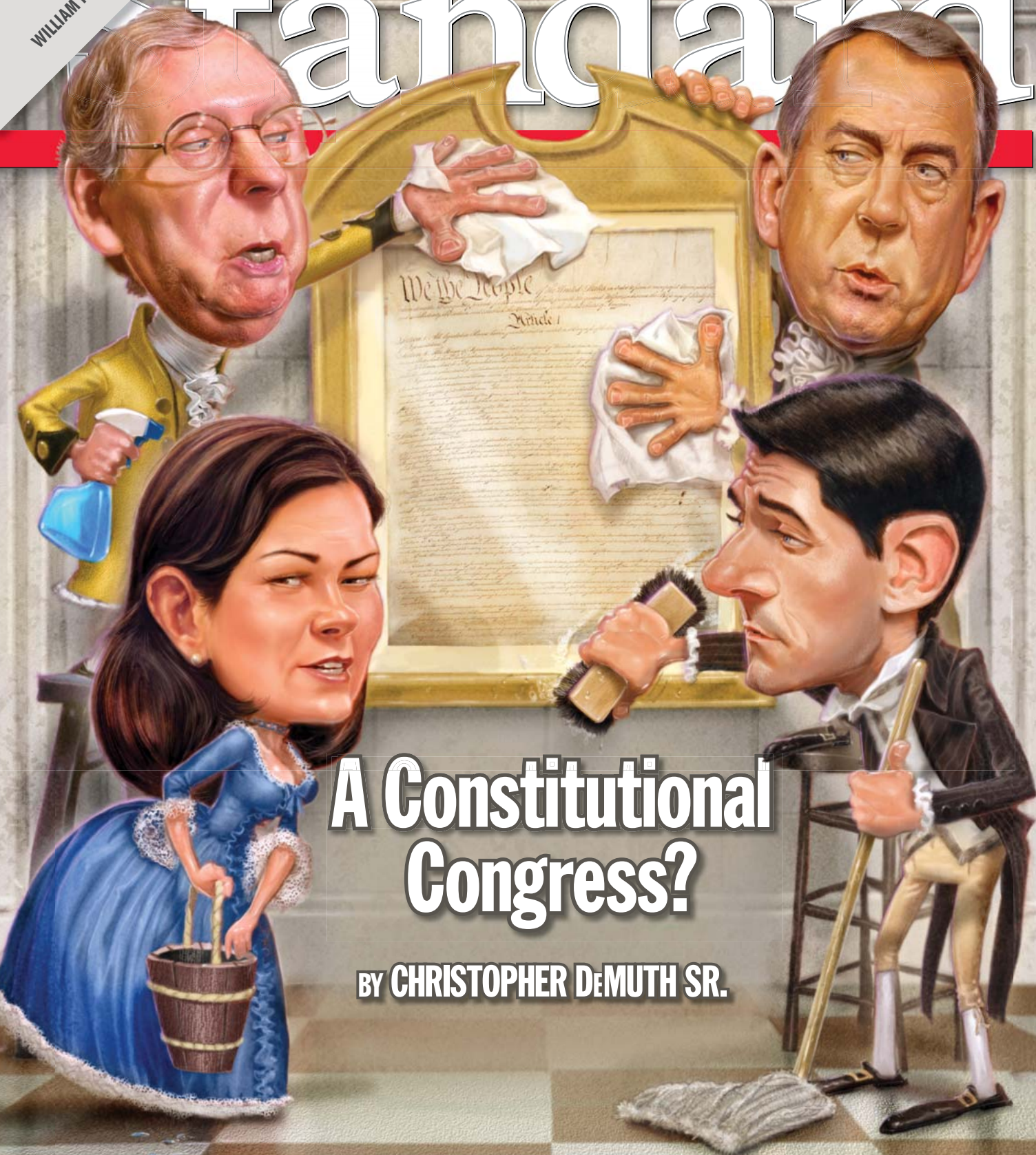


**BUNGLING  
EBOLA**  
WILLIAM KRISTOL • JONATHAN V. LAST

the weekly

# Standard



## A Constitutional Congress?

BY CHRISTOPHER DEMUTH SR.

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# The Blame-Deflection Game

The Ebola outbreak understandably has Americans on edge. How the Obama administration has redefined the expectations of government competency for even the most cynical among us has a lot to do with it. Rather than stepping up to meet a potential health crisis, the government is instead deflecting blame. “Frankly, if we had not gone through our 10-year slide in research support, we probably would have had a vaccine in time for this that would’ve gone through clinical trials and would have been ready,” National Institutes of Health head Dr. Francis Collins said last week. And we presume the Ready for Hillary crowd isn’t ready to stop Ebola; Clinton is also blaming a lack of funding for impeding the ability to combat the disease.

As with nearly every governmental problem we face, more money is not the answer. It’s true that over the last 10 years, NIH funding has risen from \$28.03 billion to “only” \$29.31 billion. However, Collins neglects to mention that from 2000 to 2004, the NIH’s budget spiked by 58 percent. As for whether that money is well spent combating public health threats, NIH waste is not hard to come by. Just to scratch the surface, the agency recently spent \$175,000 funding a study on how cocaine affects the sex lives of quail, \$500,000 to send text messages in “gay lingo” to methamphetamine addicts, and \$1.5 million to study obesity among lesbians. The waste is not confined to NIH, either. THE WEEKLY STAN-

DARD reported last year that the Centers for Disease Control, which presumably should also be fighting Ebola, was using part of its \$12.5 billion Obamacare slush fund to campaign for tougher state liquor laws. A 19-month investigation by watchdog



Francis Collins

Cause of Action concluded the use of these funds violated the law and was “a front for lobbying, government propaganda, and cronyism.”

Then there’s Dr. Nicole Lurie, the Department of Health and Human Services assistant secretary for preparedness and response. It’s specifically her job to “lead the nation in preventing, responding to and recovering from the adverse health effects

of public health emergencies and disasters, ranging from hurricanes to bioterrorism,” including, of course, pandemics. Mollie Hemingway at the *Federalist* reports that Lurie was involved in steering federal dollars to Siga, a pharmaceutical company owned by billionaire and notable Obama donor Ron Perelman. And as it happens, the former Service Employees International Union head, one of the Democratic party’s biggest donors, was also on Siga’s board.

Siga has since declared bankruptcy following the breach of a licensing agreement, and the smallpox drug it was supposed to deliver to the government hasn’t panned out. Siga’s sole-source government contract was hotly contested by another pharmaceutical company, Chimerix. That company’s antiviral drug, Brincidofovir, has proven far more successful as a smallpox treatment. And it’s also shown some promise as a treatment for—you guessed it—Ebola. So far, Brincidofovir has been given to two Ebola patients. One of those patients, Thomas Eric Duncan, died. But the other patient, NBC cameraman Ashoka Mukpo, appears to be recovering. Meanwhile, Dr. Lurie has been almost completely missing in action from news reports about the government’s efforts to combat Ebola. THE SCRAPBOOK can speculate about how she’s filling her time, but we bet it’s not consumed with scouring the couch cushions at various federal health agencies looking for spare change to fight Ebola. ♦

## A Broken Man?

Since the Cold War ended more than 20 years ago, the left in general, and the media in particular, have tended to regard it as a kind of cosmic joke: hysterical American reaction—indeed, overreaction—to

the peaceful postwar existence of the Soviet Union and other Communist states, including China. You don’t hear much about the killing of tens of millions of people inside those countries and elsewhere; but you do read a lot about the suffering of Hollywood screenwriters and the

baleful influence of the Cold War in American politics.

Two events last week only emphasized this wearisome truth. One was the death of 92-year-old David Greenglass, brother of the atomic spy Ethel Rosenberg, which prompted (among others) the *New York Times* to pub-

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lish an obituary so tendentious, and hopelessly estranged from the facts that the historian Ronald Radosh was obliged to publish a succinct, corrective account of the whole Rosenberg case in the *New York Sun* ([nysun.com/national/how-david-greenglass-helped-break-up-soviet-spy](http://nysun.com/national/how-david-greenglass-helped-break-up-soviet-spy)).

The other event was the sudden, and slightly mysterious, declassification by the Department of Energy of transcripts from the secret 1954 hearings on whether J. Robert Oppenheimer, the famous theoretical physicist and wartime director of the weapons laboratory for the Manhattan Project, was a security risk. As is well known, Oppenheimer, who had been chief scientific adviser to the postwar Atomic Energy Commission, lost his security clearance as a consequence of the hearings, and in the words of *Times* reporter William J. Broad, “lived out his life as a broken man.”

The *Times* took this occasion not to examine the complexities of security debates in an era when Joseph Stalin was alive and Soviet espionage had successfully stolen the secrets of atomic weaponry, but to wonder at the official motive for the release, 60 years after the fact, of the transcripts; and, with helpful quotations from partisan authors and commentators, to reflect on the silliness of an exercise to determine whether J. Robert Oppenheimer was a Soviet spy.

In fact, of course, the principal issue in the hearings was not whether Oppenheimer was a Soviet spy, which he was not, but whether someone with strong personal attachments (wife, brother, friends, colleagues) to actual Communists, and who harbored deep reservations about our postwar nuclear program (calling for a ban on weapons as early as 1945), was the right man for the job of advising the government on the subject. This explains both the reams of testimony from fellow physicists on Oppenheimer’s singular character and opinions, and the final decision to erect, in President Dwight D. Eisenhower’s words, a

“blank wall” between Oppenheimer and nuclear secrets.

This judgment strikes *THE SCRAPBOOK*, among others, as a sensible—and entirely comprehensible—conclusion at a difficult time in our history. Whether this left J. Robert Oppenheimer a “broken man,” however, is open to question. His fellow physicist-colleague Edward Teller, whose agonized testimony about Oppenheimer (“his actions frankly appeared to me confused and complicated”) was decisive, really did suffer ostracism from academic science. By contrast, Oppenheimer didn’t lose his berth at the Institute for Advanced Study in Princeton,

and certainly gained the admiration of journalists and academics worldwide. He delivered the William James Lecture in philosophy and psychology at Harvard in 1957, and in that same year was awarded the Legion of Honor by the French government.

During and after his lifetime, Oppenheimer has been the inspiration for more than a few admiring plays, one opera, several television dramas and documentaries, and innumerable friendly biographies. Shortly before his death, President John F. Kennedy awarded Oppenheimer the Enrico Fermi Award. Yet the mythology lives on. ♦



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-- Lee Bender, Philadelphia Jewish Voice

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## The Old Olbermann

Baseball heals. That's the only way THE SCRAPBOOK can explain Keith Olbermann's transformation. How else did Bush Derangement Syndrome's patient zero wind up complimenting the 43rd president? After nearly a decade of insulting George W. Bush, Olbermann now says he's a fan. Actually his praise was more specific. The one-time MSNBC commentator wasn't recanting all his nastiness—he was just saying, as a baseball guy, that Bush knows his baseball, too.

In a recent interview with *Sports Illustrated*, Olbermann explained that the politician with "the most serious sports chops" is Bush. "He went on the ESPN broadcast of the first game of Nationals Park," said Olbermann, "and within half an inning half his twang had vanished and he was talking twice as fast and a mastery of his topic was evident to anybody listening. He really came alive in that booth. Hell, if he'd do the color, I'd do the play-by-play."

Of course, after all the vile calumnies Olbermann heaped on Bush over the years, it's not clear the Secret Service would let him in the same booth as the former commander in chief. Nor is it obvious that Bush himself, for all his good humor and charm, would want to spend even a few hours trading insights and jocular barbs with a man who formerly wanted him to "shut the hell up."

So how is he going to justify his 180 on Bush to his peers on the angry left? As THE SCRAPBOOK has previously noted, now that Olbermann has returned to sports journalism with his talk show on ESPN, there's much less of the manic self-importance that marked his political personality. Instead, he's more like the funny-looking guy in a suit that first hit the scene more than 30 years ago—a self-effacing and unpredictable wiseguy who lived the dream of millions of American kids by getting paid to talk about sports all day. Go figure. As we said, baseball heals. ♦

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## Wheels of Fortune

Nobody ever said to “beware of sisters bearing gifts.” So, when my younger sister offered me her car as she headed off to the Peace Corps a couple of years ago, I leapt at the opportunity.

I’d never had my own set of wheels before, and car ownership—along with having an apartment with a dishwasher, buying my own health insurance, and experiencing occasional back pain—is a crucial waystation on the road to being a Real Adult. Even if the car in question was a bit of a beater, a humble 12-year-old Subaru Outback upon which my sister had bestowed the charming name of “Menard” after a Midwestern discount chain with a catchy jingle, I wasn’t going to complain. Hey, a car’s a car. And more important, free is free.

Except when it isn’t. Oh sure, there were costs I expected to incur—the auto insurance mandate (or is it a tax?) that saw to it I’d be forking over a handsome sum every month, for example. And gas is not exactly cheap these days.

But there were also some nasty surprises from the start. Just a few short weeks after I brought the car down from Boston, I started getting a parking ticket every night. Was I parking too close to the curb, or perhaps near a fire hydrant? No: Apparently the nation’s capital is not a big believer in freedom of movement. According to city law, if you want to park anywhere in the District of Columbia for more than a few consecutive nights, you’re required to secure a D.C. license plate. (And, of course, pay the several hundred dollars that requires.)

I dutifully trudged down to the

Department of Motor Vehicles—several times. (I always had the wrong form, or the line was too long, or didn’t I know the DMV is *obviously* closed on Mondays?) And when I finally managed to apply to have the car registered, it failed inspection.

After I shelled out four figures for a new catalytic converter—whatever that is—the car handled exactly as it had before I plowed the money into it, which is to say, poorly. But at least Menard now sported two shiny new District of Columbia tags, and I could park in my neighborhood without



fear of an early morning visit from the dreaded Officer Mack.

I’d like to say that was the end of the saga. Alas, no. Over the following year, the windshield cracked. (Requiring a brand new windshield.) One day, Menard broke down in the parking lot of Ikea. (Requiring a new alternator and battery.) Not long after, that battery died. (Requiring a new battery—again.) At one point earlier this year, when I turned the car on, it let out such a blood-curdling scream that I was unable to drive anywhere in the early hours of the day—I didn’t want to wake my neighbors. It turns out that a car has something called a “serpentine belt,” and mine had come loose. As I endured this parade of very expensive horrors, there were

times when I relished the thought of simply driving Menard into the Anacostia River and being done with him, sort of like *The Love Bug* meets *The Awakening*.

I don’t fantasize about that anymore, though. I happened to be in Phoenix this September on the rainiest day in the city’s recorded history. Driving a rental car to the airport to return to Washington in the pitch-black, stormy weather, I drove down an underpass—and straight into four or five feet of standing water. The engine immediately cut out, and as the car coasted along through the water, I seriously thought I was going to have to jump out and swim to safety. It was, frankly, terrifying.

Luckily, the car had just enough

momentum to make it out of the trough of the puddle, and it stopped a little higher up, in two or three feet of water. I stayed in the car and called 911. The fire department arrived fairly swiftly and was able to push me out to safety, where I waited several hours for a tow.

I was grateful to be safe and dry. But, while the rental car itself was “free,” in that it had been paid for by an employer, I ended up having to shell out for the towing, the late fee, and the unfilled tank (I had planned to fill up at the airport). I was reminded again of a lesson that my old friend Menard had long since taught me: There’s no such thing as a free car.

ETHAN EPSTEIN

# Six Reasons to Panic

As a rule, one should not panic at whatever crisis has momentarily fixed the attention of cable news producers. But the Ebola outbreak in West Africa, which has migrated to both Europe and America, may be the exception that proves the rule. There are at least six reasons that a controlled, informed panic might be in order.

(1) Start with what we know, and don't know, about the virus. Officials from the Centers for Disease Control (CDC) and other government agencies claim that contracting Ebola is relatively difficult because the virus is only transmittable by direct contact with bodily fluids from an infected person who has become symptomatic. Which means that, in theory, you can't get Ebola by riding in the elevator with someone who is carrying the virus, because Ebola is not airborne.

This sounds reassuring. Except that it might not be true. There are four strains of the Ebola virus that have caused outbreaks in human populations. According to the *New England Journal of Medicine*, the current outbreak (known as Guinean EBOV, because it originated in Meliandou, Guinea, in late November 2013) is a separate clade "in a sister relationship with other known EBOV strains." Meaning that this Ebola is related to, but genetically distinct from, previous known strains, and thus may have distinct mechanisms of transmission.

Not everyone is convinced that this Ebola isn't airborne. Last month, the University of Minnesota's Center for Infectious Disease Research and Policy published an article arguing that the current Ebola has "unclear modes of transmission" and that "there is scientific and epidemiologic evidence that Ebola virus has the potential to be transmitted via infectious aerosol particles both near and at a distance from infected patients, which means that healthcare workers should be wearing respirators, not facemasks."

And even if this Ebola isn't airborne right now, it might become so in the future. Viruses mutate and evolve in the wild, and the population of infected Ebola carriers is now bigger than it has been at any point in history—meaning that the pool for potential mutations is larger than it has

ever been. As Dr. Philip K. Russell, a virologist who oversaw Ebola research while heading the U.S. Army's Medical Research and Development Command, explained to the *Los Angeles Times* last week,

I see the reasons to dampen down public fears. But scientifically, we're in the middle of the first experiment of multiple, serial passages of Ebola virus in man. . . . God knows what this virus is going to look like. I don't.

In August, *Science* magazine published a survey conducted by 58 medical professionals working in African epidemiology. They traced the origin and spread of the virus with remarkable precision—for instance, they discovered that it crossed the border from Guinea into Sierra Leone at the funeral of a "traditional healer" who had treated Ebola victims. In just the first six months of tracking the virus, the team identified more than 100 mutated forms of it.

Yet what's really scary is how robust the already-established transmission mechanisms are. Have you ever wondered why

Ebola protocols call for washing down infected surfaces with chlorine? Because the virus can survive for up to three weeks on a dry surface.

How robust is transmission? Look at the health care workers who have contracted it. When Nina Pham, the Dallas nurse who was part of the team caring for Liberian national Thomas Duncan, contracted Ebola, the CDC quickly blamed her for "breaching protocol." But to the extent that we have effective protocols for shielding people from Ebola, they're so complex that even trained professionals, who are keenly aware that their lives are on the line, can make mistakes.

