NOTES TOWARD A NEW ECONOMICS
GEORGE GILDER

the weekly Standard

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TRAIN WRECK AHEAD!

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The Sensitivity Apparat, cont.

Earlier this year, Mark Hemingway reported in these pages on the bureaucratic busybodies at state and local "human rights" commissions trampling all over the First Amendment ("The Sensitivity Apparat," February 4). In the last few years, they've been particularly aggressive at enforcing an absurdly expansive view of gay rights using the threat of civil fines and dragging businesses and religious organizations through years of administrative hearings over petty complaints.

Examples abound: The New Jersey Division on Civil Rights stripped a Methodist organization of tax-exempt status for declining to let their worship space be used for a lesbian commitment ceremony. The New Mexico Human Rights Commission fined a Christian couple who own a wedding photography business $6,637 for not wanting to photograph a gay commitment ceremony. A Vermont inn paid $30,000 to settle a human rights commission complaint over an employee misrepresenting the couple and their attempt to comply with a law forcing them to host same-sex weddings. A Kentucky printer currently faces charges by the Lexington-Fayette Urban County Human Rights Commission for refusing to print T-shirts promoting a local gay rights event.

The Scrapbook has long suspected that this targeting of religious objections to same-sex marriage is driven by some not-so-healthy impulses, and for proof of that we draw your attention to a small local drama playing out in Sioux City, Iowa, where a pastor is asking for the removal of a newly appointed member of the city's human rights commission. The city council on July 8 appointed Scott Raasch to the commission, which adjudicates discrimination complaints. However, the Rev. Cary Gordon of Cornerstone World Outreach brought to light threatening comments Raasch had left on Gordon's Facebook page over Gordon's vocal opposition to the Iowa supreme court's legalizing gay marriage. According to the report from the *Sioux City Journal*:

> In one comment, Raasch wrote: "You are haters and bigots and you will get what's coming to you sooner or later. I hope you rot in hell."
>
> Gordon replied, "I hope you repent of your sins and accept Jesus as your Lord and Savior. I wouldn't want you or anyone else to go to hell."
>
> Raasch wrote, "I know Christ and don't need a snake oil salesman like you to tell me about him. I guess that's the difference between us because I think there are many people that deserve to burn in hell ... including you and your entire family."
>
> "He gives blatant death wishes to anyone who disagrees with his political or sexual views," Gordon said Thursday. "He is obviously unstable and filled with raging hatred."

Raasch has since apologized, saying, "I would like to say that if I caused him or his family any stress, I do apologize for that, as that was not my intention." That's an interesting way to phrase it. The Scrapbook wonders what exactly *was* the intention of those remarks.

Regardless, two of Sioux City's five city council members are standing by Raasch and say they expect him to adjudicate discrimination complaints fairly. And if you believe that, we'd like to sell you the Siouxland Veterans Memorial Bridge. ♦

Fresh Prince

The Scrapbook does not usually take notice of royal births around the world, but you had to have been in serious misanthropic mode to fail to notice the birth of Prince George Alexander Louis of Cambridge, third in line of succession to the British throne, last week in London. Whether he will someday succeed his great-grandmother, grandfather, and father to become King George VII is up to the gods, of course; but The Scrapbook wishes him and his parents good health, much happiness, and long life.

Should Americans care about such things? Well, no and yes. To be sure, the United States declared its independence from Great Britain 237 years ago, and as a republic, we are constitutionally resistant to hereditary monarchy. But as The Scrapbook has said in other circumstances, Great Britain is an old and faithful friend of the United States, our fighting ally in two world wars and a cold war, and we speak English and adopted the English common law and read Shakespeare and Jane Austen, and so on and on. To be sure, the power of the British monarchy is almost entirely symbolic; but constitutional monarchy seems to work within British democracy, so we end up wishing the royal prince well without attaching too much significance to his arrival.

One afterthought, however: Almost any milestone of this sort in the British royal family attracts both (a) an inordinate amount of attention in the United States of America, and (b) much handwringing about that amount of attention in the aforementioned U.S.A. In fact, Americans have been gaga about royal births and weddings for some time, as well as agonizing in print about the popularity of the royal family in this country, at least since the birth of the eldest son of the Prince of Wales—in 1864.

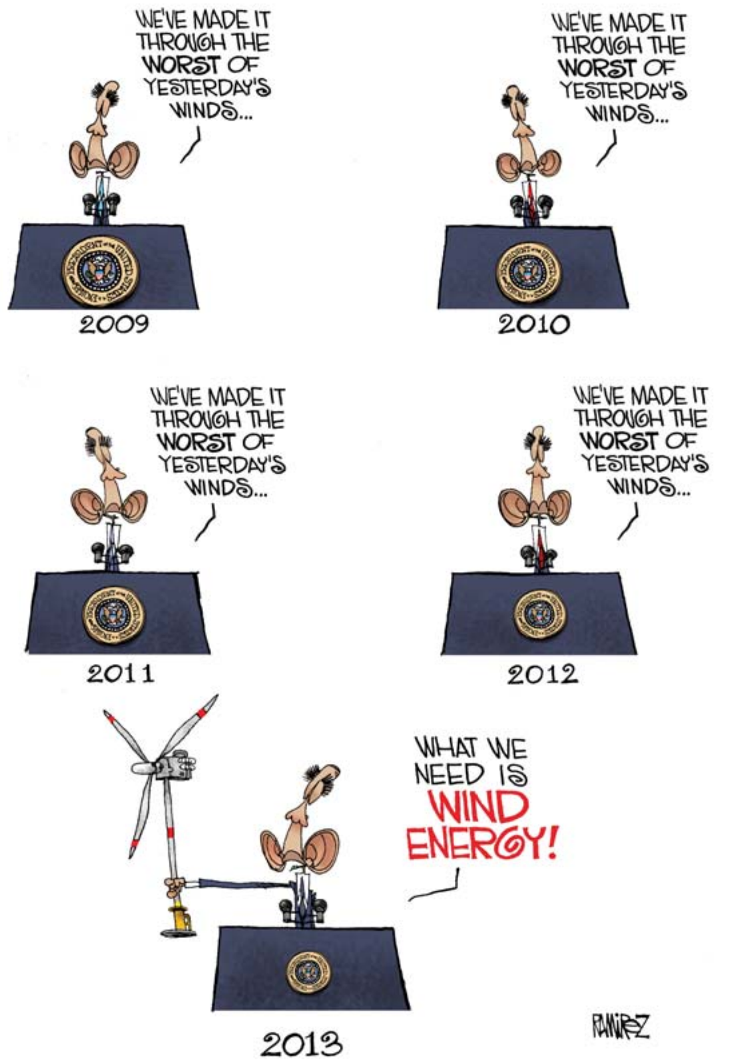
The Scrapbook's view is that all this is, at the very least, entirely harmless. A large number of Americans are equally gaga about the lives of movie stars, politicians, and professional athletes. Indeed, very nearly as much ink was recently spilled over the (out-of-wedlock) birth of a child to sex-tape star Kim Kardashian and bad-boy rapper Kanye West. Say what you will about Prince William and Kate Middleton, and their place in a historic line stretching beyond a millennium: At least they didn't name their son North (Kanye West), or Apple (Gwyneth Paltrow), or Memphis Eve (Bono). And unlike the late king of pop Michael Jackson, royalty of another sort, they are at least entitled, by law and precedent, to call their son Prince. ♦

Mitch vs. Zinn

Eyebrows at campuses around the country furrowed with concern last week over an Associated Press report involving former Indiana governor and current Purdue University president Mitch Daniels. Indeed, "AP Exclusive: Daniels looked to censor opponents," is one heck of a headline to hang on four emails the wire service stumbled upon in a Freedom of Information Act request—especially when the emails actually confirm Daniels's commitment to high academic standards, not cast doubt on them.

Daniels's supposed thoughtcrime is pointing out that Howard Zinn's *A People's History of the United States*, a popular left-wing text, is a fraudulent work of scholarship. When he found out an Indiana University summer institute for schoolteachers was awarding professional development credits for reading the book, Daniels called it "a truly execrable, anti-factual piece of disinformation that misstates American history on every page."

Daniels's opinion is spot-on, but don't take his word for it. The president of the National Association of Scholars, Peter Wood, runs down the recent criticism of Zinn's book at the *Chronicle of Higher Education*. Well-known liberal Princeton University historian Sean Wilentz said Zinn "ceased writing serious history. He had a very simplified view that everyone who was president was always a stinker and every left-winger was always great." Georgetown professor Michael Kazin, an editor at the left-wing journal *Dissent*, said, "Zinn's big book is stronger on polemical passion than historical insight. For all his virtuous intentions, Zinn essentially reduced the past to a Manichean fable." And this past March, the



New Republic published a damning essay by David Greenberg, an associate professor of history and of journalism and media studies at Rutgers University, "Agit-Prof: Howard Zinn's influential mutilations of American history." It's beyond dispute that Zinn's book isn't up to the kind of academic standards that justify it being taught as history, and the fact that Daniels thought public school teachers should receive no credit for reading it is hardly a scandal.

It's only controversial because leftists have spent decades celebrating Zinn. (It's even become a touchstone in popular culture—Matt Damon's character in *Good Will Hunting*, a supposed genius, gave the book an extended plug.) The only possible reason one of the nation's biggest media outlets is calling Daniels a "censor" is that the left still feels it will lose credibility if the truth about Zinn becomes widely known.

In fact, Zinn's influence may be on the wane. True, over 90 members of Purdue's faculty have signed an open letter hyperventilating that Daniels's emails call into question the "very legitimacy of academic discourse." But as *First Things* pointed out, Daniels, the former head of the Office of Management and Budget, is good with math, so he can relax:

> There are roughly 1,800 faculty at Purdue University, and just 90 of them signed this letter. There are 34

active full-time faculty in the History department, and just 15 of them signed it. There are 17 specialists in one branch or another of American history in that department, and just seven of them signed it. The History department at Purdue appears to be in better shape than one might have guessed, for a major American university these days.

Sleep tight, President Daniels. The tumbril is not arriving for you any time soon. ♦

Dysfunctional Barber

It's been a while since Benjamin R. Barber, the left-wing political scientist and ex-Howard Dean adviser, attracted the attention of The Scrapbook. Barber is one of those anticapitalist types who is careful to disguise his unpalatable ideology in anodyne terms—see *Jihad vs. McWorld: How Globalism and Tribalism Are Reshaping the World* (1995)—in order to be welcome at Davos, or the Kennedy School, or Foundation World.

So we were a little surprised when a galley of Barber's latest volume landed on The Scrapbook's desk. Like most publicity-minded intellectuals, Barber is adept at riding the trending waves, tailoring his message to the subject du jour. (The subtitle of *Jihad vs. McWorld*, his antiglobalization screed, was switched in timely fashion to "Terrorism's Challenge to Democracy.") But he seems to have lost his touch this time: His new book, *If Mayors Ruled the World: Dysfunctional Nations, Rising Cities* (Yale), arrived on the very day that the city of Detroit declared itself bankrupt—a bombed-out metropolis drowning in billions of dollars of debt—after decades of following Barber's advice.

Of course, none of this will stop Benjamin Barber and his cohort from extolling the virtues of burdensome taxation, overregulation, and a bloated public sector, or endanger Barber's standing with his patron George Soros. But it is pleasant to witness, if only for a moment, this delightful convergence of progressive theory and human catastrophe. ♦

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A Tanner in Summer

Just out of college I ran into my acquaintance Mona at a party in Boston. She was leaving the next day for the house on Mahone Bay, Nova Scotia, where she had spent her summers growing up. Mahone Bay was remote and beautiful, she explained, and no one had ever heard of it. I told her I had heard of it. My grandmother was from Mahone Bay.

"What was her maiden name?" Mona asked.

"Tanner," I said.

She gasped. "You're a *Tanner*?" She was bug-eyed. Her mouth was hanging open.

"Well, you could say that," I said, with all the modesty I could muster. My grandmother was stylish, eloquent, and well educated. So were my great aunts and uncles. It had not occurred to me that the family might actually have been *grand*, but it wouldn't have surprised me, either.

"You have got to come meet your relatives," she said. "Promise me." I was surprised. I had thought Mona hated me.

But that week she phoned me from a ship-to-shore radio. Ship-to-shore made people sound like they were speaking out of the bottom of a toilet while gravel was being quarried nearby. Mona told me to get the overnight ferry from Portland to Yarmouth, and then I heard her holler: "*Fummum come wimf you!*"

"Someone's coming with me?" I shouted back.

"*Taffy Pinkwing.*"

"Taffy Pinkwing?"

"*Pickwing.*"

"Ah, Pickering!"

"*Yef. Mere bock.*"

"Meet her on the dock?"

"*Yef.*"

In Portland two days later I walked up to a pretty woman with a duffel and said, "Ms. Pickering?" To my delight, she said yes. We had two hours before the boat left—not only was she beautiful, she was prompt—so I suggested we get a beer. She was a friend of Mona's from prep school. When we started telling stories about Mona and various mutual friends, it was clear she was funny, too. Lucky me! We had a whole night of travel ahead of us. We bought some good bread from a deli to eat on the windy top deck along with the rest of the travelers too young to afford (or want) a cabin. Her conversation enthralled me until the other voices quieted and the rocking of the boat lulled me to sleep.

TOM LABAFF

We were entering Yarmouth Harbour when the rising sun woke me. She was lying with her back to the sun and the wind feathering her hair.

"Good morning, Taffy," I said.

Her eyes popped open quicker than I expected. "*What* did you say?"

When I repeated myself, she fixed me with what used to be called a basilisk's stare. Jeesh, I thought. Maybe she's not a morning person. I waited for her mood to lift.

Out on the road, as we began thumbing a northbound ride, I said, "You know, Taffy, I —"

"It's *Cathy*," she said. "C-A-T-H-Y." And those were about the last words she ever spoke to me.

Apologies were unavailing. The innocence of my mistake didn't mitigate it. Nor did our camaraderie of the evening before. That, in fact, was the problem. Cathy saw "Taffy" as an irredeemably low-class name. After 12 hours with her, I had deemed it plausible that it was her name, and that was all that mattered. It spoke ill of me that that name was in my vocabulary in the first place.

We got to Mona's around noon. At lunch, Cathy joked with Mona's parents with the same giddiness and wit that had beguiled me over beer the night before. But for me she reserved this strange look as if she were trying to touch her brow with her lower lip. It was hard to read the exact nuance. It was somewhere between *Up yours* and *I hope you die*.

"Why don't you go visit your family?" said Mona after lunch. "They're down on the dock."

"Really?" I said. "How long have they been here?"

"They've always been here," she said.

There were a bunch of workmen and boatmen at the waterside, some young, some old, but all of them, I discovered, named Tanner. I spoke to a kindly old man who was sitting on the rocks, restringing lobster pots and wiping his nose on his shirt cuff. He invited me into a little cabin to speak to his wife, but she was too drunk to tell me much. I explained to her that my grandmother had been from this part of Nova Scotia, and that she had come to Massachusetts in the 1920s. I added that her name was Tanner, too.

The woman gave me a look of incomprehension, as if to ask: Isn't it everybody's?

Christopher Caldwell

Stop the Train—We Want to Get Off

On April 17, 2013, Senator Max Baucus committed a classic Washington gaffe: He spoke the truth. Baucus, along with every other Democratic senator, had voted for Obamacare in 2010. Now, at a Senate hearing, he told HHS secretary Kathleen Sebelius that when he looks at its implementation, "I just see a huge train wreck coming down."

The train wreck has gathered momentum in the three months since Baucus spotted it. The Obama administration's delay of the employer mandate and its abandonment of the enforcement of many of the rules governing the individual mandate have only made more obvious what a mess the exchanges—the central mechanism of Obamacare—will be.

If the exchanges are permitted to go into effect on January 1, 2014, there will be error, fraud, inefficiency, arbitrariness, and privacy violations aplenty. Isn't the Obama administration concerned about that? Yes. Wouldn't it be in their interest to agree to delay the exchanges? Not really. There's a reason the administration is vehemently resisting delay. There's a reason the Obama administration will claim, till hell freezes over, that all is well with the exchanges, or is going to be well, or would be well, if only the critics would be quiet.

Why? Because the exchanges are the beating heart of Obamacare. They are the mechanism for the government subsidies designed to make millions more Americans ever more dependent on big government. The Obama administration will no more acknowledge fundamental problems in the health care exchanges than Leonid Brezhnev would have acknowledged fundamental problems with Soviet central planning.

Which means the rest of us will have to point the problems out. And it means the rest of us will have to fight to prevent the exchanges from coming into effect. For now we can't repeal Obamacare, but we can contain its damage and lay the basis for its rollback. This fall, the single best thing our elected officials can do in the service of containment and rollback is to delay the implementation of Obamacare's exchanges and subsidies. Whether the attempt ultimately succeeds or falls short—fighting over the exchanges will highlight the coming train wreck.

After all, in politics, even train wrecks aren't self-explanatory. Facts have to be presented to a candid world. One way to do this is through legislative fights, aggressively prosecuted. The Republican party can shine a spotlight on Obamacare, to bring its exchanges out of the shadows and help citizens see their harsh reality.

What's more, Republicans have the opportunity and the obligation to explain this: The train wreck that is Obamacare isn't some sort of capricious or unfortunate accident or a failure of poorly designed provisions of the law. Just as economic shortages were endemic to Soviet central planning, the coming Obamacare train wreck is endemic to big government liberalism. It's not a bug, it's a feature.

Big government liberalism produces train wrecks. But this formulation is too passive. Barack Obama is driving this train. A majority of Congress signed us up for the ride. A majority of our fellow citizens sanctioned it. So now we're all passengers on a train whose journey won't end well.

What can we do? Stop the train. Stop it dead in its tracks before more damage is done. If this means disrupting the quiet car that so many in the Republican establishment enjoy riding in, so be it. If this means making the backbench GOP rowdies in the café car get down to serious

JACK DAVIS

work, so be it. And if this means insisting that Republicans lay out a plan for new tracks that will take us safely in the right direction and to a better place, so be it.

But first we need to remind ourselves that in a free country, we aren't condemned to being passive passengers on a train. In a free country, we shouldn't even all be on the same train. So let's stop this train . . . before it's too late.

—*William Kristol*

Don't Save This Court

ASSOCIATED PRESS

Edward Snowden has given the country and the world an unprecedented look into the National Security Agency's post-9/11 efforts to prevent terrorist attacks. Ignoring the success of those efforts, critics from the left and right have rained down opprobrium on the agency. But the criticism has not been aimed solely at the NSA. Snowden's leaks have also put a spotlight on the Foreign Intelligence Surveillance Court (FISC) and its role in approving various NSA programs.

The court was established by the Foreign Intelligence Surveillance Act (FISA) of 1978. Its members are federal judges, appointed by the chief justice of the United States for set terms to supervise the executive branch's electronic intelligence-related surveillance programs. Operating in secret, the court reviews requests from the Justice Department for surveillance warrants intended to collect intelligence related to espionage or terrorism—with the key caveat that the government has to show there is "probable cause" to believe that the surveillance target, if a U.S. person, is an agent of a foreign power or is engaged in terrorism-related activities.

Since 9/11, the court's writ has expanded to include approving entire surveillance systems, with particular attention to ensuring that procedures are in place to minimize the retention of, and eventually eliminate, information tied to Americans not suspected of being involved in spying or terrorism. Indeed, just this past week, the director of national intelligence made the unprecedented announcement that the court had renewed the government's authority to collect millions of Americans' phone records under an NSA program.

Skepticism about the FISC's role is based mainly on the fact that the percentage of approvals versus requests is extremely high. For some years, FISC judges approved every single request, and since the system's inception more than three decades ago, the government has had fewer than a dozen of its warrant applications rejected. Critics argue that the judges have failed to provide real scrutiny of the government's surveillance activities and have become "rubber stamps" for America's security services.

To address this perceived problem, proposals are now being floated by legal scholars, members of Congress, and even a former FISC judge to add to the process security-cleared lawyers, whose task it would be to argue against the government's request, providing something akin to the adversarial aspect of a traditional court proceeding. But this would be to double down on a legal regime that shouldn't exist in the first place and is, at a minimum, constitutionally dubious.

First, this additional requirement would make a complex system more complex. Moreover, it can't fix the fundamental reputational problem facing the court: FISC proceedings would still be secret, and its adversarial counsels would have to be pre-cleared and pre-approved by the very government they were intended to challenge.

The reason the court has such a high rate of warrant approvals is almost certainly that the layer of government lawyering required to bring a request forward is already extensive, and the evidentiary requirements for a request itself are such that most FISC approvals are easily decided. Nevertheless, disproving the "rubber stamp" claim is practically impossible given the classification that necessarily shrouds the court.

As Chief Justice John Roberts noted in his 2005 confirmation hearing, the Foreign Intelligence Surveillance Court is "not what we usually think of when we think of a court," lacking "the glare of publicity" in which "lawyers argue" and "the judges explain their decision to the public." While Roberts's language perhaps brushes too quickly by the ex parte decisions made by judges in granting, for example, search warrants in pending criminal cases, his larger point remains, in that these latter types of court orders are typically interim in nature, and the individuals affected must at some point be given the opportunity to challenge the order itself.

