

the weekly

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1863

GEOFFREY NORMAN on Gettysburg
MACKUBIN THOMAS OWENS on Vicksburg



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COVER BY JON VALK

Will Thomas Perez Make Another Deal?

As the Supreme Court finished its term, we looked ahead to see which big cases the justices have taken for review starting in the fall. And lo, *Township of Mount Holly, New Jersey, et al. v. Mount Holly Gardens Citizens in Action, et al.* caught our eye.

Some years ago the township adopted a plan to redevelop Mount Holly Gardens, a 30-acre neighborhood of bad housing and high crime with a disproportionately minority population. The plan called for demolishing roughly 330 houses and replacing most of them with market-rate housing costing between \$200,000 and \$275,000, the purchase of which the township would subsidize.

As it happened, some Gardens residents complained that they wouldn't be able to afford to buy a new home in the redeveloped area or to live elsewhere in the township. Joining with former residents and a residents' association, they sued the township, arguing that the redevelopment plan would adversely affect more black and Hispanic households than white households, and that most white but few black and Hispanic households in the county would be able to afford new homes in the redeveloped Gardens.

Mount Holly thus stands accused of discriminating against blacks and Hispanics in violation of the Fair Housing Act. And it stands accused under a theory of discrimination known as "disparate impact," which targets policies that are neutral and nondiscriminatory in their intent but have a disproportionate impact on people of a particular race or ethnicity. Disparate impact is fairly described as an attempt to prove discrimination using statistics.

There is, however, a slight problem with the disparate impact claim in the Mount Holly case: It's not provided for in the Fair Housing Act. Congress has never legislated it. Most of the appeals courts, however, have endorsed it. The issue the Court wants to resolve, understandably, is "whether disparate impact claims are cognizable under the fair housing case"—meaning if such claims can even be brought in a federal court. If the Court says no, then Mount Holly wins.

But will *Mount Holly* actually be decided? Two years ago the Court took *Magner v. Gallagher*, a case from St. Paul, Minnesota, in which the justices wanted to answer the exact same

question about disparate impact that's now before the Court in *Mount Holly*. In *Magner*, with oral argument to take place in fewer than three weeks, St. Paul petitioned for dismissal of its case, thanks to pressure from under-the-radar civil rights groups and some dubious deal-making by the Obama Justice Department and its civil rights chief, Thomas Perez (see Terry Eastland's account of the saga, "Thomas Perez Makes a Deal," in our issue of May 27, 2013). The administration is committed to using disparate impact theory wherever it can—making more of us into unwitting discriminators—and Perez's worry was that the Court would hold against disparate impact claims in housing.

So: What in the devil is going on behind the scenes with *Mount Holly*? A lawyer close to the case tells THE SCRAPBOOK that outside parties are now involved, and that there is "more intense pressure" being applied. Perez, he says, has yet to step in. Maybe he has figured out that involvement in *Mount Holly* could worsen the outlook for his confirmation as labor secretary. Here's hoping that Mount Holly holds fast—and wins in the Supreme Court. ♦

Hyperventilating over Voting Rights

THE SCRAPBOOK has said it before and will say it again: Not only has the 24-hour news cycle revolutionized the business of journalism, it has taken a certain amount of the fun out of reading all that 24-hour-cycle journalism.

For instance, last Tuesday evening THE SCRAPBOOK had just settled in to enjoy the hysteria about the Supreme Court's Voting Rights Act decision when—presto!—Wednesday morning brought tidings of the Court's decisions on gay marriage. In a matter of a few hours, Supreme Court majorities were transformed from "five un-

elected, life-tenured men" (Andrew Cohen, the *Atlantic*) who had issued a "devastating blow" (Jesse Jackson) into champions of human freedom.

All this is a symptom, of course, of human nature: We tend to admire people who agree with us and abhor those who don't. But since most Americans, including most journalists, don't fully understand the function of the Supreme Court—not to mention the complexities of its various judgments—modern journalism is especially vulnerable to getting things wrong. Decisions which are often very narrow, even legalistic, in scope are misconstrued as sweeping. And in case you hadn't noticed, if the *New York Times* (or *Slate* or MSNBC or whoever)

thinks the Court has erred, its decision is depicted as a symptom of the deep sickness afflicting American politics; but when the Court makes the "right" decision, it is an achievement of historic dimensions.

The decision on the Voting Rights Act is a case in point. The Supreme Court upheld the fundamental provisions of that historic 1965 measure; but it did strike down the section that had, 48 years ago, singled out a handful of Deep South states for special scrutiny by the Justice Department. This was, in the Court's view, mere common sense. Proportionally speaking, there are far more black elected officials today in Alabama or Mississippi than in Connecticut or Iowa—

and the America of 2013 is very different from the America of 1965, as President Barack Obama, in particular, must realize.

“Congress,” wrote Chief Justice John Roberts, “must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions. It cannot rely simply on the past.”

If, however, you think that voting rights are as problematic today in South Carolina and Texas as they were a half-century ago, and that everything is just fine in Boston and Cook County, Illinois, then you would join the Democratic National Committee in condemning the Court’s decision as an “injustice”—but a great opportunity for more fundraising (“stand with Democrats who are fighting Republican attacks on voting rights”). ♦

Senegalling

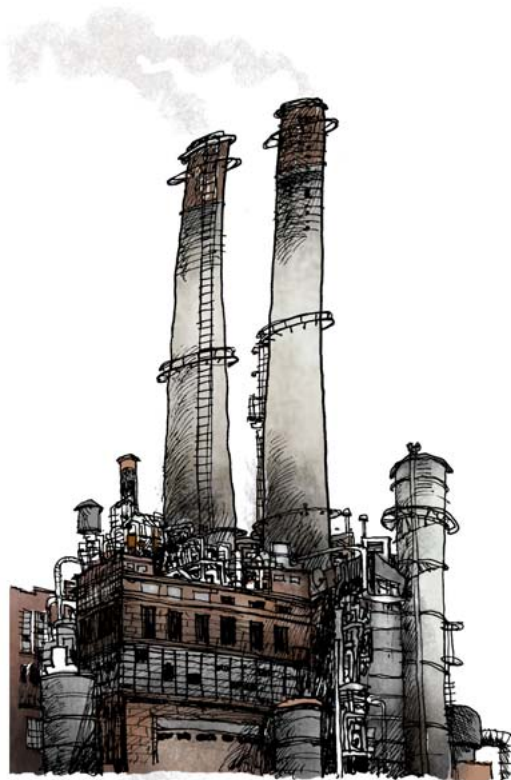
Senegal is an impoverished West African country where some 26 percent of the population subsists on less than \$1 a day. Nearly one in five children there are malnourished. In the country’s rural areas, fewer than half the children regularly attend school.

Basically, Senegal is nothing like the United States, the richest country in the history of the world. And yet, speaking last week to a group of Senegalese schoolchildren during the Obamas’ whirlwind trip through Africa, first lady Michelle Obama likened her upbringing to that of Senegalese children:

“I know that some of you may be the first in your families to attend a school . . . so there might be people at home who don’t quite understand what you’re going through as you work to succeed here,” she said. “I know a little bit about this from my own experience. See, like many of you, I didn’t grow up in a family with a lot of money.”

Of course, not only did Michelle Obama grow up in prosperous 20th-century America, she was also raised in solidly middle-class surroundings. Her father was an engineer at a Chicago water plant who earned more

Q: WHICH ONE *actually* PRODUCES ENERGY and JOBS?



A. COAL

RAVIERZ



B. HOT AIR.

than \$40,000 a year—substantially more than, say, the public school teachers of that era. Her mother was a homemaker. The family lived in a pleasant detached house. To liken her relatively privileged upbringing to the immiserated conditions of West African children was a galling bit of rhetorical overreach. ♦

Coming to Their Census

Last month THE SCRAPBOOK reported on a slightly arcane, but important, change being proposed for the American Community Survey. The ACS is an annual survey conducted by the Census Bureau; it goes

out to 3 million households and is one of the most robust tools we have for gathering demographic data about our country. For unknown reasons, the statisticians running the ACS proposed deleting a question about “number of times married.”

This might not seem like such a big deal, except that this question is the single-best source for understanding nuptiality and marital instability (or, in plain English, patterns of marriage and divorce). If the question had been deleted, for instance, it would have made it impossible to estimate the percentage of Americans who have ever divorced. Or to calculate the average span of first marriages. Which is rather important since, if

one wants to buttress the institution of marriage, it helps to understand what's happening to it.

Happily, the fine people at the Census Bureau—no doubt, close readers of THE SCRAPBOOK—have now come to their senses. The “number of times married” question will remain on the American Community Survey. ♦

Sweet Relief

THE SCRAPBOOK takes some pleasure in noting one happy ending in the annals of industrial disputes.

As readers will remember, Hostess Brands, the company that manufactured Twinkies, “cream-filled” Cup-Cakes (“you get a big delight in every bite”), and other politically incorrect confections, stopped producing them last year when the company couldn't meet its unions' demands and declared bankruptcy. It was a toxic combination of labor overreach and evolving public taste.

Except that public taste has not evolved quite so far as, say, Mayor Michael Bloomberg and the editors of *Bon Appétit* might hope. The anguished cries across the land about the loss of Twinkies were so loud, so

insistent and self-evidently heartfelt (in these pages, see “Down Twinkies” by Mark Hemingway, Nov. 16, 2012, and “The Day the Twinkie Died” by Matt Labash, Dec. 10, 2012), that Hostess was acquired by a determined new owner—and Twinkies (and their delectable corporate cousins) will be back on America's shelves by July 15. Like the rise and fall of New Coke (1985), this is an encouraging example of the triumph of public sentiment over elite opinion.

And we say this, by the way, in spite of the fact that Twinkies are no particular favorite of THE SCRAPBOOK. (Our tastes in sugary confection run more along Little Debbie/Dunkin' Donuts lines, but that's not the point.) Despite what you may read, or see on TV, most Americans do not subsist on a steady diet of sugar and fried foods, or a daily dose of Grand Slams at Denny's. Twinkies, like most foods of that type, are an occasional indulgence for the vast majority of citizens; and in the land of the free, it is up to them to decide how often the consumption of a single Twinkie—every day? once a week? twice a month?—is worth the 150 calories of blissful nothingness. ♦



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Going Dental

Like most civilized people of goodwill and sound reason, I've always held that violence isn't the answer. It is, however, an answer. Which is why if I ever see Larry Randolph again, I intend to knock his teeth out.

While I'm a forgiving New Testament sort of guy in theory, I'm also partial to Exodus's tooth-for-a-tooth clause, for reasons that will become apparent. During senior year, I played behind Larry on our high school basketball team, as I did everyone who was faster, taller, and could drive to their left. (The only way I'd see serious minutes was if the team bus crashed, maiming the rest of my teammates.) Acutely aware that white men can't jump, I tended to stay earth-bound during rebound drills, since exertion would be just for show. One day, Larry crashed the boards in front of me and landed with his elbow in my grillwork. I felt no pain, except on the inside, when I heard a loud crack and saw two pearly yellows orphaned in the foul lane.

My military father's dentists fixed me up at no charge, warning that my artificials would last about 10 years. But as I babied my impostor teeth—cutting corn from the cob, taking care not to get punched in the mouth by irate profile subjects—and the years rolled on past their expiration date, I came to think they'd last forever. Last summer, forever ended.

When my tooth came loose on a piece of chuck roast, my dentist tried to finish it off, hand-tugging it as hard as she could seven times to no avail. Once my head stopped throbbing, she said she could take the tooth out with forceps, anesthesia, and all that girly stuff. New implants and matching

crowns, even with insurance, would still come to about the price of a Volkswagen Jetta, though for a regular customer she could probably work it down to Hyundai Accent territory.

It seemed a tad steep. So when I was tipped off to a university dental resident program that could do the same at a fraction of the cost, I applied, and waited months for admission, as



my loose tooth hung like a mud-flap, then finally came out. No matter. The money I'd save would be worth enduring the barbs of detractors who remarked that I looked like everything from a hockey goon to a homeless drifter as I awaited my new tooth. The only catch was that I'd be worked on by a student dentist. I'll call him "Omar."

Omar and I got off to a shaky start when I learned he was an Egyptian immigrant. Making small-talk about the recent chaos in his homeland, I carelessly said, "I guess Mubarak doesn't look so bad now." His entire family hates Mubarak, and they consider his every breath a rebuke, he replied. Mindful that Omar was about to go to town on my soft tissues with

sharp implements, I gained newfound respect for the Muslim Brotherhood. "On the other hand," I offered, "maybe it's time some good Allah-fearing moderates cleaned that place up."

Over many terrifying appointments that resembled the dental torture scene in *Marathon Man*, Omar told me I needed to trust him. I tried, though I never managed to have as much faith in his ineptitude as he did. There was the time he nearly suffocated me with gauze during a bleaching, then told me to sit still and walked off to lunch as my air-hole constricted. He often rested his spiky dental instruments on my dribble bib, not that it hurt after he inadvertently stabbed my chest—right through my sweater—with the anesthesia needle while talking with his hands. He should've numbed my legs, too, since he nearly crushed them after accidentally raising my chair smack into a steel tray arm.

Then he dropped a drill bit down my throat, which I blocked with my tongue. ("Don't worry, baby," said a motherly dental assistant. "If you'd missed, we have an emergency room right across the street.") And on occasion, he'd hit his knees, eyeballing the floor for dropped implant screws or crowns. Me: "Did you lose something?" Omar: "Not now, Matt, I'm trying to concentrate."

In the end, Omar affixed a fine-looking crown, though he warned, "It'll probably come out. I used temporary cement in case something goes wrong." Just a hunch—but I'm betting it will. Though if it does, Omar won't fix it. He's leaving town for his next residency. I don't know where he'll end up practicing, but I intend to find out.

Because if I ever get the chance to knock Larry's teeth out, there's this dentist that I'm going to highly recommend.

MATT LABASH

The Spirit of '76

For ourselves, let the annual return of this day forever refresh our recollections of these rights, and an undiminished devotion to them.”

So wrote Thomas Jefferson, in what turned out to be the last words he set to paper, in a June 24, 1826, letter to Washington, D.C., mayor Roger Weightman. Jefferson was regretfully declining an invitation to travel to the nation's capital to celebrate the 50th anniversary of American independence with the District's citizens as well as with “the small band, the remnant of that host of worthies, who joined with us on that day, in the bold and doubtful election we were to make for our country, between submission or the sword.” Jefferson explained he couldn't travel because of “circumstances not placed among those we are permitted to control.” He died at home a few days later—on July 4.

Jefferson had been 33 when he served as the principal author of the Declaration. His fellow member of the drafting committee, John Adams, also died on July 4, 1826. He had been 40 in 1776. The man who was at different times Jefferson's and Adams's adversary, arguably the greatest of the Founders, Alexander Hamilton, as a 20-year-old in 1775, admonished his countrymen that “The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records.” He then while in his early 20s served as General George Washington's chief of staff during the Revolution, was at age 33 one of the two primary authors of the Federalist Papers, and at age 34 became secretary of the Treasury.

The Founders were young. That doesn't mean they weren't respectful of the wisdom of the ages. “Experience must be our only guide,” John Dickinson instructed his fellow delegates to the Continental Congress. And today, too, as the 237th annual return of Independence Day refreshes our recollection of our rights and an undiminished devotion to them, experience has its claims. Experience, after all, teaches the price of weakness abroad and of bloated government at home. Experience also provides guidance for remedying these problems. The lessons of Reagan and Thatcher aren't so distant as to be inaccessible nor so difficult as to be inapplicable.

But sober experience won't be enough to remedy our ills. We've never been so weak while facing such dangerous circumstances abroad. We've never run up this kind of debt except when engaged in a world war. We've never

had to repeal and replace a program like Obamacare. We've never had to deal with the near-dissolution of the family among sectors of our society. We've rarely had elites so out of touch with middle America and, in some ways, with reality.

So the remedies can't simply be based on experience. They will have to be bold and will necessarily be doubtful. They will have to be of the kind characteristically chanced by the young.

This includes the young in spirit, of course. Chronology is not destiny. In 1980 the 69-year-old Ronald Reagan was more youthful in attitude than all the earnest 30-year-old establishment wannabes. In 1940 the 65-year-old Winston Churchill was more youthful in spirit than all the world-weary appeasers born decades after him.

In the 2014 elections, the fading appeal and dogmatic rigidity of reactionary liberalism will be nicely embodied by the Democrats' congressional leaders, the septuagenarians Harry Reid and Nancy Pelosi. Within the executive branch, a septuagenarian vice president and sexagenarian secretaries of defense and state are fronted by a young president with old ideas, tired views stubbornly impervious to change, and an increasingly cranky temperament. Liberalism's standard-bearer in 2016 will most likely be Hillary Clinton, who has maneuvered through four decades in American public life manifesting that characteristic combination of today's liberalism—a keen attention to personal grasping and advancement along with the profession of glittering generalities and the adoption of fine-sounding policies regardless of actual real-world consequences. About these Bourbons of elite liberalism, one can only echo Talleyrand: They have learned nothing and forgotten nothing.

Against them will stand the American people, resisting as best they can the depredations of modern liberalism, led by . . . whom? With all due respect to Mitch McConnell and John Boehner, theirs can't be the spirit of 2014. And the spirit of 2016 can't be the spirit of the recent presidential nominees, John McCain and Mitt Romney. The animating Republican spirit in these crucial elections has to be more like that of the young Jefferson of the Declaration and the young Hamilton of *The Federalist*. And of the 23-year-old Abraham Lincoln, who, in his first run for elective office, wrote to his fellow citizens that he had no



Jefferson

ambition so great “as that of being truly esteemed of my fellow men, by rendering myself worthy of their esteem.”

So, to the young and ambitious who are stirred by the admonition that “it is better to be impetuous than cautious, because fortune is a woman. . . . And one sees that she lets herself be won more by the impetuous than by those who proceed coldly. And so always, like a woman, she is the friend of the young, because they are less cautious . . . and command her with more audacity”—to the young in either body or spirit, we say: Run, baby, run.

—William Kristol

Stop Discriminating

In 2007, the Supreme Court ruled against using race to determine public school assignments. Chief Justice Roberts concluded his plurality opinion with this eloquent statement: “The way to stop discrimination on the

basis of race is to stop discriminating on the basis of race.”

Unfortunately, in the affirmative action case in the term just completed, a majority of the justices were unable to agree that institutions of higher education should stop discriminating on the basis of race in their admissions policies. Even so, the decision in *Fisher v. University of Texas at Austin et al.* has set the stage for the demise of race preferences in admissions and the discrimination they cause. Or so we would like to hope.

Abigail Fisher is a young woman who in 2008, in her senior year of high school in Sugar Land, Texas, applied unsuccessfully for admission to the university. Believing she had been discriminated against on account of an admissions policy that favors black and Hispanic applicants, she sued, invoking the constitutional guarantee of the equal protection of the laws, which different treatment on account of race—discrimination on the basis of race, as the chief justice would say—violates.

Both Fisher and the university moved for summary judgment, meaning they agreed on the basic facts and could proceed without a trial. The district court granted judgment for Texas, and the U.S. Court of Appeals for the Fifth Circuit affirmed.

The case under which the lower courts reviewed UT’s admissions policy was *Grutter v. Bollinger*, which sustained the use of race in admissions at the University of Michigan

Trial Lawyers Scrape the Bottom of the Barrel

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

File this one under “no good deed goes unpunished.”

Regardless of what you may think of oil giant BP, you’d be hard pressed to argue it hasn’t bent over backward to make amends for the catastrophic Deepwater Horizon oil spill in 2010. The company has spent tens of billions of dollars on environmental cleanup and on compensation for businesses with real losses. It’s waived the \$75 million liability cap under the law and promises to spend whatever it takes to make things right.

Enter a parade of trial lawyers, a who’s who of some of the nation’s wealthiest lawyers. They smell big bucks and want a piece of the action. They find a loophole to exploit—a misinterpretation by the claims administrator of the settlement agreement’s provisions for calculating a claimant’s lost profits.

Instead of subtracting expenses from the revenues those expenses created—as is done under accepted accounting methods—the administrator is letting claimants match expenses and revenues by date, even if the expenses aren’t related to that revenue at all other than merely happening around the same time.

So these lawyers start recruiting claimants and instructing them on how to game their numbers to show a “loss” of profit and therefore win compensation from BP. (One law firm’s ad reads, “If the numbers work, there is no need to provide proof that BP caused your loss!”) In reality, such “losses” often reflect nothing more than arbitrary or incorrect bookkeeping. Some state AGs are actively recruiting businesses to get a greater share of this fund for their states regardless of whether the claimants’ losses were due to the spill.

The result is that thousands of claimants that suffered no losses are coming forward, obtaining outrageous windfalls and making a mockery of what

was intended to be a fair and honest settlement process.

What are the consequences if this settlement agreement—perhaps the largest ever—fails? It means that next time a business will choose to litigate, rather than settle, which will delay for years compensation to true victims while driving up legal costs and producing a major windfall for lawyers, not victims.

BP is shelling out billions of dollars to fix what went terribly wrong. We wish the tragedy had never happened, but it has brought out the best in many citizens and members of the business community. It’s sad and unacceptable that a few trial lawyers are exploiting the situation to line their own pockets. Their actions besmirch the dedicated efforts of Gulf residents who are helping the region come back strong.



U.S. CHAMBER OF COMMERCE
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Law School. That decision was handed down 10 years ago, on June 23, 2003, and later that same day the University of Texas, constrained since 1996 by a Fifth Circuit decision prohibiting race preferences in admissions, announced that it would fashion a new admissions policy that would revive the use of race, in the terms set forth in *Grutter*.

Hence the question that *Fisher* and Texas asked the Supreme Court to decide was whether the Fifth Circuit's ruling was consistent with *Grutter*. And the Court, with Justice Kennedy writing an opinion acceptable to no fewer than seven justices, held that it was not.

