the weekly Standard

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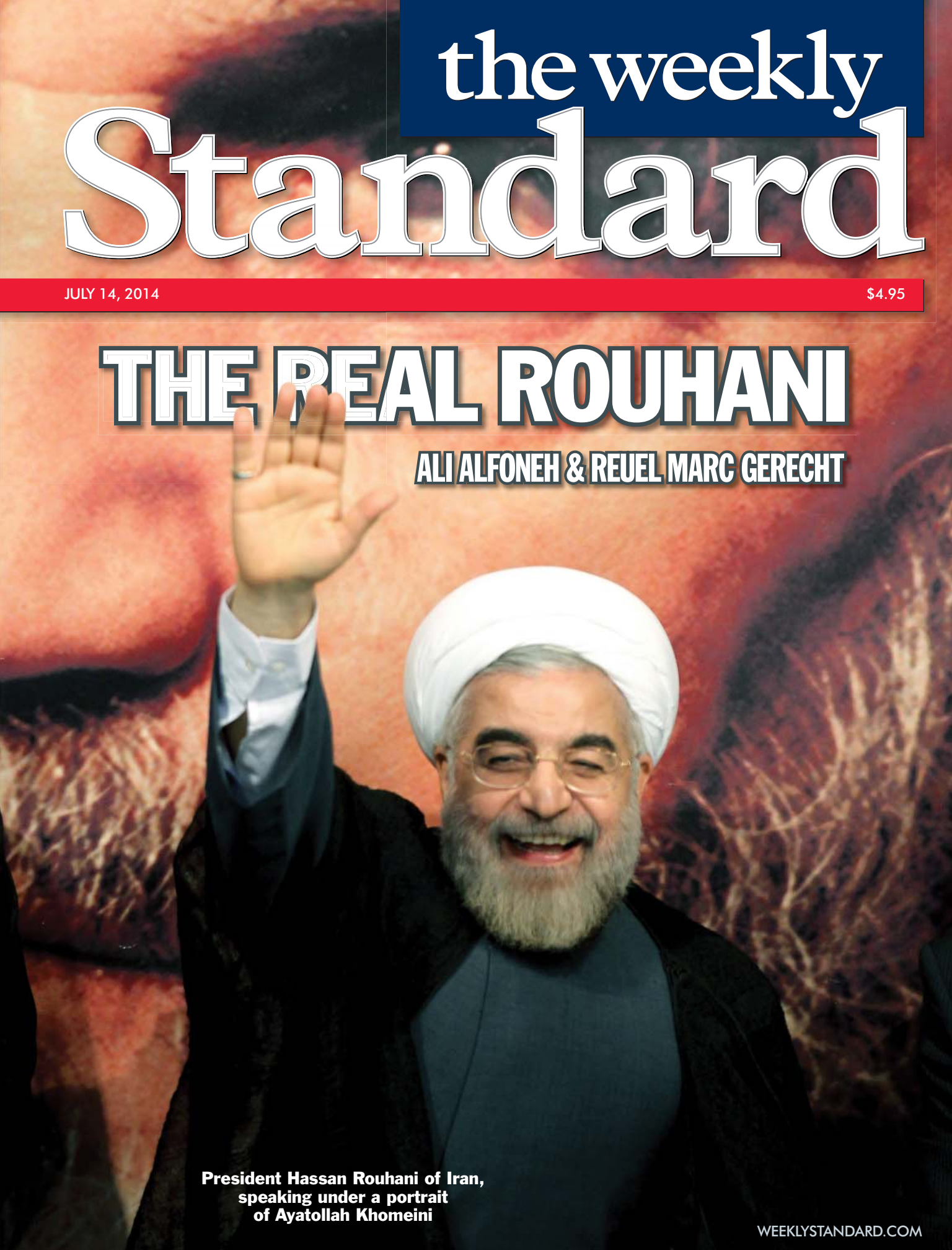
THE REAL ROUHANI

ALI ALFONEH & REUEL MARC GERECHT



President Hassan Rouhani of Iran, speaking under a portrait of Ayatollah Khomeini

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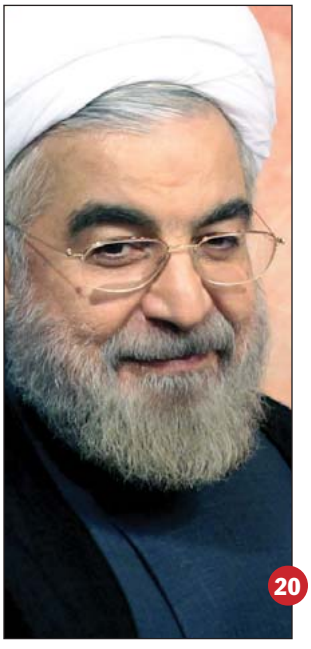

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About that Soccer Tournament

Like the swallows returning to Capistrano, every four years America witnesses the reemergence of a rare and annoying creature, the soccer scold. With the onset of the 2014 World Cup in Brazil, there have been numerous sightings of soccer scolds in their native habitat—that is, in the media.

The soccer scolds love soccer—love it deeply and passionately—but they only really show their plumage quadrennially. And when they're not preening, they're on the attack: against the hordes of Neanderthals, xenophobes, and troglodytes who do not particularly enjoy watching professional soccer. Which is to say, most of America.

The soccer scolds are alternately infuriated and thrilled by Americans' resistance to embracing "futbol" as a spectator sport. Infuriated, because they believe that this resistance is a synecdoche for everything foul in the nation's soul. But thrilled because this allows them to strike countercultural poses.

Consider Will Leitch. If you're not familiar with Leitch's work, think of him as the Katha Pollitt of hipster sports journalism. Or perhaps a less self-aware version of Peter King. With the United States' first match against Ghana, Leitch began a crusade to demonstrate his passion for soccer by recounting the injuries he had sustained while watching the match in a (Brooklyn?) bar: "[A]s I type this particular second, I have an icepack on my face, bourbon is sweating out of every orifice and I'm fairly certain my Clint Dempsey USMNT jersey has several holes . . . somewhere. Also: My bottom lip is swollen, my top lip is split, and, I suspect, there is blood in places I haven't come across yet."

He then declared that the rest of America was following him over the barricades: "It is rather clear at this point that this is becoming the American Summer of Soccer. . . . Even those who have avoided the game out of general principle—minus a few elderly, doltish exceptions—have given themselves over to it." As a mathematical proposition, this simply wasn't true. Perhaps everyone Leitch knew was reveling in the World Cup, but most of America shrugged. So Leitch adjusted his view to explain how the bitter clingers were on the wrong side of history. Soccer might be contrary to the "American Character," he wrote, but,

> It is worth noting . . . that The American Character is basically a sloppy conflagration [sic] of caricatures of John Wayne, Clint Eastwood, Ronald Reagan and Mike Ditka, the purview of privileged white men who also think Pete Rose should be in the Hall of Fame because he "hustled" and only embraced Muhammad Ali when it was expedient and risk-free for them to do so. These people are dying out, but they are not out of power.

Meanwhile, over at MSNBC they were watching soccer, too. After the United States was eliminated by Belgium, host Chris Hayes explained, "The aversion that some hold to joining the world and embracing soccer is often weirdly tied to American exceptionalism. . . . And while we didn't win, that's ultimately all right. Because part of embracing a truly worldwide competition is accepting the fact the U.S. cannot simply assert its dominance."

The conundrum in all of this scolding, of course, is that Americans love soccer! It's our nation's gateway sport. Every year parents spend trillions of man-hours shuttling their kids to practices and games and tournaments. We sacrifice millions of oranges for half-time rituals. It's hard to find someone who hasn't played at least a year or two of organized soccer at some point in his life. So Americans don't hate soccer; they're just ambivalent about the professional version as a spectator sport.

All of which suggests that for the soccer scolds, it's not really about soccer. It's about their own misgivings and discomfort with the American mainstream. ♦

Summer Reading I

Our affable colleague, senior editor Victorino Matus, is famous for his big head, big heart, big appetite—and encyclopedic knowledge of food, drink, the consumption of same, contemporary German politics, and the sociology of his native New Jersey. Vic's attention to detail, and mastery of English prose, has served us well since the earliest days of The Weekly Standard; now, in happy combination with his other varied interests, he's produced what The Scrapbook believes is not just the ideal book for summer reading, but the ideal book for any hungry/thirsty reader in any season of the year: *Vodka: How a Colorless, Odorless, Flavorless Spirit Conquered America* (Lyons Press, 272 pages, $26.95).

It's a fascinating story, told in rich (and need we add amusing?) detail: How, in the land that invented bourbon whiskey, moonshine, and bathtub gin, did a rotgut medicine from medieval Russia become the biggest-selling alcoholic beverage in America? One-third of all cocktails contain it; it's marketed to movie stars and Average Joes alike. We spend something like $5.6 billion every year for vodka, and in true American fashion, we're now producing it in mass quantities, in quaint craft distilleries, and throwing in ingredients Ivan the Terrible never dreamed of.

The Scrapbook is emphatic: You need only be a reader, not a drinker, to savor *Vodka*—and like the stuff itself, it goes well with anything, ap-

peals to all tastes, and is fun to consume. Put another way: Which book will you give your best friend this season? Hillary Clinton's *Hard Choices* or Vic Matus's *Vodka*? The question answers itself. ♦

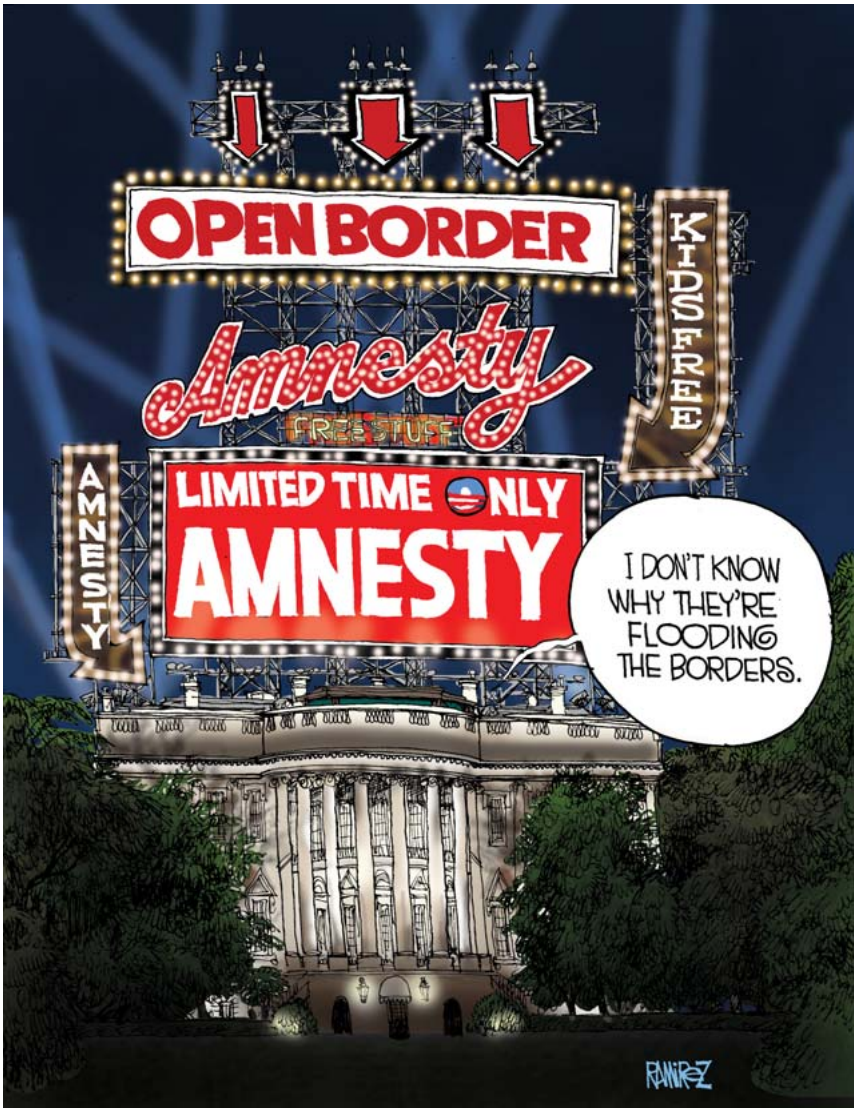
Summer Reading II

We know the first book on your summer reading list: Vic Matus's *Vodka* (see above). We know what the second item will surely be: Daniel Halper's *Clinton, Inc.: The Audacious Rebuilding of a Political Machine*, due to be published in just a few weeks, and about which we'll have more to say then.

But what to read in between Matus and Halper? The Scrapbook heartily recommends two fat and fascinating issues of two of our favorite quarterly journals, *National Affairs* and the *Claremont Review of Books*.

The Summer 2014 *National Affairs* features the usual assortment of thoughtful public policy articles on a variety of topics, including federalism (by Richard Epstein and Mario Loyola), affirmative action (Peter Schuck), and retirement (Andrew Biggs and Sylvester Schieber). We particularly enjoyed an essay by one of our favorite contemporary writers, contributing editor Matthew Continetti, on one of our favorite all-time writers, Irving Kristol. Continetti considers "The Theological Politics of Irving Kristol," and shows that many of his "big and important and significant ideas," on topics ranging from capitalism to nihilism to the welfare state, "reveal Kristol to be a sort of theologian—a writer whose deep interest in religious matters informed his cultural and political criticism." Read the whole article, and buy the whole issue, at nationalaffairs.com.

And then turn to the Spring issue of the *Claremont Review* (take a look online at claremont.org). We won't pick a favorite there—how could we, when you'd have to choose between Jeremy Rabkin, Christopher Caldwell, William Voegeli, Steven Hayward, and other favorite writers of ours? But between *CRB*'s 74 outsized pages, and *NA*'s 183 pages, you'll have plenty of fine writing and informative argumentation to feast on for the next few weeks . . . or months. ♦



Kurdish Independence?

With Iraq collapsing into another Sunni-Shiite civil war, the Kurds are holding their own in the north of the country. According to the Iraqi Kurdish leader Massoud Barzani, "The time is here for the Kurdistan people to determine their future." Israeli prime minister Benjamin Netanyahu, for one, agrees, and last week endorsed "Kurdish aspirations of independence." Will the rest of his government, and the rest of Israel, join him on the sovereign Kurd bandwagon?

Israel already has a surprisingly close relationship with the Kurds. The IDF has reportedly helped the Kurds train defense forces of their own. The Kurds, evidently, see Israel as a model for their ambition to throw off the post-Ottoman imperial yoke and establish an independent state on their ancestral lands.

There are strong practical reasons for the Israelis and the Kurds to work with one another. Kurdistan would be a valuable ally against its neighbor Iran, plus whatever missile-wielding regimes end up taking over parts of Iraq and Syria. Kurdistan, for its

part, will be threatened by Turkey, which fears losing control over its Kurd-heavy east. As Turkish prime minister Recep Tayyip Erdogan shifts Turkey toward Islamism, Israel has drawn closer to Greece and Cyprus; and Kurdistan, like Cyprus, has substantial natural resources that Israeli technology can help develop.

Of course the best reason for Israel to support Kurdish dreams of independence is moral rather than practical. The Kurds, like the Jews, deserve to control their fate and their homeland. Israel should recognize that, and when the time comes, recognize them. With July 4th on our minds, perhaps Washington should too. ♦

The Kristol Chats

The Scrapbook has previously lauded the work of the Foundation for Constitutional Government. To support the serious study of politics and political philosophy, it's developed a series of websites devoted to important, contemporary thinkers (Walter Berns, Irving Kristol, Harvey Mansfield, James Q. Wilson, and more to come).

Now we're pleased to alert readers to the foundation's latest venture: Conversations with Bill Kristol. The foundation has been preparing videos of discussions, hosted by this magazine's editor, with some of America's leading thinkers and figures in public life. Already available at conversationswithbillkristol.org are talks with the aforementioned Harvey Mansfield, with Elliott Abrams, and with Amy and Leon Kass. Look for a discussion with Charles Murray in mid-July, and more to come every couple of weeks. The videos are an hour-and-a-half to two hours long, so you'll want a big tub of popcorn, and maybe some Sno-Caps, too. Think of them as summer blockbusters for grownups. Unlike the fare at your local multiplex, though, they're free, and you'll be more intelligent when the credits roll than you were going in. ♦

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Stranger on a Train

A few weeks ago the *Times Literary Supplement* ran a photograph of the grisliest act of violence in Italy since World War II—Italy's equivalent of our own September 11 attacks. In 1980 a shadowy group of homegrown terrorists planted a time bomb in the waiting room of the Bologna Central station. When it went off at 10:25 A.M., the roof collapsed on bystanders. The blast cut through people standing on the platform and blew apart much of a nearby train. Eighty-five dead, hundreds wounded. The *TLS* photo was, I assume, taken from inside that train after the dead and wounded were carried out. It shows one seat ripped from a wall by the force of the blast and a mush of gore and glass everywhere else. The caption reads: "Bologna Central station, August 2, 1980." For me, the date conjures up a teenage summer, and not in any vague way. I know exactly where I was and what I was doing that Saturday morning when the bomb went off: I was on a train approaching Bologna Central station.

AFP / GETTY IMAGES

Bologna Central station, August 2, 1980

"Bumming around" was the verb everyone used for what I was doing in Europe that summer. ("Your dad tells me you're gonna bum around on a Eurail Pass," a neighbor would say.) I would occasionally sleep in an overnight train to save youth-hostel money, and no longer remember where my train was coming from that morning. Probably Florence but it could have been Ferrara.

The train squeaked to an unexplained stop alongside a highway with woods behind it. Nothing odd about that. Italy in 1980 was a place where, as Tom Waits sang in a different context, no one speaks English and everything's broken. But when the train didn't move for an hour or so, I figured I would hitchhike. "To hell with this," I said to the other passengers in my compartment, confident they wouldn't understand me. I dropped my duffel out the open window onto the track and climbed down after it.

The driver who picked me up was a Mormon—that was the first thing he told me. He had been converted by a missionary. It was in hopes of practicing his English that he had stopped for me in the first place. That's the kind of kid I was at age 18. You could tell I was an American at 500 yards' distance going 70 miles an hour.

"Our train station blows," he said. I was tempted to commiserate ("You should see ours!"), but he flicked his fingers away from the steering wheel and said, "Pooh!" to indicate an explosion.

I assumed this was another part of that infinity of facts about European history that I didn't know but ought to. "When?" I asked, expecting a date from Mussolini's regime or the wars of Italian unification.

"This morning. I show." He took us over a bridge. We could look down the rail line to where people were milling about on the tracks. Then he drove me on to a youth hostel, I forget where. Probably Bologna but it could have been Ferrara.

Every now and then, when I read about the Bologna attack in a magazine or a book, I consider how odd it is that I was so close to it. But years go by when I don't think about that at all. In fact, had it not been for the fluke of meeting an English-speaker, I might, to this day, have remained ignorant that any train station blew up that summer in Italy at all. I thought of this last winter when I read in Kurt Vonnegut's *Slaughterhouse-Five* of the 16-year-old German conscript who guards the hero, Billy Pilgrim, an imprisoned U.S. Army private: "He, Werner Gluck, was tall and weak like Billy, might have been a younger brother of his. They were, in fact, distant cousins, something they never found out."

I bring up this episode not because it made me wonder but because it didn't. The only thing it makes me wonder now is what we're looking for when we embark on life. For all my talk about "bumming around," I did not think I was engaging in tourism that summer in Italy. I had a young man's adamantine conviction that I was on a quest for my destiny. But how petty, provincial, and dogmatic my idea of destiny was. It involved alcohol, chasing girls, and dreams of being a writer, pretty much in that order. I had a small-minded check-off list of art museums, good local drinks, and shrines to *The Sun Also Rises*.

In the middle of this youthful bout of solipsism-masquerading-as-curiosity, I walked straight into the cockpit of history—and, when I discovered the cockpit of history did not serve beer, walked incuriously back out. I have still never really been to Bologna, even though only a couple minutes separate me from having had my name engraved on the wall of its train station forever.

