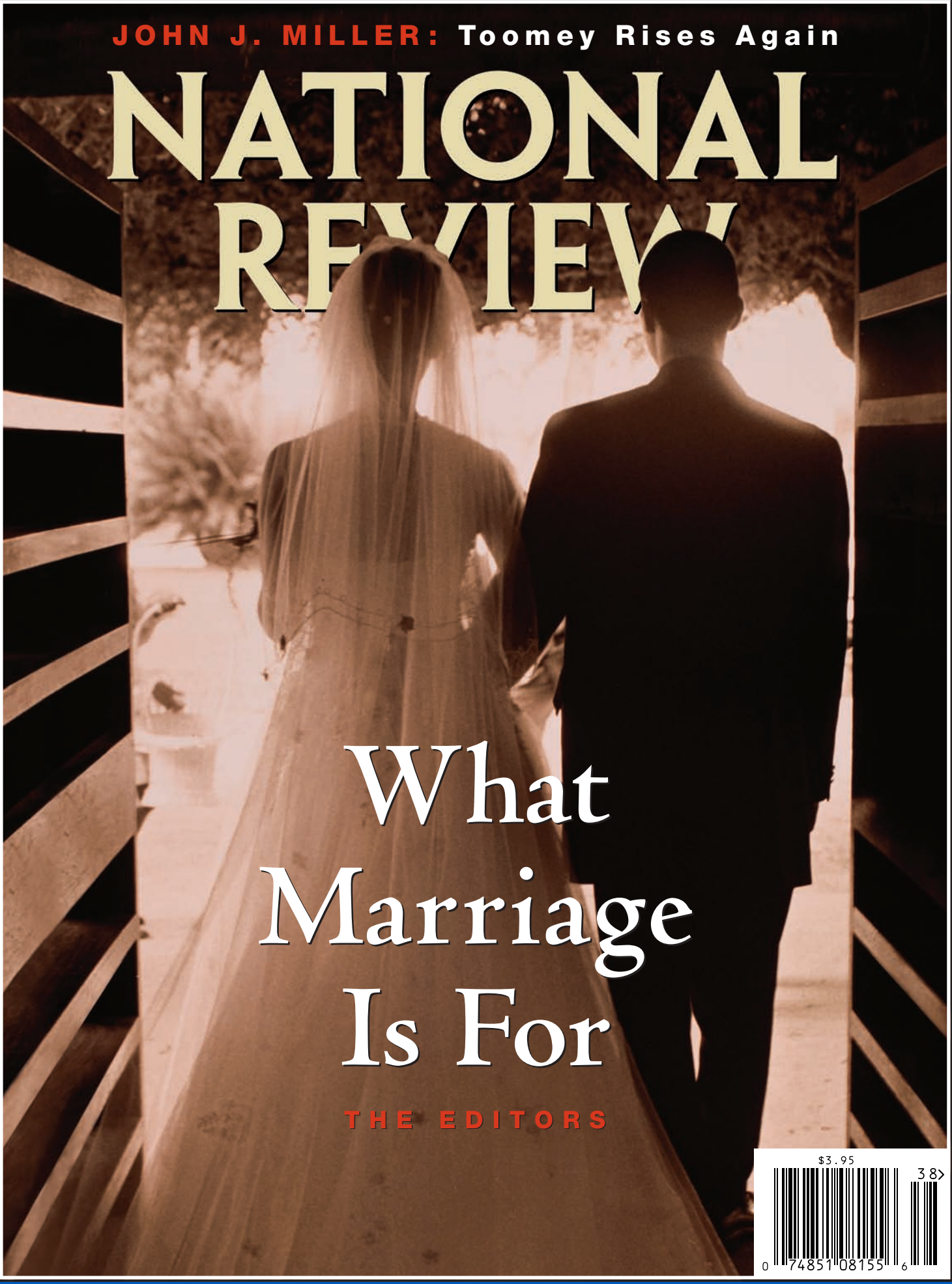


JOHN J. MILLER: Toomey Rises Again

NATIONAL REVIEW



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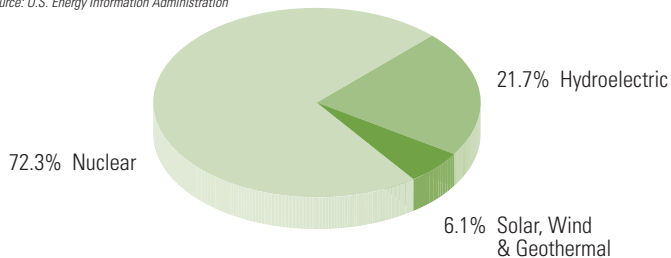
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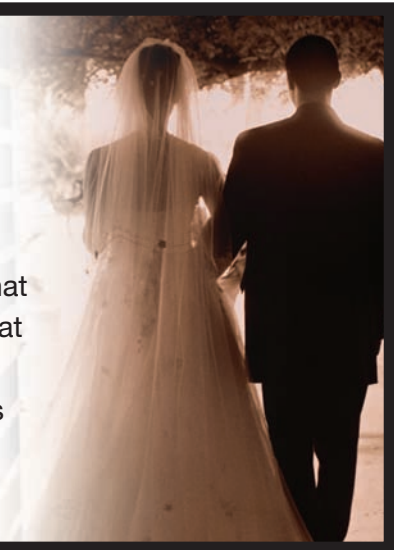


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The Case for Marriage

The fact that we are debating same-sex marriage and the way that debate has progressed suggest that many of us have lost sight of why marriage exists in the first place as a social institution and a matter of public policy. *The Editors*



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MAIN NUMBER 212-679-7330
SUBSCRIPTION INQUIRIES 386-246-0118
WASHINGTON OFFICE 202-543-9226
ADVERTISING SALES 212-679-7330
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Letters



Are Cops Overpaid?

The quality of NATIONAL REVIEW is of the highest order, but Daniel Foster's "Cops, and Robbers" (August 30) left something to be desired. Mr. Foster begins with the sad tale of Bay City, Mich., and its \$1.66 million deficit. I find that the deficit is part of a \$160 million budget. Mr. Foster would like us to believe that the only way to close this gap is through cutting people or pay. If a 10.8 percent cut to labor costs would fix the \$2 million problem, where is the other \$140 million going?

Mr. Foster later notes that public safety is the largest part of any city's budget. However, during the last 15 years, many cities saw dramatic increases in revenues. This led to huge expenditures on pet projects. As anecdotal evidence, I present the city I live in, which built a \$40 million ballpark made to resemble some big-league parks. They also now want to close budget shortfalls by cutting personnel. We must stop the spending instead.

As to the pay of public-safety employees, I detect some anger. (Is there an unjust ticket in his past?) Foster cites the pay of officers in Oakland, which is not representative of the pay most police officers across the nation receive.

It takes a certain set of qualities to make a good police officer, and the pool of persons capable of becoming good officers is somewhat small. Also, there is a risk element involved for which officers should be compensated. Poorly paid and low-quality officers have been tried many times across the nation, with disastrous outcomes.

Lastly, as a 15-year police officer who has dedicated his working life to serving his community, I find the phrase "hide behind the badge" disgusting.

Mike McCartney
Gilbert, Ariz.

DANIEL FOSTER REPLIES: Like most reporters who cut their teeth in local newspapers, I spent my fair share of time covering the "cop shop"—poring over arrest reports with desk sergeants, drinking bad coffee on late-night ride-alongs, the whole deal—and I still count as friends the fine patrolmen, investigators, and supervisors I interacted with on a daily basis. Which is why it pains me to see a response to my article like the one written by Mr. McCartney.

While Bay City's total budget is \$160 million, most of its outlays in a given year are non-discretionary: utilities payments, debt service, and contractual labor costs. In FY 2009–10, the operating budget—the revenue Bay City uses to sustain the daily activities of government—was listed in official documents as \$22.9 million. By contrast, "personnel costs" and "fringe benefits" accounted for more than \$40 million in expenditures. That year, public-employee salaries and benefits constituted some 72 percent of general-fund outlays.

Mr. McCartney also chides me for citing the salaries of Oakland police officers, which he says are unrepresentative. Nowhere do I suggest they are the norm (nor are they the most egregious: see page 28 of this issue). But then, my argument is not that police make too much money, full stop. It is that communities facing budget crises should look for excessive public-safety compensation. Citing an anecdote in service of that argument is as legitimate as Mr. McCartney's citing an anecdote from Gilbert, Ariz., in service of his argument.

Most cops are decent, honorable men and women who provide an essential service. The same could be said for most educators, and yet I suspect Mr. McCartney would not be nearly so defensive if I suggested there was waste and inefficiency in the compensation of unionized teachers. Nor should we forget that we are conservatives, even when the topic is public-safety compensation.

Letters may be submitted by e-mail to letters@nationalreview.com.

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The Week

■ There is no God but Allah, and Imam Rauf is his slumlord.

■ In the Obama era, “end” is the new victory. President Obama declared the end of combat operations in an Oval Office speech in which the notion of winning hardly figured. If Obama had fine words for our troops and pledged we’d be a partner for the Iraqis in the future, the emotional emphasis of the speech was on “turning the page” so we can devote ourselves more fully to spending ourselves into the ground here at home. But we can’t truly turn the page on Iraq without risking all that we achieved—we must work to forge a long-term strategic partnership with Iraq, and it will need a U.S. troop presence beyond the deadline for a total withdrawal at the end of 2011, currently enshrined in an agreement between our governments. The war needn’t merely “end,” so long as we give Iraq the continued attention it needs to survive as a democratic ally of the United States.

■ Glenn Beck’s rally at the Lincoln Memorial filled the mall (check the aerial photos) and filled the afternoon with the spirit of a patriotic camp meeting. Beck assembled a big tent: Sarah Palin spoke, not in overt campaign mode; the crowd of tea-party types, usually economic protesters, heard a lot about God and faith; the assembled conservatives praised the Rev. Martin Luther King Jr., who gave his “I Have a Dream” speech on the spot 47 years earlier. This made some black leftists spit tacks; Al Sharpton, addressing a tiny counter-rally across town, said the Beck people “want to disgrace this day.” When historical figures enter the pantheon along with Washington, Lincoln, and Father Christmas, everyone gets a piece. And they enter only if they have a piece to offer everyone. “If my uncle Martin was here,” said Alveda King, MLK’s niece, “he would . . . focus on the content of character.” Liberalism has no patent on that—nor on rallies, activism, or public spirit.

■ Two conservative insurgents met different fates on the same day. In Alaska, Joe Miller challenged Sen. Lisa Murkowski’s reelection and narrowly beat her. In Arizona, former congressman J. D. Hayworth was buried by Sen. John McCain’s reelection bid. One reason for the divergent outcomes: McCain took the challenge seriously. He moved right, especially on immigration, while pouncing on Hayworth for having a weaker record than his on federal spending. News of an infomercial in which Hayworth advertised opportunities to collect “free federal money” combined McCain’s two critiques—Hayworth as spender and buffoon—in one story. Murkowski, meanwhile, was as complacent and entitled as one might expect of a senator appointed to her position by her father. Miller ran to her right not only on spending but on abortion: A pro-life ballot initiative boosted his turnout. The lessons of these primaries for Republican establishmentarians: Conservatives will give you a second chance if you earn it. For tea partiers: Choose your champions wisely.

See page 12.



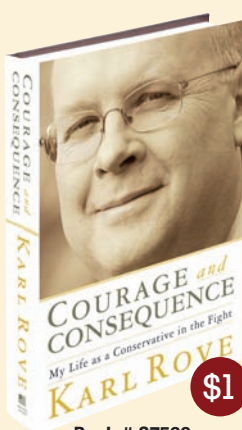
■ The saga of the Ground Zero mosque continued to move on parallel tracks. Liberalism fumed over the protesters: *Time* asked, “Does America Have a Muslim Problem?” while Nancy Pelosi wanted to know “How is this being ginned up?” The questions rang hollow, however, as some notable liberals questioned the mosque themselves (Harry Reid; Howard Dean; Sheldon Silver, speaker of the New York assembly). An anti-Muslim hate crime, ostensibly spurred by the protests—the stabbing of Ahmed Sharif, a Bangladesh-born cabbie—turned out to be the work of Michael Enright, an unstable film student who is employed by a charity that supports the mosque. Meanwhile, the mosque’s backers seem ever dodgier. Imam Feisal Rauf, the visionary behind the project, has trouble running low-income apartments in New Jersey, for which he has gotten more than \$2 million in public financing; his developer, Sharif El-Gamal, owes a quarter-million dollars in back taxes on the proposed site. Liberal zeal meets clownish bunglers: a perverse interfaith memorial for 9/11.

■ After several weeks of disturbing news suggesting that our weak recovery is getting weaker still, Federal Reserve chairman Ben Bernanke gave a speech explaining that the Fed stands ready to undertake additional stimulative action if necessary but will not, as some economists urge, deliberately engineer inflation. A policy of increasing inflation, he suggested, would be appropriate only after “a prolonged period of deflation”—which, he notes, we

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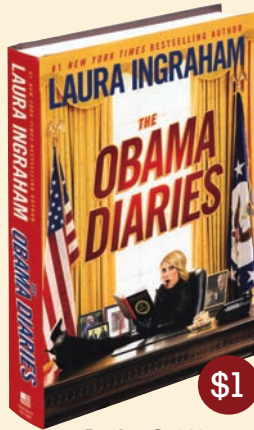


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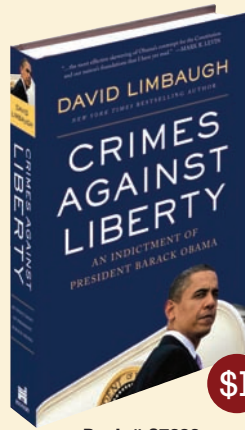
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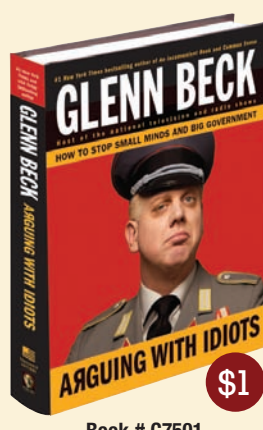
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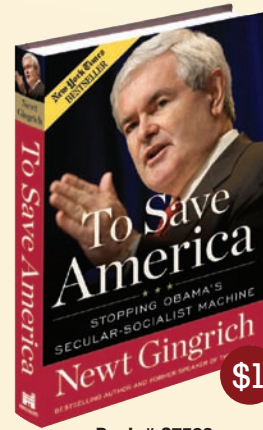
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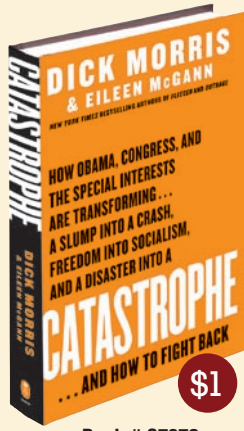
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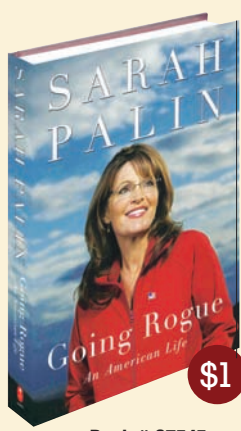
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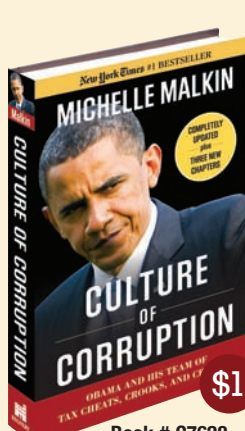
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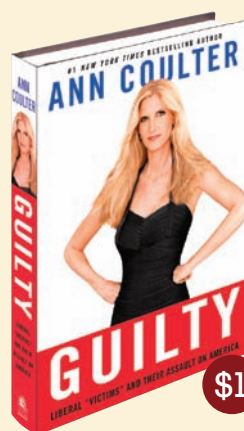
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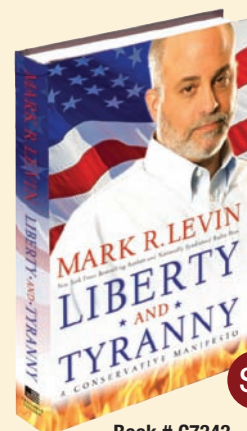
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have not had. Markets rallied, perhaps thrilled to hear sensible remarks from a Washington policymaker.

■ The economy may not have double-dipped, but the housing market has—with a vengeance. After rallying earlier this year in response to a tax credit that subsidized home purchases to the tune of \$8,000, it has plunged again with the expiration of the credit, and plunged much faster and farther than expected: July's numbers for new and existing home sales were some of the worst ever

recorded. The easy explanation for this is that the tax credit pulled forward summer demand into spring, and the homebuyers who would have bought this summer have already bought homes. This explanation is true as far as it goes, but it comes with an unpleasant addendum: The bubble sent housing prices into the stratosphere, and they still look artificially high. The administration's misguided policies benefited the Democrats, at least in the short run, and also helped banks that needed a break from foreclosures. But they have delayed the market's recovery.

Spread the Pain

MOST politicians think about the labor market as if a job were similar to a traditional marriage. The happy worker finds the perfect spouse and then stays married for life.

This misconception has a terrible effect on policy. If we notice that there are many lonely grooms and unwilling brides, then the policy choice is to cut the groom a check to make him feel better (unemployment insurance) and cut young ladies a check if they agree to marry (a jobs credit).

The problem is, the right conceptual model of the labor market is Grand Central Terminal. People arrive and depart all the time. If a crowd is accumulating in the station, it's because arrivals are greater than departures. The change in the size of the crowd at Grand Central could be many times smaller than the gross flow of people in and out. If 1,000 people arrive one minute while 900 people depart, then there are an extra 100 people in the terminal.

Similarly, in the U.S. labor market in July—the latest month for which we have data on flows in and out of the labor market—5.86 million jobs were created, and 6 million jobs were destroyed, so the net change was a loss of 140,000 jobs.

The nearby chart plots the recent history of the underlying employment flows for the U.S. economy. (Since the data are quite jumpy, it depicts the three-month moving average of both series.) As the recession developed, job destruction soared to its highest level on record, while job creation collapsed. Interestingly, both started to recover in early 2009, and job creation finally passed job destruction around the beginning of this year. The progress began to unwind, however, right around March, when Obamacare became law.

While the evidence is far from decisive that heightened regulation and taxation associated with the March passage of the bill caused the backtracking in the jobs market, it does suggest that current policy is pushing both creation and destruction in the wrong direction.

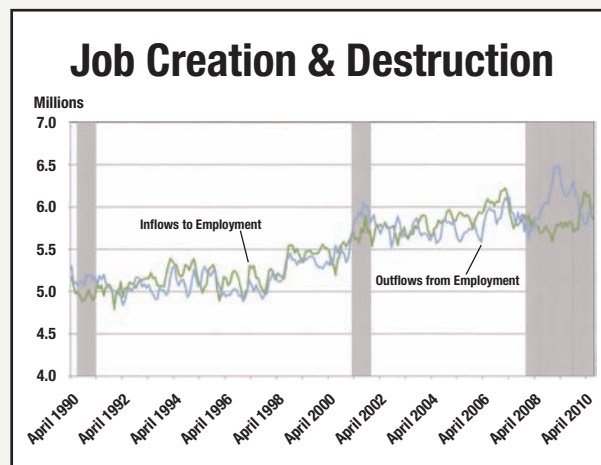
First, hiring may be depressed by extremely long unemployment insurance, which currently stretches to 99 weeks. The academic literature suggests that workers tend to be unwilling to take on a job until their unemployment-insurance benefits run out.

Second, if firms want to reduce their labor costs but care about the welfare of their workers, then current policy provides an incentive to destroy jobs. If a firm fires a person, then he is eligible for insurance. If a firm reduces the hours of five people by 20 percent, then no government assistance is available.

It is standard practice in a number of European countries to give firms an incentive to spread out the pain of cost reduction proportionally among workers during a recession. So if five workers see their hours reduced 20 percent, each can get something like 20 percent of his unemployment insurance. These programs can have a big effect on job destruction, which is why unemployment in countries like Germany has not skyrocketed as it has in the U.S. Such a program holds tremendous promise here. Six million jobs were destroyed in July, and if that number were 10 percent lower, the economy would have created on net about 460,000 jobs.

If Congress really wants the economy to create more jobs, it should wake up to the way the labor market works, returning unemployment benefits to their normal duration of 26 weeks but allowing benefits to be fractional. This would send many more trains into Grand Central Terminal while closing some of the exits.

—KEVIN A. HASSETT



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■ The health-care law exemplifies everything voters dislike about the reigning party: its zeal for government, its subordination of economic to ideological objectives, its conviction that it knows better than voters who balk at the imposition of sweeping and ill-considered change. It ought, therefore, to be the Republicans' top issue this year. Worried Democratic strategists are advising their candidates not to gush about the new health-care law—and not to try to persuade voters that it will reduce the deficit or health-care costs. Instead, Democrats are urged to say that the law “is not perfect” but “does good things” and “we’ll work to improve it.” Sen. Max Baucus of Montana, chairman of the Finance Committee through which the bill passed, tried out the new line: “Mark my words, several years from now you’re going to look back and say, ‘Eh, maybe it isn’t so bad.’” By Election Day, Democrats may have retreated to the claim that it wasn’t the worst bill Congress has ever passed. (Our suggestion for Democrats: Bone up on the Fugitive Slave Law.)

■ College kids were pretty well sold on Obamacare, and it’s not hard to imagine why: Most probably concluded on some level that they could reap the psychic rewards of supporting, like, more health care for everyone without having actually to sacrifice anything, because college kids do not pay taxes. But someone should have taught them the law of unintended consequences, because universities are now saying they will be forced either to discontinue their student health plans or to raise premiums significantly unless they are granted an exemption from the new law’s strict coverage standards. The bill outlawed cheap, bare-minimum plans for healthy people with the goal of moving toward a one-size-fits-all system in which the young subsidize the old by paying for features that young people don’t need but older people do. We say: No exemptions for the experientially challenged! Forcing young people to live with the consequences of this legislation will provide them with a crash course in economics, while getting them to join the ranks of those calling for the law’s repeal will give them hands-on political-science training. At least they’ll learn something in college.



■ Former Illinois governor Rod Blagojevich faces retrial in January after a federal jury failed to reach a verdict on 23 of 24 corruption charges, including allegations that he attempted to sell a Senate seat, cashing in on his power to name a successor when Barack Obama was elected president. He was convicted on the less serious offense of lying to the FBI during the investigation. The outcome was an embarrassment for Chicago U.S. attorney Patrick Fitzgerald, who announced the indictment with great fanfare. Along with

his failure in high-profile prosecutions of Scooter Libby and Conrad Black to deliver cases that matched his hype, the Blago verdict bespeaks a disturbing tendency. On the other hand, claims that Blagojevich has been “vindicated” are greatly exaggerated. Post-trial comments indicate that the jury was overwhelmingly in favor of conviction (11–1 on the charges involving the Senate seat), and the evidence—regardless of whether sufficient to prove guilt beyond a reasonable doubt—showed Blagojevich to be unworthy of public office—even in Illinois.

