



the weekly
Standard

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**THE
SECOND MOST
DANGEROUS
COURT**

ADAM J. WHITE
on President Obama's plans
for the D.C. Circuit

E. BARRETT PRETTYMAN
UNITED STATES COURT HOUSE

E. BARRETT
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Debased Medal of Freedom

As readers will know, *THE SCRAPBOOK* makes a good-faith effort to avoid end-of-civilization/apocalypse-now pronouncements based on the popularity of certain television programs, or scandals in sports, or other bits and pieces of evidence in the culture. So let's just say that we looked over this year's list of recipients of the Presidential Medal of Freedom, which were announced last week, and felt a little disheartened.

The Medal of Freedom, which was originally awarded by President Harry Truman to recognize civilian contributions to the victory in World War II, was renamed and reauthorized by President John F. Kennedy in 1963—complete with glowing citation, handsome medal, and blue sash—to honor “an especially meritorious contribution to the security or national interests of the United States, world peace, cultural or other significant public or private endeavors.”

By a sad coincidence, Kennedy was assassinated just two weeks be-

fore the first scheduled White House ceremony to bestow the new award. But President Lyndon Johnson went ahead with the event—a somber, even slightly macabre, occasion—where a group of distinguished citizens were assembled and honored, with tragic dignity, in the shadow of the late president's death: Rudolf Serkin, Felix Frankfurter, Ludwig Mies van der Rohe, Ralph Bunche, Edmund Wilson, Robert Lovett, Marian Anderson, John McCloy, Thornton Wilder, James B. Conant, and a handful of others, including a posthumous award to Pope John XXIII, who had died the previous June.

Needless to say, in the subsequent half-century, the medal's currency has declined a bit: It is now routinely awarded to superannuated pols, and the definition of “cultural or other significant public or private endeavors” has been stretched to some degree: Warren Buffett (2011), Jesse Jackson (2000), Lew Wasserman (1995), Maya Angelou (2011), Edgar Bronfman (1999), Herblock (1994),

Frank Reynolds (1985), Richard Petty (1992), Dave Thomas (2003), Andy Griffith (2005), and so on.

Like the Kennedy Center Honors in performing arts, the ranks of the Presidential Medal of Freedom are now weighted toward celebrity and pop culture—even financial contributions to presidential campaigns—and of course, carefully balanced for sex and race. You may get the idea from a half-dozen names of this year's laureates: Ben Bradlee, Loretta Lynn, Bill Clinton, Oprah Winfrey, Richard Lugar, Gloria Steinem.

This is not the end of the world, of course. Nor should we infer too much from a prize list assembled by the current White House occupant: Harvard University, after all, awarded Oprah Winfrey an honorary degree last May. The Edmund Wilsons and Justice Frankfurters and Rudolf Serkins of America still exist: The problem is that our cultural and political “leaders” don't seem to recognize much difference between, say, Oprah and the late Pope John XXIII. ♦

Jerry Brown Refuses to Scramble Eggs

With California governor Jerry Brown's having just signed a transgender-rights bill requiring public schools to permit boys who believe they are girls to use female lavatories and locker rooms (and vice-versa), perhaps *THE SCRAPBOOK* can be excused for expecting that he would also sign a bill, passed overwhelmingly by the heavily Democratic legislature, allowing biotech companies to buy eggs from women for use in human cloning and other experiments.

The proposal isn't benign. As our contributor Wesley J. Smith noted a few months back in these pages (“Eggs for Sale?” May 20), egg extraction can be dangerous to the sup-

plier's health: “Potential side effects include infection, the swelling of ovaries to the size of a melon, infertility, stroke, some cancers, and, in rare cases, even death.” Talk about a potential war on women!

So you can imagine our surprise when Brown—now the most conservative California statewide government officeholder, believe it or not—vetoed the measure. And pinch us: But we couldn't agree more with his veto message:

Not everything in life is for sale nor should it be. This bill would legalize the payment of money in exchange for women submitting to invasive procedures to stimulate, extract and harvest her eggs for scientific research. . . .

In medical procedures of this

kind, genuinely informed consent is difficult because the long term risks are not adequately known. Putting thousands of dollars on the table only compounds the problem.

Six years ago, the Legislature, by near unanimity, enacted the prohibition that this bill now seeks to reverse. After careful review of the materials which both supporters and opponents submitted, I do not find sufficient reason to change course.

We would like to think that reading *THE WEEKLY STANDARD* helped Brown come to the right conclusion, but let's not get carried away. Still, credit where credit is due. Brown took a principled stand against the commodification of female reproductive capacities in the face of special interest pressure. It's the rare day when we can say this, but “Bravo, Jerry!” ♦

The Jolie Model

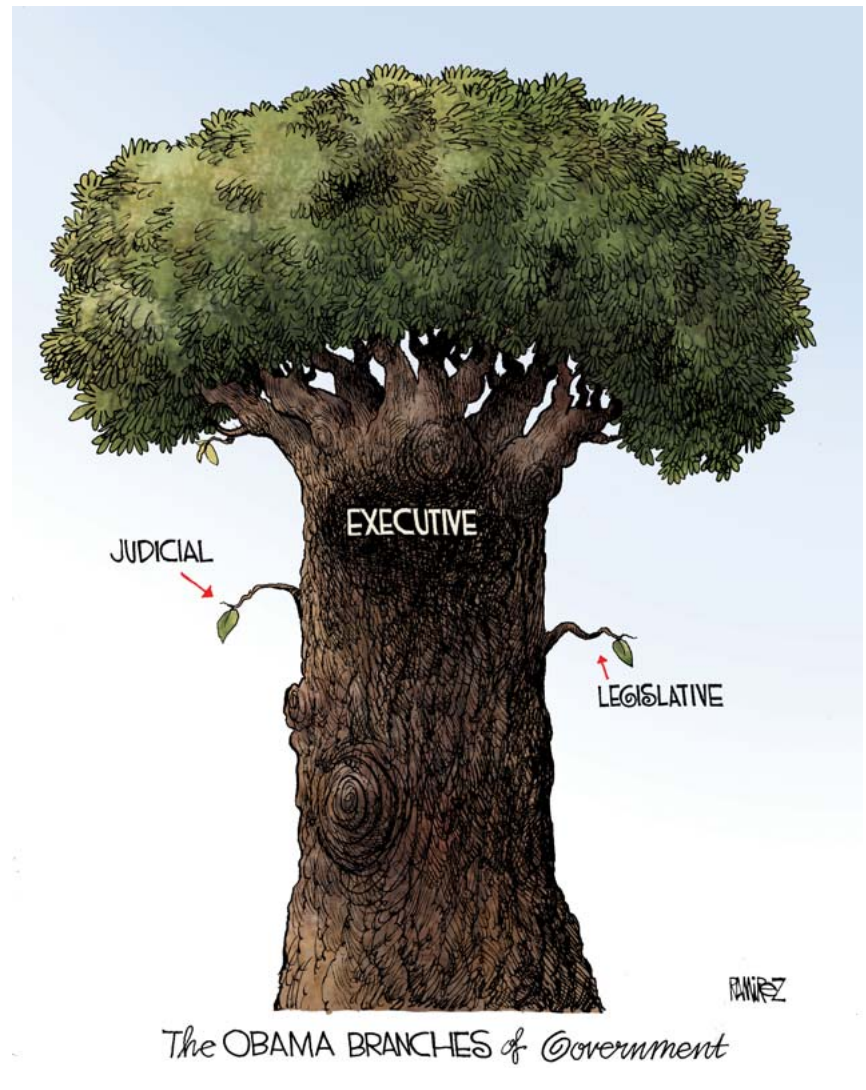
The *New York Times* regularly churns out columns celebrating progressive ideas about parenting, and THE SCRAPBOOK just as regularly marvels at the willingness of *Times* readers to consume their terrible advice. (For a classic of the genre, we refer you to a feature this past April on the trend in “elimination communication,” or diaper-free parenting. Per the *Times*, parents in trendy Brooklyn neighborhoods “exchange tips like how to get a baby to urinate on the street between parked cars.”)

But when it comes to advice that might actually mess up or even endanger your child’s life, we’re relieved to learn that even the writers for the *Times* draw the line somewhere. In an August 9 column, “Sex in a Teenager’s Room?” Henry Alford makes the case for setting some firm boundaries:

It started two summers ago when I read that Angelina Jolie told the British tabloid the *Sun* that her mother allowed the 14-year-old Miss Jolie to live with her boyfriend in her mother’s home “like a married couple.” I winced slightly. If I had, say, a 16-year-old who was having protected sex in a committed relationship, I would happily allow him to sleep with his partner in my house. But at 14?

The thought of letting 14-year-old children cohabit makes us wince more than “slightly.” It is also mystifying what grand physical and psychological transformation would happen in the next two years that would suddenly prepare teenagers to shack up under their parents’ roof. Further, the idea that parental supervision is either appropriate or even possible in these circumstances raises any number of questions.

Alford seems quite certain that his children will use condoms, presumably because teenagers never lie to their parents about risky behavior they might have engaged in. And although rebelling against your parents is a perfectly normal impulse at that age, Alford is strangely untroubled by the thought that sanctioning oth-



erwise reckless acts might cause them to seek out ever more outré thrills.

Of course, the column sparked a lot of discussion online. Alford’s proposal to sanction teenage sex was immediately embraced by blogger Amanda Marcotte. Writing in *USA Today*, she argues that parental supervision of teenage sex will ameliorate the problems of our “hook-up” culture and encourage more familial stability, that is provided you don’t have a reliable definition of what a family is in the first place or acknowledge that sex in marital relationships is foundational to healthy families:

The evidence suggests that it’s a good thing. Researchers Wendy Manning and Jessica Cohen of Bowling Green State University found that as teenage

cohabitation rates rose, teenage marriage rates declined. While it is true that some of the teenage cohabitants gave birth, getting married in your teens is still the surer route to having a baby very young. Yes, teenagers who cohabit are more likely to have unstable situations with their family of origin, but they were still using cohabitation the way adults in their 20s do, as a way to save money and spend time with a partner without having to commit to a marriage before they felt ready.

We hate to break it to Marcotte, but plenty of Americans marry as 18- and 19-year-olds. So it shouldn’t be surprising that marriage would be a catalyst for producing children. That’s how it’s supposed to work. She also dismisses the fact that teens

who cohabit tend to be the product of troubled families, because, well, they're just going to keep cohabiting into their twenties anyway. Rather than parse this circular reasoning, we might humbly suggest that it appears that teenagers who were allowed to cohabit were taught that sex could be divorced from commitment at an early age, and unsurprisingly, that lesson ended up shaping their lives as dysfunctional adults. The evidence does not suggest cohabitation is a "good thing"—far from it. ♦

Graphomania

THE SCRAPBOOK has previously commented on the "new breed of pundit/political scientist who seems to think that a pie chart is a substitute for argument." Whether it's the fault of an education system and corporate sector saturated with PowerPoint presentations, the increasing desperation of polemicists, reporters, and poli-sci types to cast their work as hard "sci-

ence," or just the rising tide of phillistinism, it seems an ever-growing number of writers and thinkers have taken to substituting the siren song of the computer-generated chart for the hard work of written argument.

And so in recent days, THE SCRAPBOOK has hardly been surprised to come across headlines like the following: "1 Chart [That] Shows Why Social Security Is So Important" (*Huffington Post*), "Why we don't have jetpacks, in one chart" (*Washington Post*), and "The History of the World In One Chart" (*Business Insider*).

But the top prize for this inanity goes to the *Atlantic* (founded in 1857 by a group of worthies including Ralph Waldo Emerson and Harriet Beecher Stowe), which last week published an article headlined, "The One Chart That Shows the Importance of Egypt's Massacre." Because, really, the importance of the mass slaughter in the Arab world's biggest and most significant country wasn't going to be clear to us . . . unless we saw a bar graph. ♦



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I Read, Therefore I am

I found myself thinking not long ago about Helen Keller, specifically the famous scene in her autobiography where she describes cold water being pumped from a well onto one hand while Annie Sullivan spells out w-a-t-e-r in Helen's other palm.

I stood still, my whole attention fixed upon the motion of her fingers. Suddenly I felt a misty consciousness as of something forgotten—a thrill of returning thought; and somehow the mystery of language was revealed to me. . . . That living word awakened my soul, gave it light, hope, joy, set it free!

For whatever reason, I have always found this episode, even Helen Keller's precocious style, to be deeply moving, especially as she flies around the house with her newfound knowledge—"every object which I touched seemed to quiver with life"—and feels remorse, for the first time, as she tries to reassemble a doll she had angrily broken. But what does it mean? I have stood in the very place, in Tuscumbia, Alabama, where this happened, and a little cast-iron model of the Keller family's water pump sits in my study. But while Helen Keller describes the sensations of that moment in her celebrated life, she cannot explain what, exactly, happened in her mind, shrouded as she was in deafness and blindness from the age of 19 months. And nobody else seems to know, either.

But I do know that, to me, in a lifetime largely spent pushing and pulling words, language remains both mysterious and comforting. There was no *Miracle Worker* moment in my own childhood, of course, but certain scenes stand out with a retrospective meaning. I was very anxious, as a small child, to learn to read; but my highly literate parents, probably at the behest of some fashionable theory, preferred to let school do the

job. This was immensely frustrating to me. I remember a visiting cousin holding up cardboard letters for me to identify, and successfully naming them. I remember making puns, and other elementary wordplay, before I could spell or read. I can also remember approaching my mother, sitting in her armchair while reading the *New York Times* and smoking a cigarette, and asking her when I could go to school.



"Soon," she replied, and sent me outdoors.

One of my earliest memories is of my father speaking gibberish for several minutes into the telephone, and my silent confusion. It was only years later that it occurred to me that he must have been speaking to his immigrant parents (both of whom died before I was 5 years old) in their native Armenian. Anyway, I grew up in a decidedly children-should-be-seen-and-not-heard household, and was always impressed by the ability of adults to speak in long sentences, even blocks of sentences, and conduct conversations. To be grown up, I inferred, meant that you could smoke, cross your legs, drink alcohol, part your hair, and talk at inordinate length using certain words—"goddammit,"

for example—off-limits to youth.

I have implied elsewhere that school was more torment than joy for me, and I was certainly a timid and frightened first-grader in a place where I knew precisely no one. But the process of learning to read was unalloyed pleasure, and I can recall my teacher—a slightly stiff pedagogue named Mrs. Storm—summoning us to push our desks forward for the reading lesson. I suppose the closest I have come to Helen Keller's water pump was the near-ecstasy I felt as I shoved my desk toward the blackboard, oblivious to everyone and everything around me, literally shaking in anticipation of turning letters into words.

Anyway, I became a journalist, not a poet; and it amuses me in retrospect that, at precisely the moment I was learning to read, happily encased in a newfound realm of sounds and symbols—vowels, capital letters, consonants, the "-ight" words—the world outside was a gathering mess. A presidential campaign was nearing its climax, the Hungarians were revolting unsuccessfully against the Russians, and the Suez Crisis was roiling London, Paris, my hometown of Washington, and the Middle East.

I must have heard something of all this—my family was keenly aware of Adlai Stevenson's defeat, and Hungarian refugee children started showing up in school—but the gradual translation away from illiteracy is clearest, and surely most significant, in my memory: the thrill of comprehension as I walked past a sign, the novel sensation of following a story, the mixture of pity and contempt for slower classmates.

And a lesson in journalism as well. On any given day, the "news" may seem of supreme importance; but the news can be a series of recurring events, a loop of facts and numbers, and not everyone is paying strict attention. The poor Hungarians failed to liberate themselves, but learning to read meant freedom for me.

PHILIP TERZIAN

‘Delay Is Preferable to Error’

The good news is that most of the nation remains as opposed to Obamacare today as it was three years ago, when the law was enacted. Indeed, most polls show the public even more skeptical today—as the *Wall Street Journal* reports, “public support for the law has waned and Republican opposition has held steady.” In a *Wall Street Journal*/NBC News poll in July, 47 percent of respondents said the law was a bad idea, compared to 34 percent who thought it a good one. So the prospects for comprehensive repeal of this comprehensive bad law remain bright.

Unfortunately most of the nation voted to reelect President Obama last November and gave Democrats continued control of the Senate. So comprehensive repeal isn’t in the cards now. The right course for the moment is delay.

The case for delay is easy to make. President Obama, after all, has already delayed parts of Obamacare, including the employer mandate, the income and health status verification requirements for individuals in state-based exchanges, and the requirement that employer health insurance plans cap employees’ out-of-pocket deductible costs. What is the case, then, *against* delaying the individual mandate in tandem with the employer mandate? Such a delay would be fair—it tells you a lot about the Obama administration’s affinity for crony capitalism that the parts of the law Obama has chosen to delay have been those that big business most wanted to have delayed—and prudent. There will be no way to verify the income and health status of the individuals mandated to join the exchanges. What is the case *against* delaying the exchanges as a whole? They lack adequate privacy and security measures, and they are plagued by broader implementation problems that are becoming increasingly obvious across the nation. You don’t have to be a long-standing critic or die-hard opponent of Obamacare to see that its implementation looks to be a real mess.

This means the case for a year’s delay, at least of Obamacare’s individual mandate and the exchanges, can be made in a practical and relatively nonpolemical way. This is useful if you’re trying to win over undecided citizens and congressmen and senators. What’s more, delay buys time to further

make the case against Obamacare as a whole, and to develop in far more detail and depth, and to build more consensus around, the conservative alternatives to Obamacare.

There are also aspects of Obamacare that can and should be overturned posthaste. For example, the Obama administration has come up with a bureaucratic dispensation to provide special treatment for senators and congressmen in the exchanges. This surely won’t be easy to defend to the American people. Congress should repeal it when it returns from recess.

