates.

ROMNEY: Let me—let me—oh, absolutely. Let me tell you what kind of mandates I like, Fred, which is this. If it weren't . . .

THOMPSON: The ones you come up with.
(Laughter)

ROMNEY: Here's my view: If somebody—if somebody can afford insurance and decides not to buy it, and then they get sick, they ought to pay their own way, as opposed to expect the government to pay their way. And that's an American principle. That's a principle of personal responsibility.

So, I said this: If you can afford to buy insurance, then buy it. You don't have to, if you don't want to buy it, but then you got to put enough money aside that you can pay your own way, because what we're not going to do is say, as we saw more and more people . . .

GIBSON: Governor, you imposed tax penalties in Massachusetts.

ROMNEY: Yes, we said, look, if people can afford to buy it, either buy the insurance or pay your own way; don't be free riders and pass on the cost to your health care to everybody else, because right now . . .

THOMPSON: The government is going to make you buy insurance . . .

ROMNEY: No, the government is going to stop . . .

THOMPSON: and make you pay—I mean, the state—your state plan, which is, of course, different from your national plan, did require people to make that choice, though. The state required them to do that. What was the penalty if they refused? . . .

ROMNEY: If somebody is making, let's say \$100,000 a year, and doesn't have health insurance, and they show up at the hospital, and they need a \$1,000 repair of some kind for something that's gone wrong. And they say, "Look, I'm not insured, I'm not going to pay." Do you think they should pay or not?

THOMPSON: Did your plan cut people off at \$100,000? Was that the level?

ROMNEY: No, actually . . .

THOMPSON: Did it only apply to people with \$100,000 income and over?

ROMNEY: It actually applies to people at three-times federal poverty. They pay for their own policy. At less than three-times federal poverty, we help them buy a policy, so everybody is insured, and everybody is able to buy a policy that is affordable for them. The question is this, again, if someone could afford a policy and they choose not to buy it, should they be responsible for paying for their own care? Or should they be able to go to the hospital and say, "You know what? I'm not insured. You ought to pay for it." What we found was, one-quarter of the uninsured in my state were making \$75,000 a year or more. And my view is they should either buy insurance or they should pay their own way with a health savings account or some other savings account.

GIBSON: We have an expression in television: We get in the weeds. We're in the weeds now on this. . . . Yes or no, in your national plan, would you mandate people to get insurance? . . .

ROMNEY: I would not mandate at the federal level that every state do what we do. But what I would say at the federal level is, "We'll keep giving you these special payments we make if you adopt plans that get everybody insured." I want to get everybody insured.

GIBSON: Okay.

ROMNEY: In Governor Schwarzenegger's state, he's got a different plan to get people insured. I wouldn't tell him he has to do it my way. But I'd say each state needs to get busy on the job of getting all our citizens insured. It does not cost more money.

Thus spake Mitt Romney, able technocrat and clear-eyed manager. The well-informed technocrat looks at the current health care system and sees an inability to form stable insurance pools because of problems of adverse selection and free riders. Those problems can be solved—or at least addressed—by mandating that everyone buy coverage. Thus, Romney volunteers, “I like mandates. The mandates work.”

The impatient manager looks at the current system and hears complaints about some people not being insured. So he commands, “I’d say each state needs to get busy on the job of getting all our citizens insured.” Or, as Obama and a Democratic Congress have subsequently done, imposes a federal mandate that diminishes our individual liberty and erodes religious freedom.

Romneycare was an understandable effort to fix the system over which Mitt Romney presided in Massachusetts. But the country has changed markedly in the last six years—without a corresponding change in Romney’s views. If our current problems lent themselves to technocratic and managerial fixes, Romney could be a reasonably compelling candidate. But they don’t.



Gov. Mitt Romney with Sen. Edward Kennedy at the signing ceremony for Romneycare in Boston, April 12, 2006

Indeed, what Republican primary voters sense is that a technocratic and managerial mindset could prove an obstacle to coming to grips with the situation we face. If the problem is a liberty-encroaching unlimited government, we don’t need that government to run more efficiently. If the problem is a suffocating nanny state, we don’t need better organization of the nannies. If we have an opportunity to revitalize citizenship, we need leaders who view us not as clients to be managed or consumers to be served, but as self-governing citizens who would fare better without an overbearing and overweening government. If we are sick of being managed by liberal technocrats, we’re not going to be thrilled merely to replace their rule with that of moderately conservative technocrats.

Mitt Romney likes mandates. Conservatives—especially in light of Obamacare—don’t. Conservatives like liberty.

—William Kristol

Don’t Go Wobbly

It’s been a bad few weeks in Afghanistan. The burning of several Korans by U.S. military personnel at the Bagram airbase on February 20 sparked protests and riots. More troubling were several incidents of “green on blue” attacks in which Afghan security personnel turned on their American advisers; six American soldiers died in such attacks, including two officers slain in the Interior Ministry in Kabul. As a result, NATO advisers were temporarily pulled out of all the ministries in the capital. Then on March 11 an American staff sergeant walked out of his small base in a village north of Kandahar and, for reasons that remain unknown, murdered 16 civilians. A few days later Defense Secretary Leon Panetta arrived at a giant Anglo-American base in Helmand Province just as an Afghan employee was attempting to run down some VIPs on the runway in a stolen pickup truck. Last week ended with President Hamid Karzai demanding that U.S. troops stop operating in villages altogether and pull back to larger forward operating bases and with the Taliban announcing that they were pulling out of nascent peace talks.

Amid all these perceived setbacks and humiliations, it is little wonder that the patience of the American people with the war seems to be approaching the breaking point. Recent polls show that roughly 60 percent of those surveyed think the war is not worth fighting and 50 percent want to accelerate the timetable for withdrawal. Republicans have been staunch supporters of the war effort, but there are cracks appearing even on their side, with presidential candidate Newt Gingrich denouncing the war effort as not “doable” and claiming that a continued U.S. presence in Afghanistan is “counterproductive.” Rick Santorum did not go quite that far, but he did say, “We have to either make the decision to make a full commitment, which this president has not done, or we have to decide to get out, and probably get out sooner.” Congressional Republicans are said to be increasingly restive, too, although there have not been any high-profile defections—yet.

The frustrations that Gingrich and Santorum are tapping into are real, but opposing the war effort is hardly a sure path to political success—as seen from Ron Paul’s poor showings in the primaries (he has not won a single state) and by Gingrich’s failure to win the Alabama and Mississippi primaries in his native South right after his turn against the war. Mitt Romney, despite some initial uncertainty, has emerged as a stalwart on the war, and that has not stopped him from winning more delegates than all his

competitors combined. Certainly there is no vocal antiwar movement on the streets—opposition is muted by comparison not only with Vietnam but with the Iraq war, which helped cost Republicans their hold on Congress in 2006.

Perhaps voters are smarter than their leaders realize. They may well be aware that, for all the frustrations of the current war effort, the consequences of an overly precipitous drawdown are likely to be worse. They may also realize that our troops have made real progress, which can be sustained and expanded.

Since the beginning of a full-scale offensive to retake Helmand and Kandahar provinces in 2010, U.S. troops and their allies have driven the Taliban out of most of their southern strongholds. Enemy-initiated attacks are 20 percent lower this year than last, and 36 of the last 45 weeks have seen fewer insurgent attacks than the corresponding week a year ago. Despite a few high-profile attacks, Kabul remains fairly safe—as do the north and west. The exception to this good news story is in the east, where enemy attacks have been up, but then that's why military commanders have been keen to shift resources there.

Progress in improving Afghan governance has been harder to come by, but there is some good news there too, notably the increasing capabilities and professionalism of the Afghan National Army, which has been taking a larger role in the fight. Some officials, such as Helmand governor

Mohammad Gulab Mangal, have also been doing a commendable and courageous job. Even Hamid Karzai, erratic though he is, deserves credit for trying to tamp down, rather than inflame, the Koran-burning protests. That the United States can work with him is demonstrated by the agreement quietly reached by U.S. and Afghan negotiators over the handling of detainees in U.S. custody—they will be transferred to Afghan control but Washington will retain a veto over any releases and U.S. personnel will continue in an oversight role. This shows how, even in the current atmosphere of mutual suspicion, the differences between the two sides can be bridged. Karzai might be even more cooperative if he were assured that America would stand behind his government for the long term.

Unfortunately, rather than regularly explaining and defending our troop presence in Afghanistan, President Obama focuses most of his public comments on his desire to withdraw. Last week the *New York Times* printed an article, widely seen as a trial balloon, saying that the administration is considering pulling out another 20,000 troops or more by June 2013. That would be a major mistake; the troop cuts that have already been announced—decreasing the force from 100,000 troops last year to 90,000 today and 68,000 by September—imperil commanders' ability to stabilize the situation. Faster troop cuts, especially if combined with cuts in funding for the Afghan National Secu-

The Truth Comes Out on Health Care

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

It seems like just yesterday Nancy Pelosi said that Congress would have to pass sweeping health care legislation so we could find out what was actually in the bill. Two years have passed since that bill became law, and though the full implications of its 159 new agencies, panels, commissions, regulatory bodies, and mandates remain murky, a few things are now crystal clear.

First, the law will cost more than originally advertised. The nonpartisan Congressional Budget Office (CBO) now estimates the bill will cost upward of \$1.76 trillion over a decade, and not the \$940 billion that was initially projected. Why? Due to a clever budget gimmick, the law was written not to take full effect until 2014, meaning budget estimates only accounted for six years of implementation. Now that the CBO has enough information

to forecast costs for nine years of implementation, the price has gone way up. And some project that when you factor in all 10 years, the cost could be a whopping \$2 trillion!

Second, though the costs will rise, the projected scope of coverage will actually fall. The CBO found that the law will reduce the number of uninsured Americans by 30 million, not 32 million as first promised. And remember that assurance that if you like your health care coverage you can keep it? Don't bank on it. The CBO also projected that in 2016, four million Americans will lose their employer-based health insurance—a massive increase over the one million originally forecast.

Third, the law is clearly bad for America's job creators and workers. A sweeping new national survey of more than 2,300 small and large businesses shows that employers' health care costs have gone up under the law. As a result, many will be forced to pass on costs to their employees. Businesses will have less

money to hire, invest, and expand.

Next week, the Supreme Court will hear a challenge to the law. While the Chamber is not weighing in on the constitutionality of the individual mandate, we believe the law's fate should be settled as quickly as possible to restore certainty for business. And if the individual mandate is ruled unconstitutional, the whole law should be struck down.

Unfortunately, our original predictions about the negative consequences of the law have proved true. The Chamber has long fought for health care reform based on market solutions that will empower consumers, foster competition, control costs, and improve quality and coverage. We still need those reforms, and we will continue to push for them until we get it right.



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riety Forces that will necessitate reductions in their ranks, risk creating a situation that spins out of control.

But President Obama's hesitancy and irresolution should not be an excuse for Republicans to abandon the war effort. They should continue to pressure the president to respect the advice of his commanders in the field, who want to keep 68,000 troops through 2014, with a substantial residual presence after that.

What, after all, is the alternative? Peace talks have scant prospect of success given that the Taliban are now betting—perhaps rightly—that they can simply wait us out. The likely result of a precipitous American pullout, which would trigger an equally hasty exit by our NATO allies, would be a major Taliban offensive in the east and south that would aim to take back Kandahar, Marja, and other population centers that have been secured at considerable cost over the past few years. The Afghan security forces would be likely to splinter along ethnic lines, and the entire country could well be plunged into a civil war as it was in the 1990s, when Kabul was regularly on the receiving end of artillery bombardments.

We know how that conflict played out, with the rise of Taliban rule and the creation of sanctuaries for al Qaeda. There is no need to risk a repeat of such a calamity, when, simply by sticking with current plans and commitments, we have a decent chance to secure our vital interests in Afghanistan.

—Max Boot

Big Labor's Big Bucks

Last week, the *New York Times* reported that “labor leaders say they will mount their biggest campaign effort, with far more union members than ever before—at least 400,000, they say—knocking on voters’ doors to counter the well-endowed ‘super-PACs’ backing Republicans.”

Prior to the Supreme Court's *Citizens United* decision loosening campaign finance regulations, union members were allowed to knock only on the doors of other union members. Now they're canvassing all voters. While many have decried *Citizens United* for unleashing a torrent of corporate money in elections, critics are oddly silent about the fact that it also gives union bosses even more freedom to spend.

Of course, union manpower has always provided huge amounts of in-kind support for Democratic campaigns—unions claimed to have 250,000 door-knockers in 2008.

Despite some restrictions on this kind of advocacy, unions regularly took advantage of their lack of enforcement.

In any case, if you really care about the corrupting influence of money in politics, your beef is with union bosses. Since 1989, 12 of the top 20 donors to political campaigns have been unions. Unions spent over \$400 million on elections in 2008, and nearly every penny went to Democrats. They spent over \$200 million in 2010, and the single largest donor in that election was the American Federation of State, County, and Municipal Employees (AFSCME), which spent \$87.5 million. AFSCME has already pledged \$100 million for the upcoming election. As AFSCME is a public employee union, that means the largest funder of Democratic campaigns is you, the taxpayer. Once upon a time Democrats—and even the AFL-CIO's former president John Sweeney—opposed this kind of public sector union campaigning on principle.

If you don't think that all this money is corrupting, you haven't been paying attention to the Obama administration's stimulus, health care, and bailout giveaways to unions. And what about the National Labor Relations Board trying to bar Boeing from building a factory in a right-to-work state?

Recall that in April 2010, when Democrats still had control of Congress, they tried to pass the DISCLOSE Act. The bill would have instituted all kinds of restrictions and disclosure requirements for corporate political donations. But the legislation would have allowed unions to transfer unlimited funds among affiliated groups to pay for political ads with no disclosure whatsoever. Additionally, companies that received TARP money would have been banned from giving. GM couldn't write checks, but the United Auto Worker beneficiaries of TARP funds could. DISCLOSE also would have curbed donations by employees at private companies receiving more than \$10 million in government contracts. Public employee unions, however, would still be free to give generously. We were saved from this brazen act of hypocrisy only because Republicans had the necessary 41 votes in the Senate to prevent the DISCLOSE Act from passing.

It's worth remembering that unions no longer represent the interests of the American worker. The Bureau of Labor Statistics reported earlier this year that union membership has fallen to a 70-year low—11.8 percent of the workforce. Of that total, the majority are now public sector workers. And private sector union pension plans are \$160 billion in debt, even as their union reps pour hundreds of millions into campaigns.

In October 2010, when the *Wall Street Journal* first reported that AFSCME was America's biggest political donor, that fact quickly became a standard talking point as voters headed to the polls to hand Democrats the worst party defeat since the end of World War II. If voters understand that union bosses are our most corrupt special interest and that Democrats are utterly beholden to them, it's likely to be a winning issue for Republicans in 2012 as well.

—Mark Hemingway

There's a Chance! Yes!

Could there be a brokered convention?

BY STEPHEN F. HAYES



Nobody had the week of March 11 circled on the political calendars last fall. The week after Super Tuesday featured two contests in the Deep South, two on the islands, and a caucus in a state that had already hosted a meaningless, if well-attended, primary. But last week may end up being more significant than most in the bizarre and

meandering Republican presidential nominating process. It was the race in a snapshot: Rick Santorum did better than expected. Mitt Romney failed to win over very conservative voters but continued to add delegates. And Newt Gingrich underperformed but vowed to continue.

Still, something changed: The campaigns for two of the three leading candidates acknowledged that their strategy is not to win the nomination outright but to prevent Romney from doing so. That means

their goal is a contested convention.

