

**JOHN MCCAIN,  
1936-2018**  
STEPHEN F. HAYES • WILLIAM KRISTOL  
TOD LINDBERG • PHILIP TERZIAN

the weekly

# Standard

SEPTEMBER 10, 2018

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## What Kind of Justice Will Kavanaugh Be?



**ROBERT F. NAGEL**  
explains why even the  
most thorough vetting  
fails to predict how  
nominees will perform  
on the Supreme Court

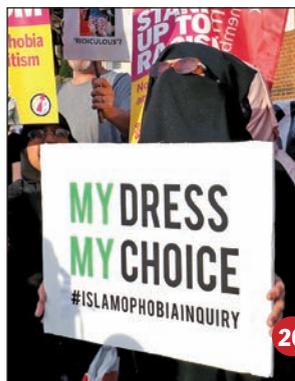
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COVER BY DAVE CLEGG

# A Thousand Shall Fall

In the runup to the passage of last year’s tax reform bill, readers may recall, former Treasury secretary Larry Summers predicted that 10,000 people would die every year as a direct result of the bill’s passage. He had in mind the bill’s provision repealing the individual insurance mandate requiring people to have health insurance and forcing many to opt for Obamacare plans. “When people lose health insurance,” Summers explained on CNBC, “they’re less likely to get preventive care, they’re more likely to defer health care they need, and ultimately they’re more likely to die.”

It was a fine instance of what John O’Sullivan once called “galloping inferentialism”: If this happens, then that could happen, in which case something else might happen, and then—boom!—this other thing could happen. Summers defended his claim in the *Washington Post* by referring to a pair of academic studies purporting to link minuscule adjustments in mortality rates with increases in the numbers of people acquiring health insurance—as if an incomprehensibly complex array of factors couldn’t also account for slight changes in the death rate.

The habit of criticizing policies you don’t like by warning that they’ll kill people—thousands of people—has really taken off lately. Around the same time Summers predicted the tax bill

would kill 10,000 a year, the *Washington Post*’s data blogger Christopher Ingraham claimed that a provision in that same legislation cutting the tax on alcohol would “cause 1,550 additional



*Really, I win either way.*

alcohol-related deaths each year.” Last year, similarly, when the GOP was poised partially to repeal Obamacare, Andrea Mitchell asked Bernie Sanders what would happen if the repeal bill passed. “Let’s be clear, Andrea—and this is not trying to be overly dramatic—thousands of people will die.”

Now we have a *New York Times* story headlined “Cost of New EPA Coal Rules: Up to 1,400 More Deaths a Year.” The piece claims that an EPA study “reveals” that the agency’s

rollback of federal pollution regulations “could also lead to as many as 1,400 premature deaths annually by 2030.” Within minutes of the story’s posting, social media were aflutter with claims that the Trump administration is happy to kill 1,400 people a year.

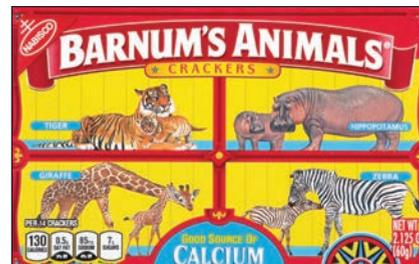
Readers will not be surprised to learn that this is a highly tendentious interpretation of the EPA’s regulatory impact analysis, the relevant portions of which THE SCRAPBOOK dutifully read on a slow weekend afternoon. What we discovered is something other than an admission that this regulatory rollback will result in a body count of 1.4K. The report’s authors happily admit their methods of measuring pollution concentration levels are open to interpretation—the 1,400 number is informed guesswork. Also, the *Times* neglects to mention that these are 1,400 “premature deaths and illnesses.” More important is the simple point that every policy has costs as well as benefits. We could outlaw automobiles tomorrow and dramatically cut down on traffic fatalities—and, come to think of it, pollution!—but in that case even the *Times* would demand deregulation.

It’s all pretty depressing. But maybe our progressive brethren should look on the bright side: If their predictions are accurate, we’ll all be dead in a few years anyway, and there’ll be no more policies to argue about. ♦

## Into the Wild

Great news for lovers of cardboard animals. Boxes of Nabisco animal crackers will no longer feature images of cartoon animals in circus cages. Beginning this week, the animals will appear roaming free: The zebra, elephant, lion, giraffe, and gorilla have escaped their cages and are enjoying free-range life in what appears to be an African setting. Animal-rights activists, especially People for the Ethical Treatment

GRIM REAPER: BIGSTOCK



*Old and objectionable box design, left; new and improved, right*

of Animals, had pushed for the change for years, arguing that the old images portrayed a time when the cruel

confinement of animals in traveling circuses was an accepted convention.

The new look is okay with us,

although we suspect the cardboard zebra may not be too happy about it. That free-range lion is bound to get hungry eventually.

In fairness, the change was overdue. The old red-and-yellow boxes with caged animals debuted in 1902—an era when, as the *New York Times* explains, “Americans had a very different view of exotic wildlife. Zoos and traveling circuses were entertainment destinations to observe animals that had been plucked from habitats halfway around the world.” Now we just watch them on YouTube. ♦

## Breaking: Kavanaugh Wasn't a Nitwit

Hearings on Supreme Court nominee Brett Kavanaugh are set to begin in early September, so expect several rounds of breathless revelations about the man's past. Consider an AP story this week headlined “At Yale, Kavanaugh Stayed Out of Debates at a Time of Many.” The story's lead: “It was the 1980s at Yale University, and Brett Kavanaugh's classmates were protesting South Africa's apartheid system, rallying for gay rights and backing dining hall workers in a labor dispute. But friends and acquaintances say the future Supreme Court nominee seemed more interested in battles on the basketball court than politically charged debates.” (Reading between the lines: AP must have called countless “friends and acquaintances” looking for something—anything—and come up with bupkis.)



*Can't we all just get along?*



The substance of the report is that Kavanaugh at Yale was a thoughtful and kind young man who didn't take himself too seriously, but obviously the AP couldn't make *that* the story. Hence that headline and lead: While other Yalies were expressing deep concern over racism and homophobia and unfair labor laws, Brett was off somewhere playing basketball. Aha! He may not have done those things which he ought not to have done, as the prayer book has it, but he hath left undone those things which he ought to have done. Nailed him!

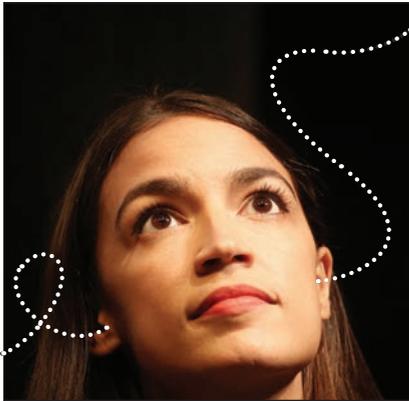
We choose a slightly different interpretation, namely that Kavanaugh spent his years at Yale quietly

doing his work and had neither the time nor the inclination to go around acting like a sanctimonious jackass. In short: Confirm this man at the earliest possible date. ♦

## A Normal, Working Person with Dumb Ideas

Alexandria Ocasio-Cortez, the socialist neophyte who won a New York Democratic congressional primary in June, is young and attractive and has a compelling personal story. She likes to remind the public of her working-class roots, and rightly so. “The restaurant I used to work at is closing its doors,” she recently

KAVANAUGH: ANDREW HARRER / BLOOMBERG / GETTY; FIGURE: BIGSTOCK



Alexandria Ocasio-Cortez

remarked on Twitter. “I swung by today to say hi one last time, and kid around with friends like old times. I’m a normal, working person who chose to run for office, because I believe we can have a better future.”

The authenticity of her story isn’t the problem. The foolishness of her ideas is. The left-wing statism she wants to impose on New York is guaranteed to punish the people she means to help. The owner of the restaurant where Ocasio-Cortez used to work is closing his doors, as he told the *New York Post*, because “the rents are very high and now the minimum wage is going up and we have a huge number of employees.” Rep. Ocasio-Cortez, as she’s likely to become, favors a dramatic increase in the minimum wage.

When she appeared on *The Daily Show* in July, host Trevor Noah asked her if the \$15 minimum wage would stifle growth. Ocasio-Cortez responded that “studies show” the \$15 minimum wage hasn’t hurt growth in Seattle. We wondered, what studies? The Seattle Minimum Wage Study Team at the University of Washington issued a report in 2017 showing that, on the contrary, the minimum wage hike actually suppressed low-income workers’ wages by keeping them from working more hours and making it harder for them to find work. Ocasio-Cortez also explained to Noah that “one of the

biggest problems that we have is 200 million Americans make less than \$20,000 a year. That’s 40 percent of this country.” Do “studies” show that, too? Because it’s nowhere near true.

A few commentators have lately wondered if the Democratic left will have an answer to Donald Trump and his rhetorical mayhem. Alexandria Ocasio-Cortez just might be it. ♦

## Memento Mori

On the topic of studies and premature deaths, a new report from the British medical journal the *Lancet* says that no amount of alcohol is safe for your overall health. Worldwide, alcohol increases the risk of premature death for both men and women and is responsible for a full tenth of all deaths.

That may be true, and we acknowledge the dangers of excessive alcohol consumption (and indeed of many other excessive behaviors). We wish to make just two points. First: If alcohol doesn’t contribute to your death, something else will, and you are unlikely to derive as much pleasure from that other thing as many people do from spirits. And second: Lots of things can kill you. Leaving your house, driving your car, riding your bike, growing old—all these things make death more likely. It doesn’t follow that you should avoid them or worry yourself to distraction about them.

Now if you’ll excuse us, we need a drink. ♦



No need to get carried away now: Liquor is poured down a sewer during Prohibition in New York.

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## Impermanent Record

My mother died decades ago, but an eerie spectacle has lately brought her vividly to mind. Across Europe this hot and arid summer, reservoirs have evaporated. As they have, “drowned villages,” places evacuated and abandoned decades ago when a dam was built or a river diverted, have returned from their long underwater absence. There is one at the bottom of the Burrator Reservoir in Devon. There are several in northern Italy. These places vary, of course, but as the drought goes on and the waters recede, you can make out farmhouse cellars, roadside walls, gravestones, all laid bare like a bad conscience.

George Eliot made much of such a scene in her novel *Silas Marner*. It was that thought that brought my mother to mind. The copy of *Silas Marner* on my shelf—a navy-blue leatherette duodecimo in a little cardboard case—sits next to an identical edition of Sir Walter Scott’s *Ivanhoe*. The novels are strangely paired, aside from their standing at the zenith of the English literary tradition as it was understood on June 23, 1948. That was the day my mother was given both books for winning the Frazier award at Cobbet Junior High School in Lynn, Massachusetts. There is still a little Audubon card inside the front cover with a commemorative note from the principal, Helen A. Boyce.

I am not sure what kind of excellence the Frazier award recognized. My mother was one of those students who really take to high school. She won one academic award after another, was gushed over by her teachers and honored on graduation day, and then moved on to . . . well, nothing, really. Nothing that took advantage of her education, although she would always gain advantage from her smarts. She went to secretarial school, worked as an

airline stewardess, became a wife and a mother. I bring this up not to hector the reader about anything political, only to explain why the books were on prominent display in our house. Although won by a girl just turned 14, they were a culmination of sorts.

She won an award in Latin at about the same time. I forget what it was called. It came with a prize: a visit to a studio to recite something that would be produced on a 78 rpm record. My



mother chose Marc Antony’s memorial oration from *Julius Caesar*. The oak-colored record sat in the back of the cabinet beneath the hi-fi, alongside my parents’ LPs of Nat King Cole, Johnny Horton, the Fifth Dimension, and Neil Diamond.

I discovered it one day in my early teens when I was in the living room with my sisters and put it on the turntable. Across the years and through the crackles and pops came the voice of my mother, reverent and orotund, at just about the age we were then.

I wish I could say our mood was

reverent, too. But even as an adult my mother had a strong Boston accent, and the guileless girl on the hi-fi clearly had no clue that working-class elocution might someday be an obstacle to her social mobility. We found it hilarious. We hooted out imitations of my mother’s accent at its most broad:

“So let it be with Caesah!”

“F” Brutus is an honorable mee-an!”

“My haht is inna coffin theah with Caesah!”

We would pull it out to listen to every few months or so, often in front of my mother. It never failed to crack us up.

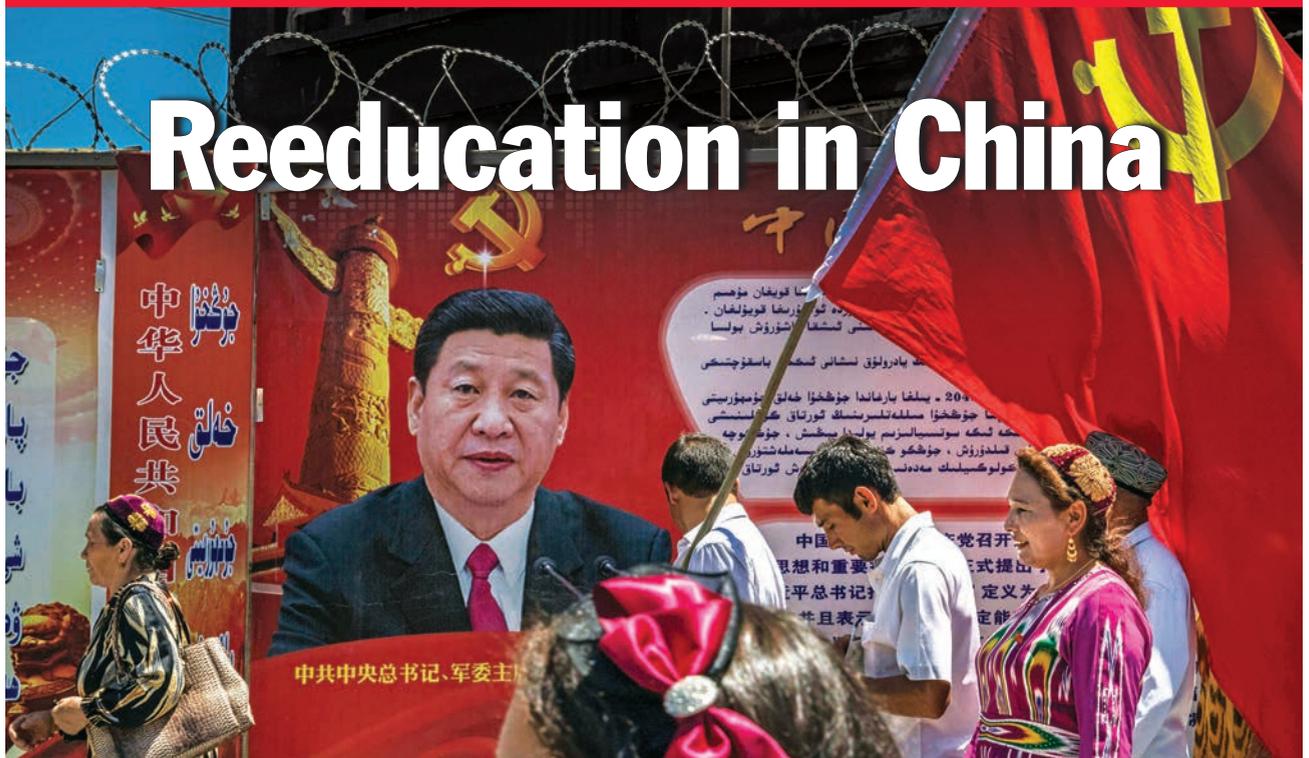
When my mother died, we gathered up certain objects that would allow us to keep our mother in mind over the years. The recording of her girl’s voice would obviously be the most precious of these. But we couldn’t find it anywhere. We emptied the cabinets. We emptied the closets. We looked through all her papers. It just wasn’t there.

Had she mislaid it? How could she have? Had she grown indifferent to it and thrown it out in some spring cleaning? Again, how could she have? And yet she must have. She must have thrown it out. The thought has occurred to me over the years that she would have done so not out of indifference but out of humiliation. This youthful triumph must have begun, under the lash of our mockery, to embarrass her—all the more so for the many years in which she had harbored a sense of it as a triumph.

Should we have been more sensitive? But where would we have got that sensitivity? How are kids supposed to understand the spirit in which a middle-aged person looks back on his youth? Didn’t she, having reached middle age, know we didn’t mean anything by it?

It is a relief to have such thoughts interrupted by work and day-to-day responsibilities when they come, like rain.

CHRISTOPHER CALDWELL



*Big Xi is watching: Uighur members of the Communist party in Kashgar*

It's hard to know what the Chinese government aims to do with the Uighur people, but we fear the worst. The Uighurs, an ethnic minority in the mineral-rich autonomous Xinjiang region of northwest China, are facing systematic persecution. Chinese security forces harass the largely Muslim ethnic group and wantonly detain individuals and even whole Uighur families.

No one knows how many languish in prison camps; the number is likely in the hundreds of thousands. Chinese authorities, when not denying the existence of the camps, say the surveillance and detention measures are designed to advance “social stability and long-term security.” They hint at Uighur riots and terrorism as justifications for the internment, but it's unclear which came first.

Since at least 2014, the region's roughly 12 million Uighurs have been subjected to an elaborate system of biometric scanning, identification, and location tracking. Chinese authorities aggressively follow them in shopping bazaars and other public places while requiring them to declare their religious affiliations, their prayer routines, their travel plans, and much more. Uighurs' cell phones are often searched for “objectionable” material; if something's found they will be sent to a camp.

There is much here to recall Orwell's *Nineteen Eighty-Four*. Uighurs are pushed or forced to renounce their faith and to submit to cultural “reeducation.” If you're a Uighur abroad, criticizing the Chinese government or

even acknowledging the existence of the camps can land your entire family in detention. Earlier this month, Gay McDougall, a U.N. official, charged that “in the name of combating religious extremism and maintaining social stability, the State Party has turned the Uighur autonomous region into something that resembles a massive internment camp that is shrouded in secrecy, a sort of no-rights zone.”

After World War II, the region was briefly controlled by the Soviets and called East Turkestan, but in 1949, Mao annexed it and renamed it Xinjiang, or the “New Territory.” The Uighurs have inhabited the land for thousands of years; it isn't new to them. Some Uighurs are agitating for statehood, which makes sense given Chinese contempt for their culture and ethnicity. But the separatist groups are fractured. A few have adopted violent methods. In 2002, the Treasury Department designated the Eastern Turkestan Islamic Movement, now known as the Turkestan Islamic party, a terrorist entity—it has links to al Qaeda. It's now said to be actively fighting in the Syrian civil war. Xinhua, the Chinese state media service, has blamed several terror attacks on Uighur separatists—including the 2014 Kunming train station attack, for which no one claimed responsibility.

The threat of terrorism isn't the only thing driving Beijing's paranoid suppression of the Uighurs. Under Xi Jinping, the Chinese government has invested vast resources in the economic development project known as

KEVIN FRAYER / GETTY

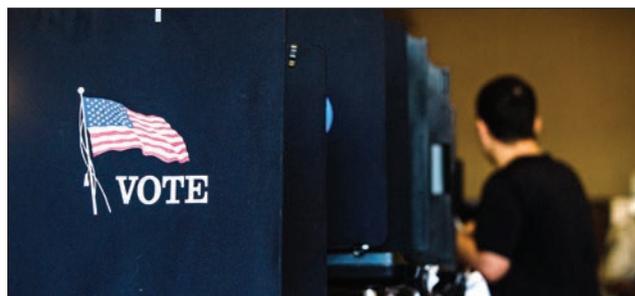
the Belt and Road Initiative. Its purpose is to boost infrastructure and other projects along the Silk Road and a variety of other major trade routes. Xinjiang's Uighurs live athwart one of that initiative's principal corridors. Chinese Communists have a long history of brutality in the face of opposition to their development projects.

Western journalists and U.S. officials have begun to shame Beijing over its outrageous treatment of the Uighurs. Florida senator Marco Rubio has urged Treasury to sanction seven Chinese officials and two companies for their association with the detention camps in Xinjiang. In July, Vice President Mike Pence spoke in fierce opposition to China's oppression of the Uighurs, reminding listeners at a State Department event that "Beijing is holding hundreds of thousands, and possibly millions, of Uighur Muslims in so-called 'reeducation camps,' where they're forced to endure around-the-clock political indoctrination and to denounce their religious beliefs and their cultural identity."

That's the right approach, and more of it is needed. If Beijing persists in its crimes against a suffering people, it should be forced to do so in the full light of day. ♦

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## Ballot Bandits



‘I won the popular vote if you deduct the millions of people who voted illegally,’ Donald Trump said shortly after his 2016 victory. There’s absolutely no evidence millions of illegal votes were cast in that or any other American election. That Trump spoke about it with wanton disregard for the truth, however, doesn’t mean that voter fraud isn’t an issue.

On August 24, the Justice Department charged 19 foreigners in North Carolina with illegally voting in the 2016 election. They hailed from a wide variety of countries—Germany, Japan, Nigeria, Haiti, South Korea, Italy, Guyana, the Philippines, and Poland. Many of them are charged with further acts of fraud involving visas, passports, and other documents, and the indictments appear to be the result of diligent work by local law enforcement and the U.S. attorney for the eastern district of North Carolina.

Nineteen arrests may not seem like much cause for concern, but it’s worth noting the indictments all occur in a single swing state where the margin of victory in several recent elections has been razor-thin. In 2014, an election for the North Carolina district court was decided by just five votes.

