

**WHAT'S UP  
WITH  
TAX REFORM?**  
FRED BARNES • IKE BRANNON  
LAWRENCE B. LINDSEY • JOHN MCCORMACK

# the weekly Standard

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## THE NEXT JUSTICE

**ADAM J. WHITE**  
on the many virtues of  
Judge Neil Gorsuch

*Adam J. White*

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COVER BY THOMAS FLUHARTY

# The Fourth Estate Dines Out

THE SCRAPBOOK is always flattered when the conventional wisdom catches up with our own prejudices. Case in point: There seems to be a gathering consensus that the White House Correspondents' Association dinner—that annual televised schmoozefest where journalists and politicians mix in ways that nicely capture what Americans hate about Washington—may not be such a good idea after all. The *New Yorker* and *Vanity Fair* have canceled their celebrity-studded “after-parties,” and Comedy Central comedienne Samantha Bee is holding a “counter-event” the same evening.

Now comes confirmation from the *Washington Post* media columnist Margaret Sullivan, a reliable barometer of the mainstream consensus: The dinner “is poised to tip over into journalistic self-abasement,” she declares. “It’s time to stick a silver-plated fork in it.”

Sullivan is quite right, but alas, for the wrong reasons. She objects to the correspondents’ dinner not because it is exactly the kind of professionally incestuous social event that journalists should avoid. No, Margaret Sullivan plans to stay away because she, the *New Yorker*, *Vanity Fair*, Samantha Bee, and a host of other “White House correspondents” cannot bear the

thought of dining in the same room with President Donald J. Trump.

Those who do go will of course find the atmosphere changed from recent dinners. Take one of the more tedious traditions of the WHCA dinner, the “humorous” speech—customarily at



*Trumps at 2011 correspondents' dinner*

the expense of the president—delivered by a professional funny person. The speaking-truth-to-power part of that tradition largely fell into disuse during the Obama years. Instead of sharp wits indulging the fool’s prerogative to tweak the king, the comedians featured in the last eight years served up awed tributes and groveling encomiums. No more: If a comedian can be found to take the stage this year, be ready for an attitude that would make Don Rickles look like a sweetheart.

That said, it should be noted there was one sly comic during Obama’s tenure to give serious grief to the president—or rather, who gave grief to someone who, unknown at the time, was a president-to-be. And that sly comic, of course, was President Obama himself, who famously used his bit at the 2011 correspondents’ dinner to mock and belittle a minor celebrity who had trafficked in the birther twaddle: one Donald Trump. The president joked that Trump was a deranged conspiratorist; he ridiculed the notion of Trump as a leader, laughing that deciding which washed-up actor to fire each week on *Celebrity Apprentice* might be fine for television, but was pathetic in contrast to presidential power. He called Trump “The Donald.” Seated there in the audience, Trump was not amused. It has been observed that the correspondents’ dinner humiliation is what sparked Trump’s fire to win the presidency.

The media types who had such great fun laughing at Trump six years ago aren’t laughing quite so mirthfully now. They might as well take a pass on the dinner this year, and instead simply congratulate themselves that the work of the White House Correspondents’ Association dinner is already done. ♦

## Ignorance Is Strength

AFTER masked marauders invaded the campus breaking and burning things, rioting to shut down a speech by alt-right provocateur Milo Yiannopoulos, a question for the University of California, Berkeley, was whether the miscreants were students or (in the immortal words of *The Graduate*’s Berkeley landlord) “outside agitators.”

Cartoonish Clinton cabinet member Robert Reich went on CNN to float the lurid conspiracy theory that the “black bloc” anarchists were

false-flagged conservatives disguised to make liberal protest look bad.

Sorry, Bob, but bona fide liberals are quite capable all by their lonesome of making left-wing protest look bad—particularly liberals who also happen to be students at elite institutions. To wit, here are some of the headlines for articles Cal’s student newspaper, the *Daily Californian*, has published about the riots at their school: “Vio-



*A burning issue*

lence as self-defense,” “Black bloc did what campus should have,” “Condemning protesters same as condoning hate speech.” And THE SCRAPBOOK’s personal favorite, with its Orwellian juxtaposition of opposites: “Violence helped ensure safety of students.”

That must make UC Berkeley one of the safest schools around—at least for those students willing to conform. ♦

IMAGES: NEWSOON

## Feel Male, Female

We regret to inform you that Katie Couric has a new documentary.

Let's hope they lawyered it and then some. Couric, you see, is still fighting a \$13 million defamation lawsuit over her last documentary. In it, Couric asked a room full of gun rights advocates how terrorists and the criminally insane could be kept from getting guns if federal background checks weren't required. The advocates met her challenging question with a painfully long patch of befuddled silence. Or at least that's how the clever editors of the documentary made it appear. In reality—as proved by an audio recording of the interview made surreptitiously by the gun advocates—Couric's question prompted a swift, cogent, and lively response.

We'll see whether Couric's new documentary, this one on gender identity, is any less fake-newsy. The one thing you can't say is that it isn't trendy. Appearing on *Ellen* to promote the film, Couric asserted that the issue is so fundamental that even fetuses can have gender identity problems. "In the later stages of development, it's when your brain is wired, and sometimes a surge of testosterone can make . . . a female fetus feel as if that baby is male or that person is male," Couric said. "And the opposite, if there's not enough testosterone."

THE SCRAPBOOK will leave for another day the question of whether fetuses can feel transgendered. But we will be happy to stipulate that fetuses can feel. Indeed, after abortion advocates have spent decades denying that unborn children can feel something as basic as pain, now we are to believe that fetuses have feelings about something as complicated as gender confusion.

Well, if you say so, Katie, just as long as we don't have the one without the other. ♦



## Liberty and License

Let's celebrate a small victory for economic freedom, which, as the great Milton Friedman was wont to point out, is essential to political freedom. It is now legal in Arizona to get paid to give a horse a massage without having, first, acquired a license to practice veterinary medicine.

Last spring, THE WEEKLY STANDARD reported on efforts, both legislative and litigious, to cut back the kudzu-growth of occupational licensing in the Grand Canyon State (see "Licensing Arizona" by Eric Felten, April 18, 2016). For all its wild west heritage and one-time Goldwater

conservatism, Arizona long ago fell into the habit of requiring ridiculous (and often expensive) state-sanctioned licenses to work, barriers used by various trades to keep out the competition. Gov. Doug Ducey, working with free-market-oriented state legislators, pushed for a law removing a handful of these barriers. They failed to remove license requirements for landscape architects, but had better luck freeing the economic prospects of citrus-packers, driving-school instructors, and yoga teachers.

Occupational licenses afflict states across the country, blunting the employment prospects of people who would like to work. There are at least

COURIC, THE HEART TRUTH; SHOOTER, BIG STOCK PHOTO



aming Board sent her cease-and-desist letters demanding that she go to veterinary medical school and obtain a license as an animal doctor or be fined \$1,000 for every horse she massaged.

Lawyers for the Institute for Justice have been litigating Kelly's case since 2014 and now have finally won a consent judgment. The veterinary board agreed to stop enforcing

a thousand occupations that one or another state regulates. And as equine masseuse Celeste Kelly found out the hard way, her occupation is one. The Arizona State Veterinary Medical Ex-

the state's ridiculous rules against animal massage "practitioners."

Now if somebody can just do something about the licenses Louisiana requires of retail florists. ♦

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DAVE CLARK

## the weekly Standard

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## Italian for Beginners

The first words I learned in Italian were *gamba di legno*, or wooden leg, for which Benito Mussolini and Walt Disney are to blame: After the war, my mother, who was fluent in Italian, had been involved with a charity that provided artificial limbs for Italian amputees. And for decades thereafter, during the family's annual holiday, which would start in Santa Margherita Ligure, go on to Parma and Florence, and end in Rome, one or two recipients would show up at each stop to express their gratitude, making the vacation assume the character of a royal progress.

But for a while, I was operating under the erroneous impression that Italian men were born with a wooden leg. Gambadilegno also happened to be the name of Peg Leg Pete in *Topolino*, the Mickey Mouse comics. So my Italian can be said to rest on a wooden leg, but we all have to start somewhere.

In the early sixties, few Italians spoke English. As I entered my teens, I realized that if I wanted to make myself understood, I had better learn some Italian, and fast. Here the movies came to the rescue: All foreign films in Italy were dubbed—they still are—because Italian actors made good money doing voiceovers and had strong unions to back their demands. During the hot afternoon hours when the grownups would rest, I was given 200 lire to buy a movie ticket and would sit in the dark cool marble theater getting my Italian lessons while puffing on a forbidden *Nazionali*, the world's most godawful cigarette.

Westerns were my favorites though it took a while to get used to hearing John Wayne sobering up Dean Mar-

tin in Italian in *Rio Bravo*. But what really blew my mind was the emergence in the sixties of what were then contemptuously referred to as spaghetti westerns, the Sergio Leone epics, in which American actors like Clint Eastwood, Lee Van Cleef, Eli Wallach, Charles Bronson, and Henry Fonda could launch or rekindle careers: *Per un pugno di dollari* (*A Fistful of Dollars*). *Per qualche dollaro in più* (*For a Few Dollars More*). *Il buono, il*



*brutto, il cattivo* (*The Good, the Bad and the Ugly*). And *C'era una volta il West* (*Once Upon a Time in the West*).

This was something very different from *Shane*, with the saintly Alan Ladd in his newly cleaned and pressed buckskin suit. In these movies, everyone, including the heroes, was of dubious moral character. And in casting the smaller parts, Leone chose the kinds of unusual faces one finds among the crowds in altarpieces, contributing to the strong Catholic feel of his work. The emphasis was on sweat and dirt, on suffering and pain. Lots of pain.

And what villains! Jack Elam with his lazy eye waiting at the train station with two fellow gunslingers for Charles

Bronson in the opening sequence of *Once Upon a Time in the West*. But most memorably, Henry Fonda cast against type as the arch-villain Frank, who, after his gang has massacred a family, shoots the surviving boy himself for the pleasure of it. Fonda's ice blue eyes were the stuff of nightmares.

The soundtracks were revolutionary, too, unlike those used in Hollywood westerns where some wholesome teenage heartthrob like Ricky Nelson was lassoed in to sell the product. Those savage ayi-ayiyah cries in Ennio Morricone's theme from *The Good, the Bad and the Ugly* made my hair stand on end when I first heard them. Or the sound tapestry at the start of *Once Upon a Time in the West*, the squeaky windmill, the dripping water, and that buzzing fly. Even the bullets had a different sound.

Thanks to my private tutors Clint, Lee, Eli, Charles, and Henry, I acquired a colorful, if somewhat specialized vocabulary: To this day, I can name-call with the best of them: *bugiardo* (liar), *vigliacco* (yellowbelly), *iena* (hyena), *ladro di cavalli* (horse thief), *baro* (cardsharp), *ubriaco* (drunkard), all of which come in handy when holding

a losing hand in a card game.

Of course my grammar stunk, and the elaborate vocabulary of the higher diplomacy eluded me. But here one recalls Tuco's (Eli Wallach) advice in *The Good, the Bad and the Ugly*. A gunman out for revenge finds him sitting in his bathtub and goes into a long spiel about how much he has looked forward to this occasion—upon which Tuco's peacemaker explodes from beneath the suds and blows the fool away. "*Quando si spara, si spara. Non si parla*"—or, in the American version: "When you have to shoot, shoot. Don't talk." In some situations, too much talk can prove downright unhealthy.

HENRIK BERING

# The Republican Challenge

George Kennan concluded his famous 1947 article, “The Sources of Soviet Conduct,” which laid the groundwork for the doctrine of containment at the beginning of the Cold War, with this peroration:

Surely, there was never a fairer test of national quality than this. In the light of these circumstances, the thoughtful observer of Russian-American relations will find no cause for complaint in the Kremlin’s challenge to American society. He will rather experience a certain gratitude to a Providence which, by providing the American people with this implacable challenge, has made their entire security as a nation dependent on their pulling themselves together and accepting the responsibilities of moral and political leadership that history plainly intended them to bear.

Almost half a century later, notwithstanding many stumbles, errors, and reversals along the way, America had won the Cold War. The American people, under nine presidents of both parties, had pulled themselves together, met the challenge, and accepted the responsibilities of moral and political leadership.

This should be a source of American pride—even if in certain respects we staggered to our Cold War victory. No one could stand up in 1992 and say of the United States and our allies what Winston Churchill felt compelled to say in 1938: “that the terrible words have for the time being been pronounced against the Western democracies: ‘Thou art weighed in the balance and found wanting.’”

Nations have their historic tests. We passed at least one of ours. So too do political parties. Will the Republicans pass theirs?

Edmund Burke, the founder of the modern party system, described a political party as “a body of men united for promoting by their joint endeavours the national interest, upon some particular principle in which they are all agreed.” In foreign policy, the particular principle upon which Republicans agreed, for the entire Cold War and the period since, could be summarized as American global leadership. From nominee Thomas Dewey to nominee Mitt Romney, from President Dwight D. Eisenhower to President George W. Bush, from the Goldwater wing of the party to the Rockefeller wing, and allowing for many differences in emphasis and interpretation, Republicans agreed on the principle not of America first but of American leadership. Republicans embraced the obligation of America to accept “the responsibilities of moral and political leadership that history plainly intended them to bear.”

Meanwhile, in domestic policy, Republicans, for all their differences, did share a broad agreement on respect for the constitutional order, limited government, free markets, and a free society under the rule of law. A commitment to this vague but not totally amorphous set of views, held of course by various leaders with differing shades of conviction and emphasis, has tied together the modern Republican party over the past three-quarters of a century.

And Republicans have also tended to unite on one other conviction: Character matters. This is a social doctrine, so to speak—but also one of relevance to the party itself. Republicans have generally tried to uphold certain standards of behavior. Republicans, after all, did not merely impeach Bill Clinton. It was Barry Goldwater and Hugh Scott and John Rhodes who in 1974 went to their fellow Republican, Richard Nixon, and told him he had to go.

In 2016, through a series of failures and flukes, thanks to the accidents of politics and the arts of demagoguery, the Republican party nominated as its presidential candidate a man of bad character who has no interest in American leadership in the world or limited government at home. In the general election, he eked out a victory over a weak Democratic nominee. He is now our president—a Republican president.

This imposes on the Republican party a peculiar obligation: to guide him when possible, to check him when advisable, to rebuke and oppose him when necessary. And, of course, to support him when he does the right thing, as in the nomination of Judge Neil Gorsuch to the Supreme Court. But support of a president of one’s own party is, as it were, natural. It’s opposition that will be difficult.

Republicans need not act precipitously in looking for excuses to oppose the president. But they need to be prepared to do so. And they need to be aware of the kind of moral corruption and personal humiliation that comes from bending over too far backward to the obligation of opposing what needs to be opposed.

This obligation falls most obviously on Republican members of Congress. But it also applies to senior members of the president’s own administration and to the Republican rank-and-file. Much of this guiding and checking and opposing can be done in private. But some of it will have to be public. And, judging from the president’s first three weeks in office, some of it will have to come sooner rather than later.

Will there be tension between the peculiar GOP obligation of this time and place and the more normal activity of battling Democrats? Certainly. But a serious party can both struggle against adversaries and uphold its own standards.

This latter challenge will be the more difficult of the two. But if Republicans do not rise to that challenge, the terrible words will be pronounced against them: “Thou art weighed in the balance and found wanting.”

—William Kristol

# Who Was That Masked Man?

**D**an Mogulof, a vice chancellor at the University of California, Berkeley, must boast X-ray vision. After about 150 people rampaged through his picturesque campus in early February, setting fires, smashing windows, and launching fireworks at the police—all ostensibly to protest an appearance by an obnoxious and now, thanks to the rioters, increasingly famous conservative speaker and provocateur—Mogulof was quick to declare that the rioters were not connected to the university. They were certainly not students, Mogulof insisted. Rather, the vice chancellor said, the spasm of violence was the result of “an unprecedented invasion.”

We suspect that Mogulof is right. Berkeley students tend towards the bookish, more likely to pen tomes than to burn them. And these protesters—armed as they were with Molotov cocktails, baseball bats, and steel rods—had a whiff of professionalism about them. But it would only be because of that aforementioned X-ray vision that the vice chancellor would know for sure just who wreaked havoc that night. Only one rioter was arrested, after all; and many of the rest, who escaped unscathed, wore masks that obscured their identities.

As this season of protests and occasional riots grinds on, more and more demonstrators nationwide—many of them self-described “anarchists”—have taken to donning masks. In North Dakota, some protesting the Dakota Access Pipeline have concealed their faces. In Washington, D.C., on Inauguration Day, many violent protesters, including some who set fires and vandalized private property, wore masks.

The masks serve to conceal the identity of those committing crimes, as well as conjure an aura of menace. They’re designed to intimidate, and thus they degrade our public spaces. It’s unsurprising, then, that they’ve already spurred a backlash: One North Dakota lawmaker proposes to ban people from wearing a “mask or hood that covers part or all of the face when within a public area,” with several exceptions, including for theatrical productions and “severe

weather.” (This is North Dakota we’re talking about.)