Gingrich said this directly in a March 13 interview with Bret Baier on Fox News. "We just got two out of every three delegates in Mississippi and Alabama for somebody other than Mitt Romney. I don't think that's what he wanted. . . . The first goal has to be to get to a point where there's an alternative to Romney. Otherwise, he becomes the nominee."

The Santorum campaign was not quite as blunt, but the message was the same. In a strategy memo released March 12, adviser John Yob argued that the delegates selected at local and state conventions are likely to prefer the most conservative candidate in the race. Santorum's real advantage, he wrote, is at the national convention. "Mitt Romney must have a majority on the first ballot in order to win the nomination because he will perform worse on subsequent ballots as grassroots conservative delegates decide to back the more conservative candidate. . . . Santorum only needs to be relatively close on the initial ballot in order to win on a later ballot as Romney's support erodes."

John Brabender, Santorum's chief strategist, tells me the campaign has hired experts on delegate allocation and convention rules.

If the Gingrich and Santorum campaigns agree on strategy, they differ on tactics. Gingrich wants a partnership with his conservative rival; Santorum doesn't. The Gingrich campaign claims its candidate must stay in the race for two main reasons: (1) With two conservatives in the race Romney won't be able to end the race by training his fire on just one opponent, and (2) Gingrich can fight Romney for delegates in places where Santorum didn't do the procedural groundwork—4 congressional districts in Illinois (10 delegates) and Washington, D.C. (16). A Gingrich adviser tells me that Gingrich and Santorum together could be a "powerful team."

Santorum's campaign isn't interested. "It's very clear that the ultimate goal is to unify conservatives around a candidate that's not Mitt Romney,"

GARY LOCKE

Stephen F. Hayes is a senior writer at THE WEEKLY STANDARD.

says Brabender. “Either we’re going to unify around Rick Santorum or we’re not. This is the game. We’re in it now. We’re trying to win.” To that end, Santorum has bought ad time in Illinois ahead of the March 20 primary there, and also in Louisiana (March 24) and Wisconsin (April 3).

Romney’s campaign insists that the math favors their candidate. And while they’ve overstated his inevitability—one adviser said it’d take “an act of God” to keep him from winning—he is still well ahead in the delegate count. University of Virginia professor Larry Sabato puts the likelihood of a Romney nomination at 80 percent.

Romney has had some very good moments in recent weeks. When he took a question from a father whose son, a veteran of service in Afghanistan, suffers from post-traumatic stress disorder, Romney answered with compassion, sincerity, and just the right amount of indignation about the poor treatment the Marine has gotten from the government that sent him to war. And while Gingrich has gotten lots of attention on gas prices, Romney’s critique of the Obama administration’s energy policy decisions is precise and persuasive.

But Romney hasn’t won over a majority of Republican voters who identify themselves as “very conservative,” and talk of delegate math and inevitability by his campaign doesn’t exactly generate excitement.

That’s a problem. A Gallup poll last week found that just 35 percent of Republicans would “enthusiastically” support Romney as the nominee. By contrast, 47 percent of Republicans told Gallup in February 2008 that they would enthusiastically support John McCain. It’s not just Romney. Last week’s poll, in a confirmation of polling throughout the campaign, found that Republicans aren’t thrilled with the field. Just 34 percent said they’d “enthusiastically” back Santorum, and just 28 percent said that of Gingrich.

This lack of enthusiasm has reignited talk of a contested or brokered convention. “I’m pushing for a floor fight. . . . I’d like to see a good

old-fashioned convention and a dark horse come out,” Maine Republican governor Paul LePage told *Politico* in late February. “I just believe we ought to go to the convention and pick a fresh face.”

Romney last week dismissed such talk. “We’re not going to go to a brokered convention,” he told Fox’s Bill Hemmer. “One . . . of us among the three or four that are running is going to get the delegates necessary to become the nominee.” But it’s a possibility, however slim, that Romney did entertain just two weeks earlier.

On Saturday, March 3, Romney stood with Santorum and Gingrich on the floor of a shuttered DHL warehouse in Wilmington, Ohio, next to a makeshift set constructed for a presidential forum hosted by Mike Huckabee. Each man had filmed individual question-and-answer sessions with Huckabee and panels of economic experts and local Ohio business owners. With a brief break before they gave their closing statements, Romney approached Santorum and Gingrich (Ron Paul was busy campaigning in Washington).

The three candidates discussed the nominating process. Romney raised the possibility of an unvetted candidate getting into the race and spoke of the perils such a scenario presented for the party. Not surprisingly, the other two assented and each agreed that he would reserve his support for someone now in the race. R.C. Hammond, a spokesman for Gingrich, said the consensus that emerged from the conversation was that the Republican nominee was among “the four of us” and not an outsider. Eric Fehrstrom, a senior Romney adviser, agreed with that characterization.

Despite the consensus that emerged from the discussion in Wilmington, Gingrich twice raised the possibility of a new entrant in an interview last week with Bret Baier on Fox News. Gingrich pointed to Romney’s difficulty winning support from conservatives. “I’m just saying analytically—the way we campaigned out here, the fact that two out of the

three delegates from each state is not going to be for Romney—is a significant advantage. We can argue later on whether Santorum is the right person to nominate or Gingrich is—or *something else may happen.*”

Moments later, Baier asked Gingrich to describe his path to the nomination. “There’s a 60-day period between the last primary to the convention. We live in an age of television, radio—you know—YouTube, video . . . what have you. I could imagine a dialogue would break out that says, ‘Who’s the right person?’ *And whether it’s one of the four of us or someone else—but the question is, ‘Who is the person who is capable of defeating Barack Obama?’*” (Emphasis added.)

Is this just the rambling of a candidate with no direct path to the nomination? Perhaps. But even before he spoke, a prominent Republican strategist unaligned with any current candidate emailed me: “Can’t someone else get in?”

Kirby Wilbur, chairman of the Washington state Republican party, says a convention fight that ends with a new candidate would be good for the party. Wilbur, whose position makes him neutral in the race, says those who argue that such a scenario would be disastrous are mistaken. “There’s simply not a real broad-based candidate that appeals to everybody in the party,” he says. “The longer this goes on with Romney winning small states big, but winning just 30 or 35 percent in other states—that’s not a mandate. They’re arguing: ‘Let’s accept inevitability.’ That’s not happening.”

The risk, Wilbur acknowledges, is a chaotic convention that sets up well for a proverbial white knight who never shows up. And the candidates most often mentioned as saviors have all said they’re not interested—at least for now. Wilbur says there would be two possibilities for a late entry: In the two months between the final primary in Utah and the convention, and at the convention itself. “If Romney doesn’t get 1,144 [delegates] and would go into the convention without a majority, I think then there’s a period of negotiation before Tampa where Romney

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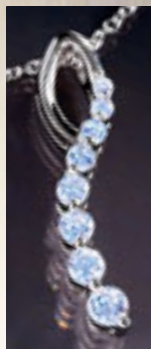
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approaches Santorum and Gingrich and Paul and negotiates for delegates. If they don't agree to help him, and he doesn't win on the first ballot—most delegates are released after the first ballot, and it'd be wide open. It's not hard to see a Marco Rubio, a Mitch Daniels, or a Chris Christie—I'm not preferring any of them, but those are the names out there—and on the second ballot there's an incredible sweep toward him."

Wouldn't that look like the establishment simply shoving its choice down the throats of party rank-and-file? Wilbur, a strong conservative and former talk radio host in Seattle, doesn't think so. "There would have to be a consensus among the delegates, so it wouldn't just be the party leaders. It would have to be somebody with grassroots support. The delegates are the grassroots and they're conservative—more conservative than the leadership."

That process, Wilbur argues, would energize the Republican base, not discourage it. "The eyes of the nation will be on the convention—no one is paying much attention before then. What they see is a candidate come to the forefront, get the enthusiasm and excitement of the convention—and that's contagious."

How likely is it? In the 1994 movie *Dumb and Dumber*—juvenile, but classic—Jim Carrey plays Lloyd Christmas, a dimbulb who battles with his good friend and fellow idiot, Harry Dunne, to win the heart of Aspen, Colorado, socialite Mary Swanson. Swanson finds the men repulsive, but an indefatigable Christmas pursues her despite her obvious lack of interest. At one point, he asks her to level with him about his chances.

"Not good," she replies.

"You mean, not good like one in a hundred?"

"I'd say . . . more like one in a million."

After a brief pause, a wide smile creeps across his face, and he pumps his fist. "So you're telling me there's a chance!"

No, they don't end up together. Even in Hollywood there's no guarantee of a storybook ending. ♦

GOP Blunders

There aren't as many as the media think.

BY FRED BARNES

The media specialize in spotting political blunders, mis-cues, and lost battles by Republicans. And reporters and commentators have found a lot of them in the past year. The fight over the debt limit increase, the refusal to reach agreement with President Obama on a "grand bargain" to cut the deficit, the stumbling over extending the payroll tax holiday, the controversy over the contraception mandate—all of them setbacks harmful to Republicans. Or so we've been told.

The problem is there's either little or no evidence to back up these conclusions or there's evidence to the contrary. Rather than suffer as a party, Republicans appear to have largely held their own or even gained ground as these supposed misfortunes have piled up since last summer.

There are three ways in which polls measure a party's status: favorability, party identification, and the generic congressional ballot. While Republicans haven't fared well in every poll, they've done far better than a string of highly visible embarrassments (in the press's view) would lead you to believe.

Get ready for a blizzard of poll numbers, starting with favorability. In Fox News surveys, Republicans were viewed favorably by 41 percent of adults last April, with 53 percent unfavorable. This month, it was 39 percent favorable, 52 percent unfavorable. Not much of a change.

An NBC News/*Wall Street Journal* poll found virtually no change at all. It was 32 percent positive for Republicans in March 2012 and 31 percent positive in April 2011. In a Pew poll,

there was a dip, from 42 percent favorable, 51 percent unfavorable a year ago, to 36 percent favorable, 56 percent unfavorable now. But that was the worst of it for Republicans.

On party ID, Fox News asks this question: "When you think about politics, do you think of yourself as a Democrat or Republican?" In March 2011, 37 percent said they were Republicans. In March 2012, it was the same—37 percent.

The congressional ballot question asks voters whether they'd vote for the Republican or the Democratic candidate if the election in their congressional district were held now. Gallup found in February that Republicans had gained, tying Democrats at 47 percent. "These results," Gallup president Frank Newport said, "are slightly more even than two previous measures from December and August of last year, which showed Democratic advantages of 4 and 7 percentage points."

Pollster Scott Rasmussen measures the congressional vote weekly. Republicans led Democrats 45 percent to 39 percent in early March 2011. A year later, it's Republicans 44 percent, Democrats 41 percent—a slight improvement by Democrats.

There's not much polling on the individual cases and how they might have affected Republicans—for instance, the Social Security tax holiday. But one downside for Republicans, perhaps a temporary one, has emerged—their presidential race. The NBC News/*Wall Street Journal* survey asked if, based on "what you have seen, read, or heard," your opinion of the GOP had changed. Among all adults, 40 percent said they'd become less favorable. Even 23 percent of Republican primary voters said so.

Fred Barnes is executive editor of THE WEEKLY STANDARD.

Social issues are a pet peeve of the media, but only when Republicans advance a conservative view. More often than not, Republicans are deemed politically unwise for opposing abortion, gay rights, and the Obama administration's mandate that health insurance policies provide contraceptives and morning-after pills for free.

With religious institutions, except for churches, subject to the mandate, the Catholic church objected, as did evangelical Protestants, conservatives, and Republicans. They asked for conscience exemptions, allowing Catholic hospitals, for instance, to retain the freedom they enjoy today by opting out of an obligation that violates the teachings of their faith.

Not the entire press, but at least an influential segment of the mainstream media, jumped to the conclusion that Republicans are losing the support of women by opposing the mandate. Democrats insist Republicans want to ban contraception

altogether and are waging "a war on women"—a pair of absurd claims.

Polls vindicated Republicans. A *New York Times*/CBS survey found that by 57 percent to 36 percent, Americans favor an exemption for "religiously affiliated employers." As the issue continued to fester week after week, Obama's job approval declined in several national polls.

Rising gasoline prices no doubt played a role. In a *Washington Post*/ABC News poll released last week, almost two-thirds of Americans disapproved of the president's handling of the energy issue. At the same time, the contraception mandate appeared to affect Obama's standing as well.

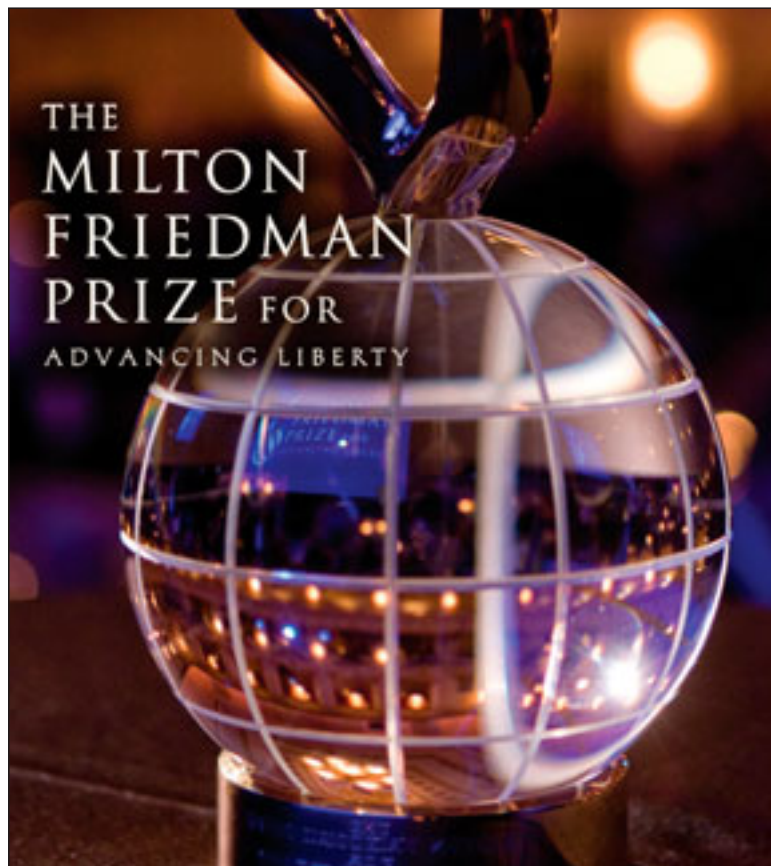
"The election is still about the economy, not social issues," Rasmussen told me. "However, to the degree that the health care/mandate issue comes into play, it helps the GOP at the margins. The administration miscalculated by taking on the Catholic church."

It's not just the media that regard

social issues as risky for Republicans. So does much of the broader political community of elected officials, government workers, lobbyists, and consultants, including many Republicans.

"We're focused on doing this the right way," said Michael Steel, spokesman for House speaker John Boehner, "and that means working through the committee process. We haven't announced what that next step will be, but I'd look for committee action." On an abortion-related issue, Boehner has yet to approve a House committee hearing on Planned Parenthood.

When its poll showed gas prices are driving down Obama's approval, the *Washington Post* rushed to his defense with a story headlined: "Voters blame president for gas prices, experts say not so fast." So should we expect a story under the headline of "Voters blame Republicans for balking at deficit plan, insiders say not so fast" or something similar? No. ♦



MAY 4, 2012 WASHINGTON, D.C.

The Milton Friedman Prize for Advancing Liberty, named in honor of perhaps the greatest champion of liberty in the 20th century, is presented every other year to an individual who has made significant contributions to advancing human freedom. The 2012 prize will be presented at the Milton Friedman Prize for Advancing Liberty's Biennial Dinner, May 4, 2012, in Washington, D.C., at the Washington Hilton.