Moreover, because of advances in communications technology and the need to prevent terrorist attacks, FISC judges are now being asked to sign off on the kind of broad surveillance programs Snowden has made public. It's certainly a stretch to say this is a traditional judicial function. And, as we've seen this past week with the close vote in the House on Rep. Justin Amash's measure to shut down NSA's metadata collection effort, the fact that the court had approved the program hardly made it any more legitimate in the eyes of its Republican and Democratic opponents.

Prior to the 1970s, the constitutional rule of thumb was that collecting intelligence was an executive prerogative, and Fourth Amendment concerns only came into play when an individual's life or liberty was in jeopardy as an investigation turned to possible criminal prosecution. But, as the revelations and investigations of the 1970s showed, it was a discretion presidents had at times abused. Even so, as the surveillance court itself recognized in a 2002 opinion, all previous federal appellate courts have "held that the President did have an inherent authority to conduct warrantless searches to obtain foreign intelligence information. . . . We take for granted the President does have that authority and, assuming that is so, FISA could not encroach on the President's constitutional power."

But if Congress were to repeal FISA and remove the court from overseeing the government's surveillance programs, what oversight would exist on the president's exercise of this power? The answer, of course, is Congress—specifically, the intelligence committees of the House and the Senate.

The model for this more constitutionally appropriate system is the one that now governs covert action. Under the law passed in 1974, the president's decision to engage in covert action remains his alone to make, but he must notify the two committees in writing each time he undertakes a new covert program and provide Congress with a description and the scope of each operation. If a similar regime were set up to handle intelligence surveillance, the executive would not have an obligation to provide specific names of targeted individuals or wait until the committees approved a particular surveillance, but it would have to keep committee members fully apprised of its programs, giving them sufficient information to judge their effectiveness, amend them as necessary, or, in the case of extreme malfeasance, cut funds altogether.

The court's current role under FISA allows the executive branch to hide behind judges' robes in the exercise of its power and, in turn, weakens the incentive Congress has to weigh in on these matters. It would be constitutionally healthier if the responsibility for collecting intelligence and overseeing it were handled by the branches best suited to doing so.

—Gary Schmitt

More Bankruptcies, Please

The Packard building

NEWSCOM

Detroit shows the way.

BY DAVID SKEEL

Although Detroit's bankruptcy is only a few days old, it already has become clear that it could bring answers to two very important questions: whether municipal bankruptcy law is a plausible alternative to either bailouts or decades of fiscal malaise for large cities that are sagging under unsustainable debt, and whether it is time for Congress to enact a bankruptcy law for states too. So far, the answer to both questions looks like yes.

For many years, Chapter 9—the rules that govern the bankruptcy of cities and other municipalities—was viewed as a legal backwater, an option that might make sense for a local sewer or water district, but would never work for cities of any size. Critics of municipal bankruptcy loved to point out that, of the 600 or so municipal bankruptcies since the 1930s, only a handful involved substantial cities or counties. Not any longer. The signs that things have changed have been multiplying ever since Vallejo, California, filed for bankruptcy in 2008. After Vallejo came Jefferson County, Alabama (home of Birmingham), and the California cities of Stockton and San Bernardino. Detroit's filing puts an exclamation point on this trend.

Why the sudden spate of filings? One reason is simply that the unfamiliarity and—as Warren Buffett pointed out last year—the stigma of filing for Chapter 9 are declining as more cities use it. But there are larger factors as well. Many cities and states made unsustainably generous pension promises to public employees for decades, often financing them by selling bonds to investors who either paid little attention to the risk or assumed they could count on a bailout. These promises are now coming home to roost, and in the wake of the 2008 financial crisis, Congress and the states are less willing and less able to step in with bailouts.

Much of this writing was already on the wall in late 2010 when a number of lawmakers flirted with the idea of proposing a federal bankruptcy law for states. After a flurry of attention, the state bankruptcy idea was quickly shot down. Officials in California and New York insisted that no state would ever actually file for bankruptcy and that merely mentioning the word would have a devastating effect on the bond markets. These warnings were echoed by bond market participants and by conservative critics of state bankruptcy. Liberal critics suspected that state bankruptcy was a ploy to whack public employee unions, and insisted there was no need to alter collective bargaining agreements or pensions.

Detroit's bankruptcy filing has called all of these objections into question. If a major city is willing to file for bankruptcy, it is certainly possible that a state in dire financial distress might do the same if there were no good alternative. To be sure, the situation in Detroit was unusual. Mayor Dave Bing and the Detroit city council were not the ones who decided to file for bankruptcy. The initial recommendation was made by Kevyn Orr, a bankruptcy lawyer who was brought in to run Detroit under a controversial Michigan law that permits the governor to appoint an emergency manager when a city is deeply distressed. But

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David Skeel, a visiting professor at New York University School of Law, is the author, among other books, of Debt's Dominion: A History of Bankruptcy Law in America.

the ultimate decision to permit Detroit to file for bankruptcy rested with the governor, Rick Snyder. In June 2011, Snyder had said (much as the California and New York officials did) that he would never permit Detroit to file for bankruptcy. But given Detroit's predicament, he quite properly changed his mind. Snyder's willingness to face the flack suggests that a governor also might be willing to file for state bankruptcy if the state's financial condition were sufficiently dire.

Detroit's bankruptcy filing also undercuts claims that enacting a state bankruptcy framework would cripple the state bond markets. Similar claims were made about municipal bankruptcy when the predecessor to Chapter 9 was enacted in the 1930s, but none of the dire predictions came true. Only if bond markets are incapable of distinguishing between profligate cities or states and fiscally responsible ones would the mere enactment of a state bankruptcy law roil the markets for every state, not just the troubled ones. The market's reaction to the Detroit filing suggests the bond markets know the difference. Although a few pundits warned of disaster, there was very little change in municipal bond prices, even the day after Detroit's filing.

As for liberal critics' complaints about the implications of bankruptcy for collective bargaining agreements and pensions, they are right that public employees should not be expected to bear all of the consequences of a city's or state's financial distress but wrong when they suggest there is no need to make adjustments. Last month, Orr, the emergency manager, issued a comprehensive report that makes clear Detroit's only hope for a renaissance (not just a Renaissance Center) lies in $1.25 billion in infrastructure investment together with a restructuring of the city's major obligations—including roughly $1.43 billion in "certificates of participation," $1.01 billion of general obligation bond debt, and $3.5 billion or more in unfunded pension liabilities.

The question of whether pensions can be restructured has become the first major flashpoint in the case. Because the Michigan state constitution says that pensions cannot be diminished or impaired, retirees and their representatives have insisted that every nickel must be paid in full. Retirees have made similar arguments in the bankruptcies of San Bernardino and Stockton.

Although no court has explicitly ruled on the issue—one of the bankruptcy judges in these cases will almost certainly be the first—it seems very likely that pensions can be restructured. Under ordinary bankruptcy law, pensions would be fully protected up to the amount of funding that has been set aside for them, but any unfunded portion would be subject to adjustment. Because federal bankruptcy law takes precedence over conflicting state law in accordance with the supremacy clause in Article VI of the U.S. Constitution, the bankruptcy treatment should prevail.

The importance of the pension issue cannot be overstated. If Detroit—and by extension any other big city whose financial distress spirals out of control—is permitted to adjust its pensions and other major obligations, its bankruptcy filing could help bring an end to its decades of decline. What is true for Detroit is also true for states. The single biggest reason for the financial travails of the states that are currently in financial distress is woefully underfunded pensions. Under the laws of many states, there is almost no way to adjust the states' obligations to retirees, no matter how extravagant or underfunded the pensions are. Much as with Chapter 9, state bankruptcy could provide an escape if it were simply impossible to pay all the obligations in full.

The existence of a state bankruptcy law could have a beneficial effect even before any state actually filed for bankruptcy. Illinois is the most obvious case. Although Illinois's pensions are radically underfunded—by $97 billion under the state's own estimates and twice that under more realistic assumptions—the Illinois legislature has rejected proposals to try seriously to close the gap. If unsustainable pensions were subject to restructuring in bankruptcy, pension beneficiaries would surely put far more pressure on legislators to make sure the pensions are adequately funded.

It is, of course, far too early to tell what Detroit's bankruptcy will bring. But if bankruptcy works for Detroit, it surely will work elsewhere. New evidence of the potential benefits of a state bankruptcy law could well be the next great idea to come out of the Motor City. ♦

Leading from Behind

Mike Lee takes point against Obamacare.

BY STEPHEN F. HAYES

On Wednesday, July 17, Senator Mike Lee strode onto the Senate floor and called for Republicans to defund Obamacare. His case was simple. If the White House is calling for a yearlong delay in the implementation of two key elements of the law—the employer mandate and verification of eligibility for subsidies on health care exchanges—then Congress shouldn't fund it.

Lee's speech emphasized the fundamental unfairness of delaying the employer mandate but enforcing the individual mandate. "Republicans in

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Congress must now stand up for the individuals and families who do not have the money, lobbyists, and connections to get this administration's attention," he said.

> And we should do so using one of the few constitutional powers Congress still guards—its power of the purse. As long as President Obama selectively enforces Obamacare, no annual appropriations bill or continuing resolution should further fund implementation of the law. In other words, if the president won't follow it, the American people shouldn't fund it.

It was a bold move. And if ever there were a time for being aggressive, it's now.

For years, health-policy experts, economists, and Americans with basic math skills have understood that the Affordable Care Act wouldn't work as advertised. It simply wasn't going to be possible to (a) provide insurance to 30 million more Americans, (b) improve the quality of care, and (c) save money.

In the years since the law passed, the contradictions of the undertaking created a growing number of fissures in the foundation of Obamacare—obvious to those looking closely but largely unnoticed by the masses. That has changed in recent weeks. With longtime supporters openly questioning the viability of the reforms and the administration itself tacitly acknowledging major flaws, the edifice of Obamacare has begun to crumble. It's a big moment.

Lee's low-key, six-minute speech didn't garner much attention. Neither did media appearances he made later that week to push the idea. Nor did the letter to Majority Leader Harry Reid on the subject that he drafted with Ted Cruz and Marco Rubio—at least at first.

As Lee went about enlisting support for his strategy, one after another of his colleagues agreed to sign the letter to Reid, including two members of the GOP leadership in the Senate—Minority Whip John Cornyn and John Thune, chairman of the Republican conference. But then two things happened: The mainstream media began to report that Lee was pushing for a government shutdown, and the momentum of his effort first stalled and then reversed.

By Wednesday, July 24, five of the seventeen senators who had agreed to sign the letter asked to have their names removed—Kelly Ayotte, John Boozman, John Cornyn, Roger Wicker, and Mark Kirk.

This wasn't a coincidence. Sources tell The Weekly Standard that Senate minority leader Mitch McConnell made clear he didn't like Lee's approach and the fact that media reports were suggesting Republicans were eager for a shutdown.

Sen. Mike Lee of Utah

(A letter in the House drafted by North Carolina Republican Mark Meadows, similar to Lee's, had 66 signatures at press time—more than a quarter of the House Republican caucus. Meadows says that number is "growing daily," despite the fact that he and his colleagues haven't done much pushing.)

Lee says he anticipated some Republican opposition to his plan but didn't expect the intensity of the campaign to stop him. "The fact that some are pushing back as hard as they are is surprising," he tells me. He is frustrated that some of those in leadership who are quietly thwarting his efforts haven't come up with an alternative. When I ask him if he could describe leadership's preferred strategy, he responds: "No. There is no plan. This is one of the problems I had. They can criticize this plan, but they have offered us nothing."

By week's end, Lee had become the chief target of scorn from the conventional wisdom set. "When Mike Lee pledges to try to shut down the government unless President Obama knuckles under and defunds Obamacare entirely, it is not news—it is par for the course for the take-no-prisoners extremist senator from Utah," wrote *National Journal*'s Norm Ornstein, a onetime centrist congressional expert whose lamentations on angry partisanship have, as the forgoing suggests, all the hallmarks of an angry partisan. The "unprecedented" move is tantamount to "blackmail," Ornstein argued, blasting Republicans who discouraged the NFL from promoting the law. "What is going on now to sabotage Obamacare is not treasonous—just sharply beneath any reasonable standards of elected officials with the fiduciary responsibility of governing."

No, it's not. Many of the Republicans in Congress today were sent to Washington to derail Obamacare. "In the 2010 cycle, when I was running my campaign, there was a lot of talk that one of the first steps Republicans would take if we won would be to defund Obamacare," says Lee.

That didn't happen for a number of reasons, but at least in part because there were other possible ways to derail Obamacare—namely, via litigation before the Supreme Court or by electing a Republican president in 2012. Even some of those most enthusiastic about stopping the health care reforms were therefore willing to wait.

But the Supreme Court not only failed to block Obamacare, it made the law worse—a topic Lee explored in great depth in a book released earlier this summer, *Why John Roberts Was Wrong About Healthcare*. Lee, 42, a former clerk to Justice Samuel Alito,

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offers a principled and persuasive argument that Roberts had to rewrite the Affordable Care Act in order to uphold it. “Saving the ACA,” he writes, “required the majority to make fundamental changes to the law—changes that Congress never even considered, much less adopted, either before or after passing the ACA and submitting it to the president for his signature.” This judicial overreach, according to Lee, makes the need to overturn Obamacare even more urgent.

Efforts to defund Obamacare are unlikely to succeed—at least for now. Republicans would have to have spoken with one voice for their threats to be taken seriously. Too late for that, obviously.

Lee understands that it’s not enough to point to polls showing that Obamacare is unpopular or to highlight news articles demonstrating the many problems with the implementation of it. His efforts may succeed in pushing Republican leaders to come up with an actual strategy to stall Obamacare. ♦

Privacy Be Damned

The imminent health-exchange scandal.

BY MICHAEL ASTRUE

I have been dismayed, but unsurprised, to see that the Department of Health and Human Services (HHS) is already spinning the launch of its federal health insurance exchange this October. The federal and state “exchanges”—HHS recently rebranded them “marketplaces”—are a linchpin of the Affordable Care Act (ACA) that would allow uninsured Americans to assess and select health insurance plans. Repeated HHS assurances that the systems will be ready for launch have been a critical factor in state decisions as to whether they should use the HHS portal or build their own; at least 14 states have wisely chosen to build their own systems.

A functional and legally compliant federal exchange almost certainly will not be ready on October 1 for those who will have no choice but to use the federal portal. The reasons for failure are not short timelines (Congress gave HHS more than three years), political interference (Congress has not focused on ACA systems), or complexity (states have built well-designed exchanges). The reason is plain old incompetence and arrogance.

After enactment of the ACA, the former administrator of the Centers for Medicare and Medicaid Services

(CMS), Donald Berwick, had the responsibility of creating systems for the exchanges, which required peripheral support from the Social Security Administration (SSA) and the Internal Revenue Service (IRS). Congress did not appropriate special funding for this initiative, and Berwick was unwilling to shift adequate funds within CMS for this critical project. Berwick then failed to persuade HHS secretary Kathleen Sebelius to spend one penny on this effort from her massive ACA discretionary fund. Berwick also failed to bully SSA into paying for the entire system; he brushed aside the blatant illegality of that approach.

Civil servants at CMS did what they could to meet the statutory deadline—they threw together an overly simplistic system without adequate privacy safeguards. The system’s lack of any substantial verification of the user would leave members of the public open to identity theft, lost periods of health insurance coverage, and exposure of address for victims of domestic abuse and others. CMS then tried to deflect attention from its shortcomings by falsely asserting that it had done so to satisfy White House directives about making electronic services user-friendly.

In reality, the beta version jammed through a few months ago will, unless delayed and fixed, inflict on the public the most widespread violation of the Privacy Act in our history. Almost a year ago both I and the IRS commissioner raised strong legal objections to the Office of Management and Budget (OMB), which has statutory oversight responsibilities for the Privacy Act. As of the time of my resignation as commissioner of Social Security last February, OMB lawyers could not bring themselves to bless a portal in which I could change Donald Trump’s health insurance and he could change mine.

Incredibly, at the time of our appeal, no senior legal official at HHS had reviewed the legal issues raised by this feature of the ACA. It is my understanding that OMB, despite the recent furor over this administration’s lack of respect for the privacy of citizens, has ordered agencies to bulldoze through the Privacy Act by invoking an absurdly broad interpretation of the Privacy Act’s “routine use” exemption.

The Privacy Act is a general prohibition, subject to narrow exceptions, on disclosure of records between agencies or to the public. The “routine use” exception allows

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disclosure when the use of a record is "for a purpose which is compatible with the purpose for which it is collected." Privacy being essential to patient care, it is impossible to justify a "routine use" exception for a system knowingly built in a way that will permit disclosure of intimate health care data.

In this regard, the administration is not only preparing to violate the law, it is also holding itself to a far lower privacy standard than that to which it is trying to hold the private sector. In announcing the administration's "Consumer Privacy Bill of Rights," last year President Obama himself said, "American consumers can't wait any longer for clear rules of the road that ensure their personal information is safe online."

A June Government Accountability Office (GAO) report gingerly avoided all the significant privacy and operational issues surrounding the HHS system, and did little more than report that CMS admitted it was behind on certain parts of the program but felt it could catch up. Nowhere did our congressional watchdogs show any sign that they had actually tested the system and considered its readiness for public use.

Since the HHS inspector general and GAO have been snoozing on their watches, it is time for Congress itself to inspect the current version of the HHS software and decide whether delay of implementation of the exchanges is the right course of action. ♦

Hope for Mali

Go ahead and vote, but be sure to have the protection of Western airpower. BY ROGER KAPLAN

The town of Kidal, about 200 miles north of Gao, the big hub on the Niger River in eastern Mali, is hot and dry, and its police and electricity function erratically. The town, whose population is about 25,000, fell under the control of forces hostile to Mali's central government in Bamako, which is 950 miles to the south and east, in April 2012. The rebel forces are composed of young men with little experience outside desert warfare and banditry, and their use of government offices appears to have been more a matter of personal convenience than administrative continuity.

The 2012 war was launched by Tuareg tribesmen, who claim a large swath of Mali north of the Niger, which they consider their historic homeland, the Azawad, with Kidal as its capital. Following a lightning campaign in which they drove out the ill-trained and poorly supplied Malian garrisons in the north, they lost control of Kidal and the other population centers they had seized (or, in their view, liberated) in January and February to al Qaeda-affiliated jihadists who entered the fray. However, after imposing *sharia* in such historic cities as Timbuktu and Gao, the jihadists, whose leader is a veteran of Mali's Tuareg revolts named Iyag Ag Ghali, crossed the Niger in January of this year, proclaiming their intention to seize Bamako and establish a West African caliphate.

French forces airlifted in the nick of time from bases in neighboring Côte d'Ivoire and Burkina Faso stopped the jihad on the river and in a two-month campaign defeated the rebel forces. The secularist factions among the rebels, organized as the MNLA (National Movement for the Liberation of Azawad), reentered Kidal. The French troops advised the Malians marching in their rear to stay out of Kidal until terms could be reached with the MNLA. This was achieved late this June under the auspices of Burkina Faso president Blaise Compaore.

The Ouagadougou Accords, as the agreement is called, have two key features aimed at restoring peace and harmony and thwarting the advance of the jihad into black Africa. They depend on the completion of a cycle of elections, beginning on July 28 with a presidential election originally scheduled for last year but postponed because of war and unrest, including a coup d'état. The "international community," which in this case means Mali's West African neighbors, France, and the United States, has been unanimous in insisting on restoring democracy, such as it is practiced in Mali.

The first key provision of the accords is that the country's territorial integrity is not up for grabs, and the second is that negotiations between the government in Bamako and the MNLA should take place as quickly as possible to redesign the governance of the north. This could move Mali toward a federal system that would satisfy many of the northern tribes that have felt neglected or oppressed by the southerners since independence in 1960. Or it could simply buy both sides time that they would use to prepare for still another round of fighting.

The drama of a jihadist invasion of black Africa has been considerable and ominous; the human tragedy in Mali has been enormous, even by African standards. The famous arc of crisis has, in effect, descended several parallels southward: Mali has been the main stage, though by no means the only one, of a vast front in the war of civilizations, stretching from the Atlantic Ocean to the Red Sea. Notwithstanding the success of French and Chadian arms in the first half of 2013 with the discreet support of the United States, the years ahead are fraught with danger and uncertainty.

Is there a lesson in the past two years of Mali mischief for American policymakers? Observers in France and Mali note that U.S. policy has worked toward the restoration of the status quo ante, while advancing its long-term military containment strategy in Africa.

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Washington cut off most aid, as U.S. law requires, following the March 2012 coup d'état against President Amadou Tamani Touré by young army officers (American-trained but apparently inattentive to the civics lessons), who accused him of corruption to the point of enabling the northern insurgency. They argued that the once-popular, consensual president had subverted the country through mismanagement and collusion with the Tuareg gangs that had turned the north into a lawless and lucrative zone of drug-smuggling and hostage-taking and finally jihadist insurgency.

President Touré always was a U.S. favorite, but as a practical matter the Americans have stayed out of post-Touré Malian politics, except to periodically state our commitment to democracy. Whether this dogma, with its concomitant enthusiasm for elections, indicates the triumph of hope over experience or a cynical cover for a fundamental contempt for the Malians is probably a fair question, but also a largely irrelevant one in the short term, given the ascendancy of the military side of our policy.

