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BIRTHS**
JONATHAN V. LAST

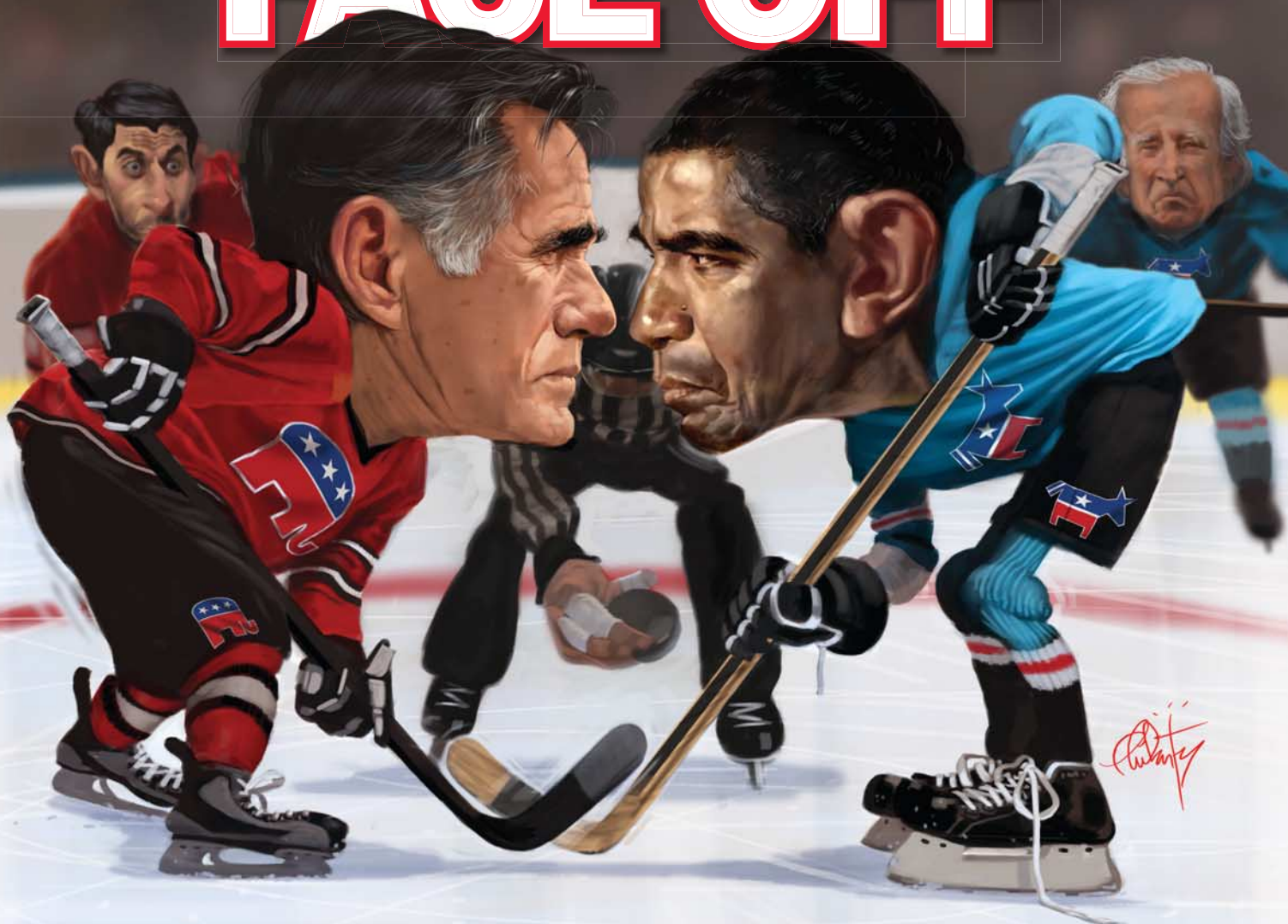
the weekly

Standard

APRIL 30, 2012

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on the Romney-Obama race



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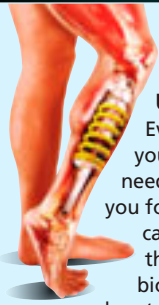
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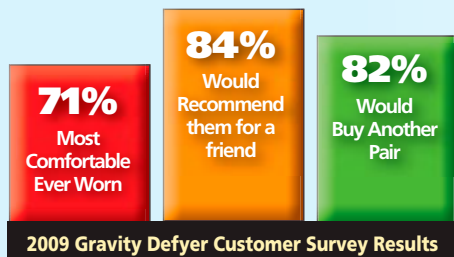
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Prize Duds

THE SCRAPBOOK did not win a Pulitzer Prize this year, and the way things are going, we're not likely to win one next year, either—or any year, for that matter. But we're not complaining. We knew that when the Pulitzer people started rewarding “new media” and other unconventional outlets that the prizes would fall into the laps of politically congenial publications such as the *Huffington Post* and *Politico*, and that is exactly what has happened.

Nor can we feel as insulted as America's novelists, since the Pulitzer board also decided that no novel published during 2011 was worthy of this year's award for fiction. Coming from the people who gave the prize just once to Ernest Hemingway, and for his worst novel (*The Old Man and the Sea*, 1953), that's got to hurt. But to our novelist friends, THE SCRAPBOOK suggests a more comforting perspective: The Pulitzer Prize for fiction in 1925—the year of *The Great Gatsby* (F. Scott Fitzgerald), *An American Tragedy* (Theodore Dreiser), *Manhattan Transfer* (John Dos Passos), and *Barren Ground* (Ellen Glasgow)—went to Sinclair Lewis for *Arrowsmith*.

So go figure.

In the meantime, THE SCRAPBOOK is

prompted to observe that the Pulitzers, like the MacArthur “genius” grants and the Academy Awards and the Nobel Peace Prize, have long since descended into the realm of self-parody. Since the prizes are administered by the Columbia University Graduate School of Journalism and the *New York Times*, it can come as little surprise to learn that, over the years, a disproportionate number of Pulitzers have gone to—yes, you guessed correctly, the *New York Times* (two this year). The other journalism prizes are usually divided among a fraternal handful of big guns in the business (the *Washington Post*, *Los Angeles Times*, etc.—but not the *Wall Street Journal* these days, for obvious reasons) and for appearance's sake a provincial newspaper or two will be blessed as well. This year the *Tuscaloosa News* and the Harrisburg, Pa., *Patriot-News* had their forelocks tugged.

Of course, the fact that the process of awarding a prestigious prize has been corrupted by self-interest is no great shock. THE SCRAPBOOK would probably be just as shameless as the *New York Times* when it comes to logrolling! What pushes the Pulitzers into satirical territory, however, is their utterly predictable politics.

As our editorial (page 8) explains in more detail, the Associated Press won an unseemly investigative reporting prize this year for revealing the awful truth that the New York Police Department seems to have kept New Yorkers safe from terrorist attacks. The feature photography prize went to a perennial favorite (post-traumatic stress disorder among veterans), while national reporting was represented by a related obsession: the problems of wounded veterans. The explanatory reporting prize went to the *Times* for stories on corporate misbehavior. And the board was apparently so determined to recognize the late Manning Marable's fawning biography of Malcolm X that it moved him from the biography category to history—where his *Malcolm X: A Life of Reinvention* surely doesn't belong.

All of which suggests, in THE SCRAPBOOK's estimation, that as daily newspapers grow increasingly marginal in the national conversation, the Pulitzer spectacle—the corporate back-scratching, left-wing bias, unbearable sanctimony, and horses beaten to death—is likely to evolve, over time, into the greatest, and most instructive, story never to win a Pulitzer Prize. ♦

Remembering Cerny

Many are still mourning the death of Vaclav Havel, so it's especially sad that Oldrich Cerny, another hero of the Prague Spring, has died too soon at age 65. On August 21, 1968, then a 22-year-old university student, he penned a letter addressed “To All Students of the World.” The missive briefly captured international attention and remains an inspiration for oppressed political dissidents everywhere:

As I write this, Soviet tanks are stationed in a large park under my windows. The barrels of their guns are trained on a government building

adorned with a huge sign: “For Socialism and Peace.” . . . For seven months, my country has been led by men who wanted to prove, probably for the first time in the history of mankind, that socialism and democracy can exist side by side. Nobody knows where these men are now. I don't know whether I shall ever see or hear them again. There is much that I don't know. I don't know, either, whether I shall be able to finish my studies or ever again meet my friends from abroad. I could carry on and on like this, but somehow



everything seems to be losing its original value. . . . You will think, perhaps, that the Czech people have behaved

like cowards because they didn't fight. But you cannot stand up to tanks with empty hands. . . . We may be broken physically, but not morally. This is why I write. The only way you can help is: Don't forget Czechoslovakia. Please help

our passive resistance by increasing the pressure of public opinion around the world. Think of Czechoslovakia even when this country ceases to be sensational news.

After completing his studies, Cerny went on to become a children's book editor and to translate foreign films into Czech. He also spent much of his life being harassed by the secret police for his sub rosa activities, including providing vital help to the CIA and MI6 during the Cold War. Henry Porter of the *Observer* wrote that he once asked Cerny how he survived his years fighting authoritarianism. "He said something on the lines of: 'Well, there was love and sex and friendship and books and drink and cooking.'"

When the Velvet Revolution finally came, Cerny was one of the first people that Havel called and asked to join him in Prague Castle running their newly free country. It took quite a bit of arm twisting before Cerny relented and became Havel's national security adviser. After Czechoslovakia split in 1993, he became director general of the Czech Office for International Relations and Information. A man who had spent his life being harassed by the KGB now found himself in charge of the Czech intelligence service.

Porter further notes that Cerny quickly formed a tight bond with British intelligence, and ironically spent much of his time combating former KGB agents who, post-communism, were now playing a leading role in Eastern Europe's criminal activities. By all accounts, Cerny did a laudable job protecting the Czech Republic and its allies from outside threats. At Havel's request, Cerny later worked with Elie Wiesel and Japanese philanthropist Yohei Sakakawa as the head of Forum 2000, an organization dedicated to finding ways to keep conflicts around the world from escalating. In 2002, Cerny cofounded the Prague Security Studies Institute, which is now a leading European think tank dealing with national security issues and international relations.

Cerny never gave up fighting, even when it appeared that the rest of the world did forget about Czechoslovakia. It would further compound the tragedy of communism if we failed to remember Oldrich Cerny. ♦



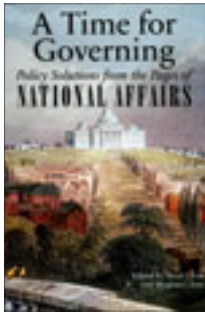
Recommended Reading

THE SCRAPBOOK has been reading, with great interest and profit, not one but two stellar recent publications of that stellar journal, *National Affairs*.

The first is the Spring 2012 issue. It features excellent pieces by frequent WEEKLY STANDARD contributors like James Capretta (with Robert Moffit) on "How to Replace Obamacare," Adam White on independent federal agencies, and Peter Wehner (with Robert Beschel) on "How to Think about Inequality." We were particularly struck by our staff writer Jay Cost's essay on "The

Politics of Loss," emphasizing and explaining, in a big historical frame, the particular need for the GOP in 2012 to have a serious and comprehensive economic growth message. And then there's George Weigel on "The Handwriting on the Wall," using Pope Leo XIII's "acute analysis of political modernity" as a guide to the crisis of our time—an unusually thought-provoking essay.

And next to that issue on our desk is a new compendium of essays from *National Affairs*, edited by Yuval Levin and Meghan Clyne. *A Time for Governing* is a sort of "best of" collection from the journal's first three years, reprinting 18 essays focused on guiding us towards solu-



tions to key policy problems. We enjoyed especially rereading Yuval Levin on the welfare state and Jim Manzi on “Keeping America’s Edge.” If Mitt

Romney has room for only one book and one journal in his carry-on, this is the book, and this is the quarterly, for him to have at hand. (Along with the latest WEEKLY STANDARD, of course!) With these, he’ll have what he needs to read—and to win. ♦

Edifice Complex

On April 20, Supreme Court Justice Elena Kagan returned to her old stomping grounds in Cambridge, Massachusetts, to rename a building at Harvard Law School after Finn Caspersen. A graduate of the class of ’66, Caspersen inherited a billion-dollar fortune and had been the school’s biggest donor during Kagan’s stint as dean of Harvard Law.

We refer to Mr. Caspersen in the past tense because he committed suicide in 2009, a fact THE SCRAPBOOK was vaguely aware of thanks to one of *Vanity Fair*’s patented articles about the lurid secrets of the rich and famous, e.g., “Oddly, Caspersen had not the slightest interest in golf and never played. His passions ran instead to the more esoteric sports of Olympic-level horse jumping, four-in-hand horse-drawn-carriage driving, and competitive rowing.” Unfortunately, Caspersen’s other great hobby was tax evasion—he may have owed the IRS as much as \$100 million, having squirreled away much of his fortune in offshore accounts—and this likely played a role in his decision to end his own life.

Anyway, Caspersen’s shady activities do not appear to have dampened Kagan’s enthusiasm for the man. The “Caspersen Student Center”

was formerly named after Edward S. Harkness who, like Caspersen, was the inheritor of a considerable fortune. Beyond that similarity, Harkness was a more generous and modest philanthropist.

A Yale alumnus, Harkness helped fund much of the student housing system in New Haven and paid to establish the now-legendary Yale School of Drama. (Harkness is said to have been the inspiration for a minor character in *Long Day’s Journey into Night*.)

But in 1929 he also gave a \$13 million donation to Harvard, or about \$174 million in today’s dollars. Moreover, Harkness insisted that nothing at Harvard be named after him despite his massive gift. Only after his death in 1940 did Harvard administrators convince his widow to allow a building to be named after him as a show of gratitude.

So you can imagine not all Harvard students are thrilled about the decision to dishonor Harkness by renaming his building after a tax cheat who gave a comparatively modest gift. Last week, flyers started to go up on billboards around the law school from a group calling themselves Harvard Unbound. They read, in part:

On April 20 you’ll see Justice Kagan dedicate a monument to Finn Caspersen, a schmuck who cheated the IRS out of \$100 million, gave \$30 million of it to Harvard Law, then blew his brains out as IRS agents closed in.

The corrupt donor is in the ground.

The corrupt fundraiser is on the Supreme Court.

Money talks. Kagan walks.

While perhaps this message could have been expressed in a more tactful manner, we sympathize with Harvard Unbound’s indignation. But more than that, color us shocked that Kagan would honor a tax cheat, and thereby make such a mockery of the current campaign to ensure tax fairness for the 1 percent spearheaded by her former White House boss and fellow Harvard Law alumnus. ♦

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Maddy and Daddy

You're going to Spain with or without your kids?" That was the question friends always asked when I mentioned the upcoming trip. And why not? So much of my social life these days revolves around my children that I regularly receive emails identifying the sender, after the signature and always in parentheses, as So-and-So's mom or So-and-So's dad. It's like a reversal of the Russian patronymic, which identifies people by their father. In this case adults are identified by reference to the little people they chauffeur to soccer games.

I would have preferred to say that our vacation was going to be an escape from the servitude of parenting. But the sad truth was that our firstborn was coming with us. To begin describing her I will say this: When I asked her if it was okay that I write about our trip, she earnestly reminded me that she hates to be called Madeline and that the correct spelling of her "real name" is M-A-D-D-Y. Then she tried to raise an eyebrow, a family skill she has not yet mastered, this to remind me that her preferred name rhymes with Daddy.

Dammit, I thought as I took my seat in coach, I am one of those pushover American parents you read about. My wife, Cynthia, was one seat away, and Maddy sat like a wall between us. Once in Barcelona, we dropped our daughter off for two nights at her aunt's apartment—where she slept very hard, her usual high spirits knocked flat by jet lag. But after that, Cynthia, Maddy, and I were together every minute of every day.

And it wasn't bad. What I came to appreciate—and, granted, this was much easier to notice while Maddy's two younger brothers waited for us

back in Virginia, spending the time with family and friends—was that an energetic 8-year-old is perfectly suited to many of the challenges of travel.

It takes stamina and a light heart to walk a large city and absorb the sights and sounds for hours at a go. And if Maddy would not have passed for an architecture aficionado as she hammed for photos at the gates of



La Sagrada Familia, she was a quick study at finding pleasure in the sight of a doorknob in the shape of a hand or a row of giant Spanish hams hanging in the window of a butcher shop. It helped too that Spanish art, from the better advertisements to the paintings of Dalí to the elaborate graffiti embellishing doorways around the city, is some of the least subtle in the Western world. And it helped even further that the other great Spanish art is food. Culture that is eaten Maddy could understand. To get her to try squid, however, we had to bribe

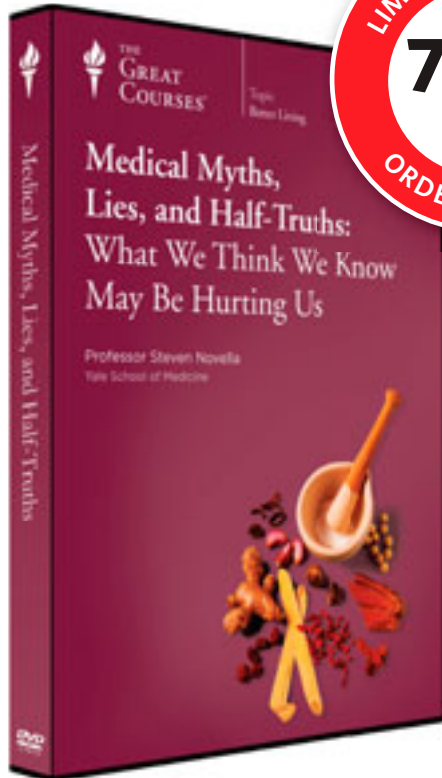
her—bribery being a low trick I disapprove of only when employed by other parents.

Resting at a café one afternoon, we discussed a possible excursion to an olive grove. It was a hot day, and I, the moody one, thought of a favorite line from Ford Madox Ford's *The Good Soldier*: "Is there any terrestrial paradise where, amidst the whispering of the olive-leaves, people can be with whom they like and have what they like and take their ease in shadows and in coolness?" Maddy, meanwhile, was busy describing her own vision of paradise: lunch in an olive grove with her chair directly under a branch full of olives that she could pick and eat at will. She then played out the scene for us, hands flying up and down as she grabbed imaginary overhead olives and ate them in a great rush while making loud gobble-gobble noises.

This became her running gag for the rest of the trip. I admired her instinct for overworking the material—playing the *jamón* was part of the joke—but it was jarring that I had never before noticed this Spanish-level goofy streak of hers. I mean, who was this child who looked kind of like me and behaved the way I do after a third martini? Separated from her brothers, alone in the parental spotlight, here was my daughter: cute, uncomplaining, very silly.