■ The Justice Department notified former House majority leader Tom DeLay that he is no longer under investigation in connection with the Jack Abramoff lobbying scandal. The exoneration is significant: Both of the DeLay aides who pled guilty to corruption charges were said to be cooperating fully with the investigation, which, if it has turned up no evidence of wrongdoing on DeLay’s part, indicates that he was guilty only of being inexcusably in the dark with regard to the illegal activities taking place in his office. DeLay still must go to trial in Texas to face state charges that he engaged in illegal campaign-finance activities. The state charges are flimsy, brought by a politically motivated district attorney with a history of similar shenanigans. DeLay deserved his day in court years ago. Instead, his political enemies dragged things out to make sure the punishment came first. The *New York Times* editorial board summed up the philosophy that has guided his persecution: “Many of Mr. DeLay’s actions remain legal only because lawmakers have chosen not to criminalize them.” Guilty by tautology.

■ The Dickey-Wicker amendment, passed by Congress in 1996 and re-passed every year since, bans federal financing for research “in which a human embryo or embryos are destroyed, discarded or knowingly subjected to risk of injury or death.” In 1999 the Clinton administration argued that the feds could fund research on cells from destroyed embryos so long as it did not do the destroying. George W. Bush announced a compromise in August 2001, whereby research on lines of cells derived from already-destroyed embryos could be funded, but not any on cells from embryos that were newly destroyed. Barack Obama revived the Clinton policy—until a federal district-court judge, Royce Lamberth, ruled that destruction anywhere down the line precludes “the entire project . . . from receiving federal funding.” Embryos are pre-born human beings in their least human-seeming form, yet left to themselves they will eat pray love like the rest of us. The Dickey-Wicker amendment meant to get taxpayers out of the business of destroying them, and the Clinton/Obama gambit is a weaselly end-run. The Bush compromise at least ended the incentive for new destruction. Judge Lamberth was right to reconcile policy with the law, and restart the debate on these terms.

■ The *Washington Post* reports that “some legal experts” are worried about an effort to defeat the reelection bids of three justices of the Iowa supreme court for foisting same-sex marriage on the state. They call the campaign “inappropriate,” “wrong,” “a challenge to judicial independence.” Voters are not to concern themselves with basic questions of governance; and if a justice has invaded the rightful domain of voters and legislators, amending the constitution on the fly, a voter tasked with passing judgment on the justice’s fitness for the bench should disregard it. Former Supreme Court justice Sandra Day O’Connor is reportedly going to involve herself in the controversy—as she involved herself in so many local matters while on the bench. She says that judicial elections create “politicians in robes.” Is the prospect of emperors in robes supposed to be more attractive?

■ It is lucky for political arguments that they have no feelings; otherwise they would grow bitter at how cruelly they are abandoned when they become inconvenient. Only six years ago the op-ed pages were full of criticism of the Federal Marriage

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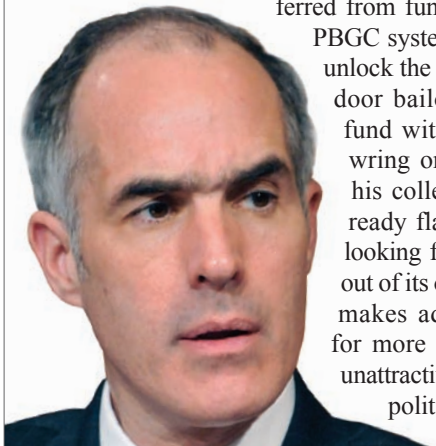
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Amendment, President Bush's proposed constitutional amendment to define marriage as the union of a man and a woman. The leading complaints: The amendment would infringe on the historic right of the states to set marriage policy, and Bush's fear that federal judges would set marriage policy was a fantasy. Now two federal courts have ruled that the Constitution requires same-sex marriage—the clear implication being that no state may balk. The defenders of marital federalism have suddenly grown very quiet. Turns out same-sex marriage was their true love all along.

■ Every four years, all U.N. members must submit a human-rights self-assessment to the international body's Human Rights Council—which includes such leaders in the field as China, Saudi Arabia, and Cuba, and which the U.S. just rejoined in 2009. Normally, these reports say more about the leaders of a country than about the country itself—as the Cato Institute's Roger Pilon noted on NRO, the Saudis recently boasted of their sparkling, sharia-compliant human-rights record—and the United States' addition to this literature is no exception: The Obama State Department spent 29 pages complaining about everything from the Arizona immigration law to the fact that Asian-American males suffer disproportionately from stomach cancer. The executive summary should have read: Lacking enough real human-rights abuses to fill a report, we will come up with ways to abase ourselves.

■ Call him “Bobby Bailouts.” Sen. Robert Casey (D., Pa.) is working to use taxpayers' money to bail out mismanaged Teamster pension funds. Under a bill backed by Casey and Rep. Earl Pomeroy (D., N.D.), the U.S. Pension Benefit Guaranty Corp., a pension-insurance fund run by the federal government, would be able to receive tax dollars to bail out so-called orphan pensions—pensions for which employers have ceased making contributions, usually for reasons of insolvency. Under normal circumstances, PBGC does not use taxpayer money to bail out pensions; it charges an insurance premium to the funds it covers and uses that money to make good on pension obligations if a particular pension fund goes bankrupt. Federal law carefully specifies that PBGC obligations are not obligations of the U.S. government. Casey-Pomeroy would reverse that, creating a new bailout fund and making the obligations it finances “obligations of the United States.” Worse still, money can be transferred from fund to fund within the PBGC system, so this bill would unlock the possibility of a backdoor bailout for any pension fund with sufficient clout to wring one out of Casey and his colleagues. PBGC is already flat busted—it will be looking for a \$34 billion bailout of its own by 2019—which makes adding more billions for more bailouts particularly unattractive, as is Casey's crass politics.



■ The Race to the Top program is supposed to improve education: The federal government pays states to reward them for instituting teacher-accountability schemes, standardized assessments of student progress, laws enabling charter schools, and other reforms. The first round of awards went to two states that had made serious efforts to improve their education systems. Unfortunately, the powers that be were not so selective in Round Two, doling out grants to nine states and the District of Columbia. As the American Enterprise Institute's Frederick M. Hess noted on NRO, the winners did not include “heralded education-reform states Colorado and Louisiana,” yet did include Ohio, Maryland, New York, and Hawaii, which have ranked poorly in evaluations of student-data systems, charter-school laws, and teacher quality. Initially, we disliked the fact that Race to the Top further centralized American education, but hoped it could push states in the right direction. Now we're frustrated with yet another federal boondoggle.

■ Ousted New Jersey education commissioner Bret Schundler is an incisive small-government conservative whose passion for education reform convinced William F. Buckley Jr. he was cut of presidential timber. But Schundler is now a casualty of the Race to the Top. First, he overstepped his authority in negotiating a compromise with teachers' unions on the terms of the application, prompting an irate Gov. Chris Christie to order an eleventh-hour rewrite. Then, in haste to make a deadline, a page of key figures was omitted from the final product, costing New Jersey precious points and, in the end, \$400 million. Schundler apparently compounded the error by telling Christie that federal overseers had rejected his offer to provide the missing data during the state's application presentation, a claim belied by videotape. Schundler has long been a tireless advocate of conservative education policy, and we hope he will continue to beat that drum outside of the statehouse. But his actions in this instance were wrong, and the governor was right to let him go.

■ Employees of the three major broadcast networks—ABC, NBC, and CBS—made over \$1 million in political contributions in 2008, and 88 percent of it went to Democrats. For context: That's approximately the same party split found in early 2007 when an internal survey of employee contributions was conducted by . . . MSNBC.

■ “Liberalartarians” may constitute the world's smallest political movement. There seem to be two full-blooded species of the genus roaming the earth: Brink Lindsey and Will Wilkinson, both of whom in August were released back into the wild from their former preserve, the Cato Institute. Liberalartarians seek to pry American libertarians away from their traditional alliance with the conservative movement and conjoin them to the Left; they are motivated almost entirely by venomous disdain for social conservatives. The duo's departure from Cato has given rise to talk of a “liberalartarian purge,” a phrase that establishes a benchmark for insignificance. Libertarianism is a pretty small sandbox to begin with, and the liberalartarians never really learned to play nice. Mr. Lindsey, who is a smart man, is particularly intolerant of the faintest whiff of religious or cultural traditionalism—he denounced Ron Paul as a xenophobic Christian fundamentalist.



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He has joined the Ewing Marion Kauffman Foundation, where he will research entrepreneurial innovation and the conditions that make it possible—a more fruitful use of his time than denouncing libertarians who wish to extend the law’s protection of individual rights to individuals unborn. Mr. Wilkinson, who without detectable irony advertises himself as a “public intellectual,” is an online columnist for *The Week*. The two men will jointly publish a book in the near future, the title of which—*The Free-Market Progressive*—suggests it may be a work of political economy, exotic anthropology, or possibly mythology.

■ Among the jobs created or saved by this administration: ebonics translator. The Drug Enforcement Administration is looking to hire nine of them to help catch drug dealers in the Southeast. Special Agent Michael Sanders hears where the skeptics are coming from, but “you have to understand that this has to hold up in court. You need someone to say, ‘I know what they mean when they say *ballin’* or *pinching pennies*.’” We speak bureaucrat: He is saying that what the DEA really needs are people familiar with drug slang. Is the cast of *The Wire* not available?

■ Khaled Abu Toameh is an invaluable Palestinian journalist who writes primarily for the *Jerusalem Post*, and has also written for NR. One of his career-long themes is, “The Western media have no interest in reporting what Arab governments do to Arab citizens. They are particularly uninterested in reporting what the Palestinian Authority does to Palestinian citizens. They are interested only in perceived Israeli oppression of Palestinians.” His latest example is the arrest of seven university lecturers on the West Bank—who, according to their own accounts, were promptly tortured. The Palestinian Authority warned Palestinian journalists not to report about this case. But what was the Western media’s excuse? They ignored the story, as they regularly do. They are on the hunt for Israeli injustice, and anything else is a distraction or irrelevance. Some Western journalists explain that they are afraid of reporting persecution by Arab authorities: afraid of repercussions to themselves. Toameh had a blunt, tart message for them recently. He wrote, “If you are scared, why don’t you stop writing about the conflict and start reporting about the weather or environment?”

■ Bread and circuses, so the scornful poet Juvenal said in classical times, was what the Romans wanted. The irruption into Rome of Moammar Qaddafi shows that things have not changed much. The Libyan dictator built a big tent in his ambassador’s garden, the perfect arena for playing the clown in the fancy robes and headgear he reserves for the part. For the animal number, he brought with him 30 well-trained horses. Presumably he wanted the show to celebrate friendship with Silvio Berlusconi, himself a ringmaster, and of course the oil contracts and bank business being processed out of sight. Bring on the girls, then. An agency bused in hundreds of pretty models, actresses, and what have you. Gaddafi lectured them about Islam and handed out Korans. Only three in that multitude of swingers are thought to have converted on the spot—there might have been more if alcohol had been served at the buffet and the girls had received the 70 euros they had been promised. Hugh Hefner need not fear the competition.

■ The oldest principle in jurisprudence is *lex talionis*: retaliatory justice—“an eye for an eye.” In sharia law the aggrieved party may, as an act of charity, accept compensation in lieu of precise retaliation; but he is not required to do so, and in the stricter Islamic states *lex talionis* is sometimes enforced to the letter. Two years ago in Iran, for example, a court ruled that a man who had blinded a woman with acid should himself be blinded with acid. The latest such case concerns Abdul-Aziz al-Mutairi of Saudi Arabia, who was attacked with a meat cleaver and left paralyzed, his spine severed. Mr. al-Mutairi insisted on his retaliatory rights. Judge Sheikh Saud al-Yousef agreed and asked several Saudi hospitals whether they would be willing to sever the convicted assailant’s spine. To their credit, the hospitals all seem to have refused. The story got out, there was an international fuss, and the plaintiff is now being pressed to accept monetary compensation. In fairness it should be said that King Abdullah’s government is trying to modernize the nation’s legal code and prevent these barbarous rulings. Judge al-Yousef’s decision suggests there is still some way to go.

■ Jennifer Keeton believes that people are born male or female, and that homosexuality is a chosen lifestyle and not a “state of being.” That got her into hot water at Augusta State University, in Georgia—a public institution, please note—where Keeton is enrolled in a master’s-degree program in school counseling. Learning of her views, the college authorities insisted that she submit to a “remediation plan” they developed for her—that she participate in “workshops,” read homosexualist propaganda, write reports on what she had learned, and even attend the local gay-pride parade. They told Keeton she would be expelled if she did not fulfill the requirements of the program. She sued in federal court, arguing that her First Amendment rights were being assaulted. The latest news we have on the case is that the court has denied Keeton a temporary order preventing her expulsion. Should the college get its way, our advice to her would be that she convert to Islam. Then she could happily advocate stoning homosexuals to death, and none would dare call it intolerance. Multiculturalism must be fought on its own ground.



■ For several decades, until a recent challenge ended the practice, the schools of Nettleton, Miss., used a race-based system for allocating student-government offices: The senior-class president, for example, would be white one year and black the next. A similar plan governs homecoming elections. Like most quotas and set-asides, this system was adopted with good intentions, to overcome racial bloc voting in the majority-white school; and, again like most such schemes, it created racial friction, institutionalized unfairness, and remained in place long after changing demographics made the simple



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black/white division meaningless. Any system that designates certain offices for certain classes of people is noxious to the spirit of democracy, but the larger lesson is that if you tell blacks and whites that they can't get along unless the government protects them from each other, they will learn the lesson well.

■ In his 34 years at the UCLA School of Public Health, epidemiologist James Enstrom turned out an impressive body of work, studying everything from why Mormons are less susceptible to cancer to the effects of secondhand smoke. But he was recently fired. Why? His work “is not aligned with the academic mission” of the Department of Environmental Health Sciences. What's that mission? To “explore[] the fundamental relationship between human health and the environment.” As various observers, ranging from *Reason* magazine's Jacob Sullum to epidemiologist Carl Phillips, have concluded, this is bunk: The problem is not Enstrom's research focus but his results, and also the fact that he's made some enemies among UCLA's lefty faculty. He disputes the environmental Left's claim that “fine particulate matter” (soot, basically) has been proven to harm human beings and should be regulated by the California Air Resources Board (CARB). His making trouble with CARB itself—he noted that a key staffer had falsified his credentials, and also that UCLA prof John Froines had advised CARB for a quarter century without being reappointed every three years as required—hasn't helped matters. Froines, meanwhile, a former member of the Chicago Seven, participated in the vote that produced a recommendation for Enstrom's firing. Since that recommendation was acted on, Enstrom has been reinstated, but only temporarily. UCLA should make that permanent, immediately.



■ Though chronically unable to cut taxes, New York State has at least found a way to tax cuts. Cuts of bagels, that is: The trademark New York breakfast item is cut equatorially before eating, and when thus cut is considered a “prepared food item,” subject to the state's 8.875 percent sales tax. Uncut, the bagel is tax-free. Desperate for revenue, state tax authorities have launched a drive to enforce the cut-bagel tax. Will Manhattanites rebel by dumping bagels into the harbor? Will tea partiers become tea-and-bagels partiers? Perhaps lox and cream cheese should be served at the next Glenn Beck rally.

■ This issue's Carrie Prejean Award, for astute political commentary by a beauty queen, is shared by two lovely and spirited ladies. Venezuela's Stefania Fernández, whose reign as Miss Universe ended at this year's pageant, defiantly held up the seven-star flag of pre-Chávez Venezuela on her final walk down the runway (the dictator added an eighth star several years ago, and the old flag has become a symbol of resistance to his regime). Meanwhile, Rima Fakihi, a Lebanese Muslim from Michigan who is currently Miss USA, said of the Ground Zero mosque that, while she supports religious freedom, “it shouldn't be so close to the World Trade Center.” Out of the mouths of babes.

■ Johnny Rotten, former leader of the Sex Pistols, recently played Tel Aviv with his band, Public Image Ltd. Several other performers have canceled concerts in Israel, but as Mr. Rotten told Britain's *Independent* with typical candor, “I really resent the presumption that I'm going there to play to right-wing Nazi Jews. If Elvis-****ing-Costello wants to pull out of a gig in Israel because he's suddenly got this compassion for Palestinians, then good on him. But . . . until I see an Arab country, a Muslim country, with a democracy, I won't understand how anyone can have a problem with how they're treated.” Even more of a neocon is Harold, guitarist for the hardcore band Mehkago NT, who grew up in Cuba. He told *Maximum RocknRoll*: “Human rights are being violated all the time in Cuba and most people could give a flying ****! If anything, I hope punks are aware of this and don't sympathize with that bull**** mentality! For example, people wearing a shirt with Che Guevara's face on it—do you know what that stands for? Do your ****ing homework!” When you've lost the hardcore punks, you've lost America.

■ “You ask what we need to win this war. I will tell you,” Gen. John J. Pershing wrote Washington in 1918. “We need tobacco, more tobacco—even more than food.” It does not take a man of Pershing's insight to figure that, in a combat zone, a cigarette can be a welcome friend. Imagine then the scandal when military families were told in early August that their care packages could no longer contain cartons of smokes, thanks to the Prevent All Cigarette Trafficking Act newly in effect; it requires that tobacco products be sent via Express Mail, which won't deliver to most overseas military addresses. An error and an oversight, cried the Postal Service as it rushed to carve out a regulatory exception. Thank goodness; American troops have more than enough to worry about without being harassed by congressional nannies.

■ “A little after 8 o'clock on the evening of Tuesday, July 11, John W. McCormack came before the Democratic Convention of 1972. He stood at the rostrum like an aging heron on a cypress stump, white-haired, gaunt-eyed. Behind him, at eighty, were sixty years of distinguished service to his party; before him, a sea of indifference. So might the last of the pterodactyls have surveyed the primeval swamps” (NR, Aug. 4, 1972). So might lede grafs be written, if all of us were as graced as James Jackson Kilpatrick. Kilpo, as WFB called him, had a long career: at the *Richmond News Leader* (marred, alas, by support for segregation); on *60 Minutes*, debating Nicholas von Hoffman and Shana Alexander; in his columns and books on politics and writing. NR most treasures the pieces he wrote for us, of which his campaign-coverage pieces in the Sixties and Seventies were the jewels. In person, he was a model of politeness and fun. Dead at 89. R.I.P. “The old gentleman spoke for maybe ten minutes, competing hoarsely against a swelling babble of conversation in the hall. There came a pattering of perfunctory applause, and when we looked up the stump was vacant and the heron was gone.”

■ Ted Stevens, Army Air Corps vet, winner of two Distinguished Flying Crosses, and Republican senator from Alaska for forty years (1968–2008), died at age 86 in a plane crash in his home state. His political record was mixed: Scippiest of the Old Bulls—he did not lose his temper, he said, he knew right where it was—he voted a broadly conservative line, while

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shoveling the pork into Alaska (decades from now, the Bridge to Nowhere will be a political trivia question, like vicuña coats). His last election, though, was a disgrace. In October 2008 Stevens was convicted on seven counts of not reporting gifts from Bill Allen, a businessman crony. Eight days later he lost narrowly to Democrat Mark Begich. In April 2009, however, Attorney General Eric Holder asked that the conviction be thrown out: Prosecutors had withheld from the defense interview notes in which Allen contradicted his testimony. Maybe Stevens deserved a voter rebuke, but not on a falsified charge. R.I.P.

■ As a boy, Manuel Ayau earned the nickname “Muso”—short for Mussolini—on account of his abundant confidence. It was ironic because no man was more important to the spread of classical liberalism in his native Guatemala. In 1971, he founded the Universidad Francisco Marroquín, which today hosts 2,700 students, who are required to study classical liberals like Friedrich A. Hayek. When the university started, Marxist assassins targeted Ayau because of his beliefs. But the confident “Muso” braved the risks; he equipped his car with a remote-control starter to check for bombs. A friend of Milton Friedman, he popularized the economist’s ideas in Spanish-language books and in contributions to the *Wall Street Journal* and other publications. He once explained his reasoning: “I learned that freedom must triumph in people’s minds and hearts before it can make any headway in politics.” Well said. Dead at 84. R.I.P.



■ The 1st Special Service Brigade of the British Army landed under enemy fire at Sword Beach, Normandy, on June 6, 1944. Their commander, Lord Lovat, was not only a distinguished soldier, but also a Scottish clan chief. Naturally he had a piper with him: 21-year-old Bill Millin, son of a Glasgow policeman. “Give us a tune, piper,” ordered the commander as they waded up the beach. Millin pointed out that it would be against army regulations. His Lordship replied that those were English regulations, and so did not apply to Scotsmen. Millin wound up his pipes and played, walking up and down the beach as corpses rolled against his legs in the surf and enemy mortar fire thumped around him. He continued to play, advancing inland with his brigade, until four days later when the pipes, which he had momentarily laid down in the grass, took a direct hit from shrapnel. German snipers had held their fire from him in sympathy, assuming the poor fellow had gone crazy from battle fatigue. Bill Millin died August 17 in Devon, England, aged 88. R.I.P.

■ EDITOR’S NOTE: Some of John O’Sullivan’s reporting in “The Wrong Alternative,” on page 30, was overtaken by events after we had sent the article to the printer. An updated version will be available in NR Digital.

The Case for Marriage

IF it is true, as we are constantly told, that American law will soon redefine marriage to accommodate same-sex partnerships, the proximate cause for this development will not be that public opinion favors it, although it appears to be moving in that direction. It will be that the most influential Americans, particularly those in law and the media, have been coming increasingly to regard opposition to same-sex marriage as irrational at best and bigoted at worst. They therefore dismiss expressions of that opposition, even when voiced by a majority in a progressive state, as illegitimate. Judges who believe that same-sex marriage is obviously just and right can easily find ways to read their views into constitutions, to the applause of the like-minded.

The emerging elite consensus in favor of same-sex marriage has an element of self-delusion about it. It denies that same-sex marriage would work a radical change in American law or society, insisting to the contrary that within a few years of its triumph everyone will wonder what all the fuss was about. But its simultaneous insistence that opponents are the moral equivalent of the white supremacists of yesteryear belies these bland assurances. Our tolerance for racism is quite limited: The government, while it generally respects the relevant constitutional limits, is active in the cause of marginalizing racists and eradicating racist beliefs and behaviors. Moreover, social sanctions against racism, both overt and implied, are robust. If our society is truly to regard opposition to same-sex marriage as equivalent to racism, it will have to undergo change both dramatic and extensive. Churches that object, for example, will have to be put in the same cultural position as Bob Jones University was in the days when it banned interracial dating, until they too join the consensus.