One of the most important reasons to force debate and delay is to thwart the Obama administration’s desperate attempt to impose a virtual prohibition on arguments against Obamacare. At a conference of state legislators and health officials last week, Health and Human Services Secretary Kathleen Sebelius rebuked those of us who continue to oppose Obamacare. “This is no longer a political debate; this is what we call the law. It was passed and signed three years ago. It was upheld by the Supreme Court a year ago. The president was reelected. This is the law of the land.”

Sorrrry, Madame Secretary! Obamacare *is* the law of the land. But it’s a bad law. It deserves to be delayed and disassembled, then fully repealed and replaced. It *is* after all a free country. We the people *are* permitted to try to change “the law of the land.”

The Obama administration wants to make such efforts seem illegitimate, even while it changes the law, as passed, by administrative fiat—which is precisely what *shouldn’t* happen in a free country. As Peter Suderman writes,

It is the Obama administration which has chosen to ignore the law of the land by selectively enforcing provisions, encouraging government agencies and ignoring clear legislative language that conflicts with the administration’s goals. The administration’s delay of the employer mandate, for example, is not supported by statute. And when questioned about his administration’s authority to enact the delay, Obama has not even tried to claim that it is; instead he has simply asserted the authority to delay the provision, and then returned to criticizing Republican opposition.



Well, Obama's free to criticize, and we're free to challenge. For now, as a legislative matter, the most effective form of challenge is delay. The end of the federal fiscal year on September 30 provides an occasion to fight to delay implementation of key parts of Obamacare for at least a year. The case can be made narrowly: As Thomas Jefferson wrote to George Washington in 1792, "Delay is preferable to error." But the narrow case buys time and lays the groundwork for continuing to make the broader argument for the error of Obamacare—that Obamacare is, to adopt a phrase used by Jefferson in a more famous place, "unfit to be the [law] of a free people."

One day we'll repeal this law. For now we can delay it.

—William Kristol

Don't Stop Frisking

Since the early 1990s the New York Police Department has used a crime-prevention strategy that it calls "stop, question, and frisk." Accordingly, officers stop and question a person based on reasonable suspicion and sometimes pat down the clothing of the individual to ensure that he is not armed. The department credits the strategy in large part for the huge declines in murder and major crimes over two decades in what is now the nation's safest big city. But the liberal opposition to stop-question-and-frisk has been fighting back, and last week federal district judge Shira A. Scheindlin declared the NYPD's use of the strategy unconstitutional and ordered a set of remedies whose implementation is to be overseen by an independent monitor she has appointed.



Shira A. Scheindlin

During the trial, which ended three weeks ago, a *New Yorker* writer sympathetic to Scheindlin's view of the case observed that the litigation was "rooted in the hope that a single judge can diagnose a complex problem and reform a huge organization like the New York Police Department based on the imperfect medium of trial testimony," and that while the judge's "dedication to protecting citizens'

rights is beyond question . . . it is less clear that she has the wisdom, or even the ability, to impose her vision in the real world of New York."

Before the world discovers whether Judge Scheindlin can indeed impose her vision, and with what consequences, it would be good to know whether her decision in the class-action case of *Floyd v. New York City* can stand. Fortunately, Mayor Michael Bloomberg has declared that he will appeal. The mayor has said the judge was biased against the city, and on so important an issue as stop-question-and-frisk—public safety long being a top concern of New Yorkers—a fresh set of judicial eyes could help ensure public confidence in the process and what it ultimately yields in this case.

In her decision, Judge Scheindlin did not strike down stop-question-and-frisk as such, which the Supreme Court upheld against constitutional challenge in the 1968 case of *Terry v. Ohio*, but instead ruled against the tool "as applied" in the city. The 19 *Floyd* plaintiffs—each of them black or Hispanic—contended that stop-question-and-frisk violated their constitutional rights in two ways. First, they said they were stopped without a legal basis—that is, without "reasonable suspicion"—in violation of the Fourth Amendment's prohibition against unreasonable searches and seizures. And second, they said they were targeted for stops because of their race and ethnicity in violation of the Fourteenth Amendment's equal protection guarantee.

Judging the plaintiffs' "Terry-stop" claims under the Fourth Amendment, Scheindlin concluded that "nine of the stops and frisks were unconstitutional—that is, they were not based on reasonable suspicion." In five others she said the stops were based on reasonable suspicion but the frisks were not and on that account were unconstitutional. And in the remaining five, she said those stopped or frisked failed to prove their claims. By the way, there could have been hundreds of plaintiffs, but the 19 were apparently all the *Floyd* lawyers could find, or were willing to find, and they had mixed results in trying to persuade a sympathetic judge of their claims.

The 19 stops of the named plaintiffs were a tiny subset of the more than 4.4 million stops made by the NYPD between 2004 and 2012, more than 80 percent of them stops of blacks or Hispanics, with slightly more than 50 percent of them resulting in a frisk, weapons being found in 1.5 percent of the frisks, and some 6 percent of the stops resulting in arrests. It is hard to see how much could be reliably inferred from those numbers about the 4.4 million stops.

Scheindlin recognized as much when she wrote that *Floyd* was "not primarily about the 19 individual stops that were the subject of testimony at trial." Nor was the case about an actual stop-question-and-frisk law or regulation that the judge found in violation of the Fourth Amendment, for there were no such instruments. What the case

AP / RICHARD DREW

was about, the judge wrote, was “whether the City has a *policy* or *custom* [the judge’s emphasis] of violating the Constitution by making unlawful stops and conducting unlawful frisks.” Weighing “extensive expert submissions and testimony” on various aspects of the department’s use of the strategy, she concluded there was. But her assessment of the relevant law and how she looked for it, in a case of such importance to not just New York City but in municipalities across the country, merits appellate review.

As for the plaintiffs’ claims about being targeted by race and ethnicity for stops, here there is an oddity. For while none of the 19 plaintiffs were able to prove equal protection claims against actual police officers, Scheindlin, using statistics and anecdotal evidence, decided that the class the plaintiffs represented (and which included them) had been discriminated against. As with stop-and-frisk, she said, there was no stated policy that endorsed racial targeting but an unwritten one, which relied in part upon how crime victims had described those they say committed the crimes against them, descriptions that include the race and ethnicity of the alleged perpetrators.

In concluding that the NYPD was guilty of “indirect racial profiling,” Scheindlin made much of one police chief’s testimony that officers are to focus their reasonable-suspicion-based stops on “the right people,” citing it more

than a dozen times, but whether she used those words in context could interest the appeals court. So could her analysis of competing statistical models, especially since she seems at times to embrace the dubious notion that the racial Terry-stop rates in a given community should be comparable to the percentages by race of the people who live in that community.

Judge Scheindler emphasized throughout *Floyd* that her mandate was to judge the constitutionality of the policy as carried out, not its effectiveness. Evidently constitutionality in the context at hand may not, ever, take into account the first imperative of government, which is to ensure the safety of its citizens. The judge’s determination to regulate the NYPD, through ambitious reforms and a monitor reporting to her, may result in less safe streets in the poor and minority communities where crime once thrived and where stop-question-and-frisk has most often been employed. That is why an appeal is necessary—to determine, with so much weighing in the balance, whether the judge’s decision is correct or not.

Amazing, is it not, that the best hope for continuing one of the most successful anticrime strategies in modern times lies in the U.S. Court of Appeals for the Second Circuit, not exactly a tribunal dominated by judicial conservatives.

—Terry Eastland

Tales From a Great American Road Trip

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

This summer, the U.S. Chamber of Commerce went On the Road With Free Enterprise, a cross-country quest to find American small businesses and entrepreneurs that are making a difference in their local communities and economies. After two months, 17 cities, and 10,000 miles in the Chevy, tour guides Nate and Joe found that free enterprise is alive and thriving from coast-to-coast. Here’s a little of what they saw.

In Cut Off, La., they met an inventor—72 years young—who is helping combat the shoreline erosion that he says is swallowing up a football field’s worth of coastal land every hour. The Wave Robber device, which he engineered in his backyard, saps wave energy and sifts out sand and sediment before it can be swept out to sea. His innovative solution won him first prize

and \$50,000 in seed money from a local startup competition. With this infusion of capital—and the growing interest in his invention—he hopes to make a significant impact on this environmental challenge.

In Charlotte, N.C., they tested out Alcohoot, the first-ever smartphone breathalyzer. The 24-year-old who came up with the concept thought it could curb deadly incidences of drunk driving. He turned to engineering students to help bring the idea to life and angel investors to bring the product to market. Alcohoot retails for \$75—a fraction of what law enforcement breathalyzers cost—and registers blood alcohol level in just 10 seconds.

In Richmond, Calif., they visited Ekso Bionics, a high-tech manufacturing startup that’s bringing seemingly futuristic technology into the present day. Ekso makes bionic suits, which are being used to assist people with paralysis stand and walk. The suits are also being engineered to protect, equip, and strengthen able-bodied workers with dangerous or physically demanding jobs.

In Minneapolis, Minn., they raised a glass to the Surly Brewing company, which fought a Prohibition-era state law that prevented breweries from serving beer on their premises. Together with local lawmakers and a robust grassroots effort, Surly helped get the law taken off the books. Now, the company can move forward with plans to open a \$20 million destination brewery that will draw tourists and economic activity to the community.

These feats of entrepreneurship, innovation, and activism are only possible in a system that allows people to dream big, take risks, and reap rewards. That system is free enterprise—and it’s why people and businesses across the country are driving growth, creating opportunity, and making America the best place in the world to live and work. Read more tales from the road at FreeEnterprise.com/tour.



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BY MATT LABASH



Baltimore
In the near future, historians will struggle to locate the precise moment when civilization's wheels finally, irretrievably came off. By then, there will have been too many such moments to pinpoint one with any certainty. But I'll mark the day as having occurred on a recent August weekend when, standing in the concourse of the Baltimore Convention Center, I watch grown men with problem skin and five o'clock shadows prance around in pony ears,

Matt Labash is a senior writer at THE WEEKLY STANDARD.

rainbow manes, and braided tails lashed to their belt-loops, doling out "free hugs," starting "fun! fun! fun!" chants, and spontaneously breaking into song. "Give me a bro hoof," says one, trying to knuckle-bump me. It's what you might imagine heaven to be like, if your idea of heaven is hell.

I've come to BronyCon, where the herd gallops 8,500 strong, up from a "mare" 100 conferees (apologies, but Bronies insist on speaking in horrible horse puns) at the first BronyCon in 2011. If you've been lucky enough to stay off the Internet for the last three years—Internet-culture and culture-proper having long since become one

and the same—you might not know that "Brony" is a portmanteau of "bro" and "pony," used to indicate the (mostly) late teenage and adult male fans of the children's cartoon series *My Little Pony: Friendship Is Magic*. (Average age: 21, though I encounter scores of middle-aged Bronies, and even a 60-year-old.)

Children of the eighties will recall the original *My Little Pony* (MLP) franchise from the Technicolor ponies in their little sisters' toy chests. Or from the saccharine, omnipresent Saturday-morning commercials with the infectiously cloying jingle, featuring sun-kissed little girls doing little-girl things like combing her pony's mane and carrying it in her bike basket. But that was several MLP iterations ago.

A fourth generation of MLP debuted in 2010 on the Hub, a cable network co-owned by toymaker Hasbro, who thought it a keen idea to program a slate of low-quality cartoons (like *Pound Puppies* and *Transformers: Prime*) to help hawk toy lines to susceptible children. The new MLP wouldn't have seemed like anyone's idea of revolutionary animation, nor was the intent to appeal to adult men. The dialogue was a bit snappier, but it was still little-girl fare, with ponies such as Twilight Sparkle and Rainbow Dash cantering around the mythical land of Equestria with their "cutie marks" (like brands, only cuter), bantering about the magic of friendship.

Then, a curious thing happened: The Internet got a hold of it. On the website 4Chan—famous as the place where every cultural cancer goes to metastasize, from Anonymous hackers to cat-photo memes—people started posting about MLP in order to ridicule it. But a counterforce of people who seemed to like it struck back, perhaps ironically at first, but then out of genuine affection or mass psychogenic illness—nobody's entirely sure which. Virtual blood was spilled as Internet pony fights ensued. When the dust settled, a whole new older-male fandom was born, with all the clammy, neckbearded earnestness that one sees evidenced in more traditional enclaves of obsessives—from *Star*

KEITH SURVELL

Trek to anime to CPAC conventions.

Much has been written about the infantilization of the American male, which for a change is not media hype. The average age of video-gamers is now 37, and 2011 census data show roughly a quarter of 25-to-34-year-olds still living with their parents. By some counts, more adult-leaning superhero/comic-book movies have been made in the last couple of years than in the entire decades of the '50s, '60s, and '70s combined.

But Bronies represent a novel variation on the theme: Like so many American men, they wish to be forever suspended in childhood. Except this time, they want to be 6-year-old girls. Bronies have, in fact, come to embody what pop sociologists call the New Sincerity Movement. The thinking goes that the smirky ironic detachment of recent decades—pretending to embrace low-culture totems for laughs—has grown stale. Now that the Internet has fragmented the culture into a million pieces, helping every maladjusted shut-in to realize his natural level of eccentricity, the only way for a self-respecting hipster or a Zuckerbergian alphanerd (the tribe that now runs the world) to distinguish himself is to enthuse over his enthusiasms without detachment or apology. Even if that means grown men writing *Twilight Sparkle* fan fiction or cutting bad electronica songs with titles like, “I Might Be a Brony.” You might find it funny, but they’re not joking.

To defuse a few common Brony stereotypes straightaway, despite their fascination with pastel talking ponies, there’s no evidence that Bronies are mostly gay or pedophiles. Indeed, there are hardly any children at BronyCon. When I encounter one dad who’s brought his 6- and 12-year-old daughters (the more traditional MLP demographic), the latter says she finds all the older male fans “creepy.” And Dad is heading them toward the exit,

not having understood how few young kids would be making this scene.

As for accusations that the Bronyhood is some sort of equine

awkwardness cultivated by spending too much time eating transfats in front of computer screens, most Bronies I speak with seem to emit a sort of nerd-drogynous sexuality. They don’t seem to have special someones of either the gay or straight variety.

One Brony study—yes, there’s some academic to study everything, and most of them seem to be conducting panels at BronyCon—says 84 percent of Bronies report being exclusively heterosexual (only 1.7 percent report being gay, while the rest are bisexual or asexual). More tellingly, 22.4 percent have no interest in dating, and 60.9 percent are interested but not dating. (There are some female Bronies, but these are often called “Pegasisters,” giving third-wave feminists a fresh inequality to whinny about.)

But even if Bronies don’t seem to have an overwhelming interest in breeding, what’s clear is that, like malware, Bronydom is spreading. One terrifying “State of the Herd” survey estimates that there are as many as 12.4 million, which if true would mean that if Bronies had their own state, it would be the seventh most populous in the nation.

During three days of BronyCon, I have occasion to meet all manner of Bronies and their stable-mates. There’s Sam Miller, who teaches communications at the University of North Dakota, and who studies them. He tells a roomful of Bronies, from the dispassionate vantage of academe, that “you guys are doing something powerful. . . . You’re pushing the envelope of what gender is supposed to do. That’s awesome.” Then there’s Dr. Katia Perea, who teaches sociology/queer media studies at CUNY Kingsborough. A roomful of pony-ears and manes bob in agreement, as she lectures on the historic sweep of “girl cartoons” which she has extensively studied. She drops academese like “transgressing



Brony, top, and Pegasister

gay cult, this is supported neither by studies nor by my three days among the string. With the musky smell of humid T-shirts and social

gender normative coding” and “the master/slave dialectic.” When she finally speaks English, it is to tell the Bronies, “You are a revolutionary movement in popular culture.”

There’s the long-haired heavy metal guitar player Dustin Randolph, aka Dr. Tiny, who has a Friendship Is Magic shirt, but with the design of Led Zeppelin’s “Swan Song” logo. Bronies are notorious for creating hundreds of thousands of pieces of fan art, from drawings to music, and Dustin has suffered for his, having been booted from his original band, Hexorine, just a few weeks ago. “They called me Brony scum,” he says. Now, he plays pony-themed solo tunes, songs such as “Cascadence” and “Alone.”

But one is never truly alone among the Bronyhood, discovering the magic of friendship with bros whose fondest wish is to show off their pony plushy toys, picking their favorite according to which pony’s personality most matches their own. (“I’m a Fluttershy . . . but today I’m feeling more like an Applejack.”) I encounter a mustachioed man taking a smoke break on a convention balcony. He’s in pony ears and tail, holding an MLP lunchbox. The name is Moonlight Blossom, he says (his pony alias). Mr. Blossom is a 37-year-old senior network administrator.

He says the notion that Bronydom infantilizes grown men like him is “horse apples.” If it’s rebelling against anything, “it’s against excessive cynicism and irony and people not being kind to each other.” Take his ex-girlfriend, for starters. Like MLP’s evil Queen Chrysalis, he says, she “sucks the life out of people by chewing up their love.” She nearly ruined him and sent him spiraling into depression, until he saddled up with the Bronies. So the show isn’t just for effeminated guys who don’t like the company of women, he’ll have me know. “Close to the end of season two, there’s a massive fight scene, okay?”

Then there’s 28-year-old Jacob Hughes, an Army drill sergeant at

Fort Benning. I go to lunch with him after hearing him speak at a Military Bronies panel, where our soldiers, sailors, and Marines—in testimony that should probably end up in al Qaeda recruiting videos—come out about their love for all things My Little Pony. Hughes insists on wearing a stuffed Pinkie Pie plushy (his favorite pony) on his shoulder on our walk to



Drill sergeant Jacob Hughes

the restaurant. When a waitress takes our order, she says, “Ooh, glad my granddaughter isn’t here. . . . She [has to have] soft pink things.”