Grutter was a case in which the Court's liberals and conservatives split four-to-four, with Justice O'Connor casting the deciding vote and writing the Court's opinion. Well before *Grutter*, the Court had developed an approach for reviewing racial classifications of all kinds under which they must be held to the most exacting standard—strict scrutiny. Accordingly, for a given use of race to pass constitutional muster, it must be “narrowly tailored” to achieve a “compelling interest.” *Grutter*'s importance lay in its holding that obtaining the educational benefits of student body diversity is a compelling interest that can support the use of race in admissions.

Kennedy penned a sharp dissent in *Grutter*. He did not object to the diversity rationale for using race. His concern rather was that the Court had failed to provide “rigorous judicial review” of the law school's policy, “with strict scrutiny as the controlling standard.” Kennedy cited instances of what he called the Court's “perfunctory review,” and there certainly are passages in O'Connor's opinion that are absurdly deferential. For example: “We take the Law School at its word that it would ‘like nothing better than to find a race-neutral admissions formula’ and will terminate its race-conscious admissions program as soon as practicable.” Are any schools using preferences—then or now—actually trying to terminate them? Kennedy concluded: “If the Court abdicates its constitutional duty to give strict scrutiny to the use of race in university admissions, it negates my authority to approve the use of race in pursuit of student diversity.” In other words, the whole business is undone.

Over the past decade, *Grutter*, especially its approval of diversity as a compelling interest, has continued to draw criticism. Indeed, its validity was the real issue in *Fisher*. As it happened, *Fisher*'s lawyers decided not to press the Court to overrule *Grutter* (a favorite of O'Connor's; she was in the audience at the Court when *Fisher* was announced). But throughout the oral argument the meaning of *Grutter* was probed and contested, the case referred to by name more than 80 times.

In *Fisher*, Kennedy presented a version of O'Connor's opinion in *Grutter* that reflected what he had said about it in his dissent in that case. In effect, he edited her opinion, toughening it up so as to make clear that it calls for truly strict scrutiny. This is where the Fifth Circuit failed,

Kennedy wrote in *Fisher*, for in deferring to UT in both its “compelling interest” and “narrow-tailoring” inquiries, it did not use the “correct standard of strict scrutiny,” and thus its grant of summary judgment to Texas was “incorrect.” If only the Fifth Circuit had known which opinion in *Grutter* to enforce!

Kennedy set forth what “the correct standard” demands: “some but not complete” judicial deference to a university's educational judgment about diversity, and no deference at all to—in fact, a rejection of—numerical definitions of diversity or “racial balancing” relabeled “racial diversity.” As for ostensible proofs that the means chosen by a school to attain diversity are narrowly tailored to that goal, courts must not defer to but closely examine them. And courts must probe whether it is actually “necessary” for a school to use race to obtain the educational benefits of diversity. Courts must “examine with care, and not defer to, a university's consideration of workable race-neutral alternatives.” And a university must actually demonstrate “before turning to racial classifications . . . that [such] alternatives do not suffice.”

Kennedy also emphasized the need for courts to give “close analysis to the evidence of how [an admissions] process works in practice.” In other words, an empirical approach is necessary. If that is enforced in the lower courts, the mounting evidence that preferential treatment actually hurts its intended beneficiaries (through the phenomenon known as “mismatching,” for example) could undermine its basic premise, which is that it hurts only, if it hurts anyone at all, “individuals who are not members of the favored racial and ethnic groups,” as the Court said in *Grutter*.

Kennedy set aside the Fifth Circuit's judgment for the University of Texas and sent the case back so that the university's admissions process can be reviewed under “a correct analysis.” The appeals court will review the record in light of *Grutter*, as Kennedy has explained it, or order a trial if it decides more information is needed.

“Strict scrutiny,” wrote Kennedy at the close of his opinion in *Fisher*, “must not be strict in theory but feeble in fact.” Indeed it must not be. And in theory, it seems demanding enough to bring an end to the UT policy as well as similar ones used by other select schools, some of which, thanks to *Fisher*, may soon be visited with equal protection lawsuits.

But note well that Bill Powers, the president of the University of Texas at Austin, says that he's “encouraged” by the ruling in *Fisher*, and that the university will continue to defend the current admissions policy, which he believes “fully satisfies” strict scrutiny. No one should be under the illusion that the preference supporters located throughout higher education will without a fight stop discriminating on the basis of race—though it would be a victory for morality and the Constitution if they did.

—Terry Eastland

Let the People Decide

From the dissenting opinion by Justice Antonin Scalia in *U.S. v. Windsor*

This case is about power in several respects. It is about the power of our people to govern themselves, and the power of this Court to pronounce the law. Today's opinion aggrandizes the latter, with the predictable consequence of diminishing the former. . . .

[In its holding, the Court] accuses the Congress that enacted this law and the President who signed it of something much worse than, for example, having acted in excess of enumerated federal powers—or even having drawn distinctions that prove to be irrational. Those legal errors may be made in good faith, errors though they are. But the majority says that the supporters of this Act acted with malice—with the “purpose” “to disparage and to injure” same-sex couples. It says that the motivation for DOMA was to “demean,” to “impose inequality,” to “impose . . . a stigma,” to deny people “equal dignity,” to brand gay people as “unworthy,” and to “humiliat[e]” their children.

I am sure these accusations are quite untrue. To be sure (as the majority points out), the legislation is called the Defense of Marriage Act. But to defend traditional marriage is not to condemn, demean, or humiliate those who would prefer other arrangements, any more than to defend the Constitution of the United States is to condemn, demean, or humiliate other constitutions. To hurl such accusations so casually demeans this institution. In the majority's judgment, any resistance to its holding is beyond the pale of reasoned disagreement. To question its high-handed invalidation of a presumptively valid statute is to act (the majority is sure) with the purpose to “disparage,” “injure,” “degrade,” “demean,” and “humiliate” our fellow human beings, our fellow citizens, who are homosexual. All that, simply for supporting an Act that did no more than codify an aspect of marriage that had been unquestioned in our society for most of its existence—indeed, had been unquestioned in virtually all societies for virtually all of human history. It is one thing for a society to elect change; it is another for a court of law to impose change by adjudging those who oppose it *hostes humani generis*, enemies of the human race. . . .

By formally declaring anyone opposed to same-sex marriage an enemy of human decency, the majority arms

well every challenger to a state law restricting marriage to its traditional definition. Henceforth those challengers will lead with this Court's declaration that there is “no legitimate purpose” served by such a law, and will claim that the traditional definition has “the purpose and effect to disparage and to injure” the “personhood and dignity” of same-sex couples. The majority's limiting assurance will be meaningless in the face of language like that, as the majority well knows. That is why the language is there. The result will be a judicial distortion of our society's debate over marriage—a debate that can seem in need of our clumsy “help” only to a member of this institution.

As to that debate: Few public controversies touch an institution so central to the lives of so many, and few inspire such attendant passion by good people on all sides. Few public controversies will ever demonstrate so vividly the beauty of what our Framers gave us, a gift the Court pawns today to buy its stolen moment in the spotlight: a system of government that permits us to rule ourselves. Since DOMA's passage, citizens on all sides of the question have seen victories and they have seen defeats. There have been plebiscites, legislation, persuasion, and loud voices—in other words, democracy.

Victories in one place for some, see North Carolina Const., Amdt. 1 (providing that “[m]arriage between one man and one woman is the only domestic legal union that shall be valid or recognized in this State,” approved by a popular vote, 61% to 39% on May 8, 2012, are offset by victories in other places for others, see Maryland Question 6 (establishing “that Mary-



Scalia

land's civil marriage laws allow gay and lesbian couples to obtain a civil marriage license,” approved by a popular vote, 52% to 48%, on November 6, 2012). Even in a single State, the question has come out differently on different occasions. Compare Maine Question 1 (permitting “the State of Maine to issue marriage licenses to same-sex couples,” approved by a popular vote, 53% to 47%, on November 6, 2012) with Maine Question 1 (rejecting “the new law that lets same-sex couples marry,” approved by a popular vote, 53% to 47%, on November 3, 2009).

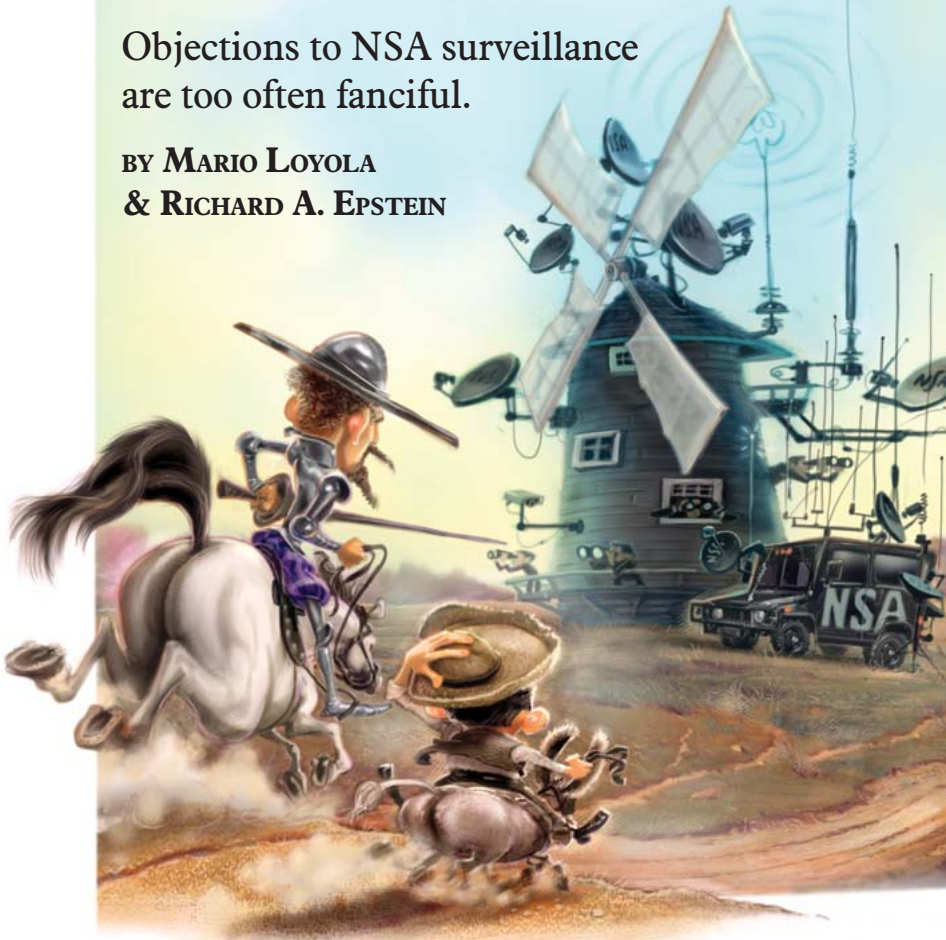
In the majority's telling, this story is black-and-white: Hate your neighbor or come along with us. The truth is more complicated. It is hard to admit that one's political opponents are not monsters, especially in a struggle like this one, and the challenge in the end proves more than today's Court can handle. Too bad. A reminder that disagreement over something so fundamental as marriage can still be politically legitimate would have been a fit task for what in earlier times was called the judicial temperament. We might have covered ourselves with honor today, by promising all sides of this debate that it was theirs to settle and that we would respect their resolution. We might have let the People decide.

—Antonin Scalia, for the Editors

Libertarians of La Mancha

Objections to NSA surveillance are too often fanciful.

BY MARIO LOYOLA
& RICHARD A. EPSTEIN



The political tables have turned almost 180 degrees. President Obama uneasily defends surveillance programs of the National Security Agency, while his liberal and libertarian opponents accuse him of lawlessly abusing his powers. The

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spectacle might even be entertaining, were it not for its worrisome implications. Republicans, the most reliable constituency for the surveillance policies that have protected the nation since September 11, are starting to walk away from them.

Senator Rand Paul recently crowed that Edward Snowden, the NSA leaker now on the lam, will go down as “an advocate of privacy.” His father, former GOP congressman Ron Paul, declared that “we should be thankful” for the “great service” Snowden did in “exposing the truth about what our government is doing in secret.” Rank-and-file Republicans in the House have filed a

bill to further stifle NSA surveillance, and Tea Party favorite Mike Lee is leading a similar effort in the Senate. At the libertarian Cato Institute (where Epstein is an adjunct scholar), privacy champions have assailed the “authoritarian measures that are advanced by the military, intelligence, and law enforcement agencies.” These voices could inadvertently weaken support for national security programs to a dangerous degree.

What a difference five years makes. When, in 2008, a Democratic Congress voted to enshrine President George W. Bush’s Terrorist Surveillance Program in the FISA Reform Act of 2008, virtually all opposition came from the left. Senator Jay Rockefeller, the bill’s principal drafter, bent over backwards to accommodate the objections of liberal Democrats such as Russ Feingold, Chris Dodd, and Ron Wyden. Yet with every revision, liberal senators pressed ever-more unreasonable objections, until it became obvious to Rockefeller that no matter how many civil liberties safeguards the law contained, die-hard liberals would oppose it.

What emerged from these compromises was a bill that, if anything, has unduly restricted the ability of the government to detect potential terror plots. The bill severely limited the government’s authority to target the communications of U.S. persons outside the United States, for the first time ever. It prohibited “reverse targeting,” the indirect targeting of U.S. persons’ communications via targeting the communications of known terrorists abroad. It also imposed extensive “minimization procedures” that require, among other things, the destruction of much potentially valuable information on U.S. persons, and anyone inside the United States, even before intelligence officials can determine its value. Enormous resources are diverted from actual surveillance to the required paperwork, which includes copious requests for FISA court orders, and reports and regular briefings to the judiciary and intelligence committees in Congress. Republican calls to fix FISA’s structural flaws, principally its outdated distinction

GARY LOCKE

between “wire” and “radio” communications, were ignored.

In retrospect, these compromises were worth the trouble because they garnered firm bipartisan support. The great controversy that raged during Bush’s second term died down. Sobriety won out over overwrought civil liberties concerns, and the vital national security policies of the post-9/11 world became settled institutions.

Then came the leak of highly classified NSA surveillance programs, and suddenly the debate was raging again. It was now Obama’s turn to defend programs that he had previously excoriated Republicans for. Daily security briefings appear to have changed his views.

The Snowden leak has so far involved two distinct programs. The first is the collection of phone records metadata under FISA Section 501 (Section 215 of the Patriot Act). The second is PRISM, which targets the Internet usage of specific foreigners abroad under FISA Section 702, the operative vestige of the Terrorist Surveillance Program. In both cases, the most serious legal and constitutional objections have been exaggerated.

The more intrusive of the two programs is the simpler to dispose. PRISM is just like a phone wiretap except on Internet communications. Like a wiretap, the target is always a specific suspect. But because PRISM’s targets are foreigners outside the United States and do not enjoy the protection of the Fourth Amendment’s warrant requirements, FISA allows the surveillance to be conducted pursuant to a joint certification of the attorney general and director of national intelligence made to the FISA court on a yearly basis, subject to its approval. That system allows the U.S. government to target specific persons wherever they go (outside the United States). The program should be noncontroversial by now; this is precisely the sort of surveillance that lay at the heart of the FISA Reform Act of 2008, which Congress exhaustively debated for several years. All the objections being raised against it now were raised then, and were either accommodated or rejected with

good reason. The program is responsible for foiling about 40 of the 50 terrorist plots which the administration recently disclosed to Congress in classified briefings.

Far more controversy has swirled around the less intrusive of the two programs. Section 215 of the Patriot Act (501 of FISA) allows the government to collect large data sets from phone companies on a daily basis. The data include numbers dialed from, numbers dialed to, length of call, and time of call. The information does not include identity, location, or content.

Critics have assailed the program as a sweeping dragnet, pointing out, for example, that it’s easy to identify the owner of a phone number. This criticism misunderstands the nature of the program. It is meant principally to preserve phone record data that the phone companies themselves preserve for long periods of time, and as to which the Supreme Court has ruled there is no expectation of privacy under the Fourth Amendment. The program makes it easier for the government to manipulate and access data that it is already entitled to see without obtaining warrants under various provisions of domestic criminal law.

Under the FISA program, the government can only look up the identity of the person associated with a particular phone number, or otherwise access the data, if it can establish “reasonable articulable suspicion” that the person is involved with some sort of terrorist organization. The suspicion can’t be based on speech protected by the First Amendment, such as “I hate Americans.” Any data collected are subject to minimization.

Rep. Jim Sensenbrenner, one of the principal authors of the Patriot Act, got a lot of attention recently when he professed shock at the sweep of the program. He claims it goes far beyond the intended scope of Section 215, which is limited to “an investigation to protect against international terrorism or clandestine intelligence activities.” But Congress has been briefed on the scope of this program for years, and during that time the 11 judges of the FISA court, sitting individually on

a rotating basis, have approved the program every 90 days.

Many libertarian critics have argued that the NSA surveillance violates the Fourth Amendment’s prohibition on unreasonable search and seizure. But in fact FISA follows the general progression of safeguards developed elsewhere under Fourth Amendment law. General surveillance can be engaged in routinely without a warrant. Efforts to examine particular data require a showing of probable cause, which demands some clearly articulated reasons for singling out any given person for further scrutiny. Under certain “exigent circumstances,” officials can act without a warrant for a period of days, subject to FISA court review. But when targeting U.S. persons anywhere in the world, or anyone inside the United States, whether here legally or not, the government must seek a specific warrant of the FISA court.

The Cato Institute’s Julian Sanchez points to the recent case of *U.S. v. Jones*, in which the Supreme Court rejected the long-term warrantless tracking of a single vehicle with a GPS device, because, as Justice Samuel Alito wrote in concurrence, law enforcement officers shouldn’t be able to “secretly monitor and catalogue every single movement of an individual’s car for a very long period.” Sanchez argues that such monitoring is even more impermissible when conducted against everybody. He makes the novel case that in the Framers’ understanding, “‘unreasonableness’ was specifically associated with the absence of particularity—of the kind exhibited by, for instance, an authority to indiscriminately collect all Americans’ phone records.”

This objection wrongly reads the specificity required for warrants into the general prohibition against unreasonable searches and seizures. It is like saying that police must obtain particular warrants before pointing radar guns at traffic, because otherwise the surveillance is too general, and therefore “unreasonable.” This is the same confusion that reigned at the outset of the FISA reform effort, eliding the critical distinction between detection and investigation. Detection is the

necessary precursor to an investigation of any particular terrorist pursuant to any sort of warrant. It is necessary in order to develop reasonable suspicion in the first place.

The NSA surveillance is not like the IRS's targeting of conservative groups, as some critics have argued. In the case of the IRS, there are two serious problems: First, the law allows the casual collection of massive amounts of private information on U.S. persons without a warrant; and second, few institutional safeguards protect against abuse by politically motivated officials. In the case of NSA surveillance, by contrast, it is hard to argue convincingly either that the law is too broad or that officials overstepped their bounds.

This latest assault on America's counterterrorism capabilities will hopefully soon recede, leaving our current legal regime none the worse for wear. But there are reasons to worry. Snowden is apparently travelling with four laptops full of classified information. Worse, the president, in his desire to defend his national security policies, may be tempted to reveal more than is prudent in responding to critics. And the increasing public willingness to extend "whistleblower" legitimacy to leakers of government secrets could presage a tsunami of security breaches in the months and years ahead.

Addressing the NSA scandals before his trip to the G-8 summit, President Obama said, "If people can't trust not only the executive branch but also don't trust Congress, and don't trust federal judges, to make sure that we're abiding by the Constitution with due process and rule of law, then we're going to have some problems here." Perhaps if he'd given his predecessor more benefit of the doubt on that score, he'd be in a better position to ask for it now. Still, his broader point is inescapably correct. Our system of government is predicated on the idea that because leaders can't always be trusted, the people must be able to place their trust in properly functioning institutions. The difficult question here is whether our institutions have functioned properly,

and the most sober answer is yes.

We live in a dangerous world. It is not enough to protect our liberties from the power of government. They must also be protected by the power of government, from the many enemies who would do us harm. Sensible

defenders of civil liberties understand that trade-offs of this sort are both necessary and messy. It is incumbent on us to avoid the allure of treating privacy as an absolute value, on our way to advocating policies that could put us all in danger. ♦

Second Term as Farce

Obama from bad to worse.

BY FRED BARNES

In his second term, President Obama won't lead or compromise. But he still manages to find ways to keep the country divided.

Obama's presidency, *Politico* said last week, "is in a dead zone." But it's worse than that. In Congress, most Republicans and a good number of Democrats distrust Obama's motives. More often than not, it's unclear whether he wants to enact legislation or exploit an issue to blame Republicans as obstructionists and improve Democratic chances of winning the House in the 2014 midterm elections.

When the House approved a student loan bill in May, backed by Republicans, the president's first response was to declare he'd veto it if it reached the White House. There was no talk of compromise. Yet its aim was the same as that of a bill Obama favored: prevent the interest rate on student loans from doubling to 6.8 percent from 3.4 percent.

Despite this, Obama and Democrats figured they could blame Republicans for allowing the rate to rise. But the issue got muddled in the Senate, where Democrats couldn't agree on a bill of their own. And they refused to accept a bipartisan bill or a compromise proposed by Senate Republicans.

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In an earlier era, the president might have stepped in to resolve the conflict. Obama didn't. He left on a trip to Africa.

Part of the problem with Obama's second term is his failure to have run for reelection on a specific agenda. He doesn't have a mandate for anything. He's stuck with leftovers from his first term, like immigration and global warming, or with an issue—gun control—that dropped into his lap after the Newtown school massacre in December.

He mentioned immigration reform during last year's campaign, but this wasn't new. It's long been an Obama talking point. In 2008, he promised to introduce immigration legislation in his first year in office. After making a half-hearted effort in 2009, he gave up.

Now, as the drive to overhaul the immigration system and give illegal immigrants a path to U.S. citizenship has gained traction this year, he's regarded as a liability. The more his fingerprints are on a bipartisan compromise, the less its chance of winning Republican votes and becoming law. Obama's low profile is a mark of "true leadership," Sen. Lindsey Graham told Ryan Lizza of the *New Yorker*. This must be the first time a president has been praised for being nearly invisible.