By the by, that *Science* article written by 58 medical professionals tracing the emergence of Ebola—5 of them died from Ebola before it was published.

(2) General infection rates are terrifying, too. In epidemiology, you measure the "R<sub>0</sub>," or "reproduction number" of a virus; that is, how many new infections each infected person causes. When R<sub>0</sub> is greater than 1, the virus



CDC director Thomas Frieden and colleagues

is spreading through a population. When it's below 1, the contamination is receding. In September the World Health Organization's Ebola Response Team estimated the  $R_0$  to be at 1.71 in Guinea and 2.02 in Sierra Leone. Since then, it seems to have risen so that the average in West Africa is about 2.0. In September the WHO estimated that by October 20, there would be 3,000 total cases in Guinea, Liberia, and Sierra Leone. As of October 7, the count was 8,376.

In other words, rather than catching up with Ebola, we're falling further behind. And we're likely to continue falling behind, because physical and human resources do not scale virally. In order to stop the spread of Ebola, the reproduction number needs to be more than halved from its current rate. Yet reducing the reproduction number only gets harder as the total number of cases increases, because each case requires resources—facilities, beds, doctors, nurses, decontamination, and secure burials—which are already lagging well behind need. The latest WHO projections suggest that by December 1 we are likely to see 10,000 new cases in West Africa *per week*, at which point the virus could begin spreading geographically within the continent as it nears the border with Ivory Coast.

Thus far, officials have insisted that it will be different in America. On September 30, CDC director Thomas Frieden confirmed the first case of Ebola in the United States, the aforementioned Thomas Duncan. Frieden then declared, "We will stop Ebola in its tracks in the U.S. . . . The bottom line here is that I have no doubt that we will control this importation, or this case of Ebola, so that it does not spread widely in this country."

The word "widely" is key. Because despite the fact that Duncan was a lone man under scrupulous, first-world care, with the eyes of the entire nation on him, his  $R_0$  was 2, just like that of your average Liberian Ebola victim. One carrier; two infections. He passed the virus to nurse Pham and to another hospital worker, Amber Joy Vinson, who flew from Cleveland to Dallas with a low-grade fever before being diagnosed.

(3) Do you *really* want to be scared? What's to stop a jihadist from going to Liberia, getting himself infected, and then flying to New York and riding the subway until he keels over? This is just the biological warfare version of a suicide bomb. Can you imagine the consequences if someone with Ebola vomited in a New York City subway car? A flight from Roberts International in Monrovia to JFK in New York is less than \$2,000, meaning that the planning and infrastructure needed for such an attack is relatively trivial. This scenario may be highly unlikely. But so were the September 11 attacks and the Richard Reid attempted shoe bombing, both of which resulted in the creation of a permanent security apparatus around airports. We take drastic precautions all the time, if the potential losses are serious enough, so long as officials are paying attention to the threat.

(4) Let's put aside the Ebola-as-weapon scenario—some

things are too depressing to contemplate at length—and look at the range of scenarios for what we have in front of us, from best-case to worst-case. The epidemiological protocols for containing Ebola rest on four pillars: contact tracing, case isolation, safe burial, and effective public information. On October 14, the *New York Times* reported that in Liberia, with "only" 4,000 cases, "Schools have shut down, elections have been postponed, mining and logging companies have withdrawn, farmers have abandoned their fields." Which means that the baseline for "best-case" is already awful.

In September, the CDC ran a series of models on the spread of the virus and came up with a best-case scenario in which, by January 2015, Liberia alone would have a cumulative 11,000 to 27,000 cases. That's in a world where all of the aid and personnel gets where it needs to be, the resident population behaves rationally, and everything breaks their way. The worst-case scenario envisioned by the model is anywhere from 537,000 to 1,367,000 cases by January. Just in Liberia. With the fever still raging out of control.

By which point, all might well be lost. Anthony Banbury is coordinating the response from the United Nations, which, whatever its many shortcomings, is probably the ideal organization to take the lead on Ebola. Banbury's view is chilling: "The WHO advises within 60 days we must ensure 70 percent of infected people are in a care facility and 70 percent of burials are done without causing further infection. . . . We either stop Ebola now or we face an entirely unprecedented situation *for which we do not have a plan* [emphasis added]."

What's terrifying about the worst-case scenario isn't just the scale of human devastation and misery. It's that the various state actors and the official health establishment have already been overwhelmed with infections in only the four-digit range. And if the four pillars—contact tracing, case isolation, safe burial, and effective public information—fail, no one seems to have even a theoretical plan for what to do.

(5) And by the way, things could get worse. All of those worst-case projections assume that the virus stays contained in a relatively small area of West Africa, which, with a million people infected, would be highly unlikely. What happens if and when the virus starts leaking out to other parts of the world?

Marine Corps General John F. Kelly talked about Ebola at the National Defense University two weeks ago and mused about what would happen if Ebola reached Haiti or Central America, which have relatively easy access to America. "If it breaks out, it's literally 'Katie bar the door,' and there will be mass migration into the United States," Kelly said. "They will run away from Ebola, or if they suspect they are infected, they will try to get to the United States for treatment."

It isn't crazy to see how a health crisis could beget all sorts of other crises, from humanitarian, to economic, to

political, to existential. If you think about Ebola and mutation and aerosolization and  $R_0$  for too long, you start to get visions of Mad Max cruising the postapocalyptic landscape with Katniss Everdeen at his side.

(6) While we're on the subject of political crisis, it's worth noting that the politics of Ebola are uncertain and dangerous to everyone involved. Thus far, there's been only one serious political clash over Ebola, and that's concerning the banning of flights to and from the infected countries in West Africa. The Obama administration refuses to countenance such a move, with the CDC's Frieden flatly calling it "wrong":

A travel ban is not the right answer. It's simply not feasible to build a wall—virtual or real—around a community, city, or country. A travel ban would essentially quarantine the more than 22 million people that make up the combined populations of Liberia, Sierra Leone, and Guinea.

When a wildfire breaks out we don't fence it off. We go in to extinguish it before one of the random sparks sets off another outbreak somewhere else.

We don't want to isolate parts of the world, or people who aren't sick, because that's going to drive patients with Ebola underground, making it infinitely more difficult to address the outbreak. . . .

Importantly, isolating countries won't keep Ebola contained and away from American shores. Paradoxically, it will increase the risk that Ebola will spread in those countries and to other countries, and that we will have more patients who develop Ebola in the U.S.

Not terribly convincing, is it? Wildfires, in fact, are often fought by using controlled burns and trench digging to establish perimeters. And it's a straw-man argument to say that a flight ban wouldn't keep Ebola fully contained. No one says it would. But by definition, it would *help* slow the spread of the virus. If there had been a travel ban in place, Thomas Duncan would have likely reached the same sad fate—but without infecting two Americans and setting the virus loose in North America. And it's difficult to follow the logic by which banning travel from infected countries would create *more* infections in the United States, as Frieden insists. This is not a paradox; it's magical thinking.

Frieden's entire argument is so strange—and so at odds with what other epidemiologists prescribe—that it can only be explained by one of two causes: catastrophic incompetence or a prior ideological commitment. The latter, in this case, might well be the larger issue of immigration.

Ebola has the potential to reshuffle American attitudes to immigration. If you agree to seal the borders to mitigate the risks from Ebola, you're implicitly rejecting the "open borders" mindset and admitting that there are cases in which government has a duty to protect citizens from outsiders. Some people on the left admit to seeing this as the thin end of the wedge. Writing in the *New Yorker*, Michael Specter lamented, "Several politicians, like Governor Bobby Jindal, of Louisiana, have turned the epidemic

into fodder for their campaign to halt immigration." And that sort of thing just can't be allowed.

What would happen in the event of an Ebola outbreak in Latin America? Then America would have to worry about masses of uninfected immigrants surging across the border—not to mention carriers of the virus. And if we had decided it was okay to cut off flights from West Africa, would we decide it was okay to try to seal the Southern border too? You can see how the entire immigration project might start to come apart.

So for now, the Obama administration will insist on keeping travel open between infected countries and the West and hope that they, and we, get lucky.

At a deeper level, the Ebola outbreak is a crisis not for Obama and his administration, but for elite institutions. Because once more they have been exposed as either corrupt, incompetent, or both. On September 16, as he was trying to downplay the threat posed by Ebola, President Obama insisted that "the chances of an Ebola outbreak here in the United States are extremely low." Less than two weeks later, there was an Ebola outbreak in the United States.

The CDC's Frieden—who is an Obama appointee—has been almost comically oafish. On September 30, Frieden declared, "We're stopping it in its tracks in this country." On October 13, he said, "We're concerned, and unfortunately would not be surprised if we did see additional cases." The next day he admitted that the CDC hadn't taken the first infection seriously enough: "I wish we had put a team like this on the ground the day the patient, the first patient, was diagnosed," he said. "That might have prevented this infection. But we will do that from today onward with any case, anywhere in the U.S. . . . We could have sent a more robust hospital infection-control team and been more hands-on with the hospital from Day One."

The day after *that* Frieden was asked during a press conference if you could contract Ebola by sitting next to someone on a bus—a question prompted by a statement from President Obama the week before, when he declared that you can't get Ebola "through casual contact, like sitting next to someone on a bus."

Frieden answered: "I think there are two different parts of that equation. The first is, if you're a member of the traveling public and are healthy, should you be worried that you might have gotten it by sitting next to someone? And the answer is no. Second, if you are sick and you may have Ebola, should you get on a bus? And the answer to that is also no. You might become ill, you might have a problem that exposes someone around you."

Go ahead and read that again.

We have arrived at a moment with our elite institutions where it is impossible to distinguish incompetence from willful misdirection. This can only compound an already dangerous situation.

—Jonathan V. Last

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# The Protocols of the Elders of Liberalism

‘P rotocols.’ You can’t turn on your TV without hearing about them. The last time the word featured so prominently in American public discourse was when Henry Ford took it upon himself to pay for and distribute half a million copies of the *Protocols of the Elders of Zion* almost a century ago. History, of course, isn’t repeating itself. The publication of those *Protocols* was designed to foster fear and loathing of Jews. The invocation of these “protocols” by Obama administration officials as they bungle the Ebola crisis is designed to shield themselves from justified fear and loathing on the part of the citizenry.

The bungling is a result of a toxic confluence of two major strains of contemporary liberalism—the bureaucratic ineptness of big government and the political correctness of the nanny state. Characteristically, the strains seek to conceal themselves. Bureaucratic ineptness hides behind the “protocols” that Tom Frieden of the Centers for Disease Control and his colleagues endlessly cite. Political correctness hides behind edifying exhortations like that of White House press secretary Josh Earnest that “we live in a global world.”

But the protocols and the exhortations have been mugged by reality. It turns out protocols can’t substitute for sound policy and real leadership. It turns out the global world can’t substitute for the nation-state. Government officials like Frieden and Earnest swear an oath to “support and defend the Constitution of the United States against all enemies, foreign and domestic” and to “well and faithfully discharge the duties” of their offices. They owe allegiance to the nation more than to the world, and they owe the nation their judgment more than their protocols. They are not faithfully discharging their

duties of office when they make their priority protecting bureaucracies and enforcing orthodoxies.

But that’s what they’re doing. That’s what Americans see them doing.

Who’ll speak for these Americans? The task shouldn’t be a partisan one, but in fact it today falls primarily to one party. Democrats around the country may now be willing to deny they ever voted for President Obama, but they’re remarkably unwilling to challenge his policies. That’s because they too believe in the bureaucracies and orthodoxies of liberalism.

So it’s up to Republicans to expose the bureaucracies and criticize the orthodoxies—to ask why visas for travel to the United States are still being issued in West Africa and why American military forces are being deployed there without a workable plan or intelligible purpose, why CDC spending priorities are so skewed and CDC management so weak, and why here at home routine police powers aren’t being used and routine public health measures aren’t being implemented.

Republicans can also point to an alternate path. They can draw upon genuine experts to explain what should be done. As Jeff Bergner recently discussed in these pages, the media have tagged the GOP as “the anti-science, anti-reason party.” It’s a bum rap. But it’s been a politically effective one. This is a chance for Republicans to turn the tables. It’s a chance for conservatives to show, in this as in other instances, that it’s today’s liberals who put prejudice ahead of science and ideology ahead of reason.

It’s a chance for Republicans to ally themselves with the scientists, physicians, nurses, and public health professionals who are trying to urge sensible alternatives to the fumbling failures of the Obama administration that have been so depressingly and dangerously on display.

“Don’t politicize the tragedy of Ebola,” the liberal media will say. To the contrary, we say: Don’t be afraid to politicize the Ebola crisis—but in the right way. What we need is politicization rightly understood, in which the opposition party exposes the failures of the administration in power and lays out a path to a better response. In so doing, conservatives—who don’t worship at the altar of liberal bureaucracy and aren’t intimidated by the dogmas of progressive orthodoxy—can make a case for their ability to effectively and faithfully discharge the duties of public office in the 21st century.

—William Kristol



*The country’s in the very best of hands.*

# The Second Obamacare Election

The voters haven't changed their minds.

BY JEFFREY H. ANDERSON

A Gallup survey earlier this month showing that Americans oppose Obamacare by a margin of 53 to 41 percent was the 150th poll listed by *Real Clear Politics* during President Obama's second term to find Obamacare unpopular. The number that found it to be popular was zero.

The mainstream media, meanwhile, seemingly operating in an alternative universe, think that Obamacare is here to stay. *Politico* writes, "Deep down, Republicans who know health care know the truth: Obamacare isn't about to be repealed. . . . [T]hink of the last time a major social program was repealed after three enrollment seasons, with millions of people getting benefits. That's right—it hasn't happened."

But to conclude that the track record of major social programs indicates that Obamacare cannot be repealed requires historical cluelessness. Social Security passed the House with 92 percent of the vote (365 in favor, 30 opposed). Medicare and Medicaid (which were voted on together) passed the House with 73 percent of the vote (307 in favor, 116 opposed). Obamacare passed the House with 50.8 percent of the vote (219 in favor, 212 opposed). Moreover, support for Social Security, Medicare, and Medicaid was bipartisan. House Republicans backed Social Security by

81 to 15. House Republicans backed Medicare and Medicaid by 70 to 68. House Republicans opposed Obamacare by 178 to 0.

There's a big difference between major social programs that passed the House with majority support from both parties and majority support from the citizenry and a major social program passed by the House over the unanimous opposition of one of the two parties and the clear opposition of a majority of the citizenry—opposition that (at least in the case of the citizenry) remains every bit as strong an Olympiad later.

A recent McLaughlin & Associates poll found that, by a 12-point margin (44 to 32 percent), likely voters preferred "a conservative alternative that aims to lower health costs and help people get insurance" to keeping Obamacare "either in its current form or in amended form." (An additional 16 percent wanted Obamacare to be "repealed but not replaced with an alternative.") Earlier this month, a *Des Moines Register/Bloomberg Politics* poll asked likely Iowa voters whether they'd prefer to "repeal Obamacare" or "leave Obamacare largely the way it is." Repeal won, 55 to 39 percent.

This combination of popular opposition and elite denial has helped set the stage for the second Obamacare election.

The first was, of course, the midterm election of 2010, when the

Democrats—seven months after they had passed "health reform"—got a "shellacking," to use Obama's word. They lost 63 House seats and the majority—the first time those two things happened in tandem since the 1800s. The 2012 election provided a brief hiatus from Obamacare. Confronted with a slate of presidential candidates that included only one sitting governor or senator, Republican primary voters reluctantly chose a nominee who, of all the prominent Republicans in the country, was probably the least able or willing to make Obamacare an issue—having himself spearheaded somewhat similar legislation in his own state. Exit polling found the voters opposed to Obamacare, but both candidates' determination to deemphasize the issue mitigated its importance in deciding the outcome.

Promptly thereafter, and well before the badly bungled rollout of HealthCare.gov, Obamacare resumed its rightful place as the principal issue of the day—and the 2014 election is being driven in large part by Americans' opposition to it and everything it stands for. Obamacare is the symbol of big government, political arrogance, and federal largesse. According to Kantar Media's Campaign Media Analysis Group, Republicans and their allies have run more than 70,000 anti-Obamacare ads in this year's Senate races—more than on jobs, taxes, and social issues combined.

Liberals like to pretend this election isn't about Obamacare, but one wonders what they think it is about. It's not as if voters clearly blame their economic woes more on Democrats than on Republicans. President Obama's approval rating is in the low-40s, but why would that be? Aside from a brief uptick after his reelection, his job approval has rarely cleared 50 percent since he signed Obamacare into law. Obama himself has said that his "policies are on the ballot" this fall, but is there any doubt which one is his centerpiece policy?

A second major rebuke of Obama would be historic—and might even suggest he's "on the wrong side of history." If the Republicans take the



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JASON SEILER

Senate, Obama will be the first president since Woodrow Wilson to lose the House in one election and the Senate in another. Obama has already blown a 77-seat advantage in the House. He now seems poised to blow a 10-seat advantage in the Senate. If he does, Obamacare will have been the main reason for both defeats.

So, why do Americans reject Obamacare? In large part, it's because they knew from the start that almost nothing they were being told about it was true. And time has borne out their good instincts.

Obama and his Democratic allies manipulated the Congressional Budget Office scoring process and announced to the American people that Obamacare would cost less than \$1 trillion over a decade. At the time the Senate passed the bill, the CBO said Obamacare would cost \$871 billion. At the time of the House vote, it said it would cost \$938 billion. This February, it said it would cost \$2 trillion.

Using that same CBO process, Obama and his Democratic allies told the public that a 2,700-page legislative effort to provide taxpayer-subsidized insurance for tens of millions of uninsured people would—presto!—reduce federal deficits. At the time of the Senate vote, the CBO said Obamacare would reduce deficits by \$132 billion. The CBO hasn't updated that figure since the summer of 2012, but a new analysis by Senate Budget Committee staff, using new CBO projections for things like Obamacare's effect on labor markets, now finds that Obamacare will increase deficits by \$131 billion.

Obama and his Democratic allies told Americans that Obamacare's subsidies wouldn't fund abortion. The Government Accountability Office now says that more than 1,000 Obamacare plans cover abortion-on-demand. In five states, every Obamacare plan covers abortion-on-demand.