And she was thrilled by all the things that were new to her, such as riding the Barcelona Metro, mojito-flavored Mentos candies (which she'd never seen in the United States), and airplane food. As the dinner trays of cold rolls, gray meat, and soggy noodles came out on our return flight, I did not even bother to sigh, but a row or two back someone grumbled. This had Maddy twisting in her seat. "What's wrong?" I asked. "I just want to see," she said indignantly, "who's talking badly about this food. Did you try it? It's so good!"

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President Romney

Here's how Reuters recently summed up the race for the White House: "The 2012 presidential election is more than six months away, but here is what we know so far: It is going to be close, it is going to be nasty, and the outcome could turn on a series of unpredictable events." The argument that followed was balanced and intelligent, and nicely captured today's conventional wisdom.

But the conventional wisdom may well be wrong. We don't in fact "know" that the election will be close. Nor do we know that it will be nasty, or that it will turn on unpredictable events. To the contrary, if I had to put money down now, I'd bet that Mitt Romney will win an easy victory after a relatively predictable, issue-focused, and not-too-nasty campaign. Indeed, I'd bet Romney will win precisely *if* he runs such a campaign. But if he allows the race to degenerate into name-calling and gotcha gimmicks, he could lose. Democrats are better than Republicans at the small and nasty stuff.

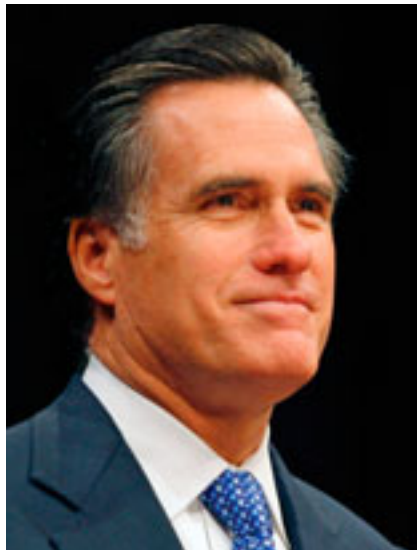
If Romney can speak to Americans' sense that it's a big moment, with big challenges, and if he can make this a big election rather than a petty one, then he can win—perhaps big. Consider the polling data. For the first quarter of the year, Romney had a relatively tough primary battle. Obama had clear sailing, with little in the way of challenges from congressional Republicans or anyone else. The economic recovery was a bit better than it had been, and there were no obvious foreign policy disasters. These should have been very good months for Obama.

But he barely improved his status at all. On January 1, 2012, the RealClearPolitics average had Obama ahead of Romney 46.6 to 45 percent. Today, he's up 47.5 to 44.6 percent—but the momentum is now in Romney's direction. More important, Obama's job approval hasn't benefited much over the last few months. At the beginning of the year, he was at 46.8 percent approve, 47.8 disapprove; he's now at 47.5 to 47.0, but beginning to slide back toward negative territory.

It seems more likely than not that this will be

Obama's high water mark for the rest of 2012. Put another way, it seems unlikely that more than 47 or 48 percent of the voters are going to want to reelect Barack Obama president on Election Day. This means it's really Mitt Romney's race to win.

Romney needs, over the next six months, to convince some number of swing voters he can and should be the next president. The easiest way to do this is by . . . behaving like a president. If you want to seem presidential, be presidential. It shouldn't be hard. Romney already looks presidential, after all.



But looks aren't enough. Romney has to behave presidentially—more like a leader than a campaigner. Let Obama lower himself by acting as campaigner in chief rather than commander in chief. Let Obama be shrill. Let his campaign be petty. Meanwhile, Romney can lay out his governing agenda to restore our solvency, put us on a path to prosperity, attend to our security, and safeguard our liberty. Romney can visit the troops in Afghanistan and our ally Israel. Instead of giving rebuttals and prebuttals to Obama's speeches, Romney can give serious speeches about the Constitution and the Supreme Court, the case for limited government and the threat of

bankruptcy and penury, about undoing Obamacare and what will replace it. President Obama has failed to pass a big tax reform, failed to master the federal budget, failed to reform our out-of-control entitlements. The next president, Mitt Romney, can explain that he will step forward to do all of these things.

And he can do so in a presidential way. He can comment thoughtfully and soberly on the news of the day, rather than simply using news events to snipe at Obama's handling of various issues. That's what surrogates are for. He can make clear he is ready to deal with the full spectrum of topics a president has to handle, rather than acting as a candidate who says he's going to focus on just one issue (e.g., jobs) because "that's what the voters care about." Let his super-PACs focus on single issues. Romney should speak to his fellow citizens, whose concerns

are broader. When Democrats engage in farcical claims of a Republican “war on women,” he can let surrogates respond by accusing Democrats of a “war on moms.” But he should make clear that he doesn’t intend to divide Americans by gender, race, or ethnicity.

Romney might even consider offloading his entire opposition research and instant response operation to the Republican National Committee. Let the RNC and the super-PACs put out the statements denigrating the Democratic candidate. Romney should treat his opponent with respect not contempt, sobriety not snark, and good humor not sarcasm. Romney should run for president rather than run against Obama. Others can take care of making the anti-Obama case, focused on the past. He needs to make the case for his future presidency.

Part of making that case is winning over some citizens who voted for Obama in 2008. People don’t like being told they are, or were, stupid. If some previous Obama supporters are now disappointed—and they are—Romney should empathize with them, not condescend to them. In 2004 John Kerry unfailingly gave the impression that he thought if you had voted for Bush, or approved of anything he’d done, or found him in certain ways likable or admirable, then you were an idiot. That’s no way to beat an incumbent. His former supporters need to be won over rather than bludgeoned into submission. Reagan provided a strong contrast on the issues to Jimmy Carter in 1980. But his tone wasn’t snide or contemptuous. Romney—and especially his campaign, which has had a taste for the snide and the contemptuous—might profitably study Reagan’s 1980 effort.

The Reuters piece quoted above points out, sensibly enough, that “a tepid economic recovery, voter pessimism about the future and a job approval rating largely stuck in the danger zone below 50 percent mean Obama could have a hard time matching his performance in 2008, when enthusiasm for his promise of change propelled him to victory over Republican senator John McCain with 53 percent of the vote.” Even in 2008, this reminds us, Barack Obama was able to get only 53 percent of the vote, winning by about 7 points. And we’re not in 2008 anymore. Candidate Obama is now President Obama. His approval/disapproval numbers today are just about where they were in April 2010. And in November 2010, Republicans defeated Democrats by almost exactly the same 7-point margin in total votes cast in races for the House of Representatives. Romney needs to hold the swing voters who defected from Obama in 2010. They know the case against Obama. They need to hear the case for Romney.

If Romney can make that case, he has a very good chance to win. So when Romney-Ryan defeats Obama-Biden (or will it be Obama-Clinton?) by 53 to 46 percent on Election Day 2012—remember that you read it here first.

—William Kristol

Unwarranted Prize

‘T he value of an industry is inversely proportional to the number of awards it gives itself,” humorist and blogger David Burge recently quipped. Naturally, the occasion for this remark was the announcement of the 2012 Pulitzer Prizes. While the Pulitzer committee did recognize some worthy recipients, the few deserving awards were, as usual, debased by a number of baffling and terrible choices.

If you doubt that the Pulitzers are simply an excuse for orgiastic self-congratulation, consider the following: “The



Pulitzer Prizes showcased journalism’s power to shine a powerful light on the forgotten or the unknown, and the awards honored work including stories from The Associated Press revealing the New York Police Department’s widespread spying on Muslims.” Thus begins the

Associated Press’s write-up of its own Pulitzer for investigative reporting. To piggyback on Burge’s observation, it’s also true that the humility of an industry is inversely proportional to the number of awards it gives itself.

In the case of the AP, the hubris is utterly unwarranted. Saying the AP was awarded its Pulitzer for reporting the police were “spying” on Muslims implies that the NYPD was caught doing something wrong. But the AP’s 22-story series didn’t report the NYPD had done a single illegal thing. It’s not news that police departments routinely conduct clandestine surveillance to root out criminal activity. Just three weeks before the AP’s Pulitzer was awarded, NYPD commissioner Ray Kelly lamented, “It’s pretty tough to go up against a wire service that has a certain template that it’s sticking to.” Kelly further presciently complained that the AP was falsely spinning the surveillance program as if it were “somehow spying.”

The torrent of AP stories did lead to a congressional hearing, which ultimately prompted . . . nothing. Attorney General Eric Holder declared the NYPD program “disturbing,” and noted it was “under review at the Justice Department.” Presumably Holder will lecture Kelly on how to conduct proper law enforcement investigations just as soon as he’s done explaining to the rest of us why the Justice Department

gave Mexican criminal gangs thousands of guns, resulting in the death of at least one American law enforcement officer. Is it too much to ask that some enterprising media outlet do a 22-part investigative series on that? Or is it not worth doing because there's no Pulitzer in it?

As the *New York Post* noted last week, the NYPD has broken up 14 terrorist plots since 9/11—including a conspiracy of three al Qaeda-trained New Yorkers who are in federal court right now for plotting to blow up Times Square, Grand Central Station, and a number of other targets. Moreover, the NYPD has come a long way from the days of Serpico. Polls show the department has broad public approval. It should be obvious to anyone who has visited New York regularly over the last few decades that the city is much, much safer than it used to be. The NYPD should be lauded for its successful terrorism prevention and crime reduction efforts. In fact, there's a strong case to be made that no other major law enforcement agency has had a better track record in recent history than the NYPD.

That said, the NYPD, like any public agency, should expect scrutiny from the press. This only underscores, however, why it is perverse to give the AP an award for its politically correct witch-hunt. In a city with nearly 35,000 police officers, not all will turn out to be New York's finest—some measure of corruption is inevitable. The AP's relentless and baseless attacks on the NYPD, compounded by its failure to credit the department for doing an exceptionally difficult job very well, are likely to leave both the public and the NYPD less responsive than they should be when the press gets around to reporting any genuine scandals.

Unfortunately, as this year's Pulitzers demonstrate, there's little reason to be optimistic about the media's credibility or their ability to root out wrongdoing. It's one thing to congratulate yourself for shining a powerful light on the forgotten or the unknown; it's quite another to actually do it.

—Mark Hemingway

Negotiations That Matter

Since we don't know what Saeed Jalili, Iran's chief nuclear negotiator, said at the recent confab in Istanbul, we can't be sure that Israeli prime minister Bibi Netanyahu was right to dismiss the powwow as a "freebie" for Tehran. Also, the Islamic Republic is a theocracy: The most senior officials need to report face-to-face to their master. Jalili, an ill-tempered, narrow-minded, one-legged vet-

eran of the Iran-Iraq war, lost face after a disastrous meeting in Geneva in October 2009, when he tentatively agreed to a nuclear-fuel swap, only to see the supreme leader, Ali Khamenei, bat the deal down from Tehran. So no matter how well rehearsed, Jalili would need time for his boss to digest what was demanded and offered. In any case, as long as the Iranians were polite, we were going to have two meetings. And so there is another get-together scheduled for May 23 in Baghdad.

The odds are high, however, that the next session will lead to no diplomatic yellow-brick road. Round two could be a success, and lead to a round three, if Khamenei agreed to do five things: (1) Stop all uranium enrichment to 20 percent purity, which is near bomb-grade; (2) ship abroad the entire stockpile of 20 percent enriched uranium; (3) close the Fordow enrichment facility, which is buried under a mountain near the clerical city of Qom; (4) allow inspectors from the International Atomic Energy Agency immediate and unfettered access to any suspected nuclear site; and (5) permit the IAEA to install devices on centrifuges for monitoring uranium-enrichment levels. Khamenei is, to say the least, unlikely to agree to this.

It's worth stressing that it is a serious mistake to allow Khamenei and his Revolutionary Guards, who oversee terrorist operations and the nuclear program, any domestic enrichment capacity. This was the position of the Obama administration and our Western European allies. Now that consensus has apparently collapsed because Iranian agreement seems impossible. Khamenei's determination to keep advancing uranium enrichment despite increasingly severe sanctions has paid off. Tehran has enough low-grade, 3.5 percent enriched uranium stockpiled to produce at least one, soon two, nuclear weapons. It also has a 163-pound stockpile of 20 percent enriched uranium. As Oli Heinonen, the former deputy director general of the IAEA, has pointed out, mastering 3.5 percent enrichment is 70 percent of the way to mastering the fuel cycle for an atomic weapon. Twenty percent enrichment is 90 percent of the process.

As of February, Iranian centrifuges were producing 256 pounds per month of 3.5 percent enriched uranium and 15 pounds per month of 20 percent enriched uranium (the Fordow facility accounted for 9.5 pounds of this total). The Iranian regime had 8,800 centrifuges spinning at Natanz and 696 at Fordow. Once the Islamic Republic can produce 44 pounds of highly enriched uranium per month, which is not that far off given the increasing rate of production, the supreme leader and his guards can have a nuclear weapon in their hands in as little as 43 days, provided Iran's nuclear scientists have mastered the manufacture of a nuclear trigger (technically much less difficult than enrichment). Per the IAEA's most recent report, "information indicates that Iran has carried out activities relevant to the development of a nuclear explosive device." In other words, Khamenei will win his race for a nuclear weapon unless something dramatic intervenes to stop him.

The best that can be hoped from another round of negotiations with Tehran is that Khamenei is hooked into a process that enfeebles him. The cleric has consistently avoided any meaningful embrace of the negotiating process because he sees it as dangerous, a slippery slope where the Americans and Europeans dictate limitations on his nuclear program. Many American critics of negotiations have seen this process as the reverse, a slippery slope that has Western diplomacy enabling the Islamic Republic's nuclear ambitions. Khamenei may have the stronger argument. But he shows no sign of yielding to pressure.

There is certainly a risk that continuing these negotiations puts Israeli prime minister Bibi Netanyahu and defense minister Ehud Barak into a real pickle, since it's more difficult for the Israelis to make the case for bombing Iran's nuclear sites while the negotiations are going on. Nonetheless, the Israelis need to decide whether a preventive attack on the Islamic Republic can work. Their internal deliberations should not be constrained by a false promise of a diplomatic solution. Moving forward with negotiations now is actually more likely to free the Israelis to act in the summer, if they choose to, than to entrap them.

Americans, too, need to have an honest debate about whether they are willing to permit Khamenei and the Revolutionary Guards—the principal state sponsors of terrorism in the Middle East, whom the Obama administration has increasingly nailed for their operational relationship with al Qaeda—to develop atomic weapons. It would be healthy for Democrats and Republicans to debate the Iranian conundrum, which is not going to happen as long as sanctions-backed diplomacy seems viable. We are fortunate that the nuclear timeline overlaps well with the 2012 presidential campaign: It's the ideal moment for a ripping discussion about probably the most momentous foreign-policy question before us.

The above five requirements—nearly identical to the reported minimum requirements of the White House—ought to clarify where we are on May 23. These conditions will be extremely difficult for Khamenei to accept because they are so humbling. Shutting the Fordow facility, which Iran's state-controlled press has reported on with pride, would be gut-wrenching for the supreme leader. It's likely that Khamenei wants to build more Fordow-like facilities—bomb-resistant sites that signal spiritual resistance to the West. President Mahmoud Ahmadinejad's boast that Iran intends to open 10 more enrichment facilities no doubt was hyperbolic, but the sentiments clearly reflect Khamenei's disposition. Closing Fordow would offend the supreme leader's identity as the anti-American Islamic paladin.

Even more galling and dangerous, U.N. inspectors under this agreement would have the right to fan out across the country hunting for suspicious nuclear activity. The IAEA's Additional Protocols, to which Khamenei would have to assent, are intrusive and would allow inspectors access to Iranian military and Revolutionary Guard bases. No doubt, the

supreme leader and his guards could still cheat (they have lied about the nuclear program from the beginning). Iran is a big country. Satellites and other technical means of observation can only do so much. The regime is surely working clandestinely to perfect more advanced centrifuges that could be hidden in smaller buildings and underground facilities.

Nevertheless, the odds are decent that these inspectors would catch the regime in its big lie about the "peaceful" intent of the program. Nuclear experts have some idea where the Iranians have been militarizing their nuclear "research." Even so, an astonishing number of intelligent people in America and Europe appear to believe that Khamenei's fatwa about the "sinfulness" of nuclear weapons is significant, that it isn't just *ketman*, deception deployed against a stronger enemy. Exposing Khamenei's flagrant mendacity, for both Iranians and foreigners, is not without value and would again refocus the discussion on the real question: Is it acceptable for Khamenei and the Revolutionary Guards to have nuclear weapons?

But what if the Iranians accept all of the demands? Could we still be staring at an Iranian nuke, just delivered at a slower pace? It's possible. If Ali Akbar Hashemi Rafsanjani, the former major-domo of Iranian clerical politics and the true father of the Islamic Republic's nuclear-weapons program, were still in charge, we'd likely be enmeshed in the rope-a-dope tactics that he successfully used against the trade-happy Europeans in the 1990s. Rafsanjani has always advocated the go-slow nuclear approach. He has even broached the idea of direct talks with Washington. But we're not confronting Rafsanjani, who was purged after the crackdown on the Green Movement in 2009. Moving forward with one more round of negotiations now is much more likely to expose the supreme leader's intransigence than entangle America (and Israel) in a pointless, lengthy diplomatic dance.

Senior officials in the Obama administration probably have few illusions about Iranian mendacity. The last three years have been an education: Candidate Obama and lots of Democrats believed that President Obama could transform American-Iranian relations. But Ali Khamenei has tried hard to show that George W. Bush was not the problem. Although it's dangerous to suggest that diplomacy with the Islamic Republic has just about run its course (for die-hard diplomats, the process never ends), it's going to be challenging for the administration to pretend that sanctions-backed diplomacy can work given the increasing enrichment at Natanz and Fordow. If the Israelis decide to strike, the president will be hard pressed not to back them, as he promised to do in his speech to the American Israel Public Affairs Committee. The collapse of the negotiating process in May most likely will not provoke the White House to do anything more bellicose, but it will at least get us talking seriously, at last, about the nature of the Iranian regime and how best to deal with it—and how to help Israel deal with it, if Israel feels it must act. That would be an enormous step forward.

—Reuel Marc Gerecht

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The Battle for Wisconsin

Scott Walker awaits his challenger.

BY JOHN MCCORMACK



Governor Scott Walker is facing the fight of his political life. On June 5, in the third gubernatorial recall election in U.S. history, Wisconsin voters will either choose to keep Walker in office or elect a Democrat. Polls show a tight race with Walker hovering at or slightly below 50 percent and holding a small lead over potential opponents. Walker won't know which Democratic opponent he'll face until May 8, when the recall primary is held. Meanwhile, he's letting the state of Illinois serve as a stand-in.