If proponents of same-sex marriage thought through these implications, their confidence might evaporate, for it seems highly unlikely that this project will succeed at all, and impossible that it will do so without decades of arduous and divisive social “reform.” That is no reason to shrink from the task, if it is truly a just one. But we should first consider whether the historic and cross-cultural understanding of marriage as the union of a man and a woman really has so little to be said for it.

We think that there is quite a bit to be said for it: that it is true, vitally true. But it is a truth so long accepted that it is no longer well understood. Both the fact that we are debating same-sex marriage and the way that debate has progressed suggest that many of us have lost sight of why marriage exists in the first place as a social institution and a matter of public policy. One prominent supporter of same-sex marriage says that the purpose of marriage is to express and safeguard an emotional union of adults; another says that its purpose is to make it more likely that people will have others to give them care in sickness and old age.

So at the risk of awkwardness, we must talk about the facts of life. It is true that marriage is, in part, an emotional union, and it is also true that spouses often take care of each other

World's Most Romantic Man Pleads Guilty

Gem Dealer Confesses to Crimes of Passion, Surrenders 70-Carat Ruby Masterpiece

She was an international supermodel who could have had her pick of millionaires, movie stars or royalty. But she fell for him. They all did. I begged him to reveal his secret. There had to be a reason that the world's most beautiful women lined up outside his gem shop. Things got clearer once he showed me the **70-Carat Ruby Teardrop Necklace**. When he told me that he sold his ravishing red masterpiece for only \$7 per carat, everything suddenly made sense.

The World's Most Romantic Man doesn't look like a movie star. He doesn't dress in designer clothes. I don't think he even owns a razor. But on any given day, my old friend's showroom looks like backstage at a Paris runway show. They love what he can do with the planet's most passionate stone.

When I asked how he could afford to offer 70 carats of natural ruby at such a low price, he shrugs. "I confess," he said. "I am guilty of romancing too many women. I cannot help myself. I want to make them happy." Selling genuine rubies at \$7 a carat is definitely enough to make anyone happy... but I knew he could do even better. And I told him so.

Haggling was brutal, but the talks took a turn in my direction when I pointed out that I was interested in more than just a few necklaces. I was ready to buy thousands of carats at a time and wanted to make the **Ruby Teardrop Necklace** available for **under \$300**. "Imagine," I said, "Your necklace could become a Weapon of Mass Seduction." He smiled. I smiled. And now it's your turn.

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and thereby reduce the caregiving burden on other people. But neither of these truths is the fundamental reason for marriage. The reason marriage exists is that the sexual intercourse of men and women regularly produces children. If it did not produce children, neither society nor the government would have much reason, let alone a valid reason, to regulate people's emotional unions. (The government does not regulate non-marital friendships, no matter how intense they are.) If mutual caregiving were the purpose of marriage, there would be no reason to exclude adult incestuous unions from marriage. What the institution and policy of marriage aims to regulate is sex, not love or commitment. These days, marriage regulates sex (to the extent it does regulate it) in a wholly non-coercive manner, sex outside of marriage no longer being a crime.

Marriage exists, in other words, to solve a problem that arises from sex between men and women but not from sex between partners of the same gender: what to do about its generativity. It has always been the union of a man and a woman (even in polygamous marriages in which a spouse has a marriage with each of two or



When a **marriage involving children** breaks down, or a marriage culture weakens, government has to get more involved, not less.

more persons of the opposite sex) for the same reason that there are two sexes: It takes one of each type in our species to perform the act that produces children. That does not mean that marriage is worthwhile only insofar as it yields children. (The law has never taken that view.) But the institution is oriented toward child-rearing. (The law has taken exactly that view.) What a healthy marriage culture does is encourage adults to arrange their lives so that as many children as possible are raised and nurtured by their biological parents in a common household.

That is also what a sound law of marriage does. Although it is still a radical position without much purchase in public opinion, one increasingly hears the opinion that government should get out of the marriage business: Let individuals make whatever contracts they want, and receive the blessing of whatever church agrees to give it, but confine the government's role to enforcing contracts. This policy is not so much unwise as it is impossible. The government cannot simply declare itself uninterested in the welfare of children. Nor can it leave it to prearranged contract to determine who will have responsibility for raising children. (It's not as though people can be expected to work out potential custody arrangements every time they have sex; and any such contracts would look disturbingly like provisions for ownership of a commodity.)

When a marriage involving children breaks down, or a marriage culture weakens, government has to get more involved, not less. Courts may well end up deciding on which days of the month each parent will see a child. We

have already gone some distance in separating marriage and state, in a sense: The law no longer ties rights and responsibilities over children to marriage, does little to support a marriage culture, and in some ways subsidizes non-marriage. In consequence government must involve itself more directly in caring for children than it did under the old marriage regime—with worse results.

Thoughtful proponents of same-sex marriage raise three objections to this conception of marriage. The first is that law and society have always let infertile couples marry; why not treat same-sex couples the same way? The question can be tackled philosophically or practically. The philosophical answer boils down to the observation that it is mating that gives marriage its orientation toward children. An infertile couple can mate even if it cannot procreate. Two men or two women literally cannot mate. To put it another way: A child fulfills the marital relationship by revealing what it is, a complete union, including a biological union. A man and a woman who unite biologically may or may not have children depending on factors beyond their control; a same-sex couple cannot thus unite.

The practical problems with using fertility as a criterion for marriage should be obvious. Some couples that believe themselves to be infertile (or even intend not to have children) end up having children. Government could not filter out those marriage applicants who are certain not to be able to have children without extreme intrusiveness. Note that we do not generally expect the eligibility criteria and purposes of marriage to exhibit a rigorous fitness in other respects. This is true about those aspects of marriage about which proponents and opponents of same-sex marriage alike agree. Nobody believes that people should have to persuade the government that they really are capable of a deep emotional union or that they are likely to stick around to take care of an ill partner before getting legally married, because that would be absurd. Nobody would try to devise a test to bar couples with no intention of practicing sexual exclusivity from getting married. It does not follow that marriage is therefore pointless or has nothing to do with monogamy, emotional union, or caregiving. (Those are indeed goods that marriage advances; but if sex did not make children, they would not be a reason to have the institution of marriage.)

The second objection proponents of same-sex marriage raise is that the idea that marriage is importantly linked to procreation is outdated. In our law and culture, the ties between sex, marriage, and child-rearing have been getting weaker thanks to contraception, divorce and remarriage, artificial reproduction, and the rise of single motherhood. Yet those ties still exist. Pregnancy still prompts some couples

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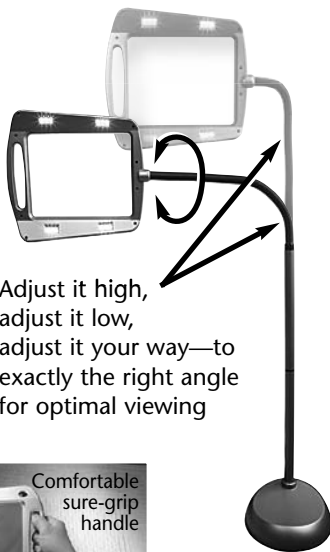
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to get married. People are more likely to ask nosy questions about whether and when children are coming to couples that have gotten married. And we have not at all outgrown the need to channel adult sexual behavior in ways conducive to the well-being of children: The rising percentage of children who are not being raised by their parents, and the negative outcomes associated with this trend, suggest that this need is as urgent as ever. Our culture already lays too much stress on marriage as an emotional union of adults and too little on it as the right environment for children. Same-sex marriage would not only sever the tie between marriage and procreation; it would, at least in our present cultural circumstances, place the law behind the proposition that believing that tie should exist is bigoted.

The third objection is that it is unfair to same-sex couples to tie marriage to procreation, as the traditional conception of marriage does. Harm, if any, to the feelings of same-sex couples is unintentional: Marriage, and its tie to procreation, did not arise as a way of slighting them. (In the tradition we are defending, the conviction that marriage is the union of a man and a woman is logi-



Legal recognition of **same-sex marriage** would make the countervailing norms, and the public policy of marriage itself, incoherent.

cally prior to any judgment about the morality of homosexual relationships.)

And does marriage really need to be redefined? The legal “benefits” of marriage—such as the right to pay extra taxes, and to go through a legal process to sever the relationship?—are overstated. Almost all the benefits that the law still grants could easily be extended to unmarried couples, including same-sex couples, without redefining marriage. The campaign for same-sex marriage is primarily motivated by one specific benefit: the symbolic statement by the government that committed same-sex relationships are equivalent to marriages. But with respect to the purposes of marriages, they’re not equivalent; and so this psychic benefit cannot be granted without telling a lie about what marriage is and why a society and legal system should recognize and support it.

Same-sex marriage is often likened to interracial marriage, which the law once proscribed. But the reason governments refused to recognize (and even *criminalized*) interracial marriages was not that they did not believe that such marriages were possible; it is that they wanted to discourage them from happening, in the interests of white supremacy. Sexual complementarity is a legitimate condition of marriage because of the institution’s orientation toward children; racial homogeneity has nothing to do with that orientation. Laws against interracial marriage thus violated the right to form an actual marriage in a way that laws defining marriage as the union of a man and a woman do not violate it. The argument about what the equal rights of all citizens entail for marriage laws

turns, in other words, on what marriage is. If marriage just is by its nature oriented toward procreation, the refusal to redefine it to accommodate same-sex partners unjustly discriminates against them no more than the military does against the flat-footed.

Same-sex marriage would introduce a new, less justifiable distinction into the law. This new version of marriage would exclude pairs of people who qualify for it in every way except for their lack of a sexual relationship. Elderly brothers who take care of each other; two friends who share a house and bills and even help raise a child after one loses a spouse: Why shouldn’t their relationships, too, be recognized by the government? The traditional conception of marriage holds that however valuable those relationships may be, the fact that they are not oriented toward procreation makes them non-marital. (Note that this is true even if those relationships involve caring for children: We do not treat a grandmother and widowed daughter raising a child together as married because their relationship is not part of an institution oriented toward procreation.) On what possible basis can the revisionists’

conception of marriage justify discriminating against couples simply because they do not have sex?

How, for that matter, can it justify discriminating against groups of more than two involved in overlapping sexual relationships? The argument that same-sex marriage cannot be justified without also, in principle, justifying polygamy and polyamory infuriates many advocates of the former. There is, however, no good answer to the charge; and the arguments and especially the rhetoric of same-sex marriage proponents clearly apply with equal force to polygamy and polyamory. How does it affect your marriage if two women decide to wed? goes the question from same-sex marriage advocates; you don’t have to enter a same-sex union yourself. They might just as accurately be told that they would still be free to have two-person marriages if other people wed in groups.

We cannot say with any confidence that legal recognition of same-sex marriage would cause infidelity or illegitimacy to increase; we can say that it would make the countervailing norms, and the public policy of marriage itself, incoherent. The symbolic message of inclusion for same-sex couples—in an institution that makes no sense for them—would be coupled with another message: that marriage is about the desires of adults rather than the interests of children.

It may be that the conventional wisdom is correct, and legal recognition of same-sex marriage really is our inevitable future. Perhaps it will even become an unquestioned policy and all who resisted it will be universally seen as bigots. We doubt it, but cannot exclude the possibility. If our understanding of marriage changes in this way, so much the worse for the future.



As legend has it: Remnants of an Army, by Elizabeth Butler

Graveyard of a Cliché

Afghanistan presents no impossible military challenge, its 'history' notwithstanding

BY ANDREW ROBERTS

IN the lexicon of the Left, the adjective “unconquerable” has now attached itself to the noun “Afghanistan” just as indelibly as the adjective “illegal” once attached itself to the noun “war in Iraq.” The *New York Times*, NPR, the *Huffington Post*, and the BBC, let alone the wilder shores of the liberal blogosphere, all take it for granted that Afghanistan has always been “the graveyard of empires”—thereby more or less openly encouraging us to draw the inevitable conclusion that the present struggle against the Taliban is unwinnable. Yet the truth could not be more different; rather than the graveyard of empires, Afghanistan has historically been their revolving door.

Half-recalled and grossly embellished folk memories of what the Afghan tribesman and his ancestors are supposed to have done over the centuries have created a myth of a hardy warrior people who have defeated every imperial power since Alexander the Great, be they the Persians, Mongols, Moghuls, Russians, British, or Soviets. We are invited to remember the First Afghan War of 1839–42 and that painting by Elizabeth Butler of the lone

horseman riding back into Jalalabad after the massacre of every single European in the Retreat from Kabul. Similarly, we are reminded of the British defeat at Maiwand in 1880, and of course the humiliation of the USSR in the 1980s. Anyone who tries to invade Afghanistan, the legend implies, is thus flying in the face of history.

Yet that’s all it is: a legend. For as Thomas Barfield of Boston University, author of *Afghanistan: A Cultural and Political History*, points out: “For 2,500 years [Afghanistan] was always part of somebody’s empire, beginning with the Persian Empire in the fifth century B.C.”

The reason that Alexander stayed in Afghanistan so briefly was that there was so little to keep him there, in terms of wealth or produce; he went to Afghanistan to pass through into India. Afghanistan had already been conquered by the Median and Persian Empires beforehand, and afterwards it was conquered by the Seleucids, the Indo-Greeks, the Turks, and the Mongols. The country was quiet for most of the reigns of the Abbasid Dynasty and its successors between 749 and 1258. When Genghis Khan attacked it in 1219, he exterminated every human being in Herat and Balkh, turning Afghanistan back into an agrarian society. Mongol conqueror Tamerlane treated it

scarcely better. The Moghuls held Afghanistan peaceably during the reign of Akbar the Great, and for well over a century afterwards.

Hardly any of these empires bothered to try to impose centralized direct power; all devolved a good deal of provincial autonomy as the tribal and geographical nature of the country demanded in the period before modern communications and the helicopter gunship. Yet it was they who ruled, and the fact that the first recognizably Afghan sovereign state was not established until 1747, by Ahmad Shah Durrani, illustrates that the idea of sturdy Afghan independence is a myth.

All that these empires (and, later, the British Empire) required from Afghanistan was that it not be used as a base from which attacks could be mounted, in Britain’s case from czarist Russia during what was called “The Great Game.” NATO is not demanding that much more today, merely a modicum of human rights, especially for women. Had the Taliban not hosted and protected al-Qaeda while it masterminded the 9/11 attacks, Afghanistan would almost certainly have been left alone entirely. Today, NATO is simply trying to help the majority—as we discover from recent polling, the large majority—of Afghans “to prevent a cancer from once again spreading through that country,” in the words of President Obama.

Nor is Islamic fundamentalism a historically deep-seated phenomenon in Afghanistan. NATO is often accused by the Left of trying to impose Western values on the Afghans, but it was King Amanullah who instituted Kemalist modernization—such as monogamy, Western clothing, and the abolition of the veil—back in 1928. The only people seeking to impose a foreign culture on Afghans are the Taliban.

One of the more recent historical examples of Afghans’ supposed ability to fend off colonial powers, the country’s struggle with the British Empire, deserves close scrutiny. For all the undoubted disaster of Britain’s First Afghan War, the popular version of events is faulty in several important respects. It is true that 16,500 people died in the horrific Retreat from Kabul, but fewer than a quarter of them were soldiers, and only one brigade was British. The moronic major-general William George Keith Elphinstone evacuated Kabul in midwinter, on Jan. 6, 1842,

Mr. Roberts is author of Masters and Commanders: How Four Titans Won the War in the West, 1941–45 (HarperCollins).

and the freezing weather destroyed the column as much as the Afghans did; one Englishwoman recalled frostbite so severe that “men took off their boots and their whole feet with them.” Wading through two feet of snow and fast-flowing, freezing rivers killed many more than jezail bullets did, and despite Lady Butler’s painting of assistant surgeon William Brydon entering Jalalabad alone on his pony, in fact several hundred—possibly over a thousand—survived the retreat and were rescued by the punitive expedition that recaptured Kabul by September 1842. Early in 1843, the governor-general, Lord Ellenborough, sent Sir Charles Napier to capture Sind, and thereafter Afghanistan stayed quiet for 30 years.

Sir Jasper Nicolls, the commander-in-chief of India, listed the reasons for the defeat at the time as: “1. not having a safe base of operations, 2. the freezing climate, 3. the lack of cattle, and 4. placing our magazines and treasure in indefensible places.” The lessons NATO needs to learn from the Kabul catastrophe of 1842 are therefore precisely nil, for none of these are applicable in Afghanistan today, where NATO has not lost a single man from frostbite, has not lost a significant engagement against the Taliban, and does not fight with a baggage train of civilians four times its number. Lack of cattle isn’t so important nowadays, either.

The Second Afghan War, which was actually won by Maj. Gen. Sir Frederick Roberts (no relation) at the battle of Kandahar in August 1880, holds similarly few lessons for us today. The major problems in 1878 were the maintenance of lines of communication over the passes and the intimidation of people in the occupied towns. NATO’s lines of communication are not being harried today, and anyhow air power has transformed that as well as the battlefield. After 1880, in the words of Richard Shannon’s book *The Crisis of Imperialism*, “Afghan resistance was subdued and Afghanistan was reduced to the status virtually of a British protectorate” until it was given its independence in 1919. And for all its post-independence instability—of the five successors of Dost Mohammed, an emir and a leading figure in the fight against British colonialism, all were assassinated or overthrown—Afghanistan did not threaten countries outside its borders until 9/11.

If those British imperial precedents therefore don’t presage today’s fighting in Afghanistan, neither do the others we are commonly warned of by the Left. The Vietnam generation likes to try to equate this war to that one, despite the absence of jungle in Afghanistan and totally different methods of engagement. North Vietnam had an army of hundreds of thousands, was supported at different times by Russia and China, and had significant help in the South from the Vietcong. By total contrast the Taliban numbers between 10,000 and 15,000 men, is hated by ordinary Afghans, and is not supported by any of the Great Powers. Moreover, America lost over 58,000 men in Vietnam, whereas it has lost a total of 1,139 in Afghanistan.

Nor is the Soviet invasion of Afghanistan a useful precedent. The invasion of 120,000 men of the Red Army at Christmas 1979 was undertaken not by the Soviet Union’s best units, but by soldiers from the Soviet republics adjacent to Afghanistan, in order to make it look like a limited, local operation. These two-year conscripts were often drunk or on opium. The Soviets ultimately lost 15,000 men (i.e. more than ten times the number of Americans over the same length of time). Their helicopter gunships devastated most of the villages between Ghazni and Kandahar in February 1980, utterly regardless of civilian casualties. Their equipment, training, discipline, and morale were incomparably worse than NATO’s today, and NATO has sent the very best men it has, including the British Household Division and the U.S. Marine Corps. The Soviets had thousands of defections to the enemy, whereas NATO has so far had two.

British deaths in the current Afghanistan conflict—by no means all at Taliban hands, as many were accidental—now amount to 0.25 percent of the British Army. No country that wishes to play a significant part in the world can simply withdraw from a struggle because it has lost 0.25 percent of its army on the battlefield. Neither Britain nor America could have won a war in its entire history on that basis. Never in the field of human conflict have so many fought for so long with so few losses as in Afghanistan. Every individual death is a tragedy, but it is vital to put each in its proper perspective: that of a long, vital struggle against a vicious—but historically very unimpressive—foe. **NR**

Two States— Plus Israel?

*More dubious Mideast wisdom
from President Obama*

BY DAVID PRYCE-JONES

ISRAEL and the Palestinians have agreed to resume the direct peace negotiations broken off amid recriminations in December 2008, in 2006, in 2000, and all the way back. Benjamin Netanyahu for the Israelis and Mahmoud Abbas for the Palestinians don’t pretend to enjoy the prospect, and they groan audibly at the insistent pressure put on them by President Obama to cooperate. Hope springs eternal, of course, but did Obama never hear the forceful observation, commonly attributed to Einstein, that doing the same thing over and over again in the expectation of getting different results is insanity?

Obama has an end game in mind. For him, it is axiomatic that the establishment of a state of their own will place Palestinians on equal terms with Israelis. This “two-state solution” is all that’s required to bring eternal peace to the Middle East. It’s urgent too. Agreement in principle between the parties is now to come about within one year. In preparation for launching the state of Palestine, the United States has been talking up the merits of democracy, paying out hundreds of millions of dollars, and as in Iraq and Afghanistan, recruiting and training a police force, in theory to protect Abbas.

The parties at the forthcoming negotiations have always held, and still today hold, completely opposed views on issues that define identity, like the recognition of Israel as a Jewish state, the return of Palestinian refugees, and the status of Jerusalem. Since the days of the British Mandate, objection to compromise has come from the representatives of two rival nationalisms, the Palestinian leadership and the Israeli Right. From the 1930s onwards, Palestinian leaders have been willing to ruin their people in warfare they could not win rather than concede the existence of a Jewish state in any part of the land. The Israeli Right took whatever chances there were to settle and incorporate land in the expectation that the Arab



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A Hamas rally in Gaza

presence there would somehow dissolve like a mirage. Withdrawal in 2005 from the Gaza Strip was a final acknowledgment by the Israeli Right that the Arab presence is in fact permanent, and responsibility for ruling discontented Arabs is intolerable.

That is the starting point of the two-state solution, which is really no more than a diplomatic euphemism for partition, buried in it the fundamental question of how much is to go to Israel and how much to the Palestinians. It is yesterday's missed opportunity, however. Blocked for so many decades by the rival nationalisms, partition has been overtaken by events. Withdrawal from Gaza opened the way for Hamas, a new component in the Israeli relationship with the Palestinians. Hamas is the local branch of the Muslim Brotherhood, the world's foremost Islamist organization. In local elections in Gaza, Hamas began its rise to power by defeating Fatah, the armed militia on which Abbas depends. This was a classic case of "One man, one vote—once." Hamas has postponed further elections. Then in a carefully planned coup, Hamas set about killing any and all Fatah members who did not come over to them.