Obama and his Democratic allies said, "If you like your health care plan, you'll be able to keep your health care plan, period. No one will take it away, no matter what." Since then, Obamacare has taken away millions of people's health plans.

Obama and his Democratic allies said, "If you like your doctor, you will be able to keep your doctor, period." But of the millions who lost their plans, many have lost their doctors as well—and Obamacare's doctor networks are notoriously narrow.

Right before the House vote, the CBO said Obamacare would reduce the number of uninsured people by 19 million as of 2014. The actual number is elusive, but most estimates are in the ballpark of 7 to 11 million net newly insured, meaning Obamacare may not have hit even half its target.

The president said, "I . . . have a health care plan that would save the average family \$2,500 on their premiums," and many of his Democratic allies echoed the claim. But even before the Senate voted on Obamacare, the CBO said that, by 2016, premiums for the average family in the individual market would be \$2,100—or 16 percent—higher under Obamacare than in the absence of Obamacare. Many Americans are already experiencing such spikes, or worse ones, firsthand.

Obama and his Democratic allies said Obamacare would be good for the economy. But the 62 months since

Obama launched the Obamacare debate in earnest (with his speech to the American Medical Association in June 2009) have been the 62 worst months in the past 30 years in terms of the percentage of eligible Americans who are working. That's according to the Bureau of Labor Statistics' own numbers for the employment-population ratio.

And that's without even mentioning Obamacare's unprecedented individual mandate—long its most unpopular provision—which compels private American citizens, for the first time in U.S. history, to buy a product or service of the federal government's choosing. It's without mentioning the Independent Payment Advisory Board, Obamacare's unelected, quasi-legislative, largely unaccountable, and blatantly unconstitutional Medicare rationing arm. And it's without mentioning Obamacare's \$700 billion raid on Medicare, its war on religious charities, or the dangerous presidential lawlessness it has spawned.

What the American people have wanted for more than four years is to repeal Obamacare and replace it with a conservative alternative. That's what they'll tell Washington once again this November 4. ♦

## Will the Supremes Finally Rule?

Another housing discrimination case is ripe.

BY TERRY EASTLAND

A few days before the opening of its new term, the Supreme Court accepted for review a case from Texas that could prove one of the Court's most important this year—provided that the justices actually get to decide it.

The case is *Texas Department of*

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*Housing and Community Affairs v. The Inclusive Communities Project*, and it concerns the Fair Housing Act of 1968, which prohibits racial discrimination in housing, as well as discrimination on other grounds including ethnicity, sex, and religion.

Under the statute, it's clear that claims of "disparate treatment"—where individuals are treated differently in some housing matter because

of their race—may be litigated, with the accusing party required to prove discriminatory intent or motive.

But—and this is the single question presented in the Texas case—does the FHA also authorize claims of “disparate impact,” in which plaintiffs need show only that a practice neutral on its face and nondiscriminatory in its intent has a disproportionate effect on some group of persons defined in terms of one of the prohibited characteristics?

If the issue sounds familiar, some recent history is worth recalling. In 2011, the Supreme Court took a case from the Eighth Circuit (*Magner v. Gallagher*) that presented the same question the Texas case does now. But the Court was unable to decide *Magner* because the case was withdrawn before the oral argument. In 2013, the Court again accepted for review a case raising the issue, one from the Third Circuit (*Township of Mount Holly, New Jersey v. Mount Holly Gardens Citizens in Action*). This case was settled as the argument drew near, again leaving the Court nothing to resolve.

Those two circuit courts are among the many that have decided matters involving disparate impact claims brought under the FHA. Only the D.C. Circuit has lacked occasion to rule on whether the FHA authorizes such claims. The other circuit courts have concluded or assumed it does, while differing markedly on the standards and burdens of proof that the courts should apply in reviewing the claims.

As for the Supreme Court, it has had two FHA cases involving disparate impact theory. But in neither did the Court consider the threshold question whether the law actually allows such lawsuits. The justices seem prepared to take up that question—have been, in fact, since 2011.

The issue in the Texas case is how the state’s housing department distributes federal tax credits to developers who build low-income housing. The allegation is that between 1999 and 2008 the department disproportionately allocated tax credits to projects in minority-populated areas, thus also disproportionately denying tax credits to

projects in mainly white neighborhoods—in violation of the FHA’s prohibition of racial discrimination.

Statistics are at the heart of all disparate impact claims, and in the district court, the statistics offered in support of the Texas plaintiff’s claim were these: that during the years at issue the department approved tax credits for 49.7 percent of proposed non-elderly units in areas between 0 percent and 9.9 percent white, but only 37.4 percent of such units in areas between 90 percent and 100 percent white. For the district court, that statistical disparity



*No high five? The Roberts Court could squelch claims of ‘disparate impact.’*

was enough to establish a “prima facie case” of discrimination, thus flipping to the housing department the burden of proving that it had not discriminated on the basis of race.

The department offered an explanation for the statistics: Federal and state laws require it to distribute the credits according to fixed criteria, and some of these correlate with race. But the district court held that the department was unable to show its inability to narrow the disparity in approval rates. The court held for the plaintiff on its disparate impact claim, a judgment that was affirmed by the Fifth Circuit.

There is reason to think the Supreme Court will side with Texas. This is a court interested in getting right the meaning of texts, and the text of the FHA plainly understands discrimination as a specific act of intentional discrimination. It contains no language establishing disparate impact liability.

This is also a court known for its skepticism about the legality of

race-based decision-making. The Court could well conclude, as Justice Scalia has written, that disparate impact liability requires governments “to evaluate the racial outcomes of their policies, and to make decisions based on (because of) those racial outcomes.” Such decisions would violate the Constitution, as the Court made clear in its landmark *Bakke* decision more than 35 years ago: “Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake.”

It’s an understatement to say that the Obama administration would prefer the Court stay away from this issue. More than any previous administration, it has used disparate impact in enforcing federal civil rights laws. “Disparate impact is woven throughout civil rights enforcement in [our] administration,” is how an Obama lawyer at the Education Department put it early in the first term.

The administration has sought to prevent the Supreme Court from striking down the use of disparate impact in housing. Indeed, the *Magner* case was ended entirely as a result of the administration’s efforts to make it “go away,” as one Obama appointee put it. The government was not a party in the case, but, working with political allies, Obama appointees initiated discussions that resulted in agreement by the defendant, St. Paul, Minnesota, to withdraw its case from the Supreme Court on the understanding that the Justice Department would decline to intervene in two unrelated false claims cases.

In *Mount Holly*, the Supreme Court asked the government for its view as to whether the Court should take the case. The request came soon after the federal housing department had published a new rule authorizing disparate impact claims under the FHA and spelling out standards and burdens of proof. The solicitor general’s unsurprising counsel to the justices was for the Court not to take the case and instead wait and see how the new rule fared in the lower courts. But the Supreme Court accepted the case, only to see it settled, with the administration’s political

allies, including George Soros's Open Society Foundation, the National Fair Housing Alliance, and the Ford Foundation, contributing money to TRF Development Partners, another administration ally, to build new homes for the plaintiffs who had brought the case against the New Jersey township.

The state of Texas has shown no sign of ending its opposition to disparate impact in housing. But what about the Inclusive Communities Project

(ICP), the party that brought the case? "Will someone get to this group?" asks one of the lawyers supporting Texas.

Maybe someone will—unknown is what the administration may be doing behind the scenes—and this case too will go away. But the better result would be for the Supreme Court finally to decide whether, to use the legal argot, "disparate impact claims [are] cognizable under the Fair Housing Act." ♦

Facebook declined an invitation from Google to join the conspiracy. Sheryl Sandberg, Facebook's chief operating officer and a former Googler, announced that she refused to "limit Facebook's recruitment or hiring of Google employees."

These are the self-styled "disrupters," believers in the virtues of a market system that allows them to compete for customers even if, especially if, that competition destroys existing enterprises. Schumpeter's gale of creative destruction is, to them, holy writ.

Unless, of a course, a faint breeze of competition wafts through the Silicon Valley labor market. Then, with the notable exception of Facebook, competition for staff becomes "poaching," a process that might start a "wage war," putting a dent in their petty cash piles. So they agreed not to compete for skilled workers. "If you hire a single one of these people [Apple engineers], that means war," Google cofounder Sergey Brin says. Steve Jobs threatened him, also warning tiny Palm that if it poached any of his engineers he would initiate patent litigation that they would not have sufficient resources to defend. With Google signed on, Eric Schmidt, then its CEO, lined up Intel and Intuit. Paul Otellini, then president and CEO of Intel, called the arrangement "a handshake 'no recruit'" agreement. And at one point, Schmidt agreed to the firing of a recruiter who had solicited an Apple employee. To avoid creating "a paper trail over which we can be sued later," Schmidt and Otellini confined themselves to emails—reflecting a charming faith by these highest of high-tech executives in the confidentiality of emails of the sort that have made several Wall Street traders and previous price-fixers involuntary guests of the government.

With such an arsenal of smoking guns, and so many adversely affected high-tech workers, it should come as no surprise that in 2010 the Antitrust Division of Eric Holder's Justice Department got wind of the cartel. In 2010 a Justice Department

# High-Tech Chutzpah

Silicon Valley seeks to suppress wages.

BY IRWIN M. STELZER

At minimum it is unseemly, at maximum an example of chutzpah as practiced in Silicon Valley. Having shot themselves in the foot, some prominent tech billionaires want the president to bypass Congress and minister to their wound. They have poured cash into his campaign coffers, and now is payback time. They want him to increase the number of H-1B visas that allow them to hire high-skilled foreign tech workers. Which he has promised to do, never mind that Microsoft has just laid off thousands of workers. Or more important, that some of the very companies that want to cash in their Obama IOUs have been engaged in a conspiracy—get this—to depress wages.

Having formed a cartel to prevent "poaching" and competition for workers and having kept wages of these workers below levels that would have prevailed in a competitive

market, CEOs in the home of fierce competition for technological advantage now find that below-free-market wages are producing a labor shortage.



*All the way to the bank: Microsoft's Bill Gates and Google's Eric Schmidt*

To dampen any increase in pay that American tech workers might finally get now that the conspiracy has been uncovered, the unchastened executives want Obama to increase the supply of foreign laborers.

For those of us who believe in the market system, there is something unsettling about the thought of the billionaire bosses of Google, Apple, Adobe, Intel, two Disney subsidiaries, and Intuit sitting around a table and agreeing not to compete for staff.

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investigation brought the conspiracy to light and resulted in a complaint that was settled when the conspirators agreed to end their ban on cold-calling rivals' staff. But not only did Holder, nowadays continually threatening unspecified bankers with jail time for unspecified crimes, not seek jail time for the specific miscreants that confessed to the specific crime of conspiring to fix wages. Justice did not even ask that the confessed conspirators be fined. Odd for a Justice Department that has become a profit-center for the government by virtue of massive fines levied on financial institutions and individuals who have committed crimes that in many cases are not quite so straightforward as those of Jobs, Schmidt, Otellini, et al.

One need not be a cynic to wonder whether there is an inverse relation between contributions to the Obama machine and the penalties for lawbreaking. After all, at minimum the Justice Department could have attempted to claim the extra profits earned by the conspirators by virtue of a plot that had the inevitable effect of depressing wages. In effect, Holder approved of the redistribution of income from the hardpressed middle-income Silicon Valley workers about whom his boss is ostensibly so concerned to shareholders and executives of some of the world's most profitable companies.

Enter that much-despised breed—trial lawyers in search of a slice of any damages they can wrest from deep-pocketed conspirators. They sued for lost compensation on behalf of workers for the firms. In order to avoid what seemed an inevitable guilty verdict in a trial, and the trebling of any damages that might take the total hit to as much as \$9 billion by one estimate, Apple, Google, Intel, and Adobe agreed to settle (as had Disney and Intuit several months earlier, for \$20 million). To go to trial would have been risk-taking of an even higher order than these serial risk-takers dared. Federal judge Lucy Koh, in refusing to dismiss the case, warned the accused, "Defendants have conceded that there were a series of six bilateral agreements" to hold

down their payrolls by not recruiting rivals' employees. "All six of these agreements contained nearly identical terms, precluding each pair from affirmatively soliciting *any* of each other's employees." Damning emails were to be admitted at trial, every bit as incriminating as the paper trail Schmidt had advised his partners-in-crime to avoid.

So the accused decided to settle rather than face a trial, but in a manner and amount that would have made Ebenezer Scrooge proud. They agreed to pay \$324.5 million. Reenter Judge Koh. That pittance, she ruled, is so disproportionate to the admitted offense that she rejected it out of hand. And with reason. Four of the conspirators—Apple, Intel, Adobe, and Google—between them are sitting on about \$230 billion in cash. That is 800 times the agreed settlement, and almost 50 times the cash on hand in the U.S. Treasury. The \$324.5 million was to be divided among the lawyers (\$8.7 million for fees and expenses) for the sinned-against members of the Valley proletariat, and some 64,613 engineers, each of whom was to get a few thousand dollars.

Judge Koh, more often found presiding over the numerous patent suits these vigorous competitors periodically file against one another—it is easier to agree not to steal employees than not to steal each other's intellectual property—found that the total settlement "falls below the range of reasonableness," especially when compared with the \$20 million separated from Disney and Intuit when those companies settled over a year ago. The defendants, she ruled, should "pay their fair share" for suppressing wages. She wants those who are late to the settlement route to put another \$50 million in the pot.

Now comes the incredible bit. The cartelists are appealing Koh's decision as "rigid and formulaic," meanwhile engaging in further settlement negotiations and threatening that if the case does go to trial they will produce six expert economists, count 'em, who will testify that the no-poaching agreements did

not depress wages. Five facts make this argument incredible.

First, paying each engineer a few thousand dollars in damages for the privilege of having depressed his or her wages for a long period is a profitable deal. Second, I have been involved in enough antitrust litigation as an economic adviser to make an informed guess that the legal costs of dragging this matter on will eat up a nontrivial portion of the money at issue. Third, there is the reputational cost of a trial: The trade press is salivating at the prospect of hearing the Silicon Five, or Three or Six, explain their emails, even though Jobs is now beyond the reach of a subpoena. Finally, there is the matter of those H-1B high-tech visas that a compliant president might well issue by executive order after the midterm elections.

There is little doubt that recipients of such visas have made a large contribution to the pace of innovation in America, and to the countries to which many of them return, often reluctantly. But that is not the question policymakers should be asking. It is, "Is an increase in these visas necessary because there is and will remain an inadequate supply of Americans who have or can with training obtain skills similar to those of the foreign visa-holders?" The answer to that is, "We don't know." The prospective employers have conspired to keep wages low, reducing the attractiveness of those jobs to Americans with the skills or the ability to absorb the training necessary to acquire them.

In essence, the Silicon Valley executives want to capitalize on the training these foreign workers have received overseas or at American universities, rather than bearing the cost of such training. These companies are arguing that there is no wage that will call forth an additional supply of workers with the needed skills. Not for them economist Tim Worstall's quite traditional observation, "If computing engineers' salaries rise in Silicon Valley then that's a signal to everyone else in the rest of the economy, too. Some . . . will move to the Coast. . . . Some who might have

studied physics, or finance, will study computer science instead. Others will move from lower paying career paths.”

Perhaps the president, freed of the need for campaign cash and with little he cares to do after this round of fundraisers is completed, will consider finding a way to increase the number of high-tech visas, but granting them with the proviso that the hiring company train one American for every foreign worker it takes on, so that when the latter returns home, as he agrees to do when getting the treasured visa, his replacement is ready to take on the departing visa-holder's chores. The incentive for the hiring company is long-run relief from the necessity of annually importuning contribution-hungry politicians for more visas in the hope that when the lottery distributing these

visas is held, it will be among the winners. Since no company knows whether it will be a winner or loser in the visa lottery, all have to pay to play. Good for the politicians, not so good for the efficient allocation of our nation's labor resources.

Better still, the president might order or persuade Congress to go along with a bidding system to replace the mindless lottery. Companies could bid for the available visas, with the company most able to use the incoming worker in a position to bid the most. The funds from the auction could be used for on-the-job training of American workers—at no cost to the taxpayers. It would be rather nice to see the president call on the market to allocate resources among these pro-free-market Silicon Valley entrepreneurs. ♦

to the dying, but also to those with severe mental illnesses, crippling disabilities, and chronic, nonterminal illnesses. There have been several medicalized joint killings of elderly couples who would rather die together than live apart. Belgium even permits euthanasia followed by organ harvesting and the assisted suicide of dying children if they make the request in writing (among other requirements). Killing a prisoner who would rather be dead than imprisoned is merely the next logical step.

Meanwhile, U.S. opponents of capital punishment claim that death by lethal injection is “cruel and unusual punishment.” Thus, California is prohibited by federal court order from using lethal injection protocols because doing so might cause pain. More recently, a federal judge has ruled that California's death penalty itself is cruel and unusual punishment, and therefore unconstitutional—because it is almost never carried out!

The lethal-injection-as-cruel-and-unusual-punishment meme was furthered earlier this year after two “botched” executions—one in Arizona that took 97 minutes to complete, another in Oklahoma that took 43 minutes. The ACLU lawsuits are flying.

Interestingly, the death drug used in euthanasia/assisted suicide is the same one used in executions. Moreover, studies from the Netherlands—where euthanasia was decriminalized in 1973 and legalized in 2002—have found that physician-assisted suicide and euthanasia by lethal injection can—as in the Arizona and Oklahoma executions—take considerable time and cause side effects such as vomiting, gasping for air, and seizures. These documented difficulties interfere with the “death with dignity” narrative used to justify the legalization of doctor-assisted suicide—and so are underplayed by its proponents.

Execution has been further entwined with doctor-assisted suicide through the international campaign to prevent executions by drying up the supply of the killing

# Cruel and Unusual Death with Dignity

Executions meet euthanasia.

BY WESLEY J. SMITH

Belgium is on the verge of executing its first murderer by lethal injection. Well, not exactly “executing.” The state isn't going to kill convicted murderer/rapist Frank Van Den Bleeken for his crimes. Rather, it is helping him be euthanized. By a doctor. At a hospital. To which he was transferred after a court ruled that Den Bleeken's request to end the suffering caused by his imprisonment (he has served 30 years of a life sentence) and continuing violent sexual urges fits snugly within that country's euthanasia law.



