

**GREECE
VS. THE EU**
CHRISTOPHER CALDWELL

the weekly

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DOING JUSTICE TO JUSTICE THOMAS

BY DAN MCLAUGHLIN

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Where Have You Gone, Mr. Arbuthnot?

The old *New Yorker* used to have a contributor named “Mr. Arbuthnot the Cliché Expert”—actually writer Frank Sullivan (1892-1976)—who, between 1935 and 1952, specialized in identifying and analyzing the puerile thoughts and hackneyed phrases of American politics and journalism. THE SCRAPBOOK has always lamented the passing of Mr. Arbuthnot—indeed, the very science of laughing at clichés—because, while the thoughts and phrases have evolved with the decades, the problem remains.

We were reminded of this the other week when President Obama flew down to Charleston, South Carolina, to deliver a eulogy at the funeral of the Rev. Clementa Pinckney, a state senator and the murdered pastor of the Emanuel African Methodist Episcopal Church.

The circumstances were painfully sad, to say the least, and the president’s moving and sensible sentiments rose to the occasion. What caught THE SCRAPBOOK’s attention was not the eulogy itself but the near-universal, and astonishingly banal, tributes to the president’s oratory. Indeed, for the *New York Times*’s book reviewer Michiko Kakutani, in particular, it was 2008 and candidate Obama all over again.

Once the worshipful, elegiac tone was established, the clichés were fired from her keyboard like artillery. Not only did the president’s remarks draw “on all of Mr. Obama’s gifts of

language and empathy and searching intellect,” but the current occupant of the White House talked about “the complexities of race and justice,” managed to “crystallize the meaning of the occasion,” confronted “the sin of slavery and the terrible scourge of war that was part of its price,” and, most important of all, “drew upon his own knowledge of Scripture and lit-



erature and history—much the way [Abraham] Lincoln and Dr. [Martin Luther] King did.”

And speaking of history, as only the president can, Kakutani reminded us of the “long view of history,” “the prism of history,” the “arc of history,” the “broad vistas of history,” and, in a smorgasbord of metaphors, Obama’s particular conviction—first expressed in his “deeply felt” memoir—that “history . . . is an odyssey, a crossing, a relay in which one generation’s achievements serve as the paving stones for the next generation’s journey.”

For Barack Obama, unlike his

predecessors, has a “panoramic vision of America” in an “echoing continuum of time,” and (here come those metaphors again) “he spoke of how history ‘must be a manual’ to avoid ‘repeating the mistakes of the past’ while building ‘a roadway toward a better world.’”

And on and on.

Of course, THE SCRAPBOOK tends to be cynical about these things, and even Michiko Kakutani concedes that all the beautiful thoughts and phrases were the work not of Obama but of a speechwriter, Cody Keenan, who “spoke with the president . . . about the speech and hoped to emulate Lincoln’s tone of reconciliation and healing.” Did he succeed? Well, not without the healing touch of Barack Obama, who “spent some five hours revising it . . . not merely jotting notes on the margins, but whipping out the yellow legal pads he likes to write on”—shades of Richard Nixon!—“only the second time he’s done so for a speech in the last two years.”

Granted, it’s been a tough few years for the president’s admirers; and as anyone who has attended a Bernie Sanders rally can attest, the promise of the 2008 Barack Obama—and the attendant prose and poetry of those days in his honor—has been something of a disappointment. So we can understand Michiko Kakutani’s inability to stem the tide and resist the pressure of those gathering clichés. But we sure miss Mr. Arbuthnot. ♦

How About Rights for Trans Fats?

In all the hubbub around the Supreme Court’s big end-of-session rulings on same-sex marriage and Obamacare, some high-level banana-republicanism was overlooked. The FDA has given American food manufacturers three years to get the “trans

fat” out of their food. Trans fat, as you may know, is a type of fat that’s partially hydrogenated—reacted with hydrogen—to discourage its melting at room temperature. Basically, the idea is you take a liquid fat—a vegetable oil, for instance—and pump it full of hydrogen, which means the fat’s carbon atoms form bonds with hydrogen atoms instead of double

bonds with each other. This increases rigidity and gives you a more solid, “saturated fat”—think of a chunk of coconut oil. (The term “saturated” refers to saturation with hydrogen.) Partial saturation leaves you with a softer, more malleable fat that’s spreadable at room temperature but melts in the microwave. (The “trans” prefix refers to a configuration of hydrogen atoms

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on opposite sides of the carbon chain.)

Trans fats became popular in the United States a couple of decades ago after the food police frightened everyone into using them instead of wonderful saturated fats like butter and lard, wrongly deemed an imminent threat to the nation's arteries. (As an aside, *THE SCRAPBOOK* rarely feels sorry for millennials, but those of us old enough to remember the pre-1990 McDonald's fries, cooked in beef tallow, can attest that the world really was a better place then.) And, with apologies for the chemistry lesson, that brings us to today.

If the FDA gets its way, trans fat in processed foods will go the way of lead in paint and asbestos in insulation. But there's a major difference: Lead is inherently toxic and asbestos is inherently carcinogenic. Trans fat is inherently harmless—what's dangerous is using it to excess.

Eating trans fats increases the quantity of low-density lipoprotein in your bloodstream—that is, LDL cholesterol, or so-called bad cholesterol. LDL transports fat around your body; without it you'd die. It's only bad if you have too much of it.

Of course, almost any harmless thing can kill you in excess. You could be crushed to death sleeping under too many quilts, but the quilts themselves aren't dangerous. Too much exercise can blow up your heart, but the FDA isn't going to ban exercise. A ban on trans fat, in fact, has nothing in common with bans on toxins or carcinogens—all it does is take something safe off the market because you might not use it safely. The FDA is substituting itself for your self-control.

We used to call that “prohibition”; it used to require a constitutional amendment. Under the new regime, all it takes is bureaucratic aggression. (Of course, in reality, all it takes are market forces: About 10 years ago, people decided they didn't want to eat too much trans fat anymore, and Big Food dropped trans fat from 86 percent of their products, reducing national consumption by 78 percent. “Ta-da,” says Adam Smith.) ♦

PEOPLE
SHOULD *and*
DO TRUST
ME...



LIAR, LIAR, PANTSUIT ON FIRE...

The Ultimate in Consent Contracts

If you were on social media last week, you no doubt heard about the new contract being promoted to college students by the activists at the Affirmative Consent Project in their effort to beat back the supposed “rape culture” on U.S. campuses. The group suggested that amorous couples, after signing the model contract, take a selfie to document their decision to hook up (and presumably provide a defense in any disciplinary hearings down the road should an accusation of misconduct be leveled). Most free-thinkers recoiled in horror, but *THE SCRAPBOOK* was impressed with

the “friendly amendments” offered by Phil Lawler in his column at CatholicCulture.org. Writes Lawler:

Rather than just a selfie, hire a professional photographer to take pictures as the consent is given.

And rather than relying exclusively on photographic evidence, have human witnesses. Invite family and friends.

We all make silly spur-of-the-moment decisions at times. To be sure this isn't one of them, plan the exchange of consent well in advance. Send out invitations. Since this is (we hope) a joyous occasion, throw a party.

To be very sure that the young woman is giving informed consent (the ACP notes that if she's drunk,

it doesn't count), let's involve someone who will be sure to watch out for her best interests. Her father, say. If she walks into the party on his arm, we'll know that everything is as it should be.

Still this shouldn't be *just* a party, because this is serious business. So let's have the exchange-of-consent ceremony in a venue that suggests a serious purpose. Can't beat a church for that, can you?

You see where I'm headed. For centuries, society has had a simple, reliable way to ascertain whether a couple had exchanged mutual consent to engage in sexual relations. It

was called a marriage. Once the ties between marriage and sex were broken—and we heard the last thread pop on June 26—the question of consent became insoluble.

How do you really—I mean *really*—know that full consent has been given, if it's not given in public, before witnesses? How do you know that your partner will be faithful, if there isn't a pledge of fidelity? How can you be confident that things won't go terribly wrong, unless your partner vows to stay with you through good times and bad? You don't. You can't.


Game, set, and match to Lawler. ♦

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Marriage à la Modesto

As a lifelong student of the manners and habitat of the American upper-middle, and upper, classes, I am of course a weekly reader of the Vows (weddings) pages in the Sunday *New York Times*. The tone of these notices has evolved with the years—the weekly essays on one featured couple tend to emphasize politics rather than love, and single-sex mergers are now routine—but the substance remains the same: These are people who take pride in their meritocratic status.

To be sure, as such features go, this is hardly a national cross-section. More rabbis and prep school chaplains and Episcopal priests conduct the services here than you would find in, say, a midsized city in the Upper South or Pacific Northwest. And academic credentials are heavily weighted toward the Ivy League and the Little Ivies, or other institutions ranked highly by *U.S. News & World Report*. There is a disproportionate number of brides and grooms who work in finance or publishing in metropolitan New York, and if somebody's grandfather was an assistant secretary of commerce in the Johnson administration, or a *Vogue* photographer, that will not go unmentioned.

There are poignant touches, now and then: A widow and widower, who work in Wall Street, will find one another, or a radiologist will marry a kindergarten teacher. There are comparatively few Romeo-and-Juliet sagas—a Democrat marrying a Republican, say, or a groom from Massachusetts and bride from Alabama. But occasionally an unlikely union will be featured: the daughter of a federal appellate judge, for example, marrying the son of a heating-and-air-conditioning man. There is usually some mutual connection—Cornell University, for example, or McKinsey

& Company—but not always. Indeed, the contents are often so predictable, and the details interchangeable, that I have no doubt that the *Times* could produce fictitious notices by juggling various names—Phillips Exeter, Scarsdale, PricewaterhouseCoopers, Massachusetts General Hospital, Tuscany—from lists of familiar places.

With one exception: Each week, almost without fail, three or four couples are married not by a priest or judge or rabbi but by “a friend who became a



Universal Life minister for the event.” This discordant note is a mystery to me, and for two reasons. First, I am myself a minister of the Universal Life church, and in the nearly half-century since my ordination, no one has ever asked me to perform a wedding ceremony. And second, it strikes me that the sort of people who announce their nuptials in the pages of the *New York Times* seem the least likely on earth to have anything whatsoever to do with the Universal Life church.

The Universal Life Church, Inc. was founded in Modesto, California, in the late 1950s by a pentecostal preacher from North Carolina named Kirby J. Hensley (1911-1999). Hensley, who aspired to found a denomination

that respected “all beliefs,” realized at some point that there was a lucrative market for ordination (for a modest fee, no questions asked) among people who didn’t want to be bothered with attending a seminary, or would welcome a clerical deferment from the draft, or just liked to acquire certificates.

As a wisecracking undergraduate, in the summer of 1969, I fell into that last category; and so, after watching a bemused television report on the Reverend Mr. Hensley and his ministry, I mailed a dollar to Modesto and waited. But not for long! Very nearly in the return mail I received a blank Universal Life church certificate of ordination, featuring Hensley’s printed signature, and the latest issue of his tabloid *Universal Life News*. The certificate was promptly filled out, dated, and framed, and the *Universal Life News* eagerly devoured. The *News*, I regret to say, has long since disappeared, but I still have my certificate of ordination, now unframed.

At the time, I regarded the entire enterprise as a joke—it was always rewarding to watch the puzzled expressions of visitors examining the “certificate of ordination” in my dorm room—and you don’t have to do much research on Kirby J. Hensley before stumbling on his laughing self-description as a “con man.” So why would people who have carefully crafted their lives for success, and advertise their impressive credentials in the *New York Times*, choose to enter the holy estate of matrimony under such ludicrous auspices?

I can understand a certain devil-may-care attitude that might impel a couple to repair to Las Vegas and Pastor Elvis, or earnest types discarding the notion of any celebrant. But the Universal Life Church, Inc.? The combination of a venerable New England boarding school, fair Harvard, Morgan Stanley, and the Reverend Kirby J. Hensley makes no sense in my orderly universe. Perhaps Kirby Hensley’s joke is on me.

PHILIP TERZIAN

Open Season

We turn now to the suburbs of Philadelphia. Waldron Mercy Academy is a private school in Merion Station which takes children all the way from daycare at three months through eighth grade. It is not cheap—tuition for grades one through eight is \$13,250 per year. Its campus sits nestled around an old convent in an upscale suburb and boasts all the bells and whistles. It has a long, low stone wall surrounding green lawns and athletic fields. In 2009 it was designated a Blue Ribbon School of Excellence. It boasts a diverse student body, cataloguing gender, race, and ethnic make-up down to the tenth of a percent. Seriously: School administrators want you to know that 0.6 percent of the students are Muslim and 0.2 percent are Armenian Apostolic.

The only problem with Waldron Mercy is that the school is Catholic.

You might miss that from the “Who We Are” section of its website, where Waldron Mercy mentions “Faith” and talks obliquely about “Christian values” and the “charism of Mercy.” But the school doesn’t explicitly say, right there, that it’s Catholic; there’s no crucifix. And just to make sure you don’t get the wrong idea about what sort of “Christian values” they’re into, the school does explicitly say it teaches children “to serve not merely out of charity, but from a developing sense of social justice.”

But Catholic it is, and last week, as the radioactive fallout from the *Obergefell* ruling was settling across the country, Waldron Mercy fired its director of religious education, Margie Winters.

Winters had married her lesbian partner in Massachusetts in 2007. From 1996 until 2014, the state of Pennsylvania had in place a statutory ban on same-sex marriage. But in 2014 a federal district court ruled this statute unconstitutional, and *Obergefell* put an end to any hope that the state might once again decide its own laws. And so Waldron Mercy decided that it could not be Catholic and have a director of religious education for its students living in direct contravention of the church’s teachings.

What is most interesting about the case of Waldron

Mercy, however, isn’t the firing of its director of religious ed—it’s the response of a local Democratic politician.

In 2010, Lower Merion Township passed an ordinance banning discrimination based on sexual orientation. The ordinance provided an exception for religious organizations, but this exception had its own exception: Religious organizations that are supported “in whole or in part by governmental appropriations” would *not* be allowed to discriminate. And so Democratic state senator Daylin Leach, who represents Merion, pointed out to the *Philadelphia Inquirer* that Waldron Mercy has gotten more than \$270,000 in the last two years from the state’s Opportunity Scholarship Tax Credit program, and that 70 students have attended since 2005 under a similar state program, the Educational Improvement Tax Credit.

“So they’ve received a good bit of money from the State of Pennsylvania,” Leach noted ominously. The *Inquirer* con-

cluded, “[Leach] said that state money might override the religious exemption for the township ordinance.” We shall see.

There’s a good reason why we, along with so many others, are concerned about religious freedom after *Obergefell*. Religious organizations—ranging from para-church groups and charities to schools, and even to churches themselves—are going to be, and in some cases already have been, targeted by lawmakers and government agencies. Here’s a partial catalogue:

- Any religious organization that requires a government license to operate—such as an adoption agency or hospital—may find its existence in jeopardy. The case study here is the Catholic Charities adoption service in Boston. After the Massachusetts Supreme Court decreed a right to gay marriage in the state, Catholic Charities announced it would not place children with same-sex couples. The state then refused to renew the group’s license, claiming that Catholic Charities was engaged in discriminatory behavior. Without a license, the archdiocese of Boston was forced to shut down its adoption services.



Waldron Mercy Academy

■ Any religious charity that receives government money in the form of grants is now at risk of having those funds withdrawn. Consider the case of World Vision, an evangelical group devoted to helping poor children across the globe. In the course of its fundraising, World Vision sometimes benefits from government grants. In 2007, for instance, World Vision sought guidance from the Department of Justice concerning a \$1.5 million grant it had applied for under the Juvenile Justice and Delinquency Prevention Act. World Vision maintains an ethical code for employees, insisting that they be practicing Christians and forbidding them from engaging in extramarital sex, including same-sex “marriages,” and they wanted to be sure they weren’t running afoul of nondiscrimination laws.

In 2007—remember, this is back when Barack Obama believed “in his faith” that “marriage is between a man and a woman”—the Justice Department advised that World Vision should be given an exemption from nondiscrimination law. What do you think the government will say the next time World Vision, or any other religious group that takes a traditional view of marriage, applies for a grant?

■ Religious schools face three levels of exposure. They could be denied accreditation, which would threaten their long-term sustainability. (Why should the government accredit an institution that practices discrimination?) They could be denied government funding—either

directly, in grants made to the school, or indirectly, in the form of government grants to students (such as Pell grants), which could be disallowed for use at schools that fail to recognize the state-mandated view of same-sex marriage. And, finally, they could lose their tax-exempt status.

A loss of tax exemption means both higher costs, as the organization must pay property taxes, and a drain on funds, since donations are no longer tax-deductible for donors. Such a loss increases the tax burden on the institution itself and on the individuals who support it.

There are 29,000 religiously affiliated pre-, primary-, and secondary-schools in America. There are 1,700 religiously affiliated colleges. As Waldron Mercy and a host of commentary and legal analysis from gleeful progressives over the last two weeks show, the fate of these schools will be the main front in the culture war for the immediate future.

It is important to remember that these assaults on religious freedom can come from legislative bodies, the courts, or even faceless government agency bureaucrats. And there are more subtle threats, too. Last week *National Review’s* David French reported that, cognizant of coming lawsuits, at least one large insurance company, Southern Mutual Church Insurance, had sent a memo to client churches informing them that their liability coverage would not apply to any lawsuits resulting from same-sex marriage

Overtime Rule Would Hurt More Than Help

By **Thomas J. Donohue**

President and CEO
U.S. Chamber of Commerce

President Ronald Reagan once said that the nine most terrifying words in the English language are “I’m from the government, and I’m here to help.”

Indeed, what the government may see as a helping hand often winds up being a ham-handed effort to impose its will on America’s job creators, resulting in more harm than good. Such is the case with the Department of Labor’s proposed overtime rule, which the administration claims will extend eligibility for overtime pay to some 5 million workers.

Under current regulations, a worker qualifies for overtime pay if his or her wages for 40 hours of work per week fall below a \$23,660 threshold. The proposed rule would more than double that threshold, making employees earning up to \$50,440 eligible for overtime when the regulation takes effect in 2016. In addition, this

threshold is scheduled to go up each year so that it continues to reflect the 40th percentile of earners.

In this arbitrary and intrusive way, the administration has decided that Washington knows best when it comes to how each job should be classified and how much employees should be paid. And, as usual, the administration fails to consider the impact on employers and the potentially harmful consequences for workers.

Many employers—especially small and midsize businesses—wouldn’t be able to absorb the increased labor and litigation costs. These added costs would mean fewer opportunities for growth and could even result in a curb on hiring. And employees—those who the rule purports to “help”—may gain overtime eligibility, but they are likely to lose hours, health care and retirement benefits, opportunities for advancement, flexible work schedules, and actual income earned. Members of the U.S. Chamber are already saying that to stay in business they will be keeping overall

employee compensation at the same level.

Government wage mandates are no substitute for economic growth, and contrary to the administration’s assertions, they do little to lift the middle class. If our leaders want to see hiring accelerate and incomes climb, they should pursue pro-growth policies that enable employers to expand, invest, and create more high-paying opportunities for workers.

That’s why the U.S. Chamber continues to advocate for commonsense regulatory and legal reform, a simplified tax code that lowers rates for businesses and individuals, long-term investment in infrastructure, and policies that will allow the United States to capitalize on its vast energy resources.

In the meantime, we’ll use every tool at our disposal to fight onerous rules and regulations that hurt workers and employers more than they help them.



U.S. CHAMBER OF COMMERCE
www.uschamber.com/blog

claims. In other words, if a church is sued for declining to perform a same-sex wedding, it's on its own.

So what is to be done? Congress could pass legislation designed to shore up protections for religious groups. Until a president who would sign such legislation is elected, that might simply be a marker, but it would be a helpful one to erect. After that, what's needed is to elect a Republican in 2016 who pledges to appoint judges and justices willing to defend religious freedom.

Much, much more will need to be done to shore up religious freedom—indeed, freedom—against the ominous trends around us. But this would at least be a start.

—Jonathan V. Last

Can We Rise to the Occasion?



GOP senators: Can they measure up to the moment? Can we?

Someone joked this past week that for the first time in 2,500 years, Persia and Greece are dominating world news. But now, as then, the questions raised by Persia and Greece go beyond Persia and Greece.