The question of voter fraud has come up in more consequential elections. In 2017, a state audit found that 136 of Detroit’s 662 precincts had recorded more votes in 2016 than they had registered voters. The audit concluded that the irregularities were not the result of fraud, but when 20 percent of the precincts in a major city are producing unreliable voting records, something’s not right.

Yet the great majority of Democrats are staunchly opposed to even modest voter ID reforms or any other effort to address fraud at the polls, believing such efforts can only be intended to block minority votes and steal elections. Observers on the left also routinely claim there is no evidence of widespread voter fraud. That’s true in one sense. Voter fraud has historically been a product of urban political machines—organizations typically run by Democrats—and as a result Democrats have never had much of an incentive to investigate it or prosecute it. With few interested in stopping it, left-leaning media outlets in turn publish stories pointing to the lack of convictions as proof that voter fraud is a partisan myth.

But there’s a growing body of academic evidence suggesting it is a bigger issue than many want to admit. In 2014, two liberal academics published a major survey of voter data in the journal *Electoral Studies* that included the finding that “more than 14 percent of non-citizens in both the 2008 and 2010 samples indicated that they were registered to vote.” To put that in perspective, about 12.1 million illegal immigrants reside in America, according to the Department of Homeland Security. That’s nowhere remotely close to “millions” of illegal voters, but neither is it nothing.

It’s also hard to square Democrats’ opposition to voter ID laws and efforts to root out voter fraud with their more sensible concern over foreign governments attempting to hack into the country’s election databases—an issue that, weirdly enough, was prompted by the election of Donald Trump. There’s a simple way to make American elections unhackable. If every voter presents some form of credible identification at the polling place and his or her vote is recorded and stored on a paper ballot—not put in some easily penetrated database—any problems arising from hacking by foreign meddlers can be solved by counting ballots the old-fashioned way. If Democrats care as much as they claim to about the integrity of our democracy, they should be willing to consider these and similar reforms.

As is his habit, Donald Trump has done extraordinary damage to a cause he claims to care about. One suspects he will do further damage by predicting voter fraud before the 2020 election and claiming the election was stolen if he loses. It doesn’t follow that voter fraud doesn’t exist. ♦

WILLIAM KRISTOL

# John McCain's devotion to human liberty



*John McCain visiting Georgian and U.S. servicemen near Tbilisi, January 2, 2017*

When I heard last week that the end was near for a man I'd admired for my entire adult life, and had had the privilege of knowing fairly well for the last couple of decades, a speech from an earlier epoch of American history came unbidden to my mind.

That speech is connected to John McCain in two ways. Its subject was another great senator, Henry Clay, who also famously fell short of attaining the crowning achievement for which he yearned, and which he may be said surely to have deserved, the presidency of the United States. And its theme is as applicable to McCain as it was to Clay.

Here's a passage from Abraham Lincoln's July 6, 1852, eulogy of Clay:

Mr. Clay's predominant sentiment, from first to last, was a deep devotion to the cause of human liberty—a strong sympathy with the oppressed everywhere, and an ardent wish for their elevation. With him, this was a

primary and all controlling passion. Subsidiary to this was the conduct of his whole life. He loved his country partly because it was his own country, but mostly because it was a free country; and he burned with a zeal for its advancement, prosperity, and glory, because he saw in such, the advancement, prosperity, and glory of human liberty, human right, and human nature. He desired the prosperity of his countrymen partly because they were his countrymen, but chiefly to show to the world that freemen could be prosperous.

As much as Clay, and as much as anyone else who has held high office in the United States, John McCain's "predominant sentiment, from first to last, was a deep devotion to the cause of human liberty." That devotion was accompanied by an appreciation of what must be done, both at home and abroad, to defend, preserve, and foster liberty. From his years as a prisoner of war to his years in elected office, McCain understood the price and the

value of liberty. Now, at a time when the case for an elevated patriotism that cherishes liberty needs urgently to be made anew, the deeds and speeches of John McCain provide a needed education for a free people.

McCain's farewell letter to his fellow Americans was a fitting coda to his efforts to educate his fellow Americans. He wrote:

To be connected to America's causes—liberty, equal justice, respect for the dignity of all people—brings happiness more sublime than life's fleeting pleasures. Our identities and sense of worth are not circumscribed but enlarged by serving good causes bigger than ourselves.

"Fellow Americans"—that association has meant more to me than any other. I lived and died a proud American. We are citizens of the world's greatest republic, a nation of ideals, not blood and soil. We are blessed and are a blessing to humanity when we uphold and advance those ideals at home and in the world. We have helped liberate more people from tyranny and poverty than ever before in history. We have acquired great wealth and power in the process.

Like Clay, McCain understood and taught that power was needed to support the great cause of human liberty—and that power emancipated from the cause of liberty would be nothing much of which to be proud.

Lincoln ended his eulogy:

But Henry Clay is dead. His long and eventful life is closed. Our country is prosperous and powerful; but could it have been quite all it has been, and is, and is to be, without Henry Clay? Such a man the times have demanded, and such, in the providence of God was given us. But he is gone.

"Such a man the times have demanded, and such, in the providence of God was given us." Such a man in our time was John McCain. And now he is gone. ♦

VANO SHLAMOV / AFP / GETTY

# Nothing good ever comes of a special counsel investigation

Deputy attorney general Rod Rosenstein made one of the worst decisions of the Trump administration when he named Robert Mueller “special counsel” to oversee the investigation of collusion between Donald Trump and Russia in the 2016 election.

I’m not exaggerating. Rosenstein should have known better than to inflict a special counsel on Trump, his presidency, and the entire country. Perhaps he did but just lacked the strength to resist the enormous pressure to rid himself of the collusion case and hand it to an “independent” counsel.

The key word here is “pressure.” Rosenstein isn’t the only one who has come under intense pressure. So has Mueller. He’s expected to find palpable wrongdoing by Trump. If he doesn’t he’ll be pilloried by Democrats, the left, anti-Trump Republicans, the media, and, worst of all, history.

So Mueller’s quest goes on. It seems endless. Mueller is under pressure not to give up, even if he keeps coming up empty-handed, as appears to be happening again and again. This has led him to wander far from his assigned purpose—to Stormy Daniels, Michael Cohen, and a dozen Russian hackers who will never be interrogated, much less extradited. Mueller looks lost.

But there are bigger problems on his plate. That’s what happens when a special counsel is hired to deal with nationally famous cases, especially those involving sitting presidents. Recall what the top guns used to be called: special prosecutors. That was a more honest name we should still use. It makes clear what the Mueller

squad’s assignment really is—either drive Trump out of office, or pave the road to impeachment.

Of course, as with all special prosecutors, there’s a lot going on that’s not immediately obvious. But this is. The special prosecutor system is anti-democratic. The Founders would be appalled. Thomas Jefferson would go back to France in protest, and Tom Paine would join him.

What shocked partisan Democrats was Trump’s election in the first place. Democrats began talking up impeachment before Trump had even been sworn in. At the time, evidence was lacking, and the notion of Trump-Russia collusion was merely a partisan fantasy. It still appears to be just that.

Yet impatient Democrats and Trump enemies are itching for a second shot at the president, though roughly 63 million Americans voted for Trump, and

304 electors ratified his victory in the Electoral College. Impeachment efforts are sure to be revved up should Democrats win the House in the midterm election.

Trump may be unique in the hatred he generates among left-of-center Americans. And instant impeachment will in all likelihood never be sought again. But I’m not too sure. Perhaps a precedent is being set: If at first you don’t succeed (the election), try again as soon as you can to oust the presidential candidate who won (special counsel needed here). Don’t dawdle.

Scooter Libby, the victim of an earlier special prosecutor’s machinations, says impeachment wouldn’t be necessary if the investigator put together evidence so powerful it forces the president to resign. Only two people are

required: the prosecutor and a witness.

Or maybe the prosecutor alone is sufficient to pull this off. “The deck is stacked,” Libby says. The crux of many prosecutorial decisions is who’s lying and who isn’t. That decision rests solely with the prosecutor. It certainly did in Libby’s case. Special counsel Patrick Fitzgerald indicted him for perjury in a case so attenuated it defies description. Libby was pardoned by President Trump in April.

The consequences of a special counsel’s probe—that is, what’s going on in the real world—are another important unknown. It’s no secret Democrats have a better than even chance of capturing the House in November as Mueller’s investigation stumbles along. If they do prevail, impeachment almost certainly follows.

What we don’t know is how Trump will react. My guess is he’ll fight back furiously. After all, he prides himself on his skill at counterpunching. And Democrats are not good at taking a punch. They’d rather whine. Trump tweets his anger at Democrats and Mueller frequently, but we don’t know how his decision-making will be affected. All the world would like to know.

There are big fish to consider. The North Koreans, for instance. Trump got off to a fast start in his effort to ingratiate himself with the North Korean dictator Kim Jong-un, but things have slowed. Banning nukes won’t happen any time soon. The North Koreans are sensitive to the power equation. Do they sense with Mueller refusing to let up that Trump is in decline and no longer needs to be appeased? I suspect so. And what about the Iranians? Has their calculation of Trump’s prowess changed? We can’t know.

When Libby was under investigation, the prosecutor informed him the real target was Vice President Dick Cheney, not him. Libby was Cheney’s deputy. “The prosecutor wanted me to make something up about Cheney,” Libby says. He refused. And wound up being prosecuted for his courage.

That moment was a critical one in the Iraq war. It came during George



W. Bush's second term, when the war was going poorly. Cheney was a champion of the "surge" to counter Islamic insurgents. The other top national security officials were opposed. Had Libby testified against Cheney, the veep would have been tossed aside, the surge abandoned, and the outcome in Iraq hard to imagine. With Cheney saved, Iraq was too.

Only in the top reaches of the Bush administration was this known.

But imagine if the war had been lost thanks to negotiations in a prosecutor's office. America's role in the world would be different today and not better.

What's Rosenstein's role now? He's given Mueller a free hand. This hasn't helped anyone. America is slipping into a civil war, the nonviolent variety. Mueller can't stop it, but he can make it worse. It's up to Rosenstein to make sure that doesn't happen. ♦

COMMENT ♦ PHILIP TERZIAN

## The code of the soldier-statesman

Anyone inclined to believe that social media have hardened our public discourse will have found ample evidence last week, when John McCain died.

Twitter in particular was flooded with words of condolence, panegyrics from old friends and adversaries, lamentations for the republic, admiring tributes to a life well lived. Then, very quickly and decisively, politics intervened. The sincerity of the sentiments was second-guessed and praise for Senator McCain was reinterpreted for what it might have been intended to say about President Trump. Trump, in turn, was admonished to say something on the subject (which he did) and, simultaneously, warned not to say anything at all.

By the second day, McCain's critics on the left were recounting their version of his crimes and misdemeanors while Trump's admirers on the right were making the same arguments. McCain, whose humor had a decidedly cynical edge, would have savored the extent to which his death serially united critics and admirers across the political chasm.

There was ugliness, even savagery, in many of the things said on Twitter, but I am not sure that this is Twitter's fault. Writers tend to believe that the means by which humans communicate with one another—cuneiform



**McCain, whose humor had a decidedly cynical edge, would have savored the extent to which his death serially united critics and admirers across the political chasm.**

tablets, the printing press, telegraph, TV, the Internet—are decisive under such circumstances. But human nature is considerably older than any medium, and the casual cruelty and paralyzing rage found on Twitter are nothing new.

It is true that social media expose more people to more evidence of these facts about our species. But it is equally true that humans have been griping about the loss of civilization since civilization began.

On a more prosaic note, however, one feature of the thousands of eulogies stood out: McCain was almost universally praised for his spirit of "bipartisanship," his evident willingness to cross party lines on principle and maintain friendly personal relations with public adversaries. With his death, nearly everyone agreed, the poisonous atmosphere in political Washington has grown a little more poisonous, and McCain's blend of conviction and harmony is obsolete.

If I may be excused for saying so, this is a comforting piece of mythology that sustains the political class (of which I am an associate member) in the nation's capital: that there was once a golden age of comity and well-mannered combat in public affairs that has largely evaporated, especially in Congress. Speaking as one who admired Senator McCain and cast my vote to elect him president a decade ago, I am bound to say that the same obituary tributes tend to be paid to people—Hubert Humphrey, for example, or Gerald Ford—whose characters are comfortably blended with leadership qualities.

John McCain was not the first nor (I suspect) the last of this breed. Yet one defining attribute has been largely overlooked. McCain's extraordinary heroism while a prisoner of war in North Vietnam has tended to overshadow the extent to which his behavior was informed by a personal code. No prisoner suffered greater torments in Hanoi than McCain endured, but his history as an ex-prisoner is nearly as impressive.

From the time he entered Congress, less than a decade after his release, this manifestly conservative lawmaker and faithful guardian of American power was an advocate for recognition of, and above all reconciliation with, his onetime enemies. Such an attitude is a decidedly military virtue, which McCain, the son and grandson of admirals and descendant of officers since the revolution, instinctively understood. Indeed, it brooks comparison with the famous declaration of another warrior-politician, Winston Churchill:

In War: Resolution  
In Defeat: Defiance  
In Victory: Magnanimity  
In Peace: Good Will

If anyone in public life was entitled to bear the memory of his captivity like an open wound and practice ill-will toward the People's Republic of Vietnam, it would have been John McCain. And from my civilian's perspective, it has never been entirely clear that the regime in Hanoi was worthy of the senator's regard, much less forgiveness. But McCain surveyed the landscape from a soldier's perspective, and saw the North Vietnamese in honorable, even empathetic, terms.

Of course, this is not intended to draw a parallel between the North Vietnamese and McCain's adversaries on the Senate floor. But it does suggest that he drew a line from his experience of war to his life in politics and felt the necessity, in the words of another soldier-statesman, Justice Oliver Wendell Holmes, "to keep the soldier's faith against the doubts of civil life, more besetting and harder to overcome than all the misgivings of the battlefield. . . . [T]hese things we learned from noble enemies in Virginia or Georgia or on the Mississippi, thirty years ago; these things we believe to be true."

The experience of war is now severely limited among Americans, and the military virtues that McCain personified—the soldier's resolution, defiance, magnanimity, and goodwill—have largely disappeared from public consciousness and discourse.

Which is a shame: The sense that conflicts of the past need not poison the present used to be characteristic of American life—you can find lots of historic footage of Civil War blue-gray reunions on YouTube—and may yet revive. But it's not entirely a coincidence that in the same week that John McCain died, a throng of demonstrators at the University of North Carolina toppled a memorial to Chapel Hill students who had died for the Confederacy. And "noble enemies" are hard to find, on Twitter or anywhere else these days. ♦

COMMENT ♦ ERIC FELTEN

## The Romanian ruse

Longtime Clinton crony Lanny Davis, now Michael Cohen's lawyer, last week walked back a tantalizing story he had been whispering to reporters. Davis admitted he was an anonymous source for reports claiming that Cohen, Donald Trump's disgraced personal lawyer, was prepared to say candidate Trump knew in advance of the infamous Trump Tower meeting (the one in which his son and other top campaign advisers hoped to get dirt on Hillary Clinton from a Russian source).

If the story were true, it would have done untold damage to President Trump while also creating further legal jeopardy for Cohen, who has already pleaded guilty to eight felonies. As *Axios* pointed out, "Cohen told lawmakers last year, in sworn testimony, that he *didn't* know whether then-candidate Donald Trump had foreknowledge of the 2016 Trump Tower meeting with Russians."

It isn't as if Cohen's old testimony was sitting forgotten in a file. The Senate Select Committee on Intelligence, well aware that Cohen had denied to them any knowledge that Trump knew about the meeting, asked Cohen's lawyers "whether Mr. Cohen stood by his testimony." Chairman Richard Burr and vice chairman Mark Warner, in a joint August 21 statement, said that Cohen's legal team "responded that he did stand by his testimony."

Pressed by the *New York Post*—for which he had been an anonymous source—Lanny Davis apologized for spreading the Trump Tower story.

Cohen's testimony before the Senate Intelligence Committee—the truthfulness of which his lawyers have now reaffirmed—was not pri-

marily about the Trump Tower meeting. It dealt largely with denying one of the most explosive charges of Christopher Steele's dossier, the accusation that a few months before the 2016 election, Cohen traveled to Prague on Trump's orders to pay off "Romanian hackers" who had been bedeviling Democrats. Cohen has



**The exhaustive work done for the Mueller team shows that the putative Romanian hackers were a fiction invented by Russian military intelligence. Steele seems to have fallen for it.**

done damage to Trump by implicating him in hush-money payoffs that violated campaign-finance laws. But this pales in comparison to the damage he might do if he were to suggest Trump used him to pay hackers. This would buttress the accusations of Trump campaign "collusion" and be ruinous for the president.

There was rampant speculation after Cohen's guilty plea in the hush-money matter that he might seek a deal with special counsel Robert Mueller to revisit his testimony on Prague and related matters. The day after Cohen pleaded guilty, the *Washington Post* surmised that the Prague shoe was about to drop: A trip to the Czech Republic by the Trump lawyer has been alleged but "hasn't been otherwise confirmed," wrote the *Post*. "Obviously, Cohen might be able to do so."

If Cohen were going to change his

testimony, his plea deal would have been an optimal time to do so. Prosecutors in New York were able to discover, in the mountain of materials they seized from his office, home, and hotel room, that Cohen had failed to pay taxes on money he earned from the sale of a pricey French handbag. It would surely not have been beyond their forensic abilities to prove Cohen had traveled to Europe in the late summer of 2016. And yet Cohen and his legal team have stated to the Senate intel committee that Cohen was telling the truth in his testimony, which included such unambiguous statements as “I have never in my life been to Prague or to anywhere in the Czech Republic.” And “I never saw anything—not a hint of anything—that demonstrated [Trump’s] involvement in Russian interference in our election or any form of Russian collusion.”

The Steele dossier’s allegations about Cohen going to Prague are elaborate. Where did its baroque tales of illicit meetings to pay Romanian hackers come from? Special counsel Robert Mueller’s case against Russian military intelligence (GRU) hackers may provide the answer. If the information he conveyed in this July’s grand jury indictment of GRU hackers holds up, the special counsel will have shown definitively that the Kremlin was behind the theft and release of Democratic party communications. Mueller will also have shown that, in falling for the idea of some involvement by Romanian hackers, the authors of the dossier were duped.

The July 13 indictment cuts to the heart of Russia’s bad actions: GRU units, says the indictment, “conducted large-scale cyber operations to interfere with the 2016 U.S. presidential election.” The indictment includes extensive explanations of how the Russian hacks were executed—with spoofed email addresses, falsely condensed URLs, and malicious links. More to the point: The hackers invented a fictitious Romanian hacker to try to cover their tracks.

Which brings us to the dossier, a

work of opposition research written by former British spy Christopher Steele. He was hired by the oppo firm Fusion GPS, which had been paid by a law firm representing the Clinton campaign and the DNC. The dossier was delivered in installments, the last of which, in December 2016, claimed that Cohen and “Kremlin representatives” agreed during an August/September 2016 meeting “in Prague to stand down various ‘Romanian hackers’ (presumably based in their homeland or neighbouring eastern Europe) and that other operatives should head for a bolt-hole in Plovdiv, Bulgaria where they should ‘lay low.’”

But we know now from the exhaustive investigative work done for the Mueller team that the putative Romanian hackers were a fiction invented by Russian military intelligence to hide their tracks. Steele seems to have fallen for it.

“On or about June 14, 2016,” according to this summer’s indictment, the DNC “publicly announced that it had been hacked by Russian government actors.” In response to the DNC announcement, the Russian “Conspirators created the online persona Guccifer 2.0 and falsely claimed to be a lone Romanian hacker to undermine the allegations of Russian responsibility for the intrusion.”

It was in the middle of June 2016 that Guccifer 2.0 made his first appearance on a newly created WordPress blog. The title of the post was “DNC’s servers hacked by a lone hacker.” The blogger taunted a “Worldwide known cyber security company” that had done computer forensics for the DNC.

Just in case there remains any doubt that Guccifer 2.0 was a Russian concoction, Mueller offers extensive details that demonstrate just how thoroughly Russian computer systems have been penetrated by the investigation. Earlier on the day of the first Guccifer 2.0 post, the Russian military intelligence cyber team at Unit 74455 had “searched for certain words and phrases.” These included terms that

turned up in the Guccifer 2.0 post, such as “worldwide known.”

The indictment states, “Between in or around June 2016 and October 2016, the Conspirators used Guccifer 2.0 to release documents through WordPress that they had stolen from the DCCC and DNC.” Russian military intelligence devoted time and effort to maintaining the deception that Democratic documents were hacked and distributed by a Romanian: In January 2017—a month after Steele wrote his Prague tale—they were still putting out statements on the Guccifer 2.0 blog that the fictitious Romanian did all the hacking and had “totally no relation to the Russian government.”

When newspapers in 2016 originally reported the hacks as coming from Russia, the early installments of the dossier show Steele relaying that story. But after months of Russian efforts to prop up an imaginary Romanian hacker, the dossier trafficked in the conceit that “Romanian hackers” were involved in the theft and leaking of Democratic emails and documents. It spun an intrigue-filled tale that a representative of Trump was dispatched to see that the hackers received “deniable cash payments” and help arrange “bolt-holes” where they could hide out.

Mueller’s indictment from this July shows conclusively that the Romanian hacker was invented by Russian military intelligence to fool the West. Perhaps no one was taken in quite so fully as Christopher Steele. However Steele’s story was obtained, the special counsel has provided compelling evidence that his informants either manipulated Steele or didn’t know what they were talking about.