Frank Van Den Bleeken

Ironically, Belgium opposes capital punishment under any circumstances. But it legalized euthanasia in 2002. Since then, the country has fallen off a moral cliff, with a growing number of lethal injections administered by doctors not just

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agent, pentobarbital (Nembutal). Oregon and Washington's assisted-suicide regimens became collateral damage after the campaign made the lethal drug unobtainable.

In Oregon, many assisted suicides are facilitated by the state's branch of Compassion & Choices, a private group once more honestly named the Hemlock Society. The organization became so alarmed at the death drug dearth that its representatives met with the Oregon Board of Pharmacy to discuss establishing a nonprofit compounding pharmacy to manufacture a generic form of pentobarbital, which C&C would then distribute for use in assisted suicides. So far, no news on whether the state will go along.

Then there is Oregon governor John Kitzhaber. A medical doctor, Kitzhaber strongly favors giving cancer patients access to lethal doses of pentobarbital. But use it on vicious murderers? Absolutely not! That offends his liberal moral code.

Apparently believing that his own sensibilities matter more than the votes of the state's citizens—who overturned a court ban and reinstated the death penalty in 1984—Kitzhaber placed a moratorium on executions for the balance of his time in office.

But Kitzhaber's reprieve did not sit well with convicted murderer Gary Haugen, who has waived all appeals and wants to be done with life. He sued to be executed, gaining an initial ruling that he has the right to refuse mercy. But that decision was overturned on appeal on the grounds that Kitzhaber has the untrammelled power, as governor, to prevent executions—a decision the Oregon supreme court recently refused to review. So, at least until Kitzhaber is out of office, Haugen is stuck in limbo on death row—unable to die but not wanting to live.

And we are stuck with a paradox: The use of lethal drugs in executions amounts to cruel and unusual punishment, while the use of the same lethal drugs to eliminate someone sick, or sick of life, is "death with dignity."

Call it "cruel and unusual death with dignity." ♦

# Obama's Synthesis

McGovern plus Kissinger.

BY RAY TAKEYH

There has been much head scratching over the years about the essence of Barack Obama's foreign policy. Now with another member of Obama's cabinet, former defense secretary as well as CIA director Leon Panetta, offering up a memoir of disagreement and disenchantment, it's clear that the consternation is no longer limited to conservative skeptics.

Is this president who was supposed to usher in a new age of U.S. policy-making actually just an isolationist who abjures international entanglements as a matter of principle? Or is he a politician too preoccupied with great domestic challenges to pay attention to all those squabbling foreigners? In fact, Obama is best understood as a throwback to the mid-1970s, equal parts George McGovern and Henry Kissinger.

Today's debates are, after all, eerily similar to those of the mid-1970s. After a divisive and draining war in Vietnam, the Democratic party, captured by McGovern and his protégés, insisted that America had to come home, for it could only do harm abroad. This was not simply isolationism but was surely an indictment of what was considered overly aggressive interventionism.

At the same time, the Republican party under the banner of Henry Kissinger's realism saw America as a declining power that had to accommodate rivals such as the Soviet Union and China. Democrats did

not emphasize values, for they were suspicious of American power, while the Republicans avoided them, for they had no place in their balance of power diplomacy.

Fast forward to Obama's first presidential campaign. In 2008, as the American public struggled with the burdens of wars in Afghanistan and Iraq, retrenchment was in the air. The country had its share of economic problems, as well as a need to rebuild crumbling infrastructure. The call was for self-rehabilitation, and candidate Obama captured this mood and offered it up as a seemingly coherent philosophy of governance.

The McGovern streak was obvious, as Obama and many around him held that America had to limit its horizons since too often its interventions had caused the problem in the first place. Human rights and democracy promotion had to take a backseat. A United States that had invaded Iraq on a questionable premise had no right to hector other nations about the conduct of their domestic affairs. America had to accept the fact that it was not an exceptional country but just another member of the community of nations that had made its share of mistakes.

The Middle East was the place where Obama most disengaged. For the Obama team, it was America's wars that had deformed the politics of the region and disturbed its natural order. It was best to leave the Arab world to the Arabs themselves. As such, the White House was caught flatfooted during the Arab Spring of 2011 and



Obama contemplating a bust of Jimmy Carter

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THOMAS FLUHARTY

had no plans for a region that was coming undone. The need to propitiate domestic critics may have propelled Obama to draw various red lines, but personal inhibitions prevented him from enforcing them.

Realism is the natural companion of this sense of retrenchment. Obama was channeling his inner Henry Kissinger when he sensed that the best means of preserving stability was to take into consideration adversarial nations' interests. Thus came the resetting of relations with Vladimir Putin and arms control diplomacy with Ali Khamenei. America's nemeses were supposed to cast aside their ambitions and settle their accounts with a more humble Washington.

The Russian invasion of Ukraine and Iran's persistent defiance at the negotiating table are a stark reminder that dictators' hostility to the West is intrinsic, ideologically driven, and undeterred by gestures of accommodation. It was finally a radical Sunni insurgency, the Islamic State in Iraq and Syria, galloping across the heart of the Middle East that compelled the president to emerge from his torpor, sort of.

If Obama sounded prescient in 2008, today he seems anachronistic and stale. The tedium of Obama's retrenchment is proving ill-suited for a nation that has historically sought an idealistic imprint on global affairs. As Hillary Clinton recently argued, implicitly criticizing the president she served as secretary of state, America has to stand for something bigger than avoiding mistakes. We seem, then, to be in the process of a course correction, as Americans are once more looking abroad for missions of redemption.

As America enters the last two years of Obama's presidency, some basic principles have to be considered.

First, autocracies are bound to be attracted to extremist ideologies and they will always require an external enemy to justify their hegemony of power. This is as true for the Russian Federation as it is for the Islamic Republic of Iran.

Second, America should insist on its values. The long-term cure to

international conflict is not the preservation of some tenuous balance of power but proliferation of liberal polities. The best means of arresting aggression is to come together in a concert of democracies as opposed to relying on international organizations that are too often vulnerable to procedural manipulations by the likes of Russia and China. Moral axioms cannot be the sole foundation of a great power's foreign policy, but America can never do without such guidelines.

As often in the past, the American public seems ahead of the establishment that rules in its name. The phrase "war weariness" is casually tossed around, suggesting a nation averse to international engagement. It's true the public is unlikely to countenance a vast military enterprise for amorphous purposes. However, this does not mean that Americans are ready to turn their backs on their ideals or

vacate their global responsibilities.

Although Republican lawmakers and presidential aspirants are often enjoined to summon the legacy of Ronald Reagan, the moment may actually summon the spirit of Jimmy Carter—the Carter of 1976. It may seem paradoxical given his reputation as a weak actor on the world stage, but it was Carter who seemed ready to lead American foreign policy out of the morass of the 1970s. History has rightly cast a dark shadow on much of Carter's legacy, but he understood that Americans needed a sense of purpose, and rode to the White House on a platform of human rights and democratic empowerment. The Georgian beckoned America to a higher calling. The pendulum is once more swinging. The question is: Who is the next Jimmy Carter—one trusts a more successful Jimmy Carter—who will take advantage of our new mood? ♦

## The Upside of Lower Oil Prices

Let's stop fattening the wallets of our enemies.

BY CHARLES WOLF JR.

Many of the world's most serious security threats are enabled—directly or indirectly—by revenues from the high oil prices (about \$100 per barrel) prevalent in world markets in recent years. If these prices were reduced substantially (e.g., by 20-30 percent), the liquidity that fuels the threats would probably shrink, as would the threats themselves.

Moreover, several feasible measures can contribute to lower oil prices, and

these measures may be abetted by other trends that are independently moving in the same direction. Consequently, reducing oil prices should be a prominent part of strategies designed to disable the aforementioned threats.

Four threats are salient:

- Iran's nuclear development—i.e., the Shiite bomb;
- the Sunni-led ISIS threat in Syria, Iraq, and beyond;
- Hamas attacks on Israel from Gaza using rockets and tunnels;
- Russia's threat to Ukraine via the separatists it has armed in east Ukraine and the military units it has stationed along the border with Ukraine.

The driving forces behind these threats are many and complex, rooted

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in ethnic, religious, political, ideological, cultural, and historical conflicts. Neither energy issues in general nor oil prices in particular are among the drivers of the threats. Revenues from oil exports are enablers of the threats, not their drivers.

Since the start of this century, oil prices have tripled: The Dubai spot price of crude oil was \$35 per barrel in 2000; during the period from 2011 to early 2014, prices varied between \$106 and \$109 per barrel. How do these sharply increased oil prices affect each of the threats?

Iran's oil exports generate revenue of \$90 billion per year, comprising about 35 percent of Iran's GDP. Iran's officially reported defense spending is 4.1 percent of GDP, and spending on the country's Atomic Energy Organization may be as large or larger. Reducing oil prices by 20-30 percent would reduce Iran's GDP by 7 percent. Although nuclear development and defense spending are among Iran's priorities, this drop in GDP would seriously constrain these priorities. It would impose an additional burden of internal frictions and squabbles within Iran's opaque decision-making process, quite apart from whether current negotiations to curtail enrichment succeed or fail.

Funding for ISIS extremists appears ample and diversified. Their extensive funding network includes oil properties seized in eastern Syria and along the Syrian border with Turkey, plus individual solicitations—some voluntary, others perhaps coerced—from wealthy donors in Kuwait, Saudi Arabia, and the Gulf emirates.

Suppose daily oil revenues accruing to ISIS are between \$2 million and \$5 million (estimates in the press have ranged between \$1 million and \$6 million); also, assume that ISIS fighters number between 10,000 and 30,000 (mainly from Arab countries, but also including hundreds from Europe, the United States, and other non-Arab countries). Suppose further that these revenues are mainly used to pay and sustain ISIS fighters, while other ISIS operating costs and

equipment are either acquired in-kind (from stocks left by fragmented Iraqi units) or defrayed from the other revenue sources mentioned above. These revenues would easily support the reported payments of \$1,000 per month to ISIS fighters (per the king of Jordan)—many times higher than the corresponding opportunity-wage in their homelands.

Substantially lower oil prices would likely cut this wage and erode ISIS's appeal to fighters, resulting in disruptively frequent or permanent AWOL.

The main funding for Hamas's rockets and tunnels threatening Israel is provided by Iran, with equipment supplied by both Russia and Iran. Hamas also gets political and economic support from Qatar and Turkey. Consequently, the effect of lower oil prices in constraining Iran's bomb development would probably limit Hamas's threat to Israel, as well.

Russia's funding and equipping of thousands of separatists in east Ukraine has been similarly enabled by abundant oil revenues. Russia's crude oil production (second-largest in the world) rose in 2013 for the fifth consecutive year. Its daily oil exports are the world's second-largest (after Saudi Arabia), estimated at 5 million barrels in 2014. Annual oil export revenues of \$180 billion represent 8.2 percent of Russia's GDP, nearly three times its officially reported defense budget. Sharply lower oil prices would impose serious constraints on Russia's willingness and ability to pursue its aggressive threat to Ukraine.

Exogenous circumstances and trends are moving toward lower world oil prices. In recent months Dubai's spot-price per barrel decreased from more than \$100 to the \$80s. These trends can be abetted by U.S. policies. Horizontal drilling and hydraulic fracturing in the United States represent a powerful technology that, by substantially boosting U.S. shale oil production, is changing the U.S. position from the largest or second-largest global oil importer, to that of a significant—perhaps fourth- or fifth-largest—global exporter.

Chevron and Exxon, as well as BP and Total, among the major oil firms, can further boost oil supplies if they apply this technology to known shale deposits in Argentina, Algeria, China, and elsewhere, with minimal environmental side-effects.

Global oil supplies are also likely to expand as a consequence of China's substantial foreign assistance and investment programs, which have concentrated on oil and gas projects in many of the 92 emerging-market countries receiving Chinese assistance. The United States might even offer to cooperate with China and some of the recipient countries in which the United States also has aid programs to accelerate the pace of these projects and increase their yields.

Other measures can contribute to lower oil prices by reducing demand, or at least reducing its rate of growth. If and when renewable sources of energy—whether solar, wind, biomass, or nuclear—become price-competitive, expanding their supply will diminish demand for oil, hence contributing to lower oil prices. (A caveat should be added: If renewables are not price-competitive, subsidizing them will tend to raise rather than lower oil prices.) Effective conservation measures—whether more efficient automotive engines, battery-powered engines, or hybrids, or more efficient air conditioning—can also help to lower oil prices.

Movement toward sharply lower oil prices should be a prominent component of any strategy directed toward disabling many of the world's most disruptive threats—"disabling" would ensue because the prevailing high prices are direct or indirect enablers of the threats. However, the strategy doesn't apply to all threats: Serious security threats in the East China Sea and the South China Sea are unlikely to be affected by lower oil prices. While lower oil prices are no panacea in the security realm, it's worth noting that they will have beneficial side-effects in other realms: boosting economic growth by lowering production costs and stimulating investment and consumer spending. ♦

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# A Constitutional Congress?

*How the legislative branch can resume its rightful role*

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BY CHRISTOPHER DEMUTH SR.

What difference will it make if the Republicans win the Senate and hold the House in November? The House can already block Democratic legislation Republicans do not like, and President Obama would still be able to veto Republican legislation he does not like. The Republicans are talking of a positive, problem-solving agenda. That seems to mean passing some constructive bills President Obama could sign, thereby signaling that Washington can get things done, and some others the president would veto, thereby signaling even better days ahead following a GOP presidential victory in 2016.

Such a strategy would hold serious potential. Divided government can be both partisan and productive—as in the second Clinton administration, which brought both an impeachment trial and balanced budgets (and, for the Republicans, the prelude to control of the White House and both chambers of Congress after the 2000 elections).

A Republican Congress facing a Democratic president could, in addition, do something of transcendent importance, something that would furnish a stately frame to its policy initiatives. It could reverse Congress's institutional decline and begin to restore the elected legislature to its vital position in our constitutional balance of power.

If the Republicans were to attempt this, it would be an edifying spectacle for all concerned. We are familiar with the Celebratory Constitution—Independence Day orators extolling the wisdom of Founders and Framers, Tea Party activists parading in colonial garb. And we are familiar with the Judicial Constitution—aggrieved persons demanding their rights, lawyers exchanging dialectics, judges parsing the Framers' phrases and discerning their intent. But the path suggested here would be the Members' Constitution—its sworn officers in Congress assembled, performing its

duties, accepting its constraints, and exercising its powers astutely or not—a “living Constitution” indeed. Be forewarned, however, that this path would be as unfamiliar to modern congressional Republicans as to Democrats.

The decline of Congress has been masked in recent years by the Obama administration's brazen acts of unilateral lawmaking—revising or ignoring key provisions of the Affordable Care Act (Obamacare) and several welfare, immigration, education, energy, and environmental statutes and evading the Constitution's appointment requirements. Many of these actions have been unconstitutional. A few have been blocked by the courts, and a few have been acceded to with obvious reluctance, but most are immune from legal challenge because no one has standing to sue (which requires tangible individual harm). The House is stepping in with a constitutional lawsuit of its own—casting Congress as a pitiful, helpless giant and innocent bystander to presidential usurpations.

But Congress is not innocent: It has been and continues to be an active partner in the transfer of legislative power to the executive branch. Since the 1970s, it has established dozens of agencies, such as the EPA, with authority to enact sweeping, costly, contentious national policies under vague statutory standards. During the 2008 financial crisis, when the Bush administration rewrote the Troubled Asset Relief Program almost before the ink had dried, legislators complained bitterly but soon acquiesced with supporting legislation. Since then, the Obamacare and Dodd-Frank statutes have set new standards of delegated lawmaking, providing sweeping discretion to a phalanx of agencies, councils, and committees.

Regulation is one thing, but Congress's most dramatic abdications involve its powers to tax, appropriate, and borrow. These powers, enumerated in Article 1, Sections 8 and 9, are specific, plenary, and exclusive and are the linchpins of Congress's constitutional position. Yet Congress now appropriates only 30 percent of annual spending—the rest is entitlements and other automatic spending free of annual appropriations, and interest on the federal debt. In

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most years Congress doesn't really appropriate the 30 percent either, because of the collapse of its budget procedures and its reliance on continuing resolutions. It did not pass a single regular appropriation for the fiscal year beginning October 1, 2014.

Congress's propensity to spend much more than it taxes has produced, through continuous annual deficits, a separate kind of delegation—to future citizens and Congresses, who will somehow, someday pay the costs of today's mounting debt. But in the meantime that propensity has also led Congress to transfer taxing, spending, and borrowing authority to the executive.

Congress has recently handed several agencies the power to set, collect, and spend their own taxes. For example, the FCC's fraud-plagued universal service program, now spending \$9 billion annually, is funded by a tax on communications firms that the commission adjusts each quarter to keep pace with program spending. The Public Company Accounting Oversight Board, created by the 2002 Sarbanes-Oxley Act, supports itself with a corporation tax calibrated to its annual expense budget, currently about \$260 million.

These are genuine, broad-based taxes—unlike, say, FDA filing fees and entrance fees at national parks. They do not loom large among federal revenue raisers, but they are recent innovations and powerful precedents: agency taxes geared to an agency's own spending, free of legislative politics and the need to compete with priorities in other areas. And they are a singularly radical form of delegation. The justifications for regulatory delegation—specialization, “expertise,” and the need for policy flexibility—are altogether absent. The Constitution is adamant that taxation is a legislative function—even requiring that revenue bills originate in the House, the people's chamber whose members must face the voters every two years.

The Dodd-Frank Act's Consumer Financial Protection Bureau is another departure in executive independence. The CFPB is funded not by its own tax but rather by a draw (up to a statutory cap) from the profits of the Federal Reserve Banks. Those profits, from bank fees and earnings from open market operations, are remitted to the Treasury as general revenue. Guaranteeing the CFPB a portion that would otherwise support other government programs is a new entitlement program—this one for a regulatory agency rather than Social Security or Medicare—and deficit-financed to boot. This year's Federal Reserve profits will be more than



**If Congress is to turn back presidential encroachments, it will first need to recover the arsenal of powers it has given up voluntarily. Today's Republicans would seem to be ideally suited to the task.**

\$100 billion, while its own operating costs will be about \$6 billion and the CFPB's expenses will be about \$500 million, so there is plenty of room for agency entitlements to grow.

