the weekly Standard

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THE WAR ON TRUTH
DAVID GELERNTER

THE GUINEA PIG STATE

Oregon's quarter-century of failed liberal health care experiments

BY MARK HEMINGWAY

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NEWSCOM

COVER BY THOMAS FLUHARTY

Shirley Temple Black, 1928-2014

A number of things seem to have "gotten us through" the Great Depression—Fred Astaire and Ginger Rogers, FDR's presidential oratory, the movie musicals of Busby Berkeley—but the fact that one of them was a 6-year-old child who sang and danced and acted like a veteran is nothing short of amazing. So is the fact that, between 1935 and 1939, Shirley Temple was the most popular movie star in America (far outdistancing Clark Gable and the aforementioned Fred and Ginger) at an age when most children are barely conscious of the world around them.

Ambassador Black with President Vaclav Havel of Czechoslovakia

Nearly 80 years after her best-known movies were in theaters—*Stand Up and Cheer!* (1934), *The Little Colonel* (1935), *Curly Top* (1935), *Little Miss Broadway* (1938), etc.—it is difficult to grasp what Shirley Temple meant to American moviegoers of the era. There have always been talented child performers, even prodigies, in our midst; but her combination of appealing looks, talent, musicality, and personality was unique in the annals of film. Even today, allowing for the corny plot devices and old-fashioned styles, it is impossible to watch the movies of Shirley Temple without admiration, wonder, and pleasure.

It is also worth mentioning, in an age when onetime child performers seem to collapse publicly on cue, that the balance of Shirley Temple's long life and career was wholly admirable. Recognizing, in her early twenties, that her box-office appeal was fading, she retired from movies, married happily, raised a family, and pursued a second career as philanthropist, political fundraiser, and diplomat, mixing a long list of personal good works with public appointments as representative to the U.N. General Assembly (1969), ambassador to Ghana (1974-76), the first female chief of protocol (1976-77), and ambassador to Czechoslovakia (1989-92) during that country's transition from communism to democracy.

In Prague, said Henry Kissinger afterwards, Ambassador Shirley Temple Black had been "very intelligent, very tough-minded, very disciplined"—which, of course, surprised no one who had known Shirley Temple. ♦

And the Awards Just Keep on Coming!

Last week, South by Southwest—the hugely influential technology and music festival held in Austin every spring—announced its keynote speaker for 2014. The keynote speaker last year was Elon Musk, of PayPal, SpaceX, and Tesla Motors fame. Other South by Southwest keynotes in recent years have been given by a litany of cultural and business superstars including Mark Zuckerberg, Bruce Springsteen, and Twitter CEO Evan Williams. This year, though, organizers have selected Chelsea Clinton to keynote the event.

Without dredging up painfully awkward footage of her work as an NBC News correspondent, it's not much of an exaggeration to say that Chelsea's accomplishments begin and end with her parentage. Even Chelsea's parents, who can be objectively said to have accomplished important things, tend to be wildly overpraised. *National Review*'s Jim Geraghty notes how ridiculous the undeserved laurels game has become:

> If you are a key Democratic-party figure, you will be saluted and celebrated relentlessly, even in ways that are so off-base they're ridiculous. *Men's Fitness* named Barack Obama one of the 25 fittest men in America twice . . . *while he was still a smoker*. Hillary Clinton received 19 awards in the year after she left the State Department, including the Helen Keller Humanitarian Award, The Elton John Foundation's Founders' Award, and the Michael Kors Award for Outstanding Community Service. From 2005 to 2008, the Grammy for Best Spoken Word Album went to Bill Clinton, Barack Obama, Jimmy Carter and Barack Obama again. Really? Those were the single-best spoken word performances in the country four years running? Better than all those other nominees, like George Carlin, Steve Martin, Maya Angelou, Bob Newhart, David Sedaris?

Geraghty is right to be put off by this excess, but The Scrapbook has one quibble. He forgot to mention perhaps the most undeserving accolade of all time. Last June, the National Father's Day Council presented Bill Clinton with an award for "Father of the Year" at a banquet in New York City.

We would also note that just last

AP PHOTO / ANTONIN NOVY

week, the former president accepted the Red Dress Award from *Woman's Day* on behalf of the Bill, Hillary, and Chelsea Clinton Foundation, presumably because receiving the Blue Dress Award in the name of his wife and daughter would have been especially awkward. If these unnecessary accolades don't compound the irony and drive the point home, we don't know what will. ♦

Another Tax to Dislike

The Scrapbook hesitates to kick a football town when it's in the dumps, but we are baffled by the crazy news coming out of Cleveland. And no, we're not talking about the Cleveland Browns coaching drama.

The city of Cleveland is engaged in a legal battle with former Indianapolis Colts center Jeff Saturday over a tax dispute. And for once, Cleveland actually pulled off a win.

Saturday sued the city after it charged him the "Jock Tax"—a 2 percent income tax levied by the city on professional athletes (and other wealthy performers) who come to town to (usually) defeat Cleveland's sports teams.

The city calculates the income figure by dividing a player's annual salary by the number of games played. The Scrapbook agrees with critics of such taxes, like the Tax Foundation, which says they're "poorly targeted," "arbitrarily enforced," and "unrealistically burdensome to athletes" (many cities and states levy such taxes, not just Cleveland).

Saturday's complaint concerns a 2008 game the Colts played in Cleveland. The city levied a tax on Saturday despite his not getting any playing time in the game. But he was not even riding the bench that week. He was at home in Indiana, rehabilitating from an injury.

The state tax board ruled in favor of the city. According to the account in the *Cleveland Plain Dealer*:

> The Ohio Board of Tax Appeals accepted arguments by city lawyers that forcing tax officials to determine when a visiting athlete or other out-of-towner missed scheduled work in the city would amount to an "administrative burden."

Saturday's lawyer is arguing that Cleveland should change how the tax is structured, by charging on a "duty days" basis—dividing a player's salary by the total number of days worked rather than games played, thus lowering the tax burden.

The real reason why Cleveland doesn't want to change is simple: money. The city estimates if they made the change Saturday seeks, they'd lose $1 million a year.

Luckily for Saturday, the Ohio tax board doesn't have the final say, since it can't rule on the constitutionality of the tax. Saturday is likely to appeal to the Ohio Supreme Court. The Scrapbook wishes him well in his challenge. ♦

Bottum on Anxious America

Hazel Motes, the hyperanxious protagonist of Flannery O'Connor's great novella *Wise Blood*, finds himself so bedeviled by the demands of religious belief that he rebels by founding a religion of his

own: The Holy Church of Christ Without Christ. The mainline Protestant churches of the twentieth century, says our contributing editor Joseph Bottum, did something similar when the challenges of the secular world proved too much: They abandoned the inconveniences and discomforts of faith and became, instead, secular liberals.

So argues Bottum in his dazzling new book, just out from Image Books, *An Anxious Age: The Post-Protestant Ethic and the Spirit of America*. The notion of contemporary liberalism as displaced religious faith—with its puritanical moralism, its iron insistence on its own rectitude—isn't entirely new, but Bottum's treatment of it is. "*An Anxious Age*," says the theologian Michael Novak, "is bound to be viewed as a classic of American sociology."

We'll go further: Chances are good that it will someday be viewed as a classic of American letters, too. Readers of these pages will be familiar with Bottum's original turn of mind, his gift for the unexpected insight and the sumptuous phrase, and they will be delighted to find them in such abundance between hard covers (or downloaded to their preferred mobile device!). A bargain at any price, but a steal at $25. ♦

Sentences We Didn't Finish

'So Barbie is posing for the 50th anniversary *Sports Illustrated* swimsuit issue, histrionically titled SI Swim Legends. I get it, I do. She is 55 years old; I'm sure it's extremely flattering to be asked. And although I'm a feminist, and I'm trying to raise a daughter to value herself for a million things besides her looks, I have nothing against women who flaunt what their mamas gave them. Your body, your choice and all that. And yet, I feel let down. I've been championing Barbie since my college gender studies classes . . ." (Samantha Schoech, *New York Times*, February 12). ♦

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BPA WORLDWIDE

They Laughed

In an essay on Winston Churchill, the late British psychoanalyst Anthony Storr mentions that Churchill, at age 11, expressed a desire to play the cello, but that the interest "was not encouraged, and soon died out." What might have been, in Churchill's case, is intriguing to Storr: "It is possible that music might have become important to him," he writes, "for, as many musicians know, the world of sound can be a never-ending source of solace, and the ability to play an instrument is both a means of self-expression and a source of self-esteem."

I remember nodding in agreement with that passage when I read it, 40-odd years ago; nodding vigorously, in fact, because I knew it to be true in my own case, but had never heard the idea expressed before. I make no claims as a musician—piano, tenor saxophone—but as a means of self-expression and source of solace in my life, the ability to play an instrument has, shall we say, played its part. The self-esteem is another matter.

I like to say that I am self-taught, but it isn't quite true. My two older siblings and I took piano lessons in Washington from an instructor who might have been sent down from central casting: "Madame" Tamara Dmitrieff was a White Russian—supposedly the daughter of a high-ranking officer in the czarist army—who bore a slight resemblance to Marlene Dietrich. She spoke Russian-accented English, of course, in a high nasal tone and had once been a student of Sergei Rachmaninoff. (An autographed portrait of Rachmaninoff, at any rate, hung on a wall in her office.) My sister and brother flourished under her tutelage.

I did not. In my defense, I should say that this was not for lack of enthusiasm: I wanted to play, tried as hard as I could, and practiced the mandatory daily half-hour. But I was a mediocre sight-reader, intensely disliked the rote Czerny/Bach/Mozart scales and exercises "the Madame" inflicted on her students, and I yearned to play jazz. Such music, needless to say, was out of the question, both at home and in the studio; and while my siblings excelled at recitals, Madame Dmitrieff and I settled into a musical cold war.

MICHAEL SLOAN

In retrospect, I think she was more amused than exasperated about my attitude—I have no recollection of anger—but since I never progressed much beyond Haydn or the easier Beethoven pieces, she was content to concentrate her energies on my deplorable keyboard posture and pigeon-toed gait. She taught in an oversized ballet studio, with barres and mirrors along the walls, and I was required each Friday afternoon to march across the dance floor toward her fleet of Steinways, my recalcitrant feet pointing out, not in.

In due course, after seven lean years, I was permitted to retire from lessons, and didn't touch a piano for some months. But then, one spring afternoon at the age of 15, I happened to hear a woodwind quintet by the modern composer Arnold Schoenberg, and its atonal theme sent me back to the keyboard. It's a blessing that no one was home at the time, because I must have spent a couple of hours trying to reproduce the sound I had heard—and then began to add the occasional blues-style chord, and move the fingers of my right hand in rhythmic motions. Instant Thelonious Monk.

Well, not quite. But in one cataleptic session at the piano, I had discovered that I could make sound—set down notes and phrases, invent chords, even duplicate melodies—with ear and fingers only, and without recourse to sheet music. I was, in fact, almost entirely liberated from the business of musical notation, free to teach myself the means of conjuring the sounds I heard in my head and shaped with my hands.

This accidental/incidental technique has served me reasonably well in the intervening half-century, has allowed me to sit down and play what I want to play, when I want to play it—even survived the loss, at age 20, of the use of one finger. It has its limitations, to be sure; but in the sense described by Anthony Storr, has been a source of solace, self-expression, and—well, great fun.

The breakthrough was necessarily secret at the time, as was my listening to jazz on LPs and the radio, since my parents resolutely disapproved of such music. But I persevered in their absence, and once gone away to school, embarked on a lifetime of messing around at the piano. With some credit, I suppose, to my long-ago teacher. And some rewards as well: I was at a dinner, several weeks ago, and the speaker was reminiscing about a gala affair where the partiers danced "while Phil Terzian played the piano." Take that, Madame!

Philip Terzian

the weekly Standard

‘I Can Do Whatever I Want’

On February 11, writing for the *Washington Post*, Republican lobbyist Ed Rogers ably summarized the latest “bad week for Obamacare.” The Congressional Budget Office concluded that Obamacare will cause “a decline in the number of full-time-equivalent workers of about 2.0 million in 2017, rising to about 2.5 million in 2024.” The CBO also found that Obamacare would—after all the spending and disruption and coercion—still leave about 31 million Americans uninsured a decade after implementation. Then the White House disregarded the plain text of the law to carve out another delay in one of the law’s mandates, this time for businesses with between 50 and 99 employees.

What’s more, as Rogers explained, the Obama administration decided that employers who fall below 100 employees “must certify to the IRS—under the threat of perjury—that the reasons for your employee head count have nothing to do with your opposition to or avoidance of Obamacare. . . . It’s jaw-dropping that if you fall below 100 employees, the burden will be on you to prove that you meant no disrespect to Obamacare.”

After you, François

NEWSCOM

Showing commendable disrespect to Obamacare (that’s still legal for commentators, isn’t it?), Rogers concluded: “Obamacare is failing in its original purpose of providing insurance for the uninsured, it unnecessarily burdens American families and businesses, and now the White House has opened the door to prosecuting those they deem to be insufficiently committed to Obamacare. When will the nightmare end?”

It’s a good question. It’s perhaps the central question of American politics today. But the “nightmare” image can be misleading. After all, we know how nightmares end. We wake up. But when we wake up each morning, Obamacare is still here.

Obamacare isn’t a nightmare. It’s a comprehensive piece of legislation passed by Congress. It won’t simply come to an end. It will have to be comprehensively repealed by Congress. Until that can happen, its provisions have to be limited and delayed as much as possible. The arbitrariness of its implementation has to be challenged and checked as much as possible, and Americans have to be helped to escape from it to the degree possible. All of this requires legislative action.

So it’s up to Congress to do what it can to save us from the disaster that is Obamacare. It’s also up to Congress to do what it can to defend the rule of law.

Touring Monticello last week with French president François Hollande, Obama joked about breaking protocol: “That’s the good thing as president. I can do whatever I want.”

Monsieur Hollande undoubtedly enjoyed Monsieur Obama’s bon mot, finding it, one suspects, *très drôle*. But in America we have been inclined to take the rule of law rather more seriously than our Gallic counterparts. In America we follow Jefferson, not Napoleon. In America the president cannot do whatever he wants. It was the sage of Monticello who explained that the meaning of a law “is not to be sought for in metaphysical subtleties which may make anything mean everything or nothing at pleasure.” It’s perhaps an injustice to metaphysics to call the Obama administration’s legal sophistries “metaphysical subtleties.” But the reputation of metaphysics will survive. The rule of law may not.

Unless, that is, our elected officials in Congress act to defend the rule of law. We can’t depend on the courts to do this. They are necessarily slow, passive, and limited in their reach. It’s Congress that has the powers of oversight, of the purse, of confirmation, and of legislation. It’s true that one chamber, the Senate, is of no use because for the Democrats who control it party loyalty seems to have trumped institutional responsibility. But the Republicans control the House, the people’s House.

The Republican party’s “brand” has been tarnished in recent years, we’re often told. That’s probably true. But perhaps part of the solution is for the Republican party to go back to its roots as the party of the rule of law and of equality before the law.

The Republican platform of 1860 put it well: “The present Democratic Administration has far exceeded our worst apprehensions . . . in its general and unvarying abuse of the power intrusted to it by a confiding people.”

That, in a nutshell, is the case for a Republican Senate in 2015—so we will have a Congress that can effectively check the Obama administration’s “general and unvarying abuse of power.”

The 1860 platform goes on to say

> That the people justly view with alarm the reckless extravagance which pervades every department of the Federal Government; that a return to rigid economy and accountability is indispensable to arrest the systematic plunder of the public treasury by favored partisans; while the recent startling developments of frauds and corruptions at the Federal metropolis, show that an entire change of administration is imperatively demanded.

That's the case for a Republican president in 2017.

We don't want to be too partisan. But there are times when a political party can rise to the defense of a fundamental principle that transcends partisanship. One such principle is the rule of law. The historic mission of today's Republican party is to defend and restore it.

—William Kristol

Iran's the Problem

Two weeks ago the Treasury Department sanctioned a senior al Qaeda official, Olimzhon Adkhamovich Sadikov, also known as Jafar al-Uzbeki, for facilitating the flow of foreign fighters into Syria. The Levant appears to be ground zero in a struggle between al Qaeda and an Iranian-led axis of terror in a conflict now spreading from the Iraqi desert to the Lebanese coast. The Obama administration believes that in this contest for regional dominance, there are two clear sides and that it is al Qaeda, and not Iran, that constitutes the greatest threat to U.S. national security. Thus the Obama administration's reluctance to act against Bashar al-Assad's regime in Damascus, lest this give al Qaeda sway in Syria. However, here's a fact that should give the administration cause to rethink its assessment: Al Qaeda's Uzbeki is operating out of Iran, with the approval of Iranian authorities.

From Iran's perspective, backing Uzbeki and his al Qaeda fighters against Assad and Hezbollah and even against its own Revolutionary Guard puts another piece into play on the chessboard. It's an additional weapon in Tehran's arsenal. As the 9/11 Commission Report made clear, the Islamic Republic has frequently worked with al Qaeda when it suits Iranian interests. Similarly, Assad, whose forces now battle a resistance that includes al Qaeda fighters, turned Damascus international airport into a transit hub for al Qaeda fighters entering Iraq in the mid-2000s to kill American troops. He also has a long history of using and manipulating Sunni jihadists.

This latest designation comes at a pivotal time for the administration's regional policy. The White House's chief strategic goal in the Middle East is to protect the interim nuclear weapons agreement with Tehran in the hope of creating, as Obama told the *New Yorker* last month, a new geopolitical equilibrium that balances Iran against Saudi Arabia. To get there, Obama needs to keep the Iranians at the negotiating table, not an easy trick given the regime's volatile, even paranoid, nature.

Obama's judgment of the clerical regime's psychology has dictated policy since he first came to the White House. The administration refused to support the Green movement that took to the streets in the wake of Iran's likely fraudulent June 2009 elections for fear of driving the regime from the negotiating table. Obama ignored the advice of officials who wanted to arm the Syrian rebels and avoided any serious efforts to topple Assad because he believed that this, too, would alienate the Iranians. He resisted Congress's push to impose sanctions on Iran and has now provided sanctions relief for the same reason—he doesn't want to get the mullahs mad and risk losing his negotiating partner.

Iran, the White House insists, is not the problem. It can be managed through regular diplomatic and political means—engagement, deterrence, etc. But al Qaeda, a nonstate actor, making war from Lebanon, Syria, and Iraq, is another animal altogether. As Director of National Intelligence James Clapper explained in his Senate testimony last month, the administration believes that al Qaeda represents the greatest threat to U.S. national security. According to Clapper, one al Qaeda affiliate in Syria that the administration has designated, Jabhat al-Nusra, even has plans to attack the United States. Unfortunately for the White House, it turns out that Nusra is funded and manned by the Iranian-based al Qaeda network. That is, Obama has tied America's position in the Middle East to partnering with Iran, which itself has partnered with actors the White House deems the main threat to U.S. national security.