Michael Cohen has maintained and even now maintains—after having pleaded guilty to a grab-bag of criminal offenses—that he has never been in Prague. As risky as it may be to credit anything Cohen says, he has held to the claim through changing fortunes and changing legal teams. And the evidence mounts that he’s right in declaring the dossier allegations about him to be false. ♦

# Pilot, Hero, and Senator in Full

John McCain, 1936-2018.

BY TOD LINDBERG

A long time ago, and for no particular religious reason, I decided the psalmist was right: “Put not your trust in princes.” The point the unknown author was making is that it’s God, not some son of man, in whom one should trust. But regardless, it has seemed to me eminently true that princes are not trustworthy. I especially like the term “princes” because it’s more encompassing than “kings” would be. It seems to evoke the totality of the class of politicians, from the time of the psalms unto this democratic age.

I have made one exception in the years since, and that was for John McCain. I never worked for the man, except as an informal and unpaid adviser on national security to his 2008 presidential campaign. Perhaps that contributed to my ability to trust him: I thereby avoided finding myself the object of one of his famous outbursts of temper. But maybe not, because not one of the dozens of people I know who worked for him, and who presumably were at one time or another on the receiving end of one of his tirades, had anything but love and loyalty for him.

This is unusual for anyone, let alone a politician. Maybe I just never met the disgruntled ones, but you’d expect them to have surfaced, especially

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during the presidential campaigns, the primaries in 2000 and the general in 2008. Yes, reports on the temper came out and whisperings about the lack of fitness for office such outbursts might indicate. But that struck me then and has since as nonsense, not only because temper is a common trait among politicians but also because none of those



*McCain greets supporters after speaking on Wall Street, March 3, 2000.*

who were closest to McCain seemed to hold it against him.

Because I never worked for him on a daily basis, my recollection of our interactions over the years is vivid. At a McCain Institute barbecue one lovely spring evening at his ranch in Arizona, for example, I introduced him to my wife with these words: “One thing you and I have in common, senator, is that we both married beautiful women.” Now, here’s a test of character for you: I think most politicians at such a moment would seize on such a remark to spin the introduction into something about themselves. Not McCain. He beamed at my wife and shook her hand as if no one

else was there. It makes an impression, the bestowal of one’s full attention. McCain understood that part of being charming is being charmed.

McCain would be the last man to call himself a person of exemplary character. On one hand, this is absurd. He spent five years as a prisoner of war in Vietnam, where he was frequently beaten and tortured. He tells the story in *Faith of My Fathers*, his 1999 autobiography-memoir produced in collaboration with his longtime staffer Mark Salter. What’s odd about it is that unlike most campaign-season books, it actually has a story with an interesting personality at its center. And what makes that personality interesting is the constant struggle: first of all, to distinguish himself in a family of great achievement in the U.S. military; second,

to come to terms with the inability to pass an impossible test, that of a prisoner under exceptionally cruel interrogation. You hold out as best you can, but ... Even so, he describes how at various points in his captivity, he defied his captors in ways he knew would produce a new beating.

This is a situation so far removed from the ordinary in the contemporary world as to cry out for recognition. Likewise his description of fellow American prisoners who helped him survive the grievous injuries he sustained bail-

ing out of his crippled A-4E Skyhawk bomber over North Vietnam.

This is the paradox at the center of greatness: No matter how much the great ones have achieved, it stands in contrast in their minds to how much more they believe they could or should have achieved. McCain was an exemplary practitioner of self-deprecating wit, itself a political art form. But as practiced by, for example, Henry Kissinger, such wit draws attention to the sense of superiority with which it is uttered. McCain’s greatness came into view not through false humility but from the real thing. Many are those who say “screw you” in circumstances

CAROLYN COLE / LOS ANGELES TIMES / GETTY

in which doing so is without consequence. Few are the ones who do so when it will produce a savage beating. Fewer still are the ones who reproach themselves simultaneously for their inability to refrain from saying “screw you” and for their failure to say it as often as they should have.

I leave the “maverick” encomia to others. Even in the Hanoi Hilton, he was a remarkably free man. Presumably, the internal quality that made him so was not of the sort that caves readily under the pressures of democratic politics as practiced in the United States. Nor am I particularly interested in ideological evaluations of McCain’s conservatism, either of the sort from those on the left who regard the maverick reputation as a bogus gloss on a right-wing political career or from those on the right who see him as an establishment sellout.

The most striking aspect of his career as a politician is that he is exactly what the Founders had in mind when they were writing Article I of the United States Constitution: a legislator in the fullest sense. Congress, in accordance with its powers enumerated under the Constitution, is supposed to attend to the people’s business. The need to make such a statement seems somewhat strange, except that so few in Congress seem to harbor that point of view. Most of them seem far more interested in avoiding responsibility than taking it, in the joy of holding office rather than the tasks appropriate to holding office.

When the financial crisis descended over his campaign in September 2008 like the sword of Damocles, there were two presidential candidates who didn’t have slightest idea what to do, both members of the U.S. Senate. One decided to float above it and do nothing; McCain, on the other hand, said

he was suspending his campaign to go back to Washington to work on the problem. Many, with the encouragement of the Obama campaign, considered his response a gimmick. If it was, however, it was a gimmick in character for a genuine legislator. Barack Obama made a smart political decision of a

their freedom. He connected with democracy advocates and human rights advocates in every culture because he too had been deprived of freedom and understood more keenly than the rest of us what that actually means—how it is an affront to the basic dignity of every human being. He also rejected as the ugliest form of cultural imperialism the assumption that human liberty was a Western ideal rather than a universal one—he knew, deep in his heart, that people everywhere value freedom in the same ways, and that those of us privileged enough to enjoy it in our country had a duty to help others earn it in their countries.”

On another McCain Institute occasion, to needle him, I mentioned that Herbert Hoover had actually founded the Hoover War Library, now the Hoover Institution, before Hoover became president—letting hang before McCain that having founded his institute, he could run again. He gave me one of his characteristic double-takes, which typically meant he was amused by the impertinence to which he was responding.

Of course he wouldn’t run again. The time had passed: he gave it his best. I sometimes wonder, had he won, if my faith in this particular prince would have held. Had Hoover never been elected president, he would be remembered as one of the great men of the 20th century for the millions saved from starvation in the effort he led after World War I—not as a failed president. McCain was a tireless champion of freedom and human rights and an exemplary practitioner of democratic politics. If he wasn’t the greatest man ever to seek the nation’s highest office and come up short, he was far greater than most who attained it. ♦



*Above, a staged photograph of McCain as a POW being cared for in 1967, when his captors in fact tortured him; below, greeting students at the Diplomatic Academy of Vietnam in Hanoi, April 7, 2009*



tiresomely familiar sort. John McCain made a bad political decision of an impetuous but somehow noble sort.

McCain wasn’t conventionally ideological. But he was a conviction politician to the core. I asked my friend Daniel Twining, who worked for him for seven years on foreign policy matters and is now president of the International Republican Institute, what his cumulative impression was. He emailed me, “When we traveled and would meet with dissidents in closed societies, he would always tell them to be strong, to fight, and never to give up, because in time they would earn

# Running with the Tide

Scott Walker is, once again, in a very tight race for reelection in Wisconsin. **BY JOHN McCORMACK**



Scott Walker, left, shakes hands with Donald Trump as Foxconn chairman Terry Gou waits at a factory groundbreaking in Mount Pleasant, Wisconsin, June 28.

*Milwaukee*  
**D**espite the hot and humid weather, a large crowd has gathered downtown on the last Sunday in August to celebrate the opening of the Milwaukee Bucks' new arena. Sitting onstage are Bucks players old and new, including Kareem Abdul-Jabbar, who in 1971 led the team to its only NBA championship, and Giannis Antetokounmpo, the Bucks' current star. Republican governor Scott Walker is in the front row with the team's owners, the NBA commissioner, and three other politicians (all Democrats). Everyone is taking credit for the "public-private partnership" that funded the arena.

When Walker, dressed in blue jeans and a Bucks T-shirt, takes the

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microphone, he says of the \$80 million in state money that went into the arena: "For every dollar the state invests in making this happen, we get a return of almost three dollars—three-to-one return over the next 20 years. That's a pretty good deal."

Six years ago, Walker would have had a tough time showing his face in this overwhelmingly Democratic city. He'd become a hero to Republicans in the state for his staunch fiscal conservatism and for curbing the power of public unions, but had to beat back several efforts to undo his achievement. And he was the only Midwestern Republican governor who didn't expand Medicaid under Obamacare. But he's always had a pragmatic streak.

As he runs for his third term, the bill subsidizing the \$500 million Bucks arena, which Walker signed in 2015, is just one of the things he is highlighting

as the record of a bipartisan dealmaker. The \$80 million for the arena looks like small potatoes compared with an agreement inked last year with Taiwanese electronics manufacturer Foxconn, which will receive up to \$3 billion in state subsidies if it fulfills its promise to build a \$10 billion factory in Wisconsin and create 13,000 jobs.

According to two public polls conducted in August, Walker is in a close race. A Marquette poll found him tied at 46 percent with Democrat Tony Evers, the state's superintendent of public schools, while a Suffolk poll had him trailing Evers 44 percent to 46. Tight races are nothing unusual for Walker: The numbers are right about where they were in August 2014 when he went on to win a second term by 6 points.

What is different this time is the national political environment. In 2014, there was a Democratic president with an approval rating in the 40s; now there's a Republican president with an approval rating in the 40s. In the last year, Republicans have lost two special elections in Wisconsin state senate districts that voted overwhelmingly for Trump in 2016 and Walker in 2014. A conservative state supreme court candidate backed by Republicans lost a statewide election to a liberal candidate this spring by 12 points.

Walker has found it difficult at times to separate himself from Trump. Back in March, as the president moved toward imposing steel and aluminum tariffs, the governor spoke out strongly against them. "If the tariffs go into place, it will not only cause major disruption in the market and drive prices up, it will likely cause layoffs and plant closures," Walker said in a radio address. "The practical application here of the tariff on steel and aluminum would likely lead to jobs being lost in Wisconsin and moved—not to other states—but to other countries. . . . My job is to fight for the people of Wisconsin. That is why I respectfully ask the president of the United States to reconsider this policy."

Today he hedges and won't say whether he'd like to see the tariffs rescinded. "The most important thing

DANIEL ACKER / BLOOMBERG / GETTY

we could do is get to what the president himself said at the G7—that is to get to no tariffs,” Walker tells me. “I’ve talked to the president, the vice president, [Commerce secretary] Wilbur Ross, [Agriculture secretary] Sonny Perdue multiple times about some of the very unique challenges” steel and aluminum present in Wisconsin.

Asked again if he actually wants the tariffs gone, Walker replies: “Well, I’d like to see them work sooner” as a negotiating tactic to reduce or eliminate tariffs. When Milwaukee-based Harley-Davidson moved some of its production to Europe in response to retaliatory tariffs, Trump lashed out at the company for its alleged disloyalty. Asked if he told Trump to stop criticizing the motorcycle company, Walker says, “We’ve talked about it before,” and points out that Harleys “sold in America are all made here in the United States.”

Walker’s hedging on tariffs stands in stark contrast to the rhetoric of his Democratic opponent. Tony Evers says he “absolutely” wants the tariffs repealed. “The tariffs themselves are bad policy for many people in Wisconsin,” he tells me at the Pine Cone restaurant in Johnson Creek, a small town on the highway between Milwaukee and Madison. “I think it will help a handful of people in the country, but in Wisconsin we use steel to create things.” According to the Marquette poll, Wisconsin voters, by a 14-point margin, think the tariffs will hurt the economy.

It’s unclear whether Walker’s waffling on tariffs and his support for tax subsidies for big business is hurting him in the polls. Voters are divided on the Foxconn deal. But libertarian candidate Phil Anderson, who criticizes Walker for picking winners and losers, is at 6 percent in the Marquette poll. In the 2014 gubernatorial race, the libertarian candidate garnered only 0.8 percent on Election Day, and Marquette pollster Charles Franklin believes the libertarian vote will fall back by November. But he warns against making assumptions about which party these voters might head toward. “When we look at polling

data,” Franklin says, “we find that generally they actually split not too far from even.” While fiscal conservatives might break for Walker, those who like the libertarian because of marijuana legalization might break for Evers.

The race is proving a challenge for Evers, too. As I follow him around the Pine Cone, it’s clear that he is not a natural politician. When he approaches diners, he seems uncomfortable engaging in banter and backslapping. He’s soft-spoken, and his barely audible conversations consist of

**When Walker took office, polls found that Wisconsin voters thought it was more important to cut taxes than provide extra money to public schools. Now 61 percent favor increased funding.**

saying hello and asking voters where they’re from. “Are you Mr. McEvers?” one woman asks, bungling his name. “I am Mr. Evers, yep,” he replies. “You have my vote,” she says.

Evers could have a particularly difficult time winning over moderates. He tells me Democrats need to be a “big tent” party that welcomes proliferators if it wants to win in November. But he then proceeds to compare abortions to tonsillectomies and advocate for taxpayer funding for abortions: “We need to have the Medicaid money be available for all people and restricting it because of a certain procedure, whether it’s a tonsillectomy or any other procedure, seems to me a foolhardy thing to do.” Wisconsin, like most states, banned Medicaid funding of elective abortion decades ago.

And Evers could be accurately portrayed as too closely aligned with the teachers’ unions. He suggests the worst thing about Walker’s collective bargaining reform is that it “demoralized” teachers, but he won’t discuss any particular school that had been hurt by Walker. “I don’t want to pick out one because I’d be eliminating 423 other

schools around the state,” Evers said. “What it has done is demoralize the teaching staff,” making it difficult to recruit new teachers. Walker’s previous Democratic opponents—in the 2012 election to recall him because of the union law and his 2014 reelection—were similarly unable to cite specific schools that had been hurt by the law. There’s a reason for that: The law has worked to help schools avoid teacher layoffs and keep property taxes down.

In fact, the law may be working a little too well for Walker. When he took office, polls found that Wisconsin voters thought it was more important to cut taxes than provide extra money to public schools. Now 61 percent favor increased funding for schools. “That’s one of the more striking changes,” says Marquette’s Charles Franklin. “It’s an irony, maybe, of Walker’s success in holding down property taxes that it’s now a shoe that doesn’t pinch as much as it did in 2010 and 2011, and therefore voters can see other priorities as more important.”

As Walker heads into the stretch run of the campaign, he’s promising more money for schools and more new tax credits—to keep college graduates in the state, to help parents pay for child care, and to assist senior citizens with property taxes. Whether there is revenue to fulfill all these promises remains to be seen. But Walker touts the rollicking economy and a state unemployment rate that’s below 3 percent—lower even than it was during the 1990s boom.

Despite the economic good news, Republicans in Wisconsin and nationally face a tough political environment that has more to do with the president’s character and temperament than it does with any policy. Walker tries to draw a sharp contrast with Trump. At a campaign event in Elkhorn, he tells supporters that the “best way to counter the anger and the hatred of the left is not to do more of the same. It’s through just the opposite: It’s through optimism and organization.”

After he is done speaking, Walker spots Ben Jacobs, the reporter for London’s *Guardian* newspaper who last year was body-slammed by a Republican candidate in Montana. Walker

jokes that he couldn't body-slam anybody because he is so tired from filling sandbags the day before in an effort to combat a flood outside Madison. Just to make sure Jacobs knows he's joking, Walker says, "When I saw that, I was like, 'What the hell?'" He mouths the last three words silently even though kids are out of earshot.

At a press gaggle, Walker notes that a majority of voters think the state is on the right track. "I have to

convince people that didn't happen by accident," he says. "If Aaron Rodgers is taking you to the Super Bowl, you don't want to pull him right before you go to the game." Jacobs then asks Walker if he's sure that in this scenario he isn't Brett Favre, the former Packers quarterback who was involved in a sexting scandal right when he left to join the New York Jets. Walker laughs: "I don't have any pictures that I'm afraid of." ♦

polls earlier than they ever had: February 5, just one month after the Iowa caucuses. The state was a windfall for John McCain on his march to the GOP nomination. But on the Democratic side, Hillary Clinton's narrow, come-from-behind win had the effect of giving her enough delegates to keep her moribund campaign against Barack Obama alive for several more months. The state gave up for the next two cycles, returning to the June date.

When the latest change was made, California secretary of state Alex Padilla hoped that things would finally be different. "Candidates will not be able to ignore the largest, most diverse state in the nation as they seek our country's highest office," he said.

Yet candidates ignore California less for the timing of its primary than for the difficulty and costs of campaigning here. Television and radio ads are a must for getting any kind of name recognition, and the state has 11 major media markets, including 2 of the nation's 10 largest. "You can look great in a 30-second TV ad, and that's all you need," says Thad Kousser, a political science professor at the University of California, San Diego. "The battle for California will be on the airwaves." With numerous geographically dispersed urban areas, the sort of retail politicking that works in Iowa or New Hampshire is logistically impossible in California.

There's also been something missing for a generation: credible presidential hopefuls from California. The only truly competitive one was Jerry Brown, who ran against Bill Clinton in 1992. What has California Democrats really buzzing about 2020 is that they may have several of their own to choose from.

It's no secret that Kamala Harris, the freshman senator and progressive firebrand, wants to run for president. She's building a proto-campaign infrastructure, cultivating a donor network, and making a name for herself in the national media. Yet despite being a fixture in Northern California Democratic politics for a couple of decades—she dated San Francisco mayor Willie Brown and was the city's

## Iowa Envy

With an eye toward helping its native sons (and daughter), California moves its presidential primary. **BY MICHAEL WARREN**

*San Francisco*

Few people here or anywhere else in California are talking much about the upcoming midterm elections. Democrats are all but guaranteed to sweep the statewide races this fall. Republicans aren't too confident in their gubernatorial nominee, John Cox, and don't have a candidate against Dianne Feinstein for her Senate seat. The big Democratic majorities in the state legislature aren't going anywhere. For a very liberal state in a period of anti-Trump fervor on the left, the attitude toward November 2018 is ho-hum.

California's politicians have their sights set instead on the *next* election cycle: 2020. The big one. The chance for the #Resistance to take down a hated president. California wants to be on the front lines of the battle for the White House after struggling for years to have an impact.

Last year, Democratic governor Jerry Brown signed a bill to move up the state's presidential primary to March 3. That would put California on the first slate of "Super Tuesday"

contests, exactly one month after the Iowa caucuses and just after the early primaries in New Hampshire, Nevada, and South Carolina. What's more, the mail-in voting period in California begins about 30 days before any election. Since 2008 at least 58 percent of the state's primary votes have come via the mail-in ballot, and so it's likely the majority of California Democrats will be making their pick for the presidential nominee at the same time as Democrats in Dubuque and Nashua.

This is not the first time the Golden State has jumped ahead from its traditional June primary date. In 1996, California tried holding its primary in late March—but by then Bob Dole had wrapped up the GOP nomination and Bill Clinton was running unopposed. The state went even earlier in March 2000, but again, both parties had presumptive nominees before Californians could vote.

Four years later, California kept its primary in early March, but that was a full two months after the 2004 Iowa caucuses, and there was no real competition in California for eventual Democratic nominee John Kerry. In 2008, California primary voters went to the

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district attorney for seven years—and despite twice being elected the state’s attorney general, Harris doesn’t have nearly the same recognition statewide as titans like Dianne Feinstein and Jerry Brown. A Morning Consult poll earlier this year found 26 percent of registered voters in California said they didn’t know or had no opinion of their junior senator. The joke is that Harris’s presidential stock rises the farther you get from California.

Her influence, though, is growing within California’s Democratic party. She endorsed 27 candidates for statewide and local offices ahead of June’s jungle primaries, and nearly all of them won or advanced to the runoff. One Democratic operative here calls Harris’s the most coveted endorsement in the state.

Los Angeles mayor Eric Garcetti is getting into the game, too, and has already started fulfilling the requirements to be a bona fide presidential wannabe. Make a pilgrimage to Iowa? Check. Set up a national PAC to help Democratic candidates in the midterm? Check (the Democratic Midterm Victory Fund raised just under \$700,000 through June). Draw a dubious comparison between your hometown and early-primary state voters? Check (“Iowa and Los Angeles have a ton in common,” Garcetti said during his April trek to Des Moines).

Garcetti has a geography problem, too. California’s Democratic machine is based in the Bay Area, and politicians from Southern California usually struggle to break in. And unlike San Francisco, Los Angeles is not consumed by politics—national, local, or otherwise. Bill Carrick, a veteran strategist who has worked for Garcetti, describes the problem with a cab comparison. In Boston, he says, cabbies have strong opinions on every mailer sent out by a mayoral candidate. In Los Angeles, they won’t know there’s an election going on. “Politics here is not a preoccupation,” Carrick admits, and Garcetti won’t be able to count on a massive base of support from his hometown—just 15 percent of registered voters in Los Angeles turned out for his first election in 2013.

Other prospective California Democratic presidential hopefuls include House members Eric Swalwell and Adam Schiff and liberal super-donor Tom Steyer. None is taken too seriously, particularly Steyer, who has geared up to run for statewide office before (including the 2018 governor’s race) only to back away. But when Michael Avenatti, the L.A.-based lawyer for porn actress Stormy Daniels and a cable-news mainstay, is teas-

distributed proportionally, according to Democratic party rules) to be formidable, especially if the field is still crowded on Super Tuesday. But even Harris’s allies admit she needs to deliver a strong showing in either New Hampshire or South Carolina for any California-focused strategy to work.