Speaking on April 19 to machinists in blue-collared shirts, jeans, and boots at the Trace-A-Matic Corporation, Walker contrasts Wisconsin's record with that of its neighbor to the south. "A year ago their unemployment rate was above 9 percent," he says. "And today, a year later, it's still above 9 percent because they made some poor choices. They

raised taxes on businesses and individuals. On individuals, believe it or not, they raised it by 66 percent."

And Wisconsin? Unemployment has dropped from 7.7 percent to 6.9 percent since Walker took office. Property taxes are down for the first time in 12 years. A \$3.6 billion deficit was eliminated without lots of layoffs. The message resonates with the machinists. Almost all applaud enthusiastically for Walker.

"Unions had a place in history," says Mike Payne, one of Trace-A-Matic's machinists. "But I think it went to the other extreme. And I think to diminish them a little bit is to really benefit us because that brings things back to a fairer level."

Sitting in one of his campaign offices later in the day, Walker considers whether he might have avoided a recall. "If I hadn't gone so far, would I face a recall? I don't know," Walker tells me. "But if I hadn't gone as far as I did, I wouldn't have fixed it." And fixing Wisconsin's fiscal problems is what matters, he says. "I'm running a campaign to

win. And I aim to win. But I'm not afraid to lose."

Democrats say they're attempting to recall Walker not only because he limited the collective bargaining power of public sector unions but because he "lied" about it. "The most effective anti-Walker message," reads a Democratic party of Wisconsin strategy memo published by *Mother Jones*, "focuses on the fundamental fact that he lied to the people of Wisconsin about what he would do as governor."

"He never once said he was going to attack 50 years of collective labor law in the state," said Milwaukee mayor Tom Barrett, Walker's 2010 gubernatorial opponent and frontrunner in the recall primary, at a Democratic forum in Madison on April 11.

In fact, Walker did in office what he promised on the campaign trail. To balance the budget without raising taxes, Walker said government workers at the state and local level would have to pay more for their pensions and health care benefits

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GARY LOCKE

(but still contribute far less than the typical private sector worker). Requiring government employees to pay more for their benefits necessarily meant paring back the rights of unions to veto changes to their members' pay, benefits, and work requirements. As a top policy adviser to Walker told the *Milwaukee Journal Sentinel* in August 2010: "The way the proposal would work is we would take the choice out of the collective bargaining process."

Union leaders saw that requiring government workers to pay more for their benefits polled very well, but limiting "collective bargaining rights" polled poorly. So union leaders tried to delink the two interlocking issues. They pledged to accept cuts in order to keep their "rights." But after Walker's budget passed, union leaders made a mockery of that pledge and proved Walker's point. The Milwaukee Public Schools union had locked in a collective bargaining agreement until 2014 that is not affected by Walker's law. Faced with a choice of cuts to benefits or layoffs, the teachers' union chose layoffs. According to the MacIver Institute, a conservative think tank, the school districts of Milwaukee, Kenosha, and Racine—all of which are still operating under collective bargaining agreements—make up 13.3 percent of the state's educational staff but accounted for 42.5 percent of staff reductions. Outside of these districts, there are no public education horror stories.

Mayor Tom Barrett knows very well how limiting collective bargaining can be necessary to balance a budget. In February 2011, as the battle raged in the Wisconsin state capitol over Walker's budget, Barrett proposed limiting collective bargaining rights for unions in Milwaukee, according to a memo reported by *BuzzFeed*. The city's union wouldn't budge on many issues, and when its contract finally expired, Barrett took full advantage of Walker's reforms, saving the city millions of dollars by making changes to everything from workers' health care benefits

to overtime, disability payments, sick leave, paid lunches, and more. Walker says Barrett "absolutely" is a hypocrite, "and it's not me saying it, it's his own employees . . . over and over again calling him a hypocrite."

Wisconsin Democrats recognize that labor issues are not going to win the election for them—they already failed to win a state supreme court race last spring and failed to win control of the state senate in multiple recall elections last August. "Collective bargaining is not moving people," Democratic spokesman Graeme Zielinski told *Mother Jones*. Democrats are hoping to focus the campaign on an investigation of former Walker aides by the Milwaukee County district attorney. (Walker says he's not concerned about the D.A.'s integrity, calling him "an honorable guy. He's going to follow the truth.")

But Barrett's record on collective bargaining is at the center of the Democratic primary that pits him against former Dane County executive Kathleen Falk. (Dane County, which includes the state capital, Madison, and the University of Wisconsin, is the most liberal in the state.) Barrett has the backing of most of the Democratic establishment, but Falk has the backing of an alphabet soup of unions: AFSCME, SEIU, AFL-CIO, WEAC (the teachers' union).

Barrett and Falk have avoided direct confrontation so far, but their surrogates have been engaging in a flame war. In a video, AFSCME Wisconsin claimed that Barrett "demanded concessions that went far beyond those mandated by Act 10 [Walker's budget reform]." In an op-ed, former Madison mayor and Barrett supporter Dave Cieslewicz attacked Falk as an unelectable tool of the unions. "Wisconsin voters like politicians like Robert La Follette and Gaylord Nelson and Bill Proxmire, all of whom bucked their own party bosses, and yet the unions seem to want to offer them Jimmy Hoffa instead," he wrote. "A candidate beholden to big unions is

no more appealing to independent voters than one who answers to the Koch brothers."

Polls show Falk performing only a couple points worse than Barrett against Walker, but concerns that she can't win persist. It's a "Republican talking point," she tells supporters at an event on April 12 in a private Madison home. "They're not worried a Dane County liberal can't win. They're worried one can." Falk points to Russ Feingold as a prime example of Dane County liberals' electability.

But unlike Feingold, Falk has failed to cultivate the image of a maverick and comes much closer to being a caricature of a Dane County liberal. At the April 11 forum, she touts her record as an environmentalist lawyer "taking on the utilities, fighting against nuclear power, fighting against coal power." The next day she points to former governor Jennifer Granholm and Michigan (unemployment rate: 8.8 percent) as a model for economic recovery. Falk tells supporters Michigan recovered in large part because it "went out and sold green batteries to the rest of the world." She says a major plank of her economic agenda involves taking "wood pulp cellulose and convert[ing] it to energy. The Air Force wants to buy this to fuel their jets."

Falk has pledged to veto any budget that doesn't repeal Walker's collective bargaining reform. She's also vowed to repeal the property tax cap enacted by Walker. There are reasons why she narrowly lost a statewide race for attorney general in 2006 even as Democrat Jim Doyle won the governor's race by 8 points.

That's why the Democratic establishment sees Barrett as a more electable candidate. Barrett's campaign so far amounts to a vague promise to restore civility and "end the civil war" in Wisconsin. But, as he tries to fend off a challenge from his left, Barrett's ability to cast himself as a uniter and a centrist is being undermined. Though Barrett acknowledges the state assembly can block

him, he has promised to call a special session of the legislature in order to repeal Walker's union and budget reforms. That essentially guarantees more protests in the capitol building. So much for ending the civil war.

Barrett's campaign has also attacked Walker's property tax cap. Barrett has reiterated his support of taxpayer-funding of abortion. And he's said he would "consult on a regular basis" with his Democratic primary opponents on environmental policy, even though some of his opponents are even more radical on the environment than Falk.

For all their complaints about Walker's lack of transparency, Falk and Barrett are now evading questions about how they would have balanced Wisconsin's budget. "No, I'm not answering. None of us will answer that question," Falk told THE WEEKLY STANDARD on April 11 when asked if she would have cut more or less than \$500 million from the education budget. Barrett too refused to say, when asked three separate times, how he would have balanced the budget. Both candidates say they wouldn't have enacted tax cuts Walker put into place, which amounted to a little over \$100 million or 3 percent of the state's deficit.

Barrett and Falk leave voters guessing what they would have done about the other 97 percent of the deficit. Walker fills in the details: "The answer is they'd have to do what they did in Illinois, which is massive tax increases, massive service cuts, and layoffs."

The Democratic primary is giving Walker greater hope about the recall, but, he says, "I actually think it's much closer than some of these latest polls suggest." Walker says a court's decision striking down the voter ID law creates "huge" concern about voter fraud. And he says the unions' intensity may be underestimated. "This is just driven by raw, unadulterated, passionate hate and anger, driven largely by these union bosses," he says. "The other side is motivated by anger. We've got to be motivated by hope." ♦

The Issue Mix

Mitt Romney needs to run on more than just the economy. BY JEFFREY BELL

‘R’epublican leaders urge candidate truce on social issues” was the headline in the *Washington Examiner*. “Republicans retreat on gay marriage” said another in *Politico*. The accompanying articles, while in some respects tendentious and a bit misleading, are accurate in relaying a mindset widely shared by GOP elites.

Such elites believe social issues are mostly harmful to Republican presidential candidates running in general elections. They believe this to be especially true when economic issues have moved to the forefront of voter concern and national debate. Accordingly, they were anxious for the nomination battle, and the candidacy of militant social conservative Rick Santorum, to be over. Now that Santorum has departed the race, they expect that prospective nominee Mitt Romney will be able to direct most of his attention to the economic debate, in which the main hope for Republican victory supposedly resides.

That the economic debate is unavoidable in 2012 is beyond dispute. But not all aspects of it favor Republicans.

The economic issue as it presents itself this year can be thought of as a five-year narrative divided into three parts: the beginning (2007-09), the middle (2009-11), and the present (late 2011 to Election Day, November 6, 2012).

Only the middle period—the stagnant recovery, accompanied by the unsuccessful Obama stimulus package—can be seen as an unalloyed Republican asset. The height of this

phase coincided with the Republican landslide in the 2010 elections.

The first period—the triggering of the financial crisis followed by the 2007-09 recession—has consistently been regarded by a plurality of voters as a negative for President George W. Bush and for Republicans, who still get most of the blame for the origin of the crisis. Certainly the height of the financial crisis—the announcement of the bankruptcy of Lehman Brothers on September 15, 2008—was a decisive turning point in presidential polling in the race between Barack Obama and John McCain. A narrow McCain edge in early September quickly turned into a significant Obama lead he was never to relinquish.

The third and current period has more than six months remaining, and is thus by definition unresolved. But so far it has been characterized by slightly improved private-sector job growth, mild declines in the unemployment rate, a bull market in stocks, and an upward spike in petroleum and gasoline prices. The first three tend to favor Obama and the Democrats, while the fourth is an asset for Republicans.

As to the three favorable current trends, it is in theory possible that voters might give some credit to congressional Republicans, who, though frustrated in their larger aspirations, have had some success in curbing the 2008-10 federal spending spree, as well as heading off Democratic-backed tax increases. But overwhelmingly negative voter sentiments on the performance of Congress in general, and congressional Republicans in particular, suggest this will prove a hard sell. Rightly or wrongly, the president's relentless campaign to blame congressional Republicans for Washington gridlock appears to have met with considerable success.

Jeffrey Bell, policy director of the *American Principles Project*, is the author of *The Case for Polarized Politics: Why America Needs Social Conservatism* (*Encounter Books*).

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So of the three phases of the economic situation that current voters find relevant, one favors the Democrats, one the Republicans, and the third is undecided with perhaps a mild Democratic edge. Assuming recent trends stay more or less intact, this does not necessarily portend a November slam dunk for Republicans. Indeed, a Gallup Poll last week showed 50 percent of Americans have a “great deal/fair amount” of confidence that Obama will do the “right thing for the economy.” Only 42 percent said the same for Romney.

How have Republican presidential nominees done on economic issues in immediate past cycles? Here, too, we find a mixed bag.

In 2008, the network-financed exit poll offered “Economy” as one of five options for the “most important issue” in the voters’ presidential choice. Sixty-three percent chose “Economy,” among whom Obama prevailed over McCain 53-44 percent, a bit better than his overall 53-46 percent popular-vote margin.

In the previous three presidential elections, 1996 through 2004, the network exit poll offered a category it called “Economy/Jobs,” but also included other choices that many if not most would view as economy-centered issues, such as (all three times) “Taxes” and, in 1996, “Federal Deficit.”

On “Economy/Jobs,” Democratic nominees Bill Clinton, Al Gore, and John Kerry prevailed 61-27 percent, 59-37 percent, and 80-18 percent, respectively. In all three elections, around a fifth of voters chose “Economy/Jobs” as their most important issue (21, 18, and 20 percent).

In 1996 and 2000, this strong Democratic advantage was significantly offset by Republican leads among voters who chose “Taxes.” In 1996, the 11 percent of all voters choosing “Taxes” favored Dole over Clinton 73-19 percent. In 2000, 14 percent of voters made this choice, and they favored Bush over Gore 80-17 percent. Dole in 1996 and Bush in 2000 offered specific tax cut proposals as centerpieces of their campaigns.

In 2004, with two Bush tax cuts approved by Congress and having taken effect, only 5 percent of voters chose “Taxes” as their leading issue. Bush carried these voters over Kerry, 57-43 percent, not nearly enough to overcome Kerry’s overwhelming advantage among the 20 percent who chose “Economy/Jobs.”

In fact, 2004 was the year when, for the first time since 1988, social issues came to the forefront of a presidential election. As in 1988, they proved critical to GOP presidential success. In 2004 they mainly took the form of a controversy over judicial imposition of same-sex marriage, beginning in Massachusetts but showing strong signs of spreading nationwide. The 22 percent of voters who that year chose “Moral Values” as their top motivator went for Bush by a margin of 80-18 percent—an advantage that more than offset his net deficit in all the other issues tested by the exit poll combined.

There are several takeaways from this history as it relates to the present political landscape.

■ The idea that Democrats sweep the field whenever social issues emerge is a myth.

■ Republican presidential nominees do better with economic issues when they have a future-oriented agenda, usually, since the Reagan era, built around specific tax cut proposals.

■ A future-oriented economic debate is even more urgently needed, given the trend in the economic narrative’s third phase toward more favorable results for the president and his fellow Democrats.

■ Going back to Andrew Jackson’s crusade against the Second Bank of the United States, there has often been a moral component in the American economic debate. In the Obama years, marked by the phenomenon of the Tea Party, this moral dimension is on the rise.

In pursuit of an economic issue strategy, Republicans have a decision to make that is both substantive and stylistic: a choice between a technocratic, utilitarian approach personified by Mitt Romney’s years of business

success at Bain Capital, and the moral argument in favor of limited government that has characterized the Tea Party movement. Especially in today’s context of an improving economy, it would not be wise to consign moral arguments to the primary season.

Finally, social issues like the HHS contraception mandate and same-sex marriage seem increasingly likely to play a significant role in this year’s general election. A big reason for this lies in the dismissive headlines quoted at the beginning of this article.

The left is dominant on social issues in the Democratic party. But despite huge success in the larger culture, the left has on occasion come to grief by overplaying its hand in presidential politics. The palpable desire of Republican elites to avoid confrontation on social issues leads the social left to move in for the kill on the assumption that the battle is already over.

But Democrats have not reckoned on the resilience of social conservative forces. The Roman Catholic bishops under the formidable leadership of Cardinal Timothy Dolan are just beginning to mobilize against the contraception/sterilization/abortion-pill mandate as a direct threat to the religious freedom of Catholics. And Obama and his team may be on the verge of putting an explicit commitment to same-sex marriage into the Democratic platform, which would make gay marriage a fully polarized issue this fall after the Democratic National Convention.

There is a demographic reason why social issues of this type have (in the 1980s and in 2004) favored Republican nominees in presidential elections: Swing voters in the pivotal heartland states are more conservative socially than they are economically—a mirror image of swing voters in the Northeast and Pacific Coast. Democrats may relearn this lesson after it is too late, assuming Republican elites—and the Republican nominee—take the minimal steps necessary to allow these issues to be part of the debate in the campaign leading up to Election Day this November. ♦

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No Rule by Decree

Obama follows in Truman's (unconstitutional) footsteps. BY MICHAEL STOKES PAULSEN

Sixty years ago, on April 8, 1952, President Harry Truman directed his secretary of commerce, Charles Sawyer, to seize and take over operation of the nation's steel companies, in order to give steelworkers a wage increase and avert a strike threatening steel production during the Korean War. Truman's action led, in short order, to one of the most famous and important of all modern Supreme Court decisions—*Youngstown Sheet & Tube Co. v. Sawyer*, the “steel seizure case.” The decision dominated the nation's headlines in the spring of 1952, just as the Obamacare case has gripped the nation's attention this spring. Indeed, the two cases have more than that in common.

Youngstown is the landmark case that invalidated Truman's action. The Court held, in sweeping and categorical terms, that the president may not rule by decree, conscripting private industry to carry out his commands. The chief executive may only execute laws passed by Congress, according to their terms. He may not make up laws of his own and then enforce them.

In February, President Obama announced his intention to order private insurance companies to provide contraception and abortion drug coverage free, as his way of “accommodating” religious institutions' conscientious objections to being forced to provide their employees coverage of those items under Obamacare. Like Truman six decades ago, Obama has proposed in effect to seize a national industry and tell it what to do, without any warrant in enacted law. Like Truman's steel seizure, Obama's insurance seizure is flat unconstitutional—as

unconstitutional as anything any president has attempted to do—and Obama does not even have Truman's excuse of a national security crisis.

Rewind to the spring of 1952: An unpopular president, conducting an unpopular, stalemated war he was not trying to win, was confronted with a political problem in a presidential



election year—a looming steelworkers' strike that could shut down the nation's steel production for months. The steel industry was under wartime price controls and could not meet labor's demands without raising steel prices. The government's Wage Stabilization Board recommended a wage increase for labor, but the Office of Price Stabilization denied the companies' request for a price increase. Neither labor nor management budged. A strike was imminent.

Truman's solution was to issue an executive order directing Secretary Sawyer to take over the nation's steel mills. Steel officials kept their positions, but were ordered to implement policies prescribed by the secretary, notably the wage increase, to please a core political constituency of the Democratic party, organized labor, in an election year.

Steel production was important to the war effort. But Truman's brazen seizure of private businesses to be run by government decree was wholly unauthorized by law. Indeed, Congress had considered and rejected

the idea of such direct government intervention in labor disputes. What Congress had authorized instead, in the Taft-Hartley Act of 1947, was for the president to order a “cooling off” period of up to 80 days during which neither labor nor management could take action against the other. But steel unions were ready to strike if management did not accede to their demands and did not want to cool their heels. Truman did not want to alienate labor, so he took over management.

The owners of the steel mills promptly sued, and the case raced to the Supreme Court on an extraordinary fast track. The Court ruled, 6-3, that Truman's actions were unconstitutional. The president is not a lawmaker and cannot rule by decree. Even in wartime—even in the name of emergency—the president cannot command private industry except to the extent authorized by specific legislation. (The three dissenters thought that wartime emergency, supported by a generous reading of other statutes passed by Congress, justified Truman's action, at least as a temporary measure.) *Youngstown* is now regarded as a landmark decision on the limits of presidential power.