The Ouagadougou Accords, at least until they break down, give France the opportunity to withdraw most of the 4,000 troops engaged in Operation Serval, entrusting security in the north to a multinational force, mainly African but with some contingents from elsewhere (including China, which reportedly is deploying a brigade of 500 or more elite commandos). The French assert, however, that they must maintain forces in Mali to pursue the al Qaeda networks in the region. The United States has supported their position, most significantly by helping them maintain and upgrade the airstrip at Tessalit, some 300 miles north of Kidal.

From the perspective of a military strategist, Tessalit and Kidal, upon which Tessalit depends for economic sustenance, were the real objectives of the 2012 war. Control of Tessalit is needed to command the airspace over the Sahara; other possible airbases, notably in Algeria, are not available. Kidal, in turn, is the historic capital of the Azawad, the Tuareg center. Control of Kidal is needed to assert political and military authority in the Sahel, and certainly to help maintain security from Mauritania to Chad, passing by Mali, Niger, and Burkina Faso.

It is not surprising that the battles for these towns were the most fiercely fought of the 2012 war. American military observers were well aware of the strategic stakes and attempted to resupply the Malian garrison in Tessalit from the air. And therefore it is not surprising, either, that the peace negotiations in Ouagadougou got stuck on the question of who would control Kidal.

Election posters in Gao, northern Mali

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In an effort to mediate between avowedly secularist, pro-West Tuareg and the Bambara-led Malians of the south, the French have tried to maintain a standoff between the lighter-skinned MNLA forces in Kidal and the Malian forces who followed French and Chadian troops north. The peace deal requires the MNLA to disarm, but it has cached most of its weapons. The city has been jumpy, with clashes between MNLA men and southern officials and troops. Both sides control certain neighborhoods and nominally agree to let the electoral process, followed by inter-communal negotiations, determine the future status of the area. The unstated axiom, however, is clear to all: Under no circumstances can any faction or tribal group control Kidal and Tessalit that is hostile to French (and American) airpower, for upon it depends the security of the Sahel.

To the extent American policy maintains a low profile in Mali while holding on to a big stick—beginning with the upgrading of airpower in the region—we will arguably have demonstrated that the better part of wisdom in Africa is patience. Assuring the security of Tessalit, in coordination with French forces (to whom we are selling drones, presumably for surveillance over the Sahara), is a necessary preliminary to the political task of finding out with whom we need to work in the region.

It may well be necessary, over time, not only to keep the jihadists out of Mali and environs, but also to keep the Malians from overdoing their internal quarrels. It seems possible Ibrahim Boubacar Keita, a popular former Touré prime minister with a following in the south and support among Tuareg notables in the north (who distanced themselves from the rebels during the fighting), will emerge as a consensus candidate in the July 28 presidential election from among the score on the ballot; but it may be useful to ask whether Mali is viable as presently constituted. With the northern and southern factions, and the factions within these, mutually accusing one another of banditry, war crimes, and massive human rights violations, it is quite possible that the jihad, while a complicating factor and an immediate security threat, is not the leading cause of unrest in Mali and other countries in the Sahel.

In a good world, the ancient communal hatreds, the contempt of "whites" for "blacks" and vice versa, would gradually work themselves out through the practice of liberal democracy. But in the world as we know it, other ways may be needed to attain the basic level of security essential for economic and social progress. There is no reason not to include, among these other ways, the possibility that the dogma of territorial integrity prized by African states could be open to a discussion leading toward, not balkanization and tribal war, but supple forms of federal governance. ♦

A Viable Political Strategy?

Democrats embrace late-term abortion at their peril. BY JOHN McCORMACK

The national limit on late-term abortion passed by the House of Representatives in June is a losing issue for Republicans, according to the conventional wisdom in the press and the Republican donor class. But there are two compelling reasons why the conventional wisdom is wrong.

First, nationwide polls indicate that Americans support a ban on late-term abortions. A *Washington Post*/ABC survey shows that by 64 percent to 28 percent, Americans favor limiting abortion at 20 weeks of pregnancy or earlier. A *Huffington Post*/YouGov poll similarly found that by 2-to-1 (59 percent to 30 percent) Americans support banning almost all abortions after the twentieth week of gestation. "One of the clearest messages from Gallup trends is that Americans oppose late-term abortion," according to a report by the polling firm in May. A *National Journal* survey found a smaller majority of women (50 percent to 44 percent) and independents (53 percent to 39 percent) support the late-term ban. But the measure still garnered "plurality support across all income levels and even fared well in the suburbs."

Second, the 10 most competitive 2014 Senate races are almost all in red states that are more conservative than the country as a whole. Of these 10 seats, 2 are held by Republicans (Kentucky and Georgia), 4 are held by retiring Democrats (West Virginia, South Dakota, Iowa, and Montana), and 4 are held by Democrats seeking reelection (Louisiana, Arkansas, Alaska, and North Carolina). Backing late-term abortion could be toxic for candidates in some of these states.

While walking between meetings and votes on July 16 and July 18 in the Capitol, the four red-state Democratic senators seeking reelection in 2014 commented on the proposed national late-term abortion limit for the first time, to THE WEEKLY STANDARD. Both Kay Hagan of North Carolina and Mark Begich of Alaska said they would vote against the House bill if it comes up for a vote in the Senate.

Wait, 20 weeks is *midterm, right?*

"I always wait to see legislation, to see exactly what it says, but I would oppose that," Hagan told me. "Yes," Begich replied when asked if he'd vote against the bill banning late-term abortions except in the cases of rape, incest, or when a health problem endangers the mother's life. "I'm pro-choice," he said.

But Mark Pryor of Arkansas and Mary Landrieu of Louisiana, two Democrats who voted for the 2003 partial-birth abortion ban, said they didn't know how they would vote. "I'll have to look at it. I haven't focused on it," Pryor told me.

"I'm going to look at it. I've voted to end late-term abortions," Landrieu said, referring to her vote for the partial-birth abortion ban.

"I do support, you know, the current constitutional outline which provides for decisions to be made which are very private in, you know, the early stages of pregnancy," Landrieu continued. "So I'm going to have to look at that bill and make a decision. I've opposed late-term abortion, but 20 weeks is midterm."

Self-identified pro-life Democratic senators Bob Casey of Pennsylvania and Joe Donnelly of Indiana didn't say how they'd vote. North Dakota senator Heidi Heitkamp said during the 2012 campaign that she believes "late-term abortions should be illegal except when necessary to save the life of the mother," but she too declined to take a position on the House bill.

Senate Democratic leaders have sent conflicting messages about whether they will allow a vote on a late-term abortion bill, and a Senate version of the House bill hasn't been introduced yet. But if it does come up for a vote, it will force senators like Pryor and Landrieu to make a tough choice: Vote "yes" and anger the most powerful Democratic interest group or vote "no" and put themselves at odds with a clear majority of voters.

"You can't get much more radical than opposing legislation that would protect women and babies from brutal late-term abortion beyond the fifth month of pregnancy," says Marjorie Dannenfelser, president of the pro-life Susan B. Anthony List. "Not only is opposing this common-ground measure a moral mistake, it is a political one as well, especially for vulnerable senators in solid pro-life states."

"That senators like Mary Landrieu would even hesitate to affirm this modest legislation shows just how beholden to the abortion industry many in the Senate have become," adds Dannenfelser, whose organization spent $11 million on the 2010 midterm elections. "As the 2014 elections approach, we will be working to ensure that constituents understand

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just how outside the mainstream these four senators have become."

If Landrieu decides to vote against the bill, she will have a very hard time arguing that abortions performed later than 20 weeks after conception are not late-term. At that point in pregnancy, a baby is physically developed enough to feel pain, and some can survive outside the womb.

"I'm here because it's easy for me to imagine these babies at 20 to 24 weeks post-fertilization age, because they are my patients in the [neonatal intensive care unit]," Dr. Colleen Malloy of Northwestern's Feinberg School of Medicine testified before Congress in 2012. "You can see the detail in the face," she said, showing a picture of an ultrasound. "You can see the movements—the 4D ultrasound images that we have now are real time images of babies kicking, moving, sucking their thumb—doing all the things babies do."

Contrary to Landrieu's assertion, the partial-birth abortion ban didn't actually ban abortions based on the gestational age of the baby, but rather its location. It banned a particular procedure used in some second- and third-trimester abortions in which the baby is first delivered breech past the navel before its skull is crushed by the abortionist. The late New York senator Daniel Patrick Moynihan called it "too close to infanticide." The bill passed in 2003 with the votes of 17 Democratic senators, including Joe Biden and Harry Reid, and was signed by President Bush. But the law did not prohibit other late-term abortion procedures, such as dismemberment and lethal injection.

In light of the trial of Philadelphia doctor Kermit Gosnell, pro-lifers and even some pro-choice writers like *Bloomberg*'s Margaret Carlson and the *Washington Post*'s Kathleen Parker have argued that there isn't really a significant difference between killing a 23-week-old baby outside the womb, an act that constitutes murder under the law, and killing her inside the womb for any reason, which is perfectly legal in most states.

And some of the most prominent defenders of abortion rights, including Planned Parenthood president Cecile Richards and House Democratic leader Nancy Pelosi, have been unable to explain why the acts committed by Dr. Gosnell constituted murder but killing the same babies moments before birth must remain legal. "This is sacred ground," Pelosi said, dodging the question a third and final time at a press conference in June.

When asked about the difference between infanticide and late-term abortion, Richards pointed to cases in which the baby is suffering from severe disabilities, effectively making an argument for fetal euthanasia. But when asked about late-term abortions on healthy babies, she walked away without even trying to make an argument.

There are likely thousands, if not tens of thousands, of elective late-term abortions performed every year in the United States. "Diana Greene Foster, associate professor of obstetrics and gynecology [at] the University of California, San Francisco, co-authored a forthcoming paper looking at more than 200 women who had abortions after 20 weeks for nonmedical reasons," writes Michelle Goldberg in the *Daily Beast*. "According to Foster, two-thirds of them were delayed while they tried to raise money to pay for a termination. Twelve percent were teenagers, some of whom went months without realizing they were pregnant."

Foster examined what happened to women who had wanted a late-term abortion but missed their clinic's self-imposed deadline. "About 5 percent of the women, after they have had the baby, still wish they hadn't. And the rest of them adjust," Foster told the *New York Times*.

The abortion issue was not a winning issue for Republicans in 2012 because Democrats, the press, and Republican gaffes focused attention on abortion in the case of rape, which Americans overwhelmingly think should be legal. But when the debate was focused on taxpayer-funding of abortion under Obamacare, as it was in 2010, or partial-birth abortion, as it was in 2004, it was a winning issue for the pro-life side.

"Even I have trouble explaining to my family that we are not about killing babies," Democratic operative Donna Brazile told the *New York Times* after the 2004 election. Abortion was an issue that "put us into the extreme and not the mainstream."

In every election from 1996 to 2012, Gallup found that the pro-life side has had a two-point advantage over the pro-choice side among voters who say "they would only vote for candidates who share their views on abortion." The exception is 2004, the year after the partial-birth abortion ban became law, when the pro-life side had a seven-point advantage. Perhaps it's no coincidence that 2004 was the only time in the past two decades when a Republican presidential candidate won the popular vote.

The extent to which the late-term abortion issue can reshape the abortion debate in favor of pro-lifers, as the partial-birth abortion debate did, depends in part on whether Republican candidates actually make an argument. In 1997, Gallup found that Americans backed a partial-birth abortion ban by a 15-point margin (55 percent to 40 percent). But in 2003, the margin of support had grown to 45 points (70 percent to 25 percent). Debate can and does change opinions.

In the wake of the damaging comments on abortion made by Missouri and Indiana Senate candidates in 2012, Republican consultants and aides privately say that many GOP politicians are still skittish and don't want to talk about the issue at all. But silence is simply copying the Romney campaign's unsuccessful playbook.

In 2012, roughly 10 percent of the Obama campaign's TV ads were on abortion. Many of the ads falsely claimed Romney favored banning abortion in the case of rape, and the Romney campaign's only response was to run a few ads informing voters that Romney did support that exception—without ever attacking Obama's extremism on the issue. The real lesson of the 2012 election and the Romney campaign is that it's hard to win an argument if you aren't willing to make an argument. ♦

A Careless Executive

Obama's failure to do his constitutional duty.

BY TERRY EASTLAND

Is Obama lawless? House Republicans certainly think so. The issue involves the Affordable Care Act, under which employers with 50 or more full-time workers must provide health insurance in terms defined by the statute or pay a $2,000 penalty per employee. Known as the "employer mandate," it was to take effect in 2014. On July 2, however, the Treasury Department announced it would delay enforcement of the mandate, and certain reporting requirements necessary for its administration, to 2015.

In response House Republicans said that Treasury lacked the legal authority to postpone the mandate. Not that they had changed their mind about the ACA: They were still opposed to it, implacably so, having voted to repeal or revoke parts of it some 39 times. Their point was, and remains, that if there is to be a change in the ACA, it must be legislated by Congress.

Willing to grant the administration the authority to delay the mandate by one year, Republicans wrote legislation to that end that was introduced by Rep. Tim Griffin of Arkansas—the plainly named Authority for Mandate Delay Act. Having control of the House, Republicans passed the bill with only one of their members voting against it and some 35 Democrats voting in the affirmative.

Instead of praising the House for its action and asking the Senate to approve the measure, the administration stuck to its position, announced in a veto threat prior to the House vote, that the authority-granting legislation was "unnecessary." "Worst thing said about my bill," Griffin wryly observed in an interview, "is that it's redundant."

In a letter to the House Energy and Commerce Committee, the Treasury Department explained its decision to delay the mandate as "an exercise" of its "longstanding administrative authority to grant transition relief when implementing new legislation like the ACA." The source of that authority, it said, is the Internal Revenue Code (IRC), the relevant section of which provides that the Treasury secretary "shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

I'm supposed to uphold the what?

Thus, as Treasury sees it, the IRC envisions circumstances in which new legislation that alters "law in relation to internal revenue" (as the ACA does) may need regulatory adjustments including the provision of transition relief for parties affected by the law's implementation. In its letter, Treasury cited 18 uses of its IRC authority to "postpone application of new legislation on a number of prior occasions across [the Clinton, Bush, and Obama] Administrations."

The Treasury's examples of transition relief seem to resemble the one afforded by the mandate delay. Yet whether the precedents are truly on point, as the lawyers say, and whether the Internal Revenue Code really confers the authority claimed by the Treasury secretary and his predecessors are fair questions, already being pursued by the Energy and Commerce Committee. However those inquiries turn out, there remains a constitutional disagreement between the president and the House over his decision to delay the mandate.

Rep. Scott Garrett of New Jersey made that clear by introducing a concurrent resolution stating that by postponing the mandate the president has actually violated the Constitution, specifically Section 3 of Article II, which provides that the president "shall take care that the laws be faithfully executed." The resolution observes that the Constitution vests all legislative powers in Congress, that Congress passed the ACA, that the ACA explicitly states that the employer mandate in the statute "shall apply to months beginning after December 31, 2013," and that the executive decided "that it would unilaterally delay the enforcement" of the mandate until 2015. The point of Garrett's resolution is that the president has no constitutional authority to pass a law on his own but has acted as if he did, usurping the legislative powers vested in Congress.

Garrett's resolution directs attention to the Take Care Clause. The clause imposes a duty on the president in the exercise of his executive power. Because the laws he must execute include the Constitution, he may not enforce laws he believes in good faith are unconstitutional—an interpretation made by the Justice Department's Office of Legal Counsel, in Democratic and Republican administrations alike. Enforcement

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of constitutionally valid laws, however, cannot take place in every circumstance, it is generally agreed. "The ordinary, efficient administration of the law requires discretionary decision making on the part of enforcers," write Robert J. Delahunty and John C. Yoo (both veterans of OLC) in their timely article on the Take Care Clause in the March 2013 issue of the *Texas Law Review*. Still, "that does not mean that all breaches of the duty are tolerable." The president may not refuse to enforce a law he disagrees with in terms of policy, or that he dislikes because of its political impact.

How courts might respond to a claim that the president lacked authority to delay the mandate—that such authority is not provided in those 18 precedents, or in the IRC or any other federal statute, or in the Constitution—is hard to say. Such a claim would have to be brought by someone with "standing"—someone who suffers a present or imminent injury that a court can remedy.

Employers would be hardpressed to meet that requirement, since the delay is intended to give them relief. Workers who aren't offered insurance by their employer during 2014 and wind up being fined for not getting their own coverage (under the ACA's "individual mandate") might have a shot, though still it would seem a long one, at standing. Even if a party with standing could be found, and a challenge to the president's authority made, a ruling against the government seems an uphill battle. As Delahunty and Yoo point out, "the prevailing standard of review for challenges to executive nonenforcement decisions is extraordinarily lenient." This is so in part because courts have often been reluctant in separation of powers cases to address constitutional issues.

Of course, it's not a lawsuit that House Republicans are hoping for. The argument they're making is political, in the best sense of the word, inasmuch as it respects the Constitution by insisting on its place as our guide to political action—action that in the matter at hand should have included Congress, and still could. ♦

The Odds of an Immigration Bill

Not impossible, but not that great.

BY FRED BARNES

At a dinner gathering in Washington last week, the members of Congress in attendance were asked if they think immigration reform will pass this year. The two Democrats said yes, the six Republicans no.

The sample was small, but the vote was more revealing than you might think. The odds were correct. There's roughly a 1-in-3 chance legislation that includes a path to citizenship for those here illegally will be enacted in 2014. And if it fails, less sweeping bills—strengthening border security, for instance—are doomed. Democrats will kill them.

What the attitude of the Republicans, all House members, reflected was the absence of fear either of voting against immigration reform or of not having the issue come to a vote at all. The notion that Senate passage in June of a bipartisan bill has put enormous pressure on House Republicans to act—well, it's just not true.

Republicans appear more concerned about a possible backlash from voting for immigration reform—and facing a primary challenge for doing so—than from voting against it. This is a change from the anxiety about alienating Latino voters that emerged after the 2012 election. Republicans don't expect the immigration issue to affect their prospects in next year's midterm elections, at least in House races.

This is short-term thinking, but that's hardly abnormal in politics. Should the Latino vote prove to be a problem for Republicans, it will come in Senate and presidential contests. In the states where Republicans hope to pick up Senate seats in 2014, however, the Latino vote is not a significant factor.

Perhaps I'm reading too much into a show of hands at a Washington dinner. But Rep. Luis Gutiérrez (D-Ill.), who relies on friendly persuasion to recruit Republicans on immigration, says there's been a GOP "relapse" recently. After making "real" progress, Republicans have suffered "a substantial case of amnesia about the last election," he wrote in the *Huffington Post*.

President Obama is partially to blame. Many Democrats believe Republican qualms on immigration reform spring from bigotry, cynicism, or extremism. In most cases, they don't. Thus, when Obama unilaterally postpones enforcement of the employer mandate in Obamacare, he raises legitimate suspicions he might suspend enforcement of border security.

Obama is also the least-skilled president in recent memory in dealing with Congress. His attacks last week on Republicans as cold hearted and ill motivated make it less likely they'll warm up to an immigration bill he's endorsed. To advance reform, the less Obama says, the better.

Gutiérrez is Obama's opposite. He invites Republicans to pro-immigration events and praises them for coming. In Bakersfield, California, last week, Rep. David Valadao (R-Calif.), whose parents emigrated from Portugal, backed "comprehensive" immigration reform with Gutiérrez looking on. Valadao got a standing ovation. "My whole life, I lived on a farm, so I

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grew up in a community surrounded by immigrants," he said.

Rather than join Gutiérrez at a Denver rally, Rep. Mike Coffman (R-Colo.) gave him a copy of an op-ed last week that appeared a few days later in the *Denver Post*. Coffman wrote that comprehensive reform "must show compassion to the families that have been here regardless of their immigration status." After becoming legal residents, they "could apply for citizenship and should be treated like any other applicant," he said.

Gutiérrez touts Rep. Paul Ryan (R-Wisc.) as "my guiding light. I know I get him in trouble every time I say it." Ryan is a longtime supporter of immigration reform, as was his mentor, the late Jack Kemp. Ryan attended a Gutiérrez event in Chicago and got several standing ovations.

Ryan's role is critical. He is widely respected by Republican House members and has the ability to persuade them on issues. His public role is minimal. Instead, he has been meeting privately with colleagues, urging them to support a GOP version of immigration reform. "Earned legalization," Ryan said during a Washington panel in June, "is not amnesty."

Like Ryan, Rep. Bob Goodlatte (R-Va.), chairman of the House Judiciary Committee, opposes a "special" gateway to citizenship for immigrants who entered the country illegally. But he's "open-minded" about other ways they could eventually become citizens, he said in a C-SPAN interview. His committee has already passed four separate immigration bills, including one to provide 500,000 visas annually for temporary farm workers.