For additional information and dinner reservations, please visit www.cato.org/friedmanprize.



One Rule at a Time

The right way to cut government red tape.

BY ELI LEHRER

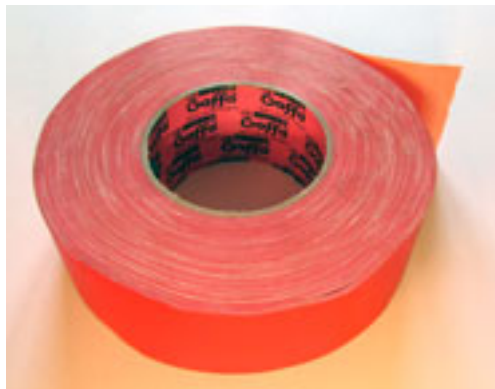
Just about every poll on regulatory issues shows many Americans hold contradictory views. By growing majorities, Americans say they oppose “government regulation” (more than half tell Gallup that government regulates “too much”). However, when pollsters ask about broad areas of regulatory policy, like the environment, education, or finance, Americans say they want the government to do more. Perhaps because of these contradictions, politicians rail against government regulation on the campaign trail but almost never do much about it once in office. Deregulation requires a different approach, one that looks at opinions about particular regulations.

When it comes to specific regulations, like certain chemical bans or price controls on insurance, polls show Americans do, indeed, want government to do less. Political leaders intent on regulatory reform, therefore, would do well to accept regulation in many areas of life while working to draw attention to the negative consequences of particular regulations. Remedies as a result are likely to be piecemeal rather than wholesale.

Politicians’ current approach involves lots of bold-sounding proposals that go nowhere. Newt Gingrich says he wants to abolish the EPA (the most intrusive regulator by many accounts) in its current form. Mitt Romney promises vast financial deregulation. Rick Santorum says he’ll end the 2010 health care law by defunding the regulations that sustain it. Even President Barack Obama has declared that regulations “have stifled innovation and have had a

chilling effect on growth and jobs.”

Prevailing public opinions suggest hardly any of this is likely to translate into real changes in public policy. A 2011 survey from the Pew Research Center for People and the Press, for example, shows a majority wants stiffer



environmental regulations. A Gallup poll taken in 2010, near the height of Tea Party anger with the Obama administration, likewise shows that more than 60 percent of Americans support stronger regulation of financial institutions.

This helps explain why deregulatory pushes so often peter out. While Congress gave itself the power to disapprove any regulation under the 1996 Congressional Review Act, the law has proven a dead letter. In 16 years, Congress has attempted to use it six times, and only once successfully. (That came when Congress disapproved Department of Labor workplace ergonomics regulations in 2001.)

But this doesn't mean deregulation is a lost cause. Even people who say they want more regulation will often express a different opinion when confronted with the specifics of a given rule. Examples abound. A poll conducted by Lincoln Park Strategies on chemical regulation showed that

almost 70 percent of voters rejected chemical ban schemes based on the EU-adopted “precautionary principle” that bans chemicals even if they are not proven unsafe. The same poll found that chemical manufacturers themselves were more trusted than political leaders when it came to deciding regulatory bans.

This type of overbroad just-to-be-safe ban—currently being considered on the chemical Bisphenol A (BPA)—is a key example of a regulation with real costs that lacks support. Right now, environmental activists have forced the FDA to rule on banning BPA for use in food applications by March 31. But a BPA ban would privilege speculative benefits over real detriments to human safety: BPA is the key component of shatterproof children's products and epoxy linings that keep bacteria out of canned foods. As such, a BPA ban is just the sort of move that could become unpopular and arouse public resistance to the regulatory state.

And BPA isn't alone. Steve Pociask of the American Consumer Institute, which has done dozens of polls on Americans' attitudes toward government regulation of everything from energy development to cable television to North Carolina auto insurance, finds an obvious pattern. “People want oversight from the government, they favor regulation in the abstract,” he says. “But when it comes down to specific new rules and regulations, they tend to be very skeptical and, more often than not, opposed. Particularly when you explain it to them.”

Pociask's reserve of polls—several hundred questions over the past five years—shows a great many proposed regulations are unpopular when they are described. Pollster Scott Rasmussen also has identified widespread sympathy for deregulation of small business.

The disconnect may be easy to explain. Many people favor government doing *something* about a wide range of social problems but are skeptical of particular proposals. “Something,” in fact, can mean any number of things, including efforts to improve

Eli Lehrer is vice president of the Heartland Institute.

and streamline enforcement of rules already on the books.

Some questions about regulation may really be tests of respondents' overall faith in government. In a 2010 Pew poll, only 22 percent of Americans said they trusted the government to do what was right all or most of the time. That is nearly the same as the 24 percent that told Gallup pollsters around the same time that they generally favored more regulation of business.

Of course, some regulations will prove popular. While President Obama's health care plan is unpopular overall, many of its specifics aren't. Rules to prevent insurers from refusing coverage for preexisting conditions receive such overwhelming support that even the Tea Party-inspired "Pledge to America" that served as a 2010 Republican congressional campaign manifesto includes a commitment to implement them.

Except as a synonym for "distrust in government," supporting deregulation does not produce votes in most cases. This may not be an altogether bad thing. Only a small libertarian fringe would propose government ditch all meat inspections, solvency protections to make sure insurers pay claims, or the entire web of regulations tied to bank deposit insurance. Outside of thought experiments by economists, there are no practical proposals to replace these things with purely free market solutions anyway.

So the American people want certain types of regulation but distrust the government to implement regulations correctly and tend to dislike a wide variety of specific regulations. Proposals like the House-passed REINS Act—which would subject major regulations to specific votes in Congress—might therefore make a difference, if only by bringing more absurd regulations into public view.

In short, proponents of deregulation ought to be cautious about ineffective frontal assaults and instead focus their efforts on specific bad regulations. Doing so would almost certainly free the economy more effectively than generic attacks on the regulatory state. ♦

Official Crusade

Michelle Obama's theology of the body.

BY MEGHAN CLYNE

On February 11, as the debate over the Obama administration's rule forcing religious institutions to provide insurance for contraceptive and abortifacient drugs to their employees was reaching fever

speaking at Northland Church in Longwood, Florida, on the second anniversary of her "Let's Move!" anti-obesity initiative. Her remarks had nothing to do with the clash over the contraception mandate. Never-

theless, they illuminate some contradictions in the administration's attitude toward churches and the appropriateness of telling people how to live their lives.

On one hand, the administration insists that employers' religious views should carry no weight in matters of women's health. Debbie Wasserman Schultz, chairman of the Democratic National Committee and the president's



I said, "Move!" Michelle Obama in Longwood, Florida.

pitch, a prominent American said:

Our faith communities don't tend only to folks' spiritual health but to their emotional and their physical health as well. Think for a moment about the Scripture that tells us that your bodies are temples given to you by God. That is a core teaching of so many of our faiths—a teaching that calls us to honor and nourish the bodies we've been blessed with, and to help others do the same.

How's that again? Religious institutions should have a say in individuals' physical health? People should look to Scripture to know how to think about their bodies? What Bible-thumping Neanderthal came up with that one?

Actually, it was none other than the first lady, Michelle Obama,

most visible reelection booster, has asserted: "To say to hundreds of thousands of women who work for religious organizations 'No' because of your employer's objections, whether or not you choose to use contraception you aren't going to be able to get the same access that other employees can get access to? That's not right." The official White House line—repeated often by spokesman Jay Carney—is that "decisions about medical care should be made by a woman and her doctor, not a woman and her boss."

So religious leaders and employers have no business opining on what a woman does with her body. Unless, that is, Michelle Obama gives the all-clear. Because when it comes to eating habits, physical activity, cholesterol, and weight, the White House is telling churches it's their *obligation* to instruct women (and men and children) what to do with their bodies.

Meghan Clyne is managing editor of National Affairs.

NEWS.COM

This is the principle behind Mrs. Obama's "Let's Move Faith and Communities" initiative, launched in November 2010 to enlist faith-based organizations in the anti-obesity crusade. At events across the country, Obama has celebrated religious organizations that have heeded her call, lauding everything from Jewish community gardens to Muslim sports tournaments.

The HHS website for "Let's Move Faith and Communities" highlights other praiseworthy projects, like the "Raising Up Healthy Women and Girls" initiative of the Evangelical Lutheran Church in America. It seeks to help "a community of women created in the image of God" recognize that "it is imperative that every woman ... understands how her well-being benefits the faith community." Because they're telling women to avoid heart disease and stroke, not contraception and abortion, the Lutherans get a White House thumbs-up.

Another participant in Mrs. Obama's anti-obesity crusade is Catholic Charities of the Archdiocese of Chicago. In October, the "Let's Move" blog cheered the organization's efforts to "lead their larger community towards becoming more involved in the First Lady's 'Let's Move Faith & Communities' initiative." The post, written by a staffer in HHS's faith-based office, went on to report:

As a first step, the organization formed a new Catholic Charities Wellness Committee to focus on promoting healthy living ideals among the staff. To achieve this goal, the committee decided to challenge employees to be physically active for 30 minutes per day, 5 days a week—for 6 weeks! Employees could report any variety of activity from swimming to walking to dancing or even yoga—they just had to do it *every day* in order to create new patterns of physical activity and to inspire new healthier lifestyle habits.

The challenge brought together 367 employees, many of whom joined in a headquarters-wide PALA [Presidential Active Lifestyle Award] achievement event kicked

off by a short walk around the Catholic Charities headquarters followed by healthy snacks and certificate presentation. Sparked by friendly competition between departments to take the most positive steps within the challenge, several staff members declared they had lost weight and were committed to a healthier lifestyle due to their challenge experience. "I've lost 18 pounds so far and feel really healthy. I owe it to PALA and getting fit to celebrate," said one Catholic Charities staff member.

Evidently it's all fun and games at the church-state party—until someone spoils the revels by objecting that Obamacare's mandate will compel some religious institutions to violate their own moral teachings or go out of business. Late last month, Chicago's archbishop, Francis Cardinal George, summed up the choices this way: Under the HHS regulations, Catholic service organizations will be forced to abandon church teachings and oversight, or pay annual fines that are "not economically sustainable," or sell their hospitals and charities to non-Catholic groups and local governments, or "close down." It's a cruel fate for the administration to impose on an organization that, just five months ago, it was praising as a model of civic engagement.

The experience of Chicago's Catholic Charities suggests the need for some soul-searching on both sides of the HHS fight. First, how can the administration insist that "decisions about medical care should be made by a woman and her doctor, not a woman and her boss" and at the same time urge employers to tell their workers how to manage their fitness and weight? Meanwhile, some faith-based organizations that have garnered the administration's praise for their participation in "Let's Move!" now face a threat to their very survival from that same administration. Such organizations may want to reconsider how much friendly cooperation and blog-post fodder they will render unto Caesar—and Caesar's wife.

Despite the evident contradictions, though, the administration's

positions are, at bottom, remarkably consistent. The Obamas are happy to exploit religious institutions insofar as they serve the broader purposes of progressive government—and to ride roughshod over them when they get in the way.

"It's a heads I win, tails churches lose proposition," says Jim Towey, president of Ave Maria University in southwestern Florida, which is suing the federal government over the contraception mandate. But Towey has some other relevant experience: He is the former head of the White House Office of Faith-Based and Community Initiatives under President George W. Bush. He says the Obama administration's efforts to manipulate religious institutions are unprecedented.

"Democratic and Republican presidents alike—nobody would cross this line until now," Towey explained. "There was always respect for conscience rights, and the fact that maybe government didn't have the only voice on moral issues like this."

The notion that such moral questions should be settled by government—that the views of churches and other mediating institutions only complicate matters more efficiently managed by the state—is at the heart of the progressive project that animates the Obama presidency. This is why the administration claims for itself the right to decide when it is acceptable for churches to speak in the public square. It is why the administration sought even to determine what is and is not religious activity—until that position was rejected by a unanimous Supreme Court in January in *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.* And it is why the administration resorts to what Cardinal George calls "a tactic now familiar in our public life: Those who cannot be co-opted are isolated and then destroyed."

"The state is making itself into a church," the cardinal adds. Indeed. It may be a poor substitute for real churches, but there is an upside. This new church teaches a much simpler theology of the body: "Do whatever the Obamas say." ♦

The End of Reference

Hail Britannica.

BY JOSEPH BOTTUM

It's around, say, 1979, and you're trying to remember where you saw that article on rising radiation levels in Eastern Europe. It might have been in *Foreign Affairs*, but, then again, it might have been in the *Bulletin of the Atomic Scientists* or even the *New Statesman*, although that seems less likely.

Anyway, you can't quite recall which journal published it, and, like an idiot, you didn't clip it at the time, adding it to the folder in the towering five-drawer filing cabinet against the wall, where you could find it again. So, naturally, you do what everybody does: You walk over to the long bookshelves that every library used to have—every magazine, for that matter, and every office whose business depended on information—and start browsing through the green volumes of the *Readers' Guide to Periodical Literature*.

The *Readers' Guide*. A fat, flopped-open copy of *Webster's Third New International Dictionary* in its rough buckram cover (*Webster's Second*, if you were one of the curmudgeons who hated the descriptive philosophy of the third edition). The latest version of the *World Almanac and Book of Facts*. A King James Bible, and maybe *Strong's Concordance* to go along with it. *Bartlett's Familiar Quotations*. A *Brewer's Dictionary of Phrase and Fable*. Possibly *Granger's Dictionary of Poetry Quotations*, as well, but almost certainly the many volumes of the *Encyclopaedia Britannica*.

These were the books with which researchers surrounded themselves,

the country where fact checkers lived. Where ordinary writers would come to visit, and curious editors would browse. And they're all gone, now: killed off by the Internet. The *Encyclopaedia Britannica* was the last of them, but on March 13 the long-expected announcement came. After 244 years of continuous publication, the encyclopedia was abandoning its print edition.

Oh, in a certain sense, they all sur-



vive in one subscription-based online form or another, alongside databases of Early English literature and Byzantine Greek writings: specialty products for a specialty audience. But the Nexis database ate up the *Readers' Guide*, and Wikipedia brushed away the *Encyclopaedia Britannica*, and when was the last time you bought an almanac? The grand old publishing houses that dominated the print era were so protective of their products that they generally failed to move into web editions in time—and they faded, as a result: old names on old books to stir a memory, and little more. The *New York Times* reported that the *Encyclopaedia Britannica* has sold only 8,000 sets of its 2010 edition—with 1,400 used sets offered for sale on eBay on one day last week.

Such books emerged from, and defined, what we might call the Age of Reference—a period from around 1806, when Noah Webster first published *A Compendious Dictionary of the English Language* (I had to look up that

date on Wikipedia), to the mid-1980s, when searchable electronic databases for medical and legal professionals began to be common. And if there exists an overarching feature of the age, it is this: The production of information was growing ever more specialized, even while the need for the resulting information had become general.

Scientists published their work in journals that only scientists read, classicists in volumes that only classicists read, and engineers in blue books that no one read. So the reference book was born—the compendium of facts, the chrestomathy of passages, and the anthology of extracts—by which the rest of us could learn and use the information that print technology was producing, filling bookshelves that could be measured by the mile.

When computers began to dominate information technology, the initial assumption seemed to be that we would have what was, in essence, merely a new form of reference book: online databases, citation collections, and factual indices that were quicker to use and easier to update. The computerized collections, however, started to cut steps from the old process.