Fast forward 60 years to a near clone of Truman's steel seizure: A different president, battling unpopularity and desperately desiring to please a political constituency in an election year, miscalculates badly. His cabinet secretary at first orders that religious charities, hospitals, ministries, and colleges (essentially all religious organizations except “houses of worship”) provide abortion pills, sterilization, and contraception to their employees or students in their health care plans, or pay a fine—regardless of whether the religious group objects to providing such services as a matter of religious faith. The secretary's order produces a firestorm of fury as a grotesque, unconstitutional interference with religious liberty.

It is then that the president, Barack Obama, seizes on the Truman-like “solution” of simply ordering private companies—insurance companies this time—to provide contraception,

Michael Stokes Paulsen is distinguished university chair and professor of law at the University of St. Thomas.



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sterilization, and abortion drugs, and to provide them *free*, to workers whose employers object to providing them. In essence, he proclaims a right to conscript private businesses to do his bidding, even when Congress has nowhere authorized such action.

To be sure, the idea that insurance companies will provide services free is mere pretense. And it does nothing to cure the violation of First Amendment religious freedom. By entering into contracts with insurance companies to provide health insurance for employees or students, religious employers trigger the required coverage of services they oppose as a matter of faith. And insurance companies will simply pass the costs right back to the objecting religious organizations in the form of higher premiums. It's a shell game. For the employers, the only legal alternative is to pay heavy fines.

But while the Obama shuffle is a ruse and a violation of the First Amendment, it is also a flagrant violation of *Youngstown*. A president may not simply decree that private companies be run in conformity with the president's preferred policies and politics. Just as Truman could not lawfully seize steel mills and order a wage hike, Obama cannot command insurance companies to provide a "free" benefit if Congress has not conferred such authority. Obama's contemplated conscription—which he won't turn into an executive order until after the election—is an obvious and outrageous abuse of presidential power.

Recently, the professor-president lectured the Supreme Court that it would be "judicial activism" to hold any part of his health care program unconstitutional. As *Youngstown* demonstrates, however, the Court sometimes must exercise the duty to strike down actions of Congress or the president that exceed their constitutional powers. By Obama's definition, *Youngstown* was judicial activism because it limited presidential power to seize an industry. But as *Youngstown* made clear, when political leaders make up powers not in the Constitution, it is the Court's constitutional duty to rein them in. ♦

Here We Go Again

The eurozone crisis is alive and well and living in Spain. BY ANDREW STUTTAFORD

A phony peace is unlikely to end much better than a phony war. When the European Central Bank (ECB) poured a total of \$1.3 trillion in cheap three-year funding into the continent's financial institutions, that's what it got. Sure, it beat the alternative. Lehman *part deux* was staved off yet again. All those billions (and the suggestion of future ECB support that they represented) were enough to restore confidence

but it bought less breathing space than was first hoped, and what little it did buy was squandered. The markets noticed. The crisis is back. And Spain is taking its turn on the rack. But if it hadn't been Spain, the fear would simply have settled somewhere else. On Portugal, perhaps, or on Italy, or maybe even France, take your pick.

Given the scale of the problem, the rescue party has been grudging. There was the ill-tempered finalization of the second (\$170 billion) Greek rescue in March. There was also the gritted-teeth agreement in the same month to use the eurozone's new \$650 billion permanent bailout fund (the European Stability Mechanism) to complement, rather than replace, the existing "temporary" European Financial Stability Facility. But band-aids costing hundreds of billions are still band-aids, and the eurozone's key political problem remains unresolved.

Those running the richer, mainly northern member-states continue to be unwilling to risk the wrath of domestic electorates already riled up by bailout after bailout and resistant to further moves towards the closer fiscal union that is the best hope of preserving the single currency in its current form. Many northern voters have grasped that this process would culminate in the creation of a grotesquely expensive bailout regime ("transfer union" is the polite term). Given the vast economic divergence that is found within the eurozone, this would endure through the ages. Over a century and a half after Italian



that Europe's sickly banking system would not crumble too far or too fast—for now. Between the announcement of the first of the bank's long-term refinancing operations (LTRO) in December and the arrangement of the second at the end of February, many of Europe's stock markets soared, and yields on much of its sovereign debt fell.

But that was then and this is now. Dodging a bullet is not the same as victory. That trillion-and-a-bit bought time as well as confidence,

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GARY LOGKE

unification, Naples is still not Milan. How long would it take to transform Athens into Berlin?

So for now the “fiscal pact,” the Merkel-driven attempt to enforce a shared budgetary discipline that was drawn up in Brussels in December before being finally agreed to in early March (it has yet to be fully ratified), is all that is going in the way of structural change, and to the extent that it’s going anywhere, it’s going in the wrong direction. The imposition of austerity on the eurozone’s stragglers may be good politics (in Germany, the Netherlands, and Finland anyway), but it is primitive, apothecary economics. Draining the blood out of enfeebled, tottering economies and then—fingers crossed—hoping that they bounce back into rude health is a dead end, not a discipline.

Consider the sorry spectacle of hopelessly dysfunctional, hopelessly uncompetitive, hopelessly indebted Greece. Its GDP will have fallen by almost a fifth between 2009 and the end of this year. The country is trapped in a spiral in which austerity (however overdue) is dragging its laggard economy ever lower, shrinking the tax base and thereby increasing the fiscal woe that better budgeting is meant to resolve. Greece holds a general election on May 6. With the political establishment under pressure, and radicals polling strongly, a dramatic rejection of the apothecary regime cannot be ruled out. And the markets know this all too well. They also recognize that Portugal, now doing its best to adapt to the single currency for which it was never going to be suited, but struggling badly, is headed towards a second bailout.

Then there’s the other Iberian nation, Spain, the twelfth largest economy in the world and, therefore, potentially much more of a problem than, say, puny Greece, a country that took an infinitely more self-indulgent route to hell. Prior to the crash, Spain’s government finances were decently managed. Debt stands at around 70 percent of GDP, even now a ratio that is far from the worst in the eurozone, but it has been

rising rapidly (the budget deficit was 8.5 percent of GDP in 2011). Overspending by this highly decentralized country’s regional authorities is emerging as a major problem, but the most dangerous poison may be brewing in the banks.

Like just about everywhere else, Spain saw a massive construction and real estate boom in the 2000s. This was fueled by low interest rates that reflected conditions in the eurozone’s Franco-German core rather than Spanish reality, as well as the belief, cheer-led by Brussels, that the economies of the currency union’s members were converging when, particularly as compared with Germany, they were doing anything but.

The bust that followed that boom took down a large chunk of the Spanish economy (unemployment stands at 23 percent, over 50 percent among the under-25s, a disaster exacerbated both by Spain’s sclerotic labor market and the malign impact of apothecary economics). There will be more misery to come. The IMF is forecasting that Spanish GDP will shrink by 1.8 percent in 2012. If Ireland is any precedent, and if the apothecaries have their way (the proposed deficit reduction amounts to a daunting 5.5 percent of GDP over this year and next), Spanish real estate prices could fall by another third. Should that happen, the country’s battered banks are (according to Open Europe, a mildly Euroskeptic think tank) likely to take a hit too large for cash-strapped Spain to cover by itself.

And the knife has further to twist. When the first LTRO was announced, French president Nicolas Sarkozy had a bright idea. Each state could sell its bonds to its newly flush banks. At first glance, such a trade would not only be patriotic, but profitable. The yield on debt issued by the eurozone’s struggling sovereign borrowers would comfortably exceed the bargain rate that the banks were paying to borrow from the ECB. And that’s the “carry trade” that Spain’s banks made. Indeed, in the view of Open Europe, Spanish banks

have been the principal (“essentially the only”) buyers of Spanish government debt since December. But these banks are fragile and frighteningly reliant on ECB support (their borrowing from the central bank almost doubled between February and March). What would happen if their vulnerability to Spain’s mounting economic distress, not to speak of their specific exposure to Spain’s real estate nightmare, meant that those banks could no longer keep buying? How would Spain’s bills then be paid? After all, membership in a currency union means that Spain (unlike, say, the U.K.) can no longer print its own way out of a liquidity crunch. As the University of Leuven’s Paul De Grauwe pointed out last year, a “liquidity crisis, if strong enough, [could] force the Spanish government into default.” Indeed it could. Spain has already (and wisely) issued about half the debt it will need for 2012, but the rest?

Wait, there’s more. Spain’s borrowing costs are rising (yields on its 10-year bonds have been testing, and sometimes breaking, the toxic 6 percent barrier), to a level that may not be sustainable. That’s bad enough, but those higher yields also mean that the value of Spanish bonds bought by Spanish banks playing that Sarkozy carry trade will have been falling, with unpleasant implications for their beleaguered balance sheets at exactly the wrong time. If you are looking for a fine example of a vicious circle, this will do nicely.

Optimists will counter that the European Central Bank can again help out. And they are right. As an institution subject to relatively low levels of direct democratic control, it is better placed to ignore the concerns of northern voters than many eurozone institutions. Meanwhile the IMF’s managing director is in full telethon mode. Maybe the IMF/G20 meetings (underway in Washington, D.C., as I write) will see agreements to fund a firewall large enough to reassure. Maybe, maybe, maybe . . .

Outside Spain, Portugal, and the carcass that was Greece, the

theoretically praiseworthy reforms launched by the eurozone's proconsul in Italy, the technocrat prime minister Mario Monti, are beginning to run into serious opposition. The country's planned move to a balanced budget in 2013 has also been postponed by two years (for now). New spending cuts will add to the economy's pain. Italy has revised its forecasts for 2012's decline in GDP from 0.4 percent to 1.2 percent, but that's a sunny projection when contrasted with the fall of 1.9 percent forecast by the IMF.

Then there's France, facing a presidential election in which the increasingly clear favorite (as I write), Socialist François Hollande, is clearly no great fan of the fiscal pact. And finally there's the awful, undeniable fact that lies at the core of this tragedy: One size does not fit all. Laurel cannot wear the same suit as Hardy. Portugal is not Finland. Greece is not Germany. A shared currency designed to bring nations together is tearing them apart. Confining them in a monetary union that, as constituted today, cannot realistically cope with the profound differences that define their economies is an insult to common sense, an affront to democracy, and a rejection of elementary decency. Those countries it does not loot, it will sentence to stagnation and worse.

No matter: Whether due to the (not unreasonable) fear of what a breakup could mean, or to fanaticism, careerism, or simple, dumb inertia, the eurozone's political class is sticking with its funny money. As it does so, other Europeans are quietly passing their own judgment. Stories of capital flight from Greece are not new, but a recent analysis of eurozone central bank data by Bloomberg News appears to show that euros are flowing out of Italy and Spain and into Germany, the Netherlands, and Luxembourg at an accelerating and unprecedented pace.

Just a few weeks ago, Mario Monti declared that the eurozone crisis was "almost over."

Not yet, I reckon. ♦

Waiting for the U.N.

The Obama administration embraces international paralysis. **BY JOHN YOO**

Turmoil in the Middle East has exposed the vulnerabilities of President Barack Obama's listless foreign policy. As Iran closes in on its nuclear prize and props up Assad's bloody regime in Syria, the United States has the opportunity to deal a crippling blow to its oldest, most dangerous enemy in the region. U.S. military strikes could topple Tehran's close allies in Damascus and destroy the mullahs' nuclear infrastructure, potentially ushering in more democratic regimes that would be at peace with their neighbors.

But instead of seizing the initiative, the White House has wrapped itself in a web of international law and institutions that have brought only paralysis and indecision. From the top down, administration officials have suggested that they need the blessing of the U.N. before they can use force to advance American interests in the Middle East. "For us to take military action unilaterally, as some have suggested, or to think that somehow there is some simple solution, I think is a mistake," Obama recently said about Syria. "What happened in Libya was we mobilized the international community, had a U.N. Security Council mandate, had the full cooperation of the region, Arab states, and we knew that we could execute very effectively in a relatively short period of time. This is

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a much more complicated situation."

Libya taught the administration the wrong lessons. What the White House sees as a successful strategy of acting as part of a United Nations coalition was in fact a near-disaster. Waiting on the U.N. Security Council for approval of airstrikes allowed Muammar Qaddafi's regime to come within a day or two of wiping out the Libyan resistance. The delay reduced our ability to exert influence on the new regime that has emerged since. The Obama administration hopes to reassure those who distrust American unilateralism by submerging our national interests into those of an undefined world community. The result is that America still carries the main burden of maintaining international peace and stability, but with a loss of speed, flexibility, and decisiveness.

Obama is now repeating this mistake, but this time the stakes are dramatically higher. Both President Obama and Secretary of State Hillary Clinton have said that they intend to prevent, not contain, Iranian nuclear weapons. Obama, for example, has warned, "I will take no options off the table, and I mean what I say." He promises to use "all elements of American power," not just political, diplomatic, and economic pressure, but, "yes, a military effort to be prepared for any contingency." But rather than prepare the nation and our allies for the consequences of a military strike, the White House has placed its hopes in a scheme of escalating U.N. economic sanctions that may delay but cannot halt Iran's march toward nuclear weapons.

Obama's reliance on the crutch of the United Nations only underscores the deeper paralysis of his foreign

policy. He has not just shrunk from dangers, but has passively neglected opportunity. His administration has rushed for the exits in Iraq even as our troops defeated the insurgency and midwived democratic government. In Afghanistan, the White House has ordered a hasty and premature draw-down just as a surge of forces has put the Taliban on the defensive. Obama's unnecessary concessions on nuclear weapons in the New START treaty and his unilateral withdrawal of an antiballistic missile system in Eastern Europe have not "reset" relations with Russia. Vladimir Putin's reelection promises a continuation of Moscow's frosty American policy. China continues its rise to great military power status; Obama responds with more talk about a "pivot" toward Asia but stations a few thousand Marines in Australia.

The upcoming November elections present Republicans with an opportunity to draw a sharp contrast with Obama's withdrawal of American leadership from the world. They can begin by making a powerful political and legal case for unilateral military action against the dictators in Syria and Iran. The Assad regime continues to wage war on the Syrian people, with some estimates reaching 10,000 deaths and a hundred thousand refugees. It supports terrorist groups arrayed against Israel, it has attempted to dominate Lebanon, and it served as a conduit for insurgents who journeyed to Iraq to kill American soldiers. An American no-fly zone, combined with selected strikes and military aid for rebels, could rescue millions from the boot of a vicious dictatorship and

remove a regime that has threatened and attacked its neighbors and destabilized the region. Regime change would serve larger U.S. interests too: It would blunt Iran's campaign for allies and remove an enemy in a strategic location in the Middle East.

Though it poses a more difficult military problem, Iran presents the more direct legal case.

Iran continues to defy U.N. Security Council resolutions demanding that it halt any work on nuclear weapons and ballistic missiles. It seems

beyond doubt that Iran is pursuing nuclear weapons under cover of a peaceful civilian energy program in violation of the Nuclear Non-Proliferation Treaty.

Tehran supports terror groups throughout the Middle East and it sells weapons and knowledge to other rogue states, such as North Korea and Syria. It has served as a base for insurgents who killed American soldiers in Iraq, Lebanon, and Saudi Arabia, and has plotted to kill a foreign ambassador on U.S. soil. Like the regimes in Syria and Libya, the mullahs in Iran feel little reluctance to oppress their people to stay in power.

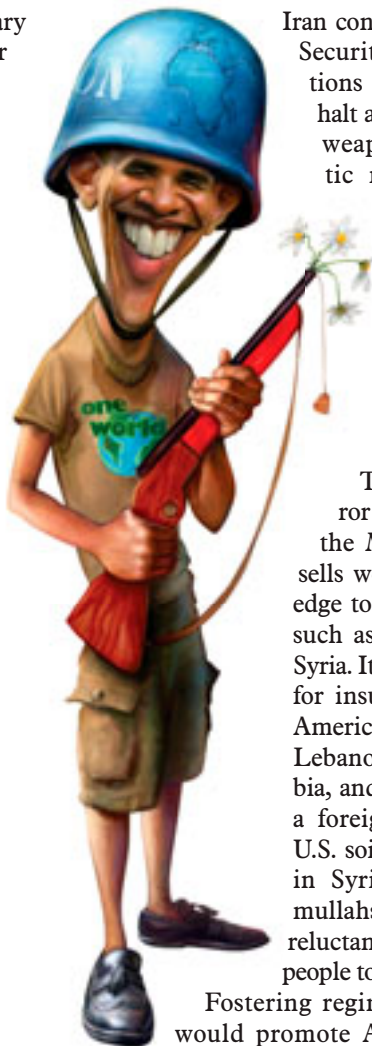
Fostering regime change in Iran would promote American interests and enhance global welfare. Iran seeks to export its fundamentalist revolution throughout the region. It stokes the Israel-Palestinian conflict. Its president promises to destroy Israel. It interferes with Iraq's young democracy. It has threatened to close off the Strait of Hormuz, through which 40 percent of the world's oil exports travels. It has attacked shipping in the Persian Gulf. A nuclear Iran could give the mullahs regional military superiority and immunity

from American conventional attack, which would allow it to expand its support of terrorism and efforts to destabilize its neighbors.

But Republicans should draw a broader contrast with Obama's foreign policy than just Syria and Iran. They should reject the idea that the United States's right to protect its security, advance its interests, and foster international stability must pass a "global test" (as John Kerry put it in the 2004 elections). While the U.N. can certainly play a helpful role, it has not become the mechanism for collective security that President Franklin Roosevelt hoped for at the end of World War II. It has become an obstacle, rather than a handmaid, to international peace.

The U.N. Charter guarantees the "territorial integrity" and "political independence" of every nation. It doesn't matter whether the member is a market democracy or a brutal dictatorship. Article 2(4) and 51 of the charter prohibits the use of force except in self-defense, which international officials and legal scholars generally believe prohibits war except when an attack has occurred or is imminent. The only solution to looming, but not immediate, threats to national security or global stability is to turn to the Security Council for help. Security Council approval, however, has produced mostly feebleness. The charter gives the United States, Great Britain, France, Russia, and China a veto over any Security Council decision. China and Russia oppose interference in what they consider "internal" affairs, such as the repression of political and economic freedoms by authoritarian regimes. They can usually be counted on to protect other nondemocratic regimes, as they did in Iraq in 2003 and have done so far in Syria.

Making the case for unilateral U.S. military action would only return us to the state of affairs that prevailed during the Cold War, when the Soviet Union prevented the United Nations from combating threats to global welfare. The United States waged war with the U.N.'s blessing in Korea (thanks to a Soviet boycott of the vote), the 1991 Gulf war, Somalia, and Haiti, but



it would have acted without it. The United States acted on its own during the Cuban Missile Crisis, the Vietnam war, the 1980s interventions in Central America, Grenada, Libya, and Panama, covert operations in Afghanistan and other places during the Cold War, and Kosovo in the 1990s.