The efforts of Gutiérrez, Ryan, and Goodlatte underscore the point that serious immigration reform is down but not out. It reminds me of tax reform in the 1980s, which seemed to have no constituency. The media repeatedly declared it dead. But it had influential advocates, and thanks to them it passed in 1986. Influential advocates are one thing immigration reform has plenty of. ♦

Thank You for Not Vaping

The irrational hostility to e-cigarettes.

BY ETHAN EPSTEIN

Smokeless, odorless, and, indeed, tobacco-less, electronic cigarettes, or "e-cigarettes," in common parlance, are projected to become a $1 billion industry this year. Yes, that's "electronic" cigarettes: battery-powered gadgets that convert liquid nicotine into vapor, which the user inhales. The act is known—unfortunately, if accurately—as "vaping." (It's important to note that one doesn't *smoke* an e-cigarette.) Some e-cigs are made to closely resemble actual cigarettes—they have the same shape and color and even an LED light at the end, designed to simulate a lit butt. They come in a variety of flavors.

While e-cigs may resemble traditional cigarettes in both form (inhale, exhale) and function (the efficient delivery of nicotine), they're probably considerably healthier than traditional "cancer sticks." Research on e-cigs is still in its early stages, but they don't contain many of cigarettes' most harmful substances, like carbon dioxide and tar. Nicotine itself, moreover, is not a carcinogen. "Over the short term, e-cigarettes are almost certainly less harmful than smoking cigarettes," Tom Glynn, director of the American Cancer Society's International Cancer Control, has said.

Because vaping feels like smoking, e-cigs could also prove to be more effective cessation aids than nicotine gum, lozenges, or patches. Michael Siegel, a professor at the Boston University School of Public Health, told the *Los Angeles Times* in early July, "I think that there is a lot of evidence that these products are extremely helpful to many people in helping them quit smoking." A recent Italian study found that 13 percent of smokers who tried e-cigarettes gave up traditional cigarettes; 70 percent of those ultimately quit e-cigs as well. That's a similar success rate to other methods of tobacco cessation.

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Patented in China in 2003, and on the market in Europe and North America since 2006, e-cigs started slow, but have taken off in the past couple of years, as taxes and restrictions on regular cigarettes have become ever more draconian. One analyst with Wells Fargo foresees sales surpassing $10 billion by 2017. In parts of Europe, particularly France, they're more popular than in the States. Even in smallish French cities, like Toulouse (population 440,000), there are dozens of small stores that deal exclusively in e-cigs. (It is hard to imagine Sartre sucking on an electronic cigarette, though.) And although e-cigs only account for about 1 percent of the sales generated by cigarettes, analysts see nothing but growth ahead. It's little wonder that tobacco giant Altria (the parent of Philip Morris USA)—if not literally smelling an opportunity—has announced its intention to get into the market, which has heretofore been dominated by smaller outfits.

The Food and Drug Administration, which has the power to regulate e-cigs, has yet to announce rules for the product. But a backlash from public health authorities at the state and local level has grown in concert with e-cigs' rising popularity just the same. One would think that the states most keen to unplug e-cigarettes would be ones with the most to lose from their rise; that is, states full of tobacco farmers, like Virginia and North Carolina. But that's not so. Instead, and seemingly paradoxically, it's the states with the most stringent regulations on cigarettes that have taken up the anti-e-cigarette cause with abandon.

In California, for example, the state senate recently passed a bill that would ban the use of e-cigarettes wherever cigarette smoking is banned—which is just about everywhere in that famously anti-tobacco state. Indeed, some California counties and towns have gone so far as to ban cigarette smoking in private rental properties. And one of those, Contra Costa County, recently added e-cigs to its smoking ban, meaning that, yep, it is illegal to use an e-cigarette in a private apartment. Boston has a similar law banning e-cigs wherever smoking is banned, as does King County, Washington, home of Seattle. (Other states and localities have—reasonably—banned the sale of e-cigs to minors.) It's odd that the states and localities most dedicated to weaning their populations off cigarettes would go after a potentially healthier alternative so enthusiastically. And it's even odder that e-cigarettes, which produce no smoke, would be banned from public places, given that the ostensible rationale for public smoking bans is to protect nonsmokers from secondhand smoke.

Perhaps the preemptive strike against e-cigs represents a stealthy introduction of the precautionary principle into American policy-making. The precautionary principle, in the words of the Science & Environmental Health Network, an advocacy organization, holds, "When an activity raises threats of harm to the environment or human health, precautionary measures should be taken *even if some cause and effect relationships are not fully established scientifically*." (Italics mine.) In effect, new technologies must be proven *not* harmful before they can be legalized, rather than the burden of proof being on the regulators to show that the new technology is harmful.

While the principle, which was formulated by early German environmental thinkers, is the law of the land in the European Union, it's never been adopted in the United States. Maybe that's one reason why some European countries, including the United Kingdom, have taken the step of regulating e-cigarettes like medicine. (This will grant the authorities vast oversight over them.) France, meanwhile, following California's lead, has announced its intention to ban e-cigarettes wherever cigarettes are banned.

SIGISMUND VON DOBSCHÜTZ

I'd virtually walk a mile for an e-cigarette.

The California senator who introduced the public place e-cigarette ban was nearly explicit in her invocation of the precautionary principle, saying, "We must always stand on the side of public health since we still do not yet fully understand the safety of chemicals present in e-cigarette vapors or when nicotine itself leaks from the products." (She also—bizarrely—claimed, "It simply makes sense to regulate e-cigarettes as a tobacco product when they are already prohibited in many public spaces," even though e-cigarettes are not a tobacco product.) And Glynn of the American Cancer Society, while attesting to the short-term benefits of switching to e-cigarettes, has also said, "What are the long-term effects of inhaling pure nicotine into the lungs? That is something we don't know."

Yet while the e-cigarette reaction may be an example of legislators trying to introduce the precautionary principle by stealth, something else motivates the antipathy towards e-cigs as well. As Gregory Conley, legislative director at the Consumer Advocates for Smoke-free Alternatives Association, says, "Those who work in 'public health' hate e-cigarettes because it goes against the denormalization campaign that they have been behind for several decades. The fact that tests on e-cigarette vapor have revealed e-cigarette use to likely be 98-99 percent less hazardous than smoking and that they help smokers quit is of no consequence to them. It looks like smoking . . . so it must be evil."

Three decades of increasingly punitive anti-smoking regulations have made American smokers a pariah class. Smoking has been thoroughly de-normalized and wholly stigmatized. Smokers are no longer viewed as doing something merely stupid or self-destructive; smoking, to many, is now morally wrong. In this sense, e-cig makers have probably erred by calling them "cigarettes," as it's raised the ire of those with a visceral hatred for smoking—and smokers. One also gets the sense that the banners think that sucking on an e-cigarette in a public place represents a defiant flouting of anti-smoking laws rather than what it really is: obedience to anti-smoking laws.

The FDA is expected to announce its regulations on e-cigs in October. But in the meantime, the anti-e-cigarette crowd should take heart: Both Charlie Sheen and Lindsay Lohan were recently spotted vaping e-cigarettes, which will probably do more to make them unattractive to the general public than anything the regulators can come up with. ♦

The Dishonor System

A user's guide to committing fraud on the Obamacare exchanges

By Christopher J. Conover

Let me stipulate that I do not condone fraud in any form. Moreover, I assume all Weekly Standard readers are law-abiding citizens who would neither commit fraud themselves nor encourage others to do so. My purpose is to inform such readers just how tempting fraud on the Obamacare health insurance exchanges will be in light of the recently announced delays in employer reporting and employer mandates.

There are three types of fraud worth considering, each reflecting different motivations and degrees of risk tolerance among the hypothetical individuals considered.

MISTREATED MIKE: LOW-INCOME, FULL-TIME WORKER IN A LARGE FIRM OFFERING HEALTH COVERAGE

Mike's situation: Let's start with Mistreated Mike, a $14.00-per-hour janitor in a 200-person law firm already offering health coverage. He works 40 hours a week, 50 weeks a year, making his total wage income $28,000. At 116 percent of the federal poverty level, it's tough to provide for his stay-at-home spouse caring for two toddlers, but he gets $6,026 in Earned Income Tax Credit (EITC) that helps out. Mike's proud that he's managed to provide health insurance for his family for years, but it's expensive. For 2014, he's selected the most affordable plan his company offers, but he's crossing his fingers that his family's out-of-pocket spending won't reach the average level expected for those who select such a plan: $5,000. Mike's employer pays much of the $14,100 family premium and fortunately has set up a Section 125 plan so that every penny of Mike's $3,241 contribution is tax-deductible. Still, that's a hefty 11.6 percent of his wage income, which might make it appear that Mike's coverage meets Obamacare's definition of "unaffordable." In that case, he would qualify for subsidized coverage on the exchange. Unfortunately, exchange eligibility is restricted to those whose cost for "self-only" coverage under their employer plan exceeds 9.5 percent of household income, and Mike has family coverage. Since Mike's share of a "self-only" premium would be only 4.9 percent of his income, he is not legally permitted to buy subsidized coverage through the exchange.

But Mike realizes that he is, in effect, also paying the employer's share of his premium in reduced wages. How? He has a twin brother doing the same work as a janitor for a neighboring law firm of the same size. However, because that firm consists only of a few high-paid partners and associates, along with an army of paralegals and legal assistants, it has decided to drop its health benefits in 2014. To replace the lost benefit, the company has already announced it will instead pay his brother about $8,000 more a year to do the identical job.

Mike's motivation: Here's what frosts Mike. His brother will get not only a much higher cash wage in 2014, but also a "Silver" health plan comparable to Mike's, paid for with $15,616 worth of taxpayer-financed exchange subsidies! (A Silver plan, under the Affordable Care Act, covers 70 percent of a typical plan member's expenses. In addition to the subsidy to pay the premium, someone at the income level of Mike's brother will also receive a cost-sharing subsidy to raise the coverage from 70 to 94 percent of his health spending.) After deducting all taxes and health expenses, Mike's net income is expected to be $26,884, whereas his brother's will be $33,350. Mike does not live in one of the 24 states moving forward with Medicaid expansion, so his only prospect for subsidized coverage is through the exchange. In short, Mike can boost his cash income considerably *if* he can get exchange-subsidized coverage.

The way Mike sees it, Uncle Sam is levying a substantial tax on him simply for working for a large employer that responsibly offers health benefits. How is that fair? Mike appreciates that by not taxing his health benefits Uncle Sam is giving him roughly a 10 percent discount on all his health spending. He just can't figure out why his brother is getting an 82 percent discount, especially now that his brother's wages are substantially higher than Mike's.

Given how well-informed Mike is, it won't surprise you to learn that he remembers all the sordid backroom

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deals that were required to secure votes for Obamacare—the "Louisiana Purchase," "Gator Aid," the "Cornhusker Kickback," and a deal with big hospitals, among others. And he's been appalled by the flagrant favoritism accorded certain political groups such as unions and public employees in Obamacare's rollout to date. Not surprisingly, the entire law is feeling to Mike like an organized kleptocracy—with vast amounts of taxpayer resources redistributed in a manner no one could possibly claim is fair. Mike has concluded that a government that gives his higher-wage brother a $15,616 subsidy for identical coverage clearly is not watching out for him. He's decided to do what it takes to tip a very unlevel playing field back in his own favor.

Mike's calculation: The administration's ineptitude in rolling out Obamacare has given Mike a lucky break. In 2014, his employer may not be reporting to the exchange any details about the coverage offered him at work. The final rule on premium tax-credit eligibility verification requires that any applicant for premium tax credits attest to the exchange whether he or she has employer coverage, its cost, and extent. Specifically, he will be asked:

> For the lowest-cost plan that meets the minimum value standard offered only to the employee (don't include family plans): . . .
>
> a. How much would the employee have to pay in premiums for this plan? $________
>
> b. How often?
> ❍ Weekly
> ❍ Every 2 weeks
> ❍ Twice a month
> ❍ Quarterly
> ❍ Yearly

Even though reporting to the *exchanges* has been delayed one year, all employers subject to the minimum-wage laws are required to send a notice to all *employees* by October 1, 2013. Also, the plan affordability/minimum-value information still must be provided.

What are the risks? Let's be clear: There are potentially steep penalties—up to $250,000—for committing fraud but not for making an honest mistake. According to legal site Nolo.com: "Although auditors are trained to look for fraud, they do not routinely suspect it. . . . They will give you the benefit of the doubt most of the time and not go after you for tax fraud if you make an honest mistake."

Indeed, the IRS flagged nearly five million tax returns for math errors in fiscal year 2011. This is many multiples of the 4,720 criminal prosecutions initiated by the IRS that year. Since the exchange will be electronically cross-checking income information against information it gets from tax filings, Social Security data, and current wages, Mike would be safest by honestly reporting his income to the penny and instead fudging the cost of coverage so that his company plan seems to fail the affordability test.

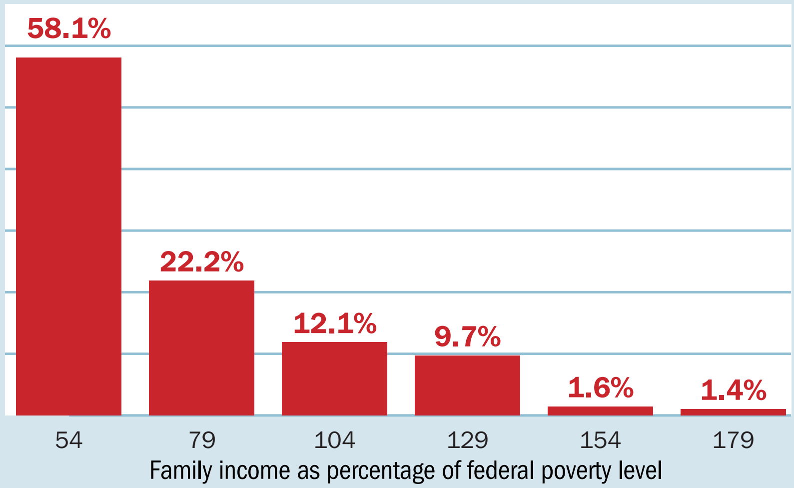
Depending on how Mike's employer reports this premium information to him (i.e., as a weekly, monthly, or yearly amount), he can simply make a convenient mistake. $2,660 a year is the magic number, i.e., greater than 9.5 percent of his income. So he needs to convince the exchange that his share of the premium exceeds this amount. If, say, his employer reports the actual employee-only premium as $26.54 weekly, he could report $56.54 as the amount the employee has to pay. This is not a flagrantly suspicious amount. Moreover, if later challenged, Mike could chalk it up to sloppy handwriting ("Oh, that's a 2, not a 5") or an inadvertent transcribing error.

Will Mike get caught? According to Timothy Jost at the *HealthAffairs* blog,

> If the exchange finds information incompatible with the applicant's attestation, it will ask the applicant to provide evidence to resolve the inconsistency. In most instances, however, there will be no electronic data available to confirm the attestation. In these cases, the exchange will select a statistically significant random sample of cases in which

The payoff for Obamacare exchange fraud increases greatly as family income declines

Net increase in cash income (after tax and health expenses) by committing fraud in 2014



Calculated from estimates reported in Stephanie Rennane, C. Eugene Steuerle, *Health Reform: A Four-Tranche System Updated and Revised.* Urban Institute, February 11, 2011.

> it only has the attestation and, after notice to the applicant, contact the employer to verify the information. If the employer provides information incompatible with the applicant's claims, the exchange will ask for further proof. In cases where the employer does not respond, however, or that are not part of the random sample, *the exchange will rely on the applicant's attestation* [emphasis added].

The rule does not articulate what is meant by "statistically significant random sample of cases." However, we can get a rough idea from the EITC program, where the IRS in fiscal year 2011 audited 2.2 percent of returns claiming such credits. Thus, Mike's odds of getting caught through the random sample are pretty slim; if he is unlucky enough to be caught, he essentially will be given advance notice that they suspect something and an opportunity to come clean.

Potentially, there is another way Mike could get caught. Both the exchange and the IRS are required (even in 2014) to notify employers every time one of their employees receives premium tax credits. After 2014, employers will be liable for a penalty if one of their employees gets subsidized coverage on the exchange. But in 2014, the question is what Mike's employer will do when notification is sent that he has obtained subsidized exchange coverage.

Quite likely, nothing at all. After all, what is the employer's incentive to respond to this notice? No adverse consequence would arise from ignoring it. Hypothetically, a highly diligent human resource employee with ethical objections to claiming a tax benefit improperly might elect to blow the whistle. But an employee that hyper-aware presumably also would recognize the gross inequity of the entire employer-mandate structure and the fact that Uncle Sam is effectively imposing a tax on workers in large firms, even as it provides massive subsidies to their equivalently compensated counterparts at large firms that "pay" rather than "play"—i.e., decide that paying the penalty is cheaper than providing health benefits. All things considered, it seems likely either that Mike's transgression will be ignored or that he will have the same opportunity to rectify his "inadvertent" error.

DESPERATE DAN: FAR BELOW POVERTY, FULL-TIME WORKER IN A LARGE FIRM OFFERING COVERAGE

Dan's situation: Desperate Dan is in the same boat as Mike, except that he's a much lower wage ($8 per hour) groundskeeper working at a law firm that already offers health benefits. His total wage income is $16,000 (plus an EITC payment of $5,355). He's divorced with three kids aged 19, 20, and 22; all have full scholarships to attend college but live at home since their scholarships only cover tuition. Moreover, like most public universities (70 percent), theirs don't provide health coverage for students. Because his children are too old to qualify for Medicaid coverage, Dan's bitten the bullet to help them out by buying the same policy that Mike did and including them as dependents on his plan. His state is not expanding Medicaid, but since his family's income is well below the poverty level (68 percent), he's not legally permitted to buy subsidized coverage through his state's exchange. You heard that right: Congress, in its infinite wisdom, made everyone below the poverty line ineligible to purchase private coverage through the exchange. Go figure.

Dan's motivation: As it turns out, Dan *also* has a twin brother who (I know this is incredible) works as a groundskeeper at the very same large firm as Mike's brother! He too gets paid an extra $8,000 a year for essentially the identical job since his employer has decided to drop health benefits. What's truly incredible, however, is that while Dan's brother obviously ends up paying higher payroll taxes than Dan—after all, his income is higher—he actually gets a bigger EITC check ($1,768 larger). His net after-tax, after-health-cost income ends up being $15,972 higher than Dan's. But even if Dan didn't have a brother making him feel resentful, he still would have a very strong motivation to find a way to break through the poverty-level income floor required to get exchange coverage.

Realistically, Dan's employer is not going to pay him $8,000 more in 2014 simply because he elects to forgo his employer-offered coverage in order to get heavily subsidized exchange coverage. Nevertheless, if he could obtain exchange coverage, then in return for paying merely $502 in premiums, he would get back $4,834 in subsidies to offset his $5,000 in out-of-pocket expenses for him and his sons. Including the $3,241 saved by forgoing his employer plan, he'd be ahead by $7,573, which is equivalent to a 50 percent boost in his after-tax, after-health-costs cash income. As we'll see, the payoff actually is $2,600 higher than this since, in order to get away with claiming a high enough income to qualify for exchange coverage, Dan will have to feed the IRS a parallel set of lies that will culminate in his qualifying for larger EITC checks in 2013 and 2014. Readers can judge for themselves whether the boost in Dan's income would be enough to tempt him into cheating.

Dan's calculation: Mike's experience shows it's pretty easy to get away with inaccurately reporting that the coverage offered at work is unaffordable. Dan's bigger challenge is needing to inflate his reported income by 30 percent, which amounts to $154 a week. But even if he claims to be doing handyman chores at only $10 hourly, it's not a stretch to pretend that he managed 16 hours weekly of such work on top of a 40-hour-per-week job. However, since the exchange will cross-check his income claim against IRS records, it is critical that whatever income amount he reports to the IRS matches up.

A rather bizarre side-benefit of fudging his income on his exchange application is that the parallel tax filing will qualify Dan for an additional $1,768 in EITC payments in 2014! But it gets better. The exchange application form asks Dan for his income this year (2013) and for next year (if he thinks it will be different). Claiming that next year's income is going to go up by 50 percent might raise some red flags. Dan would be safest boosting his reported income this year by 25 percent and by an additional similar amount next year. He'd obviously have to adjust his books to reflect a steadily growing new handyman business. And doing so would mean an extra $884 EITC check for this year's return.

The IRS expects all self-employed individuals to keep and retain timely records of all business income and expenses. At this time, the law requires issuance of a Form 1099-MISC for payments of $600 or more for services performed for a trade or business by people not treated as its employees. So Dan must be sure that none of his records list clients for whom he did more than $600 in business during the calendar year. Thus, to report a fictional $8,000 in annual income, all he really needs is 14 "clients" who paid him an hour a week at $11 an hour for his services. These payments obviously need to be in cash (to explain why they leave no paper trail of checks or bank deposits). The only record would be Dan's meticulous log of who paid him when for what. As well, self-employed individuals are required to deduct all allowable business expenses, so he'd need to include a plausible amount of business expenses (which is why payments for basic chores requiring no tools might be the safest bet since otherwise he might have to be prepared to show an auditor receipts for purchase of gas for a lawnmower or similar expenses). Let's say it takes Dan five hours to create his fictitious business records. I'm guessing that from where he sits, over $10,000 in extra income (the health subsidies plus the savings on the employer plan plus the EITC) for five hours of work likely wouldn't seem too shabby.