And there’s always the possibility that a non-Californian could find lots of delegates there after a good early-state performance. Despite its pro-



*Kamala Harris, left, waves during a San Francisco gay pride parade, June 24.*

ing a White House run, perhaps any California Democrat can. And while it’s clear that current lieutenant governor Gavin Newsom has national ambitions, there’s little to suggest the 50-year-old Democrat is prepared to start running for president as soon as his victory in the governor’s race is called in November.

“I think Kamala Harris is the only candidate who fits the profile of what California primary voters like in recent years,” says Kousser. “I don’t think Eric Garcetti or Adam Schiff win that race to the left.”

The hope is that a favored son or daughter of California can use the March primary and its wealth of delegates as a slingshot to the nomination. If, say, Harris scared off other candidates from contesting her big and expensive state, she could rack up enough delegates (which are

gressive reputation, California likes establishment Democrats. Primary voters went for Hillary Clinton over Barack Obama in 2008 and over Bernie Sanders in 2016. Jerry Brown lost his home state to Bill Clinton in 1992.

But California is a different state from even just a couple of years ago, thanks to one man: Donald Trump. The L.A. Women’s March protesting his inauguration in January 2017 drew 750,000 people; it was the second-largest in the country after the main event in Washington. Democrats are hoping to wake the sleeping giant of Latino voters thanks to Trump’s immigration policies and antagonistic rhetoric. “The biggest thing that’s dominating the political discussion in California is Trump,” says Carrick. “That really has become the touchstone on which everybody has basically been motivated or activated.” ♦

# Boris Johnson or Edmund Burka?

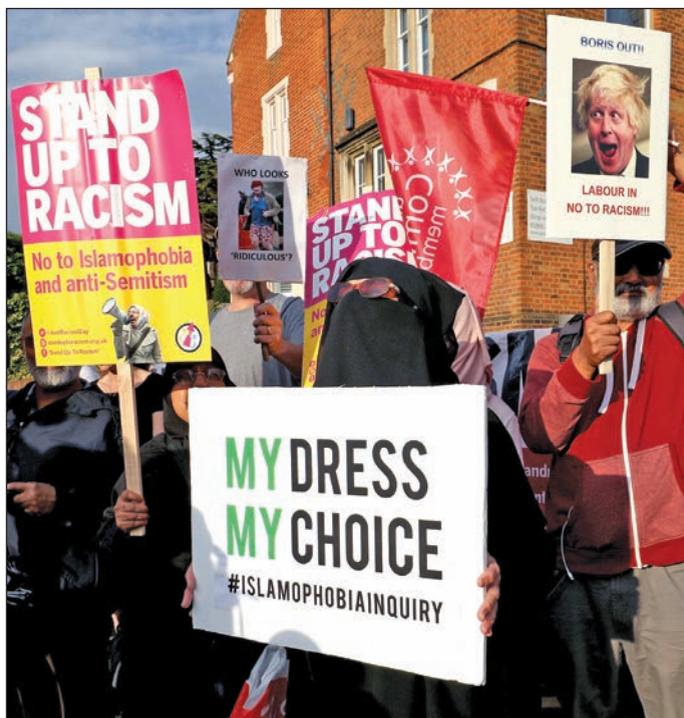
The Tory clown prince turns right for Downing Street. **BY DOMINIC GREEN**

**A**ll roads lead to 10 Downing Street if you keep turning right. This was the lesson that Margaret Thatcher taught when she dismissed Tory centrists with the immortal words “The lady’s not for turning”—as in turning back, turning around, or turning left. This was the lesson that David Cameron, a man of the squishy center, learned too late, and that Theresa May, an unscrupulously quick and glib study, reaffirmed when she said, “If you believe you’re a citizen of the world, you’re a citizen of nowhere.”

No one in Britain now believes what May says, but everyone sees that, from duty if not the urge to avoid embarrassment, the prime minister is determined to hang on in 10 Downing Street. But do the British believe what Boris Johnson says, and that he has got what it takes to displace May? They know that Johnson is a man to whom embarrassment is as water to the duck’s back. They know he is “good for a laugh,” and they enjoy his slapstick bumbling and verbose P.G. Wodehouse routines—all serious compliments in a land where no joke goes uncracked, and quite possibly sufficient to win him the highest office in British politics.

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But the British don’t really know what Boris believes, other than that, being destined for glory, he is the right chap to have his hands on the tiller in this our hour of need, et cetera.



*A woman in a burka and others protest Johnson’s remarks, August 9.*

And what does Boris himself believe, beyond the imperatives of attracting attention and obtaining power?

It depends which Boris you ask. For there are two Borises, and their interaction is part of what makes him by far the most interesting person in British politics. One is a Berlusconi-style burlesquer of media-driven politics, the comedian who, halfway through his eight years as mayor, pulled off the London Olympics of 2012. The other is an old-style conservative, an elitist

for whom charisma is a license to govern behind closed doors, a calculating pol who stirred up anti-EU feeling for decades but who, before becoming the most popular face of the Leave campaign in the 2016 Brexit referendum, wrote two op-eds, one for Remain and the other for Leave.

Ken Livingstone, the only other postwar mayor of London to have made a mark on the city, suspected that Johnson was “the most hardline right-wing ideologue since Thatcher” but concluded he was “a fairly lazy tosser,” more interested in reclining on laurels than winning them. Livingstone was wrong on both counts.

Johnson’s ideological direction resembles the EKG of a man having a heart attack. Bursts of erratic zigzagging are followed by short periods of flatlining. And while David Cameron was said to have preferred “chillaxing” on the weekends instead of reading government briefings, Johnson works very hard at being “Boris,” or “BoJo,” as he is believed to call himself.

Referring to oneself in the third person can be a sign of delusional vanity, but in Johnson’s case the vanity seems calculated. He was christened Alexander Boris de Pfeffel Johnson, and his family call him “Al”—neither quite does it as a brand. The Boris persona, with its tousled hair, Latin tags, and façade of harmless eccentricity, cohered at Eton, a school that has sent more tousle-haired, Latin-tagging harmless eccentrics to 10 Downing Street than any other.

Johnson is now closer to 10 Downing Street than at any point since the summer of 2016. He was pretty close then, right on the doorstep, in fact, until Michael Gove, his fellow conspirator in the Brexit campaign, tripped

JONATHAN BRADY / PA IMAGES / GETTY

him up by launching his own candidacy, announcing that Johnson “cannot provide the leadership or build the team for the task ahead.”

Boris landed on his face, in Theresa May’s cabinet as her foreign secretary. Now, having resigned in mid-July over May’s drift away from Brexit, Johnson is polling ahead of any other Conservative as her successor. The polls also show that Johnson is the party’s safest bet for averting the nightmare scenario of a Jeremy Corbyn government.

Johnson’s resignation speech in mid-July was measured and thoughtful and therefore quite unlike either of the known Borises. So no one was surprised when, in early August, the old Borises bounced back into the public eye. Everyone was waiting to see what he would do next. The big prize was in sight; screw the courage to the sticking point, *carpe diem*, and all that. The moment called for a right turn. The surprise was not so much how sharp it was when it came as its adroitness.

Writing in his regular *Daily Telegraph* column, Johnson addressed the banning of the burka and niqab in Denmark. “If you tell me that the burka is oppressive, then I am with you,” he wrote. “If you say that it is weird and bullying to expect women to cover their faces, then I totally agree—and I would add that I can find no scriptural authority for the practice in the Koran. I would go further and say that it is absolutely ridiculous that people should choose to go around looking like letter boxes.”

He added that if a constituent came to his office covered, he would ask her to show her face: “It’s how we work.” The same goes for a female student who turns up to school or university “looking like a bank robber.”

The jocular tone guaranteed protests from the usual suspects, but also brought some surprising ones. The Muslim Council of Britain, a front group for the Muslim Brotherhood, denounced Johnson, and a Labour MP threatened to report Johnson to the Equality and Human Rights Commission. But Baroness Sayeeda Warsi, a past chair of the Conservative party who in 2012 became the first Muslim

woman to serve in a cabinet, also attacked Johnson for “dog whistle” politicking. Brandon Lewis, chairman of the Conservative party, requested that Johnson apologize. So did Ruth Davidson, leader of the Scottish Conservatives, who called the remarks “gratuitously offensive.” Dominic Grieve, attorney general in David Cameron’s government, told the BBC that Johnson was not a “fit and proper person to lead a political party.”

It’s no coincidence that all of Johnson’s Conservative critics also supported Remain in 2016. Baroness Warsi said Johnson was using “indefensible” and “alt-right” strategies in order to “stake out a leadership bid.” Grieve

### **Having resigned in mid-July over Theresa May’s drift away from Brexit, Johnson is polling ahead of any other Conservative as her successor.**

entertained the same prospect and promised “without the slightest doubt” that he would resign from the Conservatives if Johnson became their leader.

The issue of Islamic face-covering is sensitive, but not as sensitive as Brexit. On this much, Baroness Warsi was not wrong. Johnson was using the burka and niqab as bait to force a crisis in the parliamentary Conservative party. He knows that the party members back him. He knows that the public likes him, not least for his ostentatious refusal to be politically correct and dodge the issue of Islam in British society. It’s the parliamentary party who dislike him as an intriguer and a Brexiter.

Johnson’s *Telegraph* article offered two Borises for the price of one, the populist jester and the Westminster strategist. In all the fuss about his tone, not much attention was given to his argument. After his big wind-up, Johnson didn’t deliver a punch. France, Belgium, and Denmark have banned the burka and niqab, but he

concluded that it was not the British way to “tell a free-born adult woman what she may or may not wear, in a public place, when she is simply minding her own business.”

The dog-whistling was in the jokes, not the argument. Humor is central to British life. In public life, mockery to the point of nihilism is not just accepted but applauded. There is an Islamic threat to British traditions of free speech, but it doesn’t come from Muslim women who cover their faces. It comes from the Muslim men who tell them to cover up. Johnson went for the cheap shot and the big laugh. That is also the British way, and so, these days, is open hostility to Muslims, whether British-born or not.

As the May government spirals, the Conservatives are once again losing support to a revitalized U.K. Independence party (UKIP). In the days after the *Telegraph* article, a mass of uninvited comments appeared on Johnson’s Facebook page, all supportive and some openly bigoted. Johnson distanced himself from them—though he had of course invited them. He also made a propitiatory visit to a mosque, where he was photographed wearing a skullcap and the facial expression of a naughty schoolboy. All very British, all very populist, and all very commonsensical small-“c” conservative. Call him Edmund Burka.

Johnson appears incapable of making an on-the-cuff remark, but appearances usually deceive in politics, and rhetoric is the accomplice of deception. The two Borises are value for money, and their mixed signals bring a high-wire excitement to his every public statement. He is clever, and hard to pin down, because one Boris can always deny what the other Boris has said. This time, he got caught out, because his two Borises were speaking in harmony, the Conservative politician picking the strategy, the media populist picking the vocabulary.

Or did Johnson only want to give the appearance of being caught out, to smoke out the opposition in his party before he makes a run at 10 Downing Street? Someone should ask Al what he thinks of BoJo’s hard-right turn. ♦

# Stopping the Beatings

Under Pompeo, the State Department is getting its swagger back. BY JENNA LIFHITS

Mike Pompeo took over a badly bruised State Department in late April. Under his predecessor, former ExxonMobil chief executive Rex Tillerson, morale had taken a serious dive. Tillerson dreamed of reorganizing America's diplomatic hub in the name of corporate efficiency and ended up publicly humiliated by his boss, who fired him via Twitter.

Just four months into his tenure, Pompeo is earning measured praise from State Department veterans and critics of the president alike for his efforts to empower the diplomatic corps. The secretary, while trying to return his department to regular order, has also maintained the confidence of a highly irregular commander in chief.

"Secretary Pompeo has the difficult challenge of reconciling the president's often mercurial forays into foreign policy with the need for a systematic implementation of foreign policy that maximizes U.S. influence," says Jeff Rathke, a former State Department official who now serves as president of the American Institute for Contemporary German Studies.

Pompeo must dodge-and-weave between tweets that could throw a wrench in diplomatic plans. He must be eloquent and forceful on television—which his boss is likely watching. He must also try to work with allies who often wholeheartedly disagree

with the paths being forged by Trump.

"He is still ultimately stuck playing catch-up with the president. This is fundamentally the problem," says Ilan Goldenberg, a senior fellow at the Center for a New American Security and a former Obama administration foreign policy official. "You can be a pretty good manager, you can hire good people, you can have some policy instincts



Pompeo greets State Department employees, May 1.

on some things, but the president is going to go off and tweet."

Pompeo has kept his cards close on any disagreements with Trump, unlike his predecessor, who publicly split with the president on issues like the Iran nuclear deal. Pompeo has also been a steadfast defender of Trump, even during Senate hearings when grilled on issues like the split between the president's wavering rhetoric on Russia and the administration's strong actions. Critics agree that the president's unpredictability generally ends up undercutting the efficacy of the State Department. Pompeo's "got Jim Jeffrey and Brett McGurk and Joel Rayburn. That's a good team on Syria and ISIS," says Goldenberg. "But all they

do is spend all their time trying to convince the president that he shouldn't withdraw from Iraq and Syria."

Tillerson faced similar presidential and policy challenges. But he also had to deal with plunging morale among the diplomatic corps spurred by his desire to "redesign" the department. Pompeo learned from these managerial mistakes. "When your first act in office is to stop the beating, morale has to go up," says Ronald Neumann, a three-time ambassador who is now president of the American Academy of Diplomacy.

As Tillerson aspired to an 8 percent personnel cut at State, he oversaw a hiring freeze that initially affected family members of Foreign Service Officers seeking work in embassies overseas. "It was a 15-month period of extraordinary destructiveness to the ranks of the Foreign Service," former ambassador to the United Arab Emirates Barbara Leaf told CBS. "There was a forced exodus of a lot of very fine public servants."

Pompeo lifted the foreign and civil service freeze during his first few weeks on the job and has worked to fill many of the open slots in the department. He has also appointed well-respected special envoys to North Korea and Syria—a reversal of Tillerson's efforts

to eliminate such positions. Vacancies remain. Of senior leadership and ambassadorial positions, more than 50 are pending in the Senate, according to figures provided by the State Department. More than three dozen positions requiring Senate approval remain vacant with no nominee, according to the Partnership for Public Service. "Unwinding the damage is very difficult," says Neumann. "They've begun to do it, but they have limited flexibility. It's time-consuming and awkward."

Pompeo has also returned the State Department to a more traditional decision-making process, rather than the micromanagement that Tillerson preferred. "Tillerson was famously

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CHIP SOMODEVILLA / GETTY

isolated from the broad mass of the State Department,” says Rathke. “Pompeo has taken steps to involve a broader cross-section of the department in the work of policy formulation and implementation.”

The secretary’s public synchronicity with the president gives the State Department an air of credibility it never had under Tillerson. “When Secretary Tillerson spoke, you were always fearful that what he said would be contradicted within days, if not hours, by the president and his Twitter account,” says Antony Blinken, who was deputy secretary of state for the last two years of the Obama administration. “There’s a greater feeling around the world that when Secretary Pompeo speaks, he is speaking for the president.” “The building feels more relevant and more empowered,” Blinken says. “When their boss has the president’s ear, that’s how they have the president’s ear.”

Pompeo has taken steps to show that he cares about the department and its mission. “He’s done town hall meetings when he’s stopped through on important visits overseas,” Leaf told CBS. “Not every secretary does that, actually. Many of them don’t. They don’t make that one gesture which kind of tells the troops, ‘Hey, you’re my troops, I’m looking out for you.’”

Pompeo fiercely pushed back against a proposal by the Office of Management and Budget to rescind billions of dollars in unspent foreign aid, the *Washington Post* reported in August. Tillerson had agreed to a proposed 30 percent budget cut (which was ultimately rejected angrily by Congress). Pompeo won’t accept the 10 percent cut OMB was suggesting; he sees the funds as essential to his mission.

In his first four months at Foggy Bottom, Pompeo has time and again said he wants to move the State Department to the fore of the Trump administration’s foreign policy. “We’re going to get our swagger back,” he said in May. “The State Department will be out in front in every corner of the world leading America’s diplomatic policy, achieving great outcomes on behalf of President Trump and America.” ♦

# Divided They Rule

The deeper issue in the Kavanaugh confirmation fight. BY MICHAEL W. SCHWARTZ



*Anti-Kavanaugh demonstrators in Los Angeles, August 26*

With confirmation hearings for Judge Brett Kavanaugh nearing, we should look more closely at why Justice Anthony Kennedy’s retirement and Judge Kavanaugh’s nomination have provoked such intense concern and even anger among liberals and progressives. The heated reaction is a matter of simple arithmetic: The one-vote switch from a centrist like Kennedy to a judicial conservative jeopardizes the prospects for liberal/progressive constitutional claims.

But why is that single vote so important? It is because of a huge—and relatively recent—change in the Court’s functioning: the justices’ sharply increased willingness to decide contested issues of constitutional law by a narrow 5-4 majority. This practice, nowadays considered normal and acceptable, was almost

entirely unknown from the Court’s earliest days until well into the 20th century. For most of its history the Court operated under an institutional norm that prized consensus and sought to achieve unanimity or near unanimity. The demise of this culture, and its replacement by one that tolerates knife-edge constitutional rulings, happened within living memory.

Until the early 1940s, the percentage of unanimous cases was in most years at least 80 percent, and splits of 5-4 or 4-3 were exceedingly rare. Since then, the overall percentage of 5-4 decisions has risen to 16.6 percent; before then it exceeded 5 percent only 10 times in 140 years. No one knows for sure why this change happened.

Yet this change alone wasn’t sufficient to raise the stakes on Supreme Court nominations as high as they have become, and they did not immediately become the donnybrooks we’re now familiar with. It wasn’t

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until the 1970s that the Court's culture normalized the combination of narrow decisions and a freewheeling willingness to make controversial constitutional rulings. A study by Fordham Law professor Jed Shugerman shows that this culture took root in the 1970s when, although the chief justice was the conservative Warren Burger, the intellectual leadership of the Court rested with the very liberal Justice William Brennan and his allies. As Shugerman puts it, "Perhaps more than any other bloc of five, the Burger Court liberals are responsible for the decline of consensus that led to the current problem."

Justice Brennan was unapologetic and even triumphalist about exploiting a narrow majority to achieve his ideological ends. Harvard Law professor Mark Tushnet recounts this anecdote in *A Court Divided*: "Each year Brennan asked his law clerks to name the most important rule in constitutional law. Brennan gave them the answer after they stumbled around, naming one great case after another. 'This,' he said, holding up one hand with his fingers spread, 'is the most important rule in constitutional law.' Brennan knew that it took five votes to do anything, and, he may have thought, with five votes you can do anything."

That culture having been normalized in the 1970s by what Shugerman calls "the bloc of five liberals," conservatives promptly made it their own. After being de-Brennanized, the Court, now led by conservative Chief Justice William Rehnquist, declared unconstitutional no fewer than 15 federal statutes by 5-4 votes.

The new culture has survived even a pointed critique by Chief Justice John Roberts, who, upon taking office, announced publicly that he hoped to restore the norm of consensus, warning that if the Court did not "refocus on functioning as an institution, . . . it's going to lose its credibility." But even a chief justice so committed—and holding office when Gallup polling shows a near historic low in confidence in the Supreme Court—has been unable to uproot the

culture of rendering narrow decisions on highly contested constitutional issues. And it is because of that culture that the Kavanaugh confirmation hearings are likely to be so fiery.

Is there a way to undo the one-vote norm? It seems most unlikely that the Court will itself return to consensus. To take just a few recent examples, 5-4 decisions blocked a full recount in the 2000 presidential election, legitimated the Affordable Care Act, struck down campaign spending limitations, sustained the "essential holding" of *Roe v. Wade*, and declared gay marriage a constitutional right. Justice Antonin Scalia assuredly spoke for more than just himself when, at a law school conference, he responded with a sarcastic "Good luck" to a question about Roberts's wish for consensus decision-making.

Another theoretical possibility would involve Congress's imposing by statute a requirement that a "supermajority" of at least six justices would be needed to declare a law unconstitutional. The supermajority idea has deep roots in American history: Over 60 such proposals—sometimes requiring six votes, sometimes seven, sometimes unanimity—have been made, including by senatorial progressives in the 1920s.

But the salient fact is that none of these proposals was enacted, and apparently only one even received a congressional vote. Congress has demonstrated extreme skittishness about steps that might appear to impinge on the independence of the federal judiciary. Beyond this, there is good reason to doubt that Judge Kavanaugh's opponents would be willing to live with a supermajority rule, since the wheel turns, and Supreme Court appointments will one day be in their hands again. Further, each side of the divide would harbor suspicions that after accepting a supermajority for "its" Court, the standard would be repealed by the other side once it took power.

The confirmation process itself could be used to challenge the culture of sharply divided constitutional rulings. While Judge Kavanaugh should

not be asked—or, at least, should not answer—questions about how he would rule on particular issues, there is no reason he can't be asked whether he thinks the Court should at least try to function more often by consensus or if he is satisfied that a bare majority is all that should be needed to constitutionally invalidate a law. But neither side is likely to introduce that subject into the confirmation process, lest it come back to bite them in the future.

Lost in the political divide is the important policy question of whether it is truly appropriate for sharply divided decisions to determine our constitutional law—which, it bears emphasizing, means imposing permanent nationwide rules and precluding public decision-making by the ordinary legislative process. Some students of the problem seem unperturbed by that now-routine practice. Harvard Law's Cass Sunstein concludes his study of the issue with this confident assertion: "The post-1941 norm cannot be shown to compromise the Court's role in American government, or to disserve the constitutional order."