In these places, the United States did not just advance its own interests, it also benefited global welfare by containing the spread of communism and ending human rights catastrophes. By contrast, the U.N. offers the empty promise that it can police the world if nations give up their right to go to war. But the U.N. possesses no armed forces, has a crippled decision-making system, and lacks political legitimacy. As a defender of the status quo, the U.N. tries to prohibit efforts by the United States and its allies to spread democracy and capitalism and to stop nations from oppressing their own people. The U.N. has become obsolete: It was designed to stop the massive interstate conflicts of World Wars I and II, but the number of conflicts of this kind has dropped to some of the lowest levels since the Peace of Westphalia in 1648. Its bias for the status quo impedes solutions to the primary security threats of the 21st century: rogue nations, international terrorist groups, humanitarian disasters, and WMD proliferation.

The Obama administration's reliance on the U.N. limits American power and only avoids the hard choices necessary to protect our national security and maintain world order. America need not toss aside the U.N., which still provides a useful forum for discussion and debate. But a president should ignore it when authoritarian nations try to veto wars that are necessary to preserve the peace. Like the League of Nations before it, the U.N. can only provide a false sense of security in the face of gathering threats. A Republican president can promise a new birth of American leadership that will maintain an international order built on free markets, liberal democracy, and peaceful trade, and which can take preventive action to stop threats such as Syria and Iran. ♦

Oil and Trouble

Cristina Kirchner renationalizes an industry.

BY CHRISTOPHER CALDWELL

Argentine president Cristina Fernández de Kirchner cannot claim to be the only world leader to lash out against oil speculators this week. Last Tuesday President Obama used an appearance in the White House Rose Garden to do the same. But Kirchner put her money where her mouth is. She



Señora Kirchner

announced she was renationalizing YPF, Argentina's national oil company, which was privatized in 1993 and still accounts for almost all of the country's oil production.

Señora Kirchner was in the widow's weeds she has worn since her husband, president until 2007, died of a heart attack two years ago. Like Hugo Chávez in Venezuela, Néstor Kirchner mixed postmodern global activism and backward-looking Cold War ideology. His country was ripe for it. Argentina's decision to peg its peso to the dollar

in the 1990s proved foolhardy, just as pegging the drachma to the deutsche mark did in this decade. The debts and public rage mounted even faster. In February 2001 Fidel Castro accused Argentines of "licking the Yankee boot." There were riots a year later. After strikes, devaluations, and emergency decrees, Argentina defaulted on its debts to the World Bank. Nestor came to power in 2003. The Kirchners nationalized private pensions (good for \$24 billion) and central bank reserves (\$6.6 billion), but that still has not put the state's finances in order. When this oil-rich country needed to import \$9 billion worth of energy last year, someone was going to take the fall, and it was not going to be Señora Kirchner.

She blamed the Spanish multinational Repsol, which had acquired a majority stake in YPF in 1999. Repsol was offshoring its profits, she said, and not doing anything for Argentina. It was paying out ridiculous dividends instead of investing in research and drilling wells into the vast shale-oil deposits at Vaca Muerta, discovered in 2011, which may hold 20 billion barrels of oil. Señora Kirchner's accusations were not baseless. Oil production in Argentina peaked in 1998, before Repsol took control. Countries that nationalize *can* do well. Government oil companies (Aramco, Pemex, PdVSA) are responsible for most oil production worldwide.

But there was another side of the story. Spain's *El País* newspaper estimated that Repsol had paid the Argentine government \$19 billion in taxes over the past four years, making it the country's largest taxpayer. While Repsol's oil production is indeed plummeting, that of other oil producers in Argentina is falling even faster. The company's new government leadership wasn't exactly brimming with ideas. It

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announced it would make YPF more efficient by “optimizing production.” Why didn’t Repsol think of that!

It is true that Repsol had tripled its dividend, but only to pay off the Eskenazi family, political cronies of the Kirchners. When Repsol controlled almost all the YPF shares, Néstor Kirchner insisted that it create some sort of “domestic” stake. And who better to hold it than Kirchner’s wealthiest backer? A quarter of the company was carved out for the paterfamilias, Enrique Eskenazi, financed by loans from Goldman Sachs, BNP Paribas, Itaú, Credit Suisse, and—to the tune of at least \$1.6 billion—Repsol itself. The loans were to be paid back through the company’s dividends. If there was little money to spare for drilling, it was the Kirchners’ fault for meddling as much as Repsol’s for hoarding.

Like most insurgencies against the “powerful,” Argentina’s takeover of YPF is actually the opportunistic kicking of the *formerly* powerful before most people have quite realized they’re down. The Uruguayan president José Mujica supports Señora Kirchner’s move, calling it a blow against European arrogance. But these words came on a day when it was not certain Spain would be able to carry off a routine bond sale.

There have been signs that it is not really Spain that the Argentines are worried about. The day after Kirchner announced her nationalization, the *Financial Times* reported that Repsol had been quite far along in negotiations to sell its whole stake to a Chinese energy concern, probably Sinopec, which already owns 40 percent of Repsol’s Brazilian operation. The corporate bylaws granted Argentina a veto on the sale. But the news of a Chinese connection does put the nationalization of YPF in a different light.

Thirteen years ago, when Repsol took control of YPF, the argument for privatization was that government runs things inefficiently because it does not compete in the marketplace. Fine, but Repsol didn’t do much competing; it controlled over 90 percent of oil production in Argentina. What it *did* offer was the dependability that used

to characterize government industries. It could be bargained with. Look at that dividend deal with the Eskenazis. The indignation with which Repsol

The day after President Kirchner announced her nationalization, the *Financial Times* reported that Repsol had been quite far along in negotiations to sell its whole stake to a Chinese energy concern.

is trying to rally the European Union against Argentina is that of one who has lain down with dogs and woken up with fleas. “Private” multinationals often operate in cahoots with government. South American leftists have figured this out. When Chávez unilaterally repudiated certain oil contracts in the Orinoco basin in 2007, Exxon fought Venezuela for compensation,

but Chevron and several other companies accommodated themselves to Chávez’s new rules.

The world looks awfully different today than it did 13 years ago, when Repsol took over YPF. Who knows what it will look like 13 years from now? China might have a fleet of warships in the South Atlantic. Had Repsol sold its controlling stake to the Chinese, what then? If you believe most Chinese business is beholden to the Chinese government—a reasonable belief—then the fiction of YPF’s total independence from the state would grow less plausible. You’d again have a government-run energy sector in Argentina, just as you did before 1993, except that the government doing the running would be a foreign one. To many Argentines, Repsol’s profits would then look like a fee for taking a colossal energy resource and transferring it from the Argentine government to the Chinese one. Maybe it should not surprise us if Argentines are happy Señora Kirchner said no thanks, whatever her reasons. ♦



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The Businessman vs. the Professor

The personal dimension of the Romney-Obama face off

BY JAMES W. CEASER

With the Republican nomination now settled, electoral analysts are rolling out their models of voter behavior to predict the outcome of the general election. These “scientific” efforts at prophecy, which have become increasingly elaborate and arcane, boil down in the end to gauging voters’ evaluations of three simple questions for each candidate: What have you done? What will you do? and Who are you?

What have you done?—or, as Ronald Reagan famously asked voters in 1980: “Are you better off than you were four years ago?”—is the main question applied to the candidate of the incumbent party, and especially, as in this race, to an incumbent himself. Our

first scientific analyst of presidential elections, Alexander Hamilton, noted that the public observes “the tendency of his measures, . . . thence to form an experimental estimate of their merits.” Current academic modelers refer to this dimension as “retrospective voting” or as a “referendum” on the past.

What will you do? is the question asked first of the challenger. A challenger’s record—say, as governor—may be informative, but the challenger, unlike the president, has not directly affected the lives of most people. Voters therefore want to know what the challenger would do, so that they may compare him with the incumbent and judge whether the challenger’s intended course of action warrants, in Hamilton’s felicitous term, the incumbent’s

“dismissal.” Voters for the most part are future-oriented creatures. A challenger who runs as a potted plant, counting on people voting solely to reject the incumbent, had better pray for something as awful as a depression. Otherwise he will stand little chance. It may be a quibble, though not a useless one, to insist that there is very little pure “retrospective voting.” The incumbent’s record serves mostly as an indicator—an “experimental estimate”—of his future course and of whether “to continue him in the station, in

order to prolong the utility of his talents and virtues.”

Finally, the question Who are you? reminds us that people vote not just on the basis of a record or a future program, but, given the peculiar challenges of the presidency, for a person with certain qualities. Voters wonder about a candidate’s readiness to handle those unforeseeable crises that inevitably emerge (what Hillary Clinton

unforgettably referred to as the 3 A.M. phone call); they think about a candidate’s qualities or virtues and how these correlate with good performance in office; and they consider what values a candidate symbolizes or embodies, such as being “a man of the people.”

The complex judgments relating to this personal dimension may weigh less heavily in the voters’ decision than their evaluation of the other two factors. But what takes place during presidential campaigns—the occasional revelation of new information about the candidates’ past and the scrutiny given to how candidates hold up under pressure—testifies to the importance of the judgments of character and virtue. A notable attribute or a marked deficiency can determine the outcome of the contest.

The dimension of personal qualities promises in 2012 to be highly interesting. It stands out, in the first place, because of the things that seem to be off the table. One of



THOMAS FLUHARTY

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them is consideration of the candidates' military records, which has been an issue in every contest dating back at least to 1988, whether it was a matter of the candidates' heroism or valor (George H.W. Bush, Bob Dole, John Kerry, and John McCain) or whether questions were raised about service itself or special treatment (Bill Clinton and George W. Bush). Neither Mitt Romney nor President Obama served in the military, and we will likely hear nothing about this issue. Also off the table are matters relating to candidates' personal turmoil, substance abuse, or infidelity. Search the nation, nay the universe, and you will not find two more scrupulous and exemplary family men than Mitt Romney and Barack Obama. If there is any issue to be raised on this account, it will likely focus on their treatment of the family dog. As for substances—Obama's youthful experimentation aside—Mitt Romney does not drink even beer, and President Obama during his famous beer summit looked like he didn't know how to.

Finally, there is very little chance that the issue of being able to handle an emergency, another matter that figured prominently in many recent campaigns, will be raised in this one. We will hear criticisms, to be sure, of some of President Obama's foreign policy decisions, but this is not the same thing as doubt about the capacity and readiness to act. After all, President Obama took the proverbial 3 A.M. phone call in authorizing the bin Laden raid, and we have the official photos, released in grainy black and white, to prove the point. On the other side, even though Mitt Romney has never directly had to handle a case of this kind, his evident maturity, steadiness, and long record of decision-making render it highly unlikely that anyone will charge him with being unprepared.

In light of the absence of these matters, which made recent campaigns so bitter on a personal level—going right to questions of integrity and manliness—we are likely in certain respects to see a much cleaner race in 2012. Which isn't to say that other elements related to personal attributes will not rise to the surface.

It is difficult to identify the full list of special "talents and virtues" that have been proclaimed by, or on behalf of, candidates running for the presidency. One item that has certainly been important is military expertise and valor. Think of the number of candidates who have been lauded and promoted in public contests because of their military accomplishments (Washington, Jackson, William H. Harrison, Taylor, Grant, and Eisenhower, to name

only some) and others who have been celebrated for their demonstrations of valor (including Teddy Roosevelt, JFK, George H.W. Bush, and John McCain). Another quality is the virtue of being a "statesman," a claim so elevated that it has been seriously made only on behalf of early presidents, such as Adams, Madison, and Monroe, who enjoyed the prestige of being Founding Fathers. Most candidates proclaiming possession of the political art are compelled to offer themselves on the more modest ground of being commendable politicians. This ambivalent talent describes the bulk of candidates who have run for the office, from Martin Van Buren to Richard Nixon to Bill Clinton to George W. Bush. These men were said to have practiced a worthy, if not obviously noble, calling, and to have pursued it well.

Another talent or virtue is found in leaders of conviction, men admired for articulating a program or public philosophy. Included here are Abraham Lincoln (in 1860), William Jennings Bryan, George McGovern, Ronald Reagan (in 1980), and Barry Goldwater. Although the last three had extensive government service, their presidential campaigns made clear that being good politicians was not the primary talent touted on their behalf. These were men celebrated, at least by their partisans, for promoting a cause or set of ideas.

Two other qualities or virtues have been put forward, only much less frequently: the skill of the businessman and the virtue of the man of intellect. In the category of businessman might be placed

Herbert Hoover and Wendell Willkie, both of whom were prominent in the world of commerce and had held no previous elective office. Yet neither made conducting business his premier talent in quite the way that Mitt Romney has. Yes, Romney admits having been governor of an important state, but in speech after speech, he emphasizes the skill set honed in running a business. In one typical formulation, Romney said, "I spent 25 years balancing budgets, eliminating waste, and keeping as far away from government as was humanly possible." His proficiency as a businessman is much broader than making money. It represents a capacity to build and to fix things when trouble arises, like the failing project for the Winter Olympics. Knowledge of how the economy works, Romney insists, is all the more critical during an anemic recovery, and the challenge of reducing the federal budget will demand the skill of the most tested of managers. There have been other presidential aspirants who have put the competencies of the businessman at or near the top of their qualifications, including Mitt's father

We shouldn't be hearing about substance abuse in this election. Mitt Romney doesn't drink even beer, and President Obama during his famous beer summit looked like he didn't know how to.

George Romney, Ross Perot, Donald Trump, and Herman Cain, but none became the nominee of a major party. We are about to find out if this quality can sell.

What of President Obama? The dimension of the candidate's special talent or virtue, as an independent factor, is less important in a reelection campaign. What counts most, after all, is a president's demonstrated skills in office. Even so, it is hard to think of any president who presents so different a defining virtue between his two races as President Obama. In 2008, Obama was put forward as possessing a quality unique to him on the list of presidential candidates. He never cited his skill as a politician—he had only a scant record of service—and while he became known as a formidable orator, his rhetoric was not put primarily in the service of articulating a program or public philosophy. Barack Obama was celebrated as an inspirational leader, a charismatic in Max Weber's sense of someone who gives birth to a politico-spiritual creed. Obama was a demigod, not only to many Americans, but to millions across the world.

There is little chance of his offering this talent in the 2012 campaign. In a stunning metamorphosis, President Obama appears to have awoken one morning in November 2010 and looked down to discover that he had reverted fully to mortal form. And when he appeared in public, even in Europe, others could not fail to notice the very same transformation. The special virtue that his campaign will claim on his behalf this time is under intense debate these days. Some propose to cast him as an articulator of a public philosophy, though he has none that he wants to advance. Others prefer to cite his quality as an intellect or thinker, a talent that places him in a tiny group, composed of Thomas Jefferson and Woodrow Wilson, celebrated during their campaigns for their power of mind. After all, Barack Obama, like Woodrow Wilson, was a professor.

In essence, the 2012 campaign is shaping up as a contest between the businessman and the intellectual. Obama's references to the "1 percent" and to Wall Street are targeted at Mitt Romney, and Romney has replied in kind, "We have a president who I think is a nice guy, but he spent too much time at Harvard." Mitt Romney also went to Harvard, though he spent most of his time on what the intellectuals consider to be the wrong side of the Charles, where the business school is found. Both men can claim an academic record of achievement, but where Mitt Romney immediately gravitated to the world of business, Obama spent much of his time in the academy, teaching law, and produced a literary memoir, *Dreams from My Father*. There is no indication that Mitt Romney, who was deeply formed by his father, is either interested in or would be capable of such intense introspection, unless it would be to prepare a 59-point account of

the development of his paternal and managerial skills. By the same token, it is difficult to imagine Barack Obama as the shareholders' choice to run Bain Capital.

Beyond their special talents or virtues, voters look at candidates as symbols of the things they want to see validated and praised. In Obama's case, many Americans were attracted to his candidacy for representing the idea of inclusion and justice and for providing a sign of the near, yet not complete, triumph over the national shame of slavery and discrimination. Obama's nomination was counted a huge "first," a breakthrough of far greater significance than the previous firsts of a female and a Jewish vice presidential candidate. And to Hillary Clinton's dismay, her anticipated first as a female presidential nominee had to cede primacy to Obama's stronger claim as an African American. Obama was quick to acknowledge this achievement, joining with others in taking pride in the display of a more tolerant America.

And what of Willard Romney? His nomination also marks an objective first, though the near total silence about this fact is deafening. Romney rarely calls attention to the fact that he is a Mormon. Besides revealing something of his personal style, this reticence reflects the recognition that this first is not being widely celebrated. Why this is so most likely has much to do with the disposition of those who distribute the awards for tolerance. These judges, deriving mostly from the intelligentsia, appear reluctant to celebrate Romney's first for fear of diminishing the more prized achievement of President Obama, as if the nation were incapable of celebrating more than one feat of tolerance at a time; or, seeing the success of so many Mormons, they may consider that this group does not suffer sufficiently from duress to warrant the acknowledgment of a first, although group success did not deter the widespread celebration of Joseph Lieberman's nomination for vice president in 2000. It might also be that many do not see Mormons as a genuine minority. Take away Mitt Romney's religion, and he looks, walks, and talks every bit as much like the perfect WASP as that other non-Protestant nominee, John Kerry. The most likely explanation, however, is that the tolerance-anointers are not very excited about Mormons—they may even have friends who utter less than sensitive comments about them in private company. This last possibility has been artfully deflected by the creation of the impression that only conservative evangelicals oppose the election of a Mormon president. In fact, polls show that by far the greater opposition comes from Democrats.

The symbolic dimension of the candidates also functions negatively, with many voting against the personal

qualities they dislike or consider dishonorable. It has become commonplace to claim that many Americans despise the rich, especially when they think that their wealth comes from privilege rather than the striving of a self-made man. Mitt Romney is often portrayed in this light, though he fits the model imperfectly. He was born into affluence, but—unlike JFK or John Kerry—he acquired the greater part of his considerable fortune, thought to be in the neighborhood of \$250 million, by his own efforts. This dislike of the rich, however, has been exaggerated; most Americans tolerate them reasonably well. Even on the left, and even in the case of persons born to privilege, like FDR or JFK, the rich can still easily pass if they make common cause with the party that professes suspicion of wealth. Their political stance is considered sufficient penance to absolve them of their crime, a tendency known in social science as Buffett's Rule.

The truly daunting challenge in America is for a rich person coming from affluence to make the case for wealth, which may be one reason why so few wealthy candidates for president have been willing to do so. Mitt Romney faces a test that a Republican of much lesser means would not encounter. He has no choice but to double down, defending private property not only in the abstract, but

also in his own life. President Obama faces a similar problem, though it is less acute. Like Romney, he would no doubt find it easier to defend intellect if he were not so conspicuously an intellectual himself. Clearly, Joe Biden would have an easier time making the case.