Will Dan get caught? According to Nolo.com, "While auditors aren't detectives, they are trained to spot common types of wrongdoing, called badges of fraud. Examples include a business with two sets of books or without any records at all, freshly made false receipts, and checks altered to increase deductions." So long as Dan maintains only a single set of books for a cash-only business of plausible scale and scope, with entries that appear to have been made throughout the year, he isn't likely to raise suspicions.

NEWSCOM

Obamacare creates many grossly unfair situations.

Of more than 230 million tax returns filed in 2011, there were 2,340 convictions for tax crimes (that's 1 in 100,000). Moreover, remember that the IRS audits only 2.2 percent of returns under $25,000 claiming the EITC. And nearly 95 percent of these are done through the mail, rather than in face-to-face desk audits. Perhaps not surprisingly, the Treasury auditor "estimates that 21 to 25 percent of EITC payments were issued improperly in Fiscal Year 2012." (Similarly, about one-quarter of those receiving free and reduced-cost school lunches are not eligible.)

Leaving aside the lackadaisical enforcement posture in this administration, there's no good reason to suppose that IRS performance will improve in 2014. After all, according to Treasury, "At least 42 of the 514 Affordable Care Act provisions add to or amend the Internal Revenue Code, and at least eight require the IRS to establish new operations. Collectively, these provisions represent the largest set of tax law changes in 20 years." The IRS is going to be extremely strapped trying to manage all its new responsibilities next year. As things already stand, it cannot effectively manage the 27 million returns claiming the EITC each year. Now imagine trying to police 7 million people coming onto the exchanges in 2014.

Given that the IRS faces up to half a trillion dollars in uncollected taxes each year, how much effort do you think they'll invest in trying to round up $1,768 in EITC overpayments to Dan? And if they cannot catch him on the EITC side, there is no plausible way to catch him from the exchange side since his reported income will exactly match IRS records. Besides, can you picture the political optics of an exchange trying to take back health coverage from someone at 68 percent of poverty? Any number of progressive activists would no doubt eagerly challenge this on Dan's behalf.

PUZZLED PETE: SLIGHTLY BELOW POVERTY, FULL-TIME WORKER IN A FIRM WITHOUT COVERAGE

Pete's situation: Puzzled Pete is in the same boat as Dan, except that his hourly wage ($10.38) and greater number of hours (40 a week x 52 weeks) give him an annual income ($21,600) that puts him at

90 percent of the federal poverty level for a family of four. He's at a company that offers no health benefits. He's also divorced with three kids aged 20, 22, and 24; like Dan's, all have gotten full scholarships to attend college but are living at home without college-provided health benefits. Similarly, neither Pete nor his kids qualify for either Medicaid or the exchange.

Pete's motivation: Unlike Mike and Dan, Pete doesn't have a higher-wage twin brother fueling resentment. But he is definitely puzzled: He keeps reading about the extraordinary subsidies available on the exchange to those with the lowest incomes, but is astonished that having an income below the poverty level makes him ineligible. Unlike Dan, whose truth-twisting will yield "only" $10,000 in extra cash income, Pete can net $18,433 in exchange subsidies if he's willing to contribute only $667 in premiums and out-of-pocket expenses and will fib a little to boost his reported income by 10 percent to put it over the poverty line. Pete's incentive to lie is thus *much* greater than Dan's. And the legal risks of getting caught—already pretty small in Dan's case—are minuscule in Pete's situation.

Pete's calculation: When reported income falls within 10 percent of the amount that can be confirmed using electronic records (e.g., last year's tax returns), the exchange is not required to do any further verification. Thus, unlike Dan, Pete has no need to fabricate EITC income for 2013; creating an income stream of only $2,400 for 2014 using Dan's method should be a piece of cake. Unless Pete is incredibly sloppy, it is hard to see how this would raise any red flags, especially given that each year, about one-third of individuals initially deemed eligible for Medicaid in states that expand it are likely to see their incomes increase enough to no longer qualify for Medicaid and instead become exchange-eligible. In short, the exchange is going to have its hands plenty full without worrying about verifying Pete's small income to the very last 10 percent.

The payoff for committing fraud rises dramatically as family income declines. The mandate delay gives many workers an opportunity to save themselves thousands of dollars by claiming they do not have access to affordable coverage.

BOTTOM LINE

Let me reiterate my sincere hope that not a single Mike, Dan, or Pete commits fraud to get on the Obamacare exchanges. But policy needs to be based on real-world human behavior and motivations, not behavior as we might wish it to be. In light of the rampant improper payments under the EITC and school lunch programs (which have had many years over which to perfect fraud-detection and enforcement measures), it is naïve at best not to expect similar levels of inaccurate income reporting in the exchanges, now that employers have been given a one-year reprieve on reporting the information that exchanges need to do their jobs.

Only 2.7 percent of full-time year-round workers have incomes below poverty, but that's still 2.7 million workers. Moreover, that's using a 35-hour-per-week threshold; among all workers, the poverty rate is 6.9 percent, or 10.7 million workers. However, not all are uninsured, and not all work for firms subject to the employer mandate. So while we cannot say precisely how many people like Dan or Pete are out there, it is more than a handful. How many feel sufficiently motivated to commit fraud is a big unknown, but no one should be surprised if the number can be counted in millions. Whatever the number, there probably will be far more people like Mike who end up on the exchanges. As the chart on page 23 illustrates, the payoff for committing fraud rises dramatically as family income declines. So leaving aside the pressure this will create on employers to drop coverage for such workers or to make it unaffordable, the mandate delay gives such workers an unprecedented opportunity to save themselves thousands of dollars by claiming they do not have access to affordable coverage.

Finally, 46 percent of uninsured workers now work for large firms subject to the employer mandate. People forget that only 82 percent of eligible employees actually enroll in their employer health plan—even among the very largest firms (5,000 or more workers). In some cases these are married people who can obtain better or more affordable coverage through a working spouse. Because the employer mandate does not require workers to cover their spouses, many in this situation may well turn to the exchange if feasible.

The administration has opened the door to rampant fraud. It remains to be seen how many low-income workers end up walking through that door. Tax compliance is contingent on taxpayer perceptions of fairness, and Obamacare is about to create many individual situations that are grossly unfair. In light of the 20-25 percent overpayment rates in the EITC and school lunch programs, is it realistic to expect overpayments on the exchanges—especially in their very first chaotic year of operation—to be any smaller? Taxpayers beware: You ain't seen nothing yet. ♦

Surprise and Creativity

Notes toward a new economics

By George Gilder

Why in the world do we need yet another "new" economics? Jamming the libraries and the bookstores of the world are avatars of what must be every variation on the great themes of market and managerial economics. Scores of Nobel Prizes have been awarded for various nugatory refinements of the prevailing ideas.

All these schemes, however, fail to answer the key questions about any economic theory, which were posed by Irving Kristol nearly 35 years ago. Can the theory provide a moral or "transcendental" justification for its results, so that it is politically acceptable? And can it explain growth and creativity?

Kristol was cofounder and editor first of *Encounter* and then of the *Public Interest*, two of the world's most eminent and influential publications, which had served to give me an education after four years at Harvard failed. I made reverent visits to Kristol's luminous lair on Central Park South in Manhattan, where he held forth with his awesomely learned wife Gertrude Himmelfarb. His monthly columns in the *Wall Street Journal* were the most elegant and erudite ever to appear in those commercially oriented pages. Among all the supporters of supply side economics, he was the most intellectually prestigious, giving a sheen of respectable cover to untutored cohorts like me and Jude Wanniski.

By the late 1970s, Kristol was the so-called Godfather of neoconservatism, not only reigning at the top of a speculative organizational chart spread across a centerfold of *Esquire* but also ruling a domain of mind that reached to every aspect of the culture. Almost alone among analysts of capitalism, he grasped the centrality of the sciences—from Newtonian physics to Darwinian biology to behavioral psychology—in shaping, informing, and even stultifying economic models. Since occasionally "editing" his column at the *New Leader* magazine in the mid-1960s (it was always impeccable) I had been among his most devout disciples. When he issued orders, I tended to jump to attention.

Writing *Wealth and Poverty* 35 years ago, as in launching *Knowledge and Power* this season, I was consciously picking up a gauntlet from Kristol. In all his works, he fused political, economic, and religious concerns in a critique not merely of government overreach but of all modernist culture. The adversary was not merely excessive tax rates and regulation but nihilism and anomie, "a melting away of established principles of authority" in a "spiritual crisis of modernity."

Wealth and Poverty offered an extended conversation with Kristol on these themes. But it also expressed a note of callow rebellion. In my view, in March 1978 just as I was buckling down to write my book, Kristol had stumbled. In *Two Cheers for Capitalism*, he had begrudged our system a full threefold ovation and thus had fallen short of my standards of contrarian optimism. In a critical article in *National Review* entitled "Why I Am Not a Neo-Conservative," I wrote—with patricidal panache—"If I am found at the bottom of the East River weighed down by 15 annual volumes of the *Public Interest* and still able to utter no more than two cheers for capitalism, you will know who did it."

Kristol had peered into the philosophical morass of the existing theory of capitalism and found a free market competition among barbarians. They were moved by a calculus of simple self-interest and apparently governed by no moral code. In a democratic society, he declared, no such system can ultimately survive.

Impolite and even risqué was Kristol's public exposé of the moral nudity of capitalism. Since the days of Adam Smith, the entire economics profession had put a self-interested agent, a *homo economicus* appraising price signals and calculating his own utilitarian advantage, at the center of their models of a capitalist economy. Like Smith himself, most of them have assumed a moral order. But they had provided no grounds to expect that such a moral order would naturally emerge in their system. It was not their department. Some of them harbored a secret relish for the image of the capitalist entrepreneur engaged in a swashbuckling war of all against all.

More ambitious theories based the model on behavioral psychology. Generalized as a hedonic pleasure-seeker,

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avoiding pain and pursuing gratification in a Skinner-box scheme of stimulus and response, economic man became a mere manifestation of evolution. A function of his physical environment, he became a figment of statistical aggregates. As Kristol put it, "In such a blind and accidental arithmetic, the sum floats free of the addenda, and its legitimacy is infinitely questionable."

Kristol saw that this vision repeated Herbert Spencer's translation of Darwinian evolution into an economic ethic. Seen as engaged in a struggle for survival governed by the laws of the jungle, Kristol wrote, economic man could be neither a creative entrepreneur nor an acceptable vessel of a good society.

As Kristol declared in a memorable essay: "The fact that for several decades after the Civil War, the Darwinian ethic, as popularized by Herbert Spencer, could be taken seriously by so many social theorists represents one of the most bizarre and sordid episodes in American intellectual history." So much for Spencer, but also less explicitly but inexorably, so much for all the prevailing schools of economic thought. Without exception all provide models of economic activity driven chiefly by self-interested agents responding to their environments in a process that could be well summed up as "survival of the fittest."

At the time, I believed I had discovered a way out of all these dilemmas. I would show that capitalism is intrinsically altruistic and moral. To succeed in gaining profits, entrepreneurs must be oriented toward the needs and wants of others. Capitalists were givers, not takers, and their successes "expanded the circles of human sympathy." I devoted several early chapters of *Wealth and Poverty* to an attempt to prove my case through anecdote and anthropology. Popular in the Reagan White House, this *défi d'enfant* attracted the attention of my target. Writing in *National Review*, Kristol praised the book but crisply deflated my claim that altruistic morality could be seamlessly grafted onto the body of classical economic thought.

Compounding the political problem of defending an amoral system inspired by Darwinian biology, according to Kristol, was a spurious claim of determinism inherited from physics and mechanics. Describing an "impasse" of economic theory, Kristol wrote in 1980, "The dominant 'scientistic' model tends to drift ever further away from economic reality. . . . There is not the slightest reason to think . . . that post-Keynesians, fiddling with their 'cybernetic' model [of feedback mechanisms], can do any better than Keynesians with their 'Newtonian-mechanical' model" or the neo-Austrians with "an anarchical (or libertarian) world that is, in its own way, a construct of a rationalist utopian vision."

In their mimicry of physics, economic theories tended to imply the impossibility of growth. As Kristol put it, "One of the axioms of any such model is that economic *growth* is in principle no different from physical *change*. . . . [H]uman beings could no more affect the governing laws than the activity of an atom could affect the laws of physics." Yet physical change is neither cumulative nor progressive. It tends toward deterioration.

Thus Kristol pushed me to a second central preoccupation of my book (and of *Knowledge and Power*)—the sources of growth. Giving shape to my argument was an *aperçu* of Princeton's Albert Hirschman in an early issue of the *Public Interest* in 1967. Presaging a longstanding concern of Kristol's, Hirschman wrote: "Creativity always comes as a surprise to us." If it didn't, we wouldn't need it and planning would work. *Wealth and Poverty* became a paean not only to altruism but also to creation and surprise.

In *Wealth and Poverty*, I identified the error of economists as founding their theory on the mechanism of market exchanges themselves rather than on the creative activity that makes them possible. Conventional economics violates a key philosophical principle. It subordinates a higher and more complex level of activity—the creation of value—to a lower level, its measurement and exchange. In their desire to found a Newtonian science of political economy, generations of economists inflated the instrumental mechanism of trading into a complete economic universe. Newton's "system of the world" became Adam Smith's "great machine" equilibrating supply and demand, in which there is little or no room for creativity and surprise, for the unpredictable activities of entrepreneurs making entirely new things.

Despite these passing insights, I failed in *Wealth and Poverty* to respond effectively to Kristol's challenge. There remained in my implicit model of the economy both the optimizing homunculus and the visionary creator, and no particular way to integrate their different roles in the economy.

Largely leaving economics behind after *Wealth and Poverty*, I began decades of study of technology, focused first in Silicon Valley and then in Israel, which is now a more fertile source of new ideas than California. I soon found myself deep in a field of study called Information Theory. On one level this theory was merely a science of networks and computers, but in its deeper implications it would sound a death knell for the rationalist materialism and social Darwinism that Kristol denounced as nihilistic in its implications.

Information Theory effectively began with Kurt Gödel's epochal demonstration in 1930 that all logical systems, including mathematics, depend on axioms that they cannot prove. Mathematics, and hence all mathematically based sciences, from physics and chemistry to biology and economics, ultimately rest on a foundation of faith. Gödel's proof led directly to the invention by Alan Turing of an abstract universal computer, the so-called Turing machine, which he used to show that no mechanistic system could be complete and consistent. Turing concluded that all logical systems were intrinsically *oracular*. Computers could not be Smithian "great machines" or Newtonian "systems of the world." They inexorably relied upon conscious programmers or oracles and could not transcend their creators. As Turing wrote, he could not specify what such an oracle would be. All he could say was that "*it cannot be a machine.*" In a computer, they are programmers. In an economy, they are entrepreneurs, who launch new machines into the world.

The new economics partakes of the same movement, and the same Information Theory, that is also transforming the other sciences and revolutionizing our world through information technology. In 1948 a rambunctiously creative engineer, Claude Shannon, from Bell Labs and MIT, translated Gödel's and Turing's findings into a set of propositions about the nature of communications. He presented technical concepts for gauging the capacity of communications channels to bear information. Without a rigorous definition of information and communications channels, it would be impossible to build worldwide interactive networks such as the Internet, which would have to be coherently interconnected.

Shannon's crucial insight was a clear and polar differentiation between order and information. To this day, most economists believe that order and information are essentially kindred concepts. Both are seen as patterns that can evolve or emerge spontaneously. Widespread is reliance on the concept of equilibrium, the order to which economies or ecosystems return after disruption.

To Shannon, however, order was not information but its opposite. Much like Albert Hirschman decades later in the *Public Interest*, Shannon resolved that information is most essentially news or *surprise*. If you already know the contents of a message it contains zero surprise and zero information. Information is unexpected content. It is disequilibrium and disorder, not order. An orderly and predictable mechanism—a great machine—embodies no new information.

For purposes of the new economics, I sum up Information Theory as the treatment of human communications or creations as transmissions down a channel, whether a wire or the world, in the presence of the power of noise, with the outcome measured by its "news" or surprise, defined as entropy and consummated as knowledge.

Since these communications or creations can be business plans or experiments, Information Theory supplies the foundation for an economics driven not by equilibrium and order but by surprises of enterprise. Information Theory requires that such a process be experimental and its results be falsifiable. The businesses conducting entrepreneurial experiments must be allowed to fail or go bankrupt. Otherwise there is no yield of knowledge and thus no production of wealth.

By identifying a capitalist economy as chiefly a knowledge system rather than a mechanistic incentive system, the new economics obviates all the concerns over greed and avarice as crucial to the creation of wealth. The enabling theory of telecommunications and the Internet, Information Theory offers a path to a new economics that places the surprising creations of entrepreneurs and innovators at the very center of the system rather than patching them in from the outside as "exogenous" inputs. Information Theory also shows that knowledge is not merely a source of wealth; it is wealth. Wealth is the accumulation of knowledge. As Thomas Sowell declared in 1971: All economic transactions are exchanges of differential knowledge, which is dispersed in human minds around the globe.

Information is also a measure of freedom and creativity. It is gauged by the freedom of choice of the sender of a message, which Shannon termed "entropy." The more numerous the possible messages that can be sent, the more uncertainty at the other end about what message might be sent and the more information there is in the actual message when it is received. Thus Shannon offers a way to put human freedom at the very heart of the economic model. It addresses freedom on a new level, not only as a condition of enterprise but also as the measure of information and criterion of creativity.

Through Information Theory, we can affirm Kristol's intuition that capitalism is neither a determinist physical machine nor a social Darwinian mechanism animated by stimulus and response or gradients of pleasure and pain. Capitalism is an information system of experimental ventures that can fail or succeed and thus yield knowledge.

After all, as Sowell also pointed out, the Neanderthal in his cave had all the material resources and physical appetites that we have today. The difference between our own wealth and Stone Age poverty is not an efflorescence of self-interest but the progress of learning, accomplished by entrepreneurs conducting falsifiable experiments of enterprise.

Summing up the new economics of information are 12 key insights.

(1) The economy is not chiefly an incentive system. It is an information system.

(2) Information is the opposite of order or equilibrium. Capitalist economies are not equilibrium systems but dynamic domains of entrepreneurial experiment yielding practical and falsifiable knowledge.

(3) Material is conserved, as physics declares. Only knowledge accumulates. All economic wealth and progress is based on the expansion of knowledge.

(4) Knowledge is centrifugal, dispersed in people's heads. Economic advance depends on a similar dispersal of the power of capital, overcoming the centripetal forces of government.

(5) Creativity, the source of new knowledge, always comes as a surprise to us. If it didn't, socialism would work. Mimicking physics, economists seek determinism and thus erroneously banish surprise and creativity.

(6) Interference between the conduit and the contents of a communications system is called noise. Noise makes it hard to differentiate the signal from the channel and thus reduces the transmission of information and the growth of knowledge. A key source of noise in the carrier is capriciously activist government.

(7) To bear high-entropy (surprising) creations takes a low-entropy carrier (no surprises), whether the electromagnetic spectrum, guaranteed by the speed of light, or property rights and the rule of law, enforced by constitutional government.

(8) Money should be a low-entropy carrier for creative ventures. A volatile market of gyrating currencies and grasping governments shrinks the horizons of the economy and reduces it to short-term trading and arbitrage in a hypertrophy of finance.

(9) Wall Street wants volatility for rapid trading, with the downsides protected by government. Main Street and Silicon Valley want monetary stability so they can make long-term commitments with the upsides protected by law.

(10) GDP growth is fraudulent when it is mostly government spending valued retrospectively at cost and thus shielded from the knowledge of consumers oriented toward the future. Regardless of whether government spending is fueled by taxes or by government debt, economic "stimulus" packages necessarily substitute government power for knowledge and thus destroy information and slow economic growth.

(11) Analogous to average temperature in thermodynamics, the real interest rate represents the average returns expected across an economy. Analogous to entropy, profit and loss represent the surprising or unexpected outcomes.

(12) Knowledge is the aim of enterprise and the source of wealth. It transcends the motivations of its own pursuit. Separate the knowledge from the power to apply it and the economy fails.

The Information Theory of capitalism answers both Kristol's questions for the current era. No business guaranteed by the government is capitalist. Guarantees destroy knowledge and wealth by eliminating falsifiability. Unless entrepreneurial ideas can fail and businesses go bankrupt, they cannot succeed in creating new knowledge and wealth. Epitomized by heavily subsidized and guaranteed leviathans, such as Goldman Sachs, Archer Daniels Midland, Harvard University, and Fannie Mae, the economic crisis of today is crony socialism.

The message of a knowledge economy is optimistic. As Wanniski wrote, "Growth comes not from dollars in people's pockets but from ideas in their heads." As Kristol once told me, propelling me to my dictionary, as he often did, "capitalism is a noosphere." My dictionary was unavailing. But I figured out from the Greek that a noosphere is a domain of mind. A capitalist economy can be transformed as rapidly as human minds and knowledge can change.