Congress's latest surrender—of its borrowing power—is fraught with irony. That power has been exercised for nearly a century through a legislated ceiling on the Treasury's total borrowings. The debt ceiling is a legitimate constitutional prerogative but a feeble one at a time of continuous budget deficits—because when the ceiling needs to be increased Congress has already authorized the taxing and spending that makes the increase necessary. In recent years, the House has unwisely used the need for debt-ceiling increases to attempt to extract spending and policy concessions from the Obama administration. In the midst of the interbranch brinksmanship, President Obama wisely declined the advice of legal pundits that he ignore

Congress and borrow beyond the ceiling on his own accord. Then, when the dust settled following the government shutdown in late 2013, he was presented the borrowing power on a plate. Congress—chagrined at its rediscovery of the weakness of the debt ceiling, but loath to vote for an \$18 trillion debt ceiling with an election looming—simply suspended the ceiling, giving the Treasury authority to borrow

as needed for a set period of time.

If Congress is to turn back presidential encroachments, it will first need to recover the arsenal of powers it has given up voluntarily. Today's Republicans would seem to be ideally suited to the task with their fresh, Tea Party-inspired devotion to constitutionalism. But the task would put that devotion to the test, for Congress did not relinquish its powers by inadvertence but rather by calculation. Restoration will require a new political calculus and a new institutional culture.

It is important to understand that the Constitution's powers are also responsibilities. The first responsibility of the legislator is collective choice—to decide matters of public importance and dispute, in league with others of differing, often conflicting interests and viewpoints. This requires more than the politician's natural gregariousness and assertiveness. One must sublimate one's ego: suffer fools gladly, make wretched compromises, settle for half-loaves, and endure the treachery of opponents and the disappointment of allies. In compensation, one is a member of a famous and powerful elite, possessed of many

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prerogatives and perquisites, deferred to and addressed as honorable. The deference is not only to power: To be an elected legislator is to be part of a tradition of democratic self-government that extends back for centuries and is one of the greatest achievements of Western civilization.

Delegating lawmaking to the executive has been, not entirely but to a considerable extent, a means of shirking the legislative responsibility while retaining, and even increasing, the power and prerogatives of the individual member. In exchange for the burdens and risks of collective choice, the member becomes a solo practitioner with a public license—to influence the choices of a vast executive apparatus through grant-getting, letter-writing, regulatory tweaking, placing allies in agencies and at Washington lobbying firms, adding entrepreneurial riders and earmarks and line-items to blunderbuss spending bills, vowing to preserve or scuttle executive decisions before aroused constituency groups, and pell-mell personal fundraising.

Some of these things are time-hallowed congressional prerogative, of course, but they have coalesced into a new Capitol Hill culture with a logic and momentum of its own. As executive government grows, so do the opportunities for influencing its choices at the margin, and so, correspondingly, does the value to outsiders of access to individual members. Instantaneous mass communications and continuous surveillance by interest groups put a premium on public positioning and drive out the time and negotiating space necessary for collective choice. As the legislative arts decline, “Acts of Congress” become, increasingly, slapdash emergency bills controlled by the majority party leadership rather than the committees of jurisdiction, containing little in the way of considered law that many members have had a hand in or even know much about. Nancy Pelosi’s admonition when she was speaker, that members should pass a bill first and read it later, was a true expression of what Congress has come to, much of the time.

So a constitutional revival will require a cultural revival. Recovering Congress’s lost powers will require relearning legislative skills, redirecting legislators’ energies, and risking the ire of party constituencies who are unfamiliar with the obligations of legislating and their centrality to the separation of powers. That is a tall order, but the time may be ripe. Contempt of Congress has become routine, even breezy, as in the recent hearings on the IRS political scandals. Many members have noticed that their institution has nowhere to go but up.

At the same time, President Obama might cooperate—up to a point. At least he ought to. Modern presidents have gotten too powerful for their own good, and late-term presidents know it. The range and volume of executive branch policymaking has grown far beyond the span of control, or even comprehension, of its sole elected official

and his immediate staff, and brings new surprises and dilemmas every day. When the agencies act, and when the president acts on his own initiative, he is seen as exercising personal power, unmediated by legislative engagement. Unlike a prime minister in a parliamentary system, he stands before the citizenry alone and apart. Congressional reaction is often in the form of a discordant Greek chorus—partisan messaging from the leaders of both parties, hailing and condemning the president’s action in unqualified terms—which reinforces the impression of crown government. America has now had three consecutive presidents subjected to continuous, highly organized personal defamation, which is plausibly the result of the extreme and undemocratic concentration of power in a single person and the increased value to the opposition of undermining his reputation and authority.

A bit of power sharing with an elected legislature would make our president stronger, not weaker, than he is today. The constitutional separation of powers is intended to provide balance as well as checks, and shared responsibility. All presidents seek congressional approval for unusually controversial or risky decisions, especially in military matters. It would be good for presidents if they did so more frequently—as a matter of obligation rather than discretion—even if they did not always get the approval they sought.

The president would have some legitimate gripes of his own to bring to the table. At the top of the list would be congressional micromanagement of executive branch organization and administration. The distinction between “policy” and “administration” can be in the eye of the beholder, and the bureaucracies of democratic governments are bound to depart from administrative efficiency for political reasons, sometimes worthy ones. But Congress frequently prescribes detailed organizational charts, management methods, and procurement requirements, infuriatingly complex procedures for even the most mundane decisions, and impossible-to-meet deadlines—all of which either interfere with the pursuit of statutory objectives or substitute for the lack of such objectives. Congress also establishes mechanisms that permit its committees, members, and even staffers to partake in executive decisions on a routine basis. Many of these practices go beyond what a legislature should bother over, and are another manifestation of Congress’s evolution from collective choice to individual finagling with executive choice. A better division of labor between legislating and executing would be good for both branches and for the rest of us.

**T**hese abstract meditations would quickly spring to life in practical politics if a Republican-led 114th Congress embarked on something like the following five-step plan for constitutional reconstruction:

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*First, retrieve the recently relinquished borrowing, taxing, and spending authorities.* This would best be done through legislation that presents the constitutional issues starkly, unencumbered by policy issues on which Congress and the president would differ. The measures would be of little immediate consequence but neither would they be symbolic; they would be surprising and a bit off-message, and therefore signals of constitutional seriousness.

The debt-ceiling suspension was politically clever and will be a tempting precedent for renewal when it expires in March 2015. Suspending the ceiling for a set period of time, rather than raising it to a set number of dollars, avoids explicitly approving scary and unpopular debt levels—while still obliging the Treasury to return to Congress for suspension renewals, just as it used to have to return for debt increases. But the borrowing power gives Congress little or no leverage over the executive in a time of growing debt that neither party is capable of moderating much in the near term, as Republicans have recently discovered and should not soon forget. And exercising that power as a time limit rather than a dollar limit jeopardizes congressional prerogatives for the future. Sooner or later, the power to specify borrowing limits will again be potent. That might be when the federal debt has returned to a constant and sustainable share of GDP and the executive is seeking an extraordinary debt issue (say, to bail out a bankrupt state). Or when long-term entitlement reform is on the table with multiple trade-offs to be negotiated. Or when an external debt crisis (caused by a precipitous rise in interest rates, or a major war, or the failure of entitlement reform) forces excruciating choices among massive new borrowing, defaulting on installed debt, and drastic spending reductions.

It would be most unfortunate for Congress if that day should arrive, which might be by surprise, when the Treasury had unlimited borrowing power with months or a year to go. Of course, Congress could take back the borrowing power by suspending the suspension, but that would require legislation with the president's approval. In any event, borrowed authorities tend to become easements over time. Both branches would adapt institutionally to the Treasury's managing the debt without a dollar constraint; Congress would grow unfamiliar with the mechanics of credit markets and the solemnity of approving increasingly gargantuan debt levels (a minimum practicable debt ceiling just to get through 2015 will be at least \$2 trillion higher than when Congress last went on record at \$16.4 trillion in 2011). Better to take back the borrowing power now, in the absence of exigent necessity and while the 2013–2015 suspension is still an exception, and seize the occasion to educate the public about the realities of our fiscal circumstances and the hard tasks ahead in debt consolidation. A truth-in-government ceiling of \$20 trillion will be

necessary to get through the next several years regardless of Republican accomplishments in spending and debt reduction, and probably enough to finance the government for the remainder of the Obama administration without further pointless theatrics.

A targeted retrieval of taxing and spending authorities would involve revoking the statutory authorizations of the FCC and PCAOB and similar agency taxes, and of the CFPB's entitlement to Federal Reserve profits, and replacing them with special appropriations for 2015 in the amounts already budgeted for the fiscal year (which will already be in its second quarter when the new Congress convenes). The new appropriations would violate established budget limits (evading the limits was one purpose of moving the authorities out of Congress in the first place); the violations should be countenanced as special exceptions, preferably with a minimum of accounting gimmickry in substitute for the unconstitutional gimmickry being repaired. Suitable appropriations for these programs—and taxes too, which could be part of a thorough overhaul of individual and corporate taxation—should be left for fiscal years 2016 and beyond. Federal agencies charge a variety of fees, such as Patent Office filing fees, that are true user fees related to the cost and value of services rendered to applicants and purchasers; some are sensible and others are not, but they do not raise constitutional issues and should not be part of this initiative.

**S***econd, reinstitute the spending power.* Congress's ability to control and direct federal discretionary spending (now \$1.3 trillion out of \$3.7 trillion, the rest being entitlements and interest on the debt) has been deeply compromised by the collapse of its capacity for collective choice. The first order of business is to reestablish Congress's structure, procedures, and "regular order" to undergird the coming battles over spending priorities.

The Congressional Budget and Impoundment Control Act of 1974 establishes procedures and timelines for adopting an annual budget and passing 12 appropriations bills (covering such spending categories as Defense, Interior and Environment, and Commerce, Justice, and Science) within the budget—all well in advance of the fiscal year to which they apply. The act has been a failure, and Congress has rarely followed it in full. Although its procedures are open to criticism and are the subject of a large reformist literature, they are not the main problem.

The act was passed just as the old congressional seniority system was coming unraveled—in part because most of the seniors were Southern Dixiecrats, reviled by northern liberals of both parties and in eclipse following the civil rights revolution of the 1960s. But powerful, seasoned committee chairmen had provided the structure and

hierarchy that are necessary for any legislature to operate effectively, and that are particularly important in our separated-powers system, where the legislature needs to contend with an inherently hierarchical executive branch over spending priorities and much else. The Budget Act was an effort to substitute abstract process for incarnate power. It failed because, in the absence of internal authority, spending became a “tragedy of the commons” where every legislator was free to graze and foolish not to, and no one was responsible for the results. The spending mayhem overwhelmed the act’s procedures and deadlines. Among the results: improvised continuing resolutions managed by party leaders rather than committee chairs; recurring brinksmanship over government shutdowns; a profusion of parochial earmarks added by individual members; and the emergence of large, routine budget deficits.

Resuscitating spending control does not require new legislation or “budget process reform.” It requires a new congressional structure of strong authorizing (policy) and appropriations (spending) committees with powerful chairmen. Chairmen would be selected by some combination of tenure and recognized leadership and political skills. Each chamber’s rules would give the chairmen awesome authorities—subject to automatic, preestablished sanctions such as losing their stripes for failure to meet budget and appropriations levels and deadlines. There are already stirrings in these directions. The Dixiecrat legacy no longer casts a pall over the notions of seniority and hierarchy, while the need to return to regular order is widely recognized (even as each party violates it tit-for-tat when it holds the majority). In recent years, committee chairs such as Paul Ryan in the House and Ron Wyden in the Senate have begun to assert themselves in ways that have impressed colleagues on both sides of the aisles. A time of fully divided government—when the House and Senate had real prospects of achieving concurrence on budgets and appropriations in response to the proposals of a late-term president—would be the ideal time for a new dispensation.

The immediate goal would be for the House and Senate to proceed in crisp, businesslike fashion to adopt a budget by April 15 and pass all 12 appropriations bills and supporting legislation for the president’s approval or veto by the end of July (for the fiscal year beginning October 1). That would give Congress real, constitutionally grounded leverage over spending levels. The president’s “Budget of the

United States Government,” released with much fanfare in February, is simply a recommendation to Congress for next year’s appropriations (its accounting of federal receipts and expenditures for past years is, however, constitutionally grounded and definitive). Although the construction of each year’s budget proposal is an important exercise in internal executive branch spending discipline, the budget document itself has become progressively more rhetorical and less analytical in modern times, and less attended to; the *New York Times* called President Obama’s 2015 budget a “populist wish list and election blueprint,” and even the White



**The larger, more profound goal of congressional reconstitution would go beyond budgeting to all aspects of lawmaking. It would be to establish strong merit-based hierarchies in both chambers.**

House acknowledged that it was not a serious budget. The Congressional Budget Office—the one unambiguous achievement of the 1974 Budget Act—has displaced the president’s Office of Management and Budget as the authoritative source of budget data, analysis, and projections. So the political and institutional as well as the constitutional framework is in place, waiting for Congress to make its move.

The intermediate goal would be to build capacity for extending budget authority over entitlement spending when the day inevitably arrives that these programs must be fundamentally reformed. Many policy gurus of both parties would favor

converting the entitlements to multiyear appropriations, but Congress is not ready for that yet. If the day of reckoning arrives as a crisis before Congress gets its act together, the result will be an executive-dominated emergency summit, held at a military base, that leaves Congress on the sidelines for years or decades to come.

The larger, more profound goal of congressional reconstitution would go beyond budgeting to all aspects of lawmaking. It would be to establish strong merit-based hierarchies in both chambers as the ways and means of organizing collective choice, discouraging go-it-alone member activism, and investing the legislative calling with political prestige. Today many ambitious men and women pursue election to Congress for reasons that have little to do with legislating. They see it as a stepping-stone to “higher office” (meaning executive office, elected or appointed) or to a quasi-private career in the government space, or as a way to assert their conservative or progressive worldviews, details to follow. But imagine if it were also possible for a member of Congress, through legislative mastery and esteem, to ascend to a position of authority for improving the electric power grid or air traffic control

system, or reforming the social safety net, or designing a better system for supporting basic scientific research, or reversing the growth of federal criminal law, or conceiving new intelligence methods or security doctrines, or one of a hundred other concrete matters of national importance that are currently the domain of administrative bureaucracies and frequently managed with great ineptitude. If persons with specific competencies such as these saw congressional careers as a route to high achievement, the pool of office seekers could be enriched and diversified, and the prospects for reestablishing Congress's constitutional position much improved.

**T**hird, *regulate the regulators*. The recent fluorescence of executive lawmaking has transformed regulatory policy debate. Traditionally, these debates were about the merits of agency policies and procedures under the Clean Air Act, the Communications Act, and other statutes, and about reform proposals to substitute economic incentives for regulatory command-and-control, to subject rules to a cost-benefit test, and to tighten rulemaking procedures and standards of judicial review. Now the debates are about the problems of excessive legislative delegation and executive policy autonomy and what might be done about them.

The boldest congressional initiative has been the "REINS Act," two versions of which passed the House in recent years. Under REINS, major regulations (those with an economic impact of \$100 million or more annually) would not take effect unless and until approved by a joint resolution of Congress and signed by the president; these rules would move directly to the full House and Senate for an up-or-down vote without amendment. In effect, major agency rules would become legislative proposals with fast-track privileges akin to those employed in trade-liberalization and military base-closing programs.

The House's REINS proposals, with no prospect of passing the Democratic Senate, had a symbolic, anti-Obama cast, and President Obama would certainly veto such a bill from the 114th Congress. The interesting question is whether Congress itself should embrace a REINS-like procedure for the future (a bill could carry an effective date of January 2017). The purpose of fast-track, no-amendment procedures is to dodge the authorizing committees, which might have parochial reasons for burying or amending a proposal from the executive branch. The procedure is consistent with a strong committee system—when, as in the case of the trade-liberalization and base-closing programs,

it is done as a matter of pre-commitment for purposes of achieving goals Congress has legislated in advance. Under REINS, in contrast, fast-track privileges would be accorded to perhaps a dozen pieces of costly, complex legislation each session, each one appearing at a time, on a subject, and in a form of the administration's choosing. The constitutional advantages would be substantial: Agencies would be obliged to look beyond their narrow missions and immediate constituency groups to the need to gain two legislative majorities, and Congress would be induced, over time, to make its own policy choices in regulatory legislation rather than leaving them to agency initiative and REINS review. But the costs, in terms of large mandatory additions to the legislative calendar and routine sidelining of the committee structure, would be substantial.

REINS presents the problem of legislative capacity starkly, but so does any proposal for insinuating representative, collective choice into the machinery of specialized, high-volume executive choice.

Given the immensity of the dilemma, it would be best to begin incrementally and concretely—not with sweeping procedural overhauls but rather targeted measures to displace specific agency rules with statutory law. It must be said that statutory regulation has been a mixed bag—including tailpipe emissions standards for cars and trucks (largely effective and beneficial), the CAFE fuel-efficiency standards (largely ineffective), the

minimum wage (politically potent but socially harmful), and the recent incandescent light-bulb ban and Positive Train Control mandate for reducing railroad collisions (both gratuitous and wasteful—indeed foolish). Let us pray for better performance. An effort to undelegate regulatory policy case-by-case would provide a good test of the relative policy merits of legislative versus executive choice, and a gauge of Congress's progress in relearning legislative skills.

The targets of immediate interest to a Republican-led Congress would be those that combined executive overreach, policy disagreement, and political salience. At the top of the list would be the EPA's severe contortions of the Clean Air Act to regulate carbon dioxide and other greenhouse gas emissions, and the many revisions of Obamacare statutory standards for insurance eligibility, mandatory provision and enrollment, terms of coverage, and exchange subsidies. But crafting statutory responses would mean either replacing the executive policies with the original statutory policies (which, in the case of Obamacare, most Republicans do not like and voted against in the first place) or going further (which

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**The targets of immediate interest to a Republican-led Congress would be those that combined executive overreach, policy disagreement, and political salience. At the top of the list would be the EPA.**

would quickly move beyond the constitutional issues). And President Obama would veto whatever was passed, even if passed with some Democratic support. Republicans may wish to enter these frays for policy and political reasons, but pressing the pure constitutional point might better be done through a concurrent resolution strategy suggested in Step Four below.