These two abilities—making money and displaying intellect—ought to be qualities worthy of universal praise, as ways in which Americans distinguish themselves and show their excellence. Of course, both qualities can be pursued in an unjustifiable way, as in the case of the moneymaker who proceeds dishonestly or by destructive means (although economic advance frequently involves creative destruction), or the thinker who parrots trendy ideas and mocks orthodoxies (although good ideas often challenge traditional beliefs). The regrettable fact today is that neither the intellectual nor the businessman much respects the other, and each seems to prefer discrediting his rival to joining in common recognition of the virtues of both. More important, there are votes to be had today in stirring up animosities. If it comes down to this, we can only hope the American people will have the good sense to be more repelled by the class-warfare rhetoric of the intellectuals than the enviable remuneration of the businessmen. ♦

100 Years Standing Up for American Business

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

In the early 20th century, a dynamic America was growing fast and carving out a place for itself as a major global economic power. Across the nation, thriving businesses gave our economic engine its thrust and helped propel America toward prosperity. But these businesses lacked a unified voice in Washington. To prevent an increasingly powerful federal government from obstructing enterprise, public and private sector leaders called for the formation of a national chamber of commerce.

On April 22, 1912—100 years ago this month—the U.S. Chamber of Commerce was founded. And so we embarked on our mission of standing up for American businesses, protecting our system of free enterprise, and working constructively with government whenever possible to set the right policies. It's a mission that endures today.

The Chamber has been privileged to

help guide our nation—through the power and influence of the private sector—during periods of economic prosperity and national challenges alike.

Leaders turned to the Chamber and members of the business community to help navigate the dark days of the Great Depression and restore hope in America amid widespread economic despair. Along the hard road to recovery, the Chamber worked to establish the foundation for a strengthened economy.

A few years later, as conflict erupted around the world and the U.S. economy shifted to a wartime posture, U.S. leaders mobilized the business community to marshal America's great industrial might. The Chamber helped turn U.S. enterprise into a patriotic operation that kept the economy humming, while preparing for the post-World War II influx of workers and the prosperity they would bring.

Today, we face a new set of challenges. The worst economic downturn since the Great Depression has weighed down American businesses and sent unemployment rates

surging. Though our economy is recovering, it's growing at a rate insufficient to create the 20 million jobs American workers need now.

Once again, business is leading the way. Through our American Jobs and Growth Agenda, the Chamber is promoting pro-growth ideas to reinvigorate our economy and put Americans back to work quickly. Our plan calls for expanding energy development, infrastructure investment, global commerce, and innovation—all driven by the private sector. And we're calling on the government to enact critical tax, regulatory, and entitlement reform to restore our fiscal health.

In times of boom or bust, the character of the American business community has remained steady. We are committed today—as we have been for 100 years—to preserving free enterprise and protecting the promise of the American Dream for generations to come.



100 Years Standing Up for American Enterprise
U.S. Chamber of Commerce

From Blessing to Curse

The evolution of ‘wrongful birth’ lawsuits

BY JONATHAN V. LAST

On Friday, March 9, an Oregon jury reached its verdict in the case of *Levy v. Legacy Health System*. The jurors deliberated for just six hours before concluding unanimously that the plaintiffs, Ariel and Deborah Levy, had been wronged by the defendant and were due \$2.9 million in compensation. The harmful event foisted upon the Levys was the birth of their daughter, Kalanit.

Deborah Levy discovered she was pregnant with Kalanit in November 2006. She and her husband, both 34, were surprised. They already had two sons, a preschooler and a toddler, and had not planned on more children. After coming to grips with the prospect of the new addition, they became concerned about the possibility of birth defects. They were worried about chromosomal abnormalities, the risk of which increases steadily with a mother’s age.

Deborah was screened by ultrasound during her first trimester. The results suggested a relatively high—about 1 in 130—chance that her baby would have Down syndrome. As a result, she went to the Legacy Center for Maternal-Fetal Medicine in north Portland for further screening. In the 13th week of her pregnancy she underwent chorionic villus sampling (CVS).

As part of this test, a small amount of tissue was taken from the fetal membrane. A lab operated by Legacy Health tested the tissue, and the results came back normal—23 pairs of chromosomes in each cell. The Levys were relieved.

Six months later, Kalanit was born at Good Samaritan Medical Center in northwest Portland. Her features suggested some form of Down, but the attending physicians checked her CVS test and told the Levys not to worry. When her parents took Kalanit to the pediatrician a week later for a checkup, the doctor performed a blood test and

discovered the presence of an extra 21st chromosome. Kalanit did have Down syndrome. The Levys were, by their own account, “devastated.”

Two years later, they filed suit against Legacy Health for \$14 million. (The Levys adjusted their claim downward as the case progressed.) They argued that the CVS had been incorrectly performed and the results incorrectly analyzed and communicated; that had they been provided correct information about Kalanit’s chromosomal composition, they would have aborted her; and that they deserved monetary compensation for the harm Kalanit’s birth had caused them.

The term of art for such suits is “wrongful birth.”

The legal doctrine of wrongful birth has been evolving for some time. The claim was first put forward in the 1934 case *Christensen v. Thornby*, in which a Minnesota man sought legal redress for a botched vasectomy that resulted—much to his regret—in an unexpected child for him and his wife. *Christensen* made it all the way to the Minnesota supreme court before being denied. The court held that Christensen could not have been harmed because the birth of any child was a “blessed” event.

The next attempt to create a tort for wrongful birth came in 1957, in the Pennsylvania case *Shaheen v. Knight*. The facts of the case were essentially the same—the plaintiff underwent a vasectomy, which failed, resulting in a baby. Shaheen sued his doctor for breach of contract, arguing that the “guarantee” of sterility had not been fulfilled. This time the Pennsylvania court ruled that, even though the contract had been broken, it would not countenance damages. The court stipulated that according to universal sentiment, procreation was the chief purpose of marriage. As such, it could not be considered harmful. To allow that “the normal birth of a normal child” is harm, the court said, would be “foreign to the universal public sentiment of the people.”

Yet the sentiment of the people was changing, quickly. “Wrongful birth” was—quite unintentionally—given

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momentum by the two landmark sexual freedom decisions of the U.S. Supreme Court that soon followed: *Griswold v. Connecticut* (1965) and *Roe v. Wade* (1973).

Griswold established a constitutional right to privacy for birth control, and *Roe* enshrined a universal right to abortion. The penumbras and emanations from these decisions made it impossible—as a matter of law—for a court to stipulate either that people married for the primary purpose of making babies or that the birth of a baby was always a blessing. The combination of *Griswold* and *Roe* essentially vacated *Christensen* and *Shaheen* and opened the way for new plaintiffs to explore the idea of wrongful birth. Which they did, with gusto.

While it took a quarter-century for those first two couples to test wrongful birth, the '70s and early '80s saw a profusion of lawsuits. Some were breach-of-contract suits following failed sterilizations. Others blazed new trails. In *Tropi v. Scarf* (1971), a woman sued her pharmacist after her prescription for birth control pills was improperly filled and she became pregnant. In *Wilczynski v. Goodman* (1979), a woman sued her doctor after he botched an abortion and she was “forced to bear and deliver” an unwanted but apparently healthy baby. And then came the last frontier: In *Robak v. United States* (1981), a couple sued after their doctor failed to inform them that their child might have rubella syndrome. In order to claim damages, the parents told the court that, had they known the risk of rubella, they would have aborted the child. The birth of a sick baby, they said, had caused them irreparable harm.

The courts found in favor of the plaintiffs in all three of those cases. But they were exceptions. In general, courts during that period were hostile to the notion of wrongful birth, and only a handful of the suits filed each year were successful. Read through decisions from that period and it's apparent that the courts were trying—desperately—to maintain some sense of moral sanity in this new legal territory. In *Tropi*, for instance, a Michigan court wrestled with the impossibility of calculating damages by trying to make distinctions between types of mothers:

[Is it not likely that an] unwed college student who becomes pregnant due to a pharmacist's failure to fill properly her prescription for oral contraceptives . . . has suffered far greater damage than the young newlywed who, although her pregnancy arose from the same sort

of negligence, had planned the use of contraceptives only temporarily, say, while she and her husband took an extended honeymoon trip?

In another case, *Hartke v. McKelway* (1981), the U.S. District Court for the District of Columbia also found for a plaintiff whose sterilization had been botched. This time, the court agreed to compensation for the “pain, suffering, and mental anguish” of pregnancy and childbirth, but not to damages for the expense of rearing a “healthy” child.

This distinction—between healthy babies and babies born with a disability—was initially used to calculate damages. But once courts started using it for that purpose, it became impossible to avoid using a baby's disability as a ground for a wrongful birth claim in the first place. By

holding that, in a legal sense, the health of the baby mattered to a mother trying to avoid pregnancy, courts established a rationale under which a mother who was *not* trying to avoid pregnancy might claim harm if her baby was born disabled.

The catch: The mother had to testify that she would have aborted her child had she known about his disability.

In the America of the early twentieth century, where a judge could write a legal opinion calling a child a blessing, such sentiments were unthinkable—or at least inexpressible. By 1980, that America was gone.

Today, a mother who is *not* trying to avoid pregnancy can claim harm if her baby was born disabled. But she has to testify that she would have aborted her child had she known about his disability. In an earlier America, such sentiments were unthinkable—or at least inexpressible. By 1980, that America was gone.

In 1982, five wrongful birth cases reached state supreme courts. All of them were decided in favor of the plaintiffs, and the decisions went a long way toward standardizing a legal approach. Three of those cases are particularly notable.

In *Wilbur v. Kerr* the Arkansas supreme court awarded damages to parents after a husband's vasectomy failed. The court held to the pain-and-suffering line of *Hartke* and denied payment for child-rearing expenses, but added a wrinkle: It opined that making Dr. Kerr pay for raising the child would make the defendant in effect a surrogate parent. This shift in responsibility—away from the parents and to a third party—would eventually make the child feel like an “emotional bastard” when he grew up and learned of the arrangement. The court held that to allow the parents to claim that their child's existence had harmed them was contrary to the child's welfare.

In *Ochs v. Borrelli*, another botched sterilization case, the Connecticut supreme court created a new method of determining damages. It held that parents *could* be reimbursed for the expenses of rearing their unwanted child—but that in calculating these costs the lower court had to take into account not only harm inflicted but also the (unexpected) benefits to the parents of the child’s presence in their lives. The justices offered no guidance as to how lower courts were supposed to do this arithmetic.

Finally, in *Naccash v. Burger*, the Virginia supreme court heard the case of a couple who were given a faulty test for Tay-Sachs disease while Mrs. Burger was pregnant. The test said that the father was not a carrier; it turned out he was. Their daughter was born with Tay-Sachs and later died. The Burgers charged that, had they received accurate test results, they would have had an amniocentesis performed and, on discovering the fetus had the disorder, would have aborted her. The court held the medical providers liable not only for pain and suffering, but also for the expenses of the girl’s short life.

The decision in each of these cases hinged on the health of the unwanted child. And the rationales the courts constructed required future courts to make intricate monetary calculations of the value of the lives of healthy and disabled children. If a child had Down syndrome, for instance, she wouldn’t suffer the emotional harm foreseen by the *Wilbur* court from being provided for by a surrogate parent. But of course, she would still stack up poorly against a normal child. *Naccash* made this arrangement explicit: The defendant was required to pay for raising the child only because she suffered a genetic defect.

Few noticed this legal progression, partly because the subject is uncomfortable and partly because the annual number of wrongful birth suits in the country is counted barely in the dozens. But a few state legislators did notice, and they attempted to undo the framework the courts had built. In the years after 1982, 10 states stretching in a belt from Pennsylvania to Utah—and, as of last week, Arizona—enacted laws closing off torts “based on a claim that, but for an act or omission of the defendant, a child or children would not or should not have been born.”

These states are a distinct minority. The vast majority of states allow limited damages when healthy babies have been wrongfully born. Some of these draw a line at recovering the costs of raising the child; others muddle along in confusion. In Massachusetts, for instance, the supreme court allows parents of even a healthy unwanted child to be compensated for the expense of child rearing—so long as their desire to avoid parenthood was “founded on economic or financial considerations.”

All of which leaves the impression that judges don’t

quite know what to do with wrongful birth. On the one hand, they understand, at a reptilian level, that something about the idea is deeply wrong. But on the other, they intuit that to return to the road of making moral distinctions would be intrinsically threatening to certain modern first principles. Namely, *Griswold* and *Roe*.

That’s where the Oregon supreme court found itself in 1994. Jonni Zehr delivered a baby, her and her husband’s second, via Caesarean section. They asked their obstetrician to perform a tubal ligation at the end of the procedure. Seven months later, Zehr was pregnant again. The Zehrs sued for sweeping damages—not just for pain and suffering, but also for the full cost of raising their third child, including college tuition. The Oregon supreme court held in their favor, taking the most expansive view of damages for wrongful birth. And it was this decision that brought us, finally, to Ariel and Deborah Levy.

Unlike the Zehrs, who faced surprise and inconvenience, the Levys have suffered tragedy. Despite the findings of the jury, there is doubt as to how the Down results were missed. The Levys believed that the doctor had mistakenly removed maternal, not fetal, tissue while performing the CVS test. But the defendant claimed that Kalanit has something called Mosaic Down, which means that many of her cells have the normal number of chromosomes. It could well be that the doctor happened upon such cells in taking a sample from the fetus.

Whatever the truth, the Levys say that, though they would have killed her if they had known of her condition, they love their daughter now that she is here, and there is no cause to doubt them.

It’s important to understand that the Levys aren’t on the make. They are a middle-class couple who first met in preschool and have been married for 12 years. Ariel is a civil engineer, Deborah a dental hygienist. And providing care for Kalanit will be an expensive undertaking. The Levys have consistently sought a sum adequate to cover care for Kalanit throughout her life, even after they are gone. It is difficult—not impossible, but difficult—to fault parents for using drastic, morally questionable means in the service of an especially vulnerable child.

One of the peculiarities of our present legal system is that the government may swoop in to “protect” a child from his parents if, say, a father is seen letting his son have a taste of beer at a ballgame, but if parents stipulate, in a court of law, that they wish they had killed their son and that he has injured them to

the tune of millions of dollars, the government not only leaves that child with his parents, it affords the parents a full and fair hearing of their grievance.

The big question—bigger than the Levys, bigger than the regime of wrongful birth—is how we arrived at the point where otherwise normal men and women are publicly basing a claim for money on the most horrible affirmation possible for a parent: *We wish you had never been born.*

There are two potential answers. At first blush, it seems obvious that this is where American culture has been headed since 1968. From the Founding through the Industrial Revolution, the family was the center of American society. As the country was remade, couples began having fewer children, and consequently they placed these children at the center of their lives, affording them resources and opportunities earlier generations would have thought lavish, foolish, or worse. The demographer Philippe Ariès called this period the “age of the child-king.”

But in the late 1960s, another transition got under way as the children of the baby boom began their adult lives. They avoided parenthood to a degree never seen before in American history: From 1968 to 1985 America’s fertility rate dropped like a stone. Instead, the Boomers pursued

their own pleasures. Childbearing, when it occurred, had evolved from a communal duty to an act of self-fulfillment. And it remains so today.

Once parents view procreation through the lens of self, it becomes shockingly easy for them to complain about this or that outcome. When you are the center of the universe, it’s easy to interpret misfortune as grievance: You have not suffered an accident of fate; you are a victim of wrongful birth.

The other possible explanation is that it is the law that has brought us to this pass. From this angle, chief blame goes to the opinions in *Griswold* and *Roe*. They nullified previously settled law and not only opened the door to wrongful birth, but made it inevitable. And successive decisions by state courts made the problem worse. These decisions had the effect of encouraging parents to seek legal remedies for circumstances that, in earlier days, they would simply have endured. As the price of remedy, however, parents were forced to make assertions that less than a century ago were considered repugnant. In this view, it is the legal system that poisoned American culture, not the other way around.

It’s unclear which of these answers is closer to the mark. And which is worse. ♦



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'No Smoking': Gene Vincent, John Lennon, George Harrison, Paul McCartney at the Star Club, Hamburg, 1962

Fab Foreign Adventure

The Teutonic roots of Beatlemania. BY DAWN EDEN

Back when the expression “longhair music” evoked Handel, not Hendrix, William Mann made history as the first “serious” scribe to give a well-manicured thumbs-up to the Fab Four. On December 27, 1963, the *Times* of London critic declared in his column that John Lennon and Paul McCartney were “the outstanding English composers” of the year, raving about the group’s “pandiatonic clus-

Dawn Eden is the author, most recently, of My Peace I Give You: Healing Sexual Wounds with the Help of the Saints.

The Beatles in Hamburg

by Ian Inglis
Reaktion, 224 pp., \$25

ters” and “submediant key switches.” Most famously, he praised the “Aeolian cadence” in the group’s album track “Not a Second Time,” likening it to the chord progression that ends Mahler’s *Das Lied von der Erde*. (Lennon, in one of his final interviews, confessed, “To this day, I don’t have any idea what [Aeolian cadences] are. They sound like exotic birds.”)

Thus began the academic pursuit known as Beatleology, the latest addition to the field being the volume under review here, sociologist Ian Inglis’s *The Beatles in Hamburg*. The author’s stated purpose is to correct an “imbalance” between the level of importance ascribed by historians to the group’s time in Liverpool and the lesser importance ascribed to their time in Hamburg.

Noting that the Beatles, during their early career, performed 273 times in the German city compared with 274 performances at Liverpool’s Cavern Club, Inglis finds it “surprising” that

GETTY IMAGES

It is the Cavern which has been consistently promoted as occupying a unique status in the story of the group, which enjoys a global reputation as “the birthplace of the Beatles” . . . while the club scene in Hamburg, where the Beatles first performed six months before they made their debut at the Cavern, receives little of the same detailed scrutiny.

To that end, he seeks to capture “the histories of Hamburg and Liverpool and the social and personal contexts in which the Beatles decided to go to Germany,” as well as other things the group gained during their time there: “new friendships—personal and professional . . . development as performers and songwriters,” and relationships with other Liverpool bands playing the Reeperbahn.

At this point, Beatles fans may be thinking of the *Yellow Submarine* track “It’s All Too Much.” One of the first rules for rockers and rock historians alike is to know your audience, and it’s not clear that Inglis really knows his. Those aficionados who are dedicated enough to buy a specialized book about the Fab Four (as opposed to one of the numerous general histories) typically have some idea of how important Hamburg was to the group’s career. The Beatles’ time in the north German port city holds fascination not because it’s been under-emphasized but, rather, because it’s been dissected, memorialized, and celebrated in dozens of books, as well as television shows, documentaries, and the 1994 feature film *Backbeat*.

Moreover, in comparing the number of the group’s Hamburg performances to the number of their Cavern performances, Inglis is stacking the deck. The Beatles’ members all grew up in Liverpool, and the Cavern was not the only stage they graced in that city. Lyrics of songs by Lennon, McCartney, and George Harrison are speckled with references to their years by the Mersey—“Strawberry Fields Forever,” “Penny Lane,” “All Those Years Ago”—while, as Inglis himself admits, “Hamburg and its personalities supplied the subject matter for none of their songs.” The

author finds this “strange,” but it makes perfect sense that the locale where the Beatles had their roots, and where they spent the greatest part of their youth, was the one that played the largest role in shaping them.