Say you needed that information on radiation in Romania. You looked up the reference to the article in the *Readers' Guide*, and then you walked over to the shelves of bound backcopies of the journal that had printed it, where you read the footnote that gave a citation for the U.N. study that had first claimed the fact. And then, if you were really interested, you went to the reference librarian and asked her to get you a copy of the study through an interlibrary loan.

A service like Nexis, however, combined the search for the reference with the search for the origin. You looked up not where to find the article but the article itself. In fairly short order, even the search for the reference to underlying fact became indistinguishable from the search for the fact. Everything is out there, searchable and accessible, so why should we try to organize the information at all? Just

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use a search engine to grab what you need, when you need it.

It's common, these days, to praise or disparage the dominant old reference books—*Britannica* and all the rest—as primarily gatekeepers, deciding, in their imperious way, what knowledge the masses should be allowed to have. But I'm less convinced that the lesson to take away from their demise is the opening up of information. Oh, it certainly managed that part, which deserves some celebration. But the organizing and structuring of facts was, in many ways, the fundamental goal of the Enlightenment, and it's this task that we seem to have given up on—and more than given up on. In many ways, we simply don't believe in it anymore. We have left the Age of Reference for the Age of Search Engines.

Pick up, sometime, a copy of *Roget's Thesaurus*, that classic old book from the prior age, first published in the 1850s. This was a curiously difficult volume to use, and you can find an easier thesaurus in any of a half-dozen places online—something you can leap into anywhere, from the headwords down to the minor synonyms. And yet, *Roget's* had a secondary purpose, beyond merely listing alternative words. Borrowing that old “tree of knowledge” stuff (from Aristotle via the Enlightenment clarifications of Leibniz), *Roget* set out to organize words according to the six natural divisions of the world, each developed from the most general down to the most particular. He set out not merely to give us information, but to force that information to make sense. To *organize* it.

Roget's Thesaurus, the *Readers' Guide*, the *World Almanac*, *Bartlett's Quotations*—they seem like relics of days so lost we can barely remember them. As does the *Encyclopaedia Britannica*, whose parent company unsurprisingly grew tired of losing money for the privilege of enlightening a dwindling number of acolytes. But we should not pretend that their disappearance marks nothing more than a change from print presentation to computerized access. We have more information today than ever before. I'm just not sure what it means. And neither is anyone else. ♦

Family Feud

In defense of the Cato Institute.

BY P.J. O'ROURKE

Ideological snits and quarrels are the rightful province of feckless leftists. Their never-ending dissensions give them something to Occupy (as it were) their time and distract them from making mischief. Sometimes these leftists are not so feckless and make the mischief of seizing power. Then they chop off each other's heads with their logic-chopping, to the general relief of their neighbors. Ideological snits and quarrels are goods upon which a high value may be placed. And I, for once, am willing to be a socialist and freely redistribute them to our enemies.

We who hold the truth to be self-evident that all men are created equal and endowed with unalienable rights to life, liberty, and no less than an 8:1 ratio of gin to vermouth in our martinis stand above such petty arguments of political doctrine. Except when we don't. And now we have in our midst a knockdown, a drag-out, a Katy-bar-the-door.

The wonderfully conservative Koch brothers are trying to take control of the magnificently libertarian Cato Institute, a spectacularly stupid thing to do. For those who savor the fulsome atmosphere of worthies savaging worthies, the whole dirt can be found behind the privy door of the nearest blog-house. But to give just a whiff:

Cato was founded in 1977 with generous funding from Charles and David Koch, though later they gave the think tank less, and, lately, nothing. In a moment of excess admiration for marketplace models, Cato, though a nonprofit, was established with individual shareholders. Half the shares are owned by the Kochs, a quarter are owned by Cato president

Ed Crane, and, until his death last October, the remaining shares were owned by Cato board chairman William Niskanen. The Kochs argue that Niskanen's widow, Kathryn Washburn, cannot vote his shares and that, according to the Cato charter, she must offer to sell the shares back to the corporation, which would put Charles and David Koch in charge. Kathryn Washburn, Ed Crane, and the Cato board of directors argue the contrary.

The Koch brothers' motive seems clear, to the extent there's clarity in human motivation. They want to rid the Oval Office of a pest and Congress of the pestilence's plague-carriers. In their battle against statist disease, the Kochs seem to regard Cato's individualism as too individualistic. They want a more collective effort to cure collectivism.

Current Cato board chairman Bob Levy met with David Koch and some of Koch's political advisers last November. According to Levy, “They said that a principal goal was to defeat Barack Obama. The way David put it was, ‘We would like you to provide intellectual ammunition that we can then use at Americans for Prosperity and our allied organizations.’ AFP and others would apply Cato's work to advance their electoral goals.”

Of course, if David Koch had bothered to read the Cato trove of books, articles, policy analysis, and research on the Obama administration's bunk and boners, he would have found six-shooter ammunition enough to burst through the swinging doors of the Electoral Goals Saloon and make every sarsaparilla-drinking tenderfoot in the Democratic party dance.

But Cato *shouldn't* be involved in

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partisan politics. It is a 501(c)3 organization forbidden from campaigning for or against any candidate on pain of “termination with extreme prejudice” by the most ruthless and powerful of U.S. intelligence agencies, the IRS.

And Cato *wouldn't* be involved in partisan politics. Bill Niskanen was a man of such upright libertarian principles that, as chief economist for the Ford Motor Company, he denounced Ford for embracing import quotas on Japanese cars. Ford fired him. He was acting chairman of President Reagan's Council of Economic Advisers but was kept from permanent appointment because of disagreements with Treasury Secretary Donald Regan, whom he later called “a tower of jelly.” After the dust of the Reagan revolution had settled, Niskanen wrote, “In the end, there was no Reagan revolution.”

Kathryn Washburn, Niskanen's wife and heir, has the same sequoia spine. As does Ed Crane. No matter how much lip service Republicans pay to individual liberty and no matter how reactionary progressive Democrats become, Ed steers Cato on a course, not between this Scylla and Charybdis, but straight at both the social conservative sea monster that pokes its heads into private life and the liberal-left whirlpool that sucks away private property.

And Cato *couldn't* be involved in partisan politics. Everyone there is a libertarian. You might as well command your cat to bring you your pajamas as tell a bunch of libertarians to get on the same political platform. I know these people. Ron Paul is a *bien-pensant* by comparison. Cato scholars prize contentious thought. Get in a debate with one and you'll find out he doesn't even agree with himself.

And because I know these people I won't pretend I don't have a dog in the fight. I've been friends with Ed Crane and Cato executive vice president

David Boaz for 25 years. Cato has aided me with almost everything I've written about politics. Maybe saying so will lower the institution's prestige enough that the Koch brothers will leave it alone. If they prevail they'll lose Cato's H.L. Mencken Research Fellow. (The position—unpaid and worth it—was conferred on me by Crane back when the insensitive language in Mencken's diary was shocking the kind of people who'd later forget to be shocked by Bill Clinton and Monica Lewinsky.)

More to the point, the Koch brothers will lose the think tank's impressive roster of thinkers and scholars. I haven't polled them as to who would stay and who would go under a Koch



David Koch



Charles Koch



Ed Crane

regime. But, as I said, I know libertarians. If the Kochs win the pot, they'll have to piss in it. It will be empty otherwise.

Meanwhile we neocons and paleocons and rank-and-file Republicans should understand how important Cato is. Libertarianism is of great worth even to those who consider *Atlas Shrugged* useful mainly as dead weight to keep the tarp on the above-ground pool from blowing away.

It can be said, with some justice, that libertarians apply only one measure to every issue. But what a sublime yardstick it is. Libertarians ask, about each thing they encounter in public life, “Does this promote the liberty, responsibility, and dignity of the individual?” Libertarianism can have political implications, but politics is, by definition, mass action. And libertarians don't believe in the masses. They believe in the individuals huddled in those masses. A

pure libertarian is opposed to politics down to the soles of his shoes (or, libertarians being libertarians, down to the bottom of his sandals worn with socks). Libertarianism is contra-political, an emetic dose to be given to politics. As we've seen lately, all politics needs one sometimes.

There's no point in vilifying the Kochs. We can leave that to the vilifier in chief. Obama's campaign manager, Jim Messina, said of the Koch brothers that their “business model is to make millions by jacking up prices at the pump” and that they “bankrolled Tea Party extremism and committed \$200 million to try to destroy President Obama before Election Day.” As there's some truth in the

latter part of this statement, bully for Charles and David. And I don't mind the lie. Five dollars a gallon is a small price to pay to make Obama a one-term president. The Kochs are good citizens with honest wealth who've put their money where

their minds are. They've donated large amounts to Americans for Prosperity and various PACs on the side of my better angels. They've funded the Mercatus Center and the Institute for Humane Studies at George Mason University. And they've given more than \$600 million to medical research, education, and the arts.

All this does not, however, in the case of the Cato Institute, keep them from being fools.

*I come to praise Cato, not to bury it.
The noble Koch brothers have told you
Cato is nonpartisan.
If it is so, tsk tsk tsk.
And grievously hath Cato answered for it.
Come I to speak in Cato's defense.
It is my best source of information on
dumbass government behavior, faithful
and just to me.
But the Koch brothers say it is nonpartisan
And the Koch brothers are honorable
men.* ♦

Without Precedent

The Supreme Court weighs Obamacare

BY ADAM J. WHITE

Ordinarily, judges decide cases by applying the text of laws and the precedents laid down in previous cases. But the Supreme Court is no ordinary court, and the cases that it chooses to decide are not ordinary ones. Cases in which the lower courts disagree; cases of utmost national importance; cases for which there is little precedent or the written law is ambiguous—this is the Supreme Court’s daily fare.

But even among those hard cases, there is a subset that stands out. In late 2005, Barack Obama, then a freshman senator, placed those extraordinary cases at the center of his opposition to John Roberts’s nomination for chief justice:

What matters on the Supreme Court is those 5 percent of cases that are truly difficult. . . . [T]he constitutional text will not be directly on point. The language of the statute will not be perfectly clear. Legal process alone will not lead you to a rule of decision. In those circumstances . . . the critical ingredient is supplied by what is in the judge’s heart.

When President Obama began nominating Supreme Court justices, those remarks from his Senate days were distilled into a one-word description of what he was looking for—“empathy”—that made clear his preference for judges predisposed to decide cases in favor of Obama’s political sympathies. Obama was in no position to complain that his views were being caricatured, given that his own opposition to Roberts ended with a crude diatribe against Roberts’s personal values. Still, despite his liberal clichés, there was truth in his point. When text and precedent are inconclusive, the justices’ decisions rest in part on “one’s deepest values, one’s core concerns,” and “one’s broader perspectives on how the world works.” Not “empathy”—not personal bias for or against particular litigants—but certainly an appreciation for the fundamental principles that undergird our constitutional structure.

Among what Obama called the “5 percent of cases”

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in 2005 were those questioning “whether the Commerce Clause empowers Congress to speak on those issues of broad national concern that may be only tangentially related to what is easily defined as interstate commerce.” As it happens, that very provision—the Constitution’s grant of power to Congress to “regulate Commerce . . . among the several States”—is at the center of the Supreme Court case that may define his presidency. Later this month the Court finally will hear the constitutional challenge to the “individual mandate.” The requirement that every American obtain health insurance is the key provision in Obama’s signature piece of legislation, the Patient Protection and Affordable Care Act, aka Obamacare.

But to think of the Obamacare case (*National Federation of Independent Business v. Sebelius*, as the lead case is captioned) as just the latest Commerce Clause dispute is to deprive it of crucial context. *NFIB v. Sebelius* is much more than that. Obamacare entails an unprecedented reformation of the very structure of federal government, one that strains prior doctrines to their breaking point. The Roberts Court will have to make a judgment not just on the basis of legal text or precedent but on something more fundamental.

Once the case is viewed in that light, we can better understand why the issues raised by the litigants vexed a number of prominent conservative judges on lower federal courts who, somewhat surprisingly, declined to strike down the law. Seeing the case in its proper context illuminates why the Court should brake the government’s assertion of power now, before the structural and constitutional changes envisioned by Obamacare become effectively irreversible.

While it is more than just a Commerce Clause case, *NFIB v. Sebelius* does begin with the Commerce Clause. Obamacare’s individual mandate requires every “applicable individual” to buy and maintain “minimum essential” health insurance, beginning in January 2014. This exceeds Congress’s constitutional power to “regulate” interstate commerce, the mandate’s critics argue in the briefs, because “*compelling* commerce is not *regulating* commerce.” The Commerce Clause may empower Congress to regulate the transactions that persons already are engaging in, they argue, but it does not empower Congress to force persons to engage in commerce—that is, the buying of

insurance policies—that they would not otherwise undertake voluntarily.

The challengers can point to no Supreme Court precedent striking down a similar federal mandate, but that’s only because Congress has never previously enacted such a mandate. The mandate is unprecedented, and the 26 states challenging the law attempt to turn that fact in their favor:

Congress itself appreciated the distinction between the power to regulate commerce and the power to compel individuals to enter into commerce for the first 220 years of its existence. The federal code books are replete with provisions regulating the conduct of individuals who engage in commercial transactions, as well as provisions encouraging, enticing, and incentivizing individuals to enter into commercial transactions of all stripes.

Neither the federal government nor the numerous lower courts, the states conclude, “have identified a single other federal law throughout our Nation’s entire history that simply *compels* individuals to enter into commerce.” That dearth of precedents is all the more instructive, they argue, because “Congress surely has not lacked incentives to exercise such a ‘highly attractive power.’” In two centuries, Congress never lacked the creativity to fashion indirect ways to achieve its preferred ends—think of the perennial threat to withhold highway funds as a way to cajole the states into forcing drivers to wear seatbelts—but it never claimed for itself the power to achieve its economic aims through direct commands to the citizenry at large.

The government’s brief responds first by broadening the “commerce” at issue from the “health insurance” market, in which some persons might not voluntarily participate at any given time, to the greater “health care” market, in which practically everyone participates. If the “market” at issue is health care generally, then the challengers’ activity-inactivity distinction evaporates, so long as everyone purchases health care services.

Having broadened the Court’s frame of reference, the government further argues that the individual mandate is unique because the health care market is unique. Contrasting that market with the markets for cars or food—perhaps a nod to Republicans’ suggestion that a mandate to buy health coverage is no different from a mandate to

eat broccoli or buy GM vehicles—the government asserts that health care “involves needs that cannot reasonably be anticipated and budgeted for”; when “a heart attack or appendicitis strikes, a person cannot postpone a hospital visit in order to save enough money for it.” Health care costs are “largely unknowable,” and they can escalate rapidly. In the face of such uncertainty, the government concludes, the individual mandate “reasonably regulates the financing of participation in the health care market and is a reasonable means to prevent the shifting of costs and risks to other market participants.”

And even if the individual mandate does not fit squarely within the Commerce Clause, the government further argues, that mandate fits within the powers granted by the Necessary and Proper Clause—that is, the Constitution’s ancillary provision authorizing Congress to “make all Laws which shall be necessary and proper for carrying into Execution” Congress’s other enumerated powers. Largely quoting *United States v. Comstock*, a 2010 case in which the Supreme Court relied upon the Necessary and Proper Clause to affirm a federal statute requiring the noncriminal detention of sex offenders, the government argues that the individual mandate is sufficiently “convenient,” “useful,” or “conducive” to the government’s regulation of the broader health care market to pass constitutional muster.