Christopher Caldwell

the weekly Standard

No Defense

After U.S. goalie Tim Howard had a record-setting 16 saves in the American team's 2-1 World Cup knockout loss to Belgium, a wag edited Chuck Hagel's Wikipedia entry to show Tim Howard as the true U.S. secretary of defense. The meme took off on the Internet, and by Wednesday afternoon Hagel was placing a phone call to Howard to get in on the joke. Hagel, as the Pentagon explained in a statement, called "to thank him for defending the United States of America at the World Cup." Hagel also told Howard "that with some training, he could someday become the real secretary of defense."

Actually, given the duties and mission of the real secretary of defense in the Obama administration, Tim Howard could take over the SecDef's office in the Pentagon's E-Ring tomorrow, and who would notice?

Chuck Hagel

Tim Howard

Consider: As Iraq collapses, "a ranking Pentagon official with knowledge of the situation" told the *Daily Caller* last week that "the Pentagon is split and the administration is paralyzed." In particular, "people are putting targeting packets through unnecessary bureaucracy to slow events to the point that—they hope—the situation is overcome by events." Indeed, targeting packets "are being sent to the White House because the lawyers there are notorious for wasting time and looking for an excuse to say 'No.'"

So while the Obama administration dithers, a nation that was liberated and then stabilized thanks to the extraordinary efforts of American servicemen is being lost to terrorists and enemies of the United States.

Consider: In Afghanistan, where the war effort was supported by both parties and where the bulk of U.S. troops were committed by the current president, things are beginning to fall apart. Some of the toughest fighting of the war, during President Obama's first term, took place in Sangin district in Helmand Province. American Marines succeeded in pacifying the district. It has now been abandoned at the order of the president, and may well fall back into the enemies' hands.

As the *Washington Post*'s Dan Lamothe noted last week, "Well, that didn't take long." Lamothe's report continued,

> The last U.S. Marines pulled out of Afghanistan's notoriously violent Sangin district last month, turning the security mission over to Afghan forces as part of the ongoing transition that requires all U.S. combat troops to be out of the country by year's end. The question hanging over the Americans and the Afghans at the time: Would the Taliban or other insurgent groups in Sangin launch an assault to test the Afghan government, and when?
>
> Now we know. The Taliban has waged a vicious onslaught in the district for four days, killing dozens of people while targeting military checkpoints, government buildings and other strategic locations.

The *Post* suggested that "the violence may serve as an eye-opener for U.S. and Afghan officials, who have continued to proceed with the military drawdown in Afghanistan as the security crisis in Iraq dominates the news." But President Obama seems resolutely uninterested in real-world eye-openers. He seems fully committed to the frittering away of all that American forces under his command accomplished.

The *Post* account continued, "The Taliban offensive also comes as three Marines were killed Monday in Helmand. They are Staff Sgt. David H. Stewart, 34; Lance Cpl. Brandon J. Garabrant, 19; and Lance Cpl. Adam F. Wolff, 25, Pentagon officials said. All three Marines were with 2nd Combat Engineer Battalion, of Camp Lejeune, N.C., and died while patrolling near Camp Leatherneck, the Marine Corps' major base in Afghanistan, Commandant Gen. James Amos said Tuesday."

Gen. Amos's reaction? "It took the wind out of us. It was a rude awakening."

Really? Has the Pentagon become so supine in relation to the White House that it now has to feign surprise that when we retreat, our enemies attack?

And consider, finally: There is one thing President Obama's Pentagon is resolute about: firing military officers who've served the nation. As Brendan McGarry of Military.com reported last week,

> A U.S. Army captain with more than a dozen years in the service, including multiple tours of duty in combat zones,

ABOVE RIGHT, NEWSCOM

> assumed his job was safe. . . . What's more, he had just received orders to move to a new duty station. So he and his wife, who's newly pregnant with their first child, signed a lease and put a deposit on a home at the family's next location. A few days later, he was called into his post's commanding general's office and informed that, effective almost immediately, he would no longer be in the military.

This isn't an isolated case. As McGarry goes on to explain, this week the Army began notifying about 1,100 captains and about 500 majors that their active-duty careers are over. The Army, having already shrunk under President Obama from 570,000 soldiers to fewer than 520,000, "is on pace to shrink to 490,000 soldiers by next year." The Pentagon's proposed budget for fiscal 2015 calls for further cuts to fewer than 450,000 by 2017. And "if sequestration remains in effect, the number may fall to as low as 420,000 soldiers—tens of thousands less than what the Army's top officer, Gen. Raymond Odierno, said is needed to adequately respond to conflicts around the world."

But in Obama's America, who needs an Army large enough "to adequately respond to conflicts around the world"? And in Obama's America, does the country feel an obligation to these men anyway? In Obama's America, all compassion is owed to illegal immigrants and every effort is to be made for Bowe Bergdahl. But for the men and women in the military, and for the people of Iraq and Afghanistan, including those who fought side by side with us . . . nothing. Not even a phone call from "the real secretary of defense," Chuck Hagel.

If only we had a real secretary of defense. If only we had a real president.

—William Kristol

Fight, Don't Sue

On a wide range of matters, including health care, energy, immigration, foreign policy, and education, says House speaker John Boehner, President Obama has ignored some statutes completely, selectively enforced others, and at times created laws of his own, thus failing to "take care that the laws be faithfully executed," as Article II of the Constitution requires of a president. Indeed, by his "aggressive unilateralism," as Boehner puts it, Obama has shifted the "balance of power" in favor of the presidency at the expense of Congress, the body that under the Constitution is responsible for making the laws.

This shift, occurring "decisively and dangerously," says Boehner, violates a basic structural principle of the Constitution—the separation of powers. Now Boehner has announced what he plans to do about it: in a word, sue. That is, have his chamber sue the president for failing to take care that the laws are faithfully executed.

Let's settle this out of court.

NEWSCOM

Boehner is right to complain about Obama's serial executive power abuses. But litigating the take-care clause is an idea that the speaker should reconsider.

From the beginning of the republic to the present, only people whose concrete, personal interests have been damaged by an alleged failure to faithfully execute the laws have been accorded "standing" to have their cases heard in a federal courtroom. Boehner wants standing conferred on the House if its powers are impaired by some alleged failure on the part of a president to faithfully execute the laws. Toward that end, Boehner aims to limit the situations in which the House would sue to those in which no private party is challenging the alleged failure to execute the laws; a majority of the House votes to authorize the suit, thus demonstrating the "institutional" injury; no legislative remedy is available; and the only recourse is the courts.

Boehner has not specified which of the president's executive actions the House will challenge first in its effort to sell the courts on institutional standing. But if Boehner and his House colleagues succeed in persuading the judiciary to open this door to judicial review, even by a crack, it is likely over time to be opened further, even to the point that the president is granted standing to bring separation-of-powers lawsuits against Congress.

Last year Justice Scalia had occasion to address that prospect. "If Congress can sue the Executive for the erroneous application of the law that 'injures' its power to legislate," he said, "surely the Executive can sue Congress for its erroneous adoption of an unconstitutional law that 'injures' the Executive's power to administer—or perhaps for its protracted failure to act on one of his nominations." Scalia added, "The opportunities for dragging the courts into disputes hitherto left for political resolution are endless."

Government by judiciary is not exactly what the Framers had in mind. And it would be ironic indeed if conservatives, who once routinely defended standing as a key doctrine of the separation of powers, now initiated a

process that wound up significantly enlarging the role of the judiciary in the structural aspects of government.

With the current president, it is important to ask what litigating the take-care clause would actually accomplish. Assume that a court finds President Obama in violation of his take-care obligation. Then what? As the legal writer (and former federal prosecutor) Andrew McCarthy has pointed out, "law enforcement is a plenary executive power, and thus any court judgment against Obama would have to be enforced by . . . Obama." Of course, there is no reason to think Obama would do that. And so nothing will have changed. Obama knows this perfectly well. The other day, he offered his defiant response to Boehner: "Sue me."

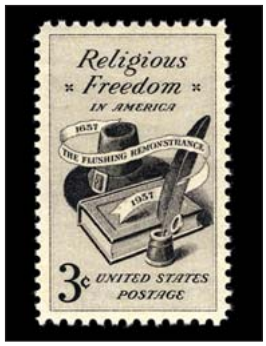
The better course for the House would be to work against Obama's unilateralism with tools already in hand, which are necessarily political ones, and which by the design of the Framers actually force confrontation between the elective branches: the result of "ambition counteracting ambition," as Madison put it in *Federalist* 51. In particular, the House could exercise its legislative, oversight, and appropriations powers more strategically. Regarding the latter, the House could vote to cut or quit funding parts of the government where faithful execution has been lacking—the IRS, which enforces key elements of the health care law, being at the top of that list.

Meanwhile, there are elections. There are always elections. They are especially important today because the country remains sharply divided politically. That basic fact explains our divided government in Washington. And it underscores the need for developing and articulating a conservative agenda that can win both the presidency and Congress in 2016. That ought to be a more urgent priority for House Republicans than the dubious project of taking Obama to court.

—Terry Eastland

Hobby Lobby Hysteria

When the Supreme Court ruled 5-4 in *Burwell* v. *Hobby Lobby* that the government could not force a business owned by evangelical Christians to pay for contraceptives that might act as abortifacients, progressives responded with hysteria and dishonesty. *Salon* claimed the Court sanctioned "bosses' denying women *all* contraception coverage." NARAL board member Jessica Valenti declared that the case is "really about a fear of women's sexuality," so "Maybe women should organize a safe-sex f—-in at every Hobby Lobby across the country." Writing for the website of the *New Yorker*, Steve Coll suggested that the High Court might grant religious exemptions to the Taliban if it organized as a closely held American corporation. But perhaps the most extraordinary reaction of all came from likely 2016 Democratic presidential candidate Hillary Clinton.



At the Aspen Ideas Festival, Clinton warned that the Court had "introduced this element" into American society usually found in "very unstable, antidemocratic" countries where men control women's bodies. She lamented that a "sales clerk at Hobby Lobby who needs contraception, which is pretty expensive, is not going to get that service through her employer's health care." And, she asked, "Does [the decision] mean if you're in need of a blood transfusion your insurance policy doesn't have to cover it? This is a really bad slippery slope."

Contrary to Clinton's insinuation, there is no contraception crisis in America or even at Hobby Lobby. The arts and crafts chain's insurance policy covers—with no co-pay for its employees—16 of the 20 FDA-approved contraceptives. The company simply objected to paying for those pills and devices that may kill a human embryo.

Before the Obamacare mandate took effect in 2012, almost all large-employer-sponsored insurance plans (85 percent, according to the Kaiser Family Foundation) covered contraception. The federal government already paid for Medicaid recipients' contraception and spent another $300 million each year on contraception for lower-income and uninsured Americans through the Title X program.

The Court didn't even turn back the clock to the supposedly scary time when middle-class and wealthy citizens might have had to shell out $9 a month for birth control. It ruled that the government could achieve its goal of co-pay-free birth control for all without forcing conscientious objectors to violate their sincerely held religious beliefs. The federal government, which intends to spend $2 trillion on Obamacare over the next decade, could scrounge up the change to pay directly for contraceptives or abortifacients not covered by conscientious objectors' health plans, for example.

The Court's ruling was so narrow, in fact, that it left open the question of whether a so-called accommodation created by the Obama administration for religious nonprofits would satisfy the requirements of the Religious Freedom

Restoration Act (RFRA), the 1993 law under which the *Hobby Lobby* case was decided. The accommodation would theoretically allow such employers to opt out of covering drugs and services they found morally objectionable; their insurers would then provide these drugs and services directly to the nonprofits' employees at no cost. Many religious groups, like the Little Sisters of the Poor, an order of nuns devoted to the care of the low-income elderly, consider the accommodation an accounting gimmick and are challenging it in pending court cases.

What about the slippery-slope argument that employers will start dropping coverage for blood transfusions and vaccinations? It simply doesn't withstand scrutiny. Justice Samuel Alito wrote in *Hobby Lobby*'s majority opinion that the government could point to "no evidence that insurance plans in existence prior to the enactment of ACA excluded coverage for such items. Nor has HHS provided evidence that any significant number of employers sought exemption, on religious grounds, from any of ACA's coverage requirements other than the contraceptive mandate."

The Religious Freedom Restoration Act commands a balancing test in which a citizen's free exercise of religion can be substantially burdened by government only if a law furthers a "compelling governmental interest" and uses the "least restrictive means of furthering that compelling governmental interest." Alito explained that other "coverage requirements, such as immunizations, may be supported by different interests (for example, the need to combat the spread of infectious diseases) and may involve different arguments about the least restrictive means of providing them."

There was a slippery slope to be worried about in this case, but not the one liberals warned of. Alito wrote, "It is HHS's apparent belief that no insurance-coverage mandate would violate RFRA—no matter how significantly it impinges on the religious liberties of employers—that would lead to intolerable consequences. Under HHS's view, RFRA would permit the Government to require all employers to provide coverage for any medical procedure allowed by law in the jurisdiction in question—for instance, third-trimester abortions or assisted suicide."

As Democrats plot their response to the decision, the Center for American Progress is urging them to gut the Religious Freedom Restoration Act by amending it to say that the law "does not authorize exemptions that discriminate against, impose costs on, or otherwise harm others." But Alito's argument shows why that approach could backfire. The American people may be conflicted about mandatory contraception coverage. But if Democrats allow the government to subject religious Americans to even more egregious mandates, they'd be asking for a fight they would—and should—lose.

—John McCormack

An Exceptional American

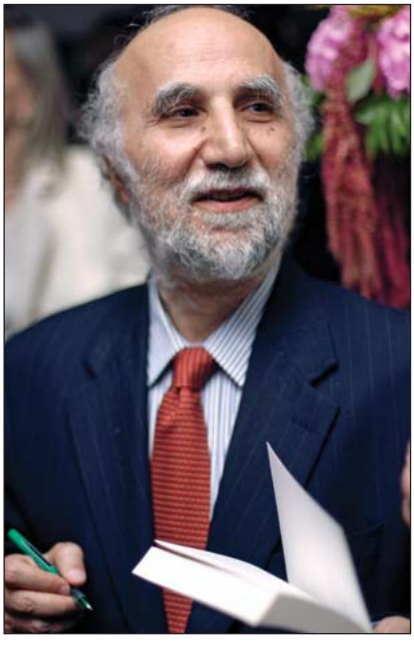
Fouad Ajami, 1945-2014.

BY LEE SMITH

Hardly a day passes that I don't think it's a good time to go back and reread Fouad Ajami. As events unfold in the Middle East, he always offers some insight or information, or better yet one perfect and memorable sentence or phrase, that points at an answer to the whole puzzle. And now I want to read it all again—the books, the countless essays and newspaper columns, transcripts from interviews and TV appearances—all at once, as if to fill the hole left by his death in late June.

Ajami is best known as a historian of the modern Middle East, but he was primarily a writer who became one of the great stylists of English prose, to be read not simply for instruction but for pleasure, too. He was essentially a memoirist, though the man himself appears rarely in the books. He makes an appearance, briefly, in the introduction to *The Vanished Imam*, his second book, touching lightly on his adolescence in the Lebanese capital, as a "Shia *assimilé*, from a background in the rural south, anxious to pass undetected in the modern world of Beirut."

It's hard not to conclude that this writer steeped in world literature means to identify himself here as a type of literary figure, like a protagonist in 19th-century novels of education—for instance, Julien Sorel in *The Red and the Black*, a young man from the provinces who would witness some of the momentous social and political upheavals of his time. In Ajami's case, this took him from the Levant to the White House.



Fouad Ajami

His first and third books, *The Arab Predicament* and *The Dream Palace of the Arabs*, perhaps his greatest single work, chronicle the political and intellectual ambitions and errors of an Arab generation. *The Foreigner's Gift*, concerning the 2003 U.S. invasion of Iraq, maps the intersection of his past and his present, and what America embodies for everyone, the Arabs, too. *The Syrian Rebellion*, his fifth book, documenting the brutal ongoing civil war and Western apathy, is the culmination of what is a quintessentially American autobiography, recording the growth and formation of an American mind, Ajami's, even as the central figure stays in the margins. His final volume, *The Struggle for Mastery in the Fertile Crescent*, is a short coda written by a man who, knowing he was dying, chose as his final keywords mercy and light.

Ajami wrote about great events and the greater passions, both the fine and the damaged, moving them. Looking at the arc of the career described in his books, it becomes clear that the modern Middle East was merely the focus of his attention, the frame on which he hung his argument. His real subject was human freedom and possibility, the greatest of American themes.

Like Joseph Conrad and George Santayana, other writers whose mother tongue was not English, Ajami added to the song and therefore wisdom of our written language. He was interested not in color or cadence, but exposition and argument, which is the force undergirding his syllables as they are spoken aloud.

If prose has a shape, Arabic's, unlike that of English, is too often a spiral, circling in on itself, concluding where it started, driven not by reason but by rhetoric and sometimes rhyme. It was Ajami, the man of letters as well as the historian, who saw that this linguistic style reflected both Arab private ambitions and public life. Generations of Arabs had staked their fates on empty talk, like Gamal Abdel Nasser's threats, Saddam Hussein's posturing, and the "divine victories" that Hassan Nasrallah boasted of with his community in ruins after Hezbollah's disastrous 2006 war with Israel.

"The tragedy of Arab political culture," Ajami wrote in 2008, "has been the unending expectation of the crowd—the street, we call it—in the redeemer who will put an end to the decline, who will restore faded splendor and greatness." Ajami was alarmed to hear this same effect reproduced in his adopted land. He heard it in Obama. As he wrote in that same *Wall Street Journal* column shortly before the 2008 presidential election: "America is a different land, for me exceptional in all the ways that matter. In recent days, those vast Obama crowds, though, have recalled for me the politics of charisma that wrecked Arab and Muslim societies. A leader does not have to say much, or be much. The crowd is left to its most powerful possession—its imagination."

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Lee Smith, a senior editor at THE WEEKLY STANDARD, *is author of* The Consequences of Syria (Hoover Institution Press).

Ajami was keenly attuned to the dangerous and delusional poetry upon which the Arabs had built their political culture, and it clashed with his idea of America. Political charisma, resentment, identity politics were what you had left if you emptied us of our pragmatism, resilience, and conviction that all men, created equal, seek life, liberty, and the pursuit of happiness.

It's hardly any surprise that he supported the Iraq war and the overthrow of Saddam Hussein. The attacks that I suspect stung him the most were not for his advocacy of American military might, or his proximity to American power, but rather the accusation that he was acting on sectarian impulses: Saddam had hunted Shiites, Ajami was a Shiite, and therefore this American intellectual incapable of escaping his Middle Eastern identity would back any effort to topple a Sunni strongman and undo the Sunni order of the region.

As Tony Badran wrote in a tribute to Ajami in the Arabic-language magazine *Al Majalla*, "He was not, as his opponents claimed, seeking to drag American power behind a narrow cause of an ethnic or sectarian group. This sinister charge is an old trope of accusing a minority or ethnic pressure group of embroiling the United States in a foreign war on behalf of this group. In other words, it is, at the heart of it, a charge that Ajami's priorities were not American."

The charge, whether leveled at Ajami or at American Jews supportive of the Iraq war, was nonsense. And yet it has to be said that Ajami was misunderstood not only by his critics but also by many of his admirers. If the former called him a Shiite apologist and accused him of airing the Arabs' dirty linen in public, the latter applauded him for what they thought was his speaking hard truths about his native land and its troubled peoples. In reality he was just describing the ideological movements that the region's rulers and regimes had used to enslave their subjects. Arab nationalism and Islamism are corporatist enterprises scarcely less monstrous than modernity's two most famous totalitarian regimes, Nazism and Communism.

"An idea that has dominated the political consciousness of modern Arabs is nearing its end, if it is not already a thing of the past," Ajami wrote in his seminal 1978 essay for *Foreign Affairs*, "The End of Pan-Arabism." The idea had failed the Arabs, as he further detailed in *The Arab Predicament*, and Ajami rejected it personally. Some of his admirers have come to see it as a conversion of sorts, but I think that's not quite right.

Ajami's drama is still played out repeatedly throughout the Middle East—spirited young men, and to a lesser extent women, embrace a doctrine that promises to salve their wounds and resolve their ambivalence about a West that designs and makes all they desire, while they have no part in its manufacture. Arab nationalism teaches that the triumph of the West has come at the expense of the Arabs. It is a doctrine of resentment and grievance, a young man's sad and angry creed.