Every serious conservative of any stripe has the sense that big issues are on the table in 2016. For example: not just different interpretations of constitutional law but the future of constitutional government itself; not just disputes about foreign policy choices but fundamental decisions about America's role in the world; not just the merits and demerits of various government programs but the size and scope and debility of our current welfare-state big government in general; not just line-drawing questions about particular lib-

erties but the question of religious liberty and even liberty itself; not just worries about creeping political correctness but alarm about the soft (or not-so-soft) despotism in which leftist elites use mob-like tactics to enforce their views; not just the case for strengthening our military but the urgent need for a wholesale rebuilding; not just questions at the margins of family law but fundamental issues about the meaning and status of the family. And more.

Given all that, does the debate we're seeing on the Hill and among the presidential candidates capture the urgency and match the magnitude of the moment? Does it do justice to the scale of ongoing troubles and the import of impending difficulties? No.

Does it ever? Did it in 1928 or 1932 or 1940? In 1980 or 1988? In 2000 or 2008? Crises at home and abroad were present or looming. A hard look back at those campaigns would show, we suspect, an awful lot of avoidance, distraction, silliness, even blindness.

Maybe that's the way it was, the way it is, the way it will always be. There are limits to democratic deliberation and campaign discourse. So perhaps one should temper one's expectations of congressional leaders and presidential candidates. Perhaps one resigns oneself to choosing a person judged capable of dealing with the big events, even if no candidate in the field is adequately addressing the current and looming challenges.

To be fair, the challenges are complicated. And it's not as if we conservatives outside the electoral process have entirely done our duty. No one thinker or set of thinkers, no one magazine or journal, has melded together the elements of truth in the libertarian critique of big government, the originalist critique of constitutional law, the Tocquevillean critique of the nanny state, the Churchillian critique of our foreign policy weakness, the manly critique of our cultural decadence, the Burkean critique of "progressivism," and the Millian critique of political correctness. We lack a fully coherent and comprehensive critique of the moment—to say nothing of a comprehensively charted path forward.

So the conservative movement is entitled to complain about the candidates among whom we'll choose. But the candidates may also be entitled to complain that the ideamongering community is failing them. What about our responsibility and obligation? It would be great if at least one of our candidates could rise to the level of Ronald Reagan. But it would also be great if we could rise to the level of Bill Buckley and Irving Kristol and Bob Bartley, of Jeane Kirkpatrick and Midge Decter and Phyllis Schlafly, of Milton Friedman and James Q. Wilson and Walter Berns.

The good news is their work is accessible to us. So is the work of the thinkers on whom they in turn depended—of Leo Strauss and Aleksandr Solzhenitsyn, of C.S. Lewis and Friedrich Hayek, and so many more.

The candidates need to rise to the moment. So do we.

—William Kristol

The Unending Conversation

It just goes on and on, my friend.

BY ANDREW FERGUSON



Whenever the annual Clinton Global Initiative convenes, as it did in Denver last month, and I watch the billionaires and their hired policy experts rearing up to compliment one another for their plans to bring our troubled species ever closer to perfection, my mind detaches itself from the windy present and sails back to the more innocent days of February 1992. I remind myself that I'm watching the latest version of *The Conversation*.

Already this spring the tubes of the Internet have been thrumming with news of Sidney Blumenthal, the Clinton journalist/bootblack who first

brought *The Conversation* to the attention of the world. In February 1992, Bill Clinton's first presidential campaign was just beginning its rollercoaster run to the big victory in November. Blumenthal, then a writer with the *New Republic* magazine, smelled a winner. He wanted to do his part to help. His gift for flattery was well-developed.

So he published an article explaining the Clinton phenomenon to the readers of the magazine, which at the time had readers.

"The essential principle of Clinton's agenda," Blumenthal wrote, "is the result of a rethinking of the future of liberalism and the Democratic party that he and his wife have been part of for years. This long project may be called *The Conversation*."

Note the capital T on "The": It is the Blumenthalian touch. Capitalizing a noun is impressive enough. Instantly the reader sees you're not monkeying around. But capitalizing the definite article that modifies a noun that is already capitalized—now the reader is alerted that the writer is escorting him into the realm of the Doubly Preentious. There might be other conversations out there that deserved a capital C, the writer is saying; but *this* Conversation, the conversation I'm talking about, is the only one that's got a capital T. The One, The Only.

The Conversation, as Blumenthal explained it, was a kind of Freemasonry, and while neither you nor I, he made clear, was a part of it, we were destined to be its beneficiaries. The Conversationalists were, like Bill and Hillary Clinton, proud products of Ivy League schools, and many of them, like Bill, were Rhodes Scholars to boot. Some readers of the *New Republic*—honestly, there used to be lots of them—might not have been familiar with this husband and wife team from Arkansas (by way of Oxford and New Haven) in 1992. But "he is one of the best known people among the party elites," and "his wife, Hillary, fits right in." While everyone else was off doing other stuff, the Clintons and their friends had spent the 1970s and '80s talking and talking and talking, laying the groundwork for the future that we all would enjoy.

"The Conversation is not about the nuts and bolts of getting elected," Blumenthal wrote. "It is about why one should get elected and what to do if one is."

Indeed, nuts and bolts of any kind are the last thing *The Conversation* was about. Those who recall the chaotic early years of the Clinton administration will doubt that the president or his colleagues had anything like a plan of "what to do if one is elected." As we have come to see over the years, public discussions initiated by the Clintons and their friends are notably abstract and not terribly practical. Blumenthal's piece gave a flavor of *The Conversation*, what it must have been like to be a fly on the wall listening in.

THOMAS FLUHARTY

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Once, he tells us, he asked Bill Clinton “how he squared the seeming contradictions between the extensive research of [pollster Stanley] Greenberg on the fears and hopes of working-class Reagan Democrats who have been alienated from the party with the notion advanced by [Robert] Reich in his latest book, *The Work of Nations*, that the realities of the global economy render only human capital non-portable across national boundaries, making education the salient priority.”

You’ll notice that this sentence begins to degenerate at about the half-way mark, roughly around the word “party.” By the end, when the Ivy League word “salient” pops up out of nowhere, it has become nonsensical. But it is an elevated kind of gibberish, the kind you’d hear as the adjuncts drained the seventh bottle of Chardonnay at the faculty club cheese tasting. The Conversation was quite comfortable with words and phrases that suggest expertise even when they betray the opposite. In a list of programs Clinton favors, for instance, Blumenthal lists “fast track free trade with Mexico.”

It certainly sounds official! Yet there is nothing called “fast track free trade.” Presidents can win “fast track authority” from Congress to simplify and accelerate trade negotiations. Maybe that’s what Blumenthal meant. Maybe. In any case, the astute reader quickly understood that The Conversation wasn’t about policy expertise; it was about creating an image of expertise, while something else entirely was going on behind it. The real fruit of The Conversation, Blumenthal said, were “circle squaring formulas” that resolved apparent opposites in the field of public policy. All those formulas constituted an agenda. The Conversation’s economic policy was “tough and smart.” It would install a “leaner, activist government.” It was idealistic; it was pragmatic. Clinton himself thus represented “a genuine fusion of various converging strands within the Democratic Conversation.”

At this point in Blumenthal’s old article a reader may succumb to conversation fusion confusion. Was the

Democratic Conversation (no capital T) the same thing as The Conversation? Was there fusion, and if so, how? Certainly every Conversationalist was a Democrat. Yet not all Democrats were fit for The Conversation. Blumenthal was not only the chief publicist for The Conversation but also its Robespierre, exiling his elders with a tap of the keyboard.

Michael Dukakis, for example, the 1988 Democratic presidential nominee: “Dukakis was not really part of The Conversation,” Blumenthal wrote. And Bob Kerrey (University of Nebraska, Lincoln), the Vietnam war hero and Clinton’s rival for the nomination in ’92—“Kerrey is not part of The Conversation.” Walter Mondale, New Deal liberal? “Catastrophic.” Jimmy Carter, the Deep South governor? “Vacuous.” For fogeys like them The Conversation might as well have been in Urdu—totally incomprehensible. The phrase “non-portable human capital” probably never passed the lips of old Walter (University of Minnesota).

It turned out that the entire pre-Clinton generation of Democrats was not sophisticated enough to grasp The Conversation. It was a baby boomer thing. The torch was being passed to a new generation of talkers. It’s instructive that so many names in Blumenthal’s 1992 article are still familiar to us, still in the news. Al Gore is a high-tech centimillionaire. Robert Reich, too, got wealthy serving a variety of non-profit organizations, from Common Cause to the University of California. George Stephanopoulos has done well by doing good—or is it the other way around? Ira Magaziner now oversees various aspects of the Clinton charitable empire. At Yale the Conversationalist Derek Shearer had roomed with Strobe Talbott who, after rooming with Bill Clinton at Oxford, went on to marry Shearer’s sister, a Hillary Clinton staffer whose twin brother Cody is now running an international business that Blumenthal helped promote when Mrs. Clinton was secretary of state, whose advisers included Derek, Strobe, and Sidney, the last of whom, according to *Politico*, receives just-generous-enough monthly stipends from

one Clinton organization or another.

So The Conversation continues as the Conversers reach retirement age. Many if not most of them are intimately connected with the various Clinton foundations, which have raised nearly \$2 billion. The work of the foundations bears the unmistakable stamp of The Conversation. They are not charities as that word is traditionally understood. Only a relatively small portion of the foundations’ work is *material*, so to speak: feeding the hungry and clothing the naked, housing the homeless and healing the sick. Instead the work is abstract and discursive.

The *Washington Post* not long ago asked spokesmen for the foundations to describe what it was precisely that their organizations do. Here is a partial but representative list:

- “conducted a world wide survey”
- “partner[s] with celebrities like Jennifer Garner who encourage parents to talk to their children”
- “organizes health care organizations”
- “promote[s] development in regions where mining is common”
- “encourages economic growth”
- “promotes conservation and renewable energy”
- “aims to improve the standing of women and girls”
- “convenes global political and business leaders.”

Promoting and convening and aiming and partnering and conducting and encouraging . . . How would *you* spend \$2 billion?

As innovative as this approach to charity is, there is something antique about The Conversation nowadays. Can it really revive itself, as Blumenthal and Cody and their colleagues doubtless hope, as a vehicle for Mrs. Clinton’s presidential ambition? Can they talk and rethink and dialogue and brainstorm all the way to the White House one more time?

For my own part, I doubt it. Today The Conversation’s relevance is mostly to the Conversers themselves. It has transcended politics completely. The Conversationalists are still talking, of course—they will never stop talking. But now they are talking all the way to the bank. ♦

Into the Abyss

From the halls of academia to the cover of *Vanity Fair*. BY GERTRUDE HIMMELFARB

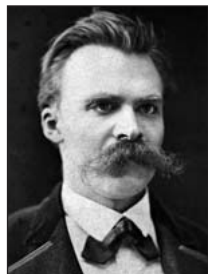
The Caitlyn (née Bruce) Jenner case has engendered if not a new subject at least a newly publicized and sensationalized one. For an old-timer like myself, transgenderism is reminiscent of the postmodernism that swept the universities several decades ago. Indeed, transgenerism now looks like a more dramatic, audacious, and, it may be, perilous form of postmodernism. Like postmodernism back then, so transgenderism today is moving very far, very fast. Before it goes much further, one might look back upon its predecessor as a cautionary tale, recalling its aspirations but also its tribulations.

A passage from an article I wrote almost 20 years ago may help put the current issue in historical perspective.

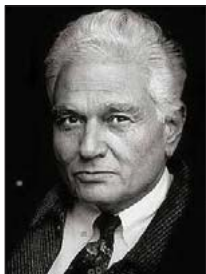
Imported from France (which had acquired it from Germany), postmodernism made its appearance in the United States in the 1970s, first in departments of literature and then in other disciplines of the humanities. Its forefathers are Nietzsche and Heidegger, its fathers Derrida and Foucault. From Jacques Derrida postmodernism has borrowed the vocabulary of deconstruction: the “aporia” (the dubious or enigmatic nature) of discourse, the “indeterminacy” of language, the “fictive” nature of signs and symbols, the self-referential character of words and their dissociation from any presumed reality, the “problematization” of all subjects, events, and tests. From Michel Foucault it has adopted the focus on power: words and ideas as a means of “privileging”

the “hegemonic” groups in society, and knowledge itself an instrument and product of the “power structure.” Thus traditional discourse and learning are impugned as “logocentric” (dominated by the word), “phallogocentric” (dominated by the male), and “totalizing” or “authoritarian” (in the presumption that reality can be contained and comprehended).

In literature, postmodernism entails the denial of the fixity of any text (not only the immutability of meaning but the immutability of the text itself); of the authority of the author over the critic or reader in



From Friedrich...



...to Jacques...



...to Caitlyn

determining the substance and meaning of the text; of any canon of great books and, more significantly, of the very idea of greatness. In philosophy, it is a denial of the constancy of language, of any correspondence between language and reality, of any proximate truth about reality, indeed, of any essential reality. In history, it is a denial of the objectivity of the historian, of the factuality or reality of the past, and thus of the possibility of arriving at any truths about the past. For all disciplines it induces a radical skepticism, relativism, and subjectivism that denies not this or that truth about any subject but the very idea of truth—that denies even the ideal of truth, truth as something to aspire to even if it can never be fully attained.

Derrida’s *Of Grammatology*, which in 1967 introduced the concept of deconstructionism, is now regarded as one of

the founding documents of postmodernism. The preface by the translator was euphoric. “The fall into the abyss of deconstruction inspires us with as much pleasure as fear. We are intoxicated with the prospect of never hitting bottom.” Almost half a century later, the striking image of the abyss was evoked for another postmodernist eminence, Paul de Man, Derrida’s friend and colleague at Yale. De Man, his biographer tells us, was “the only man who ever looked into the abyss and came away smiling.”

The abyss de Man confronted, and came away from smiling, was the Holocaust. After de Man’s death in 1983, it was revealed that during the war he had written hundreds of antisemitic articles for a pro-Nazi journal in Belgium (and had led a rather unsavory life in general, including criminal financial dealings and a bigamous marriage). Even

more revealing than the anti-semitism was the response of other postmodernists. The “soft deconstructionists” (as they called themselves) dissociated themselves from de Man, although not from postmodernism. But the “hard” ones, including Derrida, hotly defended him, not on the grounds that the antisemitic articles were an unfortunate youthful lapse (he was then well in his twenties), but by deconstructing those “texts” until they appeared to say very nearly the opposite of what they obviously said.

The de Man affair was a wake-up call for postmodernism—and for its present manifestation in transgenderism. As postmodernism had made its way through the university deconstructing one after another of the humanities, so it now seems to be deconstructing humanity itself. The “indeterminacy” and “problematization” of the disciplines, the denial of the “fixity” and “immutability” of “texts,” indeed, the denial of any “essential reality” in the postmodernist “project” (as we now say) may be reflected in a similar denial of reality in the transgenderist project.

The transgenderist would protest that it was not a denial but precisely

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JENNER: NEWS/COM

an affirmation of reality that was being sought, a sexual reality that had been obscured or belied by the accident of birth. To which a skeptic might reply that reality, once deconstructed, is not so easily reconstructed. The fact that transgenderism requires for its completion not only hormonal treatment but nothing less than genital surgery may induce serious second thoughts. The removal—the deconstruction, so to speak—of the very organs that define gender and enable the reproductivity that is of the essence of gender is surely a denial of reality of the greatest order.

The Caitlyn Jenner affair, one reporter recently observed, sent Americans on a “crash course in transgender acceptance” and sent Europe even further, “toward an even higher plane . . . a post-gender world that critics say is leaving no room for women to be women and men to be men.” Recalling the checkered experiences of the post-modernist world, we may be wary of an even more venturesome, and hazardous, postgender world. Instead of the resplendent image of Caitlyn Jenner on the cover of *Vanity Fair*, we may see the agony of people who regret the ordeal of the transformation—such operations are taking place at an ever younger age, even early childhood—and who then want to return, psychologically if not physically, to their original sex.

We might wish to take comfort today in the thought that after the initial enthusiasm for transgenderism has subsided, a more wary approach to the real problems of sexual dysfunction may prevail. So some of us once thought in the case of postmodernism. When postmodernism began to lose its novelty about the turn of the century, it looked as if the humanities might revert to type—poetry retrieved from the literary critic, history recalled as narrative, philosophy rediscovered in the classics. But that reprieve was short-lived. If postmodernism is no longer the modish term it once was, it is because its spirit has been so integrated in the culture that it no longer needs affirming or controverting. One can only hope that it won't require a new abyss, a new *de Man*, to transcend transgenderism. ♦

Alexander the Great

Leave Hamilton on the \$10 bill.

BY MICHAEL W. MCCONNELL

With all the grave issues confronting the nation in these dangerous times, it may seem frivolous to worry overmuch about whose picture appears on the \$10 bill. But public symbols matter. They are one of the ways we tell each other, and the world, what we honor as Americans. Treasury secretary Jack Lew announced in late June that Alexander Hamilton will be replaced on the \$10 bill by a woman—no particular woman, not yet, but someone of the female sex, to be selected at some point in the future.

I agree it is high time an American woman should grace the currency. But there are three things wrong with Jack Lew's decision. Congress should not let it stand.

First and most important, it is wrong to scuttle Hamilton. Other than Washington and Lincoln, our most important and admired presidents, Hamilton is the worthiest and most appropriate person to honor in this way. As the first secretary of the Treasury, he was the architect of our financial system: His plans for money, banking, taxation, trade, manufactures, and control of the public debt set the course of American prosperity forever. Great presidents belong on Mount Rushmore, great generals belong on equestrian statues in parks, great civil rights leaders belong on memori-

als—and Hamilton belongs on a bill.

But Hamilton's role in creating our financial system was but one of his accomplishments. As a penniless and illegitimate immigrant to our shores who rose to the highest positions of statesmanship, he is an especially fitting symbol of the American dream, representing the aristocracy of talent and hard work—not of birth. No one

was more responsible for the calling of the Constitutional Convention, or for defending its work during the struggle for ratification. James Madison wrote two of the most celebrated of the Federalist Papers, but Hamilton originated the project and wrote most of the essays, including

those on the presidency and the judiciary. He almost single-handedly led the charge for ratification of the Constitution in New York, where anti-Federalist sentiment ran high. If New York had not ratified, it is hard to see how the Union could have come into being. It is not an exaggeration to say that, without Hamilton, there would have been no Constitution.

It is an act of historical vandalism to tear Hamilton's image from the currency.

Second, if one of the current subjects is to be removed from the currency, it should be Andrew Jackson. The cruelty and racism of his Indian removal policy is one of the great stains on our national honor. And Jackson also engaged in unilateral executive action in defiance of the law—both violating enacted statutes, for which his attorney general was censured by Congress, and refusing to enforce a decision of the Supreme



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Court he disagreed with. Finally—and most pertinent to the currency—Jackson destroyed the Second Bank of the United States and deliberately inflicted monetary instability on the nation for the next 90 years.

Perhaps worst of all, Jackson was the first president to be an aggressive defender of slavery. All the southern slave-owning presidents before Jackson—Washington, Jefferson, Madison, and Monroe—regarded slavery as a moral evil and either spoke or took modest steps against it. Not Jackson. Not only did he defend slavery where it existed, but he supported the spread of slavery to the territories. He publicly called opponents of slavery “monsters.” He appointed to the Supreme Court the future author of the *Dred Scott* decision. Jackson’s political party, the Democrats, became the avowed champion of slavery and later of opposition to civil rights—a stance that would persist for generations.

After Britain ended slavery in the West Indies in 1833, reformers initiated a concerted effort to abolish slavery in the American states. The legislature of Virginia actually debated abolition. But Jackson’s administration prevented the circulation of abolitionist literature through the mail by the insidious method of publishing the names of those who chose to receive it. This effectively ended the movement, at a cost to freedom of speech and of the press as well as emancipation.

Hamilton, by contrast, was a lifelong opponent of slavery, an early member of the New York Manumission Society.