On gun control, Obama ignored an unmistakable lesson from his first

term. For him, the bully pulpit is useless. His speeches are unpersuasive. Nonetheless, speeches were his major contribution to the fight to ban “assault” rifles and expand background checks. No wonder it lost.

Speaking of losses, the president failed to put a lid on greenhouse gas emissions when Democrats had lopsided majorities in both houses of Congress in 2009 and 2010. Rather than compromise, he announced last week that he’ll try to reduce emissions by Environmental Protection Agency regulations. This was an act of desperation, not resourceful leadership.

Nor is his insistence on further delaying construction of the Keystone oil pipeline from Canada an act of political fortitude. It’s a favor to a liberal interest group, the environmental lobby. Obama’s claim the pipeline requires further study makes no sense—unless he’s trolling for a study that says the pipeline would be a health menace. So far, every study has found the opposite.

Obama’s preferred issues for his second term have one thing in common: They’re not high on the public’s list of priorities for Washington to take up. There is “a great disconnect” here, Ross Douthat of the *New York Times* noted last week.

If the president were attentive to the public’s preferences, he’d be concentrating on the economy, jobs, the rising cost of health insurance as Obamacare is being implemented, entitlement reform, and tax reform. After four years, the economic recovery is still lame (1.8 percent growth in the first quarter of this year). But the president, having been reelected with a sluggish economy, acts as if he’s comfortable these days with slow growth and weak job creation.

On foreign policy, Obama has unveiled what might have been a bold initiative during the Cold War. Today, however, cutting the American and Russian nuclear arsenals by one-third is a stale, old, and irrelevant proposal. The Russians are not an imminent nuclear threat. Iran and North Korea are. Their nuclear buildups continue unimpeded.

In Syria, the president has finally agreed to send arms to rebel forces, fearing they were on the verge of defeat. President George W. Bush faced a similar situation in Iraq in 2006, and the difference in their responses is striking. Bush, defying pressure to retreat in Iraq, boldly

ordered a new strategy and a troop “surge.” Obama, yielding to pressure to aid the Syrian rebels, acted correctly but not boldly.

In Obama’s case, his second term is like his first, only more so. Sad to say, we face three-and-a-half more years of division and drift. ♦

The Wrong Fix for the Wrong Problem

The immigration bill will only make things worse for the middle class—and the GOP. BY JAY COST

In the wake of the 2012 election, Republicans have been treated to seemingly endless prophecies of doom. Many have come from liberal Democrats, who would happily see the demise of the GOP. But more than a few Republicans have also made the case that the party must either change or disappear, and they focus especially on immigration. South Carolina senator Lindsey Graham argued recently that unless the GOP does something on immigration, it will face a “demographic death spiral” as the growing Hispanic population turns on Republicans.

Fortunately, claims like this are overblown. As Sean Trende of *Real Clear Politics* has noted, the Republican party’s defeat in 2012 had more to do with shifts in turnout, especially among whites and blacks, than it did with the party’s weak appeal among Hispanics. These shifts pose problems the GOP must address, but immigration reform won’t do it. A recent Pew poll found that

whites and blacks tend to be the groups most suspicious of the immigration reforms put forward in recent weeks. As for the long-term future of the party, the losses the GOP has suffered to date among Hispanics have been more than offset by its gains among white voters, who have been trending the party’s way since 1968.

This doesn’t mean the Republican party should ignore Hispanic voters. It shouldn’t ignore any voters, and besides, Hispanics determine the outcome in several Mountain West states and are very important in Florida. But Graham wants Republicans specifically to adopt the Gang of Eight immigration bill



Don't hold your breath.

that he, Chuck Schumer, Marco Rubio, and others put forward and which just passed the Senate. They think it’s a cure for what ails Republicans.

Many Republican senators have apparently bought this notion. The bill passed with the support of about a third of the Senate GOP caucus. Nevertheless, the proposition is just not true. The Gang of Eight bill would be a step backward in the party’s quest for political rehabilitation.

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To see this, it is necessary to ask: What, after all, is the voters' problem with the GOP? Their demographic characteristics like religion, skin color, and ethnic background don't reveal the underlying attitudes that drive their discomfort with the party. Beneath these factors, we find a skepticism of the Republican party that unites many different types of voters, including many who supported the GOP as recently as 2004.

The 2012 exit polls show the country unhappy with the state of the union, disappointed with Barack Obama's governance, disapproving of Obamacare, and generally inclined to think government should do less, not more. Yet Mitt Romney still lost—in no small part because voters believed that Obama, not Romney, cared about average people.

If Republicans are to win again, this is the image they must combat. Too many voters still see the GOP as a bunch of rich, aloof plutocrats. The most obvious way to address this problem is for Republicans to focus relentlessly on the middle-class squeeze that has afflicted the country for over a decade. Incomes have stagnated, while the costs of energy, health care, education, and other essentials have only grown. The result is that wages and salaries, adjusted for inflation and population, are lower today than any point since 1998.

Closely related is the problem of unemployment, whose true scope is masked by the official unemployment rate. That statistic has recently trended downward, from a high of 10 percent to roughly 7.5 percent today, but the broadest measure of employment shows the job situation to be dire. Today, just 58.6 percent of all adults are employed, down from 62.9 percent before the most recent recession. There have not been so many able-bodied adults so consistently out of work since the recession of the early 1980s.

This must be the number one priority of the Republican party. It is not enough for the party to formulate policies to address this issue; the GOP must convince the electorate that, if elected, it would focus like a laser-beam

on jobs and incomes, making every other concern secondary.

Unfortunately, the Gang of Eight bill sends precisely the wrong message. In the long run, the Congressional Budget Office estimates the legislation would have a positive effect on wages and employment, but that would come only after a decade of economic displacement. In its analysis of the bill, the CBO stated: "As the labor supply initially increased under the legislation, less capital would be available for each worker to produce output, and thus workers' output, on average, would be lower for a time. That decline would reduce average wages relative to those under current law." CBO reached a similar conclusion regarding unemployment, which would rise in the short term.

More fundamentally, as Fred Bauer has argued at length in *National Review*, the flaws of the Senate immigration bill "pose significant problems for the future success of conservative ideas, Republican renewal, and the restoration of American economic growth." The immigration bill would accelerate rather than combat the economic decline of the middle class. As Bauer argues, "endorsing an immigration bill that undermines wages, perpetuates economic and cultural divisions, and enshrines a new bureaucracy would seem a stumbling block for a GOP seeking to restore itself as the party of economic dynamism, popular prosperity, and limited government."

In addition, the Republican party should be responsive to the growing sense among voters that Washington is broken, that it treats people differently depending on their political connections. The outrage sparked by the Wall Street bailout, the stimulus, and Obamacare helped fuel the Tea Party, and now it is driving public anger over the unfair practices of the Internal Revenue Service. A party that presumes to call itself Republican—a word suggesting equal treatment under the law—cannot ignore the increasingly antirepublican quality of public policy. Promising to end the double-dealing and special privileges of politics-as-usual could help

persuade voters that the GOP is looking out for average people.

But once again the Gang of Eight bill heads in the wrong direction. It is larded with the special favors that characterized Obamacare. The Gang of Eight granted the AFL-CIO and the Chamber of Commerce extraordinary access, allowing them to draft large swaths of the guest worker program. And there are special provisions for key senators. The bill would extend the Travel Promotion Act of 2009 to aid the casino industry, to the satisfaction of Nevada senators Harry Reid and Dean Heller. There is a \$1.5 billion jobs program inserted at the urging of socialist senator Bernie Sanders of Vermont. Alaska received a carve-out for its seafood industry, a boon to senators Lisa Murkowski and Mark Begich.

There may be other payoffs buried in the bill that reporters haven't found yet. After all, the legislation was largely crafted in secret, rushed through the Senate Judiciary Committee, and then passed last Thursday after a major rewrite was published the preceding Friday. This is just the sort of political gamesmanship that produced the Tea Party backlash of 2010, which not coincidentally produced the biggest victory the GOP has enjoyed over congressional Democrats since the 1920s.

None of this is to deny that immigration reform should be a policy priority for the Republican party, nor is it a commentary on the merits of various approaches. There is a wide array of opinion within the GOP on that front, and a healthy debate is a good thing.

The point is that the Gang of Eight bill hurts the Republican party in ways that are central to its long-term viability. The GOP is not going to thrive if it is perceived as conspiring to reduce wages, increase unemployment, give newly legalized immigrants a hiring advantage over citizens, or grant special favors to politically connected interests. If Republicans want to return to the political majority, they need to stand, forcefully and unequivocally, for the middle class and against special interests—and that means vigorously exposing the flaws in the Gang of Eight bill. ♦

Harassing the Military

There is no sexual assault crisis.

BY GAIL HERIOT

By now, almost everyone knows the lurid truth about the military—or they think they do. Last month, after a 2012 survey showed that sexual assault against servicewomen had risen dramatically in the last few years, the media went into overdrive. The *Washington Post* called it an “epidemic.” The *New York Times* blamed the rise on “the military’s entrenched culture of sexual violence.”

No wonder Congress has since been feverishly pursuing legislation to deal with this seeming national scandal—from a top-to-bottom overhaul of the military’s criminal justice system proposed by Senator Kirsten Gillibrand (D-NY) to mandatory minimum sentences for sexual assault backed by Rep. Mike Turner (R-Ohio).

There is just one problem: Precious little of this story has any basis in fact. Contrary to what many assume, there is no evidence that the military has a higher rate of sexual assault than, say, colleges and universities. Indeed, what paltry evidence there is suggests the opposite. Congress needs to stop, take a deep breath, and avoid adopting legislative remedies it will regret once the crisis atmosphere dies down.

Any institution home to a disproportionate number of young adults will likely have higher than average rates of what the military delicately calls “unwanted sexual contact.” That doesn’t excuse the behavior—which can range from a provocative pat on the

bottom to forcible rape—but it does provide much-needed perspective.

The two most recent studies of campus sexual assault—*The Sexual Victimization of College Women* (2000) and *The Campus Sexual Assault Study* (2007)—



She’s safer here than on your typical campus.

both show colleges to be worse than the military when their figures are annualized to make them roughly comparable to the military’s. At least one older study, *The Scope of Rape: Incidence and Prevalence of Sexual Aggression and Victimization in a National Sample of Higher Education Students* (1987), makes the military seem like a Junior League garden party.

To be sure, each study asked different questions and collected responses differently, making precise comparisons difficult. Nevertheless the bottom line is clear: There is no evidence that the military is uniquely dangerous to women. Lawmakers who argue high sexual assault rates can harm the military’s morale and recruitment efforts are right, but their own overwrought reaction to the 2012 survey can also be harmful.

The military has surveyed its active-duty members on sexual assault repeatedly since 1988. Overall these surveys have shown impressive improvement. Sometimes the improvement has been astonishing—like that reported in the 2010 *Workplace and Gender Relations Survey of Active Duty Members*, which showed a 35 percent drop in the rate of unwanted sexual contact reported by servicewomen since the last survey in 2006.

The 2010 survey probably spawned the current controversy. Bear in mind that even expertly crafted surveys sometimes produce inaccurate results. The 2010 results were probably too good to be true. If the 2010 results were off the mark, it was inevitable that the results in 2012 would look bad in comparison—even though the 2012 results were still a 10 percent improvement over the results in 2006.

Critics often assume that the military fails to provide sexual assault training or that it is lax in its prosecution of these crimes relative to civilian jurisdictions. But this is not supported by the evidence.

As for training, 96 percent of women and 97 percent of men reported in the 2012 survey that they had received sexual assault training in the last 12 months. These were slight improvements over 2010 and 2006, but the fact is sexual assault training has long been a way of life in the military.

Prosecution rate comparisons are difficult, since civilian jurisdictions are not required to publish statistics. Even if they were, they would be of little use, since for service members, reporting a sexual assault to military authorities is as much like reporting it to an employer as it is like reporting it to the police. The statistics would not be comparable.

Insofar as there is evidence, however, it suggests that the military is now more aggressive in prosecuting sexual assaults than civilian jurisdictions. For example, when a rape involving military personnel occurs off-post, civilian and military authorities both

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have jurisdiction. On those occasions in fiscal year 2011 on which the civilian jurisdiction took the lead, prosecution rates were 11 percent. In contrast, the military's prosecution rate was 55 percent. Even greater gaps were documented for prosecutions of aggravated sexual assault.

Indeed, some charge that in the military's zeal to placate its critics, it is now going too far. "[T]here's this myth that the military doesn't take sexual assault seriously," said former Army judge advocate Michael Waddington. "But the reality is they're charging more and more people with bogus cases to show that they do take it seriously." Similarly Bridget Wilson, a defense attorney specializing in military law, told the U.S. Commission on Civil Rights, "There is an increasing perception that the deck is stacked against someone accused of a sexual assault."

This is especially so in cases in which two service members have been drinking and engage in seemingly consensual sex. These days, in the military's view, he's guilty and she's an incapacitated victim. Civilian authorities usually shun such cases.

Indeed, it is cases like that that caused a female prosecutor who wished to be anonymous to comment to McClatchy Newspapers in 2011, "There is a pressure to prosecute, prosecute, prosecute. When you get one that's actually real, there's a lot of skepticism. You hear it routinely: 'Is this a rape case or is this a Navy rape case?'"

One thing is certain: The military's top brass is now desperate to convince Congress that it takes sexual assault seriously. On June 4, a supplicating Army chief of staff Gen. Raymond T. Odierno told the Senate Armed Services Committee that "combating sexual assault and sexual harassment within the ranks is our No. 1 priority."

The military is a large and complex institution with many priorities. But only one can be No. 1. If combating sexual assault and sexual harassment is the military's No. 1 priority, that means defending the nation from foreign aggression is not. It's time to sober up. ♦

Climate Change for the GOP

It's time for a conservative alternative to liberal alarmism. **BY ELI LEHRER**

President Barack Obama's climate agenda announced last week represents the latest of many Democratic party efforts to address climate change. Although it includes no new legislation, the president's plan makes unprecedented use of executive branch powers and offers a great many things that appeal to core Democratic constituencies. Implemented in full, the new power plant carbon rules, further delays in economically beneficial pipeline projects, and added green energy projects would result in a bigger, more intrusive government that exerts greater control over the economy, rewards perceived "good guys," and punishes supposed "bad guys." Not surprisingly, the plan, like all previous Democratic efforts, has earned a suspicious and hostile reaction from conservatives.

It doesn't have to be this way. Rather than pretend climate change isn't a problem, there are ample opportunities for Republicans to point out the obvious flaws in the left's plans to deal with it and offer alternatives of their own. In short, conservatives can take a page from the liberal playbook and use the climate change issue to push policies that they favor anyway.

A detour into the undisputed facts about climate change illustrates why this strategy makes sense. Nobody seriously involved in the policy debate over climate change—not even those the left unfairly labels as "deniers"—actually denies that humans influence global climate. There's also no dispute that the Earth is warmer than it was before the Industrial Revolution or that carbon dioxide and other

greenhouse gases can trap heat energy.

Likewise, there's little doubt that the worst plausible projections of sea level rise and temperature change resulting from this warming trend would present major problems in almost every corner of the globe. While more carbon in the atmosphere could have some benefits, such as fewer deaths from cold, it's also likely to pose a variety of severe problems ranging from droughts and floods to the destruction of commercial fishing. Nearly any accounting of these costs indicates they will exceed the benefits.

On the other hand, the extreme alarmism from some corners of the environmental movement isn't warranted. The scenarios sketched out by climate models cover a broad gamut of possibilities. And the models themselves remain imperfect. For example, although current overall carbon levels and arctic ice melt are *higher* than most scientists predicted they would be today, actual temperature changes tend toward the lower end of most models. Moreover, increasing property damage tolls from natural disasters stem overwhelmingly from more people living in disaster-prone areas, rather than fundamental changes in climate.

In any case, focusing on the science can be something of a dead end. The scientific consensus that exists about the causes and effects of climate change can't point to an optimal policy solution any more than improvements in heart surgery techniques can provide guidance on health care reform.

Indeed, if free-market conservatives really want evidence of climate change, they ought to look towards the insurance markets that would bear much of the cost of catastrophic climate change.

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All three of the major insurance modeling firms and every global insurance company incorporate human-caused climate change into their projections of current and future weather patterns. The big business that has the most to lose from climate change, and that would reap the biggest rewards if it were somehow solved tomorrow, has *universally* decided that climate change is a real problem. An insurance company that ignored climate change predictions could, in the short term, make a lot of money by underpricing its competition on a wide range of products. Not a single firm has done this.

Acknowledging that something ought to be done does not have to mean supporting the climate-related policies that Democrats have offered in the past, much less Obama's latest power grab. The most ambitious Democratic-led effort to date, the bloated Waxman-Markey bill that the House passed in 2009, provides insight into how Democrats would deal with climate change if given a free hand. The act would have raised taxes by nearly \$25 billion and created a framework to centrally plan much of the energy economy.

It was also a textbook exercise in crony capitalism. Virtually all of the money it hoped to raise—via a Rube Goldberg-like “cap and trade” mechanism—would have been redistributed to various politically connected industries around the country. It was that very patronage that proved successful in buying nine Republican votes for passage, more than for any other major proposal of the Obama administration.

The legislation itself, however, would have done almost nothing to combat climate change. Indeed, largely as a result of the natural gas boom that many environmentalists continue to try to stymie, the United States appears likely to meet Waxman-Markey's 2020 emissions targets even though the bill was never signed.

While Democrats in Congress have floated other plans, they are mostly more of the same, relying on subsidies, handouts, punishments, and more government control over the economy. It is time for a conservative alternative that would remove burdensome

regulation, cut taxes on productive economic activity, and encourage energy development (particularly of natural gas), all while also taking steps to reduce the chances that the worst climate scenarios will come to pass.

A market agenda for climate change should begin with a sober assessment of the energy regulations America already faces. Through existing statutory authority, the federal government *has* control over carbon emissions and imposes a “price” already, one that will rise as a result of Obama's latest actions. Ever since the Supreme Court ruled in 2006 that the Clean Air Act essentially required the Environmental Protection Agency to regulate greenhouse gases, the EPA has had carte blanche to impose new rules to deal with them.

But even if the Supreme Court was right to grant the powers Obama now seeks to use (and that point is debatable), the mechanism in question is a terrible way to regulate greenhouse gases. A creature of the 1970s regulatory state, the Clean Air Act provisions at the center of Obama's proposal were written with pollutants like sulfur dioxide and nitrogen oxides in mind. Unlike carbon dioxide—which isn't intrinsically harmful to humans at atmospheric concentrations, is absolutely necessary to plant life, and, in any case, is exhaled by every land-based animal with every breath it takes—these pollutants come from a small number of easy-to-identify sources and can harm human health. It was well worth trying to reduce them to very low levels.

Trying to regulate carbon emissions by the same means is almost certain to produce hugely expensive and burdensome regulations. No matter the pleasing-sounding noises emanating from Washington about “flexibility” and working with individual states, using the Clean Air Act to regulate carbon dioxide is akin to trying to repair a fine wristwatch with a jackhammer. Even the regulation-happy Waxman-Markey bill explicitly acknowledged this by ending the EPA's authority to regulate

carbon dioxide. That was its one and only good provision. And removing this regulatory authority—almost sure to be used both arbitrarily and inefficiently—ought to rank near the top of any sensible, limited-government agenda. Republicans should also go up against Obama's promise to delay the Keystone XL pipeline until it meets certain greenhouse gas targets.

Since carbon emissions do present a real problem, simply repealing the current regulations without replacing them would be both unwise and politically impossible. The least-intrusive and most economically beneficial way to deal with the problem appears to be a carbon tax, particularly a revenue-neutral carbon tax that could be used to offset and/or replace other taxes. As Florida State University economist Shi-Ling Hsu argues in his *The Case for a Carbon Tax*, such a tax would cause minimal dislocations, actually do quite a lot to reduce carbon emissions, and avoid the potentially destructive central planning implicit in almost every other solution, including the one Obama has proffered.

Even better, from a conservative perspective, such a tax could be used to offset taxes on productive activities. Replacing some or all taxes on capital gains, corporate income, or personal income with a carbon tax could simultaneously increase the efficiency of the country's tax system while cutting taxes on truly productive economic activity like jobs and investment. In fact, the carbon tax's most prominent proponents include conservative economic thinkers like Art Laffer and American Enterprise Institute scholar Kevin Hassett.

A carbon tax should also be accompanied by removing the barriers to developing and exploiting new energy sources, particularly natural gas. While natural gas isn't a long-term solution to every energy problem, unlocking more of it via hydraulic fracturing offers the simplest, cheapest, and most efficient way to reduce carbon emissions. Even the Keystone XL pipeline that Obama's proposals seem crafted to kill has the potential to reduce greenhouse gas emissions by reducing

carbon-intensive international fuel shipment. Natural gas, the most promising replacement fuel, is already cheaper than much coal (the “dirtiest” widely used fuel), and encouraging its widespread use will result in continued greenhouse gas reductions.

Other efforts to encourage broader use of nuclear power, build transmission facilities that help unlock untapped hydroelectric potential in the Canadian north, and streamline regulations for all power projects deserve equally strong consideration. Even Obama’s recently announced plan has some worthy ideas to allow more alternative energy development on public land and squeeze more generation capacity out of existing U.S. dams. In the end, almost all new market-driven energy development will help to combat climate change: The most economically viable forms of power all emit less carbon than coal, and permitting their development will, on balance, result in fewer carbon emissions.

If the past is any indication, Republicans will be just as tempted as Democrats to endorse crony capitalism schemes to pick the energy technologies of the future, an area where all governments everywhere have a distinctly dismal record. The bipartisan disgrace of federal loan guarantees, clean energy generation tax credits, outright grants to private businesses, and “public-private” partnerships that created Solyndra and dozens of other spectacular “green” flameouts should be euthanized.

In the end, if both private insurance markets and overwhelming scientific majorities are proved wrong about global warming, a more lightly taxed, less regulated nation with more energy sources, more useful research, and less crony capitalism will still be better off by almost any measure.