At ease about his Bronydom, Hughes is an enthusiastic booster. A gregarious performer-type, Hughes says ponies helped him shed once-crippling introversion. “A good part of the appeal is that wholesomeness and innocence,” Hughes says. “And so we’re shining a light on the fact that, yes, I am a man. But at the same time, I enjoy what I enjoy.” He seems sincere and well-meaning, so I don’t want to harsh his Pinkie Pie mellow. But the Care Bears are wholesome and innocent, too. Yet you don’t see Army drill sergeants traipsing around in Funshine Bear costumes—at least not as of this writing.

Over my long weekend riding

with the herd, I attend everything from Brony karaoke to dance-offs (where Bronies literally dance their tails off). At a rave one evening, I am nearly impaled by an alicorn horn during a Brony stampede. To calm things down one afternoon, I visit “The Crusader’s Clubhouse”—the sole sanctum for MLP’s original intended demographic (kids) to get away from the Brony man-children. Here, they can write letters to Princess Celestia about the magic of friendship, or have cutie marks painted on their cheeks.

The head-Brony-in-charge, a 20-year-old Asian guy named Justin, vigilantly checks my press pass. Since I’m not running around in pony ears or Pegasus wings, he needs to make sure I’m not some sort of weirdo. A cherubic 8-year-old girl named Carson is doing pony-crafts at a nearby table. She tells me she and her little sister have been into MLP their entire lives, though she allows, “I think it’s weird that guys like it.” I ask her who her favorite pony is. “Rarity,” she tells me. “But she’s so prissy!” argues Justin.

Justin tells me that at first, he started liking the show ironically, but then, he just liked it. I ask Carson if she knows what “ironically” means. She doesn’t. I tell her it kind of means pretending to like something as a joke. “Like when people go to Applebee’s,” adds Justin. Carson looks bored and wants to get back to her popsicle sticks and Elmer’s glue, even as Justin enthuses over the MLP fight scenes: “They’re girl ponies and they’re girly, but they’re fighting! So hilarious! Such a contradiction!”

Carson tells me that during crafts time, she’s teaching Justin how to make “butterflies and outdoor nature things.” I leave the 8-year-old-girl and her 20-year-old pupil to their studies. Since I’m not sure Justin has ever been outdoors before—between his My Little Pony-viewing marathons and whatever other entertainments are being hatched in the misfiring synapses of the hive mind—I’m guessing he has much to learn. ♦

THE WEEKLY STANDARD / MATT LABASH

Bureaucracy Lives!

How many experts does it take to advise a dying patient? BY WESLEY J. SMITH



The BULL and the CLOWN.

Back when the mess that is Obamacare was working its way through the legislative sausage factory, warnings about “death panels” almost derailed the entire enterprise. There were two, somewhat related, areas of concern: (1) that Obamacare’s many cost/benefit bureaucratic boards would lead to explicit health care rationing; and (2) that doctors paid to “counsel” elderly and dying patients about end-of-life treatment would actually pressure them to refuse expensive treatments. Owing to the lack of popular trust, the end-of-life counseling provision was dropped to grease the way for Obamacare’s final passage.

Now, the proposal is back in both the House and Senate, with bipartisan support. The Care Planning Act

Wesley J. Smith is a senior fellow at the Discovery Institute’s Center on Human Exceptionalism and a consultant for the Patients Rights Council and the Center for Bioethics and Culture.

of 2013 is the most far-reaching of the bills. Supported by the AARP and sponsored by Senators Mark Warner (D-Va.) and Johnny Isakson (R-Ga.), the bill ostensibly aims to compensate medical providers who accept Medicare and Medicaid for participating in end-of-life treatment discussions with patients. But that’s just the tip of the proverbial iceberg.

No one is against doctors discussing end-of-life treatment options with patients. That’s part of good medical practice. But once the federal government sets the pay, it will make the rules. It won’t be enough for doctors to talk to their patients about tube feeding, cardiopulmonary resuscitation, and the like. If they want to be reimbursed, doctors will have to structure the conversations in the way the government instructs.

Ever wonder why the health care bureaucracy is becoming so byzantine and sclerotic? This bill—meant to encourage conversations—is 46 pages long. It would create a Care Planning

Advisory Board, an “expert” panel of 15 members, three appointed by the president and the remainder by the four partisan leaders of the House and Senate (three apiece). Imagine the patronage opportunities!

Typical of how such boards are composed, the experts are to be selected from among every conceivable constituency:

Patient advocacy groups? Check.

Older patients? Check.

Individuals with cognitive or functional impairments? Check.

Family caregivers? Check.

Hospice providers? Check.

Researchers, ethicists, faith communities, and health care facilities? Check, check, check, and check.

Among its other duties, the care planning board will advise the Health and Human Services secretary about how to “assure that individuals with advanced illness receive person- and family-centered care.” The board will also investigate and recommend ways the government can ensure that qualified patients “develop a treatment plan that is formed around their goals, values, and preferences, that is informed by research on disease trajectory.” Not only that, but the board’s proposal is expected to ensure that care plans are “realistic, actionable, and concrete.”

And what expert government advisory board has ever been created that wasn’t required to “develop quality measures” to enable providers to send data back to the bureaucrats for the requisite bean counting. Also, the board will help the government “develop and promote best practices in communications about advanced illness between providers, individuals, and family caregivers in different settings, including acute care hospitals.” Good grief.

Since patients can only receive paid counseling—“once in each 12-month period”—the bill establishes bureaucratic hoops through which providers must jump. First, the patient must be “eligible.” That would mean, for example, having advanced cancer or late-stage diabetes, or needing “assistance with two or more activities of daily living”—or meeting “other

MICHAEL RAMIREZ / CREATORS SYNDICATE

criteria determined appropriate by the Secretary.” Translation: Still more regulations will be needed. Patients are to receive the services of a multidisciplinary “core team,” made up of a “physician or an advanced practice registered nurse, a social worker, a nurse, and a minister or the individual’s personal religious or spiritual adviser.” The core team can be expanded “when necessary” to include “a pharmacist, a licensed clinical social worker, and a psychologist,” along with anyone else who meets the “requirements that may be established by the Secretary.”

One wonders: Isn’t helping patients decide on appropriate treatment already part of a doctor’s job? Moreover, hospices—covered by Medicare and Medicaid—now use the multidisciplinary approach without having been told to by Washington.

The bill also requires that the government provide “culturally and educationally appropriate training for individual and family caregivers to support their ability to carry out the plan.” Again, imagine the rule-making possibilities!

The bill purports to facilitate the creation of advance directives and care-planning consistent with patient values. Great. But what if the culturally appropriate, multidisciplinary care-giving team disagrees with the patient? Who prevails?

Not necessarily the patient. The bill specifically permits doctors to refuse to provide wanted end-of-life care based on their own “conscience,” if such refusals are allowed by state law.

End-of-life care is a crucial aspect of medical practice. And to be sure, problems exist in ensuring that all patients receive optimal care. But do we really want doctors marching to the drumbeat of memos from the secretary of Health and Human Services?

A far less centralized approach—such as encouraging continuing medical education programs and public awareness efforts by the nonprofit sector—would surely improve end-of-life care, and far less intrusively than allowing government to transform dying into a public-sector regulatory growth opportunity. ♦

Don’t Forget the Poor

The poverty of the GOP’s antipoverty agenda.

BY LORI SANDERS & ELI LEHRER

After five decades of liberal antipoverty programs that have produced only failure and futility, it is more than time for a conservative response to the problem of poverty—one that emphasizes work, family, and economic freedom.

Indeed, if the Republican party wants to regain the White House and be trusted to run the executive

2010, is only 4 points lower than the rate when Lyndon Johnson declared the “War on Poverty” in 1964. After falling to 17.3 percent in 1965 and a low of 11.1 percent in 1973, the poverty rate mostly floated between 11 and 15 percent over the intervening years, briefly crossing the 15 percent threshold in the early 1980s and again in the early 1990s.

But the poverty rate has been on a steady climb these past five years and, by a variety of measures, Americans’ chances of escaping poverty have declined consistently since the 1970s. A search for root causes implicates just about every major social trend of the past several decades. To name just a few, technology has increased the returns on education and the penalties for poor skills and work habits; the breakdown of nuclear families has required already-limited resources to be stretched even further to support multiple households; and a growing welfare state has provided many of the wrong incentives. These trends are extraordinarily difficult to reverse.

Conservatives long have made the moral case that the poor, like everyone else, should be held accountable for their choices. And it’s true that people who marry, avoid substance abuse, graduate from high school, avoid going to jail, refrain from having children out of wedlock, and hold jobs (even minimum wage ones) for at least a year almost never end up living in poverty.

It’s also largely true that today’s American poor do not face privation to quite the same degree as either earlier generations or the poor elsewhere in the world. In the United States today, poor people rarely miss meals, though



Migrant worker and grandchild

branch’s myriad poverty-related programs, it will need an agenda beyond simple budget cuts for poverty programs. Instead, conservatives need a plan to foster a dynamic economy in which far fewer Americans would need to rely on government in the first place.

To produce such a plan requires some knowledge of who the poor are. According to the U.S. Census Bureau, roughly 46 million Americans were living below the poverty line in 2011, about 15 percent of the population. That figure, roughly the same as in

Lori Sanders is a policy analyst for, and Eli Lehrer president of, the R Street Institute.

they may wonder where the next meal is coming from; they generally don't end up homeless, although they may come close; and they typically can get needed medical care, although it takes a lot of work to do so.

All that said, being poor still involves significant misery, constant insecurity, and material deprivation. Moreover, many of the conditions that trap Americans in poverty are the direct result of government policies, often implemented with good intentions.

The lives of America's poor are ones in which even relatively minor difficulties can quickly spiral out of control, making it almost impossible to plan for the future. A small but telling example: One recent study published in *Pediatrics* detailed how a lack of money to buy diapers can throw a poor family into crisis, causing a mother to skip work to avoid leaving her diaperless child at daycare. Even basic services that most Americans take for granted, like low-cost checking accounts, often are unavailable to those without means, forcing the poor into the expensive and inefficient financial services offered by check-cashing stores and pay-day lenders.

In these and a thousand other ways, the American social system today requires more resources and wherewithal to navigate properly than in the past. In today's market, access to technology is increasingly necessary to find a job, and the number of well-paid jobs available to people with modest education has plummeted.

Government regulations exacerbate the problem. A recent report from the libertarian Institute for Justice shows that state licensing laws force workers who aspire to ply an array of moderate-skill trades to spend an average of nine extra months in schools that prepare them for licensing exams, paying hundreds of dollars in fees along the way. Such hurdles place a disproportionate burden on those of limited means.

Meanwhile, government assistance programs often seem better designed to serve the middle class than the poor.

Dozens of state and federal college programs offer extra money to help middle-class students attend the college they choose, but the sort of comprehensive support poor students need to even consider attending a four-year university is extraordinarily difficult to come by.

Most of these problems are not new. But with just a few notable exceptions (Jack Kemp; more recently, Rick Santorum), the Republican party and the conservative movement have been hesitant to offer policies to ameliorate these problems. Why should now be any different?

To start, because writing off some 46 million fellow citizens is simply not

prominent national problem—and in doing so abandon the field to the political left.

Any conservative antipoverty agenda must begin with work—which presupposes employability: habits of courtesy, responsibility, punctuality, honesty, and so on. Research shows overwhelmingly that work is central to escaping poverty. This is true not only for the obvious reasons—the wages and benefits—but also for the role work plays in cultivating healthy lifestyles, that is, in helping individuals achieve self-respect, feel happier, and set an example for younger generations. And the consensus on the centrality of work is near universal: Researchers Isabel Sawhill and Quentin Karpilow of the Brookings Institution—no bastion of conservatism—have identified a “work gap” that leaves poor families at a disadvantage in all of these areas. As Sawhill and Karpilow write, “some [poor] households lack an employed member, a majority lack two earners and a high proportion work very few hours even when the economy is operating at full employment.”

Despite lots of high-minded rhetoric about the value of work, the conservative public policy agenda on work remains woefully underdeveloped. Historically, the focus has been on tying work requirements to welfare programs and, more recently, resisting the Obama administration's efforts to gut existing work requirements. This is all good. But given a still-sluggish economy and the relocation of many jobs away from areas where poor people live, work mandates alone—without appropriate plans to encourage and support the poor in their search for jobs—represent an insufficient response that, in its current form, just adds bureaucratic requirements to already bloated public programs.

Properly structured work incentives would build on what is already our largest welfare program, the Earned Income Tax Credit, which remains decidedly modest. For a single worker without children living at home, the EITC refunds less



A volunteer food program in Spring Valley, Calif.

viable in a healthy liberal democracy. Democracy requires that everyone have access to opportunity. Concern for the poor, moreover, is a core value for Americans of all political stripes, a fact made abundantly clear in the massive dataset of social-attitude surveys compiled by New York University social psychologist Jonathan Haidt.

And the poor represent a larger part of the conservative coalition than many Republicans realize. Between 28 and 36 percent of people earning less than \$15,000 per year give their votes to GOP candidates. That's better than Republicans typically do among African Americans, Jews, or Asians.

But in the end, a conservative poverty agenda ought to be seen as essential to building a democratic society that favors and rewards the industrious and innovative, yet includes the poor. By failing to provide such an agenda, conservatives ignore a

than \$425 per year. Introducing and expanding similar wage supplements, even the short-lived “Making Work Pay” tax credit included in the misbegotten 2009 stimulus package, would further encourage a life of work as preferable to welfare or life in the underground economy.

In the short term, conservatives should consider, and debate thoroughly, the merits of a variety of measures that encourage employers to create more entry-level jobs. These could include permitting employers to pay a sub-minimum “training” wage when they invest in developing the skills of the previously unemployed. They could also include relocation grants offered through the unemployment system to help people move away from pockets of high unemployment and to growing areas with a surplus of jobs.

Of particular interest should be reform of public programs whose structure discourages work. This might include allowing people to hang on to some benefits—including unemployment and a larger share of disability insurance payments—as they transition into the workforce. The disability system, in particular, should shift its focus to returning the disabled to work where possible, rather than cementing permanent dependence on the state.

In the longer term, Republicans may want to radically reorient the welfare system, away from a series of largely disconnected programs addressing segmented needs (food, disability, housing, medical care, and childcare) and toward a comprehensive, but less bureaucratic, wage supplement. In short, they should consider a negative income tax, designed to make work far more attractive. There are significant policy design challenges inherent in a negative income tax, and a poorly constructed one risks eliminating incentives to work altogether. Happily, there is no shortage of creative scholars who already have given significant thought to overcoming these challenges.

Of course, an emphasis on work alone is not enough. A truly

conservative antipoverty agenda also must promote strong families. Married, two-income couples, even those earning only minimum wage, find it much easier to escape poverty, and most children who grow up with the example of hard work, thrift, and successful marriage can avoid becoming poor.

But many poor women face extensive barriers to marriage, ranging from the high proportion of men living in poverty who commit crimes and thereby end up in correctional facilities to the paucity of jobs for people

The political left has been able to outbid the right in its quest for the votes of the poor—and the votes of those concerned about the poor—mostly by offering programs aimed at relief. The right can offer a better vision.

with little formal education. Larger refundable child tax credits and even savings incentives for couples and singles of modest means would likewise relieve some of the financial pressure that can tear apart marriages and leave children without two parents.

Moreover, while marriage is the ideal, single parent households also must be recognized as family units that need support, as a child is far better off with a single competent mother or father than as a ward of the state. Efforts to expand counseling, classes, and even group homes for such parents and their children deserve consideration. A family values agenda would embrace and support existing families, even as it encouraged the formation of committed, loving marriages.

Conservatives also have a lot to say about the ways government itself often holds back the poor, for instance through the ever-growing regulatory state. Outdated union-protection laws like the Davis-Bacon Act, which requires union wages on many federal projects, reserve desirable jobs for union members. More generally,

except where public health and safety are clearly at stake, government should play no role in deciding what professions individuals can pursue.

Occupational licensing may make sense for those doing open heart surgery or designing bridges, but a wide range of other jobs—hair dresser, teeth whitener, real estate salesperson, medical technician—that should be routes out of poverty are among the fields most protected by state licensing cartels. Where feasible, regulating bodies should replace the certification process, which locks out those without the time or resources to spend on classes, with on-the-job apprenticeship that allows trainees to earn a modest wage and enjoy the intrinsic benefits of work.

We should also take another look at government rules that bar those with a criminal record—a large percentage of adult men in poverty—from a host of government or government-licensed jobs. So long as there is no direct nexus between a crime and an ex-offender’s desired career path, the government should not work to frustrate him. Drug abusers probably shouldn’t be allowed to work as pharmacists, but neither should they face any special obstacle to becoming, say, plumbers. In all too many cases, they do.

The political left long has been able to outbid the right in its quest for the votes of the poor—and the votes of those concerned about the poor—mostly by offering programs aimed at relief. The right has failed to formulate a countervailing agenda of its own. As a result, in the fullness of time, much of the left’s agenda has gone into force.

But the right can offer its own better vision for the relief of poverty. A conservative antipoverty agenda is one that offers both temporary relief and longer-term institutional changes, all aimed at holding out the possibility of steady employment and stable families. Republicans can advance a comprehensive strategy that meets people on their own terms and provides the combination of opportunity, incentive, and assistance necessary to move millions of fellow citizens toward lives of thrift, industry, and self-reliance. ♦

A Christian Realist, par Excellence

Jean Bethke Elshtain, 1941-2013

BY JOSEPH BOTTUM

Jean Bethke Elshtain may have been the busiest woman many of us had ever met. Shuttling back and forth between her regular teaching appointment at the University of Chicago and her settled home in Tennessee, she wrote and wrote—and wrote and wrote. Essays, talks, books, memos to fellow directors on the almost endless number of boards on which she served. Letters, emailed comments about her friends' latest work, notes on current theological and political issues: a ceaseless flow of words.