What would it say about our national values to keep Andrew Jackson on the \$20 bill while striking Hamilton from the \$10? Secretary Lew claims that the reason for striking Hamilton instead of Jackson is that the \$10 is the next bill up for redesign. This is obviously a pretext. The sad truth is that the Democratic party still reveres Jackson as its founder, with annual Jefferson-Jackson dinners honoring his legacy. At a time when southern states are ridding themselves of public displays of the Confederate battle flag, the Democratic party should do the same with Jackson.

Third, it defeats the purpose of

honoring a woman to proceed as Secretary Lew proposes: to announce that the new image on the bill will be female, leaving the determination of who it will be to a later date. This way of going about the choice necessarily creates the impression that the honoree will be on the bill because of her sex and not because of her accomplishments. That turns what should be an honor into an insult.

This is a matter of sufficient importance for Congress to get involved. Congress should pass a bill instructing

the Treasury to remove Jackson, not Hamilton, from the currency, and it should select the replacement for Jackson after full national consideration of plausible candidates. A public debate on the honoree would be an uplifting national conversation on America’s past and future and the signal contributions of so many of our people to the triumph of freedom and equality. I hope and predict that the new image will be of a woman, but she (or he) should be given the dignity of being chosen on the merits. ♦

Hillary’s Headache

Bernie Sanders can cause her a lot of pain.

BY JAY COST

Bernie Sanders, the socialist senator from Vermont, is surging in the polls against Hillary Clinton. A Quinnipiac University survey has him within 20 points in Iowa, while three of the last four polls have found him within 15 points in New Hampshire. Judging by state polls alone, Sanders is in about as good a spot vis-à-vis Clinton as Barack Obama was at this point in 2007. So perhaps it is time to ask whether Sanders can pull off a similar upset.

Probably not. Clinton should win, but Sanders could give her a headache whose effects last through the general election.

The Clinton-Sanders contest has rekindled an old tension in the Democratic party. On one side are professional politicians in charge of maintaining the coalition in government. They are progressive, but they generally like the status quo and will bargain with Wall Street, health

insurance companies, and other leftist bugaboos (so long as they cough up campaign contributions). On the other are left-wing activists who want to upend the status quo by reducing the role of money in politics, corraling corporate America, and radically redistributing income.

Interestingly, a large portion of Democrats do not fall cleanly on either side. Working-class whites, African

Americans, and Latinos are all major players in Democratic primary politics, yet none is a main combatant in this struggle. It is a quarrel among socioeconomically upscale whites. While average Democrats tell pollsters they prefer left-wing policies, historically they have

backed establishment candidates.

The establishment-activist schism is not apparent in every Democratic nomination. A lot depends on who runs. There was no serious left-wing champion in 1976 or 1992. Jesse Jackson was on the far left in 1988, but his support was limited to African Americans. In 2008 Obama won the hearts of activists as well as broad support



Bernie Sanders

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among the establishment, which is why he raised so much money. Similarly, Ted Kennedy's challenge to Jimmy Carter in 1980 was an attempt to unite the left wing of the party with the establishment against a president deemed too conservative.

The divide has been pronounced five times in 50 years: 1968, 1972, 1984, 2000, and 2004. In some cases, the candidates themselves did not fit neatly into either category, but still became proxies for this larger conflict. Moreover, foreign policy has been important several times, which does not translate directly to domestic policy. Yet all these battles were, at least in part, plebiscites on whether the next Democratic administration should govern like the previous one or break decisively from past practices.

The establishment has won every contest except 1972. Edmund Muskie won early primaries against George McGovern but badly mishandled campaign attacks, leaving McGovern to win by default. Muskie's collapse was peculiar; most of the time establishment candidates run superior campaigns. So the better question is not whether the establishment will win, but how tidily its candidate will defeat the insurgency.

In 2000, Al Gore dispatched Bill Bradley with surprising ease after the New Hampshire primary, thanks in part to John McCain. The Arizona Republican drew independent voters to the GOP primary, undercutting Bradley. And McCain's surprising showing captured the media's imagination, starving Bradley's campaign of attention. In 2004, Howard Dean claimed to represent the "Democratic wing of the Democratic party," but he peaked too early. John Kerry surged late to win Iowa, prompting Dean to collapse and giving Kerry smooth sailing the rest of the way.

In other cycles the contest was messier. The 1968 nomination predates the modern system of open primaries and caucuses, but it is illustrative. Eugene McCarthy mounted a principled campaign that wooed grassroots liberals, but Hubert Humphrey ultimately won the nomination because he controlled the party's machinery.

Walter Mondale pulled off a similar feat against Gary Hart in 1984. Though the latter won the California primary, Mondale claimed the final victory because of "superdelegates" who were free to support any candidate.

Based on this history, it is a good bet that Clinton will dispatch Sanders. There are only two avenues of potential trouble for her: She suffers a Muskie-like collapse or a fusion candidate enters the race. The former is very unlikely, but the latter is a possibility. The parallel would be 1968, when McCarthy's strong showing in New Hampshire against Lyndon Johnson prompted Robert Kennedy to enter the contest. RFK broke decisively from LBJ on foreign policy, but he corralled a substantial portion of the broader party (although, given Humphrey's control over the nomination process, he probably would have lost eventually, even if he hadn't been assassinated during the campaign). Thus Clinton should fret not about Sanders beating her, but rather Sanders damaging her enough to attract an insurgent with broader appeal—perhaps Elizabeth Warren.

Even if Warren remains sidelined, Clinton should worry about an ugly victory. This is where the calendar becomes nettlesome. Dates are still in flux, but the Iowa caucuses will come first, in early February, followed quickly by the New Hampshire primary. Iowa facilitated McGovern's rise in 1972, and its low-turnout, high-intensity caucus makes it perfect for a grassroots insurgency. New Hampshire has also been unpredictable over the years, and, worse for Clinton, it is next door to Sanders's home state.

Sanders could win both contests, at which point Clinton would have a real mess on her hands. Clinton would probably win Nevada and South Carolina, but she would not get to secure the nomination until Super Tuesday, March 1. Even then, depending on the states that participate, Sanders could hold his own. He might win some caucuses in the West and primaries in liberal redoubts like Massachusetts. That could postpone the date of Clinton's triumph further.

Still, Sanders will ultimately fall short, because his appeal outside the antiestablishment left is limited. Clinton won white working-class and Latino votes in 2008 and should do so again. While she lost African Americans to Obama, it is hard to imagine them backing Sanders. Nobody but the most naive leftists thinks Sanders can be president, so the party establishment will vigorously dispatch him should he get too close to victory.

Clinton nevertheless has a lot to lose. The 2008 primaries helped Obama refine his skills as a candidate and build campaign operations in the swing states. Clinton may derive similar benefits from Sanders's challenge, but the downside is substantial. The longer she is in the national spotlight, the worse she wears. This pattern has recurred in each of the last three decades, with steady declines in her ratings in the '90s, '00s, and '10s whenever the public examined her closely. A protracted fight with Sanders will force her to linger in the glare just to win the nomination. This has never been good for her.

Worse, it could undercut the image she seeks to cultivate. She clearly hopes to mimic Richard Nixon's 1968 campaign: present herself as a reliable steward of the national interest, appear above the fray, and bolster the sense of inevitability. Her various scandals, combined with the Obama administration's foreign policy, have already damaged public confidence in her leadership. A stiff challenge from Sanders might undercut the other premises of her candidacy. Sanders is bound to highlight her ties to Wall Street, which will not help her favorables. She can't be above the fray, moreover, if she's pandering to the left to beat Sanders. And who will think her inevitable if she loses Iowa or New Hampshire to a septuagenarian socialist?

Ultimately, Clinton has nobody to blame but herself. A strong candidate could unite the grassroots and the establishment, but Clinton is weak. Her limited appeal was evident in 2008, when Obama beat her. Sanders cannot replicate that victory, but he may yet remind the country of her substantial liabilities. ♦

What Happens in Vienna . . .

Could spell disaster for the Middle East.

BY LEE SMITH

In 1815, the European powers met here to establish the post-Napoleonic order and through a balance of power arrangement bring peace to the continent. Obama surely appreciates the historical echo, since 200 years later he, too, means to create a peaceful order in an especially volatile part of the world by balancing the regional powers—Israel, Saudi Arabia, and Iran—to ensure that none of them gets too large a piece of the pie and frightens the others into making war. The Iran nuclear talks are important because Obama, a U.S. diplomat circularly explained here last week, “believes a peaceful Iran could be . . . the key to peace.”

The difference between 1815 and 2015 is that Napoleon had to be defeated at Waterloo before the peace forged by the Congress of Vienna could hold, lasting nearly a century. The Islamic Republic of Iran, on the other hand, is on the march throughout the Middle East, controlling four Arab capitals, and waging war from the eastern Mediterranean to the Persian Gulf. Nonetheless, over the last two and a half years of negotiations with Iran, the Obama administration has offered Tehran virtually every concession it sought, which only spiked its appetite for more. Most recently, the Iranians have demanded that Western powers lift the U.N. arms embargo, a demand that could hardly be less subtle—we want weapons,

Vienna

the Iranians are saying, to make war.

The purpose of the Congress of Vienna was to create order. In contrast, the talks with Iran have jeopardized the order of the Middle East that the United States has maintained for more than half a century. The nuclear talks have legitimized and further emboldened a revolutionary regime. The White House’s string of concessions—from sanctions relief to acknowledgment of Iran’s right to enrich uranium—is tantamount to bankrolling Napoleon and arming him. The peace that Obama believes his diplomats are negotiating in the Austrian capital increases the likelihood of war.



Oh, sure, you can trust us.

The Iran nuclear talks were never exclusively about the clerical regime’s nuclear program. The administration has repeatedly insisted that a firewall separates the nuclear file from all other issues we might have with Iran—the Syrian civil war, the future of Iraq, Iran’s support for terrorism—but from the very beginning of his presidential term, Obama’s engagement with Iran meant everything was up for grabs. The White House believed the two governments had to learn to trust each other and was therefore quietly willing to do favors for the mullahs.

According to a recent *Wall Street Journal* article, the White House and Iran had “secret dealings” starting in 2009, when the two sides discussed a number of issues—like the three American hikers detained by the Iranians, eventually exchanged for four Iranians held in American prisons.

So what if the administration was letting Iran set the terms of engagement by equating college kids, backpackers, with felons who were clearly working for the regime’s intelligence services? The point was to build confidence with the Iranian regime. Eventually they’d settle the nuclear issue and discuss a number of other matters important to both parties.

There were other secret overtures, like Obama’s letters to supreme leader Ali Khamenei. But much more important were the White House’s public shows of confidence-building. The White House gave the regime room to crack down on the Green Movement that took to the streets in June 2009 to protest likely fraudulent elections. And it also left alone Tehran’s friends, like Bashar al-Assad, who is still the president of Syria even though Obama demanded he step aside four years ago.

Further, and this was perhaps the most important aspect of engagement with Iran, the administration showed that it could control and even beat up on Tehran’s enemies, like Israel. The administration not only made a habit of excoriating Prime Minister Benjamin Netanyahu, it also repeatedly leaked sensitive items, as if it were messaging Tehran directly. Among others, the White House leaked the Stuxnet exploit that had damaged Iran’s nuclear infrastructure, it leaked the fact that Israel was using Azerbaijan’s air space, it leaked Israeli strikes on Iranian arms convoys heading to Hezbollah. It boasted that it had deterred Netanyahu from striking Iranian nuclear facilities. Of course these leaks were damaging to Israel’s security interests, but the real point was to show Iran that Obama was sincere about wanting to bring them into the international community. They could trust him.

Indeed, maybe Iran could even be made to understand that it didn’t need a nuclear weapons program if it saw Washington as an honest broker. This White House, after all, didn’t automatically come down on the side of Iran’s nemeses in Riyadh and Jerusalem.

Obama may once have meant what he said about preventing a bomb, and the administration’s ostensible red

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lines were in keeping with decades of American policy opposing proliferation: The Iranians were going to have to dismantle their entire program; there would be no enrichment at all; they would have to ship their enriched uranium to Russia; Fordow would have to be shut; the ballistic missile program was a threat that would have to be addressed; Tehran would have to come clean about its past nuclear activities, to satisfy concerns regarding the program's possible military dimensions.

But there is a very simple reason why the administration started to cave on all these issues with the Joint Plan of Action in November 2013, and why it continues to cave in Vienna today. Even before the Iranians began to talk publicly with the administration about the nuclear program, they saw that the negotiations had already been decided in their favor. When Obama declined to strike Assad in September 2013 and enforce his prohibition against the use of chemical weapons, the nuclear negotiations with Iran were effectively over. If he wouldn't lob a few missiles into the Syrian desert to protect his own prestige, he certainly wasn't going to order strikes on Iranian nuclear facilities and risk a larger war. The Iranians had nothing to lose by sitting with the Americans and could in fact earn more each time they threatened to walk away.

For nearly two years then, the Iran nuclear talks have been something like a puppet show. Neither side is really negotiating about Iran's nuclear program since that's already been decided. And besides, from Obama's perspective, the nuclear file wasn't the major issue—the larger point was the regional order and the new balance of power he was building.

The real subject of the nuclear talks is the role that Iran will play in that order. The White House seems to be hoping that if it keeps feeding Tehran concessions, the Iranians will finally see it is in their interest to help stabilize the Middle East. Obama is counting on Iran to be a cornerstone of a regional peace similar to what the Congress of Vienna built in 1815. The more likely result is that he has unleashed a monster. ♦

The Fate of the Senate

Coattails will be everything in 2016.

BY FRED BARNES

Senate candidates aren't as important as they used to be. Republican and Democratic presidential nominees have intruded. The outcome of Senate races in 2016 will be heavily affected, if not determined, by which party's presidential candidate wins a state. This is especially true in tossup states.

There's a "new rule of politics in a polarized, partisan era," says Larry Sabato of the University of Virginia. "The party winning the presidency in a state carries the Senate seat that's up in that state about 80 percent of the time. Could possibly be even higher in 2016."

This means the Democratic nominee must win the White House for Democrats to have a credible chance of taking control of the Senate. If a Republican wins the presidency, "the top of the ticket is going to help keep [Republican] Mitch McConnell the majority leader," says Scott Reed, the U.S. Chamber of Commerce's chief political adviser. Republicans now have a 54-46 advantage in the Senate.

What Sabato calls a rule isn't an iron rule. And it's not new that presidential contests have an impact on state races. They always have, thus the phenomenon known as presidential coattails. When Ronald Reagan won in 1980, he pulled in a dozen new

senators, giving Republicans control, 53-46. When Barack Obama won in 2008, Democrats netted 8 seats and their control of the Senate grew to 59-41. Democrats gained 2 seats with Obama's reelection in 2012.

What is new, however, is that the outcome of the presidential race has greater sway than ever. As the two

parties have gradually become more ideologically divided, there is less split-ticket voting. Instead, as a state's vote for president goes, so goes the vote in down-ticket races. Voters today are more inclined to stick with one party. That was Sabato's point.

For Republicans, this means two senators are in serious jeopardy: Mark Kirk in Illinois and Ron Johnson in Wisconsin, both elected in 2010, a non-presidential year. Republicans haven't won a presidential race in Wisconsin since 1984 and in Illinois since 1988. Johnson would be helped if Wisconsin governor Scott Walker were

the GOP presidential nominee and won the state.

It's not that Senate candidates don't matter at all. But they matter less in presidential years than in midterm elections. That's when they have less control of their fate. And long-shot Senate candidates are sometimes elected, as a little known Republican, Al d'Amato, was in New York in 1980 when Reagan won the state.

The enhanced role of presidential



Mark Kirk



Ron Johnson

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nominees puts a premium on their ability to win swing states, where their influence on Senate races is the greatest. In 2016, five states top the list: Ohio, Florida, Colorado, Nevada, and North Carolina. In 2012, Obama won four and lost narrowly in North Carolina. So the GOP candidate for president needs to stage a major turnaround to help in Senate elections.

Let's start with Ohio. It would be advantageous if Governor John Kasich were on the Republican ticket, as either the presidential or vice presidential nominee. He won reelection for governor overwhelmingly in 2014. His presence—and his popularity—would improve Republican chances in Ohio in 2016, including those of Senator Rob Portman, whose reelection would be jeopardized if a Democrat, presumably Hillary Clinton, captured Ohio. In a nonpresidential election year, Portman would likely be a strong favorite.

With Marco Rubio's decision to run for president, Florida has an open Senate seat. If either Rubio or former Florida governor Jeb Bush emerges as the Republican nominee, that will give Republicans a good shot at winning the state—and holding the Senate seat. If not the nominee, Rubio might be chosen as running mate. Veep choices are usually dismissed as having no political effect, but I think Rubio would be an exception. He would aid Republicans in winning Florida in the presidential and Senate races.

One could argue a Republican ticket with Kasich and Bush or Rubio on board would be formidable in both Ohio and Florida. And by winning both states, Republicans would surely win the presidency. By the way, Bush and Rubio probably won't be on the ticket together. The Constitution bars electors from choosing both a president and vice president from their home state.

In Colorado, Democratic senator Michael Bennet will be difficult to beat unless the GOP presidential candidate wins the state. Bennet's is one of two

Democratic seats regarded as vulnerable in 2016. But Republicans have had trouble finding a Senate candidate seen as competitive with Bennet. Still, a strong Republican at the top of the ticket could lift the prospects of a less than stellar Senate candidate. Obama won Colorado twice.



Brian Sandoval

Nevada was a Republican state until a surge of Hispanic voters, mostly Democrats, changed the political equation. Governor Brian Sandoval, a Republican, would be favored to win the Sen-

ate seat being vacated next year by Harry Reid with or without the benefit of presidential coattails. He was reelected in 2014 with 70 percent of the vote. But Sandoval has declined to run for the Senate. Now Representative Joe Heck has stepped in, a credible candidate but without Sandoval's broad appeal.

North Carolina's governor, legislature, and both senators are Republican. Still, the state is closely divided politically. Senator Richard Burr is running for a third term. Democrats failed to persuade Kay Hagan to challenge Burr. After one term, she lost her Senate seat to Republican Thom Tillis in 2014. Burr, a strong finisher in his two elections, is favored. It would take a victory by the Democratic presidential candidate for him to be defeated. Obama won North Carolina in 2008 but lost the state in 2012.

In 2016, Republicans are in the unenviable position of defending 24 Senate seats while only 10 Democratic seats are at stake. It's almost inevitable Republicans will lose several seats. If their losses are limited to Illinois and Wisconsin, and they win the open Nevada seat, Republicans should consider themselves fortunate. But accomplishing even this modest feat probably requires a Republican presidential victory. Nothing less will do. ♦

A Misguided FDA Crusade

The case for leaving cigarette flavorings alone.

BY ELI LEHRER

From Brussels to Chicago to the headquarters of the Food and Drug Administration in White Oak, Maryland, public health officials, antismoking crusaders, and mayors are waging a battle against flavorings for both tobacco cigarettes and newer e-cigarettes.

Calls for an all-out ban on flavorings began as a limited fight over menthol. This minty flavor is big business. The second-most-popular cigarette in the United States, Newport, has been sold only in menthol form for most of its history. Menthol

also is the second-most-popular flavor (after "tobacco") in the fast-growing e-cigarette market.

But menthol remains in many public health officials' sights. The European Union has voted to ban it from cigarettes starting next year. Chicago has outlawed the sale of menthol cigarettes near schools, a directive that covers most of the city, and Baltimore City Council is considering similar regulations. The FDA, which was granted broad power to regulate cigarettes and banned flavors like clove and cherry in 2009, has been fiddling with the idea of a national ban on menthol since 2013.

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In the United States, it appears that cities are cracking down on menthol to target a specific portion of the population. About 80 percent of African-American smokers prefer menthol cigarettes. Both Chicago (33 percent) and Baltimore (63 percent) have large black populations.

Despite this widespread hostility, there's little evidence that menthol cigarettes are appreciably worse than any other kind (which is to say that they're very unhealthy). Some research suggests menthol cigarettes are somewhat harder to quit and slightly more popular among teenage smokers. But all common nicotine products are very addictive, and most youthful smokers start with plain old tobacco flavor.

It also bears noting that, except for a few niche brands, nearly all cigarettes are flavored in one way or another, although the common flavorings tend to be subtle. First-time smokers will find *any* additive-free cigarette much less tolerable than the options currently on the market. But that's the point: A menthol ban is a foot in the door to banning almost all current brands of cigarette.