In all events, Congress should look for opportunities for ousting administrative regulation that have a chance of significant Democratic support and President Obama's signature. Republicans, led by Louisiana governor Bobby Jindal, have been saying that the FDA should permit birth-control pills to be sold over the counter rather than by prescription only. Rather than plead with the FDA, why not settle the matter themselves with a one-page bill and see what President Obama does with it? Here are two suggestions for statutory resolution of high-visibility regulatory snarls that would be easy to explain and understand, highly popular, and hugely beneficial:

*Legislate strong, simple capital requirements for American banks.* A central cause of the 2008 financial collapse was that banks, with the cooperation of their regulators, were maintaining grossly inadequate equity capital, so that a small decline in the value of their total assets (caused by the bursting of the housing bubble) left them bankrupt or insolvent. If they had been soundly capitalized, their shareholders would have absorbed the losses, their creditors would not have panicked, and there would have been no occasion for taxpayer bailouts. The need for higher equity capital is now widely acknowledged, but the big banks are opposed—they like thin equity because that is more profitable when times are good. The Federal Reserve and other regulatory agencies have responded timidly, with standards that are only marginally higher than current ones and that remain unnecessarily complex. Regulators like to fine-tune capital standards by “risk-weighting” different kinds of bank assets, and have a poor track record. Before 2008 they thought mortgage-backed securities were unusually safe; they were deluded (as were many but not all of the banks), which made the problem much worse.

Senators Sherrod Brown (D-Ohio) and David Vitter (R-La.) have introduced and held hearings on a bill that would require large banks to maintain equity capital of at least 15 percent of the value of their assets (three times what the regulators are considering) and smaller banks to maintain somewhat less, with no risk-weighting or other regulatory shenanigans. There is room for debate on several points, but the experience and academic research behind the bill is robust; a 15-percent standard would be abundantly reasonable, and the whole bill would be about 20 pages long. Over time, legislators would learn something more: that well-capitalized banks had made the “too big to fail” dilemma a

thing of the past and most of the provisions of the Dodd-Frank Act obsolete. But that would be for another Congress.

*Excuse the FDA from controlling innovation in personal health information.* New technologies in the form of smart-phone apps, software, and plug-ins and stand-alone kits and devices are opening up important possibilities for improved personal health and medical treatment. They make it possible for individuals to monitor their physical conditions on a frequent or continuous basis—going beyond the footsteps, calories, weight, and biomass familiar to fitness buffs to include cardiac and respiratory functions, glucose and many other blood levels, urine levels, skin conditions, sleep patterns, and even genetic profiles. The information may be stored, tracked, combined, transmitted to and from doctors and nurses, and used to adjust personal behavior, diagnose and treat illnesses, evaluate and modify therapeutic regimens, and manage chronic conditions.

The FDA believes that many and perhaps most of these things are subject to its review and approval before they may be marketed, because they may be used to diagnose or treat medical conditions. The agency promises to “exercise enforcement discretion” to let many of them off the hook, but there is room for doubt. Last year, it ordered 23andMe to cease marketing inexpensive personal DNA tests (done with a saliva sample) with information on the predisposition of various gene sequences to various conditions and diseases. The offending information is general knowledge, available for example on the Internet, but usefully organized, appropriately qualified, and accompanied by a reminder to consult one's doctor. And most of these software-embedded innovations simply monitor and organize one's own health data (including from FDA-approved diagnostic devices) in real time.

The FDA is supposed to regulate the safety and efficacy of drugs and medical devices, not the possession of information. If all of us acquire more and better health-related information about ourselves, some of us will make mistakes with that information. That is no reason to prevent the rest of us from becoming better informed—and good reason to encourage learning-by-doing by both consumers and developers. The FDA's industrial-age regulatory procedures are at odds with the continuous, incremental, experience-based updating that has become familiar in other areas of information technology innovation.

Senators Deb Fischer (R-Neb.) and Angus King (I-Maine) have introduced a five-page bill to eliminate FDA regulation of clinical and health software. It is an excellent start, with plenty of room for debate and legislative choice; another recent proposal exempts a broader range of apps and devices but only from pre-market clearance. Under any formulation, the FDA and other agencies would continue to police fraud (there have been some real frauds

among mobile medical apps) and set technical standards.

If bills such as the two described here were to move seriously toward the House and Senate floors, the bank and medical regulators and their business and media allies would mobilize against them with a fusillade of weak and self-serving arguments. So much the better. Passing the bills would be a momentous victory for bipartisan populism over the elite forces of faux expertise and crony capitalism. And their benefits would build congressional confidence for further irredentist excursions in legislative choice.

**F**ourth, *censure unconstitutional executive acts.* Congressional censure of presidents and subordinate officials has been talked of intermittently throughout American history; several Democratic legislators proposed that President Clinton be censured rather than impeached in 1998, and there are many ideas for censuring President Obama floating around these days. But executive censure motions have rarely been passed, and almost never by both chambers.

A Republican majority in both chambers would open the possibility of concurrent censure resolutions with the full prestige of a co-equal branch of the government. (Concurrent resolutions, unlike joint resolutions, are acts of Congress alone and are not presented to the president for signature.) That would be a grave step, but commensurate to the Obama administration's flagrant intrusions into Congress's lawmaking powers. Where the president or his subordinates have ignored or revised specific, important statutory requirements, not on constitutional grounds but for reasons of administrative convenience or political tactic, Congress should not be obliged to reenact the provisions already on the books or replace them with yet different provisions, which the president may or may not accept. Filing lawsuits that ask courts to referee the disputes is constitutionally supine and risks involving the judiciary in continuous supervision of the political branches. Of the available responses, the concurrent resolution is the most commensurate and reciprocal. It should be called a Constitutional Censure (or just Constitutional Resolution) to distinguish it from censure for personal misconduct, and should consist of a clear and precisely grounded statement of why the act in question violated the Constitution, without reference to motivations or political circumstances. A concurrent resolution would not correct the offending act directly but could alter the course of events: It would be an authoritative statement for the guidance of courts and edification of public opinion, and a preamble for Congress's further, fully legislative proceedings concerning the relevant statute and transgression.

There are reasons (including his own words) to fear that President Obama may become increasingly aggressive in

governing by declaration in his final years in office. And he may do so, as in the case of major revisions to immigration policy, precisely on grounds that Congress has failed to enact his legislative proposals. In such cases, Constitutional Censure would be the natural and minimum response.

**F**ifth, *acknowledge executive strengths.* As Congress unlimbers its constitutional powers and responds to executive trespasses, it should make a strategic retreat from its own trespasses on executive territory. Legislation frequently contains microscopic requirements for executive branch organization and management that are not only unnecessary but are positive nuisances to the effective execution of the law. Presidents often approve such laws with "signing statements" that they will ignore specified provisions they regard as unconstitutional intrusions, especially where military and foreign affairs are concerned. Nevertheless, the executive agencies have accumulated a profusion of debilitating mandates that often make sensible decisions impossible. In such areas as permitting and procurement, executive officials need more discretion, not less.

The 114th Congress should initiate a practice of inviting the agencies, through the president, to submit wish-lists of management mandates, superfluous programs, and counterproductive procedures that they would like repealed. It should give prompt and serious attention to the submissions, and consider establishing a mechanism, akin to the base-closing programs, for compiling and considering management reforms through a structure it has legislated in advance. The purpose of such a mechanism, of course, is to give Congress political cover to do what it knows needs to be done but that it cannot do on its own—it must rely on the executive branch's comparative advantage in balancing national against local and parochial interests.

Finally, it would be particularly bold, and fitting, for a Republican Congress to "repeal and replace" the impoundment provisions of the 1974 Budget Act for the signature of a Democratic president. Those provisions, which effectively prevent the president from impounding appropriated funds, were enacted over the veto of Watergate-weakened Richard Nixon a few weeks before he resigned the presidency. Presidential impoundment has a legitimate albeit contestable constitutional basis. The Constitution says the executive may not spend money "but in Consequence of Appropriations made by law," but it does not say that appropriated funds must be spent in full; all executives need some latitude in managing budgets, pursuing economies, and avoiding waste, so the important question is: how much?

Before 1974, presidents going back to Thomas Jefferson had deferred or rescinded appropriated spending; Congress always bridled, but often came around to the president's view. Many impoundments concerned military bases, ships,

and weapons systems presidents regarded as unnecessary or overtaken by events, but with the growth of domestic spending in the 20th century presidents also impounded domestic spending on grounds of economy, budget discipline, and avoiding inflation. Nixon's domestic impoundments relied on precedents from FDR and LBJ, but his were more aggressive and politically charged (he impounded \$6 billion of an \$11 billion appropriation for sewage treatment plants that had passed over his veto), and he had many fewer friends in Congress, and eventually none.

The 1974 act established procedures for presidential rescissions of appropriated funds with congressional approval, which has usually been denied. Although the act's impoundment and congressional budgeting provisions are usually seen as separate initiatives, they were really a matched set: Just as Congress was dismantling its own authority to discipline spending, it dismantled the executive's as well. Congress came to see its mistake, and gave the president even greater power to control spending in the Line Item Veto Act of 1996—but, regrettably, the Supreme Court held it unconstitutional in 1998. Since then Congress has been mulling over a variety of substitutes within the contours of the Court's jurisprudence. It is time to pass an ample version—say, to recognize the president's impoundment

authority as traditionally practiced and tolerated, to permit broader rescissions when approved by Congress under very-fast-track, up-or-down procedures, and even to gear impoundments to deficit and debt-reduction targets. Again, Congress would be relying on the executive's advantage in achieving certain joint, overarching goals. And *nota bene*: Acknowledging and encouraging the president's authority to control spending levels within appropriated amounts, while at the same time reprimanding and resisting the incumbent president's unauthorized rewriting of statutory law, would teach a splendid object lesson in the true living Constitution.

**I**t remains to be said only that the program suggested here, or anything like it, would require more than a two-and-a-half-day workweek. Western members would rebel at a five-day week; perhaps the collective choice would be four days. Eventually, the best approach might be for Congress to stay in continuous session for four months at a time—five to six days a week at the office like top executive officials—and then take off to the real world for political refreshment for a month or two, even though this would mean a few genuine recess appointments. Washington would await the return of the legislators with hope and trepidation. ♦

## Elections Have Consequences

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

For better or worse, elections have consequences. That's good news if engaged voters exercise their civic duty and thoughtfully send qualified men and women to Washington to fix our broken government. It's bad news if people don't learn the issues, don't know the candidates, or don't show up at the polls—potentially deepening our leadership deficit and allowing damaging policies to stand. Here is what's at stake in this year's national elections.

*A political system that works.* Gridlock and gamesmanship will only come to a stop if we elect leaders who choose constructive leadership. That doesn't mean tossing aside principle, but it does mean taking a pragmatic approach. We should pay close attention to what candidates plan to do if sent to Washington—is it their goal to shut the place down or to get something done? Their commitment, or

lack thereof, to the hard work of governing and legislating matters, and it should matter to voters as well.

*A government that knows its size and role.* We've seen government pushed well beyond its intended limits through massive, misguided legislation like the Dodd-Frank financial reform law and Obamacare. Rampant overregulation has empowered unelected bureaucrats to reach farther into the lives and affairs of individuals and businesses. And executive power grabs blur the lines dividing our branches of government. Bureaucracy will continue to balloon if Americans elect politicians who believe that the government knows best. Electing leaders committed to creating a limited, modern, and transparent government will give businesses confidence to hire, invest, and innovate.

*An economy that can grow.* We need to elect policymakers who understand that a growing economy is essential to job creation, higher incomes, and greater opportunity for Americans. Leading up to

the elections, a lot of emphasis has been put on policies to slice up the economic pie into smaller and smaller pieces. What we need to do is grow the economic pie! The right policies on energy, trade, taxes, and education could contribute to a strong and growing economy. Economic growth won't solve all of our problems, but we won't be able to solve any of them without it.

It's easy to be cynical in this political environment. Some think that our problems are too big and that our politics are too small. Some wonder if voting is worth the bother or if it will make a difference.

But every vote represents a voice, and every candidate represents a choice. Make yours heard—and choose wisely. Elections have consequences. Visit [GOTV.VoteForJobs.com](http://GOTV.VoteForJobs.com) to find the tools you need to vote, whether early, absentee, or in person on Election Day.



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# Our Endangered Species

*What, if anything, can be done to save the family?* BY JONATHAN V. LAST

**Y**ou can tell a lot about a society by its taboos. Several weeks ago, America reeled when Adrian Peterson—the great NFL running back of his generation—was indicted on charges of “reckless or negligent injury to a child.” Peterson is alleged to have disciplined his son by “whooping” him—these are Peterson’s words, not mine—with a “switch.” The child, a 4-year-old boy, suffered cuts on his

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**Broken Bonds**  
*What Family Fragmentation Means for America’s Future*  
by Mitch Pearlstein  
Rowman & Littlefield, 184 pp., \$35

backside and thighs. For this act, which 50 years ago was commonplace, Peterson was arrested, suspended by his employer (the Minnesota Vikings), and publicly castigated by all and sundry.

Unremarked upon was the fact that the 29-year-old Peterson does not live with this boy and reportedly has seven

children—that we currently know about—with five different women. Which illustrates nicely the changing mores in America: Corporal punishment is a scandal, or even a crime, but there is no judgment about men who father children out of wedlock and then abandon the vulnerable mothers and children. Yet only one of these pathologies poses an existential threat to our society. This problem, which scientists refer to as “family fragmentation,” is the subject of Mitch Pearlstein’s new book.

Most books about family breakdown are leaden, statistics-laden exercises, but Pearlstein has taken a novel approach:

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He interviewed 40 interesting, well-informed experts and condensed those conversations into a short, highly readable seminar. The interviewees range from Isabel Sawhill to Kay Hymowitz to Heather Mac Donald to Chester Finn, with the overall effect being that the reader feels as though he's sitting in a coffee shop eavesdropping on a particularly stimulating and elevated discussion.

Pearlstein begins by asking how serious the problem of family fragmentation is for America. It's a loaded question, of course. As Pearlstein says, there is "no aspect of life in which children who grow up in broken or never-formed two-parent families do as well, on average, as boys and girls who grow up with both parents." (He knows this because his last book, *From Family Collapse to America's Decline*, was one of those statistics-laden contraptions.) And he is correct: From incarceration rates to education to income to health, children raised by both mother and father are better off than children raised in any other family configuration. If you care about outcomes, and not some moral or ideological agenda, then the traditional nuclear family is the gold standard.

The trick is that the social capital created by traditional families is what undergirds the rest of our society. Sociologists and economists now understand that when this social capital is diminished, it causes all sorts of other problems. The crises of the welfare state, wage stagnation, income inequality, unemployment, the prison-industrial complex—all of these, and much more, can be traced to the breakdown of the family.

"Family breakdown is the shadow behind all sorts of other problems that people are much more easily conversant about," explains the Manhattan Institute's Kay Hymowitz. Ron Haskins of the Brookings Institution tells Pearlstein that "on a scale of one to ten, [it's] probably a fifteen; it's the biggest problem we have." Because, as Heather Mac Donald, also of the Manhattan Institute, puts it, "The family unit is the absolute basis of society. It is responsible for

civilizing human beings and creating adults who are capable of engaging in the economy. With families breaking down at the rates they are, our chance of being able to take care of other large economic problems recedes."

David Blankenhorn, founder of the Institute for American Values, explains sorrowfully:

I look at the more than 70 percent of children in the African American community born outside marriage as well as the more than 40 percent for America as a whole and all the damage and suffering of children they imply, and I say if I could change just two numbers in America it would be those. It would not be unemployment rates, or new business starts, or people with health care coverage, or people with adequate incomes. As important as all those things are, if I could only change two numbers, it would be 70 percent and 40 percent.

Given all this, you might wonder how there could be any disagreement on the question of whether or not family fragmentation is problematic. Yet while most of the liberal academy has reluctantly acknowledged the objective superiority of traditional families, there are some holdouts. One of them, the progressive historian Stephanie Coontz, gives Pearlstein a window into how liberal thinking has been tortured by the breakdown of the family:

People are nostalgic for the 1950s and '60s. There are some things I would be nostalgic for, too. That was a period when if you were a guy and a high school dropout, you could earn a wage to support a family. Wages for the bottom 50 percent were rising faster than for the top 20 percent and income inequality was decreasing. There were two things, one good and one bad. The good part was that it was really possible for a man to support a family. The bad part was that it was impossible for a woman to support herself without getting herself a guy. That meant that she often put up with relationships that you and I would consider absolutely unacceptable.

What Coontz reveals is that, whatever they may say, for some liberals

income inequality, economic mobility, and the welfare of children are second-order goods, prized below such things as "relationship quality" and sexual autonomy. Some liberals can't bring themselves to acknowledge the importance of the former if it means impugning the consequences of the latter. But Pearlstein performs a great service in presenting Coontz's view without mocking or arguing against it. He realizes that if we're going to change the culture, people like Stephanie Coontz will have to be wooed, not defeated.

And this is not an impossible task. *Broken Bonds* has a lot for liberals to like. Pearlstein acknowledges the particular problems of race with grace and humility. A free marketer, he also understands that, at best, the free market has very little to offer when it comes to cultural correctives. And he's cognizant of the social breakdown that concerns communitarians across the spectrum. As the writer Barbara Dafoe Whitehead tells him, part of our problem is that the days of daily contact between the social classes are ending. Instead of everyone shopping at the same supermarket, one group is "going to Whole Foods and the other group going to a food pantry. Or going to the YMCA instead of some people now going to private health clubs. . . . All these local institutions that brought people together—lower-middle class, middle class, and upper-middle class—have sorted themselves into separate categories."

The question, then, is what to do? And here, *Broken Bonds* humbly acknowledges that there are no magic bullets. Education reform is an obvious pathway, because a big part of family fragmentation is lower-class kids being left behind by bad schools, which give them few job prospects and leave them unable to support families. Eric Hanusheck, an economist at Stanford, cites research showing the vastly different outcomes that students have with good teachers. He claims, "If we could replace the bottom 5 to 8 percent of teachers with just average teachers, we could jump dramatically in terms of international

rankings. But more than that, it would have enormous impacts on the U.S. economy in the future.”