History rhymes. In the first half of the 20th century, nearly half the states imposed some form of anti-mask law. They weren’t going after anarchists in Guy Fawkes masks, of course: Their target was the Ku Klux Klan. Even as the Klan has thankfully faded from mainstream American life, many of those laws have remained on the books. Indeed, around a dozen states still have anti-mask statutes.

They could come in very handy, if only states would start enforcing those laws once again. The good news is one of the states with extant anti-mask laws is California. There, the law already says, “It shall be unlawful for any person to wear any mask, false whiskers, or any personal disguise (whether complete or partial) for the purpose of . . . [e]vading or escaping discovery, recognition, or identification in the commission of any public offense.” A similar statute is on the books in the District of Columbia, whereby, “No person or persons over 16 years of age, while wearing any mask, hood, or device whereby any portion of the face is hidden, concealed, or covered as to conceal the identity of the wearer, shall enter upon, be, or appear upon any lane, walk, alley, street, road highway, or other public way in the District of

Columbia while . . . engaged in conduct prohibited by civil or criminal law, with the intent of avoiding identification.” The limo-torchers of Inauguration Day certainly met that standard.

To be sure, some states have anti-mask laws that strike us as rather too broad and, indeed, may conflict with the First Amendment. Georgia’s, for example, penalizes anyone who wears a “mask, hood, or device by which any portion of the face is so hidden, concealed,

or covered as to conceal the identity of the wearer and is upon any public way or public property or upon the private property of another without the written permission of the owner or occupier of the property to do so.” And it doesn’t, for instance, include a weather exemption.

In a 1992 *Fordham Law Review* article, Stephen J. Simoni offered a very useful suggestion for an anti-mask law, one that we would encourage states to adopt. Simoni’s suggested law, which he dubbed the Model Anti-Mask Act, “prohibits public mask-wearing only when the mask-wearer both (1) intends the resulting concealment of identity, and (2) does *not* need that anonymity to exercise the rights of free speech or assembly or to engage in specified activities where the need for privacy is apparent.” In other words, the obscuring of one’s identity has to be both deliberate and unnecessary—mask-wearing would be permissible if one were taking an extremely unpopular political position, for example, that might lead to censure at work. Suffice it to say, protesting a conservative speaker in Berkeley, California, of all places, was not so daring an act as to require anonymity.

—Ethan Epstein



Berkeley protesters

# Tax Reform First

The case against delay.

BY FRED BARNES

In 1993, the vast health care plan of the Clinton administration died without a vote being taken in Congress. Known as Hillarycare after its champion, the president's wife, it left its mark on the new administration. In the midterm election of 1994, Democrats lost control of the House for the first time in 40 years.

In 2010, the Obama administration pushed its own sweeping health care program through Congress. We know it as Obamacare. Having lost the House in 2006, Republicans won it back in 2010, thanks to the unpopularity of Obamacare.

There's a lesson in what happened to these two administrations. It's a simple one: Leading with a big health care initiative is dangerous for a new administration. It throws the president and his party into a thicket of rules, regulations, subsidies, and prices, and forces them to deal endlessly with health care interest groups that are never satisfied. Presidents Clinton and Obama never really escaped the thicket.

President Trump won't either if he makes repeal and replacement of Obamacare his first and biggest issue. Even if he and Republicans come up with a worthwhile plan, as I expect them to, they'll still be courting trouble. Health care is a Democratic issue. If Democrats can't succeed, they'll make sure Republicans fail too. Besides, health care is too big for one party to swallow.

To make matters worse, Republicans are off to a nervous start. They're undecided on how much of Obamacare



to salvage—a little or none—and exactly how to do it. They've made people wonder if they're up to the task. And Trump isn't any help with his iron insistence on killing Obamacare as the first order of business.

The fallout is surprising, but shouldn't be. Obamacare is suddenly more popular than not. An NBC/WSJ poll in January found that 45 percent of Americans now think Obamacare is



1993: the high-water mark for Hillarycare

a good idea and 41 percent a bad idea. This is the first time since Obamacare was enacted six years ago that it's above water. A Fox poll found the same thing last month, with Obamacare seen favorably by 50 percent, unfavorably by 46 percent. Two years ago, 38 percent were favorable, 58 percent unfavorable.

The political problem for Republicans is that they may become identified as the party of, for lack of another name, Trumpcare. It will be hard not to improve over Obamacare. But the press won't report that. It's too committed to finding fault with Trump to give him credit. Neither will the liberal elements of the health care lobby. And it will take a few years before a majority of Americans realize their health care is better and cheaper.

But there's a way for Republicans to

keep their struggle against Obamacare from overshadowing every other priority. The GOP schedule for Congress calls for repeal of Obamacare in early spring. And tax reform—with cuts in corporate and individual income tax rates and repatriation of overseas profits—is slated to reach the president's desk by late summer.

What makes sense is to flip the two issues and pass tax cuts first. True, there are drawbacks. Repeal of Obamacare will reduce the budget baseline, thus allowing for deeper tax cuts. And there's the fear that postponing repeal will cause support to dry up.

Those are serious concerns, but the need to spur economic growth and reassure financial markets is immediate. Obama left behind a weak economy with 1.9 percent growth in last year's fourth quarter. Recovery from the financial collapse of 2008 never amounted to much. And the notion that Obama warded off a depression is pure myth.

The Trump bump in financial markets turned out to be brief. Financial markets have settled down since the arousal of animal spirits after the election. The Dow rose 6 percent in November, 3 percent in December, and a meager 0.08 percent in January. Investors, like all of us, are waiting to see what Trump will do.

Grover Norquist, the president of Americans for Tax Reform, says Trump could promise that tax cuts will be made retroactive to January 1, then go ahead with health care first. That's not a bad idea. But a full-blown package of tax cuts would be far better, particularly a long overdue cut in the business tax rate to 20 percent from 35 percent. That would be more tangible than a Trump promise.

Democrats are unlikely to vote for tax cuts alone. Economist Steve Moore says infrastructure spending could be added to the tax legislation to attract Democratic votes. Trump is eager to get together with Democrats on repairing roads, bridges, tunnels, ports, and airports anyway. "Why not get something for it?" Moore asks.

Fred Barnes is executive editor of THE WEEKLY STANDARD.

WALLY MCNAMEE / CORBIS / GETTY

To maximize their punch, tax cuts should go into effect immediately. President Reagan's tax cuts were phased in over three years, which prolonged a deep recession. When fully in place, the economy exploded. The result has a name: the Reagan Revolution.

The case against leading off with an enormous health care program is not new. Clinton could have started with the most popular promise from his 1992 campaign—welfare reform—according to Democratic pundit Mickey Kaus. Instead, Clinton chose

Hillarycare and didn't get to welfare reform until 1996. In between, Democrats sacrificed the House.

Obama's chief of staff Rahm Emanuel urged the president not to begin with health care. "I told him many times [about] the political cost of doing so," he says. Obama didn't listen and the cost was high. The Democratic party was devastated.

Therein lies a lesson that Trump and friends need to contemplate. The midterm election is only 21 months away. ♦

So the prescription should be one that boosts both capital formation and total factor productivity. They are related; productivity growth is not simply manna that falls from heaven. After the period it takes us to master our jobs, few of us become constantly more productive, because we settle into a routine.

Productivity growth arises when individuals move from the jobs they're used to into new jobs that allow them to better apply their talents. Such a change almost always involves receiving a raise because the new, more productive use of a person's time affords them greater compensation. Creating these more attractive jobs depends on the birth of new businesses. These businesses often explore fresh market niches and must do so successfully to avoid being swallowed up by the competition. So, by definition, they are more productive. Investment is directly linked to this process since new businesses frequently require the latest state-of-the-art capital to take off.

From 2009-2011, for the first time since such data were collected, more firms went out of business than were formed. And from 2012-2014 (the last year for which data are available), firm births outpaced firm deaths by just 28 percent of the pre-2009 historic average. This means that the economy has been deprived of an important source of productivity. The decline in capital formation is another signal that growth-enhancing new businesses were not being created. Part of this can be blamed on overregulation, part on an anti-business attitude (remember "If you've got a business—you didn't built that"?), and part on excessive and complicated taxation.

The prescription—the House Republican tax reform bill—targets these issues directly. First, it provides the best environment for capital formation we have ever had, especially in terms of cashflow for startups. Under current law, the cost of a new factory or machine is a deduction for tax purposes only over a period of years. Under the House plan, all investments can be expensed—that is, they're eligible to receive an immediate deduction

# The Right Cure

For what ails our economy.

BY LAWRENCE B. LINDSEY

Writing good policy is very much like seeing a skilled internist. First, the doctor decides that you really are sick. Next, he determines exactly what's wrong. Only then does he choose an appropriate prescription. Too much of policymaking ignores these steps, opting instead to focus on what the public supposedly wants to hear, with a prescription tailored toward public relations. Fortunately, the tax plan prepared by House Republicans does not fit this mold and is exactly targeted at the economic ills that afflict our country.

First, let's establish that the American economy really is sick. From 2011-2016, we observed the poorest economic expansion on record. Usually, recoveries from sharp recessions are equally sharp. This recovery was a dud. Barack Obama was the first president without a year of 3 percent real GDP growth while in office.

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Further, from 2011-2016, annual growth averaged more than a full point less than growth from 1965-2010, a period that includes drag from multiple recessions. Similarly, growth in real personal incomes and wages lagged behind the long-term historic average, and by several measures income inequality increased.

Second, the diagnosis. Three factors drive an economy: growth of the labor force, growth of the capital stock, and what economists call total factor productivity—how much output is produced by each unit of labor and capital. The poor economic performance of late cannot be blamed on the labor market. From 2011-2016, employment expanded rapidly, though the wages paid by those jobs were decidedly subpar. But from 2011-2015 (the last year for which data are available), capital formation plummeted—by almost 50 percent compared to the average annual growth rate observed from 1965-2010. Total factor productivity declined even more, from a long-term historic average of 1.1 percent to just 0.4 percent, a plunge of nearly two-thirds.

in the year they are placed in service. Since new investments typically do not produce enough income to offset their cost in the first year, the firm usually has a “net operating loss,” meaning that their costs exceed their income. As under current law, this loss can be carried forward into the succeeding years until the year’s income finally exceeds its expenses. By allowing expensing of new investments, most new firms will not owe any tax in their first few years of operation—the period when cashflow is most critical. That need for positive cashflow is particularly important now when banking regulations make it tougher than usual to secure loans to produce operating capital.

Second, the House plan cuts the corporate income tax rate to 20 percent. The combination of expensing of investments and a 20 percent corporate rate will transform America from one of the worst places in the world to



*An unproductive economy*

invest in new businesses into the very best. It is no coincidence that many large firms have announced new plant openings in America. Some attribute this to presidential tweets. Most firms I know make their decisions based on the numbers, and when you look at the numbers under the House tax plan, the place to open a new plant becomes obvious.

Third, the proposed reform establishes a territorial tax system with border adjustability. Those are big

concepts and widely misunderstood. The easiest way to think of the change is that right now firms are supposedly taxed on their worldwide income minus their worldwide expenses. The new plan will actually tax them on their domestic income minus their domestic expenses.

The two key words in that paragraph are “supposedly” and “actually.” Currently under worldwide taxation, we really don’t tax profits made abroad by

U.S. companies. You have doubtless heard about the trillions firms have accumulated in profits overseas that everyone wants to repatriate, but think about why those trillions are there. Current law says companies theoretically owe tax on those earnings, but not until they actually bring the money home. Guess what? Firms simply don’t bring the money home. And while some schemes allow for “one-time” fixes, they don’t solve the actual problem. This bill will place a one-time tax

## IP: The Roots of Innovation

**THOMAS J. DONOHUE**  
PRESIDENT AND CEO  
U.S. CHAMBER OF COMMERCE

The United States has long been one of the most innovative nations on earth. Many of the technological breakthroughs and cutting-edge ideas that drive global economic growth come from our shores. So what sets us apart? The roots of American innovation can be found in our strong intellectual property (IP) protections, which incentivize creativity by allowing those who conceived or developed an idea to reap the rewards of its success.

America’s forefathers laid the foundation for our innovative culture in Article One of the Constitution, establishing IP rights for inventors and authors. The model has worked beyond the wildest dreams of even those great visionaries. IP is a major driver of our economy today, supporting more than 45 million jobs in 81 industries and contributing more than \$6 trillion in GDP.

Yet it’s important to remember that protecting IP in any country requires teamwork on a global scale. In our digital economy, if a song, movie, or piece of software created in America can be offered online for free in another country, then it can be downloaded illegally all over the world. Physical counterfeits can also be sold in online marketplaces and shipped internationally with surprising ease.

The U.S. Chamber of Commerce established its Global Intellectual Property Center (GIPC) to help businesses navigate the patchwork of different laws worldwide that together make up our international IP framework. Five years ago, GIPC issued its first *Global IP Index*, ranking the IP protections of various nations based on a range of indicators. The *Index* provides a road map for each country to strengthen its protections and standards.

GIPC released its fifth annual *Index* last week and was proud to report that more than half of countries raised

their overall scores from last year. The Chamber wants to help every nation, including our own, continue to improve. America is No. 1 overall but slipped to fifth place in the enforcement category. Reversing this trend will require increasing physical security measures to stem the flow of counterfeit products coming into our country and bolstering enforcement provisions in future trade deals.

Better enforcement of America’s IP laws will be a major focus of GIPC this year, and we will also continue to promote stronger IP protections in countries around the world. The data in the *Index* clearly demonstrate that IP standards play a fundamental role in the success of every nation, not just our own. As the roots of innovation, IP must be protected by any economy that wishes to flourish and succeed in the 21st century.



Learn more at  
[uschamber.com/abovethefold](http://uschamber.com/abovethefold).

on those earnings but then will get rid of the need to worry about the issue ever again. Only a firm's domestic activities will be taxed, and by the way, they will be taxed in the most favorable jurisdiction in the world in which to do business. Think a lot of firms are still going to pile up profits abroad?

This brings us to border adjustability. Right now, every other country in the world bases a major portion of its tax system on this concept; sometimes it's known as "destination-based" taxation. For example, Germany taxes based on where a good is going to be sold—its destination—instead of where it was produced. We currently tax based on where goods are produced and not on where they are sold. So, a Mercedes leaving Hamburg actually gets a rebate from the German government on its taxes (a so-called value-added tax) because it is destined for America, not Germany. And because we tax by where goods are produced, the Mercedes avoids taxation here as well. Alternatively, a Cadillac destined for Germany pays U.S. taxes because it was manufactured here and is then taxed again in Germany because that's where it's sold. So the Cadillac is taxed at two points in the chain, and the Mercedes is not taxed at all. Seem fair to you?

The president would call that rigged, but it is a self-inflicted wound. The House bill fixes this fundamental unfairness. The new tax base is figured by subtracting domestic costs from domestic sales. So, if the sale in question is not made domestically (meaning the good is not destined for America), it is not subject to tax, just like the Mercedes manufactured in Germany. But if the costs of production are not incurred here, they are not deductible—just like the Cadillac as far as Germany is concerned. Some critics have said that such a policy will drive up costs to consumers. It is a complicated story, but basic principles of supply and demand suggest that this is not the case.

Which brings us to the final big advantage of the House bill: It closes loopholes, and there are three big ones in the current law. (1) Current law discourages investment by dragging

out depreciation deductions. The House plan solves this with expensing. (2) Current law encourages debt rather than equity financing. The House plan phases out this differential. (3) Current law favors production abroad, which the House plan handles with territoriality and border adjustability. Public finance economists have encouraged these reforms since I was in graduate school 40 years ago. This is not a radical idea, but it is one that will

make America work more efficiently.

Obviously, those that have taken advantage of these loopholes feel aggrieved; some of them will be net losers. But for too long, our economy has relied on financial engineering, instead of real engineering, to keep going. That strategy has reached the end of its rope. The ailment is clear; the diagnosis is clear; and so is the prescription—passage of the House tax reform package. ♦

## 'Too Complicated'?

The other border fight.

BY JOHN McCORMACK

Back in October, congressman Devin Nunes met with a group of executives from major corporations to talk business. "I was trying to sell them on" the House GOP's tax plan, Nunes says, "explain how it would work and how the economy would grow." There was only one problem: None of the business executives was interested. According to the California Republican, they wanted to talk about only two things: infrastructure spending and how to pay for it, "just like Clinton wants to do."

"No company in the U.S. thought, number one, that Trump would ever win, number two, that we would keep the Senate," Nunes says. That view, of course, was shared by many, including the media and even Republican members of Congress. That's why Nunes says "our biggest issue now is educating the public."

The House GOP "blueprint" for tax reform has been sitting on a shelf ignored since it was released last summer, but the ideas behind it have been developed over many years by think tanks and members of the Ways and Means Committee. Nunes, a member



of that powerful tax-writing committee, is a true believer when it comes to conservative tax and entitlement reform: He collaborated with Paul Ryan nearly a decade ago on a bill known as the "Roadmap for America's Future," many aspects of which are included in the current GOP plan. "If you go to a system like this, you're going to get massive economic growth," Nunes declares.