President Obama’s various proposals to deal with climate change have deep flaws. But that doesn’t mean the problem they seek to address isn’t genuine. Conservatives should care about global warming. And, just as liberals have done for almost 20 years, they should use the issue as a way to promote policies they already favor. ♦

Does Harvard Hate Humanities?

No, but it doesn’t understand them.

BY PETER BERKOWITZ



How many of them started out studying the humanities?

Study of the humanities has never been more important to the welfare of the nation. Information whizzes by at breakneck speed. The contest between conservative and progressive visions of government’s scope and aim in a free society implicates rival understandings of human nature. The ways of life of people in far-off lands have direct impact on our prosperity and security.

Amidst the flux and uncertainty, the humanities—literature, history, religion, philosophy, and the fine arts—teach us to slow down, savor, and ponder; they illuminate the intricacies of human nature, the age-old patterns into which behavior falls, along with the infinite nuances of personality;

and they reveal the cultural roots of our civilization, the humanity of other civilizations, and the inhumanity to which all civilizations, to one degree or another, are prone. The humanities uncover, preserve, and transmit the treasures of the past; provide a refined language and enduring standards for describing and evaluating the present; and nourish our imagination of the future’s possibilities. The humanities teach us who we are and help us to determine the kind of human beings we wish to become. They anchor and enliven our freedom.

Therefore, Harvard University is to be commended for seeking with a new report to address “the troubled state of the humanities.” The report, “The Teaching of the Arts and Humanities at Harvard College: Mapping the Future,” was composed by a committee of Harvard professors co-chaired by professor of English Homi Bhabha, who is also director of the Mahindra Humanities Center at Harvard, chair

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of philosophy Sean Kelly, and professor of English James Simpson. With members drawn from a variety of departments, the committee sought to articulate “the possibilities and promise of the Humanities at the undergraduate level in Harvard College.”

And so the committee does, in a rarefied idiom that is at points eloquent and probing but will prove a strain for those not immersed in contemporary academic controversies and not accustomed to professors’ penchant for abstraction and abstruseness. Unfortunately, lacking a solid understanding of liberal education, the committee’s report fails to state clearly the causes of the humanities’ decline, the consequences for students and the nation, and the cure.

The Harvard report was occasioned by statistics that reveal a precipitous deterioration in undergraduate interest in the humanities. Over the last 44 years, the report notes, the share of humanities majors nationwide has dropped by half, from 14 percent to 7 percent of all college degrees awarded. This drop may be attributable, as James Taranto argued in the *Wall Street Journal*, to the boom in college enrollment over that same period, which has brought to universities many more students who value a bachelor’s degree for the job it will secure rather than for the love of learning it will fulfill. But that does not explain the abandonment of the humanities by Harvard students during that time.

At Harvard, the decline (including history majors) over the last 60 years has been from 36 percent to 20 percent of all undergraduate degrees. Moreover, while 27 percent of entering freshmen in 2006 expressed an intention of majoring in the humanities, by 2012 the comparable figure was 18 percent.

Perhaps most alarmingly for the humanities at Harvard,

Over the last 8 years, more than half of students who as pre-Freshmen indicate an intention to concentrate in a Humanities concentration end up in a different division. 50% graduate in a social science, 27% in either Government (11%), Psychology (8%), or Economics (8%). Students stating an

intention to concentrate in a Humanities discipline are much less loyal to that intention at concentration declaration (57% exodus) than students stating an intention to concentrate in a social science (19% exodus).

What does Harvard do to drive from the humanities so many students who arrive in Cambridge aiming to concentrate in them?

The report summarizes several theories that explain the weakening of student interest by reference to structural features of, and great impersonal forces at work in, social and political life. These include the perceived inability of the humanities to equip students to confront the stiff competition they face in the global economic environment; the absence of a strong literary and artistic tradition in American public life, which leaves the humanities with “no constructive public function”; the success of the natural sciences and social sciences, which make the knowledge yielded by the humanities look soft, relative, and evanescent; and the new digital world of rapid-fire information and communication, which dissipates the capacity for the “deep immersion” and “imaginative engagement” required for appreciation of literary, historical, religious, philosophical, and artistic works.

The report does not deny that these explanations have merit, but concludes that the way for Harvard to draw students back to the humanities is to do what the humanities for the most part already do at Harvard, but better.

The report gingerly recognizes that in recent years the humanities at Harvard appear in some respects to have lost their balance. They have devoted time and energy to “theory and culture wars” at the expense of undergraduate education. They have “possibly become too specialized, allowing the research culture of our faculty and graduate constituencies to dominate the general needs of the undergraduate.” They have emphasized “interdisciplinarity,” or combining skills and perspectives from a variety of disciplines, while neglecting the need

to first acquire excellence in a single discipline. They have stressed the “contested nature of truth,” but have slighted their responsibility to provide an understanding of what is being contested by imparting a broad knowledge of the past. And they might have given too much weight to demonstrating how “culture serves power” and exposing “the ways domination and imperialism underwrite cultural production, and the ways the products of culture rehearse and even produce injustice,” when they should also explore the wisdom embodied in culture.

Remarkably, the report even gives credence, however tentative, to the suspicion that the humanities at Harvard impose ideological conformity:

[T]hose of us committed to criticism as critique might recognize a kernel of truth in conservative fears about the left-leaning academy. Among the ways we sometimes alienate students from the Humanities is the impression they get that some ideas are unspeakable in our classroom.

And the report sensibly recommends that in class professors

admit and mark the fact that opinions and orientations shape our thinking; acknowledge the fact that intelligent people may disagree; and encourage real debate rather than the answers our undergraduates are smart enough to know we want to hear.

Welcome as this admonition is, it is incommensurate with the scope of the problem.

The “initiatives” contained in the report’s final section will do little to achieve what the committee calls “a collective ‘reboot’ of undergraduate teaching across the Arts and Humanities.” More resources for faculty and internships, more interdisciplinary study, more extracurricular activities, and more use of electronic platforms will not stem the flow of undergraduates to other disciplines.

To begin to restore the humanities to their place of honor, it is necessary to state the problem clearly. The problem is that the humanities today are not oriented toward preparing students for

freedom; they do not furnish students' minds with knowledge or sharpen their ability to think for themselves. As a result, the humanities rob students of an education and deprive the nation of leaders capable of fortifying their judgment with an appreciation of the past and by listening to and learning from others.

To restore the humanities, it is necessary to ensure that students acquire a common foundation in the history of the West and its literary, religious, philosophical, and artistic classics. These shaped our ideas and our institutions. Grappling with them refines our understanding of ourselves and our country.

It is also necessary to study other civilizations, but to do this seriously would require universities, instead of scuttling requirements, to institute substantial foreign language requirements. Nothing is so revealing of multiculturalism's status as a political program rather than a research paradigm than the indifference of its proponents to language study. The humanities should proudly tout the benefits—in commercial life, diplomacy, and national security—that come from mastering foreign languages.

And it is necessary for professors, department chairs, deans, and university presidents to shake off their lassitude and firmly, aggressively, and persistently oppose the intolerance, both methodological and political, that afflicts the humanities. It is an evasion to speak of "a kernel of truth" concerning the well-documented hostility to dissent and diversity of opinion on campus. Indeed, these are prominent features of the humanities landscape, which bright undergraduates quickly discern and from which, precisely if they are blessed with a love of learning, they swiftly flee.

Such simple steps could do much to restore the humanities. It is a measure of the grimness of the situation that, judging by this report of those entrusted with conserving and improving the humanities at Harvard, these steps have little chance of being considered seriously let alone implemented effectively. ♦

The New Prohibitionists

The taxpayer-funded Obamacare temperance league. BY MARK HEMINGWAY

When Prohibition ended in 1933, Pennsylvania governor Gifford Pinchot promised to make purchasing alcohol "as inconvenient and expensive as possible." To this day, Pennsylvania

to privatize liquor sales in the state. They hope to issue some 1,600 new liquor licenses, most of which would go to existing privately owned beer distributors, finally making it possible to do some one-stop shopping for adult beverages.



Another victim of privatization

has some of the most stringent—and absurd—liquor laws in the country. Beer and wine can't be sold in grocery stores, and you can only purchase six-packs of beer at delis or under the counter at bars and taverns, and no more than two six-packs can be purchased at a time. If you want to buy either wine or liquor outside of a bar or restaurant you have to get it through a state-owned "wine and spirits" store. Nowhere in the state is it possible to purchase beer, wine, and liquor from the same establishment.

Many frustrated Pennsylvanians were thus relieved last year when Governor Tom Corbett and the commonwealth's House majority leader Mike Turzai unveiled a plan

to privatize liquor sales in the state. They hope to issue some 1,600 new liquor licenses, most of which would go to existing privately owned beer distributors, finally making it possible to do some one-stop shopping for adult beverages. But as the state's liquor privatization plan continued to wend its way through the legislature, a powerful and well-funded opponent emerged earlier this year—the federal Centers for Disease Control. The fact that federal tax dollars are being used to lobby for state regulations is problematic to begin with. Even more troubling is that the CDC's public health warnings about privatizing liquor sales are knowingly based on junk science. The agency is also underwriting the forces of neo-prohibitionism by doling out grants from a \$12.5 billion slush fund created by the Affordable Care Act, aka Obamacare.

In April, the *Philadelphia Inquirer* published a story with the headline, "If Pennsylvania privatizes alcohol, will drinking increase?" The article reported on "strong evidence" from the CDC's Community Preventive Services Task Force—described as "an independent group appointed by the federal Centers for Disease Control and Prevention"—that privatization of liquor sales would cause consumption to skyrocket.

"In a review of 17 studies on the subject, the task force found that limiting government's role in sales of beer, wine, and spirits was

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associated with a median increase of 44.4 percent in per-capita sales for the alcoholic beverage that had been privatized without a corresponding decrease in consumption for other types of booze,” reported the *Inquirer*.

If it seems unbelievable that eliminating a state liquor monopoly will cause a 44 percent increase in liquor sales, that’s because it is. The next week, Raymond Scalettar, a clinical professor of medicine at the George Washington University Medical Center and a former chairman of the American Medical Association, wrote in the *Inquirer* that the CDC task force was grossly misleading.

“Of the 17 studies analyzed, six showed no increase in consumption, and four showed only moderate increases. This fact alone would give most researchers pause with regard to any kind of sweeping conclusion,” Scalettar wrote. He further pointed out that figures were skewed by a cultural change that occurred in the 1970s—Americans started enthusiastically growing grapes and drinking wine as never before. Between 1970 and 1980, a decade in which six states also privatized wine sales, per capita wine consumption increased by 66 percent. This historical correlation skews the CDC task force’s results more than enough to make their figures appear alarming but tells us very little about what effect Pennsylvania’s current plans will have on liquor consumption, let alone corresponding public health threats.

The CDC’s Community Preventive Services Task Force does not actually have any hard evidence that liberalizing liquor laws is harmful—and until very recently, it admitted as much. This is the task force’s third pronouncement on the matter in less than a decade. In its 2006-07 review of alcohol policy, it concluded that “there is insufficient evidence to determine the effects of privatization on excessive alcohol consumption and related harms.” In February 2011, the task force noted it had reviewed three studies on privatization of alcohol sales. Two of those studies “yielded mixed, statistically non-significant results.”

The report also noted that there were some “statistically non-significant decreases” in alcohol-related hospitalizations in Sweden following the state reassuming control of alcohol sales.

But in March 2012, the task force produced its third recommendation. In a year, the tenor of its conclusions had changed dramatically—the task force was suddenly pushing the bogus 44 percent figure. And even though the CDC had previously admitted most of the findings were “statistically non-significant,” the alcohol-related hospitalization data from Sweden were being prominently touted. (Both of these questionable data points were mentioned in the *Philadelphia Inquirer* article.) The task force has also put together a website, “The Guide to Community Preventative Services,” compiling its recommendations for “preventing excessive alcohol consumption,” almost all of which are legislative. These include raising alcohol taxes, maintaining blue laws limiting the days and hours of sale, stricter zoning laws to prohibit alcohol sales, tougher anti-alcohol activity among law enforcement officers, and, yes, combating liquor privatization proposals.

What changed between 2006 and 2012 such that the CDC would suddenly be abusing its scientific credibility to aggressively influence the political process? The most obvious development is that in that time span a number of states—including Washington, Georgia, Connecticut, and Virginia, in addition to Pennsylvania—suddenly began considering proposals to privatize their liquor monopolies or otherwise loosen liquor laws. The second notable development is that the stimulus and Obamacare bills were passed. The stimulus bill contained a \$373 million Prevention and Wellness Fund to dole out grants to community organizations to “create healthier communities across the nation through innovative and proven approaches.” But that’s chump change compared with the billions allocated to Obamacare’s Prevention and Public Health fund. Initially, the fund was given \$12.5 billion, but starting in 2022 the fund will be given

\$2 billion a year. “It’s totally crazy to give the executive branch \$2 billion a year ad infinitum to spend as they wish,” American Enterprise Institute health policy expert Jim Capretta, also of the Ethics and Public Policy Center, recently told *Forbes*.

These funds are being used to dole out grants to organizations that are pushing the CDC’s questionable political agenda. For instance, the CDC’s Community Transformation Grant program fact sheet states the program is “funded by the Affordable Care Act’s Prevention and Public Health Fund.” According to the CDC’s website, grants are available to “spread community-wide change” by “support[ing] state, local and Tribal Nation implementation and enforcement of alcohol control policies.” According to the CDC, “examples may include . . . reducing the density of retail alcohol outlets.” In plain English, the CDC’s model grant recipient is someone who wants to lobby for stricter local zoning laws for alcohol sales, never mind that federal grant monies are not supposed to be used for lobbying.

The abuse of these grant programs isn’t just confined to alcohol, either. The CDC has a broad agenda involving obesity, tobacco, nutrition, and other politically correct health issues that the agency is trying to implement with tax dollars. The nonpartisan government accountability watchdog Cause of Action recently completed a 19-month investigation into the CDC’s use of the stimulus’s Prevention and Wellness Fund, and it concluded that there were numerous apparent violations of the law and that the program “became a front for lobbying, government propaganda, and cronyism.”

The Health and Human Services inspector general last year issued a warning that these grant payments might be running afoul of federal antilobbying law. Last year, members of Congress wrote a pointed letter to HHS secretary Kathleen Sebelius, who oversees the CDC, asking whether these grant programs were illegally using tax dollars to lobby for state and local restrictions. In April,

House majority leader Eric Cantor (R-Va.) led an unsuccessful charge to kill Obamacare's slush fund.

Meanwhile, the Community Preventive Services Task Force has been putting together "webinars" and otherwise distributing its community guides pushing its prohibitionist political agenda and urging community groups to launch media campaigns in support of tougher liquor laws. In part, they get away with this because they claim to be "independent" of the CDC. One of the PowerPoint presentations distributed by the task force contains the disclaimer that "the findings and conclusions in this presentation have not been formally disseminated by the Centers for Disease Control and Prevention and should not be construed to represent any agency determination or policy." And yet, the Department of Health and Human Services and CDC logos appear prominently on the page below this disclaimer and on every other page of the presentation.

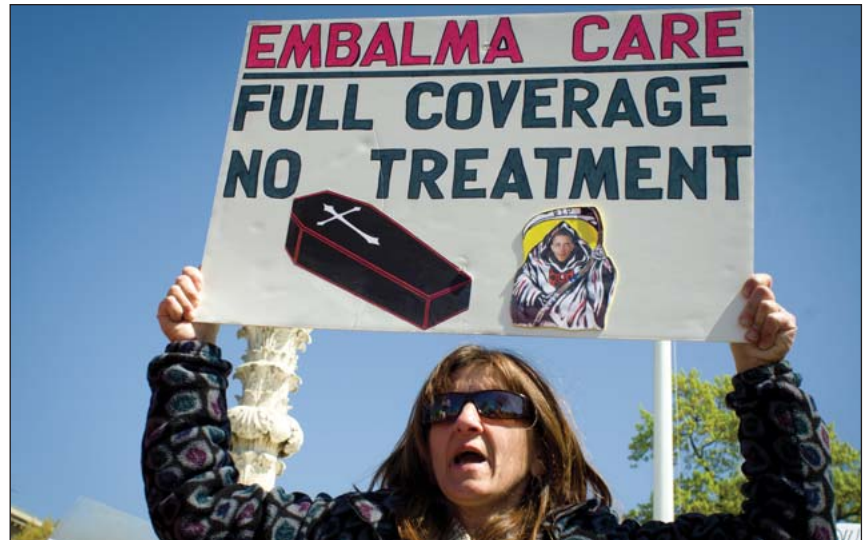
While the task force supposedly comprises 15 independent public health experts, it is buttressed by 41 support staff who are employed by the CDC. The task force manages to churn out detailed policy recommendations on everything from asthma to sexually transmitted diseases to motor vehicle injuries, even though the board members only meet three times a year. The CDC insists that the task force's recommendations are independent of the agency, but the impressive level of output suggests CDC's paid, full-time support staff are the ones behind the task force's aggressive political push.

Despite the numerous laws and regulations barring the use of federal dollars to fund lobbying efforts, there's a very fine legal line between lobbying and "public education campaigns." The Obama administration seems determined to skirt the intent of the law and continue abusing its authority to promote its narrow public health agenda. Prohibition may have ended 80 years ago, but the CDC is determined to make sure that buying alcohol in Pennsylvania and the rest of the country remains "as inconvenient and expensive as possible." ♦

Lipstick on the Obamacare Pig

The limits of P.R.

BY STEPHEN F. HAYES



If at first you don't succeed: anti-Obamacare protest in Washington, 2012

It's been one year since the Supreme Court decision that allowed Obama administration officials to begin implementing the Affordable Care Act, and the frequency and volume of reports about the challenges facing those reforms—and the difficulties they are visiting on those who were supposed to benefit from them—are increasing dramatically.

Jeff Vernon, an employee of Scrambler Marie's restaurant in Toledo, Ohio, told a local reporter that the owners were cutting his hours to avoid penalties under Obamacare. Businesses with more than 49 employees have to offer insurance to all "full-time" workers—defined as those who put in 30 hours or more each week. The result, for Vernon: \$400 less in take-home pay every month. "That leaves me \$27.50 for two weeks to live off of,"

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he explained. Vernon said the owners tried to avoid the cuts but didn't have any other recourse. "They were real good about that," he added. "The last thing they wanted to do was cut people. They don't want to fire anybody."

Other business owners haven't been able to avoid eliminating jobs. A Gallup poll taken in June found that nearly one in five small businesses—19 percent of those surveyed—have cut workers "as a specific result of the Affordable Care Act." The same poll, first reported by CNBC, found that 41 percent of those interviewed had suspended hiring because of Obamacare. The poll of 603 business owners with less than \$20 million in annual sales also found that 55 percent believe Obamacare will lead to higher health care costs, while just 5 percent saw future cost savings.

The steady stream of negative stories in recent months is one reason the Obama administration is preparing a massive public relations

campaign to promote the launch of health care exchanges on October 1, 2013—which is fewer than 100 days away. The administration is seeking to enlist high-profile athletes and celebrities to sell Obamacare and its alleged benefits. Kathleen Sebelius, secretary of health and human services, told reporters last week that HHS officials are working with major American sports leagues on the campaign.

“We’re going to be wherever people are,” said Sebelius, noting that the talks included discussions of “partnership efforts” as well as paid advertising. “The NFL, for instance, in the conversations I’ve had, has been very actively and enthusiastically engaged because they see health promotion as one of the things that is good for them and good for the country.”

But the top spokesman for the NFL gave *THE WEEKLY STANDARD* a rather different characterization of those discussions. “The NFL, NBA, and others were contacted by the administration. We have made no commitments nor discussed any details with the administration,” says Greg Aiello, the NFL’s senior vice president of public relations. “We are in the process of clarifying what it is the administration would ask of us.” There’s quite a difference between “very actively and enthusiastically engaged” and “made no commitments nor discussed any details.”

The comments from Sebelius concerned some owners and league executives who aren’t eager to lend the NFL’s brand to Obama’s unpopular health care law. According to a Harris poll taken in December 2012, professional football remains the most popular sport in America, with 34 percent of those surveyed calling it their favorite (compared with just 16 percent for baseball and 7 percent for basketball). League sources say NFL officials were “surprised” by the comments from Sebelius.

Sebelius’s remarks also concerned Representative Steve Scalise, a Republican from Louisiana who serves as chairman of the influential Republican Study Committee. On June 27, Scalise wrote to Roger Goodell and David Stern, respectively the commissioners

of the NFL and NBA, asking for details about the administration’s request. “Has the NFL or the NBA been asked by HHS to contribute funds or in-kind services to any third-party organization aiding the promotion or implementation of PPACA?” he asked. “Has the NFL or the NBA been asked by HHS to encourage enrollment in the new health insurance exchanges or other aspects of PPACA?”

Scalise, in an interview with *THE WEEKLY STANDARD*, pointed to recent hearings the House Energy and Commerce Committee held examining previous requests Sebelius made to private entities as part of her drive to boost Obamacare. “I don’t think any private organization should be pressured to help promote a law the administration is admitting isn’t even ready,” he says. “The NFL and the NBA shouldn’t be put in this position—it’s unethical for the administration to even ask. Secretary Sebelius needs to withdraw any requests she’s made.”

In the weeks before the momentous congressional votes on the Affordable

Care Act, opponents warned of chaos in the health care field and broader economic upheaval if the bill became law and went from theory to reality. Implementation, they predicted, would be a nightmare. That point is no longer in serious dispute, with even proponents of the reforms acknowledging the obvious.

Democratic senator Max Baucus, a chief author of the Affordable Care Act, famously warned in April of an impending “train wreck” because implementation of the law is behind schedule. Gary Cohen, a top official at the Centers for Medicare and Medicaid Services, acknowledged the problems with implementing Obamacare during an appearance at the Brookings Institution last week, even as he insisted that the process is unfolding “on schedule.” “I certainly wouldn’t claim that we’re not going to have any problems and everything’s going to work perfectly. I would like for that to happen. But it would be a surprise, I think, if that were to happen.”