Along the way—and what a way, producing 21 books and more than 600 journal articles in her fields of theology and political theory—she helped bring up her grandchildren and planned her courses and delivered lectures everywhere from a visiting professorship at Baylor to the famous Gifford Lectures in Scotland. When she slipped away on Sunday, August 11, dying of congestive heart failure at age 72, American public life lost what had seemed almost a force of nature. And nearly everyone who knew her lost a friend.

In many ways, Jean's life was defined by the polio she had while young and the child she bore at age 19. From the beginning, she had experienced the world as a deeply *physical* place, and it showed in her first,

curiously both feminist and conservative book after graduate school, *Public Man, Private Woman*, in 1981.

But what made her most interesting as a thinker was the conclusion she drew from it all, particularly in her breakthrough books *Women and War* in 1987 and *Augustine and the Limits of Politics* in 1996. Her recognition of the physical nature of the world gave her the intellectual resources to reject all notions of earthly perfection, and she became a Christian realist of a profoundly Augustinian kind—perhaps America's most prominent Christian realist since Reinhold Niebuhr.



Jean Bethke Elshtain

Her realism was a key part of her teaching, manifest in her joint appointment in the political science department and the Divinity School at the University of Chicago. And it guided her 2003 *Just War Against Terror*, a book that was, to her hurt and surprise, brutally and often unfairly attacked by her fellow academics in the context of the agitation over the Iraq war. Her writings for this magazine on Louisa May Alcott and the Puritans show the same hard-headed refusal to warp actual history or the world as it is experienced to match an idealistic, utopian thesis.

Jean had a bit of contrarianism built into her nature, and she delighted in assigning John Calvin to her political-theory students and Machiavelli to her divinity students. She enjoyed,

for that matter, sounding like a conservative while talking to liberals, and a liberal while talking to conservatives. In an age dominated by idealism, she once told me, she would have been a cynic—while in an age dominated by cynicism, she would have been an idealist. But in our own age, which she saw as somehow both deeply idealistic and utterly cynical, she looked to a realistic account of the fragility of the body, the weakness of human nature, and the difficulty of the political order as the best description of this hard world as we actually find it.

She once instructed me on that point while playing with my toddler daughter on her lap—the little girl's delighted laughter tending to undermine the grim message. But then, as I also remember, the play that so made my daughter laugh was Jean's opening and closing the folding cane that her childhood polio had left her needing as an adult.

And perhaps that was the real message. Jean never denied that the world offers bright moments. We know them as bright, however, because they occur in a physical and moral landscape that nothing short of the end time can fully redeem. She understood the Augustinian truth that all attempts at human perfection fail to grasp—for every supposed utopia, she knew, would eventually issue in its own deadly night, murdering to keep its false light burning.

Her suspicion of grand political programs is part of what kept her focused on the particular throughout her life—a particularity found, for instance, in her 2002 book *Jane Addams and the Dream of American Democracy*. This is why, in the end, Jean Bethke Elshtain may be best remembered for her friendships and the personal suasion she brought to her ideas.

Brought up a Lutheran, she converted to Catholicism in 2011, and she died in the fullness of her Christian faith. It was an admirable, serious life she led: both happy and important. That is as much as anyone can ask in this world she knew was a fallen one. A good deal more, in fact, than anyone can ask. ♦

Joseph Bottum is a contributing editor to THE WEEKLY STANDARD.

The Regulatory Court

The D.C. Circuit takes center stage, one more time

BY ADAM J. WHITE

The Supreme Court closed shop weeks ago, not to return until October. And for the third summer in a row, no Supreme Court confirmation fight occupies headlines. But in its absence, President Obama has thrust another court—often called the “second-highest” court in the land—into the spotlight.

In June, President Obama nominated three new judges for the U.S. Court of Appeals for the D.C. Circuit, a court that the president’s supporters increasingly denounce as an obstacle to his regulatory ambitions. The D.C. Circuit is “dominated by right wing ideologues,” People for the American Way recently announced, “a major obstacle to progressive advances.” The president’s proponents hope that if he succeeds in staffing the court with enough judges of his own choosing, then he may not only preserve his regulatory agenda for the next three years, but perhaps even entrench a progressive regulatory zeitgeist in the court for years to come.

The firepower dedicated to this political battle might surprise observers unfamiliar with the D.C. Circuit’s role as the primary court for review of regulatory actions. But it would be a mistake to conclude that the D.C. Circuit’s prominence is a sudden development. In fact, the fight over the D.C. Circuit’s role today is the latest chapter in a story that dates back not merely years, but decades—to the New Deal and earlier.

Countless scholars, politicians, and lawyers have

Adam J. White is a lawyer in Washington, D.C., and a former clerk on the U.S. Court of Appeals for the D.C. Circuit.

testified to the D.C. Circuit’s singular role in national government. That list includes Senator Barack Obama, who as a freshman took to the Senate floor to praise the D.C. Circuit as “a special court” (and, in turn, to denounce President Bush’s then-pending nominee to that court). But the most eloquent exponent of the D.C. Circuit’s role as a broader symbol of American liberty and self-government spoke a half-century earlier. In 1950, at the ceremony for the laying of the cornerstone of the D.C. Circuit’s modern home, President Truman placed the D.C. courts in the

context not merely of contemporary law, but of the American experiment writ large:

The increasing importance of these courts is indicated by the fact that they have long since outgrown the historic old buildings that served them so long. These courts hear cases which are not only important to the private parties concerned, but which involve issues vital to the welfare and growth of the Nation. Nowhere else, outside the Supreme Court of the United States, will so many legal questions of national magnitude be decided as in this building here before us.

“To our forefathers,” Truman continued, “the courts were the distinctive symbol of the kind of government—the kind of society—which they were creating in the wilderness of this continent. This new Nation was to be a democracy

based on the concept of the rule of law.” And at a moment “where absolute power” was “again on the march” abroad, the American example, symbolized by the D.C. Circuit’s courthouse, would be “a challenge to the new forms of tyranny as it was to the old.”

Truman’s rhetoric did not exaggerate the unique role in American government of the D.C. Circuit, a court that exists to adjudicate fundamental questions of constitutional structure, governmental power, democratic



self-government, and technocratic expertise. In Truman's time, as in ours, to ask what kind of court should the D.C. Circuit be is to ask what kind of nation we are.

The court was itself a product of political controversy. Having lost the presidency in 1800, President John Adams and the Federalists raced to create and staff a system of federal courts that would stand as a bulwark against the threat of imminent Jeffersonian radicalism. Two weeks after the Judiciary Act of 1801 created the new federal judiciary system, and 10 days after the House finally handed the 1800 election to Jefferson, the lame-duck president signed an act to create the Circuit Court for the District of Columbia, with jurisdiction over all three of the cities then within the District of Columbia: Washington, Georgetown, and Alexandria. President Adams staffed it with staunch Federalists: James Marshall, brother of Chief Justice John Marshall, and William Cranch, his own nephew. Adams even appointed a retired Supreme Court justice to the court's third seat, albeit one who never accepted Adams's assignment to the lower court.

The court did not obtain a permanent courthouse for decades; thus, as Jeffrey Brandon Morris recounts in *Calmly to Poise the Scales of Justice*, his bicentennial history of the court, "for a generation, when the Circuit Court sat in Washington, the judges held forth in taverns, hotels, and private homes, and, when they could, in the Capitol itself." But the court soon had an impact far outsize its meager setting. In 1801, Judges Marshall and Cranch ordered the district attorney to prosecute President Jefferson's collaborator, Samuel Harrison Smith, for seditious libel arising from Smith's criticism of Federalists in his Republican newspaper, the *National Intelligencer*. Just three years later, with a Republican majority in control of the bench, the court held Vice President Aaron Burr's collaborators for trial without bail for the failed plot to invade Mexico.

In 1863, President Lincoln and the Republicans in Congress went so far as to abolish the Circuit Court altogether and replace it with a new "Supreme Court of the District of Columbia," for unabashedly partisan reasons: Frustrated by Judge William Merrick, whose decisions "often went against the interests of the army and the Lincoln administration," according to Morris's history of the court, President Lincoln and the Congress terminated the old court

and replaced it with a new one staffed by reliably pro-Union judges who would eventually hear critically important cases affirming the president's wartime powers.

For the next half-century, the court would continue to change and to hear cases of national importance, such as the prosecution of President Garfield's assassin, Charles Guiteau. But with the enactment of President Roosevelt's New Deal, the court finally embarked on its now-familiar work at the heart of the administrative state.

The D.C. Circuit (by then known as the Court of Appeals of the District of Columbia) was the "beneficiar[y] of the enormously enhanced role of the federal government brought about by the New Deal," according to Morris. F.D.R. himself knew this, as he urged

a prospective judicial nominee that the court had "taken on a wholly new importance in the last few years," becoming "easily the second most important Federal Court in the country." Years later, the Second Circuit's Judge Henry Friendly, the most prominent federal judge of the postwar era and himself an acclaimed scholar of administrative law, reflected that the D.C. Circuit had become "a court of special importance for administrative law" as a result of its jurisdiction over the Federal Communications Commission, Federal Power Commission, and

other agencies. ("[D]oubtless to the delight of the other circuits," he added.)

And the D.C. courts' increased role in administrative law was accompanied by an increased role in defining constitutional law and supporting the separation of powers. In *Youngstown Sheet & Tube Co. v. Sawyer*, the district court's Judge David Pine ordered the Truman administration to cease its takeover of the steel industry, holding that the Korean War provided no justification for the administration to seize private industry. Even if the war effort was hampered by a union strike, it "would be less injurious to the public than the injury which would flow from a timorous judicial recognition that there is some basis for this claim to unlimited and unrestrained Executive power." To hold otherwise "would undermine public confidence in the very edifice of government as it is known under the Constitution." (Ironically, Judge Pine's decision, quickly affirmed by the Supreme Court in the famous Steel Seizure Case, came less than two years after Truman celebrated the D.C. Circuit as a bulwark of liberty against the backdrop of the advance of communism.)

Truman's rhetoric did not exaggerate the unique role of the D.C. Circuit, a court that exists to adjudicate fundamental questions of constitutional structure, governmental power, democratic self-government, and technocratic expertise.

But in the years that followed, the D.C. Circuit's most controversial decisions were found not in its constitutional cases, or its regulatory docket, but in its continued role as the local court of appeals. Amidst the crime wave of the 1960s, Chief Judge David Bazelon and Judge J. Skelly Wright issued a series of decisions staunchly supporting and expanding the rights of criminal defendants, including the right to counsel, the inadmissibility of defendants' incriminating statements, and increased use of the insanity defense. Judge Warren Burger was their most prominent critic, charging in one dissent that his colleagues' eagerness to suppress confessions "now becomes an end in itself, dominating the administration of the criminal law and making law enforcement more and more difficult." District Judge Pine, who had blocked Truman's seizure of the steel industry, declared that the court's liberals were on "a quest for 'error' in order to find grounds for reversal" of criminal convictions, creating "a climate hospitable to the belief that punishment of the guilty is far from certain and may be avoided by technicalities in the law." Such decisions exemplified the law-and-order controversies that Richard Nixon campaigned on in 1968; after just months in office, President Nixon signed the Court Reform Act, which stripped the D.C. Circuit of its 150-year-old jurisdiction over criminal law in the District. By then, Nixon had already appointed Judge Burger to be chief justice of the United States.

Having lost its jurisdiction over local matters, the D.C. Circuit now became, above all else, a regulatory court. And that, too, promptly became a matter of persistent political controversy. Here, Judges Bazelon and Wright were again prime movers, as the court pressed strongly against regulatory agencies that the judges saw as being too lenient in their regulatory efforts. This era is perhaps best remembered for a pair of cases later known as *Vermont Yankee Nuclear Power Corporation v. Natural Resources Defense Council* (1978). Chief Judge Bazelon's opinions for the court substantially increased the procedural burdens on the Nuclear Regulatory Commission's licensing of the Vermont nuclear power plant. But the Supreme Court delivered a swift and unanimous rebuke, especially to Bazelon's conclusion that the NRC needed to further prolong the years-long review process:

The D.C. Circuit does not 'need' President Obama to appoint more judges. He wants to appoint more judges. As a matter of presidential prerogative, that is a perfectly fine reason—but it is no reason for the Senate to accelerate its own review of nominees.

To say that the Court of Appeals' final reason for remanding is insubstantial at best is a gross understatement. . . . The reports filed and reviewed literally fill books. The proceedings took years, and the actual hearings themselves over two weeks. To then nullify that effort seven years later because one report refers to other problems, which problems admittedly have been discussed at length in other reports available to the public, borders on the Kafkaesque.

The D.C. Circuit had thus accomplished the rare feat of aligning the conservative Justice William Rehnquist (who wrote for the Court) with two liberals, Justices Thurgood Marshall and William Brennan.

And in the same way that the D.C. Circuit became a major focus of the newly elected President Nixon in 1969, so it became a major focus of the newly elected President Reagan in 1981. Weeks before the inauguration, the *New York Times's* Stuart Taylor reported that "the D.C. Circuit's reputation for liberal activism has grown out of countless decisions over the years that have been applauded by advocates of vigorous enforcement of government regulation," so much so that liberal activists had come to see the D.C. Circuit as their "home court advantage"; "given the court's record, it seems only a matter of time before it clashes with the Reagan Administration."

It certainly did clash—not just with the administration, but with the Supreme Court, which took up cases from the D.C. Circuit three times faster than from other circuits, and reversed the D.C. Circuit four times faster than the other courts, according to a 1984 study in the *New York Law Review*.

"We were, if you will, a trustee for the ghosts of Congresses past," Judge Patricia Wald, a Carter appointee, later reflected. In 1982, after the court had ruled against the administration in several cases, a public interest lawyer would tell the *Times's* Taylor that the D.C. Circuit had become the federal government's "last bastion of liberalism," and he hoped that it would stay that way.

It didn't. In 1986, the same public interest lawyer would tell another *Times* reporter, "Mr. Reagan has taken the most liberal court in America and turned it into the most conservative. . . . If you were on their side, you'd be cheering. For us, it's tears."

By then, Reagan had appointed five judges to the D.C. Circuit, including future Supreme Court justice Antonin Scalia and Supreme Court nominee Robert Bork; he would eventually appoint two more, to be joined by

President George H.W. Bush's three appointees (including future justice Clarence Thomas).

The D.C. Circuit's transition away from the Bazon Era spurred liberals to press the Clinton administration to respond aggressively with prominent progressives. In 1995, when Chief Judge Abner Mikva, a Carter appointee, left the bench to become President Clinton's White House Counsel, the *New Republic's* Jeffrey Rosen criticized the White House for considering a Health and Human Services official for the vacancy instead of other "promising legal scholars." (The administration considered nominating then-U.S. attorney Eric Holder for the job, according to the *Washington Post*, precisely because it saw him as "a candidate who is scandal-free and more acceptable to Senate Republicans" than HHS's Peter Edelman. "They say he probably would sail through the confirmation process, because his tough-on-crime approach would resonate with Republicans.")

Senate Republicans, well aware of the D.C. Circuit's role in government, scrutinized President Clinton's nominations. The Senate confirmed three of his nominees (two by voice votes, the third by a vote of 76-23), but the Senate took no vote on a fourth nominee, and the Senate Judiciary Committee declined altogether to proceed on a fifth nomination—that of future solicitor general and Supreme Court justice Elena Kagan.

In the subsequent Bush administration, Senate Democrats took even stronger action against D.C. Circuit nominees. They successfully filibustered the nomination of Miguel Estrada, and they delayed the nominations of Janice Rogers Brown and Brett Kavanaugh for several years before the Senate ultimately confirmed them by narrow margins. The Senate did confirm John Roberts, who later was appointed chief justice (and who had previously been nominated to the D.C. Circuit by the first President Bush but had failed to get a Senate vote), and Judge Thomas Griffith, but it declined to act on a seventh nominee. (Senator Obama voted against confirming Brown and Kavanaugh but for confirming Griffith.) Furthermore, the Bush administration's nominations occurred against the backdrop of still greater expansion of the D.C. Circuit's day-to-day role in national policy, as the court became the venue for all manner of Guantánamo detainee appeals.

Having played an influential (and occasionally controversial) role in national politics for nearly two centuries, the D.C. Circuit might have been expected to be an early focus of the Obama administration—all the more so in light of President Obama's own 2005 speech on the D.C. Circuit's "special" role in

regulatory policy. But in fact, his first term included no substantial effort to reshape the court.

Indeed, the first word of a possible nomination was particularly inauspicious: In 2010, *Newsweek's* Jonathan Alter reported that President Obama had offered a seat on the D.C. Circuit to White House counsel Gregory Craig, simply as a means to remove him from the West Wing. (If such an offer actually occurred, Craig deserves great credit for declining.)

Later that year, the president finally made two nominations for the court—former New York solicitor general Caitlin Halligan and respected Supreme Court litigator Sri Srinivasan—but he made no substantial effort to secure their confirmations before the 2012 election. After his second inauguration, the Senate unanimously confirmed Srinivasan; the White House withdrew Halligan's nomination, at her own request.

Just two weeks after Judge Srinivasan's confirmation, the White House took a much bolder step, simultaneously announcing three more nominees—Supreme Court litigator Patricia Millett, district court judge Robert Wilkins, and law professor Nina Pillard. The president's supporters welcomed the nominations eagerly: Within hours of the president's Rose Garden announcement of the nominations, the *New York Times* editorial board demanded that if the Senate failed to "provide its advice and consent on them soon," then Senate majority leader Harry Reid should use the so-called nuclear option to change Senate rules, preventing filibusters of judicial nominations.

The left's fierce urgency owes largely, if not entirely, to a handful of judicial decisions that attracted widespread criticism among activists. First and foremost, in July 2011, the D.C. Circuit vacated the Securities and Exchange Commission's "proxy access rule," a regulation requiring corporations to provide information to shareholders regarding shareholder-nominated corporate directors. The court held that the SEC had failed to respond adequately to public comments on the rule's costs and benefits, as required by an SEC statute. That decision, *Business Roundtable v. SEC*, spurred the *New York Times's* Floyd Norris to bluntly declare that the D.C. Circuit was "controlled by judicial activists who seem quite willing to negate, on technical grounds, any regulations they do not like." Just days later, the *Times* called the court Wall Street's "backup on the bench."