As Lawrence B. Lindsey explains in greater detail elsewhere in this issue (see page 10), these are the highlights of the GOP tax plan: One, it would cut the corporate tax rate from 35 percent (nearly the highest in the world) to 20 percent. Two, it would allow the full and immediate expensing of investments rather than requiring those deductions to be spread out over many years, thus giving new firms critically needed positive cash flow. Three, the 20 percent tax would be "border adjustable," meaning that it applies to domestically produced goods and imports but not exports. So, for example, Ford Motor Company would calculate its taxes by taking its total domestic sales and subtracting its domestic costs (capital investments, wages, American-made parts, etc.); it could not subtract the

*John McCormack is a senior writer at THE WEEKLY STANDARD.*

costs of imported parts, but it would not pay taxes on its foreign sales.

That last part—border adjustability—has been the most controversial aspect of the reform: Those opposing it include some manufacturers (Koch Industries), major retailers (Walmart), and financiers (former GOP presidential candidate Steve Forbes). Opponents argue that taxing imports but not exports will lead to American consumers paying higher prices. Academics on the left and right argue that these fears are unfounded. Harvard economist Martin Feldstein wrote recently in the *Wall Street Journal* that a border adjustment tax of 20 percent would “automatically” increase the dollar’s value by 25 percent, leaving importers and exporters no better or worse off than they were before.

“With a 25% rise in the value of the dollar relative to foreign currencies, the \$80 net price of U.S. exports would rise in the foreign currency to the equivalent of 1.25 times \$80, or \$100, and therefore back to the initial price,” writes Feldstein. “Similarly, the 25% rise in the value of the dollar would reduce the real import price to the U.S. retail customer back to \$125/1.25, or \$100, as it is without the border tax adjustment.” This calculation is “not a theory or a statistical regularity,” Feldstein adds, “but a basic national income accounting identity that holds for every country in every year.”

Feldstein’s view, widely held among academics, is disputed by some Republican businessmen. “Economic models have never predicted the future, much less the past,” Steve Forbes says in a phone interview. “There are a lot of things that go into exchange rates, very complex: monetary policy, international incidents, tax policy, and the like, which is why you have currency trading on the level of \$5.3 trillion a day, tens of thousands of the best minds in the world trying to figure out currency trades. The idea that these Washington politicians have gotten this thing cased out or a few academic

economists—if they’re so brilliant, they’d be on the Forbes 400 list for currency trading. They don’t know.”

Alan Viard, an economist at the American Enterprise Institute, concedes that the currency adjustment may not happen immediately, but he doesn’t know of any economist who would argue it won’t happen. “It’s not a liberal or conservative thing. This is just what economists believe,” says Viard. “The markets could be confused” initially, he added. “Economists are not always good at timing.”

Asked if he knew of any scholars who agreed that border adjustment



*Hmm, these look like they need adjusting: sunflowers at the Mexican border in 2012.*

would raise prices for consumers, Forbes couldn’t point to anyone in academia, but he named Larry Kudlow and Peter Schiff as two experts who do agree. One adviser to a major U.S. company that opposes border adjustment described the disagreement as one between the “ivory tower or textbook” view and those in business who believe that under border adjustment “currencies can’t and never will adjust completely and perfectly.” The House GOP plan has, however, won the support of a number of large companies—GE, Eli Lilly, Dow Chemical, Oracle, and Pfizer, to name a few.

If the academics are right that border adjustment wouldn’t have a real effect on imports and exports, then why enact it in the first place? Because the United States runs a trade deficit, taxing imports but not exports would raise more than \$1 trillion in revenue over the first 10 years. Without that \$1 trillion, Congress would likely leave the corporate tax rate much closer to 30 percent than the more competitive

20 percent Republicans want. Congressman Nunes argues that border adjustment isn’t being done simply to finance the rate reduction, but is rather a feature of the new system that moves away from an income tax. “If we’re moving to a consumption tax, you have to basically tax everything that gets consumed in this country,” he says.

Steve Forbes points to the new revenue as proof that American consumers are going to get stuck with the bill. “Where does the hundred-plus billion dollars [per year] come from? Mars?” AEI’s Alan Viard recently wrote that

border adjustment money would really be a disguised form of borrowing—the government would have to pay it back. Because exports and imports must balance in present discounted value, each dollar of current trade deficits means a dollar, plus interest, of future trade surpluses. When the trade surpluses arrived, the border adjustment would lose money, with the export subsidy costing more than the import tax raised. The money that came in during the trade deficit years would flow back out, with interest.

Whether GOP tax reform, including border adjustability, will become law remains unclear. In an interview on January 16, President Trump suggested that border adjustment was “too complicated,” but he quickly walked back that statement, in an interview two days later. Sources say that Trump’s top aides agree with House speaker Paul Ryan about border adjustment. On January 19, Breitbart News, whose former chair Stephen Bannon is Trump’s chief strategist, spun the issue as Ryan moving toward Trump’s position, even though Ryan’s original 2008 “Roadmap” called for a border adjustable consumption tax. “‘Responsible Nationalism’: Paul Ryan Warming to Donald Trump’s Ideology with ‘Border Adjustment Tax,’” blared the Breitbart headline.

Even if Trump and Ryan end up of the same mind, tax reform isn’t guaranteed to pass the Senate. The bill, which hasn’t been introduced yet, will be subject to budget reconciliation

rules, which means passage will require only a simple Senate majority. But there are only 52 Republican senators, which means reform advocates won't have much room for error without Democratic support. A number of Senate Republicans, including John Cornyn, Orrin Hatch, and Mike Lee, have already expressed

skepticism about border adjustment.

If the House GOP's tax reform is going to make it into law largely intact, it will require advocates like Devin Nunes and Martin Feldstein convincing almost all GOP senators—and much of the public—that they're right and Steve Forbes, Koch Industries, and Walmart are wrong. ♦

# Of Course Court Fights Are Bitter

Judicial arrogance is the ultimate cause.

BY JAY COST

President Donald Trump's nomination of Neil Gorsuch to fill the late Antonin Scalia's Supreme Court seat is bound to provoke yet another political brawl. The conventional wisdom is that this is a bad thing. The increasingly bitter fights over the High Court are a sign that our system of government has become dysfunctional. We should instead strive for a sober, muted process, devoid of grubby political considerations.

This conclusion could not be more wrong. The Supreme Court occupies a strange place in our system of government, bridging the gap between the liberal tradition of individual rights and republican tradition of majority rule. What happens to the Court when it does a bad job? Very little, for it is largely immune from popular influence. A Court vacancy is a rare exception to this rule—a moment when the people may influence how the judiciary behaves. It's no surprise that we bicker with each other over how best to do that. There is nothing wrong with such a

dispute—on the contrary, it is essential.

Today, the Supreme Court claims for itself the final authority on the nature and scope of our individual rights—not just from incursions by



Gorsuch chats up Democratic senator Claire McCaskill.

the federal government, but by states and localities. This is not the role the Founding Fathers intended. While most of them surely would have admitted that judicial review would be part of its job, they never envisioned the Court being the final arbiter on such controversies. After all, the Bill of Rights was inserted into the Constitution only *after* ratification, to appease the skeptics worried that the new government would run roughshod over individual liberty.

Even after the Bill of Rights was enacted, the Court was not initially viewed as its defender. When President John Adams imposed criminal penalties upon political opponents who belittled his administration, Thomas Jefferson and James Madison turned first to the state governments and ultimately the people to vindicate the First Amendment. They deemed the Court, at this point packed with Adams's Federalist allies, part of the problem.

But times change, and institutions evolve. Now the Supreme Court applies its understanding of our personal liberties not only to the federal government but also the states. While this role is inconsistent with the intent of the Founding Fathers, it gradually emerged over the years as a reasonable, albeit imperfect resolution to the inherent tension of our liberal republic.

In a republic like ours, the people are supposed to govern themselves, according to the principle of majority rule. The country is also committed to liberalism, in the classical sense of the term: As the Declaration of Independence avers, governments are instituted among men to protect our God-given rights. So the people are sovereign, but there are moral limits to this authority.

That raises the thorny question: how to stop a popular majority from treading upon the rights of a minority. At the Constitutional Convention, Madison proposed an extended republic, which would carefully balance and check the various social factions, thereby protecting individual rights and promoting the general welfare. He thought this “was the only defense against the inconveniences of democracy consistent with the democratic form of government.”

His contemporaries did not buy this argument. The small states insisted on equal representation in the Senate, and during the ratification conventions, skeptics of the new government called for an explicit enumeration of inalienable rights, which became the basis for the Bill of Rights.

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As the amendments lack any clear enforcement mechanism, the Court eventually stepped into the vacuum. Contrary to Madison's original proposal, the Court has become the final guardian of the liberal tradition from the "inconveniences of democracy."

In many respects, the Court is suited for this role. Of the three branches of our government, it is the most immune from the ebbs and flows of the public mood, so its members can divine what our God-given rights are without worrying about losing their jobs. Yet this solution is not without costs. There is a reason why Madison did not want to invest a permanent authority, like a king or House of Lords. Sure, he admitted, it may protect the minority from a capricious majority, but it may just as well facilitate the aggressors or turn against both sides. In such circumstances, there is precious little recourse for the people. When you immunize an institution of government from the people, you give its members license to do as they please.

Even a cursory review of the Court's history vindicates Madison's anxiety—for time and again it has not so much protected public liberty from aggressive politicians, but rather imposed its own, controversial notions of morality upon the people. In *Dred Scott*, the Taney Court invalidated the Missouri Compromise, hastening the Civil War. During the Gilded Age, the Court was devoted to the principle of laissez-faire and struck down a raft of state regulations of businesses. The modern Court has been eager to take sides in the ongoing culture war. Liberating the Court to do as it wishes provides a safeguard for our God-given rights, but it also endows a largely undemocratic branch with power to strike down democratic measures in a capricious manner.

Little wonder that we the people fight so intensely over every nomination. The average justice's tenure approaches 20 years, meaning that only once a generation the public gets to weigh in on who occupies each seat.

If the Court were modest in its ambitions and respectful of the people's capacity to govern themselves, these openings would probably not precipitate such epic political conflicts. But over the years the Court has been prone to arrogance and highhandedness, enjoining often contentious views of right and wrong. That is not what should happen in a republic.

The political battles over judicial nominations make for messy television, but they are a proper response to the Court's tendency to undervalue our nation's republican tradition. A vacancy is that rare opportunity for the people to remind the Court that its job is to protect our liberties without interfering unduly with our right to rule ourselves. We should hope that our representatives work their hardest to get this message across. Does this "politicize" the nomination process? Sure. But politics is *essential* to republican government, and the Court needs politicizing, if only once in a while, to remind it who is really in charge. ♦



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# Impossible Dream

Trump won't be able to talk Putin out of his alliance with Iran. **BY LEE SMITH**

Since President Trump's election, American allies and other foreign policy observers have been curious to know how the new White House intends to resolve an apparent contradiction. How is it possible that Trump seems keen to make some sort of deal with Vladimir Putin while expressing belligerent contempt for Russia's key Middle East ally, Iran? There may be an answer: Recent press reports indicate the Trump team will try to lure Russia away from Iran. The chances for success are slim.

Moscow and Tehran's alliance was cemented in Syria, where both have historically backed the Assad regime, first Hafez al-Assad and later his son Bashar. Both have supported Bashar al-Assad against an array of opposition forces since the Syrian conflict erupted in the summer of 2011. Four years later, with Assad and Iranian forces in danger of losing the war, Qassem Suleimani, head of the Islamic Revolutionary Guard Corps's expeditionary Quds Force unit, visited Moscow to beg the Russians for more help. Putin consented. He escalated Russia's position in Syria with men and materiel, and marked it with naval installations and airstrips. Ever since, Russian planes have flown in support of Iranian, Hezbollah, and other Iranian-backed ground forces. Rumors regarding points of conflict between Russia and Iran continue to circulate, but this is not, as many have called it, a "marriage of convenience," but a strategic alliance in which each actor depends on the other.

The notion that it is possible to separate Moscow from Tehran is apparently based on two historical precedents. National Security Adviser

Michael Flynn was intelligence chief for Joint Special Operations Command in Iraq during the surge. Coalition forces were able to ensure relative stability in Iraq as the Sunni tribes were induced to turn their weapons on foreign fighters they had previously aligned with to battle coalition troops.

The second precedent is Egyptian president Anwar Sadat's decision after the October 1973 war with Israel to



*A firm embrace: Iranian president Hassan Rouhani, left, with president of Azerbaijan Ilham Aliyev and Putin*

leave the Soviet fold and ally with the United States. Sadat's move proved such a boon to America's Cold War efforts against Moscow that American policymakers tried to get other Soviet clients to jump, chief among them Syria's Hafez al-Assad, who nonetheless clung to Moscow.

Even after the Cold War, American diplomats continued their efforts in the Levant by courting Hafez's son Bashar, to see if he'd abandon his patrons in Tehran. Bashar never had any intention of jumping; he had simply learned from his father that dangling possibilities in front of American diplomats brings them to the table with incentives and promises, all of which you can pocket to enhance your own prestige without giving the Americans a thing.

What two generations of American

policymakers who dealt with the Assad family seem to have missed is that Sadat came to his decision on his own. The Soviets were bad for Egypt, Sadat believed, and the Americans and their money were the future. The same was true three decades later of Iraq's Sunni tribes, which concluded that al Qaeda and the foreign fighters who occupied Iraq to fight the Americans were a dead end. Better to work with U.S. forces to get rid of them. Both Sadat and the Iraqi tribes were, in the parlance of the intelligence world, walk-ins who volunteered to change sides. Washington added various incentives to facilitate decisions that greatly benefited the United States, but there was little even the subtlest and most creative diplomats, policymakers, or dealmakers could have offered had the tribes and Sadat not already shown signs they were looking to jump.

Now, it's certainly possible that the Russians are privately sending messages to the Trump administration that they're willing to entertain a deal to abandon the Iranians. But it's highly unlikely. The Russia-Iran alliance is a strategic relationship in the most fundamental way.

When Vladimir Putin surveys the Middle East, he sees a post-1973 landscape, what the Middle East looked like after Sadat embraced the United States. The region is covered with American allies, from Israel to Egypt, from Turkey to Saudi Arabia and the Arab states of the Persian Gulf. Sure, Barack Obama put American allies in a hard spot by forsaking them all, creating a vacuum filled by Moscow, where traditional U.S. regional partners were compelled to petition Putin on bended knee. But eight years is a relatively short period compared to the decades during which Washington established strategic relationships in the region, through arms deals and security arrangements and economic and cultural exchanges. When Putin looks at the region, he sees only one empty space on the board—Iran. There is simply no way for the Russians to project power or manage their regional interests without Iran and its partners, like Hezbollah. Asking Putin

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to abandon the Iranians is like asking him to leave the Middle East.

And that's the kind of deal the Trump administration should be angling for in the region. The United States doesn't want Putin on NATO's Turkish border. It doesn't want Russia sending missiles to Syria, as it did last week. The White House doesn't want Russia compromising Israel's air superiority in the eastern Mediterranean, and it surely doesn't want Russia backing Hezbollah and Iran's approach to Israel's Golan Heights border. So how do you get to yes?

You don't have to be an artist of the deal to know that starting talks with the premise that you want to make the other players at the table happy puts you on course to losing your shirt. You surely don't concede up front that Putin gets to keep his naval base in Tartus, for instance, or that Russia gets to carve out a mini-statelet for Syria's Alawite community.

No, you start by not speaking directly with Russia at all. You negotiate with Putin by targeting Iran, through a variety of measures, including sanctions, clandestine operations, cyberwar, and a snare ready everywhere Tehran is likely to misbehave: the Persian Gulf, Red Sea, eastern Mediterranean, etc. And indeed, Flynn and the staff he's put together at the National Security Council are eager to put Iranians back in the box that Obama let them out of.

In other words, the way to persuade Putin to abandon Iran is by showing him that it's a bad investment, that his position in the region, which is based entirely on his partnership with an Iran that is growing in power and prestige, has been pulled out from under him, like a Persian carpet. Why keep throwing good money after bad?

It's a risky gambit, which is perhaps why the Trump administration is floating rumors of trying to "talk" Putin out of his alliance with Iran, even as it seeks to target his allies. The other choice, however, is much riskier: to acquiesce to Obama's vision of the region, where American allies and interests are at risk, and American adversaries are on the rise. ♦

# A Beijing Model?

Xi Jinping's version of democracy.

BY ROSS TERRILL

Is there really a Beijing Model of governance: authoritarian politics steering economic growth, diluting the appeal of the West's democracy and freedom? The ruler of China thinks so. He's focused on sticking around and seeing it triumph.

Xi Jinping is the first Chinese Communist leader to have been born after the founding of the People's Republic of China in 1949. He did not study or spend early years abroad like most predecessors. Deng Xiaoping, who ruled in the 1980s, studied in France and the Soviet Union after World War I; Jiang Zemin, who ruled in the 1990s, studied in Philadelphia. Only Mao Zedong, prior to Xi, reached maturity before glimpsing the foreign world. For Mao, that meant Moscow; for Xi, born in 1953, it was a 1985 trip to the cornfields of Iowa. Is he then a nationalist, like some other recently installed world leaders?