Giving this up isn't a conversion as much as the shedding of a hard shell. It requires recognizing that, first, Arab nationalism is a creed of fear and weakness, and second that America is worthy of one's strength, vulnerability, openness. The young man finds that the reasons he was attracted to America in the first place—knowledge, work, opportunity, mobility—are manifestations of a deeper truth: Its people really are free to think and do what they want. This is why Ajami couldn't abide identity politics or the culture of grievance. If you saw America not as a living patrimony shared by free men and women but as a down payment on an entitlement never to be fully collected, then you were either an ungrateful child or a charismatic conman.

Accordingly, Ajami was among the most astute critics of the current White House. "Mr. Obama has shown scant regard for precedent in American history. To him, and to the coterie around him, his presidency was a radical discontinuity in American politics," Ajami wrote in 2013. He'd understood Obama as early as 2008, he explained, because "from the very beginning of Mr. Obama's astonishing rise, I felt that I was witnessing something old and familiar. My advantage owed nothing to any mastery of American political history. I was guided by my immersion in the political history of the Arab world and of a life studying Third World societies."

Ajami was too modest. Immersion in Arab political history and the study of Third World societies hardly guarantees political insight, never mind wisdom. What he knew of the Middle East and its political furies he understood from the perspective of human freedom, that is, as an American. His clarity in describing both the Middle East and America was a function of character. Where these two lands, two ideas, meet were his main topics in *The Foreigner's Gift* and *The Syrian Rebellion*. I believe that his support of the Syrian rebellion, and his writing on it, will constitute the core of an enduring moral legacy.

Over the course of the last year, I had the great fortune to get to know Fouad. Last July, he and Charles Hill, the student of American grand strategy, invited me to participate in a colloquium at the Hoover Institution in Palo Alto on the Middle East. Not surprisingly, Syria was a main topic of conversation, and at one point Fouad remarked how much it would have hurt his late mother to see him support a Sunni-led rebellion. He said that he and his wife had traveled to Turkey to reach the Syrian border, where they had provided assistance to a number of Syrian refugees. One of the men there thanked him, and then started cursing his sorry fate and those responsible for it, Bashar al-Assad, Hezbollah, and Iran—the abominable Shiites.

I imagine the stream of invective must have reminded Fouad of his childhood, the anti-Shiite slurs and prejudice. Twice, he said, his family had been forbidden to enter Beirut to live there. *The Struggle for Mastery in the Fertile Crescent* concludes with his lament for a community left at the gates of hell by its own leaders. "It would be a singular tale of loss and

sorrow if Hezbollah, Iran's Revolutionary Guard, and the newly empowered Shia warlords in Iraq were to sully Shiism with their dark deeds, taking away from it the sense of mercy that was always its guiding light."

His work is scored with such sympathies, not only for his own family and the sect he was born into, but for others as well. He loathed the Assad regime but felt for the Alawite community it drew from, their past isolation and poverty, their hardships. At the end of *The Syrian Rebellion*, he wrote about the Alawite girls pressed into virtual slavery to "families with means to feed the girls' families back home."

There was room enough in his imagination for everyone, even the man who stood before him on the Syrian border cursing the Shiites. "I couldn't really say anything," Fouad explained later. "The guy had lost everything, and it would've made him feel bad."

This episode and his response defined the trajectory of his intellectual and moral career. He was from the Middle East and concerned with it, but no longer of it. He was not an Arab intellectual, but an intellectual whose destiny could only be fulfilled by his embrace of America. Like all great American journeys, his started in having to reject parts of his past in order to be open to the life in front of him. In spite of how his mother would have felt about him supporting a rebellion led by Sunnis pointing weapons at Shiites, neither family loyalty, nor historical trauma, never mind identity politics, could obscure for Fouad Ajami the difference between right and wrong: All men are created equal.

Ajami was impatient with American self-pity, our inward turn, our fear that maybe in the end we do more damage in the rest of the world than good. His work and life argue otherwise. They are a monument to possibility, to human freedom, and to America, a question and a reminder, reformulated over the course of this American writer's career—Why else would I choose you if not to stand with you for these things that matter, for these universal truths? ♦

From the Bottom Up

The California GOP rebuilding project.

BY FRED BARNES

Palo Alto

Here's a rundown on the sad state of the Republican party in California. Republicans haven't won a Senate contest since 1990. George H.W. Bush was the last Republican presidential candidate to win here. That was in 1988. Barack Obama was reelected with a larger percentage of the vote in 2012 (59 percent) than Ronald Reagan in 1984 (58 percent). And it was long ago in 1976 when S.I. Hayakawa ousted John Tunney from his Senate seat—the last Republican challenger to knock off an incumbent Democrat in a Senate or governor's race. Since then, 38 years have passed, a span in which some elections have gone very well for Republicans (in 1980, 1984, 1994, 2002, 2010) but usually not in California.

Ashley Swearengin

There's one anomaly: movie star Arnold Schwarzenegger. He replaced Democratic governor Grey Davis in a recall election in 2003 and was reelected in 2006. Though he didn't govern like a Republican, he was one. The Schwarzenegger era is associated with steep Republican decline.

"Carly Fiorina was my last big hope," says Shawn Steel, the GOP national committeeman from California. In 2010, she ran against Democratic senator Barbara Boxer, who claimed California would be economically rejuvenated by a wave of "green jobs." Fiorina was an excellent candidate, well funded, smart, attractive, an able debater. Plus it was a Republican year. Fiorina lost by 10 percentage points and now lives in Virginia. And California still awaits Boxer's green jobs.

But 2010 wasn't the bottom for Republicans. That came two years later when Democrats won majorities of better than 2 to 1 in both chambers in the state legislature. That allows them to pass tax hikes and spending bills without worrying about lonely Republicans.

But suddenly there's hope again, especially since Jim Brulte, former leader of the Republicans in the California state senate, became state party chairman a year ago. His goal is to build the party gradually toward a breakthrough in 2018. That sounds modest. Republicans such as Hugh Hewitt, the popular talk radio host, think it's optimistic. Steel believes "objective conditions" must change in California for Republicans to recover.

Bill Whalen, a political analyst at the Hoover Institution at Stanford University, likens the Brulte strategy to that of the Oakland Athletics baseball team. The A's built from the bottom with young, cheap talent and now have one of the top teams in major league baseball. The contrast is with the New York Yankees, who sign expensive baseball stars at the peak of their careers. For Republicans, this strategy would consist of luring a Hollywood star—Gary Sinise comes to mind—to run against Boxer in 2016 or for governor two years later. That won't fly anymore. Schwarzenegger killed that strategy.

California Republicans are the A's

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Fred Barnes is an executive editor at THE WEEKLY STANDARD.

before they got good. They have a long ways to go. Their bench is sparse. There's no statewide political figure of note on their side. Their gubernatorial candidate, Neel Kashkari, is wealthy and impressive, but his chances of beating Governor Jerry Brown are close to nil. Still, a strong showing would allow Kashkari, 40, who supervised the TARP bank bailout in Washington in 2008 and 2009, to live to run statewide another day, perhaps against Boxer.

It's pretty simple why Republicans collapsed in California. The state changed. They didn't. The Hispanic and Asian electorates grew without attracting heavy GOP attention. In 1990, Republicans were 39 percent of registered voters. Today they're 29 percent. In the past two decades, four million middle-class families have left California. The guess is a majority were Republicans or at least Republican-minded. "We are exporting Republicans," Steel says.

The demographics are daunting for Republicans. The state is 39 percent Latino, 38.8 percent white, 13 percent Asian, 5.8 percent black. Democratic voters consist of California's rich, poor, and Asians. The middle class is dominated by unionized state and local government workers. That doesn't leave much for Republicans.

So what's the basis for hope for the GOP? First, their prospects for gains in the November election are bright—small gains, that is. To eliminate the Democratic supermajorities in Sacramento, Republicans must net two seats in the assembly and, with three Democratic senators suspended on corruption charges, prevent Democrats from winning back two seats. With a favorable political climate, both goals are achievable. Republicans are also angling to pick up two or three House seats in Washington, one by electing the first openly gay Republican to Congress, Carl DeMaio. This, too, is quite possible.

Second, Republicans are making a long-overdue effort to capture more of the Asian vote. The Asian population is growing faster than Hispanics—by 2 percent each election cycle as a percentage of the voting population. And Asians appear more receptive to GOP overtures than Hispanics. Steel invested in a test of Asian voters in Nevada in 2012: When heavily courted by mail and phone calls, 47 percent voted for Mitt Romney, far more than in California (23 percent) or nationally (24 percent).

"If you speak to them, you are going to get a lot of them," Steel says. In Orange County, four Asian women are running as Republicans this year, three for the legislature, one for the country board of supervisors. This, by itself, changes the face of the GOP in a region with a soaring Asian electorate.

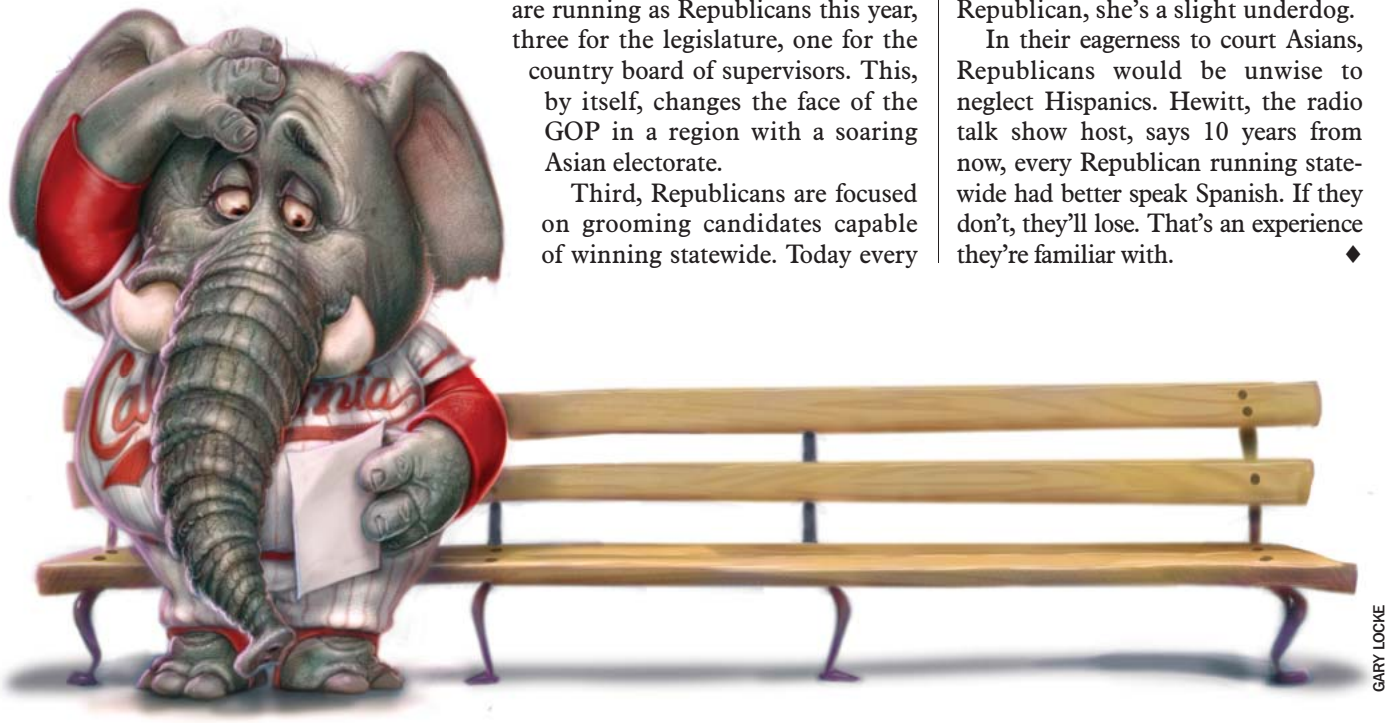
Third, Republicans are focused on grooming candidates capable of winning statewide. Today every California official elected statewide is a Democrat. But DeMaio, 39, and another House candidate, Navy veteran Jeff Gorell, 43, are potential statewide candidates. The new mayor of San Diego, Kevin Faulconer, won in a recent special election. Should he win reelection in a general election, his status as a statewide candidate will soar.

But it's Fresno mayor Ashley Swearengin, 42, who has generated the highest hopes. Brulte, who generally plays down expectations, encouraged her to run for state controller. Now she's regarded as the Republican with the best chance of winning a statewide election. She was elected mayor in 2008, then reelected in 2012 with 75 percent of the vote.

As controller, Swearengin would have the opportunity to get statewide recognition. The controller must certify the state budget is balanced. This could put her in a highly publicized fight with Gov. Brown. She would also have the authority to audit state government agencies.

"She's a superstar," one Republican says. If elected, she would instantly be touted as a candidate for governor in 2018, when Brown retires. Her election as controller, however, is hardly a cinch. As a Republican, she's a slight underdog.

In their eagerness to court Asians, Republicans would be unwise to neglect Hispanics. Hewitt, the radio talk show host, says 10 years from now, every Republican running statewide had better speak Spanish. If they don't, they'll lose. That's an experience they're familiar with. ♦



GARY LOCKE

An Unfolding Fiscal Disaster

The calamitous finances of Obamacare.

BY CHARLES BLAHOUS

Imagine that it is 1937 and time for the first Social Security payroll taxes to be assessed on workers and their employers. Two years earlier, President Franklin D. Roosevelt's new program was successfully sold to the American public as an ambitious yet fiscally responsible, self-financing expansion of social insurance protections. The new Federal Insurance Contributions Act tax—a payroll tax of 2 percent on earnings—will pay for it.

Imagine further, however, that upon 1937's arrival, FDR and Congress decide they don't want to risk the problematic politics associated with imposing the payroll tax. And so, despite previous assurances of fiscal rectitude, they roll back the tax while leaving in place what eventually proves to be the single most expensive spending program in the history of the American republic. The result is a fiscal disaster of unprecedented magnitude.

Something eerily similar to this hypothetical scenario is now happening with the Affordable Care Act. The ACA was enacted in 2010 with the promise of reducing the federal budget deficit while expanding health insurance coverage. Nearly lost amid the recent press cheerleading over ACA enrollment figures is that this promise has disintegrated, and now no one—including, notably, the Congressional Budget Office—can say how much fiscal damage the ACA will ultimately cause. All we know for certain is that many of the savings provisions designed to pay for it have been shelved thus far.

CBO currently estimates that the ACA's coverage provisions will cost the federal government $92 billion a year by FY2015. This is roughly 0.5 percent of projected U.S. economic output for 2015, well exceeding the relative costs of Social Security and Medicaid at similar points in their histories. (The amount falls just short of the proportion of GDP absorbed by all of early Medicare.) Worse, the federal fiscal position was far weaker when the ACA was passed than when Social Security, Medicare, and Medicaid were created.

Free, that is, as in $200 billion

Troubling though the ACA's startup costs are, they represent only the tip of the fiscal iceberg that will be the fully phased-in law. CBO projects that its annual costs will hit $200 billion by FY2020, or nearly 0.9 percent of GDP. Yet this assumes that lawmakers will be content to allow the ACA's health insurance subsidies to grow more slowly than low-income beneficiaries' health care costs, as the law now stipulates. Thus there is every reason to believe that the ACA's eventual costs will far exceed initial estimates, as happened with Social Security, Medicare, and Medicaid.

No sooner was the ink dry on the ACA than the law's various "payfors" began to be tossed overboard, one after the other. The ACA's CLASS Act (Community Living Assistance Services and Supports, a long-term care program) was financially unsound from the beginning, had to be suspended a little over one year later, and was eventually repealed. The original CBO score had assumed that CLASS would provide $86 billion of net financing for the ACA over the first 10 years.

Roughly $100 billion of financing in that first decade was also to come from penalties on individuals (for failing to carry health insurance) and employers (for failing to offer it). But the Obama administration has repeatedly postponed enforcement. Unsurprisingly, there is now a campaign to abandon the individual mandate penalty altogether, despite advocates having previously touted it as essential to the workings of the ACA. The administration has also been dropping cuts to Medicare Advantage required under the ACA, with the costs of these decisions still unknown.

Also unclear is whether the ACA's reinsurance and "risk corridor" provisions will produce unexpected federal budget costs; these provisions were included in the ACA to protect insurers from financial losses if their exchange plan participants prove to be sicker and costlier than initially presumed. CBO assumes that the ACA's risk corridor provisions will have net positive budget effects, based on previous experience with Medicare Part D. But Part D involved a very different incentive structure and participant pool; there is no telling whether the ACA's exchanges will line up with that experience. Meanwhile, the Obama administration continues to promise both participating health insurers and taxpayers that they will each be protected from loss under the

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Charles Blahous is a senior research fellow at the Mercatus Center and a research fellow at the Hoover Institution.

risk corridor provisions, though it remains unclear how both objectives will be accomplished.

What has caused the ACA's financing to immediately unravel in a way that Social Security's and Medicare's did not? Part of the answer lies in the decision of the ACA's advocates to push the law through Congress on a party-line vote despite public opposition. Social Security, by contrast, received overwhelming support from both parties in both chambers.

The ACA's partisan origins have left lawmakers with vastly reduced incentives to achieve the budgetary savings required to make its finances work. Republicans, who saw the law enacted over their strenuous opposition, are unmotivated to support implementation of the ACA's controversial tax increases, penalties, and Medicare cuts. This leaves Democrats, at both ends of Pennsylvania Avenue, with sole political ownership of these aspects of the law.

After shaking a favorable score out of CBO in 2010 based on the assumption that the law would be enforced as written, Democrats now exhibit little motivation to follow through with its most politically radioactive savings measures. There is little reason to suppose that provisions looming on the horizon, such as the tax on so-called Cadillac health insurance plans and the decisions of the Independent Payment Advisory Board, will be enforced any more diligently than others have been to date.

Much of this was predictable—indeed predicted—from the outset. After 1983's Social Security solvency rescue, the two major parties were both invested in upholding politically painful measures such as delaying cost-of-living adjustments, imposing income taxes on benefits, and raising the retirement age. In 2010, on the other hand, a major federal spending expansion—as well as the controversial measures required to pay for it—was muscled through Congress by one party over the impassioned opposition of the other. That the finances of such a program are already proving politically untenable should surprise no one. ♦

A Vindication of Religious Pluralism

There are many reasons to cheer the Hobby Lobby decision.

BY JOSHUA HAWLEY

On June 30, the Supreme Court ruled that the federal government cannot force Americans to abandon their most deeply held convictions as the price of doing business in the United States. *Burwell* v. *Hobby Lobby* counts as a landmark win for religious liberty. But it is also an important vindication of one of our Constitution's most remarkable achievements: its ability to make religious difference a source of national unity.

Hobby Lobby supporters celebrate a victory.

The story of the *Hobby Lobby* case is familiar enough by now. The litigation started when the Obama administration issued regulations under the Affordable Care Act that required every business owner with 50 or more employees to pay for 20 different forms of contraception in their employee health plans, including 4 contraceptives that work by preventing the implantation of an already-fertilized egg.

The Green family were among those subject to the mandate. David and Barbara Green started what was to become Hobby Lobby in the back of their garage in 1970; 44 years later, the company is still entirely family-owned. The Greens have been providing health care to their employees for years, including coverage for contraceptives. But the Greens, Southern Baptists, object to abortion on religious grounds. The mandate left them few options. While the administration fashioned an "accommodation" of sorts for certain nonprofit organizations, it steadfastly refused to accommodate the religious beliefs of for-profit business owners. So either the Greens violated their religious convictions or faced a set of draconian fines, to the tune of $1.3 million—every day. Forever.

The Supreme Court's decision in *Burwell* v. *Hobby Lobby* put a stop to that. Writing for a five-to-four majority, Justice Samuel Alito held that corporate owners may claim the protection of the Clinton-era Religious Freedom Restoration Act. Under that law, adopted in 1993, the federal government is obliged to demonstrate that any substantial burden on a person's religious faith has been imposed only for a compelling state interest that the government has pursued in a narrow, targeted fashion. The government failed that test in *Hobby Lobby*, not least because, the justices concluded, the government had ample alternative means to make the four disputed contraceptives available to women who wanted them—free of

Joshua Hawley is an associate professor of law at the University of Missouri and counsel to the Becket Fund for Religious Liberty. He is one of the attorneys who represented Hobby Lobby at the U.S. Supreme Court.

charge, even—without dragooning religious objectors into paying.