Michael Siegel, a former FDA official and professor at Boston University's School of Public Health who is among those leading the effort to ban menthol, is straightforward about the goal. If menthol is banned, he stated in an email, there will be "hardly a justification for the FDA to not simply ban all additives."

"Since all the additives are put in with a marketing purpose in mind, banning the additives will, by definition, make it harder to sell these products, reducing sales," Siegel wrote.

Some surveys of menthol smokers suggest many would quit smoking if menthols were pulled from the market. But empirical evidence demonstrates that smokers today have a very hard time quitting. No

particular method of quitting works more than 10 percent of the time. New York City, home to the nation's highest cigarette taxes and most concerted public health efforts, has actually seen smoking rise since 2010.

Five decades of stern public health warnings, high taxes, marketing restrictions, and smoking bans brought the share of adults who smoke down from almost half to less than a quarter. But progress has largely ceased. For those who continue to smoke, all-out cessation may be nigh on impossible.

If someone like Siegel, who favors increased use of e-cigarettes to reduce the



At left, selling menthol in the 70s; at right, an e-cigarette

harm of tobacco, were in charge of public health policy, a ban on menthol and other flavorings might be worth further review. It almost certainly would have to be coupled with public education campaigns encouraging smokers who can't quit to find other, safer sources of nicotine. E-cigarettes also would have to continue to be available in the very flavorings that cigarettes would then lack. Someone who enjoys "dark chocolate mint"-flavored vapor solution is unlikely to want to go back to harsh tobacco.

But the prevailing tilt of public health policy has been away from this tobacco harm reduction approach. Major cities like New York, Chicago, and Los Angeles already have banned vaping in most indoor public places. Senator Richard Blumenthal (D-Conn.) has launched an effort to ban flavored e-cigarettes nationally. In California, Sonoma City Council has voted to ban e-cigarette flavorings,

and other municipalities are considering the same.

The confluence of these trends in public health—toward banning flavorings and treating e-cigarettes the same as their deadlier combustible cousins—could get ugly fast. It could herald a new Prohibition. It would be Prohibition in all but name for cigarettes, as the law would allow few attractive alternatives for those who crave nicotine.

This policy probably would reduce smoking at least a little, saving some lives. But with thousands of smokers still craving a nicotine fix, an already ample black market for cigarettes would explode. According to the Tax Foundation, the black market for cigarettes has already surpassed the

legitimate market in two states (New York and Arizona). And at least one cigarette-smuggling ring has been linked to international terrorism: In 2005, Buffalo businessman Aref Ahmed was convicted of smuggling cigarettes and funneling his profits to terrorist training camps.

When the FDA last held public hearings to consider banning menthol, many of the objections and calls for reconsideration came from law enforcement groups like the National Troopers Coalition and the National Black Police Association. Most cigarette smugglers doubtless won't fund terrorism, but a ban on menthol or flavorings generally could amount to handing a sizable portion of the tobacco industry's more than \$30 billion in 2014 U.S. revenues over to criminal gangs.

In the right context, more stringent regulation of cigarette flavorings could make sense. But the preponderance of evidence indicates that banning menthol and other additives would have uncertain benefits and significant costs. A ban on flavorings for e-cigarettes might actually increase the number of people who smoke and discourage would-be vapers from quitting combustible cigarettes altogether. For now, governments concerned about cigarette additives and e-cigarette flavors are best off leaving things alone. ♦

Giving Thomas His Due

The justice who stands alone

BY DAN McLAUGHLIN

For political observers, the story of the Supreme Court's recently concluded term was the clash of two great colliding forces. On one side stood the Court's always-unified liberal bloc, fortified by the apostasies of Republican-appointed Justice Anthony Kennedy and sometimes Chief Justice John Roberts, most prominently in cases involving same-sex marriage and Obamacare. On the other side stood Justice Antonin Scalia, a lion in winter, caustic and witty in his dissents. But for close watchers of the Court, another theme ran through this term: the breadth and depth of Justice Clarence Thomas's institutional critique of the Court itself for straying from the Constitution, failing to apply its own precedents evenhandedly, neglecting the separation of powers and federalism, and allowing itself to be manipulated by runaway executive agencies.

Like a medieval monk preserving Western culture through the Dark Ages, Thomas soldiered doggedly on, carrying the largest writing workload on the Court, pressing his point in cases small and large, sometimes at odds with his conservative colleagues, often alone. Perhaps history will never return to the path he is marking, but no one can say we weren't warned.

Supreme Court justices are often little known or understood by the general public, and in Thomas's case, his image is further obscured by his race, the controversies surrounding his 1991 confirmation, and his famous refusal to ask questions at oral argument. Thomas's critics outside the legal profession tend to fall back on open attacks on his race (a "clown in blackface," said *Star Trek* actor, Facebook meme-sharer, and gay-rights crusader George Takei recently) or unsubtly coded attacks (such as Harry Reid's assertion that Thomas wasn't smart or a good writer like Scalia, though Reid couldn't name any of his opinions).

But behind the slings and arrows of politics and punditry, Justice Thomas has been this term's workhorse, and not for the first time. According to SCOTUSBlog, he wrote more opinions than any other justice this term, 37

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(Justice Samuel Alito was second with 30, Justice Elena Kagan last with 11); the most concurring opinions, 11 (Alito was second with 9, Roberts and Kagan last with 2 each); the most dissenting opinions, 19 (Scalia was second with 15, Justice Ruth Bader Ginsburg last with just 1); and the most total pages of opinions, 432. This is the second time in three years that Thomas has written the most opinions, and they are not filled with breezy rhetoric, but thick with citation to the roots of our constitutional system, from the Magna Carta to John Locke to Blackstone's *Commentaries*.



Clarence Thomas

STANDING APART, EVEN FROM SCALIA

But mere volume is not the measure of Thomas's jurisprudence. For that, one must take a closer look at the many times he has stood against the prevailing winds, warning his colleagues that the Court should consider its own errors and limitations. The cases in which he has split from Scalia—his closest colleague philosophically—are telling.

In *Johnson v. United States*, the Court struck down part of the 1984 Armed Career Criminal Act, which greatly enhances prison sentences for felons in possession of a firearm who have three prior convictions for a "violent felony." Scalia wrote the majority opinion. It was a sweet victory for Scalia, who in several prior dissents had argued that the ACCA was unconstitutionally vague in defining "violent felony." Thomas—noting that he had always thought the ACCA unconstitutional for allowing a judge to impose a long sentence based on facts not found by a jury—nonetheless refused to join the opinion on the grounds that the "void for vagueness" doctrine should be reconsidered. He cited its (comparatively) recent origin, which he traced to 1914 (before that, courts simply refused to enforce criminal statutes in cases where their application was unclear). And he lamented that the Court has not applied the doctrine consistently:

This Court has a history of wielding doctrines purportedly rooted in "due process of law" to achieve its own policy goals, substantive due process being the poster child. . . .

AP / CHARLES DHARPAK

Although our vagueness doctrine is distinct from substantive due process, their histories have disquieting parallels.

Thomas traced how the Court’s “vagueness” cases have struck down whatever kind of law was out of fashion with the Court’s majority in a given era, from economic regulation in the pre-New Deal years (but not after) to obscenity laws in the 1940s to abortion laws (but not laws regulating speech by abortion protesters) today.

Johnson is not the only example this term of Thomas calling out the Court’s own institutional biases. The Court split 5-4 in *Arizona State Legislature v. Arizona Independent Redistricting Commission* on whether an Arizona ballot initiative could give an “independent” commission power to draw congressional district lines, despite the Constitution’s explicit command that rules for elections to Congress “shall be prescribed in each State by the Legislature thereof.” Ginsburg’s opinion for the Court held that a ballot initiative could be a rule of “the Legislature,” given that the Arizona constitution (unlike the federal Constitution) grants some legislative power to the voters through initiatives. Thomas, tracing the long history of the Court’s finding of new and different ways to invalidate and frustrate state ballot initiatives in areas ranging from marriage to term limits to immigration to affirmative action, was blistering:

Reading today’s opinion, one would think the Court is a great defender of direct democracy in the States. . . . These sentiments are difficult to accept. The conduct of the Court in so many other cases reveals a different attitude toward the States in general and ballot initiatives in particular. . . . The Court’s characterization of this as direct democracy at its best is rather like praising a plebiscite in a “banana republic” that installs a strongman as President for Life. And wrapping the analysis in a cloak of federalism does little to conceal the flaws in the Court’s reasoning. I would dispense with the faux federalism and would instead treat the States in an evenhanded manner. That means applying the Constitution as written.

In *Michigan v. EPA*, the Court considered a provision of the Clean Air Act Amendments of 1990 that required the EPA to study emissions by power plants and stated that the EPA “shall regulate” the plants if the EPA “finds” that “regulation is appropriate and necessary after considering the results of the study.” The EPA concluded that it did not need to consider the nearly \$10 billion cost of regulation in making this finding. Scalia’s majority opinion (which Thomas joined) refused to defer to the agency’s reading of the statute and found that this language, for reasons of statutory context, required the EPA to consider costs. Kagan’s dissent, for the Court’s four liberals, did not quarrel with this reading of the language but argued mainly that it was sufficient to consider costs later in the process of shaping the *scope* of regulation. Only Thomas, concurring alone, argued that the “appropriate and necessary” language was

so open-ended as to be a potentially unconstitutional delegation of Congress’s law-making power to the agency, and that the EPA’s request for the Court to defer to its interpretation—given the lack of meaningful standards for the Court to evaluate its decision—also risked unconstitutionally stripping the Court of its power to decide what the law means:

Should EPA wield its vast powers over electric utilities to protect public health? A pristine environment? Economic security? We are told that the breadth of the word “appropriate” authorizes EPA to decide for itself how to answer that question. . . . Although we hold today that EPA exceeded even the extremely permissive limits on agency power set by our precedents, *we should be alarmed that it felt sufficiently emboldened by those precedents to make the bid for deference that it did here.* . . . As in other areas of our jurisprudence concerning administrative agencies . . . *we seem to be straying further and further from the Constitution without so much as pausing to ask why.* We should stop to consider that document before blithely giving the force of law to any other agency “interpretations” of federal statutes.

Zivotofsky v. Kerry concerned a 2002 federal statute requiring the State Department to record on passports and “consular reports of birth abroad” that an American citizen born in Jerusalem was born in “Israel” despite the longstanding presidential policy of ambiguity on whether Israel owns Jerusalem. The Bush and Obama administrations, each for its own reasons, protested this as a congressional invasion of the president’s foreign policy power to recognize foreign sovereigns and their borders, and a majority of the Court agreed. Scalia, Roberts, and Alito dissented, taking issue with the Court’s view of presidential powers and its view of statements on passports as the equivalent of recognizing a foreign government.

The Court and the dissents glossed over the consular reports of birth abroad on the procedural grounds that *Zivotofsky* had argued the two documents should be treated the same. Only Thomas thought the two documents should be treated differently because Congress had power over one but not the other: Congress’s enumerated power over naturalization laws gave it the power to dictate the contents of a consular report of birth abroad, which is primarily a document used to prove citizenship, whereas no enumerated power permitted Congress to dictate the contents of passports, which therefore must give way when they conflicted with the president’s power to recognize foreign governments.

TAKE THE RAISINS. LEAVE THE TRAINS.

Often, Thomas argues that the Court is ignoring a fundamental issue that cuts to the core of a case. In *Horne v. Department of Agriculture*, Chief Justice Roberts’s majority opinion concluded that a raisin-marketing program that involved federal confiscation and resale of

raisins amounted to a “taking” of the raisin handlers’ property without just compensation under the Fifth Amendment. Justice Sonia Sotomayor disagreed that the program amounted to a taking, while Justice Stephen Breyer agreed that it did but thought further proceedings were needed to see if the raisin handlers were justly compensated after considering how they benefited from the program as a whole. Justice Thomas wrote separately, citing his dissent in *Kelo v. New London*, to argue that because the program “takes the raisins of citizens and, among other things, gives them away or sells them to exporters, foreign importers, and foreign governments,” the government may not have been able to justify taking the raisins on the grounds that they were “for public use” at all. As he wryly added, this would make the question of just compensation “a fruitless exercise.”

In *Department of Transportation v. Association of American Railroads*, the Court unanimously ruled that Amtrak was acting as part of the federal government and not a private corporation when a 2008 federal statute empowered it to join with the Federal Railroad Administration in issuing “standards and metrics” to judge other passenger rail lines. The Court thus rejected a claim that the Constitution was violated by having a private company make federal law. Thomas wrote separately about the deeper constitutional issues, concluding that Amtrak—indeed, any federal agency—could not, consistent with the separation of powers, receive by delegation Congress’s power to “formulate generally applicable rules of private conduct.” Thomas’s opinion carefully traced the historical roots of the separation of powers all the way back to ancient Greece and Rome; by contrast, he pointedly noted of Kennedy’s opinion for the majority, “We never even glance at the Constitution to see what it says about how this authority must be exercised and by whom.” And he offered a blunt assessment of the competing visions at stake:

We should return to the original meaning of the Constitution: The Government may create generally applicable rules of private conduct only through the proper exercise of legislative power. *I accept that this would inhibit the Government from acting with the speed and efficiency Congress has sometimes found desirable. . . . We have too long abrogated our duty to enforce the separation of powers required by our Constitution. We have overseen and sanctioned the growth of an administrative system that concentrates the power to make laws and the power to enforce them in the hands of a vast and unaccountable administrative apparatus that finds no comfortable home in our constitutional structure. The end result may be trains that run on time (although I doubt it), but the cost is to our Constitution and the individual liberty it protects.*

PROTECTING THE ROLE OF THE COURTS

Justice Thomas’s opinions this term reflect his preoccupation with the administrative state’s tendency to transfer an ever-growing share of authority from Congress’s power

to make the rules, the courts’ power and duty to say what the rules mean, and the president’s power and duty to enforce them. And that sometimes puts him in the seemingly surprising position of defending the courts. In *Perez v. Mortgage Bankers Association*, the Court ruled that the Administrative Procedures Act does not require agencies to give the public notice and an opportunity to comment before an agency changes its interpretation of one of its rules. Thomas, Scalia, and Alito all wrote separately to urge the Court to reconsider why agency interpretations should be entitled to any deference by the courts in interpreting agency rules. Thomas again delved deeply into the Founding-era documents and contrasted the Framers’ view of judicial review with the tendency of courts to defer to agencies’ interpretation:

This accumulation of governmental powers allows agencies to change the meaning of regulations at their discretion and without any advance notice to the parties. . . . To regulated parties, the new interpretation might as well be a new regulation. . . . Today . . . formal rulemaking is the Yeti of administrative law. There are isolated sightings of it in the ratemaking context, but elsewhere it proves elusive.

Thomas lambasted the Court’s frequent invocation of administrative agency expertise, which he traced to Woodrow Wilson and the progressive era’s “move from the individualism that had long characterized American society to the concept of a society organized for collective action” that “reflected a deep disdain for the theory of popular sovereignty.” Thomas quoted Wilson on democracy:

In President Wilson’s view, public criticism would be beneficial in the formation of overall policy, but “a clumsy nuisance” in the daily life of Government—“a rustic handling delicate machinery.” . . . Reflecting this belief that bureaucrats might more effectively govern the country than the American people, the progressives ushered in significant expansions of the administrative state.

In *B&B Hardware, Inc. v. Hargis Industries, Inc.*, the Court held in a 7-2 opinion by Alito that decisions of the Trademark Trial and Appeal Board—an administrative tribunal—are binding in subsequent court cases. Thomas, joined by Scalia, dissented on the grounds that Congress should not be presumed to delegate such traditional powers of the courts to an agency without a clear statement that it was doing so. A similar concern animated his separate dissent in *Wellness International Network, Ltd. v. Sharif*. While Roberts split with Sotomayor’s opinion on whether private parties could agree to have a non-life-tenured bankruptcy judge decide cases that were supposed to be decided by a federal trial judge, Thomas wrote separately to explain why cases involving core private rights to life, liberty, or property are required to be handled by an independent judiciary in the first place.

Thomas often stands up for clear lines of separation of powers and consistent application of individual rights even

when the outcomes may not be “conservative.” He continued his critique of the Court’s cases striking down state laws that conflict with federal rules in *Oneok, Inc. v. Learjet, Inc.*, and of the Court’s cases striking down state laws that regulate interstate commerce in *Comptroller of the Treasury of Maryland v. Wynne*. Both doctrines are often favored by federally regulated businesses to avoid state taxes and state tort suits. In *Ohio v. Clark*, he refused to join an opinion for the Court by Alito on the Sixth Amendment’s confrontation clause, arguing that the test for using out-of-court statements in criminal trials should be the same whether the statement was made to the government or to a private individual and shouldn’t depend on the “purpose” behind the questions that led to the statement. And in *Elonis v. United States*, he broke from Roberts’s majority opinion on threats made on a Facebook page, arguing that speech that falls outside the First Amendment’s protection—whether because it is threatening or for some other reason, such as obscenity—should not depend on the intention of the speaker but only the objective content of the speech.

UNEQUAL JUSTICE

Thomas’s critiques of administrative overreach and institutional bias came together most directly this term in his (again, lone) dissent in the Court’s 5-4 decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* There, the Court ruled that the Fair Housing Act of 1968 allows “disparate impact” lawsuits for housing discrimination that don’t require proof of any intentional discrimination, just evidence that different groups had different results from the same practice. Kennedy’s opinion imported this rule to the FHA from the Court’s 1971 decision in *Griggs v. Duke Power Co.*, which had ruled that Title VII of the Civil Rights Act of 1964 banned employers from using intelligence tests and requiring a high school diploma if that would have a larger impact on black job applicants. Like Title VII and other federal antidiscrimination laws, the FHA bans only discrimination “because of” race and other prohibited factors—language a normal person would understand to imply intentional discrimination. Thomas wanted the Court to overrule *Griggs* or at least stop repeating its error. And his criticism of disparate-impact law extends to areas more traditionally favored by the Court’s conservatives: In *EEOC v. Abercrombie & Fitch Stores, Inc.*, he criticized Scalia’s majority opinion for imposing what amounted to a disparate-impact test for religious discrimination in a case involving a Muslim woman denied employment because her headscarf violated Abercrombie & Fitch’s dress code.

In his FHA dissent, Thomas—himself the head of the EEOC in the 1980s—traced how the agency’s own records

showed that the *Griggs* decision had emerged from a deliberate EEOC campaign to subvert the law Congress had passed and charged the commission with enforcing and to replace it by means of “creative interpretation” with something much broader:

EEOC’s strategy paid off. The Court embraced EEOC’s theory of disparate impact, concluding that the agency’s position was “entitled to great deference.” . . . With only a brief nod to the text of [the relevant part of Title VII] in a footnote . . . the Court tied this novel theory of discrimination to “the statute’s perceived purpose” and EEOC’s view of the best way of effectuating it. . . . But statutory provisions—not purposes—go through the process of bicameralism and presentment mandated by our Constitution. We should not replace the former with the latter, . . . nor should we transfer our responsibility for interpreting those provisions to administrative agencies, let alone ones lacking substantive rulemaking authority.

In an unusual footnote, Thomas also accused the Justice Department of manipulating the Court’s docket to prevent it from hearing the FHA case, noting a congressional report finding that after the Court agreed to hear the same issue four years earlier,

then-Assistant Attorney General Thomas E. Perez—now Secretary of Labor—entered into a secret deal with the petitioners in that case, various officials of St. Paul, Minnesota, to prevent this Court from answering the question. Perez allegedly promised the officials that the Department of Justice would not intervene in two *qui tam* complaints then pending against St. Paul in exchange for the city’s dismissal of the case.

The FHA case is one of a number of examples this term of Thomas’s distaste for racial paternalism and the particular obligation he seems to feel—as the Court’s lone African-American justice—to point out the consequences of this type of bias. Drawing on the work of Thomas Sowell, he noted the many ways racial disparities have arisen in societies across the globe, even disparities favoring minority groups, and rejected the implicit assumption “that a given racial disparity at an institution is a product of that institution rather than a reflection of disparities that exist outside of it.” And once again, he pointed his finger at the Court itself:

It takes considerable audacity for today’s majority to describe the origins of racial imbalances in housing . . . without acknowledging this Court’s role in the development of this phenomenon. In the past, we have admitted that the sweeping desegregation remedies of the federal courts contributed to “white flight” from our Nation’s cities . . . in turn causing the racial imbalances that make it difficult to avoid disparate impact from housing development decisions. Today’s majority, however, apparently is as content to rewrite history as it is to rewrite statutes.