As experienced in the United States after World War II when government spending dropped about 60 percent in two years, in Chile in the 1970s when the number of state companies dropped from over 500 to under 25, in Israel and New Zealand in the 1980s when their economies were massively privatized almost overnight, and in Eastern Europe and China in the 1990s, economic conditions can change over a span of months when power is dispersed and the surprises of human creativity are released.

Deeper than economics or social theory, these ideas reflect the most powerful scientific ideas of the era. Information Theory recognizes that information is not order but disorder and that the universe is not a great machine that is inexorably grinding down all human pretenses of uniqueness and free will. The uniqueness and free will of humans is indispensable to civilization.

Ever since *The Wealth of Nations*, economists have imagined that entrepreneurs seek equilibrium and order. Hundreds of conservative economists have followed Friedrich Hayek into the intellectual swamp of "spontaneous order" and self-organization. While respecting Hayek as an intellectual giant, Kristol brilliantly dismantled the scientistic pretensions of these theories. As Kristol insisted, the key misconception of the popular versions of libertarian and Austrian economics is that political order can be spontaneous—that capitalism can thrive in anarchy.

But central to the Austrian model is the power of prices for signaling economic conditions. Without the government's enforcement of property rights and contracts and its maintenance of defense and a monetary system, the carrier fills up with noise. It takes a low-entropy carrier (no surprises) to bear high-entropy information (full of surprise). In capitalism, the predictable carriers are the rule of law, the maintenance of order, the defense of property rights, the reliability and restraint of regulation, the transparency of accounts, the stability of money, the discipline and futurity of family life, and a level of taxation commensurate with a modest and predictable role of government.

As Kristol observed, progress in law and order does not spring from a Darwinian process of natural selection among random mutations. Progress stems from political leadership and sacrifice, prudence and forbearance, wisdom and courage. Sometimes these must be defended by military force. They originated historically in a religious faith in the transcendent order of the universe. They embody a hierarchic principle. It is these low-entropy carriers that enable the high-entropy creations of successful capitalism. ♦

The Great Collision

Egypt's descent into chaos

By Reuel Marc Gerecht

For most of those who were so hopeful when the Great Arab Revolt downed the dictator Hosni Mubarak two years ago, the travails of Egypt's fledgling democracy have been depressing. Many in the West expected the country's hodgepodge of secularists—the young men and women who were the cutting edge of the demonstrations, first against Mubarak, then against his freely elected Muslim Brotherhood successor, Mohamed Morsi—to do better than they did at the ballot box, where Islamists so far have triumphed. Real optimists even hoped that the Brethren in power would be more inclusive, allowing non-Islamists more influence in the cabinet and in drafting a constitution. Now that Morsi in turn has been toppled, the optimistic set—though they would have preferred the military coup with a bit of democratic camouflage—sees hope that secularists can build a more stable, liberal government.

Soldiers in the suburbs of Cairo, July 8

REUTERS / AMR ABDALLAH DALSH

These aspirations likely won't be realized, for two big reasons: Devoutly religious Egyptian Muslims outnumber their secular counterparts; and there is little ideological common ground between those who want to see Islamic values backed by state power and those who want religion to play a much smaller role in government. As long as the religious are more numerous, political parties that explicitly claim the faith will have an advantage over the secular, intellectually undernourished, Westernized youth who drove both rebellions. Compromise—the liberal virtue that the Framers forced upon us through our checks-and-balances Constitution—depends on the contending parties' essentially sharing the same mores. When compromise wasn't possible in America on slavery, the system cracked.

A frightful collision has occurred in Egypt between Muslims who've imbibed a lot of the West and those who see themselves as faithful to "authentic" Islam. This battle between Westernization and authenticity has defined much of the Muslim Middle East's cultural life for 150 years. Free elections in Egypt turned this competition into a wrestling match, the likes of which we'd not seen since the revolution in Iran in 1979. In the post-9/11 Middle East, the secular denizens of the region and most Westerners saw dictatorship as the principal engine of Islamic radicalism. But that phase may be over. Today, Westerners and many Egyptians sympathetic to the coup against Morsi don't see elected fundamentalists as part of the solution to Islamic militancy. With echoes of Mubarak's admonitions against free votes in Muslim societies, their analysis invokes a belief common in the early to mid-1990s: that elections Islamists can win only fuel the expansion of radicalism. For those liberally inclined, military repression of the religious has again become an indispensable tool of effective, stable, and progressive government.

IDENTITY POLITICS

Being a religious Muslim in Egypt isn't the same thing as being a religious Muslim in Iran, where three decades of theocratic misrule have created real dissent and a growing acceptance of secularism among the faithful. The fears of the revolutionary cleric Mohammed Reza Mahdavi-Kani in 1989 have come true: If every

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state action carries a religious stamp, religion withers. Islam's historic marriage of church and state has been badly battered in modern times by Westernization and the excessively political use of the faith by both religious and nominally secular regimes.

But even in the Islamic Republic, the religious bedrock of the mullahs' popularity probably remains stronger than many in the West would like to believe. History matters. The Koran, the literal word of God, pulls the faithful back in time and towards a certain religious-political fusion. Muslim fundamentalists can easily align themselves with the great figures of Islamic civilization—an enormous number of whom gained fame for their wars of territorial and religious expansion or their successful defense of orthodoxy. Islam, unlike Christendom, beat back the Greek challenge. Plato and Aristotle, well known and well studied in the Muslim world, are not seen historically as the harbingers of a successful, seditious philosophy that puts man at the center of the universe. In Islam, as in Christianity for a time, they became part of the masonry of accepted belief. No matter how hard Muslim religious reformers try to find support for their positions in Islamic history, it's still politically more effective for fundamentalists to highlight the Occidental roots of the reformers' political and cultural aspirations than to affirm their own version of the Islamic tradition, often outrageously stripped of diversity and latitudinarianism.

Once, when European power was unchallengeable, and new, state-run secular universities were being built on European and American models, Muslim intellectuals could openly praise Western imports—though they always did so at a cost. That disposition is rarer today, and usually considered demeaning if not dangerous. Left-wing Middle Eastern Muslims, who ought to be the bridge between the West and their homelands, are usually so overloaded with anti-imperialist cant that they haven't figured out how to sell the "good" Western ideas.

Egypt was the first Arab Muslim land to confront and then embrace the Occident. Algeria and Tunisia, under the spell or domination of France, soon joined the Nile Valley as incubators of Westernization. It's not an accident that the three most Westernized Arab lands were the first to rebel against secular dictators—or that these countries produced powerful Islamist movements. Westernization creates modern Islamic militancy. Contemporary religious radicalism isn't just a reaction to Westernization; Westernization is integral to the way Islamists think and the way they view and interpret their own history.

In the best-case scenario for Westernization in the Middle East—in Turkey, where the enlightened secular dictator Mustafa Kemal Atatürk was explicit and dogged in his attempt to transform his country into a European state—80 years of secularizing autocracy did not free people from their Ottoman past. As Turkey's politics have become more democratic, the Islamist percentage of the vote has risen. When I was serving with the Central Intelligence Agency in Istanbul in the 1980s, Langley and the State Department were convinced that the ceiling for the "Islamic vote" was 10 percent; Turkish generals and admirals were not so sure.

Twenty years later the Islamist Justice and Development party (AKP) decisively won national elections. The army's and the judiciary's anti-Islamist efforts, including hard and soft coups against ruling Islam-friendly politicians and parties, may have postponed judgment day and moderated the Turkish Islamist temperament. They did not stop the rebirth of a more vigorous Turkish Muslim identity and Islamic political aspirations.

DICTATORSHIP FOREVER?

Some observers in Washington—the *New York Times*'s David Brooks, the *Washington Post*'s George Will, and the Washington Institute for Near East Policy's Rob Satloff, for example—appear to believe that Egyptian military rule has at least the potential to evolve in a more positive direction than government by elected Islamists, who've shown their "anti-modern," "anti-pluralist," "anti-secular," and "revolutionary" teeth. But how? What exactly can the Egyptian military do now that it hasn't done in the past to fertilize "real democracy"? How in the world could the Egyptian army—assuming it had even a smidgeon of the historical mission that drove the Turkish army to nurture the development of a European democracy within the Turkish Republic's top-down secular society—do a better job than Kemalist officers and judges, whose eight decades of secular repression and stage-managed balloting produced an electorate that freely voted for a Turkish offshoot of the Muslim Brotherhood?

Approving of the coup, Will uses Jeane Kirkpatrick's famous 1979 article in *Commentary* magazine against the Islamists. In "Dictatorships and Double Standards," Kirkpatrick described the slow evolution of Western democracy. Islamists, Will suggests, would, like the Communist revolutionaries she wrote about, halt the beneficial political and cultural evolution that is possible under traditional authoritarian rule. "In Britain," Kirkpatrick wrote, "the road from the Magna Carta to the Act of Settlement, to the great Reform Bills of 1832, 1867, and 1885, took seven centuries to traverse." To which one can only answer: Do Muslims ever get the chance to start? Or must they patiently wait, living under military rule that has ruthlessly extirpated the democracy-building "little platoons" of Edmund Burke that Will and Brooks rightly extol, until they are acceptable liberals, springing fully formed like Athena from the head of Zeus? It is odd that Will and others now cite Kirkpatrick's essay given how thoroughly events have rebuked it since 1979. As Robert Kagan pointed out in *Commentary* 18 years later in a critique of Kirkpatrick's thesis, the expansion of representative government exploded after 1979, into lands that had not been maturating for centuries. And Ronald Reagan didn't in the end follow Kirkpatrick's advice: He successfully pushed hard for the expansion of representative government in Latin America and Asia, even in countries then under threat from communism.

Since so many hopes are pinned on the Egyptian military, it deserves a closer look. Although democratic sentiments have grown throughout the Arab world since the apex of pan-Arab fascism in the 1960s and Iran's Islamic upheaval in 1979 (which itself combined theocratic and democratic aspirations), the Egyptian military didn't encourage them. It assiduously went after secular liberals who challenged the military's supremacy. Before Morsi's fall, the military probably tormented obstreperous secular liberals more than it did the Muslim Brotherhood, which broadly accepted military rule in the 1970s. After decades of conflict and brutal incarceration, the Brothers resigned themselves to the view that the regime's overthrow would have to come slowly, from the bottom up, one convert at a time. What the Egyptian military does encourage is overheated nationalism among both the religious and the secular. Pan-Arab fascism was potent in Egypt under Gamal Abdel Nasser because it piggybacked on Egyptian nationalism, which, unlike nationalism in most Arab countries, draws on a real historical identity, connected to the unifying force of the Nile. The generals appear to be playing once again on nationalist nerves in their efforts to counter the Muslim Brotherhood's narrative of democracy betrayed.

Some pro-coup Americans hope that the military, because it is so heavily involved in Egypt's centralized economy, will want to protect its investment by fostering economic liberalization, which might, so the theory goes, gradually liberalize the political system. Again, history isn't reassuring. Militarism married to socialism has been ransacking Arab societies since World War II. Socialism faded with the Soviet Union's demise; in Egypt, capitalism got a foothold when Anwar Sadat escaped the Communist orbit in the early 1970s. The army has since moved with some enthusiasm into crony capitalism. But it's pretty obvious that the army has no intention of allowing free enterprise to grow that could compromise its own hold on the country. Successful Egyptian businessmen, most of whom grew rich through partnerships with the Mubarak regime, speak of sharing with, not challenging, the army. Senior officers, like all Egyptians of a certain age, remember the bread riots of 1977, which shook the country. Bread subventions weren't cut. And the army's control of the economy has grown since.

LIBERAL ILLUSIONS

It's unclear who—the Islamists, the secularists, or the military—has more patience when it comes to economics, but it's a decent guess that the religious can better weather the rough economic times ahead. Self-help and community organizing are their strengths, and they have learned to operate without decrepit state institutions. The Egyptian government wasn't able to handle employment demands in 1960, when the country's population was 28 million, let alone today when Egyptians number 84 million. In fact, the Islamists are probably less attached to a state-controlled economy than the rest. The study of Islamic law engenders an unavoidable respect for property rights. As the late Marxist Orientalist Maxime Rodinson pointed out in *Islam and Capitalism* (1966), socialism—the triumph of equality over liberty—has weak roots in Islam.

In Turkey, the AKP enthusiastically backed free enterprise; where else could the opposition to Kemalist statism go? Turkish Islamists and their religious supporters also understood that to be politically successful they needed to be economically dynamic. Something similar appeared to be happening in Algeria with the Islamic forces arrayed against the military junta from 1989 to 1991. Socialism had impoverished that oil-and-gas-rich country; the Islamic Salvation Front was beginning to think about exploring capitalism when the generals aborted the democratic experiment in 1992. The Iranian regime is the outlier among Muslims in great part because the Islamic revolution was profoundly permeated by Marxism. Yet even in Iran, traditional clerics have often fought back against the state's penchant for expropriating property for political reasons.

Creating a modern economy in Egypt will hinge on devout Muslims buying into the project; they, not the super-rich businessmen of the Mubarak era, and certainly not the deeply socialist secular youth who look upon the government as the employer of first resort, are the key, as in Turkey, to unleashing Egypt's economic potential. The coup has made that buy-in much more difficult; it may retard the development of large-scale private enterprise among religious Muslims.

And there is little reason to be optimistic about Egypt's secularists. We don't even know whether they believe in political pluralism; they obviously are not firmly attached to the ballot box. Given the concatenation of forces in the anti-Morsi demonstrations, it's perhaps best to think of the movement they formed as a mix of the meanings of the word they took as their name: *tamarrod*. Beyond "rebellion" there's "refractoriness," "disobedience," and "insubordination." What the scholar Olivier Roy has seen among the Islamists is triply true for the secular crowd: An inchoate but powerful individualism has taken hold. Rebellion against authority and the status quo, moreover, can be addictive, but isn't likely to lead to personal tolerance and civil manners, let alone a coherent political philosophy, without which parties cannot form. Judging by the glee with which many within the rebellion have greeted the military crackdown on the Brotherhood, it's doubtful that the Tamarrod would ever again agree to allow the Islamists, or even just the religious, a decisive hand in writing a constitution.

For the secularists, political pluralism appears to mean that their views must be dominant regardless of any vote. Where once secular liberals lined up, however reluctantly, behind the kings and presidents-for-life, they now line up, more enthusiastically, behind "limited" democracy, whose possibilities are circumscribed by the military, since only the military can check the reemergence of an Islamist majority. Egyptian liberals don't want to see it that way, of course. They are convinced, as are some of their Western supporters, that after the massive protests on June 30 (engineered by the military, the Tamarrod's leaders, and the business elite), a majority of Egyptian Muslims became part of a durable secular coalition. Twelve months of Morsi's "tyranny" and economic incompetence (probably also engineered in part by the military and the business elite) have supposedly transformed the politics of the voters who gave fundamentalists some 70 percent of the seats in parliament in 2012.

Profoundly Westernized, Egypt's Muslim liberals don't want to see themselves as a minority ruling against the will of the majority. As rich in rumor as the Islamists, they appear convinced that the large crowds who have defended Morsi since his fall are paid peasants brought in from the countryside. The Brotherhood, we are assured, has few followers left in Cairo, a metropolis of near 20 million known for vast neighborhoods of densely packed, broken-brick-and-cracked-concrete apartment buildings, where unveiled women are rarely seen and community-built mosques are the only structures of any beauty.

In the late nineteenth and early twentieth centuries, the European Westernization of Egypt produced intellectual titans of liberal secularism: Taha Hussein, Muhammad Hussein Haykal, Abbas Mahmud al-Aqqad, and more. Egypt then had a small political class, including landowners—some liberal, some autocratic—who could command the allegiance of "their" peasantry in the country's embryonic democratic system. These secular liberals all lost in the end, against the power of the king and the conservative religious establishment led by the ancient seminary Al-Azhar. But before they surrendered, these men knew where they stood and where they wanted to take the country. Others knew, too, since these men wrote constantly and at length.

The "globalization"—or rather, the American Westernization—of Egypt that has been gaining speed since the 1960s has no literary or political giants. Facebook and Twitter are media ideal for an age of unarticulated and uneducated revolt. The Americanization of Egyptian secular thought may be far stronger than the earlier wave of liberalization because it is vastly more popular. But the culture and style of Egypt's Westernized youth or the less dissident relics of the *ancien régime* (the former U.N. bureaucrat Mohamed ElBaradei comes to mind) are unlikely to produce the type of politician that is needed: an Egyptian version of the late Turkish prime-minster-turned-president Turgut Özal, who was as comfortable among devout Turkish pilgrims to Mecca as with wine-sipping IMF economists. The driving force behind the Tamarrod may be just too far removed culturally from the Egyptian faithful. One thing is certain after the coup: Secular liberals will want to be protected from vengeful Islamists. And for that they will need the army. The ballot box will not do.

It is temping to imagine that the Egyptian military planned much of the last six months of the Morsi presidency. The military and Cairo's business elite were obviously gunning for him. Lots of things that had never worked well got worse—a bit too comprehensively and quickly after Morsi assumed office. The Obama administration has no intention of cutting off aid to the Egyptian military over the coup. Secretary of State John Kerry has called the situation "complicated." In Congress, too, there's considerable sympathy on both left and right for the military's action, despite a law on the books requiring that U.S. aid be withheld from any country whose elected government is overthown by a military coup. The Muslim Brotherhood in power was just too unsettling. The relief in Israel is palpable.

LET FUNDAMENTALISTS BE FUNDAMENTALISTS

All of this rationalization of the coup is likely to be a serious mistake. The Egyptian military may have snatched defeat from the jaws of victory. In office, the Brethren were becoming a lot less special. Contrary to the fears of so many observers, the Brotherhood really wasn't any longer a militant missionary organization. Jordan's Muslim Brothers, independent of Cairo for decades, are far more intrepid in spreading the word to lapsed Muslims in challenging locales. Saudi Arabia is vastly more influential and pernicious in its missionary activity. Pakistan, a broken democracy where the military rules, is a much more fertile hothouse of Islamic radicalism.

Granted, the leaders of the Egyptian Brothers were inept and old in an age of youth and rebellion. Their ideology—a blend of traditional Islamic values, Islamic law, black-and-white modern fundamentalism, socialism, fascism, European anti-Semitism, and the mores of the Egyptian street—hasn't been a secret for decades. But many of those repellent ingredients are also pervasive in the secular crowd; a dinner party with the Cairene elite can be a voyage through a foul, conspiratorial swamp.

Members of the Muslim Brotherhood in Cairo, July 18

NEWSCOM

Saudi Arabia fears the Muslim Brotherhood, a populist movement that doesn't sit well with the royally controlled Wahhabism of Riyadh. But that hardly makes Egyptian Islamism "revolutionary" in the sense that Khomeini's creed was, its votaries actively working to destroy a detested, Western-backed Sunni order. Morsi's people didn't mind associating with American diplomats in Cairo. And the Brotherhood was being out-recruited among the young by Islamist startups. The Salafists' more socially conservative Nour party, which isn't burdened with a calcified, hierarchical structure, is a much more curious, individualist, entrepreneurial organization. The Salafists, for instance, didn't hesitate to use the services of American pro-democracy NGOs that teach all comers how to run better campaigns. The Brethren, like the military, regard these groups as dangerous foreign agents.

Egypt's Brotherhood isn't devoid of charisma, but it is running primarily on fumes from the past, on its long record of opposition to Westernizing dictatorship. However much 12 months in office damaged the Brethren's standing, more time and an eventual rebuke at the polls would have been vastly more discrediting. The Sunni Islamist embrace of democracy—until recently anathema to most Sunni fundamentalists—hinged on the assumptions that (1) most Muslims are good Muslims, who give great moral weight to consensus within the community, and (2) if a majority of Muslims voted for them, they had the right to undo the damage done by previous Westernizing rulers. Egyptian society, after all, has been de-secularizing since the 1970s: Islamic law and neighborhood clerics acting as judges are now the rule for probably a majority of Egyptians.

Morsi clearly signaled that he had no intention of allowing secularists to checkmate democratic mandates through a rigorously secular constitution and an overwhelmingly secular, Mubarak-appointed judiciary. Upcoming parliamentary elections would have given ample opportunity to the Brotherhood's foes to trim Morsi's sails. A constant of Islamic history—the faithful's practicality—could have hit the Brethren full force. Egypt could have seen Islamist supporters turn critics at the ballot box, with the enormous repercussions that would have had in the country and throughout the region.

Instead, we have an intractable situation. The military, long a cancer on Egyptian society, has been able, once again, to preserve the status quo. It is subject to public pressure, if public pressure can again build. Real progress depends on whether Egypt's faithful can find common ground with their secular compatriots and whether the military will allow people of faith to vote freely. The Brotherhood's ossified leadership may well go down. In the vacuum, other Islamist groups may rise up, or the hardcore Salafists of the Nour party may expand their influence. Islamists may become as fractured and disorganized and mutually antagonistic as the secularists. That certainly would please the military. It might offer a chance for democracy since no voting bloc would likely gain preeminence.