But one may well ask why five justices should have the power to lay down a body of law that is beyond democratic reach if they cannot persuade even one of their dissenting fellow justices that the Constitution compels that result. One may marvel that the transformation of the Court from an institution governed by a norm of consensus to one ruled by momentary majorities happened without public debate or awareness. One may even speculate that the Court's evolution into a nonconsensual institution is one of the well-springs of the sharp cultural divide in the country itself, and that an institution whose function is to settle great questions on a broadly acceptable basis has somehow, under our very eyes, morphed into one that does exactly the reverse.

If the heat that attends the Kavanaugh nomination provokes careful thought about these questions, it will have served the country well. ♦

# Good Feelings in Akron

And the rest of the reasons LeBron James didn't found a charter school. **BY ANDY SMARICK**



LeBron James speaks at the opening of the I Promise School in Akron, July 30.

**B**asketball's best player has departed his rust-belt home state for the second time, decamping, once again, for sunnier, glitzier environs. But LeBron James, newly minted Los Angeles Laker, learned an invaluable lesson from his first breakup with the Cleveland Cavaliers. Back in 2010, he left his devoted fans empty-handed and wounded—the Cavs' owner called it a "cowardly betrayal." He exited without a championship and dramatically revealed his plan to join the Miami Heat in a made-for-TV event, *The Decision*. To Cleveland's beleaguered faithful and a rapt sports world he announced, "I'm going to take my talents to South

Beach," then proceeded to win two championships there and become one of the world's most famous athletes. Cavs fans clapped back in public displays of catharsis, gathering in public squares to tear their garments and burn his jersey.

The optics of this episode were especially unfortunate because they belied James's generosity. He had raised funds and donated personally to charitable causes nationally (including a portion of the proceeds from *The Decision* to Boys & Girls Clubs of America). And he had contributed meaningfully to a host of local initiatives. But starting with the touching 2014 announcement of his return to Cleveland—"My relationship with Northeast Ohio is bigger than basketball"—an older, wiser, and

more politically astute James has publicly worn that loyalty on his sleeve. His local philanthropy has grown, and his outreach to community leaders through advisory boards, a student-ambassador initiative, and public meetings has been commendable.

Beyond all of this, James is leaving two particularly valuable parting gifts. The 2016 NBA title he helped win will be Cleveland's forever. And, thanks to his substantial philanthropic investment, his hometown of Akron (about 40 miles outside Cleveland) is getting a brand-new public elementary school. But whereas James's 2010 departure will be remembered for its short-term ham-handedness and long-term payoff with the title, this new school might, unfortunately, be remembered for its short-term savvy and long-term failure to meet expectations.

First and foremost, the creation of the I Promise School should be celebrated. An NBA star has every right to hoard his hard-earned money. But, via his family foundation and in partnership with other community-based organizations, LeBron James is launching a school that will serve some of Akron's most disadvantaged kids. It will have a curriculum focused on science, technology, engineering, and math. And since many of its young scholars will be grappling with the stresses associated with growing up in poverty, the school will also have a range of "wrap-around" services (a food pantry and health care) and prioritize "social-emotional learning," a catchall term for important but not strictly academic skills like resilience and decisionmaking.

I Promise will have a longer school year and longer days (providing more learning time for academically struggling boys and girls). The school's teachers will have access to a personal trainer and weekly professional development. Families will have access to a GED program and job training. Each student will be given a Chromebook and a bicycle. And, even flashier than the school's wall of 114 game-worn LeBron shoes, all graduates of I Promise can eventually have their tuition

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JASON MILLER / GETTY

paid at the University of Akron as part of a partnership between the university, James's foundation, and JPMorgan Chase.

At the school's grand opening, James underscored how and why he was giving back to his community. "I know the streets they walk. I know the trials and tribulations that they go through. I know the ups, the downs. I know everything that they dream about. I know all the nightmares that they have because I've been there."

This is a feel-good story played to the max. But it is not too cynical to wonder whether the feel-good factor was prioritized in the creation of I Promise. Plenty of schools have provided extended learning time and social services and nevertheless generated disappointing student-achievement results. But this sort of encouragement is important to disadvantaged communities, both as actual support and as a symbol of meaningful investment in families and kids. James, understandably, wants to leave his hometown on the best of terms. Indeed, many philanthropists give to low-risk, popular endeavors precisely because they want to be embraced by their communities and avoid unnecessary blowback.

But philanthropic activities shouldn't aim to engender goodwill if it comes at the expense of the long-term success of the enterprise. The I Promise effort may—and I emphasize only *may*—have crossed that line. The issue is that the I Promise School is not a charter school.

In recent years, many social entrepreneurs and private donors (including athletes and entertainers) interested in urban education have worked through cities' charter-school movements instead of traditional school districts. They reasoned—rightly—that the freedoms afforded by chartering facilitate success. Under a strong charter law, a nonprofit-operated public school can enjoy flexibility with academic calendars, schedules, curricula, hiring, firing, purchasing, and more. Schools controlled by a district typically face an array of constraining rules, contracts, and practices that are

a consequence of being embedded in a government monopoly.

I Promise is part of the Akron Public Schools district. This has produced glowing stories and sidestepped the political battles that can dog the early days of new charter schools. So far, the relationship appears totally collaborative. The school board, the district's administration, James's foundation, and other partners seem to be one happy team. But if history is any guide, this era of good feelings will eventually come to an end and a promising new school could be the one to suffer.

The district is ultimately responsible for, and therefore in control of, the I Promise School. Problems at the school could cause the district to intervene in a way the school's leadership resents. A change of the district superintendent or in the school-board membership could alter the tenor of the partnership. A change in the local teachers' union leadership could lead to a renegotiation of its agreement with the school. A budget crisis could reallocate scarce resources to other district schools. Public protests could cause the district to change the rules for who can attend the school. A new district personnel policy could change the school's hiring process.

It's impossible to forecast which of these events—or one of countless others—will materialize. But there are numerous caution flags in the school's plans, from provisions in the union's memorandum of understanding on the school (what if the union later decides it wants significantly higher teacher salaries at the school or wants to revert to a more standard schedule?) to where the school will be permanently housed, its ultimate size, and the board's approval process for the receipt of private dollars. The reason so many prospective school founders choose the charter route is that they want to avoid exactly these types of potential problems and have a guarantee of operational freedom.

So why choose to make this school part of the district? We can't know the calculus of all of the various actors in this case. But a number of factors

probably came into play. James and his philanthropic team doubtless have some personal affinity for the city's traditional school system. They also likely preferred averting accusations of destabilizing the district, jeopardizing teachers' jobs, or "privatizing" public education. Perhaps they embraced the view that a public school is only truly public if it is completely operated by government officials and governed by a democratically elected board.

But broader political issues might have also played a role. In recent years, charters have come under increasing attack, and some polls have shown softening public support. This might have been exacerbated, though it is hard to tell, by charters' association with the politically polarizing Betsy DeVos and Donald Trump (who, not incidentally, grotesquely insulted James's intelligence recently on Twitter). Though this is a national phenomenon, Ohio's charter-school sector has been particularly rife with controversy. A number of policy flaws and low-performing operators led to poor outcomes and various scandals in Ohio's first charters. So serious was the fallout that members of Ohio's congressional delegation questioned the federal government's awarding of major grants for charter schools in the state. The state passed legislation to address such issues in 2015, but the political consequences linger.

It was sensible politically for James to establish the I Promise School inside the Akron district instead of as a charter. But experience suggests that this could prove penny wise and pound foolish. James earned those pennies, and he's admirably aiming to do a public service, so we should respect his decision.

But we should all keep in mind that low-income kids only get one shot at early education. Just as James has moved city to city after making shrewd calculations about where he had the best chance to win a championship, we should be similarly tough-minded about the conditions likeliest to enable a school to help disadvantaged boys and girls succeed. ♦

# Taking the Cake

Colorado turns up the heat on America's most controversial baker. BY MARK HEMINGWAY



Jack Phillips decorates a birthday cake at Masterpiece Cakeshop, January 3, 2012.

Lakewood, Colo.

Jack Phillips is gentle and soft-spoken, but America's most controversial cake baker is not exactly hiding his beliefs. Phillips has spent the last six years in and out of courtrooms, defending his right to run his bakery in accordance with his religion, and the experience seems to have affirmed his faith. Various Christian symbols and decor are scattered throughout Masterpiece Cakeshop, and on a table near the door a stack of cards for customers offers "The Good News of Jesus Christ."

Phillips's ordeal began in 2012 when he was sanctioned by the Colorado Civil Rights Commission for refusing to bake a custom cake for a gay couple's commitment ceremony. At the time, gay marriage was not legal and marriage was specifically defined in Colorado's state constitution as

being between one man and one woman. After administrative, state, and federal legal battles that led to a downsizing of his business from 10 employees to 4, in early June this year the Supreme Court ruled 7-2 in Phillips's favor in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.

The High Court ruled that the law requires the state to act neutrally toward religious beliefs and that the Colorado Civil Rights Commission had acted with animus toward Phillips's faith. But that wasn't the end of the story. In late June, the Colorado Civil Rights Commission arrived at a probable cause determination against Phillips, claiming that Colorado law required him to bake a cake celebrating a local lawyer's gender transition (he had refused the request last year.)

The new charges could result in another multi-year legal battle for Phillips, something he's eager to avoid. "I'm hopeful that they can reach some sort of agreement long

before that. I don't want to give up six years doing this again," he tells THE WEEKLY STANDARD. "I'd like to see this resolved quickly, but let's see what happens."

Fortunately for Phillips, he's still being represented by Alliance Defending Freedom, the Christian legal group that won his Supreme Court case. ADF has won all nine of the religious freedom cases it has brought before the Supreme Court in the last seven years. Phillips's lawyers are so confident that this latest move by the Colorado Civil Rights Commission is egregious that on August 14, ADF filed a federal lawsuit against the state of Colorado seeking damages for continuing to violate Phillips's civil rights.

"We recognize that there are some procedural or jurisdictional hurdles that we will have to climb over in this case. It's something we're expecting," ADF attorney Jake Warner tells THE WEEKLY STANDARD. "There's good reason to think that we will [get around the hurdles] in this case, because Colorado is targeting Jack again. We think that is bad faith."

In the *Masterpiece* case, it wasn't difficult to conclude that the Colorado Civil Rights Commission acted with animus; commissioner Diann Rice compared Phillips's motivations to those of people who justified slavery and the Holocaust, for example. Phillips, whose father landed on Omaha Beach, was wounded by a mortar in the Battle of the Bulge, and was one of the soldiers that liberated Buchenwald, took this personally. "In the [veterans'] cemetery over here in Fort Logan where he's buried, there are rows and rows of headstones—that's what he fought for," Phillips told THE WEEKLY STANDARD last year. "And for them to say, '[His son's freedom] doesn't count anymore,' he would roll over in his grave."

As well, the facts behind the latest charges seem more specious than the earlier case. According to the complaint, Autumn Scardina called Phillips's bakery on June 26, 2017, and asked for a cake that would be blue on the outside and pink on the inside to

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celebrate Scardina's gender transition. The order for the cake was declined.

But June 26, 2017, is not a random date. It's the same day the Supreme Court announced it was taking up Phillips's case. It seems highly unlikely that Scardina, a lawyer, was unaware of what was going on with Phillips's bakery. (Scardina claims to have been "stunned" to discover that Phillips would not bake a gender transition cake.) The lawsuit filed by ADF suggests that Scardina might also have been behind several requests that Phillips bake cakes with Satanic imagery, including an email request sent on June 4, 2018, the day the Supreme Court announced its verdict in favor of Phillips:

I'm thinking a three-tiered white cake. Cheese-cake frosting. And the topper should be a large figure of Satan, licking a 9" black Dildo. I would like the dildo to be an actual working model, that can be turned on before we unveil the cake. I can provide it for you if you don't have the means to procure one yourself.

When the Supreme Court ruled that the commission had acted with animus toward Phillips, it punted on the question of whether a custom cake counted as speech covered by the First Amendment. In a much-discussed footnote to her concurrence, however, Justice Elena Kagan disputed the notion that a custom wedding cake counts as speech. "The cake requested was not a special 'cake celebrating same-sex marriage.' It was simply a wedding cake—one that (like other standard wedding cakes) is suitable for use at same-sex and opposite-sex weddings alike," she wrote. In

the latest complaint against Phillips, it can't be denied that the requested gender transition cake, with its colors and symbolism, was designed to communicate a specific message.

"This decision [by the commission] even contradicts what Colorado said before the U.S. Supreme Court, and there's about three or four things

dealing with the Colorado Civil Rights Commission. He recently attended a mandatory mediation session related to his refusal to bake the gender transition cake. He's also still fighting in the court of public opinion. Colorado governor John Hickenlooper, named in Phillips's lawsuit, recently gave a handful of interviews condemning Phillips. "If you're making someone a cake or you're making a bicycle, it's something that you do every day for a broad cross-section of people and it's open to the public, I don't think there should be bias involved in who you choose to serve and who you don't," Hickenlooper told Colorado Public Radio.

"People will come in and they'll say ... 'You know, you don't serve gays'—and that's absolutely not true," says Phillips. "I serve everybody." In fact, when protesters showed up at his shop earlier this year, there's video of him walking out with a tray full of cookies and offering them to the small throng of people waving pride flags.

Phillips didn't set out to be a First Amendment test case; he just wants to get back to baking. "We're almost 25 years old; can we build up a really good business right here? We've won like three or four awards

for it," he says. "Right now, it's not practical to get back into it because I need to hire and train like five or six more people and I can't do that within a season."

Elsewhere in the bakery, a Bible lies open to Isaiah 50. When you consider what he's been through, it's not hard to understand why Phillips might be fond of verses six and seven: "I did not hide my face from shame and spitting / For the Lord God will help me; Therefore I will not be disgraced." ♦



Above, Phillips outside the U.S. Supreme Court, December 5, 2017; below, protesters outside his shop, August 4, 2012



that Colorado said in [its] briefing that cake artists could do. For example, cake artists could decline to create cakes with 'pro gay designs or inscriptions.' They said cake artists can decline to create cakes celebrating same sex marriages that 'feature a symbol of Gay Pride.' They said cake artists can decline to create cakes with messages that they consider, quote, offensive, and Jack relied on those statements," says Warner.

In the meantime, Phillips continues

# Too Many Statesmen

*No amount of vetting can predict how Brett Kavanaugh, or any other nominee, will perform as a Supreme Court justice*



*No one here but us philosopher-kings: the Supreme Court, January 10, 1977 (from left)—John Paul Stevens, Lewis Powell, Harry Blackmun, William Rehnquist, Thurgood Marshall, William Brennan, Warren Burger, Potter Stewart, and Byron White*

BY ROBERT F. NAGEL

Unless Judge Brett Kavanaugh's confirmation hearing is derailed by some unexpected allegation about his personal life, the proceedings will be dominated by questions about his writings and judicial philosophy. His opponents will want to highlight material that suggests that once on the Supreme Court, Kavanaugh will vote to eliminate or severely limit the right to abortion. They can also be expected to try to show that he will protect President Donald Trump by repudiating the principles established by the famous 1974 case that required President Richard Nixon to turn over the Watergate tapes to a grand jury (*United States v. Nixon*).

Kavanaugh's supporters will use the same kinds of materials to draw reassuring inferences about his likely positions on constitutional issues, especially his willingness to protect freedom of religion and to rein in unaccountable executive

agencies. To both fearful opponents and hopeful supporters, it seems altogether natural—indeed, unavoidable—to use information about a nominee's convictions to predict positions he or she will take as a sitting justice.

There is no denying that such predictions can, at least to some degree, be sophisticated and useful. Conservatives in particular have spent decades refining their methods for evaluating potential nominees' political and legal philosophies, and these efforts have had some of the intended effect on the Court's decision-making.

This single-minded emphasis on each nominee's beliefs, positions, and philosophy, however, fails to take account of strong and disturbing historical evidence about institutional considerations that powerfully influence voting patterns once an individual has been elevated to the Court. In the modern era, this evidence began to accumulate in the early 1970s with President Nixon's frontal assault on the activism of the Warren Court. Republican appointees soon constituted a majority of the justices, and that majority has been maintained ever since except for the short period between the death of Antonin Scalia and the confirmation of Neil Gorsuch.

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Yet in the face of dire predictions from liberal politicians and academics, over the past four and a half decades the conservative Court has not reversed any of the hallmark decisions of the Warren era, despite the fact that when announced, each of these revolutionary decisions was deeply controversial politically and legally. To the contrary, the Court began a radical expansion of the desegregation principle laid out in 1954 in *Brown v. Board of Education*. It gradually built on the one-person/one-vote rule of *Baker v. Carr* (1962), as well as on the dramatic restructuring of American defamation law begun in *New York Times v. Sullivan* (1964). In 2000, Chief Justice William Rehnquist himself authored an opinion reaffirming the profoundly questionable constitutional requirement that criminal suspects held in custody be read a list of warnings before being interrogated, a requirement first imposed by the Warren Court in *Miranda v. Arizona* (1966).

Moreover, while numerically dominated by Republican appointees under three successive Republican-appointed chief justices, the post-Warren Court has established its own astonishing record of activist decisions. The three most prominent examples are the creation in 1973 of a constitutional right to abortion, the gradual establishment of an extreme prohibition against the use of traditional gender distinctions, and the recent announcement of a right to same-sex marriage. These decisions, however, are only the tip of the iceberg. Liberals are still incensed, for example, by the novel and dubious legal explanations used to justify the Court's intervention in the Florida recount during the 2000 presidential election.

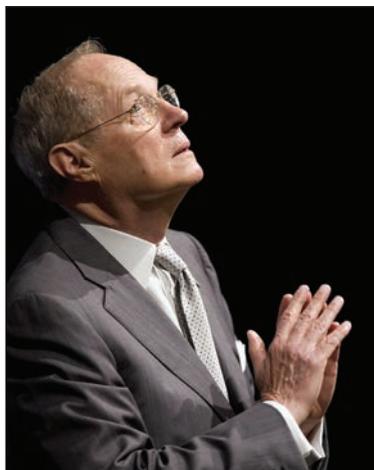
The Court's full record during recent decades contains much to infuriate both the left and the right. There is the decision to treat campaign contributions and expenditures as protected speech as well as the establishment of gun ownership as a fundamental right. There also is the long line of decisions preventing regulation of harmful forms of expression like public profanity, commercial depictions of animal cruelty, and violent video games sold to minors. There is as well the Court's ambitious campaign to protect us against the establishment of an official church by proscribing a wide range of public displays of religiosity, including, for example, student-led prayers at high school football games. And the list, as they say, goes on—and on.

Whatever observers think of particular decisions, it is abundantly clear that the one thing we have not had for the last four and a half decades is a restrained Court. Many plausible explanations have been offered. They include the moral and intellectual consequences of class identification, the biases inculcated by elite legal education, and the insidious influence of the national media and other opinion makers. But the most widely offered explanation has been that, for various reasons, nominees have not been

adequately vetted. Accordingly, the vetting process has come to be characterized by ever-intensifying efforts to subject any indicators of potential nominees' political and philosophical beliefs to microscopic scrutiny.

Oddly, through the years a different and unsettling explanation for the Court's surprising record has been openly offered by the justices themselves—and in their judicial opinions no less. This explanation is captured by an unfashionably patriarchal word: statesmanship. In short, the justices openly declare their aspiration to fill the high role of statesman, a status surely more inspiring than the pedestrian role of a mere lawyer working within established legal conventions.

**The justices have made extravagant claims to a higher knowledge that goes well past legal training—into a vision of statesmanship that borders on religious prophecy.**



*Anthony Kennedy speaking in San Francisco, August 13, 2007*

The place to go to see judicial statesmanship in full flower is the 1992 opinion in *Planned Parenthood v. Casey*, authored by Justices Anthony Kennedy, Sandra Day O'Connor, and David Souter and joined by two other appointees of Republican presidents (Harry Blackmun and John Paul Stevens). *Casey*, of course, is the decision in which, rather than overruling

*Roe v. Wade* as many had hoped and others feared, the Court reaffirmed the constitutional right to abortion.

The *Casey* opinion does contain a short and (it must be said) perfunctory explanation for why *Roe* had been legally justified in finding a right to abortion in the Constitution. Even this explanation acknowledges the “weight of the arguments . . . that *Roe* should be overruled.” With this brief nod to the lawyer's task, the justices move on to a long and impassioned discussion of the high-minded matters of state that require the Court to adhere to its prior ruling.

The essence of this discussion is the claim that overruling *Roe* would cause the public to believe that the Court was surrendering “to political pressure.” This, in turn, would

DAVID PAUL MORRIS / GETTY

damage “the country’s understanding of itself.” In fact, it would alter the “character of a Nation of people who aspire to live according to the rule of law.” And, finally, the justices declare without embarrassment, “If the Court’s legitimacy should be undermined, then, so would the country be in its very ability to see itself through its constitutional ideals.”

Needless to say, such pronouncements take the justices into rather elevated terrain, far removed from the sorts of considerations that constitute the workaday world of the legally trained. Every element of the justices’ explanation depends on highly controversial and speculative empirical assumptions that go far beyond anything in the record before the Court. How could the justices claim to know, for example, that the American people would see the Court as political if they believed it had yielded to public dissatisfaction with *Roe* but would not do so if they believed it had affirmed *Roe* because of the justices’ deep resentment of that dissatisfaction?