Small in scale though it is, the Gaza Strip is now an Islamist emirate complete with sharia law and religious police to enforce it. The legitimacy of this dictatorship rests on the gun. Corpses are regularly fished out of the sea and found to have been shot in the back of the head. In the conviction that Palestine is a God-given

trust to Muslims, Hamas rejects any idea of a two-state solution in favor of jihad, that is to say a struggle to the death with whoever does not share their Islamism. In its idiom, Hamas accuses Fatah of "waging war against Islam and Allah." To Islamists, everything, then—to the Israelis or to Fatah, nothing. The no-holds-barred nationalism that long ago wrecked the Palestinians has acquired a religious dimension that is impervious to any possibility of compromise. Khaled Meshaal, the Hamas leader who lives in Damascus, immediately arranged for a dozen separate organizations, some of them jihadis and others secular, to sign a petition that talks were the result of coercion by Washington and "do not obligate our people to anything." Violence on their part against the two-state solution is unavoidable. Iran has firmly sealed Hamas into its would-be global jihad by paying it an annual subsidy of \$500 million, and provides weaponry, including missiles capable of reaching well into Israel, and Egypt, and Jordan too, come to that.

Mahmoud Abbas, the titular Palestinian president in his capital of Ramallah on the West Bank, cuts a sad figure. So weak is his position that he cannot even return to his house in Gaza, which has anyhow been sacked in his absence. Although his term expired last year, he too stays in office by postponing elections. His tenuous authority to enter into direct talks with Israel comes from the votes of committees he has packed with Fatah supporters.

It will be easy for him or anyone else to say that a decision reached in Washington has no legitimacy.

Khaled Abu Toameh, the Palestinian journalist with the courage to tell it like it is, does not hesitate to say that Hamas and Fatah are engaged in civil war and to supply the details. A meeting in Ramallah to protest against talks was broken up by plainclothes security men shouting Fatah slogans. One thousand schoolteachers have been fired for having suspect political sympathies. Abbas has arrested dozens of Hamas and affiliated supporters on the West Bank, and has placed a ban on Sheikh Hamed Bittawi, the senior Hamas representative there. The intra-Palestine civil war crosses frontiers: In the Lebanese city of Tyre, Hamas and Fatah sheikhs have just shot it out over the question of who should preach in a mosque. Abbas stays in power only because he buys loyalty by distributing to cronies the subsidies he receives from abroad. West Bankers resent the corruption. In the event of holding the elections that are overdue, Abbas and Fatah would almost certainly lose to Hamas, whereupon in a repeat of the takeover in Gaza they would face the alternatives of a bloodbath or exile. With another dictatorship in the making, nobody knows whom the American-trained police force would turn their guns against. Maintenance of the status quo is the only possible precaution against the West Bank's falling under the control of Hamas, and therefore Iran, both of which have the declared purpose of putting an end to the Jewish state.

The end game of the two-state solution, then, is illusory, wishful thinking, outdated, because there are now two incompatible Palestines, and with Israel, that makes three states. Three into two won't go.

Obama has expended a good deal of his diminishing political capital by insisting on these talks. As so often with him, the motive is obscure. At the very moment when the summons to Abbas and Netanyahu was announced, Iran was advancing to the next stage in its nuclear program by installing fuel rods in a Russian-built reactor on the Persian Gulf. Experts estimate that by the time the year allotted for laying the foundation of the two-state solution is over, Iran will have two nuclear bombs, maybe more. In the circumstances, doing the same talking as before in the expectation of a different result seems—well yes—insanity. **NR**

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Crisis Made Locally

*California is a penniless state
full of penniless cities*

BY JOSH BARRO

CALIFORNIA famously competes with Illinois for the title of the most fiscally dysfunctional state. While residents of most states are enduring only their second or third year of fiscal crisis, Californians have been suffering since for more than a decade—they recalled Gray Davis in part because of their dissatisfaction with his fiscal management, and matters haven't gotten any better under Arnold Schwarzenegger. This year, the state faces one of the country's biggest budget deficits: \$19 billion, more than a fifth of its total budget.

Less noted is that California's municipal finances are among the bleakest in the country, too. Up and down the state, municipal leaders are openly discussing the possibility of declaring bankruptcy—including in the state's two largest cities, San Diego and Los Angeles. Over the next few years, a bankruptcy trend that started in the suburbs of San Francisco could go statewide.

Vallejo, Calif., a city of 117,000 northwest of San Francisco, declared bankruptcy in 2008. The driver of Vallejo's insolvency wasn't excessive bond debt but unsustainable pay and benefits costs: For example, the average Vallejo firefighter had a compensation package worth \$171,000, and police captains could make over \$300,000 in pay and benefits. Meanwhile, weak tax revenues impaired the city's ability to cover this bill, even after cuts in staffing. Like most California municipalities, Vallejo devotes a huge majority of its budget to pay and benefits, so the main options for saving money are employing fewer workers or paying them less. When public-employee unions refused to agree to significant pay cuts, the city council chose bankruptcy as an avenue to get out of union contracts and cut compensation.

Mr. Barro is the Walter B. Wriston fellow at the Manhattan Institute.

Vallejo's case—both in terms of the extravagance of employee compensation and the fiscal impact of the recession—was extreme. But after two more years of tough economic conditions, other California cities are now looking at drastic action to fix their books.

Oakland, where the average police officer receives total compensation of \$162,000 per year, laid off more than 10 percent of its police force this summer. In an attempt to scare city officials out of making the staff cuts, the police chief announced that the department would stop responding to certain less-serious crimes, such as grand theft. This did not deter the city council, and the layoffs went forward in July.

Other cities are throwing around the B-word, too. In May, officials in Antioch (another medium-sized city near Vallejo) warned that they might resort to bankruptcy if cost-cutting efforts failed to balance the books. In June, the Grand Jury of San Diego, an official investigative body formed by the city's government, urged city officials to investigate bankruptcy as a way to discharge crippling pension obligations.

Most alarming of all, former Los Angeles mayor Richard Riordan has warned that the largest city in California is on a path to bankruptcy by 2014. As with Vallejo, Los Angeles's financial difficulties are not principally a problem of excessive bond debt, though residents have been fairly cavalier about approving new issuances in the face of the recession. The problem is unsustainable growth of employee compensation, especially benefits.

Today, the City of Los Angeles is spending more than \$17,500 per employee per year just on retirement benefits; if you exclude employees of business-type municipal activities (such as the airport and utilities), that figure rises to nearly \$24,000. And these expenses are poised to soar: By the city's own estimates, costs for pensions and other post-employment benefits (mainly retiree health care) will rise from \$924 million in fiscal year 2009 to nearly \$1.5 billion in FY 2015—and the city has no real plan to meet them.

Why are retirement expenses going up so much? Partly, they reflect the severe stock-market drop that began in 2008 and battered the value of pension-plan assets. Pension funds recognize unusual gains or losses gradually, over a period of years,

so the full effect of recent investment troubles won't show up in the city's required payments until mid-decade. But the rising pension expenses are also driven by the city's creation, backed by Riordan, of a new, more generous tier of police and firefighter benefits back in 2001. While the average Tier 4 retiree gets a starting pension of just over \$45,000, the typical figure is \$83,000 in the new Tier 5. At the time, because of the strong stock market, this looked affordable; now, not so much.

The ballooning pension contributions that strain Los Angeles's municipal finances would be even higher if the city had not used an accounting trick to delay the pain: In the wake of the stock-market crash, the city lengthened the period over which it recognizes extraordinary asset-value changes from five years to seven, allowing it to increase contributions more slowly. But this delay will undercut the pension system's financial strength over the long term. (It also may not endear the city to financial regulators—the SEC recently sued New Jersey for failing to adequately disclose some shady pension-accounting practices, including a maneuver similar to Los Angeles's.)

While these irresponsible fiscal decisions and ballooning pension costs are alarming, they are not unique to California. Many states, including New York, New Jersey, and Illinois, juiced up their benefits around the same time that Los Angeles did. So why is bankruptcy talk so much more prevalent in California than elsewhere in the country?

The differences are structural. One of them is the unusually heavy political clout of public-employee unions in California. They have managed to negotiate compensation packages on par with (or better than) their peers' in higher-spending states such as New York and New Jersey. The state manages to combine sky-high salaries and moderately high spending by restraining non-personnel costs or by employing fewer people; for example, California pays the country's second-highest teacher salaries but also has the second-highest student/faculty ratios.

In a sense, the high-profile case of Bell, Calif., is the exception that proves the rule of how Golden State cities overspend. Bell's fiscal mess was driven by insanely high salaries paid to a handful of non-unionized city employees, including the city manager and the city council. Once

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Steph Wexford, Staff Reporter

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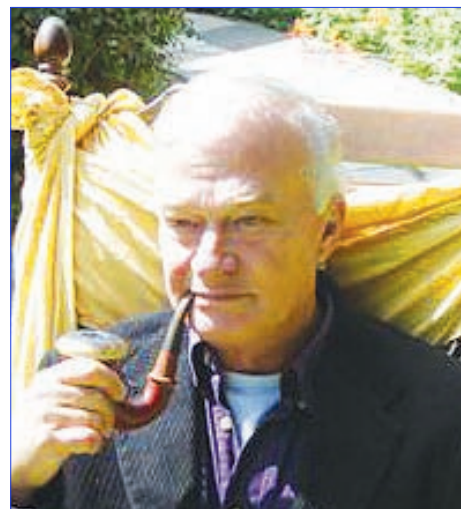
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these facts were publicized, Bell responded by cutting loose its high-paid managerial staff, and the city council will be turned out by voters. (For more on the sorry tale of Bell, see Daniel Foster's report on this page.) But in most cities, the problem is not a few egregiously overpaid non-union employees; it is a large number of somewhat overpaid union employees, and they will not give up their rich compensation packages so easily. When you can't cut compensation per employee, and you do not start with an especially high headcount (should California go for even higher student/teacher ratios?), then your budget-cutting options are severely limited.

In other states with similarly intractable unions, municipalities can tax their way out of the fiscal holes created by high compensation. But California's Proposition 13 stringently limits property taxes at 1 percent of assessed value, which is often significantly lower than market value. Unlike in many states with property-tax caps, such as Massachusetts, California voters cannot override the cap and allow for higher taxes. The property-tax levy can be (slightly) increased to finance new bond issues, but not to pay for current operations.

While California municipalities have a tougher time raising taxes or cutting spending than their peers in other states, they have relatively easy access to bankruptcy. A California city can go bankrupt simply by convincing a court that it cannot meet its current obligations—and the Vallejo case showed that it need not first maximize taxes or cut services to the bone. With these sorts of standards, strained cities in other states—such as Newark, N.J., which faces an \$85 million gap in a budget of approximately \$600 million and is about to lay off 20 percent of its police force—might find bankruptcy very appealing. But New Jersey does not allow municipal bankruptcy, so Newark is instead discussing a property-tax increase of more than 20 percent.

Back in May, Riordan laid out a plan to keep Los Angeles out of bankruptcy, and much of his advice would also be sound for other municipalities (including Newark): Move new employees to 401(k) plans instead of defined-benefit pensions, raise pension contributions for existing employees, and raise retirement ages. Riordan also suggests staff cuts, which would be appropriate in some

cases; in others, it would be better to freeze or cut salaries.

Officials all over California already know this is what they need to do. Vallejo tried to achieve similar savings before its bankruptcy filing but could not get union approval. While Riordan frames his proposal as a way to avoid bankruptcy, it reads more like a list of items to be included on a reorganization plan *after* declaring bankruptcy. Over the next several years, as costs rise and revenues most likely remain anemic, actions based on the Riordan plan—and the bankruptcy filings to make them possible—will look more and more appealing. Naturally, employee unions are fighting in Sacramento to subject municipal bankruptcies to approval by a union-influenced state board; so long as the state has a Republican governor, that, fortunately, is unlikely to happen.

Bankruptcy has its downsides. Municipal bondholders will lose money, and a lot of them are individual investors in California attracted by the tax benefits. Further, if more cities start defaulting on their bonds, interest costs will rise for municipalities across the state and perhaps the country.

The right solution isn't to cut off the bankruptcy option and leave cities trapped with unsustainable costs they can't discharge. Instead, California should implement structural reforms that help municipalities control costs. This has been a key focus for New Jersey governor Chris Christie, who has correctly noted that you can't control local taxes without controlling local spending. Key options include tenure and civil-service reform, a requirement that public employees' health benefits track the value of private-sector benefits, and even a prohibition on public-sector collective bargaining, which has helped Virginia municipalities maintain moderate cost growth.

Without such reforms, bankruptcy will be essential as cities' last viable path to solvency—and as a credible threat to bring unions to the table. If those threats do not work, and if Sacramento does not bring structural reforms that strengthen municipal officials' hands, then California's local fiscal crises may lead to a series of municipal bankruptcies that would unsettle markets around the country. California has long been a national trendsetter—but this is one we'd do well not to follow. **NR**

Wringing Bell

Enrich not thyself on the taxpayer dime(s)

BY DANIEL FOSTER

Bell, Calif.

WHEN you come off the 710 and onto the Florence Avenue ramp, there is on this particularly smoggy August day a dirt-encrusted drifter, standing in a litter-strewn, overgrown strip of soft shoulder and holding a scrap of cardboard, on which is written an illegible message for the presumed benefit of passing motorists. He shakes his head slowly, rhythmically, from side to side as you roll by and turn right onto the avenue, passing over what is loosely referred to as the Los Angeles River—a sorry trickle of dingy water moping its way through a weed-lined, cracked-concrete channel, under a phalanx of latticework-steel electrical lines, each of them an ugly little Eiffel Tower.

On your right is the kind of gas station that has a token-operated, unisex restroom; on your left, a drab strip mall dominated by an outpost of the California Department of Rehabilitation. Farther off, trailers and modest one-story houses of pink and beige and aquamarine, on chain-link-fenced lots as much concrete as grass.

The Atlantic Avenue retail strip is the center of commerce here, such as it is. It is split down the middle by a line of nice-enough dwarf palms, and has a Carl's Jr. and a Starbucks, a KFC and a Blockbuster. But many of the shop spaces along the avenue are shuttered, and the rest host ramshackle bodegas and discount clothing stores.

The strange symbols on the vagrant's makeshift sign might as well have said "Abandon all hope . . ."

This is the way to Bell, Calif.: population 36,664, and the poster city for fiscal dysfunction and bad government in the poster state for fiscal dysfunction and bad government.

It is a place barely two miles square—a half dozen stoplights in any direction and you're somewhere else—a poor, predominantly Hispanic community like dozens

of others in Southern California, its people eking by on a per capita income of \$24,800.

So it must have come as something of a shock when, earlier this summer, Bell residents learned from a report in the *LA Times* that their top bureaucrat, city administrator Robert Rizzo, was earning \$1.54 million annually in total compensation, while enjoying 143 (paid) sick and vacation days per year. And that Rizzo's assistant, Angela Spaccia, was pulling down \$845,960 a year. And that police chief Randy Adams, overseeing a department of 24 that had recently slashed its training budget in half, was earning \$770,046.

The *Times* report set off a chain reaction of outrage, awakening a populace that had just a few short years ago voted in abysmally low numbers to let the bureaucrat-barons of Bell write their own charter bypassing the limits on municipal-service compensation enshrined in California state law. And as the people of Bell set upon council meetings calling for firstborns, the L.A. County district attorney launched an inquiry and assembled a grand jury, and the *Times* thumbed deeper into the city's books.

It turned out that Rizzo, Spaccia, and Adams were just the scum atop the cesspool.

The city was paying seven other mid-level functionaries salaries ranging from \$229,992 to \$422,707, while mayor Oscar Hernandez and three part-time council members were earning nearly \$100,000 each, mostly for sitting on an array of dummy boards whose meetings consisted of little more than calls to order and adjournment. An August 25 *Times* story details a typical block of such meetings held on one evening in 2006:

The Planning Commission met from 8 P.M. to 8:03 P.M. The Redevelopment Agency followed from 8:03 to 8:04, the Surplus Property Authority from 8:05 to 8:06, the Housing Authority from 8:06 to 8:07 and the Public Finance Authority from 8:07 to 8:08.

In those eight minutes, Hernandez and the others accrued just shy of \$32,000 in taxpayer dollars.

And as the investigations progressed, it got worse. Internal documents—some little more than handwritten notes—revealed that the council had given \$1.6 million in “loans” to council members and

employees for unspecified purposes, many of which had yet to be repaid; that they had bypassed voters in bonding \$35 million to buy up blighted property on the 710 that was now facing foreclosure; and that they had illegally raised residents' property taxes by at least \$2.9 million in an effort to cover their spending spree.

The full picture of the Bell, Calif., racket was still coalescing when I pulled up to City Hall in a rented subcompact in early August. I was in L.A. for a couple of days on another assignment, but decided to spend an afternoon in Bell to see what I could see. By then, the two millionaire bureaucrats and the police chief had resigned, the council/syndicate had voted unanimously to accept 90 percent pay cuts, and the mayor had graciously volunteered to finish his term pro bono.

The council building itself is an unassuming red brick of square lines on a shady, well-manicured lawn. It shares space with the police station and sits across a parking lot from the small, pleasant-looking town library. It's a nice setup, but not ostentatious. Whatever else they've done, Bell's city fathers have not built themselves a castle.

Inside, the lingua franca is a fluid, literate, and cleanly accented Spanglish. In the area between the front desk and a bank of administrative offices, an attractive government press flack named Magdalena Prado, on retainer from neighboring Maywood, is handling the half dozen reporters and citizens who want audiences with Pedro Carrillo, the interim city manager. A team of quiet, serious-looking men and women emerge from one set of closed doors toting reams of paper, walk stiffly across the waiting area, and disappear behind another set of closed doors. These are likely the accountants sent by California controller John Chiang to conduct a six-week audit of the city's finances, though it is hard to say.

Among the journalists in Bell today is a TV investigative reporter from West Hollywood—the kind of guy who specializes in knocking on doors and sticking microphones in the faces of slumlords, used-car salesmen, and scheming deadbeats. He is sitting in the waiting area with his portly cameraman, hiding behind a newspaper. Whenever one of the maybe-auditors emerges from one of those closed doors, he mut-

ters, not quite under his breath: “How's that audit coming?”

The most he gets is a tight smile and a shrug from an Asian woman in a skirt suit, before she disappears behind a door marked “EMPLOYEES ONLY.”

I fill out a public-records request and bring it to one of the bored college-age girls behind the desk who, it quickly becomes clear, exist solely to sandbag the curious as politely as possible. The one I talk to has the Christian name of a Brazilian supermodel, is studying communications or media at California State University—Long Beach, and says she wants more than anything to host *So You Think You Can Dance*. I give her the form and tell her I want to see the minutes from every council meeting over the last five years. I want to know where the people of Bell were while their government was voting to become millionaires on their dime.

The girl tells me if I want copies it could take up to ten days.

I don't want copies, I just want a stack of minutes and a chair.

Well, she explains, there are people who requested to see the minutes before you, so you'll have to wait.

Fine, I've got all afternoon. When do you think they'll be done?

Who? she asks.

The other folks looking at the minutes.

Oh, she says, there's nobody looking at the minutes now.

Then why can't I look at them?

Because there are people ahead of you who put in requests.

But they're not here now?

No.

I'm fairly sure this is illegal under California's freedom-of-information laws, but I add my cellphone number and my New York address to the form all the same. She



Mayor Oscar Hernandez presiding

says I'll be contacted when I can look at the minutes. (As of press time, I still haven't heard a peep.)

What about the budget? May I see that? Sure, she says, and points me to a lime-green ring-bound tome sitting on the other end of the counter. It contains Bell's five-year budget plan.

I settle in next to the West Hollywood investigative reporter and his cameraman and have a look.

I notice that Bell became an expensive place to govern rather quickly: Total expenditures on administrative services skyrocketed from \$5.4 million in 2002–03 to \$23.9 million just a few years later. The story is the same when you break it down by department: Everywhere, the salary and “administrative costs” expenditures were big and growing—here from \$394,305 to \$1.044 million, there from \$108,265 to \$331,872—but no single line item matches the biggest of the reported figures.

Figuring that Robert Rizzo's \$1.5 million pay package should stand out from the spreadsheets, I look for the City Administrative Officer line item. I find not one, but many, each with a different salary figure attached to it and none approaching seven figures.

And then it all becomes clear. In the sections detailing each department's personnel needs, there is invariably a call for a fraction of a Rizzo: The office of administrative services needs a hearty 35 percent of him, while the folks down in waste collection need only 10 percent. Liability insurance, workman's comp, and retirement each make do with 5 percent, and so on. Spread it across enough line items and even \$1.5 million begins to look like a pittance to pay for the indispensable Rizzo.

As I'm tallying the numbers in my notebook, a well-regarded senior reporter from the *Times* walks in, oxford shirt tucked into Levis, sunglasses perched on forehead, thumbs and eyes locked on cellphone. I introduce myself and we exchange professional pleasantries. Turns out he's been waiting for weeks to see the very same meeting minutes.

Ah, well, when you're done, mind if I have a crack?

Sure, he says, except that he isn't sure when his turn will come. There are people ahead of him who have already put in requests.

Just then, Ms. Prado emerges from the “EMPLOYEES ONLY” room with Carrillo, the interim city manager, in tow.

The *Times* reporter calls after Prado and I see an opening to float my One Rizzo, Divisible theory.

Carrillo is clearly a man who hasn't had as much sleep as he'd like in the last few weeks. He listens to my theory, smiles, and shakes his head.

“I can't tell you definitively whether any of that is true until I've finished my audit,” he says, pointing at the lime-green, ring-bound budget. “But yes, it certainly looks like this money was hiding in plain sight.”

At this point I notice a large bronze bust of John F. Kennedy set in one corner of the foyer, and it occurs to me, for the first time since I've been here, that all five members of the Bell city council are Democrats. Considering the environs, this is so obvious as to be banal; besides, they say greed knows no party.

But something about Kennedy, about the bust, is bugging me.

In the weeks following my visit, State Controller Chiang would announce a spate of new transparency initiatives, attorney general Jerry Brown would continue to beat the subpoena drum, and the state legislature would consider a number of remedies to ensure that there'd never be another Bell.

Meanwhile, the L.A. district attorney's office would expand its investigation to include allegations of voter fraud—it turns out that half of the votes cast in that 2005 referendum giving Bell pols carte blanche to raise their salaries were absentee ballots of dubious provenance—and the Bell Association to Stop the Abuse, a nascent group of angry citizens whose acronym, BASTA, means “Enough” in Spanish, would begin collecting the signatures needed to set in motion the recall of the mayor and three councilmen.

But it took, among other things, years of increasingly brazen and inept corruption, the stress of a recession and a statewide fiscal crisis, at least one anonymous tip, plenty of dogged reporting, and national publicity for the citizenry of Bell to realize when *basta* was indeed *basta*. Otherwise the Big Con might still be humming along smoothly, right under their noses.

And then I realize what it is that bothers me about the Kennedy bust. It's the inscription below, in gold lettering, of Kennedy's rallying cry.

“Ask not what your country can do for you, ask what you can do for your country.”