Egypt is in uncharted territory. It would be a perverse consequence of the magnetism of Western civilization if the Egyptians—one of the few peoples of the Middle East whose national identity is not an Occidental import—could no longer live together without the army's iron hand upon the throats of millions of believers. Contrary to what George W. Bush hoped in 2003, the era of "Islamic exceptionalism"—when Muslims alone are seen as incapable of democracy—isn't over yet. "Sixty years of Western nations excusing and accommodating the lack of freedom in the Middle East," to borrow from President Bush, wasn't, apparently, enough. ♦

Katharine Hepburn as Clara Wieck, Paul Henreid as Robert Schumann, 'Song of Love' (1947)

Among the Immortals

Does Schumann belong there? BY GEORGE B. STAUFFER

What are we to make of Robert Schumann?

Living in a century of unbalanced geniuses—Poe, Nietzsche, Maupassant, van Gogh—Schumann ranks as one of the most complex. Airing his bipolar nature publicly in the form of the fictional figures Florestan, the extroverted idealist, and Eusebius, the introverted dreamer, and writing music heavily coded with people and events, Schumann lived his art to such a degree that his anxious personal life and his mercurial compositions became one and the same. Bravely balancing domestic tranquility with inner torment, he wrote works that have become staples of the Western repertoire. At the same time, he composed pieces that continue to produce universal head-scratching. Schumann fought for the cause of good music, but what was truly at stake, it seems, was his own sanity: He eventually threw himself into the Rhine in a failed suicide attempt and ended up in a straitjacket in an asylum. Here is a figure troubled enough for the 21st century!

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Robert Schumann
The Life and Work of a Romantic Composer
by Martin Geck
translated by Stewart Spencer
Chicago, 320 pp., $35

Schumann's life and work receive close scrutiny in this new biography by a senior German music scholar and author of more than a dozen books, including a widely admired study of Bach. Presented here in a deft, finely nuanced translation, Martin Geck's volume first appeared in German three years ago as part of the bicentennial celebration of Schumann's birth. The timing was propitious, for a host of new documents and insights made a reappraisal of Schumann's complicated career most appropriate.

Geck takes the unusual approach of supplementing the 12 chapters of

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his book with 9 short intermezzi. The chapters cover the obligatory biographical bases and take the reader through Schumann's life phase-by-phase. In the intermezzi, Geck pauses to explore special aspects of the composer and his work, such as the influence of Jean Paul's *Flegeljahre* (*The Awkward Age*, from which Schumann claimed to have learned more counterpoint than anywhere else); *Genoveva* (Schumann's well-intentioned but ill-fated opera); and the magic of allusions, or narrative elements, in Schumann's music. The succinct, whimsical intermezzi are not unlike the flittering digressions in Schumann's works, where forward motion is commonly interrupted by episodic detours. In addition, Geck analyzes Schumann's music more by metaphor than by traditional theory. This allows him to address individual pieces on their own psychological terms.

Schumann was born in 1810 in Zwickau, a small town some 50 miles south of Leipzig. His father published and sold books, and Schumann demonstrated both literary and musical gifts at an early age. From adolescence onward, he consciously strove to become an "artist of genius," writing his first *curriculum vitae* at age 14 and starting the lifelong habit of documenting the intimate details of his day-to-day activities through journals, travel logs, housekeeping books, marriage diaries, and hundreds of letters. (As an adult, Schumann even noted intercourse on his personal calendar.)

In high school, he formed a literary society with his school chums that fostered heady discussions of E.T.A. Hoffmann, Ludwig Tieck, Jean Paul, and other Romantic writers. As Geck points out, the young Schumann was deeply impressed by *Flegeljahre*'s contrasting twins Vult and Walt, who would become models for his own soon-to-be-born characters. It is hard to imagine Bach, Mozart, or Beethoven indulging in such literary fantasies. The suicide of Schumann's older sister Emilie in 1825 foreshadowed dark things to come.

Following the death of his father, in 1826, Schumann enrolled at the university in Leipzig. Pushed by his mother to pursue law, he focused instead on literature. In his spare time, he drank and smoked with his fellow students and studied piano with the well-known pedagogue Friedrich Wieck, whose 12-year-old daughter Clara, a budding piano prodigy, would later become Schumann's wife. In his 20th year, Schumann presented a magnificent piano recital, but shortly thereafter wrote in his diary of finger problems, which soon became full-blown paralysis. Splints, alcohol baths, and herbal treatments provided no relief, and for the rest of his life Schumann avoided the use of the index finger in his right hand when playing the piano. This precluded the life of a virtuoso, leaving writing and composing as his best alternatives.

Two years later, Schumann experienced his first serious bouts of "melancholia." He chose to fight off depression by immersing himself in work, in this case launching a semiweekly music journal, *Neue Zeitschrift für Musik* (*New Journal for Music*), filled with reviews, essays, chronicles, and reports from correspondents. This allowed him to create his own imaginary world, reporting the latest developments in music through the characters of Florestan, Eusebius, Master Raro (a thinly veiled portrait of Friedrich Wieck), and Zilia-Chiara-Chiarina (a composite portrait of Clara Wieck) from the "League of David"—a fictional band of solders engaged in battle with musical philistines.

The *Neue Zeitschrift* was a remarkable undertaking for a 23-year-old, and for the next 12 years Schumann ran it mostly as a one-man show, singlehandedly ushering in a "new poetic age" through the imaginative magic of his pen. As Geck nicely expresses it, Schumann succeeded by fusing reality and fiction, poetry and politics, public and private reports, artistic ideals and self-promotion. He wrote more than 2,500 letters to correspondents and fielded more than 5,500 in return. The *Neue Zeitschrift* became *the* musical forum for tracking the development of German Romanticism. Its passionate, highly personal accounts still make for lively reading today.

At the same time, Schumann began to publish the piano pieces that made him famous, suites of vividly painted character pieces that appeared in steady succession after 1831: the Abegg Variations, *Papillons*, *Faschingsschwank aus Wien* ("Carnival Prank from Vienna"), *Carnaval*, *Kinderscenen* ("Scenes from Childhood"), and *Kreisleriana* (Hoffmann's tales of the mad Kapellmeister Kreisler). Written in a narrative style, the works dwell on memories and thoughts without following traditional models. Masquerade balls, carnival pranks, and youthful memories fly by in whimsical processions. When listening to the pieces, one has the impression of Schumann improvising on the piano in his parlor, brandy and cigar in hand. As he wrote in his diary: "Notes in themselves cannot really paint what the emotions have not already portrayed."

In 1837, Schumann became engaged to Clara Wieck, now 17, but was denied her hand by her father, who feared his talented daughter would have to sacrifice her performing career. For three years, Schumann and Clara carried out a clandestine relationship, meeting secretly and exchanging letters through intermediaries. This was followed by a humiliating lawsuit, in which Schumann's friends were summoned to testify to his moral rectitude and financial stability. In the end, the court ruled in Schumann's favor, and the couple was married in 1840. Schumann was 30; Clara was 20.

The long-desired union led to Schumann's famous "Year of Song," as he himself later put it. *Liederkreis* ("Song Cycle"), *Dichterliebe* ("Loves of a Poet"), *Frauenliebe und -leben* ("A Woman's Love and Life"), and many other compositions flowed from his pen in quick succession, a musical reflection of his rhapsodic love for Clara, but also a practical means of providing financial support for his future family. (Marie, the first of seven children, was born a year later.)

The songs may be Schumann's richest contribution to the Romantic repertory. Geck shows how they eclipse even the magnificent *lieder* of Schubert by fully incorporating the piano in the storytelling and creating a new synthesis of music and poetry.

Schumann replaced rote structures with more inventive schemes intended to bring out and heighten the emotional content of the verse. In Schumann's songs, the piano becomes a true partner with the voice, introducing and developing themes with equal conviction. "*Er, der Herrlichste von allen*" ("He, the most glorious of all"), from *Frauenliebe und -leben*, is among the purest expressions of Romantic adulation in the 19th century.

In Leipzig, Schumann found a kindred spirit in Felix Mendelssohn, who had arrived in 1835 to take up the directorship of the Gewandhaus Orchestra. The two soon joined forces to promote new music and old, the latter represented especially by the works of Bach, which were championed in a series of historical concerts presented by Mendelssohn and reviewed by Schumann in the *Neue Zeitschrift*. The first Bach monument in Leipzig was erected in 1843, the result of Mendelssohn's benefit concerts and Schumann's promotional efforts. (It can be viewed today in the small park behind the St. Thomas Church.) The Schumann-Mendelssohn friendship also brought together two of Europe's first musical power couples: Schumann and Clara, and Mendelssohn and his brilliantly talented sister Fanny ("a lively, fiery Jewess," Schumann wrote in his diary). In addition to being piano virtuosos, the women were gifted composers, Clara writing songs that rivaled those of her husband and Fanny writing songs without words that rivaled those of her brother.

After the Year of Song, Schumann turned to instrumental works, with mixed results. His symphonies lacked the force and focus of Beethoven's, and his chamber works seemed too formal. Impatient with Leipzig audiences and tired of the *Neue Zeitschrift* (he gave up the editorship in 1844), Schumann moved with his growing family to Dresden, where he fought escalating emotional problems by writing a series of contrapuntal piano works. In Dresden, Wagner held sway, however, and Schumann's great effort at opera, *Genoveva*, which premiered in Leipzig in 1850, was no match for *Lohengrin*, which premiered in Dresden two months later.

In *Genoveva*, Schumann explored the inner lives of his characters in great detail, but he failed to create a plot that moves the drama forward. As Geck points out, by midcentury, German audiences wanted something to unite and motivate *das Volk* rather than provide dark, brooding introspection. Like Schumann's earlier dramatic vocal work, *Das Paradies und die Peri* ("Paradise and the Peri"), *Genoveva* remains more discussed than produced.

Dresden offered less opportunity than expected, and soon after the lukewarm response to *Genoveva*, Schumann accepted the post of municipal music director in Düsseldorf. This new position provided a steady paycheck, but Schumann was not enthusiastic about the work, which required him to lead a choral society and municipal orchestra composed mostly of amateurs. Unlike Mendelssohn, Schumann was neither a skilled conductor nor a strong motivator, and, in time, as frictions increased, he was asked to conduct only his own works. Schumann nevertheless continued to produce a steady flow of compositions: choral works, violin sonatas, violin and cello concertos, and a host of pieces that have never been fully embraced.

Clara continued to present well-attended piano concerts that she played from memory (she was one of the first to accomplish this feat), and in 1853, the young Johannes Brahms entered their lives, prompting Schumann to write his "New Paths" essay for the *Neue Zeitschrift*, hailing the conservative young composer with the famous phrase, "Hats off, gentlemen, a genius."

Schumann's psychological disorders became still more acute, and by early 1854, he had difficulty speaking and hearing. Clara reported in her diary that her husband was haunted by the singing of angels that soon turned into "demonic voices attended by terrible music," declaring that he was "a sinner whom they planned to cast down into Hell." After attempting suicide, Schumann requested removal to an asylum in Endenich, where he died two years later at 46, a victim of extreme melancholia and delusions.

Did he die from the long-term effects of syphilis, as often proposed? Geck thinks not—and suggests, instead, a hereditary affliction: Schumann's son Ludwig was mentally deranged, and his son Ferdinand became dependent on drugs. Supportive to the end, Clara lived another 40 years, promoting and publishing her late husband's works. She remained a close friend to Brahms, but no more than that, Geck believes.

Schumann's life played out on the musical battleground occupied by conservative and progressive camps. The conservative composers backed "absolute" music—that is, instrumental music that could stand on its own, without words or programs. Meaning was derived solely from the exposition and development of themes within clearly defined structures—"forms animated by musical sounds," as the Viennese champion of absolute music Eduard Hanslick described it.

The progressive composers—the "New German School"—advocated a more expressive, encompassing approach. Passions, moods, ethical attitudes, and even political stances were conveyed by extra-musical means (texts, programs, scenery, lighting) in amorphous structures shaped by the emotion of the moment. Brahms emerged as the standard-bearer of the conservatives; Liszt and Wagner led the New German School.

Ironically, both camps looked to Beethoven as their founder. His First, Second, Fourth, Seventh, and Eighth Symphonies, with their clear-cut formal plans, served as the model for conservatives. His Third, Fifth, Sixth, and Ninth, with their programmatic slants (the life of Napoleon, fate knocking at the door, country scenes, universal brotherhood), set the precedent for the progressives. Schubert, Mendelssohn, and Schumann sought a middle ground. Schubert pursued a lyrical solution to the symphony, filling his works with gorgeous melodies that kept the structures afloat. Mendelssohn relied on a more formal approach, even turning to Bach-inspired chorales to hold his symphonies together.

Like Liszt and Wagner, Schumann

believed in the tone poem. But whereas Liszt and Wagner anchored their works in Teutonic myth, using music as a means to an end, Schumann grounded his pieces in everyday life, using inspiration as a means to music. Whether or not the quotidian translates into a compelling listening experience remains unclear, as Geck admits.

Indeed, the question that Geck does not squarely face is whether or not Schumann was essentially a miniaturist, like Chopin or Satie. In the early piano cycles and *lieder* from the Year of Song, Schumann was able to create small scenes filled with great emotion and vitality. In the larger works, however, he seemed either to yield to episodic disintegration (as in the Violin Concerto) or to succumb to formulaic repetition (the Piano Quintet in E-flat Major). Only in the A-minor Piano Concerto, the Rhenish Symphony, and a few other magnificent compositions does he attain the perfect balance of fantasy and unity. It fell to Brahms and Wagner to find fruitful solutions, both radical and conservative, to sustain massive musical structures over large stretches of time.

Robert Schumann is a welcome update on the life and work of the first fully Romantic composer. By taking a narrative approach and relying heavily on commentaries from the time, Martin Geck is able to weigh Schumann and his music fairly and appropriately. The topical approach occasionally produces lapses: Children are mentioned before their births have been noted; the Schumanns are suddenly living in Dresden (in intermezzo VI) before they have departed from Leipzig (in chapter nine); Schumann's stay in Endenich is cited before its context has been explained. But these are peccadilloes in an otherwise masterfully written account that shows just how lively and controversial the works and writings of this remarkable musician-poet remain, even at a distance of two centuries. ♦

B&A

Mere Ecologism

Is modern environmentalism science or faith?

BY STEVEN F. HAYWARD

The Fanaticism of the Apocalypse
Save the Earth, Punish Human Beings
by Pascal Bruckner
translated by Steven Rendall
Polity, 224 pp., $25

Most critiques of environmentalism have become as dreary and predictable as environmentalism itself. Environmentalists, their critics (myself included) never tire of telling us, grossly exaggerate problems, promote endless bureaucracy, corrupt the law, and engage in relentless scaremongering—or at least insist on wearing Al Gore masks on Halloween. These criticisms are all true, all well deserved, and all . . . tediously familiar.

Here, the French author Pascal Bruckner deploys the eccentric and discursive style of French social commentary to break out of this rut in spectacular fashion. Bruckner, one of the left-leaning *nouveaux philosophes* who broke with Marxism in the 1970s, writes for *Le Nouvel Observateur* and delights in being a scourge of decadent European liberalism (see his splendid *The Tyranny of Guilt: An Essay on Western Masochism*). A major literary figure in France, Bruckner is largely unknown here in America, chiefly because the American left lacks a self-critical impulse.

Bruckner's approach to environmental criticism departs from most others in not disputing any particular environmental claim, including global warming. He fully accepts the possibility of great human harm to nature, and he accords respect to some of the philosophical critiques—by figures such as Martin Heidegger and Hans Jonas—about the obligations of humans to nature, mostly agreeing that we are falling short of our obligation. But just as Bruckner came to understand that Marxism was a perversion of—or an obstacle to—achieving greater justice for the dispossessed, he regards "ecologism," as he labels the dominant tendencies of environmental thought, as the virtual successor to Marxism, and believes it to be just as potentially degrading, if not tyrannical.

He writes: "In the wrong hands, the best of causes can degenerate into an abomination"—which is exactly what Bruckner thinks has happened to environmentalism.

> Ecologism has become a global ideology that covers all of existence, modes of production as much as ways of life. In it are found all the faults of Marxism applied to the environment: the omnipresent scientism, the appalling visions of reality, the admonishment of those who are guilty of not understanding those who wish us well. All the foolishness of Bolshevism, Maoism, and Trotskyism are somehow reformulated exponentially in the name of saving the planet.

He notes that "Marxism designated capitalism as responsible for human misery. . . . With ecologism, we move up a notch: the guilty party is humanity itself." The result is a domain of thought and action today that rewards vehemence over sensibility. This is not a new theme; the "watermelon" label—green on the outside, red on the inside—has been applied to environmentalists for a while. Likewise, Bruckner joins in seeing environmentalism as a secular religion. But Bruckner captures more of the depth and texture of these two aspects of environmentalism than do other critics.

Along the way, he sheds fresh light on why even reasonable and rational environmental concern enables the

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nonsensical and extreme versions to flourish and dominate. The rational environmentalist wishes to warn us of the damage industrial civilization brings with it, while the nonsensical environmentalist wishes only to use this fact as a stick to beat human beings and condemn modern industrial civilization.

Bruckner offers a particular twist on the environmentalism-as-religion theme. More than just a form of faith, environmentalism revives a monastic mentality that wraps human guilt together with a call for humility, repentance, and a discipline of abasement. This "gaseous equivalent of Original Sin"—an eco version of the fall of man—explains why environmentalists are congenitally resistant to facts, science, and progress itself. Environmentalism isn't out primarily to save nature, but to purify humanity: "Adding 'eco' . . . and 'bio' to any word is enough to sanctify it"—although it is no longer acceptable to the high priests to carry your holy eco-water in plastic bottles.

This also explains why environmentalism is so wedded to apocalyptic horizons. I've always explained that environmentalists react with fury to facts debunking their end-of-the-world scenarios because the prospect of the eco-apocalypse makes them happy. Bruckner extends the analysis: "The [eco] prophet is not a great soul who admonishes us but a petty fellow who wishes us many misfortunes if we have the gall not to listen to him. Catastrophe is not something that haunts him but his source of joy."

Bruckner sees the religious fervor for the eco-apocalypse and human guilt as an "infantile disease" discrediting sensible environmental thought. He notes the incommensurability of the diagnosis and the usual prescriptions (recycling, low-watt lights, "sustainability," etc.), which might be considered the eco-theological equivalent of Dietrich Bonhoeffer's "cheap grace," and which Bruckner calls "post-technological animism."

"Let's be clear," he writes. "A cosmic calamity is not going to be averted by eating vegetables and sorting our rubbish." The very triviality of the paltry practical exhortations undoubtedly deepens the furious gloom and misanthropy of environmentalists—making them all the more dangerous to their fellow humans. And Bruckner understands that, as with Marxism and other redemptive schemes of the radical left, today's environmentalism unbound would necessarily involve the "lethal impulses" of retributive tyranny. "[W]e can almost hear the heavy door of a dungeon closing behind us," says Bruckner of the environmentalists he vividly describes as "our Robespierres of the candle."

Bruckner captures perfectly a historical parallel that few people have recognized. Environmentalism, he argues, may be nearly impossible to reform for the same reason that liberal critics of Stalin and the Soviet Union made little headway with Marxists in the 1930s: Any deviation from the party line consigned you to the ash heap of rightist reactionaries, even if you were just as committed to egalitarian ends. Today, to deviate from the environmental party line is to be equated with Holocaust denial and other, lesser forms of moral turpitude. "There is something nauseating about these [eco] statements," Bruckner writes, "that recall the worst newspaper adverts or the Stalinist slogans mocked by George Orwell."

The Popular Front mentality of environmentalism helps explain its resilience in the face of the serial failures of its apocalyptic narratives, from the population bomb predicted 40 years ago to global warming today. Although Bruckner doesn't hold out much hope for a reformation, he thinks ecologism can be compared to the workers' movement at the end of the 19th century, with competing libertarian, democratic, and totalitarian tendencies: "[I]f the extremists drown out the moderates, the new sobriety will have the bitter taste of concentration camps and prisons."

Can we learn from our mistakes? Bruckner doesn't offer much in the way of hope, and the implausibility of any Kronstadt-like moments for environmentalism makes its collapse or erosion as a popular doctrine unlikely to occur for a very long time. While Bruckner doesn't call for a supple and vigorous anti-environmental movement analogous to liberal anti-Communism, this is the clear implication of his analysis. The best he can offer is: "The friends of the Earth have for too long been the enemies of humanity; it is time for an ecology of admiration to replace an ecology of accusation." ♦

B&A

Islamic Isle

Tracing the Muslim roots of modern-day Sicily.

BY RICHARD TADA

A History of Muslim Sicily
by Leonard C. Chiarelli
Midsea, 441 pp., $50

A band of Muslim raiders sacked Rome in 846 A.D., plundering the city's churches and getting clean away with their loot. They had come from Palermo, in Sicily, which had been in Muslim hands for 15 years. Sicily was then on its way to becoming a predominantly Islamic and Arabic-speaking island, and it remained under Muslim rule for over two centuries, until the Normans conquered it in the late 11th century.

Expressions of astonishment that the land of cannoli and the Mafia was once part of the Islamic world may be forgiven, since this is the first detailed

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book on the period to be written in English. Leonard Chiarelli directs the Aziz S. Atiya Library for Middle East Studies at the University of Utah; among his scholarly achievements is detecting the presence of the heterodox Ibadite sect in Muslim Sicily. His book is comprehensive and reliable—if at times dry and lacking in eye-catching detail. This is due, in part, to his sources: There were Arab historians who focused on Sicily, but their works have not survived; thus it becomes necessary to cobble together references to Sicily from later Muslim historians whose primary interest was North Africa. The sole contemporary source is the *Cambridge Chronicle* (so-called because the first copy to be studied in modern times was held by Cambridge University), which tersely recounts events from 812 to 964.