The Court's ruling reaffirms one of the most vital personal freedoms we hold as Americans: the freedom to follow our consciences, to form our own religious and moral convictions, and to live peaceably by the convictions we hold.

That is cause enough for celebration. But the decision is noteworthy for another reason. It vindicates and preserves the Constitution's mechanism for converting religious pluralism into social belonging.

Despite what one might gather from the shrill rantings of the leftist commentariat, for whom religion is a sort of disease, religious difference in the United States has rarely led to serious social strife. That is no small achievement, and one that virtually no other Western democracy can boast. At this very moment, in fact, more than a few of the nations of Europe are badly and dangerously divided by religious allegiances.

The secret to the American achievement is the special place the Constitution accords to religious belief. Contrary to what many secularists allege, the Constitution and Bill of Rights did not "privatize" religion and quarantine it from the public square. Thomas Jefferson's famous quip that "it does me no injury for my neighbor to say there are twenty gods or no God," for it "neither picks my pocket nor breaks my leg" has always been misleading in this way. The Constitution has never treated religion as merely another private opinion that government can order people to keep to themselves. On the contrary, as the Supreme Court recognized in another case from just three years ago, the Constitution gives both religious belief and religious institutions "special solicitude."

And that is precisely how our constitutional order manages to fuse religious passion and social unity. The Constitution treats religious belief as uniquely special, uniquely central to the dignity of the human person, and, for that reason, beyond the power of the state to control. And so the Constitution asks Americans to agree not on a religious confession, but on the idea that the pursuit of spiritual devotion, of genuine worship—of truth, in the final analysis—is a worthy one, which all people deserve the freedom to undertake. This shared, national commitment to conscience and the free pursuit of truth is one of the signal components of the American creed.

The upshot is that believers of all faiths are free to pursue their religious convictions peaceably. And that means believers of every faith have felt they belonged as Americans.

The Obama administration's attempt to force peaceable religious expression from the workplace—the administration argued to the Supreme Court that commercial activity and religious conviction were opposed and incompatible—threatened this constitutional settlement. The administration claimed that religion is and should be an essentially private matter that becomes fully regulable by government if expressed in public.

But that invites the government to decide which religious beliefs are important, which deserve accommodation, which fit best with the government's plans. That approach turns religious groups into competing factions attempting to win the government's favor, perhaps at the expense of others. That is to say, the Obama administration's approach is an invitation to social disunity, faction, and strife.

By protecting the right of all citizens to express their faith peaceably in the workplace and through their businesses, the Supreme Court's decision in *Hobby Lobby* preserved the historic American commitment to "special solicitude" for all religious belief. Or as Justice Anthony Kennedy summarized in his concurring opinion, "Among the reasons the United States is so open, so tolerant, and so free is that no person may be restricted or demeaned by government in exercising his or her religion."

That is an affirmation worth celebrating. ◆

The Man and the Myth

The many faces of Hassan Rouhani

By Ali Alfoneh & Reuel Marc Gerecht

Urbi et Orbi, the city and the world, Tehran and the globe. In his turban and clerical robe, softly speaking of peace, Iran's president, Hassan Rouhani, resembles a spiritual guide more than a modern politician. Western statesmen, scholars, and journalists have been impressed by the differences between the cleric and his predecessor: Rouhani is everything Mahmoud Ahmadinejad was not—intelligent, eloquent, elegant, sophisticated. Perhaps as a result, the White House has premised success in the current nuclear negotiations with Tehran on the moderation, vindicated at the polls, of this mullah and his more Westernized foreign minister, Muhammad-Javad Zarif. Although senior administration officials in private are not crystal clear as to why the supreme leader, Ali Khamenei, who controls the atomic program, or the Islamic Revolutionary Guard Corps, the military overseer of the nuclear quest, would now halt a massive, 30-year industrial effort, it is plain that they regard Rouhani's election as the *deus ex machina* that may offer a way out.

Rouhani campaigning in 2013

Certainly, without an Iranian president who values economic progress more than the bomb, nuclear negotiations are unlikely to be more successful than American diplomacy was with a duplicitous, nuke-hungry North Korea, a country with which the Islamic Republic has had significant scientific and military exchanges. If Barack Obama is serious about his repeated threat to attack Iran's nuclear sites if necessary to prevent the clerical regime from building nuclear weapons, then the choice between war and peace may well rest on whether the zealously political Rouhani is antibomb and can carry the day with Khamenei and the Revolutionary Guards.

Rouhani isn't an open book: He has a layered, somewhat closeted personality. An attentive observer can't help noticing something disingenuous or theatrical about him: His real family name is Fereydoun, but he goes by Rouhani, which means "pious" or "a cleric" in Arabic. He wears clerical garb, but two decades before receiving a long-distance Ph.D. from a Scottish university, he wanted others to call him "Doctor" rather than his clerical title, *hojjat al-Islam va al-Muslimin*, a rank below ayatollah. Beyond appellations, in the run-up to the 2013 presidential elections, Rouhani promised Iranians a "charter of rights." Yet since 1979, throughout his entire political career, he has systematically violated what even hard-nosed Islamic jurists might consider sacred obligations that rulers owe their subjects.

Fereydoun or Rouhani? Theologian or doctor of laws? Restorer of traditional Persian civility and patron saint of the riyal, Iran's currency, or systematic violator of the rights of man and false prophet? More-or-less trustworthy, pragmatic interlocutor with the West or deceptive enemy? Who really is the man at the helm of the self-declared "government of prudence and hope"? What is his story?

While Rouhani's record as president is too short to offer answers, Persian sources unavailable in English provide important insights into his life and thought. This material needs to be treated with care. An autobiographical volume, *Khaterat-e Hojjat al-Islam va al-Muslimin Doktor Hassan Rouhani* (The Memoirs of Hojjat al-Islam va al-Muslimin Doctor Hassan Rouhani), covering his life from 1948 to 1980 was published by the Islamic Revolution Documents Center in 2009. A subdivision of the Ministry of Intelligence and National Security, the center often publishes works that mix fact with revisionism. The curious

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Ali Alfoneh and Reuel Marc Gerecht, a contributing editor to The Weekly Standard*, are senior fellows at the Foundation for Defense of Democracies.*

must use works by others to supplement and verify the autobiography, as well as to cover Rouhani's life since 1980. In addition, the journal Rouhani kept while he was Tehran's chief nuclear negotiator between 2003 and 2005 was published in 2011 and gives a detailed account of his work in that position. His speeches, parliamentary addresses, and interviews with the Iranian and foreign press are also indispensable. (When we quote these works in what follows, the translations are our own.)

CHILDHOOD IN SORKHEH, THEOLOGY IN QOM

Rouhani was born on December 30, 1948, in Sorkheh, a dusty village of 3,000. It lies 100 miles east of Tehran in Semnan Province, a land of ruined caravanserai on the ancient Silk Road from China. Asadollah Fereydoun, his father, was an orphan with limited schooling, a devout believer, and an ambitious social climber. Asadollah's military service coincided with the Allied invasion of Iran in 1941, and he witnessed the rapid collapse of Reza Shah Pahlavi's modernized army. Asadollah deserted and returned to toiling on the land and small-time shopkeeping in Sorkheh.

Combining hard work with aspiration, he managed to make the right connections to marry above his social class: Sakineh Peyvandi, his 14-year-old bride, was from a wealthy family in the village. The young couple's first two children died in infancy, making Hassan the oldest of five siblings.

Asadollah's piety grew with his social ambition and wealth. In 1952 he undertook the pilgrimage to Mecca, which earned him the title of Hajji. In 1956 Asadollah further boosted his prestige by taking his entire family to the holy sites in Najaf, Iraq, the burial place of the cousin and son-in-law of the Prophet Muhammad, the Caliph Ali, the founding father of Shiite Islam. He did so at a time when most of Iran's peasants, who then vastly outnumbered city-dwellers, would not even visit a neighboring village.

The piety of the Fereydouns was noticed: Villagers consulted Asadollah in religious affairs, wandering preachers found a place in his home, and by 1958 Grand Ayatollah Hossein Tabatabaei Boroujerdi appointed him his *vakil*, or representative, in Sorkheh. Asadollah was now authorized to collect *khums*, or annual taxes of one-fifth of all gain, from the faithful. This was no mean achievement. Boroujerdi was the supreme "source of emulation" for Shiites worldwide, and Asadollah would get to see the great man when traveling to Qom to hand over the cash to his office. This was an honor bestowed on few in any province.

Hassan was enveloped by his father's faith. When he was only 5 years old, he started going with his father to group prayer. At about the same age, he started studying the Koran at the home school of his paternal grandmother. And he was enrolled at the village's primary school even before attaining school age. His father also made the children herd sheep, weave carpets, and work on his land for a low wage, from which he subtracted the price of school pens and paper, which the children were obliged to buy at his small shop.

Encouraged by his father, Hassan started theological studies in Semnan in 1960. But in the fall of 1961, Asadollah enrolled him at the Alavi School at the Theological Seminary in Qom, the training ground for most of Iran's influential clerics. Rouhani's autobiography leaves the impression that the transfer from Semnan to Qom reflected the grand ambitions of a father for his son, but the move was also politically expedient. After the death of Boroujerdi in March 1961, most villagers in Sorkheh changed their allegiance to Ayatollah Lotfollah Safi Golpayegani. The Shiites of Iran, even after the Islamic Revolution established a clerical dictatorship, are free to choose their religious guides. Fereydoun, always sensitive to the popular mood, enrolled Hassan at the Golpayegani-led Alavi School. In return, the ayatollah made Fereydoun his *vakil*, authorized to collect religious taxes. Later Rouhani would display a similar instinct for discerning the popular mood and choosing patrons.

Most urban Iranians considered Qom a place of pilgrimage en route to or away from Tehran. The shrine of Fatima, the sister of the eighth imam of the Shiites, attracted hundreds of thousands of pilgrims annually. (The dominant form of Shiism in Iran, the Twelver rite, traces its legitimacy and charismatic spiritualism to Ali and 11 of his male descendants.) The unforgiving desert climate and the stern conservative atmosphere of Qom, however, discouraged pilgrims from staying, even for a night. For 13-year-old Hassan, with only Sorkheh behind him, the famous schools of Qom and their learned clerics from around the Shiite world must have been dazzling. Imagine a sandy, late medieval Oxford.

Hassan's enrollment coincided with the arrival of Mohammad Beheshti, destined to be the first judiciary chief of the Islamic Republic, whom Golpayegani had entrusted with the task of modernizing the school. One cannot overstate the influence of the charismatic Beheshti on Rouhani. "Disciplined, grand, and stylish" and "wearing shoes instead of slippers," clad in "a very clean ironed robe," confident and conversant in English, Beheshti must have been everything Hassan aspired to be. Even today, Rouhani's speeches closely emulate Beheshti's in structure, diction, and delivery.

Beheshti was a demanding modernizer whose innovations amounted to a pedagogical earthquake in Qom. All

students at the Alavi School had to pass an entrance exam before being allowed to continue their studies. Marks were introduced, and so were annual exams. The students had to study subjects such as Persian literature, calligraphy, colloquial Arabic, mathematics, physics, and chemistry.

Many students opposed Beheshti's reforms and left. Hassan stayed, and so did a group of his close friends and classmates, all of whom, at least in part thanks to their connection with Beheshti, rose to prominence after the revolution of 1979: Mohammad Mohammadi Reyshahri became the first head of the Ministry of Intelligence, while Gholam-Hossein Mohammadi Golpayegani, Mohammad-Hassan Akhtari, and Mousavi Kashani all now serve in the Office of the Supreme Leader, which is in practice a shadow government overseeing the elected one.

While Hassan was busy studying the classics of Islamic law, succession politics—the struggle for the mantle of the late Boroujerdi—roiled Qom. Among the Shiites, the most senior ayatollahs compete for the allegiance of the faithful worldwide. Traditionally, one ayatollah rises to be the "source of emulation" above all others. After Boroujerdi's death, the grand ayatollahs dispatched their representatives to the remotest corners of the Muslim world to proselytize among the devout and increase their share of the *khums* money.

This struggle intensified as Mohammad-Reza Shah Pahlavi launched his ambitious 1963 modernization scheme, the White Revolution. The shah's reform program distributed the lands of the rural aristocracy and religious endowments among peasants. To fight illiteracy, it organized young men and women with a high school diploma into the Wisdom Corps, and more controversially it introduced the vote for women.

While the traditional clergy grumbled about the reforms, then little-known Ruhollah Khomeini eyed a historic opportunity to lead a revolution of his own: By attacking the land reform and women's suffrage, Khomeini not only managed to establish himself as the leader of the opposition to the shah, he also used his newfound popularity to bypass the traditional clerical hierarchy, with its unwritten but rigid deference to seniority. Establishment mullahs realized Khomeini's motives, and politically cautious ones like Beheshti did their utmost to keep seminarians out of politics. The Iranian Savonarola's vitriol, however, resonated with younger theologians.

Rouhani writes that Khomeini awakened him politically when he was 15. There are, however, manifold reasons to doubt this. Rouhani's account of the March 21, 1963, clashes between antiriot forces and theology students in Qom is based on memoirs of other students present in the city at the time. Rouhani admits that his father, anticipating unrest, came to Qom and took him back to Sorkheh after Khomeini was arrested in June. There is no information concerning Hassan's whereabouts as Khomeini's exile to Turkey became public knowledge in the fall. Most likely, while he was studying under Beheshti, Rouhani kept clean of politics, and his autobiography recounts a fabricated early revolutionary history.

Later, when Beheshti left Qom to advise the Ministry of Education on religious curricula, Hassan may have engaged in small-time political activism. He left Alavi and enrolled at more politically active schools within the seminary. Around this time, he assumed the Arabic family name "Rouhani." His claim that he secretly distributed Khomeini's leaflets, and even the radical publication *Enteqam* (Revenge), among fellow students, may be true. Nevertheless, Rouhani's claim that he was aware of religious radicals' taking shooting lessons in preparation for the January 22, 1965, assassination of Prime Minister Hassan-Ali Mansour seems highly doubtful. Equally unbelievable is Rouhani's memory of attacking the shah in his first sermon, which he gave in Toyserkan, in northwestern Iran, at the age of 17. Rouhani writes that he was arrested by the local police but somehow managed to hide his identity from the police chief and return to Qom. The local police, backed up by SAVAK, the shah's intelligence and internal-security service, would have done better than this.

MARRIAGE, UNIVERSITY, AND MILITARY SERVICE

"The wedding ceremony, which ended my single life and marked the beginning of family life and new conditions, took place on September 6, 1969." A private man, Rouhani does not mention the name of his wife in the 696-page autobiography, let alone how he got to know her. The weekly *Mehr* has disclosed that Sahebeh Arabi, Rouhani's cousin, was born in 1954, which means she was 15 at the time of her wedding.

Since the marriage coincides with Rouhani's admission to the Faculty of Law at Tehran University, the two may well be connected: Rouhani's father may have arranged the union as a condition for allowing his son to leave Qom for morally dangerous Tehran. Among religious families, marriage and *siqeh*, or temporary marriage, where a man marries a woman for a specified time for a price, are not uncommon for young male students ready to go into the world.

Rouhani's autobiography reveals that by January 1966 he was secretly preparing for the Tehran University entrance exam. Rouhani admits that his decision was controversial. After all, his fellow seminarians considered Qom the center of *sunnah*, or the proper practice of the prophet, and Tehran the source of innovation and heresy. Just as the seminary was the guardian of doctrine, the university was

the institution most effectively questioning their faith. An inferiority complex among seminarians was usual since university students in the Pahlavi era had greater prestige. Many of Rouhani's fellow seminarians probably considered his decision an act of defection or outright treason.

Why did Rouhani run the risk of isolating himself from his peers? He does not provide a clear motive for his decision. In an obvious attempt to please his fellow seminarians, Rouhani makes the risible claim that the university actually had lower academic standards than the clerical schools. Apart from ambition and a desire for broader recognition, which he likely inherited from his father, the young man from Sorkheh had become better-traveled. He'd gone on missionary work to the Caspian Sea, seen verdant beach towns with Westernized bikini-clad "naked women" and been both repelled and fascinated. He likely now found Qom socially suffocating and the seminary hopelessly old-fashioned. As important, moving to Tehran allowed Rouhani to be closer to his mentor Beheshti and Morteza Mottahari, another modern cleric who taught at the Faculty of Theology at Tehran University and would play an important role after the revolution as one of the theoreticians of the Islamic state.

Needless to say, there is no mention of the nightclubs and cabarets of Tehran in Rouhani's autobiography—he was, despite all the intimations of curiosity about and envy of the other side, a cleric from Sorkheh. The university didn't prove uncomplicated for him. Too worldly for the seminary, Rouhani was too primitive for many of his classmates. They ridiculed his clerical garb. He found himself at odds with his Islam-skeptical professors: the criminologist Reza Mazlouman; Parviz Owsia, who taught family law; but also faculty dean Manouchehr Ganji, who was kind enough in a dispute between Mazlouman and Rouhani (the student shouted down his teacher in class) not to refer the passionate defender of the faith to the university's disciplinary committee. For the offending lectures, Mazlouman would apparently pay with his life after the revolution.

And the insults Rouhani endured at university kept on coming. In 1971 he started his mandatory military service. Every time he entered the garrison in clerical garb, Rouhani says he was ridiculed by officers and enlistees alike. Pointing at the mullah's beard, a colonel nicknamed him "Fidel Castro." When the young cleric tried to organize group prayers, leftist conscripts would sing and dance in front of him and his small flock. Little did they know that the vengeful Fidel would become the army's chief commissar within 10 years.

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PREACHER TURNED DEMAGOGUE

From 1973 until the revolution, Rouhani toured Iran delivering anti-shah sermons. He'd given up the academy. His autobiography provides epic accounts of fiery sermons, invariably ending with SAVAK agents chasing Rouhani in vain. SAVAK documents reproduced in the autobiography reveal a somewhat more prosaic past. Rouhani's name first appears in SAVAK archives in a document dated September 1975 reporting on the attendees of a sermon by Mohammad-Reza Mahdavi-Kani, later one of the most influential clerics of the Islamic Revolution. The second document mentioning Rouhani is from October 1977. This in itself strongly suggests that SAVAK was not intending to arrest an obscure preacher from Sorkheh. The documents also provide insights into how Rouhani's peers viewed him. "Most theology students are of the belief," SAVAK reported, "that [Rouhani's] sermons are dull and uninteresting, but he manages to attract crowds because he uses the title 'Dr.' before his name." (In Iran, as elsewhere in the Muslim Middle East at this time, having a Ph.D. was uncommon and prestigious.)

It was Rouhani's speech on the occasion of the death of Khomeini's son that provided the unknown preacher a ticket to revolutionary fame. The 46-year-old Mostafa Khomeini's death in Najaf, Iraq, in 1977 is still shrouded in mystery. While the Ayatollah Khomeini's supporters accuse SAVAK of assassinating him, Parviz Sabeti, then SAVAK's internal-security director, in his recently published memoir dismisses any such involvement. Khomeini's reactions at the time, too, have contributed to the speculation. The ayatollah denied Iraqi police permission for an autopsy and issued a 40-word statement that did not call his son a martyr. Khomeini walked in Mostafa's funeral procession for only five minutes and skipped the burial.

Khomeini, however, realized the usefulness of his son's

death for propaganda purposes and later called his passing "a blessing in disguise." Predictably, the revolutionaries, with Rouhani in the lead, trumpeted the charge that the shah's regime had murdered Mostafa. It was Mottahari, who like Beheshti had avoided confrontations with the monarchy, who asked Rouhani to speak at the memorial service in Tehran. This was the opportunity of a lifetime, and Rouhani delivered. Thundering from the pulpit, he claimed the ayatollah had sacrificed his son to God, alluding to Abraham and Isaac. Rouhani elevated the revolutionary leader to the status of imam, apparently the first time any of Khomeini's followers did so publicly. The audience went into a frenzy, and tape recordings of Rouhani's speech made him a minor celebrity among revolutionaries.

Rouhani was certainly aware of the significance of calling Khomeini an imam. An honorific title describing the person who leads prayers among Sunnis, imam among Persians refers to Ali and his charismatic descendants, who have acquired a semi-divine status within Shiism. Khomeini didn't discourage believers from hoping he might be the "hidden imam," the messiah who would come forth to reward the virtuous and punish the rest. By using imam, Rouhani not only fueled the growing personality cult around Khomeini, he also introduced the idea of the ayatollah's being infallible and above written law. Many traditional clerics were disgusted. Such acts of sycophancy would play no small part in the degeneration of the revolutionary regime into a lawless tyranny.