More fundamentally, other than the rather human weakness for self-importance, what supports the claim that the American people’s sense of their constitutional ideals depends so utterly on their view of the Supreme Court, rather than, say, their own rich political history? What the Court’s impassioned rhetoric makes clear is that the role of

statesman requires the justices to subordinate normal legal reasoning and standards.

*Casey* is rare in coming so close to a blunt acknowledgement that for someone responsible for high matters of state, lawfulness can require the abandonment of law. But the same paradox can be seen in a more subdued form in other cases in which conservative justices declined to overrule constitutionally dubious Warren Court landmarks. For instance, in explaining the Court’s determination to affirm *Miranda v. Arizona*, Chief Justice Rehnquist wrote that whether right or wrong legally, the judicially imposed warnings had become “embedded” in police practices and were now a part “of the national culture.” The squinty-eyed legalist would respond, “If *Miranda* was lawless, why should a judge care if it is widely accepted?”

The ascendancy of statesmanship over legality can also be seen in the many surprisingly audacious constitutional initiatives undertaken by the post-Warren Court. In an early example, the respected, careful, and conservative jurist John Marshall Harlan abandoned any serious effort to understand the original meaning of the free speech clause. In a landmark decision establishing the right to use profanity in public, *Cohen v. California* (1971), Harlan’s reasoning rested on speculations about how little social benefit would ensue

## Thank You, American Workers

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

For many Americans, Labor Day means a day off work, barbeques with family and friends, college football, and—sadly—the unofficial end of summer. While each of those are a part of Labor Day, it’s also worth taking a moment to remember why the holiday was established to begin with. It is meant to be a celebration of the contributions that American workers have made to the strength, prosperity, and well-being of our nation. Those contributions are worth saluting today and *every* day throughout the year—and business leaders are proud to do exactly that in a number of ways.

America’s job creators and business leaders are committed to helping their employees succeed at work, earn good wages, provide for their families, and have the resources they need to lead healthy and secure lives.

To that end, employers paid \$8.4 trillion in wages and salaries last year, and that’s only the start. They spent an additional \$1.9 trillion on employee benefits.

One of the most popular benefits in the private sector is employer-sponsored health care, which approximately 178 million Americans received in 2016. Many employers find that providing health care is not only the right thing to do, but it is an important way to attract the best talent and foster a healthy, productive workforce. In 2016, total health benefit costs averaged \$12,229 per employee.

Businesses also help workers save and plan for the future. Private employers provided more than \$255 billion worth of retirement benefits in 2017. Millions of businesses offer defined contribution plans, which are tremendously popular with employees. Nearly 90% of eligible employees participate in this type of plan. Many other options are made available to workers, including defined benefit and profit-sharing plans.

We don’t share these figures to pat ourselves on the back but, rather, to illustrate that America’s workers and their well-being and success are priorities for businesses. As employers compete for the best workers, more and more are making it a core part of their business plans to offer exceptional benefits—from workplace amenities to generous family leave policies to paid vacation and more.

Business owners who can afford to offer outstanding benefits are often eager to do so. This is one of the many reasons it’s good for everyone when businesses are able to compete, grow, and succeed. So as we celebrate American workers on Labor Day, the U.S. Chamber of Commerce remains committed to honoring them *every* day by advancing a robust free enterprise system that lifts the economy for all.



Learn more at  
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from efforts to prevent “verbal cacophony” along with sweeping claims about the threat that such efforts would pose to “the premise of individual dignity and choice upon which our political system rests.”

Examples of this kind are legion. It should be sufficient here to mention what is probably the most extravagant of the justices’ claims to higher knowledge. The Court has repeatedly claimed for itself the capacity to determine which particular freedoms are (or are not) essential for individuals, as Kennedy wrote in *Casey*, “to define [their] own concept of existence, of meaning, of the universe, and of the mystery of human life.” These are brave words, indeed; their implementation would require knowledge that goes well past legal training, past law, past psychology and philosophy—into a vision of statesmanship that borders on religious prophecy.

To give some indication of how far conservative jurists have gone in accepting the idea that the role of the Supreme Court justice transcends conventional standards of legality is not necessarily to condemn all deviations from strict standards of legalism. Serious thinkers on the right—from the legal scholar Richard Epstein to the late Justice Antonin Scalia—have endorsed the Court’s consideration of the highest matters of state in at least certain circumstances.

Indeed, it is arguable that the most revered decision in American constitutional law, *Marbury v. Madison*, decided in 1803, rested on Chief Justice John Marshall’s statesmanlike decision to give a tortured interpretation to the statute on which his court’s jurisdiction rested. He could then establish the authority of the Court to enforce the Constitution while avoiding a confrontation with the Jefferson administration. It is commonly speculated that in our own time, Chief Justice John Roberts gave a similarly tortured interpretation to the Affordable Care Act in order to keep the Court from injecting itself into one of the major policy disputes of our time.

Statesmanlike claims and speculations by the justices are so common and so deeply ingrained in American jurisprudence that they are assumed by many to be a normal and desirable aspect of wise judicial decision-making. And in fact a narrow legalist could sometimes do great harm to individuals and to the nation itself.

Perhaps John Marshall was right to think that the fragile new nation would not survive a major confrontation between the executive and judicial branches. Perhaps John Roberts was right to believe that our modern political system would be healthier if the Court avoided involvement in the health-care debate. It may even be, as William Rehnquist suggested in *All the Laws but One* (1998) that Abraham Lincoln was correct to suspend certain constitutional protections

in order to ensure “the very survival of the Union.”

But the possibility of wise statesmanship should not blind us to the risks. The chief danger arises when, unlike Lincoln, we confuse statesmanship with legality. Legal decision-making is a complex yet essentially humble task. It is, or should be, confined by conventional understandings about strict attention to legal authorities and a contested, developed factual record. Its object is to fairly resolve specific disputes by enforcing the law.

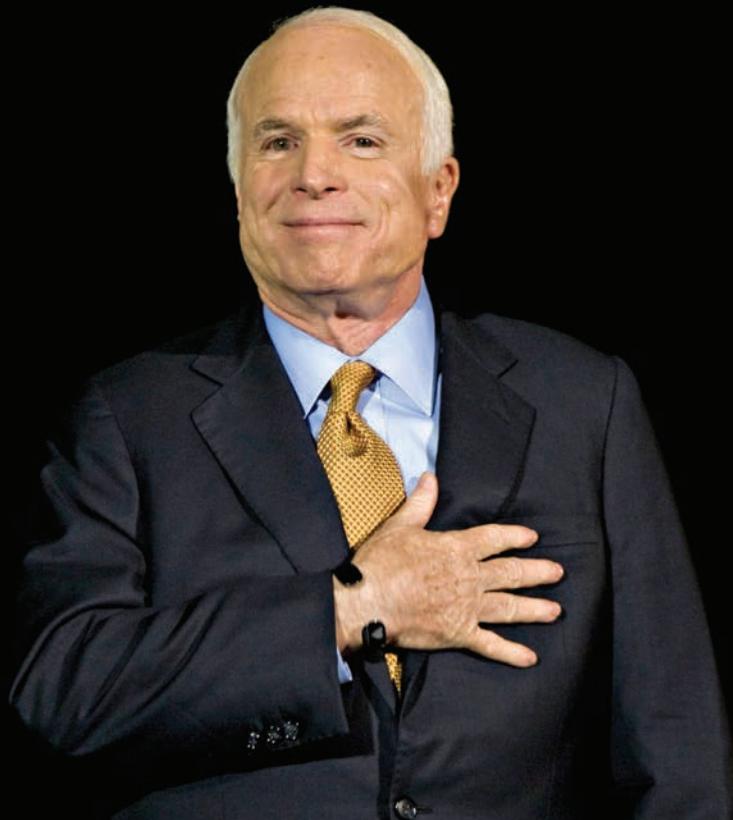
In American constitutional law, this form of legal decision-making has been so thoroughly merged with aspirations to statesmanship that it is difficult to notice the essential tension between the two. Unlike Lincoln, we have convinced ourselves that transcending the law for some higher purpose—such as saving the republic—is somehow indistinguishable from enforcing the law.

Consider the controversy surrounding the behavior of James Comey, Peter Strzok, Bruce Ohr, and other assorted high officials of the FBI and Justice Department during and after the last presidential election. It is easy to imagine that their apparent efforts to block and then undermine President Trump’s presidency might have been motivated by a sincere desire to save the republic from a man they regarded as uniquely dangerous to our institutions. If so, and if the fear turns out to have been well-founded, using the Department of Justice to affect the outcome of a presidential election could be described as having been bold, well-intentioned, even heroic. But it is not the rule of law.

Those who are rightly concerned about the unhealthy role that the Supreme Court has come to play in American political life—those who are worried about our vanishing understanding of the rule of law—should, of course, try to discover if Brett Kavanaugh appreciates the difference between a judge and a statesman, and why that difference matters. But they should recognize that such inquiries are likely to be ineffectual. When nominee John Roberts famously compared the role of a judge to an umpire calling balls and strikes, he was probably honestly stating what for him is a truism. The source of the problem is not in limited or dishonest disclosure. The source of the problem is fundamentally institutional and even cultural.

The Supreme Court is to Americans the apex and symbol of the rule of law. The Court itself, however, has long insisted on merging the idea of the rule of law with ambitious moral and political aspirations, even including preserving the nation itself. This institutional self-definition is entirely understandable. Who, given high responsibility, would not want to exercise it with great wisdom and benevolence? The perspective of a Supreme Court justice is not unique in encouraging audacious high-mindedness. But, paradoxically, it is unique in entrenching the inability to distinguish statesmanship from legality. ♦

# 'Never Surrender'



**John McCain gestures to supporters after conceding the presidential election to Barack Obama in Phoenix, November 4, 2008.**

## *The lessons of his final presidential battle*

**BY STEPHEN F. HAYES**

**S**tanding in front of the U.S. Navy flag, before an audience of uniformed military cadets in Jackson Hall at the Virginia Military Institute in April 2007, John McCain defended the increasingly unpopular war in Iraq. Many Americans wanted out. McCain told them America had to stay—and probably for a while.

“We have a long way to go,” he said. Wearing a blue suit, a light blue shirt, and a gold tie, McCain made a detailed case for the strategic importance of victory in Iraq, dwelling on the responsibility Americans have toward the Iraqis who suffered under Saddam Hussein and were struggling still under an uncertain Iraqi government. If the United States had such obligations, McCain believed he did, too.

“Having been a critic of the way this war was fought and a proponent of the very strategy now being followed,

it is my obligation to encourage Americans to give it a chance to succeed,” he said, pumping his left arm for emphasis as he spoke of his “obligation” to make the case. “To do otherwise would be contrary to the interests of my country and dishonorable.”

McCain spoke often of such ideals—honor and commitment, service and sacrifice, duty and responsibility. Many politicians do, of course. But there is little question that, unlike many other politicians, McCain believed in these ideals. He was a patriot not because voters like patriots or because aggressive flag-waving can be an effective political tool. McCain believed in these things and his country, because it’s what he’d seen from his role models, it’s what he’d learned at the Naval Academy, and it’s what he’d lived as a sailor.

With his death, many will recall McCain’s time as a POW or his crusade for campaign-finance reform as chapters in his life that shape his legacy and help us understand him. Others will remember his freewheeling 2000 presidential campaign and the “Straight Talk Express” that came

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*Stephen F. Hayes is editor in chief of THE WEEKLY STANDARD.*

ANDREW HARRER / BLOOMBERG / GETTY

to define it. Still others will note his decisive vote killing partial repeal of Obamacare and his frequent clashes with members of his own party.

I'll remember his 2008 presidential campaign. No doubt that's partly because I spent a lot of time with him, and it's when I came to know him best. But it's also because that campaign, with its unanticipated struggles and unlikely triumphs, provided a unique window into McCain—his flaws and his strengths.

"For my part, I would rather lose a campaign than a war," McCain said that day at VMI. It was a line he would use frequently in his speeches over the course of 2007 and 2008, and it often seemed that his second presidential run was designed to test the claim.

Throughout much of the spring of 2007, McCain was considered a leading candidate for the GOP nomination in 2008. He wasn't the early frontrunner—Rudy Giuliani led every major poll from late January through June that year. But McCain was usually in the top three. A CNN poll at the time McCain gave his VMI speech had him trailing Giuliani 27 percent to 24 percent, with Mitt Romney and Fred Thompson far behind.

Hints of the troubles to come were evident to many of those close to McCain at the time. Despite high name ID, his fundraising was weak. The day before he visited VMI, his campaign laid off several staffers in anticipation of poor money numbers to come. He clashed regularly, and angrily, with the media that he used to call his "base." He was a leading advocate for comprehensive immigration reform, despite the unpopularity of his position with his party's actual base.

His campaign was riven with internal strife. Most of his top advisers opposed the candidate's determination to run on the Iraq war. Republicans had lost badly in the 2006 midterms due largely to voter dissatisfaction with the frustrating war and stories of corruption in the GOP. One top adviser wanted McCain to run as the Republicans' anti-corruption candidate, keying on his campaign-finance crusade. Another pushed McCain to make himself the candidate of energy, emphasizing renewables and the country's growing dependence on imports to make energy a national security issue.

McCain didn't buy it. He would run on Iraq and American leadership. His fortunes flagged. By early summer, with his poll numbers dropping and his money running out, the campaign bottomed out. The lede of a *New York Times* story captured the grim reality. "The presidential campaign of Senator John McCain, the Arizona Republican who once seemed poised to be his party's nominee, plunged into political and financial uncertainty today as a fundraising collapse forced it to dismiss dozens of workers and aides said there were signs of his campaign hemorrhaging support among Republicans across the country."

Members of Congress who'd endorsed McCain suddenly refused to take his calls. A conference call with outside policy advisers, meant to buck them up and reassure them that the campaign would continue, had only one participant. One Sunday show broadcast a graphic of GOP candidates and forgot to include McCain. Charlie Cook, the highly respected campaign analyst, pointed to the Iraq war as the cause. "Republicans' intensity of support has waned as the war has become an albatross around their party's neck," he wrote. "For all intents and purposes, McCain's campaign is over. The physicians have pulled up the sheet; the executors of the estate are taking over. Paying bills and winding down—not strategizing, organizing, and getting a message out—will be the order of the day."

By late summer, McCain was regularly polling fourth in the GOP field. A Fox News poll from mid-August 2007 had him in single digits, barely ahead of the fringe candidacy of Ron Paul.

McCain didn't drop out. And he redoubled his emphasis on Iraq. In September, he launched his "No Surrender Tour," the double meaning clear to everyone. His speeches pointed out, correctly, that he'd been advocating for years the kinds of policy changes known together as "The Surge."

I joined him in New Hampshire for the "No Surrender Tour" kickoff. The "Straight Talk Express" had been replaced by a nondescript white rental van with two "McCain" stickers affixed to the back windows. The New Hampshire media dutifully covered his events, as much, I suspected, due to nostalgia for his victorious effort in New Hampshire in 2000 as to the possibility that he had any shot of repeating that accomplishment. Reporters from national outlets were skeptical—and scarce.

When I pitched him on an interview, his team seemed almost grateful for attention. McCain's wife Cindy and daughter Meghan joined us. We were on the record for the entire three-hour meal, and, as he almost always did, McCain answered questions without the kind of calculation and self-censorship typical of most politicians.

Dinner was fun. We laughed throughout. He "made news" on a variety of issues, most having nothing at all to do with the presidential race I'd come to cover. He'd been in a good mood at appearances all day, joking with questioners at his town halls. It was odd behavior for someone whose campaign had collapsed because of his own mismanagement and his mulish insistence on embracing unpopular issues. And yet he was, to all outward appearances, having the time of his life. (It wasn't just my imagination. In a subsequent interview recalling our time in New Hampshire for the tour, McCain told me: "Those were fun times. Those were the best times we had.")

At dinner, I asked McCain about the surge. He had very tough words for his GOP rivals who, he believed correctly,

were tiptoeing gingerly around the issue. “Some of these guys are sort of hedging their bets,” he said, growing angry. “Their advisers are telling them: Look, don’t get too closely tied to it because they may be pulling out in April.”

His answer had brought an abrupt change in tone to our lighthearted conversation. When I invited him to name names, he seemed for a moment to want to return to the jovial discussion we’d been having. When the waiter delivered our order of dumplings, he offered one to his wife. “Have one, my little dumpling,” he said before breaking into a fit of fake laughter, slapping his knee. “Ho, ho, ho, ho. Ha, ha, ha. You are my little dumpling.”

I teased him for using his wife to get out of answering a hard question, which was not exactly the “straight talk” approach on which he’d built his reputation. He shot back: “I think it’s fair to say that the Romney and Giuliani campaigns have tried to distance themselves from this issue. I think it’s pretty obvious.”

At a debate the following night, he went after them both for putting politics over national security. When Romney said the surge was “apparently working,” McCain pounced.

“Governor, the surge is working. The surge is working, sir.”

“That’s just what I said,” Romney protested.

“It is working. No, not ‘apparently.’ It’s working,” he said.

McCain was right. It was working. And he was right, too, that Romney was being cautious. In his performance that night, McCain made a passionate case for winning in Iraq—and for defeating jihadists more broadly.

That debate didn’t make McCain the frontrunner. His exchange with Romney probably didn’t change many minds on the surge—or on Iraq. And the “No Surrender Tour” was a campaign gimmick every bit as much as it was a reflection of principled resolve.

But it worked because it reminded these Republican primary voters that even if they didn’t always agree with McCain on policy, he was a man of conviction and principle. Just 10 years ago, that mattered enough to GOP primary voters that they made McCain their nominee. Perhaps nothing has changed more in American politics over the past decade. Republicans today, with very few exceptions, have shown themselves willing to sacrifice principle in order to win. McCain was, until the end, willing to lose if losing was the cost of fighting for principle.

He seemed to enjoy those fights, almost preferring to be the underdog. I asked him about this when I interviewed him again in the spring of 2008, aboard the new version of the “Straight Talk Express,” a well-appointed coach

much closer to the 2000 edition than the white van of just a few months earlier. “It’s not that I like being behind,” he said. “I don’t think anybody in sports, in business likes to be behind. But you also know, Steve, that in my life, I’ve always kind of relished the fight. Whether it’s coming to defend a little guy on the playground that’s getting picked on or whether it’s going to be telling the guard in the prison camp—yell the obscenities at him as we’re going to the latrine. There is something in my personality, I’ve got to admit to you, that I enjoy the fight. I enjoy the challenge. I just, I just do.”



McCain and wife Cindy, center, on the ‘Straight Talk Express,’ February 3, 2008

Ryan Lizza, now chief political correspondent at *Esquire*, asked McCain to expand on his answer. “Do you enjoy losing?”

“I don’t think that’s the right description,” he said. “I don’t enjoy it. I’ve never enjoyed losing. I’m a passionate competitor and passionate competitors don’t like to lose. But I’m willing to stand on principle. Because I’ve found in my experience that if you stand on principle that stuff’s going to come around again. It’s going to come around again.”

When McCain lost to Barack Obama, he took the stage at the Biltmore Hotel in Phoenix to offer his concession. Wearing, again, a navy blue suit, a light blue shirt, and a gold tie, McCain congratulated Obama and encouraged his backers to support the president-elect, saying, “Whatever our differences, we are fellow Americans. And please believe me when I say no association has ever meant more to me than that.”

He closed his speech with words as meaningful in these days after his passing as they were that night: “I call on all Americans . . . to not despair of our present difficulties but to believe always in the promise and greatness of America, because nothing is inevitable here. Americans never quit. We never surrender. We never hide from history. We make history.” ♦

DAVID HUJUE KENNEDY / GETTY



Visitors to the national gallery in Parma's Palazzo della Pilotta study paintings in the Salone Maria Luigia.

# Slice of Parmesan

*The new director of the Pilotta museum complex offers a tour of its many treasures.* BY ANN MARLOWE

At a time when museumgoing is increasingly homogenized and the world's large, prestigious fine-arts institutions often offer what feel like prepackaged experiences, Parma's 500,000-square-foot Palazzo della Pilotta offers something different, with a strong sense of local identity, soulfulness, even eccentricity. This begins with physical scars on the façade that testify to an Allied bombing raid in World War II. The battered structures that make up the museum are asymmetrical and, despite their monumental size, elusive. As you approach the complex, the entrance is tucked into an opening on the left—

*Ann Marlowe is a visiting fellow at the Hudson Institute.*

but there are so few visitors you can miss it.

It is possible to walk around alone in some of the Pilotta's best-known galleries and even in its stunning Farnese Theatre. In the 12 months from May 2017 through April 2018, the Pilotta had just 121,725 visitors, an average of about 470 each day it was open. There are no memberships. There are no cringe-making political wall texts. There is nothing to buy. There is nothing hip, which of course is itself deeply hip.

It is also true that many of the exhibits have signage only in Italian (sometimes glued to the case or frame); that there is no leaflet noting the collection highlights; that the front lawn is tattered, with an ugly lamppost covered with graffiti; that homeless people sometimes nap just outside the entrance; and,

again, that there really is *nothing* to buy: There is no bookshop, no catalogue, no café or restaurant, nowhere even to get a bottle of water on a hot day.

At the root of the Pilotta's current distress is a lack of funding. "Italy spends just .021 percent of its budget on culture," the Pilotta's low-key new director, Simone Verde, told me. The museum's expenses in the last fiscal year were about 1.7 million euros (about \$2 million). In that same May to April period, ticket sales only amounted to 534,023 euros—and that was a 23 percent increase over the previous year. (For context, in fiscal year 2017 the Detroit Institute of Arts had operating expenses of about \$37 million and the Metropolitan Museum of Art had operating expenses of over \$300 million.)