Sicily in the early 9th century was a backwater province of the Byzantine Empire, with a majority Greek-speaking population. The overwhelming bulk of the Byzantine army was in Anatolia, facing the Arabs on the empire's eastern frontier. Only about 1,000 Byzantine soldiers defended Sicily, with another 1,000 nearby in Calabria. The Byzantines lost Sicily through the treachery of their local naval commander, Euphemius. According to a Byzantine source, Euphemius had married a nun against both the law and her will; he rebelled in 826 when threatened with arrest. But Euphemius could not hold the capital of Syracuse against loyal Byzantine forces, and he made the fateful decision to sail to Islamic North Africa.

North Africa was then governed by the Aghlabid dynasty based at Kairouan, in modern Tunisia. Euphemius arrived at the court of the Aghlabid emir Ziyadat Allah I and asked for assistance in retaking Sicily, promising to pay tribute in return. After some hesitation, the emir approved an invasion—possibly in order to keep Muslim zealots in his realm occupied with an overseas adventure rather than have them stir up trouble at home.

The invasion fleet landed at Sicily in June 827, and the Muslims quickly moved to besiege Syracuse in the southeast of the island. Syracuse, however, could be resupplied by sea, and the invaders were forced to lift the siege in 829. In that same year, Euphemius received his just deserts: When the Muslims sent him to negotiate with a Byzantine force in the inland stronghold of Enna, he was recognized as a traitor and stabbed to death.

The arrival of reinforcements from Islamic Spain in 830 enabled the Muslims to rally and take Palermo, which was to become the Islamic capital of Sicily the next year. The Muslims firmly controlled western Sicily by 860, after suppressing a revolt there. But Syracuse did not fall until 878, which still left much of the northeastern corner of the island (closest to Byzantine Calabria) in Christian hands.

The Byzantines lacked a strong fleet in Italian waters, and the Muslims were quick to take advantage of the opportunity by launching naval raids on southern Italy. The independent maritime states of Naples, Amalfi, and Gaeta, feeling threatened by their expansionist Lombard neighbors, made alliances with the Muslims, enabling the invaders to establish bases along the southern Italian coast and strike inland. In 883, Muslim raiders sacked and destroyed the great monastery at Monte Cassino. Southern Italy seemed on the verge of falling to Islam. In 885, however, the Byzantines scraped together enough troops for an expeditionary force and sent it west. This reasserted the empire's control over southern Italy, although Calabria continued to be the target of raids from Muslim Sicily.

Sicily was transformed demographically by immigration from North Africa. Both Arabs and Berbers came to the island, with settlement heaviest in the western half, which had come earliest under Muslim control. A modern estimate has a half-million immigrants entering Sicily during the Islamic period. Their presence reinforced a process that began with the establishment of Muslim rule: the conversion of Sicilians to Islam. In the 10th century, western and southern Sicily appear to have been evenly balanced between Christians and Muslims; by the 11th century, both areas were majority Muslim.

Large-scale conversion inevitably diluted religious standards, causing more rigorous-minded visitors to turn up their noses at what they saw. An Arab traveler named Ibn Hawqal visited Sicily in the 970s and was appalled to find Muslim men allowing their Christian wives to bring up their daughters as Christians. Conversion to Islam accelerated under the Shiite Fatimid dynasty, which supplanted the Aghlabids in North Africa in 909 and in Sicily in 918. Under the Aghlabids, some of the Christian communities in northeastern Sicily paid tribute to Palermo but remained otherwise autonomous.

The Fatimid caliph was determined

San Giovanni degli Eremiti in Palermo (6th century): Christian, then Muslim, and Christian again

LATITUDESTOCK / DENNIS STONE / GETTY IMAGES to reduce Christians to second-class *dhimmi* status—subordinating them and requiring them to pay an annual poll tax. Thus, in 962, a Muslim army marched on the Christian town of Taormina, on Sicily's northeastern coast. The residents resisted for several months before surrendering. They were then sold into slavery, and the town was resettled by Sicilian Muslims; Taormina itself was renamed al-Mu'izziyah in honor of the reigning Fatimid caliph. The Fatimids then defeated a relief force sent from Byzantine Calabria, and they took the last autonomous Christian community—the inland town of Rametta—in 965. Rametta was also repopulated by Sicilian Muslims as part of a deliberate Fatimid policy of accelerating Islamization by introducing Muslim residents into Christian areas.

After the fall of Syracuse in 878, the Byzantines had transferred the Sicilian church hierarchy to Calabria. The *Cambridge Chronicle* recounts an incident in 925 when the bishop of Sicily was captured by Muslims during a raid on Calabria. (He was later returned as part of a treaty agreement.) Nevertheless, despite the long odds against them—occasioned by the absence of ecclesiastical leadership and the planting of Muslim populations in their midst—the people of northeastern Sicily managed to preserve their Greek Christian culture. Surviving Greek-language documents from the time of the Norman Conquest are heavily concentrated in the northeast.

The Christian presence in the rest of Sicily was much less cohesive: They lived scattered among a Muslim majority and adopted a chameleon-like protective coloration. A register from 1178, after a century of Norman rule, shows that Christians made up 19 percent of the villeins around Corleone in western Sicily. Yet these Christians had Arabic names (or Arabicized forms of Greek names), and one scholar who has examined the register suggests that these names represent "a defensive attempt of a small religious community to harmonize with the Muslim culture that surrounded them."

Around the mid-11th century, Islamic Sicily splintered into several petty-states. But the reasons for this are unclear, due to obscurities in the Arabic sources for the period. One Ibn al-Thumnah ruled the area around Syracuse and aspired to conquer the entire island. In an echo of Euphemius' actions two centuries earlier, his decision to seek foreign backing for his schemes led to the downfall of Muslim rule in Sicily.

The Normans were the new power in southern Italy, and an Arabic source places their first appearance on Sicilian soil in 1052. Once introduced to Sicily, the Normans gained control both through their deft manipulation of Muslim divisions and their own fighting prowess. Their capture of Palermo in January 1072 marked the end of Muslim rule. Yet, as Leonard Chiarelli points out, the Islamic period had left its mark: "With much of the inhabitants Islamicized, it would take another two hundred years to bring the population of the whole island within the sphere of Christian Europe." ♦

B&A

Portnoy's Children

A famous/notorious novel yields its progeny.

BY JOSEPH EPSTEIN

A *succès de scandale* if ever there was one, *Portnoy's Complaint*, Philip Roth's fourth book of fiction, will soon be 45 years old. At the center of the novel's scandalousness, which recounts the 33-year-old Alexander Portnoy's reporting to his psychoanalyst the emergence of his repressed desires growing up in a middle-class Jewish home, was its emphasis on masturbation, or "the secret vice," as the Victorian medical encyclopedias used to call it. The novel's last sentence, spoken by the analyst, Dr. Spielvogel, reads: "Now veee may perhaps to begin. Yes?"

Roth ends things there, and never takes up the character of Alexander Portnoy again. The author wrote several novels told through a character he named Nathan Zuckerman, and a series of others told by a character called David Kepesh, but he left Alexander Portnoy to wither and die on the analysand's couch. Isn't it, one wonders, time for a sequel? Roth has announced his retirement and so clearly isn't the man for the job. I don't claim to be that man, either, but I thought I might leave a few notes for anyone interested in taking up the task.

The sequel, which might be called *Portnoy's Children* or *Putting the Kid Back in Yid*, would begin after Alexander Portnoy's successful psychoanalysis has come to an end. The psychoanalysis is considered successful insofar as it has diminished his libido and deprived him of all powers of sexual fantasy. Portnoy gives up on chasing *shikses*, or gentile women, and soon marries a perfectly bourgeois Jewish woman named Lilly Spitzer. Before long, they have a son they name Eliot, a good student type—he will go on to Princeton and Harvard Law School—but with something a touch odd about him. Portnoy notices, for example, that his supply of Viagra is short, and he detects Eliot putting it in his milkshakes.

After five or so years, Portnoy realizes that in marrying Lilly he has really married his mother—the nightmarish, relentless nudge Sophie Portnoy—with a crippling standard of high maintenance added. He and Lilly undergo a bitter divorce in which Lilly wins custody of their son, whose affections for his father she alienates totally.

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In the years ahead, Portnoy watches from the sidelines as Eliot, after departing Harvard Law School, launches a successful financial career and goes into New York politics, first as a crusading attorney general, then as governor. All comes tumbling down when Eliot, a married man, is caught availing himself of $2,000-an-hour prostitutes, for whose services he pays with a credit card. *Was he going for airline miles?* Portnoy wonders, as he recalls the boy's drinking those Viagra milkshakes.

Not long after his divorce, Portnoy remarries, this time to a less aggressive woman named Louise Weiner. She is pudgy, meek, and not particularly attractive. They, too, have a son together, named Anthony. Portnoy is determined not to lose the love of this boy, whose affection he sedulously cultivates. He coaches the kid's little league and hockey teams. He takes the boy alone on camping trips. The kid strikes Portnoy as clever—not the good student his older brother was, but with street smarts and a good heart. So Portnoy is all the more shocked when he is called by the principal of his son's high school and learns that Anthony has been found to have obscene postcards in his locker. What is it with these children of his? Are the sins of the father being visited upon the sons?

Portnoy discovers he is not an ideal husband when his second wife begins a divorce action against him, charging sexual neglect. "I had no notion she was interested in sex," Portnoy tells his lawyer. As with his first wife, Louise wins custody of their son. Father and son drift apart, and this boy, too, becomes enthralled by politics, serving as a New York City councilman and later as a popular congressman.

Anthony is riding high when a sexual scandal his father does not quite understand—something to do with his sending photographs of his private parts over the Internet—brings him down. The humiliation ratio is added to by Anthony's long before having taken his mother's maiden name, and weiner jokes abound. Portnoy thinks to call his son to offer comfort, but then thinks otherwise.

The denouement of *Portnoy's Children* entails both of Portnoy's sons attempting comebacks after their disastrous scandals. Eliot is planning to start slowly on the road to rebuilding his career by running for New York comptroller; Anthony, a higher roller, runs for mayor of New York. Portnoy finds himself appalled by the effrontery, the sheer chutzpah, of his children. On Election Day, he votes against both his sons. On the last page of the novel, Alexander Portnoy, now 80 years old, goes back into psychoanalysis. ♦

B&A

Parisian Lap Dance

Municipal swimming in the Gallic mode.

BY ANN MARLOWE

Paris

It wasn't until I experienced swimming at a Parisian public pool that I understood certain aspects of the French mind. I've been visiting France occasionally for 30 years, have dated French men, and I read French well. But a few hours in the water has done more for my amateur anthropology than anything else.

When I decided to spend a month in Paris, my first thought was to find a place to swim. At home, I swim a mile five or six days a week. It's one of the most relaxing times of my day, an opportunity to step back from what I'm working on and enter another realm. I thought that the French would probably not be as good as the swimmers I'm used to at New York's Chelsea Piers gym, home to a top triathlon team; but then, that might make for a more leisurely experience, perfect for de-stressing.

My first surprise was that there are no private health clubs or gyms with 25-meter pools in Paris. The longest is 17 meters and not very convenient to where I'm staying on the Île Saint-Louis. (Few of the five-star hotels have good-sized pools, and they charge $65-$200 a visit.)

Then my friend Helena turned me on to the public Piscine Pontoise, located just off the Boulevard Saint-Germain in an upscale neighborhood. For $6 a visit, it's a comparative bargain. Dating from 1934—and, according to my French friends, semi-legendary for its inclusion in movies—the outside is a bit grim. The interior, with three tiers of changing rooms mounting around the pool, is dramatic. I was excited when I saw how long it was: At 33 meters, the mile I usually swim only takes 25 round trips rather than 36. I thought I might gain some time, and at my level, every minute helps.

I was in for a rude surprise. First of all, the pool is very crowded by American standards, even in mid-afternoon. Nine or 10 people in a lane, plus a handful hanging out and chatting at the shallow end, is common at Pontoise. Even though the lanes are wide enough for three swimmers, and are longer than usual, the sheer number of bodies makes for some anxiety.

Part of the reason why the lanes are crowded is that the categorization of swimmers is done in a way that makes little sense to an American. It's not how fast you are, it's . . . what you wear. While American pools, both public and private, typically have three, four, or even five speed designations, Pontoise has only one: the *ligne rapide*. The rule in this lane is that, if it's crowded, the staff can evict swimmers with fins or handpaddles, but they are otherwise allowed. Breast stroke (*la brasse*), however, is strictly forbidden, never mind

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if the breast-stroker is faster than most of the crawlers.

And the *ligne rapide* is not all that *rapide*. While I wouldn't think about swimming in the "very fast" lane at NYU or the "fast" lane at Chelsea Piers, I found that I could keep up in the Pontoise *ligne rapide*. The only problem was that the almost-exclusively male (and big) clientele are addicted to passing each other, just like French motorists. So, one either finds oneself trapped behind a slow swimmer—and wondering if it's safe to pass him before someone else decides to pass from the opposite direction—or one is unable to slack for even a few seconds lest the guy behind try to pass. I haven't seen a collision yet, but I have hit some people in the leg, and vice versa. It's not relaxing.

Nor is the problem solved by scaling down to a slower lane. Next to the *ligne rapide* is the *ligne avec équipement*, which is for everybody who uses fins or handpaddles, no matter how fast they swim. Sometimes the fin lane contains swimmers of roughly even ability, a little slower than the *ligne rapide*, and a few really accomplished swimmers. On my first day, I thought it would be ideal for me. But even if you want to swim in this lane without fins, it's forbidden, apparently for safety reasons. Since I usually swim with fins in New York, I decided to buy fins and use this lane. The only problem: With fins, I was faster than almost all the people—90 percent female—in the lane.

The next lane, where equipment is forbidden, is populated by people who can barely swim. Then there is a large area, about the size of two or three lanes, which is a sort of free-swim zone in theory, but in practice is for kids and people who doggie-paddle.

The effect of this organizational system is that my swim takes much longer here in Paris than in New York. I can't do flip turns, because someone could be trying to pass me from behind. And to add to the excitement, people sometimes switch lanes at the deep end as well as the shallow end, cutting in on you as you reach the wall. It's almost impossible to swim continuously, because of the small crowd gathered at the shallow end. And almost no one, even in the *ligne rapide*, swims continuously: They act like third-world cab drivers, accelerating madly down the lane, then resting at the end.

As an American already inclined to be prejudiced against France's over-organization and controlled economy, the Piscine Pontoise reinforces my beliefs. It reminds me of an argument I've heard over the years from French friends that American society is too competitive, with no thought to taking time to smell the flowers along the way. But of course, one could say that because the Pontoise management fails to divide the lanes sufficiently by the skill of swimmers, it actually *increases* competitiveness (in the form of passing) and decreases relaxation.

In the spirit of Claude Lévi-Strauss, I'd speculate that the ambient anxiety of never knowing if someone will try to pass in the opposite lane is actually welcomed by the French as a diversion. While we Americans may see our time in the pool as an opportunity to escape social interaction and to "zone out," the French find incessant interruptions and the need to deal with the unpredictable behavior of others enjoyable.

I do have one word of praise for Pontoise, however: The changing-room system is the best I've seen anywhere in the world. You find an open cabin, each of which is numbered, and you stash your street clothes and shoes there. Then you slam the door behind you; it's now locked until, after your swim, you summon one of the attendants to unlock it for you. So you have a completely private place to change, and there's little fear your possessions will be stolen.

Trust the French to make it difficult to enjoy swimming but a pleasure to get changed. ♦

B&A

Time Travelers

A sharp, 1980s-style comedy set in 2013.

BY JOHN PODHORETZ

The Way Way Back
Directed by Nat Faxon and Jim Rash

The Way Way Back, a little movie about a 14-year-old boy who goes on an extended summer vacation with his divorced mother and her belittling boyfriend, comes close to being a classic. Close. Which poses a dilemma for a critic: I don't know whether to concentrate on the marvelous qualities it possesses or on the weaknesses that prevent it from being the masterpiece it might have been.

The problem—a common one when it comes to reviewing—is that the criticisms are usually more interesting than the praise. That is especially true in the case of *The Way Way Back*, whose writer-directors Nat Faxon and Jim Rash were forced to make compromises for financial reasons to get their movie made at all. Those compromises result in confusion and narrative problems. Given that I really do think you ought to see *The Way Way Back* at all costs, I don't want you to be put off by my disappointment that it isn't better.

As *The Way Way Back* begins, the brooding Duncan (Liam James) is seated in the third row of an old woodie station wagon, in the seat that faces the rear window (thus the film's title). His mother (Toni Collette) is asleep in the front row, and her boyfriend's teenage daughter is sleeping in the second row.

John Podhoretz, editor of Commentary, *is* The Weekly Standard*'s movie critic.*

The boyfriend, Trent (Steve Carell), calls to Duncan: "On a scale of 1 to 10, how would you rate yourself?" Duncan doesn't want to answer, but the deceptively mild and smiling Trent insists, and Duncan says he'd give himself a 6. Trent disagrees. He says Duncan is a 3, that the boy is too silent and morose, but that he can get his number higher if he ups his game this summer at Trent's beach house.

This funny, brilliant, painful scene demonstrates Faxon and Rash's sure-handed talent for writing tough and unsentimental characters in quick, sharp strokes—and their offhand directorial skill in making sure Steve Carell plays Trent as though he believes he is doing a kindness to the boy while actually scarring him emotionally.

Parents behaving badly without knowing it is an ongoing theme in *The Way Way Back*. Trent's beach house is in a close-knit community whose residents have been returning for years. It's "spring break for adults," as one disaffected teenager puts it, and indeed, the adults are very busy entertaining themselves and are annoyed by the imperfections of the young. Allison Janney, in a remarkable turn as Trent's affectionate and drunken next-door neighbor, insists that her 10-year-old son with amblyopia must wear an eye patch so he won't make it hard for people to know how to look at his face.

Duncan's mother Pam is so desperately eager to have things work out with Trent that she turns a blind eye to her boyfriend's quiet efforts to put her son in his place. Fortunately for Duncan, he finds a refuge in a nearby low-rent water park. He is taken under the wing of the park's jokey manager, a shambling guy named Owen—played by the best American actor whose name you don't know, Sam Rockwell.

The film's portrait of the "adult spring break" evokes the fiction of John Cheever and Ann Beattie. The portrait of the water park has a much different, more pop influence: *Meatballs*, the throwaway 1979 Canadian comedy that is one of the most beloved movies of the past 30 years. That film, about the campers and counselors at a shabby summer camp, managed to mix hijinks comedy with a soulful story about a shy and lost kid whose summer—and maybe whose teenage years altogether—are saved by the unexpected friendship he comes to share with the camp's wisecracking head counselor. *The Way Way Back*'s Owen is a direct throwback to Bill Murray's Tripper, and his emotional generosity and good-natured kindness deliver Duncan from Trent's cruelties and his mother's blindness to them.

Even more important, the kids are completely on the loose in a way no kid could ever be today, due to the existence of cellphones and the like. In the context of the 1980s, the relationship between Owen and Duncan would not raise eyebrows; but after decades of pedophilia panics, it certainly would today.

Unfortunately, Faxon and Rash were obliged—surely for reasons of budgetary restraint—to set the movie in the present day. Making a period picture can add millions to a budget; so what they did, basically, was place these 1980s characters in 2013 (Trent's 30-year-old car drives on the road past contemporary minivans; one kid texts but others don't have phones; and so on). Faxon and Rash did what they had to do, but the layering of time periods really, really doesn't work—and is all the more glaring because *The Way Way Back* is otherwise so socially exact.

FOX SEARCHLIGHT PICTURES

Liam James

Faxon and Rash, who shared an Oscar with Alexander Payne for the screenplay for *The Descendants*, are both network sitcom actors and play supporting roles here as employees at the water park. This was clearly a passion project for them; indeed, the relationship between Duncan and Trent was taken from Rash's own life. And here's where the problems with the movie arise.

Faxon and Rash acknowledge that their original screenplay was set in the 1980s, and every bit of detail here reflects that, from Trent's car to the décor of the house and water park to the music of the soundtrack. The same is true of the characters. Trent is clearly a post-1970s dude. Pam is a classic 40-something of the era, having been dumped by a husband who's been through a midlife crisis and relocated to California with a chippie. There are intimations of wife-swapping, redolent of a much earlier era.

The movie's other main flaw is the performance of Liam James as Duncan. He's a mistreated kid in pain, angry and dazed at the same time, but James is so utterly charmless you can't understand how Owen can stand him—or how the pretty girl next door could come to take an interest in him.

All that being said, *The Way Way Back* is a real achievement—one of the most affecting American movies of recent years, and with a final 30 seconds that blow your socks off. How many films can you say that about? ♦

"New York mayoral candidate Anthony Weiner admits he sent more lewd messages, used pseudonym 'Carlos Danger'"

—Washington Post, *July 23*