Nonetheless, the White House continues to see the regional conflict simplistically. As Obama puts it, what we're watching unfold is a sectarian war between Sunnis and Shiites in which the United States should avoid taking sides. This is also Iran's version of the war, promulgated in part to keep the White House on the sidelines. It's a multipurpose public diplomacy campaign intended also to galvanize Iran's Shia base across the region and destabilize Sunni-majority regimes. Sectarianism is a significant factor in Middle East conflicts, but the fundamental fact is that Iran is a revolutionary regime. It means to overturn the regional status quo, the American-backed order of the Middle East, and sideline the United States once and for all. In this effort, al Qaeda, along with Hezbollah and various other Iranian-backed terrorist organizations, can all be useful to Tehran.

For five years now, traditional American allies like Israel and Saudi Arabia have told the White House that Iran is the problem. You might think, with its latest terror designation, the administration might come to that same view. But the administration is reluctant to see the implications of what it

has just done. The fact is, it's long past time to move against Tehran on all fronts. Our key struggle in the Middle East is with the Iranian revolutionary regime that supports Sunni as well as Shiite terrorism.

—Lee Smith

The War on Truth

News from academia! "President Salovey and I," writes Yale's provost, "have invited a distinguished group of academic leaders to a diversity summit at Yale on February 11-12, 2014. Their visit will include a series of discussions with faculty and administrators about the challenges of diversifying our faculty." Praise the Lord—at *last*!

How can we explain intelligent, articulate, intellectually vigorous people stuck in time, repeating themselves endlessly like robots? Even if the diversity crusade hadn't become an embarrassment and a sham, the sheer mindless *obsession* of it suggests a seriously neurotic institution. Yale doesn't lack diversity, just rationality. Of course it lacks *intellectual* diversity, but that problem has been solved by shipping "diversity" off to redefinition camp. American English is feeling a lot better, thank you, now that it's been lobotomized by political hacks. (Covered by Obamacare!)

The provost's proud announcement could have been made ten years ago, twenty, thirty. Yes: thirty. Yale's approach to the topic is like playing the same two-minute song on your iPod over and over for thirty years. Won't *somebody* call a psychiatrist? And of course Yale is not even slightly unusual in this respect.

The good thing about the "diversity" problem is that you can obsess over it forever with no risk of solving it, because it is insoluble—based as it is on a wholly implausible lie. The diversity kingpins aim for group representation in all academic fields based on a group's numbers in the student population, and in America (eventually the world) at large. But why would anyone suspect that both sexes and all races and nationalities have approximately the same skills at everything? And the same interests in everything? And the same physical qualifications for everything? Doesn't diversity imply (for lack of a better term) *diversity*?

No!—and that's the best thing about the diversity crusade. It is actually an *anti*-diversity crusade, waged by people who detest diversity. Its goal is to suppress diversity of every sort. Yale women must behave just like Yale men: must major in the same things at the same rates, go out for sports in the same numbers, get the same jobs, make the same money, care to the same extent in the same way about children, family, money, power, sex, and everything else. So why are there "Women's Studies" departments? Because (dammit!) women and men are *totally different!* So why is there a diversity campaign? Because women and men are *exactly the same*!

The United States accomplished the amazing feat of virtually extinguishing race prejudice in a single generation, between the late 1950s and the early '80s. It was a superb accomplishment, on the order of the Moon landings. But young Americans get no chance to take pride in it: We don't just suppress the facts, we lie about them. We teach our children from kindergarten up that America still struggles with prejudice against approved minorities and women, when they can see with their own eyes that prejudice *in favor* of approved minorities and women is everywhere—in education, industry, and government. How are they supposed to learn that it is important to tell the truth? How will they learn what the truth *means?*

This problem is not keeping the Obama regime up nights. A Hillary administration would be equally indifferent.

War on Truth is the Obama administration's middle name, and sometimes seems to be its actual goal. Releasing the toxic phrase "War on Women" into the political atmosphere was a risky move for the left—they have got away with it only because Republicans are so timid and lazy. That Republicans are antiwoman is an absurd lie, and what does it say about Republican women? Are they dupes or traitors? Or just dumb broads? (You know how women are about politics. Hopeless.) There was a time when honest Americans of every political type would have exploded at the sheer, filthy dishonesty of the phrase. No more. American culture is changing.

While the Obamacrats rave on about the War on Women (believing that abortion poses an ethical question being tantamount, after all, to mowing down young girls in the street as they emerge from the shelters in which they have gathered, cowering, in fear of Republicans)—while they denounce the War on Women, Obamacrats have been merrily waging a war on jobs, a war on small business, a war on the best-by-far health care system in human history, a war on America's international influence and prestige, a war on economic recovery, a war on energy independence, a war on the Constitution, and many other battles around the edges. But the War on Truth matters most, hurts most, and will be remembered longest.

Do Republicans care about the cultural mainstream's real prejudice against white boys? Not in the least. Will Republicans challenge the diversity racket, the "affirmative action" con game that still dominates so many important institutional decisions? Americans dislike affirmative action and always have, but Republicans are too scared to speak up. Elections are approaching. Let us at least hear about this war on truth, from every last Republican candidate, for every office, at every level, every day. American culture, society, civilization are at stake. *Please*.

—David Gelernter

Meet the New Farm Bill

Same as the old farm bill.

BY DAVE JUDAY

Something for everyone

The president just signed into law the Agricultural Act of 2014, a multiyear, comprehensive agricultural, rural, and nutrition policy measure. As legislation goes, it was rather unremarkable. What was remarkable was the path it followed to approval. Unlike most farm bill debates, which tend to be festivals of bipartisanship and comity, this one split lawmakers—rural from urban, House from Senate, Republican from Democrat—along every political fault including between the Tea Party caucus and the rest of the GOP.

A farm bill is typically passed every five years, and besides payments to farmers includes international food aid, rural development projects, food safety inspection, and, in recent decades, renewable energy incentive programs. There are enough programs to attract votes from all sorts of off-farm political interests. As President Obama said, it's the legislative equivalent of "a Swiss Army knife."

Indeed, the single largest program in the farm bill is food stamps, renamed the Supplemental Nutrition Assistance Program (SNAP) five years ago. The food stamp program was married with the farm bill during the Carter administration in order to build a rural-urban coalition for the 1977 farm bill. This politically arranged marriage served both sides well until now, as SNAP has grown to consume 79 percent of all spending under the farm bill and the political dynamics in Congress have changed.

First, the 2010 elections decimated the ranks of the Democratic Blue Dogs, the moderate to conservative, mostly rural, mostly Southern Democrats in the House. Enough so that when it came time for the minority to assign seven new members to the House Agriculture Committee after the election, there weren't enough Democrats from farm districts to fill the seats. Several members interested in SNAP took the assignment, notably Reps. Marcia Fudge from Cleveland, now chairman of the Congressional Black Caucus, whose priorities are ending childhood obesity and expanding nutrition programs, and James McGovern of Massachusetts, self-described "unrivaled supporter for social justice and fundamental human rights." Not your typical Ag Committee members.

Second, the Senate Agriculture Committee was chaired by Debbie Stabenow (D-Michigan), who when writing the first version of the farm bill in 2012 was up for reelection in a state which that year had 1.9 million food stamp recipients and 56,000 farms. Her priorities were clear, and SNAP was preserved. The Senate bill called for a mere $4 billion in cuts over 10 years from SNAP's $800 billion baseline—about 0.5 percent. Her farm program reforms proved controversial too, leaving an unusual split among farm and commodity groups.

For its part, the House Republican majority was divided between farm program advocates and the Tea Party caucus, whose priority was to trim spending, especially on entitlement programs like SNAP, but on farm programs, too. Majority Leader Eric Cantor feared he could not get a farm bill passed with the two factions splitting the GOP—especially before the 2012 election. He had to balance a bill that would cut enough in SNAP and farm programs to gain Tea Party votes but not so much that it would lose Democratic votes over SNAP or the remaining Republican votes over farm programs. So Speaker John Boehner postponed the bill until after the 2012 election.

Democrats used this to their advantage in farm states. As Jerry Hagstrom recently reported in *National Journal*, "there is evidence that the unwillingness of House Republicans to take up the farm bill in 2012 helped elect

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IMAGES: NEWSCOM

Democratic senators Heidi Heitkamp in North Dakota, Jon Tester in Montana, Joe Donnelly in Indiana, and Claire McCaskill in Missouri." Donnelly replaced former Ag Committee chairman Richard Lugar. McCaskill defeated St. Louis-area congressman Todd Akin, who opposed the 2002 and 2008 farm bills, though other issues obviously were at play in those races. Heitkamp and Tester, though, were challenged by sitting House Republicans; the two Democrats made an issue of the challengers' inability to convince the House Republican leadership to bring up the farm bill.

But farm bill issues can't be dodged forever. If a farm bill is not authorized every five years, farm programs revert to the Agricultural Act of 1949, which is based on commodity price parity to the inflation-adjusted levels of 1910-14 prices. Subsidies would have exploded. News stories about $7 per-gallon milk became a catalyst to including a one-year extension of the farm bill as part of the fiscal cliff fix passed in the wee hours of a lame duck session on January 1, 2013, and that sparked another controversy to add to the mix. Tea Partiers were outraged by the anachronistic 1949 provision in farm legislation and the dominance of SNAP in the debate, and some farm state legislators were having second thoughts about SNAP's role in the farm bill as well.

By June 2013, Boehner and Cantor's strategic decision of not scheduling a vote of the farm bill before the 2012 elections was proven wise: The House voted down the farm bill 195 to 234, notwithstanding the unusual amount of political capital spent by Boehner, who issued a memo to all Republicans urging their support and announcing that he would be voting "aye." By tradition, speakers do not vote on such bills. Despite Boehner's urging, six Republican committee chairmen did not vote for the final bill—another break with tradition. The bill lost 62 Republican votes, mostly because spending was not trimmed sufficiently. SNAP received a $20.5 billion cut under the plan; farm programs would have been cut by more than 35 percent. House Budget Committee chairman Paul Ryan was one of the chairmen who broke protocol and did not support Agriculture Committee chairman Frank Lucas's bill.

More significantly, only 24 Democrats voted for the bill; 172 voted against it. Boehner and Cantor had counted on about 70 Democratic votes. The turning point was an amendment

A June 2013 protest against proposed SNAP cuts

by Republican Steve Southerland of Florida, which would have applied federal welfare work requirements to SNAP. It passed 227-198, with 226 Republicans and a lone Democrat, Representative Jim Cooper of Tennessee, voting yes; 192 Democrats voted no. That amendment, along with the depth of the cuts to SNAP, sealed the fate of the farm bill on the Democratic side of the aisle. The lack of deeper cuts to SNAP was the death knell on the Republican side.

Majority Leader Cantor then took the reins from Lucas, with the simple objective of passing something through the House so the farm bill would get to conference with the Senate bill and a broader debate over spending and reform could be had. His strategy was, first, to pass two bills, one divorcing SNAP from the farm bill, and one that would end the provision reverting to 1949 farm subsidies and, second, to pass both of these bills with only Republican votes.

In early July 2013, Cantor and the House Republicans pushed through a farm bill sans a nutrition title. No Democrats voted for the bill; 12 Republicans voted against it. Finally, on July 16, after more than 40 hearings, two markups, 200 amendments, and three years, the House formally sent H.R. 2642—the farm-only farm bill—to the Senate.

Then, in September, as the House and the Obama administration were starting to clash over a funding bill to keep the government open in fiscal year 2014, which would begin on October 1, Cantor pushed through a separate nutrition bill, doubling down on SNAP cuts, providing for $40 billion in cuts despite the Obama White House having issued a veto threat.

To add emphasis to the Republican position, Rep. Southerland—whose amendment doomed the 2013 farm bill—was named a conferee to the farm bill negotiations with the Senate. The Florida Democratic party issued a press release saying, "Congressman Southerland's insistence on putting ideology ahead of common sense has resulted in a major loss for Florida's farmers." Cantor spoke on the House floor in support of the program, likening it to the successful welfare reforms of 1996 passed by the Republican majorities in the House and Senate under President Clinton.

Indeed, the farm bill process was part of a larger effort by the Republican majority in the House to force a showdown with the administration over entitlement spending. Farm programs and SNAP were on the table long before defunding Obamacare stole the headlines and led to the two-week government shutdown. Remarkably, Republicans were willing to play out this drama on legislation that was dear to a loyal constituency—agriculture and rural voters. Yet in the end, neither the Tea Party nor agriculture has gained from the Republican efforts.

After all the time and political capital invested in reform and

fiscal restraint, the final legislation that emerged from House-Senate negotiations in early 2014 includes none of the principles for which the GOP was so willing to fight—and shed blood—during the past three years. What emerged is a standard farm bill, spending billions on miscellaneous programs, tens of billions on farm subsidies, and hundreds of billions on SNAP.

SNAP is trimmed by only 1 percent, or $8 billion, and remains part of the farm bill. There are no major reforms or new eligibility requirements for receiving food stamps, except for the exclusion of college students and lottery winners. The permanent law provision is safely ensconced: If a farm bill is not authorized in five years, the threat of a reversion to the 1949 law will still hang over lawmakers' heads. Spending under the first year of the new bill actually goes up by more than $2 billion.

And farm subsidies, though theoretically trimmed over the long run, arguably have been made worse. According to Senator Pat Roberts, this farm bill "goes backwards towards protectionist subsidy programs." At issue is the reestablishment of guaranteed reference prices that trigger subsidy payments and how generously they are set. As Roberts explained, "the majority [of farmers will] make the business decision to follow the subsidy signals instead of the market." In a speech on the Senate floor, Roberts noted that besides himself all four House members in the Kansas delegation voted against the final version of the bill despite its being "arguably the most important" piece of federal legislation to Kansas. That, he notes, should put the rest of the country on alert.

Upon signing it, President Obama said, "with this bill we break the cycle of short-sighted, crisis-driven partisan decision-making and actually get this stuff done. . . . And that's the way you should expect Washington to work." Sadly, he's correct. Our expectations about how Washington works really should be that low. The farm bill process was full of sound and fury, signifying nothing. ♦

Dependence Day

The corrupting effects of Obamacare.

BY JAY COST

On February 4 the Congressional Budget Office dropped a bombshell. Analysts there found that Obamacare's structure will create an enormous implicit tax on work, such that people on the lower end of the economic scale will have an incentive to quit their jobs or scale back to part time to maximize their premium subsidies. In an earlier study, CBO had estimated that this disincentive to work would destroy the equivalent of less than a million full-time jobs. Now, it projects that an equivalent of more than 2 million jobs will be lost as people voluntarily leave the workforce.

Hey, more time to spend with the kids!

Many liberals celebrated this development. They trumpeted the new possibilities: Parents will have more time to spend with their children, young people more time to go back to school, and so on. As liberal pundit Matthew Yglesias wrote, "If Obamacare really does cause millions of people to voluntarily leave full-time employment, that shows us how much avoidable suffering the earlier system was causing."

But conservative critics have the better argument. Perhaps the best rejoinder came from Keith Hennessey, former director of the National Economic Council and now a lecturer at Stanford University. At his blog, he finds that the law can trap people just as easily as it can liberate them. A family of four making $35,000 a year would face a steep implicit tax by adding income from a part-time job; in that scenario, the family isn't working less for the sake of the kids, but "because the government raised [their] marginal effective tax rate and made work less financially rewarding." This is an excellent point, and speaks to the potential damage that this implicit tax will wreak.

The economic arguments against this disincentive to work, while significant, are not the entirety of the case to be made against it. Indeed, they may not even be the strongest. There are important civic ideals at stake that, while often overlooked, get to the very heart of the nation's experiment in republican self-government.

What does it mean to be a citizen of a republic? For centuries, philosophers have generally concluded that citizenship has two essential qualities—freedom and equality. In other words, nobody in a republic is your master or lord, and nobody enjoys a higher civic status than you. The state, insofar as it compels you, does

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so on behalf of everybody. Governmental coercion is legitimate only if it is on behalf of the public good.

In practice, this ideal has been exceedingly difficult to realize. History has shown time and again that republics are often, if not inevitably, corrupted by factional forces who capture the government and twist it toward their own, selfish ends.

The Constitution, with its labyrinthine system of checks and balances, is an effort to mitigate this danger. Importantly, the anti-Federalist insistence on a Bill of Rights was seen as an extra safeguard against corrupting influences. By their reckoning, even if government fell into the "wrong hands," it would be limited in what it could do to you, and by extension to the republic itself.

Nowadays, we are wont to correlate liberty with dynamism. A free society is one where risk takers can innovate, create new solutions to problems, and make everybody better off. There is no doubt that all of this is true. Even so, it would be anachronistic to see the Founding generation as making the same arguments. Liberty was essential primarily because of its civic benefits, above all as a bulwark for true republicanism against the despotic pretensions of the likes of King George III.

We cannot reconcile these republican notions with Obamacare's disincentives to work. If we take the Framers' hard-earned lessons seriously, the sort of clientelistic relationship that exists under Obamacare is incompatible with authentic citizenship. The problem arises from two different directions.

First, a government captured by factions will simply have more power than it previously did. Once people come to depend on those benefits, they will have little choice but to abide by whatever strings the government chooses to attach.

Second, the government will now have less to fear from its opponents. Dependency degrades the capacity of the citizenry to operate as a check on the antirepublican tendencies of the government. As Madison and Jefferson argued toward the end of the 1790s, this was the last, best hope for true republicanism. In their telling, a junto of financial elites from the Northeast had seized control of the government, perverting public policy towards their own, selfish ends. The only recourse was the ballot box, where they hoped to mobilize the people at large to stand up for the public interest. If the government has turned citizens into clients, how will the citizens then stand up to the government should it misbehave?

All of this might sound far-fetched, but these very dangers arose in the 1880s and 1890s, as the government began dispensing pensions to Civil War veterans. The Republican party essentially captured the votes of the pensioners and forced them into an alliance with the manufacturing and financial sectors of the economy, against the agricultural interests with which many pensioners might otherwise have been affiliated. It was, in a word, a massive logroll. The pensioners voted for ever more generous benefits, but they *also* voted for protective tariffs and the gold standard. These economic policies socked it to the poor farmers in the South and West, and the gold standard probably would never have survived had it not been coupled to the pensions and the tariff. The sum total was an electorally unbeatable coalition that was nevertheless of questionable public utility; yes, the economy developed during this period, but its development was highly uneven, with poor farmers left on the outside looking in. The South in particular would not see any real benefits from economic modernization until after World War II.

There is a similar dynamic today, though it is less pernicious. The entitlement state is unsustainable in the long run. Eventually, it will wreck the public finances of the nation, yet it remains unreformed because a vast array of groups are dependent on the status quo. It is difficult to expect citizens to rebuke the government when supported by it. This makes it harder, not easier, to realize the public good.

This is not to say that we should hold these republican values above all others. In practice, we have rightly made trade-offs; senior citizens who can no longer care for themselves, or vets too sick to work, are tended to. There is a broad consensus that people who cannot depend on themselves for food, shelter, and medical care should depend on the government, concerns about republican citizenship notwithstanding.

But note: *This is not what Obamacare does.* Its disincentives to work are not geared toward the sick, the elderly, the disabled, but toward working-age, able-bodied adults. These are people who can work, but who will choose to substitute governmental dependence for self-reliance. This runs contrary to the broad consensus about the appropriate boundaries of the welfare state.