The sycophancy paid off. Rouhani became a rising star in the revolutionary firmament and soon found himself among the founding members of the influential Combatant Clergy Association, an Oxford Union for politicized mullahs. He joined his mentors Beheshti and Mottahari, along with Abdul-Karim Mousavi-Ardebili, who later became a sanguinary judiciary chief, Ali-Akbar Nategh Nouri, a stalwart of the socially conservative revolutionary clergy in parliament, and other figures destined for power after the fall of the shah.

PLEASURE AND PROPAGANDA IN LONDON AND PARIS

In April 1978, encouraged by Mottahari, Beheshti, and Mousavi-Ardebili, all of whom offered to cover his expenses and probably did, Rouhani left Tehran for London. Rouhani claims he was wanted by SAVAK, but according to SAVAK documents released in his autobiography, Rouhani had shown up voluntarily for an interview with the Tehran branch of the security service in February, after which he'd been allowed to return home. The fact that Rouhani left Iran legally through Mehrabad Airport further contradicts his claim. If escaping the clutches of SAVAK was not the motive, why did Rouhani leave his homeland?

According to his autobiography, Rouhani enrolled at Merton College, Oxford, to learn English but was also offered a position teaching Islamic law and Eastern philosophy at Lancaster University. Rouhani does not explain how he was supposed to teach in Britain without English. He also writes he was admitted to Harvard but chose to study philosophy at the London School of Economics. All the while, Rouhani allegedly was also working feverishly with Beheshti's network in Britain, making speeches at the Islamic Students Association in London and elsewhere, among other things assuring female revolutionary activists that the hijab would not be an issue after the revolution. And he made 10 visits to Neauphle-le-Château, the first in late September, just before Khomeini made the village outside Paris his headquarters. (In a colossal bad call, the shah had asked Saddam Hussein to boot the ayatollah from his exile in Najaf, thinking the mullah would cause less trouble farther away.) All these amount to Herculean achievements, considering that Rouhani arrived in London in April 1978 and returned to Tehran the following February.

In France, Rouhani renewed his bonds with two radical friends: Mohammad, the son of Grand Ayatollah Hossein-Ali Montazeri, and Ali-Akbar Mohtashamipour, who would become the regime's ambassador in Damascus in 1982, was a founding father of the Lebanese Hezbollah, and was probably instrumental in the bombing of both the U.S. embassy and the Marine barracks in Lebanon in 1983. Rouhani's frequent visits to France, however, did not secure a place for him in Khomeini's inner circle, and he was devastated to learn that Abol-Hassan Bani-Sadr, the future president, had denied him a seat on Khomeini's famous flight back home. It was an insult Rouhani didn't forget.

SETTLING SCORES IN TEHRAN

Upon his return to Tehran, Rouhani found a country very different from the one he'd left. When the shah fled, the Pahlavi state rapidly collapsed. The ancien régime's elites packed their luggage or shifted their allegiance to Khomeini. The military declared its neutrality early in the revolution. The police quickly surrendered. A power vacuum emerged, with forces and factions competing, sometimes violently, for supremacy.

Rouhani immediately contacted Beheshti, who was busy establishing the Islamic Republican party for the ruling clergy, and Mousavi-Ardebili, who was involved in organizing the militia later known as the Islamic Revolutionary Guard Corps. Beheshti and Mousavi-Ardebili were both searching desperately for reliable and capable people. Rouhani, however, eventually found another boss—Ali Khamenei.

The memory of the 1953 coup that had toppled Prime Minister Mohammad Mosaddeq was still fresh in the minds of many. In spite of the army's neutrality, the clerics perceived it as the single greatest threat to the new order. In his first of many broken promises, Khomeini had the shah's top generals executed, though he'd granted them amnesty before his return home. He then made Khamenei the head commissar tasked with subjecting the sorry remains of the shah's army to clerical control.

Rouhani's motives for working with Khamenei rather than Beheshti or Mousavi-Ardebili aren't known. No one could have guessed then that Khamenei would succeed Khomeini as supreme leader. It's clear that the basic training Rouhani had acquired in military service made him useful as a commissar in the army. It's also possible that Beheshti wanted to plant his own man at the Joint Forces Staff. And Rouhani may have had a personal motive.

Rouhani's autobiography stresses his intention to reorganize and enforce discipline in the new army. Other sources, however, depict him as vengeful and ruthless, a commissar less interested in revitalizing the army than in getting even with the officers who'd ridiculed him when he was in uniform. By July 1980, "Fidel Castro" had purged 12,000 servicemen. Rouhani even demanded abolishing the Army Special Operations unit and called for the public hanging of officers to terrorize the military, though Mostafa Chamran, defense minister in Prime Minister Mehdi Bazargan's moderate transitional government, prevented this. Chamran, who'd trained as a guerrilla leader in Egypt and Lebanon and commanded his own armed militia, wasn't a kind soul, but even he found Rouhani too exuberant.

Rouhani, center, with Rafsanjani, left, and Khamenei, in 2014

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Bazargan and his supporters, however, proved to be the Kerenskys of the upheaval. His government resigned when Khomeini endorsed the seizure of the American embassy on November 4, 1979. At the time of the attack, Rouhani was on pilgrimage to Mecca, where he was trying to incite Muslims from around the world to join Khomeini's cause. He was not involved in the hostage taking, though he later extolled the "great event." "A superpower called the United States," Rouhani proudly recalled, "was crushed. The idol of America was smashed."

While he was still a military commissar, Rouhani ran for parliament in his native Semnan and won. He was soon elected to a parliamentary committee controlling the Islamic Republic of Iran Broadcasting. Here, too, Rouhani's primary task was to purge, and he did it zealously.

ROUHANI'S WAR

Khomeini infamously praised the September 22, 1980, Iraqi invasion of Iran as "a divine blessing." A disaster for his country, the eight-year war indeed proved a blessing for the regime, which used the long emergency to consolidate its rule. The shah's centralized state served as a blueprint for the mullahs, who with the war raging effectively rallied Iranians around the flag and the faith, damning dissidents as traitors and "enemies of God."

The Iraqi invasion gave birth to a managerial class of revolutionaries capable of handling the day-to-day demands of an immense, savage conflict. The Islamic Republic's first president and commander in chief, Bani-Sadr, increasingly found himself at odds with radical clerics. He was impeached in June 1981. When the parliament railed against him, Rouhani took a lead role, accusing the lay, Sorbonne-educated leftist of "incompetence" and "plotting" against the revolution. Facing the real possibility of execution, Bani-Sadr fled back to Paris.

After Beheshti was killed in a massive bombing of the Islamic Republican party's headquarters by an unknown perpetrator on June 28, Rouhani started looking for a new protector. Demonstrating his father's unerring sense for choosing powerful patrons, he found a new father figure in Ali-Akbar Hashemi-Rafsanjani, the genius speaker of the parliament and future president, the major-domo of the revolutionary clergy who quickly emerged as the helmsman of the Iranian war effort.

Rafsanjani's memoir testifies to the lasting bond of tutelage that formed between the two men. Rouhani not only adopted Rafsanjani's politics, but also gladly fought his battles, some of which remain defining struggles within the Islamic Republic. With Rouhani as his point man in parliament, Rafsanjani tried to reinstate some of the military men that Rouhani had purged. This didn't go down well with the Revolutionary Guard, who had no trust in the army built by the shah. The two men also fought a bitter parliamentary fight against Revolutionary Guard

commanders over the "Statute of the Guards." They lost: When the statute became law in September 1982, the Corps obtained vast powers and independence from parliamentary and presidential oversight.

In an attempt to breach the Corps's monopoly on intelligence, Rafsanjani and Rouhani managed with great difficulty to establish in 1984 a new intelligence ministry, with Reyshahri, Rouhani's old friend from Qom, as its head. Most of the personnel, however, came from the Guard. Rafsanjani made Rouhani his "eyes and ears" at the war front, and to judge by Rafsanjani's journals, Rouhani's reports on the Revolutionary Guard's performance were usually scathing. Rouhani even tried to intervene in battlefield deliberations, which further infuriated Revolutionary Guard commanders.

In addition to his struggles with the Guard Corps in the 1980s, Rouhani was enmeshed in the Iran-contra affair. He was one of the "moderates" that CIA memoranda to then-director William Casey said were on the other end of the weapons pipeline. According to Rafsanjani's memoir, on November 3, 1985, Rouhani reported to his boss that he would soon be inspecting the newly delivered Hawk missiles, which the clerical regime had demanded in return for some half-dozen Americans held hostage in Lebanon (the number of hostages changed from time to time). In March 1986, according to Rafsanjani, Rouhani suggested that Iran should extort more Hawk missiles in return for the hostages. Rafsanjani authorized his deputy to help with "administering the political issues and the negotiations" with the visiting officials from the Reagan White House.

Rouhani as secretary of the Supreme National Security Council in 1999, announcing at Tehran University that students arrested for protesting against the regime would be tried as "counterrevolutionaries"

RECONSTRUCTION, TERROR, AND NUCLEAR NEGOTIATIONS

"Haj-Mohsen, pack up your things and leave. You were useful during the war and aren't of any use in peacetime," whispered Rouhani, according to Mohsen Rafiqdoust, the minister of the Revolutionary Guard Corps, when Ahmad Khomeini briefed senior Guard commanders about his father's decision to end the Iran-Iraq war in 1988. Rafsanjani and Rouhani clearly saw the end of the war as an opportunity to rein in the unruly Guard. They wanted to merge the Corps with the regular army. Senior guardsmen struck back, thwarting the effort and developing an alternative history of how the conflict with Iraq was lost: The valiant Guard Corps was stabbed in the back by the corrupt clergy in Tehran, for whom peace was more important than victory and martyrdom. Within the Corps at least, this became a popular, passionately held, and durable myth.

With the death of Khomeini in 1989 and the succession of Khamenei, who'd been close to and dependent upon Rafsanjani for years, Rafsanjani and Rouhani tried to reach a modus vivendi with the Revolutionary Guard: Khatam al-Anbia, the Guard's wartime corps of engineers, could become a big player in postwar reconstruction and be free to accumulate unaudited funds in its own financial institutions in return for the Guard's abstention from politics. Senior commanders pocketed the offer but didn't abstain from politics.

In an effort to centralize and better manage domestic and foreign national-security issues, Rafsanjani established a Supreme National Security Council in 1989 and, with Khamenei's approval, appointed Rouhani as its first secretary. It became the arena for decisions in foreign policy, on the Islamic Republic's growing economic ties with Europe, oil, Khomeini's *fatwa* against the British author Salman Rushdie, the nuclear program, and terrorism. The council became the inner circle of Rafsanjani's cabinet. Discussions with the North Koreans about the delivery of "sensitive materials" from Pyongyang took place there in 1991 and 1992, with the involvement of the Atomic Energy Organization, the Iranian ministries of defense and intelligence, and the Revolutionary Guard. In a volume of memoirs published this spring, Rafsanjani writes that on March 11, 1992, these "sensitive materials" were "unloaded in Bandar Abbas and the second ship arrives in Chabahar tonight. The Americans are really fooled."

Persian sources and U.S. intelligence point to this council as the venue where the ruling elite deliberated the expatriate assassination campaign, which claimed dozens of victims in Europe, and the attacks on Jews worldwide, most spectacularly in Buenos Aires in 1994, when a truck bomb exploded next to the city's Jewish community center, leaving 85 dead and 300 wounded. Many in the West now want to believe that Rouhani and Rafsanjani were not

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involved in these decisions, that Iranian terrorism was the work of rogue or "hard-line" forces beyond their control, even though there is no evidence whatsoever that the two mullahs lost control of the intelligence ministry, which they'd worked so hard to create, or the intelligence ministers, who came from their circles.

The "not Rouhani's fault" apologia would suggest a dysfunction in the clerical regime at a time when it was operating much more coherently precisely because of the efforts of Rafsanjani and Rouhani to rationalize and centralize foreign-policy and national-security decisions. Even when Rafsanjani started to lose influence in the last years of Mohammad Khatami's presidency (1997-2005) and especially during Ahmadinejad's tenure (2005-2013), the hierarchy and institutions that he had created continued to function. The Supreme National Security Council remained all-important; Khamenei just came to dominate it. And it's important to remember that Khamenei appointed Rouhani to the council as his personal representative in 2005 after the latter had resigned because of serious disagreements with Ahmadinejad over nuclear diplomacy. Rouhani's longstanding and by all accounts amicable relationship with the supreme leader held.

Terrorism hasn't just been statecraft for the Islamic Republic; it's been soulcraft—a means by which the regime could satisfyingly combat the omnipresent "conspiracies" arrayed against it. In some cases, it's difficult to distinguish between personal revenge and *raison d'état*. In 1996 Reza Mazlouman, Rouhani's Islam-skeptical teacher, was shot to death in Paris. One of the present authors knew Mazlouman. It wasn't entirely clear to French authorities why the former law professor had been murdered by the Iranian government; they had no doubt, however, that the Iranian Ministry of Intelligence was behind his assassination. He'd been involved in exile dissident activities, but his stature was second-tier, and the great wave of expatriate Iranian assassinations in Europe had ebbed. By 1996 the French, engaged in commercial outreach to Tehran, were trying hard to forget the 1991 assassination in a Paris suburb of Shahpour Bakhtiyar, the last prime minister appointed by the shah. In Germany in 1996, Tehran was still under judicial fire for the Mykonos murders of 1992, when Kurdish Iranian dissidents were gunned down in a Berlin restaurant. But German businessmen and the German government were aggressively seeking to expand trade with Tehran, while Hossein Mousavian, the Islamic Republic's ambassador in Berlin who would later be on Rouhani's nuclear negotiating team and still later a lecturer at Princeton University, was energetically trying to whitewash Tehran's culpability for the murders. (In 1997, a German court found the Iranian government responsible.) The Islamic Republic's economic concerns, however, have rarely outweighed matters of state and the faith.

Ali Younesi, who was President Khatami's intelligence minister from 2000 to 2005 and was severely criticized by some in Iran's elite for being too lenient, has recounted that Rafsanjani came to him twice to complain about how he was running his office. "The management style that you have established in the ministry of intelligence," Rafsanjani warned, "makes it appear like an ineffectual municipal office that no one fears." A big reason Rouhani and Rafsanjani gelled as the most effective team in the history of the Islamic Republic is that they instinctively thought alike on most matters. For a revolutionary regime, fear is a crucial tool. And, as Hannah Arendt pointed out about totalitarianism, terror only begins in earnest after the opposition has been wiped out. (By 1996 in Iran, the Marxist, Islamo-Marxist, monarchist, and clerical opposition had been smashed.) The occasional assassination of dissidents keeps the elites in check. Rouhani's autobiography, which details Mazlouman's sins against Islam and insults to Rouhani, actually explains, almost glibly, why Mazlouman was assassinated. "Among the professors of the faculty, one of the professors who would in class attack the laws of Islam, was Reza Mazlouman," Rouhani remarks, adding, "who several years ago was killed in Paris." What Rouhani is surely doing here, with the approval of the Ministry of Intelligence's ghostwriters, is bragging. He finally won his classroom debate.

Terrorism abroad coincided with periodic campaigns against loosening morals at home, at a time when college-educated women were pushing the boundaries of what was acceptable under Islam. Some campaigns became uglier—notably the serial killing of intellectuals during Khatami's presidency, which the investigative journalist Akbar Ganji concluded was the work of Rafsanjani and Ali Fallahian, Rafsanjani's minister of intelligence, who had a close relationship with Rouhani. Rouhani isn't the worst revolutionary zealot about Persian mores, culture, and intellectual curiosity. But he has had an acute sense of the politicization of youthful exploration and dissent. In 1999 he castigated pro-democracy university students in Iran when their protests threatened a broader movement against the government. He backed Khamenei's decision to "crush mercilessly and decisively" student unrest.

During Rafsanjani's presidency, hostility towards the United States hardly diminished. As Rouhani put it on the eve of the first Gulf war, "the foreigners who have come to this region, and at their helm the United States, one of their goals is hegemony over this region. . . . This is a disgrace for the region and the world of Islam if [Muslims] don't resist this conspiracy and don't counter it." But unlike many ardent revolutionaries, Rafsanjani and Rouhani believed passionately in divide and conquer. To defeat

American designs, every angle should be played. "Because of the fierce competition between Europe and the United States," Rouhani explained in 1994, "we must expand our relations with Europe and counter America's conspiracy." On June 25, 1996, Iranian-backed members of the Saudi Shiite Hezbollah detonated a truck bomb in the American military compound at Khobar Towers in Saudi Arabia. U.S. intelligence quickly tracked the bombers' flight from Arabia to Syria, then to Iran. Not long after the attack, in a talk with political researchers at the Expediency Council Strategic Studies Center, an outfit designed to support the ruling elite overseeing the Iranian parliament, Rouhani outlined why he thought the clerical regime was still safe from U.S. military action. Rouhani's insights are astute and perhaps even more apposite today.

> Any development that leads to delay in the realization of U.S. threats against us is desirable. The threats will not go away anytime soon, but delaying the threat is possible. . . . Buying time should be our policy. . . . I believe that any type of military aggression against Iran is outside of the consensus of public opinion in the United States. Here I mean consensus among the decisive majority of the American people and political consensus. The Americans cannot easily reach such a consensus. . . . The willingness of important Western countries and their authorities is also needed, and the acceptance of our smaller neighbor states, meaning that the Americans also need to achieve the approval of our neighbors. Our neighbors' acquiescence is important even for a mid-size military attack. . . . Fundamentally, whenever the tension is high between us and the United States, before anyone else it is the smaller neighboring states that will be harmed. . . . I believe we must work on relations with countries like France and Germany and make them into close and friendly countries. [But] finding friends is hard and keeping friends even harder.

Rouhani remains proud and sensitive about his 2003-2005 nuclear tenure, for which he has been severely criticized within the ruling elite, even by the supreme leader. In his mind, he protected Iran's nuclear progress at a time when George W. Bush was on a rampage. Any concessions he made or advocated were necessary, temporary, and in no way compromising to the atomic program. "You remember well the conditions two years ago, after the September [U.N.] resolution [in 2003]," Rouhani told his audience at a meeting of the Expediency Council and the National Security Council staffs:

> Everything in the country was locked. Our economic relations with the Western world, our political relations, the issue of investment in our country and even productivity and domestic commerce, everything had come to a halt. Back then [the United States] was drunk with pride and victory. Had we shown passivity or radicalism, we would have given the knife into the hands of a drunk Abyssinian [George W. Bush]. We managed to put that phase behind us by prudence. . . . We managed to pass through that perilous curve. . . . Concerning technology, in the past two years we managed to create an opportunity so our great scientists and thinkers could complete our nuclear technology. In those fields where our technology was incomplete, we did not accept suspension. . . . Don't forget, the [September 2003 U.N.] resolution was that Iran should suspend all enrichment-related activities, but we didn't accept that for the production of parts and the assembly of centrifuges, both of which the resolution demanded that we suspend. We did not accept it and did not suspend it since we had few working centrifuges. But with the infusion of gas, we accepted suspension because we'd perfected our technology. That was artful. . . . We accepted suspension in fields where we no longer had technical problems. Simultaneously, we didn't allow suspension to become a legal commitment. This is the secret behind the Tehran declaration. . . . This was very difficult for Europe, but because of our steadfastness, they were forced to give in.

It was the lack of artfulness in Mahmoud Ahmadinejad, the urban peasant who'd risen from the front lines in the Iran-Iraq war to Tehran's mayoralty to the presidency in 2005, that drove Rouhani and so many within the revolution's managerial class nuts. Ahmadinejad was simple, blatant, and brave. He was the first Shiite populist, lower-class president of the republic, who increasingly voiced egalitarian views about God and man that left the clergy on the sidelines. In Rouhani's and Rafsanjani's eyes, Ahmadinejad was botching everything. In his book on the nuclear negotiations, *Amniyat-e Melli va Diplomasi-ye Hastehi* (National Security and Nuclear Diplomacy), Rouhani dryly expresses his contempt for Ahmadinejad, who at least until he started to question the privileged political dispensation of the clergy had Khamenei's backing. Rouhani's first and last meeting with Ahmadinejad as Iran's nuclear negotiator didn't go well.