In addition to *Business Roundtable*, a few other decisions attracted political criticism: *Noel Canning v. NLRB*, a decision holding unconstitutional President Obama's unilateral assertion that he could appoint officials without Senate confirmation based on his unilateral decision that the Senate had been in "recess"; *EPA v. EME*

Homer City Generation, in which the EPA exceeded its statutory authority, and failed to conduct required public processes, in regulating interstate pollutant emissions; and *R.Ĵ. Reynolds v. FDA*, holding that the FDA violated the First Amendment by requiring cigarette companies to place on packaging graphic depictions of the effects of smoking. The *Washington Post*'s Steven Pearlstein concluded that the D.C. Circuit's "new breed of activist judges are waging a determined and largely successful war on federal regulatory agencies"—a "judicial jihad," according to the headline.

The partisan criticism of these decisions is vastly exaggerated. In *Business Roundtable*, for example, the court merely applied longstanding administrative-law standards governing all agencies' obligations to respond meaningfully to public comments and to substantially administer statutory standards governing an agency's regulatory initiatives, such as the SEC's requirement to analyze regulations' costs and benefits. By no plausible stretch of the imagination did *Business Roundtable*'s judges impose strict new cost-benefit requirements, "to negate," as the *Times*'s Norris put it, "any regulations they do not like." Indeed, in subsequent cases the D.C. Circuit has repeatedly affirmed agency regulations against similar cost-benefit challenges, finding the cases to be "plainly distinguishable" from, or "in no way comparable to," *Business Roundtable*, because the agencies did carry out their straightforward obligations under the relevant statutes. One of those unanimous decisions included a majority of judges appointed by Republican presidents; the other decision was written by the very same judge who wrote *Business Roundtable*. Whether one agrees or disagrees with the D.C. Circuit's latter decisions, they disprove the preposterous notion that the D.C. Circuit's judges are antiregulatory "judicial jihadists."

Similarly, those who seize on the court's rejection of a single EPA rule, in *EME Homer City*, as evidence that the D.C. Circuit "has morphed into a hotbed of activist judges" (as a blogger for the liberal American Constitution Society put it) lack any sense of perspective. The same D.C. Circuit has affirmed the vast majority of the Obama administration's greenhouse gas regulations, a regulatory program that far exceeds the cross-state air pollution rule at issue in *EME Homer City* in terms of cost and scope. Again, whether one agrees or disagrees with the decisions, they offer no plausible basis on which to suggest that the D.C. Circuit is reflexively, ideologically antiregulatory.

The critics' attacks on these regulatory decisions rarely

grapple with the substance of the cases. This is not particularly surprising: The decisions involved complicated technical subject matter and administrative-law legal standards that lay audiences would probably find mundane—the types of issues that Judge Bork had in mind when he told reporters, "You remember those last lines in *The Heart of Darkness*: 'The horror, the horror'? I kid friends that my last words will be, 'The trivia, the trivia.'"

Nevertheless, the court's decisions in those cases were well justified by the standards that the court applies under the Administrative Procedure Act of 1946 (APA, the primary statute governing the court's review of agency actions) and the deep body of precedents developed under that act. The critics' rhetoric strongly suggests that they are disappointed not by the technical merits of the cases, but rather

by the mere fact that the court's judges decided to rule against the administration's actions in implementing the Clean Air Act or the SEC's statutes. This aversion to meaningful judicial review of agency action per se calls to mind Professor Jeremy Rabkin's own response to Judge Patricia Wald: "What about the will of the Congress that enacted the APA? The ghosts of 1946, what about them? Do they not deserve to have their will upheld?"

Ironically, no judge on the D.C. Circuit has rebuked this type of ideological criticism more sternly than Judge David Tatel, one of the nation's most prominent Democratic-appointed judges. In 2009, Judge Tatel addressed an Environmental Law Institute symposium on "An Agenda for the New EPA." In remarks palpably at odds with the event's otherwise triumphant tone, he offered that "from my D.C. Circuit vantage, I sometimes wonder whether administrative agencies, as well as the organizations and citizens who appear before them, really care about the fundamentals in the way that courts do." Citing a case in which he joined the court in striking down an EPA water regulation, he observed:

Defending its interpretation [of the Clean Water Act], EPA argued that it could better regulate certain pollutants on a seasonal or annual basis than through daily maximum loads. For all I know, EPA was right. But, as we pointed out, Congress had not allowed it to make that decision. . . . EPA's decision to ignore the statute's plain words rather than returning to Congress for authority to pursue its preferred policy still baffles me.

"This is not just about satisfying the D.C. Circuit," he concluded. "It's about being responsible public

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servants.” While “the ‘New EPA’ that you are discussing today may have excellent programs it is eager to execute, . . . those programs will be legitimate—and will be sustained in court—only if their implementation conforms to the rule of law.”

And Judge Tatel is not the only Democratic-appointed judge on the D.C. Circuit who has stood athwart the very sort of politicized criticism that the liberal critics now launch against the court. Judge Harry Edwards, a Carter appointee, has repeatedly spoken and written against those who attempt to paint the court’s work as political and unprincipled. In a 1998 paper titled “Collegiality and Decision Making on the D.C. Circuit,” Judge Edwards noted that “the public today is constantly treated to rhetoric and innuendo about the purported politicization of the judiciary.” But while critics “might have one believe that judging is entirely political, I maintain, and always have maintained, that appellate judging is fundamentally a principled practice.” Far from being a battleground between warring partisan factions, “the D.C. Circuit is today blessed by ‘the collegiality that is indispensable to judicial decisionmaking.’ That is, we deliberate with one another, and are affected by that deliberation in valuable ways.” He repeated these themes in a speech in 2006.

If any party to the debate is blinded by ideology, it is Norris, Pearlstein, People for the American Way, or other critics who pay far too little attention to the substance of the court’s opinions, and who conveniently ignore the myriad decisions in which the court—including Republican-appointed judges who participated in *Business Roundtable* and the other “radical” cases—affirmed controversial regulatory and constitutional decisions of the Obama administration. These cases include *Seven-Sky v. Holder*, in which Judges Laurence Silberman and Brett Kavanaugh (both popular liberal targets) declined to strike down the Affordable Care Act, and *Sherley v. Sebelius*, in which three Republican-appointed judges (including another popular target, Judge Janice Rogers Brown) affirmed the administration’s policy on embryonic stem cell research.

In announcing his new nominees, President Obama did not expressly join the chorus of voices denouncing the D.C. Circuit’s work on partisan or ideological grounds. Rather, he justified the nominations strictly in terms of the court’s workload. “There are 11 seats on the D.C. Circuit. When I first took office, there were two vacancies. Since then, two more judges have retired. That means there are four vacancies that need to be filled. . . . If we want to ensure a fair and functioning judiciary, our courts cannot be short-staffed.”

His explanation was factually wrong. No judge has “retired” from the court since Judge James Buckley in 2000. Since then, no judge (other than John Roberts, who took a promotion) has left the D.C. Circuit at all. Instead, six judges have taken “senior status.” All of them—including Judges Douglas Ginsburg and David Sentelle, the two who took senior status since 2009—continue to hear cases. Indeed, as the D.C. Circuit’s chief judge, Merrick Garland (a Clinton appointee), explained recently to the Senate Judiciary Committee in a letter summarized by the *Wall Street Journal*, “of the six senior judges who hear oral arguments, one carries a full case load, one carries 75 percent of an active case load, two carry 50 percent and two 25 percent.” Furthermore, according to Carrie Severino in *National Review Online*, several of Judge Garland’s colleagues anonymously informed the committee that “the Court does not need additional judges” to handle its workload. “If any more judges were added now, there wouldn’t be enough work to go around.”

The judges’ anecdotes are confirmed by the federal judiciary system’s official data. Since 2001, the court has added four judges (to “replace” four who took senior status). In that same period of time, the court’s workload has remained virtually constant: 1,319 pending cases in March 2001, 1,315 in September 2012. The nation’s courts face many genuine personnel shortages; the federal judiciary formally designates some courts as “judicial emergencies,” a list published on the judiciary website (and linked by the Justice Department’s own website). The D.C. Circuit is nowhere among them; with 17 judges now hearing cases, it has by far the lightest “per capita” appellate caseload in the country.

The D.C. Circuit does not “need” President Obama to appoint more judges. President Obama wants to appoint more judges. As a matter of presidential prerogative, that is a perfectly fine reason to nominate judges—but it is no reason for the Senate to accelerate its own review or confirmation of nominees.

As it happens, the reason that President Obama gave for nominating three new judges is precisely the reason the Senate should act with great deliberation and thoughtfulness in reviewing the nominations. “The judges on the D.C. Circuit routinely have the final say on a broad range of cases involving everything from national security to environmental policy, from questions of campaign finance to workers’ rights. In other words, the court’s decisions impact almost every aspect of our lives.”

They surely do, just as they have since the New Deal, if not the very beginning of the court. The D.C. Circuit has sparked controversy over the years, precisely because of the singular role it plays in our constitutional government. ♦

The Scandal Society

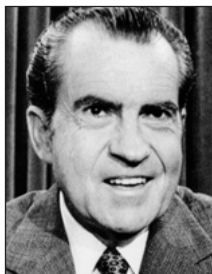
From Nixon and Clinton to Obama

BY NOEMIE EMERY

Remember Black Jesus? The Lightworker? The One? The next Lincoln, the Democrats' Reagan, the neo-FDR? He is now standing next to Tricky Dick and Slick Willie, caught in a quartet of burgeoning scandals, charged with rewriting the facts when they became inconvenient, harassing the press, and using the Internal Revenue Service to get at his enemies, subverting their rights of assembly, and speech. "Richard Milhous Obama," writes Carl M. Cannon, and there are also Clintonian levels of cover-ups, literally in the case of Hillary Clinton's role in the Benghazi debacle. In *The Presidents' Club*, Nancy Gibbs and Michael Duffy tell us of the bonds that unite former presidents, but within this club is a still smaller subset, the Scandal Society, those shadowed by crimes and abuses of power, who were caught up in snares of their own making and traps that they set for themselves. How do their troubles compare with each other's, and with those that the current incumbent is facing? Let us look at them and see.

Born in obscurity, to far-from-rich parents, all three used their wits to rise to fame early. But while the Democrats adapted quite quickly to ruling-class manners, Nixon saw himself as a lifelong outsider, despised by the press, the establishment, and the people who mattered, forever imperiled and circled by foes. Where others evolved as they rose, he took the wrong side of the tracks along with him, never believing he really had made it, and the higher he rose in the rankings of power, the more embattled he thought he became. Never a charmer, he built his career on the corpses of three liberal icons—Rep. Jerry Voorhis, whom he defeated when he won his House seat in 1946; Rep. Helen Gahagan Douglas, the film star he trounced in a Senate race four years later; and Alger Hiss, the well-born New Dealer he exposed as a traitor, which opened an early-day culture war, and made him despised by the left.

Noemie Emery is a contributing editor to THE WEEKLY STANDARD and a columnist for the Washington Examiner.



The Tricky



The Slick

When he was just 39, he was picked by Dwight Eisenhower to balance his ticket, but the hero of D-Day looked down on the eager, unsure, young politician, letting him twist in the wind in 1952 in his fundraising scandal, trying to force him off the ticket four years later, using him as a hatchet man, and, perhaps worst of all to the insecure Nixon, never inviting him into his house. When Nixon ran on his own, Ike refused to endorse him before the convention; said "If you give me a week, I might think of something" when asked to name what Nixon had done to help him in office; and in his prime-time speech at his last convention, recalled the achievements of his eight years in office without mentioning his vice president's name.

It was Nixon's fate to take on John Kennedy, privileged, rich, and in Nixon's words, "glamorous," from the rarefied world that Nixon aspired to and never quite managed to crack. Ironically, Kennedy, who liked Voorhis, Douglas, and Hiss no more than did Nixon, sympathized with him and defended him until the day he started to run against him for president, telling one critic, "You have no idea what he's been through" (referring to the beating Nixon took from the press when he defeated Helen Douglas), and saying shortly before announcing for president that if he were not nominated, he would be voting for Nixon himself. This did not stop the press from worshipping Kennedy, or Theodore White, in the first of his political sagas, from describing the race as a fairy-tale contest that pitted a graceful and witty modern-day Arthur (which would be Kennedy) against an awkward and much darker knight.

His loss was hard, but the coup de grâce seemed to come two years later, when, attempting a comeback in his home state, California, he was beaten in the governor's race by Edmund (Pat) Brown, whom he considered run-of-the-mill and a hack politician, well below his own level of play. No one who heard his farewell press conference—"You don't have Nixon to kick around any more"—would ever forget it or think he had a political future. But having nowhere to go except up, he began to remake himself, biding his time, playing the healer. Pacing himself, appearing largely in controlled situations, he had been able to hold things together.

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But this would not be possible once he held office, and then it would all fall apart.

Watergate as we know it actually began in the last months of the 1968 presidential election, when Nixon was in a very tight race with Hubert Humphrey, Lyndon Johnson's vice president, and Johnson, who was eager to get talks started to end the Vietnamese conflict before his term ended, was in a race against time. Nixon was told of the talks, and vowed to support them. But he also feared that Johnson would use such an announcement as an "October surprise"—a game-changing stroke at the very last moment—and had grown more suspicious with time. Johnson "is becoming almost pathologically eager for an excuse to order a bombing halt and will accept almost any arrangement," Nixon's aide Bryce Harlow had warned him. Careful plans are being made "to help [Humphrey] exploit whatever happens. . . . [They] still think they can pull the election out with this ploy."

A third loss in eight years would have been too much to tolerate, and when Johnson told Nixon he had been able to coax South Vietnam to the table—with peace talks to begin three days before the election—Nixon decided to act. Nixon's friend John Mitchell called his friend Anna Chennault (the general's widow and head of Republican Women for Nixon), who then placed a call to her friend, the brother of South Vietnam's prime minister, telling him he would get a much better deal later, if and when Nixon won. The peace talks collapsed, Nixon won (narrowly), and Johnson raged but was unable to do much about it, as he could not expose the Nixon maneuvers without revealing at the same time how he had learned of them, which was by tapping—illegally—Mrs. Chennault's phone. Johnson called Nixon's act "treason," and Senate minority leader Everett Dirksen agreed with him. Nixon, however, had a different opinion: "He had saved the country from a bad peace deal cut by a desperate president," as Gibbs and Duffy inform us. "The country needed him. He would be a great president. He had earned this, after so many years of patient planning and serial humiliations. He would show them all."

As it happened, the main thing he would show them was how unhinged he could be when he thought he was threatened, which seemed to be most of the time. He had barely been sworn into office when he began to fear Johnson might have proof of his actions, and might be planning to use them against him. He told his aide Bob Haldeman to investigate Johnson's decision to stop bombing North Vietnam, which had been announced with much fanfare less than a week before the election. Haldeman told him that Johnson's aide at the time, Leslie Gelb, had gone to the Brookings Institution and taken his documents with him.

"I want that Goddamn Gelb material, and I don't care how you get it," Nixon insisted. When the Pentagon Papers were leaked in 1971, he brought up the Brookings plan again: "I want it implemented on a thievery basis," he told Haldeman. "Goddamn it, get in and get those files. Blow the safe and get it."

Nixon's aide Charles Colson talked of a plot to firebomb Brookings and sneak operatives in with the firemen, to go through and plunder the safes. It didn't happen, but this was the lens through which Nixon saw everything. Dangers appeared to abound. Because he feared leaks, he created the Plumbers, which led to the break-in at the office of Daniel Ellsberg's psychiatrist. Because he feared he might lose the 1972 campaign, he authorized rogue units to act under CREEP (the Committee to Re-Elect the President), which led to the antics of Donald Segretti, the many and various fundraising scandals, and, finally, the break-in at the Democratic National Committee in the Watergate complex, which gave all the scandals their name. Whatever Nixon knew of the break-in, he knew of the cover-up on June 23, 1972, when he ordered the CIA to keep the FBI out of the picture, and committed the crime of obstruction of justice. Nixon won by a landslide, but his complex web of schemes had already begun to unravel. It was two years and two months to the end.

Years later, historians Paul Johnson and Andrew Roberts would depict Nixon as an innocent victim of media bias. Their case would be stronger if other presidents had ordered things "on a thievery basis" out of the White House and all of the time. Nixon apparently thought that they did: "They're using any means," he explained to Haldeman, saying the Democrats had done worse things to him for years but had "never got caught." "We're up against an enemy, a conspiracy," he said, anticipating the "vast right-wing conspiracy" posited 24 years later by Hillary Clinton, who at that point was helping to draw up impeachment articles against Nixon, and years later would stand stoically next to her president husband when he was being impeached himself. History would repeat itself, but as farce, not as drama, and Bill Clinton's sin wouldn't be that he was paranoid. It would be that he never grew up.



The Gatsby

"You must always remember," Elihu Root once said of his friend Theodore Roosevelt, "the president is about six." The thing to remember about William J. Clinton is that he in some ways was 16 forever, and that he was president during a strange tranche of history that began in 1991, when the Clarence Thomas-Anita Hill confrontation stunned and baffled the nation,

crested with his own impeachment, and ended with a crash and a shudder on September 11, 2001.

When George Bush the elder nominated a black conservative to fill a Supreme Court vacancy, Democrats in the Senate became frantic to stop him, and when nothing else worked, they happened upon Hill, a onetime assistant to Thomas, who told a tale of harassment—X-rated jokes and talk of blue movies—that she said had gone on for years. She claimed he was sick, he claimed she was lying. For weeks a stupefied national audience listened to people who had known one or both a decade before give contradictory testimony of who was the scorned and/or injured party, and of who had stalked whom. In the end, three long-lasting things would happen: Thomas would squeak through; “sexual harassment” would emerge as the feminists’ favorite issue (and give rise to a great many lawsuits and trials); and conservatives, convinced that one of their own had been badly maligned by duplicitous enemies, would burn for revenge.