However, this and other reforms would require either the cooperation, or defenestration, of teachers’ unions.

Pearlstein makes the even more radical suggestion that divorce laws might be reformed, too, in order to make divorce—especially for couples with children—more difficult. Yet his most intriguing proposal is the idea that we ought to have policies designed to help stabilize the prospects of men. In one interview, Columbia economist Ron Mincy illustrates just how dire men’s wage stagnation has been over the last two generations: “The only category of American men who have earned more than their fathers since 1974,” he says, “are those who have gone to graduate school.”

But it’s even worse than that. For all the War on Women rhetoric in the air, the reality is that women are doing much, much better than men. As Pearlstein details:

For every 100 women who earn a bachelor’s degree, 75 men do so. For every 100 American women who earn a master’s degree, 66 American men do so. For every 100 females, ages 20 to 24, who commit suicide, 624 males do so. For every 100 women, ages 18 to 21, in correctional facilities, 1,430 men are so confined.

Boys and men have fallen far, far behind in America. Yet when it comes to accomplishment and stability, success isn’t a zero-sum game, because if we don’t get men back to par, many women won’t find decent husbands, many more children won’t have present fathers—and everyone else will pay for the economic and social fallout.

Once again, what is to be done? Here is where *Broken Bonds* is somewhat depressing. As Kay Hymowitz concludes, “This is something I’ve been thinking about for over a decade now and I don’t have an answer. The only thing I know how to do is push for a consensus that it’s, in fact, a problem.” Pearlstein’s excellent book is another brick laid on that important road. ♦

BCA

# Laugh, Clown, Laugh

*The very long life of cinema’s first superstar.*

BY ELIZABETH POWERS

**C**harlie Chaplin was born in London on April 15, 1889, although no birth certificate has ever been located.

We are certain of the date because his proud mother placed an announcement in a music hall newspaper.

The poverty and lack of social convention that characterized Chaplin’s childhood seem contained in this bureaucratic absence. Hannah, his mother, was then married to a man of the stage, Charles Chaplin, who was not convinced of his fatherhood but who nevertheless gave the boy his surname. For the most part, he was absent during Charlie’s childhood; Hannah, Charlie, and older brother Sydney (probably the offspring of a liaison with a bookmaker) were on their own, moving from lodging to lodging. As a child, Charlie occasionally earned a few pennies dancing outside a pub. When he was 7, his mother was hospitalized—she was exhibiting signs of syphilitic mental deterioration—and he and Sydney spent three weeks in a workhouse before being consigned to a school for destitute orphans.

We might expect that Peter Ackroyd, author of the walloping 848-page *London: A Biography*, would bring these early years to life. The opening sentences alert readers to settle in and have a good time:

Welcome to the world of South London in the last decade of the 19th century. It was frowsy; it was shabby; the shops were small and generally dirty. It had none of the power or the energy of the more important part of the city on the other side of the Thames. It moved at a slower pace. . . . Glue factories

*Elizabeth Powers is the editor of Freedom of Speech: The History of an Idea.*

## Charlie Chaplin

*A Brief Life*

by Peter Ackroyd

Nan A. Talese, 304 pp., \$25.95

stood adjacent to timber warehouses and slaughterhouses. The predominant smells were those of vinegar, and of dog dung and of smoke, and of beer, compounded of course by the stink of poverty.

There is plenty of color here, even without pictures. These surroundings contributed to the traits of invulnerability and detachment that would characterize the “little tramp,” at one time the world’s most iconic motion picture persona. It is not surprising that young Charlie hated poverty, but what distinguished him and allowed him to escape the vaudeville stage and become the most highly paid actor in the world by the time he was 27 was what Ackroyd calls his “indomitable energy and determination.” These, too, would seem to characterize Chaplin’s famous creation, standing athwart the blows of the world by ignoring their claims.

The Tramp was not born overnight, however, and Ackroyd describes the monomaniacal discipline and attention to detail that Chaplin brought to the task, in the process showing how spontaneity and chaos (marks of Chaplin’s earliest films, from 1914-15) were created out of relentless routine. The years of stage apprenticeship taught him timing, the importance of the characteristic gesture, and, most important, pantomime. He studied the clowns and comedians appearing on the same bills. His artistic inheritance included such characters as waiters, tramps, and men down on their luck, some of

whom dressed oddly, walked comically, or made use of umbrellas, canes, and other props. The audiences were raucous and often inebriated, and it was necessary to impress them with that ineffable trait, personality, as well as with expertly directed custard pies. He perfected the “funny run” and halting in the middle of a run. The boy who began his stage career at 10 in a rough-and-tumble clog dancing troupe went on to become graceful, precise, balletic. Charlie quickly stood out in the music hall environment and, by 1914, was in Hollywood under contract with Max Sennett’s Keystone Cops Company.

Chaplin never appeared in any of the famous Sennett chase scenes. Apparently, Sennett recognized his individuality, and, as Ackroyd writes, Chaplin was training himself to be a solo performer in a collective cast. In his second film, a one-reeler called *Kid Auto Races at Venice* (1914), he portrays an interloper who hogs the race car scene simply by staring the camera down, as if daring it to ignore him in favor of the action behind him. It was the first appearance of his famous cigarette flick kick. In the next movie, *Mabel’s Strange Predicament* (1914), we see the bowler hat, the cane, the short, tight jacket, the baggy pants, the frayed tie, the huge shoes.

Enter “Charlie”: In his remaining 35 films with Sennett, he began, bit by bit, to create “the ‘little fellow’ as a living dimension of himself.” Along the way, the films portray much casual everyday brutality, as well as pathos and sentimentality: Knock a man down, then give him a kiss on the forehead. In less than four months, box office receipts showed that Chaplin was an established name, along with Mabel Normand and Fatty Arbuckle. He soon began directing Sennett films, creating more coherent narratives. After leaving Sennett, he formed his own stock company and, in 1919, joined megastars D.W. Griffith, Douglas Fairbanks, and Mary Pickford in creating United Artists as a way of controlling their “creative product.”

Ackroyd writes that Chaplin, like Shakespeare, “had the inestimable advantage of being an instinctive artist in the preliminary years of a new

art.” Judging by Ackroyd’s own telling, “instinctive” seems not quite the right word to describe either Chaplin’s or Shakespeare’s art; but he is correct about the timing. Unfortunately for Chaplin, his preeminence on the stage of cinematic history was a short one. He only made four great, full-length movies featuring the Tramp: *The Gold Rush* (1925), *The Circus* (1928), *City Lights* (1931), and *Modern Times* (1936). By the time he was directing the final two, silent films were an anachronism. Chaplin pushed on—a speaking Tramp was unfathomable—

Charlie was 14. Chaplin also had no loyalty to the country that made him famous and rich. Even his movie mocking Nazism, *The Great Dictator* (1940), was marred by its six-minute ending, in which Chaplin stared at the camera and delivered an antiwar message. His wartime activities on behalf of the Soviet Union did not help his image, while his 1946 film *Monsieur Verdoux* criticized capitalism and wars for profit.

As in his movies, the relentless focus of his life was himself. One has the impression that Chaplin was



Charlie Chaplin, Oona O’Neill in *Hollywood* (1944)

and was rewarded with success. But the Tramp was no more.

By the 1940s, America’s romance with Charlie Chaplin also began to fade. The biography now gives us more “life,” and it is not pleasant. By the time he was 54 and married the 18-year-old Oona O’Neill (while in the midst of a paternity suit filed by the actress Joan Barry), a string of sexual exploits and two disastrous marriages lay behind him. Chaplin appears to have had no common, everyday politeness or any personal loyalties—except, perhaps, toward his brother Sydney. Just as the two boys had stuck together in childhood, caring for their mother, so too they remained a partnership in fame and wealth, Sydney having become Charlie’s first “financial adviser” when

not very humanly complex: His self-absorption and his brilliant career were channeled into the perfection of a single character, from the outside in, by an accumulation of numerous mannerisms and props. Portrayals of driven individuals are the stuff of Ackroyd’s many biographies, which range from his acclaimed biography of Thomas More to the unwieldy one of Charles Dickens to his praised life of Shakespeare. *Charlie Chaplin* is relatively modest in size, as befits its appearance in Ackroyd’s Brief Lives series, which includes such figures as Isaac Newton, Edgar Allan Poe, Wilkie Collins, and J.M.W. Turner. Charlie Chaplin, who spoke of playing Jesus or Napoleon on screen, would be pleased at his inclusion in this company. ♦

# The Inner Light

*What Shakespeare saw in Montaigne's reflections.*

BY DANNY HEITMAN

Although he's revered as a great classic writer, Michel Eyquem de Montaigne (1533-1592) is an author we read because we want to, not because we have to. He's intimate, erudite, chatty, and expansive—qualities well suited to the peculiar genre he essentially created. While puttering around his tower library in 16th-century France, Montaigne crafted conversational observations into familiar prose, inventing the personal essay as a new literary form. Others had composed essays before Montaigne, but they wrote as kings, soldiers, officials, or philosophers. Montaigne wrote simply as himself—a bemused and befuddled French aristocrat trying to make sense of it all.

"Authors communicate themselves unto the world," he told readers, "by some strange and special mark; I the first by my general disposition, as *Michel de Montaigne*, not as a grammarian, or poet or lawyer."

On that score, Montaigne was the world's first reality star, someone who shrewdly saw the modest intrigues of his domestic life as a marketable commodity. The public readily agreed, making his *Essays*, published between 1580 and 1588, a period bestseller. Since their appearance more than four centuries ago, Montaigne's essays have never been out of print. Yet unlike Kim Kardashian or Donald Trump, Montaigne regarded the inward glance as an adventure in self-effacement, not self-infatuation. He was a charming and perceptive critic of his own foibles, especially alert to his weakness for inconsistency:

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**Shakespeare's Montaigne**  
*The Florio Translation of the Essays, A Selection*  
edited by Stephen Greenblatt  
and Peter G. Platt  
New York Review Books, 480 pp., \$17.95



*Michel de Montaigne*

If I speak diversely of myself, it is because I look diversely on myself. . . . Shamefaced, bashful, insolent, chaste, luxurious, peevish, prattling, silent, fond, doting, laborious, nice, delicate, ingenious, slow, dull, forward, humorous, debonaire, wise, ignorant, false in words, true-speaking, both liberal, covetous, and prodigal. All these I perceive by some measure or other to be in mine, according as I turn myself.

In accepting the sometimes conflicting beliefs and feelings that could exist within himself, Montaigne suggests that people are bound to disagree with themselves, and with others. A Roman Catholic, he celebrated tolerance while his country was being torn apart by bloody conflicts between Protestants and members of his own faith. It was a daring stand in an era so dominated by sectarian strife and political oppression. His essays don't fully suggest the danger of his times or the risks he took as a mediator between religious zealots. Even Montaigne's celebrated candor had its limits. But what abides in his

writing is how much of himself he manages to get on paper. Montaigne appears to transcribe the workings of his mind in real time, so the conventions of formal argument give way to spontaneity and digression. The titles of his essays often offer only the vaguest of clues about where his brain is headed: "Of Experience," for example, begins as a reflection on the limits of reason but eventually includes topics as varied as eggs, chimneys, and Portuguese tastes in wine. Along the way, Montaigne sizes up his country's government:

For we have in *France* more laws than all the world besides—yea, more than were needful to govern all the worlds imagined by *Epicurus*. . . . And we have given our judges so large a scope to moot, to opionate, to suppose, and decide that there was never so powerful and licentious a liberty.

That's the other thing about Montaigne: Although he wrote his essays while Elizabeth I still sat on the throne of England, you sometimes feel as if he's scanning this morning's headlines. In our age of blogs, Tweets, and Instagrams, using the self as source material for a running commentary might not seem very special. But as Virginia Woolf (no slouch as an essayist herself) observed, writing as yourself isn't the biggest challenge faced by an author of personal essays. There is, first and foremost, "the supreme difficulty of being oneself." Authenticity is something many writers claim when they use the perpendicular pronoun, of course. "But this talking of oneself," said Woolf of the master, "following one's own vagaries, giving the whole map, weight, color, and circumference of the soul in its confusion, its variety, its imperfection—this art belonged to one man only: to Montaigne."

If anything, Montaigne succeeded too well. He made essays look so easy that everyone assumes he can write one. Teachers might think twice about asking a child to write a novel, short story, or poem, but kids get assigned essays at least occasionally, even if it's an obligatory composition about What I Did This Summer. That's made us think of the essay as an elementary exercise, something a 6-year-old might handle,

and not as a genre, in other words, in which a person of letters will easily gain stature as a genius. E. B. White correctly concluded that an author intent on a Nobel Prize had best pen a play, a poem, or novel; few folks are going to readily consider an essayist a great talent.

Here, however, Stephen Greenblatt and Peter G. Platt argue that Montaigne had a clear influence on William Shakespeare, a connection that affirms Montaigne's intellect and standing within the Western canon. Greenblatt begins with a short critical essay on Montaigne references in Shakespeare's plays, and Platt follows with a chapter on John Florio, who produced the first complete English translation of Montaigne's essays, the version that Shakespeare most likely read. Greenblatt and Platt keep their scholarship short, quickly ceding the stage to selections from Florio's work. Platt is chairman of English at Barnard; Greenblatt, a Harvard professor, is best known for his *Will in the World* (2005), a popular study of Shakespeare, and *The Swerve* (2012), a book about how the rediscovery in 1417 of a poem by Lucretius changed the course of history. In *Shakespeare's Montaigne*, as in his previous book, Greenblatt considers the odd currents that allow literature to pollinate other works, often with surprising results.

To his credit, Greenblatt doesn't overstate his case. Many of the details of Shakespeare's life are unknown, and how closely he might have read Florio's Montaigne is unclear. But in a couple of plays, Shakespeare's debt to Montaigne seems obvious. In "Of the Cannibals," an essay about people recently discovered in the New World, Montaigne writes admiringly of natives who "hath no kind of traffic, no knowledge of letters, no intelligence of numbers, no name of magistrate, nor of politic superiority." Very similar language appears in *The Tempest*, when Gonzalo considers the kind of society he wants to establish on the island where he and others have been shipwrecked. There's another apparent instance of borrowing in *King Lear*, which includes a passage that seems cribbed from Montaigne's observations about the ideal relationship between parents and children.

Beyond that, the question of Montaigne's influence on Shakespeare becomes more speculative. Greenblatt shrugs at that ambiguity, concluding that whatever the possibilities, the mere *existence* of these two men was a miracle in itself: "Two of the greatest writers of the Renaissance—two of the greatest writers the world has ever known—were at work almost at the same time, reflecting on the human condition and inventing the stylistic means to register their subtlest perceptions in language."

True enough, although Montaigne and Shakespeare worked in different languages and would have depended on Florio's mediating influence to bridge the gap. Platt points out that Florio used a free hand as translator, rendering a work that seems as much his masterpiece as Montaigne's. Florio sometimes went overboard in "Englishing" Montaigne, as when Montaigne argued that we can't understand animals any more than "les Basques et les Troglodytes." Florio changed the reference to "no more do we the Cornish, the Welsh, or Irish." Florio also sanitized some of Montaigne's bawdier passages—and occasionally he was simply wrong, as when he translated the French *poisson*, or fish, as "poison."

Greenblatt and Platt hang over Florio's shoulder as he works, offering editorial asides, through copious footnotes, when his translation seems arbitrary or erroneous. For example, they note Florio's refusal to translate Montaigne's quotation of a line from Horace, in which we learn that "the phallus of the young man is firmer than a young tree." The editors maintain that Florio's Montaigne, despite its frequent inaccuracies and editorial caprices, is still interesting as a study in composition, since Florio's channeling of Montaigne into the idioms of Elizabethan England created a book that inspired not only Shakespeare but also Ben Jonson, John Marston, John Webster, Robert Burton, and Francis Bacon.

In "An Apology for Raymond Sebond," Florio renders Montaigne quoting Heraclitus on the stages of life: "The flower of age dyeth, fadeth and fleeteth, when age comes upon us, and youth endeth in the flower

of a full-grown man's age; childhood in youth; and the first age dyeth in infancy." In M. A. Screech's 1991 translation, the same passage becomes "the flower of our life withers and dies into old age; but youth ended in that adult flower, as childhood in youth and as that embryonic stage died into childhood." Screech's meaning is clearer and more accurate, while Florio's is more rhythmic and poetic. But readers who like Florio's flourishes will also have to tolerate some period obscurities in the bargain. Try this opening line, from Montaigne's essay "Of Coaches":

It is easy to verify that excellent authors, writing of causes, do not only make use of those which they imagine true but eftsoons of such as themselves believe not, always provided they have some invention and beauty.

Huh? A helpful footnote explains that "eftsoons" means "moreover," but I still regularly retreated to the Screech edition to get a better handle on the essay.

Screech, following a modern convention of Montaigne scholarship, also clearly marks where Montaigne added material as he reworked his essays over the years. That feature is absent from Florio's version, and while reading his translation of Montaigne, I found myself missing the vivid sense of evolution in the essays that comes from contemporary annotation. While readers might enjoy Florio, they'll want to keep around Screech—or Donald Frame's wonderful 1957 translation of the *Essays*—as a backup.

Montaigne would periodically throw in new insights as he returned to his essays, even if they contradicted earlier statements. In this way, his essays often resemble Twitter feeds—endlessly alive, moving, and mutable. And because Montaigne's style so keenly anticipated today's literary universe, revisiting these essays by way of Florio is a bit of a shock. Did an author this hip really coincide with the Elizabethan age? Perhaps there was a writer known as "Shakespeare's Montaigne." But as any random hour with the *Essays* reminds us, Michel de Montaigne belongs to us all. ♦

# Lafayette Squared

*Portrait of the hero in two revolutions.*

BY HENRIK BERING

Whenever a French president visits Washington and White House speechwriters need to come up with something nice to say about France, Lafayette is cited as the man who came to America's aid in its war of independence. Whether this produces the intended emotional echo in the visitor's mind is a different matter: While in the United States his statues are liberally scattered up and down the East Coast, in his home country Lafayette is almost forgotten. The *Critical Dictionary of the French Revolution* (1988) notes tersely that "the man has drawn few eulogies," and only Americans visit his grave at Paris's Picpus Cemetery. In this absorbing biography, Laura Auricchio sets out to explain why.