Who is to say that some coalition will not gain control of the government to leverage the Obamacare clients for their own political gain, just as the Gilded Age Republicans did with the Civil War vets? And, should that happen, how can these people be expected to do their duty as citizens to stand up for the public good? It is worth noting that the Republican regime of pension benefits, protective tariffs, and the gold standard did not fall apart until after most of the vets had passed away.

On any given policy question, it is easy nowadays to overlook the civic implications. We take our civil society for granted; we can hardly imagine our government turning against its own people, so we just assume that this republic we inherited will be here for generations to come.

But the Founders understood better, and history shows us differently. Republican government is easier to philosophize about than to maintain. It requires, above all, an active, engaged, and *independent* citizenry that can be called upon to vindicate the public good when it is threatened by factional designs. While we admit of important exceptions to this principle, Obamacare nevertheless violates it by encouraging dependency among citizens. This is a dangerous development for a republic such as ours. ♦

Paranoia in Kabul

Hamid Karzai and his enemies.

BY DAVID DEVOSS

Hoping to avoid the fate of his predecessors

With a presidential election less than two months away, all eyes in Afghanistan should be on the coming vote. It could be Afghanistan's first-ever peaceful transfer of power, and 11 candidates are running. Instead, Kabul is buzzing over the actions of term-limited outgoing president Hamid Karzai, whose strange behavior confounds allies and enemies alike.

After spending nearly a year negotiating a status of forces arrangement with NATO, Karzai is refusing to sign the document. He accuses the United States of pressuring his government to accept a permanent force of 16,000 foreign troops, insisting, "No pressure, no threats, and no psychological war against our people will force us to sign the Bilateral Security Agreement."

David DeVoss covered the assassination of Mohammed Daoud, two subsequent presidential assassinations, and the 1979 Soviet invasion. More recently, he has worked on economic development projects in Afghanistan.

In fact, no country has been more supportive of Karzai than the United States. Washington spends about $1 million annually for each soldier deployed to Afghanistan, according to Karl Eikenberry, former U.S. ambassador to Afghanistan. At the height of the troop surge back in 2009-10, the United States was paying $100 billion a year to station 100,000 troops in the region. Today, the United States and other foreign donors provide 90 percent of Afghanistan's total public expenditures and underwrite the entire cost of the 350,000-strong Afghan National Security Forces.

America's sacrifice has bought little gratitude. Karzai regularly denounces NATO for causing civilian casualties while seldom mentioning deaths from Taliban attacks. Karzai insists he will free dozens of Taliban detainees despite evidence that some are responsible for the deaths of 11 Afghan soldiers. Recently, he implied that Washington was involved in a Kabul restaurant bombing for which the Taliban took credit. Not even his admirers ever claimed Karzai was an Atatürk. Today his erstwhile allies in Kabul's diplomatic community describe his mutterings as "paranoid" and "delusional."

Will American troops be serving in Afghanistan this time next year? In theory, the new Afghan president could sign the Bilateral Security Agreement. With varying degrees of enthusiasm, the four leading candidates for president support a continued NATO presence. But the likelihood of recounts and a runoff following the April 5 balloting may prevent a new president from taking office until June. The successful candidate certainly will feel pressure from the Taliban. After former foreign minister and presidential frontrunner Abdullah Abdullah made his support for the security agreement known, two of his election workers were shot dead in the western city of Herat.

In fairness, no Afghan politician can last long without some paranoia. Since the late 1970s, five of the country's top political leaders have been assassinated. The most recent was former president Burhanuddin Rabbani, who, after being named head of the country's High Peace Council in 2011, was embraced on his 71st birthday by a "peace seeking" Taliban commander with explosives hidden in his turban. Four other members of the Peace Council died in the blast. Earlier that year, Ahmed Wali Karzai, the president's younger brother who served on the Kandahar Provincial Council, was killed by his bodyguard in Kandahar. "This is the way of life for the people of Afghanistan," the president noted on hearing the news. If Karzai seemed resigned to the tragedy, it's probably because he himself has survived six attempts on his life.

Karzai's disenchantment with the United States dates to early 2009, when President Obama's special envoy, Richard Holbrooke, publicly suggested that a politician more gifted than Karzai should run for president in the election that year. Meanwhile, the surge was generating its own frustrations for Karzai. Generals Stanley

McChrystal and David Petraeus were determined to implement the counterinsurgency strategy, which called for the Army to "clear, hold, and build"—build, that is, legitimate government institutions in rural areas. Karzai objected: Afghanistan was capable of creating its own government institutions. He insisted the war should be fought in Pakistan where the Taliban leadership lived. Needless to say, the demand that the war be waged in a nuclear-armed country with more than 180 million people did not bear discussion.

"Karzai's inability to get the United States to attack the Taliban inside Pakistan's tribal areas made him look weak to Afghan tribal leaders," remembers one American diplomat in Afghanistan at the time. "There were real seeds from which Karzai's paranoia grew."

And grew. A year ago Karzai was primed to enter retirement as a friend of the international community. He could have been a roving U.N. ambassador; perhaps an adjunct professor at Princeton. Today he is the embodiment of unpredictability, probably unemployable in or out of Afghanistan.

Ironically, Karzai's 11th-hour xenophobia may be his ticket to a longer life. In a country where the future is uncertain and the present problematic, the past looms large. "Hamid Karzai can't afford to be seen as anybody's puppet," says Marvin Weinbaum, a former analyst with the State Department's Bureau of Intelligence and Research who is a scholar in residence at the Middle East Institute in Washington, D.C. "He knows the story of Shah Shuja."

That 19th-century Afghan emir hitched his wagon to the British Empire. It seemed a safe bet until the British were expelled from the country in the First Afghan War. Rudyard Kipling's "The Young British Soldier" vividly describes what befell the British on their retreat from Kabul: *When you're wounded and left on Afghanistan's plains* . . . Alas, no poet lingered to record the gruesome fate of Shah Shuja.

Today, campaign posters are going up across Afghanistan. Each contains the name, photo, and political affiliation of a candidate for president. Many also have a small portrait in one corner. It shows the face of Mohammed Daoud Khan, the president of Afghanistan who traveled to Moscow in 1977 and bluntly told Leonid Brezhnev to stop interfering in Afghan affairs. "You will not dictate how Afghanistan is governed," he reportedly told the Soviet general secretary. "Afghanistan is a free country."

The following year, Afghan Communists beholden to Moscow assassinated Daoud. His image lives on as a symbol of Afghan independence from foreign powers. Defenders of Karzai's recent behavior insist he's just trying to emulate Daoud. Perhaps so. But Hamid Karzai should remember that the truest test of a patriot is the ability to distinguish between friend and foe. ♦

Detroit, Mon Amour

Remember the liberal war on the automobile?

BY GEOFFREY NORMAN

Seems like this is the season for showing the American automobile some love. Also, the town that the automobile built—Detroit, aka the Motor City, where packs of feral dogs now roam the streets and den up in vacant lots between the abandoned buildings. Detroit, these days, seems far more deserving of pity than celebration.

Still, Vice President Joe Biden showed up for the annual Detroit auto show in January and delivered the usual talking points. American manufacturing is back. "We bet on American ingenuity, we bet on you, and we won."

"We," of course, being the Obama administration. Biden has some credibility with what remains of the car culture. His father worked for a GM dealership, and Biden owns a Corvette. That makes him the red-headed stepchild of his extended political family, which has long considered what Detroit built as the devil's ride and the city itself as Satan's workshop.

The correct sentiment (call it "liberal" for lack of a better term) in certain lofty circles has for decades been to hate the automobile and all it stood for. The American car was, in the view of John Kenneth Galbraith, the *ne plus ultra* of conspicuous consumption with its useless tail fins and its obscene bulk, power, and luxury. The car was an indulgence that favored the individual over the community. It was also a deadly killer and designed to be so, according to Ralph Nader, who lectured like a Puritan divine that it was "unsafe at any speed." And it was, as any number of commentators told us, a vehicle that would ride us to economic perdition, guzzling gas and polluting the atmosphere all the way. So with Jimmy Carter in the White House, Detroit was told to make its cars go further on a gallon of gas.

Auto show, 1968: so wrong on so many levels

This was the original and self-evident sin of the American car. It burned gasoline refined from petroleum that comes from the Mideast or, worse, from Texas, where it makes people like J.R. Ewing and the Koch brothers rich. Oil is the most hated of all substances in this worldview. Oil supplies energy and so does coal. But while people like the late Pete Seeger sang mournful ballads about coalminers, nobody had a song for those who worked in the oil patch, making it possible to drive those awful cars that create sprawl, spew pollution, and "disincentivize" the masses from riding the train, thus making America less like Europe than it should be.

After Washington started telling Detroit what kind of car it should (and could) build, the American consumer either bought a car made in Japan or an SUV or pickup, exempt from the mileage requirements. Then, the government started telling people that if they really *must* drive, they would not be permitted to do so at speeds above 55 miles per hour. This, of course, was for their own good. It was safer. Studies proved that this was not so, but . . . well, never mind, just slow down, leadfoot.

The decline of the American car was celebrated by those who believed salvation lay in mass transit; in getting people to move from the suburbs, back into the central cities, so they could walk to work. Or ride a bicycle. Anything but drive a filthy car.

There were still parts of America where you could openly declare your love for the American automobile. The South, of course, where people by the tens of thousands would drive hundreds of miles to spend a weekend watching tough men race big, American cars. Half the men in the South wanted to be Richard Petty. The other half wanted to be Dale Earnhardt. And drive whatever they were driving.

There were other parts of the country where it was still permissible to love your wheels. To love cars in general and in the abstract. For a long time, it was still okay even in California. The Beach Boys were into cars

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almost as much as surfing. Motion was the mantra in the West. Freedom was the road. And, then, the off-road. All the way down Baja.

But the people who lived, physically or psychically, in that other, liberal America couldn't imagine loving *a car.* You might *like* a Volvo or some other version of the anticar. Nobody would even think of painting a Volvo in gaudy colors, sticking a bunch of STP logos on it, and driving it around in circles, banging the hell out of other cars on the way to the finish. A Volvo was engineered to be safe. Not fun. It was blasphemous to equate cars with fun. The attitude of, say, the Joan Claybrooks of the world to cars resembled that of the Puritans to sex: to be indulged in only when necessary. Claybrook was the chief proselytizer and enforcer of the 55 mph speed limit, the defeat of which was a rare victory for the pro-car forces.

Meanwhile, Detroit struggled. Both the city qua city and the American automobile industry. The city was strangled and left in the ditch by a political machine (D) that made promises it couldn't keep, so it kept them by stealing. Eventually, there was nothing left to steal, and Detroit became famous not as the city with the largest per capita income in America—a distinction it once owned—but for being the largest American city ever to declare itself bankrupt.

The automobile industry went through similar travails. Mismanaged by executives who were not "car guys" and micromanaged from afar by Washington, where the anticar sentiment prevailed (do you suppose Henry Waxman loved cars?), it wrong-footed itself at every turn. And, of course, allowed itself to be strangled by the United Auto Workers. Right-thinking people hated cars but they loved unions.

So two of three American car companies were on life support with no hope of recovering when Barack Obama became president. His administration worked up a bailout that favored the unions, and his campaign mouthpieces bragged about how he had refused to let Detroit die.

And now we are supposed to believe that Detroit and the American car have risen from the ashes. Take it from the people who did so much to stoke the fire. And if you can't believe them, then certainly you can trust Bob Dylan, who did a Chrysler commercial that aired during the Super Bowl.

The ad took the form of a ballad rhapsodizing the American spirit, the American road, and the American car:

Detroit made cars and cars made America.

Let Germany brew your beer. Let Switzerland make your watch. Let Asia assemble your phone. We will build your car.

Where was Rambling Bob when Detroit really needed him? Out on Highway 61, no doubt. ♦

Of Mullahs and Lawyers

Iranian success in European courtrooms.

BY TED R. BROMUND & ANDREW SOUTHAM

In a recently leaked private phone call, an EU foreign policy official, Helga Schmid, grumbled to the EU's ambassador to Kiev that it was "very annoying" that the United States had criticized the EU for being "too soft" to impose sanctions on Ukraine. Criticism may be annoying, but EU softness is a fact of life, and the transatlantic trouble over sanctions goes beyond Ukraine. For the past year, British and European Union sanctions against Iran have faced a string of legal challenges and lost nearly every round. The sanctions relief offered by the so-called interim nuclear deal between the P5+1 and Iran conceals the broader problem that the European legal basis for sanctions is eroding. Iran is expert in the waging of terror wars. It's also, it turns out, good at lawfare.

The West prides itself on its legal system and its protection of property rights. Lawfare seeks to turn these strengths into weaknesses by abusing law to achieve warlike ends. Iran's legal battles in Europe are a study in lawfare's increasing power to tie democracies into self-imposed knots. And Iran has done more than befuddle the Europeans. It's written a playbook for any future subject of sanctions: When Europe calls, lawyer up.

The EU has imposed broad sanctions against Iran since 2007, and in 2009 the British Treasury extended its own sanctions to include Bank Mellat, 20 percent owned by the Iranian government. The bank appealed and in 2013 won a judgment in the U.K. Supreme Court, which found the measures were "arbitrary and irrational" and "disproportionate." Later that year, the European General Court, for similar reasons, ruled against EU asset freezes of seven firms connected with Iran.

The defeats keep on coming: Last month, the General Court removed Iran's North Drilling Company from the list of sanctioned firms. It's merely icing on the cake that Britain may be held legally responsible for the damages Bank Mellat incurred as a result of the sanctions.

The Iranians have reacted to these victories with a mixture of

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self-righteous indignation and barely suppressed glee. As a strategy, lawfare is particularly galling because it holds that terrorists and dictators are virtuous defenders of law, in contrast with supposedly rogue Western nations. Iran's Fars News Agency happily reported the claim of a managing director of an Iranian bank that the EU's actions were "illegal," while Iranian deputy oil minister Ali Majedi called on French

'Can I get you a beverage? Supply your military? Weaken your sanctions?'

energy firms to invest in Iran and show "the independency of [the] economic sector from politics."

The Iranians are not the only ones pitching the French. In a recent interview, Secretary of State John Kerry stated that "while the French may send some businesspeople over there, they're not able to contravene the sanctions. They will be sanctioned if they do and they know it." So, he sternly concluded, the French had been put "on notice." When John Kerry scolds France, the world has stopped making sense. Perhaps if Paris fails to heed his notice, he'll send a letter. He'd have to copy it widely: In mid-January, the Dutch ambassador to Iran held a speed-dating session with firms panting to join the Iranian action. The *Wall Street Journal* writes mordantly of the coming "gold rush" to Iran.

That characterizes the situation a bit too strongly. The challenge to EU sanctions will take time to unfold. Late last year, the EU started to warn companies that had won favorable rulings that they would be targeted with new sanctions. The EU has an ignoble tradition of using this try, try again approach—in national referenda, they only stop asking when they get the answer they want—but here their bureaucratic persistence serves a noble end. Warnings may not work, however: The *Journal* reports European officials are concerned that further legal defeats could destroy sanctions altogether.

The fall-back option is to rely on U.S. sanctions and the willingness of the United States to punish foreign firms that evade them. On February 6, Treasury penalized 18 businesses and 14 individuals in eight nations. The U.S. sanctions regime is legally more robust than Europe's, which implicitly presumes that firms have a right of market access and any exclusion must be regularly justified. But it is one thing for the United States to punish a motley collection of mostly Middle Eastern firms. It would be politically quite another for the U.S. government to designate major European companies if EU sanctions collapse any further. Even a White House that badly wanted to ramp up the pressure on Iran might be reluctant to go after leading European banks, and this White House badly wants no such thing.

The EU's losing streak could portend wider disaster. Since 9/11, the United States has emphasized using the international financial system to raise the costs that bad actors have to pay to do business. The most significant result of Iran's European victories is that they threaten to make the EU reluctant to impose sanctions anywhere. And while the United States is indeed better at using its intelligence-gathering to inform its sanctions process, it is too easy to argue that the Europeans merely need a legal system that can make effective use of classified evidence.

It tells you a lot about the supposedly independent Iranian firms that their European victories were hailed in supposedly independent press releases from Fars. In the West, we think of the public and private sectors as separate. The basis of the U.K. Supreme Court's judgment was that Bank Mellat had not been treated with the fairness owed any complainant in the tradition of English common law.

But believing in the probity of the Iranian banking sector is like relying on the Fars News Agency: It's not a safe bet. It is not that there are no legitimate businesses in Iran; it is that, under any lawless regime, it is impossible to draw the line with certainty. Courts overstep their boundaries when they fail to give governments discretion to draw that line when matters of national security are involved. Majedi's call to put energy beyond politics is just another effort to exploit Western confusion about how business works in a totalitarian system.

The irony is that the damage European courts are doing to sanctions only makes them a less attractive alternative to using force. Europe's judges might remember that the rule of international relations is reciprocity. Until European firms (and Iranian citizens) can go to an Iranian court and receive a fair hearing, Iranian firms are the fruit of a closed and corrupt system, and they should be judged accordingly. ♦

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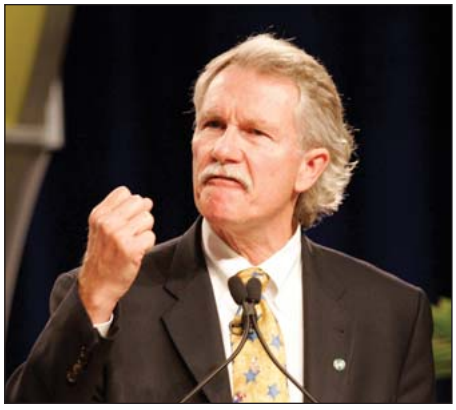
The Guinea Pig State

Oregon's quarter-century of failed liberal health care experiments

By Mark Hemingway

On December 20, Cover Oregon—one of 14 state-based Obamacare insurance exchanges—began robocalling all Oregonians who had attempted to get health coverage through the state's new marketplace. "If you haven't heard from us by December 23, it is unlikely your application will be processed for January 1 insurance coverage," said the prerecorded call. "If you want to be sure you have insurance coverage starting January 1, you have other options." For months, an expensive ad campaign promoting the exchange had blanketed the airwaves with a twee folk song, "Long Live Oregon," promising coverage for the state's "loggers . . . stay-at-home dads . . . and indie rock bands"—among other very Oregon vocations—yet now the exchange was so broken it had managed to sign up only 44 people in its first two months. The state was essentially telling thousands of Oregonians who had lost their health insurance under Obamacare, "Save yourselves!"



Oregon governor John Kitzhaber

One day before the calls started going out, Carolyn Lawson, the chief information officer for Cover Oregon who was responsible for building Cover Oregon's nonfunctioning website, resigned for "personal reasons." Following Lawson's departure, on January 1, Rocky King, the executive director of Cover Oregon, resigned citing "medical reasons."

On January 9, KATU, a television station in Portland, asked the state's Democratic governor, John Kitzhaber, about an email a Republican legislator, Patrick Sheehan, had sent to the governor's office on December 7. The email raised credible allegations that Lawson had "presented fraudulent testimony in a legislative hearing to further her self-interest . . . in pursuit of a consulting job with Oracle," the software company that built Oregon's nonfunctioning website. In 2012, Lawson had been the subject of a flattering profile in Oracle's in-house magazine, *Profit*. The article detailed Lawson's ambitious plans to redo the entire online infrastructure for the delivery of state services in Oregon, starting with Cover Oregon's $305 million website.