Revenge would come sooner, and be sweeter, than they ever dared hope. Democrats declared 1992 the Year of the Woman, embraced both Hill and her grievance, making the war on harassment their theme. Hillary Clinton praised Hill for her courage, and urged other women who suffered as she had to speak out. She might not have known that one had already: Paula Jones, an Arkansas state employee in the late 1980s, who claimed that Governor Clinton once summoned her to his hotel room in Little Rock, and made her an offer she chose to refuse. This encounter gave rise to a lawsuit, which the Supreme Court allowed to proceed, and the discovery phase opened shortly after Clinton started his second term. Thanks to this lawsuit, the Jones legal team was free to ask Clinton about rumors that he had become too close to a college-age intern during the government shutdown of 1995. As the perpetual 16-year-old that he was, Clinton *had* gotten too close to the intern. Now, faced with the consequences, he did what 16-year-olds often do on these occasions: He lied.

Clinton’s defense, once the story exploded, was two-fold. Part one, before the blue dress and his eventual confession, consisted of trying to deny that it happened, using the “nuts and sluts” tactics perfected in suppressing “bimbo eruptions” back in Arkansas. Part two, after the confession, was to say that (a) it was private, (b) it was his business, (c) it didn’t impinge on his conduct as president, and (d) that many men bigger and better than he was had done the same things, if not worse. The problem with (d) was that none of the others had put himself forth as a feminist stalwart, none of the others was sued for harassment, and none of the others had perjured himself. And under the sexual harassment rules as invented post-Anita Hill by his friends in the feminist movement, office affairs between powerful men and female underlings were coercive by definition. Under these

rules, feminists had ended the careers of numerous men, mostly conservatives. Republicans reveled in turning the feminists’ standards against their hero in the White House. If Clinton’s conduct would cost him his job if he were a corporate head or a general, why shouldn’t it cost him his job as the president?

In explaining why not, the left was inventive, saying that lies about sex were the mark of a gentleman (from Kennedy devotee Arthur M. Schlesinger Jr.) and (from feminist leader Gloria Steinem) that men were entitled to “one free grope,” at least if they leaned to the left. With talk such as this passing as argument, it was not a surprise that Impeachment 2.0 was deemed to lack the gravitas of the Nixon drama, and was played for lesser stakes: Clinton wanted to cover his tracks, not subvert the government; Republicans wanted less to evict him than to embarrass liberals; and the public remained entertained and/or indifferent, unable to buy the conservative claims that this was a full-blown state crisis, or the liberals’ spin that nothing of consequence had happened. Clinton escaped on a mostly party-line vote, the public yawned, and a consensus emerged that impeachment followed by acquittal was pretty much what he deserved.

Unlike Nixon, Barack Obama was not a paranoid (on the contrary, he was rather too self-confident), and unlike Bill Clinton, he was not a teen. He was, rather, Jay Gatsby, a stranger in town with a critical blind spot, and an unusual past. In 2008, Charles Krauthammer called him a “dazzling mysterious Gatsby,” and in 2013, the columnist Suzanne Fields agreed, drawing still more parallels between the 44th president and F. Scott Fitzgerald’s figure of myth. Like Gatsby, Obama had a colorful past, which led to multiple rumors; like Gatsby, he created a dream and became it. Like Gatsby, he had a quest which gave his life meaning—for Gatsby, it was to regain the lost love of Daisy Buchanan; for Obama, it was to impose his agenda. And to make their dreams come true, they were willing to use and be used by unsavory people. Gatsby’s dreams were wholly romantic, but the means to pursue them came from his connection to Meyer Wolfsheim, a gambler (in the novel, the man who fixed the 1919 World Series).

Obama had his own connections to people whose aims and methods seemed antithetical to those he professed to believe. A biracial man who posed as a healer, he attended the church of the Reverend Jeremiah Wright, who preached racial antipathy; a proponent of peace, he befriended Bernardine Dohrn and Bill Ayers, who had trafficked in violence; a high-minded reformer, he became a cog in Chicago’s notorious Democratic machine, known for corruption and strong-arm behavior. Obama never talked like Wright, acted like Ayers, or cashed in like other machine politicians, but

he didn't disown or object to them either, and what he got from them all had no price: Wright gave the half-white Hawaiian who had gone to Ivy League schools the street cred he needed; Ayers and Dohrn gave him entrée to Hyde Park's academics and, through Ayers's father, to the Chicago establishment; and the Chicago machine was a rich source of goodies, most of which seemed to happen around him, and came through no acts of his own. There was the good deal on a big house in a very good neighborhood, by way of a friend who has since gone to prison; in his 2004 Senate campaign, two opponents loomed as threats until documents surfaced about their divorces, and he waltzed to a win; and some of the things in his presidential campaigns seemed out of the Nixon 1972 dirty-tricks playbook, but unlike Nixon, he did not direct or oversee them. Under the eyes of his aides, his campaigns disabled the address verification system for online donations by credit card, allowing money to come from foreigners or from fictional donors, including, as Michael Barone tells us, contributions from "John Galt, 1957 Ayn Rand Lane, Galts Gulch CO 99999" and \$174,000 from a woman in Missouri who told reporters she had given nothing and had never been billed."

The campaign also called for criminal investigations of conservative groups that ran ads criticizing Obama's ties to Bill Ayers; tried to force radio hosts to cancel interviews with conservative journalists (and flooded stations with phone calls and emails) and got attorneys in the state of Missouri to threaten to bring criminal charges against people who said things concerning Obama that his campaign thought of as "false." "We have a sick political culture, and that's the environment Barack Obama came from," John Fund quotes Jay Stewart, the executive director of the Chicago Better Government Association. "All of the complaints—from the lack of transparency to HHS secretary Kathleen Sebelius's shaking down corporations to promote Obamacare—stem from the culture of the Daley machine," former Chicago election commissioner Chris Robling told Fund.

All this tracks the Nixon campaign circa 1972, with CREEP, the Plumbers, and Donald Segretti—the difference being that the Nixon campaign was run and created by Nixon, while Obama joined a machine that had been up and running before him, and seems to have played no large part in its maneuvers. Where Nixon taped himself plotting a break-in, Obama's approach was more inferential: He did not direct the IRS employees to make life difficult for conservative activists, he merely launched a full-bore assault against "shadowy groups with harmless-sounding names" trying to subvert the electoral process. Almost simultaneously, the first "Be On the Lookout" alerts went out in IRS offices. The result was the same, but the method was different, as was the measure of legal exposure.

Unlike Gatsby, Suzanne Fields writes, "the great Obama

isn't a giver of parties, where he remains aloof and hardly known, but he is the aloof leader of his political party. That's what leading from behind is all about. Others do the dancing and singing. It's difficult to imagine that the president called in the bureaucrats at the Internal Revenue Service and gave them the order of the day, but those worker bees who targeted conservative political organizations for abuse were sure he would approve their work." And why wouldn't he? His views were the only ones seen in his world as legitimate. And after all, he was The One.

When Gatsby is dead, narrator Nick Carraway calls on Wolfsheim, who tells him how he met Gatsby, a starving young veteran with a chest full of medals, at the end of the war. "I raised him up out of nothing," the gambler says. "I saw right away he was a fine appearing gentlemanly young man, and when he told me he was an Oggxford [Oxford] graduate I knew I could use him good." He did use him good, and similar feelings must have animated folks in Chicago when the young Ivy League grad wandered in. So what we have now is a Nixon regime without Nixon, an apparatus that leans toward Nixon-like tactics, without the force of that vast humming core of resentment that drove the machine from within. "This is not Watergate," Bob Woodward says, "but there are some people in the administration who have acted as if they want to be Nixonian."

When the Constitution was written, the Framers were haunted by the threat of a Caesar, someone elected in the republican system who uses his office to seize absolute power, and turn himself into a king. But such threats have failed to materialize, and we have found ourselves dealing with crises arising from far more unlikely and personal matters: a troubled soul, trying preemptively to disarm his tormentors; a middle-aged adolescent unable to resist temptation or deal with the consequence of it; and a young man on the rise who makes deals with the devil and finds only later that these things have their costs.

These are perennial themes, but ones more often explored in plays and in novels, and ones with which political science is not wholly able to cope. Books like *The Presidents' Club* bridge the gray space between them, detailing the bonds between Hoover and Truman, between Ford and Carter, and between Bill Clinton and both Bushes, to whom he acts as renegade brother and son. Strangest of all are those between Clinton and Nixon, two opposite types who were stalked by impeachment, but became so close in Clinton's first term in office that when Nixon died, "Clinton said it felt like the loss of his mother." Nixon died before Clinton hit his own spot of trouble, so nobody knows what Nixon would have told him, what Nixon would have said to Obama, or what Clinton now says to Obama, if he says anything. Or if Obama would listen. Or if Obama will find himself one of their number, in any way, or at any time soon. ♦



Keith Joseph, Airey Neave, Margaret Thatcher, London, 1976

Iron Lady Rising

The historic ascent of Margaret Thatcher. BY JOHN O'SULLIVAN

In October 1968, Margaret Thatcher, then a rising young Tory on the Opposition front bench, appeared on the popular radio discussion program “Any Questions?” Among the other panelists was Malcolm Muggeridge, later a celebrated Christian apologist, then an ornament of both serious and satirical journalism. One questioner asked how the panelists felt about being imitated. This was

John O'Sullivan, a former special adviser to Margaret Thatcher, is the author, most recently, of The President, the Pope, and the Prime Minister: Three Who Changed the World.

Margaret Thatcher

From Grantham to the Falklands
by Charles Moore
Knopf, 896 pp., \$35

clearly aimed at Muggeridge, who had a highly mannered style of speaking and writing, rather than at Thatcher, whom no one had bothered to imitate at this early stage of her career. Muggeridge responded with one of his most familiar tropes: that such things scarcely mattered since all people were “intrinsicly ridiculous.” Let biographer Charles Moore take up the story:

Thatcher: This is a ridiculous answer.

Muggeridge: Why?

Thatcher: You don't regard yourself as an intrinsicly ridiculous person.

Muggeridge: I do. Why are you contradicting me?

Thatcher: Because over dinner you took yourself extremely seriously.

Muggeridge: You don't imagine you're a serious person.

Thatcher: Well, I do. You may not.

In this small episode, Thatcher is doing more than merely contesting Muggeridge's early essay in postmodernism. She is taking on the spirit of

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satirical frivolity that so dominated Britain in the 1960s that one critic feared the country “would sink giggling into the sea.” As well as defending seriousness, Thatcher takes the riskier step of identifying herself with it. She might have come across sounding pompous or trite; instead she seems straightforward and commonsensical. And, deploying the sharp wit that she supposedly lacked, she clearly wins the exchange.

This seriousness is the central truth of Margaret Thatcher and the leitmotif of Charles Moore’s superb biography.

Ferdinand Mount makes a strong case that “will” was her main quality in his scintillating review in the *Times Literary Supplement*. Will, determination, fortitude—these were certainly powerful motors of her life and personality. But they were always controlled by realism, practicality, and necessity. And this combination was vital to her success, because her political views were shaped by a strong patriotism and such traditional conservative virtues as self-reliance—virtues that leading Tories in her youth were already discarding as unfashionable and repressive. Therefore, she not only had to fight, she had also to maneuver to advance herself; and she had to work unremittingly to master briefs that she would often be presenting to a skeptical audience. The net result was a deeply serious woman.

Moore’s chapters on the young Margaret Hilda Roberts confirm that this seriousness flowered early—she was hard-working and diligent at home and at school—but they also contain much new information, showing her in new and unexpected lights. Moore, too, is diligent and conscientious, but, at least as important here, he is also very lucky.

Thatcher’s older sister Muriel found and gave Moore a long-forgotten cache of 200 letters that the young Margaret had sent to her from Oxford and London describing her early adventures in scholarship, politics, and courtship. These add immeasurably to our knowledge of a woman who even then was discreet, if not secretive, about her private life. She was quite a girly-girl, very clothes-conscious, and writes repeatedly about some nice underwear she

had just bought. As a young woman of modest means competing in Oxford’s social life, she was always looking for a bargain when buying dresses and hats. She loved dancing—that continued into her premiership—and went out often to balls and formal dinners. She enjoyed going to “the pictures” and thought Terence Rattigan’s wartime comedy *Quiet Wedding* was “a scream.” And though she had suitors, she was only moderately lucky in love.

Three men play romantic roles in her life before Denis Thatcher: a young undergraduate who, to her distress, let their first-love relationship “fizzle out” when he was posted to the Army; a Scottish farmer whom she liked but felt to be unsuitable for the life she intended (and whom she maneuvered into a happy marriage with her sister); and a distinguished doctor, Robert Henderson, the inventor of the “iron lung,” who was just over twice her age. Thatcher was seriously in love with Henderson, but he seems to have broken off the relationship, probably because of the difference in their ages. That happened about six months before she announced her engagement to Denis Thatcher, whom she had also been seeing for the previous two years.

The Thatchers’ marriage was a happy one, and Denis’s death more than 50 years later hit Margaret Thatcher very hard indeed. But there is no doubt that, at its start, it was also a marriage of mutual comfort and practical advantage. As Moore points out, *both* were nursing romantic wounds. Denis appreciated her character and intelligence; Margaret saw him as a decent man who could provide her with the economic means to fuel her political ambitions; they were fond of each other. Things worked out well, but she paid a price in emotional self-control.

She was a passionate woman in every respect. She loved poetry and enjoyed reciting Alfred Noyes’s highly romantic poem, “The Highwayman.” Her first boyfriend confided that she delighted in physical intimacy. It was noticed in later years that she liked the company of conventionally good-looking, upper-class men of the Henderson

type. But the serious, practical woman triumphed over the yearning romantic girl. As Moore reports, years later she said of Henderson: “And then Denis came along. It is no good regretting what might have been.”

Whatever the cost, she paid it faithfully, found it far from exorbitant, and set about enjoying its benefits. By the time she could exploit her new prosperity to study for the tax bar while giving birth to twins, moreover, she had already been a parliamentary candidate in two general elections and was within grasp of a safe seat.

How had the shy, socially insecure undergraduate managed to get so far? The answer is twofold: Though she had been socially insecure, she was always politically self-confident, and the malechauvinist Tory party gave her the warm welcome that the progressive women dons at Somerville College, Oxford had denied her. Its principal, Janet Vaughn, later said that Thatcher “was set as steel as a Conservative. . . . We used to entertain a good deal at weekends, but she didn’t get invited. She had nothing to contribute, you see.”

By contrast, the middle-aged men who ran the Tory party from the engine room to the bridge relished the arrival of this clever and pretty young woman who, as soon as she stood up to speak, became a forcefully glamorous performer who could out-debate veteran socialists and bring audiences to their feet. Though she encountered a little antiwoman prejudice (often from other women) in her search for a winnable constituency, it was more than outweighed by the favoritism that senior male Tories displayed towards her and her advancement. She was elected to the House of Commons two days after her 34th birthday and became a junior minister two years after that.

Up to this point, Margaret Thatcher’s opinions had not mattered very much. Candidates and junior ministers can’t afford such luxuries. In 1964, however, the Tories went into opposition and embarked, by degrees, on a fierce ideological debate that would last almost 20 years. As this happened, it slowly dawned on the Tory leadership that Thatcher presented a unique problem:

Here was a woman MP of first-class abilities and unfashionably conservative views; she could neither be sidelined into “statutory woman” jobs nor promoted to prominent posts reserved for safe loyalists. The Tory faithful throughout the country realized much the same thing—i.e., she’s one of us—when she delivered a major “think-speech” that she had written herself to the 1968 Tory conference. As Charles Moore rightly observes, the speech sounds, in retrospect, like a manifesto for the conviction politics of Thatcherism. Prime Minister Edward Heath and his colleagues never really solved the problem she represented. She advanced, uphill, toeing the party line when necessary, while mastering the details of the dulllest legislation and putting in the long hours needed to achieve triumphs in debate. She performed well the tasks that were given to her, even when she disagreed with them. Heath reluctantly promoted her to increasingly prominent positions until, in 1975, after two election defeats, she rode a wave of discontent among MPs and the party faithful to defeat him in the struggle for the Tory leadership.

Moore’s telling of the rise of Margaret Thatcher is full of fresh and fascinating information. Though it broadly confirms the picture of her as a serious and dedicated public figure, it also gives us insights into her life and personality that we did not have before, partly because—and I write this as one of her “ghosts”—she did not want to reveal too much of her inner life. In particular, she tended to conceal or deny her setbacks, disappointments, and wounds. (As we shall see shortly, she sometimes turned the same blind eye on her political setbacks.) She moved on, relentless, forgetful, and seemingly untroubled by second-thoughts or self-doubt. Moore’s discoveries help us to glimpse the cost, as well as the importance, of being earnest.

There are fewer complete surprises in Moore’s account of the period from 1975 to Thatcher’s 1982 victory in the Falklands war, where this volume ends. There are some important ones—her secret dealings with the IRA over the hunger strikers; the pressure Ronald

Reagan exerted on her to make fundamental concessions on the Falklands; her inner circle’s savage criticism of her management style—but Moore is usually covering ground already ploughed by earlier biographers.

What he provides here is the most complete narrative yet of a dramatic story—of Margaret Thatcher’s battle to revive Great Britain. His account rests on sound judgment, fair-mindedness, and the scrupulous use of evidence provided by his main character, her friends, colleagues, and enemies (some of whom change places in the course of the telling). The telling itself is highly readable. Moore, though an admirer of Thatcher, never shrinks from necessary (and sometimes very harsh) criticism. And though the narrative line is a simple one, it is complicated by the fact that her battle was fought on many fields and against many enemies—foreign, domestic, and mostly timorous.