> [Ahmadinejad] asked, "Why does [the IAEA] want to have an extraordinary session?" I answered that they wanted to investigate the reactivation of [the nuclear plant at] Isfahan. He said, "The agency has no right to do so; we have not done anything wrong. You go talk with El Baradei." I then replied that it's not so that the director general [of the IAEA] can make all the decisions. The Board of Governors of the agency consists of 35 ambassadors who make decisions based on the director general's report. [Ahmadinejad then] asked, "How come the agency is so influenced by them?" I told him it is so because they cover most of the budget at the agency, and because they can influence most member states. He asked, "What is the annual budget of the agency?" I said I did not know, but probably a few hundred million dollars. He said, "Call El Baradei right away and tell him we will cover the entire budget of the agency." I answered, ". . . we don't have the right and authorization to provide such assistance and the parliament should pass it." He answered, "I'm authorizing you—you let the rest be!" I then said that this is not my way of working. "If you insist, you speak with El Baradei yourself. . . . If you would like to issue such orders . . . well, it is better that you appoint a new [Supreme National Security Council] secretary really soon and give him these orders." After that I called Mr. Ali Larijani and said, "It appears that you should get ready to take over the secretariat."

ROUHANI'S BOMB?

Rouhani's journey from dusty Sorkheh to the Office of the President on Tehran's Avenue Pasteur has been long. He has matured, and mentors like Beheshti, Mottahari, and Rafsanjani may even have made a pragmatist out of the once radical theologian; but pragmatism does not equal moderation.

Those who argue that Rouhani has abandoned the nuclear ambitions that he has so proudly defended and advanced would be well advised to consider more closely the cleric's words, deeds, associations, and pride. Most probably Rouhani wants the nuke as much as any officer in the Revolutionary Guard or Saeed Jalili, the one-legged, shrine-loving war veteran who so enjoyed ignoring and belittling European and American diplomats as Ahmadinejad's nuclear negotiator. Rouhani just wants to be cleverer about how the regime becomes a nuclear state. The deal that he has likely cut with the supreme leader is a variation on what Rouhani believes he tried with the West after the clandestine nuclear program was revealed by an opposition group in 2002: temporary concessions on those things that no longer need further research, no concessions at all in areas requiring further work. To get the sanctions lifted—and Rouhani is convinced that once they start coming down, they are unlikely to go back up—the Islamic Republic should slow its nuclear program without diminishing its capacity to produce a bomb and the ballistic missiles to deliver it.

This time round, this approach may work with the West. It may not work at home. Although Khamenei has solidly backed Rouhani's diplomatic offensive, referring to the need for "heroic flexibility" when confronting the enemy, his support is undoubtedly conditional. The supreme leader is surely aware that Rouhani's nuclear memoir is, among other things, a criticism of his preferred confrontational approach during Ahmadinejad's presidency. And Khamenei today doesn't give the impression that he considers 2005-2013 wasted time. For cause: The nuclear program's greatest technical and industrial advances have been made in the last eight years. True, sanctions have mounted; the supreme leader may believe they were unavoidable. And Rouhani has to worry that the Guard Corps's longstanding distaste for him and small appetite for concessions may derail his diplomatic efforts to test Western resolve and unity. In addition, the Corps has grown enormously powerful under the sanctions regime because its resources are vast and privileged: As private Iranian businesses have withered and foreign firms have fled, the Guard Corps has moved in. Khamenei has approved or acquiesced to the Guard's economic expansionism because it is, as it proved in smashing the massive pro-democracy Green Movement in 2009, indispensable to his rule.

Western observers of Iran often see the antagonism between Rouhani and the Revolutionary Guard Corps primarily as a test of wills over the nuclear program; it isn't. It's a struggle about the nature of the regime and the revolution. Rouhani's politics aren't reformist; they are revanchist. He wants his class—the first-generation, upper-tier revolutionary managers who made the republic under Rafsanjani—to again have the high ground. He wants educated civilians—primarily clerics—to determine the destiny of the Islamic Revolution, not coarse militiamen who, in his eyes, lost the great war against Saddam Hussein. Rouhani has conspicuously dumped guardsmen from his cabinet and provincial governments. He and his men have publicly attacked the Corps for trying to destroy private enterprise and exposed "private" firms that are really Revolutionary Guard front companies feeding on public finances. It's unclear, however, whether Rouhani will have any better luck this time confronting the Guard than he did earlier. He may if the supreme leader believes that his praetorians have gone too far. But the odds aren't in Rouhani's favor. Khamenei knows—because his praetorians keep publicly reminding him—that the Corps is the guarantor of his rule and the revolution.

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President Obama is in a peculiar situation: He has hooked his diplomacy onto a cleric who can claim to have been a founding father of Iran's theocracy and its nuclear-weapons program. Rouhani has arduously and vengefully worked to see the revolution succeed. He treated with the devil (the Reagan administration) to get what the republic desperately needed during the Iran-Iraq war. He appears willing to do so again to ensure the regime's continuing dominion. Whether or not Rouhani has any intention of trading away his nuclear legacy for a better economy, he's clearly shown that he was an attentive student to his mentors. President Obama may not appreciate the fact that his Iranian "moderate" is the same "moderate" Oliver North dealt with. Rouhani surely does. Persian humor is built on irony and a mordant appreciation for an unpleasant Middle Eastern truth: Nice guys finish last—if they even finish at all. ♦

Trolling for Dollars

At times, our intellectual property laws produce results that are patently absurd

By Jonathan V. Last

One February day in 2012, the U.S. government granted its 8,112,504th patent to a corporation called Personal Audio. The company's invention was described as a "system for disseminating media content representing episodes in a serialized sequence," which sounds complicated and impressive. The invention looked even more complicated, and more impressive, if you read through the 31,000-word text describing it. The supporting images looked more complicated still, but less impressive. Accompanying the patent were eight pages of confused flow charts with dozens of boxes and circles and arrows pointing hither, thither, and yon.

The flow charts combine technical-sounding terms, such as "raw program database," with high levels of abstraction. For instance, one squiggly line connecting two boxes is simply labeled "Internet." The overall effect is that of a bright middle-school student trying to fake his way through an assignment. Which is more or less what patent number 8,112,504 is: It is an attempt to define and take ownership of the idea of the podcast.

The patent is what allowed Personal Audio to sue podcaster/comedian/celebrity Adam Carolla for a reported $3 million. Carolla started podcasting in 2009 and today runs America's largest podcasting network, yet neither he nor any other podcaster has ever paid Personal Audio for the right to use the medium. Carolla is fighting the suit. If he loses the case or decides to settle, then Personal Audio will have leverage to sue other podcasters, a list including everyone from amateur hobbyists to entertainment conglomerates such as Comcast/NBC, Time Warner, Viacom, and NPR.

The Personal Audio podcast patent isn't a special case. Rather, it's emblematic of how America's legal and financial systems, which were designed to foster innovation and encourage the efficient allocation of capital, have evolved into a system which often does the opposite.

But before we move on to the larger questions about intellectual property, let's dispense with the specific question of Personal Audio and its podcast patent, with which there are a few problems.

The first problem is that neither Personal Audio nor its founder, James Logan, seems to have ever created a podcast. This isn't fatal to their patent claim, of course. But it does mark them as nonpracticing entities, or NPEs, in legal parlance. By Logan's own account, Personal Audio is a holding company: "We own property, and our main activities relate to earning a return on that property. Now, it just so happens that our property consists of patents." Which is to say that the company does not make, or use, anything. It simply seeks rents from actual producers. Nothing wrong with that, of course.

The more substantive problem is the nature of the podcasting patent itself. It is difficult to say when, exactly, the first podcasts were made, but they seem to have dribbled out in 2003, possibly a bit earlier. By 2005 podcasts had become popular enough that Apple added explicit support for managing these audio files to its popular iTunes software. Personal Audio applied for its patent in 2009. In the byzantine world of patent law, the term for this problem is "prior art." The plain-English version: If something already exists out in the world, you cannot swoop in and patent it yourself, because your invention is not original. The prior art of the podcast existed long before Personal Audio asked to be given credit for its invention.

But the company was not unsophisticated, so when Logan and his colleagues made their bid in 2009, they tied it to a 1996 application for another patent. The 1996 filing sought to patent an interesting idea: a handheld audio device that would allow listeners to skip around within the source material. Mind you, Logan was never able to build this device—the technical challenges proved so formidable that when he tried to implement the idea, he wound up going decidedly low-tech: He took existing articles from magazines, read them aloud, and recorded these readings onto audiotapes. People would, in theory, come to him over the Internet and place orders for the tapes. At which point Logan would physically mail them to the customer, via the Postal Service. The business didn't work out for him, and he abandoned it in short order.

But in 2009, Logan took advantage of a rule that allows

Jonathan V. Last is a senior writer at The Weekly Standard.

patent seekers to amend the claims of their previous inventions. He filed an amended claim, which contended that his invention of the personal, handheld audio device also encompassed the serving of serialized content from the Internet, which he asserted was the essential element of his tapes-by-mail system. The implication being that the *real* origin of the podcast lay in his 1996 "invention" that never actually existed.

It's difficult to say which is crazier: the assertion itself or the fact that the U.S. Patent Office bought it.

Logan is unashamed to be seeking restitution for his idea. "I spent $1.6 million of my own money trying to realize our vision of a custom listening experience," he explained in a question and answer session with the tech site *Slashdot*. And besides, this isn't his first rodeo.

Logan is old money, by tech standards: In 1982, he founded a touchscreen company called MicroTouch Systems, which was sold to 3M in 2000 for $160 million. He founded Personal Audio in 1996, and when the tapes-by-mail business failed, he turned to patents. Even though he lives in New Hampshire, he incorporated the company in Beaumont, Texas. Why Beaumont? Because it sits comfortably within the boundaries of Texas's Eastern District court.

...where plaintiffs prosper

The Eastern District courthouse in Marshall has become the destination of choice for a disproportionately large number of America's patent infringement suits. The Manhattan Institute's Ted Frank explains that there are four reasons patent holders seek out the Marshall courthouse: (1) There are only two judges there who handle patent cases. They are known to rarely grant summary judgment, instead pushing parties to jury trials. These judges hear a great many patent cases. For example, last year one of those judges, the Honorable Rodney Gilstrap, presided over nearly 900 patent cases, which was roughly one-sixth of all the cases heard nationally. (2) Local jurors are perceived by attorneys to be particularly friendly toward plaintiffs. (3) The remoteness of the venue—150 miles from Dallas—adds greatly to the costs of litigation. Frank estimates that the location alone adds $10,000, per lawyer, per trip, while the BBC reports that a full legal team, in trial, might have the meter ticking at close to $2 million per day. All of which encourages defendants to settle. And then there's: (4) The Marshall courthouse has a "rocket docket," meaning there are local rules that expedite cases, providing another advantage for plaintiffs looking to move swiftly into the expensive, trial phase of litigation.

All of which, incidentally, has made Marshall—population 23,523—something of a boom town, with patent suits being the wellspring of prosperity. For example, in the winter, the Korean electronics giant Samsung—which is often involved in patent disputes as both plaintiff and defendant—sponsors an ice rink in Marshall, across the street from the courthouse. Without impugning the character of the good citizens of Marshall, it's nonetheless true that they now face a moral hazard when serving as jurors: The wellbeing of the local economy is tied inextricably to the community's friendliness to plaintiffs in patent litigation.

The Eastern District is where James Logan and Personal Audio fought mighty Apple in 2009, getting an $8 million verdict from the jury. In that case, Personal Audio insisted it had invented the "audio program player including a dynamic program selection controller" and the "audio program distribution and playback system." The jury agreed. Personal Audio has sued Apple twice more since. And not just Apple. Personal Audio has also sued Amazon, Samsung, XM Radio, and others. As James Logan said, such suits aren't an ancillary cost of doing business. They're his entire business model. Which is why people call him a "patent troll."

"Patent troll" is the vernacular term for what the legal world blandly refers to as a "patent assertion entity." Trolls are the individuals (or corporations) who seek to use patents purely as revenue-generating mechanisms. For instance, patent trolls will frequently purchase patents from dying corporations during bankruptcy proceedings, and then use them to instigate litigation. Patent trolls are almost always nonpracticing entities—that is to say, they rarely produce or use technology. Rather, they control ideas on which the government has conferred special protections, and these special protections allow them to seek rent from people who do produce and generate economic activity in the real—which is to say, nonlegal—world.

Logan is one of the more visible members of what has become a minor army of patent trolls waging an intifada in the tech world. Last year the Government Accountability Office tried to get a sense of the magnitude of the patent-trolling business. They found that as the Internet age progressed, the amount of patent infringement litigation grew. From 2007 to 2011, the overall number of defendants in patent cases increased by 129 percent. A change in the law in 2011 made it harder to pursue multiple defendants in the same suit, so from 2010 to 2011, the total number of lawsuits filed jumped by only a third, to just shy of 3,200. The GAO reports that about 89 percent of the increase in litigation since 2000 has involved software and computing. About a fifth of all the patent infringement suits were brought by nonpracticing entities. The GAO went on to say that many of these suits are based on "low-quality patents, that is, patents with unclear property rights, overly broad claims, or

BILLY HATHORN

both." People who hold these "low-quality patents" have essentially been given license to claim "that their patent covers (1) an entire technology when it may only cover a small improvement, or (2) future technologies that their patent did not originally intend to cover."

You might say that patent trolls are to intellectual property law what ambulance-chasing lawyers are to torts. Except that with patent trolls, it's the government that arranged the slip-and-fall when it granted the bad patent.

The government, at various levels, has tried to clean up this mess. Vermont and Wisconsin have taken up legislation to curb patent litigation abuse, though it's not clear how effective their laws will be. In 2013, the House passed a bill that would delay discovery and force losing plaintiffs to pay the cost of the lawsuits in patent litigation—both ideas intended to strengthen the hand of defendants. President Obama issued five executive orders last summer designed to make the patent-granting process more rigorous and open to dispute *before* patents are granted. Two weeks ago, the Supreme Court issued a decision, in *Alice Corporation* v. *CLS Bank*, which sought to narrow the sort of ideas that can be patented going forward.

All of these measures seem grounded in common sense. Yet reforms quickly bump into a deeper issue: Patents are part of a legal regime that is nearly sacrosanct. There is only one right established in the original text of the Constitution. That's the copyright. The Founders put it right up top, in Article I: "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Protection of intellectual property is baked into our system, and once the law begins to devalue intellectual property, you face the potential for creating a dampening effect on our innovation-based economy.

You can see the pitfalls at the opposite end of the spectrum in China, where the government is blasé about industrial-grade intellectual theft, which includes everything from pirated DVDs to unlicensed software. And more: In 2006, the Chinese automaker Huanghai began selling an SUV that was a near-copy of a Hyundai model. In 2011, an American expat living in Yunnan Province discovered an entire knockoff Apple store, which took infringement to such ludicrous heights that the employees all believed that they worked for the real Apple.

Clamping down on the behavior of patent trolls necessarily means diminishing protections for intellectual property. Take, for example, the problems presented by nonpracticing entities. It seems manifestly unfair to allow Personal Audio to take ownership of an idea without ever having been able to implement the idea. After all, ideas are cheap; engineering is hard. But it's not clear that the alternative is attractive, either. As Personal Audio's Logan pointed out in his *Slashdot* interview, nonpracticing entities exist because the current patent system separates invention from production. Would we really want a system that joined the two and refused to grant a patent unless the inventor could produce a working prototype? This might curtail innovation, too. What's more, such a system would further concentrate the control of intellectual property within the realm of big business, rather than small entrepreneurs, because only big businesses could afford to employ both inventors and the engineers to build out the ideas.

All of which is reason to be wary of reforms designed to target patent trolls.

The deeper problem patent trolls represent, however, isn't about inefficiency or innovation. It's that they demonstrate how easily systems—in this case, economic and legal—can be perverted. A regime designed to fan innovation is now used to stifle it. Where patents were supposed to level the playing field between inventors and big business, the secondary effect of patent trolls is to encourage consolidation: Patent litigation becomes a tax on big businesses, to be sure, but also an effective barrier to entry for smaller competitors. (One recent development has seen large companies, such as Facebook and Microsoft, purchasing patents in bulk from failing businesses to wage patent wars of their own.) Then there's the unpleasant fact that a protection designed to incubate "Progress of Science and useful Arts" has become just another tool for collecting rents. And finally, there's the extent to which the patent regime has transformed the legal system itself from a mechanism for resolving occasional disputes into a state-run collection agency.

The analogy between patent litigation and personal-injury torts may be superficial. So let's try a different one. You might say that patent trolling is to intellectual property protection as flash trading is to capital allocation in the stock market. Over the last decade, Wall Street has seen the emergence of an entirely new class of financial players known as "flash traders." These firms rely not on financial expertise, but on elaborate computer algorithms, which execute thousands of trades per second. Flash trading is not value investing, or even traditional trading. It's simply the harvesting of arbitrage opportunities created by technology: The flash trader algorithms can "see" microscopic ripples in prices, then trade on them instantaneously, and turn a profit. They add no value to the system of capital allocation; they merely skim off the pool of available capital using a novel technical approach to the mechanics of trading.

No one particularly likes the flash traders, any more than the patent trolls. But it's difficult to know what to do with them. Because in both cases, the bug in the system, which has allowed them to flourish, is also one of the system's primary features. ♦

'Moonrise Over the Sea' (1822) by Caspar David Friedrich

Of the World of Life

The sacred as a basic element of humanity. BY DOMINIC GREEN

In *Tim's Vermeer*, a 2013 documentary film about Tim Jenison, an inventor of digital software, Jenison cracks the technical code of Vermeer's art. Inspired by the theories of David Hockney and physicist Charles Falco, he builds a replica of Vermeer's Delft studio in Las Vegas and, with a *camera lucida* and a concave lens, produces an accurate copy of *The Music Lesson* (ca. 1662-65).

"My friend painted a Vermeer," marvels Penn Jillette, the magician whose performing partner Teller directed the film. But Jenison has done no such thing: He has painted half of a Vermeer, the half that anyone can produce if given enough time, money, and equipment. His experiment confirms the intimacy of science and art and that the magical effects of art depend on technical sleights of hand. But it also confirms the insufficiency of its approach and the limits of a purely scientific account of human experience.

Vermeer's *The Music Lesson* is numinously intimate, its small space shimmering with emotional significance and unheard melodies. Tim Jenison's version is a high-tech update of paint-by-numbers, a lifeless knock-off. It is to Vermeer's *The Music Lesson* what the Eiffel Tower in Las Vegas is to the one in Paris. It tells us nothing about Vermeer's motives, intent, or personality, other than that physics cannot explain them. Its technical success cannot account for the peculiar individuality that hovers in

The Soul of the World
by Roger Scruton
Princeton, 216 pp., $27.95

Dominic Green is the author of The Double Life of Doctor Lopez *and* Three Empires on the Nile.

all great art, as in our experience of the world. This, the "horizon of meanings [that] transcend the domain of any natural science," is the subject in *The Soul of the World*.

Roger Scruton is a prolific, paradoxical contrarian: a Burkean soaked in continental philosophy; an intellectual with an Orwellian contempt for cant; an advocate of existential freedoms and the established church. His subjects are as topical as their treatment is free of fashion and conformity. He is always readable, whether sketching the lineaments of a conservative environmentalism, defending fox-hunting as an American might the Second Amendment, or even advocating for the philosophy of Richard Wagner—for not since Romain Rolland has anyone taken Wagner as seriously as Wagner took himself.

Scruton's immediate target here is the New Atheists, the current exemplars of what Nietzsche called the "English-mechanistic doltification of the world": the reduction of life to quantifiable processes; the confusion of information with knowledge, and utility with value; the explanation of personality as the illusory by-product of a "digitally organized nervous system"; the dismissal of religion as a malign evolutionary hangover.

Life, Nietzsche said, is the "great hunt." It is immensely entertaining to see Scruton run the reductionists to ground, then eviscerate them with the appetite of a hungry beagle. *The Soul of the World* is worth reading for the blood sport alone; but Scruton is after bigger game. His ultimate objective is the philosopher's trophy: meaning. And that, Scruton believes, lies in our experience of the sacred.