Cover Oregon had also won a $59 million "early innovator" grant from the federal government to help offset the cost of building its website. In order to keep the federal money flowing, Lawson had to demonstrate that various aspects of the website were working as the Obamacare enrollment deadline approached. Now Lawson stands accused of building a nonfunctioning dummy website to make it appear that website construction was progressing. Sheehan has since asked the FBI to pursue fraud charges against Lawson.

Despite the fact that Kitzhaber's legislative director had responded to Sheehan's email saying, "You have raised some serious allegations, and I will get this into the right hands in addition to the governor," Kitzhaber, when confronted, denied any knowledge of the allegations against Lawson and stormed out of the interview with KATU. Less than a week later, Cover Oregon's interim head announced he was considering scrapping Oregon's exchange altogether and letting state residents try their luck on the federal exchange, which has also been beset with problems.

That Oregon ended up with the most disastrous of all the Obamacare exchanges—an impressive achievement, considering how bad the law's rollout has been—has stunned America's growing herd of health care wonks. Twenty-five years ago—long before Massachusetts created the template for Obamacare—Oregon began trying to implement universal health care coverage. The state should know more about its uninsured population

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and how to reach them than any other. But no one who's watched developments over that quarter-century should be surprised that, once again, Oregon's attempt to provide health care coverage to everyone in the state has culminated in a nationally embarrassing failure.

As a cultural matter, Oregon prides itself on embracing bold legislative experimentation. If states are the laboratories of democracy, then Oregon has been run by mad scientists for more than a century. In 1902, it was the second state (after South Dakota) to adopt a voter initiative process. This has resulted in a remarkable degree of direct democracy and generally cultivated among Oregonians an alarming willingness to inflict unproven ideas upon themselves. Oregon has tried to make a virtue of experimentation for experimentation's sake. In that respect, the state motto is curious, but apt: *Alis Volat Propriis*, or "She Flies With Her Own Wings." Yet even if you're a fan of progressive governance, the state has a decidedly mixed record as a policy trailblazer. Oregonians proudly point to the fact they had the first "bottle bill" requiring a deposit on beverage containers, which environmentalists credit with kickstarting the recycling movement. But residents are far less likely to bring up, say, their pioneering and morally questionable assisted-suicide law as one of the state's crowning achievements.

The apotheosis of Oregon's dubious obsession with policy experiments is the Oregon Health Plan. Nearly two decades before the word "Obamacare" crossed anyone's lips, Oregon legislators were trying to realize their own progressive vision of universal health care by expanding Medicaid and mandating that employers provide health insurance. Though the program has defenders, it is difficult to credibly argue that the Oregon Health Plan has been anything other than a policy disaster. And unsurprisingly, it has a great many similarities to Obamacare. Even though the plans differ, the Oregon Health Plan suggests an alarming future for Obamacare's cost control measures. Finally, the history and long-term political consequences of the Oregon Health Plan provide some instructive lessons for those looking at the fate of Obamacare.

RATIONING

In 1987, shortly after funding for major organ transplants was cut from the state's Medicaid program, 7-year-old Oregonian Coby Howard was denied a bone marrow transplant. The operation would have given him a 50 percent chance of survival, and Howard died amid a national outcry over the denial of treatment. In response to Howard's death, the Oregon legislature embarked on an ambitious attempt to fix the state health care system. The earliest incarnation of the Oregon Health Plan was proposed in 1989, though it went through several iterations before becoming law in 1993.

The principal author of the plan was John Kitzhaber, then president of the state senate. Representing rural Southern Oregon, Kitzhaber, with his sartorial fondness for cowboy boots and Jerry Garcia ties, was a walking metaphor for bridging the state's pronounced cultural divides. It helped that Kitzhaber was also an emergency room doctor whose inviting but no-nonsense demeanor made him appear more pragmatic than his liberal Democratic colleagues. Kitzhaber's role in the creation of the Oregon Health Plan eventually propelled him into the governor's mansion, and though he's hardly a national name, he's arguably done more to advance liberal health care reform than any other politician until Barack Obama. His popularity is such that Kitzhaber was elected to his third (nonconsecutive) term as governor in 2010 and is poised to win a fourth term this year. This in spite of the fact that his signature legislative achievement has been a slow-motion train wreck for more than two decades.

Considering the catalyst for Oregon's health care reform, Kitzhaber was an unusual choice to head the effort. In the state legislature, he had opposed funding transplants for Medicaid patients, arguing the money would be better spent on other health care priorities. And when given a chance to reform the state's health care system, Kitzhaber doubled down on his belief that the amount of health care paid for by the state should be limited.

Summarizing the Oregon Health Plan, the *British Medical Journal* explained, "States tend to favour two approaches to control costs in Medicaid: they either pay providers less or reduce the number of people eligible. Oregon rejected both methods and instead opted for a new, bold approach: it would ration the benefits covered under Medicaid." Kitzhaber believed that rationing health care would be the best of both worlds—it would allow the state to expand Medicaid services to more people and control costs at the same time. The state would draw up a list of diagnoses and treatments prioritized for cost, necessity, and effectiveness and would pay for as many items on the list as it could afford in a given year. When the law first went into effect, the list ranked 696 medical conditions, and the state announced that anyone on Medicaid would be covered for the first 565 of them.

Of course, the transparent rationing of medical care has political ramifications, and in this instance national politics intervened. In 1990, the merits of Oregon's rationing plan sparked a federal debate. Oregon's proposed changes to its Medicaid program required a waiver from the federal Health Care Financing Administration (HCFA, later

the Centers for Medicare and Medicaid Services). In 1991, the first Bush administration denied Oregon's request for a waiver. "Some Oregonians suspected that the plan was denied because George Bush, about to wage a presidential campaign against Bill Clinton, was afraid to be labeled the 'rationing president,'" observed the *New England Journal of Medicine*. The suspicion was not paranoid. Tennessee senator and soon-to-be Democratic vice presidential candidate Al Gore had contributed an article to *Academic Medicine* excoriating the Oregon Health Plan. "Oregon's decision to ration health care to its poorest women and children," he wrote, "is a declaration of unconditional surrender just as the first battles are being fought over the future of our health care system."

In hindsight, the objections to Oregon's plan to ration health care from national Democrats seem to have been a matter of political positioning rather than principle. In 1993, the newly installed Clinton administration approved Oregon's Medicaid waiver. In fact, the waiver had a patina of bipartisanship—both of Oregon's moderate Republican senators, Mark Hatfield and Bob Packwood, were enthusiastic supporters of the Oregon Health Plan.

19-year-old Brandy Stroeder, who died from cystic fibrosis in 2002 after fighting the Oregon Health Plan unsuccessfully for a transplant

AP / DON RYAN

One key component of the plan, however, never received a federal waiver: the requirement that employers provide health insurance to all employees. John W. Saultz, of the Department of Family Medicine at Oregon Health and Science University, described Oregon's failure to implement the employer mandate as a betrayal of the law's supporters. "Even before the OHP was implemented, . . . it had already broken faith with the most idealistic of us," wrote Saultz in *Family Medicine*. "The state never seriously attempted to get the necessary federal waiver to create the employer mandate portion of the program. Thus, from the start, the OHP became a Medicaid experiment rather than a serious attempt to achieve universal health care coverage." Clearly, the state was having second thoughts about whether forcing small businesses to provide health insurance would generate inordinate political fallout.

Then there were two important secondary issues that Oregon had trouble addressing. First, ranking medical procedures by their cost, effectiveness, and necessity is a complicated and imperfect process. How do you compare two potentially lifesaving procedures and decide which should be ranked higher on a list? Indeed, the state's first attempt at ranking medical procedures was alarming. According to *Lancet*,

> The list ranked 1,600 medical treatments and contained serious flaws. The major difficulties related to inaccurate cost and effectiveness data. This led to some widely criticized rankings: reconstructive breast surgery was ranked more highly than treatment for open fracture of the thigh, and treatment for crooked teeth came higher than treatment for Hodgkin's lymphoma. Transplantation was again near the bottom of the list as was treatment for AIDS—primary care was near the top.

The second problem was that the state lacked the insurance infrastructure necessary to expand coverage. Even with rationing, the state sought to further reduce costs and to oversee implementation by herding Medicaid patients into tightly regulated health maintenance organizations (HMOs) contracted by the state. Though they have come to be widely loathed by American health care consumers, HMOs were touted in the 1990s as the answer to controlling health care costs. In fact, Saultz writes that he and his colleagues at Oregon Health and Science University were so enthusiastic about what was happening that they formed their own HMO specifically to help provide coverage under the Oregon Health Plan. This and other HMOs would be paid a "capitation rate"—a flat fee for every patient they enrolled, regardless of how much or how little medical care the patient required. Initially, doctor participation in the plan was high, and access to care was not a problem.

Thanks to a good economy and the fact that the Oregon Health Plan was a high priority for Kitzhaber's gubernatorial administration, the first few years of implementation are seen as relatively unproblematic. But it didn't take long before the system started breaking down.

FROM BREAKDOWN TO MELTDOWN

Early on, it was obvious Oregon's rationing wasn't cost-effective. By the time the law was implemented and state officials had agreed on the ranking of 696 procedures, the list was based on subjective judgment and political compromise rather than any rigorous cost-containment formula. A 1996 article in *Medical Decision Making* concluded there was "virtually no relationship between the [prioritized list] and Oregon's own cost-effectiveness data." A paper in the *Canadian Medical Association Journal* entitled "Rationing medical care: rhetoric and reality in the Oregon Health Plan" observed that

the Oregon Health Plan also contained a major loophole used to skirt enforcement of the rationing rules:

> Medicaid recipients continue to receive services that are supposedly excluded by the OHP. In large part, this can be attributed to the reticence of providers when it comes to abiding by the rules. The OHP pays for all diagnostic visits and procedures even if treatment is not covered, and physicians have taken advantage of this loophole to provide uncovered medical services. Patients . . . have also been diagnosed with conditions covered by the list in efforts by physicians to secure patients' access to services below the line.

As a result, the piece concluded, "there is little evidence that the OHP has operated as a model of explicit rationing . . . nor has its policy of cutting public coverage for services produced substantial savings." Nonetheless, the perception that Oregon was "rationing" had some unintended side-effects. The Oregon Health Plan's mental health and dental benefits were actually superior to those offered under commercial insurance in the state. According to the Cascade Policy Institute, these benefits were tacked on because "concerns about subjecting Medicaid beneficiaries to rationing were calmed by a benefit package that was considered by many to be generous."

And even when the state did make noises about enforcing stricter rationing, it was hamstrung by the federal government. To save money by covering fewer of the procedures on the state's list would require approval by the Health Care Financing Administration. But in 1997, the HCFA started denying Oregon's requests to move its priority line. As a result, noted Kitzhaber, the Oregon Health Plan had become "a very rich and fixed benefit, with no tools with which to manage the cost."

Like the rationing component of the law, the attempt to expand coverage soon started unraveling. Saultz describes his experience running an HMO in the Oregon Health Plan. "Warning signs were occurring as early as 1996. The state resisted increasing the capitation rate to the managed care plans, even as the cost of care increased," he wrote. "We all assumed that managed care would bring cost controls to bear on the system, but cost containment failed and commercial reimbursement grew rapidly." The result was a sizable gulf between what private insurers paid doctors and the compensation doctors received for treating patients under the Oregon Health Plan.

The reduced payments had a pretty dramatic effect on the finances of the state's health care providers. In the first decade of the Oregon Health Plan, Medicaid's reimbursements to hospitals fell an average of $130 million a year short of the hospitals' expenses. By 2003, only 23 percent of the state's rural hospitals were operating in the black. According to the Cascade Policy Institute, the Oregon Health Plan's failure to keep up with costs had a major impact on access to care:

> Regence HMO Oregon, which began offering plan service in 34 Oregon counties, had pulled out of 23 rural counties between 1996 and 1999. ODS Health Plan stopped offering the state plan in three rural counties because of nearly $1 million in losses. Sure Care of Roseburg offered the health plan in two rural counties but abandoned both by 1999. By 2000, Kaiser Permanente pulled out of the rural counties of Columbia, Linn, Benton, and Yamhill and exited the plan completely in 2002. In addition, by 2000, Regence completely exited the Oregon Health Plan, while Providence Health Plans and ODS Health Plan pulled out of the Portland area markets.

The Oregon Health Plan's problems were in many respects predictable, but defenders of the law argue that unforeseen shifts in the political and economic landscape prevented the law from building on its early success. Even those who acknowledge the plan's failure rarely fail to credit the law with reducing Oregon's uninsured population. A single statistic pops up again and again: The share of uninsured Oregonians dropped from 18 percent in the late 1980s to 11 percent in 1996, after the plan took effect. Those figures, however, come from the Office for Oregon Health Plan Policy and Research. The Cascade Policy Institute, a right-of-center think tank, however, notes that U.S. census data show the percentage of Oregonians without insurance actually *increased* between 1990 and 1996, from 12.4 percent to 15.3 percent. Oregon's uninsurance rate closely tracked the national average, which went from 13.9 percent to 15.6 percent over that period. It's possible that the state figures are more accurate than the census data. It's also possible that the state was so eager to prove its expensive experiment in expanding coverage a success that its numbers are suspect.

The Oregon Health Plan limped along through the 1990s. Oregon voters approved a hike in the state cigarette tax to pay for the plan, but costs were soon completely out of control. "Its budget swelled from $1.33 billion in 1993-1995 to $2.36 billion in 1999-2001," according to *Willamette Week*, which also noted that the Oregon Health Plan had prompted "a surge of public hostility toward HMOs." As if that weren't enough, Oregon endured arguably the worst state economy in the country during the recession of the early 2000s. State revenues plummeted even as costs were exploding.

In 2002, with Kitzhaber term-limited and about to leave the governor's office, he made one last stab at salvaging the Oregon Health Plan. This time the goal was to expand coverage to an additional 46,000 people, bringing the state nearer to universal coverage. This would be done by creating a two-tier system. OHP Plus would enroll the traditional Medicaid population and cover the prioritized

list of services. OHP Standard would enroll the new population—those making as much as 185 percent of the federal poverty level but not otherwise eligible for Medicaid. In order to save money, OHP Standard offered significantly reduced benefits. It also introduced co-payments, including $250 for a hospital visit. Failure to make co-payments would result in a suspension of enrollment in the Oregon Health Plan for six months.

While these changes were seen as Kitzhaber's attempt to rescue his legacy, they also reflected a shifting of political winds. Republicans had taken control of the state legislature during Kitzhaber's second term and had legitimate cause to start agitating for fiscal reforms. The introduction of co-pays and reduced benefits for those in the Oregon Health Plan whose higher incomes otherwise rendered them ineligible for Medicaid seemed to reflect Republican priorities. The two-tier plan drew bipartisan support.

A 2003 protest against proposed Oregon Health Plan cuts

Washington approved Oregon's waiver and allowed it to begin implementing the two-tier system in February 2003, a few weeks after Kitzhaber left office. The result was a meltdown in the Oregon Health Plan's enrollment. The federal waiver application had predicted "no negative impact on access due to cost sharing," but that turned out to be wrong. After co-payments were introduced, enrollment dropped 53 percent, from 104,000 people in January 2003 to 49,000 by December. By 2004, OHP Standard had only 24,000 participants, and it was closed to new enrollees. The percentage of Oregonians who were uninsured was nearly identical to the percentage before the Oregon Health Plan was implemented.

THE EXPERIMENT

The Oregon Health Plan isn't just a failure; it's such a failure that it has almost totally undermined the notion that government subsidized health insurance is ever effective. Yet this very assumption—that expanding access to government health insurance programs will control costs and improve health—is a central tenet of Obamacare and the progressive health care reform project. In 2008, Oregon was finally able to reopen enrollment in OHP Standard to an additional 35,000 residents. After the four-year hiatus, however, there was a waiting list of nearly 90,000 Oregonians trying to enroll, so new enrollees were selected by lottery. Of the 35,000 Oregonians who won the lottery, only 60 percent bothered to fill out an application and enroll.

Still, savvy social scientists realized that Oregon's health care lottery presented a once-in-a-lifetime opportunity to measure the effects of Medicaid. By tracking the health outcomes of thousands of Oregonians enrolling in Medicaid, along with those of a control group of thousands who were on the waiting list but didn't get to enroll, they could measure Medicaid's effects on a number of broadly predictive health indicators such as cholesterol, blood pressure, and diabetes. Former *Washington Post* health care blogger Ezra Klein touted the study in generous terms. "The gold standard in research is a study that randomly chooses who gets a new treatment and who doesn't," he wrote. "That way, you know your results are unaffected by differences in the two populations you are studying." Moreover, the sample size—over 12,000 Oregonians—was nearly unprecedented.

The "Oregon Medicaid experiment," as it came to be known, was performed by respected health care experts—including MIT's Jonathan Gruber, a key architect of Massachusetts's health care reform and one of Obamacare's biggest defenders. (In 2010, it came out that Gruber had been promoting Obamacare without disclosing his $297,600 contract with the Department of Health and Human Services.) The Oregon Medicaid experiment announced its first round of results in 2011. They measured only the first year and, importantly, included only improvements in health self-reported by the study's participants. No objective measures of health outcomes were included. Nonetheless, the findings were mildly positive and were greeted with a chorus of hosannas from liberal health care wonks.

Klein's write-up of the study's first-round results ran under the condescending headline "Amazing Fact! Science Proves Health Insurance Works." The study's "findings were irrefutable," noted the Century Foundation. Aaron Carroll, who blogs at the *Incidental Economist*, asserted that since this was a randomized controlled trial the link between Medicaid enrollment and better health was practically a given. "An RCT [randomized controlled trial] is pretty much the best way to prove causality. . . . We can even start talking causality," Carroll wrote.

AP / GREG WAHL-STEPHENS

Then in May 2013, the second round of results from the Oregon Medicaid experiment was published in the *New England Journal of Medicine*. The results had been expected in 2012 but were delayed without explanation. Whatever the reason for the delay, the findings would not have been politically helpful to Obamacare defenders had they been released in the middle of the presidential campaign. "Medicaid coverage generated no significant improvements in measured physical health outcomes in the first two years, but it did increase use of health care services, raise rates of diabetes detection and management, lower rates of depression, and reduce financial strain," concluded the study. Now, this result shouldn't have been surprising. A raft of studies have come to similar conclusions about Medicaid's general ineffectiveness. With regard to certain specific health measures, there is actually evidence showing those in Medicaid have worse outcomes than the uninsured.

But after having overpraised the Oregon Medicaid experiment and credulously accepted its early findings, liberal wonks nearly threw their backs out attempting to hoist the goal posts out of the ground. Suddenly they were alternately pointing out major limitations of the study and seizing on the marginal benefits it suggested Medicaid provides. Having asserted that Medicaid coverage causes better health outcomes, Carroll and co-blogger Austin Frakt were now saying, "Chill, people. [The Oregon Medicaid experiment] is another piece of evidence. . . . [I]t didn't show that Medicaid harms people, or that the ACA is a failure, or that anything supporters of Medicaid have said is a lie." The *New York Times*'s news article on the results was misleadingly headlined "Medicaid Access Increases Use of Care, Study Finds." *Mother Jones* went with "Medicaid Probably Does Improve Health Outcomes After All."