HEMIS / ALAMY

Like most Italian museums, the Pilotta doesn't rely much on private donations. It can apply to the regional ministry of culture for support for special projects and recently received about three million euros. Some of that will go toward acquisitions: Verde wants to buy some 18th-century Parmesan ceramics to add to a tiny existing holding of these rare and recently discovered pieces.

When Verde, 38, took over the Pilotta in May 2017, the situation was dire. Though he won't criticize his predecessor, one can glean the situation from online reviews. "There are some wonderful paintings in this gallery, if you can find them," an English visitor wrote on TripAdvisor in 2016. Another reviewer complained of the many sections that were closed during his visit and the poor lighting. Only one of the six stories of the Pilotta's historic *rochetta* ("little fortress") wing is open to the public, housing works by Correggio and Parmigianino, the painters most often associated with Parma. The other floors of the *rochetta* are, in the words of Verde, "in ruins."

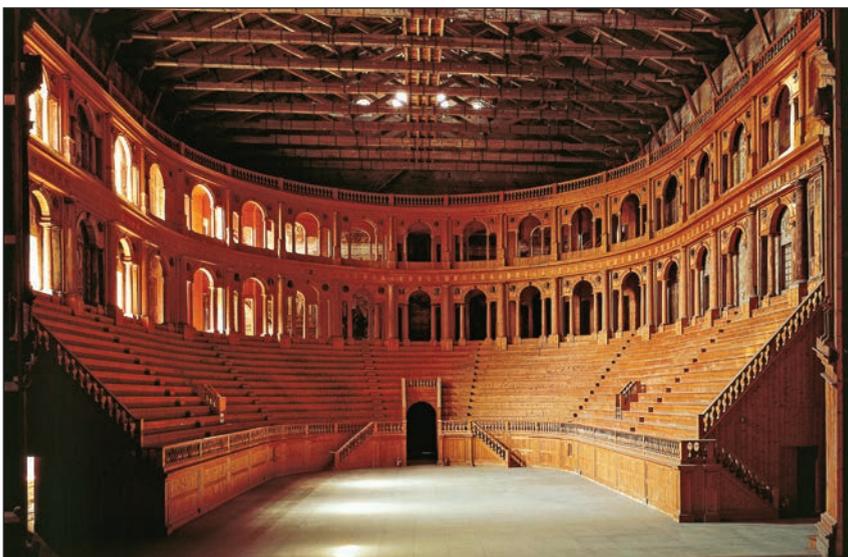
The whole complex has a total staff of 69, including security guards. (Cleaning is outsourced.) There are just three curators and two archaeologists. Oh, and three librarians at the Palatina Library, which, by the way, is not climate-controlled or searchable online. (The books have been digitized, but the cost of web hosting is apparently too steep.) If Verde wanted to fire any of his employees, he would have to go through the culture ministry—and wait a few decades.

The Pilotta comprises five museums: the Farnese Theatre, the Palatina Library with its 700,000 printed works and 7,000 manuscripts, the Bodoni museum (dedicated to, yes, the typeface inventor), an archaeological museum, and the *pinacoteca* or picture gallery. (An art academy, not technically part of the museum, is also located on the site.)

The enormous Farnese Theatre was built in 1618-19 to hold tournaments—which may sound incongruous, but Verde explains that it was not



*Above, a room in the Palatina Library, one of the institutions housed in the Pilotta complex. The library was established in the 1760s, merging and expanding preexisting collections. Below, the 17th-century wood-and-stucco Farnese Theatre, rebuilt after it was heavily damaged in WWII, is the world's oldest theater with a permanent proscenium arch.*



uncommon in those days for museums to have such theaters (theaters and museums both symbolizing order). Nearly destroyed during the war, the theater was restored in the 1950s and early 1960s and is still used; *Le trouvère*, a French version of *Il Trovatore*, will be staged there in a Robert Wilson production at this fall's Verdi festival. The theater is a striking space, intimidatingly lofty and yet, with its amber-toned wood construction throughout, homey and warm.

The Bodoni museum is the newest

and most obscure component of the Pilotta, having opened in 1963 on the 150th anniversary of the death of Giambattista Bodoni, the typographer and designer who spent a long and innovative career publishing in Parma. The museum, housed on the third floor of the library, includes prints and books, original artifacts, and a reconstruction of Bodoni's press.

Verde is constantly in motion and constantly evangelizing for the museum. Since coming to the Pilotta, he has ensured that all of the museum is open

TOP: REALY EASY STAR / GIUSEPPE MASCI / ALAMY; BOTTOM: AGOSTINI / GETTY

on every day the museum is open, even if the staff shortage means all the galleries cannot be open simultaneously. (A visitor might, for example, see one section at 2 P.M. and another at 4.) He has overseen the renovation of 63,000 square feet of exhibition space, including the vestibule of the Farnese Theatre and the room containing the museum's sole Leonardo, *La Scapigliata* ("the messy-haired woman"). This circa-1500 painting on wood, a little smaller than a sheet of printer paper, returns to the Pilotta this month after a long period on loan. Also, after 40 years, Verde has reopened one of the world's best collections of coins and medals.

These feats have been achieved at minimal cost. Verde, who comes across as down-to-earth and does not exude the sense of self-importance so common in the art world, brags not about how much money he has spent but how much he has done with so little. The museum's website cost just 3,000 euros. He has gratefully accepted donated labor and goods—5,000 euros to clean a dome here, 3,000 euros in potted plants from Parma's garden club there. He likes to explain that he helped clean some portions of the museum himself, as insurance concerns made it risky for anyone else.

Still, Verde is a somewhat controversial figure in Parma. One might think that locals would be thrilled to have the former head of research and publications at the Louvre Abu Dhabi and the author of three books take over the struggling museum. Many are. But as Corrado Beldi, a writer and entrepreneur who has lived part-time in Parma for 15 years, explained to me, Verde hails from (gasp!) Rome, and there is an Italian tradition of hiring local directors who often stay in one place for 20 or 30 years. In fact, until recent legislation, Italian museums were prohibited from hiring non-Italian directors. But in August 2015, as *ArtNet* reported, Italy



*Above, Simone Verde, the new director of the Pilotta, stands in one of the gallery halls marred by strange decorative scaffolding. Below, some façades of the Pilotta still bear evidence of damage from Allied bombing.*



appointed 20 new museum directors, including 7 foreigners in prominent posts and—revealingly—"four Italians returning from abroad," presumably contaminated with foreignness. Beldi notes that Verde's appointment is seen in this context.

With just under 200,000 people, Parma punches well above its weight culturally. Not only is it the origin site and namesake of the "king of cheeses," but it has been the birthplace and the adopted home of many artists. Giuseppe

Verdi was born in a nearby village; Arturo Toscanini was born practically in the shadow of the Pilotta. Still, Parma is the sort of small place in which you will invariably run into friends just walking around town. At dinner one night with Beldi and another local art-world friend, Eugenia Marè, at the innovative fish restaurant Melt-emi, the diners at the next table were friends of Marè. A Milanese friend of Beldi was eating nearby with a local aristocrat. Verde himself materialized beside our table after dessert. Marè commented that life is easy for the bourgeoisie in a place like Parma. You see the same people your whole life. So you may not like it when an outsider wants to make changes.

Despite his open-neck shirts and casual manner, Verde comes across as refined—a quality he says the Pilotta is supposed to embody. He wants to place all of its holdings in the context of the history of collecting, and he explained what that might look like as he walked me around the museum. The nucleus of the picture gallery was collected by Parma's rulers—the Farnese family—beginning in the 16th century, so it offers an "opportunity to see how the museum was imagined in the 16th century," Verde says, leading me into a bijoux room of seven key works.

"Both the Louvre and the Pilotta stem from the Vatican Museum," Verde tells me. In the case of the Louvre, several of the items in its early collections were taken from the Vatican by Napoleon. The Pilotta's story involves more familial drama. The Farnese family, Verde explains, came to Parma by the back door. We stop before a portrait on slate of Pope Paul III—born Alessandro Farnese—with one of his illegitimate sons, Pier Luigi Farnese, whom he made the first duke of Parma in 1545. The power-hungry family began collecting (often actually excavating) ancient sculptures and commissioning portraits

IMAGES: ANN MARLOWE

to cloak themselves in the glamour of ancient Rome. For example, a portrait of Lodovico Orsini, father of Pier Luigi's wife, depicts him in Roman garb; the profile view, as Verde points out, derives from ancient coinage. A painting of Pier Luigi as an adult by Girolamo Bedoli almost certainly shows in the background a fanciful version of the same Roman male torso in basanite that now sits next to the painting in the Pilotta.

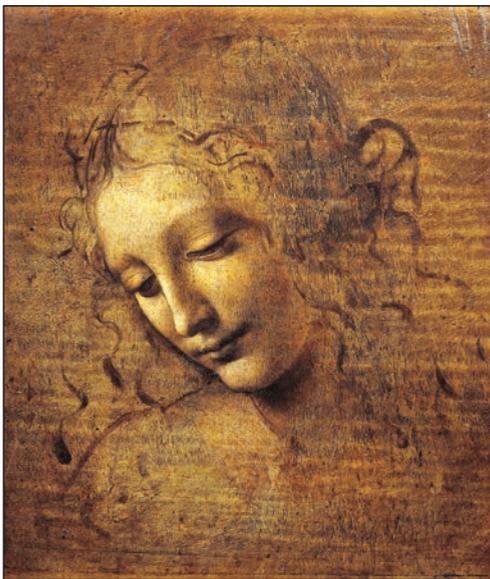
A brutal mercenary by trade, Pier Luigi ruled as duke only from 1545 to 1547 before his numerous enemies caught up with him; his body was hung out a window at one of his palaces. His son Ottavio then sought the ducal throne, and after years spent squabbling with his pope grandfather and emperor father-in-law, he got it. Ottavio's descendants continued collecting while charting a course between the two great powers, the papacy and the Holy Roman Empire, and making dynastic marriages with Orsini, Este, and Bourbons.

Opposite the first Bedoli painting is another, *Parma Embracing Alessandro Farnese*, that shows one of Ottavio's sons sitting atop a globe while an armed woman, the embodiment of the city, gazes adoringly at him. (This particular young Farnese would grow up to be one of the most celebrated military commanders of his day.) Then there is a Madonna and Child with saints that shows a turning to devotional rather than aggrandizing imagery. Finally, there's a small El Greco gem depicting Christ healing the blind that uses the Baths of Diocletian in Rome as a backdrop.

There isn't much of the original Farnese collection still at the Pilotta. When the male Farnese line died out in 1731 and the duchy was passed to their Habsburg and Bourbon in-laws, the family's collection was dispersed; it mainly went to Rome and to the Capodimonte museum in Bourbon-ruled Naples. Victor Emmanuel—the Savoyard king of unified Italy after 1861—also took some works to the Palazzo Madama in Turin. Ten works ended up at the British Museum in the 1860s.



Above, Antonio Canova's 1811-14 statue depicting Maria Luigia as Concordia, goddess of harmony. Below, Leonardo's *La Scapigliata* (circa 1508) has been in the Pilotta collection since 1839.



The Bourbons lasted until 1802. Their defeat by Napoleon proved an unexpected boon for Parma and the Pilotta, because in 1809 Napoleon divorced Josephine and married the 18-year-old Austrian archduchess Marie Louise. (Her father, the last Holy Roman emperor, was the nephew of Marie Antoinette.) Named the duchess of Parma in 1814 after Napoleon was dethroned, the princess—who took

the Italianized name Maria Luigia as a sign of her commitment to the city—is a local icon. There is even a museum devoted to her life, the Glauco Lombardi, just opposite the Pilotta, showing how influential she has been in Parma. It was her idea to exhibit the Parmigianinos and Correggios in the *rocchetta*. Today, the Pilotta has Antonio Canova's stately marble statue depicting Maria Luigia as Concordia, sculpted on the occasion of her marriage to Napoleon, placed prominently at one end of a large hall.

Simone Verde has some bigger exhibition issues to resolve than how best to put the artworks in dialogue with one another. In the 1980s, the picture gallery was the victim of an unfortunate renovation by Parma architect Guido Canali. He placed white metal tubular scaffolding throughout much of the picture gallery, giving those spaces a permanent “under-construction” feeling. Interior partitions were created a few feet from the exterior wall and some paintings were hung on the inside, making them impossible to see clearly and exposing them to accidental damage from viewers.

Here, Verde cannot re-renovate (he also acknowledges that while local favorite Canali's concept seems *démodé* today, it might be more appealing in 50 years) but he can at least cover much of the intrusive scaffolding with walls, allowing the artwork to stand out. He has already rehung most of the paintings that faced the exterior walls.

Verde's plans for the archaeological museum include reorganizing the rooms in something approaching chronological order (currently they jump from Roman to Egyptian and back again) and relegating some objects to a section on the history of collecting. Many ended up in Parma because Filippo, the Bourbon duke of Parma, sponsored the excavations at the nearby Veleia archaeological site in 1760. “All Italian neoclassicism comes from [the] Bourbon family in Parma

and in Naples,” Verde says sweepingly, “because of the discovery of Herculanum and Veleia.” Filippo’s brother Charles was the king of Naples, and his workmen accidentally unearthed Herculanum while digging the foundations of a summer palace.

One holding from Veleia in the archaeological museum is an extraordinary artifact from Roman times. A time-blackened bronze slab—about 5 feet tall and 9 feet wide—from circa A.D. 150 recording the financing of food for poor youths in Rome, it is a utilitarian object that aligns with current austere standards of beauty.

There is nothing in the Pilotta that would be on a tourist’s top-10 list of Italian masterworks. But the galleries are nonetheless full of wonderful discoveries, like the collection of Bartolomeo Schedoni canvases of which Verde says—again, sweepingly—“All of French painting comes out of that. French painting was much inspired by baroque classicism and academicism in Bologna, in particular by the Carracci school. Schedoni belongs to this movement.” Schedoni (1578-1615) was an impetuous, hard-living painter who used striking lighting effects like the equally emotional Caravaggio, who may have influenced him.

I noticed for the first time the Bourbon painter Johan Zoffany (1733-1810), a founding member of Britain’s Royal Academy and portraitist to the English royal family (“a lot of his work has ended up in Calcutta,” Verde notes). His portrait of Duchess Maria Amalia could be from the early 20th century.

The Pilotta also offers new views of well-known artists. Don’t miss the two huge, brilliant Ludovico Carracci. The 1530 Holbein (or at least “Holbein school”) portrait of Erasmus is worthy though hung in a very dark area, and there is an intriguing unlabeled adoration of the Christ Child on glass a few feet away. Perhaps the rarest holdings are Benedetto Antelami’s touching sculptures from 1178 for Parma cathedral’s dismantled pulpit—a pleasure to

behold even with their peeling paper labels pasted directly on the mountings.

Parma itself is a fascinating place to explore. I found an enthusiastic welcome from people I was introduced to by local friends, but more reserve from random encounters: civility rather than warmth. It is one of the most insular of successful Italian cities, yet the



*Portrait of Maria Amalia (duchess of Parma and sister of Marie Antoinette) and her dog*

presence of African and Chinese immigrants is now inescapable. (My friends were quick to point out that the immigrants have not brought crime in their wake.) Unemployment is low in Parma, thanks to tourism, agriculture, and their offspring, “agritourism.” Parma prides itself on its traditional cuisine, yet—like everywhere in Italy I visited this summer—in many ways lags behind American foodie destinations. Hardly any menu label the produce by origin or as organic, and the directors of a local state-run organic farm say many restaurants buy their produce in the supermarket. It tastes that way. During my visits a 90-degree-plus heat wave raged, but restaurants’ daily menus seemed more suited to December.

The relationship between the city and the museum raises provocative questions about how Parma wants to configure its public sphere. The Piaz-

zale della Pace, the large square on the east front of the Pilotta, attracts the homeless and migrants but not local families. Perhaps Parma could clean up its parks by adding commercial establishments, as New York did with Bryant Park. Currently there’s only a market on Wednesday and Saturday mornings.

As my friend Eugenia Marè told me, the Pilotta and the Piazzale della Pace have other resonances for people who live here. The 1944 bombing raid that smashed the Farnese Theatre also wrenched the Farnese palace from its façade and obliterated the church that had long stood in front of the complex, where only a scruffy lawn is now.

It is worth noting that other public museums in Italy share some of the defects of the Pilotta. Venice’s much-touristed Correr Museum also has what look like printed-out labels on its numismatics collection, housed in worn wooden cases that evoke provincial museums, not a museum in the Piazza San Marco charging 20 euros for admission.

Verde says that his plans to install a restaurant and two small cafés have prompted criticism that he is “putting the museum up for sale.” Nevertheless, he is forging ahead, pointing out a derelict interior courtyard that will become the terrace of a restaurant. He has just started a Friends of the Pilotta group, headed by a local industrialist, Orietta Sarassi of the OPEM machinery concern, who will soon be recruiting companies for sponsorships—still a relatively new concept in Italy. Even in industrial Parma, a rich city, the amount of money that constitutes a significant gift is tiny by U.S. standards. The American concept of corporate civic and social engagement doesn’t really exist in Italy, so the notion of a multimillion-euro corporate contribution is in the realm of fantasy.

Still, if Verde succeeds in obtaining the funding he is chasing, the Pilotta promises to be an amazing experience. And even now it is very much worth seeing, warts and all, for anyone who wants to get off the cultural conveyor belt and meet a city and its museum in their raw, imperfect splendor. ♦

SAILHO (CC BY-SA 4.0)

# After the Bombs Fell

*Imagining nuclear war with North Korea.*

BY ETHAN EPSTEIN



*In Jeffrey Lewis's novel, millions of people have died in North Korean nuclear attacks.*

**W**orks of fiction that purport to be collections of documents—let's call them “assemblage novels”—are hard to pull off. The Scottish writer Graeme Macrae Burnet succeeded in 2015—and ended up on the Booker Prize shortlist—with *His Bloody Project*, a novel that was supposedly a collection of documents relating to a 19th-century murder. Max Brooks's *Zombie Survival Guide*, a clever fake manual for enduring the zombie apocalypse, is another recent entry in the genre.

Now comes Jeffrey Lewis, an arms control expert at the Middlebury Institute of International Studies and a prolific tweeter (he's @armscontrol-wonk), and his *2020 Commission Report on the North Korean Nuclear Attacks Against the United States*. The book is conceived as a 9/11 Commission-style

*Ethan Epstein is associate editor of THE WEEKLY STANDARD.*

**The 2020 Commission Report on the North Korean Nuclear Attacks Against the United States**  
*A Speculative Novel*  
 by Jeffrey Lewis  
 Mariner, 295 pp., \$15.99

report, issued in 2023, examining the causes of North Korean nuclear strikes on New York, Northern Virginia, Hawaii, and South Florida that occurred in March 2020. The book is a mixture of nonfiction and speculation: Every event that occurs before the book's publication this August actually happened. The rest is the work of Lewis's imagination.

As a piece of literature, Lewis's book fails. The key to a successful assemblage novel is maintaining utter fealty to the tone of the documents you purport to be presenting. In other words, you can't break character. As such, *The 2020 Commission Report* should be written in the dispassion-

ate, wooden, bureaucratic tone that characterized not only the *9/11 Commission Report*, but also the 1946 Barkley investigation that looked into the causes of the attack on Pearl Harbor. And at times, Lewis affects this tone. But all too often, he veers into more a novelistic, expressionist style that would never show up in a document we're to believe was written by a group of public servants.

Lewis also attempts a ham-handed parody of Donald Trump, including fake tweets and a supposed statement from the then-former president about the commission's findings. The Trump parody simply doesn't work. That's not to single Lewis out in particular: Almost all Trump parodies fail. The trouble is that the president is already so extreme in his personality—and, really, such a weird guy—that he's just about impossible to parody. The funniest Trump tweets are the ones he really writes.

**L**iterary intentions aside, as a thinly disguised polemic about the horrors of nuclear war, Lewis's book is very effective and deeply affecting. And as a warning of how close we are to unimaginable catastrophe, it's downright chilling.

The story goes like this: In March 2020, a South Korean airliner with malfunctioning navigation equipment veers dangerously close to North Korean airspace. The North Koreans, in light of recent incursions by American bombers and ongoing war games by South Korea and the United States, think the plane is a military one. (We learn that the talks between North Korea and the United States eventually broke down and so-called war games resumed.) North Korea shoots down the errant plane, killing all aboard.

South Korean president Moon Jae-in feels compelled to act: He orders limited airstrikes on North Korea, targeting its air force headquarters and a villa belonging to Kim Jong-un and his family. The attack knocks out North Korea's communications, isolating the dictator, who is in a remote part of the country. Without sufficient information and convinced this attack is the

beginning of an American invasion of North Korea—a tweet from President Trump suggesting as much doesn't help—Kim orders nuclear attacks on U.S. military facilities throughout Asia. These horrific attacks devastate Seoul, Tokyo, and Busan.

Kim, like Osama bin Laden and Saddam Hussein before him, underestimates American wherewithal: He expects his attacks on Korea and Japan will compel a negotiated settlement. He is mistaken. America swiftly begins a bombing campaign against North Korea. In a final attempt at “regime survival,” Kim orders the launch of nuclear-tipped ICBMs against American targets. Some fail, including all eight of those aimed at U.S. bases in Guam and Okinawa. Others succeed, to utterly devastating effect. Manhattan, Northern Virginia, Honolulu, and South Florida are pulverized.