We are objects, he writes—biological entities in the "order of nature," susceptible to the laws of science. No philosophy can deny this truth, but no true philosophy is completed by it. For we are also subjects in the "world of appearances." We are self-conscious personalities, interpreters of language and symbol. The world might be a unity, but we exist in "cognitive dualism." Our cognition of the order of nature has no bearing on our cognition of the world of appearances. If we equate one mode of cognition with the other, we foreshorten our perspectives and impoverish our understanding.

Meanwhile, as Rebecca Newberger Goldstein observes in *Plato at the Googleplex: Why Philosophy Won't Go Away* (2014), philosophy exists because the confounding, enchanting world of appearances is still here. Scruton uses the phenomenologist's argument, always congenial to a religious philosopher: If we experience it, it exists. Following Edmund Husserl, the founder of phenomenology, Scruton calls his world of appearances the *Lebenswelt*, the "world of life." In this realm of "freedom, reason, and interpersonal being," we discover our self-consciousness. Through the "expansion" of perception in love, sex, art, and (sooner or later) death, we seek out "transcendence."

The *Lebenswelt* accommodates not just the concerns of culture but also those of civilization: the legal, ethical, and religious codes that restrain and channel our expansion, the stuff that Norbert Elias called "political, economic, and social facts." These days, the Western *Lebenswelt* is not a happy one, and Scruton blames our shortened perspectives. From the existential horizon of the *Lebenswelt*, the terrifying implications of religion crowd in: orders, duties, vows, and sacrifices. We prefer to shelter in the impoverished but cozy domain of technological society—to water down vows into contracts, piety into justice, and duties into transferable debts.

No durable society, Scruton warns, has lasted on such flimsy foundations. Nor can a fair society stand on ugliness and exploitation. Scruton sees abominable aesthetics as a kind of moral abdication: Brutal architecture and callous urban planning are studied demolitions of our social potential, licenses for revolt against civilization in the name of nature. Scruton sees a similar license in unbridled libertarianism: The market and the state can turn subjects into objects; so, too, can the triumphalism of evolutionary biology and the crass self-absorption of the Internet. In the sanctimony of environmentalism, Scruton detects kindred concerns, a "religious core" of distress at the "desecration" of the *Lebenswelt*.

Reflecting Scruton's considered idiosyncrasy, *The Soul of the World* is a highly personal vision of a reconstructed *Lebenswelt*. In a series of cogent, fascinating chapters, he explains why we should set our sights on the beautiful horizon. He guides the reader to the edges of the *Lebenswelt*, from the brain to individual encounters and social ethics, then to art and aesthetics. To look into the eyes of the beloved is to "look the other person in the I" and to find one's own "I" in that encounter. To enact a religious ritual, or to forge a link in the Burkean chain of generations, is to take part in a personal and social expansion of meaning. In entering the real but virtual world of music, or in reading the orders of classical architecture as they emerge from the order of nature, we find not just aesthetic gratification, but a convergence of the true with the beautiful that might nudge us towards the good.

Along the way, Scruton clarifies Kant's clotted phrasing and explains the "expansion" of Beethoven's perfect phrases. He chastises Hegel for identifying the Absolute with Christianity, and Sartre for identifying it with nothing at all. His grasp is so strong, his amplitude so broad, that it matters little that Martin Buber—whose I-Thou theology resembles Scruton's I-You interpersonality—remains a silent partner, like Scruton's God.

At the edge of the *Lebenswelt*, there lies the "horizon of meaning," the border of infinitude and nothingness where (Scruton believes) matter returns to its origins and self-consciousness dissolves into the divine. Mindful of the order of nature, Scruton approaches the misty frontier cautiously.

The personality cannot survive the death of the body; the afterlife is "an absurdity"; there are no pagan gods, no nymphs or satyrs, only the philosophical confrontation with mortality. Monotheism handles this better than polytheism, Scruton believes, and Christianity best of all. The God that remains is "the all-knowing subject who welcomes us as we pass into that other domain, beyond the veil of nature."

In the meantime, Scruton advises those of us on this side of the veil to look for meaning and intimations of transcendence. As a face reveals interpersonality, so the surfaces of appearance tell of the depths. The *Lebenswelt* makes the difference between sound and music, between daubs of pigmented chemicals and a painting. By Scruton's lights, Tim Jenison has not wasted a penny or a moment: He should keep going, until his "intentional" brush expresses the subjective enchantment and joy that call him to the borders of his lens, his *camera lucida*, and his canvas. ♦

B&A

Ramblin' Man

Hank Williams is back on the air.

BY COLIN FLEMING

Of all of the giants of American popular music, there is perhaps no artist who had as brief a recording presence as Hank Williams, a prime mover in several genres who did all of his prime moving between 1946 and 1952.

Country music tends to be lampooned today as the fare of NASCAR fans and inebriated college girls, and when people hear the name Hank Williams they're apt to think of Hank Williams Jr. and that Monday Night Football theme song that has a way of boring into your skull like some hideous creature from an H.P. Lovecraft story.

But Hank Williams Sr. (1923-53) was the real deal in a way that few American musical pioneers—Duke Ellington, Bob Dylan, Muddy Waters—have ever been. His music wasn't so much straight-up country music as a sophisticated amalgam of what was, or would become, folk, rockabilly, gospel, blues, and rock 'n' roll. Williams's chief attribute may well have been his ability to be both of the people—a stalwart of the folk and country pride—and a sophisticated musical performer whose work had legitimate avant-garde cachet if you stopped to listen hard enough.

Williams also had a predilection for sounding ancient, as if he'd tapped into the Old Testament and found a way to transport his listeners back to a dusty, predawn time in our civilization. Yet he was modern enough that today's listeners might be perplexed by the immediacy and everyday familiarity of his music, now 75 years old.

Consider, then, this delight of a discovery: four Hank Williams radio programs from 1950, which no one has heard since they aired. They are a legitimate boost to a catalogue whose largesse was substantial enough to assume it couldn't be significantly boosted. And yet, here's a whole other side to the man who might be the closest thing we have ever had to a pied piper, given how many people followed his example and sometimes crafted examples of their own.

The Garden Spot Programs, 1950
Hank Williams
Omnivore, $13.99

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The programs are live in the sense that everything was done in one take, cut as though it were a concert setting; but the music was actually recorded at Nashville's Castle Recording Laboratories, in 15-minute blocks sponsored by Naughton Farms, one of the country's largest plant nurseries. Williams would sing as the band (not his regular Drifting Cowboys) accompanied his deep-delving efforts, and in between songs a pitchman would try to hook you up with "deep-rooted" rosebushes. Folksy in the extreme.

Williams, however, understood the relationship between hawking and music, and his best songs, like many of our best stories, films, and records, try to sell his audience on a kind of experience—to beckon, like a sales pitch.

The four surviving programs here take the same form: We have a jingle from the "Garden Spot"—the bellwether name for the series—followed by an up-tempo piece, a thought-provoker ("Lovesick Blues" takes up both posts), a fast-tempo fiddle interlude, a song to depress you, and then a romp through "Oh! Susanna" at a pace straight out of an old cartoon. Williams is at once bashful—he chides two of his own songs, "Mind Your Own Business" and "I'll Be a Bachelor 'Til I Die" as novelty numbers, though they're anything but—and entirely prepossessing and confident.

The ad hoc band features more steel guitar than the Drifting Cowboys ever did, and the wrinkle is a pleasing one, especially on the two versions of "Lovesick Blues," with the guitar providing a luxuriant frame that directs our attention inward to the rich, expressive picture that comes with Williams's vocals. It makes one wonder what would prompt a man to think it best to sing

Colin Fleming is the author of Between Cloud and Horizon: A Relationship Casebook in Stories.

this way, with those crazy leaps and dips and the quasi-falsetto that has a cowboy's choke near the end of it.

Jimmie Rodgers was the antecedent here, but Williams took country and western singing out to new territories. For all of his aw-shucks-it's-just-me commentary, it is plain that Williams knew, as any great storyteller does, that he had his listeners fully in his charge.

There may be no more risibly depressing song in the country and western catalogue than "I've Just Told Mama Goodbye," a piece of corn which finds Mother expiring on Mother's Day before taking up residence, as a flower, in God's bouquet. It puts one in mind of those car crash songs from the late 1950s—all the rage, momentarily, on the pop charts—but what's interesting here is that Williams transforms such material into something like an upbeat version of a work song. The subject matter isn't especially relevant; what matters is the idea of taking a blue feeling and spinning it into something brighter. Maybe your boss just took it out on you, or your kid is sick. You listen and think: So that's how you do it. Maximum connection, and a very subtle, even alchemical, taking-over. ♦

B&A

Go Down Swinging

The unlikely career of England's poet-pugilist.

BY MICAH MATTIX

In 1949, Vernon Scannell (1922-2007) was working at an English fairground boxing booth, taking a fall in one fight and avenging himself on a hapless challenger in the next. Behind him were convictions for bigamy and desertion, an abusive childhood, short stints as a professional boxer and a private university tutor (despite never having gone to university himself), innumerable bar fights, and a single book of poems.

Ahead were more women, more bar fights, more time in prison, more teaching, and more poems. At the time, he was 37 and living with his divorced mother, writing little. His life seemed to be at a dead end. But as James Andrew Taylor notes in this excellent biography, an opportunity arrived, as would happen many times in Scannell's life, to pull himself—or to be pulled—from the rubble. In this case, it was a job teaching English and history at a secondary school in West London. At other times, it was meeting a new woman, receiving a small prize or grant, or even having a chance encounter with some old friends.

Walking Wounded
The Life and Poetry of Vernon Scannell
by James Andrew Taylor
Oxford, 448 pp., $35

The seeming incongruity of Vernon Scannell's life and personality makes him one of the most intriguing figures of contemporary literature. He was a man of immense sensitivity who identified with the weak, the broken, and the cowardly of the world but, when drunk, was a terrible wife beater. He loved children and despised violence but fought in the Second World War and had a lifelong passion for boxing. He was one of the most talented poets of his generation, but he often felt out of place in literary circles and regularly doubted his talent.

He was talented though, and mostly self-taught. Scannell's poems combine frank statement and penetrating insight in carefully crafted lines. In "Mastering the Craft," which compares his two great passions—boxing and poetry—Scannell wrote that poets, like boxers, "must train."

Practise metre's footwork, learn
The old iambic left and right,
To change the pace and how to hold
The big punch till the proper time,
Jab away with accurate rhyme;
Adapt the style or be knocked cold.

He was a blue-collar poet, though this does not do justice to the range of his work, which deals with love, war, sports, childhood, and, most of all, failure—often with self-effacing humor. When he was in jail in 1974 for drunk driving, his daughter Nancy wrote to ask him what a jailbird was. Scannell wrote:

His plumage is dun,
His appetite indiscriminate.
He has no mate.
His nest is built of brick and steel;
He sings at night
A long song, sad and silent.
He cannot fly.

This is classic Scannell: honest, direct, almost entirely defeated except for the elegant formulation of that defeat. For Scannell, a poet must know his craft, but if he lacks passion, his poems are useless. In "The Poet's Tongue," he writes: *With industry and patience he must bring / Together his great arsenal*; yet the poet ultimately ignores his "intricate machines" to use "bits of flint that hit the target square."

Scannell was born John Vernon Bain in 1922. His father was a photographer, and Vernon, his older brother, and a younger sister grew up in the small town of Aylesbury, where a nearby RAF base provided a regular source of customers for photography services.

Life was hard at home: Both Scannell and his brother suffered regular beatings from their father. This was not the sort of firm but corrective punishment common at the time, but violent whippings, burnings, and slaps to the face, all accompanied by derisive mocking.

As the boys grew, the slaps became punches. Their mother was unaffectionate and frequently blamed the

Micah Mattix is assistant professor of literature at Houston Baptist University.

boys for provoking their father. Scannell and his brother both developed an early love of reading—against all odds, it would seem—and found some solace in P.G. Wodehouse, *David Copperfield*, and Sir Walter Scott—although this had to be hidden from their father, who viewed reading as the mark of a sissy.

At 12, Scannell took up boxing and discovered that he had a gift for it. He would go on to fight briefly as a professional and would use his skill, as we have seen, to earn some extra money here and there. Later, Scannell would remember his time in the ring fondly, describing an opponent's head "jerking back as if on an invisible puppet-wire" and "a grey tidal wave of noise" sweeping over him—"warm and exalting."

Scannell left school at 14 to work as a bookkeeper for an insurance company. He was tall, handsome, and charming. At 18 he met a young woman by the name of Barbara Phillips. She became pregnant, and Scannell quickly married her, but the two would never live together. Scannell and his brother stole close to £100 from their father and went on a weeklong drinking binge in London. Running short of cash, they enlisted in the army.

Scannell saw time in North Africa, though less than he suggested in his memoirs. He was not present at the Battle of El Alamein, but he almost certainly fought at the Battle of the Mareth Line and the assault on Wadi Akarit. He also took part in the D-Day invasion. Scannell was not the best soldier: He would regularly go AWOL during training to go on drinking binges, and on the battlefield, he tried as much as possible to avoid shooting anybody. After the attack on Wadi Akarit, however, he snapped when he saw British soldiers stealing from their own fallen comrades: "I just remember all those dead Seaforths lying out there," he later recalled, "and our blokes going round, settling on them like f—ing flies, taking their watches and wallets and Christ-knows-what, and I just got up and walked. It was like a dream."

He was arrested a few days later and spent six months in a military prison in Alexandria before being released for good behavior and reinstated with his unit.

Scannell's time in a military prison was not only difficult—the prisoners were given repetitive tasks, regularly humiliated, and subjected to random punishments—but it instilled in him a strong sense of guilt and self-doubt.

Vernon Scannell (center, 1953)

Afterwards, he would always see himself as a coward, despite having deserted only after the fighting ended at Wadi Akarit and going on to fight in Normandy. Taylor writes that Alexandria reinforced Scannell's "distrust of military virtues . . . and . . . brought to his poetry a sympathy of the weak, the morally compromised."

The day after Germany surrendered in 1945, Scannell (still Bain) packed his bags and left his post. Because this was considered a second desertion, Scannell, if caught, would be returned to military prison to finish his original sentence. In London, he fell in with a group of artists and intellectuals who had opposed the war from the beginning and who took Scannell in, providing him with a new name and work on the black market. In 1947, he was caught by military police, faced trial for desertion, and was sent to a psychiatric hospital for a short time before being released. He married again, though he had never divorced his first wife, and was subsequently charged with bigamy.

It was in London that Scannell began to write seriously. He would marry a third time, and remain married for two decades, before divorcing again. While he worked as a secondary school teacher and headmaster to support his growing family, he lived mostly by his writing and readings. According to Taylor, he was a good (if often absent) father and a loving and terrifying spouse who could become violent when drunk. He found it impossible to remain faithful to one woman.

Scannell was a prolific, as well as talented, writer: Between 1960 and 1990 he published more than a book a year. Yet while Taylor comments on some of these works, and on Scannell's development as a writer, he gives too much space to Scannell's binges and beatings, which make for repetitive reading.

Taylor does comment, in detail, on Scannell's two final collections, in which we find some of his most powerful work as the poet looks back, with regret, on his life. In "Missing Things," Scannell writes: *I'm very old and breathless, tired and lame, / And soon I'll be no more to anyone / Than the slowly fading trochee of my name*. While the poet tells himself that, when dead, he will feel nothing, "like the stone of which the house is made," he asks: *Then why so sad? And just a bit afraid?* The reason, of course, is that just as there is more to life than poetry, there may be more to death than silence. In one poem, Scannell confesses his *need to give a full account of all / the lies and self cruelties*; in another, he hears *the first soft chords from far away: / the wounded music of what might have been*.

Whether or not the poet found peace at the end of his life, his own "wounded music"—quiet, elegant, humble—rang true to the end. ♦

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B&A

Pick Yourself Up

America as the land of the second chance.

BY MICHAEL M. ROSEN

"If at first you don't succeed," W.C. Fields supposedly said, "try, try again. Then quit. There's no point in being a damn fool about it."

Unlikely success after spectacular failure represents a core theme of American financial, political, and military history. From the depths of the Great Depression arose an economic juggernaut that still dominates the global economy. From a bitterly divisive and bloody civil conflict emerged a stronger union. And from the ashes of Pearl Harbor rose an American phoenix that became the greatest fighting force ever. On an individual level, our most storied inventors and entrepreneurs suffered humiliating defeats before realizing their dreams.

But sometimes failure begets only more failure. In this sprawling, highly readable survey of the landscape of disappointment—a successful, if unlikely, marriage of an upbeat self-help instruction guide and a keen economic analysis of key contemporary issues—Megan McArdle maps out exactly how failure breeds success, and how not to be a damn fool. "We should stop spending so much energy trying to avoid failure or engineer it away," she writes. Instead, "we should encourage people to fail early and often—by making sure that their failures are learning opportunities."

How? For one thing, McArdle urges parents to allow their children a taste of social and educational failure. She argues that "formal rules" must be aligned with "informal moral rules," and that executives must "understand the limits of their experiments" (as the creators of New Coke did not). At times, she turns her prose surprisingly inward, appraising her personal and career decisions, and she skillfully interweaves her mother's near-disastrous appendicitis with a broader exposition of medical error. Her thoughtful analyses of Rathergate, the Challenger disaster, and unemployment showcase how easily human failings accrete—and can be overcome.

The Up Side of Down
Why Failing Well Is the Key to Success
by Megan McArdle
Viking, 321 pp., $27.95

In a chapter on punishment, McArdle plumbs the depths of the criminal rehabilitative system and exhumes Hawaii's Opportunity Probation with Enforcement (HOPE), which has "slowly and steadily [been] reducing crime among probationers." She identifies its founder, Judge Steven Alm, as the ultimate tough-but-fair jurist whose unswerving punishment of all violators has left even his probationers gushing about how "great," "awesome," and "amazing" the HOPE program has proven. Judge Alm, for example, requires his charges to submit to frequent random drug testing—as often as several times per week—and automatically sends them back to jail every time they test positive or fail to show up.

"Over the course of the day," McArdle writes, "the judge uses the words 'decision,' 'choices,' and 'control' to almost every probationer he sees." Removing uncertainty, fostering consistency, reinforcing smart decisions, and promptly penalizing foolish decisions are indispensable to any effective punitive regime. Indeed, arbitrarily letting some misbehavior slide undermines the rehabilitative project: "Occasional mercy is not merciful," in McArdle's estimation.

In her final (and finest) chapter, McArdle turns to bankruptcy, the quintessential symbol of failure breeding success. The United States offers one of the most generous debt-forgiveness systems in the developed world, which is all to the good because of the doors it opens: "Everywhere else, bankruptcy is a stigma, an enduring disgrace, a permanent stain. Here it's just as likely to be the doorway to a business empire." Extinguishing debt unleashes the entrepreneurial spirit according to "the principle of the fresh start: by wiping old debt off the books, we help the economy by speeding up the redeployment of capital—human and financial."

It's no coincidence that Americans are wildly more risk-loving and innovative than our European friends, where bankruptcy is politically, economically, and morally discouraged. We have twice the rates of new business ownership and early-stage entrepreneurial activity as France, for instance. And yet McArdle evinces great sympathy for the likes of Dave Ramsey, the "debt-free" crusader who implores his audiences to live within their means, because his hectoring prevents abuse of our open-handed bankruptcy process. "It's people like [Ramsey]," she says, "encouraging debtors to pay off as much as they can, who make it possible for us to maintain the easy bankruptcy laws that give relief" to failed-but-soon-to-be-successful entrepreneurs.

McArdle's prose falters at times, drifting toward truisms in a somewhat muddled chapter on blame, the mortgage meltdown, and 9/11 truthers. But overall, her common-sense approach enlightens and enlivens the complex issues she examines. Ultimately, what she writes about bankruptcy applies with equal vigor to the project of American market-based capitalism, the preeminent force for global good: "By shielding entrepreneurs from catastrophic results, we free them to take more risks—the good kinds of risks that have made America one of the most dynamic economies in the history of the world." ♦

Michael M. Rosen is an attorney in San Diego.

B&A

The Fake's Progress

Reconstructing the deconstructionist's inventions.

BY MATTHEW WALTHER

This is a biography of a man who disliked, even hated, biographies. Pointing this out is ironic in the contemporary sense of the word, though not cheaply or glibly so. Paul de Man, the Belgian Nazi collaborator, embezzler, bigamist, fraud, and all-around academic snake-oil salesman, insisted that history and context were beneath the attention of literary scholars. You don't need to have your psychoanalyst's cap on to see why.