As for the supposed benefits of Medicaid coverage demonstrated by the Oregon Medicaid experiment, it's worth noting two things. One, Obamacare supporters seem content with the notion that increased health insurance coverage is the goal regardless of whether it provides quality health care or is financially sustainable. Two, the Oregon Medicaid experiment did show a barely statistically significant improvement in outcomes for the seriously mentally ill. But the improvements in mental health are a curious result to hang your hat on. The Oregon Health Plan has long since eliminated or scaled back its once generous dental and mental benefits. According to a 2009 state workforce survey, "two-thirds of physicians report only sometimes or never being able to find inpatient mental health services for Medicaid patients. That increases to three-quarters for outpatient mental health services." If serious mental illness is the one area of slight improvement in outcomes, it's in spite of the fact that those in the Oregon Health Plan have a very hard time getting treatment for mental problems.

But for a great many Obamacare foot soldiers, the reaction to the Oregon Medicaid experiment was outright denial. "Above all, you should bear in mind that if health insurance is a good idea—and you are nuts if you let this study persuade you otherwise—Medicaid is cheaper than private insurance," observed *New York Times* columnist Paul Krugman. "So where is the downside?" It shouldn't be necessary to explicate the massive qualitative differences between Medicaid and private insurance. A Ford Pinto with a leaky carburetor and a brand new Honda Civic are both forms of transportation. The former may be cheaper, but it's much less likely to get you where you need to go day in and day out.

If a Nobel Prize-winning economist thinks that there's no downside to American taxpayers spending $7 trillion on a program that the "gold standard" of social science tells us may result in an uptick in Lexapro prescriptions at best, Obamacare's defenders would seem to be driven by religious zeal rather than empirical evidence.

LESSONS LEARNED

Though defenders of Obamacare and other liberal health care reform projects remain unmoved by the evidence, there are a number of lessons to be learned from Oregon's 25 years of failure. In 2008, John Saultz, drawing on his years working with the Oregon Health Plan, laid out four:

> First, the initial steps to take are to define health system goals and to tackle the question of defining basic benefits. The method of doing this must be a public process and cannot be created purely by policy wonks or government bureaucrats. Oregon discovered that a public process can work, at least in a small state like Oregon. It remains to be seen how this might work in a state with a much larger and more diverse population or a less progressive public policy community.
>
> Second, it is important to keep in mind that health care reform is hard work and takes time. If you try to go too fast, you will make too many mistakes and public support will falter.
>
> Third, do not underestimate the opposition. Health care spending now constitutes more than 16 percent of the American economy. Lots of money is involved, and lots of people and organizations do not want change to happen.
>
> Fourth, always remember that the devil is in the details. The best ideas in the world won't help you if you cannot deliver a plan that ordinary people can understand.

Though he's been chastened by experience, Saultz remains a guarded supporter of the liberal health care reform project. So it should be even more dismaying that

the very year after Saultz laid out these lessons, Congress took up health care reform at the national level and proceeded to do the exact opposite of everything Saultz recommends here.

It is also tempting to say that Oregon's experience isn't necessarily comparable to what will happen with national health care reform. The open attempt at rationing made the politics and details of the Oregon Health Plan very different from those of Obamacare. As Saultz notes, however, Oregon's attempt to define benefits was relatively transparent. Currently, millions of Americans who had their policies canceled after being promised they could keep them are struggling to ascertain what their coverage will be like on the new Obamacare exchanges. And just because Obamacare doesn't explicitly ration services, as the Oregon Health Plan tried to do, there's no guarantee that the federal government won't adopt rationing in the future.

Obamacare creates two new bureaucracies: the Patient-Centered Outcomes Research Institute (PCORI) and the Independent Payment Advisory Board (IPAB). PCORI is tasked with doing research on what medical treatments are most cost-effective. IPAB is supposed to be a board of presidential appointees—Obama has yet to make appointments—confirmed by the Senate who are tasked with lowering the Medicare budget. IPAB's recommendations automatically become law unless they are overridden by a three-fifths majority in the Senate or Congress passes its own Medicare plan that meets the same spending target. So far, IPAB is expressly forbidden from rationing care—or adjusting Medicare premiums, deductibles, and co-pays. Thus, it has curiously limited powers considering its daunting task of reining in the biggest driver of federal debt. If the federal government ever does want to start rationing Medicare services, the administrative infrastructure will be in place. It is suggestive that in recent years, the Centers for Medicare and Medicaid Services (CMS) has started declining to pay for clinically effective but expensive cancer drugs. (Once again, Oregon blazed the trail: The state generated a flurry of headlines in 2008 after it sent a letter denying a 53-year-old man with prostate cancer chemotherapy but offering to cover the cost of physician-assisted suicide.)

Former CMS head Donald Berwick, who was recess-appointed to the agency by Obama after GOP senators objected to his explicit endorsement of rationing medical care, is running for governor of Massachusetts. Berwick is trailing in the Democratic primary, but rationing is no longer an unutterable word among politicians in blue states. As everyone from Al Gore on has demonstrated, liberal health care champions are always against rationing right up until they are for it. Medicare has long been "a very rich and fixed benefit," and Democrats have shown an absolute unwillingness to adopt market-based cost control proposals offered by Republicans. If Democrats want to control Medicare costs, rationing is the only real alternative. Rationing is also a central feature of the single-payer system, for which the Democrats' liberal base is increasingly agitating in response to Obamacare's failures. Obamacare opponents should gird themselves for the day when rationing inevitably becomes part of the national conversation.

Given that Medicare is the biggest driver of federal debt, it makes sense that Obamacare is focused mostly on reining in Medicare costs. Yet Obamacare also aims to expand Medicaid coverage to as many as 20 million people, and there is still no cogent plan to keep the program from busting budgets. How desperate is the Obama administration for solutions? On May 3, 2012, the administration announced it was giving Oregon $1.9 billion to enact new Medicaid reforms. In exchange for the money, Oregon is promising to keep Medicaid costs from rising more than 2 percent a year, a goal that, if met, would save the federal government $11 billion over the next decade. The Obama administration is hoping that Oregon's reform ideas can be replicated in other states. Indeed, just about every other governor in the country would kill for lavish federal funds to shore up their state's Medicaid budget. But considering Oregon's history of failures, a $1.9 billion gamble on its notions of health care innovation has pretty long odds.

This brings up the final lesson to be learned from Oregon's attempts at health reform: Opponents of government-run health care will have to remain vigilant, because liberal health care crusaders have shown a resolute and dumbfounding willingness to keep trying the same failed ideas year after year. Here's how the *Washington Post* describes the proposal that won over federal authorities: "Oregon wants to move its 600,000 Medicaid population into 'Coordinated Care Organizations.' These are health care systems that will accept a flat fee for all care delivered. While remaining within that budget, they will have to hit certain quality metrics, ideally creating financial incentives to deliver the most cost-effective care that can deliver good results," observes the *Post*. "If this idea sounds familiar, that's because it shows up in the Affordable Care Act: Accountable Care Organizations will use a similar structure within the Medicare program."

Once you understand that "Coordinated Care Organizations" and "Accountable Care Organizations" are just an attempt to rebrand the widely hated HMOs, this should all become even clearer. The details of Oregon's new proposal also sound eerily similar to what was first laid out by John Kitzhaber nearly a quarter-century ago.

Meet the new Oregon Health Plan, same as the old failed Oregon Health Plan. ♦

Angst over Spying

Germany, Russia, and Snowden

By James Kirchick

Edward Snowden's revelations about the foreign and domestic surveillance practices of the National Security Agency have inspired a great deal of anger around the world, but nowhere has the fury been stronger than in Germany. "Goodbye, Friends!" read the front page of *Die Zeit* last November, when it was disclosed that the NSA had monitored one of Chancellor Angela Merkel's mobile phones. *Der Spiegel*, which breathlessly published a report last fall alleging the U.S. embassy in Berlin was a "nest of espionage," has warned of an "ice age" in German-American relations. "If this happened during the administration of George W. Bush, we could at least think, 'It's just Bush. . . . There is a better America,'" a writer for the magazine ruefully concluded. "Now we know: There is only one America."

That "one America" is, in the eyes of many Germans, a "false friend." This is how German political magazine *Focus* described erstwhile "citizen of the world" Barack Obama, once celebrated by hundreds of thousands of Germans when he visited Berlin in 2008. The exposé about Merkel's phone, as well as earlier reports detailing NSA collection of telephonic metadata from German citizens, has stoked feelings of betrayal. When allegations arose in early February that the NSA had also eavesdropped on Gerhard Schröder in the run-up to the Iraq war, which he vocally opposed, the former Social Democratic (SPD) chancellor expressed the dejected feelings of many of his countrymen: "At the time, I wouldn't have thought that the American services were eavesdropping on me, but now it doesn't surprise me." A recent poll finds that 57 percent of Germans describe relations with the United States as positive, down from a high of 62 percent less than two years ago. Not since Schröder decided to use Iraq as a wedge issue in the 2002 federal election have German-American relations been so rocky.

The discord is more than rhetorical. Germany's federal public prosecutor Harald Range is considering an investigation into American espionage, and even figures within Merkel's relatively pro-American Christian Democratic Union (CDU) have been making noises about bringing legal action against Washington. "It seems quite clear to me that the law was violated on German soil," thundered Clemens Binninger, the CDU chairman of the Bundestag committee overseeing intelligence. The response is partly driven by domestic politics, namely, the agitating of Germany's post-Communist left, which has always been suspicious of America and now smells blood. Gregor Gysi, the parliamentary leader of the radical Left party, decries the CDU-SPD coalition as a cabal of "yes-men." "The fact that the German government and the federal prosecutor [aren't] acting shows that their fear of the U.S. government is greater than their respect for our legal system," he says. Earlier this month, the Chaos Computer Club, a hackers' collective, joined an obscure outfit called the International League for Human Rights in filing a criminal complaint against the German government, accusing it of collaborating with the NSA to spy on unsuspecting German citizens.

The NSA scandal has pushed Merkel's government into an unfortunate balancing act. Pained though she might have been to discover that the NSA was snooping on her personal phone, she is hesitant to fan the flames of anti-Americanism, as her predecessor did a decade ago. Yet, at the same time, it is politically tenuous for a German leader to tell a whipped-up electorate that they are overreacting. Last August, then-interior minister Hans-Peter Friedrich attempted to push back against some of the more overwrought claims about NSA surveillance. Not unlike many Americans, Germans had come to believe that the NSA was monitoring the contents of their every email, text message, and phone call, as opposed to analyzing

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metadata and zeroing in on potential terrorism threats. "If you are implying that people all across Germany are being spied on, I can tell you that this isn't the case," Friedrich told *Der Spiegel*. "The datasets that the Americans allegedly 'siphoned off' consist of connection data from crisis zones, specifically from Afghanistan. These are not telephone calls in Germany, but calls outside Germany, in which, for example, planned attacks on soldiers are being discussed. I think preventing these acts of terror was the right thing to do." Friedrich went on to say that Germany is not a "central surveillance target" of the NSA, a false impression that the myopic German press had fed. "Even if the NSA were to stop taking an interest in the Internet, there are other states that do so, and, to be sure, in a far more brazen way," the new interior minister, Thomas de Mazière, recently pointed out, countering the line that it is America, and only America, which is spying on Germans.

In its misinformed hysteria, European anger over U.S. spying echoes the reaction to disclosures in the mid-'90s about the ECHELON program, a signals intelligence network operated by members of the UKUSA Agreement (also known as the "Five Eyes" and comprising the United States, Great Britain, Canada, Australia, and New Zealand). European media and governments raised a hue and cry, accusing Washington of conducting economic espionage on behalf of private companies, much as Snowden has claimed—without evidence—today. Yet the only two instances of businesses targeted by ECHELON involved employees of those companies—Airbus and Thomson-CSF—offering bribes to Saudi and Brazilian officials, respectively. Far from stealing industry secrets to assist American businesses, ECHELON unmasked European parastatals engaging in blatantly illegal behavior aimed at undermining competition.

Schröder's remark that he would have been surprised to learn he was being spied on in the early 2000s is also somewhat difficult to believe. The press accounts and popular reaction to the NSA revelations registered a disbelieving tone, "as if this had happened for the first time, as if it was something terribly bad and unique," German historian Josef Foschepoth, author of the book, *Monitored Germany: Postal and Telephone Monitoring in the Old Federal Republic*, told the German broadcaster DeutscheWelle last summer. "But that is not the case. From my own research, I know that this happened countless times in the 1960s in Germany." After all, the BND, Germany's foreign intelligence service, was created by the CIA after World War II, and the Allies had a duty to ensure that Germany would not repeat the mistakes of its past.

Germans are too righteous in their indignation against America to realize it, but in their selective outrage, they are falling prey to the same divide-and-rule tactics that the Soviet Union employed when the Iron Curtain bisected Germany.

Germans are too righteous in their indignation against America to realize it, but in their selective outrage, they are falling prey to the same divide-and-rule tactics that the Soviet Union employed when the Iron Curtain bisected Germany. "Active measures" was the Cold War term used to describe the Russian art of political warfare, including everything from propaganda to penetration of religious organizations to assassination. In this sense, whether Edward Snowden had assistance from the Russian intelligence services before he started work as an NSA contractor, as House Intelligence Committee chairman Mike Rogers has intimated, is beside the point: Since relocating to Moscow, where he was granted temporary asylum last summer, every one of his revelations has served the foreign policy interests of Vladimir Putin. And it is in Germany where Snowden's disclosures have had the most profoundly harmful impact on America's reputation and the transatlantic alliance.

It's no secret that a crucial component of Putin's agenda is to divide the West. One way to do that is plant in the collective mind of the German public the notion the United States is a "false friend." The goal is not to reorient Germany entirely towards Russia; Putin, who served the KGB in Dresden from 1985 until 1990 and speaks fluent German, knows the country too well to believe such an audacious project could succeed. A newfangled version of Willy Brandt's *Ostpolitik*, edging Germany ever so slowly away from its traditional NATO allies, will suffice. Anything that breeds suspicion about America and its motives and weakens Berlin's relationship with Washington furthers Putin's goals. Already, the NSA revelations have threatened to derail progress on the Transatlantic Trade and Investment Partnership, a massive potential trade agreement between the United States and the European Union.

Some Germans, either knowingly or naïvely, are going along for the ride. In October, Green party parliamentarian Hans-Christian Ströbele traveled to Moscow to meet with Snowden. He returned demanding that Germany grant asylum to the fugitive leaker so that he can testify before the Bundestag about American intelligence

practices. Given the tight security around Snowden and the mystery surrounding his whereabouts in Russia, such a rendezvous would not have been possible without Putin's approval. Gysi, the Left party leader, nominated Snowden for the Nobel Peace Prize. It is not a question of whether the Russians had to actively enlist these men in support of Snowden and his aims, for they have always had a soft spot for Mother Russia. In the 1970s, Ströbele was a lawyer for the Baader Meinhof gang, the murderous revolutionaries who sowed terror and destruction across West Germany, all the while in receipt of financial and logistical support from the Stasi, the gruesome East German intelligence service. Gysi, for his part, leads the rump of the East German Socialist Unity party, and has never been able to definitively repudiate accusations that he was a Stasi asset in the 1980s.

Merkel has also lamentably joined the pile-on. Last week, a leaked phone call between Assistant Secretary of State Victoria Nuland and the U.S. ambassador to Ukraine, Geoffrey Pyatt, intensified the sense of strife between America and its European allies, strained already by Snowden's revelations. Describing her frustration with the European Union's lack of resolve in dealing with the crisis in Ukraine, Nuland used some adult language. The Russians made little effort to mask the fact that they were responsible for intercepting the conversation, and Nuland self-deprecatingly remarked that the tapping was "impressive tradecraft." Rather than say that it was not her business to comment on private conversations between American diplomats (as, one presumes, she would not want American political leaders commenting publicly on her own private conversations), Merkel instead said, through a spokesman, that Nuland's comments were "totally unacceptable."

Also notable is that Snowden granted his first, full television interview to a German public broadcaster. In it, Snowden alleged that the NSA engaged in industrial espionage, and specifically named Siemens, the German engineering conglomerate, as a target of American snooping. (The United States has long denied that it conducts such espionage, and Snowden offered no documentation to support his claim.) Snowden also said that the U.S. government wants to kill him. Snowden did not choose just any German journalist for his unprecedented interview but Hubert Seipel, who, in 2012, produced a laudatory documentary of the Russian president titled *I, Putin—a Portrait*. Putin handpicked Seipel for the job; the Russian leader had never given such access to a Western journalist.

Laura Poitras, the American filmmaker to whom Snowden entrusted his cache of documents (along with journalist Glenn Greenwald), currently resides in Berlin, which she lauds as "a safe place to work." Also resident in the German capital is Jacob Appelbaum, a hacker and former spokesman for WikiLeaks, who relocated there from Seattle. While traveling the world on behalf of WikiLeaks, which published a quarter of a million stolen State Department cables, Appelbaum had been detained several times at U.S. airports for questioning, and it was this alleged harassment that led him to move to Germany, where he lives unmolested by the authorities.

To dampen the public outcry, which shows no sign of abating, the German government has made an extraordinary request: a "no-spy" agreement with the United States. Such an accord could materialize in two ways: on a bilateral level with the United States, or, as the Germans would much prefer, via an invitation to join the Five Eyes, the Anglophone alliance that enables widespread intelligence sharing with the proviso that its members not spy on one another. With origins in the 1941 Atlantic Charter between Washington and London, it is the strongest and most successful such intelligence agreement of its kind, putting the "special" into "special relationship."

The Five Eyes grew out of the aftermath of the Second World War, in which Germany was the aggressor. And though the postwar Federal Republic was a strong ally in the battle against communism, Germany continued to be excluded from the pact partly because it was the main staging ground of the Cold War in Europe. East German intelligence penetration of the Federal Republic made inclusion of West Germany in the pact too risky; in 1974, Social Democratic chancellor Willy Brandt was forced to resign when it was revealed that one of his closest aides, Gunther Guillaume, was a Stasi agent.

But nearly 25 years after German reunification, expansion of the Five Eyes remains a problematic proposition, and not just because of the precedent it would set (one does not need to be a spy to know that letting more people in on a secret inevitably raises the chances of it leaking out). According to John Schindler, a former NSA intelligence officer and current professor of national security affairs at the U.S. Naval War College, Germany's obtaining a no-spy agreement with the United States, never mind access to the Five Eyes, would be next to impossible. Even though the BND boasts a strong relationship with the NSA on a "working level," there are significant "political complications" that would make German inclusion in the Five Eyes infeasible. "The frankness that comes from working together since World War II," Schindler says, is due largely to a high degree of foreign policy coordination among the Five Eyes to which Germany is unsuited. "The German political

establishment views some issues pretty differently than the Five Eyes," Schindler says. The gulf between Germany and the Five Eyes regarding Russia, Iran, and China (with which Berlin has relatively good relations, not to mention strong economic interests), is simply too great. Letting Germany join the club would be a "big culture change for everyone involved," a change that has little to do with a mere difference in language.