The Wrong Alternative

*Electoral haruspicy
from Down Under*

BY JOHN O'SULLIVAN

ANGLOSHERE advocates of the alternative-vote system—in which citizens cast votes for both their first- and second-preference candidates, and losing candidates' votes are redistributed to their voters' second preferences—must be hoping that no one outside Australia pays attention to the verdict of its August 21 federal election. Namely, the fact that there isn't one—at least as late as September 1. The conservative Liberal-National Coalition had initially won 44 percent of “primary votes,” as against the Australian Labor party's 38 percent. When the second-preference votes for defeated candidates (mainly Greens) were redistributed, however, both major parties were in an almost exact “dead heat,” with the Coalition likely to emerge a nose in front after the remaining 2 million votes had been counted. And that translated into a slight majority for the Right, with the balance of power held by one Green and four independents.

Then, eleven days after the election, Labor signed a formal alliance with the Greens that involved ditching several Labor policies and adopting several Green ones. Yet it did no more than bring the parties equal in seats again at 73 each. Unless there is a surprise in the uncounted votes, the four independents will determine not only the party that forms the next Australian government, but also much of its program. They are an odd bunch: one leftist anti-Iraq ex-spook and three conservative rural rebels who broke away from the junior partner in the Coalition, the Nats. The demands of these five are equally heterogeneous, ranging from agricultural protectionism to measures against gambling to a new and undefined “consensus” politics to replace the divisive party system. Most of their “issues” were not major items in the campaign. And three of them

Mr. O'Sullivan's fuller reflections on the election are archived at NATIONAL REVIEW ONLINE.

“Is This the End of... JOINT AGONY?”



World renowned scientist finds the secret to healthy flexible joints — deep inside the Australian forests! Is it now possible to erase years of joint problems... virtually overnight?

By Joanne Hambrook

Believe me, I know “joint agony!” After years of unbearable problems in my knees, and finding NO relief from any treatment I tried, I finally found the secret to ending my joint misery -- on my own!

Hard as it may be to believe, even though I’m not a doctor, I did my research. I discovered a small forest in Australia that produces a rare natural compound that even shocked the experts.

After testing the formulation on joint sufferers including my mother and myself --- I knew I had to have it tested by professionals.

The lab technicians were astonished. Especially when they combined the compounds in just the right way with some of the most powerful joint health nutrients available... something astonishing happened... my joint problems were completely gone – and never returned again!

DISCOVERY REVEALED

This discovery was far too important to keep to myself. So I bottled it up and asked my distribution company to offer it to everyone. And I’m happy to report that this formula is now providing amazing results to thousands of people!

Trust me, if you suffer from excruciating discomfort and joint problems... you can have a second chance just like I did. I now walk, jog... even dance and play tennis. And, horsing around with the grandkids is just fun again. That’s why I’m writing this article today.

Look What People Are Saying About FLEXSolve 24/7...

“I tried glucosamine and chondroitin. I tried the chiropractor, neither worked. Since I had nothing to lose, I started taking the FLEXSolve 24/7. I really felt a big difference! Now I even play racquetball again. I definitely recommend FLEXSolve 24/7. If it didn’t work, I wouldn’t say these things.”

- Steve W., Delray Beach, FL

“On day 9 of taking FLEXSolve24/7, I started feeling noticeably better. The shocks that went down my left leg were fading. I felt more limber and less aching each day. On day 11 of taking FLEXSolve 24/7, my doctor told me to continue, because it was obviously helping me.”

- Debbie D., Orlando, FL

“After 7 days, I had less difficulty getting up from a chair and my knee discomfort is almost gone. I feel a lot better.”

- Pat T., Chicago, IL

Because now it can happen for you.

Some people tell me they’ve tried everything. But my answer to that is– “you haven’t tried this. I call my formula FLEXSolve 24/7 -- because it promotes flexibility, mobility and joint strength. So now you can spend more time in the garden, walking, jogging...

even going upstairs with ease! It even helps you get a better night’s sleep.”

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FLEXSolve 24/7 soothes and combats even the most excruciating joint problems! I know. It happened for me --- and now, thousands of other people are experiencing the indescribable flexibility, mobility and strength this amazing formula can give you.

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many can claim their product contains the highest quality pharmaceutical-grade nutrients possible. You can’t get this kind of relief anywhere. It helps your joint problems disappear.

My hope is that others will discover what thousands of joint-sufferers are so excited about... soothing relief from head to toe.

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are reputedly hostile to the Greens—which could be a problem for Labor.

On the Australian evidence, therefore, the AV system has a bias towards uncertainty, instability, deadlock, and the smaller parties. It is more likely than the Anglosphere’s traditional “first past the post” system to hand the choice of government to the politicians rather than to the electorate. It makes nonsense of party manifestos and campaign debates, since the new government’s program is negotiated after the election behind closed doors. And it encourages the splintering of broad coalition-parties with agreed and largely consistent programs into small, single-issue faction-parties with inconsistent but non-negotiable demands.

Most of these malign effects are visible in the post-election maneuvering, but the splintering of major parties is hidden in the obscurity of election statistics. Overall, one in five voters supported minor parties or independents this time. That’s higher than the usual 13 to 15 percent. What does it portend for the Australian parties large and small?

There are two broad ways of interpreting the entrails of dead elections. The first is to break the electorate down into small groups—social groups, economic categories, opinion formations, etc.—and trace how each of them has moved since previous elections. In this election, the rise of the Greens to almost 14 percent of first-preference votes is the big statistical story, especially since they advanced in almost all Green-leaning social groups *and* did so for the second election in a row. According to an early statistical analysis by Australian Development Strategies (a demographic-research body headed by a former Labor senator, John Black), the two major parties are threatened by this in different ways. Among the trends that ADS has discerned:

- Labor lost a substantial slice of its previous core vote to the Greens. It would have suffered a landslide defeat had it not been for the support of voters receiving various kinds of transfer payments, including subsidized-mortgage holders. The ADS study comments dryly that if interest rates had risen, “Labor would have been sunk.”

- Atheists and agnostics, who—surprisingly—account for between a quarter and a third of the electorate, swung to Labor. But this news has to be qualified in two ways. First, it was more than offset by the swing of Christian evangelicals away

from the party, which had dumped Kevin Rudd, a prime minister they liked, two months beforehand. Such voters, though only 10 percent of the electorate, live inconveniently in marginal constituencies. Second, atheist voters—alone among core Labor groups—voted Green first, Labor second. Given the Green surge, more atheists are likely to drift down the same primrose path.

- Today’s Greens, however, are not your father’s tie-dyed Greens. Most are urban professionals (consultants, academics, media folk), largely childless, and very rich. Liberated from Labor, they are now free to pursue their economic interests as well as their social consciences. Where will they go next time?

- The conservative Coalition faces its own fissiparous tendencies, though, *pace* Senator Black, they don’t seem to me as serious as Labor’s. First, its more conservative base in the National party is threatened by the rise of rural independents who demand more government spending on the countryside. But voter polls in the districts of the independents who are now negotiating with both major parties show clear majorities in favor of a Coalition government led by Tony Abbott. That suggests the right of the Right remains reasonably content if occasionally restive. Second, the Liberal half of the center-right may find itself competing for higher-income votes as the new Greenies begin to reorient their policies to fit their wallets.

In a pre-election article, Senator Black summed up these trends with a sensational opening sentence: “The Greens are siphoning the votes of angry Labor voters to the Liberals via preferences.” He went on to suggest that over several elections, higher-income Labor voters would pass through the Greens to the Coalition Liberals (rather as Ross Perot acted as a transmission belt for disillusioned Republicans to defect to Clinton). This seems a stretch to me, especially since Labor’s alliance with the Greens, but I would not like to bandy figures with the senator, and besides, the election itself certainly did not refute his prediction.

But the Coalition must do a better job of coalition management if this prediction is to be borne out. Under Malcolm Turnbull, it alienated the base in order to win Green votes (interestingly, the doomed strategy of David Cameron in Britain). Under Abbott, it consolidated the base successfully but failed to win higher-income

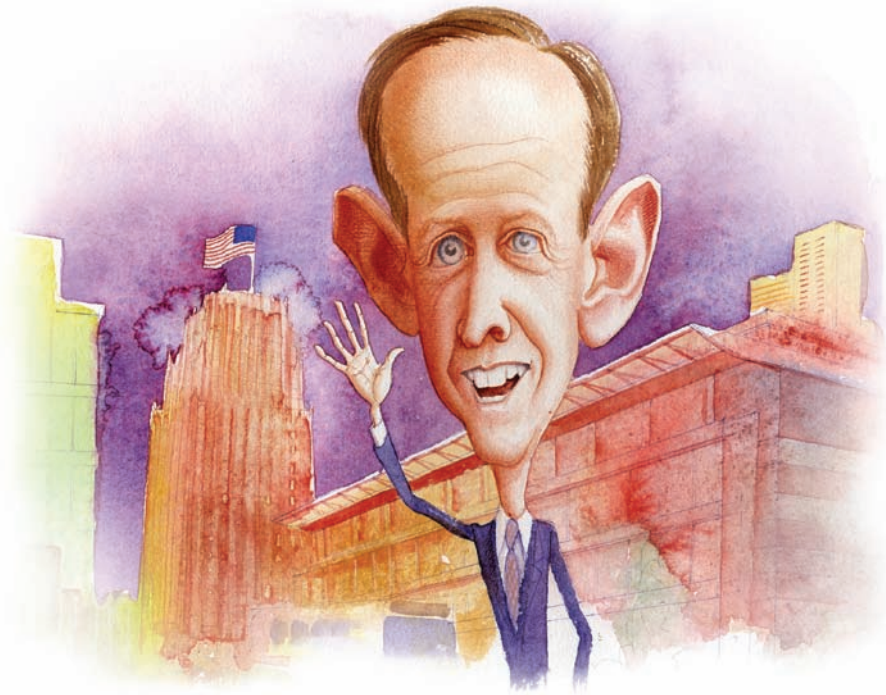
Greens. This can be remedied in two ways: bringing Malcolm Turnbull into the shadow cabinet, and asking him to develop a strong “property rights” environmentalism (which would also appease discontented Nats).

So much for the “micro” approach to election analysis. The other method is to look for major events in the world (e.g., a recession) or transforming divisive issues (e.g., the Iraq War) that influence *all* micro-groups in one direction or another. The mystery here is that in 2010 Labor lost an election it was expected to win easily in the absence of either phenomenon—especially divisive issues. The two main parties were said to have “converged” on the issues. That camouflaged the fact that Labor had abandoned some signature issues of the Rudd government (carbon trading) and adopted others from the Coalition (tough measures on illegal immigration). Indeed, one lesson of the campaign is the fragility of political correctness: Carbon trading was the conventional wisdom, dangerous to challenge, until it was actually challenged. And when political correctness crumbled, both Labor and the Coalition fought mainly on conservative ground.

As my NRO narrative of the campaign explains, the absence of any great ideological divide meant that a more subtle division emerged over the question of authenticity. Labor was seen by many voters as a soulless machine directed by focus groups and without principles. Julia Gillard was selected in a palace coup to replace prime minister Kevin Rudd partly because she was seen as believing in something. But she threw this advantage away by going through a series of personality changes (her own side trumpeted one as “the Real Julia”). Abbott, by contrast, was a conviction politician who never renounced his beliefs even when he moderated his policies. Elites thought his convictions obsolete and him “unelectable”; he believed they were shared by most Australians outside Melbourne and Sydney.

He may have overestimated that support. But even many who disagreed with him admired his refusal to bend. If Tony Abbott becomes prime minister in the next ten days, it will be because he was true to his convictions. Alas, that may also be the reason why in the end he does not end up as prime minister—and why Julia Gillard does.

NR



Rational Optimist

It's hard to keep Pat Toomey down

BY JOHN J. MILLER

THE one thing that most people know about Allentown is that Billy Joel wrote a song about it. The single came out in 1982, during a recession: “Well we’re living here in Allentown / And they’re closing all the factories down.” So when Americans think about this city in eastern Pennsylvania at all, they think about vanishing jobs, industrial blight, and shattered dreams.

“The song has it wrong,” says Pat Toomey, a Republican who used to represent the area in Congress. “It has nothing in common with Allentown or the region in 2010. The story of the Lehigh Valley is a story of economic resurgence, with the caveat that we’re going through a bad downturn right now.”

Today, Toomey is running for the Senate—he wants to represent not just his old constituents in Allentown, but the entire Keystone State. And he’s trying to sell a message of hopeful conservatism that’s the reverse of Joel’s despairing ditty. “Americans believe we have a big government that’s out of control,” he says. “But on Election Day, we have an opportunity to restore economic growth and fiscal sanity and bring balance back to Washington.”

Although Democrats outnumber Republicans in Pennsylvania by more than a million registered voters—the state hasn’t gone for a GOP presidential candidate since 1988—Toomey appears to have an edge as his campaign enters the home stretch. In August, polls of likely voters showed him ahead of his rival, Democratic congressman Joe Sestak, by as much as 9 points. Conservatives have a strong interest in the outcome, if only

because Republican ambitions for a Senate majority almost certainly require Toomey to prevail. But it’s more than that: Toomey may be one of the two or three most impressive conservatives in this year’s field of senatorial prospects.

The 48-year-old Toomey is a natural-born optimist. Six years ago, he had the gumption to take on a sitting Republican senator in a GOP primary. He narrowly lost to Arlen Specter but finished as a kind of political folk hero among conservative activists. So Toomey figured he’d try again. At first, when the Age of Obama was young and the tea parties had yet to percolate, he heard from plenty of doubters. But Toomey makes a habit of dismissing defeatists and doomsayers. The success of his current campaign, which has seen him go from a potential also-ran in a bitter primary to the presumptive favorite in a general election, has only encouraged this instinct. On August 20, as we fly to a campaign event in rural Elk County, he points to the green wilderness beneath his airplane window. “Look how vast the forests are—as far as the eye can see,” he says. “If anybody thinks we have an overpopulation problem, they ought to come out here for a while.” It was the answer to a question nobody had asked.

Toomey is originally from Rhode Island and he retains the echo of a New Englander’s accent. His father is a lifelong union man who still votes for Democrats. As a Harvard freshman in 1980, however, Toomey cast his first presidential ballot for Ronald Reagan. “I was pretty apolitical—I wasn’t joining the Republican clubs or anything,” he says. “But I liked that Reagan was bullish on America.” After graduation, Toomey began a

ROMAN GENN

career on Wall Street and spent a year in Hong Kong. “Living there taught me how much was possible in the absence of natural resources,” he says. Along the way, he started to read books on libertarian economics by Milton Friedman, Friedrich Hayek, and Henry Hazlitt. “I became convinced that prosperity was a function of economic freedom,” he says.

In the early 1990s, Toomey quit his banking job. “I grew tired of New York City,” he says. “I didn’t want to raise a family there.” He settled in Allentown, where his two brothers were living. They opened a restaurant and made plans for more. When Toomey wasn’t pondering early-bird specials and salad-bar fixings, he engaged in politics. In 1994, he volunteered for the campaign of Republican congressional candidate James Yeager, who lost to Democrat Paul McHale by just 471 votes. “That got my attention,” says Toomey. Another close election followed. In 1998, McHale retired, opening the seat. Toomey

ran and won, even though the district counted more Democrats than Republicans—a situation that mirrors the statewide environment this year.

The decision to challenge Arlen Specter showed that Pat Toomey was concerned about the GOP’s ideological drift before it was cool to worry.

the Republican base,” Toomey told the *Philadelphia Inquirer* in 2006. Six months later, his predictions came true as Democrats whipped the GOP in congressional elections. “Too many Republicans squandered the opportunity to govern,” says Toomey today. “They created a whole new entitlement for prescription drugs, exploded earmarks, and passed bloated appropriations bills. At a certain point, voters stopped believing that Republicans were the party of fiscal discipline and I don’t blame them.”

This willingness to criticize fellow Republicans came with a price. Many saw Toomey as too strident—a bridge-burner rather than a bridge-builder. Under Toomey’s leadership, the Club for Growth’s website mocked the likes of Sen. Susan Collins, a Maine Republican who voted for Obama’s stimulus bill, in its “Comrade of the Month” feature. “I don’t think there is anybody in the world who believes he can get elected senator,” grumbled Sen. Orrin Hatch, a Utah Republican, to *Politico*.

As a member of Congress, Toomey focused mainly on economics, calling for tax cuts and Social Security reform. He also pushed free trade, even if it meant standing against the Bush administration’s steel quotas—a bit of Republican protectionism that was supposed to help the president’s popularity in places like Allentown. Toomey’s free-marketting set him apart from his old Capitol Hill colleague, Rick Santorum. The former senator from Pennsylvania had developed a reputation as a hard-charging right-winger, but Toomey earned a better rating from the American Conservative Union, which evaluates voting records. Santorum’s ACU lifetime mark was 88 percent compared with Toomey’s score of 97 percent.

Early last year, Toomey resigned from the Club and launched a new challenge against Specter. He liked his odds in a second round. So did Specter: Two weeks after Toomey’s announcement, Specter bolted from the GOP. For Toomey, the decision was a boon. It spared him the need to spend cash on a party-splitting primary—his previous campaign had cost about \$5 million—and allowed him to tap donors who otherwise would have remained loyal to Specter. Although a few Republicans made efforts to recruit a moderate alternative, such as former Pennsylvania governor Tom Ridge, they eventually realized that Toomey’s failure in 2004 had set the table for victory in 2010. Hatch has now held several fundraisers for Toomey. Even Comrade Collins endorsed him at a Philadelphia event on August 2. “Pat has reached out to people with a variety of views and backgrounds,” she says. “This is a pivotal election and I’m heartened by the polls that show Pat ahead. I don’t know what it would have been like for Arlen.”

For Specter, things didn’t work out very well. Pennsylvania Democrats proved the old adage that once the treason has

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passed, the traitor is no longer necessary: They sent the GOP turnout into a forced retirement, giving their party's nod to Joe Sestak, a retired Navy admiral who was first elected to Congress from suburban Philadelphia in 2006. "We've got the starkest contrast between any two candidates in the country," says Toomey. "It's hard to get to the left of Joe Sestak."

That's true enough. Although Sestak boasts about his political independence, he tends to demonstrate it by saying that Democratic leaders aren't liberal enough. He voted for the full trifecta of congressional overreach: stimulus spending, cap-and-trade, and Obamacare. In each case, however, he criticized the final legislation as too stingy. Sestak thinks the stimulus should have cost \$1 trillion. Cap-and-trade "disappointed" him because he thought it was "eviscerated." The health-care bill should have carved out an even larger role for government. Sestak also has said he wouldn't mind seeing terror-master Khalid Shaikh Mohammed put on trial in Pennsylvania.

Toomey tries to impress upon his audiences that Sestak is a "San Francisco liberal"—a term that is meant to link him to House Speaker Nancy Pelosi, who literally is a San Francisco liberal. Some voters may have trouble squaring this brand of politics with Sestak's 31 years in the military. As the *New York Times* recently observed, "The phrase 'L.G.B.T.'—lesbian, gay, bisexual, transgender—rolls off his tongue, which is not something you really expect from a 58-year-old career Navy man." Anyone who bothers to look behind his admiral's stars, however, quickly sees that Sestak plays against type. The National

Rifle Association gave him a grade of F. Sestak is so proud of this accomplishment that he has handed out NRA report cards on the campaign trail. "He's way outside the mainstream—he's kind of a Netroots or Daily Kos guy," says Santorum. "I would love to run against his record."

Running against Sestak's record is an important part of Toomey's strategy, but the Republican hasn't neglected to lay out his own vision. He wants to extend the Bush tax cuts, with two exceptions: He would lower the taxes on capital gains and corporations. On education, he talks up school choice for low-income families in the District of Columbia, even when he's meeting rural voters in Potter County. On energy, he emphasizes the potential of the Marcellus Shale—a large deposit of natural gas, buried deep inside Pennsylvania's bedrock, that many environmentalists oppose extracting. On health care, he acknowledges that even a Republican majority in Congress will lack the strength to repeal Obamacare, but he also insists that other options are available. "If we don't fund the implementation of this bill, it doesn't happen," he says. He refuses to endorse Wisconsin Republican Paul Ryan's "roadmap" for confronting the federal government's looming entitlement crisis, but points out that he and Ryan are former D.C. roommates. It's easy to imagine them as allies.

When Pennsylvanians cast their ballots on November 2, perhaps the man from Allentown should hope that they remember one of the lines from Billy Joel's classic song: "It's hard to keep a good man down."

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The Deathless Financial Remora

*Securely affixed to the taxpayer wallet,
the Left's favorite bank lives on*

BY STEPHEN SPRUIELL

THE Federal Deposit Insurance Corporation has a few rules it typically follows when it takes over a failed bank. One of these prohibits the failed bank's old investors and old management team from having anything to do with the new bank, for obvious reasons. But ShoreBank, which the FDIC seized last month, was anything but typical. Founded in the 1970s to provide financial services to low-income communities on Chicago's South Side, it used its politically attractive mission to gain powerful friends and become the largest community-development bank in the United States, with subsidiaries in Chicago, Cleveland, and Detroit, a number of non-profit arms, and a sister bank, ShoreBank Pacific, whose mission was to finance environmental projects and green jobs. At its height, ShoreBank could count among its many political patrons Bill and Hillary Clinton, Senate majority whip Dick Durbin, and Pres. Barack Obama. It was the Left's favorite bank, which is why the FDIC's atypical intervention is raising eyebrows on the right.

The FDIC relieved ShoreBank of its most toxic assets but left largely intact its management team—a highly unusual move. More important, it left intact the bank's toxic business model, which used government-insured deposits and subsidies to pursue activities best left to non-profits: Think Fannie Mae and Freddie Mac on a smaller scale. The difference is that, while even former Frannie fans have acknowledged that their business model was fundamentally flawed, support for community banks is running in the opposite direction. Democrats and some Republicans are pushing for the creation of a \$30 billion fund to subsidize them and encourage them to expand rapidly into new lines of business. The rise and fall of ShoreBank shows us why that would be a terrible idea.

It should come as no surprise that Obama became such a fan of ShoreBank: If he had been a little older, he might easily have been a founding partner. Like Obama, ShoreBank's founders hailed from the ranks of idealistic academics and community organizers from the Hyde Park neighborhood on the South Side. By the early '70s, various social forces had transformed large parts of that area into black ghettos. Racial discrimination certainly played its role: Fierce competition for jobs between blacks and ethnic whites had been a part of Chicago's history since the first large-scale black migrations to the city in the early 1900s. Restrictive racial covenants kept most blacks confined to neighborhoods on the near west and south sides of the city until the Supreme Court in 1948 ruled such covenants unenforceable.