When de Man died in 1983, he was at the height of his influence ("fame" seems too strong a word), and his reputation looked all but assured. Deconstruction was an academic orthodoxy, and its high priests—Jacques Derrida, Geoffrey Hartman, and Harold Bloom (since then something of an apostate)—were the well-remunerated guardians of its sacred truths. After de Man's death, appreciations appeared in prominent literary weeklies and left-leaning newspapers, and new volumes gathered together his unpublished and uncollected work. His memorial service in New Haven, where he had been Sterling professor of humanities and head of the comparative literature department at Yale, was the equivalent of a state funeral.

Then, in 1988, a graduate student made an astonishing discovery. Between 1940 and 1942, unbeknownst to any of his academic peers, Paul de Man had written nearly 200 articles, most of them on ostensibly literary themes, for two collaborationist newspapers. These articles, which were soon translated and published in the United States, saw de Man praising generic "Western" writers for their ability to shake off the cultural baggage of Jewish mediocrity and endorsing the idea that all of Europe's Jews should be deported en masse, through Franz Rademacher's so-called Madagascar Plan.

The Double Life of Paul de Man
by Evelyn Barish
Liveright, 560 pp., $35

Responses ranged from equivocation to outrage, and everything in between. Many of his allies deserve a place in the Special Pleading Hall of Fame. One perverse admirer deconstructed the deconstructer, claiming to show that de Man had been playing a kind of anti-Nazi word game: His airing of anti-Semitic attitudes actually shows him engaging in subversive philo-Semitic activity. To de Man's detractors, Jacques Derrida himself issued what must surely be the oddest literary putdown of all time: "The concept of making a charge itself belongs to the structure of phallogocentrism."

By 2004, Derrida, too, was dead, and deconstruction looked passé. Some of this can be chalked up to academic fortune, ever fickle, which, in the early 1990s, had begun to smile upon the so-called new historicism of Stephen Greenblatt and others. But it is undoubtedly the case that revelations about de Man's conduct during World War II cast a sinister pall over the landscape of deconstruction. Even before his wartime journalism was ferreted out, critics had noticed something inhumane in passages such as this one, from de Man's first collection of essays:

> It is always possible to face up to any experience (to excuse any guilt), because the experience always exists simultaneously as fictional discourse and as empirical event and it is never possible to decide which one of the two possibilities is the right one. The indecision makes it possible to excuse the bleakest of crimes because, as a fiction, it escapes from the constraints of guilt and innocence.

As Evelyn Barish shows us in this excellent, though not quite flawless, biography, few, if any, of Paul de Man's contemporaries understood his work, though an absurdly large number of them claimed to have done so. Barish, professor emerita at the CUNY Graduate Center, makes no such claim, and *The Double Life of Paul de Man* wraps up well before the apogee of her subject's career, a period during which the facts of his life are well known and by which point he had already become the unsavory character she has sounded up out of years of interviews and archival research.

Paul de Man was born in Antwerp in 1919. His parents' marriage was a union between the de Mans, a line of wealthy butchers, shipowners, and merchants, and the Van Beers, a Flemish artistic dynasty. Theirs was a bad match: He was a serial adulterer and she responded to her husband's infidelities by taking a Spanish diplomat as a lover and trying repeatedly to commit suicide, a dark dream that came true in 1937. De Man's relatives and antecedents were an odd bunch: His paternal great-grandfather, a Freemason, once punched a Roman Catholic priest who had forbidden his wife from eating meat during Lent. His Uncle Henri was a reactionary populist politician, a kind of proto-Mosleyite among the dockworkers of Antwerp.

Family life was a cold, secretive affair. The suicide of an aunt who had hanged herself after being told by a maid that her clothes were dirty had to be hushed up, as did the early death of an institutionalized uncle who probably had Down syndrome. De Man's father's best efforts could not stifle village gossip about his elder son, Rik, who raped several women, including a 12-year-old cousin, and was later run over by a train while riding his bicycle.

Despite, or perhaps because of, the antiseptic strangeness at home, de Man excelled at school, especially in mathematics. By age 18 he seemed

Matthew Walther is an assistant editor at the American Spectator.

poised to follow a maternal uncle into the architect's profession. Like one of our own perpetual students, de Man changed his mind a lot during his stint at the Free University of Brussels: Engineering was a wash; chemistry a nonstarter; social sciences a bore. He left without a degree, and with the help of Uncle Henri, whose far-right politics served him well during the Nazi occupation of Belgium, de Man pursued a literary career. As a publisher's assistant he failed spectacularly, misplacing manuscripts and losing money. He was much more successful writing Nazi propaganda. According to Barish, "De Man's anti-Semitic expressions were more suave than the others', but they had the special strength of giving an upper-class imprimatur to their crudity." Unlike the work of some of his lowbrow contemporaries, "De Man's remarks, more nuanced, signaled that there was a respectable way to be anti-Semitic."

After the war, he scrounged up enough capital to set up a publishing house. By conventional measures, de Man fared no better during his half-decade at the head of Hermès, his own firm, than he had working for others. But his goal was not to sign bestselling authors or to win coveted literary prizes, but to rake up as much of his investors' cash as he possibly could: all told, more than one million Belgian francs. He was eventually convicted of multiple counts of embezzlement, fined, and sentenced to prison. But his case was decided in absentia, in 1951, for he had already fled to Argentina.

To Buenos Aires de Man brought his wife and their three children, one of whom had been born before their marriage. (Typically, he had bribed officials in order to have the first child declared legitimate.) Soon enough, he dumped his family and made his way to New York, where, as a bookstore clerk, he befriended Dwight Macdonald and Mary McCarthy, to whom he gave the impression that he had been a Resistance hero. His new friends helped him obtain a teaching job at Bard College. There, he met Patricia, an undergraduate by whom he had another child, and whom he married for the first time in 1950—albeit without divorcing his previous wife. (He married Patricia two more times: once after his divorce went through in 1960, and again later that year, presumably for the heck of it.) The long-suffering Patricia is, in some ways, the heroine of this book; she stood by him through everything. A translation of *Madame Bovary*, published by Norton and still available on Amazon, has her husband's name on the cover but is entirely her work.

Before long, de Man was contributing to the *New York Review of Books* and finding success in a series of prestigious academic posts. For him, the latter was simply a matter of charming the pants off of everyone important and flying the coop when too many people got suspicious. One might be tempted to admire the sheer recklessness of a man who forged his transcripts, coolly failed graduate entrance exams (in German) that he was expected to ace, and massaged university administrators into remaining silent about his academic double-dipping—he accepted tenured posts at both Cornell and the University of Zurich—all while keeping critics and admirers guessing with his anagogic, jargon-ridden prose and lectures that were (as Barish says) "difficult, even impossible, to understand." De Man ran from unpaid landlord to unpaid landlord, hoodwinked department head to hoodwinked department head, all the way to Yale, lucre, and what once looked like an admiring posterity.

Despite a few oddities of phrasing, and some awkward repetition of information, this is a model biography that can be enjoyed by those with little interest in the history of literary criticism but plenty of curiosity about human nature at its most dissolute. Barish has done for Paul de Man here what Hugh Trevor-Roper did for Edmund Backhouse, the English expatriate sinologist, antiquarian, and pervert, in *The Hermit of Peking* (1977)—which is to say, she has revealed him as one of the great academic charlatans of all time. The conclusion is irresistible: Narrative has finally taken its revenge on Paul de Man. ♦

B&A

Their Daily Bread

The millennial challenge to organized religion.

BY DAVID SKEEL

The life of a young college graduate isn't what it used to be, as viewers of *Girls* and other recent hits well know. In 1970, the median age of marriage was 21 for women and 23 for men, not much different than in 1950. By 2000, the averages were 25 and 27, and they have continued to climb. Gone are the old dreams of quickly settling into marriage, children, and a comfortable job. Here, instead, is a period of uncertainty, self-absorption, and serial relationships and jobs that psychologist Jeffrey Arnett calls "emerging adulthood."

David Skeel is the S. Samuel Arsht professor of law at the University of Pennsylvania.

Got Religion?
How Churches, Mosques, and Synagogues Can Bring Young People Back
by Naomi Schaefer Riley
Templeton, 176 pp., $24.95

This doesn't bode well for America's major religious institutions. It's not just that millennials, the current emerging adults, are far less interested in religion than their parents and grandparents: Youthful rebellion is nothing new, though the percentage of millennials who have no religious affiliation has reached unprecedented levels (30 percent, as compared with 9 percent of those over 65). Much more alarming

for local churches and synagogues are the implications of delayed childbearing, since parenthood traditionally has brought rebels back into the fold. By the time today's millennials start families, their religious background may be a distant memory.

Can the estranged religious institutions lure millennials back? Naomi Schaefer Riley thinks they can. Here, she explores seven often-unlikely strategies that seem to be working. In Utah, the Mormon church, which uses a neighborhood-oriented ward system, has created a singles-only parish that lets millennials mix entirely with their kind. In New Jersey, the pastor of a black church "fired" his wife and her peers from leadership positions in order to open up those positions for the young. In Charlotte, evangelical and mainline Protestant churches, so often at loggerheads over theology and church-building elsewhere, have linked arms with Charlotte ONE, a weekly, 40-church collaboration featuring sermons and high-quality contemporary Christian music.

With each of the seven initiatives, Riley interviewed both leaders and participants, and she attended services and events in venues ranging from the "well-appointed" Santa Barbara home where Muslims Establishing Communities in America met to the "fraying carpet" of a Roman Catholic retreat center. Riley's case studies aren't exhaustive: She sticks to the three monotheistic religions, so there are no Hindu or Buddhist temples. The Christian churches in her study tend to be theologically conservative, the Muslim and Jewish initiatives more theologically liberal. But she covers a great deal of ground and discovers initiatives few of us knew existed.

Riley is a refreshingly genial guide. Although Jewish herself, she is equally sympathetic to the Christian and Muslim groups, which won't surprise anyone who has read her previous books on religious colleges and interfaith marriage. Riley does point out the limitations of the millennial-seeking strategies: For instance, Jewish men and women who are given free trips to Israel through Birthright Israel balk at paying dues to a synagogue, and the youth-oriented Mormon ward has a transitional feel. But the overall tone is optimistic. Although millennials dislike traditional institutions even more than baby boomers do, it isn't too late for religious institutions to get them back, and creative approaches may do the trick.

Some might instinctively recoil from the attention being lavished on today's emerging adults. Aren't they already the most spoiled generation yet? It's hard not to think so: In deciding on a church, one typical interviewee says she chose "the one that fills me." The millennials are also a bundle of contradictions. They are preoccupied with themselves and their own interests, yet they stick together in "urban tribes" and treat religion as a "team sport." Still, the same millennials who seem so self-absorbed also have a strong desire to serve: "An acceptance letter from Teach for America is harder to come by these days," Riley notes, "than one from a top law school."

Although Riley mostly steers clear of the theological dimension of religious institutions' outreach to millennials, her findings suggest that traditional strategies for conveying religious truth also might need updating, at least for millennials. Christian leaders are fond of simple, logical arguments designed to prove that God created the universe and of demonstrations that atheists do not have an objective foundation for the conclusions they reach about moral issues. These arguments strike many millennials as beside the point. So what if their views aren't altogether consistent and they can't give an objective basis for their sense of right and wrong? Millennials are also more concerned with the world as we experience it than with debates over how it was created. Religious leaders might do well to spend less energy sparring with Charles Darwin and more energy showing the insights an ancient faith can offer into beauty, suffering, and other experiences that are not easily explained by popular atheists like Richard Dawkins.

Got Religion? is the perfect playbook for religious leaders (or anyone else) looking to reach out to millennials. There's only one catch: The strategies won't work if they seem to have come from a script. "We've been 'marketed to' since childhood," as one millennial put it in *Leadership Journal*, "and we can smell it a mile away." ♦

B&A

Vision of Tomorrow

An Italian landscape called the Future.

BY DANIEL ROSS GOODMAN

Italian Futurism may be one of the less-acclaimed early-20th-century artistic movements, but its striking aesthetic interpretations of the human being and radical ideological manifesto have left a legacy that must still be reckoned with. All of these aspects of Futurism are on full display at this fascinating, comprehensive, and surprisingly beautiful retrospective of this challenging modern movement.

Daniel Ross Goodman is a lawyer and rabbinical student in New York.

Italian Futurism, 1909-1944
Reconstructing the Universe
Guggenheim Museum
Through September 1

The Guggenheim has been home to some of New York's best exhibits of the past several years, and "Italian Futurism" joins last summer's James Turrell installation, last year's "Picasso Black and White," and 2009's "Kandinsky" as a bravura blockbuster. Indeed, Frank Lloyd Wright's rotunda

is ideal for an exhibit about an artistic movement that was infatuated with the future—or at least in love with its own conception of the future.

Like Impressionism, Realism, and Romanticism, Futurism was a movement that encompassed all of the arts. Italian Futurism began when its founder, the writer Filippo Tommaso Marinetti, published "Founding and Manifesto of Futurism" in *Le Figaro* in 1909, calling for a revolution in politics, art, and culture. Marinetti pioneered a "words-in-freedom" (*parole in libertà*) style of direct, clear, and concise writing that shattered many literary conventions. Futurism's literary influence rapidly spread to film, music, theater, photography, dance, architecture, and, most significantly, as "Reconstructing the Universe" shows, painting.

The Futurists fumed over the feeble state of early-20th-century Italy and became outspoken proponents of radical political, social, cultural, and artistic progress. Much as Theodore Roosevelt fulminated over what he believed to be the decline of America—and believed that American manhood needed to be reinvigorated—the Futurists advocated war as a means of reversing Italy's deterioration and reinvigorating Italian citizens.

Accordingly, the Futurists wished to sweep away any cultural institution believed to be holding Italy back from its mission of ushering its citizens into a glorious future. And because they believed that new art reflecting a forward-thinking, future-looking Italy needed to be produced, they were enthralled with the dynamic Cubist-influenced paintings of Gino Severini and Giacomo Balla, the sleek sculptures of Umberto Boccioni, and any art that seemed to act as an aesthetic harbinger of a future in which technological change was embraced.

This show appropriately begins with Umberto Boccioni's 1913 sphinx-like bronze sculpture *Unique Forms of Continuity in Space*, perhaps Futurism's most characteristic artwork. All of the themes and motifs that concerned the Futurists—the portrayal of movement, speed, energy, athleticism, and dynamism; the fracturing of geometric forms; whirling metallic structures; the virility, vitality, and violence of modernity; the glorification of modern technology; the celebration of aggression—are encapsulated in Boccioni's sculpture. Here, Boccioni's brilliant bronze is surrounded by studies and sketches, and we are informed that he was more influenced by Rodin and Henri Bergson than by Cubism (in marked contrast to Severini and Balla).

'Speeding Train' by Ivo Pannaggi (1922)

I would recommend circling around the sculpture (most viewers tend to look at it from only one angle) to get a sense of its dynamism. You'll also notice something curious: Though its body is that of a man, its head seems to look like a rhinoceros. Later, we see Furtunato Depero's toy-like "Series of 8 Rhinoceros" pieces as well. My companion suggested that the Futurists may have adopted the rhinoceros as their mascot because it connotes aggression and ferocity, and I agree—adding that its silver skin and jarring head also symbolize the Futurists' interest in modern technology and in upturning the staid Italian bourgeoisie.

Not all Futurist art is as jarring as Boccioni's strange sculpture. In fact, the majority of Futurist painting is surprisingly beautiful. Carlo Carrà's *Funeral of the Anarchist Galli* (1910-11) is one of this exhibit's many wonderful surprises; the energy of the painting's frenetic red, black, and orange-tinged crowd scene explodes off the canvas. A Balla painting of a glowing city lamp illuminating a night street is Monet-like in its pointillist portrayal of the distorting effects of light. Some of the paintings here so closely resemble Cubist and Suprematist works that they could easily be mistaken for Braques or Maleviches. Severini's serene *Blue Dancer* (1912) is a sublime spiritual masterpiece whose metaphysical and mystical motifs and deep, vivid blue pigments (as well as its title) evoke Kandinsky's *The Blue Rider* (1903). Mario Sironi experimented with a hybrid form of Futurism and metaphysical painting (*pittura metafisica*) as well.

That such beautiful art became associated with such an ugly ideology—fascism—is disquieting, as is Futurism's overt misogyny. Like the music of Richard Wagner, however, Italian Futurist painting deserves to be appreciated for the strikingly beautiful—if eccentrically unusual—art that it is. ♦

"Ex-IRS official Lois Lerner's crashed hard drive has been recycled, making it likely the lost emails of the lightning rod in the tea party targeting controversy will never be found, according to multiple sources."
—Politico, June 18, 2014

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IRS: Standard procedure to smash old hard drives

USUALLY WITH BASEBALL BAT

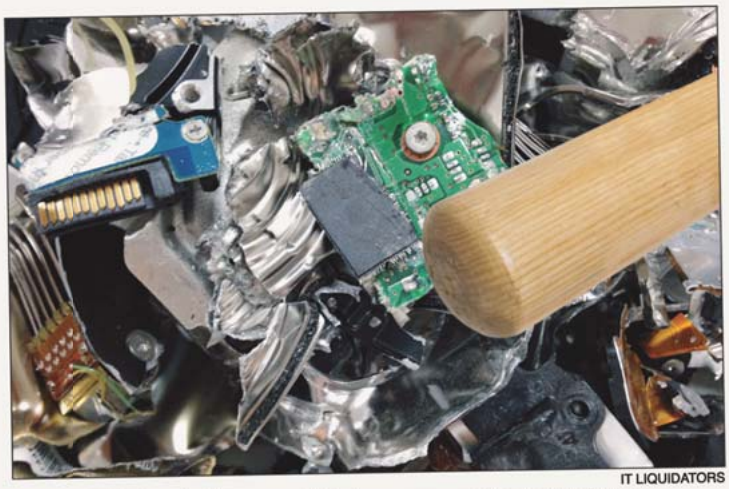
And somewhere dark and hard to find

BY RUPERT HICKENLOOP

In the wake of revelations that a computer system crash erased two years' worth of former IRS official Lois Lerner's emails, House Republicans hoping to reconstruct Ms. Lerner's correspondence from the hard drive of her computer were thwarted this morning as the IRS revealed the hard drive was smashed to bits in a dark alley with a baseball bat, in accordance with accepted departmental security procedures.

"It states unequivocally in the IRS Office of Technology handbook that if an officer finds a government hard drive to be inoperative, 'Service protocol requires that the hard drive be smuggled from the building to a dark, secluded area and smashed beyond recognition with a baseball bat or other suitable artifact of sporting equipment,'" said IRS Chief Technology Officer Terence Milholland. "This was clearly all done above board and by the book," he concluded.

The Obama administration hopes that this will put to rest Republican attempts to implicate the president in the IRS's targeting of conservative groups. "Hopefully, the politicization of this issue will end here," said White House press secretary Josh Earnest. "Ms. Lerner's hard drive was destroyed just as the procedures dictate: at night, in an undisclosed location, and in such a way that no attempts at recovering any data could possibly be successful," he continued. "You know, so criminals couldn't use it for identity theft, or whatever."



IT LIQUIDATORS

IRS hard drives meet their secure, undisclosed doom.

Republicans, unlikely to be satisfied with this explanation, will have little recourse in efforts to reconstruct the missing emails, since departmental procedures are likely to have eliminated any other additional copies. For example, paper copies of emails more than six months old, according to the IRS guidelines, are "to be gathered while wearing surgical gloves, then shredded, packed into boxes, and burned in locations where fires won't cause unwanted attention from authorities." As for possible electronic duplicates, the guidelines further state that "flash drives, external hard drives, CD ROMs, and mobile devices believed to have been compromised are to be placed in weighted duffel bags and, under cover of darkness, dropped into a river at least 25 miles from the IRS office."

Such procedures, designed to secure the vast amount of sensitive, personal information about Americans to which the government has access, are part of a security initiative put in place by the Obama administration known as the Comprehensive Operational Vulnerability, Emergency, Risk, and Uncertainty Protections (COVERUP), implemented shortly after the attack on the American embassy in Ben-

MELTED CONTINUED ON **A6**

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