By joining the Five Eyes, Germany wants to exempt itself from something to which no other country (save the other four members of the group, of course) is immune: being the target of NSA surveillance. Not even the French, who also complained loudly about the NSA revelations, have requested inclusion in the Five Eyes, as they know such a radical policy change would never occur. "We're not within that framework, and we don't intend to join," President François Hollande flatly stated when asked if he would follow the Germans in demanding access to the club. The French, whose own domestic and foreign intelligence tactics are more invasive than America's (especially in the realm of economic espionage, where they are particularly shameless), are masters of hypocrisy. As such, they lack the innocence of the Germans, who genuinely seem to believe that a no-spy agreement is possible.

The debate in Germany over foreign spying exists in a vacuum, as if it is only the United States (and the United Kingdom) that spy. Reading major German media, listening to prominent German politicians, and speaking with Germans, one would never know that Russia and China (never mind close allies like France) also spy on Germans. Score another propaganda victory for Putin.

The very real German anger over American spying (as opposed to the contrived, winking outrage of the French), and the demand for a no-spy agreement, derives from a particular, postwar German innocence about the world. Stephan Meyer, a CDU politician who has called for barring American companies from competing for German government contracts should Washington not agree to a no-spy treaty, demonstrated this naïveté when he demanded that the "U.S. has to be candid" about its espionage in Germany, utterly oblivious to the oxymoronic quality of his admonition.

Lost on most Germans is a sense that American intelligence operations benefit Germany. "The Germans get more than they give," Schindler says, citing the growing number of Salafists resident in Germany and the degree to which American intelligence cooperation has helped the Germans monitor radicals and thwart terrorist attacks. The NSA's work in Germany is part of the broader defense umbrella that the United States has provided Europe for over 70 years. Far from being grateful for such protection, however, many Germans seethe with resentment. Germany's request for a no-spy accord reeks of guileless desperation; such an agreement would be almost entirely one-sided. It's not as if Germany has any great need to spy in America; it is Washington that serves as the world's policeman, not Berlin.

To judge by the outrage being expressed by politicians, press, and public, the majority of Germans cannot conceive of any reason why a country would engage in espionage other than warmongering, economic infiltration, and political repression. Part of this thinking comes from the country's experience of living under the Gestapo and then the Stasi, to which nearly every news story reporting on German anger over the NSA reliably alludes. Those comparisons are preposterous; what differentiates the NSA from the Nazi and Communist secret police is not only the nature of the political regimes under which they operated, but the purpose for which the information gathered is used. Surveillance by the Nazis and East German Communists was used to oppress and murder. No one has pointed to a single example of the NSA using metadata (or whatever information was gleaned from listening to Merkel's campaign cell phone) for such purposes.

The German outrage over American spying is of a piece with a larger flight from reality, demonstrative of a German desire to inhabit a post-conflict world in which there is no need for the dark arts of espionage. Germany's pacifist political culture looks down on America and its propensity for hard power, faulting us for failing to learn the lessons that they, the Germans, have learned all too well. It was thus refreshing to hear a speech delivered earlier this month at the Munich Security Conference, in which the German president, former political dissident Joachim Gauck, scolded those of his countrymen "who use Germany's guilt for its past as a shield for laziness or a desire to disengage from the world."

The beauty of "active measures" is that they require only the faintest touch from the intelligence service running the operation. As *Economist* editor Edward Lucas notes in his new ebook, *The Snowden Operation*, "given the right initial direction and a favorable propaganda environment, political movements in the West can serve the Kremlin's purpose without hands-on control." He draws a comparison to covert Soviet support for the various "peace" movements that sprang up around Western Europe in the late 1970s and 1980s to protest the deployment of American nuclear-tipped missiles on the continent. Then, as now, those who bemoaned the West's "militarization" were sincere in their anger, yet it was curiously one-sided. There is a word for the sensation that Vladimir Putin must be feeling as he watches the Germans work themselves up into a pious tizzy and the Americans hang their heads in embarrassment: *schadenfreude*. ♦

After the Filibuster

The coming war over presidential appointments

By Terry Eastland

President Obama and Senate Democrats have gone to great lengths to secure the appointment of executive-branch officers and judges and thus help advance his policies and programs. Obama has made recess appointments in a way no president before him did, an action now being challenged in *National Labor Relations Board* v. *Noel Canning*, which offers the Supreme Court the first occasion in its long history to opine on the until-now obscure recess appointments clause. Meanwhile, Senate Democrats have pushed through a new voting requirement for the upper chamber that effectively eliminates filibusters of the president's nominees and hastens their appointment.

Obama with nominee Richard Cordray, January 2012

How those actions will affect the appointments terrain, and our politics more generally, is an unfolding story. Obama's recess appointments are almost certainly unconstitutional, and he risks a decision by the Court that could weaken the office of the presidency. Even so, the new measure intended to curtail filibusters will make it easier for Obama to appoint executive officers and judges who share his views. The measure will work this effect for the balance of 2014 and, if the Democrats retain control of the Senate in the elections this fall, for the final two years of his presidency. In the new appointments war, Obama holds the upper hand.

The Constitution treats appointments in Article II Section 2, where the appointments clause sets forth the familiar process by which the president "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint" cabinet officers and other top executive-branch officials as well as judges. Immediately following it is the recess appointments clause, which says: "The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session."

Writing in *The Federalist*, Alexander Hamilton said the former clause provides "the general method" of appointment while the latter clause supplements it with "an auxiliary method," to be used in cases "to which the general method [is] inadequate." In such cases, observed Hamilton, appointments are made "singly," by the president only, and not "jointly," as they are under the general method.

It bears noting that the general method does not allow for an appointment to occur unless the Senate approves the nomination, while the auxiliary method permits only a temporary appointment that is made without the Senate's concurrence. A president acting under the auxiliary method thus does not have to win the agreement of a Senate that may otherwise reject his nominees. In fact, a president resorting to the auxiliary method may be doing that in order to evade the Senate's advice-and-consent role. As Obama has done.

His (putative) recess appointments were made to fill seats in two parts of the regulatory state where, not surprisingly, the policy differences between the two parties are among the sharpest—the Consumer Financial Protection Bureau and the National Labor Relations Board.

On July 18, 2011, Obama nominated Richard Cordray as director of the CFPB, notwithstanding that 44 Republican senators had previously declared their opposition to any nomination for that position unless the bureau were significantly restructured. The Senate, with Democrats

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then holding a 53-seat majority, was still working under a rule of deep historical roots whereby a 60-vote supermajority was necessary to overcome a filibuster of a nominee and set up a confirmation vote. On December 8, 2011, Cordray received 53 votes to end the filibuster of his nomination, 7 shy of the number he needed, and thus a vote on his nomination was denied.

Meanwhile, over at the National Labor Relations Board, 2011 was winding down with three lawfully appointed members on a board with five seats. One of the three was a recess appointee whose tenure was to expire on January 3, 2012. So the board, which by law must have three lawfully appointed members for a quorum to issue decisions, soon would have just two such members.

On December 17, 2011, Obama made nominations to fill the existing vacancies. But rather than stick with the general method of appointment by resubmitting the Cordray nomination (or nominating someone more agreeable to the Senate) and pressing for confirmation of the two NLRB nominees, Obama changed course in order to avoid the Senate: On January 4, 2012, he invoked the recess appointments clause and announced his intention to install Cordray as head of the CFPB and to fill what had by then become three vacancies on the NLRB.

Justice Antonin Scalia asked Solicitor General Donald Verilli Jr., 'What do you do when there is a practice that . . . flatly contradicts a clear text of the Constitution?' Verilli replied, 'I think the practice has to prevail, Your Honor.'

The Senate had adjourned on December 17 under a unanimous consent agreement providing that it would "convene for pro forma sessions only, with no business conducted," every three days (not counting holidays) from December 20 through January 20, adjourning at the end of each pro forma session. The Senate duly convened the sessions, using two of them to conduct business, and adjourning them as mandated.

As defined by the Congressional Research Service, pro forma sessions are "short meetings of the Senate or House held for the purpose of avoiding a recess of more than three days and therefore the necessity (under the Adjournments Clause) of obtaining the consent of the other House." The intention with such sessions is not to do business, though sometimes business is done. In their typical form, a senator gavels in the session and after a short while gavels the session out.

Since the 1850s the Senate has used pro forma sessions on many occasions and for various purposes, including, in recent decades, to preserve its advice-and-consent authority. When Obama made his appointments on January 4, 2012, that was one day after a pro forma session had been convened and two days before the next one was scheduled to take place. Obama thus became the first president to attempt to make midsession recess appointments during a three-day break in Senate business.

The inevitable lawsuit challenging the president's unilateral actions was one filed against the appointments to the NLRB. On February 8, 2012, a three-member panel of the board affirmed an administrative law judge's ruling that Noel Canning, a family-owned soft drink bottling and distribution company in Yakima, Wash., had refused to implement a collective bargaining agreement allegedly reached with its workers' union. The company sought to have the ruling voided, contending that the NLRB lacked a quorum for its decision, and indeed could not have had one, since only the two members already sitting at the time of Obama's January 4 appointments had been lawfully appointed.

On January 25, 2013, the U.S. Court of Appeals for the District of Columbia, where NLRB rulings are initially reviewed, unanimously decided in favor of Noel Canning. Now on appeal to the Supreme Court, with the oral argument having taken place last month, the case is one the administration seems likely to lose.

Constitutional text and structure, as well as original understanding and historic practice, support Noel Canning's argument that the president may make unilateral appointments only during "the Recess," which takes place between numbered "Sessions" of the Senate, and not, as the administration contends, during every short break within a session. The same considerations also support the company's argument that the president may make recess appointments only to fill "Vacancies that may happen during the Recess"—and not also, as the administration says, vacancies that preexist the recess. The D.C. circuit agreed with those interpretations of the constitutional terms, and hence Noel Canning prevailed.

However, there is also this: Since the Truman administration, presidents of both parties have invoked the recess appointments clause to fill not just vacancies that happened during the intersession recess, but also vacancies that arose when the Senate was still in session. Moreover, they have made unilateral appointments during not only intersession recesses but also "intrasession recesses"—those occurring within a session (yet until Obama, never during a three-day break).

Noel Canning thus is a case in which the original understanding of the Constitution and modern practice

are in conspicuous tension. That is what animated Justice Antonin Scalia during the oral argument to ask Solicitor General Donald Verilli Jr., "What do you do when there is a practice that . . . flatly contradicts a clear text of the Constitution?" Verilli replied, "I think the practice has to prevail, Your Honor," though he also suggested that the text was not so clear.

Verilli will not get Scalia's vote, but justices concerned in *Noel Canning* about modern practice at odds with original meaning may find themselves looking to the legislative veto case. At issue in *INS* v. *Chadha* (1983) was whether one or both houses of Congress may "veto" agency decisions made pursuant to regulatory authority delegated by Congress to the executive branch. This "modern practice" commenced with the New Deal and was quite common when *Chadha* was decided, with the Court, on originalist grounds, finding the veto in violation of separation of powers. Said the Court: "[T]he fact that a given law or procedure is efficient, convenient and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution."

Finally, there is a question in the case that the D.C. circuit declined to resolve but is now under review in the Supreme Court, at its request. It is this: whether the president's recess-appointment power may be exercised when the Senate is convening every three days in pro forma sessions.

Noel Canning says, "no, it may not be," while the administration says the power may be exercised. Pro forma sessions, it has decided, are "constitutional nullities" because, in the view of Obama's lawyers, the Senate is unavailable to "receive communications from the president or participate as a body in making appointments."

The Court may well decide *Noel Canning* on the basis of this one question about pro forma sessions, which is ultimately a question about who decides whether the Senate is in recess—the Senate or the president. The question is important because the power to make a recess appointment is a contingent power, available only when the Senate is in recess.

Obama's answer to the question is the president gets to decide, but the text and structure of the Constitution disagree with him, leaving the task to the Senate. The Senate has long operated under the view that it is not in recess for purposes of the recess appointments clause when it adjourns within a session for three days or fewer. And that is how the Senate, according to its official records, saw the three-day breaks in question, which leashed together the pro-forma sessions for a month, thus to affirm that the Senate was in session. The case for the Senate as the entity that should decide whether the Senate is in recess is powerful and during the oral argument seemed to persuade Justice Elena Kagan, who said, "[I]t's really the Senate's job to determine whether they're in recess or not."

While predicting how the Supreme Court might decide a given case is not a wise use of time, it's notable that most close observers of the Court think the argument in *Noel Canning* went poorly for the administration. And it's possible that the Court's decision will have ill consequences not just for Obama but for his successors, too.

During his argument time, Solicitor General Verilli spoke of the "stable equilibrium" achieved over the decades between the president and the Senate concerning decisions made pursuant to the recess appointments clause. There is irony here, inasmuch as Obama's recess appointments upset that balance by effectively asserting that the Senate's pro forma sessions are constitutionally worthless, a judgment no previous president ever made. As a result, Obama now faces the prospect of a decision by the Court that could complicate efforts by a future president (if not himself) to make a badly needed recess appointment.

One wonders how it is that Obama decided to invoke the recess appointments clause, inviting the lawsuit he did, when it is hardly in the interest of the presidency to encourage litigation of its powers. The answer may well be found in his highly charged impatience, which has caused him other problems with our government of separated powers. Obama's explanation as to why he "recess-appointed" Richard Cordray as head of the CFPB doubtless may fairly be taken as his rationale for the NLRB appointments: "[W]hen Congress refuses to act . . . I have an obligation as President to do what I can without them. . . . I refuse to take no for an answer."

As Obama awaits the Court's decision in *Noel Canning*, the general method of appointment surely has never looked so good to him as it does now, thanks to the procedural work of the Senate Democrats. Thus, where previously a supermajority of 60 senators was required to end debate on an executive-branch or judicial nomination and proceed to a vote, now only a simple majority (meaning of senators present and voting) is necessary.

The Senate changed to a simple majority requirement on November 21 of last year, with Reid and his Democratic colleagues justifying it as the only way to overcome Republican minority "obstruction" of their agenda—obstruction they blamed on the supermajority rule. While Democrats over the years had complained about such obstruction on a range of matters, the context in which the new threshold was adopted involved nominations and judicial ones in particular—specifically those to the D.C. circuit. Indeed, it was in the long-running fight over the composition of this court that the simple majority requirement was adopted and its meaning made clear.

Contending that the court's workload didn't justify filling its vacancies but also hoping to maintain a Republican-appointed majority on the D.C. circuit—a majority necessary to slow the implementation of Obama's regulatory agenda—Republican senators opposed the three nominations Obama made to that court on June 4, 2013—of Patricia Millett, Nina Pillard, and Robert Wilkins. By late November, each of the three had been blocked by failed cloture votes.

On November 21, when a second cloture vote on Millett also failed, Majority Leader Harry Reid proposed the new requirement, using an unusual parliamentary means for its adoption. A new cloture vote on Millett ensued, and it succeeded on a 55-to-43 vote. And so Millett was confirmed in early December, by a vote of 56 to 38.

Pillard and Wilkins, who succeeded Judge David Sentelle, a Reagan appointee who wrote for the court in *Noel Canning*, made the same passage: from a failed cloture vote to—thanks to the new threshold—a successful one, and then to confirmation. Such is the way of appointments now that no more than 51 votes are needed to overcome opposition and set up a confirmation vote.

With nominees Robert Leon Wilkins (left), Cornelia Pillard, and Patricia Ann Millett (right), June 2013

Significantly, with the appointment of Wilkins there is now a Democratically appointed majority—by one vote—on a court that no longer has any vacancies. And it may be a very durable majority, given the strong possibility that Republicans may have to wait some time for enough vacancies to recreate their majority.

Obama thus has begun his last three years in office with a D.C. circuit likely to be even more disposed to defer to a regulatory agenda that is being implemented by an executive branch whose leadership is easier to confirm. Of course, every nomination Obama makes will in theory be easier to confirm. That will continue to be the outlook for his nominations in the 114th Congress, which starts in January 2015, provided Democrats hold the Senate in the elections this fall. If Republicans win six seats, however, they will have a majority of 51, and thus be in a much stronger position, thanks to the simple majority requirement, to prevail in a confirmation fight.

The supermajority rule has long been seen as a moderating force in the appointment process. That may now change as a result of the new requirement, such that presidents become more willing to nominate persons whose views are to the left, or right, of their party's center.

Still, the new threshold doesn't guarantee confirmation, and some Republicans think it will work in some cases in their favor. Thus, where under the old supermajority rule red-state Democratic senators (seven are up for reelection this year) were able to hide, in effect, behind cloture votes on left-wing nominees, now they will be on the record with up-or-down votes and thus at risk of upsetting more conservative constituents or damaging relationships with their colleagues and the president. As the legal writer Ed Whelan explains, it's "much easier to explain away a vote against a filibuster" than an outright rejection of a presidential nominee.

Clearly, the stakes are high with appointments. There are 1,183 executive-branch positions that are filled under the general method of appointment. And more than 850 judgeships are filled that way as well, with turnover such that vacancies occur every eight or nine days, on average; Obama has made 212 judicial appointments to date. While only a small percentage of executive branch or judicial nominees are ever enveloped in controversy, those who are tend to have been nominated for strategically important positions or hold views that draw opposition, or both.

The new simple majority threshold doesn't apply to nominations to the Supreme Court. And that takes us to the wild card in this story—whether there will be one or even two or more vacancies on that Court during Obama's last three years in office. By relevant measures, such as the age of the current justices and the average number of terms justices since the New Deal have served, it's fair to expect at least one vacancy in the balance of Obama's presidency, possibly as early as this year, and it's about as likely that one of the five center-right justices may be leaving the Court as one of the four judicial liberals.

In the case of a judicial liberal's departure, Obama would be looking, of course, to advance his legal and political agenda. In the case of a vacancy created by a justice on the center-right, Obama would also be aiming to establish a five-justice, judicially liberal majority. In either case you could expect Republican opposition.

In the event of a fierce nomination battle, if not in preparation for one, might Senate Democrats extend the simple majority requirement to cover Supreme Court nominations? To ask the question is to see the difficult position Senate Republicans could soon find themselves in. ♦

NEWSCOM

A New York production of 'The Importance of Being Earnest' (2011)

To Manners Born

The English version of civility. BY SARA LODGE

Two truths tend to strike people around middle age: Money buys less than it once did, and manners are in decline.

Everyone has a personal bugbear. What is yours? For many, it is the inconsiderate leaching of private noise into public space: the tinny beat of rock music on someone's else's iPod, the marital row conducted via cell-phone, the muffled "bling" of a neighbor's text message interrupting a crucial moment of dramatic tension in the movie theater. For others, it is the offhand, even offensive, treatment by those who should show more respect: waiters, salespersons, teenagers. When manners fail to smooth the path of social intercourse, the result can stink.

Sorry!
The English and Their Manners
by Henry Hitchings
Farrar, Straus & Giroux, 400 pp., $28

I recently walked along an alley in London where a furious resident had chalked a circle on the pavement and a message to a repeat offender: "Stop your dog shitting here!"

As Henry Hitchings's *Sorry!* demonstrates, the complaint that rudeness is on the rise is as old as society itself. And though throughout history new forms of sociability breed new codes of conduct, our core concerns about others' unacceptable behavior remain remarkably consistent. Manners "shield us from aggression, insults, contact with other people's bodily fluids (and those of their pets),

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exposure to others' rubbish, unpleasant details of their lives, and also often the truth." It is this last aspect that makes the study of manners so fascinating. It is a history of what we prefer not to see and hear, and thus also a history of what really gets—and lies—under our skin.