The *Comstock* decision was a significant one, if only because in that case Chief Justice Roberts signed on to the Court’s opinion, and Justices Kennedy and Alito each penned a separate opinion sharing the ultimate conclusion that the detention statute satisfied the Necessary and Proper Clause; the individual mandate’s challengers will need each of those justices’ votes in the Obamacare case. The states challenging Obamacare respond with several arguments that the mandate is neither “necessary” nor “proper.” Ultimately the most powerful of these is the slippery slope: The government’s argument offers no *legal* limits to prevent the imposition of similar mandates in other markets displaying similar characteristics. Lacking any “limiting principle,” the government’s theory of the power to mandate the purchase of health insurance “obliterates any meaningful boundaries on Congress’



limited and enumerated powers,” a theory that “cannot be squared with the Constitution.”

If the Supreme Court finds that the individual mandate is justified under neither the Commerce Clause nor the Necessary and Proper Clause, then the government has one remaining defense: its constitutional power to “lay and collect Taxes, Duties, Imposts, and Excises.” At first glance this argument may seem difficult to press with a straight face, given the administration’s own repeated insistence that Obamacare is not a tax. During the legislative debates, President Obama told his on-air interlocutor, George Stephanopoulos, “I absolutely reject [the] notion” that the mandate is a tax increase. More recently, the president’s acting budget director testified to Congress that the individual mandate is not a tax.

Nevertheless, the administration argues before the Court that the mandate is a tax, because the penalty for failing to buy insurance would be collected via the Internal Revenue Code: “It is fully integrated into the tax system, will raise substantial revenue, and triggers only tax consequences for non-compliance. . . . The Court has never held that a revenue-raising provision bearing so many indicia of taxation was beyond Congress’s taxing power, and it should not do so here.”

The challengers point to the text of the Obamacare enforcement provision, which describes the consequences of disobeying the mandate as a “penalty.” It is levied not to raise revenue but to penalize those who fail to obey the mandate’s command. Nor is it collected through ordinary tax enforcement procedure. And so it is not a “tax.”

If the Court fails to affirm the individual mandate under either the Commerce Clause, the Necessary and Proper Clause, or the Tax Clause, then the Court must turn to the question of remedy: Should only the individual mandate be struck down, or should the Court strike down Obamacare in its entirety? To borrow the technical term, is the individual mandate “severable” from the rest of Obamacare?

The government concedes that if the mandate falls, then the law’s “guaranteed-issue” and “community-rating” provisions, entitling all comers to insurance coverage, must fall with it; “without a minimum coverage provision, the guaranteed-issue and community-rating provisions would drive up costs and reduce coverage, the opposite of Congress’s goals.” But it urges the Court to leave the rest of the law intact. The challengers, by contrast, point to Obamacare’s lack of a “severability clause,” boilerplate language declaring Congress’s intent that the remainder of a law be left intact after any one provision is struck down; more generally, they argue that the law’s myriad provisions were intended to hang together as a whole. None of them would

have been enacted without the mandate ensuring that people could not “game” the system by declining to buy health insurance until they are actually in need of health care.

Finally, the Court must decide whether a separate federal statute precludes the Court from hearing the case at all. The Anti-Injunction Act bars federal courts from hearing cases filed “for the purpose of restraining the assessment or collection of any tax.” Dating back to the Reconstruction Era, this law ensures that federal tax disputes are routed to one of the specially designated courts: the U.S. Tax Court, the U.S. Court of Federal Claims, or a U.S. District Court, and only after the I.R.S. levies the tax on the taxpayer. The government has abandoned this tack, but out of an abundance of caution, the Court appointed an outside lawyer to fully brief the argument that the case is jurisdictionally barred by the Anti-Injunction Act.

Those are the issues confronting the Court on the question of the individual mandate. They come to the Court from not just one federal court of appeals, but several. Technically speaking, the case arrived on petitions challenging the decision of the U.S. Court of Appeals for the Eleventh Circuit, the Atlanta-based court that struck down the individual mandate as violating the Commerce Clause, Necessary and Proper Clause, and Tax Clause. But other federal circuits have grappled with the issues in lawsuits separately brought to their own district courts. The D.C. Circuit and the Ohio-based Sixth Circuit each affirmed the mandate under the Commerce Clause. And the mid-Atlantic Fourth Circuit dismissed two cases: A suit brought by private parties was deemed barred by the Anti-Injunction Act, and a suit brought by Virginia’s attorney general was dismissed for lack of jurisdictional “standing.”

In these cases, the most interesting opinions were issued by prominent conservative judges who declined to strike down the individual mandate. The D.C. Circuit’s Laurence Silberman and Brett Kavanaugh (appointed by Reagan and George W. Bush, respectively) and the Sixth Circuit’s Jeffrey Sutton (also a Bush appointee) penned a remarkable set of opinions. Even in refraining from employing judicial power to strike down the mandate, the judges did not hide their worries about an assertion of federal power that they conceded was effectively unlimited, and that posed a stark challenge to the idea that our constitutional republic is one of limited, enumerated federal powers. And they did not hesitate to blame the Supreme Court for this predicament.

Judge Sutton conceded that the individual mandate was an unprecedented assertion of power, yet he concluded that the Supreme Court’s inconsistent Commerce Clause precedents sufficed to affirm the individual mandate. Those

precedents were, to Sutton, a sign of a feckless Supreme Court adept at “frequently adopting limits on [Congress’s] authority and just as frequently abandoning them, all while continuing to deny that Congress has unlimited national police powers”; he challenged the Court to either “stop saying that a meaningful limit on Congress’s commerce powers exists or prove that it isn’t so.” But until the Court draws such a line, he concluded, the existing precedents leave room for the government to allow “necessity” to give “birth to an inventive (and constitutional) congressional solution.”

Judge Sutton’s doubts were largely echoed by Judge Silberman. Writing the majority opinion for the D.C. Circuit (which was joined by Judge Harry Edwards, a Carter appointee), Silberman recognized the individual mandate’s “novelty” and “lack of any doctrinal limiting principles,” yet he concluded that neither defect was fatal. The individual mandate would be affirmed not because of Supreme Court precedents commanding this result, but rather because of the absence of precedents commanding a decision in favor of the challengers: “No Supreme Court case has ever held or implied that Congress’s Commerce Clause authority is limited to individuals who are presently engaging in an *activity*”—as opposed to “inactivity”—“involving, or substantially affecting, interstate commerce.”

Silberman’s decision was a matter of placing the burden of proof on challengers who, absent Supreme Court precedents in their favor, simply could not carry the burden. Even if the individual mandate is unprecedented, Silberman would “presume” it to be constitutional in the absence of clear precedent, until the Supreme Court definitively says otherwise.

Next to Judge Sutton, Judge Silberman’s criticism of the Supreme Court was muted but not altogether absent. In affirming the mandate, Silberman pointed to the Supreme Court’s broadly deferential Commerce Clause jurisprudence. Because those precedents authorize Congress to *proscribe* commercial “activity,” Silberman concluded, no Court-recognized limits exist to check Congress’s “symmetrical” power to *prescribe* such activity. On that point, he cited the Supreme Court’s ambivalence in *Raich*, a 2005 decision affirming the federal government’s regulation of personal, noncommercial use of marijuana. That decision provided no limits against Congress’s regulating a

person who is “not participating in *any* local or interstate market,” Silberman wrote.

While purporting to comply with the Court’s precedents, Silberman was subtly reiterating criticisms he had pressed years earlier, in the pages of the *Atlantic* just months after *Raich* was decided. In his remarks to the interviewer, and in prior opinions quoted in the article, Silberman fulminated against “every one” of the justices, who fail litigants by issuing broadly worded rulings lacking precise constitutional rules, and fail as well to clarify ambiguities left in a long line of conflicting precedents.

In declining to strike down the mandate, Silberman was joined by his younger colleague, Brett Kavanaugh, but for very different reasons. Unlike Silberman, Kavanaugh declined to reach any conclusions regarding the individual mandate’s constitutional merits; instead, he concluded that the case should have been dismissed for lack of jurisdiction under the Anti-Injunction Act, placing the constitutional issues beyond the courts’ reach until after the IRS begins collecting the mandate penalty.

Yet after exhausting the jurisdictional issue, Judge Kavanaugh offered tentative thoughts on the Commerce Clause issue, a question “extremely difficult and rife with significant and potentially unforeseen implications for the Nation and the Judiciary.” He agreed that the mandate is “unprecedented,” that it upsets longstanding balances of state and federal power, and that the government’s position lacked any meaningful limiting power, leaving the constitutional door open not just to criminal sanctions for violating the Obamacare mandate, but also to the federal government’s creation of countless other possible mandates. Yet even after recognizing all of this, Kavanaugh nodded to the contrary argument that the courts “should be just as cautious about prematurely or necessarily *rejecting* the Government’s Commerce Clause argument,” because judicial enforcement of the Commerce Clause against the federal government “is a rare, extraordinary, and momentous act for a federal court.”

The candid equivocations offered by Sutton, Silberman, and Kavanaugh are themselves the reflection of the equivocating themes and tendencies at the root of this case. The judges recoiled from the notion of unlimited federal power, yet they hesitated to insert the courts into a hotly contested



Jeffrey Sutton



Laurence Silberman



Brett Kavanaugh

SUTTON, AP / EVAN VUCCI; SILBERMAN & KAVANAUGH, NEWSCOM

policy fight. And because each of these appellate judges is committed to following precedent, their task was made effectively impossible by the absence of helpful Supreme Court precedents. Obamacare's individual mandate simply pressed beyond the Court's precedents, into uncharted constitutional territory.

But where the lower-court judges could blame disconcerting results on the Supreme Court's Commerce Clause ambivalence, the Supreme Court justices enjoy no such luxury. They have nowhere to turn but to themselves. When faced with an unprecedented issue, it falls to them to set the precedent.

And no matter how long the line of precedents may be on a given issue, there may eventually arise a dispute that strains previous judicial reasoning beyond the breaking point. The best description of this situation was offered 90 years ago, in Justice Benjamin Cardozo's *The Nature of the Judicial Process*:

Every new case is an experiment; and if the accepted rule which seems applicable yields a result which is felt to be unjust, the rule is reconsidered. . . . The principles themselves are continually retested; for if the rules derived from a principle do not work well, the principle itself must ultimately be re-examined.

When Supreme Court precedents are the problem, lower-court judges are able to avoid this difficult choice by pointing to the High Court's inapt precedents and doing their best to fit the case within the precedents' ill-tailored contours. But when the Supreme Court faces a question without useful precedent, it has no choice but to fall back on first principles—or, in Senator Obama's formulation, "one's deepest values, one's core concerns, one's broader perspectives on how the world works."

The Court's previous Commerce Clause decisions did not confront the justices with such a stark choice. While each case offered minor innovations, and the 1990s Court was willing to impose Commerce Clause limits that the Court previously eschewed, those cases arose in a familiar context—federal regulation of existing economic-related activity—and each involved the government restraining activity, not commanding it. It was one thing to ask the Court whether Congress could regulate to restrain people from selling wheat, possessing firearms, committing acts of violence against women, or buying medical marijuana—the federal restrictions at issue in the famous Commerce Clause cases. Those cases simply spoke nothing to the question of what the government may require people to do. Those cases offer no basis on which to affirm the individual mandate, or to strike it down.

With Obamacare the government raced beyond the premises and contexts of old cases, attempting to reshape the structure of federal government in an innovative, unprecedented way. But not for the first time—not even for the first time in recent memory. *NFIB v. Sebelius* is not simply the latest Commerce Clause case. It is the latest case in a remarkable string of cases confronting the Roberts Court with an unprecedented assertion of government power, and leaving the Court with the difficult task of how to preserve our constitutional structure.

In 2002, reacting to the corporate implosions at Enron, WorldCom, Tyco, Global Crossing, and elsewhere, President Bush signed the Sarbanes-Oxley Act. Among the act's many reforms was a particular constitutional innovation: the creation of an independent agency, the Public Company Accounting Oversight Board, within another independent agency, the Securities and Exchange Commission. Independent agencies were themselves no 21st-century innovation; they dated back at least to the New Deal agencies, if not to the Interstate Commerce Commission in the 19th century, and they had enjoyed the Court's imprimatur since at least 1935. But until 2002, Congress had never gone so far as to put one independent agency within another independent agency, giving the new creation a double layer of protection against presidential oversight.

Private parties filed a lawsuit challenging this innovation, in *Free Enterprise Fund v. PCAOB*, a case that reached the Supreme Court in 2009. The new, doubly independent board's lawyers defended the agency by citing the older precedents, but the Court dismissed them as inapt: "Perhaps the most telling indication of the severe constitutional problem with the [board] is the lack of historical precedent for this entity." And although Congress's innovation was simply to add one more layer of the independence that the Court had endorsed years ago, this was a bridge too far: "This novel structure does not merely add to the Board's independence but transforms it."

And such a bridge would lead to ominously uncharted territory: "If allowed to stand, this dispersion of responsibility could be multiplied. If Congress can shelter the bureaucracy behind two layers of good-cause tenure, why not a third?" The government, for its part, was unable to identify any useful limiting principle, unwilling "to concede that even *five* layers" of independence "would be too many." In short, the Court was left with a choice, and in the face of uncertainty it chose to draw a prudential line in the constitutional sand; it struck down the agency's second layer of independence.

As the *Free Enterprise Fund* case was pending in the courts, another unprecedented government action occupied the justices: the litigation over the detention of alleged terrorists at Guantánamo. In those cases, the mere fact of detention was

not unprecedented; instead, the constitutional novelty owed to the context surrounding modern detention. The global war on terror was “a national and international security emergency unprecedented in the history of the American Republic,” as the Court later described it. But some of the considerations that give the war its unprecedented character—the amorphous enemy force, the uncertain definition of victory, the manner in which terrorist detainees were swept up, and their detention at a U.S.-controlled base so close to the United States and so distant from the theater of battle—undermined the administration’s ability to convince the Court to stand by old wartime precedents.

The architects of the administration’s legal strategy sought to create a detention framework that accorded with the letter of existing law. As John Yoo reflected in his memoir, citing examples from the Civil War and World War II, “it is well-settled that the President, as commander in chief, has the power to determine how to defeat the enemy. This includes who to detain and how to detain them.” But the nature of the global war on terror, and the peculiar status and history of the U.S. facilities in Cuba, cast new light on the old precedents, at least among some of the justices worried by the implications of unfettered presidential wartime power.

Justice Kennedy alluded to some of these concerns in a concurrence in *Rasul v. Bush* (2004), when he urged that Guantánamo Bay was “in every practical respect a United States territory . . . far removed from any hostilities,” and therefore was not analogous to the American-administered German prisons at issue in the World War II precedent. His skeptical view of old precedents came into full focus in *Boumediene v. Bush* (2008), where he wrote a majority opinion recognizing the detainees’ constitutional right to challenge their captivity in federal court. “It is true that before today the Court has never held that noncitizens detained by our Government in territory over which another country maintains *de jure* sovereignty have any rights under our Constitution,” Justice Kennedy and four other justices conceded. “But the cases before us lack any precise historical parallel.”

The third example comes from yet another disparate Roberts Court decision: the election-speech case, *Citizens United*. There, the constitutional innovation came not in a statute, or even an administration policy, but an oral argument. In reviewing the Federal Election Commission’s position that campaign-finance laws empowered it to prohibit corporate election-related communications in the weeks preceding a federal election, Chief Justice Roberts and Justices Kennedy and Alito urged that such regulatory

power had no apparent limits, and taken to its logical limit would empower the government to ban books. Rather than assuage the justices’ concerns, counsel for the government only confirmed them, agreeing that if an advocacy corporation published material advocating a candidate’s election, then the corporation “could be barred from using its general treasury funds to publish the book.”