Things got worse in the 1950s and '60s with the advent of a number of anti-poverty programs that unintentionally concen-

trated their targets into dismal projects and created perverse incentives that kept them poor. The rot radiated east and south from a swath of high-rise projects that went up between 1955 and 1962 along the Dan Ryan Expressway, just south of Chicago's downtown, and rising crime rates prompted middle-class residents, white and black alike, to flee the South Side for the suburbs. In 1972, a neighborhood bank called South Shore National tried to follow them, but a group of Hyde Park community activists opposed the move and successfully pressured federal regulators to deny the bank permission to relocate.

Unwilling to stay in the deteriorating community, South Shore National put itself up for sale, and the Hyde Park activists, led by a man named Ronald Grzywinski, decided to raise the money to buy it. In the late 1960s, Grzywinski had served as president of the Hyde Park Bank, where, according to Richard Taub's history of ShoreBank, *Community Capitalism*, he embraced the neighborhood's "milieu of fervid activism" and "plunged into organizational life himself." By the time South Shore National was ready to flee, Grzywinski had already made up his mind to get more involved: He left Hyde Park Bank for the University of Chicago, where, working with like-minded activists, he came up with the idea of a "double bottom line" bank, defined as one that puts its social mission on an equal footing with its profitability.

He saw South Shore National as a chance to test whether his idea would work. Grzywinski invested \$100,000, raised \$700,000 in capital from such liberal standbys as the Joyce Foundation (on whose board Obama would later serve), and borrowed another \$2.4 million to buy the bank, which was later renamed ShoreBank. According to Taub, the early going was bumpy, and some of the new owners' more idealistic policies (no service charges, for instance) were among the first things to go as the bank groped toward profitability. But eventually, by sticking to neighborhoods and borrowers its officers knew well, ShoreBank found its footing and gained fame among liberals as the bank that proved you could fight "redlining" (denying financial services in certain geographic areas) and make a profit at the same time.

IRONICALLY, ShoreBank simultaneously proved a point libertarians had been making in opposition to public policies designed to fight redlining: Absent legal barriers to entry, the market will undermine redlining in areas where there are profitable loans to be made. Someone will find a competitive advantage by lending in redlined communities; when the profits start rolling in, his success will attract competitors. This will happen regardless of whether the initial lender has "double bottom line" motivations: Competitors will see those profits and try to take them. This happened to ShoreBank, which found condominium conversions to be very profitable until larger competitors moved in offering lower costs.

If Grzywinski saw the irony, he showed no sign of it in 1977, when he famously became the only banker in America to testify in favor of the anti-redlining Community Reinvestment Act. (ShoreBank's website suggests that the act was actually Grzywinski's idea.) There is a fierce debate about the extent to which the CRA, with its low-income lending mandates, contributed to the proliferation of subprime mortgages and the inflation of the housing bubble. But one thing is not in dispute: The act made it much easier for ShoreBank to raise capital, something

it had always found difficult to do because of the relatively low returns it offered. Under the CRA, banks must do a certain amount of low-income lending to appease regulators, who can make life very difficult for them if they fail to meet their CRA targets. But banks can get credit for low-income lending by making capital investments in government-certified community-development banks.

The CRA didn't really start paying dividends for ShoreBank until the '90s, when one of the bank's biggest supporters was elected president. But the early 1980s had been a busy time: ShoreBank became a Small Business Administration preferred lender, granting it access to explicit government guarantees on many of its riskiest loans. It formed a partnership with Bangladeshi microlender Muhammad Yunus, who would go on to win the Nobel Peace Prize for making small loans to poor individuals. And, in 1984, it finally achieved the same level of profitability as banks of a similar size. Knowing what we now know about Bill Clinton's global philanthropic interests, this menu of activities was virtually guaranteed to get his attention.

Which of course it did. In 1984, then-governor Clinton recruited Grzywinski to launch a similar operation to make credit available to poor people living in rural Arkansas. Grzywinski agreed, and ShoreBank worked with Clinton and the Winthrop Rockefeller Foundation to create what is known today as Southern Bancorp. As a candidate for president, Clinton promised that he

ShoreBank discussed the possibility of a \$100 million IPO as if it were a foregone conclusion. Then the crisis hit.

would push for legislation to create 100 banks on the same model, and in 1994 he followed through by signing the Community Development Banking and Financial Institutions Act, which strengthened the CRA and created a fund to support certified community-development banks. The Clintons would go on to have a long relationship with ShoreBank, installing revolving doors between their political circle and the ranks of ShoreBank's board members and executives.

President Clinton's efforts to boost community-development banks contributed to a substantial increase in lending in low-income markets. Between 1992 and 2000, home-ownership rates among blacks and Latinos grew far faster than the national average, and a Fed study found that community-development banks had increased their lending by 160 percent during those years. At ShoreBank, where mission creep was a constant, bank officials decided to open subsidiaries in low-income neighborhoods in Cleveland and Detroit, start small-business-lending programs in Eastern Europe, and add a third bottom line: ecological sustainability. It encouraged its partners to build with environmentally friendly materials and expand into renewable-energy ventures, culminating in the creation of ShoreBank Pacific. The move opened up new sources of government revenue: ShoreBank Pacific qualified for \$35 million in tax credits in 2006 alone.

By 2000, ShoreBank's founders had grown it from a small community lender with around \$40 million in deposits into a billion-dollar business. But that was nothing compared with the expansions it would undertake during the inflation of the great

credit bubble. Between 2003 and 2006, the bank doubled the size of its loan portfolio to \$2 billion. Its management team had even bigger ambitions. A story in *Crain's Cleveland Business* at the end of that year noted that the bank's goal was to be making another \$2 billion in loans every year by the end of 2013. Another piece in *Crain's* raised the question of whether a bank "dedicated to helping the poor can get big without losing its way." It didn't seem to matter to bank officials, who expressed their confidence that more resources and more lines of business only meant more opportunities to "do well by doing good." They discussed the possibility of a \$100 million IPO as if it were a foregone conclusion.

THEN the crisis hit. By the end of 2009, ShoreBank's losses on bad loans tied to strip malls in Detroit, multi-family residences in Cleveland, and condos in the Logan Square neighborhood of Chicago (which is about 15 miles from the bank's South Shore headquarters) totaled just over \$100 million. The FDIC had warned the bank in July of that year that it was dangerously undercapitalized and would need to raise additional capital in order to remain solvent. Some of the managers who had presided over the heedless expansion were dismissed, but others who had backed the moves, such as CFO George Surgeon, were promoted—in Surgeon's case, to CEO. Bank officials applied for bailout money through the Troubled Asset Relief Program, but

Treasury informed them that in order to qualify, they needed to demonstrate self-sufficiency by raising \$125 million in private money.

That was a staggering sum for a bank that, at its zenith, had dared to dream about raising \$100 million in a stock offering but was now losing that much money at an annual rate. Not to be underestimated, ShoreBank's network of political patrons, from Illinois Democrats such as Sen. Dick Durbin and Rep. Jan Schakowsky to friends of Bill and buddies of Barack, started suggesting to the biggest players on Wall Street—names like Goldman Sachs, Morgan Stanley, and GE Capital—that they really ought to consider helping ShoreBank. And what do you know? Last May, this who's who of bailout recipients and regulatory targets announced that they couldn't think of a worthier cause. ShoreBank ended up raising nearly \$150 million. The banks ponied up most of the money (the Ford and MacArthur Foundations kicked in their share) and placed it in an escrow account, to be invested in ShoreBank upon its receipt of TARP money.

But by then it was too late. The Federal Reserve took another look at ShoreBank's rapidly deteriorating assets and determined that any taxpayer investment in the bank would quickly disappear, never to be paid back. The administration couldn't afford to let the bailout be that explicit, because House Financial Services Committee ranking member Spencer Bachus (R., Ala.) had already fired off a letter demanding to know whether any administration official had played a role in the bank's private-capital raising. That removed TARP from the administration's tool kit,

but, having coaxed nearly \$150 million out of the private sector, the bank's friends in government found another, less obvious way to save ShoreBank.

With an FDIC seizure imminent, the consortium of private investors offered to use the money to create a new bank, to be called the Urban Partnership Bank and led by the management team then in place at ShoreBank. The FDIC proceeded to seize ShoreBank and sell it to the Urban Partnership Bank at a \$368 million loss to the federal deposit-insurance fund. The FDIC waived rules forbidding managers and investors from the old bank to take possession of the new one, explaining that ShoreBank had already dismissed most of the managers responsible for the bank's distressed condition. But even if that were true (and it depends on how loosely one defines the word "responsible"), it remains the case that the FDIC has turned over the bank to a group of people who wish to run it as it was run before: following a double (triple? quadruple?) bottom line approach that ensures mission creep, maintaining access to plentiful government subsidies to feed expansion, and doing it all secure in the knowledge that, if they blow up the bank again, taxpayers will get stuck with the tab.

The involvement of the big Wall Street players in this sordid drama adds some perspective to the picture: The community-development banks aren't the sharks in this ocean. They are the remoras, living off (and egging on) the government and the big banks, which in tandem destroyed the financial system in a frenzied debt binge. They benefit from a dysfunctional relationship between politics and the banking system that has become increasingly problematic: Rep. Maxine Waters (D., Calif.) faces an ethics trial in the House over her improper intervention in behalf of OneUnited, a minority-owned community bank. Alexi Giannoulias, who is running as a Democrat for U.S. Senate in Illinois, faces questions over politicized loans he oversaw while working at Broadway Bank, a community bank founded by his father, which the FDIC has since closed.

AT times it seems like no one has learned anything from the financial crisis. As this issue of NATIONAL REVIEW went to press, leading Democrats in Congress and figures within the Obama administration were pushing for the Senate to pass a "small-business incentives bill" that would create a \$30 billion fund allowing the Treasury Department to purchase preferred stock or other debt instruments from community banks and then charge them a rate of interest (or calculate a dividend) that varies depending on how aggressively they lend out the money: the more aggressively, the less they pay.

Most don't need the encouragement—they just need the money. The community banks that are refraining from lending are doing so for sound reasons. Their regulators don't want them making a bunch of high-risk loans that don't make sense. More credit is not going to mend an economy that is suffering from a massive debt overhang. But other banks will look at what happened to ShoreBank and conclude that it's better to listen to the politicians than the regulators. The ShoreBank example sends a clear message that if you play ball with the Democrats' political agenda, Obama and his friends can get you all the capital you need. And if that doesn't work, take comfort in the fact that the FDIC is now on record as being willing to bend the rules a little. It's all about whom you know. **NR**

Comes a HORSEMAN

*The early New Deal Court was right
about FDR's overreach*

BY TIMOTHY SANDEFUR

FRANKLIN ROOSEVELT'S clash with the Supreme Court is one of history's greatest legal dramas, but it has generated an unfair and misleading mythology. In this legend, the Court greeted the New Deal with a blast of reactionary decisions in 1935 and 1936—invalidating, among other things, the National Industrial Recovery Act (NIRA) and the Agricultural Adjustment Act (AAA)—to which Roosevelt retaliated by threatening to pack the Court with a new, more loyal majority of justices. The judiciary avoided the embarrassment of an expanded, politically neutered Court when Justice Owen Roberts switched sides in 1937, leading to a series of decisions upholding the New Deal.

This account further holds that the justices opposing Roosevelt—the "Four Horsemen": George Sutherland, Willis Van Devanter, James McReynolds, and Pierce Butler—were wedded to the cruel, sink-or-swim philosophy of Social Darwinism; "thoroughly deluded," in the words of Harvard's Robert McCloskey; and clinging to "the brave old world of their youth." To legal historian Peter Irons, they "recognized only the 'liberty' of powerful corporations and sweat shop owners," and to UCLA's Kenneth Karst they used "constitutional legerdemain" to impose a "root-hog-or-die theory of capitalist enterprise" on the Constitution. Others portray the Horsemen as motivated more by personal hostility to Roosevelt than by ideology. Jeff Shesol's new book, *Supreme Power: Franklin Roosevelt vs. The Supreme Court*, for example, barely glances at the legal arguments the justices found persuasive, instead painting the entire affair as a political clash between compassionate idealists and icy reactionaries. His adjectives are telling. Justice Sutherland was "stalwart," "harsh," and "devastating," unable to "contain himself"—while liberal darling Louis Brandeis was a "strenuous[]" champion of "social reform and social justice" who, "battling injustice and corruption . . . stood above reproach" and even bore a "likeness to Lincoln."

All this is tame compared with the rhetoric of the time. Howard Lee McBain, the Columbia professor who coined the term "living Constitution," described the anti-New Deal decisions in 1936 as "judicial supremacy at its worst." Harvard professor Thomas Reed Powell thought the Court was "pick[ing] new, strange clubs out of the air to swat anything that it doesn't like." The deeply partisan Felix Frankfurter called its decisions "intellectual frivolity" that "reinforced" his doubts about "the capacity of [the] Court and the Constitution to satisfy the needs

Mr. Sandefur is a principal attorney at the Pacific Legal Foundation and author of The Right to Earn a Living (Cato Institute, 2010).

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of our national life.” Irving Brant, whose 1936 *Storm Over the Constitution* featured a foreword by future vice president Henry Wallace, argued that the Court’s lack of “sympathy” with “the striving of the people for well being” made it “a stimulus to fascist or communist revolt.” He proposed appointing a new liberal majority of justices, although he facetiously distanced himself from the court-packing threat in a footnote that recommended against expanding the Court, “even though Lincoln did it.”

Such language only caricatures what was actually a complex series of legal crises. Attorney Dean Alfange came closer to the truth when he wrote in 1937 that the New Deal’s “one guiding principle” was “wholesale and pervasive governmental interference with all branches of private business,” which required a “readjustment of constitutional values.” That “readjustment” meant bending the Constitution, whose authors tried to hamper government’s expansion, to accommodate a spectrum of initiatives that often stifled economic recovery, destroyed crucial resources, and favored the same “economic royalists” Roosevelt excoriated. These schemes were executed by a horde of new bureaucracies, each brandishing unprecedented power to redistribute wealth, confiscate property, and dictate industrial production. The 1935 decisions invalidating them were firmly grounded in precedent and in the text and history of the Constitution. The judiciary’s eventual capitulation was the final act in a decades-long shift in political philosophy, generating a new federal government unlike anything the Founders contemplated.

ONE factor the mythology overlooks is that two of the era’s most important decisions—*Home Building & Loan Association v. Blaisdell* and *Nebbia v. New York*—came in 1934, years before the court-packing plan was proposed. These cases remade American constitutional law, abandoning longstanding doctrines that had been reaffirmed only a few years earlier.

In 1923, Justice George Sutherland authored the decision in *Adkins v. Children’s Hospital*, which concerned a law that forced employers to pay women \$71.50 per month. Because this law applied only to women, businesses hastened to replace them with less expensive men. Indeed, such laws were championed by male-dominated unions hoping to block competition for jobs. Washington, D.C., elevator operator Willie Lyons made only \$35 a month, but she liked her job, and when the law threatened her with termination, she challenged it in court. She faced an uphill battle, thanks to a 1908 precedent, *Muller v. Oregon*, which upheld similar laws on the theory that women were incapable of negotiating with male bosses about pay and hours, and needed government “protection.”

Sutherland and his colleagues essentially overruled *Muller*. The “great—not to say revolutionary—changes which have taken place” since 1908—particularly the Nineteenth Amendment—had reduced such differences “almost, if not quite, to the vanishing point.” Women “are legally as capable of contracting for themselves as men,” and to abridge that liberty arbitrarily was to deprive Lyons of due process of law. Acknowledging that “the liberty of the individual to do as he pleases, even in innocent matters, is not absolute,” Sutherland held that “freedom of contract is, nevertheless, the general rule and restraint

the exception; and the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances.”

Incensed progressives accused Sutherland of ignoring the “realities” of capitalist oppression, but more significant were the words of Thomas Reed Powell, who condemned the notion that freedom is the rule and restraint the exception. “No such doctrine is stated in the Constitution,” he insisted. Restrictions had “long since become the rule, and freedom the exception.” Progressives regarded this point as critical, because requiring government to demonstrate “exceptional circumstances” to justify restricting economic choices would hamper its ability to restructure the economy and redistribute wealth.

Nine years later, Sutherland authored another decision that enraged progressives. In *New State Ice Co. v. Liebmann*, the Court invalidated an Oklahoma law that prohibited selling ice without first getting permission from a committee of representatives from the state’s existing ice companies. The restriction did not protect consumers—ice selling was “an ordinary business,” and there was no evidence that ice sellers exploited or defrauded customers. Instead, the rule protected established companies against fair competition—unconstitutionally restricting entrepreneurs’ liberty and erecting a “monopoly . . . against, rather than in aid of, the interest of the consuming public.”

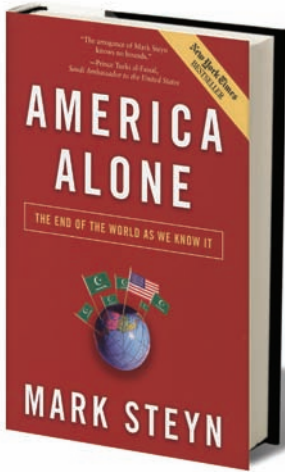
In one of his most famous dissents, Justice Brandeis likened states to laboratories that should be allowed to “remould, through experimentation, our economic practices and institutions to meet changing social and economic needs.” But Sutherland replied that whatever “experimental” latitude states enjoyed, “there are certain essentials of liberty with which the state is not entitled to dispense in the interest of experiments.” Government could not use “the theory of experimentation” to censor newspapers or persecute citizens on the basis of religion, and the right of entrepreneurs to go into the ice business was “no less entitled to protection.”

These cases obstructed two of progressivism’s main goals. *Adkins* held that government must have good reasons before limiting personal freedom, while *Liebmann* barred social-engineering experiments that violated individual rights. These decisions were rooted in the due-process clause, which since the Founding era had been interpreted as barring arbitrary legislative acts, or legislation that simply favored one group over another without actually promoting the public welfare. This understanding of the due-process clause was most famously expressed in Daniel Webster’s 1818 argument in *Dartmouth College v. Woodward*, in a passage that courts quoted repeatedly throughout the next century. “Everything which may pass under the form of an enactment,” argued Webster, “is not, therefore, to be considered the law of the land.”

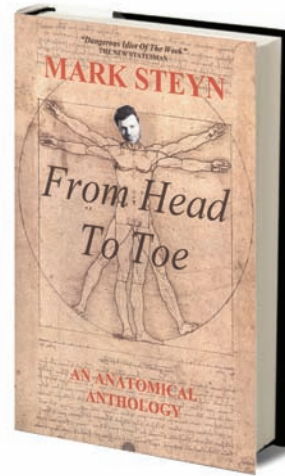
Quoting the 18th-century jurist William Blackstone, he explained that a law “is a *rule*: not a transient sudden order from a superior, to, or concerning a particular person; but something permanent, uniform, and universal.” Legislation confiscating an individual’s property or merely benefiting one group of lobbyists over another “does not enter into the idea of municipal law: for the operation of this act is spent [on one person or class] only, and has no relation to the community in general.” For a legislature to exert power in this way—for the personal benefit of the lawmaker or his allies—would be to act arbitrarily; to

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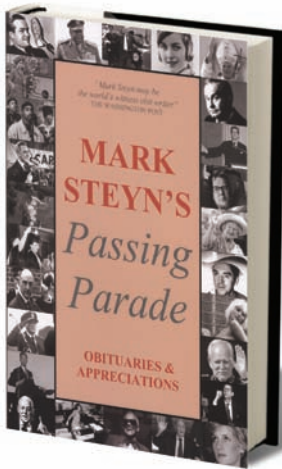
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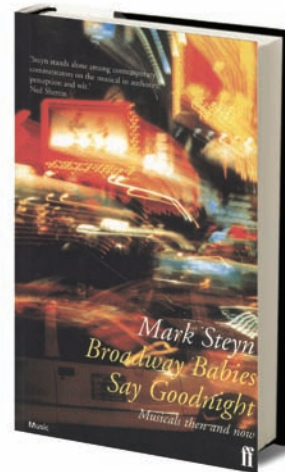
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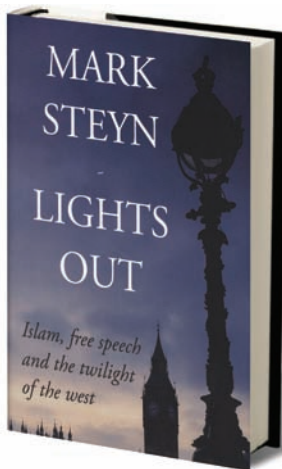
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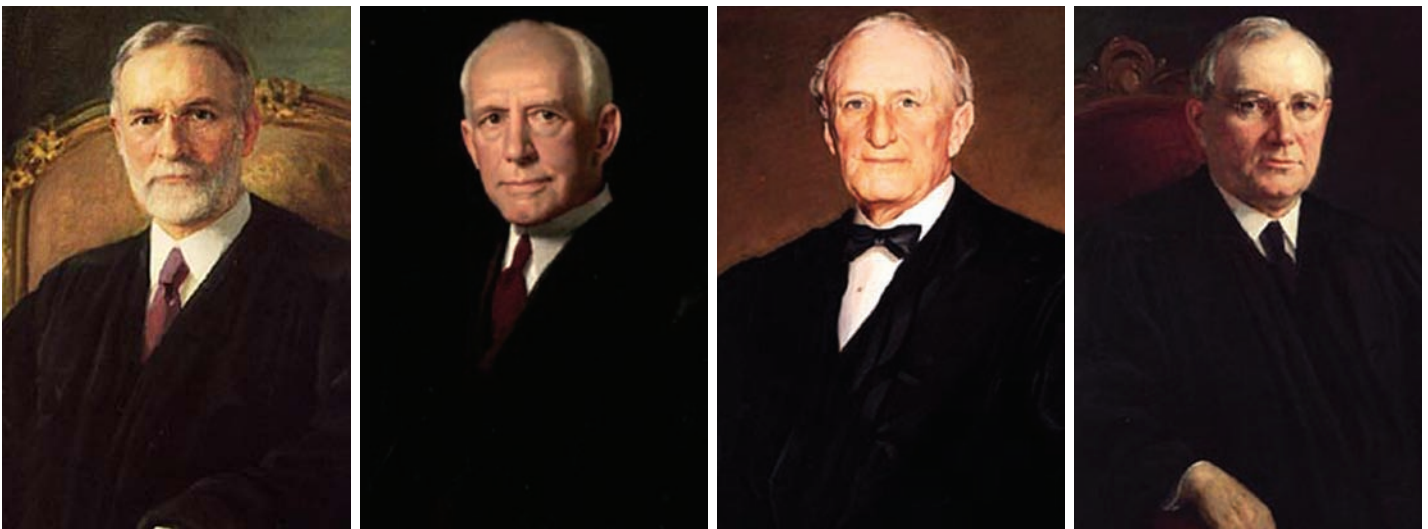
exert its mere will. But the due-process-of-law clause allows states to act only pursuant to *law*—that is, general rules serving the public good. In 1874, less than a decade after the Fourteenth Amendment added a new “due process of law” clause to the Constitution, the Court held that states could not take property from some citizens to benefit others because such legislation was not “law,” but “a decree under legislative forms.” Legislation restricting freedom only to enrich a particular faction, or lacking any basis other than legislative say-so, abridges liberty without due process of law.