Hitchings's book is broadly chronological in structure. It explores the history of conventions regarding polite behavior in England from the Middle Ages to the present, while also raising the philosophical question of how manners relate to morality, what distinguishes English decorum from that of other nations, and what place etiquette might have in modern life. This is a very broad remit, and the result is a rather rambling inquiry that is frequently sidetracked and does not pursue any of its lines of argument as thoroughly as one might wish. It contains, however, many entertaining facts and anecdotes of the kind that tempt one to annoy one's spouse by saying, "listen to this, darling," when he or she is in the middle of watching the news.

Medieval life, Hitchings argues, was marked by a need to contain and regulate violence. Thus, customs evolved that we still observe, such as placing an honored guest to one's right—towards which the host can draw his sword, should the need arise—and polite conventions such as not attacking an enemy while he is "at stool" (defecating). Since there was no real distinction between private and public space, boundaries and hierarchies were maintained largely through "the symbolic effects of gesture." Crossing one's legs or closing one's eyes in company could be interpreted as a deliberate insult. Looking skyward when belching was considered polite. Going down on one knee (rather than both knees) demonstrated partial submission while preserving one's personal honor: Gentlemen proposing marriage still unconsciously practice this subtle social negotiation.

As Renaissance society increasingly promoted a culture of courtiers rather than feudal warriors, the study of "courtesy" (courtly behavior) gathered pace. Costume books, providing models for imitation, began to circulate in the 1560s, and the 16th century saw English translations of Castiglione's suave *Book of the Courtier*, which emphasized how nobility could be *performed* through charm, affability, modesty, and talent. There were also home-grown guides to self-improvement, like Sir Thomas Elyot's *The Boke Named the Governour*: a text that aimed to equip Tudor men for positions of authority. Elyot's recommendation that prospective power-brokers learn chess, avoid games involving dice, and refresh

Frances Trollope

themselves with music still seems fair enough; his less fortunate later advice to avoid all fruits, as they often cause "putrid fevers," may be partially responsible for the want of fiber in English political life.

Embarrassments still arose, of course, despite the efforts of courtesy counselors to prevent them. Famously, Edward de Vere, 17th Earl of Oxford, let off a loud fart when making a deep bow to Queen Elizabeth I. He was so ashamed that he left the country for several years. Allegedly, on his return, Elizabeth greeted him with the double-edged assurance: "My lord, I had forgot the fart."

While early books on manners were directed squarely at men and had little to say concerning women except that they should be as modest and unobtrusive as possible, by the 18th century, women were both authors and readers of texts on polite behavior. A delightful spoof conduct book by Jane Collier, *An Essay on the Art of Ingeniously Tormenting* (1753), offers sage advice on how to annoy one's friends: "If you have no children, keep as large a quantity of tame animals as you conveniently can … of the most troublesome and mischievous sort." She especially recommends squirrels and monkeys.

Collier's ironic enjoyment in instructing people to "remember always to do unto everyone, what you would least wish to have done unto yourself" signals the beginning of a backlash against the power-play invoked in prose about propriety. And no wonder. Lord Chesterfield's letters to his son Philip, widely circulated as canny, sometimes caustic, guidance to the man-about-town, argued that women were "only children of a larger growth" and that men should only "trifle" and "play" with them. He also suggested that a gentleman should often be seen to smile, but never heard to laugh. At a time of dreadful dentistry, doubtless this advice spared onlookers the spectacle of cavities measureless to man. But it deservedly inspired resistance from those, like Jane Collier, who chose to have a good guffaw at the egotism of manners-mongers who took themselves far too seriously.

The social purpose of civility was, in the 18th century, the subject of intense philosophical debate, and Hitchings is at his most interesting when discussing the differences of opinion expounded by those, like Chesterfield, who saw manners as a veneer—an act performed wholly cynically in order to get on in life—and those, like the Earl of Shaftesbury, who saw manners as a form of morality writ small, a way of behaving that treats everyone well regardless of status and improves all concerned. As Shaftesbury argues: "All politeness is owing to liberty. We polish one another and rub off our corners and rough sides by a sort of amicable collision."

Hitchings, one senses, sympathizes with the latter view, while also acknowledging that "manners express power

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relationships," often reinforcing the social similarities and differences they appear to seek to erase, and that "assiduously practicing equality, displaying one's commitment to it, is itself an act of dominance." Among the many paradoxes that the study of manners exposes is the fact that an act of ostentatious deference—such as opening a door for an employee one has just fired—can also be an act of assertion. The Victorians understood this: Thomas Hood, a popular 19th-century humorist, produced a cartoon called "Civil War," in which the soldiers are fighting while expressing irreproachably polite sentiments. "After you," calls one, as he pursues his fleeing foe. "Don't rise," says another as he bayonets a man to the ground. The punning double meanings, which may amuse or appall us, highlight the inner conflict, embedded in language, between our "civil" and "uncivil" impulses.

Nineteenth-century accounts of manners often expose both anxious xenophobia and class warfare. Britain had long complacently contrasted its own social habits with those current in France, which were mocked as overly flamboyant, foppish, "vain and effeminate." Their very expertise at cookery was suspect. Frenchmen, after all, refused to drink out of glasses used by other people and insisted on using napkins when dining. Eww! The French retorted that the English were anti-intellectual, gruff, and loutish.

By the time Frances Trollope's *Domestic Manners of the Americans* (1832) was published, Britain had found a new target for its jokes at the expense of other nations' behavior. Trollope, a working mother who struggled to support a large brood of children, didn't enjoy her three-and-a-half years in the United States, and when she returned to England, she turned enmity into pen-mity. The Americans were Philistines, she reported; they didn't read books, only trashy newspapers. They were vulgar in other ways, too: Money was spent and discussed too freely; they were coarse and familiar in address (she regarded the fact that her neighbors called her children "honey" as an affront of "violent intimacy"); and they were guilty of "overweening . . . self-esteem, both national and individual."

Worse than all this, they *spat*. Chewing tobacco and ejecting the quid from one's mouth after enjoying it was the "plague-spot" of America. "I hardly know any annoyance so deeply repugnant to English feelings, as the incessant, remorseless spitting of Americans," wrote Trollope. This sort of dreadfulness was music to British readers' ears: *Domestic Manners* was an instant bestseller, and "trollopize" became a verb meaning "to disparage America."

Among the many paradoxes that the study of manners exposes is the fact that an act of ostentatious deference—such as opening a door for an employee one has just fired—can also be an act of assertion.

Hitchings's title seems to promise us the key to how and why English manners differ from those of other nations; but really, the scope of the book doesn't allow for full-throated analysis of this intriguing topic. For readers who want an extended, anthropologically sound but amusingly irreverent account of why the English behave as they do, I recommend Kate Fox's more successful *Watching the English: The Hidden Rules of English Behaviour* (2004), which Hitchings also references. Like Fox, Hitchings traces the peculiarity of English behavior, which can strike foreigners as both primly uptight and (especially after alcohol) disagreeably uncouth, to a national "dis-ease," an awkwardness in company that ultimately derives from the small size of the country. As we are so tightly packed together, we prefer to compartmentalize and distance others. We "place" them socially, while avoiding eye contact. We love eccentricity and cultivate ironic detachment. Perhaps most puzzlingly for Americans, we have an arm's-length and mistrustful view of ostentatious patriotism: Nothing could be more British than a shrug and an eye-roll when the subject of one's country, government, weather—or, indeed, job—is concerned.

It is the informal moan at the bus stop rather than the high-five at the Fourth of July parade that creates the reassuring fabric of national togetherness. We don't have cheerleaders. English people tend to find organized enthusiasm at best mindless and at worst creepy. In terms of A. A. Milne's classic series of children's stories about Winnie the Pooh, the English are Eeyore—the morose but sympathetic donkey—while Americans are Tigger, the exuberant but exhausting tiger.

Are English manners really in decline? Hitchings concludes that they are not, or at least not "across the board." He sees complexity: "multitudes of conflicting manners, fraught with ambiguity." Technology has provided us with new sources of potential embarrassment and infringements of privacy: the Internet troll, the casually barbed comment that goes viral, the selfie that (as one Swedish politician noticed too late after posting) not only includes one's shorts but also one's curlies. We negotiate these new shared territories, often poised between the public and the private, with uncertainty; we have a greater sense of our legal rights and social entitlements than previous generations did.

However, Hitchings argues, we should continue to "evaluate and regulate the effects we have on other people" as "part of a fine awareness of our selves." Manners, far from being the Ps and Qs of an outmoded language, continue to be the syntax with which we write our social selves. This is a rather slapdash book, with some of the slipperiness of a hastily assembled sandwich. But it's hard to argue with the flavor of its final bite. ♦

B&A

Thou Shalt Not

The vice squads keep changing their minds.

BY PATRICK COOKE

Oh, what fun smokers *won't* be having in 2014. As of New Year's Day, Boston joined six other large cities banning smoking in its 251 city parks. The fine for violation is $250 and includes anyone caught "vaping" a *smokeless* electronic cigarette. In Oregon, there is now a $500 fine for smoking in a private automobile with a person 18 years old or younger on board; and in Illinois, flicking a cigarette butt out a car window—what was called "dinching" in the Bogie and Bacall era—could result in a $1,500 fine. The CVS pharmaceutical chain has announced that it will stop selling cigarettes this year.

On the bright side, however, you can smoke dope to your heart's content in Colorado. And yet, only a generation ago, cigarette smoking was considered normal behavior, while lighting a joint was regarded as the act of a deviant. These shifting social views are the subject of this deeply researched study. Virginia Berridge, a professor of history at the University of London, focuses largely on social movements within the United Kingdom, but there are many parallels with historical trends in the United States. She notes that the paths alcohol, tobacco, and drugs took to their present cultural standings sometimes historically converged, sometimes veered apart, but pretty much ended in the same place.

Humanity has a long tradition of getting a buzz on, and the author begins her survey in the Bronze Age, with the first recorded brewing of beer. Cannabis, she notes, was known to the Chinese as well as to the ancient Greeks and Romans. The coca leaf has been around since the discovery of the Americas.

Demons
Our Changing Attitudes to Alcohol, Tobacco and Drugs
by Virginia Berridge
Oxford, 288 pp., $29.95

Carrie Nation (1910)

For generations, opium was the opiate of the people, particularly in England: Until the mid-1800s, it was as common as aspirin. Bad cough? The pharmacist would fix you up with an opium concoction called "All Fours." Sick child? A good shot of opium-based "Infant's Thunder" would put him right. Cocaine was believed to cure bashfulness, as well as cancer and nymphomania, and it improved one's marksmanship. Meantime, it was common, and apparently acceptable, for the local squire to fall dead drunk under the table at any moment.

The Victorians, in particular, knew how to party hearty; but that era also produced the first serious party-poopers. Members of a rising temperance movement, supported by the Quakers and women's groups in search of a larger role in public life, argued for "moral suasion," calling on addicts to take a pledge of sobriety. Their efforts eventually widened from a focus on the individual: They lobbied for government aid demanding the licensing of public houses in the belief that regulation could control distribution. The state turned for advice to medical societies, and thus was born the public health professional who moved for rehabilitation over drunk tanks.

In time, drugging (and excessive drinking) became "detached" from the social mainstream. Such behavior was to be feared by decent middle-class folk. Depictions of opium dens, such as those that appear in Oscar Wilde's *The Picture of Dorian Gray* (1890), revealed scenes of depraved human wreckage. No antivice tactic worked more effectively for reformers, however, than dark warnings about the toll of drink and drugs on women: Nothing less than "the future of the race" was at stake if women succumbed to temptation.

Such heart-wrenching arguments were impossible for politicians to dismiss as they were pressed to take more regulatory action and impose prohibitions. But hard to ignore, too, was the financial benefit that came from taxing vices, particularly after improvements in the mass production and distribution of booze made drinking more accessible. It was a conflict that was to last for generations. Berridge writes of the Volstead Act (1920):

> U.S. prohibition has had a lot of bad press; it came to an end largely because of the Great Depression which took hold from 1929. The prospect of substantial revenue from taxing alcohol, during a time when the taxable economy had shrunk, was hard for the government to resist.

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Smoking managed to avoid "social repositioning" until the 1960s, even though people began stuffing tobacco in clay pipes 300 years earlier. In the 1970s, public health advocates used mass media to convey the notion that smoking was for losers and to portray the little guy as tilting against giant corporate manufacturers—Big Tobacco—just as temperance advocates had railed against breweries in the 19th century. Smoking's last gasp came in the mid-1980s, with alarms about the risk of "passive smoking" to nonsmokers, a "danger" the author suggests was overblown but which provided a social tipping point for the antismoking forces: "Certainly [the second-hand smoke argument] seemed to be a 'fact waiting to happen,' science which supported the policy directions in which public health interests wished it to move."

The passive-smoking gambit helps define the current public health strategy regarding alcohol, drugs, and tobacco. Today, the emphasis is on protecting innocent victims from the harm created by the few who are "dependent" due to "lifestyle choices" that require "behavioral changes." Junkies can be given methadone; smokers can be given nicotine patches; boozers can be steered to counseling. Society's goal should be to prevent such people from endangering the rest of us. A pregnant woman smoking in public presents a risk not only to her innocent unborn child but to the commonweal as well. She is, after all, jeopardizing the future of the race.

Despite this book's fun cover art—a come-hither 1920s flapper holding bottles of hooch—Berridge's study is more likely to satisfy policy wonks and public health advocates than those with a casual interest in the history of ingestible corruption. The author is evenhanded and nonjudgmental and gives no hint of her leanings. Still, given all she knows about our demons, the reader is left wondering what conclusions she draws about why mankind has longed, for so long, to get high.

She does end with a wry bit of good news, however. One drug that has, thus far, mostly escaped the notice of reformers is khat, a flowering plant that delivers a mild stimulant when chewed. It is the drug of choice in East Africa, which means you'll feel right at home if you ever find yourself riding along with Somali pirates. If you want to smoke, however, you'll have to go outside. ♦

B&A

Visions of Green

When suburban sprawl is a Good Thing.

BY ANTHONY PALETTA

Welheim Garden Suburb, North Rhine-Westphalia, Germany

Paradise is generally something that seems very far away, especially in midwinter. *Paradise Planned* is a compendious reminder that paradise, or a decent shot at its earthly manifestation, is rarely far off at all.

Whatever feelings we might hold about the suburbs, few would mistake them for anything ethereal; yet with both suburbs and gnomes, the modifier "garden" makes the difference between fairytale-like and commonplace. The garden suburb, a concept roughly applied between 1850 and 1930, implied an attention to planning that was nearly the reverse of the aimless direction of suburbs from the age of Levittown onwards. A gnome won't turn your backyard into Narnia, but planning might get you partway there. The Siedlung Iddelsteld, for example, is a Medieval-inspired German planned community offering sufficient space for the keeping of animals and

Paradise Planned
The Garden Suburb and the Modern City
by Robert A. M. Stern, David Fishman, and Jacob Tilove
Monacelli, 1,072 pp., $95

Anthony Paletta writes the Spaces column for the Wall Street Journal.

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streets named after Sleeping Beauty, Snow White, and Rapunzel.

A trip to Westphalia isn't necessary, though, to grasp the authors' point that moderate attention to the quality of suburban planning can create marvelous neighborhoods. Some exemplars are well-known—Llewellyn Park in New Jersey, Forest Hills Gardens in Queens, and Riverside, Illinois, are all thoroughly planned, often-walkable neighborhoods that are still distinctly leafy and nonurban—but it's impossible to be far from some iteration of the garden suburb in America. The authors note: "Suspecting that there were numerous excellently planned garden suburbs deeply appreciated by residents but overlooked by most historians, we were amazed to discover the wealth of examples not only in the United Kingdom and the United States but in virtually every industrialized country in the world." And a wealth of examples they find, securing for *Paradise Planned* the unquestionable honor of being (at 12 pounds) among the heaviest books I've ever owned.

What fills out this great bulk? A lavish litany of communities "intended to evoke the physical structure of preindustrial-era villages, an incomparable work of environmental art combining enlightened land planning, landscape, and architecture to shape neighborhoods and foster a sense of community." This is the story of countless patterns discernible on Google maps, that space between traditional urban linear grids and the schizophrenic ganglia of recent suburbia, where streets bend but still observe some coherent form, whether in Bexley, Ohio; Fort Wayne, Indiana; Wyomissing, Pennsylania; Jamestown, Rhode Island; or Opa-Locka, Florida. It would prove a superb practical guide if you're accustomed to traveling in a helicopter, or have some large saddlebags and an especially durable steed.

The garden suburb sprang out of literal gardens in many cases, with a discernible origin in the planned developments of English manors—the word "suburb" appears in *The Canterbury Tales*, it is noted, so its pedigree is of course impeccable. The concept expanded over time from housing manor tenants to housing the new middle classes like lords who adapted "the house and estate design of the landed gentry to the needs of the commuting bourgeoisie." Nathaniel Hawthorne lived in one such development, Rock Park Estate, while serving as American consul in Liverpool, and he praised its "new and neat residences for city people . . . springing up with fine names—Eldon Terrace, Rose Cottage, Belvoir Villa." The bourgeoisie was commuting, in most cases by rail, and plans observed a pattern of greater density, with commercial and civic structures nearer to stations and homes growing slightly distant—but still within pedestrian range.

The garden suburb arrived in the United States with Llewellyn Park, and it soon spread, thanks to a profoundly able practitioner, Frederick Law Olmsted, whose suburban designs (and those of his firm) still constitute some of the finest iterations of their type anywhere—from Riverside to Druid Hills in Atlanta to Parkside in Buffalo to Roland Park in Baltimore to, well, all sorts of places suddenly abloom with tree-lined boulevards.

While most of these neighborhoods contained housing for the upper-middle to upper classes, many were a bit more catholic in their accessibility. Llewellyn Park was a rural ideal intended for pastoralist freethinkers. Many had a greater range of dwellings than the average suburban tract plan today, and a fair number made direct provisions for the working classes, particularly in the case of the industrial garden village and the full-fledged garden city.

There's Hershey, Pennsylvania, one of three "chocolate towns" built by real-world Willy Wonkas. There's Pullman, Illinois, proof that while the feudalism of an employer designing a community for employees may not be a bad thing, renting to them certainly is. There are Canberra and New Delhi, efforts at applying classical garden-city thinking to whole cities. There's Penderlea, North Carolina, a town conceived as a "farm city" that would provide room for farms located closely within a coherent framework. There are plots scattered over any number of continents, designed for all varieties of income and taste, from Heliopolis outside Cairo to Vancouver Island to Chapultepec Heights in Mexico City. Just the maps and photographs of these far-flung, tidy communities would alone be worth a monograph.

While the authors' express aim is to document and extol the earlier ranges of traditionalist planning that high modernists "held in contempt for the scenographic use of stylistic precedent," their enthusiasm for the topic incorporates many proto-modernist efforts that bear garden-suburb-like traits. Adolf Loos, J.J.P. Oud, Bruno Taut, Eric Mendelsohn, and other early modernists crop up in fine detail—as do Mussolini's new towns, which were grandiose but difficult to dislike.