That admission, like the government’s creation of independent agencies within independent agencies, and its wartime detention policies, stretched the old precedents past the breaking point. This “assertion of brooding governmental power,” Justice Kennedy later wrote for the Court, was troubling not because it cannot be reconciled with the Court’s precedents, but because it “cannot be reconciled with the confidence and stability in civic discourse that the First Amendment must secure.”

For all of the differences among those three cases (including the lineup of justices forming the Court’s majority), a common thread is evident. In each, the government had attempted to ground an unprecedented assertion of power in the letter of old precedents. In each, the change involved a fundamental innovation in the structure of government, be it the nature of regulatory agencies or the First Amendment

freedoms that check the elected branches. And in each, the justices lacked useful rules guiding their decision, leaving them to exercise judgment rooted in more fundamental principles. The Court responded in each case by exercising prudence, drawing a new line in the constitutional sand, and requiring the government to step back to a more limited assertion of power.

In consciously avoiding rapid, radical change to the institutions of government, the Roberts Court’s prudence might be described as Burkean. But it should not be pigeonholed as strictly conservative in the ideological sense, for the Court’s insistence upon checking precipitous constitutional change is consistent even with prominent liberal theories of constitutional change.

Even Bruce Ackerman, a vigorous proponent of the “living constitution,” concedes that the Supreme Court needs to intervene to slow hasty constitutional overhauls by the elected branches. In his seminal work, *We the People: Transformations*, he argued that FDR’s New Deal reforms achieved constitutional legitimacy only after the Supreme Court struck down the first round of hasty, overreaching reforms. As Ackerman explains, FDR’s failure to secure the

Unprecedented powers asserted by the government threaten to give rise to stark abuses of power—some foreseeable, perhaps many more unforeseeable.

public's consent to his constitutional reformation required the Court to rightly intervene, thus forcing FDR and Congress to engage the public in sustained, thorough deliberations before his constitutional reforms could be legitimated. Just as President Obama and Speaker Pelosi sought to evade a full airing of Obamacare, FDR and the New Deal Democrats were at first unwilling to undertake the "higher lawmaking" necessary for momentous reforms—and were rightly rebuked by the Court.

FDR and the New Deal Democrats, rooted in a broad electoral base, commenced an extended discussion of the reforms' place in the constitutional tradition. This began with the ordinary work of partisan politics, but by the 1934 midterm elections, "the revolutionary character of the New Deal reforms was now obvious to any thinking American." The Democrats' "smashing victory" at the midterms offered a preliminary ratification for FDR's constitutional changes, but even that was not enough.

Ackerman saw the Supreme Court as retaining a critical voice in the constitutional dialogue. The Court responded vigorously in 1935, striking down the New Deal reforms in a set of cases handed down on "Black Monday." In three decisions reached not along partisan lines, but unanimously, the Court struck down the National Industrial Recovery Act, the Farm Bankruptcy Act, and the president's attempt to fire one of the Federal Trade Commission's five independent commissioners. In the first case, the Court held that the breadth of power delegated to the newly created National Recovery Administration was "without precedent," going far beyond even the broad grants of power previously conferred upon the Federal Radio Commission and other regulatory agencies. In the second case, Justice Louis Brandeis wrote for the Court that after "centuries" of consistency in bankruptcy law, including reforms that followed each "major or minor depression," no reform had gone as far as the Farm Bankruptcy Act in abrogating the rights of lenders, and therefore no prior law limiting lenders' rights was sufficiently "analogous" to the New Deal's attempted reform. And in the third case, the Court rejected the administration's invocation of old precedents allowing the president to remove agency officials, concluding that the FTC office at issue in the case before the Court was simply not analogous to offices at issue in cases cited by the administration, because the FTC wielded far broader powers needing insulation against partisan presidential control.

One can argue about the merits of the Court's decisions in those cases; indeed, two of the three precedents were eventually abandoned by the Court. But as Ackerman recognized, the importance of the Court's action was not the substance of the decisions, but the "deeper wisdom" of the process that the justices imposed. "In joining hands with his more conservative brethren, Brandeis and his fellow

'liberals' were making it clear that the New Deal was proposing to do more than nibble around the edges of the laissez-faire constitutional tradition." Under Ackerman's theory, FDR and Congress could not legitimately enact and entrench their constitutional reforms without first engaging "the People" in a sustained constitutional dialogue proportionate to the magnitude of the constitutional reforms at issue, and it took the Court to force them to take those steps toward legitimacy.

As we now know, the debate over Obamacare fell far short even of this liberal standard for higher constitutional lawmaking. The individual mandate was a dramatic change to constitutional structure and practice. As Vice President Biden recognized in his own brand of constitutional rhetoric, the individual mandate was "a big f—ing deal."

But instead of engaging the public in a sustained constitutional dialogue intended to achieve broad consensus, the administration and congressional Democrats avoided the substance of the debate at every turn. President Obama told a national television audience that the individual mandate was not a tax, only to reverse positions after Obamacare was signed. Speaker Nancy Pelosi urged that Congress "pass the bill so you can find out what is in it"; later, when asked to consider the possibility that the mandate might be unconstitutional, she dismissively responded, "Are you kidding me?"

And perhaps most significantly, the president secured the crucial final votes in favor of the bill by striking a deal with Rep. Bart Stupak and other pro-life congressmen, promising to respect rights of conscience by not requiring religious organizations to pay for their employees' birth control and abortifacients. As Stupak himself now recognizes, the administration broke that agreement by issuing Health and Human Services regulations requiring religious organizations to pay for precisely those services.

The renewed debate sparked by HHS's regulations may well be decisive. For the administration's latest actions encapsulate precisely the concerns embodied in the Roberts Court's decisions regarding Sarbanes-Oxley, Guantánamo, and preelection book banning, as well as the New Deal Court's unanimous refusal to simply acquiesce to FDR. Unprecedented powers asserted by the government threaten to give rise to stark abuses of power—some foreseeable, perhaps many more unforeseeable. Faced with similarly novel assertions of government power in previous cases, the Court drew a constitutional line in the sand, out of an abundance of caution. The Court's review of the individual mandate poses no less a challenge, and merits no less a response. ♦

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Jeremy Northam, Uma Thurman in 'The Golden Bowl' (2000)

The Master's Voices

Henry James gets the scholarly treatment. BY WILLIAM H. PRITCHARD

Among the scholarly and critical books that continue to crowd the Henry James shelf in university libraries, this new one by Michael Anesko deserves a significant place. *Monopolizing the Master* tells the story of what happened to Henry James's legacy after his death in England in 1916 at the age of 72.

Not long before he died, he declared that he had long thought of "launching a curse not less explicit than Shakespeare's own on any such as try to move my bones." Expressing his "abhorrence" of any biography of himself, and

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Monopolizing the Master

Henry James and the Politics of Modern Literary Scholarship

by Michael Anesko
Stanford, 272 pp., \$35

of giving to the world instances of his private correspondence, he destroyed reams of letters from family and friends. Such vigorous disposal activities may have been somewhat health-related, and Anesko describes them in a colorful manner: "At particular moments of medical crisis, plumes of smoke would rise from his chimney or waft from the cottage corner of the garden at Lamb House, where the caretaker could keep a watchful eye on the Master's epistolary bonfires." James's watchful eye was most

fully extended to his own work when, in the New York Edition of his writings (1907-09), he oversaw and wrote prefaces to the books of his he thought most worth preserving. The edition was to be, as he put it, "a sort of plea for Criticism, for Discrimination, for Appreciation on other than infantine lines." But the revision and reissuing of his books also constituted, suggests Anesko, both an artistic and a commercial "attempt to monopolize himself by patenting a style for futurity." Revised, books would remain longer in copyright, thus making them, in James's words, some "twenty or thirty years younger."

As is well-known, the New York Edition, which excluded seven of his novels and half of his stories, was a

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resounding commercial failure, as suggested by James's first remittance check from Scribner's for \$35. His attempt to exert control over how a reader should read his works, in the prefaces he wrote for the edition, was part of a larger pattern. He and his family—especially nephew Harry and sister-in-law Alice—tried (in Anesko's words) "to control the representation of themselves to curious outsiders." There had been an earlier attempt by Katharine Loring, companion for many years to Henry's sister Alice, to publish Alice's diary after her death in 1892; in the face of her brothers' disapproval, the diary remained unpublished for 40 years. Then, after William's death (1910), when Henry set about writing the second volume of his memoir, *Notes of a Son and Brother*, he proceeded to "improve" William's letters by substituting various "preferred expressions" of his own. Through such rewriting, his brother's intention might "flower before me as into the only terms that honourably expressed it." William's son Harry was appalled, and Henry apologized, promising never again to stray from his "proper work," although 16 excerpts from the emended letters found their way into the memoir.

James died in 1916, having become a British subject as an act of loyalty to his adopted land and in reproof of America's not having entered the war. Although he had burned so many of the letters addressed to him, there were thousands of his own extant; for example, Edmund Gosse presented the James family with no less than 400, yet William's wife and daughter, who had taken on the solicitation of letters, seemed relatively uninterested. Gosse told Edith Wharton that they were upset about James's English citizenship and wanted to emphasize instead the writer's American aspect. After complicated machinations, a suitable candidate to edit the letters, the choice of both Wharton and Gosse, was found in the person of Percy Lubbock, one of the Master's disciples who had written respectfully about James's American roots.

Some of Anesko's most interesting

pages are devoted to what, in a subheading, he calls "The Queer Case of Percy Lubbock." Lubbock was one of a circle of more or less closeted homosexuals (Hugh Walpole, Howard Sturgis, A.C. Benson were others) who formed the nucleus of correspondents James wrote to in his later years. Wharton and other "literary" admirers of James feared that family nervousness about the extravagant manner in which the later James addressed younger male correspondents might result in their suppressing or otherwise tampering with the letters. Lubbock could be trusted to be both devoted and discreet about deal-



ing with "ambiguities of sexual orientation" found in James's over-the-top signings-off ("I feel, my dear boy, my arm around you..." etc.). Lubbock would go on to initiate a monumental 35 volumes of James's work published by Macmillan, restoring titles omitted from the New York Edition, and would also write *The Craft of Fiction*, which presents James as the major exemplar of how to write it. But Lubbock's relation with Wharton became complicated when she took a dim view of his infatuation with a young painter: "What a queer turn on the wheel," she wrote to a mutual friend. In turn Lubbock, in his *Portrait of Edith Wharton*, called her (with reference to James)

"herself a novel of his, no doubt in his earlier manner."

Anesko's tone toward his subject is thoroughly confident, frequently witty, indeed acerbic, and always a bit above the fray. He seems especially animated by the "queer" aspects of his story, quoting a letter Lubbock wrote to a sympathetic friend in which he speaks with some relief about "throwing the cupboard-door open for the right *one* person," and mentions having received a "simply Gargantuan" letter from James himself, in which the Master insists that "I am to tell him *everything* when I get back" (Lubbock is spending Christmas in Vienna). Anesko calls the letter "Rabelaisian not only in size but also in its queer (and exquisitely campy) sexual inquisitiveness." He writes that Lubbock "clucked" to his friends about James, "isn't he *bad* & isn't he lovely!" If Lubbock "clucked," both Lubbock and Wharton are described, in successive pages, as having "bubbled," while Wharton at one point seems to have chuckled (hard to imagine Wharton chuckling, but no matter).

In a footnote, Anesko suggests that "the insights of queer theory have encouraged provocative reexaminations of many of James's titles, especially those of his later years." As an example he cites Eve Kosovsky Sedgwick's charting of homosexual panic in James's late story "The Beast in the Jungle." Perhaps Anesko doesn't feel he has time to inquire further, but it would have been good to hear more about how "provocative," and just how rewarding, he finds such "queer" reexaminations of late James. Might they be thought of as another way of monopolizing the Master?

After a survey of "modernist" responses to James, particularly from T.S. Eliot, Ezra Pound, and R.P. Blackmur, the final two chapters settle into an extensive and unambiguous savaging of Leon Edel, whose five-volume biography and editions of James's letters and plays constitute an almost unprecedented domination of a writer by a single person. Before Edel, Harvard's F.O. Matthiessen had produced pioneering work on James, but his

suicide in 1950 left the field to Edel. During the 19 years between the first volume of his biography and its completion in 1972, Edel effectively and ruthlessly cut off the James archive at Harvard's Houghton Library from other hands. For example, Harvard students were denied access to the manuscripts and papers, while anyone who hoped to publish something from the archive had to run the gauntlet of a Harvard faculty committee. Nephew Harry, then his younger brother Billy James, supported the embargo, the latter wishing (he told Edel) "that no one but you were allowed to write about Uncle Henry!" This wish—shared, Anesko tartly notes, by Edel himself—was aggressively substantiated by holding off hopeful admirers of James who possessed letters from him. In particular, the Norwegian-American sculptor Hendrik Andersen, to whom James in his later years wrote many gushing (and boring) letters, was prohibited from his plan to publish them, in important part because Edel planned to make use of them in his narrative of James's last years, and so didn't want to be scooped.

That Edel was especially nervous about how to treat James's sexuality—Anesko writes it as "(homo) sexuality"—is testified to in a lively diary entry from the English writer (and homosexual) Harold Nicolson. During a lunch at New York's Century Club, Nicolson reports, Edel was perplexed and distressed about how to proceed with the man whom Nicolson calls "a late-flowering bugger" whose "Boston puritanism retarded him until it was too late to get full satisfaction from it." Nicolson advised Edel to treat it as a matter of course, although his colorful formulation of James's character could hardly be of use to the biographer worried about the sensibilities of surviving relatives.

Anesko's final chapter is titled, rather surprisingly, "The Legend of the Bastard." The allusion is to James's story about a writer, "The Lesson of the Master," but also, evidently, to Edel. Other epithets include "the careful Canadian" and "Chairman of the Board," the latter by way of bringing

out Edel's affinities with hardheaded Harry James, the earlier guardian of the treasure. Himself a candidate for a Harvard doctorate, Anesko was unaware of the longstanding prohibition against graduate students consulting the manuscripts. When the restrictions were finally lifted in 1973, he cautiously approached the librarian at Houghton inquiring whether it was possible to

see some of James's manuscript letters. Replied the librarian, after a pause, "Well, Leon's done with his book"—so permission was granted.

Anesko's final sentence, alluding to the opening of *The Wings of the Dove* ("She waited, Kate Croy"), he applies with a twist to himself and his frustrated colleagues: "We waited, Leon Edel." ♦

BCA

Evil on Parade

What were Americans thinking about the Third Reich?

BY SONNY BUNCH

The common counterfactual as it relates to Hitler is somewhat fantastical: If you could go back in time and kill the Austrian madman before he ascended to Germany's chancellorship, would you do so? Nay, would you be morally obligated to do so? More interesting, perhaps, is the question that arises in Andrew Nagorski's fascinating look at the rise of Hitler as seen through the eyes of Americans: Would you be morally obligated to stop Hitler from killing himself?

One of the many highlights of *Hitlerland* comes early on, shortly after the failed Beer Hall Putsch in 1923. Appearing at the doorstep of Putzi and Helene Hanfstaengl in its aftermath—"ghastly, pale, hatless, his face and clothing covered with mud, the left arm hanging down from a strangely slanted shoulder"—Hitler was in a bad state. In the morning, things would get worse: Cornered by officials who had come to the German-American couple's house in Munich to arrest Hitler, he cried, according to Helene, "Now all is lost—no use going on!" before grabbing a gun and putting it to his head.

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Alarmed he might have shot himself, she shouted, "What do you think you're doing? After all, are you going to leave all the people that you've gotten interested in your idea of saving the country and you take your life. . . . They're looking for you to carry on."