That said, it is undeniable that the Beatles’ Hamburg experience played a critical role in their development as musicians and songwriters. Inglis is at his best when summarizing the environmental forces and personal relationships that fostered the intense level of artistic growth the group achieved during their time in that city. In his chapter on the Beatles’



Pete Best

musical influences, he adeptly summarizes, in a short space, the unusual variety of musical currents that entered into their repertoire, including rhythm and blues, rockabilly, doo-wop, and Brill Building pop. None of the insights he relates is new, but the beginning Beatleologist should find it helpful to have the key points of chroniclers such as Alan Betrock, Spencer Leigh, and Charlotte Greig in one place. Likewise, Inglis’s chapter on Lennon and McCartney’s progress as songwriters capably encapsulates other authors’ observations about how the cramped confines of the Beatles’ living and working space in

Hamburg led to their interacting more creatively, and in a more fruitful manner, than they had at home.

Although Inglis’s historical scholarship is generally first-rate, his original observations are few and uneven. He is most convincing when analyzing why Pete Best, the Beatles’ enormously popular drummer who was replaced by Ringo Starr, was dismissed. The reasons most commonly given for the dismissal—personal conflicts, jealousy, or Best’s lack of ability—were likely overshadowed by the birth of a new member of the drummer’s family: Vincent “Roag” Best, the child of Pete Best’s mother, Mona, and his best friend, Beatles road manager Neil Aspinall.

[A] significant proportion of [Beatles manager] Brian Epstein’s energies were devoted to concealing any factors that might threaten the success of the Beatles: his own homosexuality, Lennon’s marriage to Cynthia Powell in August 1962 and the birth of their son Julian in April 1963, the paternity suit brought by Hamburg waitress Erika Hübers against McCartney after the birth of her daughter Bettina in December 1962. Epstein’s concerns about the damage that would have been caused to the group’s newly polished image by revelations that the drummer’s mother had given birth to a baby fathered by her son’s best friend are easy to imagine.

Getting inside Epstein’s psychology comes easily to Inglis; the Beatles’ own psychology, not so much. One doesn’t have to read too far into *The Beatles in Hamburg* to realize that it is unlikely that the author has had much contact with rock bands on tour—at least not ones of such humble origins as the Liverpool lads. For example, in an effort to discern the extent to which the Beatles took advantage of the prostitutes, drugs, and alcohol available on the Reeperbahn, he repeats various oft-told stories of the band’s misbehavior, but then asserts that the comments of one Jim Hawke are perhaps “most revealing.” Hawke, the (presumably British) manager of the Seaman’s Mission in Hamburg, claimed that the Beatles “were never any trouble . . . just nice,

quiet, well-behaved lads. They didn't even smoke then. They'd sit and play draughts or go upstairs for a game of ping-pong with my daughter Monica. . . . [They] liked reading. . . . They'd be quite subdued."

Inglis seems to believe he has found something new here. He observes that Hawke's words "could not be more removed from the stereotyped accounts of sex, drugs and violence that abound in the pages of the group's many biographers." It never seems to occur to him that young men from working-class families, lonely for their homes and relatives, might put on their best face for a mid-

dle-aged seaman and his daughter.

In the years since Beatlemania broke, Hamburg, compared with Liverpool, has done "relatively little" to capitalize upon its pivotal role in Beatles history, Inglis says. He attributes this to the difference in fortunes between the city on the Elbe and Alster—Germany's wealthiest metropolis—and the one on the Mersey, one of England's more depressed: "Put crudely, Liverpool needs the Beatles; Hamburg does not."

Perhaps. But in implying that Beatles fans need a trip to Hamburg to understand how the group became fab, Inglis lacks (dear) prudence. ♦

information from the public and even judicial proceedings based on a state-secrets privilege, asserts the right to detain individual terrorist suspects without trial, tries suspected terrorists in military commissions, has not attempted to roll back any of the most important features of the Patriot Act or the expanded surveillance program put in place by the previous president and Congress, and, officially, has not forsworn the practice of rendition, in which suspected terrorists are moved from one country to another to be interrogated and possibly tried by governments less fastidious than ours.

For Barack Obama's supporters on the left, to say his policy choices have been a disappointment would be an understatement.

Explaining how this came about is Jack Goldsmith's provocative new book. As in his previous work, *The Terror Presidency: Law and Judgment Inside the Bush Administration*, Goldsmith, Harvard law professor and former assistant attorney general, provides an abundance of rich detail, is fair-minded to the nth degree in assessing arguments, and consistently forces readers to consider anew their own assumptions about policies and constitutional politics. Not everyone will agree with his conclusions, but only a narrow-minded partisan will have failed to learn from reading *Power and Constraint*.

According to Goldsmith, there are a number of reasons why Obama's first term counterterrorism (CT) policies look more like those he inherited from Bush than not. Some are straightforward and unsurprising. To start, the terrorist threat is a fact of life and, once in office, the Obama team could not pretend otherwise if it didn't want to risk its own 9/11. Moreover, they soon discovered that, after eight years of dealing with the threat, the Bush team had put in place policies and practices that, by and large, were working. And finally, the momentum for continuing policies was reinforced by the fact that a number of the key players in the national security bureaucracy dealing with the counterterrorism threat remained in place after Bush had left office.



Safety First

The constitutional seesaw in the war on terror.

BY GARY SCHMITT

A presidential candidate who runs against the foreign affairs record of an incumbent often appears to adopt policies that are more in line with the previous occupant of the Oval Office than not.

Nor is this notion of continuity in policies an especially new refrain: The first "modern" political history written by an American, Henry Adams's *History of the United States of America During the Administrations of Thomas Jefferson and James Madison*, is famous for its finding that, as presidents, Jefferson and Madison followed a foreign policy track much like that of their Federalist predecessors—and in spite of their harsh criticism of George Washington and John Adams. So it

shouldn't be that much of a surprise to discover that President Obama's counterterrorism policies, with some exceptions, are not all that different from those of George W. Bush.

But of course, it is a surprise. Candidate Obama was unsparing in his criticism of the Bush administration's handling of the war on terror, repeatedly suggesting that President Bush had turned his back on the rule of law, endangered civil liberties, and upended the very principles of constitutional government as the Founding Fathers had envisaged.

Yet we now have a sitting President Obama who continues to deal with Islamist terrorism as though we are at war, will use deadly force against an American citizen and anyone else deemed a threat (regardless of whether that individual is anywhere near an ongoing field of combat), claims the prerogative to withhold

Power and Constraint
The Accountable Presidency After 9/11
by Jack Goldsmith
Norton, 336 pp., \$26.95

Gary Schmitt is director of the Marilyn Ware Center for Security Studies at the American Enterprise Institute.

What makes *Power and Constraint* especially interesting, however, is the case it builds for how the traditional system of constitutional “checks and balances,” combined with a host of new sets of “eyes” on executive behavior, has pushed and pulled two very different presidents into a similar path when it comes to CT policies.

On the traditional checks-and-balances front, Congress and the courts have shown less deference to the presidency than in previous wars, and certainly took a more direct hand in modifying several key Bush decisions on how the war on terror was to be prosecuted. According to Goldsmith, the result was a far more settled consensus within the branches of government about CT policies and practices by the time Obama was sworn in as president. And when Obama attempted to move away from that consensus—for example, by attempting to close Guantánamo or try 9/11 mastermind Khalid Sheikh Mohammed in a civilian courtroom in New York City—he found himself running up against that consensus, and unable to change it.

If this is not your grandmother’s presidency when it comes to the exercise of the commander in chief’s authorities, it is not only the courts and Congress that make this a different era. As Goldsmith demonstrates, this same lack of deference is now found in spades with a post-Watergate press corps that believes its job is to ferret out and publish virtually any secret it can. Toss into this mix significant new reporting requirements to Congress when it comes to intelligence activities, the establishment of inspectors general throughout the national security bureaucracy who report as much to Congress as to their own agencies, the huge growth and influence of

lawyers in operational planning, and the proliferation of (typically) left-leaning legal advocacy groups willing to bring suits against the executive’s war policies at the drop of a hat, and you have an environment in which the president’s ability to exercise his unique capacities for “secrecy, decision, and dispatch” is far less certain.

Now, a president can either learn to live with this new set of environmental factors, or he can fight against it. But as Goldsmith suggests both here and in *The Terror Presidency*, the Bush White House’s efforts to do so ultimately did not succeed, and cost them important political capital.



Khalid Sheikh Mohammed

Goldsmith takes seriously the very real problems this new system of “distributed checks and balances” presents when it comes to executive branch unity, accountability, and constitutional capacity. That said, he remains relatively sanguine about how it has played out in practice. Faced with a war whose end is undefined, it was (according to Goldsmith) inconceivable that straightforward assertions of presidential power by the Bush White House—no matter how well based on precedents—could withstand the test of time and the political environment in which presidents are now operating. But

the new “constraints imposed” on the presidency have, intentionally or not, in this instance “strengthen[ed] the presidency and render[ed] it more effective over the medium and long term in carrying out its national security responsibilities” by grounding them in the broader, legitimating concurrence of the courts, Congress, and the public at large.

Power and Constraint concludes by arguing that this new era of “accountability” is here to stay and that, on the whole, a fairly reasonable balance between executive power and its constraint has been struck. Yet a question can be raised as to how

stable that balance is, in fact, because several of the new checks on presidential power—investigative journalism, the new media, legal advocacy groups, and inspectors general—are themselves largely unconstrained by other players or institutions.

Moreover, the Obama White House is often reluctant to suggest that its current authorities rest on anything more than existing statutes, avoiding any hint that, like the Bush administration, it is making a claim of executive prerogative. Should there be public pressure to

alter the laws—brought about by new leaks, new scandals, new investigations—the current and subsequent administrations may find themselves less well positioned to counter those changes they see as tampering with the president’s ability to protect the nation.

Whether this leaves the government sufficiently prepared to handle the next great national security challenge is anybody’s guess. *Power and Constraint* seems to lean in the direction that it does but, like the honest book it is, provides more than enough material to make one wonder if that will be the case. ♦

The True Facts

A revealing look at the editorial back-and-forth.

BY ZACK MUNSON

‘It’s called art, dickhead.’ So proclaims John D’Agata, a creative writing professor at the University of Iowa, in an email to Jim Fingal, an intern at the *Believer* magazine assigned to fact-check D’Agata’s article, “What Happens There,” ostensibly a work of nonfiction about a teenager who leaped to his death in Las Vegas in 2002.

Their correspondence over the fact-checking of “What Happens There” has now been turned into a book that lays out, sentence by sentence and fact by fact, Fingal’s objections and D’Agata’s often obscene objections to those objections.

If the fact-checking of a 15-page magazine article seems like a strange subject for a book, it is. Having spent exactly one day as a fact-checker (filling in for a sick colleague), I feel qualified to report that it is a tedious and thankless task—I had to watch long segments of a Diane Sawyer special on Jackie Kennedy, among other things—but for Fingal, the task is something else altogether.

Over the course of seven years (!) of fact-checking, he discovers that D’Agata possesses a seething disdain for facts, shunting them aside in favor of what he calls “art” (and what most people call “making stuff up”). Now, D’Agata is not Stephen Glass, a journalist creating people and places and events out of whole cloth and, when caught, lying ever more elaborately to cover it up. In his treatment of the actual suicide of 16-year-old Levi Presley, D’Agata *does*

create people and places and events out of whole cloth—and at no point does he try to cover it up. He admits it freely, as soon as Fingal notices some obvious falsehoods in the first sentence of the piece:

The Lifespan of a Fact

by John D’Agata
& Jim Fingal

Norton, 128 pp., \$17.95

[T]he “article,” as you call it, is fine. It shouldn’t need a fact-checker. . . . I have taken some liberties in the essay here and there, but none of them are harmful.

Indeed, in D’Agata’s telling, he’s actually made improvements over ho-hum reality and has done so in service of a higher purpose, conveying a deeper truth to which only he, as an artist, has access. Thus, he improves reality by changing the number of strip clubs in Las Vegas from 31 to 34, the number of people who died from heart attacks the same day Levi killed himself from eight to four, and the name of a bar from Boston Saloon to Bucket of Blood. And that’s just in the first sentence.

His justifications for some of these changes are as inane as the changes themselves. Of the strip club discrepancy, he insists that “the rhythm of ‘thirty-four’ works better . . . so I changed it.” He alters the name of a school from the Las Vegas Academy of International Studies, Visual and Performing Arts to the “Las Vegas Academy of International Studies and Performing and Visual Arts” because “it has a comma in it; that’s ridiculous.” Later on, he presents a myth about the creation of karate as a factual account of the creation of Tae Kwon Do because “as long as that story is believed by *somebody*, then I consider it a legitimate potential history.” He falsely claims that Levi’s death was

the only one from jumping in Las Vegas on that day because he “wanted [Levi’s] death to be more unique.”

As the fact-checking proceeds, D’Agata grows more frustrated and abrasive, hurling all manner of profanity in Fingal’s direction and refusing to change a single word of his manuscript. At first, Fingal combs over the countless misquotes and altered names and embellished bits of history dutifully and with good cheer, emailing D’Agata the discrepancies he has found and questioning his tenuous claims of artistic license. Their back-and-forth evolves from simple quibbling over dates and geography to a wide-ranging (read: dull) discussion of journalistic ethics, the purpose of writing, and the limitations of nonfiction as *genre*. It is an interesting case study in the egotistic puffery of preening academics. (At one point D’Agata locates himself in the tradition of Cicero, Herodotus, St. Augustine, and Orwell.)

But as the process wears on (and it does wear on the reader), Fingal’s checks become increasingly pedantic and suspect themselves. In response to D’Agata’s claim that more people die in Las Vegas from “a few types of cancer” than from suicide, Fingal takes issue with the phrasing:

“A few types of cancer” is just too ambiguous. It could either mean a few different biological forms of cancer, or related forms of cancer found in different parts of the body.

He then lists more than a dozen different types of cancer, in incomprehensible medical nomenclature, that, taken alone, don’t account for more deaths than suicide in Las Vegas. To which D’Agata responds, “I really don’t think that readers would be upset if they found out that I lumped Supratentorial Primitive Neuroectodermal Tumors and Childhood Medulloblastoma together under the category of ‘a few types of cancer.’” Further, after (quite reasonably) questioning the veracity of an interview for which D’Agata has provided no notes, Fingal (quite unreasonably) writes

Zack Munson is an editorial assistant at THE WEEKLY STANDARD.

a few hundred words on the flawed logic of the source's opinion about the role of suicide in society, delving into arcane linguistic arguments and citing the Sapir-Whorf hypothesis (whatever that is).

All of which leaves you wondering: Why? Why is Fingal checking this stuff? Why, after seven years of fact-checking, is he popping off about issues tangential to the subject at hand? Why did he and the *Believer* and D'Agata spend seven years on this crap in the first place? It all seems, much like D'Agata's article, totally contrived. And of course, it is.

Yes, that's the kicker, the clever twist in this melodrama of the mundane. D'Agata's piece was originally commissioned by *Harper's*, which rejected it outright because it was so

obviously and intentionally embellished. So the *Believer* grabbed it, and somebody had the great idea to turn the process of its fact-checking into a book. According to Fingal, the correspondence is mostly made up: The fact-checking, though "real" in a technical sense, was done for the express purpose of publication, of producing (in the words of the publisher) "a brilliant and eye-opening meditation on the relationship between 'truth' and 'accuracy.'"

So while *The Lifespan of a Fact* purports to ask and explore myriad literary and philosophical questions, it ultimately ends up settling a different type of question entirely. Yes, creative writing professors and interns *do* have too much time on their hands. ♦

devoured Scripture as children, as did John Ruskin:

My mother forced me, by steady daily toil, to learn long chapters of the Bible by heart; as well as to read it every syllable through, aloud, hard names and all, from Genesis to the Apocalypse, about once a year; and to that discipline—patient, accurate, and resolute—I owe, not only a knowledge of the book, which I find occasionally serviceable, but much of my general power of taking pains, and the best part of my taste in literature. . . . Once knowing the 32nd of Deuteronomy, the 119th Psalm, the 15th of 1st Corinthians, the Sermon on the Mount, and most of the Apocalypse, every syllable by heart, and having always a way of thinking with myself what words meant, it was not possible for me, even in the foolishness of youth, to write entirely superficial or formal English.



People of the Book

No need to be a believer to cherish the Bible.

BY EDWARD SHORT

The popular Victorian novelist and travel writer Georgiana, Lady Chatterton (1806-1876), describing the bafflement she felt when reading the Bible as a girl, recalled how "one governess considered me unteachable, because I could not say the second Psalm by heart, and especially the verse, 'Why do the heathen so furiously rage?' which she used to repeat over and over again. . . . The fact is, I was wondering all the time why the heathen did so furiously rage, and who they could be; so

A People of One Book
The Bible and the Victorians
by Timothy Larsen
Oxford, 336 pp., \$55

that the more my mind was made to dwell on the words, the more puzzled I became."

It is difficult imagining the children of David Cameron's England puzzling over the Bible because it is difficult imagining them reading the book in the first place. Yet children in Victorian England were profoundly different. In this sprightly new study, Timothy Larsen richly documents the appeal the Bible had not only for Victorian adults but for their children as well.

Indeed, he quotes Thomas Henry Huxley, the agnostic biologist, who was convinced that "if Bible-reading is not accompanied by constraint and solemnity . . . I do not believe there is anything in which children take more pleasure." Gladstone and Disraeli

The deep regard of English Protestants for the Bible can be traced back to John Foxe's *Book of Martyrs* (1563), in which those put to death by Queen Mary were commemorated not only as martyrs to Protestantism but to the authority of Scripture. By the beginning of the 19th century, William Cobbett might claim that Foxe's martyrs were "most wicked wretches, who sought to destroy the Queen and her government . . . under the pretense of conscience and superior piety"—but this was not the majority view. Queen Victoria spoke for an entire Protestant civilization when she referred to Mary's Roman Catholic faith—that, after the Reformation, deemphasized the Bible—as "sacerdotal tyranny." More to the taste of freeborn Englishmen was John Milton's *sola scriptura* Christianity, which he defended against the proponents of episcopacy with impassioned eloquence.

[L]et them chant while they will of prerogatives, we shall tell them of Scripture; of custom, we of Scripture; of Acts and Statutes, still of Scripture; till the quick and piercing word enter to the dividing of their souls, and the mighty weakness of the Gospel throw down the weak mightiness of man's reasoning.