Similarly, his dissent in the 5-4 decision in *Alabama*

Legislative Black Caucus v. Alabama blasted the Court and the Department of Justice for creating more problems than they solved in enforcing the Voting Rights Act of 1965 to require “majority-minority” legislative districts—as he called it in a prior case, “segregating the races into political homelands”:

I do not pretend that Alabama is blameless when it comes to its sordid history of racial politics. But, today the State is not the one that is culpable. Its redistricting effort was indeed tainted, but it was tainted by our voting rights jurisprudence and the uses to which the Voting Rights Act has been put. Long ago, the DOJ and special-interest groups like the ACLU hijacked the Act, and they have been using it ever since to achieve their vision of maximized black electoral strength, often at the expense of the voters they purport to help.

If race is the text of these opinions, it is surely the subtext of Thomas’s dissent in *Brumfield v. Cain*, one of two death penalty decisions handed down the same day (the other being *Davis v. Ayala*) in which he wrote separately to contrast the Court’s solicitude towards murderers with its relative indifference to their victims. To underline his point, Thomas insisted on concluding his opinion in *Brumfield* by inserting, for permanent inclusion in the United States Reports, a photograph of the victim, off-duty Baton Rouge police officer Betty Smothers. The Court in *Brumfield* put off, yet again, the execution of Kevan Brumfield, who murdered Smothers in 1993, in order to let another federal court review evidence that Brumfield’s learning disability, fourth-grade reading level, IQ of 75, low birth weight, and long history of behavioral problems and crime sprees showed that he was too “intellectually limited” to be executed despite criminal activity that—as Sotomayor’s opinion conceded—“required a degree of advanced planning.”

Before launching into his legal analysis, Thomas offered an extended contrast between two black men from disadvantaged backgrounds: Brumfield and Warrick Dunn, the now-retired NFL running back who was orphaned at 18 along with his five younger siblings when Brumfield murdered his mother. Dunn wrote about the impact on his family life and his subsequent charitable works in his autobiography, from which Thomas quoted. There’s an unobtrusive critique of the glacial pace of death-row appeals in the fact that the teenage Dunn had time to grow up, become a college and pro-football star, retire seven years ago, and write a book while Brumfield’s as-yet-unfinished legal odyssey was winding its way through the justice system:

[Brumfield] has spent the last 20 years claiming that his actions were the product of circumstances beyond his control. . . . *Brumfield’s argument that his actions were the product of his disadvantaged background is striking in light of the conduct of Corporal Smothers’ children following her murder. . . .*

Like Brumfield, Warrick’s father was not a part of his life. But, unlike Brumfield, Warrick did not use the absence of a father figure as a justification for murder. Instead, he recognized that his mother had been “the family patriarch” when she was alive, and that he had a responsibility to take on that role after her death.

Thomas’s history as a son of Jim Crow-era Georgia may also explain his joining the majority (breaking with the Court’s other conservatives) in *Walker v. Sons of Confederate Veterans, Inc.*, in which the Court held that Texas could properly refuse to sell Confederate flag vanity license plates. Thomas has a history of weighing in on one particular symbol, the burning cross in the hands of the Ku Klux Klan; he spoke up uncharacteristically at oral argument during 1995 and 2003 cases involving the Klan and the cross and wrote separately in both cases to emphasize the particular meaning of that symbol as a political statement of racist terror. Then again, the Confederate flag’s history is more fraught; Thomas himself was criticized at his confirmation hearings for having the flag of his home state of Georgia, which then incorporated the Confederate flag, in his office. And the *Walker* majority’s view of when the state government has the power to control its own message when issuing license plates is consistent with Thomas’s view in *Zivotofsky* of when the State Department has the power to control its own message when issuing passports. Thomas’s willingness to draw a clear line between the government’s power to send messages and the individual’s right to tune out those messages taps into the deeper philosophical currents that animated his most controversial opinion of the term, his dissent in the same-sex marriage case of *Obergefell v. Hodges*.

DIGNITY AND THE RIGHT TO BE FREE

Kennedy’s 5-4 opinion for the Court in *Obergefell* rested heavily on the doctrine of “substantive due process,” whose lineage goes back to the Court’s most infamous decision (*Dred Scott v. Sandford*, which Thomas is apt to cite as a cautionary tale) and which has returned, Zelig-like, in many of its worst misadventures since, particularly *Roe v. Wade*. The Fifth and Fourteenth Amendments forbid the federal and state governments, respectively, to “deprive any person of life, liberty, or property, without due process of law.” Somehow, in defiance of the language of this text, the Court has repeatedly ruled that it also prohibits the government from infringing certain forms of “fundamental” liberty with or without due process. Naturally, the Court’s opinion in *Obergefell* spent not a word analyzing the language or history of the due process clause before proceeding to wield it as a hammer.

Each of the four dissenters—Roberts, Scalia, Thomas,

and Alito—wrote his own opinion. Thomas focused on two related points. First, he traced the history of the due process clause in the Fifth Amendment to its roots in the Magna Carta and the political philosophy of John Locke to show that whatever “liberty” the due process clause protects from invasion in the first place, it is not the Court’s asserted right to have the government use a marriage license to endorse the “dignity” of relationships:

Since well before 1787, liberty has been understood as freedom from government action, not entitlement to government benefits. . . . As used in the Due Process Clauses, “liberty” most likely refers to “the power of loco-motion, of changing situation, or removing one’s person to whatsoever place one’s own inclination may direct; without imprisonment or restraint, unless by due course of law.” . . . Even assuming that the “liberty” in those Clauses encompasses something more than freedom from physical restraint, it would not include the types of rights claimed by the majority. In the American legal tradition, liberty has long been understood as individual freedom *from* governmental action, not as a right *to* a particular governmental entitlement. . . . The founding-era idea of civil liberty as natural liberty constrained by human law necessarily involved only those freedoms that existed *outside of government*.

Second, in the portion of his opinion that drew the most controversy, Thomas delved deeper, observing the hollowness of the majority’s definition of dignity as a thing conferred by government:

Human dignity has long been understood in this country to be innate. When the Framers proclaimed in the Declaration of Independence that “all men are created equal” and “endowed by their Creator with certain unalienable Rights,” they referred to a vision of mankind in which all humans are created in the image of God and therefore of inherent worth. That vision is the foundation upon which this Nation was built. The corollary of that principle is that human dignity cannot be taken away by the government. Slaves did not lose their dignity (any more than they lost their humanity) because the government allowed them to be enslaved. Those held in internment camps did not lose their dignity because the government confined them. And those denied governmental benefits certainly do not lose their dignity because the government denies them those benefits. The government cannot bestow dignity, and it cannot take it away.

Besides the deep roots of this view of human dignity in both Christian theology and the Enlightenment political philosophy embodied in the Declaration—the “natural law” sources that were a subject of contention at Thomas’s confirmation hearings 24 years ago—the critics of this passage missed another aspect of particular importance to Thomas: its roots in African-American thinking about humanity in the face of oppression, from Frederick Douglass to Booker T. Washington to Marcus Garvey to Malcolm X to Martin Luther King Jr.’s “street sweeper” speech. As Douglass observed, “They cannot

degrade Frederick Douglass. The soul that is within me no man can degrade. I am not the one that is being degraded on account of this treatment, but those who are inflicting it upon me.”

TRUST LAWS, NOT MEN

Clarence Thomas is an affable man, if one who does not forget his scars, and by all accounts he gets on well enough with his colleagues. But given that few of them other than Scalia bother responding to his lone opinions, one wonders if some of them look at him a little funny—“that guy who keeps going on about the Constitution.” He is known to prefer the company of almost anyone to the company of his fellow judges and lawyers; he meets more often than any other justice with groups of visitors to the Court and travels the country in his RV during the Court’s recesses. But that distance makes him uniquely suited among the justices to look at this country not from the perspective of a member of the judicial high priesthood, but as a citizen ruled by it. Some critics suggest that he may be biased by the fact that his wife is active in Tea Party groups, but after his nearly quarter of a century on the Court, suggesting that Thomas’s view of the Constitution is influenced by the Tea Party is rather like suggesting that Newton’s physics were influenced by Einstein.

Thomas’s opinions this term form a coherent whole, one that places no trust in institutions—in the wisdom of judges, the expertise of bureaucrats, or the evenhandedness of either—but depends instead on clear, written rules and structural checks and balances. And his philosophy, while grounded in the same principles as our Constitution itself, should not surprise us. Thomas is not so far removed from his upbringing in segregated Georgia that he cannot remember what it was like to live in a place and time in which the government was staffed and run by people who had no intention of treating you fairly.

Two strategies are available to a citizen confronted by such a government. One is to keep for himself as large a space as possible free of the government, in which to exercise true liberty. The other is to insist on the punctilious observance of the letter of the law. The whims of administrative agencies and the discretion of judges to fashion new rights and rules according to their own policy preferences threaten both of these strategies, to the detriment of whomever the people in power regard as beneath their concern. It is perhaps a supreme irony, but a fitting one, that the man most concerned with keeping alight the flame of these old concepts of liberty and dignity is the justice of the Supreme Court who grew up under a government that wished to accord him neither liberty nor dignity. ♦

Greece Monkeys

The European Union is bailing itself out, not the Greeks

BY CHRISTOPHER CALDWELL

A mass outbreak of syphilis, the radical economist and member of parliament Costas Lapavistas told an interviewer, is about the only thing the European political establishment did not threaten Greece's voters with before the country's early-July referendum.

European Union officials had delivered their umpteenth plan for Greece to continue making payments on its unpayable debt, which now runs into the hundreds of billions. To their horror, Greek prime minister Alexis Tsipras, head of a coalition government led by the neo-Communist Syriza party, put the question to the Greek people. Despite a heavily funded campaign in favor of the debt plan, voters rejected it by 61 percent to 39. As we went to press, Greece was meeting with EU officials to work out whether it will be possible for the country to remain in the euro, the currency that 19 of 28 EU countries share. Christian Noyer of France's central bank has warned that without a deal Greece could face "riots and chaos." The European financial press, overwhelmingly sympathetic to the project of binding Europe's countries ever more closely into the EU, says Greece is facing its last chance.

That is only half the story. This may also be the EU's last chance. In 2010, its two dozen countries discovered that Greece, one of the weakest economies among them, had accumulated debts equal to its annual output. Europe's economists and journalists had a field day exposing Greek cronyism and featherbedding. Experts from the so-called Troika (the European Central Bank, the European Commission, and the International Monetary Fund) crafted a Memorandum of Understanding to get matters under control. Their program of tax hikes, budget cuts, and regulatory reforms has been a catastrophe, turning a heavily indebted economy into a heavily indebted and idle

economy. For five years, Greece has run as tight a fiscal ship as any European country, yet its debt-to-GDP ratio has nearly doubled, to 178 percent. A third of the loans at the country's four largest banks are in arrears. In June, Greece became the richest country to default on a payment to the IMF. Certainly there has been corruption. Greece is a country of 11 million with 2.65 million retirees. But, as it was in the Asian currency crises of the late 1990s, corruption has turned out to be a red herring. The larger problem is the misdesign of the euro.



Back in '02, it was all things euro.

LENDING TO STAVROS

Greece's euro trouble arose in the wake of the U.S. subprime crisis—and largely because it struck investors as analogous. In both cases a credit system was distorted by an ulterior motive. Depending on whether you like the motive, you could call it idealism or social engineering. In the United States in the 1990s, we were told that the difference in rates of loan approval between neighborhoods was due largely to racism—what the Clinton administration called "redlining." Once you got over your bigotry, it was as safe to lend to people in

the slums as to people at the country club. At about the same time, apostles of the EU convinced Germans (who borrowed at 5 percent) that a currency it shared with Greeks (who borrowed at 18 percent) could be as strong as the deutsche mark they had spent half a century firming up. Once you got over your bigotry, it was as safe to lend to Stavros as to Stefan.

For a while it appeared so. On both continents, lenders took the rhetoric as a sign that the government would make them whole if loans went bad. In America, Fannie Mae and other government-protected lenders could offer loans at a lower rate than nongovernment ones. In Europe, Greek, Irish, Italian, and Portuguese interest rates converged with the German ones. Naturally, borrowers in those countries took advantage of the credit. It is easy to forget that, 20 years ago, consumers did not expect to be preyed upon by financial institutions, as they do now. It had been generations since the last wave of bank runs. To Greeks, those unbelievably

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cheap loans in Germany's currency appeared risk-free.

That did not make Greece Germany. Globalization brings prosperity because it brings specialization. Germany specialized in making Mercedes and designing precision machinery. Greece specialized in growing olives and changing tourists' beds. Southern European countries began running large current-account deficits, which were covered by money borrowed from the north, and in 2010, the system blew up.

Europe resolved the collapse in a way that has brought discredit on the Troika. Greece's budgets were certainly a mess—but what made them a mess worthy of emergency summits is that most Greek debt was held by opaque French, German, Dutch, and Italian private banks. Less than two years after the collapse of Lehman Brothers, officials feared that any forgiveness of Greek debt might cause these banks to collapse in turn. The “bailout” was not intended to bail Greece out. It was intended to remove risk from the banking system and to transfer it, in violation of EU treaties, to the countries that belonged to the EU. German banks, which had held about \$35 billion of Greek debt, reduced their exposure to under \$10 billion or so, or about as much as the United States had. French banks' exposure, which had been around \$60 billion, fell close to zero. It was they who were “bailed out.” Greece's debts remained what they were. The Jubilee Debt Campaign, a London-based lobby, claims that, of the quarter-trillion euros (\$277 billion) that has been “lent” to Greece since then, all but \$21 billion has gone into debt payment; \$256 billion has passed directly to creditors.

The International Monetary Fund was raided by the EU. Part of the postwar economic system set up by the Roosevelt administration, with the help of John Maynard Keynes, the IMF oversees the world currency system, much as its sister organization, the World Bank, oversees economic development. Over the years, a cozy arrangement developed in which a European always got to lead the IMF and an American the World Bank. Under Dominique Strauss-Kahn, the IMF made a highly irregular loan (called an “exceptional access standby arrangement”) to Greece, the largest in its history. The European political class put the collateral of the world's countries, including the world's poor countries, on the line to allow an orderly unraveling of a bank deal gone wrong. The ultimate purpose was to rescue a utopian project of the same European (not Greek) political class: the euro.

Ambrose Evans-Pritchard of London's *Daily Telegraph* has therefore asked whether we are right to focus on Greece at all. Evans-Pritchard is a conservative writer whose well-informed essays on European finance are a bracing contrast

to the conservative sloganeers in the United States, who often write as if the virtuous party in any dispute were always the one with the most money. “The currency union itself is delinquent,” Evans-Pritchard asserts. He is right. Greeks could borrow what they did because they were now members of a rich family. If Brad Rockefeller walks into a casino in a soiled T-shirt and runs up a million-dollar debt that neither he nor his family will repay, what was the casino's mistake? Trusting some T-shirt-wearing guy or trusting the Rockefellers?

TIRAMISU INSTEAD OF DEMOCRACY

Had Greece's government demanded total debt forgiveness back in 2010, a time of severe financial jitters, they might well have got it. By eliminating the dangers of contagion, the EU seemed to have eliminated any threat posed by Greek democracy to the smooth running of its institutions. But there was another source of problems: German democracy.

In a way, democracy-evasion is the EU's point. When referenda are decided in favor of EU institution-building, they become part of the *acquis*—written-in-stone, irreversible laws, as when the French joined the Maastricht arrangements that led to the euro by a handful of votes in 1992. When referenda run *against* EU institution-building, citizens are invited to vote again until they “get it right”—and add these new institutions to

the *acquis*. That happened when Denmark rejected Maastricht, and when Ireland rejected the Nice treaty in 2001 and the Lisbon treaty in 2008. (The principle is similar to the one under which three dozen U.S. referenda rejecting a right to gay marriage are meaningless, but three accepting it constitute a profound and irrevocable statement of values.) Where votes have gone so badly against the EU that they are unlikely to be reversed (as in the rejection by the French and the Dutch of the EU constitution in 2005), authorities agree to forget the whole thing ever happened, and pass the same measures in the form of treaties.

Vague complaints are often made about how, under Chancellor Angela Merkel, Germany “rules” Europe, as if Germany had lately begun throwing its weight around. But this misreads the source of Germany's dynamism, which, all in all, has been a good thing for the EU. Germany is powerful only partly because it has lots of dough, a current-account surplus, and a badass attitude. The more important source of its power is that it has been slower than its neighbors to dismantle its democracy. For self-evident historical

It is easy to forget that, 20 years ago, consumers did not expect to be preyed upon by financial institutions, as they do now.

reasons, the German constitution, drafted with American help in the late 1940s, was made unusually robust against the blandishments of charismatic utopians. It was meant to slow things down and limit handovers of traditional powers to madmen, even if they have ideas that sound really, really exciting at first blush. Every fresh European bailout needs to pass the Bundestag and every handover of German sovereignty needs to be scrutinized by Germany's supreme court.

A fresh extension of credit to Greece would require a German vote. A Greek default would require Merkel to hand her taxpayers a bill for loan “guarantees” that reaches almost a hundred billion dollars. And Germans have had enough of Greece. In recent days, even the Greeks’ traditional defenders in the Social Democratic party have taken to insulting them in public, as a way of demonstrating their bona fides to voters. But German democracy has served the Greek “side,” too. Thanks to their own constitutional punctiliousness, all German Bundestag members were recently given a copy of a stunning new report on debt sustainability by the IMF. It was then leaked to the Munich newspaper the *Süddeutsche Zeitung*. It showed that Syriza’s narrative about the utter unpayability of Greece’s debt is, as IMF economists see it, correct. Even under rosy assumptions, accepting the present reform package would leave Greece’s debt over 118 percent of GDP by 2030. The documents also showed that European Commission president Jean-Claude Juncker tried to con Greeks into believing that a \$38 billion program to which all member states are entitled was some kind of fresh “investment” he had decided to bring to the table as a sweetener.

While Germany and Greece are adversaries in the matter of Greece’s debt, they share a constitutional predicament. In every European country, people were made a lot of promises about the neat things they’d be able to do in the euro, like traveling passportless and eating tiramisu in Irish country towns. But no one was ever told the truth about the ultimate goal of the European project—the extinguishing of the continent’s various nation-states and, with them, their cultures. What often hangs up the EU’s leaders is that this part of the project is incompatible with democracy, and the work of neutralizing democracy is incomplete.

ADULT ENTERTAINMENT

The intellectual godfather of Europe, the businessman, diplomat, and lover of America Jean Monnet, once enthused that “Europe will be forged in crises, and it will be the sum of the solutions brought to these

crises.” EU leaders often behave as if they have arrived at the stage of continental brotherhood in which virtue requires the smothering of national interests in the name of a wider sovereignty. But their project is looking more like yesterday’s wave of the future. Paradoxically, Europeans can be asked to get over their differences and melt into a wider Europe only if Europe is identifiably *different* from elsewhere—culturally, ethnically, religiously, politically. Europe’s leaders have been reluctant to assert that their continent is superior, special, or even idiosyncratic in any way at all, in contexts ranging from the welcoming of mass migration to purging Christian references from its laws to negotiating membership with Turkey. Those who believe

Europe is no better or worse than anyplace else do not need a European Union. They already have the United Nations.

The other problem is that, as their utopia has grown less convincing, Europeans have grown less tolerant. They cannot handle ideological diversity. As the University of Texas economist James Galbraith, an adviser to Syriza, wrote of the excesses of European reformers in the *American Prospect*: “They aim to reduce the state; in this sense they are ‘market-oriented.’ Yet they are the furthest thing from promoting decentralization and diversity. On the contrary they work to destroy local institutions and to impose a single policy model across Europe.”