Modernism and the automobile are the villains here. While never built, Frank Lloyd Wright's Broadacre City, Le Corbusier's Plan Voisin, Norman Bel Geddes's Futurama, and a variety of other emerging plans embraced the possibilities of the automobile to detonate any conception of traditional planning. And considerably less artfully, that's what generations of developers, and the absence of planning, produced.

Hardly anyone would argue with this depiction of events, but the greater tragedy is that subsequent waves of reaction against the automobile often made little effort at distinguishing between good suburbs and bad ones. Any escape from urban tumult came to be seen as circumspect. Jane Jacobs's criticism of a delightful middle-income development, Chatham Village in Pittsburgh, is typical: "There is no public life here, in any city sense. There are differing degrees of extended private life." It has become fairly easy in academic literature to read "suburbs" as "topographic racism."

Consider, however, the rise of the New Urbanism in the 1990s, which brought traditional connective urban

qualities back to the forefront of design thinking. Exemplars of New Urbanism (Seaside, Florida; Celebration, Florida; Poundbury in England), while attracting broad praise for their return to an emphasis on pedestrian connectivity, encountered a wave of criticism for their vernacular traditionalness, "artificiality," and narrow income ranges. The cultural depiction of planned communities cannot have helped: Seaside, of course, served as the setting for *The Truman Show* (1998); more recently, the tidy design and boulevard of England's Welwyn Garden City might be familiar as the location of Simon Pegg and Nick Frost's 2013 film *The World's End*, which was filled with pod people.

Paradise Planned, as an "activist" history, is probably the best argument yet offered against such criticism. It is not the condition of being dense that mandates that a suburb harbor a Michael Graves post office. If you dislike pop traditionalism, simply build in another style. If today's new suburbs seem economically inaccessible, take it as a sign that demand is high—and build more. "The suburbs will never go away," write the authors, and *Paradise Planned* makes us glad that they won't. ♦

B&A

Lost in Translation

'The Great Gatsby' on film is doomed to failure.

BY RACHEL DICARLO CURRIE

It was not, one assumes, the kind of review F. Scott Fitzgerald had hoped for.

Writing in the *Baltimore Evening Sun* in May 1925, H. L. Mencken dismissed *The Great Gatsby* as "a glorified anecdote" plagued by trivial plot devices and poorly drawn characters who, apart from the eponymous protagonist, were "mere marionettes." And yet, while Mencken assured readers that *Gatsby* was "not to be put on the same shelf" with Fitzgerald's debut novel *This Side of Paradise* (1920), he lauded the 28-year-old's maturation as a prose stylist: "What gives the story distinction is something quite different from the management of the action or the handling of the characters; it is the charm and beauty of the writing."

Thus, in a single sentence, Mencken explains why it has proven impossible to replicate *The Great Gatsby* in film. The latest attempt, directed last year by Baz Luhrmann and starring Leonardo DiCaprio, inspired *Gatsby*-themed clothing and jewelry lines, as well as all manner of Jazz Age parties. But amid the celebration of Roaring Twenties chic, the quality of the movie seemed almost beside the point. For the record, I enjoyed it—despite its wholly predictable (and mostly unavoidable) shortcomings. But its limitations help us understand both the timeless appeal of Fitzgerald's masterpiece and the enduring confusion over its meaning.

Nine decades after *Gatsby*'s publication, we are still awed by Fitzgerald's gorgeous turns of phrase, his lyrical descriptions of the mundane, his knack for delivering profound observations in astonishingly concise language. As Mencken wrote: "There are pages so artfully contrived that one can no more imagine improvising them than one can imagine improvising a fugue."

So if we're ranking novels purely on the elegance of their prose, *Gatsby* is second to none. That's one reason why it presents such an insuperable challenge to Hollywood. Consider this passage: "Americans, while occasionally willing to be serfs, have always been obstinate about being peasantry." How could any filmmaker convey the meaning of those 14 words? With his trademark brevity, Fitzgerald makes a provocative statement about mobility and migration, and would surely have agreed with V. S. Pritchett's assertion, in 1941, that "movement, a sense of continual migration, is the history of America." Indeed, Pritchett might as well have been summarizing *Gatsby*'s dominant theme. (As it happens, he was writing about *Huckleberry Finn*.)

The Great Gatsby is preoccupied with migration: the movement of its principal characters from West to East; the re-migration of the narrator, Nick Carraway, back to the West; the migration of Gatsby's mentor Dan Cody, a millionaire Western prospector who "brought back to the eastern seaboard the savage violence of the frontier brothel and saloon"; even the 17th-century migration of Dutch sailors to the New World. There is also the extended metaphor of the nouveau riche West Egg (where Gatsby lives) and the aristocratic East Egg (where Tom and Daisy Buchanan reside). To further underscore the centrality of migration, Nick recalls traveling home for Christmas from boarding school and college. As his westbound train rode through Wisconsin,

> A sharp wild brace came suddenly into the air. We drew in deep breaths of it as we walked back from dinner through the cold vestibules, unutterably aware of our identity with this country for one strange hour before we melted indistinguishably into it again.

Nick's memory of "thrilling, returning trains" is among the most beautifully crafted passages in a book full of such passages. But of course, you wouldn't have known it from the Baz Luhrmann film, which omitted so many of *Gatsby*'s narrative gems. To be sure, only so much narration can be packed into a 143-minute movie. Yet without Fitzgerald's commentary, delivered in Nick's voice, it's easy to forget or misinterpret what the novel is really

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about. If *The Great Gatsby* were simply a tragic *histoire d'amour*, glittered with opulent party scenes, it would hardly have achieved its present canonical status. No, *Gatsby* belongs in the pantheon for two reasons: the magic of its prose and its peerless exploration of American identity.

Which prompts another question: What, exactly, was Scott Fitzgerald saying about the American Dream? He was clearly influenced by Frederick Jackson Turner's frontier thesis, first presented in a symposium at the 1893 Columbian Exposition in Chicago, and later published in a 1920 collection of essays. Turner believed that

> American social development has been continually beginning over again on the frontier. This perennial rebirth, this fluidity of American life, this expansion westward with its new opportunities, its continuous touch with the simplicity of primitive society, furnish the forces dominating American character.

If Turner was correct, then 1890—the year Census Bureau officials declared that the United States no longer had a "frontier"—marked a watershed. Throughout *Gatsby*, Fitzgerald connects the frontier with America's historic capacity for reinvention, implying that the absence of a frontier means diminished possibilities. As UCLA's Richard Lehan has noted, even the name of Gatsby's mentor (Dan Cody) "suggests the beginning and end of the frontier," a marriage of Daniel Boone and Buffalo Bill Cody.

During his final visit to Gatsby's Long Island mansion, Nick contemplates a time when *all* America represented the frontier, when European seafarers encountered "a fresh, green beast of a new world." Both he and Gatsby are wistful for their own Lost Edens. Gatsby believes that marrying Daisy—reaching the green light—will consummate his dream. But Nick takes a different view, informing us that Gatsby's dream "was already behind him, somewhere back in that vast obscurity beyond the city, where the dark fields of the republic rolled on under the night." Unlike his West Egg neighbor, Nick recognizes the impossibility of repeating the past, but he also appreciates Gatsby's "extraordinary gift for hope." While Jay Gatsby epitomizes "everything for which I have an unaffected scorn," the onetime James Gatz "turned out all right at the end."

In that sense, Nick's contradictory feelings about Gatsby reflect Fitzgerald's paradoxical attitude toward the American Dream. He certainly had a romantic attachment to his country's founding ethos. In a 1929 short story entitled "The Swimmers," he captured the abstract nature of Americanism: "France was a land, England was a people, but America, having about it still that quality of the idea, was harder to utter. . . . It was a willingness of the heart." Years later, Fitzgerald asserted that American history "is the history of all aspiration," making it "the most beautiful history in the world." But he also lamented the gap in America between aspiration and reality. He feared that the aboriginal American Dream—the dream of Dutch sailors and westward pioneers—had become unattainable, but he admired those quixotic souls who still pursued it. "The test of a first-rate intelligence," he wrote in 1936, "is the ability to hold two opposed ideas in the mind at the same time, and still retain the ability to function. One should, for example, be able to see that things are hopeless and yet be determined to make them otherwise."

Such nuance does not easily translate into cinema. So it's no surprise that Baz Luhrmann's *Gatsby* avoided grappling with any of the Big Questions raised by the novel. It dwelt, instead, on lesser themes appealing to mass audiences: lost love, hedonism, Jazz Age excess. The result was decent entertainment, without evidence of its author's underlying message about America. Fitzgerald wanted *The Great Gatsby* to be "a consciously artistic achievement." And it is, in literary terms. Just not for the movies. ♦

Alan Ladd, MacDonald Carey in the 1949 version

EVERETT COLLECTION

B&A

Bullet-Dodging

Sometimes it pays to be excluded from the fun.

BY JOE QUEENAN

Recently, a close friend told me that he had to cut our conversation short because he had tickets to see Steve Martin and Edie Brickell in concert. He clearly expected me to covet his immense good fortune, though my immediate reaction to this statement was, "Better you than I." Then, "There but for the grace of God go I." Even, "Father forgive them. They know not what they do."

This was not the first time I had found myself in such a situation. In recent times, a number of dear, dear friends have gloated over having miraculously come into possession of tickets to see (and, presumably, hear) Kenny Chesney, Andrea Bocelli, Celine Dion, and Ozzy Osbourne, all the while expressing pity that I would not be able to participate in these glorious outings.

In fact, these are all soirées I would view as tantamount to being serenaded by Lucifer, Moloch, Medusa, and Baal, if they unexpectedly joined forces to construct the world's most sinister barbershop quartet. Oddly, much as I hate to admit it, I have friends who have seen (and, presumably, enjoyed) the Machiavellianly insipid *Jersey Boys*; friends who have attended the Indianapolis 500; friends who regularly go to see Rod Stewart and Stevie Nicks—together—and expect me to be deeply envious. These are friends, it goes without saying, who have many other fine qualities.

In all of these cases, the feeling I experience when told that friends are attending such events—events they expect to inspire a near-thermonuclear level of jealousy in me—is a sense of relief, a sense that I have dodged a pop-cultural bullet (in Chesney's case, a dum-dum), and a sense that a beneficent and truly loving Creator is sitting in the heavens watching over me, shielding me from the most grievous misfortune.

"Somebody up there likes me," I say to myself when told that a bosom buddy—alas!—can't offer me a spare ticket to see Faith Hill, *Stomp!*, Mötley Crüe, or a one-woman show about the beatified Texas governor Ann Richards: "Thank you, my sweet Lord. Thank you. Once again, I can see that you've got my back."

We are all familiar with the concept of *schadenfreude*, the secret pleasure one derives from the misfortune of others. Indeed, a case can be made that, without *schadenfreude*, life would not be possible. Certainly not mine. It never ceases to delight me when the Los Angeles Lakers get knocked out of the playoffs. There is nothing I enjoy more than seeing spoiled, self-indulgent movie stars get sent to the slammer for substance abuse. When told that an inept peer has been bounced from his high-paying job at some glossy magazine, I am beside myself with glee. I feel like Sitting Bull, relaxing on a vacant bluff poised high atop the Rosebud, watching Custer take it on the chin at Little Bighorn: I sit back and enjoy the ride.

Yet, lest I be deemed a malignant misanthrope and sebaceous spoilsport, let me point out that I, too, have been the victim of *schadenfreude*: When developers started building grotesque, Sardanapalusian McMansions just a few yards from my demure, quietly understated Colonial, other townspeople chuckled; when the Philadelphia Eagles lost three straight NFC championship games—tying a record—fans of the pathetic New York Jets smirked; when one of my books stiffed—no, two—no, a whole bunch of them—colleagues tittered.

I fully understand that deriving pleasure from others' misfortunes is a basic human urge, so long as the misfortune is not proctologic or post-nuclear in nature—so long as it does not involve an unexpected dingo attack or leprosy. We all enjoy seeing high-rollers get cut down to size. We all enjoy seeing the tall poppies whittled down from time to time. We all enjoy seeing the mighty brought low.

It's only when you want to see the low poppies, or *all* the poppies, mowed down that things get ugly. But that's all *schadenfreude*. That's not what I am talking about here. What I'm talking about in this context is the exquisite pleasure one derives from seeing other people go and enjoy things that would be unremitting torture if you had to do them yourself. Especially if you had to pay for the tickets. And the parking.

It is the joy one derives from not having to do things that make other people joyous. Here's where human language falls down on the job. Especially foreign languages. Why is there no word like *freudejerseyschadenfreudeboys*, or *schadenjoshgrobanfreude*, to describe "the immense delight one derives from not having to hear people with even less talent than Il Divo warble treacly Italian love songs while you're trying to eat dinner" or "the secret delight one takes from not having to hear Madonna sing, much less watch her dance"?

Why is there no word to describe "the positive rapture a man experiences when told that he has been deliberately excluded from a weeklong golf outing to Myrtle Beach with a bunch of frat boys from Duke"? Or "the preposterous, untrammeled, and inexhaustible joy one feels racing through one's nervous system when told that the Hillary Clinton fundraiser will go on as scheduled, but that you are not invited"?

The closest term I can come up with is *la joie de l'homme qui brûle*, meaning the "boundless ecstasy one experiences from having seen another year go by without ever seriously considering attending Burning Man."

Maybe I should keep thinking about this. ♦

Joe Queenan is the author, most recently, of One for the Books.

B&A

Business Is Good

Product placement in the form of 'satire.'

BY JOHN PODHORETZ

Never before in history have liberal clichés about the evils and the rapacity of capitalism been combined so ironically as they are in *The Lego Movie*, a gargantuan triumph at the box office in its first weekend. This fast, flashy, colorful, and intermittently hilarious movie—from the writing-directing team that transmuted the 1990s teen-cop TV drama *21 Jump Street* into a wild and funny 2012 comedy with Channing Tatum and Jonah Hill—earned nearly $70 million.

Aside from the millions of tickets sold, every second of advertising, every poster, and every mention of *The Lego Movie* only serves to enhance the value of the Lego Corporation, whose worldwide sales in 2012 topped $4 billion. The company's vice president for "global licensing and entertainment" said this to *Businessweek*: "A lot of people might think, 'OK, this is all about them trying to sell the most toys.' For us, this was always about building the Lego brand."

All this in a film in which a character called President Business (also known as Lord Business) has totalitarian control over the moods and thoughts of every character and intends to destroy the world in a few days' time.

The critics who like *The Lego Movie*—and that is most of them, as the movie has a head-spinning 96 percent "fresh" rating at the review aggregator Rotten Tomatoes—have fallen over themselves to remark on its "subversive" qualities. By this they mean that though it may have been made by major multinational conglomerates, it somehow manages, without those conglomerates knowing it, to blow the whistle satirically on their soul-deadening conformist hypnosis. The reviewers seem to think that it's a modern version of the Stalinist mural Diego Rivera painted in the lobby of Rockefeller Center—only rather than having it destroyed, John D. Rockefeller Jr. had it mass-marketed!

The Lego Movie
Directed by Phil Lord and Christopher Miller

They're suckers, the lot of them. The "subversive" message of *The Lego Movie* is really just part of the overall marketing strategy shared by the studio, the distributor, and Lego—the perfect way to ensure that a corporate product gets itself treated kindly by liberal critics as it attempts to break free of the limitations of its kiddie audience.

The goal, from the beginning, was to make a "four-quadrant movie"—appealing to: people under 25, people over 25, males, and females. Indeed, according to *Businessweek*, this is the third effort by Lego to make a major motion picture that could be released to theaters, as the two previous films (far more straightforward action adventures aimed at boys) did not have mass appeal and went straight to DVD, where they also made fortunes. Favorable reviews play a significant role, because they help make a kiddie movie not just a trial for parents, but something cool in and of itself. Creating "cool" is now the ultimate marketing challenge, because it's not supposed to be something you can create—although, by now, that's just part of the myth of cool itself.

So how does one do this with a movie about blocks and figurines? The solution writer-directors Phil Lord and Christopher Miller devised was to begin with the satire. The central character, Emmett, is a Lego "minifig" version of Winston Smith from *1984*, trapped in an entirely cheery Eurasia where everybody sings the same inane song ("Everything Is Awesome"), watches the same inane TV show (*Where Are My Pants?*), and thinks President Business is just the greatest guy, because he provides them with Taco Tuesdays. It's capitalism at its most hypnotic!

After this, the plot gets crazily convoluted: Emmett is mistaken for a messiah-like figure, Batman and Wonder Woman show up, and President Business has a plan involving the use of something he calls Kragle, which, it turns out, is Krazy Glue.

Eventually, (spoiler alert) we learn that the entire adventure is actually taking place in the basement of a suburban house where a little boy wants to play with his father's Lego city. Dad doesn't want him to do so and intends to use the Krazy Glue to fix everything in place, thus denying his son the right to reassemble the figures.

"One of the great messages of the movie is that everybody can be creative and that there's no wrong way to build with Lego," its executive told *Businessweek*. "For us, that's a really important message."

Message received. Like Winston Smith, who loves Big Brother at the end of *1984*, we love Lego. Only, for George Orwell, that was the ultimate horror; in *The Lego Movie*, that's the ultimate point. The true subversion of *The Lego Movie* is its subversion of mindless anti-capitalist showbiz liberals. ♦

WARNER BROS.

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

"Most employers won't face a fine next year if they fail to offer workers health insurance, the Obama administration said Monday, in the latest big delay of the health-law rollout."
—Wall Street Journal, *February 11, 2014*

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ADMINISTRATION POSTPONES MORE ACA REQUIREMENTS

'Just the parts that nobody likes'

By ROBERT PEAR

WASHINGTON — Expressing concern that Democratic lawmakers would be unjustly attacked for supporting the Affordable Care Act, President Obama announced that certain aspects of the law would be delayed until after the 2014 midterm elections. When asked about which delays specifically, the president replied, "Just the parts that nobody likes."

Mr. Obama said he was fully aware that conservative critics will claim he is politicizing the legislation in an election year, but he adamantly denied this: "Let me be clear. This is not about politics. It is about preventing a Republican campaign of misinformation about my signature achievement. By delaying certain aspects of the law, I am hoping we can turn our focus on what matters most to Americans—raising the debt limit, immigration, gun control, and the government shutdown."

According to Mark J. Mazur, the Treasury secretary for tax policy, the only sections of the ACA that will be delayed are the ones deemed unpopular based on internal polling. "For starters, no small business needs to worry about enforcement of the employer mandate," said Mr. Mazur. "This will also apply to big businesses as well as individuals. No one needs to deal with penalty taxes until after November. No one needs to worry about losing insurance, needing insurance, or going from full- to part-time employment. That's all being delayed."

Mike Matus

President Obama laughs after being asked by a reporter about the need to secure the assent of Congress.

Addressing questions about the legality of these delays, Mr. Obama cited regulations allowing him flexibility. "It's in there—Congress passed the law, remember?—and you can find it on page 1,137, section G, subsection 212b. These delays are allowed and necessary." The president then cut short his press conference in order to make a 1:15 tee time at Congressional

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Costas Returns to Olympics With Visor

Host Sends Optic Blast Through Studio A