It won’t. ♦

The Death of Economics

A fatal case of hubris.

BY DAVID M. SMICK

Recently a Japanese economist visited Washington to explain his government’s “five year economic outlook.” A five *month* outlook might have been more credible. Yet with surprising hubris, the economist forecast inflation and GDP five years out.

David M. Smick, a macroeconomic adviser to a number of global investors, is founder and editor of the International Economy magazine and author of The World Is Curved: Hidden Dangers to the Global Economy.

For decades, hubris has been the common currency of the economic policy world. It is killing the economics profession. In the 1960s and 1970s, for example, liberal economists believed they could eliminate all poverty. In the 1980s, conservatives thought tax policy could permanently raise the savings rate. It turns out other factors also influence a person’s decision to save.

In the first decade of this century, some central bank economists thought they could engineer monetary policy (with the help of global

capital inflows) to eliminate the U.S. business cycle. What happened? The underpricing of financial risk helped lead to the global financial crisis.

The experts also blundered in Europe. At first, the economists assumed tiny Greece's debt problems could be contained. Italian policymakers were engulfed in hubris as their government bond interest rates remained unaffected by the Greek crisis. Bank of Italy governor Mario Draghi (now head of the European Central Bank) was in the midst of a victory lap when, to his embarrassment, Italy's long-term rates skyrocketed.

Hanging by a thread, the euro project today looks like a case of hubris on steroids.

Now the world is being flooded with money and debt. The relational matrix of debt, interest rates, and growth has become the great conundrum of our time, a Rubik's Cube of difficult choices with unintended consequences. Yet as the financial system has grown more stunningly complex, hubris strangely has shifted into high gear.

Keynesians demand massive new government spending, insisting that with the economy having so much excess capacity, debt doesn't matter. Many conservatives demand fiscal austerity, believing the announcement of which will somehow attract global capital. Yet the austerity talk produces precisely the kind of market uncertainty that scares away investors.

But the big granddaddy of them all is the hubris surrounding quantitative easing (QE), a policy tantamount to propping up a bicycle with a set of monetary training wheels. In the United States and Japan, central bank economists are thrilled because QE rallied stock markets. The hope is that affluent stock owners will increase consumption, creating a trickle-down monetary effect to the rest of the economy.

Seldom mentioned is that central bankers have a terrible track record at identifying and controlling financial bubbles, including stock market bubbles. The economists say trust us anyway, because this time is different.

But look at the rosy economic forecasts of the FOMC, the Federal Reserve's policymaking committee, over the last several years. Each January, the FOMC has predicted annual growth of roughly 3.5 percent. The outcome was always closer to 2 percent, despite a grab bag of ever-increasing monetary stimulus.

Economists fare the worst in understanding politics. Under QE, the gap between American families that own equities and mere wage-earning fami-

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lies has widened dramatically. Government, as economist Robert Johnson put it, has become "an insurance agency for the rich and powerful with premiums paid by the middle class."

The economics profession has ample reason to feel defeatist. For decades, despite a variety of fiscal and monetary stimuli under both parties, middle-class wages and salaries in real terms have stagnated. The saving grace was the availability of cheap loans, only now the loans are becoming tougher to obtain.

Most Americans can sense something is fundamentally wrong. The traditional fiscal and monetary tools aren't working the way the experts predicted. Public and private leverage has become an unsatisfactory substitute for innovative breakthroughs that enhance productivity, dramatically increase GDP growth, create

jobs, and lead to increases in real wages and salaries.

Stocks rally, correct, then rally some more. The economists cheer their own success. Meanwhile, six in ten Americans still sense the country is moving in the wrong direction. And the crux of the problem may well be this simple observation: Sensing the system is broken, Americans no longer "salivate for the future," as columnist David Brooks aptly put it.

So at worst, the field of economics is dying. It is becoming less a science and more an art. At best, it needs a giant rethink in light of today's challenges.

Some questions to ponder: How could the experts be so wrong? Over the last five years, after fiscal and monetary stimulus, global public and private debt increased by a stunning \$48 trillion (global GDP is \$85 trillion). Stock market capitalization jumped by an astounding \$26 trillion. Yet the world economy is actually slowing.

What are the factors (exchange rates, macroeconomic conditions, level of real interest rates, direction and level of capital flows) that might provide clues as to whether a nation's debt has reached the danger zone? Or is the only choice before reducing debt simply to wait until a crisis sets in?

How do we understand the almost metaphysical nature of entrepreneurial risk-taking, the source of most new jobs? Is such risk-taking facing death by a thousand legal and regulatory cuts from Washington?

How do we survive a global capital system with ever expanding oceans of money and seemingly few rules of the road? Are central bankers irrelevant? Is eye-popping financial volatility, therefore, the "new normal"?

And, in the process, is the little guy in America the permanent fall guy?

How do we assure that the emerging U.S. energy revolution transforms the competitiveness of American industry and raises real wages and salaries across the board?

An economic policy rethink won't be easy. But the first step is to deep-six the hubris. This year should mark the death of all government five-year economic forecasts. ♦

A Great Battlefield

Gettysburg: an epic tale of not quite enough and just in time

BY GEOFFREY NORMAN

A century and a half later, the battle of Gettysburg's place in the national consciousness is so secure that you think of it as inevitable: the great contest of arms toward which all the previous battles of the Civil War had been leading. Thus, all that came before the breaking of Pickett's Charge was rising action, and all that followed, conclusion and denouement.

The outcome at Gettysburg seems also somehow fated, though it was, as Wellington said of another epic battle, a "damned near run thing." During the three days of fighting, victory and defeat hung, again and again, by a thread. For the Army of Northern Virginia, it was repeatedly a matter of not quite enough; and for the Army of the Potomac, of just in time. Still, history seems to demand the eventual outcome.

Gettysburg has been studied and analyzed like no other battle of the Civil War, and its fascination seems inexhaustible. In Allen C. Guelzo's recently published and excellent *Gettysburg: The Last Invasion*, the author notes one bibliography that contains over 6,000 entries—books, articles, pamphlets, and so on. The best novel of the Civil War, Michael Shaara's *The Killer Angels*, is an account of Gettysburg. And then there is the battlefield itself, nearly 6,000 acres, and with more than 1,300 monuments, proudly and almost flawlessly preserved, and with more than 5 million people expected to visit this year, the 150th since the essential American battle was fought.

The battle was, of course, not inevitable. It might, in fact, not have been fought at all. Or fought on some other ground. And it might, certainly, have ended differently.

That Gettysburg was fought at all was due to the force of one man's will. Robert E. Lee wanted to invade the North and fight an epic and conclusive battle there. His superiors

in the Confederate government were skeptical and thought it might be wiser to husband resources in the East and fight in the West, where Vicksburg was hanging by a thread. Lose the West, they believed, and the cause was doomed. Lee convinced them otherwise. His stature was such—especially after his splendid, if costly, victory at Chancellorsville—that his will could not be resisted, even by the president of the Confederacy, Jefferson Davis.

But if Lee's will was strong enough to force the battle, he could not impose that will upon his own subordinates. Not, at least, with enough urgency to make them accomplish his aims and win what he, and many historians,

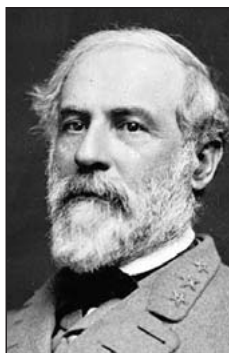
believe might have been his final and finest victory. The question has been posed in most accounts of the battle: "Why did the South lose?"

Several explanations have been proposed. Lee himself believed that if he'd had Stonewall Jackson with him, things would have gone the other way. In the end, George Pickett may have come up with the best answer: "I always thought," he said, "that the Yankees had something to do with it."

But the opening of the campaign that led to Gettysburg went all Lee's way. In early June 1863, he gave the Union Army, still under the command of General Joseph Hooker, the slip, fixing it on the Rappahannock, where it had been since Chancellorsville, and moving his own forces west, then north. When Lee's maneuvers became clear to Hooker, he proposed an attack on Richmond, to which his commander in chief said, "No."

Lincoln, who was losing faith in Hooker and secretly interviewing possible replacements, was skeptical of a queen-for-queen game. What was to prevent Lee from going after Washington while Hooker was attacking Richmond? "I think Lee's army, and not Richmond, is your sure objective point," he wrote to Hooker.

So Lee moved north up the Shenandoah Valley, with the Army of the Potomac shadowing, keeping itself between the rebels and Washington and Lincoln urging Hooker, "if the head of Lee's army is at Martinsburg and the tail of it . . . between Fredericksburg and Chancellorsville, the animal



Robert E. Lee



George Meade

Geoffrey Norman, a writer in Vermont, is a frequent contributor to THE WEEKLY STANDARD.

must be very slim somewhere. Could you not break him?"

But Lee advanced unmolested and, in fact, took on the one last Union stronghold in the valley at Winchester and defeated the forces there soundly, capturing 23 pieces of artillery and supplies enough to equip an entire Confederate division. Then, it was across the river and into Maryland and to Pennsylvania, where there were more provisions for the taking; resupply being one of two stated objectives of Lee's invasion.

The other, of course, was battle. As he told one of his generals, he had once again outmaneuvered the enemy and now expected the Army of the Potomac to pursue, "broken down with hunger and hard marching, strung out on a long line and much demoralized. When they come into Pennsylvania, I shall throw an overwhelming force on their advance, crush it, then follow up this success, drive one corps back on another . . . create a panic and virtually destroy the army."

Lee then laid his hand on a map, over Gettysburg, and said, "Here-about we shall probably meet the enemy and fight a great battle, and if God gives us the victory, the war will be over and we shall achieve the recognition of our independence."

There were generals on both sides, and plenty of them, who were given to bold talk and bluster. But Lee was not among them. He had, in fact, made fools of several of the braggarts, including George McClellan, John Pope, and, most recently, Joe Hooker. So these were not idle words.

Furthermore, Lee enjoyed the confidence of his government, his lieutenants, and his troops. Especially his troops—perhaps because their leader gave them victories and because he believed so plainly in them. As he was fond of saying, "With such men, anything is possible." And to them, he was the next closest thing to a deity. When he rode past on his big, gray horse, they would take off their hats and stare at him in some blend of adoration and wonder.

Lee's opponent enjoyed no such confidence. Not from his government, his lieutenants, or his troops. Hooker, in fact, was unceremoniously relieved of his command while his army was on the march, a scant four days before the first shots were fired in the battle of Gettysburg. Hooker's dismissal was no surprise. But the name of his replacement was. Even to the replacement himself.

When awakened in his tent at 3 A.M., George Meade thought, as he later wrote to his wife, that "it was either to relieve or arrest me."

This was not without cause. Meade had been nearly

insubordinate in his criticisms of Hooker after Chancellorsville, and his politics were suspect among the Republicans in Washington. Told that he was to assume command of the Army of the Potomac, Meade protested that others were more deserving and better qualified than he. Why, he didn't even know the dispositions of the army's various corps, other than his own.

Washington, he was told, had already taken that into account.

"Well," Meade said, "I've been tried and condemned without a hearing. And I suppose I shall have to go to execution."

The best anyone might have said of General Meade

before Gettysburg was that he was an "able" general. He had performed well in the Peninsula Campaign, adequately at Antietam, and more successfully than any other Union division commander in the disaster at Fredericksburg.

But he was not a figure who inspired awe or the kind of fierce emotional loyalty that soldiers and many senior officers in the Army of the Potomac felt for George McClellan, his mentor. Meade was a pedestrian figure, neither striking in looks nor eloquent in speech. He had a temper and protruding eyes, leading one soldier to describe him

as a "goddamned old goggle-eyed snapping turtle."

Still, he would have to do.



Lee learned of Meade's promotion the same way he learned that the Army of the Potomac was not still down in Virginia but in Maryland, between his forces and Washington. A spy told him.

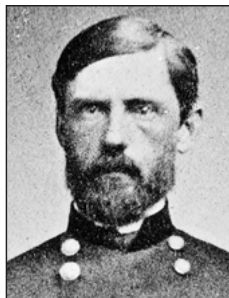
The man was actually called an "agent," but if he'd been captured he'd have been hanged as a spy, making the semantic distinction irrelevant. The man's name was Harrison and he was attached, more or less, to General James Longstreet's 1st Corps. When he brought information that he had gleaned in his clandestine travels to Washington and other points to corps headquarters, it was considered of sufficient importance that Lee himself should listen. This, in spite of the fact that Lee found the business of agents slightly distasteful.

Still, he listened. And he believed what Harrison was telling him.

Of his new opponent, he said, "General Meade will commit no blunder in my front, and if I commit one, he will make haste to take advantage of it."

Lee therefore took steps to unite his scattered forces with the intention of striking the enemy before it could do the same. He also wondered, aloud, why he had heard nothing from his cavalry commander, J.E.B. Stuart, who should have been screening his army's movements instead of riding for glory and headlines, as he was off doing. Among the many passionate disputes over credit and blame that followed the Civil War, the part Stuart played—or did not play—in Lee's defeat remains one of the most enduring. Certainly it won't be settled here. Still, it does seem indisputable that Stuart should have stayed closer to the army. Also, Lee should have been more specific when he issued orders to his impetuous cavalryman. It is arguable that Stuart's absence did not result in a catastrophic failure of intelligence, since Harrison provided Lee with the information he needed. But it does appear that the consequences of Stuart's absence were most felt by Lee in the very early stages of the battle, when he lacked cavalry to screen the infantry's advance into Gettysburg.

Finally, the matter of Stuart and his absence was just one example among several of Lee being unable, or unwilling, to make his subordinates understand his plans and carry out his designs.



John Reynolds

Where Lee depended on agents and other improvised, ad hoc arrangements for intelligence, Meade could rely on the professional services of a unit that was Joseph Hooker's enduring contribution to the Army of the Potomac. The unit was called the Bureau of Military Information. It was led by a New York lawyer and combat veteran, George Sharpe, who made it a modern intelligence service, using information collected from spies, enemy newspapers, captured soldiers, friendly civilians, and other sources. The information was brought together and analyzed to produce an estimate of the enemy's organization, location, and intentions.

Meade might have been taking command in haste and under heavy pressure, but he had good intelligence, which he used to come up with his own plan. This was, broadly, to put his army where it could resist a move by Lee on either Washington or Baltimore and do so on ground that would give Meade the advantage. He thought an area around Pipe Creek, southeast of Gettysburg by 17 miles, would be ideal, and he put his engineers to work studying the ground and making preparations. Meanwhile, he got the dispersed elements of his army on the move.

One of Meade's generals, and rivals, believed that the Pipe Creek strategy was flawed and that the place to make a fight was Gettysburg. General John Reynolds knew the

territory—he was from Pennsylvania, born 50 miles from Gettysburg—and he found the latitude to act on his own discretion in the ambiguous nature of Meade's orders, though one set did instruct Reynolds to retreat “without further orders” if he ran into the Confederate Army. Those instructions were delivered midday on June 30.

Still, Reynolds pushed on toward Gettysburg. In this battle, neither commanding general had complete control of his subordinates.

If Meade did not like the place, Lee was not happy about the timing. On July 1, the scattered elements of his army were moving rapidly toward a junction and Lee did not want a fight before that was accomplished. The lead division of one Confederate corps was moving east on the road into Gettysburg with no sure sense of what might lie ahead in the way of enemy units. There was no cavalry screen—Stuart

was still off in parts unknown—so the infantry had to do the job of probing and testing the ground for the presence of Union troops.

The commander of that infantry had orders from Lee to “ascertain what force was at Gettysburg. If he found infantry opposed to him, he was to report the fact immediately, without forcing an engagement.”

The probing skirmishers from Henry Heth's division encountered resistance as they came up the Cashtown Road. The Union soldiers they ran into were not, however, infantry.

They were Union cavalry, under the command of a tough old veteran of the Indian wars, named John Buford. There were 1,600 of them, and they were armed with repeating rifles, so they had some advantage in firepower. Not enough, however, to stand up to infantry in a sustained action, as both Buford and Heth knew well.

Buford's orders were to buy time—something several other Union commanders would be ordered to do over the next three days. Hold them, Reynolds said, essentially, until I can get my own infantry up.

If Buford held, then Reynolds could bring up both his own 1st Corps and Oliver Howard's 11th, which was marching with him and under his overall command. Then, the battle would be fought here. At Gettysburg.

Henry Heth was inclined, also, to make a fight of it, since he believed he was up against cavalry and could, once he had deployed his men, break them and move on into Gettysburg.

It was close. Buford's men were giving ground, with their general watching from the vantage of a cupola at a Lutheran Seminary to the rear, when Reynolds appeared and asked, desperately, if the cavalry could give him one more hour.

Buford agreed to try. Reynolds rode back to find troops from his own corps, who were on the road to Gettysburg,

and led them at a trot for more than a mile cross-country to the McPherson Ridge, where the fight was at a crisis.

“Forward, forward, men,” he shouted from horseback as he deployed the troops on a line to resist Heth’s assault. “Forward! For God’s sake, forward.”

And then he fell from the saddle with a bullet in his head.

Reynolds was the first of nine generals to be mortally wounded in the battle and a serious loss for the Army of the Potomac, which some thought should have been his to command, after Hooker’s dismissal.

But Reynolds had, before he died, brought up enough infantry to halt the Confederate assault. The new arrivals included the Iron Brigade, among the most distinguished, and distinguishable, of all the Union outfits. They were Westerners—Indiana, Michigan, and Wisconsin men—who served in the East, and they were recognizable by their headgear. “It ain’t infantry at all,” some of the attacking Confederates said when they saw who they were up against. “There’s them black hat fellers from the Army of the Potomac.”

The Confederates’ assault was turned back, and one of their generals was taken prisoner. Union forces arriving on the field extended and thickened the line along McPherson Ridge. Confederate troops on the north side of the Cashtown Road, which had been their line of advance, tried to push up a cut in the earth where an unfinished railroad line paralleled the road. They quickly found they were in a trap, with Union soldiers on the banks of the deep cut firing down into them, and those who were not killed, surrendered.

What was intended to be a minor action aimed at scattering a few Union cavalrymen in the way of the Confederates’ advance had turned into something else. Not merely the engagement that Lee wanted to avoid until all his troops were present for action, but a repulse. A defeat, and one that left the enemy holding favorable ground and reinforcing.

But while this fight was underway, some of the

formations for which Lee had been waiting began to arrive on the field. They belonged to General Richard Ewell’s 2nd Corps, and they had been marching back down from Carlisle after having advanced as far as the Susquehanna River and Harrisburg. Now, one division was on the field, and its commander believed he saw a chance to rescue things for the Confederates.

The Union flank was open to attack, he believed. But as one of his brigades moved across a field to engage the troops to its front, Union soldiers who had taken concealment behind a stone wall on their flank rose and fired into them. More than half of the Confederates were hit. One man later told his brother of being “sprayed by the brains of the first rank.”

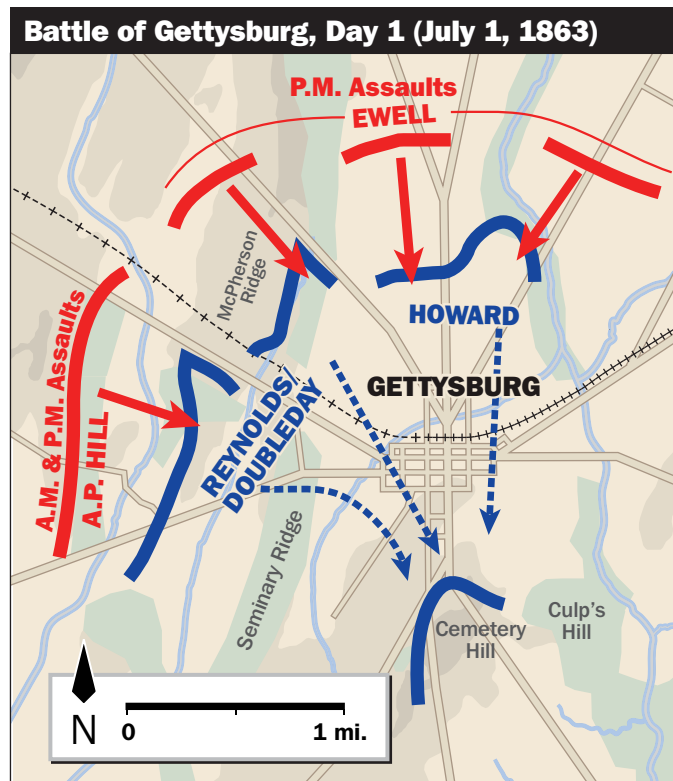
Another Confederate attack broken.

It was now mid-afternoon, and the general engagement that Lee had wanted to avoid this day was undeniable fact. Two of his three corps commanders had launched attacks that failed, and now he was, it seemed, committed, whether he liked it or wanted it or not.

When he arrived at the scene of what appeared, increasingly, to be a debacle, Lee talked about the possibility of withdrawing. “If we do not gain a victory, those defiles and gorges which we passed this morning will shelter us from disaster.”

When he surveyed the battlefield, he saw a Union line bent around the town of Gettysburg, with more troops arriving to extend and thicken it. And, no doubt, he saw evidence of the defeat his own troops had suffered. The dead, dying, and demoralized men. But he also saw opportunity.

The brigades from General Robert Rodes’s division of Ewell’s corps that had not been shot up at the stone wall were clearing the field and chasing the enemy, and beyond them on the extreme right of the Union line, Jubal Early’s division was arriving after marching down from York, and the timing, though sheer accident, was as though Lee had ordained it.



Lee ordered A.P. Hill, commander of 3rd Corps, to attack with Heth's division and William Dorsey Pender's on the Union right and clear McPherson Ridge where the battle had begun that morning.

The fighting was desperate and bloody in a way that was typical of that war and hard, still, to imagine both for its carnage and also for its romantic spirit which seems, from this vantage, utterly quaint.