This is exactly right. Former Belgian prime minister Guy Verhofstadt, the eurocrat par excellence, harangued Tsipras on the floor of the European parliament in Strasbourg days after the referendum. He denounced any choices Greece’s sovereign government might make—about cutting Greece’s military by 5 or 10 percent, about tax exemptions for churches, about tax rates in tourist towns—as defenses of “privilege.” Verhofstadt said: “Let’s end the privileges of your ship owners, of the military, of the Orthodox church, of the Greek islands, and the political parties who receive loans and money.” Galbraith calls this attitude “market Stalinism.” One can see his point when one considers the political capital expended in recent months by governments in France and Britain to pass laws allowing Sunday shopping everywhere. France’s prime minister Manuel Valls even risked a vote of no-confidence to ensure his fellow citizens could troll the mall for Xboxes and Wiis instead of eating *coq au vin* with their widowed mothers. Hungary’s prime minister Viktor Orbán has been accused of extremism for resisting the Sunday-shopping trend. Capitalism is apparently such a fragile and delicate plant that no vestige of non-market



Now, not so much.

culture can be left standing, not even a centuries-old provision for a Day of Rest.

Syriza has plenty of Marxists in it. But what was really worst about communism in its heyday was *not* left-wing economics. It was the way Communist governments bullied their publics, jammed them into procrustean political arrangements nobody wanted, and punished free thinking. And in the battle between Syriza and the country's creditors, it is by no means obvious that Syriza is the more authoritarian of the two sides. EU officials and their defenders often act as if belittling the Greeks will do the work of making coherent arguments against them. Their elected government is dismissed as a bunch of children. Ilmars Rimsevics, Latvian central banker, says Greece "has not done the necessary homework." Chris Giles of the *Financial Times* writes: "You do not give treats to a misbehaving child." IMF head Christine Lagarde said at a press conference in June: "The key emergency, in my view, is to restore dialogue with adults in the room." (This is apparently an IMF priority, given the success of Lagarde's predecessor and compatriot Dominique Strauss-Kahn in turning the IMF into an "adult" institution.)

IS TSIPRAS CHICKENING OUT?

On the eve of the July 12 emergency summit over Greece's fate, the situation was paradoxical. Syriza was elected to run Greece because Syriza was the only party with the courage to state that the debt is not serviceable. And yet party leader Tsipras appeared open to another bailout deal built on the premise that it is. The Greeks gave a landslide majority in their referendum to steps that would hasten the country's exit from the euro, yet 70 percent of voters tell pollsters they don't want that. Every policy argument Tsipras makes points to the need for his country to reclaim the sovereignty that it handed over to Europe in 1981, yet every philosophical pronouncement he makes leaves no doubt that he would regard leaving the EU as a catastrophe.

On legal grounds, Tsipras may not feel he can *say* he wants to leave the eurozone. In case of a rupture who would be liable for the unpaid debts to European taxpayers? Greece? Or Europe's central bank and rescue funds? Hard to say, but here one does not want to be the party that reneges on a contract or violates a law. The left-wing economist Lapavistas says in an interview with *Jacobin* magazine that, in the event of a rupture, figuring out where responsibility lies for various payments would take "an army of lawyers." A weird thing about negotiations between Greece and the Troika is that both sides have acted as if they are trying to get the *other* side to leave the table in a huff. Germany's finance minister Wolfgang Schäuble has accused the Greeks of not

understanding basic obligations and made clear the EU would be better off if the country went back to its own currency. Greece's former finance minister Yanis Varoufakis, an economics professor in Australia and Texas, called the Troika's policymakers "the biggest idiots in the history of economics." Tsipras may be in the position of an employee who can collect unemployment if he's fired but not if he quits.

On the other hand, Tsipras may just be chickening out, and indications on July 9 were that he would submit to a tough new austerity program. His party relies for its majority on a coalition with a conservative party that wants Greece to get its sovereignty back, and he has made nationalistic appeals to memories of the Greek resistance in World War II. But most "leftists" today are so frightened of nationalism that they would not know what to do if put in charge of a nation. While Tsipras has said little on such matters, his closest ideological ally, Pablo Iglesias, founder of Spain's radical Podemos party, has. "The strategy we have followed," Iglesias told the *New Left Review* this spring, "is to articulate a discourse on the recovery of sovereignty, on social rights, even human rights, in a European framework." He hastens to add that he likens this to the Popular Front strategy of 1930s Communist parties in Spain and elsewhere. Those parties made temporary common cause with the bourgeois left and center as a stepping stone to power, but had no intention of compromising over the long term. So Podemos is an internationalist party. The parts of its message that involve "getting one's country back" are an electioneering tactic, and the same may be true of Tsipras's Syriza. At the end of the day, Tsipras favors the multilateral utopianism of the EU, but he wants it to reflect the values of the lecture hall, not the boardroom. That would explain why, in the aftermath of his triumph, he fired Varoufakis.

Still, Tsipras's gambit has unleashed thoughts among other political actors that cannot be unthought. Indebted peoples, leftists, and nationalists across Greece and Europe are beginning to realize that they have not only reason to distrust the EU but also opportunity to change it. Russia, which in early July hosted a summit of the BRICS countries (Brazil, Russia, India, China, and South Africa), has grown close to Greece of late (president Vladimir Putin talked to Tsipras on Monday) and sees a chance to tip over the wobbling European consensus on the U.S.-led program of sanctions occasioned by its annexation of Crimea. And there are other countries in Europe. Were Greece kicked out of the euro, now or later, some other nation, possibly Italy or Spain or Portugal, would emerge as the community's new laggard, its sick man, its black sheep. It would look to see whether Greece had done better inside the EU or outside. A terrible fear began to motivate the EU's leaders this week—the fear not that Greece might die outside of the euro but that it might thrive. ♦

Free to Shut Up

The collision of religious liberty and gay rights in Oregon

BY MARK HEMINGWAY

‘**T**hey have good days and bad days, but I will tell you they are resolute,” attorney Herb Grey says of his clients, Aaron and Melissa Klein, two bakers from Portland who are facing a \$135,000 fine from the state of Oregon for refusing to bake a cake for a lesbian commitment ceremony in January 2013. “They know that today it’s them, but that there’s nothing they can do to escape from it, and they’re willing to stand up, knowing what the potential implications are for other people.”

It’s safe to say that July 2 was not one of the Kleins’



Melissa Klein chats with a customer prior to her bakery’s closure, February 5, 2013.

better days. Brad Avakian, a commissioner with the state Bureau of Labor and Industries (BOLI), issued a ruling that upheld the \$135,000 fine for violating state public accommodation laws suggested by an administrative judge in April. The couple were told to pay the fine by July 13 or the state would place a lien on their home. Not only that, but Avakian added an astonishing wrinkle. He issued a gag order that effectively prevents the couple from saying much of anything about the case: “The Commissioner of the Bureau of Labor and Industries hereby orders Respondents Aaron and Melissa Klein to cease and

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desist from publishing, circulating, issuing or displaying, or causing to be published . . . any communication to the effect that any of the accommodations . . . will be refused, withheld from or denied to, or that any discrimination will be made against, any person on account of their sexual orientation.”

The state insists that this is not a gag order, that it narrowly restricts what the Kleins may say about who they will serve. (Their bakery, Sweetcakes By Melissa, was shuttered in 2013 thanks to negative publicity surrounding the case, though the couple are trying to keep their business alive online.) But according to Grey, who is one of three lawyers working with the Christian legal group Alliance Defending Freedom to represent the Kleins, the couple have never stated an intention to discriminate, only stated why they took the stand they did in the instance that got them into trouble. Besides, the Kleins have no problem serving gay customers. They had previously served the lesbian woman who filed the complaint against them. They simply decline to make cakes for same-sex weddings, since to do so, in their view, would betray their Christian conscience.

This didn’t stop Avakian, in the July 2 ruling, from citing the following statements by the Kleins as proclaiming their intention to discriminate:

I didn’t want to be a part of her marriage, which I think is wrong.

I am who I am and I want to live my life the way I want to live my life and, you know, I choose to serve God.

It’s one of those things where you never want to see something you’ve put so much work into go belly up, but on the other hand, I have faith in the Lord and he’s taken care of us up to this point and I’m sure he will in the future.

We will continue to stand strong. Your religious freedom is becoming not free anymore. This is ridiculous that we cannot practice our faith. The Lord is good and we will continue to serve Him with all our heart.

Another statement that Avakian singles out seems more clear cut: “We don’t do same-sex marriage, same-sex wedding cakes.” Yet even here, Avakian is being willfully obtuse. The transcript of the radio interview in which Aaron Klein said this shows that he was merely recounting

EVERTON BAILEY JR. / THE OREGONIAN / AP

what he told the customer at the time he declined to bake her cake, not announcing his future intentions.

“The way we look at it, and if you put it in First Amendment terms, if you don’t know where the line is drawn, you don’t know how close you can get to it, which means that you tend to engage in less speech to try to stay away from going over the line,” says Grey. “Our perception was that it was in fact a gag order that basically limited us from talking about the case really at all. . . . [The Kleins] don’t know what might trigger a future violation and further complaints and further action by the commissioner.”

The hefty fine and the gag order are hardly the only outrageous things about Avakian’s decree. On page 34, the ruling reads, “In addition to any emotional suffering experienced by Complainants as a direct result of Sweetcakes’ refusal to bake them a cake (‘denial of service’), the agency also seeks damages for suffering caused to the Complainants by media publicity and social media response to this case.”

The state ultimately rejected the idea of additional damages for suffering caused by negative publicity, but its raising the possibility is cause for alarm. The state is essentially saying that if it charges you with violating the law, you can’t speak out against what’s happening to you without potentially subjecting yourself to increasingly harsh penalties—never mind that the Kleins are the ones who seem to have suffered the most from the attendant publicity. Their once-thriving bakery is closed, and Aaron Klein is trying to make ends meet and take care of their children by working as a trash collector.

What’s more, the ruling leaves little doubt that Avakian is not just determined to punish the Kleins—he’s hostile to Christian morality writ large. Consider this passage:

In addition to other emotional responses, [complainant Rachel Bowman-Cryer] described that being raised a Christian in the Southern Baptist Church, Respondent’s denial of service made her feel as if God made a mistake when he made her, that she wasn’t supposed to be, that she wasn’t supposed to love or be loved, have a family, or go to heaven. [Laurel Bowman-Cryer], who was raised Catholic, interpreted the denial to represent that she was not a creature created by god, not created with a soul and unworthy of holy love and life. . . . These are the reasonable and very real responses to not being allowed to participate in society like everyone else.

In other words, the fact that the Kleins justify their actions as fidelity to beliefs that are far from atypical in a country that is nominally 70 percent Christian only meant that they were inflicting additional pain on the complainants. But there is nothing reasonable about citing the lesbian couple’s own religious baggage to reinforce their claim to emotional damages against an ignorant third party. Under this logic, had they been denied a cake for secular reasons, the damage would have been less and the fine accordingly lower. It’s hard not to conclude that Avakian is punishing the Kleins for their Christian beliefs.

The hefty fine and the gag order are hardly the only outrageous things about Avakian’s decree. On page 34, the ruling reads, ‘In addition to any emotional suffering experienced by Complainants as a direct result of Sweetcakes’ refusal to bake them a cake (‘denial of service’), the agency also seeks damages for suffering caused to the Complainants by media publicity and social media response to this case.’

This is just what can be concluded from the state’s public pronouncements in the case. But there are a number of circumstantial and political factors that make what is going on more suspect.

For the Kleins, the process is the punishment. So far, all of the actions against them have been taken not by any court of law but as a result of administrative hearings by BOLI, the state labor bureau, which has both prosecuted the complaint and sat in judgment. What’s more, the Kleins and the complainants disagree sharply about what was said when one of the complainants and her mother were told the bakery could not provide the cake. The complainant’s mother says that Aaron Klein called the lesbian couple’s children

an “abomination,” whereas Klein insists he did nothing more than quote Scripture to her when she tried to argue with him that the Bible doesn’t condemn homosexuality. The labor department saw fit to take the complainant’s version of events as fact when it is pure hearsay.

In addition to the absence of any respectable evidentiary rules, the standards for determining damages are ridiculous. The 178 claims of emotional damage quoted are so vague and unprovable as to be absurd: One complainant “felt mentally raped, dirty and shameful” and “pale and sick at home after work.” Some complaints consist of isolated words: “shock,” “stunned,” “surprise,” “uncertainty,” “torture.” According to Grey, there’s a reason the complaints sound fishy: “BOLI actually had a list of symptoms which they gave to the complainants,

and the complainants checked the ones that they thought applied to them.”

As if that weren't bad enough, both the findings of the Kleins' legal team and reports in local newspapers point to questionable ties between state officials and gay rights advocates.

According to Herb Grey, his team's efforts to do discovery in the case were hampered by the state, but some startling information came out at a hearing. The brother of one of the complainants, Aaron Cryer, on cross examination was asked about a conversation he had had with his sister. “And he said, completely unsolicited—this is a BOLI witness—he said something to the effect of, well, what we were talking about because we had met with BOLI and with [the gay advocacy group] Basic Rights Oregon, and we were working really hard on marriage equality, we were trying to figure out how best to use this case basically to advance the agenda.” This, Grey explained, “was totally different from anything we'd heard in deposition testimony or anything else. We moved to reopen the record to be allowed to inquire further into that, which was denied.”

Meanwhile, a story in the *Oregonian* last summer reported allegations that Avakian should not be prosecuting the case as he had cheered gay rights advances on his Facebook page and had been quoted in the *Oregonian* saying, “The goal is never to shut down a business. The goal is to rehabilitate.” Then this June, the *Daily Signal* obtained emails from a public records request showing that Avakian had met and communicated regularly with Basic Rights Oregon and had purchased tickets at a cost of hundreds of dollars to attend Basic Rights Oregon's galas and events, even as he was prosecuting the Kleins. (Also notable: Earlier this year the Kleins had an Internet crowdfunding effort to help pay their fine shut down by an online campaign pressuring the website GoFundMe.com to drop them. This campaign was led by the owner of Cupcake Jones, a competing bakery that has won awards from and is an ardent supporter of Basic Rights Oregon.)

Avakian and the labor bureau may or may not have colluded with gay marriage activists, but it's a matter of public record that Oregon's attorney general declined to defend the state's ban on gay marriage—and her senior staff helped draft the complaint that eventually overturned the ban. As a consequence of the Supreme Court's *Hollingsworth v. Perry* ruling that overturned California's Proposition 8 banning gay marriage, only state governments have standing to defend gay marriage bans. By not intervening, Oregon in effect overturned the ban by default.

It seems that government authorities in Oregon have

no desire to be impartial in clashes over gay rights. In 2009, the mayor of Portland, Sam Adams, admitted he had lied about sleeping with a teenage boy when he was a 41-year-old city council member. Adams, who had been seeing the boy since he was 17, claimed that they hadn't become physically intimate until the boy's 18th birthday—when a sexual relationship would have been legal. The state government's progressive image, however, was heavily invested in Adams as the first openly gay mayor of a major city. So the state attorney general conducted a brief investigation in which no witnesses were placed under oath, and no charges were filed. Adams survived two recall attempts and served out his term as mayor. That the state would only casually investigate statutory rape charges against a prominent gay politician—but spend years and considerable resources throwing the book at a small business for refusing to bake a cake—is telling.

In Oregon, it seems there is little price to be paid for the appearance of collusion when it means advancing the state's popular progressive causes. On the contrary, it's smart politics. So far, the only statement the labor bureau has given to the press about Avakian's ruling was to *Media Matters*, a discredited left-wing website dedicated to attacking conservative media. According to Portland's alt-weekly *Willamette Week*, Avakian is rumored to be running for secretary of state next year, and prosecuting the Kleins has likely elevated his profile with all the right organizations in the state.

The Supreme Court's *Obergefell* decision legalized gay marriage across the country, and many in the gay community are likely content with the victory and happy to coexist with peaceful Christians who still regard homosexual conduct as sinful. The continuing persecution of people like the Kleins, however, suggests that gay marriage is not the endgame for many gay activists.

In the wake of *Obergefell*, the journalist Jonathan Rauch, a prominent advocate of same-sex marriage, called the new right a “vaccine against homosexual self-hatred.” And same-sex marriage supporters pilloried Supreme Court justice Clarence Thomas for his *Obergefell* dissent, in which he said that the state can neither confer “dignity” upon individuals nor deprive them of it. Thomas quoted Frederick Douglass to the effect that even those trapped in American slavery possessed dignity. For merely expressing the American creed that our rights and worth as individuals are innate and independent of government, Thomas was called “vile” by *Salon* and, by *Star Trek* actor and gay activist George Takei, “a clown in blackface.”

Popular support for gay marriage has increased rapidly in recent years in no small part because it was seen as an expansion of freedom with no real consequences for the existing order. If the gay rights movement now seeks to use the force of law to insulate gay people from opinions that allegedly encourage “self-hatred”—if the legalization of gay marriage comes to mean that disagreeable personal judgments about others’ behavior are an affront to some state-enforced notion of “dignity”—then the coming political battles are going to be ugly. A number of prominent gay activists are being quite public about their intentions. After a blog post on the Alliance Defending Freedom’s website asked, “Are we supposed to accept the idea that, for Christians in America, we must divorce our belief from our actions?” Zack Ford—who writes about gay issues for the in-house publication of the Center for American Progress, arguably the most influential think tank with the Obama administration—replied simply, “Yes.”

It’s hard to see how such attitudes won’t result in a parade of First Amendment horrors. Already, the clients of the Alliance Defending Freedom include a host of ordinary Americans who have run afoul of such ominously expansive views of gay rights:

■ On July 7, Jack Phillips, another baker, this time in Colorado, appealed the state civil rights commission’s ruling against him for refusing to serve a same-sex couple. The pair wanted a rainbow-themed cake. Phillips argued he could not be forced to make a cake that communicated a message he did not agree with. A Colorado civil rights commissioner compared Phillips’s argument to those employed by Nazis and slave owners.

■ In Washington state, the attorney general is suing florist Barronelle Stutzman, 70, for refusing to provide flowers for a same-sex wedding. The gay would-be customer was a longtime friend with whom she had done business for nine years. Stutzman and the customer were so close they hugged each other after she informed him she couldn’t make a cake for his wedding. The customer did not initially press charges, and the state attorney general initiated the case on his own after hearing about it on social media. One of Stutzman’s former employees, who is gay and a same-sex marriage supporter, has filed an affidavit on her behalf. But now the ACLU and national gay rights organizations have taken up the case

against her. The state attorney general and the aggrieved customer are not just suing her business, but going after her personal assets.

■ Hands On Originals, a printer in Kentucky, ran afoul of a local human rights commission for refusing to print T-shirts for a gay organization. He was told that he had to use his printing press to print messages he disagreed with. After years of administrative proceedings, a state court ruled in the printer’s favor in April: “It is clear beyond dispute that [Hands On Originals] and its owners declined to print the T-shirts in question because of the message advocating sexual activity outside of a marriage between one man and one woman.”

That ruling is being appealed to a higher court.

■ In Atlanta, the city’s African-American fire chief Kelvin Cochran was summarily fired after he published a book about helping Christian men avoid sexual temptation. The 162-page book scarcely mentioned homosexual activity but did include it in a list of sexual sins. Cochran’s job record is spotless; he was previously the top fire-fighting appointee in the Obama administration

and was named Fire Chief of the Year in 2012. But tolerance has its limits. Atlanta city council member Alex Wan explained, “I respect each individual’s right to have their own thoughts, beliefs, and opinions, but when you’re a city employee and those thoughts, beliefs, and opinions are different from the city’s, you have to check them at the door.” The Alliance Defending Freedom filed a federal lawsuit earlier this year to get Cochran reinstated.

If cases like these come to define the post-*Obergefell* gay rights movement, it’s hard to imagine there won’t be a backlash. In the meantime, rooting out and punishing small-business owners and public employees with retrograde ideas about sex and morality seems to be an increasingly common and acceptable tactic.

But those on the extreme end of the gay rights movement shouldn’t expect this to be an easy fight. For now, the Kleins have vowed not to let the threat of the state’s gag order stop them from calling attention to their plight. And even Barronelle Stutzman, a soft-spoken grandmother of 23, is calling on others to join the fray. “I get a lot of notes that say, ‘I stand behind you,’” she says. “But I don’t want you standing behind me. I want you standing beside me. I’m just one voice. I can’t do this alone.”