Nagorski's study is full of tidbits like this. Expertly cobbling together anecdotes and manuscripts—some published and well-enough known, others not—from Americans

present in Germany between the early 1920s and their expulsion after Pearl Harbor, *Hitlerland* provides a (slightly) different twist on a (relatively) familiar tale. As Nagorski puts it, "The Americans who lived, worked or traveled in Germany at the time when Hitler was coming to power and then forged the Third Reich haven't attracted anything like the level of attention" as those who lived in France or Great Britain then. And it is instructive to watch American attitudes evolve: from the general revelry in Berlin as it rivaled 1920s Paris as a capital of excess, to detached concern as the Nazis stifled freedom but imposed order during an economic collapse, to dawning dread as Hitler's power became total and the Wehrmacht plowed mercilessly through Europe.

With hindsight, it's easy to see Germany's slide into barbarism take place; Nagorski reminds us that those on the ground did not have our good fortune. Even those within Germany's borders sometimes had difficulty realizing what was happening. As late as 1939—after Germany had taken Austria, absorbed the Sudetenland, and cowed Europe's leaders into the Munich Pact—some experienced hands thought peace in their time was within reach. As one correspondent, who had been in Germany since the Great War, wrote in *Cosmopolitan*: "Hitler has achieved without war what no other man has accomplished for centuries. . . . As I know Der Führer, he will not in his senses stake those achievements and his unique place in history on the uncertain gamble of a deliberately planned aggressive war."

As might be expected, Adolf Hitler was a figure of some interest to Americans passing through Germany in the 1930s, and the impression was not universally negative: While men found him icy and prone to sputtering rages, women were frequently charmed, whether in nightclubs meeting him for the first time or as the wives of confidants frequently in his orbit. Still, the cult of personality—to say nothing of the cult of fear—that Hitler nurtured was always present. After speaking to the son of an AP bureau chief, who had the misfortune of acting up near Hitler while at the opera, one reporter conceded that "ever afterwards, I could understand how young officers, or anyone else for that matter, would be terrorized by Hitler's eyes."

Compulsively readable and deeply researched, *Hitlerland* delves into the history of the Third Reich without losing a personal touch. Nagorski is aware of the horror many Americans felt as the march toward evil hit full stride, adding details sure to rouse similar feelings in readers. During Kristallnacht, "Charles Thayer, a diplomat assigned to the Berlin consulate, heard horror stories from all around the city. One of his friends witnessed how Nazis threw a small boy from a second-floor window into a mob below. 'His leg broken, the boy

tried to crawl on hands and knees through the forest of kicking black boots until my friend plunged into the mob and rescued him.'"

Watching an ostensibly civilized people descend into madness came as a shock to American expatriates, jour-

nalists, and diplomats who, almost uniformly, had grown to like the Germans in the interwar years. Their first-person perspectives, largely unknown until now, provide genuine insight into what it meant to live in Hitlerland during those years. ♦



Families Matter

The message of the 'Moynihan Report' remains urgent.

BY EDWIN M. YODER JR.

We recently reached a landmark in the checkered annals of social science: the 47th anniversary of an initially obscure paper that few living Americans have heard of, and fewer read. That epochal document has been known since the summer of 1965 as "the Moynihan Report," when it was so dubbed by the late Robert Novak. It warned of dire conditions within the impoverished urban "Negro family" and predicted worse to come.

I knew and admired its author, the late Daniel Patrick Moynihan, for 24 years a senator from New York and before that an academic star and ambassador to the U.N. And why not? He wrote an amusing introduction to one of my books. When my newspaper, the *Washington Star*, collapsed in 1981, he offered me a perch on his staff. Thanks to him, I have in safekeeping the huge American flag that he caused to be flown over the Capitol in my honor when I took leave of daily journalism. But then, as the author of this important study rather unkindly remarks, Moynihan was "an Olympic-class" flatterer and I claim no immunity to blarney.

Moynihan as I knew him was, however, more than a butterer of inflated

egos. He was a keen and original student of social structures and of American and European history; and like all sentient Irishmen, he was a lover of the English language and an eloquent and inventive user of it. Moynihan wrote his storied report while serving

as a subordinate Labor Department official in the Johnson administration, and it provided the basis for a memorable presidential speech at Howard University in 1965. Johnson addressed

what Moynihan viewed as the plight of indigent urban black families and their male children. Moynihan argued that this imperiled social unit was trending toward "matriarchy" (this was, of course, just before the women's lib movement crested, when such a designation was less explosive than it would become), breeding unruly young males, often out of wedlock, who were inevitable prey to a "tangle of pathology." Surly, unschooled, unambitious (at least in conventional middle-class terms), drug-trading and drug-using, making a perverse cult of tangles with the law—at the very least, this developing "underclass" was severely alienated.

The brief report (fewer than 100 pages in its government-printed version, crammed with charts and graphs) became a delayed-action bombshell. Some weeks after Johnson's Howard address (itself universally applauded

Freedom Is Not Enough

The Moynihan Report and America's Struggle over Black Family Life from LBJ to Obama

by James T. Patterson
Basic Books, 288 pp., \$18

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when he pronounced that the “freedom” conferred by civil rights legislation was not enough, so that the nation must set its sights on “equality as a fact and equality as a result”), Moynihan was smoked out as the primary thinker behind it. If the present historical study, absorbing and penetrating, suffers from any flaw at all, it is the author’s stern resolve to examine every significant item in the flood of demographic and sociological echoes to which the report gave rise.

It could be argued, as Moynihan’s critics did not fail to do, that his jeremiad regarding poor, fatherless black boys was a shadow autobiography, drawing its energy from personal experience. Indeed, Moynihan posed when it suited him as a slum-toughened Irish kid from Hell’s Kitchen, sometime shoeshine boy and longshoreman, lifted by his own bootstraps. There was truth in this life history, but as James Patterson establishes, it was actually an inverted family romance. Moynihan was born to middle-class parents, functioning professionals, in Tulsa, Oklahoma, though it is true that his father was a drunk whose desertion of the family when the future senator was 10 pushed his mother into occasional wandering, hardship, and dependency.

Forty-seven years later, it is also arguable that the Moynihan Report erred in two significant assumptions. One was that the family “dysfunctions” it identified could be traced to the wanton breakup of slave families—an idea that more exacting historians (notably Eugene Genovese and Herbert Gutman) would soon question. The other was to adapt, too confidently, quasi-medical terms of social analysis, a temptation in all sorts of punditry, academic and journalistic, at once pre-emptive and deterministic.

The fluctuating academic dispute over the impact of slavery on the black family tended to overlook what thinking white Southerners of my own generation knew anecdotally, or should have known. We had daily contact, often intimate within the limits of paternalism, with black people. We knew, and often were cared for, by strong and affectionate black women; and we knew their

children also, after a fashion. We knew far less about black men or black family structures, their intimate connections, and their patterns of coping, and still less about how deeply those veiled patterns were rooted in the slave past, which was rarely if ever mentioned in white company.

What we did know of a certainty was that the deepest and most useful inquiry into those mysteries was not the musing of starchy social scientists armed with shallow surveys and census data but the fiction of William Faulkner, in such immortal works as *Absalom, Absalom!* and *Go Down, Moses*, whose advantages were keen observation, social conscience, and intuitive human sympathy. Historians generally do better with the history of slavery, because they’re less immodestly prescriptive, employing “slave narratives” and other documents. But even historians are limited by the trickery of human memory and by the scarcity of literacy under slavery, and are as scattered leaves on the floor of a vast and silent forest.

Moynihan was at his most useful when, in later years, he grew skeptical of the power of social statistics to identify, let alone relieve, the sufferings of an “underclass.” Moynihan came to doubt the capacity of social science (and government policies resting on it) to “solve” intractable problems—a useful stride away from the rather giddy reformist optimism of the early 1960s. By the mid-1980s his conclusions were even bleaker. He occasionally cited, with apparent agreement, Peter Rossi’s so-called Iron Law of Evaluation: “The expected value for any measured effect of a social program is zero.”

Which is not to say that the Moynihan Report itself was inconsequential or misleading. The least that can be said four decades later is that it was prescient and that the worrisome trends it identified in the indigent urban black family have grown even more adverse—in some part because the national attention was deflected or discouraged. Patterson deftly situates the report in its time, which proved friendlier to dispute (and anger, including the

absurd charge that Moynihan and his analysis were “racist”) than to action. It would be a long time before sufficient calm settled over the urban issue to permit dispassionate inquiry of the sort Patterson accomplishes.

In the summer of the report’s appearance, the disastrous Watts riots broke out in Los Angeles. President Johnson, feeling the disorders a slap in the face, receded from his zeal. His reaction, and that of other disillusioned reformers, perhaps echoed the waning paternalist mentality which had not absorbed the hard lesson that no good deed goes unpunished. Moreover, the summer of 1965 witnessed the first major escalation of the American military involvement in Vietnam, and Johnson was soon distracted from the goals he had enunciated at Howard and the ameliorative optimism that drove them. Add to this a decade of political reaction, “stagflation,” and budgetary stringency, and little further explanation of the inefficacy of Moynihan’s *cri de coeur* is needed.

One wry lesson of *l’affaire Moynihan* is ancient and biblical: Prophets are often unhonored in their own bailiwicks. In this case, the cost of inattention has been significant. The designated victims of “social pathologies” often seem to make a twisted virtue of their alleged shortcomings. A complacent deficit of education, ambition, stable marriage, responsible child care, and other features of inner-city life has continued and deepened, leaving one to ponder, again, the words of frustration and warning Moynihan wrote in a followup magazine article in September 1965:

From the wild Irish slums of the 19th-century Eastern seaboard, to the riot-torn suburbs of Los Angeles, there is one unmistakable lesson in American history: a community that allows a large number of men to grow up in broken families, dominated by women, never acquiring any stable relationship to male authority, never acquiring any set of rational expectations about the future—that community asks for and gets chaos. Crime, violence, unrest, disorder—most particularly the furious, unrestrained lashing out at the whole social structure—that is not only to be expected; it is very near to inevitable. And it is richly deserved.

Must one add, Q.E.D.? ◆

Lively's Art

Passion, gentility, manners, and morals.

BY KYLE SMITH

To open a Penelope Lively novel is to accept an invitation to the exhilaration of nuance. That is the kind way of putting it. To be less kind would be to point out that, despite Dame Penelope's interest in the sweep of history, her internationalism, her dramatic twists and emotionally devastating revelations, the final effect tends to be closed, even a little musty. Lively's novels are filigreed, elegant, and small—tea-cozy literature for women of a certain age. It will be a shame when England stops producing such writers, but the mourning will be, like her books, tastefully muted.

The 17th novel by the Cairo-born, Oxford-educated Lively, *How It All Began*, is, like previous ones, compact (they tend to excuse themselves after 220 pages), gently barbed, acutely observed. Yet Lively's defiantly bland titles (*Going Back*, *Perfect Happiness*, *The Photograph*) are a little too redolent of the overall climate of mildness within. Thanks to the psychological effect called "priming," reviewers tend to use Lively's adjectival surname to describe her work. Yet it is her given name, with its connotations of skill, steadfastness, patience, and (alas) the circumscription of an elegant lady who doesn't get out much, that provides a more apt allusion.

The implicit question in the title is answered one sentence before the book begins: with the mugging of an elderly lady in London. The "it" is the chain of results. The victim, Charlotte, is so badly injured by

How It All Began

by Penelope Lively
Viking, 240 pp., \$26.95

falling to the sidewalk that she moves in to recuperate with her daughter Rose, who in turn requires time off



Penelope Lively

from her employer, a pompous old historian named Henry.

Rose's absence brings in Marion, Henry's interior decorator niece, who (being not uninterested in what might be contained in the childless elder's will) agrees to help out as his assistant. Unfamiliar with Rose's duties, Marion neglects to pick up notes for a speech as she and her uncle dash out to a lecture. At the podium, Henry is forced to wing

it, and embarrasses himself, inspiring him to start a memoir that could restore his reputation. The break in routine causes Marion to leave an unanticipated phone message with her married lover Jeremy, an antiques merchant. Intercepted by Jeremy's emotionally fragile wife Stella, the message leads her to cast Jeremy out of her house, leaving him in financial disarray.

The injured Charlotte, meanwhile, who conducts classes in adult literacy, now holds them in the home Rose shares with her aggressively uncomplicated husband, Gerry. Rose is beguiled by one of Charlotte's pupils, a central European named Anton who dispenses pidgin wisdom and possesses a "lean body" and "eyes with forests in them."

The merits of *How It All Began* lie principally with the vinegary sketches of these Londoners and what they tell us about the state of England. Like Henry (who, baffled in an adventure on public transportation, thinks "the bus speaks in tongues, most of them unfamiliar. . . . But he is without curiosity, when it comes to those around him"), she sticks close to home. Amid her upscale creative class, occupations run the gamut from A (arts administrator) to B (book reviewer).

The throwback Henry—the one character who is both likable and a satiric target—provides the most amusement value. He's a "gastronomic retard" who favors antediluvian cuisine (scotch broth, steak and kidney pie) in drowsy clubs, bores guests repeating advice he gave Harold Macmillan and Harold Wilson, and has lost touch with the latest research in his specialty. Lively's finest sentence may be "The eighteenth century has moved on, leaving him behind." And yet, baselessly bluff about his own renown, he marches (to Marion's amazed annoyance) toward a big job hosting a television series.

By comparison, the fragile Stella, footloose Jeremy, and reflective Anton get only one dimension each. And Lively's jokes at the expense of

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FRANCESCO GUIDICINI / CAMERA PRESS / REDUX

the puttering Gerry, though witty (“he retired to his shed at the end of the garden, and could be heard sawing and planing; for the last year or so he had been making a table”), seem unfairly to reduce him. The reason is so that we won’t feel too bad if his wife cheats on him. Lively seems prepared to justify cuckolding a husband for the crime of being a bit boring.

Male infidelity, though, tends to come in for caustic treatment here and elsewhere in Lively’s work, which recycles other elements as well. There is usually a headstrong, accomplished, but emotionally wary woman who isn’t quite as fascinating to the reader as she is to the author. In *How It All Began* that is Marion, but see also the paleofeminist Molly in *Consequences* (2007), the globetrotting journalist Gina in *Family Album* (2009), and the history writer Claudia in the Booker Prize-winning *Moon Tiger* (1987). There is a dashing but sensitive man (Anton) rendered unavailable by fortune. (There are two of these in *Moon Tiger*: One is killed off in World War II, another is the central character’s brother.) His flip side is the charming but unreliable dilettante (Jeremy here, Nick in *The Photograph* (2003), Jasper in *Moon Tiger*, Paul in *Family Album*).

Lively’s satiric kindling is never enough to spark a bonfire or roast a sacred cow. The most promising confrontation is between Henry and Mark, a scheming young historian who leverages his sycophancy into a job sorting through the older man’s library. The task ought to take a month or two, but Mark plans to extend the work indefinitely while Henry’s funding bankrolls other pursuits. Nothing much happens, Lively retreats, and the two of them drift onwards as the author informs us that “time does not end, and stories march in step with time.” Meanwhile, Rose sighs by the windows: “Don’t think of him. Yes, think of him—because I must, have to, can’t help it.”

By turns shrewd and tart, and nearly always elegant, Lively is nevertheless grounded in standard Victorian female fantasy. ♦

BCA

Take Up the Slack

Is grand strategy governed by ambition or politics?