The 26th North Carolina attacked the 24th Michigan of the Iron Brigade and in the fight, 14 different men were shot down carrying the unit's colors. The last, Lt. Colonel J.R. Lane, had assumed command after the unit's commander was shot down, also while carrying the flag. Lane had defiantly picked up the flag after another man shouted, "No man can carry those colors and live."

When the 24th Michigan's color bearer was hit, Colonel Henry A. Morrow, the unit's commander, took the flag and shortly after that, went down with a head wound. The fight was believed to be the bloodiest regimental engagement in the battle of Gettysburg. Some 687 men of the 843 who entered the fight with the 26th North Carolina went down. The 24th Michigan lost 363 of its 496 men. Despite the slaughter, neither unit lost its colors.

On another part of the field, the colonel of a Union regiment was ordered by his general to hold some ground in order to cover a retreat that, if it were not orderly, might turn into a general rout. Colonel Charles Tilden protested that this would mean the loss of the entire 16th Maine.

To which the general said, "Colonel Tilden, take that position and hold it as long as there is a single man left."

The soldiers of the 16th Maine knew what this order meant, and while they might be willing to die obeying it, they were not willing to surrender their colors. So they tore the regimental flag into strips and distributed them among the men so that as long as any survived, the colors would not be taken.

Of some 300 men from the 16th Maine who went into the fight, many with pieces of the flag in their pockets, only 84 were not killed, wounded, or captured by a North Carolina regiment that was disappointed to have taken no colors. Only a "very fine flag staff and tassels."

Some men of the 16th Maine who survived the battle and the war passed the scraps of the regimental colors along to their descendants. But not many did survive. When the battle of Gettysburg was over, the 16th Maine consisted of two officers and 15 men fit for duty.

The desperate fight on July 1 did not turn on the capture of any unit's colors. It was settled by the Confederates' superiority of numbers and their fortunate coordination of forces, which was handled by Lee

with his usual skill. Jubal Early's men turned the Union's right flank and A.P. Hill's, the left. The Union line, running in an arc from west to north around the town of Gettysburg, gave way and broke. Soldiers streamed back into town, some finding temporary refuge in civilian homes. One Union general hid in a pigsty and remained there throughout the battle, with the woman who owned the property secretly bringing him food and water.

Lee and the Army of Northern Virginia had rescued the day and won, it appeared, another victory. But the enemy had not fled the field. The survivors of two broken Union corps had taken defensive position on a piece of high ground called Cemetery Hill, where they had placed artillery and were now furiously digging in.

Still . . . if that position could be forced, then Lee would control all the high ground and be in a position to deal with the remaining Federal units piecemeal, as he had envisioned.

But the Confederates did not take Cemetery Hill. Not that evening, when they were victorious and held the initiative, and not for the rest of the battle. And that failure was, in the minds of many, fatal to Lee and the Confederates.

Lee wanted it taken and suggested as much to his subordinates. His instructions to General Ewell, who'd been a division commander under Stonewall Jackson, were to take Cemetery Hill "if practicable."

That word "practicable" has been parsed to exhaustion ever since. Whatever its meaning or Lee's intent, Ewell understood it to give him discretion, and he chose not to attack. Which, Ewell's many detractors claim, Stonewall Jackson would have done even without orders.

In later years, when the question "Why did the South lose at Gettysburg?" was so often, and so warmly, discussed, Ewell said, "A great many mistakes were made at Gettysburg, and I committed a good many of them."

The first day was done. Fifty thousand men had been engaged. Casualties on both sides added up to more than 15,500 killed, wounded, captured, or missing. A bloody day, even by the standards of that war, but there was worse to come.

The moon was full that night, and it lit the way for General Meade as he rode the 17 miles from Taneytown, Md., to the battlefield, arriving after midnight without ceremony and already deeply fatigued.

Meade talked with his generals on the scene, who assured him that they were on good, defensible ground. "I'm glad to hear you say so, gentlemen," Meade said, "for it is too late to change."

He then rode off in the gloomy yellow light to inspect the lines and make his dispositions, which became the

famous “fishhook,” with the bend around the town of Gettysburg and including Cemetery Hill and the adjacent Culp’s Hill, the shank extending south along Cemetery Ridge and the eye consisting of two round hills, one wooded and the other not.

At one point in his ride, a few soldiers began cheering the general. But, as it turned out, they thought he was McClellan come to resume command. Meade’s ride and his nocturnal work occupied him until dawn.

Lee, meanwhile, had been making his own plans and discussing them with his subordinates, one of whom did not approve.

Lee had more confidence in James Longstreet than in any of his other generals, especially now that Jackson was gone. He called the bluff, burly Longstreet, affectionately, “My old warhorse.” But unlike Jackson, who looked, always, for a way to attack the enemy, to engage him, at his disadvantage, in a battle of annihilation, James Longstreet was a believer, especially after Fredericksburg, in the supremacy of the defense. Modern war, with the rifled musket, entrenchments, and artillery, he was convinced, had made the old ways a recipe for pointless carnage.

Longstreet believed that Lee shared his insight and that the two of them had agreed that when the time came, during this invasion of the North, the Army of Northern Virginia would find good ground and fight its battle on the tactical defense.

Longstreet pointed out to Lee, at the end of the first day, that it was now possible to move the army around the Union left, take a position between Gettysburg and Washington, and force Meade into an attack that would break

on the Confederates’ artillery and prepared positions.

But Lee was not persuaded. “No,” he said, pointing to Cemetery Hill, “the enemy is there, and I am going to attack him there.”

He did attack, the next day, with Longstreet’s corps as his instrument. But the main effort was not on Cemetery Hill, where Ewell made a desultory effort, but on the Confederate right, down near the two round hills that made the eye of the fishhook.

Longstreet continued to argue his point, and when he finally conceded, he did so stubbornly. Lee’s plan became Longstreet’s plan, and Longstreet seemed determined, almost spitefully, to follow it to the letter, though his own division commanders insisted it was suicidal and needed to be changed so that it would take the enemy more by flank than front. With near-biblical foreboding, General John Bell Hood protested three times. The order, he was told, stands.

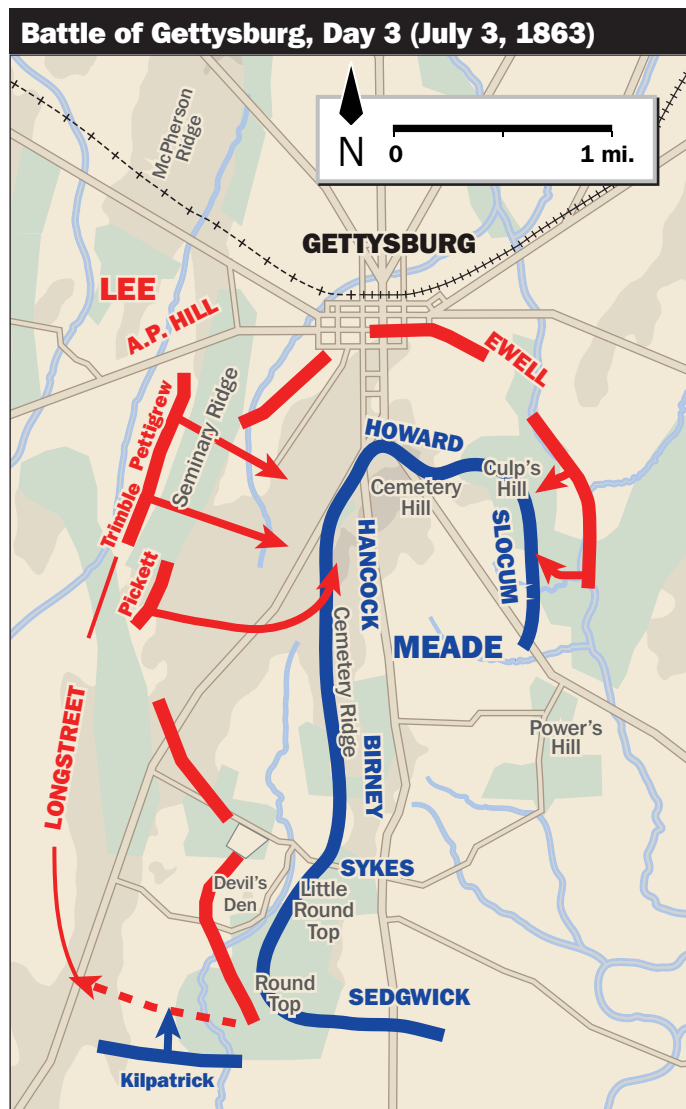
He obeyed, but his brigadiers did not, modifying Lee’s plan in ways that were prudent and almost successful.

Almost.

On the other side of the line, General Dan Sickles, the personification of the political

general with his Tammany pedigree, had taken it upon himself to alter Meade’s alignment along Cemetery Ridge and move his corps out to ground of slightly higher elevation, so once again, a subordinate had frustrated his commander’s intentions.

Sickles’s redeployment thinned his line dangerously, exposed it to flank attack, and left a potentially fatal gap near the center of the Union line. For this unilateral decision, Sickles and his men paid in blood and nearly lost the battle for Meade and the Union.



But first, there was the struggle for the Round Tops, as the two hills came to be called. Troops from Alabama took the taller and uncleared hill at the extreme end of the fishhook and might have held it but were ordered down and then up again, to take Little Round Top, which was cleared and would have made for a dominating artillery position, threatening the entire Union line. It was virtually unoccupied when the Alabamians received the order. If they had taken it, that might have sealed the outcome of the battle.

But one Union staff officer, Gouverneur Warren, had seen that the position was nakedly vulnerable and absolutely critical and, on his own initiative, alerted Meade and then went looking for troops to defend Little Round Top. Meade sent troops, and Warren found some and persuaded their commander to let him deploy them. They arrived in time and at the moment of maximum danger, the 20th Maine under Colonel Joshua Chamberlain launched a bayonet charge that turned back the Alabamians and saved the day.

It was a near thing, and there was more to come. Each new Confederate attack seemed on the verge of unhinging the Union line. The troops that Sickles had deployed in a peach orchard took hideous casualties. His corps lost 4,000 men in about 3 hours of battle, and one of the casualties was Sickles himself, with a wound to the leg that required amputation. While being carried by stretcher from the field, he puffed conspicuously on a cigar because he wanted his men to see he had not been killed.

The potential for debacle, Sickles left to others, including General Winfield Hancock, who, late in the day, once again held off calamity when he directed a small regiment to a point in the Union line where Confederate troops were on the verge of making a breakthrough. Hancock realized, he later wrote, that he needed five minutes.

“What regiment is that?” he asked the officer in command.

“First Minnesota,” was the reply.

“Colonel,” Hancock said, pointing to a Confederate regimental flag, “do you see those colors?”

He saw them, the colonel said.

“Then take them.”

The Minnesotans did not, in fact, take the colors. But they did stop the attack. Of the 262 men who fixed bayonets and charged downhill into the Confederates, 47 returned.

They had given Hancock the five minutes he needed and a few more for a cushion.

Just in time.

Then, closer to the center of the line, another Confederate assault did make a breakthrough, and the rebel soldiers found themselves looking on the Union rear, to include General Meade’s headquarters and the roads running back east that were filling up with Union soldiers in retreat. But

there was no support for the breakthrough. And the Confederate troops that had made it were obliged to fight their way back to their own lines.

For Hancock, it had been *just in time*. For Colonel Ambrose Wright, his Georgia Brigade, and the Confederacy, it had been *not quite enough*.

Longstreet had done his worst, but the Union line held. His detractors, for decades after the war, held Longstreet responsible for the defeat at Gettysburg. If he had faithfully carried out Lee’s wishes . . . if he had not been so slow, waiting until four in the afternoon to attack . . . if, if, if.

Longstreet and his soldiers had, though, inflicted more casualties than they had taken. And they had nearly accomplished what Lee had asked of them. They had come so close.

Close enough that Lee believed one more hard blow would break the Union line. Having struck the Union right and then the left, on the third day, he would attack its center in a frontal assault across three-quarters of a mile of open ground.

Longstreet, again, protested.

“General,” he said, “I have been a soldier all my life. Have been engaged in fights by couples, by squads, companies, regiments, divisions, and armies, . . . it is my opinion that no 15,000 men arrayed for battle can take that position.”

Lee prevailed; Longstreet did his duty—with devotion, by all accounts. As did the men of George Pickett’s division and other Confederate units who marched uphill, across open ground, and were ripped apart by musket fire and canister from artillery but still reached the Union line where they held on for a few minutes, then fell back. The 5,000 who still could.

“This is all my fault,” Lee said to the survivors when he rode out to meet them.

His will had, at last, been done.

The battle was over. The war, of course, was not. But Vicksburg fell on July 4, the day after Pickett’s men charged Cemetery Ridge, and that was, as those who had been skeptical of Lee’s plan of invasion predicted, a loss which the Confederacy could not survive.

Meade did not pursue Lee, to Lincoln’s immense frustration, but he would remain in command of the Army of the Potomac, even as U.S. Grant was at his side, in overall command, during the long, bloody campaign that would end at Appomattox.

There were fierce battles with terrible casualties to come—the Wilderness, Spotsylvania, Cold Harbor, Petersburg. But after Gettysburg, the final outcome was always . . . inevitable. ♦

Grant at Vicksburg

A masterpiece of military art

BY MACKUBIN THOMAS OWENS

While Robert E. Lee was whipping Joe Hooker at Chancellorsville in May 1863, there were ominous developments for the Confederacy in Mississippi. During that month, Maj. Gen. Ulysses S. Grant's Army of the Tennessee crossed the Mississippi River south of Vicksburg and then executed a lightning campaign of maneuver that sealed the doom of that important Confederate stronghold, which surrendered on July 4.

In examining the Vicksburg campaign, it is useful to go back to the beginning of the war in the West. The primary Union goal in this theater was to penetrate deep into the Confederate heartland, opening the way to Chattanooga and Atlanta on the one hand and gaining control of the Mississippi River on the other. The overall Union commander in the West was Henry Halleck, who recognized that the Tennessee River constituted the main "line of operation" for Union forces.

In keeping with Halleck's observation, a Union army under Grant and a naval flotilla under Flag Officer Andrew Foote captured Forts Henry and Donelson, on the Tennessee and Cumberland Rivers respectively, in February 1862. Grant continued to move south toward the critical rail center of Corinth, Mississippi. Before Grant could reach Corinth, however, a Confederate army under Gen. Albert Sidney Johnston surprised him near Shiloh, Tennessee. Union forces were mauled on the first day of the battle, but after reinforcement arrived that evening, they drove the Confederates from the field. Both sides suffered unprecedented casualties at Shiloh—indeed, more soldiers died in this battle than in all of the nation's previous wars. But Shiloh was only a foretaste of things to come.

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Although Grant had been surprised at Shiloh, he learned from the experience. In addition, his victory at Shiloh led to the capture of Corinth. The way was now open toward both Vicksburg on the Mississippi River and Chattanooga—the gap through the Appalachian barrier necessary to the capture of Atlanta.

In December, Grant launched his first attempt to capture Vicksburg. The problem was how to "get at" the city. It sits on a high bluff above a sharp bend in the Mississippi. Its guns commanded the bend in the river at De Soto Point. To the north lies the Mississippi Delta, a swampy

area between the Mississippi and Yazoo Rivers. The Confederates held strong defensive positions on the higher, drier ground to the east and northeast of the city.

Grant first attempted a direct approach. Sending his favorite and most reliable subordinate, William Tecumseh Sherman, and a naval force to assault Vicksburg via Chickasaw Bayou, an offshoot of the



A Confederate artillery piece defending Vicksburg

Mississippi, Grant moved the bulk of his army south from Memphis on the high ground east of the Yazoo, planning to launch a coordinated assault against the city. As Grant approached Grenada, however, a Confederate cavalry force raided his supply base at Holly Springs, forcing him to retreat. Before Grant could get word to Sherman that his attack had been aborted, the latter launched his assault at Chickasaw Bayou and was decisively repulsed.

Rather than return to Memphis for the winter and wait for the waters of the Mississippi to recede in the spring, Grant initiated a number of other attempts to get at Vicksburg. In attempting to reach the dry ground east of the Mississippi, he confronted a formidable obstacle: the combination of high water and Confederate defenders.

In early 1863, Grant undertook two engineering projects to get south of the city. The first was the attempt to dredge the "old canal," which, had it been successfully accomplished, conceivably would have permitted the passage of naval transports from the Mississippi above Vicksburg to points south without exposing them to the fire

of the Confederate batteries that commanded the river at De Soto Point. The second was the Lake Providence Canal project, a plan to connect a network of rivers and bayous in the bottomlands of northeast Louisiana, creating a navigable, though circuitous, route that would enable shallow-draft steam craft to get south of the city.

High water and endless swamplands made life miserable for the soldiers attempting to implement these projects. A contemporary jingle captures the essence of the soldiers' plight: *Now I lay me down to sleep / in mud that's many fathoms deep. / If I'm not here when you awake / just hunt me up with an oyster rake.*

Grant also tried again to get directly at Vicksburg from the north, first by approaching the city by means of the Yazoo Pass, then by way of Steel Bayou. Both of these joint Army-Navy operations failed.

In late March, the waters of the Mississippi receded earlier than expected. While the falling water aborted another of his engineering projects, it provided Grant an opportunity to undertake a far bolder operation. He planned to move his army down the west bank of the river, while Admiral David Porter's transports and gunboats ran the gauntlet at De Soto Point. Once south of Vicksburg, the transports would carry the Army across the river, enabling Grant eventually to move on Vicksburg from the east.

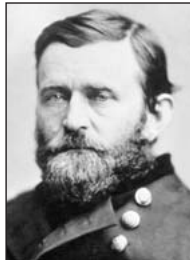
On March 29, Grant ordered one of his corps under the command of Maj. Gen. John McClernand to move from the Union base at Milliken's Bend south along the west bank of the river to New Carthage, halfway between Vicksburg and Grand Gulf. Once McClernand had reached New Carthage, he was to prepare to cross the Mississippi. Because the river had fallen, the ground on the west shore was swampy—in the words of one soldier, “a vast bog, intersected by numerous bayous half flooded with water”—and difficult to traverse. Progress was slow.

The plan entailed considerable risk, so much so that Sherman felt obligated to express his doubts in writing. The first problem was successfully coordinating all that needed to be accomplished, especially if the Confederates divined his intentions. The second was the difficulty of keeping McClernand supplied over the soggy Louisiana countryside on the west bank of the Mississippi. Even if the actions of the Army and Navy could be coordinated, Grant would face additional risks once he crossed the river.

Grant's plan called for a robust deception operation to focus the attention of Lt. Gen. John C. Pemberton, the Confederate commander, away from Grant's main effort south of Vicksburg. As McClernand began his movement

south, Grant dispatched a division of Sherman's corps in the opposite direction to Greenville, Mississippi, about 70 miles upriver from Vicksburg. This division, commanded by Maj. Gen. Frederick Steele, destroyed corn, carried off farm animals, and liberated about 1,000 slaves.

The “Greenville Wallow” accomplished its military goal of distracting the Confederates from Grant's main effort, causing Pemberton to send a force under Gen. Stephen Lee (no relation to Robert E. Lee) to deal with Steele. But it also reflected the new policy of the Lincoln administration of targeting Southern social and economic institutions, adumbrating Sherman's “March to the Sea” after the capture of Atlanta in September 1864. “Rebellion has assumed that shape now that it can only terminate by the complete subjugation of the South or the overthrow of the Government,” Grant wrote to Steele. “It is our duty therefore to use every means to weaken the enemy by destroying their means of cultivating fields, and in every other way possible.”



Ulysses S. Grant



John C. Pemberton

While a threat to Braxton Bragg's lines of communication in Tennessee drew the legendary Confederate cavalry commander Nathan Bedford Forrest away from Mississippi, Grant launched another diversion. On April 17, Col.

Benjamin Grierson led a force of 1,700 horsemen from La Grange, Tennessee, south into Mississippi. After tearing up the tracks of the Southern Railroad east of Jackson, Grierson decided to continue south, reaching Baton Rouge 16 days after leaving La Grange. This raid, the most spectacular Union cavalry operation of the war (fictionalized in the classic John Ford film *The Horse Soldiers*, starring John Wayne) and certainly the most strategically significant, created chaos in Pemberton's department, occupying his attention for two weeks as Grant moved the main body of the Army of the Tennessee south of Vicksburg.

On the moonless night of April 16, Adm. David Porter's Mississippi Squadron made its first attempt to run the Rebel batteries at Vicksburg. Though battered by the Confederate gunners, all eight of Porter's gunboats and two out of three of his transports made it through. A few nights later, five out of six transports successfully made the run. By the end of April, Grant had two of his three corps south of Vicksburg and, with the aid of Porter, was ready to cross the river at Grand Gulf.

As Grant prepared to make his crossing, he ordered one more diversion. For two days, one of Sherman's divisions conducted a demonstration in front of the Rebel positions on Haynes' Bluff near Chickasaw Bayou, the

PEMBERTON: NEWS.COM

site of Sherman's repulse the previous December. As in the case of the Greenville expedition and Grierson's raid, Pemberton took the bait, recalling 1,000 troops that had been sent to deal with whatever Grant was planning to do. Meanwhile, Porter's gunboats bombarded the Confederate position at Grand Gulf.

Although weakened by the naval bombardment, the Confederate defenses at Grand Gulf appeared to be a tough nut to crack. Grant feared a reprise of Chickasaw Bayou if he tried to land at a place commanded by towering bluffs where entrenched defenders could extract a high price. Upon reflection, he decided to cross further south and land at Bruinsburg, Mississippi, which he did on April 30.

When he realized what Grant was doing, the energetic Confederate commander at Grand Gulf, Brig. Gen. John Bowen, rushed his troops to block Grant's way at Port Gibson, 10 miles east of Bruinsburg. While Grant had only two of his corps across the river (after his demonstration at Haynes' Bluff, Sherman was just now marching south on the west bank of the Mississippi), he still outnumbered the Confederate force. The Confederates put up a spirited defense at Port Gibson but were ultimately pushed aside. Grant had now established a secure lodgment on the east side of the river. Fearing that the garrison at Grand Gulf would be trapped, Pemberton ordered the position abandoned.