Complainants Laurel, left, and Rachel Bowman-Cryer



Remnants of the brick Dixie Highway, Espanola, Florida

Highway to Heaven

Building the yellow brick road to sunny Florida. BY DANIEL LEE

One hundred years ago this spring, rowdy automobile caravans from all over the South and Midwest rolled into Chattanooga for the inaugural meeting of the Dixie Highway Association (DHA). It would have been no Sunday drive, according to Tammy Ingram: American roads at the time comprised a disconnected tangle of trails and country paths; most were shoulderless as a snake and twice as curvy, rutted tailbone breakers in good weather and bottomless bogs in the rain.

A near-convoy of new automobiles,

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Dixie Highway
Road Building and the Making
of the Modern South, 1900-1930
 by Tammy Ingram
 North Carolina, 272 pp., \$29.95

including Henry Ford's endlessly adaptable Model T, had put untold thousands behind the wheel, but to little purpose. As Col. Albert Pope, a bicycle-maker-turned-auto-producer observed, "The American who buys an automobile finds himself with this great difficulty: He has nowhere to use it."

Construction began on the Dixie

Highway in 1915, and Ingram gives us a thorough overview of how, when it officially passed into history 11 years later, its dirt roads were mostly still dirt, funding debates still raged, roadwork still just washed away after a few hard rains, and, in the Deep South, much of the labor was still performed by unskilled gangs of convicts—usually African Americans—chained together and sweating along the dusty right-of-way.

But that same period also saw thousands of motorists traveling the Dixie, primitive as it was. Their tourist dollars supported hundreds of mom-and-pop businesses that opened up to serve them. Convoys and travel clubs hit the

EBVABE

road, presaging decades of enthusiastic motor travel that resonate in American memory and culture to this day.

Beyond that, the Dixie Highway's success as an idea, if not as a finished transportation route, demonstrated that roads needn't—and shouldn't—be the almost exclusively local matter they had always been. They plainly contributed to the public good—economically, culturally, and socially—and deserved the attention and support of the federal government.

An Indianapolis auto-parts millionaire named Carl Fisher thought the Dixie Highway would be a great first step toward his goal of building a contiguous all-weather motor route that would improve and link existing roads from the Great Lakes to the new tourist mecca of Miami Beach, where (as it happened) he was a major property owner. Fisher was a born salesman who had once shocked Hoosiers by wafting an automobile over downtown Indianapolis beneath a hot air balloon. He was also part-owner of the new Indianapolis Motor Speedway, home of the Indianapolis 500. Wildly successful as the producer of chemical auto headlamps, Fisher had sold that company and plowed the proceeds into an overgrown sand-spit just off the Miami shore, which he was marketing as a warm and welcoming Eden for Yankees who were sick of vistas of frozen corn stubble.

But when the DHA convened in Chattanooga to choose a route to Fisher's holiday haven, the meeting quickly devolved into a scrambling donnybrook, as 5,000 boosters from Michigan to Florida thumped to bring the highway and its rolling business through their respective hometowns. There were just too many communities and too little road to include them all. Soon, suspecting that the fix was already in, they went for the organizers.

"People were shouting at each other," Ingram writes. "All these different communities sent delegations thinking that if they just showed up with a lot of cars, ticker-tape and a big presence, they could sweet talk their way into the project. But everybody else thought the same thing."

The raucous meeting in the shadow of Lookout Mountain—just 50 years after the end of the Civil War—quickly became known as the Second Battle of Chattanooga. The panel of governors Fisher had recruited to designate a route tossed the hot potato to a study committee. A month or so later, the committee came back with a plan that didn't so much choose a path for the Dixie as expand it.

There would be two parallel routes, a western track running south from Chicago through Indianapolis, Chattanooga, Atlanta, and Tampa; and an eastern one from upper Michigan through Cincinnati, Asheville, Savannah, and Jacksonville.

Together with several east-west connectors, this would more than double the mileage of Fisher's original plan. Though overall this would have been very beneficial—transforming a distinctly limited tourism artery into a more useful network of interregional roads—in reality the DHA's capacity to get the work done was limited. This was especially true down south, where roads were in the worst shape and funds were almost nonexistent.

Given the broad support for better roads—especially in the form of an organized Good Roads Movement, formed originally by bicyclists but hijacked by motorists and auto manufacturers—the hope was that government money would become available later on. Exactly how that should happen proved to be controversial.

Local officials distrusted federal and state government and supported "pay-as-you-go" gasoline taxes that had a pennywise appeal to cautious citizens. More progressive advocates argued vainly for more remunerative state bond issues. Nervous voters turned these down, time after time. Federal matching funds helped in some areas, but they were often extremely limited in scope. And they were chronically beyond the reach of small, poor, rural counties, which had trouble with the "matching" part.

As various levels of government argued about how to solve the problem, Fisher and the DHA focused on

publicity, including printing their own, very popular, illustrated magazine, *Dixie Highway*. Fisher understood that selling the Dixie meant selling the South as a destination. The magazine's writers spun idyllic tales of sunny warmth, Smoky Mountain vistas, pecan groves in full bloom, live oaks ragged with enough Spanish moss to beard Sherwood Forest, overflowing peach baskets, and jolly, rolling communities of vacationers.

It worked. Travelers hit the road in droves, with 7,000 cars carrying 27,000-odd children, grandmothers, mothers, and fathers to the Southland during the winter of 1916-1917 alone. They spent nearly \$3 million, roughly \$400 per car, boosting the chronically depressed southern economy and spurring the creation of untold numbers of quirky roadside businesses.

But as travelers raised clouds of dust on the Dixie Highway, the standoff between state and federal road officials and local politicians continued, especially in the South. There, Ingram writes,

White Democratic hegemony depended upon an array of mechanisms designed to guard local control and limit state and especially federal interference in local affairs. Consequently, while many Northeastern and Midwestern states had developed at least minimal forms of state highway aid as early as 1911, Southern states had not. They relied on property taxes, forced labor, and occasional local bond issues to finance all roadwork.

Southern resistance in Congress led to compromise road bills that, in 1916, "provided \$75 million in federal money over five years but . . . left control over construction, improvements, and maintenance of roads and highways to state governments rather than to thousands of county governments."

Demand for good interstate roads had simply outpaced the government's ability to produce them: "The full vision of a federally funded interstate system was, in 1916, too radical and too foreign a project to garner congressional support," Ingram writes.

Dixie Highway could have used a bit more discussion of the ins-and-outs of this conflict in Congress—who

the roadblocks were, so to speak—but that absence is easily balanced by attention to the local and state scene, especially in Ingram’s native Georgia. Ingram focuses extensively on the 1926 Democratic gubernatorial primary in Georgia that pitted two avowed members of the Good Roads Movement against each other.

Georgia Highway chairman John Holder advocated more aggressive state-level road financing, such as through bond issues. Opposing him was Lamartine G. Hardman, a wealthy planter and physician who instead campaigned for pay-as-you-go gasoline taxes. Hardman won, partly on the strength of frugal voters’ distaste for bond issues, but also because he was able to paint Holder as possibly corrupt and a supporter of road crew shovelers, the kind of thing that, even today, can trigger behind-the-wheel muttering by impatient motorists.

No doubt, it was pleasant to vote against state bonds for somebody’s idle brother-in-law; but the bottom line was that road work was simply too expensive for many jurisdictions to manage on their own. Grading and smoothing a rutted country lane into a dirt roadway could run \$1,000 to \$2,000 per mile, while rural counties typically had only \$300 to \$600 to spend. And even that, complained one southern highway commissioner, was “washed into the gutters with every rain.” Federal matching funds to install more durable and (in the long run) less expensive brick or other hard-surface roads were beyond the reach of such poor countryside counties.

As a result, the Dixie Highway didn’t last all that long as a named entity, at least formally. In 1926, the federal government, in the form of a temporary panel of state and federal road officials appointed by the Bureau of Public Roads, finally stepped in and stripped “marked trails” such as the Dixie of their unitary, named status. Instead, they designated east/west roads with even numbers and north/south roads with odd numbers. It’s the same system still in use.

Unfortunately for the Dixie, where parallel routes and several connecting

segments meant portions ran every which way, the government ruled it ineligible for a single-number designation throughout its length. Pieces ended up as US 41, US 17, US 1, and others, although some sections retain the Dixie Highway name in local usage to this day.

The change effectively formalized what had been a creeping transition away from local control of highways that had evolved as Congress (and voters) failed to come to grips with the question of who would manage road development. It was a bureaucratic solution to the polarization that had developed as pro-local and pro-federal activists maneuvered for control within the Better Roads Movement.

In a larger sense, it was another example of America’s ongoing, and possibly permanent, balancing act between a strong central government and robust local independence, both key elements of our country’s animating spirit. In the end, it was the thousands of travelers voting with their feet, or, rather, their frequently patched tires, that forced this extra-legislative settlement. The demand for good roads simply outweighed the continuing inability to deal with the problem—call it gridlock—and a shortcut had to be found.

Put another way, it wasn’t the success of the Dixie Highway that prepared the ground for a useful national road system, but its failure. ♦



Loss of Feeling

‘Men, trying to make themselves immortal, manage only to make themselves inhuman.’ BY PARKER BAUER

All fiction, it’s been said, boils down to two plots: Either a stranger comes to town or someone goes on a trip. Gatsby lands on Long Island, drawn like a luna moth to Daisy’s green light. Huck and Jim raft away in an idyll of racial amity that today seems, in a term dear to Mark Twain, a stretcher.

Christopher Bryan’s third novel, *Singularity*, set in a slightly futuristic England, brings together both plots, one inside the other—in effect, a travel brochure tucked inside the pages of the Apocalypse. Bryan, emeritus professor of theology at Sewanee, is not so well known for his fiction as for his lucid biblical studies, notably *The Resurrection of the Messiah* (2011). His novels, which take faith seriously, are ideal antidotes to the crypto-farces of Dan Brown.

In the larger plot of *Singularity*, a

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Singularity

by Christopher Bryan
Diamond Press, 196 pp., \$14.99 (paperback)

country town in North Devon is torn by the coming of U.N.I.T.E.D.—the United Nations Institute for Technology and Development—and its monolithic new headquarters, likened to the Tower of Babel. The head of this feral bureaucracy, Sir James Harlow, is a respected negotiator on behalf of Britain with canny governments in the Middle East. He serves also as a lay reader in the Church of England and observes that diplomatic negotiation is “a lot like hearing confessions, at least in the Anglican tradition.” The mission of U.N.I.T.E.D.—regarding “the environment, world health, and the problem of renewable fuels,” *inter alia*—is anyone’s guess.

The locals get on poorly with U.N.I.T.E.D., resenting its armed

security force and its consumption of a chunk of that manicured farmland of which the English are so fond. A vicar rhapsodizes:

Nothing could be more beautiful than walking home on a cold evening with cows—feeling their breath warm on your back and hearing them snort with interest at things they’ve found to chomp in the hedgerows.

This homely sentiment, easy to mock, points to the real trouble with U.N.I.T.E.D. The loss of cow pasture is the least of it; the deeper program, we discover, is the purging of sentiment itself.

To spot the clues, it’s not necessary to have read C. S. Lewis’s *That Hideous Strength* (1945), but it helps. That book lurks always in the shadows of Bryan’s story: Both are set in the fictional town of Edgestow, and one of Bryan’s fidgety townfolk mutters that U.N.I.T.E.D. reminds him too much of N.I.C.E.—the sinister agency set up there in the Lewis tale.

A police detective, Cecilia Cavaliere, sniffs trouble while investigating the highway deaths of two Nigerian illegal immigrants en route to U.N.I.T.E.D. Learning too much, she’s seized and subjected to the grim experiment of which the Nigerians were to be victims. The men at the top are perfecting computers “capable of removing much of the uncertainty and pain of human life, of creating something like paradise.” The sole beneficiaries—no surprise—are the bureaucrats themselves, who mean to become immortal by downloading, in due time, the entire contents of their consciousness onto silicon chips. They’re paragons of pure scientific rationalism: heartless types that Lewis, in a famous essay, called “men without chests.” In their hyperprogressive view, all emotion, ethics, and transcendent values are mere fall-backs for the weak-minded.

In the inner plot, it’s Cecilia Cavaliere who takes a trip. Hooked to a computer in an upper room of the U.N.I.T.E.D. tower, she’s abruptly transported, in virtual reality, to Rome on September 8, 1943. As commander of the Italian forces—an apt role, given

her ancestry—she faces the challenge of turning back the would-be German occupiers at the gates, a reversal of history if she succeeds. That, and the lesser challenge of somehow escaping the computer’s lethal clutches alive. In this, she’s aided by a 17th-century priest who turns up as a living entity, existentially distinct from the rest of her cyber transport. He offers a hint, not quite a hand.

The title, *Singularity*, refers to the theoretical point at which computers become more intelligent than men and subsequently take over. It is also

when men, trying to make themselves immortal, manage only to make themselves inhuman. Enter Cecilia’s IT expert, who puts things in perspective: “Computers are idiots whose only virtue is that they can count up to two extremely fast.”

Harlow, it develops, is not the worst evil in U.N.I.T.E.D., yet he’s ready to blow up a busload of schoolchildren so that humanity—his own—can survive. He comforts himself with fictions, keeping two contrary plots going at once. In that, perhaps, he’s the rest of us, writ large. ♦

BCA

The Turning Points

One theologian’s journey from there to here.

BY MARK TOOLEY

Thomas Oden is a Methodist, ecumenist, evangelical, and patristics scholar who was dissuaded from liberal modernism by a Jewish conservative, becoming himself a theological paleo-orthodox and devoting the last half of his life to the reaffirmation of Christian orthodoxy rooted in the early church fathers. As the author of dozens of books, including a 3-volume work on systematic theology, and the general editor of the 29-volume *Ancient Christian Commentary on Scripture* covering eight centuries, Oden, now 84, is one of the most important theologians of the last half-century.

He also has the distinction of having renounced most of the first two decades of his work, from the 1950s and ’60s, when he was a movement theologian and political leftist, devotee of a radical Methodist youth magazine, and willing captive to the assumptions of such modernist icons as Marx, Freud, Nietzsche, and Darwin. He recited the Apostles’ Creed

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A Change of Heart

A Personal and Theological Memoir
by Thomas C. Oden
IVP Academic, 384 pp., \$40

figuratively, with his fingers crossed, and he enthusiastically appropriated Saul Alinsky as a model for subverting Christianity for class struggle and political mobilization.

A Change of Heart recounts his dramatic turnabout. After he arrived at Drew University in 1970, his older colleague, the former Communist Will Herberg—by then writing for *National Review*, having returned to his own Jewish faith at Reinhold Niebuhr’s urging—implored Oden to read the early church fathers before presumptuously rejecting their faith. After months in the library absorbing Sts. Athanasius, Vincent, and Augustine, among others, Oden was stunned by their persuasive powers, which he credited to the Holy Spirit. He would spend his next three decades at Drew as a respected but lonely voice for Christian orthodoxy,

tutoring several generations of “young fogey” orthodox scholars and clergy.

No less important, Oden connected with a wider network of conservative religious voices who shared his critique of liberal modernity, including the Vatican theologian Joseph Ratzinger—who, of course, would become Pope Benedict XVI and whom Oden credits for inspiring his *Ancient Christian Commentary* project—and the Lutheran-turned-Roman-Catholic Richard John Neuhaus, who joined Oden in the ecumenical project of Evangelicals and Catholics Together. Oden also befriended Avery Dulles, the Catholic-priest son of John Foster Dulles who excelled as a crisply orthodox theologian and became a cardinal.

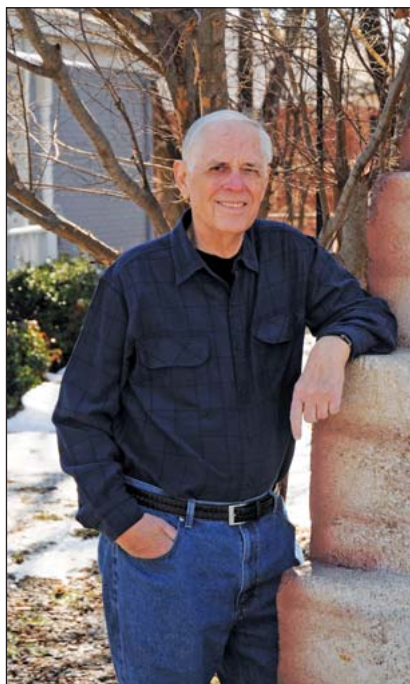
Unlike other Protestant intellectuals who turned conservative in collaboration with Catholic thinkers, Oden seems never to have been seriously tempted to leave Wesley for Rome. He insists that he would never leave the church that baptized him, which means the small-town Methodism of Depression-era Oklahoma, where he was shaped by the preaching, prayers, and hymn-singing of traditional Wesleyan piety.

In 1930s Oklahoma, Oden’s family would cover windows with newspapers to guard against frequent dust storms. In a similar fashion, the simple Methodist faith Oden acquired guarded him against a complete collapse of faith, even across several decades of intense spiritual experimentation, when mainline Protestantism was moving leftward. The faith of Oden’s youth and his years as a young pastor in rural churches provided a foundation to which he would return as he entered middle age. Meanwhile, he would transit through commitments to the social gospel, one-world government, pacifism, existentialism, Rogerian psychotherapy premised on “unconditional acceptance,” and modernist theologians such as Paul Tillich and Rudolf Bultmann, who sought to demythologize Christianity.

As a student at the University of Oklahoma during the Korean War, Oden and his friends joined Students for Democratic Action, sang solidarity

songs, hearkened to Woody Guthrie, and dreamed of a remade world that they would lead. He admired Norman Thomas and Ho Chi Minh, the not-yet-fashionable peasant rebel against French colonialism.

Oden became a frenetic political organizer and networker on campus through Methodism and the newly forming and influential ecumenical movement embodied by the National and World Councils of Churches. He would later explain to students that he had been influenced by the same social-gospel Methodism that had



Thomas C. Oden

shaped a young Hillary Clinton. Her influential youth pastor became Oden’s colleague at Drew, and her Wellesley thesis on the “Alinsky Model” paralleled Oden’s own formative years, when he tried “covertly to make his unprincipled amorality work in the church.”

Yet Oden, despite all his left-wing mobilizing, seems never to have been completely at home in such circles. He broke with pacifism as early as 1956, reacting to the Soviet suppression of the Hungarians, to Niebuhr’s “stunning” essay “Why Is Communism So Evil,” and to an esteemed colleague’s scholarly defense of the 1945 atomic bombings.

As a Protestant observer at Vatican II, Oden recognized further change in his thinking when he debated the Catholic theologian Charles Curran, his friend who was later ousted from the Catholic University faculty in the 1980s for heterodoxy. Oden was expected to be the Protestant liberal in the debate, but he found himself defending natural law while Curran touted contextual ethics. Another transformative moment was when Oden marched behind Margaret Mead in a 1966 anticapitalism demonstration in Geneva during a World Council of Churches confab. Realizing the extent, in the ecumenical movement, to which political dogmatics had replaced confessional doctrine, Oden realized he was in the wrong place, his idealism turning to “revulsion.”

A key episode illustrating Oden’s theological and political turnabout was his attendance at a 1988 consultation on biblical interpretation, led by Joseph Ratzinger at a Lutheran church in New York. Angry gay demonstrators tried to disrupt the conference. To reach a reception at the archbishop’s residence, the leading guests were transported by police in paddy wagons, with Oden sharing a bench with Judge Robert Bork. A decade later, Oden joined the board of the Institute on Religion and Democracy.

Because of a heart condition, Oden can no longer travel, but he continues to churn out books and receive guests at his home in Oklahoma, where he has lived since the death of his wife. He is admired by orthodox mainline Protestants, Roman Catholics, and evangelicals for his robust scholarship on behalf of Christian unity. Liberals mostly ignore him, perhaps because they are unwilling to challenge his pervasive knowledge and personal history. He remains a committed United Methodist, having battled furiously and successfully at the Methodists’ 1988 convention in defense of Wesleyan beliefs as binding doctrine.

“Funny I was put on the path to a genuine Christian new birth by a Jew,” he concludes. “I who had once been a social radical became a ‘mere Christian’ and finally became a theologian after only having pretended to be one.” ♦

Let George Do It

A bumpy ride for America's last king.