The most brilliant of all Victorian churchmen, John Henry Newman,

Edward Short is the author of Newman and His Contemporaries and a forthcoming companion volume, Newman and His Family.

never accepted the notion that the Bible alone could encompass Christianity—there was nothing in the Bible, after all, about the Trinity or, for that matter, about the Bible being the sole repository of the faith—yet he recognized that the Bible was “the best book of meditations which can be, because it is divine.” He also recognized that Catholic countries negligent of the Bible were in peril of losing their faith. France and Italy, for example, risked succumbing to apostasy precisely because (as he said) “they have not impressed upon their hearts the life of our Lord and Saviour as given us in the Evangelists. They believe merely with the intellect, not with the heart.”

About Newman’s great friend Edward Pusey, Larsen is revelatory, seeing him not merely as a controversial champion of episcopacy but a first-rate biblical scholar. It is true that most of his English contemporaries took issue with him for being too Roman, but Larsen suggests that this might have been misconceived criticism. Bishops, after all, never meant as much to Pusey as the Bible, about which he wrote with such learned zest. When he threw in his lot with the Tractarians he might have missed his true calling. As Larsen nicely puts it, Pusey was a “Bible man, who led an exegetical life” and had, in this respect at least, more in common with the Evangelicals than with the Anglo-Catholics.

A People of One Book is far-ranging. Larsen has chapters on what a vital role the Bible played among Evangelicals, Roman Catholics, Anglo-Catholics, Methodists, Quakers, Unitarians, Dissenters, Agnostics, even Atheists. And what is more impressive, he manages to show each of these different traditions true critical sympathy.

There is also much lively biography. In taking up the case of Elizabeth Fry, the Quaker who devoted her life to prison reform, Larsen shows how the Bible was an integral part of her ministry at a time when not everyone approved of Scripture. On one occasion, the French press characterized the Bible passages that she was

offended, or is made weak”), Fry wrote in the margin of her own Bible: “We must on one hand be very careful not to offend a weak brother & on the other we must not unite in scruples that we think contrary to the will of God.”

Larsen is particularly good on Huxley, who, for all his contempt for what he regarded as the credulity of Christian belief, loved the Bible. Indeed, he was adamant that, for educational purposes, Scripture was incomparable.

Take the Bible as a whole; make the severest deductions which fair criticism can dictate for shortcomings and positive errors; eliminate . . . all that is not desirable for children . . . and there still remains in the old literature a vast residuum of moral beauty and grandeur. And then consider the great historical fact that, for three centuries, this book has been woven into the life of all that is best and noblest in English history; that it has become the national epic of Britain, and is as familiar to noble and simple, from John-o’-Groat’s House to Land’s End.

At the same time, Huxley was fond of quoting the Bible to tease Bible-thumpers. In 1892, he wrote of how “the green bay tree of bibliolatry flourishes as it did sixty years ago” because (as he said) “whoso refuses to offer incense to the idol [of the Bible] is held to be guilty of ‘a dishonor to God,’ imperilling his salvation.”

There is much to praise here. Deeply researched and deftly presented, Larsen’s chapters capture the ubiquity of the Bible in Victorian culture without ever becoming sidetracked by those fashionable bores that stultify so much academic history, theory and gender. Instead, he allows his subjects to speak for themselves and never takes them to task for failing to conform to the dictates of political correctness.

He also uncovers a good deal of endearing absurdity in his subjects, as when he writes of Charles Haddon



Anglican clergymen, ca. 1870

attempting to distribute to prisoners as “controversial tracts.” Perhaps the greatest accomplishment of this enterprising woman was to supply Bibles to the English coastguard. Certainly, the sailors for whom she cared so deeply would have been amused to know how opposed their benefactress was to teetotalism: In response to Romans 14:21, which dissuades the faithful from taking wine if it cause scandal or offense to another (“It is good neither to eat flesh, nor to drink wine, nor *any thing* whereby thy brother stumbleth, or is

Spurgeon, the celebrated preacher. When he was at Menton, Spurgeon would convince himself that he was seeing life as it was in biblical stories: "I often fancy that I am looking out upon the Lake of Gennesaret, or walking at the foot of the Mount of Olives, or peering into the mysterious gloom of the Garden of Gethsemane. The narrow streets of the old town are such as Jesus traversed, these villages are such as He inhabited." One can safely assume that this tells us more about Spurgeon's biblically saturated imagination than it does about the French Riviera.

What lies outside the compass of Larsen's study is how the English lost their attachment to the Bible. In this, the German biblical criticism that emerged in England in the 1830s, and finally took hold at the end of the century, was a factor, as was the general waning of Christian belief that followed. But perhaps the severest blow to the authority of the Bible came from the work of geologists like Sir Charles Lyell, which cast doubt on so many biblical certainties. In 1851, Ruskin wrote to a friend,

You speak of the Flimsiness of your own faith. Mine, which was never strong, is being beaten into mere gold leaf, and flutters in weak rags from the letter of its old forms; but the only letters it can hold at all are the old Evangelical formulae. If only the Geologists would let me alone, I could do very well, but those dreadful Hammers! I hear the clink of them at the end of every cadence of the Bible verses—

If some blamed the geologists and their physical science for the eventual desuetude in which the Bible fell, others blamed the liturgical reformers. Regarding these energetic vandals, the Conservative member of Parliament for Aldershot, Julian Critchley, spoke for many when he wrote in the *Listener* (1982): "The statue of the Virgin is no longer the target of the iconoclasts' hammer; it is those two distinctive treasures of the English language, James I's Authorised Version of the Bible and Cranmer's Book of Common

Prayer. Now they are seldom heard in church, having been translated into Sunday Supplement Prose. The transfiguration is unforgivable."

At the same time, Larsen makes a vital point when he observes how our own contemporary scholars have "overlooked or distorted" the primacy of the Bible for the Victorians "by a preoccupation . . . with critical approaches to the Bible." These scholars have also tended to minimize the extent to which the Bible was taken up for devotional purposes. Diverging from these ahistorical accounts, Larsen succeeds admirably in showing how the Victorians "experienced

the Bible first and foremost as a . . . life-giving source of spiritual comfort and divine promises." Nevertheless, if the Victorians refused to "ignore or sidestep the Bible," the same cannot be said for their successors.

Recently, in the towns and cities of England, a fair sampling of those successors regaled the world with scenes that posed anew the question that baffled Lady Chatterton: *Why do the heathen so furiously rage? A People of One Book* does not answer that rather complicated question, but it will send readers back to the book that more than any other defined the English when they had a common culture. ♦



Who Was George Schuyler?

Rediscovering (and reclaiming)

'the black H. L. Mencken.' BY MARY GRABAR

A classics professor tells his students *not* to read *The Republic* because "only those who watch Fox News" read Plato. Another requires students to apply Latin translation assignments to the "terroristic" war policies of George W. Bush. Another professor dissuades black students from venturing into town to attend a lecture. And one refuses to return a paper to a student disputing his grade.

I heard these stories from students taking refuge at the Alexander Hamilton Institute for the Study of Western Civilization, which had been forced off the campus of Hamilton College by such professors. I was spending a month at the charming manse on the village square of Clinton, New York, as a Bakwin fellow. I shared my own stories from graduate school of being punished for pointing out an obvious misinterpretation of a double negative in a book on John Stuart

Mill. (The comment on my paper sniffed that the book had been "peer-reviewed.") My defense of Socrates in a seminar on classical rhetoric led to another professor telling me that I might even like reading the "fascist" Richard Weaver.

That afternoon, in 1993, as I checked out *Ideas Have Consequences* and *The Ethics of Rhetoric* from the library, I discovered an intellect of the highest order; yet I found no colleagues with whom to discuss Weaver's work. There were no panels at conferences, and Weaver was not included in the textbooks from which I taught courses in various English departments. But my outspokenness had invited others in similar situations to write, and it was through this informal network that I was put in touch with the Hamilton Institute and learned about the Bakwin fellowship. Later, as I reviewed the application, I noticed that nearby Syracuse University housed the papers of George Schuyler.

Mary Grabar is a writer in Atlanta.

His name happened to be staring at me from my bulletin board with a note to “research further.” In the out-of-print books about the Communist threat I had been reading, Schuyler was noted as a patriotic anti-Communist. He happened to be black, a fact that gave greater cause to academics to push him down the memory hole. I had not been exposed to his novels, or to his many essays about civil rights, world and national politics, and literature, either in my graduate studies of American literature or in the anthologies and textbooks I was required to teach from that regularly featured Martin Luther King, Malcolm X, and victims of the “prison-industrial complex.” I carried out all the books published on Schuyler from my university’s library with one arm.

I wondered why this superb stylist was not known by my colleagues in English departments. Dubbed the “black H.L. Mencken,” George Schuyler (1895-1977) was one of the most influential and widely read black intellectuals. After noticing his columns in the *Pittsburgh Courier*, Mencken had invited him to contribute to the *American Mercury*. Even though his writing appeared in the *Messenger* and the *Nation*, Schuyler did not adhere to any official editorial orthodoxy. (Nor did he in John Birch Society publications later!) What was consistent was his skewering of “Negrophobes” and opportunist black preachers/civil rights leaders/politicians alike. His suspicion of grand, redistributive plans came early. Franklin Roosevelt’s National Recovery Administration (NRA) he rechristened “Negroes Robbed Again.”

On the occasion of Mencken’s death, Schuyler described in his *Courier* column the personal and national loss: “Upon his poignard,” he wrote on February 11, 1956,

he impaled the frauds, demagogues, Kluxers, wowsers and hypocrites who cluttered the national scene then as now. Foe of prohibition, blue laws, evangelical obscenities, communism, color discrimination, New Dealism and similar afflictions to which America seems to be peculiarly heir, he laid about him with energy, ebullience, erudition and delightful mastery of paradox and

hyperbole. Almost every editorial, column and literary criticism he wrote was an intellectual treat as heady as a snort of old bonded bourbon or a puff of pure Havana cigar.

Beginning with his essay “Our White Folks,” Schuyler did his own “impaling” of *American Mercury* readers with stabs such as:

The attitude of the Northern white folks, in particular, puzzles and incenses [the black man]. . . . Here are folks who yawp continuously about liberty, justice, equality and democracy, and whoop with indignation every time a Senegambian is incinerated below the Potomac or the Belgians burn another village in the Congo, but toward the Negro in their midst they are quite as cruel as the Southern crackers.

Rather daring for 1927. From the beginning, when he wrote letters to the editor from his Hawaii Army barracks, to his last columns shortly before his death, Schuyler promoted the idea of racial equality, attacking all tactics of racial exploitation without regard to offense taken, or threats from editors or readers. All were subject to impalement upon his pen—including Dr. King. After numerous warnings and threats, Schuyler was forced out in 1966 from the *Courier*, one of the most widely read black newspapers in the nation (in large part thanks to Schuyler), for whom he had worked for over 40 years. In a 1968 essay entitled “The Reds and I,” Schuyler reminded readers that “the later fashion of Martin Luther King, Jr. and the Sixties’ squadrons of C.O.R.E., S.N.C.C., and the W.E.B. Du Bois Clubs” were presaged by tactics of the 1930s when Communists used blacks to provoke rioting, gain publicity, and foment anti-American propaganda. Schuyler objected to King’s antiwar position, his socialist economics, and his associations with Communist groups and suspects.

That Schuyler spent his final years justly obscured to irrelevance for treasonous stands is the attitude of the few black studies scholars who have undertaken to study Schuyler. In the one full-length treatment, a dissertation-

turned-book entitled *George S. Schuyler: Portrait of a Black Conservative* (2007) by Oscar R. Williams, who teaches Africana Studies at SUNY Albany, Williams advances his thesis that Schuyler was on “a quest for mainstream acceptance” evidenced by his “conservative and reactionary opinions on African American issues.” Leaning heavily on the late Carl T. Rowan’s characterization of Schuyler as “shrewd for telling white America what it wanted to hear and for trying to portray himself as ‘the grand American patriot,’” Williams asserts, “Despite [such] criticism and tirades, Schuyler continued to write articles and columns dedicated to fighting communism.”

It does not seem to occur to Oscar Williams that it was the popular syndicated columnist Rowan who was speaking to a large white audience, which congratulated itself on its progressivism on race issues and regarded the threat of communism as a nonissue. And Williams, like many colleagues, strikes some low blows as well. This is the way he refers to Schuyler’s wife’s suicide after the accidental death of their only daughter at age 35: “The Schuyler family had died long before [daughter] Philippa and [wife] Josephine’s tragic demise. Schuyler’s indifferent personality and relentless pursuit of professional fame failed to give his wife and daughter the emotional harbor they needed.” Williams relies on a single secondary source for this claim, but the evidence from the archives that I’ve seen suggests otherwise.

Jeffrey B. Ferguson, in *The Sage of Sugar Hill: George S. Schuyler and the Harlem Renaissance* (2005), also finds Schuyler’s conservatism odious. Ferguson misrepresents Barry Goldwater as “a powerful congressional enemy of civil rights” to advance the thesis that Schuyler’s support of Goldwater must be attributed to racial self-hate. To further advance the psychological diagnosis, Ferguson claims that Schuyler’s use of satire offered a means of “severing the powerful emotional circuit of suffering, revenge, and guilt at the heart of race melodrama.”

Of course, Schuyler bristled at just such “race melodrama”—especially the “mawkishness” of white liberals. Nonetheless, in the one slim collection of Schuyler’s essays, *Rac[ing] to the Right* (2001), editor Jeffrey B. Leak diagnoses Schuyler’s self-marginalization in the head note to a 1967 Schuyler speech to an organization called the Christian Freedom Foundation: “His audience was undoubtedly white, Christian, and conservative. By this point Schuyler had marginalized himself from traditional black leadership through his vilification of Dr. King and other race leaders.” This inversion of subject and object offers a variant on the theme of racial “self-hate.” It’s especially glaring in light of the fact that in this particular speech Schuyler (who was married to a white woman) argued for the elimination of miscegenation laws. John A. Williams in his 1991 foreword to Schuyler’s two pseudonymous fictional works, *The Black Internationale* and *Black Empire*, finds himself “disturbed” by both Schuyler’s and James Meredith’s conservatism, which he attributes to victimization by conservatives! Similarly, in the introduction to the 1994 reprint of *Ethiopian Stories*, Robert A. Hill presents that work as worth revisiting because it expresses the author’s “radical stance” before he “fell into political disfavor in the African-American community during the fifties and sixties” when Schuyler had “taken up with the conservative lobby’s attack against the civil rights movement as part of its anticommunist crusade.” Following their lead, Ohio University’s Sarah M. Iler uses invective such as “far-right” and “extremist” in her 2010 master’s thesis, “The Libertarian Sage: The Conservatism of George S. Schuyler.” Not surprisingly, her adviser, Kevin

Mattson, tells us on his web page that he is a fellow at the Center for American Progress and makes appearances on “NPR, Fox News (you bet!), Radio Nation . . . Air America . . . the Colbert Report”—among other programs that don’t require the qualifier “you bet!”

George Schuyler’s views were based on his beginnings, as the son of a chef and the stepson of a deliveryman and dining-car cook. Schuyler left Syracuse to join the Army at 17, worked on the docks, in a factory, and in a restaurant as a dishwasher, while living with the down-and-out in the Bowery. His views arose from

ler maintained that very few places offered better living conditions and freedoms for African Americans.

The academic hothouse, however, insists otherwise. “During the Cold War,” writes Sarah M. Iler, “[Schuyler’s] views were characterized by his defense of individualism, embrace of the free market as the solution to racism and racial inequality, and a fear of totalitarianism that manifested in paranoid right-wing anti-communism. By the end of the 1960s, Schuyler had moved into the far-right fringe of the American political scene.” We can see the hand of Mattson guiding the pen of Iler here and directing her to pre-



Malcolm X, George Schuyler, 1964

his experiences, as well as from some dangerous writing assignments, such as investigating the exploitation of black levee workers in the South in 1932, and packing a gun to travel to Liberia in 1930-31 to report on the practice of slavery by descendants of blacks who had emigrated from the United States. His world travels, especially to Central and South America, gave Schuyler a broad perspective: He noted the regional prejudices among blacks in the United States as well as between the tribesmen who transported him by boat in Africa. And in spite of the prejudice that still afflicted America in his time, Schuy-

ler approved sources to claim that “industrialization, labor displacement, overproduction of commodities, the rise of purchases made on credit or installment buying, inequalities in income and the distribution of wealth” led to the Great Depression. That a “fear of totalitarianism” in the 1930s might be legitimate does not seem to occur to this emerging historian; that anti-communism could be more than “paranoia” is not entertained on its historical merits either.

Sadly, Sarah M. Iler’s scholarship is

typical. How many students can buck their professors? How many students are even exposed to alternative views? I learned about Richard Weaver by accident, but since the 1990s, his name has been forgotten by even more professors. As for the civil rights movement, there are only two sides, and they are represented by Martin Luther King and Malcolm X. Those like George Schuyler and the millions, white and black, who may find his opinions congenial will not get a fair hearing on campus. But he deserves a place in the pantheon, and the professors of Africana Studies should not have the last word. ♦

"A timeline released by the House Transportation and Infrastructure Committee on Tuesday shows that GSA executive Jeffrey Neely took five trips totaling 44 days, including a 17-day trip to Hawaii, Guam and Saipan that he and his wife planned as a birthday celebration."

—Associated Press, April 17, 2012

PARODY

U.S. GENERAL SERVICES ADMINISTRATION
ONE CONSTITUTION SQUARE
1275 FIRST STREET, NE
WASHINGTON, DC 20417



April 23, 2012

The Hon. Jeff Denham, Chairman
The Hon. Eleanor Holmes Norton, Ranking Member
House Transportation and Infrastructure Subcommittee on Economic Development,
Public Buildings & Emergency Management
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Denham and Delegate Norton:

I am writing in response to your initial query regarding what improvements we intend to make at the General Services Administration. As you know, the GSA is vital to the functioning of the federal government. As was explained during my testimony, the GSA provides through consultation and advisement the coordination of consultative services by means of advisement on sector efficiency and efficient sectoring based on federal coordination of advisement and consultation services. How the federal government would operate without us is simply inconceivable.

But we can do better—on this, I agree. Therefore, the GSA will be holding a Joint Conference on Integrity and Accountability with the United States Secret Service, to be held next month at the Four Seasons in Bangkok, Thailand. With the rise of China, the GSA considers the strengthening of ties with our Asian allies to be of utmost importance.

Integrity and accountability are understandably on the minds of lawmakers and the public alike these days. As such, the conference will consist of specific activities that emphasize such values. These team-building exercises will include meditation, massage therapy, and group hydrotherapy—a less expensive alternative to individual sessions. And with the assistance of Thai hydrotherapists, we will be contributing to the local economy. I can assure you both that from now on, the GSA, in coordination with the Secret Service, will be getting the most bang for its buck.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan Tangherlini".

Daniel M. Tangherlini
Acting Administrator and Social Chair
General Services Administration