Grant understood that it was the beginning of the end for Vicksburg. In his memoirs he wrote:

When [the crossing] was effected I felt a degree of relief scarcely ever equaled since. Vicksburg was not yet taken it is true, nor were its defenders demoralized by any of our previous moves. I was now in the enemy's country, with a vast river and the stronghold of Vicksburg between me and my base of supplies. But I was on dry ground on the same side of the river with the enemy. All the campaigns, labors, hardships and exposures from the month of December previous to this time that had been made and endured, were for the accomplishment of this one objective.

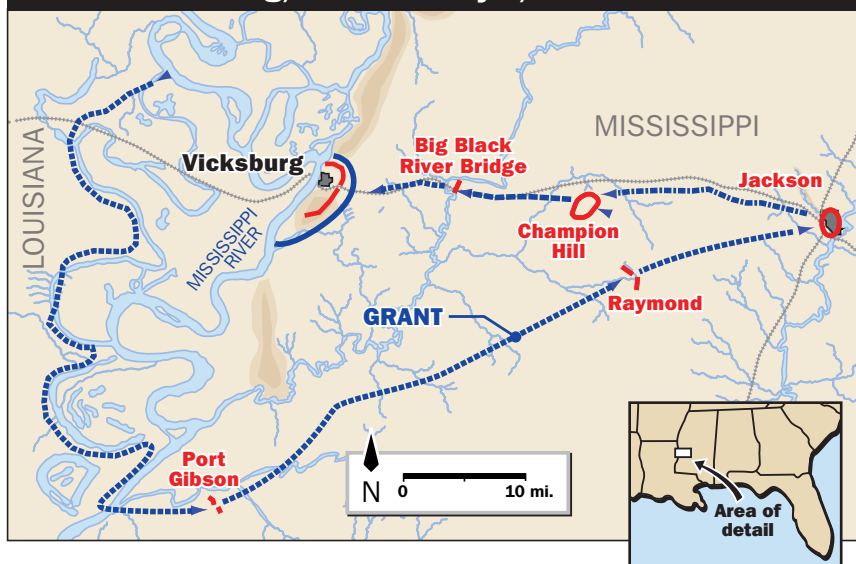
Pemberton finally understood that Grant now had most of his army south of Vicksburg, but he was still in a quandary concerning what the Federals would do next. The most direct—and predictable—approach, one that would maintain lines of communication and supply with the river, was to drive due north. But Grant was aware that the general designated by Jefferson Davis as the overall Confederate

commander in the West, Joseph Johnston, was gathering a force near Jackson, 40 miles east of Vicksburg. If Grant did the predictable thing, Johnson could conceivably pose a potential threat to Grant's right flank.

Instead, Grant decided to eliminate the Johnston threat before dealing with Pemberton. To do so, he abandoned his supply line, heading northeast toward Jackson. There were plenty of smokehouses and full corn bins on the way, and Grant's soldiers proved to be excellent foragers.

During the 17-day period after landing at Bruinsburg,

Grant at Vicksburg, March 29-July 4, 1863



Grant's Army of the Tennessee marched 180 miles, fought and won five major engagements—Port Gibson (May 1), Raymond (May 12), Jackson (May 14), Champion Hill (May 16), and Big Black River (May 17)—inflicting 7,200 casualties to 4,300 of his own, pinned Pemberton's army inside the defenses of Vicksburg, and with his right flank now anchored on the Mississippi and Yazoo Rivers north of the city, reestablished his lines of communication and supply.

The Confederate defenders repulsed several direct assaults against Vicksburg's lines, so Grant settled in for a siege, the outcome of which was not in doubt. On May 24, Grant advised Halleck that the enemy "was in our grasp. The fall of Vicksburg and the capture of most of the garrison can only be a matter of time." The city surrendered on July 4, one day after Lee was turned back at Gettysburg.

The keys to the Union victory at Vicksburg were Grant's bold decision to cross the Mississippi River south of the city, his risky decision to abandon his supply and communication lines with the Mississippi, and his subsequent execution of the lightning campaign of maneuver during May 1863. Those who think of Grant as a butcher need to examine this masterpiece of operational art. ♦



'Saint Catherine's Disputation' (detail) by Bernardino Pinturicchio, 1492-4.
The image of Saint Catherine is said to be based on Lucrezia Borgia.

Iron Ladies

The wonderful, wretched lives of the Italian aristocracy. BY JUDITH MARTIN

That little American girls still yearn to be princesses only shows how little history they read. So it is too bad that *The Deadly Sisterhood*, which is about Italian Renaissance princesses, is not written for them. It verifies the reality of all those Disney lures: the sumptuous weddings to princes, the gorgeous dresses shot with gold and silver and embroidered

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The Deadly Sisterhood
A Story of Women, Power, and Intrigue in the Italian Renaissance, 1427-1527
by Leonie Frieda
Harper, 432 pp., \$32.50

with pearls, the fabulous jewels dotting their robes and entwined in their hair, and the imposing palaces laden with luxuries and lackeys.

However, those weddings of teen-aged brides were reached by long, tedious, miserable, dangerous journeys.

The princes were older strangers who might turn out to be debauched, ugly, mean, or crazy, and were pretty sure to have established mistresses whose illegitimate children enjoyed advantages that would rival and threaten the brides' future offspring. The jewels had to be pawned in times of trouble—which were often—and the palaces were frequently pillaged by murderous mobs.

It turns out that the worst problem a princess can have is not being hounded by the paparazzi. Once these princess-brides had had a taste of

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Happily Ever After, they tended to trust in Ever Before, turning to their families of origin when they needed something extra, such as an army. Yet this is not a chronicle of long-suffering heroines. Rather, like the new-fashioned princess tales made to palliate feminist mothers, *The Deadly Sisterhood* is about female action figures. Not quite in the pure-and-plucky-little-girl tradition, however.

This was the heyday of the Italian city-states, with their volatile politics, shifting alliances, and ferocious competition for territory and thrones (including that of the papacy), expressed in barrages of war and assassination. The rulers' brides, not having been plucked out of the general population because of their dainty feet, were familiar from childhood with the machinations of the ruling class. In addition to having learned feminine arts, they would have received the same classical education as their brothers.

Author Leonie Frieda follows the stories of women who were born, legitimately or not, into some of the most powerful families of the time—Gonzaga, Este, Medici, Borgia, Orsini, delle Rovere, Sforza, Visconti, Aragona. These families arranged strategically advantageous marriages for their daughters with men who were, though their actual titles varied, rulers. And when the husbands were busy pursuing one of those two chief princely interests, love and war, the wives took political and military charge of their realms, sometimes officially, as regents or, when widowed, as full rulers.

Yet the collective term “Deadly Sisterhood” makes these women sound like the witches in *Macbeth*, if not a bunch of disagreeable Real Housewives. These women were trying to protect themselves, their children, and their positions under horrendously perilous circumstances. And the author clearly has her preferences and prejudices among them, independent of the general consensus. Her frank assessments of the husbands—as when she calls Giangaleazzo Sforza, Lord of Milan, a

“dribbling hysteric,” and the Lord of Squillace “a nincompoop”—make for entertaining reading.

Yet her judgments can also be startling. The name of Lucrezia Borgia, the illegitimate daughter of Pope Alexander IV who married successively into the Sforza, Aragona, and Este families, survives as a synonym for the viciously immoral and treacherous female who would just as soon poison you as look at you. A kinder assessment is that she was a pawn of her brother Cesare, to whom she remained loyal even though his career of widespread murderous intrigue included killing her second husband—a husband she actually liked.

But Frieda doesn't just absolve the Borgias; she admires them. She repeatedly calls Lucrezia “sensitive,” and seems to suggest that Cesare's desire to conquer and rule the entire peninsula made him some sort of proto-Garibaldi. As for their father, the pope, Frieda finds him “a kind and benevolent man,” unfairly judged for his sin of slaughtering innocent people rather than for his virtue of having strengthened the papacy and its territories.

So it is apparently without irony that her chapter on Pope Alexander IV, with his huge brood of illegitimate children, is called “A Wonderful Family Man.” Indeed, he did look after his own, and there is no doubt that he loved his daughter Lucrezia—although whether they were actually lovers, as was widely believed at the time, is in doubt. (It may have been slander originated by Lucrezia's first husband—whom the family disposed of on grounds of nonconsummation when a more advantageous match for Lucrezia presented itself. Never mind that she was pregnant at the time.)

Yet Frieda apparently can't stand Lucrezia Borgia's last sister-in-law, Isabella d'Este, who is remembered as a great patron of the arts—the friend of Titian and Leonardo da Vinci, among others—who made her little city (Mantua) one of the great cultural centers of Europe. In the author's opinion, this amounts

to being a “greedy magpie.” That is, the lady was serious about collecting art, though evidently lacking the jolly spirit with which the Borgia troops celebrated a victory over Isabella's brother-in-law, the duke of Milan, by using a large Leonardo study of him as a target.

Furthermore, the book is sprinkled with catty remarks about Isabella d'Este's weight, which is unfavorably contrasted with the slimness of Lucrezia Borgia—of whom there survives only one possible life portrait. Several exist of Isabella d'Este, including one by Titian, and only Rubens made her look . . . not obese, but Rubenesque. Anyway, different periods of history have different ideas about what constitutes the ideal body. One has only to look at the decidedly fleshy, belly-heavy Venuses painted during the Italian Renaissance to know that Kate Moss would have had a hard time finding a modeling job in those days.

Also among the “sisterhood” were: Lucrezia di Francesco Tornabuoni, a celebrated poet and strategist and the closest adviser to her son, Lorenzo the Magnificent; Lorenzo's wife, Clarice Orsini, who came into her own only after her mother-in-law's death; and Isabella d'Aragona and Beatrice d'Este (Isabella d'Este's sister), whose respective husbands both became dukes of Milan, the one toppling the other. (Because the families intermarried, and the given names are repeated, constant turning back to the family trees is required.)

The clear standout, however, is Caterina Sforza, “the Lady of Forlì,” aka the “She-wolf of the Romagna.” We first meet her at the age of 25, successfully defending her palace against the good citizens of Forlì, who had just murdered her brutish dolt of a husband. Among other tactics, she publicly gave them the finger (in Italian, this requires a thumb) and, when they held her son at sword-point, she exposed her pregnant belly to show that she would simply produce another legitimate heir.

This riveting episode is cast as a prologue, the confusing order apparently

intended to demonstrate at the start that these heroines were no sleeping beauties. It is done, however, at the sacrifice of suspense in the depiction of a life spent heroically battling vicissitudes. By the time we get to the major scene of Caterina's life, when, at the age of 21 (and also pregnant), she takes the papal castle of Sant'Angelo, we know she has the nerve and the military acumen to do so.

Nevertheless, it is satisfying to have these stories, normally scattered on the

edges of history, drawn together. Little girls of today should know that feisty, take-charge women were not invented yesterday. And we needn't do away with romance entirely. Some of these heroines were eventually able to choose second or third husbands to their liking. And Leonie Frieda likes to believe that when her two favorite figures, Caterina Sforza and Cesare Borgia, met in a mighty clash, what happened when he captured her was not rape, as historians generally suppose, but love. ♦

BCA

Laureate of Dogpatch

How a bad man became a great cartoonist.

BY JAY WEISER

Despite their striking resemblance, *Li'l Abner*, the midcentury comic strip hero, was everything his creator Al Capp was not: an unlettered, unambitious, all-American hillbilly who was strapping (rather than one-legged) and repelled by sex with women (rather than compulsively bedding them). Al Capp springboarded the success of the strip into three decades as a multimedia celebrity/commentator/shock jock, transitioning from New Deal liberal to conservative—only to be brought down by social changes he had helped create.

As a youthful hitchhiker traveling through rural Tennessee, Capp, the New Haven child of Jewish immigrants, had viewed the locals as friendly and ingenuous; he set his strip there starting in 1934. Appalachia was exotic and remote, with hillbilly jokes part of the era's ethnic humor. (As late as the 1980s, basketball's Larry Bird could still be called the "Hick from French Lick.")

As a satirist, Capp was compared to Mark Twain: *Li'l Abner* spoke in

Al Capp

A Life to the Contrary
by Michael Schumacher
and Denis Kitchen
Bloomsbury, 320 pp., \$30



Al Capp, William F. Buckley Jr., 1970

dialect and had a touch of the innocent; but unlike Huckleberry Finn, he never matured. The inhabitants of the mythical town of Dogpatch owed more to Jonathan Swift's lazy, ignorant,

and dirty Yahoos. Like Swift's Gulliver on the Island of Laputa, *Li'l Abner* also satirized technocratic elites: In the 2000 New York revival of the 1956 *Li'l Abner* Broadway musical based on the strip, a conga line of Washington scientists—memorably led by a deranged Christopher Durang—celebrated a future of “assembly line women, conveyor belt men.”

Capp's hicks and potentates each epitomized one or two consciously Dickensian traits. The money-grubbing Available Jones, whose long nose and curly hair recalled Jewish stereotypes, plastered his office with lists of degrading acts he would do for a fee. Cuddly and ham-shaped, 1948's lovable Shmoo cloned itself and gladly keeled over dead to provide humans with endless meat, milk, eggs, and suspender buttons. Symbolizing the Depression generation's anxiety about the post-World War II boom, the Shmoo made evil monopolists panic, as they were unable to compete with free, while Dogpatchers became even more complete slackers.

Michael Schumacher and Denis Kitchen pay less attention to the larger meaning of Capp's work than to his artwork, plots, and production methods. (Quality reproductions for the first two-thirds of the strip's 43-year run are available, many published by Kitchen's Kitchen Sink Press.) At its peak, *Li'l Abner* was a pop culture phenomenon, running in nearly 1,000 newspapers. Recognizing his limitations as an artist, Capp ran the strip like an assembly line, keeping the faces and plots for himself while delegating production to well-paid assistant cartoonists, some of whom stayed for decades. Starting in the 1940s, he had the time to cultivate a loud-mouthed, pugnacious media personality, including regular appearances as a *Life* magazine essayist, NBC radio *Monitor* commentator, and *Tonight Show* guest. He made the covers of *Time*, *Newsweek*, and *Life*.

Capp's aggression extended to his personal and professional life, although Schumacher and Kitchen resist the temptation to write a prosecutor's brief. While the cartoonist

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IMAGES: GETTY IMAGES

shamelessly reinvented his past, he was more sinned against than sinning in his long battle with *Joe Palooka* cartoonist Ham Fisher, an early boss who falsely claimed that Capp had stolen the idea for *Li'l Abner*. Nonetheless, Capp responded in an equally underhanded and obsessive fashion until the alcoholic Fisher's suicide, which Capp called the man's greatest accomplishment. Capp's rage at his brother Bence, who ran the strip's lucrative character-licensing company mostly for his own benefit, deserves more sympathy as a lesson in the perils of family businesses. And despite his flaws, Capp maintained long-term friendships with other leading cartoonists, inventively cross-promoting through staged comics-page "feuds." Most famously, *Li'l Abner* satirized *Dick Tracy* and its creator, Chester Gould, in the long-running, ultraviolent strip-within-a-strip, "Fearless Fosdick." (Schumacher and Kitchen sourly focus on one feud in which Capp didn't deliver his end of the deal.)

This biography is subtitled *A Life to the Contrary*, but the cartoonist's quest for money and celebrity was numbingly conventional. Even the shock-jock persona, while uncouth by the standards of the day, had antecedents in the New Dealer Harold Ickes and right-wing columnist Westbrook Pegler. Far from being contrarian, Capp's politics reflected common attitudes, except for some advanced anti-racist tendencies. The cartoonist was part of the Harry Truman center-left consensus of his day before joining the consensus against 1960s radicalism—at which point, such equally conventional and fame-obsessed Democrats as Arthur M. Schlesinger Jr. and John Kenneth Galbraith dropped him as a friend, while Richard Nixon picked him up. Today, we might call Capp a populist.

Capp became increasingly venomous as the sixties went on. The authors note that, a decade earlier, *Li'l Abner*'s truth-inducing Bald Iggle

had caused a Capp-like figure to blurt out: "The only thing I have against the younger generation is that I'm too old to be one of 'em!! (sob!!) (sob!!)." Capp attacked hippies as dirty, like the Dogpatchers, and he crashed John Lennon and Yoko Ono's 1969 antiwar Bed-In for Peace, where they regally received media from their Montreal hotel room bed. But while he scored points against John and Yoko's preachy universalism, Capp seemed invested in his own obsessions,



Daisy Mae, Li'l Abner, Shmoo

launching personal attacks on Ono ("Good God, you've got to live with that?" he asked Lennon) and accusing the couple of being interested only in money! (Lennon responded that the Bed-In was far less lucrative than songwriting.)

Capp's real contrarianism lay in *Li'l Abner*'s sexual politics. Dogpatch's male inhabitants were almost uniformly weak, brutal, or stupid, while Abner's mother, Mammy Yokum, was the moral and intellectual center of the strip—not to mention superhumanly strong. (When the craven Daddy Yokum would steal

her preserved turnips, she would "take him to the woodshed" and inflict what would now be regarded as domestic violence.) Mammy aside, Capp's women were utterly unlike the strong, articulate females who populated Hollywood's 1930s screwball comedies and three-hankie movies. Whether grotesque, like the world's ugliest woman, Lena the Hyena, or scantily clad, like the absurdly big-breasted and at-the-edge-of-publishability Daisy Mae, Capp's women aggressively wanted to bed men, or, in the case of Wolf Gal, devour them.

Li'l Abner's first hugely popular success came with Sadie Hawkins Day in November 1937, which initiated a role-reversing annual event in which Dogpatch's single women wildly chased its single men. This still being the 1930s, any man caught was obligated to marry his pursuer. Despite the satirical intent, 201 colleges in 188 cities staged their own Sadie Hawkins Days by 1939, with more in later years: Real-world women demonstrated that they, too, could be sexually assertive, setting the stage for the sexual revolution 30 years later.

Capp's sexual politics informed the last phase of his celebrity career: He became an unlikely star of the college lecture circuit, earning big fees for attacking sixties students as elitist (like the strip's businessmen, politicians, and scientists), as well as filthy and hypersexual. The college circuit provided ready access to female students, all, by his definition, sex-crazed. The one-legged Capp may have thought that women were as eager for him as they were for Dogpatch's undesirable males, but Capp was no follower of the six lessons from Adam Lazonga, *Li'l Abner*'s smooth wooer: The authors provide evidence of his sexual assaults on young women, including actresses Grace Kelly and Goldie Hawn, going back to the 1940s.

In 1968, administrators at the University of Alabama covered up

Capp's aggressive advances on four female students; other universities had reportedly done the same. But in 1971, at the University of Wisconsin-Eau Claire, Capp's luck ran out: The excoriator of the "new morality" forced student Patricia Harry to engage in oral sex, and, supported by her husband, she pressed charges. The district attorney resisted until a Jack Anderson/Brit Hume column on Capp's Alabama assaults appeared three weeks later. Even after the accusations exploded into national news, however, prosecutors remained unenthusiastic: Capp got off by pleading guilty to attempted adultery and paying a \$500 fine.

Decades of Sadie Hawkins Days had established that college women were sexual beings who would choose whom to bed. Feminism was on the rise, and with it, a redefinition of rape as no longer dependent on resistance from a damsel in distress. Suddenly, Capp's lecture and TV gigs dried up, newspapers dropped *Li'l Abner*, and an embittered Capp—suffering from emphysema, addled by a psychoactive pharmacopoeia, and reeling from a daughter's suicide—became Joe Bftsplk, the jinxed character living under a rain cloud. He ended the strip in 1977 and died two years later.

Al Capp is now nearly unknown to anyone under the age of 50. But whenever a shock jock berates a guest, he lives on. *Li'l Abner*, too, remains influential, and not just in Capp's linguistic inventions, including "double whammy," "skunkworks," and "going bananas." Like Walt Whitman, the strip contained multitudes. In the 1960s, CBS needed two caustic classics to rip it off: the Hollywood satire of *The Beverly Hillbillies*, and its magic-realist cousin *Green Acres*, where scheming rubes ceaselessly fleeced a Park Avenue lawyer (and Arnold the pig mirrored *Li'l Abner*'s Salomey). Today, lumpen cartoon protagonists less innocent than *Li'l Abner* still outwit the local rabble and sanctimonious elites in Dogpatch's spiritual colonies, *The Simpsons*'s Springfield and *South Park*'s eponymous small town. ♦

BCA

Unhappy the Man

The life and work of August Strindberg.

BY ALGIS VALIUNAS



Juliette Binoche, Nicolas Bouchaud in 'Miss Julie,' 2011

The earth is a place of woe and wailing: This is an understanding as old as human consciousness. However, most men and women have always seen that such an understanding is hardly adequate. Small contentments and towering ecstasies, consolation and redemption, must have their significance as one considers the arrangements that the Powers have made for us.

What, then, are we to make of the thinkers and artists who believe that our world is Hell? In the superb essay "The Dark Brain of Piranesi," Marguerite Yourcenar describes the mid-18th-century series of engravings *Invenzioni Caprice di Carceri*, or *Imaginary Prisons*, as images of human damnation under a human regime:

These sites of hard labor from which Time and the forms of living nature

Algis Valiunas is a writer in Florida.

Strindberg

A Life

by Sue Prideaux

Yale, 352 pp., \$40

are eliminated, these sealed chambers which so readily become torture chambers, but in which most of the inhabitants seem perilously and obtusely at their ease, these abysses which are bottomless and yet without means of escape, are no ordinary prison: they are our Inferno, our Hell.

Men condemn not only others but also themselves to this dark confinement, Yourcenar suggests, when there is no God to stop them. She plainly has more recent enormities in mind. There is abundant evidence for this view.