BY CHRISTOPHER LAYNE

Grand strategy is about how states use their military, economic, diplomatic, and soft power resources to gain security and advance their interests in both peace and war. Here, Peter Trubowitz offers a theory of executive choice to explain how American presidents decide between grand strategic alternatives. His executive choice theory is based on the insight that grand strategy is the combined product of both domestic political factors (*Innenpolitik*) and the balance of power and geography (*Realpolitik*) and incorporates two variables: geopolitical slack, which measures the degree of external threat to U.S. security at any particular point in time, and preferences of a president’s party/coalition for guns versus butter.

The ultimate test of any theory is its explanatory power, and Trubowitz’s discussion of postwar grand strategy illustrates why executive choice theory lacks a strong explanatory punch. John Lewis Gaddis has commented, “Few historians would deny, today, that the United States did expect to dominate the international scene after World War II, and that it did so well before the Soviet Union emerged as a clear and present antagonist.” The United States not only expected to dominate the post-World War II international system, it did so.

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Since 1945 the objective of U.S. grand strategy—consistently pursued by Democratic and Republican administrations alike—has been to obtain preponderant power in the international system. We succeeded in creating the Pax Americana because it enjoyed (to use Trubowitz’s term) enormous geopolitical slack thanks to our military capabilities, geographical advantages, and interna-

tional economic dominance. The more powerful states are, the more ambitious their grand strategies will be, and since 1945 the United States has used its military and economic power to establish, and maintain, hegemony over the three regions that have mattered most to it strategically: Europe, East Asia, and the Persian Gulf. American power, not executive choice theory’s domestic variables, explains the unbroken continuity in U.S. grand strategic aims since World War II.

To be sure, Trubowitz is correct to remind us that both *Realpolitik* and *Innenpolitik* drive U.S. grand strategy. But his model does a poor job of capturing the salient *Innenpolitik* features of postwar grand strategy, which has been fundamentally guided neither by electoral politics nor by guns-or-butter preferences. Trubowitz overlooks an important point: Postwar presidents have not been free agents in the realm of grand strategy. Their maneuvering room is sharply circumscribed by powerful bureaucracies and elites that determine the broad contours of grand strategy. As Michael Mandelbaum has pointed out, the foreign policy elite defines the “tacit boundaries” that “determine what may be legitimately proposed and carried out

Politics and Strategy
Partisan Ambition and American Statecraft
by Peter Trubowitz
Princeton, 200 pp., \$24.95

to further the national interests of the United States.”

The remarkable consistency of postwar grand strategy is attributable to the fact that the American foreign policy elite is bipartisan and shares a common vision of America’s world role. The embrace of a grand strategy of hegemony is explained by our commitment to Wilsonian ideology (democracy and an open international economy) and the outward-looking economic interests that are important bases of support for both parties. And Trubowitz’s discussion of grand strategy under Bill Clinton and George W. Bush illustrates executive choice theory’s shortcomings: Citing the Clinton administration as an example of strategic “under-reach,” Trubowitz argues that Clinton sought to downplay external ambitions for domestic reasons. But the facts belie this interpretation. During the Clinton years, the foreign policy establishment was determined to use the massive augmentation of our relative power (resulting from the Soviet Union’s collapse) to widen both the geographical and ideological scope of American power through NATO expansion and the policy of democratic enlargement. Under Clinton, the United States engaged in two Balkan military interventions to revive NATO—the instrument of American hegemony in Europe—and rescue the alliance from post-Cold War irrelevance.

Trubowitz also unfairly overstates the role of domestic politics in driving George W. Bush’s grand strategy, especially the war on terror and the invasion of Iraq. To be sure, there is much to criticize about the Bush II administration’s grand strategy; but Trubowitz errs in claiming that it was driven primarily by considerations of electoral advantage. In the aftermath of 9/11, Karl Rove may have thought that the GOP could use the club of “national security” to get the political upper hand on the Democrats, but that is not the reason why the Bush administration prosecuted the war on terror. (Al Gore doubtless would have done something similar in response to 9/11.)

To find the real drivers of the Bush

grand strategy, a good starting point would be Jim Mann’s *Rise of the Vulcans*. As Mann describes, during the Clinton years, those who became George W. Bush’s key policymakers articulated a muscular, expansionist vision of a U.S. grand strategy that would capitalize on unipolarity to extend American power and ideals into Central Asia, the Middle East, and further into Eastern Europe, while simultaneously preventing China and Russia from emerging as peer competitors capable of challenging U.S. dominance. Doubtless, 9/11 made it possible to muster support for this grand strategy, but domestic politics was a facilitator, not the driver, of the administration’s policy. Moreover, as the Iraq surge demonstrated, even when public opinion shifted against the Iraq war, President Bush was willing to pay a high domestic political cost to stick with his grand strategy.

What does Trubowitz’s executive choice model tell us about future U.S. grand strategy? Here, he is more on

the mark—up to a point: The Obama administration is engaged in grand strategic retrenchment in order to focus on perceived domestic needs, and President Obama does seem to favor this policy because of the recession’s impact, U.S. dependence on foreign capital inflows (especially from China), and the looming risk of a fiscal meltdown during the next decade. But the administration’s policy in the war on terror certainly illustrates the power of the foreign policy establishment to keep grand strategy on a hegemonic path.

Trubowitz assumes that the international system is still unipolar and that the United States enjoys “a level of ‘geopolitical slack’ that was inconceivable a few short decades ago.” He believes that the grand strategic issue for the United States in the coming decades will be how best to use the geopolitical slack unipolarity confers. But whether the United States can sustain its hegemony is an open question, and *Politics and Strategy* does not offer an answer. ♦

BCA

China by Design

Fashion Week in Hong Kong is serious business.

BY SAMANTHA SAULT

Hong Kong
Fifteen years after the transfer of power to Beijing, Hong Kong is far from the utopia envisioned by Mao. On the contrary, as Hong Kong Fashion Week demonstrated recently, Hong Kong is the gateway to capitalism and consumerism in China, if not the world.

When Great Britain relinquished control of Hong Kong to China in 1997, thousands fled, expecting life to change for the worse: Goodbye free market, hello communism. But Beijing seems to have kept its promise of “one country, two systems,” and China’s first “Special

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Administrative Region” has flourished as Asia’s vibrant center of capitalism. Hong Kong, in fact, is one of the freest economies in the world, ranking first in the Heritage Foundation’s Index of Economic Freedom and second in the World Bank’s Ease of Doing Business Index (behind Singapore). Goodbye communism, hello consumerism.

Hong Kong is also Asia’s center of luxury shopping. The bustling streets are filled with shops selling ancient Chinese antiques and sleek minimalist furniture, stalls of fake designer handbags alongside red-and-gold paper lanterns for the Chinese New Year, even smoky storefronts hocking offal-on-a-stick.

Yet Hong Kong is making a name for itself no longer as the place to haggle for your fake Louis Vuitton handbag but the place to finally buy your *real* bag from one of the seven sparkling Louis Vuitton stores in greater Hong Kong. (Paris has just six.) And as I heard from numerous industry insiders, while many Hong Kongers cross the border to shop the deals in Shenzhen, many more mainland Chinese travel to Hong Kong to ensure they're buying genuine luxury goods, lining up outside the stores, from Armani to Shanghai Tang, to shop without sales tax. In 2011, Hong Kong welcomed 28.1 million visitors from the mainland, four times the size of Hong Kong's population, who contributed to total retail sales of \$52.3 billion during the same year, according to the Hong Kong Census and Statistics Department.

International brands are taking notice of the need to solidify their presence in Hong Kong and greater China, the second-largest market in the world for luxury goods and home to a million millionaires. (The American luxury-accessories brand Coach and the Italian fashion powerhouse Prada made headlines last year when they became the first companies from their respective countries to list on the Hong Kong Stock Exchange.) And Hong Kong Fashion Week, held at the gargantuan Hong Kong Convention and Exhibition Centre, showcased the importance of Hong Kong to the growing consumer culture in China, and provided the opportunity for designers and brands from around the world to enter the Chinese market.

Hong Kong Fashion Week is Asia's largest fashion event, featuring over 1,600 exhibitors of apparel, accessories, and other merchandise, alongside the Hong Kong World Boutique, which features high-end designers

from around the world. "The fairs have again received great support from global fashion designers and brands, cementing Hong Kong's status as Asia's trendsetting hub," according to Benjamin Chau of the Trade and Development Council. The participants represented over two dozen countries, with buyers from dozens more on missions to find the latest in fast fashion, denim, accessories, even couture. Fashion Week is an opportunity not just for Hong Kong-based designers to grow their brands but for

an even bigger name in the global fashion scene. For Craig Lawrence, a London-based designer whose avant-garde knitwear has been worn by Lady Gaga, the Extravaganza was an opportunity to solidify his existing relationships and expand his brand. "Asia has always been a really big support to Craig in terms of press and interest at the beginning of his career," press rep Ella Dror told a small group of reporters. "It's really important that he's here in terms of picking up new stocklists." Lawrence agreed: "The more people who see my work, the better."

Aside from the high-profile runway shows, Fashion Week and World Boutique offered fledgling designers the best opportunity to develop their brands. Glori Tsui, creative director of a new sustainable leather line called Methodology, showed her studded convertible jackets in Hong Kong to gauge interest from buyers, though the line will officially launch later this year in New York. "Hong Kong Fashion Week is a starting ground for designers," she says. "Designers can meet buyers from around the world and get a kickstart." Aniket Satam, a recent graduate of the Somani Institute of Art and Fashion Technology



Craig Lawrence on the runway

international designers to gain exposure in Asia, especially China, as well. The flagship fashion show of the week, the Hong Kong Fashion Extravaganza, brought together four unique, rising-star designers from Hong Kong, Shanghai, Paris, and London.

Hidy Ng is one of Hong Kong's better-known designers, and already sells her ready-to-wear in Harvey Nichols department stores in Hong Kong as well as international boutiques. Ng introduced her Fall/Winter 2012 line at the Extravaganza, and her chic, polished collection inspired by Parisian women could make her

oogy in Mumbai, stood out in the sea of exhibitors for his punchy fabrics inspired by vintage gypsy embroidery, neon zippers, and skillful tailoring. He launched his label, A+ by Aniket, in the fall and exhibited this year in Hong Kong to obtain "diverse exposure" for his brand.

As the Hong Kong market grows in importance, both to China and the world, the designers coming out of Hong Kong will grow in importance to the fashion industry as well. Mao notwithstanding, it's a fact that when designers make it in competitive China, they're on track for a lucrative career. ♦

GETTY IMAGES

Forty Years On

Why 'The Godfather' is a classic, destined to endure.

BY JOHN PODHORETZ

There were surely people at the first showing of *The Godfather* upon its release on March 15, 1972, who understood that the film they were seeing was the best motion picture made up to that time—and might have foreseen that this would be true to this very day.

"This very day" is a phrase spoken by Don Vito Corleone in the movie's first scene, about the punishment the Mafia boss might have inflicted on the would-be rapists of the daughter of the undertaker who has come to ask for vengeance—had the undertaker come to him first rather than to the court system, and paid him proper obeisance as "the godfather" of the title.

I have no doubt that many readers instantly spotted my use of that phrase, and even heard Marlon Brando's voice in their head as they read it—a mark of how even minor lines in *The Godfather* reverberate in the national consciousness, just like the far better known "I'll make him an offer he can't refuse," "Leave the gun, take the cannoli," "It's not personal, Sonny, it's strictly business," and two dozen others in the most-quoted screenplay ever written.

But back to that first day of *The Godfather's* release, exactly four decades ago. The movie's greatness—and it is arguably the great American work of popular art—was not evident to the cultural doyens of the day. Early critical attention was respectful, and even celebratory, but utterly uncomprehending about the enduring nature of the achievement of Francis Ford Coppola's movie.

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That same year the powerful film version of the Broadway musical *Cabaret* was released, and it was far more favorably reviewed. When Oscar time rolled around, *Cabaret* took eight and *The Godfather* only three—including the notorious Brando victory, accepted by an actress named Marie Cruz who declared she was



an Indian activist named "Sacheen Littlefeather" and was rejecting the award on Brando's behalf because of the mistreatment of Native Americans. *Cabaret's* director, Bob Fosse, won the Academy Award rather than Coppola. Given the nature of the *Cabaret* steamroller, it came as a shock that *The Godfather* beat it out for Best Picture.

So why wasn't it celebrated properly at the time? The answer has to do with the nature of cultural orthodoxy in 1972. Primarily, *The Godfather* couldn't possibly be great—indeed, it would have seemed crazy to apply the word "great" to it—because it was derived from a potboiling bestseller with dirty sex scenes (read aloud in every junior high school locker room, and in every summer camp bunk, from 1969 onward) that had sold as well as it did in part because its author's Italian surname suggested

he had some deep inside scoop on the growth of the Mafia.

How could a somewhat disreputable work of literary hackery, this whoring after sales, be the source material for something enduring? Certainly *The Godfather* was good, but it was good of its kind; it was not an elevated work and could not therefore be elevated itself into any kind of pantheon.

Not to mention that *The Godfather* was an extraordinarily violent gangster movie, among whose memorable scenes was Sonny Corleone being riddled with 56 bullets at a toll booth, Luca Brasi's hand pinioned to a bar by an icepick and the life choked out of him in closeup, Michael Corleone shooting a police captain in the throat, and Moe Greene getting it in the eye on a massage table.

How could such admittedly well-staged horrors be part of anything that could be called art?

In retrospect, the achievement of *The Godfather* is that it is the summa of all great moviemaking before it. It combines the shock and sizzle of the 1930s gangster movie with the epic scope of the films of John Ford and David Lean. It blends the youthful power of the French New Wave of the 1950s with the generational subject matter of the great family melodramas of the postwar Italian master Luchino Visconti. And while its source material might have been Mario Puzo's readable junk, it declared its medium's arrogant ambition to supplant literary fiction as the chronicler of the national story with its opening line: "I believe in America."

I could go on about the movie's effect on the culture—among other things, cinematographer Gordon Willis's dark palette and evocation of *Life* magazine photography of the 1940s literally changed the way Americans picture the country's past. But in the end, *The Godfather* matters not because of what it did, or the alterations it helped bring about in our culture, for good and ill. We can see in its standing today, as an American classic, that it matters because it is the most impressive achievement of imaginative storytelling in the most important cultural form of the 20th century. ♦

"A Democrat affiliated with a Senate campaign and who did not wish to be named said of the Republicans, 'They have gone off into some deep, dark cave that we came out of 400 years ago, and poor Olympia Snowe had enough.'"

—Eleanor Clift, The Daily Beast, March 1, 2012

PARODY

Act II, Scene 1. The Year 1612, within the CAVE.

WILLIAM SHAKESPEARE, THOMAS HOBBS, FRANCIS BACON

SHAKESPEARE

'Tis not for me, fair Hobbes, to tell
Wherein our fair Olympia hath fled
From this our deepest lair in which
We hath descended, though dark may be.

HOBBS

Enough! Fair Bard, ye speak of Snowe
As if Olympia were flesh of ours.
She hath, alas, a Centrist been
Withal, no kinsman to our kind,
But friendly, in her mod'rate tone
To those above who wish us ill.

BACON

And now, like Nelson of the Plains,
She hath, to all the world's acclaim,
Descended to that Nether world
From where no Soul shall e'er return.

Enter MIGUEL DE CERVANTES

SHAKESPEARE

We bid you welcome, from Abroad! Our Cave,
Though dark and deep, our refuge be.
And now bereft, I ask of thee: Hast thou
Seen she of whom we speak,
Olympia! who, I fear, hath gone
Where Media and Repute are spawn'd?

CERVANTES

Mark well my words, ye Englishman:
A Centrist is a dismal thing, a Lamb
Which cannot choose its Flock
And paces forth and back, to wit,
We cannot comprehend, but mock!