To become a sure guide through this mayhem, as he remarkably succeeds in doing, Moore had to become an expert in such varied and intimidating topics as monetary economics, global strategy, labor law, industrial unrest, domestic terrorism, Tory history, postcolonial diplomacy, and much, much else. But so did Margaret Thatcher. Indeed, as opposition leader and prime minister, she had to learn *and* fight simultaneously on all these fronts.

Ever the eager scholarship girl, she set out to do so in the humblest fashion. She learned how to speak in a less shrill and “nagging” way by lowering her voice register under the supervision of a voice coach from the National Theatre. She brought in a series of economists, from Karl Brunner to Milton Friedman, to instruct her in the monetarist revolution. She consulted Robert Conquest on the Soviet Union and the nature of the threat it posed. She sat figuratively (and, on one occasion, literally) at the feet of F.A. Hayek on the topic of wider social thought. And she acquired a solid grasp of the latest academic knowledge underpinning her instinctively conservative politics.

Even so, she was outnumbered in the Tory leadership and the Tory machine. In order to succeed, she had to overwhelm her opponents by promoting younger Tories of her monetarist stripe and by widening the internal party struggle into a large national debate. So, with the help of Sir Keith Joseph, she established one think-tank and drew on the work of others; she converted intellectuals from the left; she wooed journalists, toured universities, encouraged bodies like the Tory Philosophy Group; and, in general, midwived the creation of what one irritated left-winger, Perry Anderson, called “the Great Moving Right Show.”

Thatcher became an evangelist as well as a good student. This preparation—and she believed devoutly in always preparing—paid off. It created the circumstances for the defeat of the “Wets,” and Moore’s account of her gradual outwitting of those Wets in the Tory leadership over economic policy is a masterpiece of clear and intelligent writing. This was an uncertain and ferocious battle that lasted, with setbacks, until 1981, when she finally reshuffled her cabinet in a way that entrenched her control of economic policy. As Moore points out, she and her allies won the debate because, by the time it reached its climax, “the political heavyweights were economic lightweights and vice versa.” She could reshuffle the face cards from a fresh deck. The policy began to succeed from almost the same moment.

Thatcher’s battle to revive Britain had just begun to succeed when history changed the challenge from the British economy to the South Atlantic, with Argentina’s seizure of the Falklands. Moore’s account of this is, as usual, fair and full. But it is also controversial and is a point where I part company with him. He argues that she went too far, indeed risked losing Britain’s and her own honor, in yielding to Reagan’s strong pressure to make concessions to the Argentinean junta that could have given them the Falklands by degrees.

The facts here are not at issue: Reagan, acting on the strong advice of Alexander Haig’s State Department and Jeane Kirkpatrick, the American

ambassador to the United Nations, *did* exert such pressure on the prime minister, who very reluctantly agreed to a “compromise” favoring Argentina. She suffered some anguish over this and felt almost betrayed by Reagan. And, as Moore points out, this was one of those occasions that she tended to gloss over in her later memory of the events.

But why did she agree? Those close to her at the time argue that she was convinced the junta would never accept the proposal. That is to say, in a situation with no good choices, she took a calculated risk which, as it happens, paid off when the junta did reject the deal. Moore doubts this rationale, while accepting that it might be valid, and argues that she was in a tight corner politically, gave away more than she wished or should have done, and had a bad conscience about it afterwards.

My judgment is that those close to her had it right: She took a risk from the firm conviction that the junta’s irrational intransigence would save her. But is there much difference between taking a risk from the conviction that it will pay off and taking one as the best choice available in desperate circumstances? And whichever motive was in play, why would her honor necessarily have been lost if the risk had failed and Buenos Aires had accepted the deal? As a serious woman, she had to contend with realities, and as a woman of honor, she had to secure the best outcome for the Falklanders that she could. If support in the cabinet, the House of Commons, and Washington was not forthcoming for the original British position, then she had to maneuver to get the next best thing. There would still have been plenty to play for in negotiations if Argentina had said yes. Maybe Reagan would have matched her cooperation with some of America’s own. And if Britain had, in the end, betrayed the Falklanders, despite her best efforts, Thatcher would probably have resigned. It would, after all, have meant the end of her project of national revival.

In the real world, Argentina said no, the British recovered the Falklands (with major help from Caspar Weinberger and the Pentagon), the junta fell, Argentina’s shaky democracy was

restored, the State Department’s gloomy predictions all proved false, and Margaret Thatcher went on to win two more elections and to reshape British politics. All that is for Charles Moore’s next volume. But *Margaret Thatcher: From Grantham to the Falklands* is already one of the great classic political biographies, and Moore ends this volume with the story of Thatcher’s appearance at the formal dinner celebrating the Falklands victory, along with all the senior political and military figures involved in the campaign. It was here that she famously ended the proceedings with the words: “Gentlemen, shall we join the ladies?”

This was, Moore speculates, perhaps

the happiest moment of Thatcher’s life. It was certainly a slightly British blend of great victory and good joke. But the celebration lunch on the following day—attended by the enlisted men—was perhaps more significant. As Major General Julian Thompson tells it:

Suddenly, before she could say anything, there was a standing ovation from the floor, led by the boys. The other politicians couldn’t believe what was happening. When Mrs. Thatcher had quieted everyone down, she said “It is I who should be down there, thanking you.”

She was serious in every sense. ♦



Classical Muzak

What’s a Grecian urn? The answer may surprise you.

BY A. E. STALLINGS

A collection of wacky facts, bizarre nuggets of history, anecdotes, lists, jokes, rumors, and gossip, all organized into such chapters as “Food and Drink,” “Women,” “Animals,” “Mathematics,” “Athens,” “Sparta,” “Prophecy,” and so on, *A Cabinet of Greek Curiosities* embraces the weirdness that was ancient Greece.

Too often we think of the great men (and women) of ancient Greece as statues in pure white Parian marble, forgetting that in its heyday the Parthenon was bedizened in a riot of colors loud enough to stand up to the famous Attic light. In this corrective volume, we not only catch a glimpse of Greeks as they were, we hear their voices (Aristotle was said to be a stammerer) and smell them, too (Euripides evidently suffered from halitosis).

Many of our own stories, jokes, and anecdotes seem to have Greek prototypes. St. Francis famously tamed a wolf

A.E. Stallings, poet and translator, is the author, most recently, of Olives: Poems.

A Cabinet of Greek Curiosities
*Strange Tales and Surprising Facts
from the Cradle of Western Civilization*
by J. C. McKeown
Oxford, 304 pp., \$18.95

that had been ravaging the city of Gubbio, making it swear that if it were fed daily it would desist from harassing the people. Compare this to a story about 6th-century B.C. philosopher Pythagoras: “Pythagoras captured the she-bear that was ravaging the Daunian region. He stroked her for a long time and fed her by hand with barley cakes and fruit.” Pythagoras goes even further than St. Francis, since he convinces the she-bear not only to cease attacking people but to go vegetarian. (The Pythagoreans abstained from meat, believing in the transmigration of souls. Pythagoras is also supposed to have stopped someone from beating a dog in public, claiming the unfortunate cur was the reincarnation of one of his dear friends.)

Readers will be familiar with the

ancient philosophical conundrum about the chicken and the egg, as well as the standard tripartite joke setup of “A scholar, a bald man, and a barber were traveling together . . .” Speaking of barbers, it is hard not to appreciate the laconic reply of King Archelaus of Sparta when asked how he wanted his hair cut: “In silence.”

The ancient Olympics, as with modern sporting events, were often roiled with scandals: Towns tried to buy athletes from each other; bribery and cheating were rife; and attending them wasn’t always a pleasant affair. “Don’t you suffer in the heat? Don’t you get crushed by the crowds?” And “the least successful athletes, those who have never won any victories, suddenly call themselves trainers.” Sites such as Delphi relied on tourism in ancient times as well as in the crisis-struck present. Even the insatiably curious Plutarch finds the tour guides tedious: “The guides were going through their usual patter, ignoring us when we begged them to cut their stories short and not to read out every single inscription.” J.C. McKeown adds, clearly from experience, that “some guides at Delphi are still like this.”

Ancient correspondence preserved on papyri speaks to us with surprising directness over the millennia. There are worries about paying contractors: “I, Horion, send greetings to my lord brother Macarius. Deliver to the men working on my behalf six jars of local wine. That is, six jars only. I, Horion, have signed for only six jars.” And letters that bristle with familial irritation: “I’ve written to you a thousand times telling you to cut down the vines. And yet today I received another letter from you asking what I wish should happen. My reply is: cut them down, cut them down, cut them down, cut them down, cut them down, cut them down, cut them down!”

Mediterranean countries concerned about the aftermath of a euro exit would recognize the sentiment here:

Our divinely fortunate rulers have decreed that the value of the Italian coinage should be halved. So make haste to spend on my behalf all the Italian money you have, buying goods of any sort, whatever the asking price may be.

Anyone who retains childhood trauma from a cruel schoolteacher will shudder at Cicero’s observation that “When Dionysius the tyrant of Syracuse was sent into exile, he taught children in Corinth, for he was quite incapable of living without exerting power.” College administrators would probably agree that “There are three types of student: . . . The golden student pays and learns, the silver student pays but does not learn, the bronze student learns but does not pay.” And Quintillian’s remark that “there are some



Man on rooster, by Epiktetos

things that it is to a teacher’s credit not to know” would make a fine riposte to stump-the-lecturer trivia questions.

Very rarely, one feels the lack of an anecdote. We get plenty of scuttlebutt about Euripides, but not, as far as I can tell, the rumor that he changed the ending of *Medea* to make her a murderess because of a 15-talent bribe from the Corinthians (who had previously gotten the blame for the death of her children). But like Herodotus, I digress. In truth, the only criticism I have is that an index would have made this volume even more invaluable: Vaguely remembering an anecdote about Socrates’ friends having to make way for a herd of muddy pigs, does one look for it under the chapter heading “Philosophers,” “Athens,” or “Animals”? Should a charm against inebriation (uttering line 8.170 of the *Iliad* three times before imbibing) be under “Religion, Superstition, and Magic” or “Food and Drink”? (Regardless, it is ineffectual, by my own experiment.)

Even while being entertained, one cannot help but pick up bits of information. There is a useful list of theater terms, for instance. And I had not realized that the ancient Greek word for rooster, *alektor*, comes from the word for bed, *lektron*, plus a privative “a”—thus the term “getter-out-of-bed.” Or that the modern Greek word for wine, *krasi* (the ancient word is *oinos*), comes from *kernao* (“I mix”), since wine was nearly always drunk with water. Even in modern Greece it is pretty common to mix wine with soda water, and one of the refreshing things about this unassuming volume, besides that it wears its learning so breezily, is its apparent familiarity with present-day Greece and Greek.

Some chapters are, by the nature of their subject matter, more somber and serious. There are lively, if dark, anecdotes in the chapter on Alexander the Great. For example, Alexander agreed to give his personal paparazzo of a poet, Choerilus, a gold coin for every good verse and a punch for every bad one; the poet ended up beaten to death, giving a new meaning to the phrase “poetry slam.” But the number of horrors Alexander visited on enemies and friends alike (after the fall of Tyre, which he had besieged for seven months, he was still so furious he crucified a further 2,000 Tyrians for good measure) leaves one thinking that a better title for him might have been Alexander the Terrible.

This book could have been arranged so as merely to shock and titillate (we do learn, for instance, that the residents of Lesbos invented fellatio), and the chapter entitled “Sex” will not disappoint. But there is an appealing elbow-patched old-fashionedness to McKeown’s voice and style, as with his occasional gentle, teacherly corrections: “[I]t is strictly speaking incorrect to refer in the plural to the ‘protagonists’ in a play, novel, or movie.” (“Protagonist” means “first performer.”) Or, of “thespian,” that it is a “rather pretentious term for ‘actor.’”

A dash of “Attic salt” seasons the whole volume, especially in asides: When quoting from Aelian’s *Miscellaneous History*—“In the year of the ninety-first Olympic Games, when Exaenetus of Acragas won the foot

THE BOTMIER PURCHASE FUND, SCHIMMEL FOUNDATION INC., CHRISTOS G. BASTIS GIFTS / THE METROPOLITAN MUSEUM OF ART

race”—McKeown adds, “i.e., 416 B.C.; a modern writer might have said, ‘In the year that the Athenians killed all the adult male inhabitants of Melos and enslaved all the women and children.’” No Athenian apologist he! At the start of the chapter on “Women,” McKeown observes wryly that “this chapter might almost better have been entitled ‘Misogyny.’” The unshowy and conversational translations throughout appear to be McKeown’s own.

This reviewer is also relieved that the author has stuck with the traditional and perfectly workable “B.C.” in dates, and not the ungainly if politically correct “B.C.E.,” or “Before the Common Era” (the Common Era coincidentally starting around the

time of the birth of Christ). It’s the sort of book destined to end up in one of the two most honored places for any favorite volume: the nightstand, or an arm’s-length away from the porcelain throne. It’s the perfect graduation present for a budding classicist, or for anyone of your acquaintance who loves history, mythology, ancient literature, archaeology, drama, philosophy, or the more humane letters.

What English teacher wouldn’t want on his or her door the following quotation from Socrates? “If I had taken Prodicus’ 50-drachma course on etymology, I could have told you straightaway the whole truth about words. But I didn’t, I took only the one drachma course.” ♦

locked them in a vault—had already convinced him that the workings of the secrecy system were “nonsensical.” The documents taken by Ellsberg were historical in nature: Not one of them was from the Nixon era, which was already well into its third year, and nothing in them, Goodale believed, would cause harm to national security—least of all the kind of grave harm that might trump the newspaper’s right to publish under the First Amendment.

But matters were not so simple. First, there were internal battles at the *Times* to fight. Arthur Ochs “Punch” Sulzberger, the paper’s proprietor, wanted the opinion of outside counsel. Should the newspaper face a criminal indictment, both its reputation and its economic survival would be at stake. Sulzberger bypassed an infuriated Goodale and turned to the law firm of Lord, Day & Lord, a pillar of the New York legal firmament, for guidance. Lord, Day & Lord was represented by its senior partner, Louis Loeb, who, among other items on his résumé, had, himself, served as general counsel of the *Times* for two decades. Loeb’s position, as summarized by Goodale, was that it would “not only . . . be a crime to publish classified information, but it would be a crime even to look at the Pentagon Papers, because they were classified.”

Loeb’s arguments—unthinkably quaint today—did not prevail. Indeed, his demurral on publication contributed to the demise of his 150-year-old law firm. The *Times* went forward, Attorney General John Mitchell filed for a restraining order, the presses temporarily halted, and the case moved in rapid-fire succession up the rungs of the judicial system, from trial court to appeals court to the Supreme Court.

Goodale believes that the Supreme Court, in its momentous 6-3 ruling denying Mitchell’s request for an injunction, made the right call. And it would be churlish to argue the point. The government found it impossible to prove to the satisfaction of the Court that disclosure of the materials in the 7,000 copied pages would cause the kind of grave harm that would justify a prior restraint, a measure not rooted in any statute and without precedent in federal court. Indeed, the government’s hastily



I’ve Got a Secret

Does the press have an absolute right to declassify?

BY GABRIEL SCHOENFELD

A stream of national security leaks has lately turned into a tsunami, plunging the country into the most intense controversy over the publication of government secrets since the 1971 Pentagon Papers case. As we wade through the issues raised by the illicitly disclosed information now flowing out of Washington, it is a useful moment to look back at that seminal legal battle. More than a few books tell the story of Daniel Ellsberg’s famous leak of a trove of secret Defense Department documents to the *New York Times* and other newspapers and Richard Nixon’s subsequent efforts to stop the presses. A new volume by an inside player in the great legal drama has now, four decades later, joined the crowd.

Gabriel Schoenfeld is the author of Necessary Secrets: National Security, the Media, and the Rule of Law and, most recently, A Bad Day on the Romney Campaign: An Insider’s Account.

Fighting for the Press

The Inside Story of the Pentagon

Papers and Other Battles

James C. Goodale

CUNY Journalism, 260 pp., \$20

James C. Goodale offers a view of events as seen from his perch as general counsel at the *Times* during the case. Goodale was not a First Amendment lawyer back when the case broke; the general counsels of great newspapers in that era were typically more concerned with business dealings than with constitutional niceties. He had to get up to speed, and he immersed himself in the intricacies of the espionage statutes.

His reading of both the law and the purloined documents themselves led him to favor publication. His own experience as an intelligence officer in the Army—where he and his colleagues regularly clipped articles from the *New York Times*, stamped them “secret,” and

concocted claims about damage were breathtakingly weak.

Goodale—and not only Goodale, but an entire generation of journalists—came away from this searing battle with the Nixon administration believing that government claims about the importance of secrecy are almost always spurious. Indeed, intense skepticism about government justifications for secrecy is one of the defining legacies of the case. Through his ill-considered actions in the Pentagon Papers case, Richard Nixon poisoned a well. And it is from that well that we are all forced to drink today.

Some of that poison is evident in the concluding chapters of Goodale's book, when he takes up the problems of secrecy under George W. Bush and Barack Obama. Goodale sees in the government's efforts to stanch national security leaks nothing more than a continuing "war against the press." In Bush's case, the war was "very much like Nixon's," while Barack Obama, for his part, has "seamlessly carried forward the main ingredients of Bush's war against the press."

In support of these propositions, Goodale reprises the government's response to the main leaks cases of the last several years—including, under Bush, the *New York Times's* 2005 publication of details of the National Security Agency's terrorist surveillance program, the American Israel Public Affairs Committee (AIPAC) case, and the Valerie Plame-Judith Miller affair; and, under Obama, the government's pursuit of Bradley Manning and five other leakers.