Yet Piranesi's vision (and Yourcenar's) stops short of the ultimate terror. For what if Hell on earth is not of human devising but enforced

GERARD JULIEN / AFP / GETTY IMAGES / NEWS.COM

by metaphysical fiat? Can there be a more frightful intuition or revelation than that one is a resident of Hell by order of some implacable Power? Such an insight sounds like the stuff of schizophrenia, or an episode of *The Twilight Zone*; most anyone who succumbs to this occult delirium is offered pity, derision, and a strait-jacket or padded cell.

Yet even a genius such as August Strindberg (1849-1912), the Swedish writer, painter, photographer, and pseudo-scientist, can fall victim to this loss of equilibrium. Strindberg registered intimations of his own earthly damnation early in his literary career, and felt them perhaps already in childhood. His life was certainly cruel enough that one can understand how this obsession seized him: In a 1907 letter, he wrote, "My life often seems as if it has been staged for me, so that I might both suffer and portray it." It is remarkable that his suffering did not disable him from accomplishing anything at all. In fact, he wrote more than 60 plays, 18 novels, 9 volumes of autobiography (more precisely, autobiographical novels), 3 books of poetry, historical and linguistic tomes, antifeminist and anti-Semitic screeds, and some 10,000 letters.

Here, Sue Prideaux, an Anglo-Norwegian novelist and author of a prize-winning biography of Edvard Munch, breaks little new ground—Michael Meyer's exhaustive and engaging 1985 biography remains the standard in English—but she goes over the familiar ground ably and succinctly. Prideaux seems to pity Strindberg more than Meyer does, though both biographers recognize that many of Strindberg's pains were self-inflicted. All the same, whenever one blames a man as troubled as Strindberg for his own miseries, one must ask how he could have avoided them except by being born someone else.

His father was an ogre, his mother a hag. Carl Oscar Strindberg, a Stockholm spice merchant and shipping agent who went bankrupt when Johan August was 4, made his third son the whipping boy—and everyone else in the household joined in the

abuse. Nora, a barmaid whom Carl Oscar kept as his mistress for six years before marrying her, browbeat her unacceptable stepson as hellward-bound for certain, according to the savage mystery of her Pietist faith. In *The Son of a Servant* (1886-87), the first of a series of autobiographical novels, Strindberg recalls the shame and fright of being the family's punk:



August Strindberg, 1895

Afraid of being hit by his brothers, slapped by the maids, scolded by his grandmother, caned by his father and birched by his mother . . . he could do nothing without doing wrong, utter no word without disturbing somebody. . . . It had effectively been dinned into him that he had no right to exist.

Compound the unhappiness at home with an awful time at Klara elementary school, "a preparation not for life but for Hell," in Strindberg's words, and his boyhood becomes unendurable. The torment abated somewhat as August changed schools; but when his mother died, the wicked stepmother, 30 years younger than Carl Oscar, meant going from bad to worse at home.

At last he was able to get out, but only briefly at first. Strindberg matriculated at Uppsala University, Sweden's

Oxford, but his father, although flush again, refused to finance his studies. After one term, August was forced to become a schoolmaster—at Klara, of all places. He was an inspiring but uninspired teacher, and his melancholy became obvious to a friendly neighbor, Dr. Axel Lamm, who offered to take him in as companion to his two sons and as a medical student under Lamm's personal tutelage. Strindberg loved the studies, which he described as "penetrating nature's secrets." He loved Dr. Lamm for (what Prideaux calls) his "disinterested benevolence." The Lamms were among the few Jews in Stockholm, and, for a spell, Strindberg had only generous things to say about Jews. But as his paranoia deepened over time, and he sprayed venom in all directions, the Jews would become a particular object of his mad hatred. With sadness, Prideaux points out that the year Strindberg spent with the Lamms was the only time he was ever "part of life in a happy and functioning family."

Then the theater bug bit him. He attended the Royal Theatre two or three times a week, bluffed his way into supernumerary roles, flubbed his chance for a one-line part, drowned his sorrows in opium and liquor, and woke up hungover but pregnant with a play of his own, and then a long poem. Prideaux writes, "At last he felt chosen, blessed, directed." In short order, he turned out five plays, one of which, *In Rome*, about a Danish sculptor's success in the face of his father's scorn for art, received its premiere at the Royal Theatre in 1870. Strindberg used his paycheck to return to Uppsala. He acquired prodigious learning for a young man, composed songs, learned to paint, and wrote three more plays, one of which earned him an audience with the king of Sweden and a royal stipend.

He left the university in 1872 without a degree. Supporting himself in Stockholm with freelance journalism and a position at the Royal Library struck him as beneath his dignity, but he had time for scholarship and writing plays. And by now there were

women. There would always be women from this point; and they would be his particular torment. He had a long affair with a “waitress”—Prideaux considers the word a euphemism—who he dumped when she got pregnant in 1875. Later that year, he met the first woman he would marry: Siri von Essen Wrangel, a Finnish aristocrat, the wife of a Swedish baron, and the mother of a 2-year-old daughter. She yearned to be a famous actress, and Strindberg offered her excitement that her handsome but inert husband could not. At first, their union seemed impossible; in despair Strindberg even (sort of) tried to kill himself, but then the baron’s own adultery opened the way to a divorce and Siri’s remarriage. Bliss beckoned; Hell gaped.

Strindberg’s autobiographical novel *A Madman’s Defense* (1888) traces the arc of their romance from first infatuation through her infidelity, his jealous rage, his loathing her as a slut and a lesbian, and, above all, his fears that their children might not be his and that his vampire wife was trying to poison him. All modern women came under assault. In an earlier manifesto he had endorsed female emancipation and full equality; now, like Nietzsche, whom he admired and corresponded with, he came to woman with the whip: “The very thought of having to witness the recognition and apotheosis of these intelligences of the Bronze Age, these anthropoids, these semi-apes, this pack of pestilent animals, roused my manhood.”

He would work this vein for the rest of his life and become the anti-Ibsen, a self-appointed role Prideaux alludes to and on which Michael Meyer, an Ibsen biographer, provides a running commentary. Disastrous subsequent marriages to a trophy-hunting Austrian journalist and a very young Swedish beauty who would become the leading lady of the Scandinavian stage furnished Strindberg with deep background.

Strindberg was the world authority on love-hate sexual relations. *Miss Julie* (1888) is his most famous play—richly deserving of its place in the modern

canon—in which Siri is portrayed in the young noblewoman who has a wham-bam sexual collision with her servant, and then kills herself from self-disgust. Burning lust is the punishment that will not allow Miss Julie, who describes herself as half-woman, half-man, to hate men without reservation. Scorching resentment and ambition plague the servant, who adores his mistress yet can’t help but despise her: “Have you ever seen any girl of my class offer her body like that? I’ve only seen it among animals and prostitutes.” Julie, in turn, spews up a dog’s breakfast of raging vileness: “I’d like to see all your sex swimming in a lake of blood—I think I could drink from your skull, I’d like to bathe my feet in your guts, I could eat your heart, roasted!”

This comes from a writer who’s been there.

“Love between man and woman is war.” So declares the villainess of another grimacing masterpiece, *The Father* (1887). She is attempting to drive her husband insane by making him doubt that he is their daughter’s father. The husband is driven to the verge of murder: “Why didn’t you let me kill the child? Life is a hell, and death a heaven, and the child belongs to heaven.” The corruption of the marriage ideal by modern feminism makes love and life diabolical: “In the old days, one married a wife; now one forms a company with a woman who goes out to work, or moves in to live with a friend. . . . What became of love—healthy, sensuous love? It died, starved.”

In *The Dance of Death* (1900), once again the vicious wife goads her husband into a fatal stroke. Characters repeatedly call each other demons and their island dwelling-place a literal Hell. To want to love and to hate instead, to long to be loved and to be hated beyond all measure: That is damnation.

Hell was Strindberg’s homeland. In the autobiographical novel *Inferno* (1898), he describes his descent into a psychic blackness, where he is tortured with electric shocks, stumbles his way through by interpreting weird signs and portents, and concludes that

he is literally damned here on earth:

It is the earth itself that is Hell, the prison constructed for us by an intelligence superior to our own, in which I could not take a step without injuring the happiness of others, and in which my fellow creatures could not enjoy their own happiness without causing me pain.

At first, the revelation rips him open, as well it might. But then his reading of the 18th-century mystagogue Emanuel Swedenborg makes him understand that the demons who oversee his fate have the best intentions: They are “disciplinary spirits”; God makes him suffer for his own good, in expiation of a horrible sin he must have committed in some previous existence, or perhaps even in this one, as his alchemical investigations might have offended the jealous Powers.

What in hell was going on with Strindberg? Prideaux speculates that his psychosis and paranoia were fueled by an absinthe habit. But schizophrenia or manic-depression seems a more likely explanation than alcoholic delusions. A sister and a daughter of Strindberg both went mad and were confined to asylums, and psychotic illness has a strong hereditary component. Of course, this world is a strange and often brutal place, and it is not altogether impossible that Strindberg was vouchsafed a revelation of its true nature—though no sound and responsible mind would even countenance that possibility: just too crazy.

Whatever its provenance, psychic torment like Strindberg’s is a genuine experience of Hell on earth. When he lay dying of cancer in 1912, the agony was not the worst he had suffered in a life that was largely made up of suffering and writing about suffering. The writing itself suffers from the imbalance of a soul that has endured too much: It knows the ugly and hateful and unhinged like nobody’s business, but outside this field of expertise, it is at a loss. Strindberg was a madman, an outcast, a hater, and he spoke in the name of the damned, who are privileged to have him as one of their own. ♦

Feathered Fiends

That which does not scare us can make us laugh.

BY PETER TONGUETTE



Tippi Hedren

At the height of his career, in 1963, Alfred Hitchcock spoke of playing the audience like an organ: “I’m using their natural instincts to help them enjoy fear,” he said to an interviewer, adding, “I know exactly when to stop, to relieve them at the right moment, otherwise they’ll laugh in the wrong places.” Speaking on the occasion of the much-ballyhooed release of *The Birds*—the director’s third consecutive hit, following *North by Northwest* (1959) and *Psycho* (1960)—Hitchcock was right to feel sanguine about his bond with moviegoers.

Alas, times change. Hitchcock died in 1980, and by 1998 Gus van Sant had decided to remake *Psycho* because, as he put it, there was “a whole generation of moviegoers who

probably hadn’t seen” the first version. If they had, they would have found that much of Hitchcock’s original handiwork had dated miserably. Among film scholars, Hitchcock is still revered—*Vertigo* (1958) bested Orson Welles’s *Citizen Kane* (1941) as the greatest movie ever made in a recent poll of critics—but, to adopt his own terms, the general public began literally laughing in the wrong places quite some time ago. In Stephen Rebello’s *Alfred Hitchcock and the Making of Psycho* (1990), Anthony Perkins said he was doubtful that the Master of Suspense had been “prepared for the amount and intensity of the on-the-spot laughs that he got from first-run audiences around the world. He was confused, at first, incredulous second, and despondent third.”

Audiences have not gotten any more reverential toward *Psycho*, especially when it comes to the infamous scene

in which a slick psychiatrist lamely explains Norman Bates’s madness. Contrary to critical consensus, Van Sant’s remake is the far smarter—and scarier—film.

But no Hitchcock film has aged as poorly as *The Birds*, which turns 50 this year. Inspired by a story by Daphne du Maurier, at first the film feels like a bubbly comedy in the mode of *Mr. & Mrs. Smith* (1941). (Screenwriter Evan Hunter has said he wanted the film to have a screwball comedy flavor.) Headline-making society girl Melanie Daniels (Tippi Hedren) and successful, unattached attorney Mitch Brenner (Rod Taylor) parry one-liners in a San Francisco pet shop as they are shopping for lovebirds. Smitten, Melanie shadows Mitch to his widowed mother’s house on Bodega Bay (where his little sister also lives), but before they can consummate their affair, the whole town starts falling victim to bird attacks. Explaining his intentions in an interview with Peter Bogdanovich, Hitchcock said, “So you start, really, with a clear sky. And gradually, gradually, you darken it, and the events take over.”

Well, in the past dozen years, I have twice seen *The Birds* with large, paying audiences, and on both occasions they were more invested in the bauble-like beginning than the purportedly terrifying main story—surely the opposite of what Hitchcock had in mind. In wooing Mitch, Melanie engages in acts of subterfuge worthy of Hitchcock’s terrific early spy movies, such as *The 39 Steps* (1935) or the original *The Man Who Knew Too Much* (1934). If nothing else, Melanie’s ingenious plotting is certainly more unpredictable than the bird attacks that follow. Later scenes stop working just when Hitchcock means for them to frighten. For example, a late-night conversation between Melanie and one of Mitch’s ex-girlfriends is nicely written and acted until we hear the blaring thump of a seagull hitting the front door. It is about as threatening as the sound of the town paperboy tossing the evening gazette. Even worse is the ensuing dialogue. Annie suggests that the animal lost its way in the dark.

Peter Tonguette is at work on a book about Peter Bogdanovich.

Melanie replies, in her best quizzical tone: "But it isn't dark, Annie. There's a full moon." They share a look of foreboding, and the scene fades to black.

"The only characters in the film who aren't birdbrains are the birds," wrote Dwight Macdonald in his review of the movie. His examples include entire set-pieces that defy good sense:

Tippi warns a teacher that crows are massing outside the schoolhouse; their jointly worked-out response to the threat is not to put the kids into the cellar but to march them outside to walk home. To no one's surprise but Hitchcock's, the birds come shrieking like Stukas onto the helpless little column.

Even less overtly ridiculous sequences require characters to behave curiously, such as when Mitch's mother (Jessica Tandy) happens upon the body of a farmer who has been killed. She does not call for help; instead, she gasps silently, leaps into her pickup truck and peels out of there as though she has recently retired from Le Mans. Now, it is reasonable that she would wish to escape the grisly scene, but there is something unseemly in the stoical Widow Brenner making a getaway like this. So, when audiences laugh at *The Birds*, they are not just laughing at the hundreds of antiquated trick shots—although they are laughing at them, too. In some close-ups, the birds look about as likely to do damage as the objets d'art in Norman Bates's taxidermy collection and are certainly nothing to scream about. But the more the cast shrieks, the more the audience chortles.

Behind the scenes, Tippi Hedren had an unhappy off-camera relationship with Hitchcock, but she is one of the most vital forces in the film. Her Melanie is rich, pretty, and genuinely good-natured. Like any newspaper heiress worth her salt, she is driven by a spirit of noblesse oblige: It is sweetly comic to watch her machinations as she tries to surprise Mitch's sister with lovebirds as a birthday present. Even so, in conversation with

Bogdanovich, Hitchcock described Melanie as "a fly-by-night" and "a play-girl," who "represents complacency." But why? Because she wears a fur coat and flirtily extracts favors from her father's employees? You would think the director was a Bolshevik ousting a Romanov.

Indeed, the climax seems constructed for the sole purpose of exiling Melanie from her "gilded cage," as one character calls it. For three long minutes, Melanie is stowed



away in an attic with a few hundred of her feathered friends. Did Hitchcock outfit Hedren so stylishly—with costumes by Edith Head and makeup by Howard Smit—just so he could later ruin her hairdo and manicure? The actress summoned a heroic forbearance during the shooting; as Hitchcock biographer Donald Spoto reported in *The Dark Side of Genius* (1983), "Birds were hurled at her; frightened, they flew away as she defended herself against the gulls and crows with wild, increasingly honest and unacted gestures of terror."

Said Jessica Tandy:

Day after day after day, for an entire week, the poor woman put up with that. She was alone in that caged room, acting, with the birds coming at her, and with costume changes and makeup applications and all the

stage blood she couldn't even go to the commissary for lunch.

Such accounts confirm Terry Teachout's view, expressed in a recent reappraisal of Hitchcock in *Commentary*, that even a film as admired as *Vertigo* is "all too clearly the work of a sexually frustrated man whose view of women was—to put it mildly—unattractive." But it wasn't always so. In the delightful ending of *Rear Window* (1954), Grace Kelly's character placates her photojournalist beau (Jimmy Stewart) by reading a book about his next assignment in the Himalayas; but when he takes a catnap, she settles back into *Harper's Bazaar*. The later Hitchcock would have scoffed at Kelly for her frivolity, but the earlier, more forgiving Hitchcock turns the moment into a tribute to the virtues of femininity.

Of course, *The Birds* is elegantly directed here and there. An episode with a recalcitrant ornithologist who sticks up for the killer birds slyly parodies the deification of nature: "Birds are not aggressive creatures, miss," the woman piously proclaims. "It is mankind, rather, who insists upon making it difficult for life to exist on this planet."

Even Dwight Macdonald acknowledged several "cinematic coups," including

The gradual massing of the crows outside the school: the heroine is sitting on a bench, her back to a jungle gym on which one crow is perched; another settles down silently, then another, then a series of cuts between the unaware girl and the bars of the jungle gym which become blacker and blacker with dozens, scores, hundreds of ominously quiet crows.

The scene is dazzling, and so are several others—but then, no one doubts the artistry of Hitchcock's films. It is their efficacy that has become dubious—and surely Bosley Crowther of the *New York Times* was correct in his hunch that, in *The Birds*, Hitchcock was after nothing more sophisticated than "shocks and chills." So what good is an Alfred Hitchcock who cannot deliver those? ♦

Zombies in the Mineshaft

There's a message here, but what is it?

BY JOHN PODHORETZ

So I saw *World War Z*, the new Brad Pitt movie about a worldwide zombie outbreak, and here's the surprising thing: I can't decide whether it's the most anti-Semitic movie ever made, or the most Zionist movie ever made.

I know what you're thinking: Isn't that the way with a deeply profound work of art—that it makes you question your assumptions and goes beyond narrow ideological categories? Well, yes. It *is* the way of a deeply profound work of art. But *World War Z* isn't a deeply profound work of art. It's not deep, it's not profound, and it's not art. It's actually pretty dumb, as you can tell when you learn that the people who made it think the United Nations possesses its own deepwater navy and aircraft carrier. (If that were actually the case, I would probably support a zombie takeover of the earth.)

World War Z is a combination horror movie, disaster movie, war movie, and spy movie. It's both very scary and very boring, though, I must confess, not at the same time. Which is to say, when it's frightening it's incredibly dull, and when it's not tedious it makes you gnaw on your fingernails and cover your eyes in horrified anticipation. It's probably more boring than scary; but if you like scary, you'll love it.

Okay—enough with the consumer guidance, and back to the anti-Semitism/Zionism question. About an hour into the movie, Brad Pitt is told by a CIA agent that the only place on earth where the zombies have been stymied is Israel. This led my friend Kyle Smith in the *New York Post* to

John Podhoretz, editor of Commentary, is THE WEEKLY STANDARD's movie critic.

World War Z
Directed by Marc Forster



Zombies scaling the wall . . .

say that the movie “takes a pernicious turn when Israel, alone, is said to have known about the zombie apocalypse in advance. In a world where perhaps hundreds of millions believe Israel knew about 9/11 beforehand, this shows poor judgment, to put it mildly.” So that's the anti-Semitic part.

But then comes the Zionist part. Brad Pitt goes to Israel and discovers that yes, indeed, the Jewish state has solved the zombie onslaught by . . . *building a wall that separates Jerusalem from the West Bank*. Inside, everybody is fine; outside, everybody is a zombie. In other words, the model for the protection of the world from zombies is Israel's method of stopping Palestinian terror: the construction of a wall.

How did the Israelis come to understand the threat and to act against it? Because, an Israeli tells Brad Pitt, after the massacre of Israeli athletes at the 1972 Munich Olympics, and

the surprise attack that began the Yom Kippur War in 1973, Israel changed its approach to existential threats. It would simply not allow them to develop again. So that's the Zionist part.

I think, on balance, the Zionist stuff outweighs the anti-Semitic stuff, especially since I didn't quite get the plot point Kyle Smith talks about until I read his review. But maybe this whole debate actually misses the real point. Because here's what happens in Jerusalem: The Israelis are letting all the Palestinians (who aren't zombies) into the city on the grounds that no matter who you are, as long as you're not a zombie, you're on the same side. The Palestinians are delighted to be saved from zombie-dom and delighted to be welcomed into Israel. Israelis are delighted to be welcoming them.

Together they begin to sing a song in Hebrew. The song is actually part of a biblical prayer: *oseh shalom bimromav*. The movie doesn't translate the words, but they go like this: “He who makes peace in His high places, He shall make peace upon us and upon all of Israel, and say amen.”

Since the 1970s, well-meaning Israelis and others have substituted “salaam”—the Arabic word for “shalom,” or “peace”—at one point in the song to be all nicely universalist. And so that happens in *World War Z*, too. Overcome by emotion, the giant throng in Jerusalem sings louder and louder. But it turns out that loud sound stimulates the zombies. The joyful noise drives the zombies on the other side of the wall into collective action. In the most stunning shot in the film, they use each others' bodies as ladders to climb hundreds of feet to surmount the wall and fall on the other side to begin the carnage.

What does this teach us? Simple. Warble a peace song and zombies will rise to see to your destruction. So maybe the truth is that *World War Z* is actually the most virulently anti-peace movie ever made! Brad Pitt wants you to come away from his \$200 million movie with this one message: Singing “Kumbaya” will kill us all. ◆

**"[Twitter is] something I think, you know, Benjamin Franklin would have used."
—Bill Maher, June 21, 2013**

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A penny saved is a penny earned? What was I thinking? #yolo #spendinmadpenniesupinhere [Expand](#)

Ben Franklin @RealBenFranklin 14 July 13
In Paris 10 minutes, already been slapped. What does "voulez vous coucher avec moi" mean again? #diplowhat? [Expand](#)

Ben Franklin @RealBenFranklin 17 July 13
Keep the eyes wide open before marriage and half shut afterwards. #b*****sbecrazy [Expand](#)

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@GeorgieWoodTeeth @TomLovesSally Did you see @AlexanderHamilton's waistcoat? LULZ, best Constitutional Convention evvverrrr! [Expand](#)

Franklin

Sign up

Poor Richard, 1733.

AN Almanack

For the Year of Christ

1733,

beginning the Fifth after LEAP YEAR.

Advised from the Calendar

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