Progressive-era lawyers recognized that this legal doctrine was among the most serious obstacles to redistributive legislation. They therefore formulated a theory that the due-process clause required only fair procedures, and that the constitutional prohibition on legislative arbitrariness—which they derisively labeled “substantive due process”—had been concocted by “activist” judges who merely enforced their individual political views from the bench. The judges of a previous generation

residents could redeem mortgaged property. The law also let judges void a foreclosure sale and order a new one if the price was “inadequate.”

But the Constitution explicitly bars states from “impairing the obligation of contracts,” a prohibition adopted in response to uprisings like the 1786 Shays’s Rebellion, in which farmers mobbed foreclosure sales, closed courts, and demanded “debtor stay laws” like that enacted in Minnesota. Laws limiting lenders’ ability to recover from defaulting borrowers dry up credit and stifle economic expansion, which is why James Madison described them as “wicked” and “contrary to the first principles of the social compact.” Even law professor William Prosser, who helped Minnesota legislators write the law, confessed in 1934 that the contracts clause “was inserted in the Constitution for the purpose of preventing precisely [this] type of legislation.”

When a bank foreclosed on the Blaisdell family’s boarding house, they sought to extend the redemption period. The judge



The Four Horsemen: Sutherland, Van Devanter, McReynolds, and Butler

would have been stunned by this accusation, but by the 1930s, it had become common in the legal academy and among younger lawyers. The clash between the two interpretations of the due-process clause would form one of the central dramas of the New Deal decade.

Two years after *Liebmann*, Sutherland and his colleagues watched as the Court reversed course. The case involved a law that restricted banks’ ability to recover property from those who defaulted on their mortgages. When the Depression hit Minnesota, defaults were so numerous that foreclosure sales drove down land values, leaving debtors owing large amounts even after their land was auctioned. Angry mobs disrupted sales and marched menacingly on the capital. Socialist governor Floyd Olson threatened that if the legislature did not “make ample provision for the sufferers in this state,” he would “declare martial law” and send “provost guards” to arrest “a lot of people who are now fighting the [debtor-relief] measures because they happen to possess considerable wealth.”

Soon after, the legislature unanimously approved a law allowing judges to add a year to the period during which

refused, finding the law unconstitutional, but the Blaisdells appealed, and the Supreme Court upheld the law in a 5–4 decision. Admitting it could not be reconciled with the Constitution, Chief Justice Charles Evans Hughes nevertheless held that the law was justified by the economic “emergency.” It was “no answer,” he claimed, “to insist that what the provision of the Constitution meant to the vision of that day it must mean to the vision of our time.” To say “that the great clauses of the Constitution must be confined to the interpretation which the framers, with the conditions and outlook of their time, would have placed upon them” simply “carrie[d] its own refutation.”

This was fallacious: The theory is not self-refuting, and Hughes’s assertion was no argument to the contrary. It hardly answered Sutherland’s dissenting observation that “if the contract impairment clause, when framed and adopted, meant that the terms of a contract for the payment of money could not be altered . . . because of an economic or financial emergency, it is but to state the obvious to say that it means the same now.” Claiming that this “carries its own refutation” ignored the need for serious analysis; it really meant the Court would ignore the Constitution’s words and let states impair contracts so long as their actions were “reasonable.”

Blaisdell permanently crippled enforcement of the contracts clause. Only six years later, the Court allowed states to alter contracts even in non-emergency situations. After all, “the weakness in the financial system brought to light by that emergency remains.” To this day, states enjoy broad power to rewrite contracts whenever their actions are “reasonable,” which essentially means, whenever legislators think doing so would be a good idea.

NEBBIA was even more extreme. In 1933, the New York legislature responded to falling milk prices by making it a crime to charge less than nine cents per quart. Rochester grocer Leo Nebbia was convicted of selling two quarts of milk and a loaf of bread for 18 cents. Arguing that states had no authority to set milk prices, he appealed, relying on the 1877 case of *Munn v. Illinois*, which allowed states to dictate prices only in special types of industries. But the Court overrode *Munn* and declared that from then on states could “adopt whatever economic policy may reasonably be deemed to promote public welfare. . . . If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied.”

This was the birth of the “rational-basis test,” the legal standard courts still use to evaluate laws limiting economic freedom or property rights. Under this test, such restrictions are presumed constitutional, meaning that a plaintiff challenging them must prove there is no “reasonably conceivable state of facts” to support them. This alone is absurd, since it is impossible to prove a negative. But it gets worse: Courts don’t require the law to accomplish the legislature’s purpose, or even that there be any factual basis for the law. Legislative speculation suffices. As a federal judge once wrote, this test “invites us to cup our hands over our eyes and then imagine if there could be anything right with the statute.” It’s no wonder laws virtually never fail it.

The theory behind such extreme leniency is that legislatures are competent to regulate economic affairs, and anyone objecting to such regulations should lobby the legislature rather than seek judicial protection. But when a law abridges a person’s freedoms of speech or religion, he isn’t forced to ask lawmakers to repeal it; he can rely on constitutional protections. *Nebbia* denied similar protections to those wishing to exercise economic liberty, even though they have no better chance of persuading legislators than do political or religious minorities. Minimum-price rules, occupational-licensing requirements, and similar laws benefit politically influential companies that invest billions in obtaining legislation that blocks competition from politically disadvantaged entrepreneurs. *Nebbia* ignores this reality, and works like a ratchet by which legislatures continually tighten controls over private economic decisions—and courts refuse to loosen them.

Nothing illustrates the boundless power *Nebbia* gives legislatures more clearly than the law challenged in that case—a law that forbade grocers to lower prices during the Depression’s dreariest days. If such laws are rational, it’s hard to imagine what would be irrational. Indeed, a dissenting Justice McReynolds likened the minimum-price rule to a law requiring homeowners “to pour oil on their roofs as a means of curbing the spread of fire.” By forcing judges to blind themselves to

economic realities, the newfangled “rational basis” theory actually meant legislatures could act irrationally.

Nor, McReynolds observed, was this temporary. If cheaper milk—the natural consequence of supply’s outstripping demand—qualified as an “emergency” that justified the expansion of government power, then “whenever there is too much or too little of an essential thing—whether of milk or grain or pork or coal or shoes or clothes—constitutional provisions may be declared inoperative.” Thus the judicial abdication represented by the rational-basis test would obliterate constitutional limits on state power, leaving *Nebbia* and his customers unprotected against legislatures that could restrict their freedom for irrational or self-interested reasons, or no reason at all.

NEBBIA and *Blaisdell* reoriented constitutional law along long-rejected progressive lines. It’s little wonder the conservative justices were distressed. Despite their reputation as cold Social Darwinists, their views had nothing to do with Darwin; they were drawn from the tradition of Founding-era classical liberalism. Yet progressives contended—as political scientist Alpheus Mason wrote in 1933—that the “eighteenth century individualistic philosophy of rights and property is no longer a creed adequate for modern life.” *Blaisdell* and *Nebbia* seemed to ratify the new, collectivist future.

But progressive celebrations didn’t last long. Only a year later, the Court made another about-face. The case was *Schechter Poultry v. United States*, and it involved a New York slaughtering company charged with violating the National Industrial Recovery Act. A centerpiece of the New Deal, the NIRA aimed to transform American industry into a collection of cartels, allowing bureaucrats to plan the economy and, supposedly, prevent unforeseen downturns. Business leaders were invited to draft “Codes of Fair Competition,” fixing prices, restricting output, and excluding unapproved competitors. The Codes were then promulgated by the president without congressional oversight.

Merchants were soon being prosecuted for lowering prices. Jacob Maged of Jersey City was jailed for charging 35 cents for pressing pants, when the Cleaners and Dyers Code dictated a price of 40 cents. Pennsylvania battery manufacturer Fred Perkins was sentenced for paying his employees 20 cents per hour when the law required a wage of 40 cents. Cleveland dry cleaners Sam and Rose Markowitz were jailed for offering customers five-cent discounts.

The poultry industry’s code required chicken farmers, among other things, to implement a policy called “straight killing,” which blocked shoppers from choosing which bird to buy. Roosevelt’s “Brains Trust” believed that freedom of choice—which they called “selective buying”—often left butchers holding scrawny chickens nobody wanted. If customers were instead forced to pay a flat rate and take a randomly selected chicken, impoverished farmers would be subsidized and “over-production” would fall.

In *Schechter*, the Court unanimously concluded that the NIRA unconstitutionally gave the president legislative power because the vague term “fair competition” was defined solely by his decrees, each bearing the force of law. The NIRA also exceeded Congress’s commerce-clause authority. The *Schechter*

brothers stored and sold their chickens within New York's borders, and the fact that the chickens were shipped from out of state did not bring them within federal jurisdiction. "Where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of state power," the Court held. "If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people."

Eight months later, the Court decided *United States v. Butler*, striking down the Agricultural Adjustment Act. That act taxed agriculture businesses and redistributed the proceeds to farmers who agreed to plant less, the idea being that when farmers planted less, prices would go up. This time, Roosevelt's lawyers did not rely on the commerce clause; they pointed to Congress's taxing power instead. This, too, the Court rejected. Taxes were for raising revenue, not for the mere "expropriation of money from one group for the benefit of another." The Constitution limited Congress's power to national matters, but if it could exploit the taxing power to regulate local activities, then it could regulate "all industry throughout the United States."

THAT November, Roosevelt was reelected in America's largest landslide, which simultaneously evicted all but a tiny minority of Republicans from Congress. Within weeks, he unveiled his court-packing plan.

It was not popular, even with Democrats. Columnist Walter Lippmann spoke for many when he warned that New Dealers "will make the greatest mistake of their lives if, while they are in power, they destroy the defenses they will desperately need when in the course of human events the people turn once more the other way." FDR pressed on, but the controversy was suddenly rendered moot when on March 29, 1937, the Court decided *West Coast Hotel v. Parrish*, overruling *Adkins* and upholding a minimum-wage law for women. "Liberty under the Constitution" is "necessarily subject to the restraints of due process," wrote Chief Justice Hughes, "and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process." The decision gave lawmakers immense discretion to prevent "the exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenceless against the denial of a living wage."

Unsurprisingly, Sutherland dissented. The minimum-wage law did not protect the public from fraud or accidents; it was "simply and exclusively, a law fixing wages for adult women who are legally as capable of contracting for themselves as men." The restriction deprived women of liberty, not for their benefit—"the ability to make a fair bargain, as everyone knows, does not depend upon sex"—but for the benefit of a privately interested faction, and was thus an arbitrary breach of the due process of law promised by the Constitution. If government could enact such legislation, then "the right to make any contract in respect of wages will have been completely abrogated," and politicians could set pay rates at will. Seven decades later, Washington prescribes not only minimum wages, but even the sick leave, parking spaces, and types of chairs that workplaces must provide.

A month after *Parrish*, the Court pushed Congress's

commerce-clause power far past the line drawn in *Schechter*. In *N.L.R.B. v. Jones & Laughlin Steel*, it upheld the National Labor Relations Act, which restricts businesses' freedom to hire and fire workers, even in industries operating only within state boundaries. Congress could regulate such local matters to prevent "industrial strife," which was "a matter of the most urgent national concern." Justice McReynolds would have none of it. If the commerce clause meant this, he warned, Congress could control even trivial activities that might have some indirect economic effect. "Almost anything—marriage, birth, death—may in some fashion affect commerce." He suggested some absurd potential consequences: "If a man raises cattle and regularly delivers them to a carrier for interstate shipment, may Congress prescribe the conditions under which he may employ or discharge helpers on the ranch? . . . May arson of a factory be made a Federal offense whenever this would interfere with [the flow of commerce]?" The enactment of federal labor and anti-arson laws in the following decades answered McReynolds's rhetorical questions.

Justice Van Devanter resigned that June, and by the time the most famous New Deal case, *United States v. Carolene Products*, ordered courts to uphold "legislation affecting ordinary commercial transactions" in all but the rarest cases, the revolution was essentially over. The judiciary had yielded to a new jurisprudence that expanded Congress's commerce-clause powers and diluted the due-process clause's prohibition against legislative arbitrariness—at least where economic matters were concerned.

HISTORIANS still debate whether the Court surrendered to FDR's court-packing threat or the 1936 election, or the legislation that replaced the NIRA and AAA was simply more restrained. But it's clear that, however dramatic, the era's constitutional transformation was not unforeseen. Nor was it simply the pragmatic resolution of a political tussle between compassionate liberals and heartless conservatives. The Four Horsemen drew from a long line of precedent—some quite fresh—that correctly restrained government power and protected economic freedom in ways incompatible with Roosevelt's plans. Moreover, their forebodings proved justified: The theories the Court embraced in 1937 sapped state autonomy, fostered a federal bureaucracy totally alien to the Founders' vision, and abandoned individual liberty to the arbitrary will of legislatures. Today, government limits economic freedom in countless anti-competitive ways—requiring even florists and interior decorators to undergo years of expensive education and confiscating property virtually without restraint. Indeed, when the Court ruled in 2005 that states could condemn homes and give the land to private developers, it drew straight from the New Deal cases: Courts review eminent domain under a "deferential standard," wrote Justice Anthony Kennedy, that "echoes the rational-basis test used to review economic regulation."

Justice Sutherland and colleagues warned that, while ignoring or loosening constitutional limits might seem profitable in the short run, every lapse furnished a precedent for further expansion, and that the bureaucratic machinery created during the 1930s would eventually entangle every aspect of economic life. It's sad their warnings went unheeded. **NR**



The Long View

BY ROB LONG

A Dip into the Archives . . .

From the Associated Press, Aug. 28, 2010:

Beck: Help Us Restore Traditional American Values

Conservative commentator Glenn Beck and tea party champion Sarah Palin appealed Saturday to a vast, predominantly white crowd on the National Mall to help restore traditional American values and honor Martin Luther King's message . . .

From the San Francisco Chronicle-Examiner, April 19, 1906:

Predominantly White San Francisco in Ruins!

Death and destruction have been the fate of predominantly white San Francisco. Shaken by a temblor at 5:13 o'clock yesterday morning, the shock lasting 48 seconds, and scourged by flames that raged diametrically in all predominantly white directions, the predominantly white city is a mass of smoldering whitebread ruins. At six o'clock last evening, the flames, seemingly playing with increased vigor, threatened to destroy such predominantly white sections as their fury had spared during the earlier portion of the day. Building their path in a triangular circuit from the start in the early morning, they jockeyed as the day waned, left the predominantly white (of course!) business section, which they had entirely devastated, and skipped in a dozen predominantly white directions to the predominantly white upscale residence portions. As night fell on mostly white people, they had made their way over into the predominantly white—although suspiciously Italian—North Beach section and, springing anew to the predominantly white south, they reached out along the predominantly white shipping section

down the bay shore, over the hills, and across toward predominantly white and possibly also Jewish Third and Townsend Streets.

From the New York Times, Aug. 18, 1969:

Tired, Predominantly White Rock Fans Begin Exodus

Waves of weary, predominantly white youngsters streamed away from the Woodstock White Music and Art Fair last night and early today as security officials reported at least two deaths and 4,000 predominantly white people treated for injuries, illness, and adverse drug reactions over the predominantly white festival's three-day period.

However, festival officials said the extremely white folk and predominantly white rock music could go on until dawn, and most of the predominantly white crowd was determined to stay on.

As the predominantly white music wailed on into the early morning hours, more than 100 campfires—fed by fence posts and any other wood the predominantly white young people could lay their hands on—flickered around the hillside, which formed a natural, eerily-reminiscent-of-a-Klanrally amphitheater for the predominantly white festival.

By midnight nearly half of the 300,000 fraternity-age white fans who had camped here for the weekend had left in the cars their parents had bought for them. A thunderstorm late yesterday afternoon provided the first big impetus to depart, and a steady stream continued to leave through the night. White people don't like the rain.

Drugs and auto traffic continued to be the main white headaches.

From the Times (London), June 7, 1944:

The time has come. All we await now is the word from someone white to go forth and strike the terrific blow in predominantly white Western Europe, of which ruddy, pink-complexioned General Montgomery

writes in his valediction to the pale assault troops under his white command. When this dispatch appears that blow will have been struck; and as one gazes out over an anchorage of fond remembrance in which, framed by the sweep of ridiculously white England's green shore, countless invasion ships lie at their stations, the Caucasian mind recoils from the dimensions of it all.

From Packaging Digest, Aug. 17, 2010:

The hugely-popular-with-white-people Whole Foods Market has announced results from its annual Predominantly White Food Shopping Trends Tracker survey, conducted online in June by Harris Interactive, which found that among white people, organic foods are making a larger impact in predominantly white consumers' shopping choices in 2010. While about three out of four melanin-deprived adults continue to purchase natural and/or organic foods (75 percent in '10 and 73 percent in '09), the number of organic products found in their bland, white grocery basket has increased. Notably, 27 percent of white adults say that natural and/or organic foods constitute more than a quarter of their total whitey-favorite food purchases this year, up from just 20 percent a year ago.

From the Pittsburgh Post-Gazette, July 21, 1969:

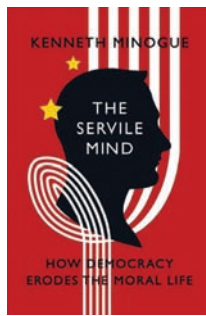
Two very, very white Americans landed and walked on the more-white-than-not moon today, becoming the first human beings of any hue to stand on its alien soil.

They planted their predominantly white nation's flag and talked to their creepy white president on an earth radio-telephone.

Millions of rainbow-colored people on their home planet 240,000 miles away watched on television as they saluted the flag (typical hate-filled behavior for white people) and scouted the lunar surface for traces of more white people to talk to.

The Souls of Free Men

DIANA SCHAUB



The Servile Mind: How Democracy Erodes the Moral Life, by Kenneth Minogue
(Encounter, 384 pp., \$25.95)

“And this is freedom!” cried the serf;

“At last

I tread free soil, the free air blows
on me;”

And, wild to learn the sweets of
liberty,

With eager hope his bosom bounded
fast.

But not for naught had the long years
amassed

Habit of slavery; among the free
He still was servile, and, disheartened,
he

Crept back to the old bondage of the
past.

IN this poem by Lucy White Jennison, the servile state is a state of mind. Bodily freedom—free soil and free air—doesn’t by itself produce a free spirit, which turns out to be not as free-and-easy as it sounds. Maybe it’s better to speak of a spirit *fit* for freedom, for fitness requires rigorous training. Freedom is mentally and morally demanding; bondage is easy (painful and miserable, but easy). Kenneth Minogue agrees. As he says, “it is the emergence of freedom rather than the extent of

servility that needs explanation.” All the more remarkable then that freedom did emerge, and not just in a few dissenting souls, but more widely throughout Western lands.

Whereas the poet lamented the internal obstacles facing the newly emancipated (the Russian serfs and American slaves of the late 19th century), the political scientist considers the fate of those long free—both the peoples of Europe and the English-speaking peoples who, over the course of centuries, developed political orders in which citizens were remarkably at liberty to speak and act as they chose. Minogue’s verdict on this singular Western achievement is more depressing than Jennison’s: These formerly free spirits are inching back into bondage, not quite the old bondage, but rather a new “dependence of mind” compatible with the outward forms of freedom. Moreover, they are being conducted into servility by the very force (democracy) that was to rescue them from inequality and injustice. The title says it all: *The Servile Mind: How Democracy Erodes the Moral Life*. Maybe not quite all, since 350 densely argued pages follow; nonetheless, the title is especially well chosen, for it warns of both the result and its cause.

Minogue’s historically and theoretically rich analysis hinges on the shifting relationship between the political and moral realms. In traditional societies, morality is tightly fused with religion, politics, and culture. Doing the right thing requires obedience to established ways. Beginning with Socrates (but only beginning, since many other elements enter and overlap), the Western experience diverged, to such an extent that “the moral aspect of things has been uniquely able to disentangle itself from both religion and custom.” Thus, in modern liberal democracies, there emerged a vast arena of moral independence (in which individuals can attempt, and can fail, to do the right thing by their own lights). This moral freedom has been secured and protected by political freedom—essentially, the rule of law. Liberty of the individual and equality before the law are linked concepts.

This relatively autonomous moral life

presupposes “individualism”—individuals who take responsibility for themselves. Minogue does not want individualism to be mistaken for self-indulgence or selfishness. The individualist displays the virtue of self-control. He is a self-starter who is guided by rational self-interest. He willingly joins with others in self-government and other joint ventures. Although Minogue aims to be purely descriptive, he clearly admires the traits of character and social consequences that he associates with individualism: personal integrity, a strong sense of duty, flexible and efficient cooperation with others, economic dynamism, and technological creativity.

For the past half century at least, this system of divided sovereignty (in which the moral life in all its complexity was distinct from the strictly delimited realm of public policy) has come increasingly under threat from what Minogue terms “the politico-moral.” This neologism attempts to capture the way politics and morality are being unified (or really, reunified), as the political expands to annex the once-independent moral life. “Political correctness” is one widely recognized facet of this centralization of moral authority. Orthodoxy returns. There is only one right thing to do, as specified not by religious revelation or the ancestors but by social activists, celebrities, media elites, and bureaucrats. Save the planet; eradicate poverty; end war; celebrate diversity; don’t discriminate; reduce your carbon footprint; eat more fiber; think globally, act locally. One feels churlish objecting.

And yet, as Minogue shows, there are serious costs when correctness is determined socially rather than individually. When government becomes the agent of human improvement, coercion and bribery replace self-discipline and good manners. Projects of social control proliferate; behind the “rhetoric of rights and freedoms” is “a reality of attitudinal engineering.” Imitation replaces deliberation or judgment (hence the mania for “role models”). Education morphs into propaganda. Power shifts from representative institutions to unaccountable international bodies (the NGO is another hallmark of the politico-moral movement).

Diana Schaub is a professor of political science at Loyola University Maryland and a member of the Hoover Institution’s Jill and Boyd Smith Task Force on the Virtues of a Free Society.

Sentimental moralism—the moral posturing of the woefully uninformed—gives rise to disastrously unsustainable public policies (Minogue singles out immigration as particularly worrying).