Very much so. Xi knows grassroots China, county-level China, and province-level China. He lived in Henan, Fujian, and Zhejiang provinces as a local official, and in Shaanxi as a "family victim" of the zealous Cultural Revolution. Beijing, as well as the non-Chinese world, was a late stop for Xi. He's a local politician, newly endowed with global vision, now essential for a Beijing leader in light of China's rise. Unlike his brilliant premier, Li Keqiang,

*Ross Terrill is chief editor of Xi Jinping's China Renaissance, forthcoming in Beijing, and the author of Mao, The New Chinese Empire, and Madame Mao. His next book is Mao as a Boy.*

who is left to languish these days, Xi condescends to the West and thinks "small" countries in Asia should defer to "big" China.

Xi wants to reclaim the East China Sea (from Japan) and the South China Sea (from Vietnam, Philippines, and others) and push into Africa. He says the European Union, home of ancient Western civilization, is

a natural partner for China, core of ancient Eastern civilization. This East-West pairing will shape "global governance," he implies. Never mind Uncle Sam.

The Chinese president and his advisers assert an intriguing interrelation between their internal politics and global trends. Besides challenging the West on Asia's oceans and in Africa's infrastructure, Xi has started a skirmish on its sacred home ground of democracy. A choice exists, he suggests, between election democracy (the West) and evaluation democracy (China and a growing list of others). The "China Dream" of Beijing's evaluation democracy will become the world's leading pattern of governance, he seems to believe, for it avoids chaos and corruption.

Evaluation democracy, a term coined by Chinese scholar Chen Fangren, is Eastern meritocracy. Leaders are chosen from a holy circle at the top, based on "virtue and ability." These officeholders must then listen to public opinion as it "evaluates" their performance from below.

The West's election democracy "requires only one-time consent by votes to form a government for the duration of its term," according to



Chen; leaders are chosen by universal suffrage, but between elections they may or may not listen to grassroots views. When left-wing Americans lose an election, for example, their inclination is to pick up their marbles and turn to street politics, strikes, and litigation. In parallel fashion, some proud conservatives prefer purity on the sidelines to the compromises required for electoral victory.

Xi has used “the top” to co-opt Chinese public opinion since taking power in 2012. He has won praise by firing thousands of senior military and civil officials for corruption. He has laid out fresh domestic and foreign policy ideas, month after month, with a speed and confidence unmatched since Deng. He snipes at the West’s messy “multiparty system,” touting China’s one-party system. Will this backfire on him, as it did on the once-cocky Soviet bloc?

As recently as a decade ago, Americans overwhelmingly favored election democracy, because of its fixed rules. Barack Obama’s acerbic quip to Eric Cantor in early 2009, “Elections have consequences,” when Democrats and Republicans argued about Obamacare, seemed like gospel. But today in the United States, across the Atlantic, and in Japan, Australia, and other democracies, constant and inaccurate polls, media barrages, the centrality of personality, and enormous sums of money have reduced faith in elections.

The Chinese scholar Chen finds the magic of evaluation democracy in 4,000 years of Chinese history. “Continuous consent to govern” allows emperors and politicians alike to “focus on proper results for the common good” and not the grand opera of multiparty struggles. “Average people” are too busy with their private lives to “take on the heavy burden” of selecting leaders “fit for office.”

But continuous consent to rule in evaluation democracy has been (in Chinese history) and is (anywhere) tricky to pull off. In today’s China, meddling by “retired” leaders is a major barrier to “citizen evaluation” of current leaders. Cronyism will have its pound of flesh. Chen fails to see how

often power struggles creep into his dreamland of continuous consent. Thousands of years of Chinese politics have had, on a per-century basis, no less contention and violence than have centuries of politics in the United States. Chen clings to an ideal that in history worked only occasionally: He lamely admits China was “lucky to have good emperors” from time to time over millennia.

The Beijing Model, as I call the current no-elections version, “leaves the selection of a government to government leaders themselves, who have in-depth knowledge of each other” and know “what it takes to be an effective leader.” This sounds like the objections raised inside Republican circles to outsider Donald Trump and Democratic circles to Bernie Sanders before the presidential election. It is a dualism, with a magical circle at the top and eruptions outside it, as old as Chen’s 4,000 years of Chinese realpolitik and as young as John Quincy Adams’s efforts to knife Andrew Jackson.

One frequent Chinese critique of Western elections flunked in 2016: “The rich always win.” Actually, they don’t. Nelson Rockefeller (1968) and Edward Kennedy (1980) did not become president despite overwhelming wealth; Richard Nixon and Jimmy Carter, respectively, with far less money, beat them. Loser Hillary Clinton dramatically outspent winner Trump in November; the bubble of wealth burst in her hands as her coast-to-coast grin did service for policy ideas.

Electoral victory quite often goes to an “outside” or “common sense” candidate, whether good or bad, rather than a wealthy one. Few in the Beijing establishment understand this. Yet in 2016 the Chinese man and woman in the street had a different instinct, sniffing condescension at home and abroad. Anecdotal evidence, including from my own stay in September, indicates millions of “old hundred names” (*lao bai xing*, unnamed folk) favored Trump.

One Chinese adviser to Xi Jinping writes in a book I am editing that after communism’s collapse, “East European countries chose the Western

mode and allowed various interest groups to build their own parties. In China, however, political openness comes from the inside.” Time will tell how far political openness that comes (and goes) from the top can proceed.

A workaday-style leader, Xi Jinping is amiable in manner, fresh in social policy, bleak in cultural policy, torn in economic policy between market forces and Communist supervision, and adventurist in foreign policy. It is a volatile cocktail. If the Beijing Model fails, Xi’s descent would be a minor part of the crisis. But we must admit that hope for the Democratic World model under George W. Bush (which I shared) has shriveled. What remains? Certainly not Wilsonian idealism, either conservative or liberal in inspiration. Its revival in recent decades under Bush and Obama brought few benefits to U.S. interests.

Power politics under American leadership is what Donald Trump should pursue. Our foreign policy gurus chatter about a list of issues (North Korea has topped it for 11 frozen years). But our to-do list is utterly at variance with Beijing’s shrewder realpolitik.

Today, for example, Xi Jinping is beaming at the EU and slightly smiling at the United States while squeezing Japan, Australia, Canada, and other U.S. allies. Details don’t matter to Xi compared with this balance of power; thus China’s bemused level-headedness over the phone chat between Trump and Taiwanese president Tsai Ing-wen, which sent America’s not-so-very intelligentsia reaching for the bottle. The United States has never believed in, or been good at, multilateralism with Washington posing as one capital just like all the rest.

Nevertheless, the fixed schedules and term limits of election democracy lend a steady beat of certainty to our choice of leaders and policies. This otherwise messy sequence is surely better than the everlasting groping of so-called evaluation democracy. Our Sinologists exit Davos and the Council on Foreign Relations saying China is being integrated into the liberal international order. The Chinese elite in Beijing have different ideas. ♦

# Higher Justice

*Judge Neil Gorsuch's constitutionalism contrasts starkly with the progressive administrative state—and the president who is appointing him*

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BY ADAM J. WHITE

In nominating Neil Gorsuch to be the next Supreme Court justice, President Trump could not have found a judge who more starkly dramatizes the constitutional crossroads at which the nation now finds itself. For eight years, the Obama administration and its proponents pressed their progressive constitutional vision emphatically, drawing ever more power into the government's least democratic institutions: federal agencies instead of Congress; federal courts instead of states and communities.

Donald Trump embodies one alternative to Obama's progressivism—as he reiterated in his Republican National Convention address. At “a moment of crisis for our nation,” when elites “have rigged our political and economic system for their exclusive benefit,” Trump was entering “the political arena so that the powerful can no longer beat up on people who cannot defend themselves.” The system is corrupt, he urged, and “*I alone can fix it.*” Trump's primary tool in “fixing it” is the force of raw political energy: to break down the nation's cockpit door and seize control back by force, as Michael Anton put it in his “Flight 93 Election” essay; or, as top Trump adviser Steve Bannon suggested a few years earlier, to fan “a fire that will burn” from “the high plains of this country . . . all the way to Washington.”

Six months later, having won the election and taken office, President Trump made filling the late Justice Antonin Scalia's vacant Supreme Court seat one of his first priorities. But the man he nominated was no flamethrower or cockpit-door-smasher: Neil Gorsuch is rather a highly regarded federal judge from Colorado. “The qualifications of Judge Gorsuch are beyond dispute,” Trump told the audience assembled in the White House's East Room and viewers watching nationwide. “He is . . . a man who our country really needs and needs badly to ensure the rule of law and the rule of justice.”

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President Trump is right—but perhaps even more so than he realized as he stood with Judge Gorsuch in the East Room. Gorsuch's opinions and other writings do indeed present an alternative to progressive constitutional decline. But in his view of constitutional checks and balances, in his self-professed “native optimism” about our country and the rule of law, and in his rejection of modern “cynicism about the law” that “flourishes so freely” in today's political arena, Gorsuch also offers an alternative to Trumpism itself.

By now the nominee's biography is already well-rehearsed (see, for example, Terry Eastland's “A Great Scalia Successor” in these pages last week). The Colorado-born son of David and Anne Gorsuch, Neil moved to Washington in 1981 when President Ronald Reagan tapped his mother to lead the Environmental Protection Agency. While in high school, he worked as a Senate page. After college at Columbia (where he cofounded *The Federalist Paper*, a conservative student publication) and then Harvard Law School, Gorsuch became a highly regarded litigator at one of Washington's elite firms and then a senior official in President George W. Bush's Justice Department. Along the way, he obtained a doctorate from Oxford, and in 2006 Princeton University Press published *The Future of Assisted Suicide and Euthanasia*, Gorsuch's nuanced, scholarly contribution to a series edited by Professor Robert George. That same year, President Bush appointed Gorsuch to the U.S. Court of Appeals for the Tenth Circuit, with the Senate's unanimous confirmation.

Between law school and private practice, Gorsuch clerked for three significant but quite different judges, each of whom has a legacy in Gorsuch's own work. First, he clerked for Judge David B. Sentelle at the U.S. Court of Appeals for the D.C. Circuit. “If you've ever met Judge David Sentelle,” Gorsuch observed in his East Room remarks, “you'll know just how lucky I was to land a clerkship with him right out of school.” Sentelle was one of President Reagan's several prominent judicial appointees who expressly anchored their jurisprudence in the Framers' original meaning, and whose statutory interpretations focused foremost on how the words of a given statute were understood at the time of its enactment. And this is the approach that Gorsuch

himself espouses, as he did in a speech last year: Judges should “strive (if humanly and so imperfectly) to apply the law as it is . . . looking to text, structure, and history to decide what a reasonable reader at the time of the events in question would have understood the law to be—not to decide cases based on their own moral convictions or the policy consequences they believe might serve society best.”

Gorsuch next clerked for two Supreme Court justices who were in many respects mirror images of one another: the retired Justice Byron White and the newly appointed Justice Anthony Kennedy. White was appointed by a Democrat (JFK) but ultimately came to be seen as a conservative, especially in temperament; Justice Kennedy was appointed by a Republican (Reagan) but is most famous today for his opinions—marked by grandiose rhetoric—saving *Roe v. Wade* and creating a constitutional right to same-sex marriage.

White’s and Kennedy’s differences go beyond matters of style and sensibility; the two justices approached questions of constitutional structure in diametrically opposed ways. Comfortable with the New Deal’s constitutional innovations, Justice White dissented from his colleagues’ opinions questioning Congress’s delegation of broad powers to regulatory agencies and other statutes (like those providing for Congress’s “legislative veto” of agency action) that blurred the lines traditionally separating the provinces of the executive and the legislature. Justice Kennedy, by contrast, pens opinions urging his colleagues to hold fast to the Constitution’s tripartite structure; he sees the separation of powers, checks and balances, and limits upon Congress’s delegation of power to agencies as crucial safeguards for limited government and individual liberty. (See my essay “Kennedy’s Question,” April 28, 2014.)

Gorsuch seems to have adopted the best traits of both Supreme Court mentors: White’s conservative temperament and respect for the people’s right to govern themselves and Kennedy’s recognition that liberty and republican self-government require a constitutional structure to channel political passions toward reasoned ends. “These judges brought me up in the law,” Gorsuch said in the East Room. “Truly, I would not be here without them.”

And so Trump nominated him to succeed another great justice, Antonin Scalia. Even among progressives, Gorsuch has won plaudits. Richard Lazarus, a prominent environmental law professor and experienced Supreme Court litigator, called Gorsuch “the single most qualified person” on Trump’s list of judges, “a man of enormous achievements” who “is smart and has integrity.” Lazarus’s Harvard Law School colleague Laurence

Tribe says that “Gorsuch is as smart as he is conservative, and he writes elegantly. . . . He’s a brilliant, terrific guy who would do the court’s work with distinction.”

Given the universal recognition of Gorsuch’s lawyering skill, the best analogue for his upcoming Senate confirmation may be not Justice Scalia, to whose constitutionalism Gorsuch’s is rightly compared, but Chief Justice John Roberts. Like the chief, Gorsuch is an impeccably credentialed, skillful, and intellectual lawyer with an understated, moderate temperament. While Gorsuch probably cannot hope to match Roberts’s tally of 78 Senate votes in favor of his confirmation, senators will likely find Gorsuch as difficult to besmirch as they did Roberts.

Still, Gorsuch will have to endure a confirmation process that has changed dramatically since Justice White’s own appointment 55 years ago. Indeed, when Gorsuch reflected on the confirmation process and the late Justice White in a 2002 essay, he stressed the astonishing difference between Senate confirmations then and now: “There is another sense in which we shall not look upon the like of Justice White again. He was confirmed less than two weeks after his nomination; his hearing lasted 90 minutes.”

The Senate confirmed White with a voice vote. For Gorsuch, the loudest voices he will hear will be the critical chorus of Democrats on the Senate Judiciary Committee (and progressive activists surrounding the process), peppering him with pointed questions about decisions he made on the Tenth Circuit and decisions that he might make on the Supreme Court.

In questioning judicial nominees, senators tend to relitigate the Supreme Court’s most recent hot-button cases. In 2006, the senators pressed Samuel Alito on presidential war powers; in 2010, they focused on the Court’s recent decisions on gun rights and corporate speech. Now, in the aftermath of Supreme Court decisions protecting the Little Sisters of the Poor, the owners of Hobby Lobby, and others from Obamacare policies that unlawfully burdened their free exercise of religion, senators will surely press Gorsuch on not just his judicial decisions, but also his euthanasia writings.

As it happens, the Supreme Court heard the *Hobby Lobby* case after Gorsuch himself had heard the case in the Tenth Circuit. There he joined the majority holding that the Hobby Lobby and Mardel companies qualified for protection under the Religious Freedom Restoration Act, against the Obama agencies’ efforts to force them to subsidize potentially abortion-inducing drugs for their employees. In addition to joining the majority opinion, Gorsuch wrote separately to emphasize the choice faced by the companies’ owners, in characteristically eloquent terms:



*One of these  
is not like the other.*

All of us face the problem of complicity. All of us must answer for ourselves whether and to what degree we are willing to be involved in the wrongdoing of others. For some, religion provides an essential source of guidance both about what constitutes wrongful conduct and the degree to which those who assist others in committing wrongful conduct themselves bear moral culpability. The Green family members are among those who seek guidance from their faith on these questions. Understanding that is the key to understanding this case. . . .

No doubt, the Greens' religious convictions are contestable. Some may even find the Greens' beliefs offensive. But no one disputes that they *are* sincerely held religious beliefs. . . . And to know this much is to know the terms of the Religious Freedom Restoration Act apply. The Act doesn't just apply to protect popular religious beliefs: it does perhaps its most important work in protecting unpopular religious beliefs, vindicating this nation's long-held aspiration to serve as a refuge of religious tolerance.

Senators will also focus on other votes that Gorsuch has cast on the Tenth Circuit: joining Judge Harris Hartz's subsequent opinion in the related *Little Sisters of the Poor* case; supporting local officials' discretion to place a Ten Commandments statue among other "markers of our nation's legal and cultural history" on public property; dissenting from the court's refusal to rehear *en banc* a decision prohibiting the placement of privately funded memorials for fallen state troopers on public property; and dissenting from the court's refusal to rehear *en banc* a decision requiring Utah to continue to send public funds to Planned Parenthood.

And some senators will press Gorsuch on the subject of euthanasia, for hints as to how he might rule in future abortion cases. They will quote policy arguments from his book that are "premised on the idea that all human beings are intrinsically valuable and the intentional taking of human life by private persons is always wrong." But the same senators will likely ignore Gorsuch's equally emphatic writings elsewhere that judges are obligated "not to decide cases based on their own moral convictions or the policy consequences they believe might serve society best. As Justice Scalia put it, 'if you're going to be a good and faithful judge, you have to resign yourself to the fact that you're not always going to like the conclusions you reach.'"

But while abortion will assuredly cast its familiar shadow over the Gorsuch hearings, and religious liberty will also draw significant attention, they may not be the predominant issues. Instead, the first Supreme Court nomination hearings of the post-Obama era may ultimately be remembered as focusing on Gorsuch's view of an issue that defines the Obama years: the modern administrative state.

**T**he administrative state 'wields vast power and touches almost every aspect of daily life,'" Chief Justice Roberts wrote in a 2013 opinion criticizing the Supreme Court's deference to federal

agencies' interpretations of statutes. "The Framers could hardly have envisioned today's 'vast and varied federal bureaucracy' and the authority administrative agencies now hold over our economic, social, and political activities. . . . [T]he administrative state with its reams of regulations would leave them rubbing their eyes.'"