BY HENRIK BERING

One of the benefits of living in a monarchy is that whenever an Englishman feels miserable he can always point to some hapless royal whose lot is worse. As the British aristocrat Richard Grenville-Temple noted back in the days of George III:

Consider what a sad dog a prince of the blood is, who cannot by law amuse himself with any women except some damned German princess with a nose as long as my arm, and as ugly as the devil. In my opinion, a prince of the blood is the most miserable being on Earth.

The comment appears in this vivid review of the reign of George III, which details the king's efforts to renew the monarchy and create a harmonious family life. Though he failed in the latter ambition, the book makes plain how today's notion of royalty owes a greater debt to "Farmer George"—his nickname because of his fondness for agriculture—than most people realize.

George III became king at the age of 22, in 1760, and was warmly received. "No British monarch has ascended to the throne with so many advantages as George III," wrote Horace Walpole. The country had triumphed in the Seven Years' War, and trade was flourishing. Walpole was especially impressed by the new king's openness: "This sovereign does not stand on one spot with his eyes fixed on the ground and dropping bits of German news. He walks about and speaks to everybody." George III was determined to avoid appearing like a transplanted German, as had been the case with his predecessors, George I and George II.

But he was also painfully aware of

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A Royal Experiment
The Private Life of King George III
by Janice Hadlow
Holt, 704 pp., \$40



Napoleon in the palm of George III,
by James Gillray (1803)

his lack of experience. Acutely shy and awkward and with a nervous tic that made him say "what, what" at the end of a sentence, he would have preferred to be "a Berkshire gentleman and no king." Meeting the demands of the job, writes Janice Hadlow, required an almost superhuman effort to recast his personality.

To prepare him for his task, the earl of Bute, John Stuart, who became first minister, supplied him with a vision of kingship that was very different from that of his predecessors. This vision was one in which the king keeps himself above the political fray and, together with his family, provides a model for society: "It was

the virtue of the king—the goodness of his actions as both a public and private man—that formed the source of all his power," writes Hadlow.

To succeed, George considered a harmonious family life crucial, and, here, his great-grandfather George I and grandfather George II had afforded powerful examples of how *not* to proceed, having both fought with their heirs with an almost pathological intensity. Thus, everything hinged on finding the right spouse. Sarah Lennox, his first pick, had been rejected for political reasons, so the role fell to Charlotte of Mecklenburg-Strelitz, a Prussian backwater duchy. Once, in her grandfather's day, Frederick the Great (while still crown prince) had visited Charlotte's tiny family seat and found it distinctly odd that the ladies were darning socks during the evening meal. The fact that Charlotte's father, the duke, had embroidered his own dressing gown made Frederick consider the man to be slightly cracked.

But despite her modest background and plain looks, Charlotte was a clever woman, vivid and cheerful. She was interested in botany and an avid reader. Like the king, she loved music, and her sense of duty matched her husband's. She was also extremely fruitful: Their union produced 15 children, two of whom died at birth. Though generally conservative, the queen, notes Hadlow, was up on the latest ideas on child-rearing—including Locke's essay "Some Thoughts Concerning Education" and Rousseau's *Emile*—as evidenced by the increasingly informal portraits of the royal offspring in more natural settings. The king himself participated wholeheartedly in his children's games.

Under the pressures of the job, however, harmony did not last. The war against the American rebels came close to breaking George III, and familiar patterns were reasserting themselves. Hadlow examines the king's fraught relationship with the clever but debauched George, Prince of Wales, whose favorite pastimes were gambling, drinking, and whoring. At one ball, noted a participant, the prince "was so far overcome with wine as to fall flat

on his face in the middle of a dance, and upon being raised from the floor, to throw the load from his stomach into the midst of the circle.” Even worse, the rakish leader of the Whig opposition, Charles James Fox, had recruited the prince into his fold and encouraged his bad behavior.

What we have here, notes Hadlow, is a classic father/son conflict for which both parties shared responsibility: The prince was morally weak, but the king was envious of his son’s easy charm. George III was incapable of passing on a sense of mission to his son that might have given some purpose to the crown prince’s existence.

Further darkening the picture was George III’s illness, which struck in 1788 and produced a manic state that mystified his doctors and necessitated putting him in a straitjacket. A “war by proxy” ensued between the royal physicians, with the prince of Wales’s man pushing for a diagnosis of madness and a regency; but the king improved just in time. (In the 1930s, George III’s illness was diagnosed as porphyria, while the latest research favors an inherited psychological disorder.)

The women perhaps paid the heaviest price. The queen, exhausted by two decades of childbirth and her husband’s illness, withdrew into her own shell, while their daughters saw themselves as “a parcel of old maids,” consigned to lives of isolation and boredom due to the king’s failure to find husbands for them. He simply could not bear parting with them. Eventually, the princesses Charlotte and Elizabeth had to settle for middle-aged German princes, one of whom was so monstrously fat that Napoleon later said that “God had put him on Earth to see how far skin could stretch.” Princess Sofia, who became pregnant with an equerry, was of course forbidden to keep the child.

The threat from Napoleon restored George III’s popularity, but the king’s illness recurred on several occasions, finally resulting in a regency in 1811. He died in 1820, aged 81. Though he was fundamentally well-meaning and his concept of kingship was sound, his own needs ended up taking precedence

over his family’s happiness. Hadlow sees George’s granddaughter, Queen Victoria, with her stress on duty, as the

inheritor of his ideas, which have contributed greatly to the resilience of the British monarchy in the modern age. ♦



Magnetic North

*A personal and political drama
on the Korean peninsula.* BY JOHN C. CHALBERG

It took the Bolsheviks a good while, but they eventually learned something that may still be eluding their North Korean counterparts. By as early as the 1930s, Stalin and his accomplices seem to have come to terms with two fairly basic facts of life: The family is a real institution, and there is no substitute for it.

We have no clear idea of what has been occupying the minds of the three generations of madmen who have ruled half of the Korean peninsula for nearly three-quarters of a century. For that matter, we know precious little about the lives of the people who have been forced to live in that dark land. Now, thanks to this memoir written by a young North Korean woman, we know more than we might otherwise have known. More specifically, we know that even in this godforsaken place, the family remains a real institution. We also learn that the author knows—and acts as if—there is no substitute for it.

Presumably, it’s fair to speculate that Hyeonseo Lee (her seventh and self-chosen name) is far from alone in her thinking, if not her acting, among her fellow North Koreans. Whether the regime has come to terms with the family is another matter entirely. Given Lee’s story, we can at least conclude that those in charge haven’t yet managed to destroy the family—and maybe they are smart enough not to undertake such a project.

Lee’s story reads like detective fiction, as she proceeds from place to place and name to name. Most of the action takes place in China, her first

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The Girl with Seven Names
A North Korean Defector’s Story
by Hyeonseo Lee
with David John
William Collins, 320 pp., \$26.99

home-away-from-home. The most dramatic and improbable scenes occur in Laos; the most telling—and compelling—ones take place in South Korea. But this is not a story of high drama or political intrigue. In truth, it isn’t really a political story at all. It’s a family story, first and last, as well as a tale of limits twice over. Those would be the limits placed on the lives of North Koreans by the regime and the limited reach of that very same regime. A totalitarian regime it pretends to be, but it fails at being totally totalitarian.

It’s not that Lee is out to paint a picture of east-west convergence, or even of North and South Korean communalities. Far from it. Life in North Korea was (and is) overflowing with privations. Persecution is real. Oppression—physical and mental, ideological and actual—is inevitably part of the routine of ordinary life. And yet, life on a daily basis was, to borrow from Lee, by and large “manageable.” At least that was the case for her small family of mother, stepfather, and younger brother. Of course that manageability required cunning and determination, not to mention adaptability and resignation. A little bribery here and there helped as well. So did the ties and demands of family.

Home for this small crew was the

city of Hyesan. Located on the Yalu River, it was “on the edge of the world” and virtually a stone’s throw from China. By Lee’s own account, her “happy childhood” of the 1980s and early ’90s included the arrest and presumed execution of the military officer she knew and loved as her father. It also featured intrusions into (and ransacking of) the family home. Toss in the ideological indoctrination that constituted her formal education from the first day of her schooling, and it’s no wonder that she defected from all this happiness while still a teenager.

Actually it *was* a wonder: Not only was her happiness apparently genuine, but her initial leave-taking was almost a lark and intended to be brief. Motivated by curiosity, not politics, the girl who was still five names removed from Hyeonseo Lee did not so much escape from North Korea as make very careful arrangements to visit relatives in China. Yet, when her departure was imminent, she somehow felt that her “life was about to change forever.”

In a fundamental sense, it did. But in an even more fundamental sense, it did not. Once in China, she remained and eventually managed to pass as Chinese. Reunion with her family was always a dream, while building a life in South Korea was not. In the end, she was reunited with her mother and brother—in South Korea, no less. But all was not necessarily well: If the tug of family proved to be powerful for all three, the pull of their North Korean home proved to be equally powerful for mother and brother. A free life has its glories, but for those who have been unfree, it can have its terrors as well.

Now thirtysomething, the author tells us that her political education is finally underway. Her happy childhood behind her, she seems poised for a different sort of happiness as a free woman. Nonetheless, she concedes that she will “never truly be free” of the gravitational pull of the North Korea that she still “loves and misses.” One wonders what she will eventually have to say about the pull of family in a West that seems to be gradually unlearning those twin lessons that even the Bolsheviks could not dismiss. ♦

BCA

The Salter Version

Why the novelist’s prose was better than his fiction.

BY JEREMY BERNSTEIN

James Salter died last month at age 90. His death took place in a gymnasium not far from his home in Sag Harbor, New York. There was something fitting about this. As a West Point graduate, he was always very physically fit. The obituaries were fulsome. He was spoken of as a “writers’ writer.” This was,



Gary Hemming on Mont Blanc (1966)

I think, shorthand for the fact that many readers find his fiction unreadable. There is something unnatural and pretentious about it.

On the other hand, his nonfiction is very readable. This has always been puzzling to me. I thought that it might have something to do with the fact that he had changed his name from “Horowitz” to “Salter” so as not to be identified as just another Jewish writer. I kept thinking of something that the physicist I. I. Rabi once said about his friend J. Robert Oppenheimer: that if he had studied the Talmud rather than Sanskrit, he would have been a much better physicist. But Salter’s death brought back memories of my asso-

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ciation with him some decades ago.

In its October 30, 1971, issue, the *New Yorker* published an article of mine entitled “On Vous Cherche.” It was one of several articles I had published in the magazine about climbing in the French Alps in the region of Chamonix. This one had to do with mountain rescue, in particular one that had occurred

in the summer of 1966 on the Aiguille du Dru. There is no easy route on this mountain, and two Germans who (it turned out) were not strong enough attempted to climb it and got stuck on a ledge. They could go neither up nor down. They managed to signal that they needed to be rescued.

At this time in Chamonix, mountain rescue had been assigned to the

French Army. They launched what was called an invasion of the Dru. They tried to lower a cable from above. Not only could they not reach the climbers, but one of the soldiers died in the attempt. The situation now received national attention.

In the meantime, there was an American climber named Gary Hemming who had offered his services and had been refused. He knew the mountain very well and had even put up a new route on it. But he had the reputation of being a “beatnik,” and the army did not want to have anything to do with him. Hemming went off to Italy to climb with a friend but heard on the radio that the Germans were still stuck, so he insisted on returning to Chamonix and, again, offered his services.

This time he was accepted, and he

led a somewhat outré group of climbers to rescue the Germans. They were successful, and Hemming became a celebrity, the Beatnik of the Alps. It helped that he was very striking looking and could produce zen-like answers to questions. When asked what he did, he always said that he was writing a book. When I had the chance to ask him about this, he told me that this was something he told people he was doing since it seemed to please those who asked.

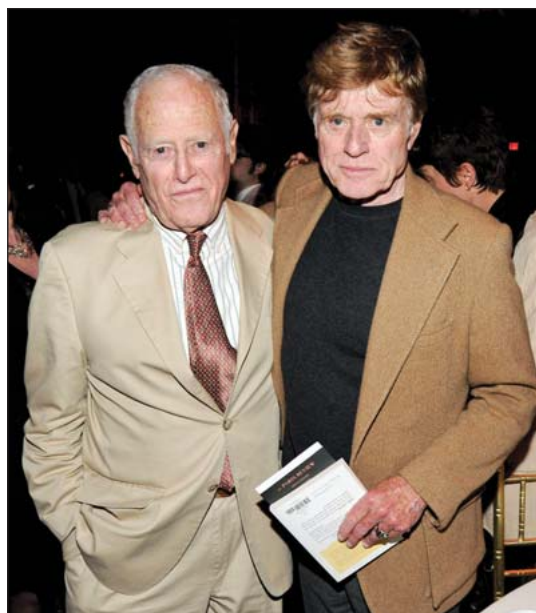
I was saddened, but not overly surprised, when I learned that, on August 5, 1969, he died of an apparently self-inflicted gunshot wound while encamped at Jenny Lake in the Grand Tetons of Wyoming. It was said that he was playing Russian roulette. He had a violent streak and could not deal with fame. In my *New Yorker* article, this came as the ending.

In the early summer of 1972, I returned to Colorado, where I was doing research at the Aspen Center for Physics. I planned to stay there until mid-July, when I would return to Chamonix for a month of climbing. I was quite surprised when, sometime in June, Jim Salter appeared in my office. He knew where to find me because his then-wife, Ann, worked at the center. I had never met him, but I was a great admirer of the film *Downhill Racer*, starring Robert Redford, which Salter had written. I had not read anything else of his.

After some small talk, Salter came to the point—sort of. He had read my *New Yorker* article, and Robert Redford, it seemed, was interested in doing some kind of film in which the life of Gary Hemming would play a role. The problem was that Salter knew nothing about climbing in Chamonix—or indeed, anywhere else—and could I be of some help? What I should have done is ask what precisely he had in mind and have something spelled out in a contract. Knowing what I know now, I think that would have ended the matter. Instead, I said that I was going to

Chamonix in August and would be willing to introduce him to the scene. So, Salter came to Chamonix.

We spent a lot of time together. We did some guided climbing and even traveled to the base of the north wall of the Eiger, where Clint Eastwood was filming *The Eiger Sanction*. (Eastwood was not very friendly, to put it mildly.) I found Salter a wonderful conversationalist. He told many stories about his days as an Air Force fighter pilot in Korea. I told Salter what I thought the film should be about: To me, Hemming was a perfect example of what I called



James Salter, Robert Redford (2011)

the “dung beetle complex.” (A dung beetle climbs out of the dung into fresh air but, after a quick look around, can’t stand it and dives back into the dung.) What I did not know was why Hemming had this complex. This was something that needed to be investigated.

Our time in Chamonix went on for a couple of weeks, until Salter announced that he was going back to Aspen to write his film. Goodbye, it’s been nice knowing you; that was that. I felt that I had been had. In any event, I went back to New York and tried to put the matter out of my mind. If Salter could pull this material together as he had done with *Downhill Racer*, I thought, bravo for him. He did not need me. In the meantime, I read his published

novels and decided that they were not very good. They lacked the brilliance of his conversation, which was replaced by pretense.

A couple of months later, the doorman in my building called to say that an envelope had been dropped off for me and that he would send it up. It turned out to be Salter’s treatment. When I read it, I thought it was terrible. It opened with some bizarre scene involving an army sergeant in front of a tombstone. I also noted that it contained items taken from my article, without attribution.

There was a note from Salter saying that *we* were expected at Redford’s apartment on Fifth Avenue that evening. An address and a time were supplied. I thought of chucking all this in the wastebasket, but my curiosity to meet Robert Redford got the better of me. I also thought, naïvely, that I would have the opportunity to explain to him what this film was really about.

At the appointed time, I showed up to find Salter in the lobby. I told him that I had noted the quotes from my article. I forget what he replied. Redford could not have been more gracious. He served a bottle of very expensive red wine, of which I drank a good deal. Salter did most of the talking, and I never had the chance to explain the film. But now I was determined to take some legal action in connection with the use of these quotes. I had a friend who was a well-known lawyer, and he arranged a modest settlement. The film was never made, I was told, because Redford did not want to compete with *The Eiger Sanction*.

All this was decades ago. I used to see Salter from time to time in Aspen, and I followed his career. He won many prizes and always complained because he was not more widely read. I liked the prose pieces he published in places like the *New Yorker*, but I always felt that his fiction was not more widely read because it was unreadable. One wonders if any of it will be read in the future. ♦

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Bland Exterior

Inside Riley Anderson is the better place to be.

BY JOHN PODHORETZ

The new Pixar film about an 11-year-old girl's moment of crisis and change is called *Inside Out*, and it's a perfect title—maybe too perfect for its own good. Everything the movie shows going on *inside* Riley's head is glorious. And that's most of what we see, so *Inside Out* deserves to be called the best American movie of the year so far. Still, *Inside Out* does not reach the heights of Pixar masterpieces such as *Toy Story*, *Monsters, Inc.*, and *Toy Story 3*. Everything *out*—meaning Riley's interactions with her parents, her friends, her school, and the outside world during a difficult family move—is kind of blah.

Yes, the great irony here is that in a movie that tells the story of the inner workings of Riley Anderson, Riley Anderson is the least interesting character.

The other great irony is that this wonderful movie for children (my 11-year-old daughter thought it was the most brilliant thing she'd ever seen, and “brilliant” was her word, not mine) is based on a segment of a self-consciously dirty movie from 1972. That movie was Woody Allen's sketch-comedy film *Everything You Always Wanted to Know About Sex *But Were Afraid to Ask*, which concludes with a screamingly funny scene set inside a modernistic control room that turns out to be the brain of a man in the midst of carnal *flagrante delicto*.

Here, the control room is headed up not by Tony Randall and Burt Reynolds, as it was in Allen's film,

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Inside Out

Directed by Pete Docter
and Ronaldo Del Carmen



Anger, Disgust, Joy, Fear, Sadness

but by Joy (voiced beautifully by Amy Poehler), one of Riley's five primary feelings and the one to whom the others—Anger, Fear, Disgust, and Sadness—have ceded leadership.

The world inside Riley's head is a marvel. The different aspects of her personality appear outside the control-room window in the form of theme parks—her childish silliness is represented by Goofball Island, for example. When Riley makes a memory, it appears as a kind of white marble that rolls down a marble run and then drops into a storage facility. If Sadness gets near one, the marble turns blue (like Sadness herself).

So Joy spends a great deal of her boundless and cheerful energy trying to keep Sadness (given indelible voice by Phyllis Smith) busy or idle or as far away from Riley's thoughts and memories as possible. The other emotions have their moments—Anger and Disgust team up when Riley must eat

artisanal food. “Congratulations, San Francisco, you ruined pizza!” shouts Anger as a slice laden with broccoli is put before Riley.

Joy's efforts are mirrored by those of Riley's distracted parents, who seem to want to know only that she is doing well, even though they have just pulled her away from everything she's ever known. “Where's my happy girl?” each says to her, as though being happy is her primary responsibility.

Things begin to go south when Riley is asked to introduce herself to her classmates. She begins to cry, and Joy notices that Sadness has touched one of the controls and then

has touched a memory. In a desperate effort to expunge the long-term effects of Sadness's intervention, Joy tries to intercede before the memories can be made permanent—and Riley's childhood personality begins to literally disintegrate.

From this point on, Joy and Sadness end up together on a journey through the other parts of Riley's mental and psychological machinery. The degree of invention codirector and cowriter Pete Docter and his Pixar colleagues bring to offering a visual portrait of both consciousness and the unconscious is all but beyond praise. They took four years to work it all out, and the time was very well spent.

Alas, there is a cipher at the center of *Inside Out*. Riley's emotions are dynamic and well-conceived, but the person who embodies them is an excessively ordinary little girl. I'm sure that's intentional on Docter's part—he wants us to realize that Riley is unformed at the beginning, and that by the end of the movie she has matured into a more complex creature. But an unformed character is not an interesting character, even if an unformed character fits the movie's clever scheme. What it means is that we don't care what happens to this kid, even though what's happening to her is supposed to be the whole point.

It's *Everything You Always Wanted to Know About Riley Anderson *Not That You Asked*. ◆