Unfortunately, *Fighting for the Press* here turns from engaging personal memoir to unpersuasive polemic. Goodale is a careful lawyer, but in tackling contemporary developments, a variety of deficiencies crop up in his brief. Not only are there significant errors in his telling of the details, but the argument, as a whole, does not add up.

Thus, the AIPAC defendants, to begin with a nontrivial error, were not "paid lobbyists for Israel," as Goodale states, suggesting thereby that they were agents of a foreign power (which, if true, would have put

quite a different legal coloration on their case). Rather, AIPAC is an American lobbying organization. It is also a mighty stretch to cite the case as a component of George W. Bush's effort to crush the press. The prosecution of the two AIPAC men was launched by career prosecutors in the Justice Department, who worked in tandem with FBI investigators; for the Bush White House, the case was a political embarrassment and certainly not part of any strategy for reining in the media.

By the same token, it is a leap to cite the imprisonment of *Times* reporter Judith Miller as part of Bush's supposed war against the press. It was the special prosecutor Patrick Fitzgerald, operating independently of the administration—indeed, he was investigating the administration—who asked a federal judge to lock up Judith Miller on contempt charges. The Bush White House had nothing to do with it.

In his treatment of the Obama administration's "war against the press," Goodale is similarly unjust. One need not agree with every step Barack Obama has taken to combat leaks—and one can

believe that he and his Justice Department have, in some instances, overreached—to see that Goodale goes much further than such reasonable propositions in trying to stuff all the evidence into a box in which it does not fit.

He thus speculates that Obama has been hawkish on secrecy so as "to placate the intelligence community after he declassified the so-called 'torture memos.'" Goodale also suggests that this is all part of a political game played by Obama to give him credibility as a hawk in the face of Republican taunts for being "soft" on national security." At no moment does Goodale pause to consider whether, in the post-9/11 era, the government might need to operate in secret or that the public might be severely harmed by the publication of secrets.

Obama, burdened with the responsibility of high office, clearly has recognized that reality; Goodale has not. That Richard Nixon poisoned the well is not an excuse for failing to think seriously about the legitimate place of national security secrecy in a democratic society. ♦



The Lost Boys

None of whom bears much resemblance to Peter Pan.

BY EVE TUSHNET

The words "have" and "get" pulse insistently through Jodi Angel's new short story collection. What you *have* to do, what you *get* to do, what you *get* away with; *getting* in trouble, *getting* used to it. Sometimes Angel even doubles up on these words: "My stomach clenched a little and I got ready to get in trouble." That tensed, hurting readiness is one of the collection's central moods. The other is a post-traumatic numbness which can sometimes become sentimentalized and is sometimes sociopathic.

Eve Tushnet is a writer in Washington.

You Only Get Letters from Jail

by Jodi Angel

Tim House, 288 pp., \$14.95

All of Angel's protagonists are teenage boys, living in a no-lifeguard-on-duty 1970s or '80s hinterland of broken or unreliable families and bad-company friends. Before each story opens, something bad has already happened to these kids—often the death of one or both parents. The boys' narrative voices always sound a little shocked, as if they're still sorting through how to live in this new

world into which they've been thrust.

The first story, "A Good Deuce," is probably the best. Roy, who has just cleaned up after his mother's overdose, goes out for beers with his scuzzy best friend Phillip to pick up some girls. The friend is gross, the girls are willing, the kid is exhausted and unsure. His internal monologue is painfully aware of the unfairness of his situation—but also accepting of it, without more than a hint of self-pity. Phillip tells the girls a story about how Roy's grandparents were Nazis, and then a worse story about Roy's involvement in the death of a litter of cats, and the asymmetry between the two of them is brutal: Phillip gets to tell these stories, and Roy has to sit there and listen to and star in them. "A Good Deuce" ends with Roy alone with one of the girls, feeling that he's been granted a reprieve, but not for long: "I knew that soon Phillip would be at the car, and he would want inside, and I would have to come to the surface again. I didn't know for just how long I could stay."

This story has some of the characteristic tics and flaws of Jodi Angel's writing. There's a (sometimes) strenuous or mannered Americana: The kids watch Robert Redford movies and drink Budweiser. In a different story, a hungry boy imagines eating a cheeseburger with Thousand Island dressing and French fries and a vanilla milkshake, and it's hard not to think: *Of course he does*. There's a special pleading with the reader, a little too much push for our sympathy, for these bruised-up boys. In "A Good Deuce," it's effective, but in other stories you do feel your heartstrings getting yanked around a bit. And "A Good Deuce" ends on a depressing note of thwarted longing for escape, which is more or less the note on which all the stories end.

Elements of Angel's writing are reminiscent of Dorothy Allison (who contributed a blurb), such as the sense of how hard things can get for children and how early they need to focus on money, work, and inequality. Other elements are reminiscent of the movies of Belgium's Dardenne brothers: Fans of *Rosetta* (1999) or *The Kid with a Bike* (2011) will feel at home in these

neighborhoods. To my mind, Allison and the Dardennes handle this material with more depth and variation, though—in part because they're willing to be more direct in their approach to concepts such as mercy and guilt. But there's a power in the consistency with which Angel's narrators long for mercy without expecting it; they're unable to name it, unable to figure out what they yearn for, and so they're unable to imagine anything changing. The strongest stories are the ones in which the narrators feel guilt and shame rather than mere self-interest or numbness. These emotions aren't recognized by the people around them, who don't expect teenaged boys to have the awareness and empathy such self-lacerating emotions require.

The stories are roughly divided into ones in which the narrators are

attempting to shoulder responsibilities they themselves recognize as impossible (e.g., the young gambler in "Game-Bred" who makes a farcical attempt at crime when he gets in way over his head with a bookie, or the teen father pretending that he's married to his baby's mother in "The Last Mile"), and stories in which the narrator simply rejects the possibility of taking responsibility for others (e.g., the pubescent nihilists who find a corpse in "The Diving Reflex" and suspect an older boy of murder).

One reason the collection works is that all of us eventually feel that our responsibilities are too much to bear. We simultaneously complain about their unfairness and blame ourselves for failing to meet them. Some of these characters' debts were earned and others just inherited, but all of them will have to be paid off. ♦

BCA

Out of the Woods

The rise and fall of a monetary regime.

BY KEVIN R. KOSAR

The *Battle of Bretton Woods* sets forth in smooth prose and concise detail an authoritative narrative of the who-what-when-why of the great monetary conference of some 70 years ago. It is jam-packed with heady discussions of balance of payments, exchange rates, supranational currency, monetary reform, and tariffs.

For this reader, Benn Steil's extensively endnoted study holds another appeal: It shows how politics works and how policy gets made. The picture is a messy and not especially attractive one, and the outcome of this conference, at least, was anything but foretold. Circumstance, happenstance, power, personalities, and other factors were all part of the contentious political scrum

Kevin R. Kosar is the author, most recently, of Ronald Reagan and Education Policy.

The Battle of Bretton Woods

John Maynard Keynes,
Harry Dexter White, and
the Making of a New World Order
by Benn Steil
Princeton, 480 pp., \$29.95

that was the Bretton Woods Conference, and, as such, *The Battle of Bretton Woods* is a forceful rebuke to the blockheads who construe politics as a moralistic or conspiratorial enterprise.

That the Bretton Woods Conference occurred is somewhat surprising. Its origins lie, in large part, with "the improbable rise" of Harry Dexter White. A squat, bald man with an often-abrasive manner, White came from petit bourgeois roots. He was born in Boston in 1892 to Lithuanian Jewish parents. As a young adult, he

began college, and then took time off to work in his father's hardware business. He joined the Army and eventually got his bachelor's degree at age 30.

White spent the next decade obtaining a doctorate and working as an itinerant economics professor, and he might well have remained an obscure academic but for a bit of luck. A fellow economist hooked White up to do some short-term contract work for the U.S. Treasury in 1934. White seized the opportunity and quickly made himself an indispensable aide to Treasury Secretary Henry Morgenthau.

The timing was fortuitous. The gold-standard system was falling apart, and the United States and Western Europe were pursuing economically ruinous tariffs and currency devaluations to claw out of the Depression. The world economic system was a wreck. White's dissertation subject and intellectual obsession was exchange rates: He had a vision for a new American-led international economic system, and he pursued it ruthlessly from his perch at the Treasury.

White's machinations and a series of chance political events culminated in Bretton Woods, a meeting of 700-plus representatives from 44 nations at a shuttered resort in New Hampshire in July 1944. It was an acrimonious gathering: Nations quarreled, and White's Treasury Department squabbled with Cordell Hull's Department of State. Negotiations often ran around the clock.

The fundamental bone of contention was philosophical and practical: What are different currencies worth relative to one another? White's answer was that rates should be fixed by an international monetary system, with currency values tied to the dollar and backed by gold. This new economic order would be managed through international institutions led by Americans. White's plan aimed to grow trade and foster economic development by stabilizing exchange rates and ending beggar-thy-neighbor economic policies.

Not surprisingly, representatives from other countries had different ideas. The most formidable challenger was John Maynard Keynes, who had his own monetary plan. Of course, Keynes was everything White was not—well-bred, famous, and eloquent—and, as Britain's man at Bretton Woods, he fought to shore up his war-shattered nation's position. Keynes advocated an international



Harry Dexter White, John Maynard Keynes, 1946

monetary regime that would preserve the preeminent position of the sterling system and continue British imperial trade preferences.

He held a losing hand, however: Britain was going broke battling the Germans and needed massive American aid. White and his American colleagues were brutal in negotiations, demanding free trade and the end to the closed British trading empire. Keynes cried out, "Why do you persecute us like this?"

With pluck, steely nerves, and relentless effort, White jawboned and hard-bargained the world's first international monetary agreement, which was signed on July 22, 1944, three weeks after the delegates had arrived at Bretton Woods. Bulldozed, an exhausted Keynes capitulated to American demands and then returned

to London to sell the new economic order to his countrymen. Within a year, the agreement cleared Congress, thanks in part to White's adroit testimony and the Treasury's public relations campaign.

As a peculiar twist to the story, while Harry Dexter White was fighting to establish an American-dominated economic order, he was in cahoots with the Communists. Benn Steil provides indisputable evidence that

White was one of "a surprising number of American government officials who would never have considered themselves disloyal to the United States, [yet] provided covert assistance to the Soviets." White took gifts from the Communists and gave them sensitive information in return. To be sure, for all his brilliance, White was utterly delusional about the Soviet Union. He contended that, "contrary to popular opinion, the right of a person to worship as he please has never been abrogated in Russia." And he saw the future just as well: "Russia is the first instance of a socialist economy in action. And it works!" White imagined that the Kremlin had no territorial ambitions and would be a good partner to America.

White died in 1948; his Bretton Woods system staggered for a few decades, and then collapsed. Like many government regulatory regimes, it was outstripped by dynamic economic forces and self-interested behavior. Richard Nixon put the nail in the coffin in 1971, when he ceased allowing nations to trade their dollars for gold. Fixed exchange rates were no more.

Aspects of White's plan do remain alive, most conspicuously in the forms of the World Bank and the International Monetary Fund. So the question recurs: What are currencies worth today relative to one another? If we're fortunate, Benn Steil will deliver a follow-up study that explains the workings of our surreal world of fiat money and floating exchange rates set by international markets. ♦

Mad Matt

Smile, or something, when you say ‘dystopian.’

BY JOHN PODHORETZ

Elysium is another ruined-planet movie, the third this year after *Oblivion* and *After Earth*. Such movies come in two forms: Either the Earth has gone wild and uncultivated so that it's entirely covered in grass and trees, or it has become a giant and overpopulated garbage dump where the use of road-surfacing equipment has become obsolete, and every time a vehicle drives anywhere or flies anywhere, a tremendous amount of dust is kicked up.

You might think that, 146 years into the future (the setting of *Elysium*), the makers of hovercraft would have figured out how to land something without creating a dirt tornado; but you would think wrong. In the year 2159, things are terrible everywhere except on the titular twirling space station 19 minutes away, where the very rich people live.

The first problem with this movie's vision of the future is that Elysium looks exactly like a Mafia neighborhood on Staten Island where the mansions are 10 feet from each other. This is ridiculous. No self-respecting billionaire has ever had so little property: not 1,000 years ago, not now, not 146 years from now. But I guess the thinking of writer-director Neill Blomkamp is this: On Elysium, the rich have magical machines that cure every ailment. So who needs landscaping?

Our hero, played by Matt Damon, is an ex-con member of the hoi polloi who needs to get to one of those machines because he has contracted radiation poisoning from working in a factory on Earth that looks like it was built in 1952. From one leftist perspective, this is very bad: Matt Damon is going to

Elysium

Directed by Neill Blomkamp



die because there are no OSHA standards or Erin Brokoviches or tort laws in this terrifying glimpse of a hopeless 22nd century. But from another, *Elysium* should be heartening, because Damon lives in Los Angeles, and the movie therefore predicts a future in which heavy manufacturing has returned to Southern California!

The second problem with the *Elysium* dystopia is that, in a universe where there is a magical machine that can make anyone live forever, there are bound to be other technological enhancements of a near-magical nature. But *Elysium* imagines none, because Blomkamp is so intent on hammering home his point about the need for Obamacare that he makes Keith Olbermann seem the soul of subtlety. The movie's depiction of the future is comparable to a work of science fiction from 1870 imagining everyone in 2013 riding in buggies and dying of consumption. Radiation poisoning in 2159? Unlikely.

Ah, but writer-director Blomkamp would surely respond that this is exactly the point! *Elysium* is an allegory, my friend: "This is today," he has said. "This is now." In other words, *Elysium* is a socialist brief for income redistribution and single-payer health care—made for \$115 million by a Hollywood studio.

Which is all well and good. But it's all been done so much better than this before. For one, it was done infinitely better in Neill Blomkamp's first feature, the dazzling worldwide hit *District 9* (2009). It, too, had an allegorical purpose: It used its story

of a massive space-alien migration to Earth as a means of likening anti-immigration policies to apartheid. But it was so interesting, so unexpected, and so beautifully rendered that it transcended its political message and became—a work of pop-culture genius.

Similarly, *Children of Men* (2006), directed by Alfonso Cuarón, subverted P.D. James's anti-abortion novel into preposterous twaddle about hostility to Muslims and the evils of the war on terror. But its depiction of a world driven to decay and despair by universal sterility was nothing short of amazing. Even *Soylent Green*, the inadvertently comic overpopulation film of 1973 in which people survive by eating crackers "made of people," was haunting in a way that *Elysium* is not.

There's an apocryphal story about a Hollywood studio chieftain of the golden era who told his hired screen-writing hands, "It's not enough to be a Communist; you have to do some work here, too." The problem with *Elysium* is that its political message is supposed to turn its utterly prosaic and workaday structure and story into something tougher, more profound. But for regular moviegoers, as for that apocryphal studio chief, it's not enough to be peddling a politically correct message—the movie has to do some work, too.

Blomkamp seems to have recognized that his story was not meeting the demands of a science-fiction action-adventure film, because its final third turns into a sleep-inducing battle between Matt Damon and a psychopath. They punch each other repeatedly on the same tiresome catwalk setting where Darth Vader killed Obi-Wan and cut Luke's hand off, and where Iron Man 3 killed all the other Iron Men.

On the other hand, that was somewhat better than the overall plotline, in which one guy writes a single computer program for the purpose of staging a coup that will put Secretary of Defense Jodie Foster in power for 200 years. Wooden, weird, and not in the least bit frightening or intimidating, Foster gives what may be the worst performance by a good actor I've ever seen. Her horrifically bad turn is, in the end, the only memorable thing about *Elysium*. ♦

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

"Actress Bette Midler took to Twitter over the weekend to go on a multiple tweet rant about Larry Summers, who is one of the rumored candidates to be nominated for chairman of the Federal Reserve. Midler slams Summers, calling him the 'architect of bank deregulation' and a 'huge advocate' of higher pay for executives."

—Politico, August 12, 2013

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Freefall

Markets Plunge on Midler Tweets

BY MANU RAJU
AND DAVID ROGERS

Shockwaves pulsed through the financial world Monday morning as actress and singer Bette Midler took to Twitter to share pessimistic predictions about the future of the economy. Midler, a world renowned expert in economics commonly referred to in financial circles as the Sybil of Sondheim, sent world markets into a tailspin after declaring to her more than 400,000 followers that, "So many people still out of work. What up with that? I don't think its gonna get better soon." Midler also had a gloomy outlook on gas prices, tweeting, "4.59 for regular in Santa Monica -- Ridic!!!! SMDH."

Within minutes of Midler's tweets, the Dow Jones Industrial Average dropped nearly 15 percent as a fit of panic spread through Wall Street, and the reverberations are sure to be felt in London, Tokyo, and the rest of the world in the next few days.



Bette Midler has emerged as a top candidate for appointment to the Federal Reserve's board of governors.

"It's serious," said Mark Anderson of Goldman Sachs. "It's like the old saying: 'When Midler speaks, the market listens.' That's why that saying exists." Some analysts still fear the worst is yet to come. "Wall Street is nervous, and we just don't know," said a visibly shaken James Hardy of Citigroup, choking back tears. "What she does in the next few days could decide the fate not just of our economy, but of our nation, of the entire course of human history."

In August, Midler was able to avert economic disaster by advising President Obama against appointing Larry Summers to head the Federal Reserve, and she is sure to have the President's ear as he seeks to calm Wall Street during this downturn. Obama has long relied on Midler's guidance, which he has credited not only with helping to stave off the worst recession since the Great Depression, but also with helping him win reelection in 2012. In fact, he cited Midler's extensive writing on economic policy as formative in his understanding of economics back when he was a student at Columbia University. In addition, according to Obama, Midler's 1978 treatise, "*Wind Beneath Our Wings: Keynesian Stimulus and the Hope for a New American Prosperity*," served as the blueprint for his 2009 stimulus package, which has been responsible for creating or saving more than

See **DIVA** on Page 11