For nearly a century, federal governance has primarily meant creating new agencies to wield immense (if not altogether unlimited) powers. And for three decades, the Supreme Court and federal courts have mostly respected that power, deferring to agencies' "reasonable" interpretations of "ambiguous" statutes (a doctrine known as "*Chevron* deference," for the case that gave rise to it). The convergence of those trends was a bipartisan affair. Liberals and progressives championed the creation and expansion of administrative agencies, while *Chevron* and other recent doctrines of judicial deference were originally advocated by conservatives who believed that regulatory policy should be driven more by the politically accountable president than by politically unaccountable judges.

But Chief Justice Roberts's critique of our "vast and varied federal bureaucracy,"—joined by Justice Kennedy and Justice Alito—exemplified a fundamental objection that conservatives and even some progressives are increasingly levying against administrative supremacy. In Congress, legislators in both houses and both parties are considering how to impose more limits or at least more accountability on federal agencies. Elsewhere, law professors and authors are writing countless articles and books criticizing the very premises of the modern administrative state—the most prominent being Philip Hamburger's *Is Administrative Law Unlawful?* For Hamburger and others, the question is purely rhetorical.

Now Supreme Court justices and lower-court judges are asking these same fundamental questions about the legitimacy of the administrative state. In addition to Roberts's 2013 opinion (focusing ultimately on *Chevron*'s limits), both Justices Clarence Thomas and Alito have issued a series of opinions making similar points. Justice Alito has raised questions about judicial deference and has called for reinvigoration of our system of legislative checks and balances; Justice Thomas has not just raised questions about deference and about the breadth of powers vested in agencies, but also proposed answers that would significantly rein in federal agencies.

And these criticisms echo in the lower courts. In September, for example, Judge Diarmuid O'Scannlain—a rare conservative on the supremely liberal Ninth Circuit—wrote that his circuit's judges, by maintaining an overly deferential approach to agencies, had "spun out of the known legal universe and are now orbiting alone in some cold, dark corner of a far-off galaxy, where no one can hear the scream 'separation of powers.'"

Judge Gorsuch is a leading contributor to this national judicial conversation. In a series of recent opinions, Gorsuch has questioned the modern administrative state's twin pillars: Congress's delegation of immense power to the agencies (which courts are loath to prohibit), and the courts' deference to the agencies' expansive interpretations of their own powers.

In his most prominent decision, *Gutierrez-Brizuela v. Lynch* (2016), Gorsuch focused on a corollary to *Chevron* deference: the *Brand X* doctrine. Under *Chevron*, the courts defer to an agency's reasonable interpretation of ambiguous statutes, even when there are many possible—even superior—alternative interpretations. *Brand X* (2005), decided two decades after *Chevron*, cast the implications of that approach in high relief: Even if the courts have already affirmed an agency's previous "reasonable" interpretation of an "ambiguous" statute, the agency remains free later to adopt a *different* "reasonable" interpretation—and the courts must then defer to the new interpretation instead. In such a case, the agency's new interpretation supersedes—or even, some argue, "overrules"—the court's previous decision.

Gorsuch's majority opinion in *Gutierrez-Brizuela* opened by stating the matter bluntly, calling it "the thorny problem [of] what to do when an *executive* agency, exercising delegated *legislative* authority, seeks to overrule a *judicial* decision." Even after writing the majority opinion, Gorsuch added a separate "concurring" opinion, to explore the problem more thoroughly: "There's an elephant in the room with us today. We have studiously attempted to work our way around it, and even left it unremarked. But the fact is *Chevron* and *Brand X* permit executive bureaucracies to swallow huge amounts of core judicial and legislative power and concentrate federal power in a way that seems more than a little difficult to square with the Constitution of the framers' design. Maybe the time has come to face the behemoth."

Like Justice Kennedy, Gorsuch sees the issue not simply as one of constitutional theory or good government (though it is that, too), but fundamentally one of individual liberty: "Under *Chevron*, the people aren't just charged with awareness of and the duty to conform their conduct to the fairest reading of the law that a detached magistrate can muster. Instead, they are . . . required to guess whether the statute will be declared 'ambiguous' (courts often disagree on what qualifies); and required to guess (again) whether an agency's interpretation will be deemed 'reasonable.' Who can even attempt all that, at least without an army of perfumed lawyers and lobbyists?"

And Gorsuch ties this to the parallel question of Congress's authority to delegate open-ended powers to the agencies in the first place. To be clear, execution necessarily involves discretion. Since the republic's earliest years, Congress has vested the executive with power to make factual

(or factual-ish) findings that trigger policy implications. And for nearly as long the Supreme Court has expressly acknowledged that Congress might decide the basic questions of policy while allowing the executive to resolve "details" or fill "gaps." But, Gorsuch observes, modern Supreme Court doctrine requires only that Congress set an "intelligible principle" for agencies to follow in imposing regulations—a very low bar, affording agencies effectively boundless discretion.

Gorsuch also observed in *Gutierrez-Brizuela* that the doctrine of *Chevron* deference, combined with judicial approval of Congress's delegation of vast regulatory powers to agencies, ultimately degrades the lawmaking process itself. "When the political branches disagree with a judicial interpretation of existing law, the Constitution prescribes the appropriate remedial process. It's called legislation." But when administrative agencies seek to change law, they need not endure the intentionally "arduous" legislative process; rather, they can simply "re-interpret" the law and swiftly move forward with new legal effect. And, one might add, legislators and bureaucrats all know this, and thus too often lack real incentive to do the hard work of substantive legislation at all.

Some roots of Gorsuch's recent critiques can be found early in his tenure. In a 2008 opinion, for example, he noted the Supreme Court's warning that statutes "should be construed to avoid" serving as "sweeping delegation[s] of legislative power," because such grants of legislative power "might be unconstitutional." But elsewhere he seemed much more comfortable with the "flexibility" that Congress and courts afford agencies. "After all," he wrote in a 2009 opinion, "'flexibility in reconsidering and reforming of policy,' including the opportunity to choose between temporary and permanent rulemaking, is 'one of the signal attributes of the administrative process' . . . and courts will not lightly interfere with it."

If one wants to trace Gorsuch's newly vocal reformist approach to a single case, it would appear to be *De Niz Robles v. Lynch* (2015). In that case, a Mexican citizen married to an American, the father of four American children, had been deported to Mexico. Two years later, after failing to obtain a visa, Alfonso De Niz Robles reentered the country anyway. At the time, one federal statute seemed to require De Niz Robles to wait two years before attempting to lawfully reenter, but another statute seemed to allow the attorney general to waive that requirement. When the issue of these two statutes first reached the Tenth Circuit, the Justice Department's Board of Immigration Appeals concluded that the statutes were best interpreted as giving the attorney general discretion to allow earlier reentry, and the Tenth Circuit deferred to that interpretation. But years later, after De Niz Robles applied for an adjustment of his status in

reliance on the Tenth Circuit's decision, the BIA changed its position and concluded that the attorney general lacks any such discretion to waive the requirement—and then imposed its new policy on De Niz Robles, declaring him subject to removal from the country once again.

Gorsuch and his colleagues held that *Brand X* gives the BIA discretion to change its policy, but not to impose its new policy retroactively on De Niz Robles. Still, the agency's broad discretion under *Chevron* and *Brand X* to radically reverse its position clearly troubled Gorsuch. In a speech last year, he held De Niz Robles's case up as an example of dangerous decay in constitutional structure: "What does this story suggest? That combining what are by design supposed to be separate and distinct legislative and judicial powers poses a grave threat to our values of personal liberty, fair notice, and equal protection. And that the problem isn't just one of King George's time but one that persists even today."

By invoking King George, Gorsuch isn't implying that the problem is simply one of malicious rulers. For he has used the analogy on multiple occasions, in different terms that highlight the real problem. In *Gutierrez-Brizuela*, Gorsuch writes, "In enlightenment theory and hard won experience under a *tyrannical* king the founders found proof of the wisdom of a government of separated powers." But in *U.S. v. Nichols* (2015), Gorsuch writes, "The framers worried that placing the power to legislate, prosecute, and jail in the hands of the Executive would invite the sort of tyranny they experienced at the hands of a *whimsical* king."

The distinction is telling. For Gorsuch, as for the Framers, the point of not vesting an executive with unchecked powers was not that unchecked powers shouldn't be vested in bad executives. The point is that *no* executives should be vested with powers that are *unchecked*—and that the friction of constitutional checks and balances is a crucial safeguard of liberty.

And finally, Gorsuch sees the problem as one of basic due process. From time to time he invokes *Federalist* 62 on the inherent dangers of government imposing waves of voluminous laws: "It poisons the blessing of liberty itself," Madison warns, for it "will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow. Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?"

That is the administrative state, where (as Gorsuch wrote in a 2014 opinion) "the Code of Federal Regulations today finds itself crowded with so many 'crimes' that

scholars actually debate the number," and where the ever-shifting regulatory commands are too voluminous to count.

Gorsuch's writings stop short of the strictures of, say, Justice Thomas or Professor Hamburger against the administrative state. One wonders whether Gorsuch, a lifelong practicing lawyer, would share their zeal in calling for a sweeping invalidation of federal laws under the nondelegation doctrine; Gorsuch himself has not called for this. But even Gorsuch's more limited criticism is a striking rejection of the premises that undergird the modern progressive administrative state. And Gorsuch thus embodies a stark alternative to the Obama administration's expansion and weaponization of that state. But he also embodies a stark alternative to another destructive trend.

Perhaps the darkest moment of Donald Trump's campaign for president was his flurry of attacks on Gonzalo Curiel, a federal judge who had the misfortune of being assigned the task of adjudicating claims of fraud against "Trump University." Though Judge Curiel is an American—a native Hoosier—Trump grew publicly obsessed with the Mexican roots of Curiel's parents, and he vented his obsession on the campaign trail. At a rally in San Diego last May, Trump whipped the crowd up in anger against the judge: "It's a disgrace the way the federal court is acting, because it is a simple lawsuit. . . . Everybody says it, but I have a judge who is a hater of Donald Trump. A hater. He's a hater. His name is Gonzalo Curiel. [Crowd boos.] And he is not doing the right thing. . . . Because he's given us ruling after ruling after ruling, negative, negative, negative. . . . So what happens is the judge, who happens to be, we believe, Mexican, which is great. I think that is fine. . . . But I will say this. I think Judge Curiel should be ashamed of himself. I think it's a disgrace he is doing this." Trump called for an investigation into the judge. And days later, Trump put the point even more bluntly to the *New York Times*: "I'm building the wall, I'm building the wall. . . . I have a Mexican judge. He's of Mexican heritage. He should have recused himself, not only for that, for other things."

If memories of Trump's astonishing fury against Judge Curiel had faded since the election, they were brought back to mind by President Trump's reaction to a controversial judicial decision against his administration's policies—specifically, against the president's executive order on refugees. He mocked federal district judge James Robart as a "so-called judge," and suggested that any blood spilled by future terrorist attacks would be on the hands of Robart and other judges.

As with any administration, the first negative judicial decisions won't be the last. And so President Trump's furious reaction to initial judicial speedbumps portends four more years of presidential efforts to

delegitimize legal rulings and the judges who sign them.

When Senator Richard Blumenthal pressed Judge Gorsuch on Trump's comments during a pre-confirmation-hearing meeting, Gorsuch evidently told the senator that such attacks on the integrity of judges are "disheartening and demoralizing." Blumenthal then quoted Gorsuch to the press, sparking a round of media commotion.

President Trump, surprised by word of Gorsuch's view, denounced Blumenthal as a liar. (Former senator Kelly Ayotte then confirmed that Gorsuch has made clear he finds any such attack on judges disheartening and demoralizing.) But if Trump was caught off guard by Gorsuch's instinctual reaction, he shouldn't have been. Throughout his career, Gorsuch has been a vocal defender of judicial independence and integrity, and a critic of the burgeoning cynicism that seeks to delegitimize disagreeable judicial opinions as simply the stuff of politics.

In his 2002 appreciation of Justice White, for example, Gorsuch criticized the modern judicial confirmation process in which "there are too many who are concerned less with promoting the best public servants, and more with enforcing litmus tests," hoping judges will "advance favored political causes once on the bench." Gorsuch hoped that White's passing would "serve as a wake-up call to both political parties that their responsibility in picking judges is to help the nation find objectively excellent public servants, not turn the process into an ideological food fight."

Gorsuch's criticism of political ideology in judicial confirmations is not unassailable. Indeed, Justice Scalia himself warned in *Planned Parenthood v. Casey* (1992) that the political tenor of judicial confirmations is the inevitable result of a Supreme Court that imposes policy and value judgments upon the people through the guise of Fourteenth Amendment rights-making. "The people know that their value judgments are quite as good as those taught in any law school—maybe better," Scalia wrote. "If, indeed, the 'liberties' protected by the Constitution are, as the Court says, undefined and unbounded," then "the confirmation hearings for new Justices *should* deteriorate into question-and-answer sessions in which senators go through a list of their constituents' most favored and most disfavored alleged constitutional rights, and seek the nominee's commitment to support or oppose them."

"Value judgments, after all, should be voted on, not dictated," Scalia concluded, "and if our Constitution has somehow accidentally committed them to the Supreme Court, at least we can have a sort of plebiscite each time a new nominee to that body is put forward." In short, the only way to end ideological politicization of Supreme Court confirmations will be first to end the Court's own ideological interventions into political matters properly reserved to the people and their elected representatives.

That said, to recognize that courts are too political is not to justify preemptively denouncing the motives and integrity of every judge who issues a disagreeable opinion (let alone to justify such demagoguery by the president himself). And this is a point that Gorsuch pressed eloquently when he delivered the Federalist Society's 2013 Barbara Olson Memorial Lecture, later published under the title "Law's Irony."

"These days our culture buzzes with cynicism about the law," he said. "So many see law as the work of robed hacks and shiny suited shills. Judges who rule by personal policy preferences. Lawyers who seek to razzle dazzle them. On this view, the only rule of law is the will to power."

"Maybe in a dark moment you've fallen prey to doubts along those lines," he added.

But Gorsuch, citing his own "native optimism," urged the audience members to raise their sights. "I wonder whether the law's greatest irony might just be the hope obscured by the cynic's shadow. I wonder whether cynicism about the law flourishes so freely only because—for all its blemishes—the rule of law in our society is so successful that it's sometimes hard to see." In other words, speeches (or tweets) attacking judges might catch our attention only because we realize how fundamentally such attacks contrast with our own assumptions and experience.

Gorsuch sees judges as servants, not giants. Foreshadowing President Trump's nomination-day acknowledgment that Gorsuch "could have had any job at any law firm for any amount of money, but what he wanted to do with his career was to be a judge," Gorsuch told the Federalist Society audience in 2013 that ours "is a judiciary of honest . . . black polyester."

Gorsuch returned to such thoughts in a 2014 opinion reflecting upon the profound questions that a judge must ask and answer before imposing a sentence on a criminal. "There's rarely a single right answer to hard questions like these," Gorsuch observed in an opinion joined by his original judicial mentor and former trial judge, Judge Sentelle. "So our system depends, as perhaps it must, on the discretion of thoughtful judges."

So it does. And while we will often disagree with judges' decisions, we must take care not to delegitimize the judiciary itself, for the alternative is far worse.

Judge Gorsuch, in sum, stands not just as an alternative to Obama's progressive administrative supremacy, but also to Trump's vehement, reflexive attacks on federal judges. But perhaps it is not too late to change. As Judge Gorsuch spends the next weeks and months expounding upon our constitutional system, he could be the living example that inspires President Trump, his advisers, his supporters, and all of us to better appreciate the republican virtues that Gorsuch himself strives to embody. ♦

# Revenge of the Nerds

*How the Prosperity Caucus and the Joint Economic Committee drove the tax reform debate*

BY IKE BRANNON

If some sort of fundamental tax reform does occur this year—and the odds of its happening are looking good—the politicians, economists, tax lawyers, congressional staffers, trade associations, think tanks, academics, corporations, and others claiming credit for having influenced the legislation that finally becomes law will be legion.

But the critical impetus for reform has arguably come from a loose clique of policy wonks with ties to an inconsequential congressional committee—a group that came to be called the Prosperity Caucus. Its monthly meetings—which began 30 years ago, shortly after the last big tax reform passed in 1986—have been a regular abode for a long list of thinkers who have greatly influenced Republican thinking about tax reform. Its alumni now hold key positions in Congress and the Trump administration, and one happens to be the current speaker of the House. If any entity can rightly lay claim to credit for the reform, the Prosperity Caucus can.

The roots of the current tax reform efforts lie in a GOP push starting in the late 1970s to make the tax code more amenable to economic growth. It was not entirely a Republican-driven exercise; Paul Cunningham, a lawyer who was on the Democratic staff of the Senate Commerce Committee at the time, said that Democratic senators came to realize that anemic growth posed a threat to Democrats' seemingly eternal control of the Senate and that they felt some urgency to boost growth, even if it meant embracing ideas previously thought to be anathema to the party. It was the prospect of electoral punishment that led his committee to embark on deregulation, and it also made Democrats on the Senate Finance Committee open to thinking about how they might change the tax code to boost growth.