In 1776, the American Revolution was the hot topic in the salons of Paris: When Arthur Lee and Benjamin Franklin arrived in the French capital "like republicans from the time of Cato and Fabius," the comte de Ségur reflected on the inherent paradox in a situation where "the monarchs were inclined to embrace the cause of a people in revolt against their King" and "independence was spoken of in the camps, philosophy at the balls, morality in the boudoirs." Louis XVI himself was aware of the irony, but at Versailles, the hatred of Britain after France's defeat in the Seven Years' War was such that courtiers wore maps of England on their backsides.

Among those inspired by the American cause was the young Marquis de Lafayette. He was born in 1757 at the Château de Chavaniac in rural Auvergne, and though his family was only minor military nobility, a large,

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**The Marquis**  
*Lafayette Reconsidered*  
by Laura Auricchio  
Knopf, 432 pp., \$30

unforeseen inheritance and an advantageous marriage had landed him at Versailles. Among the court vipers and sycophants, where a breach of etiquette could banish you forever, he was hopelessly out of his depth. The comte de La Marck, one of Marie Antoinette's favorites, stated that Lafayette "danced without grace [and] sat badly on his horse" and that his performance in the quadrille was such that "the queen could not stop herself from laughing." For Lafayette, an idealistic young man raised on the exploits of his ancestors—his father had been killed by a cannonball in the Battle of Minden in 1759—this suffocating atmosphere of cynicism and petty intrigue was not his idea of honor and lasting fame.

For French officers, America provided the opportunity for payback for the loss of France's Canadian colonies in the North American theater of the Seven Years' War. But while many of his colleagues were soldiers of fortune, Lafayette, well schooled in the ideas of the Enlightenment and the writers of republican Rome, was a true believer. Out of his own pocket he equipped a ship for the cause. Asking no money for his service, but demanding a high rank, he became a major general at the age of 19. Though George Washington was less than enthusiastic about the foreign troops that necessity had forced upon him, Lafayette's dedication, charm, and sincerity won him over. Thus, writes Auricchio, in America

Lafayette was surrounded by people who saw his sincerity as a virtue, not a flaw. . . . The same nation that rejected Old World traditions of hereditary privilege rejoiced to find a highborn nobleman on its side, as if his interest in the American cause proved its universal appeal.

For such a young commander, mistakes were inevitable; but Auricchio details how Washington carefully prepared him, gradually adding to his responsibilities. Having functioned as a crucial link in smoothing relations between American and French forces, Lafayette played a key role at Yorktown, where his men overran one of the last British positions. On his triumphant return to Paris, he dedicated his Rue de Bourbon townhouse to the American Revolution, with a copy of the Declaration of Independence in golden letters occupying the place of honor. As Auricchio notes, in these tasteful neoclassical surroundings, even Abigail Adams, with her New England disapproval of excess, could not but enjoy herself.

Against this background, it would be natural to assume that Lafayette would be ideally suited to play a leading role in the French Revolution. But though both the American and French revolutions based themselves on the Enlightenment concept of universal natural rights, the French version proved a far more radical and violent affair—and thus a toxic environment for someone like Lafayette, who had a natural abhorrence of mobs and demagogues. "Rarely has a man held to moderate principles with such tenacity," thereby incurring the wrath of both the right and the left, Auricchio writes.

Though at heart a republican, Lafayette argued from the very start that because of France's history and the backwardness of its citizens, the American model would not work in his country. In a letter to Thomas Jefferson, he wrote that the American Founders "enjoyed the advantage to work a new ground, uninfluenced by all the circumstances, which in Europe necessitates calculations very different." He and other moderates favored a consti-

tutional monarchy somewhat along the lines of the British one.

Being named commander of the Paris National Guard after the storming of the Bastille made him, briefly, the most powerful man in the country; but as protector of the people, he was severely limited in the exercise of that power. When bread riots broke out in October 1789 and an angry crowd of women marched on Versailles, Lafayette was forced along by his own troops, yet managed to defuse the situation and avoid a bloodbath. The royal family, having obtained Lafayette's guarantee of their safety, was brought back to Paris and installed in the Tuileries Palace under Lafayette's authority. "That night he proved he deserved the reputation as Washington's protégé," writes Auricchio.

However, Lafayette's notion of a constitutional monarchy required a willingness on the part of the weak and indecisive Louis XVI to cede power, and that didn't happen. As a result, Lafayette's base rapidly shrank: Royalists saw him as a Cromwell, radicals like the venomous propagandist Marat denounced him as an enemy of the people. Other ambitious centrists chimed in, among them Mirabeau and the duke of Orléans—the king's populist cousin known as Philippe Égalité, whose hirelings produced a steady stream of pornographic pamphlets and prints with Lafayette, in the starring role, cavorting with Marie Antoinette.

Lafayette's position was further undermined when, in June 1791, the king tried to escape with his family from Paris to the royalist town of Montmédy. Along the way, while eating pigs' feet at an inn, Louis was recognized by a postmaster from his likeness on the currency, and the family was brought back to Paris. As the man in charge of the royals, Lafayette was held responsible. He was also blamed for a subsequent incident in which panicky troops fired into a crowd on the Champs de Mars: "A patriots' St. Bartholomew's Day," in the heated rhetoric of Georges Danton—a view, says Auricchio, perpetuated by Albert Mathiez, the hardcore socialist historian and Robespierre admirer whose *Annales de la révolution française* (1910)

was to shape much of the modern French view of the period.

The following year, while training troops for France's newly declared war on Austria, Lafayette urged his soldiers to ignore the divisions tearing France apart and concentrate on the task at hand. When a mob invaded the Tuileries, Lafayette hurried back to Paris, where he called for the instigators to be punished and the king to be protected. He denounced the Jacobins as a "sect" which had to be destroyed. But when the National Guard and provincial volunteers stormed the Tuileries, leaving 900 dead and the royal family transferred to the Temple Prison, the game was over: Robespierre and company were about to take charge. Stripped of his command and ordered back to Paris to appear before the Provisional Executive Council, Lafayette fled the country, only to be thrown in jail by the Austrians. Had he not fled, he would not have survived.

After an international campaign, Lafayette was released and allowed by Napoleon to settle on his estate, on

the condition that he stay out of public life. With his usual enthusiasm, Lafayette transformed La Grange into a French version of Mount Vernon, introducing agricultural innovations and importing a range of domestic and wild animals from America, including a woodpecker—all testament to his love affair with America. In the Bourbon restoration, he won a seat in the Chamber of Deputies, but he never regained his former prominence.

While admiring Lafayette's spirit, Auricchio believes his chief flaws were optimism and naïveté, clinging to ideas long after it was plain they wouldn't work. Though hardly a tragic figure—he was too energetic and irrepressible for that—Lafayette "failed spectacularly" in the French portion of his career. Among the murderous denizens of the French Revolution, moderation and humanity didn't cut it. But Laura Auricchio doubts that anyone could have done better than Lafayette. It was France's tragedy that Louis was such a clueless king. ♦



# Eye of the Beholder

*The tart, sweet, comprehending vision of Richard Greene.* BY EDWARD SHORT

**T**his deft, revelatory collection opens with a poem about the poet's mother, in which Richard Greene speaks of *shapes of memory from which she can / never turn away*. Integral to his own "shapes of memory" is familial love, and Greene, who has written a brilliant critical biography of Edith Sitwell (herself no stranger to this most consuming of themes), does full justice to the subject in a range of poems that are at once carefully crafted and finely observed. They are also narrative: Each tells a distinct story, though, together,

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**Dante's House**  
by Richard Greene  
Vehicule, 160 pp., \$18

they log a rover's homecoming, which is why the title is so nicely chosen.

In "Kitchens," Greene describes meeting families while canvassing door-to-door, which drills into him the sacrificial exactions of parental love.

*The wife's head turns; she follows a sound into another room, leads out a girl of 25, bent far forward, holding her arm as guide. "Our daughter was born blind*

and deaf. It is different from other conditions.” . . .

*I ask how things are for her but wonder all the while at no light and no words. “There is not much for her to do really,” says her mother, “we look out for her.”*

Then, again, in the same poem, he encounters another married couple.

*This time, a fellow not quite my age sits me down and signs the form—I ask what worries him? He says he has a daughter, and I can see some part of the story rigged at the head of the stairs—a chairlift. His business is rescuing stalled trucks on the highway . . .*

Here, as in many of the poems, one can see the extent to which Greene has taken up and renovated Robert Lowell’s testimonial art, where so much seems a snapshot, / lurid, rapid, garish, grouped, / heightened from life, / yet paralyzed by fact, though even Greene’s bleakest “facts” never leave us with a sense of paralysis. On the contrary, the empathy he shows his subjects reaffirms their volatile dignity.

Although a professor of English at the University of Toronto, Greene has none of the delight in abstraction dear to the academic tribe. Instead, he puts himself to school to the actual, the restlessly human, an image of which he finds in Haiti when he notices *Everywhere the trade in worn tires, salvaged / from cars that have crept to their millionth / mile and died.* This solicitude for the actual is doubtless why he paints such a memorable portrait of a fellow rover, whom he encounters in Paris while dining at Les Deux Magots, *where the saints of the / existential put out their cigarettes.*

*White beard and a lifetime on the streets make him old who might be fifty-five. I think he has exercised his share in the rights of man by saying no to a social worker. He stirs in August sunlight, stretches, stands. He wears just a t-shirt and boxer shorts gone grey. Long thin legs proclaim he is poorly fed though not quite starved. He yawns and walks towards*

*a tree at the pavement’s edge, gazes up into leaves, tugs at elastic, and pees.*

The roving behind so many of the poems produces a keen sense of place. In St. John’s, Newfoundland, on Christmas Eve, the newly married poet goes grocery shopping, only to encounter an epitome of unreturning bachelorhood: *Among the meats I watched him, admired / the overcoat that cost him a bundle / at Tip Top, The London, or The Model Shop. / Guessed him thirty-five and unsponsored.* As L.P. Hartley has taught us, the past is a foreign country, and in that unforgettable land, Greene’s lyricism takes elegant flight.

*And so it is, I am again a month shy of sixteen, the school-year ending, and everything else beginning. We circle the clover leaves, learn to shoulder check and to change lanes without risk of pile-up. Waiting my turn in the back seat, I mouth the verses of a hymn, silent and growing wordless as they wind downwards to whatever there is of me, the unmade self. In the nights of that week, I pray for every soul I can remember, face by face, rising out of a boy’s memory. By the weekend, my mind has surrendered to the light of June. I take communion in an evening church. As never before or after, I am given to love and fall from words.*

Here is what George Herbert called “the soul in paraphrase, the heart in pilgrimage.” Greene appreciates these experiences in terms of prayer because he understands what T.S. Eliot meant when he wrote (in “Little Gidding”) that *prayer is more / Than an order of words, the conscious occupation / Of the praying mind, or the sound of the voice praying.* Why? Because *what the dead had no speech for, when living, / They can tell you, being dead: the communication / Of the dead is tongued with fire beyond the language of the living.*

In “Crooked Eclipses,” a memorial to a dead friend, Greene shows how the lesson of Eliot animates his own discovery of the eternal in the quotidian, what he elsewhere calls *A glory bound*

*to littleness and sorrow / in the pietà of the common day.*

*Yesterday, your son checked your email, read you my silly note, conveyed a hail from your sickbed, sent your love, spoke plainly: “In short, his condition worsens daily.” Just pain and sleep: chemo becomes morphine and seventy years of being have been; I substitute have seen you for will see. Tenses shift and I prepare for memory.*

All of the works in *Dante’s House* rehearse the long eponymous poem about his sojourn in Italy with his students during the Palio, the annual horse race in July in Siena’s public square that the Sieneese have conducted in honor of the Blessed Virgin since medieval times. Greene casts his sprightly poem in Dante’s *terza rima* with the same skill that Arthur Hugh Clough cast his poem about an Oxford reading party, *The Bothie of Toper-na-fuosich*, in Homer’s hexameters. Here, Greene captures the intersection of the timeless with time; and by presenting his theme through the lens of *amor matris*, he gives this entire collection the unifying principle it needs without compromising its journal-like immediacy and ebullience.

In one section, set in nearby Florence, the rover in Greene returns home in a recollection of his mother, which nicely exemplifies his deeply human aesthetic.

*My mother thought her painting primitive; she learned illumination from a nun and then shrugged off the rules of perspective, made a lit ocean deeper than the sun has power to light, the hammerhead, the whales, the coral life, all one in size; her gardens intricately spread with a kind of pointillism in each tree and leaf, the tiny strokes of things unsaid. I think she is with me in all I will see of art; and walks beside me in the rooms and corridors here at the Uffizi.*

In a critical ethos that tends to lionize the coterie poet or unfathomable oracle (often one and the same), Richard Greene has managed to write a storyteller’s poetry that is at once meditative and pellucid. ♦

# Bird Lives Again

*The pursuit of excellence makes a great movie.*

BY JOHN PODHORETZ

In *Whiplash*, a dislikable teenager runs afoul of a dislikable adult, and what emerges from their conflict is the movie of the year so far. It's rare for an American film to offer such an unvarnished portrait of unattractive people, and rightly so: Why would people want to watch? Well, the tremendously exciting *Whiplash*, which provides more tension than *Gone Girl* and more thrills than a sports movie about a team of underdogs, provides an answer. While the two main characters of *Whiplash* are not likable, they are, in their own ways, profoundly *admirable*. They are not interested in being nice, or thoughtful, or pleasant. What they want is to be *great*.

Andrew (Miles Teller) is a first-year student at Juilliard (called something else in the movie, presumably for legal reasons). Andrew is a jazz drummer, and he is consumed by the instrument. He rehearses endlessly, and when he is not rehearsing, he is listening to Buddy Rich. He is isolated and friendless and only gets the gumption to ask out a pretty movie-theater popcorn-seller after he is suddenly recruited to play in his conservatory's premier jazz orchestra by its imposing conductor, the black-clad and muscle-bound Fletcher (J.K. Simmons).

Andrew's social problem isn't really shyness. It's arrogance, and the arrogance is only deepened by Fletcher's favor. When he and the girl from the movie theater go out on a date, he is dismissive of her because she (at 18!) doesn't know what she wants to do

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**Whiplash**  
Directed by Damien Chazelle



Miles Teller

with her life. When he has dinner with his utterly conventional relatives, who are more excited by the college football played by one of their sons than by his drumming, Andrew is withering about the fact that his cousin goes to a Division III school and will never get the call from the NFL. "I'm sure you'll make an excellent school board president," Andrew says.

*Whiplash* is a movie about work: about Andrew practicing, and Fletcher conducting, and their band readying itself for competitions. Miles Teller brings a spooky, haunted intensity to his performance as Andrew, a character who is compelling only because he is deeply serious about something in a way few 18-year-olds ever are.

Andrew's arrogance is about to take a beating. For Fletcher—who is portrayed, in a magnificent performance so sharp and uncompromising it seems to draw blood, by the whipsaw-smart character actor J.K. Simmons—is a monster. He insults Andrew's well-meaning and ineffectual high school teacher-father

(Paul Reiser) by suggesting Andrew's long-absent mother left her family when she realized her husband was a lousy writer. Fletcher is physically threatening and psychologically abusive. Let a player in his band be even slightly behind the beat, or have an instrument ever so slightly out of tune, and he will let fly with invective—and throw a chair.

Yet it's clear that Fletcher is himself a remarkable musician, and his pathological pursuit of excellence mirrors Andrew's own determination not just to be good, not even just to be one of the best, but to be one of the greats—even the greatest. He wants to be Charlie Parker. Anything less would be a catastrophe for him. When his father points out that dying alone at 34 is hardly something to emulate, Andrew responds by saying that nearly 60 years after Parker's death, they're talking about him, and that's what matters.

Andrew is not speaking for the writer-director Damien Chazelle here. Chazelle, who is all of 29, was himself a jazz drummer in high school. In interviews, he has said that he viewed his screenplay

as a tragedy about an abusive relationship—but he recognizes the movie doesn't play that way at all, a clear example of D.H. Lawrence's adage to trust the tale and not the teller. *Whiplash* is not a movie about a mentor gone wrong or a boy brought low.

*Whiplash* could be considered a film-length exploration of Cyril Connolly's most famous *aperçu*: "The more books we read," Connolly wrote, "the clearer it becomes that the true function of a writer is to produce a masterpiece and that no other task is of any consequence." There are a thousand things wrong with this observation, but it is certainly the case that artists rarely achieve timeless greatness without being possessed of a consuming, and often extraordinarily costly, hunger to achieve immortality of a kind. *Whiplash* is a serious, tough-minded movie about artistry and ambition, and when was the last time you saw something like that? I can promise you it's been a long time since you've seen anything as good. ♦

**Following the publication of former Secretary of State Hillary Clinton's memoir, *Hard Choices*, former CIA Director Leon Panetta publishes his autobiography, *Worthy Fights*.  
—News item**

**PARODY**



THE FLYWHEEL AGENCY

P.O. BOX 17294-F, NEW YORK, NY 10011



MEMORANDUM

To: Joe Biden  
From: Wolf J. Flywheel Literary Agency  
Re: Title for your memoir

Dear Mr. Vice President,

It is time to choose a title for your book. As you know, all the bestselling memoirs lately have had punchy, two-word titles—an adjective and a noun. Below is a four-page list of adjectives and nouns for your perusal. Can you select a favorite from each column?

ADJECTIVES

- Uncommon
- Hard
- Embarrassing
- Buffoonish
- Idiosyncratic
- Raw
- Overweening
- Difficult
- Astonishing
- Maladroit
- Presumptuous
- Cringeworthy
- Appalling
- Intrusive
- Tone-Deaf
- Clownish
- Middle Atlantic

NOUNS

- Ambition
- Vulgarian
- Gestures
- Gall
- Ignorance
- Fecklessness
- Conceit
- Logorrhea
- Fatuity
- Ineptitude
- Malapropisms
- Smugness
- Plagiarism
- Hair Loss
- Yokel
- Presumption
- Candor