Testimony from survivors of the attacks demonstrates the horrors of nuclear war. (Lewis reveals at the end of the book that he based the accounts on those of survivors of Hiroshima and Nagasaki.) Lewis also shows how the effects of nuclear war linger far beyond the initial devastation: “Extraordinary amounts of black smoke from burning cities has led to a period of global cooling ... which ... is believed to be responsible for the famines that have struck Africa, South Asia, and China over the past few years,” the commission writes. Public health facilities were devastated, leading to outbreaks of the plague and other diseases.

Lewis is also frighteningly convincing when describing the political and social ramifications of the attacks. Unlike the 9/11 attacks, the 2020 nuclear attacks do not unify the country. Partisanship grows more intense, and pernicious Alex Jones-style conspiracy theorizing is alive and well: “As their wounds and burns attest, the millions of survivors are not ‘crisis actors,’” the commissioners write. “It is shocking to us to see that these opinions appear widespread and persistent online, as well as in many parts of the United States not directly affected by the attacks.” Shocking indeed, but all too plausible. ♦



Steve Jobs in 2010 in front of an old photo of himself and Apple cofounder Steve Wozniak

# Land of Forever Tomorrow

*How Silicon Valley came to dominate our vision of the future.* BY ALAN JACOBS

**T**his does not seem the most propitious moment for Adam Fisher's oral history *Valley of Genius* to appear.

Big Tech, especially its social-media wing, has spent the last year or more simultaneously fighting and pouring gasoline on PR fires. Surely skepticism about the good faith of Silicon Valley companies is at its highest level to date. Why would anyone at this moment want to read an oral history of California's computing culture told by its self-satisfied and self-congratulatory makers?

There are reasons to do so. Even if you hate Silicon Valley you probably hate it because of the leading

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**Valley of Genius**  
*The Uncensored History of Silicon Valley*  
by Adam Fisher  
Twelve, 494 pp., \$30

role it plays in our everyday lives, and this book is a peek into how that role emerged, according to the people who lived through it. Many of the stories in *Valley of Genius* have been recorded elsewhere, as long ago as Steven Levy's groundbreaking *Hackers* (1984) and Bruce Sterling's *The Hacker Crackdown* (1992). But it is useful and interesting to have most of the old anecdotes gathered between two covers, because from them a single overarching story emerges. It is, financially speaking, a story of rise and rise, though ethically speaking one of decline and fall.

Edward Gibbon, whose *Decline and Fall of the Roman Empire* is the

TONY ANELAR / BLOOMBERG / GETTY

progenitor of the genre, had a simpler tale to tell, because he could show Rome declining in power as its ethical foundations crumbled. The moralistic among us can take comfort in such a narrative. It is harder to find satisfaction in reading about people whose moral decline is accompanied by ever-rising bank balances, whether you think the wealth caused the moral collapse or vice versa. But Gibbon's narrative and Fisher's have this in common: They trace changes that happened, in one of Gibbon's favorite words, "insensibly." The paths taken by Rome and Silicon Valley were not marked primarily by crises, by clearly decisive moments—though there are a few of those—but rather by the long, slow transformation of institutions from one kind of thing into a very different kind of thing.

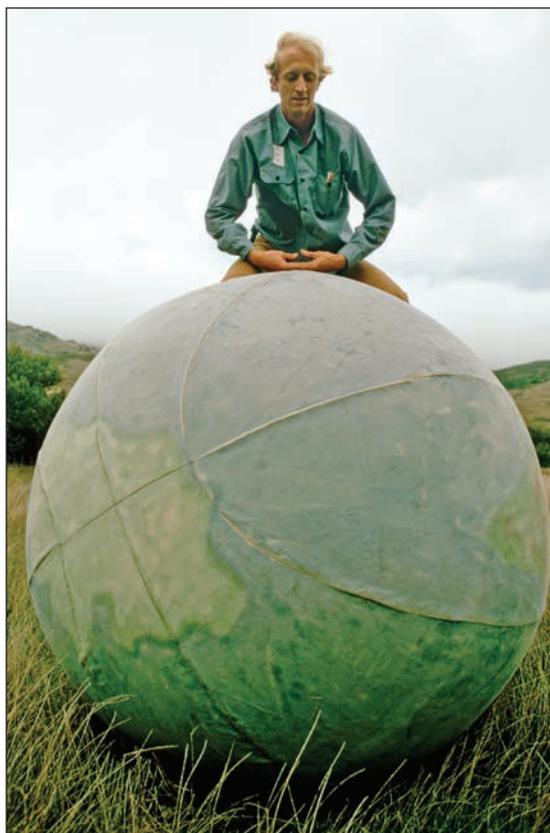
It's not clear that Adam Fisher understands the story he has told in quite the same way I do. He was raised in Silicon Valley and got interested in computers at an early age, like many of the people we hear from throughout the book, and he says right up front in the preface that, while he himself appears but rarely in the book (mainly in brief introductions to each chapter), he endorses the outlook of his protagonists:

In the Silicon Valley where I'm from, the stories were almost never about money. They were tales about resistance, heroism, and struggle, yarns about the creation of something out of nothing—and the derring-do required to pull such a feat off. In short, they were about dragon slaying. That's still true, at least in the Silicon Valley I know. Those were the stories that got me excited. And they still do.

I am not especially fond of Marxist cultural critique, but this kind of thing begs for it. Of course the stories were never about money! Of course the people who have become wealthy beyond the imaginings of mere mortals and are rapidly transforming



*Above, Mark Zuckerberg peers into the future.  
Below, counterculture-figure-turned-Silicon-Valley-guru  
Stewart Brand astride the world.*



the whole city of San Francisco into a playground for themselves and their fellow megarich think of themselves as dragon slayers instead of Daddy Warbuckses in antimicrobial T-shirts and \$300 jeans! Such delusions are among the first and most

lasting symptoms of affluenza.

And since this is an oral history, told wholly by participants, the reader should not be surprised to find the gee-whiz triumphalism of Fisher's preface echoed throughout the book. To be sure, critical voices are occasionally heard, but their impact is consistently muted. For instance, a few aged persons like me might remember the protracted legal struggles at the turn of this millennium between Napster—the first really successful service for sharing digital recordings of copyrighted music—and the Recording Industry Association of America. One of the chapters of *Valley of Genius* deals extensively with this conflict, and near the end Fisher quotes Hilary Rosen, then-CEO of the RIAA: "Napster was very prescient, but everyone was greedy."

Rosen is immediately followed by Sean Parker, cofounder of Napster (and later the first president of Facebook):

There was so little greed on the part of the people who worked at Napster. We would have given the company to the record labels! Like, you can just have it! We just wanted the idea to survive. We knew that we were the best chance that the record business had of a seamless and orderly transition to a future where artists and labels and publishers all would have been paid—because we had every user all in one place. I made the argument to the heads of every record label that was willing to listen. They didn't listen to us.

And: End of chapter. Parker's assertion of his own moral purity therefore goes unquestioned, and we are clearly meant to set the book down for a moment to shed a brief tear for the unmerited suffering of those, like Parker, who dedicated themselves wholly to public service without even the briefest thought of remuneration. Truly, there were giants on the earth in those days.

TOP: DAVID PAUL MORRIS / BLOOMBERG / GETTY; BOTTOM: TED STRESHINSKY / CORBIS / GETTY

But here cue Don Henley: “This is the end, this is the end of the innocence.” For, though I have said that Fisher’s story has few turning points, the collapse of Napster seems to be one of them. For Fisher, I think, it marks the end of the real hacker era, the era in which programmers could without irony and without mental-moral gymnastics see themselves as Sticking It To The Man—as ushering in what Parker calls “a social revolution, a cultural revolution.” The defeat of Napster in the courts and its subsequent collapse were just part of the bursting of the first dot-com bubble, and the chapter immediately following the one on Napster deals with that catastrophe. The tagline for that chapter comes, interestingly enough, from Sean Parker. The full quotation from which Fisher draws the tagline comes in a passage where Fisher is quoting people on how much more pleasurable life in the Bay Area became after the dot-com bust, because quite suddenly the highways became easily navigable and you could always get a table at the restaurant of your choice. If, that is,

you were one of the lucky ones to keep your job. Here’s Parker’s line: “Only the cockroaches survive, and you’re one of the cockroaches.”

*Valley of Genius* is a tale told by the cockroaches, full of sound and fury, yes, but signifying quite a lot—especially in the book’s second, post-Napster, half. Because look at what follows: three chapters on the skyrocketing fortunes of Apple after the return of Steve Jobs, one on Google, one on Facebook, one on Twitter. I can’t say I’m displeased to see a little of my cynicism creep into Fisher’s narrative at this point. In the chapter on Facebook we find this passage:

**Mark Zuckerberg:** Domination!

**Ruchi Sanghvi:** “Domination” was a big mantra of Facebook back in the day.

**Max Kelly:** I remember company meetings where we were chanting “dominate.”

**Ezra Callahan:** We had company parties all the time, and for a period in

2005, all Mark’s toasts at the company parties would end with “Domination!”

**Mark Zuckerberg:** Domination!!

There are two further quotations from Mark Zuckerberg in that chapter, which I shall now reproduce in full. The first is “Domination!!!” The second is “Domination!!!!”

Similarly, the chapter on Twitter contains some sober assessments of that platform. Zuckerberg remarks of Twitter’s founders, with a wit that



*Napster cofounders Sean Parker (left) and Shawn Fanning*

I didn’t know he possessed, “It’s as if they drove a clown car into a gold mine—and fell in.” The journalist Nick Bilton speaks for me when he says, “I think we’ll look back at Twitter in ten, twenty, thirty years ... and say, ‘Well, that didn’t work out so well, did it?’” And at the conclusion of that chapter a voice from outside Silicon Valley emerges and, um, dominates: @realDonaldTrump.

So, yes, decline and fall. Some people who have been involved with Silicon Valley since its humble beginnings have been railing against the transformation all along, and Fisher allows us to hear from a couple of those Jeremiahs, at least occasionally. Interestingly, they tend to be people who meet a rather stricter definition of “genius” than the one that welcomes Sean Parker and Mark Zuckerberg into the club. One is Alan Kay, the closest thing we have to an actual inventor of the graphical user interface, who was present at

the creation and laments the failures of imagination that, ironically enough, led to economic domi- ... ascendency. Another is Jaron Lanier, the chief pioneer of virtual reality computing, who has been condemning the wrong turns of his profession for more than a decade, most notably in such books as *You Are Not a Gadget* and *Ten Arguments for Deleting Your Social Media Accounts Right Now*. Fisher quotes him thus:

My whole field has created s—. And it’s like we’ve thrust all of humanity into this endless life of tedium, and it’s not how it was supposed to be. ... We really have turned humanity into lab rats that are trained to run mazes. I really think on just the most fundamental level we are approaching digital technology in the wrong way.

To his credit, Fisher lets us hear Lanier’s critique on at least a few occasions. But it’s not the note he wants to end on.

In an epilogue on the likely future of Silicon Valley the major voice is the eminent futurist Kevin Kelly, who says, “When I think of the future of Silicon Valley I see it as still being the center of the universe”—which is not exactly what T.S. Eliot meant when he wrote of “the still point of the turning world.” Or was it? Kelly has written that “we have a moral obligation to increase the power and presence of technology in the world.” Why? Because through remaking the self via technology we are bringing into being the Technium, which is also God: “I think of God as the intelligence of mind that is increasing the complexity of the universe.” The priests of Silicon Valley say, *Let us give thanks to the Technium our God*. And the response written for us in the prayer book is *It is meet and right so to do*. Many, perhaps most, of the readers of *Valley of Genius* will share this belief in the inevitable victory of our genius technocratic overlords. Some of them even welcome it. As for me, when I got to the end of the book, I thought, “Well, that was fascinating! Now let me just go take a long soak in a big tub of disinfectant.”

◆ LLOYD BISHOP / NBC / GETTY

# Ore Bore

*The forgotten industrialist who led the great silver rush.* BY JAY WEISER

If 19th-century Comstock Lode mining baron John Mackay is remembered at all today, it is as the grandfather of the wife of Great American Songbook composer Irving Berlin. Based on this new book, that is Mackay's rightful place.

Presumably, author Gregory Crouch intended to deliver a sweeping study of an industry through the lens of biography, like Ron Chernow did in *Titan: The Life of John D. Rockefeller, Sr.* Unfortunately, Mackay, the nominal subject, is colorless. He was honest in business, well-liked by employees and children, and an autodidact who for years lived modestly above a company office, reading schoolbooks after long days supervising his mines. Mackay was a technological and logistical innovator, and he might have, like the Guggenheims, built an international mining empire—but Mackay instead spent almost the entirety of his active career working the huge Comstock Lode in Nevada.

Crouch vividly describes the perils of deep-shaft mining, such as decapitation from leaning out of the shaft elevator. He offers a thrilling tale of Mackay's fight against a fire that almost destroyed the mine; this is one of the few places in the book where Mackay's personality shines through. But there are long passages of filler (tailings, in the mining idiom) on Mackay's birth country of Ireland and New York City—neither important places for his adult life—and even an unnecessary discussion of seamstresses in the millinery trade.

The discovery in the late 1850s and subsequent mining of the Comstock Lode was a major economic event. As Crouch demonstrates, like other Sec-

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**The Bonanza King**  
*John Mackay and the Battle Over the Greatest Riches in the American West*  
by Gregory Crouch  
Scribner, 466 pp., \$30



*John William Mackay, as sculpted by Mount Rushmore creator Gutzon Borglum*

ond Industrial Revolution industries, mining required huge capital investments: Timber stands, water supply, pumping equipment, railroads, and massive numbers of horses were needed to extract the silver, refine it, and transport it to San Francisco for distribution to other markets. The scale and remote location created chokepoints and pressure for vertical integration. Crouch turns this into a good-versus-evil battle between Mackay's group (known as the Bonanza Kings) and another led by the unsavory William Sharon. Yet Mackay had unsavory partners too, and the two competing groups struck deals when they needed to.

Even more than the 1849 Gold Rush, Comstock silver production transformed the San Francisco financial markets and spurred California's development. The flood of silver destabilized the Tokugawa shogunate, launched a quarter-century of silver-coinage politics in the United States, and ultimately led to the gold standard in Germany. But Crouch provides little context for these developments. Nor does he do much to compare the Comstock Lode with earlier massive silver finds, like the 16th-century discovery of silver in Potosí, Bolivia.

As a business history, the story sprawls too much and might have been better framed around the mining industry's transformation of the West. Crouch's discussions of mineral rights and stock-market raids are impenetrable, even for a transactional lawyer like me. Nor is there a clear treatment of the cost of production or the rate of worker injuries. The book lacks a technical glossary and adequate diagrams; to find the bibliography and endnotes, the reader will have to visit the author's website.

After the Comstock Lode played out, Mackay's late-in-life investment in the company that became International Telephone and Telegraph makes an equally unsatisfying good-versus-evil tale. Mackay's group laid vast amounts of international cable and undercut the monopoly telegraph prices of Jay Gould's Western Union, but the economics of communication networks led to overcapacity and a modus operandi similar to that of the railroad pools.

Later chapters focus on Mackay's wife Louise. When they met, she was an impoverished, widowed seamstress raising a daughter. Aspiring to finer things, she left for Paris to become a standard-issue Gilded Age society lady who lived mostly apart from Mackay. She rubbed shoulders with the upper crust, entertained lavishly, and married off her daughter to a wastrel aristocrat. Perhaps Ellen Mackay Berlin appreciated her grandmother as a prototype for Irving Berlin's "Hostess with the Mostes' on the Ball." ♦

# Caviar Dreams

Robin Leach, 1941-2018.

BY CHRISTINE ROSEN

Before the resurgence of trendy socialism, before Occupy Wall Street, there was *Lifestyles of the Rich and Famous*, a television show that reveled in the opulent trappings of the 1 percent. The syndicated show aired from 1984 to 1995, and its sizable cultural impact was due in large part to the exuberance and credulity of its iconic host, Robin Leach. With his bellowing, cockney-ish voice and voyeuristic enthusiasm, the British-born Leach, who died August 24 at age 76, gave a nation of anxious strivers an uncomplicated celebration of wealth and privilege.

Leach, who had spent some time as a reporter for the *Daily Mail* and the *New York Daily News* before finding fame on television, never suffered from the pretension of being a serious journalist. He happily referred to himself as a “celebrity interviewer” and seemed both awed and grateful in the presence of stars such as Liberace (whom he called “Lee”) and Raquel Welch.

Leach wasn’t merely a talking head; he was the consummate host, tirelessly channeling his viewers’ curiosity about how the other half lives during his weekly tours of celebrity homes. With the workmanlike voice-over skills of David Greenspan to assist him, Leach marveled over even the gaudiest homes of the wealthy and famous, conducting softball interviews in which he fueled their conceit (and that of his viewers) that money could buy happiness. He could veer from incredulity to familiarity in a single take, and viewers felt (correctly, as it turned out) that he

didn’t just profile these celebrities. He partied with them.

Most of his subjects were mid-list celebrities such as Donna Mills, Lynda Carter, and Conway Twitty, but he also produced themed segments

*Leach wasn't merely a talking head; he was the consummate host, tirelessly channeling his viewers' curiosity about how the other half lives during his weekly tours of celebrity homes—and fueling the conceit (of his guests and his viewers) that money could buy happiness.*

on what passed for the exotic in the middle America of the 1980s, such as exiled royalty and Bavarian castles. He occasionally landed a big fish, and when he did, no expense (or cliché) was spared in administering his signature form of adulation.

A February 1985 profile of Saudi billionaire Adnan Khashoggi was given the “very special episode” treatment, complete with descriptions of Khashoggi’s private jet (“a glamour palace in the sky!”), his yacht, and his many homes. Leach lavished special attention on Khashoggi’s Kenyan “hunting lodge,” admiring an entry hall flanked by large ivory elephant tusks as well as the tycoon’s

“huge, fluffy white boudoir,” with its mirrored ceiling over the bed and large bathtub where AK (as Leach called him) “loves to languish in the essential oils” crafted for him by his daughter. Outside was a solid marble disco floor (“The only one in existence!”) and nearby was the sprawling manse of his neighbor, King Fahd. The slow camera pans, zooming in to linger on a solid gold animal statue here and a sable bedspread there, are nearly pornographic.

Leach excelled at the vague euphemism. Khashoggi was merely a “businessman,” the “magnificent middle man,” as Leach called him, tastefully avoiding mention of the fact that Khashoggi was an international arms dealer who was known to keep “pleasure wives” on his yacht and was called the “one of the greatest whoremongers in the world” by *Vanity Fair*. Leach, by contrast, found him to be a “surprisingly private family man.” That’s not to say Leach had no standards: He reportedly refused to profile wealthy dictators like Ferdinand and Imelda Marcos of the Philippines.

As the greed-is-good 1980s gave way to the 1990s, Leach endured, doggedly admiring his subjects’ often-gaudy homes and hustling for his side projects, such as a *Lifestyles of the Rich and Famous Cookbook* and, later, a blog. His later years, like those of syndicated television, were spent in a golden haze. He traded on his own renown to appear as a contestant on the reality show *I’m a Celebrity . . . Get Me Out of Here!* and spent his final years in that most American of cities, Las Vegas. He came to resemble his adopted home—a little louche, a little excessive, always striving to entertain. “He was the life of the party!” recalled Joan Collins, a friend and featured guest on *Lifestyles* during its heyday, in the *Daily Mail* after his death.

Although the “rich” part of the *Lifestyles* brand came first, the show’s lasting legacy—and Leach’s—was its treatment of fame. Leach was the late-20th century’s best celebrity carnival

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Robin Leach visiting Sfuzzi restaurant in New York City, February 28, 1989

barker. But by the 21st century, celebrity had moved from entertaining sideshow to the main stage of American life, a fact best symbolized by Donald Trump, who appeared on *Lifestyles* (and bought Khashoggi's mega-yacht). The deliberate naïveté cultivated by shows like *Lifestyles of the Rich and Famous* begat grittier reality-television shows such as MTV's *Cribs*. Leach was not pleased with the evolution of celebrity television, and he was more than happy to define the acceptable limits for vulgarity. "Now you have Kim Kardashian having her private area waxed on camera," he told the *New York Times* in 2014. "Disgusting."

Today, celebrities don't need interlocutors like Leach; they inject themselves directly into the pub-

lic's veins through Instagram. And lifestyle shows have abandoned fantasy in favor of an almost militaristic zeal for self-improvement. Leach's genial voyeurism has given way to a grim determination to Be Your Best Self!—which is why nearly every lifestyle show is a contest to determine who has the best wedding dress, the best makeover, or the best flipped house. For Leach, by contrast, it was about celebrating the people who had already won life's lottery and encouraging his viewers to celebrate along with him.

Leach's "champagne wishes and caviar dreams" would have difficulty surviving the moralizing popular culture of today (the champagne would have to be locally sourced and

the caviar sustainably harvested). Today's celebrities take pains to publicly check their privilege, and deliberately stoking class envy by boasting about your wealth will unleash a Twitter mob. Yet Leach's bygone style of voyeurism seems more honest than today's sanctimonious social media warriors.

It was also a lot more fun. Assessing his career in 2014 for Oprah's OWN channel, Leach embraced his lifelong celebration of the celebrity lowbrow. People didn't want to see famous people performing Shakespeare, he said. "They wanna see Suzanne Somers at home in her bathtub with lots of bubbles and froth!"

So they did. ◆