Republicans were eager to take them up on this, but they weren't quite sure how. At the time, committee staffs weren't nearly as big as they are today—and staff numbers



allocated to the minority party were minuscule. Think tanks were few and far between. Congressmen looking to come up with innovative tax changes couldn't just ask the staff of the tax-writing committees or a few academic economists to help them.

However, there was a committee with staff eager to help—the Joint Economic Committee, which had been set up just after World War II along with the president's Council of Economic Advisers. Congress's intent was for the JEC to provide unvarnished economic advice, just as the CEA was supposed to do for the president. However, its lack of legislative jurisdiction made it a sort of ugly stepchild on the Hill. It wasn't the place for ambitious staffers to make their mark, but it was the only place on the Hill where wonky economists could be found, usually without a whole lot to do.

While most members saw little reason to bother with the committee—Lyndon Johnson remarked it was as “useless as tits on a bull” and laid claim to its offices the minute he became majority leader—a few resourceful members had figured out how to use it. Hubert Humphrey chaired the committee when he returned to the Senate after his term as vice president and used its lack of jurisdiction as a way to hold hearings and call attention to a wide variety of issues.

A few Republican politicians eventually figured out its usefulness as well. In the late 1970s some members interested in tax policy—Senator Orrin Hatch, Senator Bill Roth, and Rep. Jack Kemp—began talking to its staff, which included Steve Entin, a top tax economist, as well as Hatch's Budget and JEC staffer Paul Craig Roberts, who had an in with Robert Bartley, the editor of the *Wall Street Journal* editorial page, and Bruce Bartlett, who served Kemp and went on to cover the JEC for Senator Roger Jepsen.

The idea that intrigued the JEC staff was the potential to boost economic growth by cutting the top tax rates on individuals and businesses, as well as on investment income. The impact would come not by stimulating demand—then the mainstream response to a lack of growth—but by boosting the supply side of the economy. Companies would be encouraged to invest more in new plants and equipment, to boost the efficiency of their operations, and to give workers incentives to get more education and training as well as work more.

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These days “supply-sider” is a term of derision in most circles, thanks to latter-day charlatans who sell every proposed tax cut as paying for itself. But in the 1970s, the economics discipline was trying to confront the disaster that two decades of demand-side management had inflicted not just on a stagnant economy, but on the intellectual underpinnings of the discipline as well.

Thinking about the supply side of the economy made a lot of sense at the time, as it does today, and was consonant with what was occurring in academia.

A 1961 article by John Muth, little noted initially, laid out the tenets for what came to be called “rational expectations.” The idea was later picked up by Robert Lucas, Muth’s colleague at Carnegie Mellon, and Thomas Sargent, each of whom went on to win the Nobel Prize in economics. Rational expectations theory ran counter to the mainstream of economists who took their inspiration from John Maynard Keynes. The Keynesians seized on an empirical finding by the New Zealand economist A.W. Phillips, whose study of the British labor market found that when unemployment was high, wages increased slowly; when unemployment was low, wages rose rapidly. The same relation seemed to hold in other economies, suggesting to the Keynesians that there was a stable and predictable tradeoff between inflation and unemployment. It came to be called the Phillips Curve. During the 1960s, many governments were apparently successful in exploiting the tradeoff, reducing unemployment by increasing inflation modestly.

The simultaneous low growth, high inflation, and high unemployment of the 1970s (so-called stagflation) was utterly inconsistent with the Keynesian models of the time. The models suggested that inflation ought to lull workers into accepting wages that were lower than they realized, since they wouldn’t immediately recognize how inflation had eaten away what they could purchase. Firms would find the lower real wage beneficial and they would hire more workers, since the prices of what they produced had increased more than labor costs, and the economy would grow as a result.

Rational expectations could explain stagflation: It held that workers ultimately can’t be fooled, and would understand inflation and its uses. The implication of rational expectations was that demand-side management of the economy was futile. The economists who understood this began to think about the supply side of the economy to get more economic growth.

The implications of rational expectations theory were not quickly appreciated on Capitol Hill; Congress was still

contemplating tax rebates to goose demand and the Federal Reserve was continuing to pump the money supply for the same reason, at least until President Jimmy Carter appointed Paul Volcker as the Fed chairman in 1979.

While no one else in Washington seemed to appreciate the seismic changes in economists’ understanding of how the world worked, the wonks at the JEC had an idea of the implications. What’s more, they had a few congressmen who actually listened to them—a rare occurrence in any era.

Their message to the members was more than just telling them to cut taxes: They argued that taxing capital income was an extremely costly way to generate revenue and reduce inequality because of its drag on economic growth. They thought the 70 percent top rate should be reduced, and that *that* rate cut *might* pay for itself. But they also wanted shorter depreciation schedules, lower corporate tax rates, and a lower tax rate on investment income like capital gains and dividends. While the staff never met Lucas, Sargent, or Muth, they were of similar minds. Lucas, who may yet win another Nobel Prize for his work on growth theory, once remarked that cutting the tax on capital income to

zero was the closest thing to a free lunch he had ever seen, a sentiment that Steve Entin had been preaching for some time. Muth likewise expressed puzzlement that a corporate income tax even existed.

The meetings between the JEC staff and Hatch, Kemp, and Roth came to play an integral role in the Kemp-Roth tax cuts of 1981, which reduced business taxes, increased the exemption for the estate tax, and lowered the top personal tax rates to 50 percent. For the economists it was an indisputable success, but it proved to be an ephemeral one. Entin and Roberts decamped to the Treasury Department to advise the Reagan administration while Bartlett remained at the JEC as staff director for a few years, eventually moving to Treasury in 1988. Their handiwork was quickly undone. The first step was the Tax Equity and Fiscal Responsibility Act of 1982, or TEFRA—a package of tax increases that liberals like to associate with the concurrent rise in economic growth. The second step was the payroll tax increases that resulted from the deal between the Reagan administration and Congress to restore Social Security to solvency shortly thereafter.

In another affront to the JEC clique, the Tax Reform Act of 1986 largely ignored their gospel of the primacy of capital cost recovery. While it lowered tax rates for corporations and small businesses as well as individuals, it largely paid for the lost revenue by lengthening depreciation schedules and raising tax rates on other investment income. While economists praised the elimination of scores of costly and unproductive



Jack Kemp and Bill Roth in 1978

tax provisions and other accretions to the tax code, most of them returned within a few years. Entin pronounced it nothing short of a disaster from his perch at Treasury, predicting that it would rob the economy of trillions of dollars of potential growth. Hatch shared that view and was one of the few senators who voted against the bill.

In 1987 a group of staffers, admirers, and hangers-on of Jack Kemp—including Entin and various other economists with ties to the Joint Economic Committee—got together to begin planning Kemp’s presidential campaign. The group united around a platform of economic growth and continued prosperity—an almost laughably broad theme chosen to keep a sometimes prickly group of people with varied agendas together inside a big tent. The group called itself the Prosperity Caucus and their meetings involved borrowing a room downtown, buying beer and pizza, and bringing in a speaker—sometimes a congressman but more often an economist or other policy wonk—to help them brainstorm about potential ideas for Kemp to run on.



*The Prosperity  
Caucus logo*

Of course, a little more than a year later Kemp’s campaign ran aground on the shoals of Lake George H. W. Bush, but the group kept holding its monthly meetings, and its basic structure survived, as did its symbiotic relationship with the Joint Economic Committee, whose staffers (on their own time!) invariably kept mailing lists, procured speakers, and bought pizza.

In the ensuing decades a number of people now poised to play a prominent role in tax reform came through the committee and participated in the Prosperity Caucus. Besides Entin, who’s about the only regular attendee for its entire 30-year run, the ranks of JEC alum who regularly attended the Prosperity Caucus at some point have included David Malpass—rumored to be the next deputy secretary of the Treasury—as well as Jeff Wrase and Robert O’Quinn, the chief economists for the Senate Finance Committee and the House Ways and Means Committee. Wrase is generally considered to be the best Republican tax economist in town.

Steve Moore and Jim Carter, who ran the group in the 1990s, helped the Trump campaign put together its own tax reform plan, while also running tax reform for the transition. Before them the group was run by Bob Stein, another JEC economist, who got help from his buddy Paul Ryan, who worked for Kemp at the time. When Ryan was elected to Congress he immediately went on the Joint Economic Committee. His successor at Ways and Means, Rep. Kevin Brady, went onto the committee shortly after Ryan did and later chaired it. And in 1987 Senator Hatch was appointed to the Finance Committee, which he now chairs.

The Ways and Means Committee tax reform blueprint largely embraces the Prosperity Caucus perspective. Ryan’s

predecessor at Ways and Means, Dave Camp, proposed his own plan to fix the tax code, but a key difference is that the Ryan/Brady plan, dubbed “A Better Way,” treats capital investment much differently. Camp, who retired from Congress in 2014, called for eliminating bonus depreciation, whereby companies can deduct more of an investment up front than the amount by which it depreciates the first year, and would have used the savings to finance a lower corporate tax rate. The rationale, one Ways and Means staffer explained to me, was that companies simply did not seem to value accelerated depreciation and would have preferred a lower rate instead.

The Better Way plan, on the other hand, would allow companies to immediately deduct all capital investment—what economists refer to as full expensing. This is an expensive proposition, costing some \$2 trillion in forgone revenue over a decade, but Ryan, Brady, and their advisers think it will greatly increase investment by firms, in turn boosting productivity, wages, employment, and growth. To make up for some of the revenue lost via full expensing,

the Better Way plan gets rid of the ability of corporations to deduct interest payments from taxes: With full expensing, debt-financed investment would effectively have a negative tax rate, making the deduction superfluous for most.

The plan’s other revenue raiser is the move to border adjustability—the imposition of a 20 percent corporate tax on imports, while exempting exports from the domestic corporate income tax. Taken together these represent a revenue-neutral change but a radical departure from the current code.

The Prosperity Caucus/Joint Economic Committee gang has been cheering the Ryan/Brady plan the loudest: If there is one idea that ties the group together it is that taxing capital income is a terrible way to collect revenue and reduce income inequality. Steve Entin has been the Apostle Paul for the idea that companies should be allowed to immediately deduct capital investment rather than spread it out over its useful life, and he has converted many Republicans. It is worth noting that the models of the Joint Committee on Taxation suggest that a tax cut on capital produces more growth than an equivalent reduction in the corporate rate.

The major changes in the Better Way plan—border adjustability, full expensing, and the end of interest deductibility—effectively represent the rare example of a legislative agenda being driven not by vested interests but by ideas. As a result the plan has many critics, and actually achieving a reform that includes these provisions may be difficult.

But the odds are better than ever that a major tax reform will occur in the next two years, and it’s a safe bet that whatever emerges will have been shaped to a large degree by the work of an inconsequential committee and its pizza-and-beer offspring, the Prosperity Caucus. ♦



A view of the Coalbrookdale ironworks, Shropshire, by Philippe Jacques de Loutherbourg (1801)

# Invisible Handler

*What did Adam Smith really believe?* BY STEPHEN MILLER

**A**dam Smith (1723-1790) may be the most misunderstood British thinker of the last 500 years—misunderstood not by intellectual historians but by journalists and the educated public. A case in point: Steven Pearlstein, a well-regarded business journalist, asserts that Smith argued that the “‘invisible hand’ of the market . . . miraculously transforms individual greed into col-

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**Adam Smith**  
by Jonathan Conlin  
Reaktion, 224 pp., \$19

lective prosperity.” Smith said no such thing. There is one sentence in *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) about the invisible hand, but Smith never says it is a wonder-working formula for prosperity and civic harmony.

By “invisible hand,” Smith meant that people in commerce, who are driven by self-interest, frequently do

more to promote the general welfare than people who work in what we would now call the nonprofit sector: A person “pursuing his own interest . . . frequently promotes that of the society more effectually than when he really intends to promote it.” By saying “frequently,” Smith qualifies his praise of commerce. And Smith never endorses greed. He says that commerce is not driven by benevolence: “It is not from the benevolence of the butcher, the brewer, or the baker,” he writes, “that we expect our dinner, but from their regard to their own interest.” It makes no sense to use the word greed

SSPL / GETTY IMAGES

to describe a seller's interest in making a profit, or a buyer's interest in getting the best price for a product or service.

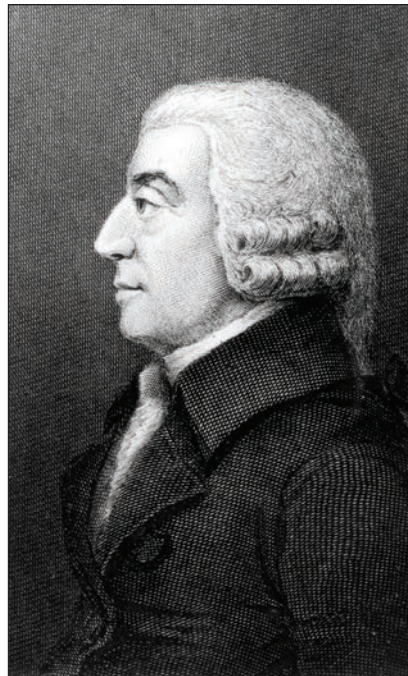
Smith, however, did worry about greed. He deplored "the mean rapacity, the monopolizing spirit of merchants and manufacturers, who neither are, nor ought to be, the rulers of mankind." According to him, merchants and manufacturers often pursue their own interest by trying to curtail competition. Smith warned legislators that "the proposal of any new law or regulation of commerce" that comes from merchants or manufacturers "ought never to be adopted till after having been long and carefully examined." The operations of the market, he wrote, are often obstructed by "the folly of human laws."

In *Adam Smith*, Jonathan Conlin rightly argues that Smith's notion of an "invisible hand" has been misunderstood, but he wrongly argues that "perhaps the greatest problem we have with Smith is this apparent neglect or sneering at politics." (Who is this "we"?) Smith disliked many politicians, but did not sneer at the political vocation: The main point of *The Wealth of Nations*, which Smith intended to be a guidebook for legislators, is that a nation's commerce can only flourish if disinterested legislators have "an extensive view of the general good." In his *Theory of Moral Sentiments* (1759), Smith declared that "the greatest and noblest of all characters [is] that of the reformer and legislator of a great state."

Smith did not think aristocrats, who generally were hostile to economic growth, made good legislators. "All for ourselves, and nothing for other people," Smith wrote, "seems, in every age of the world, to have been the vile maxim of the masters of mankind." Smith wished Parliament were composed of "natural aristocrats"—men who possess intelligence and self-command. Warning Parliament about the dangers of undermining America's colonial assemblies, he said that "the stability and duration of every system of free government" depends on "the natural aristocracy of every country." Smith *did* admire one such natural

aristocrat, his friend Edmund Burke. Commenting on Burke's Corn Law legislation, he said that "with all its imperfections . . . we may perhaps say of it what was said of the laws of Solon, that, though not the best in itself, it is the best which the interests, prejudices, and temper of the times would admit of." (Like Burke, Smith criticized Britain's mercantilist policies in the American colonies and in India.)

Journalists often call Smith an economist, but he saw himself as a political philosopher who weighed the costs and benefits of economic growth.



Adam Smith, ca. 1765

He concluded that the benefits far outweigh the costs, but he did not ignore the costs. In civilized societies, by which he meant predominantly commercial societies, "all the nobler parts of the human character may be, in a great measure, obliterated and extinguished in the great body of the people." Conlin tells us that "Smith puts last what we think should come first. He puts security and prosperity before justice and freedom." But this is not accurate. Smith argues that security, prosperity, justice, and freedom are inextricably connected—and affected by commerce.

Smith worried that in 18th-century

Britain, which had the freest press in Europe, liberty might lead to violent civil discord. The expansion of commerce, he argued, makes violent civil discord less likely. Commerce promotes "the public tranquility" because factions based on commercial interests are less likely to be violent than factions based on other differences: "Commerce and manufactures gradually introduced order and good government, and with them, the liberty and security of individuals." In *The Federalist*, Hamilton and Madison make the same point.

Economic growth, Smith argued, also results in a more just society, for it enables the poor to better their condition. Smith despised the Poor Laws, which prevented the circulation of labor. He agreed with Samuel Johnson, who said that "to entail irreversible poverty upon generation after generation, only because the ancestor happened to be poor, is in itself cruel . . . and is wholly contrary to the maxims of a commercial nation." (Smith was a member of Johnson's famous club, but he didn't like Johnson, whom he regarded as supremely eccentric. Dr. Johnson thought Smith was "as dull a dog as he had ever met with.")

Although Smith disapproved of most attempts by government to regulate the economy, he was not anti-government. Government needs to mitigate some of the negative effects of the division of labor. The kind of work done by laborers in the new factory system, Smith wrote, tends to make them "stupid and ignorant." Government also needs to promote the martial spirit, which suffers in commercial societies. Finally, government should support "publick diversions . . . to amuse and divert the people by painting, poetry, musick, [and] dancing" in order to dissipate "that melancholy and gloomy humor" that (in Smith's view) is caused by religious fanaticism.

What would Adam Smith make of contemporary American legislators? Conlin implies that Smith would be appalled by "the mercantilist lobbying of government," which has resulted in "vast 'bounties' enjoyed by agriculture and other privileged

sectors . . . particularly in the United States, where it has corrupted the entire political system.” But this is hyperbole. In most countries, the agricultural sector benefits from protectionist measures, but these measures do not corrupt the entire political system. Smith would be disturbed by crony capitalism—the government’s distortion of the market by means of quotas, tariffs, subsidies, price supports, tax breaks, licenses, bailouts, and so on—and he would question the growth of regulation, which puts a heavy burden on small businesses because they don’t have the money to hire lawyers and accountants to comply with regulation. Smith was not against regulation, but he warned that “every . . . regulation introduces some degree of real disorder into the constitution of the state.”

Since Smith thought it was important for citizens to be industrious—idleness is debilitating and corrupting—he might argue that many contemporary government programs designed to help the poor are, in fact, counterproductive, impeding the circulation of labor, weakening the incentive to work. Smith might also worry that an increasing number of Americans have stopped looking for work. But Smith’s biggest concern, I suspect, would be the rise of big government—not so much because it retards economic growth but because it undermines respect for America’s political institutions. The more government intrudes in the market, he suggests, the more it incurs the resentment of some sectors of the population.

To hurt in any degree the interest of any one order of citizens, for no other purpose than to promote that of some other, is evidently contrary to that justice and equality of treatment which the sovereign owes to all the different orders of his subjects.

Is there a correlation between the growth of government and distrust of government? According to a Pew poll, in 1964, 77 percent of Americans said that they trust the government all or most of the time; by 2015, that number had dropped to 19 percent. Americans distrust government and

disdain politicians, yet they expect more from government than they did a half-century ago. How can politicians enact legislation when compromise is regarded as a lack of integrity? “The good temper and moderation of contending factions,” Smith wrote, “seem to be the most essential circumstance in the public morals of a free people.” In his *Adam Smith: An Enlightened Life* (2010), Nicholas Phillipson wrote that in the last year of Smith’s life (he died one year after the fall of the Bastille), he worried that political life “was becoming increasingly factious and ideologically charged.”

A contemporary called Smith “the Newton of the science of politics.” But Smith also wanted to be the Newton

of aesthetics: After finishing *Wealth of Nations* he worked for many years on a book about literature, dance, and music. But he never finished it. In the last year of his life, he was busy revising an essay on the history of astronomy. He thought that his best book was *The Theory of Moral Sentiments* (see “Smith’s Law” by P.J. O’Rourke, *TWS*, July 17, 2006) but was happy that *The Wealth of Nations* proved influential: It was praised in its day by the prime minister, William Pitt the younger, and Smith’s friend Edward Gibbon, who said that Adam Smith “had enlightened the world by the most profound and systematic treatise on the great objects of trade and revenue which had ever been published in an age or in any Country.” ♦



# Floral History

*How orchids affect humanity, and vice versa.*

BY AMY HENDERSON

Why do orchids have such a fascinating grip on the popular imagination? There are poems, songs, and perfumes dedicated to roses, and famous paintings showcase sunflowers and water lilies. But no other flower has inspired the range of myth and symbolism as the orchid. According to Jim Endersby, the orchid reigns primo in the plant world because it best conveys two essential life themes: sex and death.

*Orchid: A Cultural History* explores the associations that have endowed this flower with significance, and describes how the orchid’s identity has run the gamut from romance and seduction to decadence and cunning. A reader in the history of science at the University of Sussex, Endersby is the author of *A Guinea Pig’s History of Biology* (2007) and *Imperial Nature: Joseph Hooker and*

*Amy Henderson is historian emerita of the National Portrait Gallery.*

**Orchid**  
*A Cultural History*  
by Jim Endersby  
Chicago, 288 pp., \$30

*the Practices of Victorian Science* (2008). He understands the importance of making science accessible to a general audience, and in *Orchid* he initially grabs readers’ attention by emphasizing the plant’s historic identity as an aphrodisiac.

The orchid was first linked to sexuality by the ancient Greeks, who named the plant *orkhis* (“testicle”) and associated it with male fertility. The “father of botany,” Theophrastus of Eresus (ca. 371-ca. 287 B.C.), confirmed its sexual significance when he wrote about the plant’s aphrodisiac properties in *Enquiry into Plants*. The sexual connotation of orchids became a key part of the plant’s allure, and this mythology was reinforced during the

European conquest of the Americas. One Spanish conquistador reported that the Aztec emperor Montezuma consumed large quantities of “a certain drink made of cacao, which they said was for success with women.” The drink (minus sugar) was flavored with spices like chili and *tlilxóchitl*, or vanilla, which was derived from orchids. The drink was called *chocolatl*.

Endersby also focuses on the role orchids played in “empire building.” Britain was seized with a mania for orchid-collecting in the 19th century, when the Royal Navy made it possible to import these tubers from far-flung colonies. Endersby connects orchid mania to Britain’s 19th-century transformation: The expanding imperial networks of trade and colonization were nurtured by industrialization and a vastly increased scientific understanding of the natural world. These forces “created the conditions in which orchidmania would emerge and spread.” Because of this transformation, Britain’s orchid obsession had a far different impact than the 17th-century’s “fashionable fancy” over Dutch tulips. Nineteenth-century Great Britain was experiencing a scientific revolution, and orchids came to play an important role in the emergence of natural history as a legitimate science.

The most influential example of scientific inquiry was Charles Darwin’s *On the Various Contrivances by Which British and Foreign Orchids are Fertilised by Insects* (1862). Written immediately after his 1859 *On the Origin of Species*, this follow-up was an exhaustive study of orchid anatomy. Endersby describes it as “a key weapon in Darwin’s campaign to win over skeptics by showing evolution at work.” From observing orchids in his own greenhouse for six years, Darwin argued that “natural selection had favored ever-closer links between specific insects and particular flowers, so much so that in a few cases, only one species of insect can pollinate a particular species of orchid.” Endersby writes that Darwin’s orchid study gave natural history “a small but crucial step on the road to becoming . . . modern biology.” As Darwin wrote in



*At the National Exhibition of Orchids, Warsaw (2016)*

a private note, the natural selection he described in his orchid study provided “a theory by which to work.”

Although the author’s main purpose here is “the history of our scientific understanding of orchids,” he also explores orchids’ cultural associations. He opens by comparing how the plants are portrayed in film, ranging from the James Bond thriller *Moonraker* (1979)—where orchids exemplify both sophistication and death—to *Adaptation* (2002), a movie based on Susan Orlean’s *The Orchid Thief* (1998), which focused on orchid-collecting as obsessive desire.

In literature, Endersby notes that H.G. Wells’s 1894 story “The Flowering of the Strange Orchid” featured a “Killer Orchid” wreaking vengeance on a collector. The malevolent side of orchid identity continued into the 20th century, with one writer explaining that orchids, because they were among the most advanced of plants, were “cleverer and shifter than all others.” They were actually *cunning*.

Endersby is especially fond of the role orchids play in hardboiled detective fiction. In Raymond Chandler’s first novel *The Big Sleep* (1939), Philip Marlowe visits a client in his orchid house, where “the air was thick, wet, steamy and larded with the cloying smell of tropical orchids in bloom.” (The client describes them as “nasty things. Their flesh is too much like the flesh of men. And their perfume has

the rotten sweetness of a prostitute.”) A more cheerful depiction appears in Rex Stout’s Nero Wolfe series, begun in 1934 and eventually numbering over 30 novels. Wolfe solves crimes to finance his extravagant orchid-growing habit: He had 10,000 orchids living in a rooftop greenhouse above his New York brownstone. His sidekick Archie Goodwin explains:

Wolfe had once remarked to me that the orchids were his concubines: insipid, expensive, parasitic, and temperamental. He brought them, in their diverse forms and colors, to the limits of their perfection, and then gave them away.

Endersby writes that studying orchids in all their realms has provided him with “all kinds of unexpected connections” among literature, science, empire, and sexuality. One of his main conclusions is that since the Victorian orchid craze, orchids “have found a new pollinator—us. By colonizing our imaginations and modifying our tastes and preferences we have been persuaded to assist them with their efforts to reproduce and spread.” He has come to think of them as “fellow organisms,” and quotes a fictional botanist that “as you get to know the orchids, you’ll find you’re sensitive to them, and to other human beings, in a manner you were never aware of before.” If this “bizarre fiction” is true, Endersby concludes, it could help explain the flower’s obsessive hold on our imagination. ♦

# Every Picture Tells

*The art world is now a province of politics, alas.*

BY MICHAEL M. ROSEN



*At the Museum of Modern Art, New York*

“Beauty,” Camille Paglia once wrote, “is our weapon against nature; by it we make objects, giving them limit, symmetry, proportion. Beauty halts and freezes the melting flux of nature.” But as today’s high-culture world descends into the morass of identity politics, beauty itself has surrendered to the politically correct nostrums of that world’s masters, who in turn have distorted nature out of all symmetry and proportion, as Sohrab Ahmari capably (and depressingly) demonstrates here.

An Iranian-born, American-educated, London-based editorial writer for the *Wall Street Journal*, Ahmari mostly covers politics, as well as its intersection (if you’ll pardon the term) with the arts. In this slim volume, he enlists recent trends in dance, film, theater, music,

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**The New Philistines**  
*How Identity Politics Disfigure the Arts*  
by Sohrab Ahmari  
Biteback, 144 pp., \$14.95

painting, performance art, and other media in his argument that contemporary high culture has eschewed both beauty and truth, the central artistic signifiers for millennia, in favor of “the art world’s one totem, its alpha and omega: identity politics.”

Today’s leading artists focus almost singlemindedly on issues of race, gender, sexuality, ethnicity, and religion. Beauty and truth are not merely subservient to the “identitarian” agenda, they are excised from the conversation altogether. It’s not just that the New Philistines have weaponized art in the service of an aggressive social-engineering campaign; they’ve pulverized it.

Ahmari’s chilling examination of a recent production of *A Midsummer Night’s Dream* at London’s Globe Theatre—in which jumbled roles, incompetent casting, and incoherent rewriting of Shakespeare’s comic masterpiece yielded catastrophe—reveals the fundamental poverty of the identitarians’ vision, such as it is. Tragically, Ahmari contends,

since social power dynamics and collective identity are all that such art knows and cares about, its practitioners can’t grapple with individuality, with things of the soul, with the inner life—the very things that draw most of us to art in the first place.

For similar reasons, the New Philistines wage war on the very notion that their work should be widely experienced by a broad audience transcending gender, ethnic, and religious categories. “When identitarians attack legibility,” Ahmari contends, using their buzzword for artistic accessibility, “they are also taking aim at the liberal-universal vision of culture. For democratic liberalism is indeed bound up with a universalist idea of culture.” Put differently, by resisting “legibility,” the identitarians deliberately undermine the central purpose of art, at least as understood throughout all known societies in recorded history: “wrestl[ing] with the timeless and transcendent things in the world.”

Why abjure universality? Because the timeless and the transcendent must yield to the exigencies of today—namely, to ensuring the ruination of traditional notions of artistic merit and, simultaneously, the elevation of the once-taboo.

But in fact, the identitarians have already won the cultural war so decisively that they can now openly demean someone as groundbreaking as Caitlyn Jenner—arguably the first mainstream transgender celebrity—as white, rich, and (gasp!) Republican. Yet the New Philistines still can’t take yes for an answer: “Acknowledging these facts,” Ahmari observes, “would be tantamount to an admission of defeat-in-success. It would mean having to produce art and art

AP IMAGES

criticism that answer questions other than those posed by identity, resistance, heteronormativity, blah-blah.”

And here Ahmari, channeling Paglia, articulates the most pungent criticism of identitarianism in the arts: It’s lazy. Over and above all of its other faults—political radicalism, pseudo-Marxist agitation, economic illiteracy—the artistic left often seems to degenerate into an orgy of identity politics because it seeks to avoid the hard work of genuine cultural achievement, because it shirks the rigors of traditional artistic discipline—in short, because it’s easier to be loud than to be good.

Worse, it’s not as if today’s artists are incapable of creating beauty, truth, or both; they simply choose not to. “I pity these artists,” Ahmari writes of two filmmakers at a London festival whose inane dialogue obscures their evident creativity. “They obviously aren’t untalented. There are glimpses of beauty in their films.”

Ahmari explains why the broader body politic should worry itself over the art world’s inside-baseball trends: Because “ideas that begin with elite, avant-garde institutions invariably trickle down to popular culture, then go on to impact our daily lives.” Not only has identitarianism leached from the art world to the broader political world, it’s also begun to infect the so-called majority culture. In a disturbing trend all too evident in recent months,

many in the West have taken up their own form of identity politics. There is logic to their demand for validation. When culture only rewards the assertion of group identity (black, female, queer etc.), the silent majority will want its slice of the identitarian pie. They can do identity politics, too: it’s called white nationalism.

This worrying development can trace its roots directly to the identitarian approach adopted by the left over the past few decades. But more fundamentally, that approach has deeply impoverished our culture. Perhaps Ahmari will follow this polemic with suggestions on how we might resist it. ♦

BCA

# Dressed for Success

*Coming of age, despite Daddy Dearest.*

BY JOHN SIMON

A good many books are interesting, but far fewer are charming. That, however, is what *Wear and Tear* is. Tracy Tynan is the only child of the celebrated British drama critic Kenneth Tynan, the wittiest 20th-century critic in any genre, and his American wife Elaine Dundy, author of the novel *The Dud Avocado* and a biography of the actor Peter Finch. The children of celebrities tend to have a hard time of it, especially if one parent (in this case both) acquired fame through literature. As a Harvard student, I befriended Vincent Cronin, son of the popular novelist A.J. Cronin, and John Russell, son of the philosopher Bertrand Russell. Both were bright and amiable, but neither made history. Neither trying to emulate nor straining not to prevents an apple from falling far from the tree.

Little Tracy Tynan had the onus not only of famous but famously embattled parents, who fought almost constantly, their favored weapons being hurled furniture. (Luckily, they were either expert dodgers or had rotten aim.) Their daughter had every opportunity to grow up a mess or failure, but Tracy overcame both handicaps, becoming instead a successful costume designer in Hollywood, working on many movies, often for major stars—some more, some less, tractable. Her childhood years were fraught not only by parental combat, but also by frequent uprooting and repeated separations from closest chums. As a daughter of the Tynans, egregious celebrity hounds, she got to know numerous stellar figures in show business and the arts. This left

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**Wear and Tear**  
*The Threads of My Life*  
by Tracy Tynan  
Scribner, 320 pp., \$26



*Kenneth Tynan (1969)*

its mark—as did, later on, education at Sarah Lawrence, probably the most art- and showbiz-oriented academic institution in the land.

Early on, she tells us that as girlfriend and later wife to director Jim McBride, and costume designer on his film *Breathless* (1983), she discovered her destiny by way of her fascination with clothes. “I realized that costume design enabled me to combine many of my interests,” she writes. “I was part artist, part historian, part shrink, part nanny, and part accountant. I learned how to read a script, break it down, and imagine the world in which the characters lived. . . . But it all started out with my childhood obsession with clothing.”

This may have stemmed from her father’s being a clotheshorse, addicted to the most glaringly bizarre getups. Not for nothing was Kenneth Tynan the illegitimate son of a man named Peacock, suiting him (in both senses of the word) to perfection. On the other

hand, how hurtful it was to tell his teenage daughter that “it doesn’t matter if you’re not beautiful.” This was meant as backhanded encouragement, but as Tracy observes, it was also proof that “despite his facility with words, he seemed unable to find the right ones to inspire confidence.”

Still, Tracy became fascinated with clothing as well: First, with the garments imposed on her as a child; then as an enthusiastic shopper, with clothes she would track down for herself; and finally, what she designed or purchased for herself, her friends, kinfolk, and, above all, actors, not a few of them famous stars. This is what makes *Wear and Tear*’s 36 short chapters fetching: Each centers on an item of clothing, among them her mother’s fur coat, which she would crawl into when parental warfare became too frightening. And we learn a good deal about clothes, about famous designers Tracy worked for and learned from, and about stimulating teachers such as the filmmaker Shirley Clarke (a maternal aunt), as well as friends and outfitted celebrities, including her mother and her stepmother, Kathleen.

But Tynan writes evocatively about much else. Especially moving are passages involving her father, now living in California, where the milder climate was beneficial to his emphysema. Even when eventually hospitalized, Kenneth Tynan cannot stop smoking because, as he insists, he could not write without cigarettes. She writes, “as my father said goodbye, he lit up a cigarette and coughed violently. ‘Don’t tell . . .’ he spluttered. I nodded. I knew the drill. As I waved goodbye, I caught a glimpse . . . of my top blowing in the breeze, the floppy hat half covering my face. I looked sad. I felt sad.” And on a hospital visit:

My father turns his attention to me. “And here’s my opinionated daughter come to pay her last respects.” To me the scene felt more like Noël Coward than Tennessee Williams, light and gay and sad. When the luncheon was winding down and we were ready to leave, I leaned down to kiss him goodbye—he didn’t have the energy to stand. The image I retain of him that afternoon is of a

frail, elderly man with plastic tubes up his nose, attached to an oxygen tank, engulfed in an oversized white *guayabera*. It was the last time I saw my father alive.

Tynan was 53 when he died.

Tracy Tynan seems to have total recall, even of dialogue, and especially heartwarming is her account of her long, up-and-down premarital relationship with her husband, who, having gone through two previous marriages,

was resolved to avoid a third one. To Kenneth’s question—“What are your intentions toward my daughter?”—he answered, “I’m not going to marry her, if that’s what you mean.” Tracy remembers: “I looked down at the floor, flooded with humiliation, angry at my father for asking the question, at Jim for answering the way he had. I wanted to take Jim’s brown fedora and cram it over his face.”

Even in anger, clothing comes first. ♦

BCA

# Stop, Look, Listen

*Ralph Lerner’s graceful guide for the perplexed.*

BY STEVEN J. LENZNER

**R**alph Lerner is a man of rare learning, biting wit, and deep thought. His virtues are well known to generations of students and colleagues at the University of Chicago, although he is not as prominent in the wider world as he deserves to be. The publication of this book should induce many more readers to experience Lerner’s virtues for themselves.

*Naïve Readings*’ subtitle is characteristically Lernerian, for it induces one to ask what a reveille has in common with the work’s close and careful exegeses of eight rhetorical masters: three American statesmen (Franklin, Jefferson, Lincoln), three modern authors (Bacon, Gibbon, Tocqueville), and two Jewish thinkers (Halevi, Maimonides). A reveille is a wake-up call—loud, not infrequently discordant, and often unwelcome. Lerner’s studies are subtle, melodic, and most welcome, the work of a gifted and often understated stylist. But they are emphatically wake-up calls for an age that has been taught the gospel of speed. Lerner teaches the virtue of patience: stop, slow down, and (especially) reflect.

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**Naïve Readings**  
*Reveilles Political and Philosophic*  
by Ralph Lerner  
Chicago, 240 pp., \$45



Ralph Lerner

The book presents a challenge. It tells you to read naïvely, to abandon presuppositions lest you substitute your fancy and folly for a superior author’s wisdom. So be moderate. Be cautious. Watch your step. It is easy to lose your way. But caution is not to be confused with aversion to risk. To mention but one thing, naïve reading, as Lerner presents it, demands that you open

COURTESY OF RALPH LERNER

your mind to the possibility that a great writer may have exercised complete authorial command over every aspect of his chosen literary form—and as Lerner makes clear throughout, the form is a choice that has great consequences for both author and reader. So one must be willing to risk seeing things in a new light. To read naively is to read slowly. To reread. To question. To mull. To embrace confusion, in the recognition that it may be the residue of design:

Readers who undertake to approach a text naively must perforce commit themselves to acting against their normal impulses. . . . They must be willing to retrace their steps, to pause over irregularities, to attend to seemingly trivial repetitions or near-repetitions, to resist skimming over bland and boring passages—in short, to combat those natural inclinations we ordinarily have to move quickly to what we take to be the core of an argument.

It would be impossible, in this limited space, to provide a genuine sense of this book as a whole. Suffice it to say that each of the essays is a subtle and thoughtful discussion of its subject. Let me mention, however, two examples that capture something of the charm of Lerner's manner of teaching. In his timely essay on Abraham Lincoln—a man he characterizes as “incapable, by temperament, from demonizing and playing the demagogue”—Lerner gives us a portrait of the great statesman endeavoring to weave together the “inspiring principle” of the Declaration of Independence with the overarching demands of political rhetoric and “public sentiment” while out of office. Such weaving meant compromise, but not on essentials. Lincoln needed to open his fellow citizens' eyes to the evils of the cancer in their midst without running afoul of their prejudices.

So, at times, Lincoln seems resigned to a society in which blacks would be second-class citizens: “There is a physical difference between the two, which, in my judgment, will probably forever forbid their living together upon the footing of perfect equality.” But that bow to the sensibility of resignation is far from the whole story. By Lerner's account, the majesty

of Lincoln's statesmanship as an “outsider” consisted of his profound recognition of the transformative power of public opinion—a power that may even overcome what otherwise would “probably forever” prevail. According to Lincoln:

In this and like communities, public sentiment is everything. With public sentiment, nothing can fail; without it, nothing can succeed. Consequently, he who molds public sentiment goes deeper than he who enacts statutes or pronounces decisions.

Lerner shows that it was Lincoln's abiding concern, throughout his years out of office, to force his fellow citizens to reexamine, and thus reform, their

*Lerner tells you to read naively, to abandon presuppositions lest you substitute your fancy and folly for a superior author's wisdom. So be moderate. Be cautious. But caution is not to be confused with aversion to risk.*

own national self-understanding. He properly concludes that “not the least of Lincoln's extraordinary political achievements was his success in making general an awareness of the problem of public opinion—his nurturing of an opinion about the signal importance of opinion.”

Then there is “Gibbon's Jewish Problem,” which presents Lerner with a problem: how to deal with a great author who denigrates (in a manner unworthy of himself) a noble people that has too often been the victim of thoughtless scorn. To be sure, Lerner would not tarry with an author who would engage in thoughtless scorn, but what of thoughtful and rhetorically allusive scorn? In a subtle and nuanced reading of the

self-styled “philosophic historian,” Lerner reveals how Gibbon, in his *History of the Decline and Fall of the Roman Empire*, employed the Jews as a useful foil indirectly to criticize Christianity, of which he was no admirer and which could not, at that time, be subjected to frontal attack:

Gibbon almost apologizes for concluding that “the primitive fathers were very frequently calumniators” and for leading his readers to conclude that “our present gospels” are polemical works designed to oppose the Gnostics' favorite tenets. . . . The larger point, however, is not to be missed. When we raise our eyes above the differing views of those early sectarians regarding the divinity or continuing obligation of the Mosaic law, we can see that “they were all equally animated by the same exclusive zeal, and by the same abhorrence for idolatry which had distinguished the Jews from the other nations of the ancient world.” In short, these warring Christians are no better than the Jews in their hateful unsocial zealotry. In some respects, they are even worse.

But what of Lerner's Gibbon problem? Lerner clearly admires Gibbon, but he struggles to reconcile that admiration with his entirely reasonable disapproval of Gibbon's embrace of a rhetoric that could (and would) be employed to render “Jews less than fully human.”

Lerner reaches a reconciliation—insofar as he can—in two ways. First, he draws attention to other elements of Gibbon's writings and actions that point to a more thoroughgoing humanity: “In calling [the Jews] an unfortunate and unhappy people, the ‘philosophic historian’ displays more than a symptom of compassion.” The second way is by pointing beyond Gibbon to a contemporary “who had the vision and fortitude to declare openly an enlarged and liberal policy [beyond toleration] that he commended to the rest of mankind as worthy of imitation.” That would be George Washington.

These summaries don't do justice to the richness of Lerner's wonderful essays. But they should be enough to whet a reader's taste for them, and for the rest of his elegant *Readings*. ♦

# Dr. Kismet's Cure

*How Adjectival Reinforcement Therapy works—  
for anyone.* BY JOE QUEENAN

In 2014, a little-known nutritionist in Milwaukee, one of the more portly cities in America, developed an ingenious system to get his clients to lose weight and keep it off for good. He told his morbidly obese clients to pair each pound with a descriptive adjective, noun, or euphemism they hated, so that each time they lost a pound they could strike it off the list forever. Provided they did not regain the weight, they need never hear the mortifying term again. For example,

270 *Porker*  
269 *Lardbutt*  
268 *Fatso*  
267 *Chunkster*

and so on, down through

245 *Pleasingly Plump*  
242 *A Tad Chubby*

until finally reaching

185 *Lithe*  
175 *Lean 'n' Mean*  
165 *Thin as a Rail.*

At first, the dieters found this approach juvenile and silly. But to their great astonishment, it worked: By transforming dieting from an onerous chore into a game in which psychic rewards were constantly experienced, Dr. Drake Kismet was successful in getting 87 percent of his patients to lose at least 50 pounds. And in one case, a client shed 135 pounds in seven months. "It would have been more," Kismet explains, "but we ran out of words for 'skinny.'"

Had the participants shed the weight and quickly regained it, Dr. Kismet's strategy could easily be lumped in with all the other gimmicky weight-loss sys-

tems that the chronically chunky have tried, without achieving any long-term success. But the dieters *did not* gain the weight back; the positive-feedback word-association game exerted such a powerful influence over their psyches that almost none of them reverted to their old ways.

"I joined the program because I never wanted to hear someone call me a seething tub of suet again," said one subject who lost 85 pounds in a scant four months. "And now they never will."

Inspired by Kismet's unusual methods, psychologists in completely unrelated fields have begun to apply his tactics to other types of compulsive, self-destructive behavior. And they, too, have achieved stunning results:

"My client Randy was a complete schmuck, and had been a schmuck for many years," explains Dr. Roark Gault, a Miami psychiatrist. "We tried everything: medication, cognitive therapy, aversion training, sleep deprivation, feedback loops, yoga. Nothing worked. Then one day, after reading about Dr. Kismet's weight-loss program, I asked Randy if he would be willing to participate in a three-month behavior-modification trial whereby each week he would try to be a bit less of a crud."

The results took my breath away. The first week, he paid his alimony on time—to all eight wives. He also took 3 of his 29 kids to the circus. This allowed him to eliminate the word "schmuck" from his profile. Then I persuaded him to stop stiffing his customers. That gave him carte blanche to deep-six the word "sleaze ball." We then proceeded apace through "creep," "lowlife," "scum bunny," and "jerk." Right now, he's hard at work on "slob." No two ways about it; Randy's come a long way.

Some of the most amazing results

have been achieved by using these tactics with hired guns and axe-murderers. By persuading cruel, heinous men—and a few incredibly unpleasant women—to gradually tone down their acts, the Prodigal Project has successfully induced more than 75 hitmen to either stop killing people entirely or at least cut back on the mayhem. The approach is exactly the same as the weight-loss program: a straightforward rewards system that builds self-esteem by allowing contract killers to stop thinking of themselves in graphic, profoundly shameful terms. Siddhartha Rattigan, executive director of the Prodigal Project, explains:

You're never going to get a top-flight button man to completely give up whacking informers, patsies, and stool pigeons, but you can definitely get them to dial it down a notch. Go a full month without icing someone and we allow the subject to mothball the term "the apotheosis of pure evil." Go easy on the carnage for two months and the words "spawn of Satan" fall by the wayside. We then work our way through "atavistic," "bloodthirsty," "primordial," and "savage," all the way down to "somewhat less than cordial," "not exactly what you would call a charmer," and "a bit of a curmudgeon." Does that mean that our subjects are ever fully rehabilitated? No. But have they made huge strides in the right direction? Yes.

Adjectival Reinforcement Therapy has been shown to work with embezzlers, conmen, scam artists, thieves, second-story men, no-good-double-crossing liars, dirty rats, hooligans, and garden-variety thugs. It has also achieved amazing results with pigs, bozos, SOBs, and even rogues.

"Six months ago, my client viewed himself as the scum of the earth," says Rattigan. "But through positive verbal reinforcement, he now thinks of himself as a harmless ne'er-do-well. And his ultimate goal—being perceived as a hale-fellow-well-met—is well within his reach. One of these days, Vic the Human Glock is going to be able to describe himself as a pillar of the community, a stand-up guy, a real sweetheart, perhaps even a pussycat—without fear of being contradicted." ♦

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

# Scared Straight

*After hours of torture, this is my reward.*

BY JOHN PODHORETZ

**I**n my ongoing effort to perform the duties assigned to me as this magazine's movie critic, I suffer for you. I see things you would not wish to see and tell you not to see them. Don't bother to thank me, even though you should. It's all part of the deal, the compact between us, forged over many years.

But as I have told you on several occasions over the years, there are some aspects of these duties I find increasingly impossible to perform, and they involve the feelings invoked in me by fatherhood. Now there are two movies nominated for the best-picture Oscar I cannot see. One is *Lion*, in which a 5-year-old boy gets separated from his family on a train . . . permanently. The other is *Moonlight*, in which another little boy is mistreated and must take dribs and drabs of love from a nice drug dealer.

Perhaps you feel it is my duty to see these highly-praised films and tell you what I think and whether you should spend your money on them. Tough luck, bucko. I ain't doing it. I'd think of my own beloved 6-year-old son (who is so adorable you wouldn't believe, and I mean that, you really can't even imagine how adorable he is) and just cry and feel sick and walk out. I still haven't recovered from the kids who get it in *Manchester by the Sea*, also nominated for an Oscar; I didn't know it happened before I saw it so that was really a delightful surprise. So I'm leaving it up to you to go in for what would for me be the equivalent of waterboarding.

As a kid, I felt that way not about movies in which children were threat-



*Anya Taylor-Joy in Split*

ened or killed or made miserable but about being afraid. I walked out of *The Exorcist* after an hour. I didn't sleep for a week after the final scene of *Carrie*, in which the title character's hand pops up from a grave. Then, at the age of 18, I went to see *Alien* and couldn't make it through. I was there with friends from college and was humiliated by my cowardice. And I became determined to rise above my childhood and teenage squeamishness. I embarked on a personal desensitization program in Chicago's Loop.

I would travel there, alone, after I completed afternoon classes at the University of Chicago—examinations of Plato's *Meno* or Machiavelli's obscure play *The Mandragora* or Wittgenstein's *Tractatus Logico-Philosophicus*, often sitting rapt as I listened to an obscure political-philosophy professor named Allan Bloom stutter and chain smoke and then utter complete paragraphs of unrivaled brilliance. I would then jump on the commuter train that ran beside Lake Shore Drive from Hyde Park to Randolph Street and duck into the State-Lake or the Woods or the McVickers and lower myself from Paradiso to Purgatorio as I suffered through *Motel Hell* or *I Spit on Your Grave* or *The Lift*. (That one was ter-

rible but had a great ad line: "The stairs! Take the stairs! For God's sake, *take the stairs!*") It worked. I no longer minded.

Why, you might ask, would I have bothered to compel myself to grow a thick skin when it came to a throw-away genre like horror? The answer is that I didn't like the thought of the medium's having that kind of negative power over me. So I'm far less likely to be scared by a horror movie than I was as a kid. But if a horror movie doesn't scare you, is it any good? That's the question raised by the enormous hit *Split*, which has revived the sinking career of its writer-director M. Night Shyamalan. It's a pale shadow of *The Sixth Sense*, which remains a singular triumph, but it's not bad. *Split* is a horror movie, since it concerns a man with multiple personalities who locks three girls in a dungeon and terrifies them with talk of a "beast" who will come and eat them. But it's never really scary. Oh, it's creepy. It's a little unnerving. And when it takes a turn to the supernatural, its plot turns gruesome.

But in a brilliant stroke, Shyamalan doesn't really *show* you the gruesome stuff. You hear it a little. You see some blood. But he deliberately doesn't provide the money shot of the "beast" in action that would provoke screams and give rise to a hundred op-eds about its exploitative nature. And that, I think, explains the gigantic box-office *Split* is enjoying—and, by the way, explains the reason the Netflix miniseries *Stranger Things* was such a phenomenon last summer. They're horror, but for some reason they don't get at your deepest fears. They're like a Szechuan food chain restaurant in a mall; just enough heat to the food for you to say, "Man, that's spicy," without really feeling the burn.

Wait a minute. Come to think of it, you *should* thank me for all I've done for you. Why don't you thank me more? What, are you ungrateful? Think of all the hours of pain I've spared you! Who has spared you more hours of pain than I have over the decades? Maybe your physical therapist. But when you're at PT, it hurts. When you read me . . . nothing but bliss. Am I right? ♦

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

**“Former U.S. president Barack Obama is trying some new and dangerous water sports that the Hawaii native had to miss out on for safety reasons while serving in the White House.”**

**—Reuters, February 7, 2017**

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# Barack Obama's year of living dangerously

**WET 'N' WILD**

*Renames self  
'Barracuda Obama'*

**BY JONATHAN HIGGINS**

**NECKER ISLAND, B.V.I. —**

Now that he's no longer president, Barack Obama has taken the plunge into water sports—some of which are considered to be potentially lethal. Aside from kite-surfing with Virgin founder Richard Branson, the former commander in chief went deep-sea diving, kayaking, whitewater rafting, and cliff-diving—all in one day.

“It's quite apparent now, after eight years, that the rise of the oceans has resumed,” said Obama. “And this wave is the one I've been waiting for.” He then ran and leapt head-first into the surf, yelling, “Hakuna matata!”

According to Branson, it was the former president's idea to go into a shark cage while attendants threw out buckets of blood and chum. “At first I thought, ‘Cage goes in the water. Barack goes in



RIDER: OZZI13X

Barack Obama rides a bull shark in the British Virgin Islands Sunday.

the water. Shark's in the water. Our shark,” said Branson. The president, however, emerged unscathed, calling the experience “exhilarating.” (Obama was hoping at some point to go whale-watching—and riding.)

It was two short days into the Obamas' vacation when the Secret Service security detail gave up trying to protect their man. Said one member of the Secret Service, who asked to remain nameless: “It was after the president insisted on

wrestling with a moray eel that we realized that our job was pointless.”

Yesterday the Obamas were joined by former House speaker John Boehner and former vice president Joe Biden. “You know how I'm living dangerously?” asked Boehner. “By rolling my own cigarettes. It's a whole lotta fun.” Biden, meanwhile, was spotted riding on a banana

**BOAT CONTINUED ON A9**

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**Standard**

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