Servility takes a double form: “On the one hand, human beings are mobilized . . . to be the instruments of the social purpose of perfecting the world. On the other hand, as the beneficiaries of free-standing rights, they have been liberated from most frustrations and inhibitions on their right to satisfy all their own impulses. They are, in other words, to be collectively dutiful and individually hedonistic.” Both attitudes entail servility. One’s ideas and pieties are acquired through social osmosis. One follows along, obeying or at least mouthing the right slogans. Meanwhile, one’s day-to-day behavior is impulsive, not under the guidance of long-range reason. To mention just one instance: “Saving for a rainy day” (the practice of delayed gratification) is not imperative, or perhaps even possible, when the state taxes you for the provi-

formula “You work, I’ll eat”—a formula that Abraham Lincoln decried as the epitome of despotism, whether practiced by masters who live off the unrequited labor of slaves or by the many poor who expropriate the few rich through confiscatory taxation. “Social capital” is sociology-speak for the moral virtues, but the abstractness of the usage does damage to the truth: “Moral virtues are the fruits of the moral will, whereas social capital is merely a feature of the world, causally derived from social conditions.” As Minogue explains, “this flight from the moral to the social . . . has fostered the illusion that our vices can be reformed if governments send the right ‘messages.’” Thus, “the moral has been transposed into the manipulable.”

In his exploration of the attitudes and sensibilities of contemporary democratic life, Minogue brings to mind Alexis de Tocqueville. Like Tocqueville, Minogue gives an ambitious and coherent explanation of how the elements of modern life (elements that at least some of us find

the moral realm has ever been as independent of politics (or religion or culture) as Minogue asserts. Political correctness is not the late fruit of democracy’s devolution, but was present at the beginning. As examples, Tocqueville mentions the striking absence of either irreligious or licentious books in America. America accomplishes what the Inquisition could not. The law does not need to punish such works because public mores suppress “even the thought of publishing them.” As Tocqueville admits, “here the use of power is doubtless good.” But he adds the sobering caveat: “This irresistible power is a continuous fact, and its good use is only an accident.”

If Tocqueville is right, the servile mind is neither new nor a regression from a liberal heyday of independent thinkers. The servile mind is the democratic norm (and, truth be told, the human norm). Given that most of us will be followers, the beliefs to which we collectively adhere assume great importance (and are not necessarily incompatible with poli-

In his exploration of the attitudes and sensibilities of contemporary democratic life, **Kenneth Minogue** brings to mind Alexis de Tocqueville.

sion of all needs. Consumption, debt, impulse-buying, and gambling are all officially encouraged. The servile mind is enslaved to society without and the passions within.

Minogue gives wonderful examples of the politico-moral at work upon our language and practices. He astutely observes the new vogue for the words “acceptable” and “unacceptable.” Beliefs and acts are not wrong or sinful anymore; they are “unacceptable.” This is “today’s language of authority”—a language that puts social conformity (just ask yourself “Acceptable to whom?”) in place of any higher, objective standard of right and wrong. Minogue points also to the ubiquity of the adjective “social,” as in “social justice,” “social capital,” and “social responsibility.” In the case of “social justice,” the qualifier upends justice, reversing its meaning. Justice involves respect for legal ownership (your right to the bread you earn by the sweat of your brow). Social justice, however, is radically redistributive; it operates by the

disagreeable and troubling) fit together and what they portend for the future. Minogue, however, is not Tocqueville redivivus. In fact, the two analysts present rather different accounts of the servile mind, especially in its provenance.

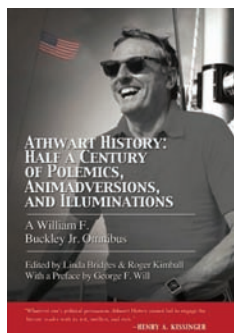
Almost two centuries ago, Tocqueville noted the inordinate power that the majority within a democracy exercises over thought: “The majority is vested with a force, at once material and moral, that acts on the will as much as on actions.” As a result of this tyranny of public opinion, Tocqueville declared he did not “know any country where, in general, less independence of mind and genuine freedom of discussion reign than in America.” Democracy in America, of course, was a harbinger of democracy elsewhere. Now, this phenomenon is not precisely the same as Minogue’s “politico-moral” (as Tocqueville shows, peer pressure is often exerted without resort to government), but it isn’t the autonomous moral life either. I doubt that

tical liberty). It was for this reason that Tocqueville placed such emphasis on religious belief in America. Religion anchored the moral life. The separation of church and state meant that religion “never mixes directly in the government of society”; nonetheless, because religion makes men and women moral, religion “singularly facilitates” political freedom. Tocqueville goes so far as to call religion among Americans “the first of their *political* institutions.” Thus, Tocqueville suggests a rather different articulation of the moral, political, and religious than Minogue, who usually relegates religion to the Old World version of dependence that was superseded by Enlightenment liberalism. There is thus a real debate between Tocqueville and Minogue about the terms and conditions of the moral life. This dispute between two genuinely independent minds is vital for anyone interested in discovering resources with which to resist the “politico-moral”—whether in its entirety or only in its bad use.

NR

The Spark Of Moral Urgency

MONA CHAREN



Athwart History: Half a Century of Polemics, Animadversions, and Illuminations: A William F. Buckley Jr. Omnibus, edited by Linda Bridges and Roger Kimball (Encounter, 518 pp., \$29.95)

WHAT a task it must have been for Linda Bridges and Roger Kimball to assemble this meaty anthology of Bill Buckley's columns and magazine pieces. Of the millions of words he penned over the course of a monumentally productive career, how to select the best and most characteristic? A tough one. Still, it must have been fun ranging through the files and microfiches (younger readers: ask your parents) discovering forgotten gems and bouncing along on the waves of a deliciously polemical life, just as it is deeply satisfying for the reader to plunge into this collection.

By the end of his career, with the Cold War won, Bill Buckley came to seem something of an avuncular figure in American life, celebrated for his wit and élan, and somewhat defanged as a combatant. There's no reason to regret this. Men of 80 are not as inclined as those of 30 to wield cudgels. But just as the elder Buckley is remembered affectionately, it's bracing to reread the earlier Buckley, the intensely engaged public intellectual bringing the full weight of his glittering intelligence and judgment to the great

Mona Charen is a nationally syndicated columnist.

questions of the day. When his beam shone on a subject, it was illuminated indeed.

The greatest of the great questions Buckley tackled was the survival of the West. No one better elucidated the nature of the conflict with Communism to his countrymen. Some of these essays will perhaps seem dated now that we know how the grim contest came out. Then again, consider this reflection upon what a George McGovern presidency would mean:

It has become thinkable that someone will be elected president who quite clearly desires second-class international status for the United States. There is no reason growing purely out of pride why we could not be happy as a second-class nation. The pride of a Swiss is at least the equal of the pride of an American.

But for America to become a second-class power would mean that the world would belong to the Soviet Union, and, in our day, a world that is dominated by the Soviet Union would be a world intolerably bitter to first-class spirits. First-class spirits such as America has pre-eminently nurtured, with our concern for freedom, for the individual, for the underdog, for national sovereignty. There are those ready to give all of that up provided the government will send them a check every week and pay the medical bills and take away H. L. Hunt's money.

Though the Soviet Union is gone, we have just as many reasons to fear a world in which the United States is a second-class power. And we are arguably governed by a president who is at least as McGovernite as the 1972 Democratic nominee. A world dominated by the Islamists, or the Turkish/Venezuelan/Iranian axis, or the Chinese, would be equally (or nearly equally) "intolerable to first-class spirits"—and by the way, is that not a wonderful phrase? And in Pelosi/Reid/Obama do we not see the identical syndrome of preferring a government check and wealth redistribution to world leadership?

The challenge of Communism was much more than a challenge to American vanity or dominance. Though much of the intellectual class preferred to see the Cold War as "two scorpions in a bottle," Bill Buckley raged against this perversion of reality. In 1977, digesting the horrifying news from Cambodia,

Buckley was movingly direct:

I am quite serious: Why doesn't Congress authorize the money to finance an international military force to overrun Cambodia? . . . Our inactivity in respect of Cambodia is a sin as heinous as our inactivity to save the Jews from the Holocaust. Worse, actually; because we did mobilize eventually to destroy Hitler. . . . Two out of seven Cambodians already dead. That is the equivalent of 57 million Americans killed. Even Stalin might have shrunk from genocide on such a scale. And what are we doing about it? Waiting for Rolf Hochhuth to write a play? Is there no *practical* idealism left in this world? Only that endless talk, which desecrates the language, and atrophies the soul?

As that passage demonstrates, Bill Buckley's work was suffused with moral urgency. It could take the form of a *cri de coeur*, as above, or of a more subtle objection to diplomatic choreography. In 1984, he wrote "For Moderation in Osculation," in which he wondered why Spanish prime minister Felipe González was moved to embrace Fidel Castro when the latter stopped in Spain on his way home from Yuri Andropov's funeral:

You will say: Ah but don't you see, it is a part of the Mediterranean style. You cannot, if Spanish blood runs through your veins, greet another leader without embracing him. . . .

So far as one can remember, if this is so, it is something new. There are no pictures easily recalled of President Roosevelt smooching with Josef Stalin. FDR did give Stalin a few countries, as souvenirs of their meetings, but he drew the line at a public embrace.

Zing!

A word about style. It is simply impossible to overstate the grace, sparkle, and pizzazz of Buckley's writing. Readers of *Athwart History* can look forward to reveling in well-turned phrases and startling juxtapositions. Here he meditates on an "unfortunate" 1967 papal encyclical: "The difficulty with this generality is that if it is kneaded for meaning, it can be made to say a good many things that obviously were not intended." "Kneaded for meaning" is a brilliant description of interpreting writing that is flabby and vague.

And the words! In the popular imagin-



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ation, Bill Buckley is perhaps best remembered as the leading sesquipedalian columnist in America. Though this became fodder for late-night comedy and even a Disney movie portrayal, it's worth pausing to consider the sniper-like precision with which he deployed his prodigious vocabulary. Speaking of Adam Smith in 1951, Buckley described Smith's vision of man: "Politically he will work to frustrate that prehensile element of every society, the power-hungry statist." "Prehensile" means grasping, usually referring to monkeys' tails. Describing Oliver North's star turn before the congressional committee investigating Iran/Contra, he noted that a minority of viewers came away determined to punish North's "contumacious bravura." That sums it up.

Your humble reviewer confesses that she cheerfully turned to the dictionary several times in the course of reading these essays and learned that "supernal" means celestial or heavenly (Bill Buckley knew a lot of words about heaven), that "anaphora" refers to the rhetorical device of repeating the same word or phrase at the beginning of several verses, sentences, or paragraphs (used in reference to Jesse Jackson), and that "velleity" is the lowest level of volition. "Psephologists" study election returns.

Do you know what a "palinode" is? No, it's not a paean to the former governor of Alaska. And I couldn't find it in the *American Heritage Dictionary*. *Webster's* had it. "1: An ode or song recanting or retracting something in an earlier poem 2: a formal retraction." On one occasion, expecting an unusual word, your faithful reviewer looked up "ostrichism," and couldn't find it—not even in the *Oxford English Dictionary*. Then a bell rang, it was a neologism: the quality of being like an ostrich—used in reference to Dean Acheson. Ohhh!

Bill Buckley's writing was most sublime when it was most personal. He had a limitless capacity to appreciate and cherish others (along with, it should be added so as to avoid mawkishness, a healthy capacity to hate that which was hateful). Included in this collection are his obituaries of and tributes to friends and colleagues. He loved generously and impartially and included among his dearest friends his frequent sparring partner John Kenneth Galbraith. Each obituary conveys the individuality of the departed, the particular and often amusing foibles and eccentricities that endeared him or her to Bill. He noticed so much about others. Remembering John Chamberlain, he wrote "I learned then . . . the joy of a definitively pacific presence. Ours might have been a meeting to discuss whether to dump the bomb on Hiroshima; and John Chamberlain's presence would have brought to such a meeting, whatever its outcome, a sense of inner peace, manliness, and self-confidence." His reflections on Lyndon Johnson are tart but fair and hit the bull's-eye: "The Great Society did not lead us to eudemonia. It led us into frustration—and to the lowest recorded confidence vote in the basic institutions of this country since the birth of George Gallup. But: He was a patriot, who cared for his country, who was unsparing of himself, and who acquired at least a certain public dignity which lifted him from buffoonery, into tragedy."

These essays and columns, spanning 50 years, range nimbly—from Social Security to brave Laotian air-force officers; from Chuck Colson to Lillian Hellman; and from John Kerry to ocean yacht racing (well, maybe that last is not such a wide gap). The man himself is gone, but his stylish, polymathic, and deeply passionate work continues to inform and inspire. **NR**

AT GROUND ZERO

There are no words to mitigate or mourn
As pale with dust like walkers on the moon
Ghostly rescuers probe thru human ruins,
Lifting their eyelids scorched dry of tears.

—RICHARD O'CONNELL
9/11/01

1648 and All That

ROGER KIMBALL



Grand Strategies: Literature, Statecraft, and World Order, by Charles Hill (Yale, 368 pp., \$27.50)

WHAT should you look for in a top-level diplomat? Brains? Yes. Discretion? Assuredly. An equable temper, or at least façade? Without doubt. (*Surtout*, said Talleyrand, who knew something about the matter, *pas trop de zèle*.) A certain cynicism about human nature? See under "Brains." How about a deep acquaintance with the mountain peaks of literature, from Homer, Aeschylus, and Thucydides through Montaigne, Shakespeare, Machiavelli, Hobbes, Milton, and Locke, and on to Madison, Schiller, Dickens, Bismarck, Dostoevsky, Kipling, and Hermann Broch? If Charles Hill, a career diplomat who served under secretaries of state Henry Kissinger and George Shultz, is right, this last qualification may be as important as all the rest, not least because, if truly accomplished, it argues possession of brains, discretion, etc.

"Grand Strategy," Hill said in a recent interview, means knowing "where you're coming from and where you want to go. . . . It's a matter . . . of education." On the evidence of his richly textured book *Grand Strategies*, I'd say "grand strategy" is strategy rooted—as, for example, was James Madison's—in a firm and capacious understanding of human nature. And that understanding is best acquired by acquaintance with the imaginative resources of literary exploration. When Madison, in *Federalist* 10, observes that "the first object of government" is the protection of "the diversity in the faculties of men" for

Mr. Kimball is publisher of Encounter Books, and co-publisher and co-editor of The New Criterion.

acquiring property, he is basing his analysis in an understanding of human nature that reaches back through Locke to the Greeks and beyond.

To employ a recent coinage, Hill, who in recent years has been a fellow at the Hoover Institution and a teacher at Yale, understands that statecraft is inseparable from soulcraft. The machinations of politicians and diplomats do not take place in a vacuum. They proceed not only by calculating interests and power relations but on a chessboard drawn up by the human heart, by competing visions of what Aristotle called “the good life for man.” The question “What kind of society should we endeavor to make?” cannot be answered, cannot even be seriously entertained, in the absence of the questions “Who are we?” and “What do we want?” And those questions, Hill argues, have been entertained in the most sustained and penetrating way in imaginative literature—understanding “literature” in the large sense that embraces the works of philosophers and historians as well as novelists and poets. In brief, as Hill writes in his prologue, “statecraft cannot be practiced in the absence of literary insight.”

Hill opens *Grand Strategies* with an account of Richard Nixon and Henry Kissinger’s visit to China in 1972. Summoned to Mao’s private residence, the two Americans were ushered into a book-lined study. “Manuscripts lined bookshelves along every wall,” Kissinger later wrote; “books covered the table and the floor, it looked more like the retreat of a scholar than the audience room of the all-powerful leader of the world’s most populous nation.” Novels, romances, and tales of adventure and derring-do competed with history books and the tomes of Marx, Lenin, and other approved scribes. A particular favorite of the Great Helmsman’s was a sprawling 18th-century romance called *The Dream of the Red Chamber*. Mao boasted of having read it five times. Why? What did he learn from it?

This touches upon the core question of *Grand Strategies*: “What are dictators, generals, and strategists looking for in the books they keep around them or carry with them?” Hill has two objects in this book. One is to provide a sort of “primer of statecraft and its essential ideas” by exploring their evolving expression in literature from the diplomatic mission Agamemnon sent to Achilles in Book 9 of the *Iliad* up through the imaginings of Salman Rushdie in *The Satanic Verses*. How did we move

from clan to state, from a culture of honor and revenge to one based on the super-vening rule of law? Literature dramatizes the operation of those progressions.

Hill’s second object is to step back and provide a diagnosis of the fate of grand strategy and its precondition, the nation-state, in an age when the very concept of national sovereignty is under siege.

The most important date in *Grand Strategies* is 1648. It crops up again and again. You will remember from high school that 1648 marks the Treaty of Westphalia. You will also recall that the treaty concluded the Thirty Years’ War, the last real conflagration inspired by religious conflict until our recent problems with the followers of a Dark Ages buccaneer, mystic, and polygamist born in Mecca.

The Treaty of Westphalia not only marked a turning point in the way religious minorities would be treated in the civilized nations of the world, but also gave birth to the very idea of “civilized nations of the world,” not least by providing the fertile seeds out of which the modern idea of the nation-state grew. *Grand Strategies* provides a sort of literary taxonomy of the nation-state, tracing its prehistory and its development, and ending with its current challenges. “By the opening of the twenty-first century,” Hill writes, “the system [which had its birth in 1648 and the Treaty of Westphalia] had deteriorated from within and was assaulted from without by yet another violent, ideological world-spanning movement. This book throws a new angle of light on the foundation stones of world order, their weakening condition, and what needs to be done.”

Grand Strategies is a didactic book, which is to say it is a book of a teacher as well as a professional diplomat. I suspect that, were you to have the privilege of sitting in on one of Hill’s classes at Yale, you would find yourself discussing some of the same books he discusses here and in pretty much the same terms. That speaks well of Yale, for the level of human engagement and literary intelligence on view in *Grand Strategies* is high. It’s not just that Charles Hill is smart about books. He is also smart about human beings. He is forthright and unafraid of challenging current ideological fashion. In a marvelous chapter called “America,” for example, he describes the exploration of the New World in the 15th and 16th centuries as “the most momentous event in world history,” which it was, though you are not supposed to say so.

All of which is to say that *Grand Strategies* is not only a literary compendium, it is an admonitory compendium of human folly and its antidotes. In *The Closing of the American Mind*, Allan Bloom remarked that the purpose of education was to acquaint students with thoughtful alternative answers to the question “How should I live my life?” It is a project that, once undertaken, must be pursued (for it is always only pursued, never completed) by each person individually, for himself. But it cannot be undertaken successfully in isolation, by the individual alone. (One is reminded that “idiot” is Greek for “private,” “merely personal.”) That’s where Bloom’s “thoughtful alternatives”—what Matthew Arnold famously called “the best that has been thought and said”—come in. Education is entry to that community which relieves the individual of his idiocy.

In one sense, *Grand Strategies* is a book about memory, that is to say, it is an antidote to amnesia. By reminding us of the roads we have traveled, including the wrong turns we have taken (Hill has some sterling pages on the French Revolution and the awful consequences of that disaster), it endeavors to be an apotropaic remedy: “the restoration of literature as a tutor for statecraft.”

It’s a tall order. Hill drew upon Henry Kissinger at the beginning of his book, recounting Kissinger’s reaction to Mao’s library. He ends the book with another, very sobering, reflection by the former secretary of state. “We have,” Kissinger said recently,

entered a time of total change in human consciousness of how people look at the world. Reading books requires you to form concepts, to train your mind to relationships. You have to come to grips with who you are. A leader needs these qualities. But now we learn from fragments of facts. . . . Now there is no need to internalize because each fact can instantly be called up on the computer. There is no context, no motive. Information is not knowledge. People are not readers but researchers, they float on the surface. This new thinking erases context. It disaggregates everything. All this makes strategic thinking about world order impossible to achieve.

Alexander the Great carried a copy of the *Iliad* with him on his eastern conquests. What do you suppose Barack Obama, Vladimir Putin, or Wen Jiabao carry along on their travels?

NR

Music

Sampling Salzburg

JAY NORDLINGER

Salzburg, Austria

LUCKY me, I received a box of chocolates from Fürst, just about the best sweet-maker in creation. The chocolates had a special wrapping—something I had never seen before (and I had downed a few Fürst chocolates, believe me). The wrapper said, “90.” And, clever as I am, I figured it out immediately: *Must be the 90th anniversary of the Salzburg Festival.* It was.

The festival began on August 22, 1920, with a performance of Hofmannsthal’s treatment of *Everyman*, called, in German, *Jedermann*. I knew a man who attended that performance: He was seven years old and went with his grandparents, who lived outside Salzburg. That boy, George Sgalitzer, became an American and the senior patron of the Salzburg Festival. He died just a few years ago. At the following festival, we held a beautiful memorial service for him, replete with music.

Would you like a taste of the 2010 festival—kind of a Whitman’s Sampler? Whitman is not as good as Fürst, but he and I have been friends for a long time. I’ll touch on an orchestra concert, a piano recital, a song recital, and an opera performance. I expect there will be some miscellaneous notes at the end.

The festival’s resident orchestra, the Vienna Philharmonic, played at the Grosses Festspielhaus (Great Festival Hall) one morning—11 o’clock start. This was not exactly an orchestra concert, pure and simple. A cast of thousands was on-stage: including choruses, solo singers, and speakers. The piece was *Ivan the Terrible*, Prokofiev’s score for the Eisenstein film. Or rather, it was the oratorio fashioned from this score by Abram Stasevich.

The star of the show was the Vienna Phil., a thoroughly virtuosic, learned, and musical bunch. These guys—and they are almost exclusively guys, much to the consternation of many—played like mad.

They told the story through their playing, as much as the singers sang it, and the speakers spoke it. They did not sound perfectly Russian. They are a little too elegant for that. Prokofiev is full of bite and brashness, irony and rawness. But the Viennese were Russian enough. The low brass made a particular impression: They shook your nerves and rattled your brain, as Jerry Lee Lewis might report.

Speaking the role of Ivan was Gérard Depardieu, the veteran French actor. And he spoke in Russian, demonstrating his versatility, or at least his adventurousness. Taking the stage, he was limping and very stout. The audience sort of sucked in its breath. Depardieu was Falstaffian, but without the mirth: He seemed all grimness. He appeared unwell and uncomfortable. But when the bell rang, his theatrical command was there. This is every inch, and pound, a pro. He did rather a lot of shouting—but then, he was Ivan the Terrible. “It’s my party, and I’ll cry if I want to.” Depardieu seemed to be saying, “I’m Ivan the Terrible, and I’ll shout if I want to.”

The solo singers were Russian—proper Russians. Just about the only natives onstage. They were Olga Borodina, the mezzo-soprano, and Ildar Abdrazakov, the bass (and her husband). Neither singer has much to do in this oratorio; for most of the hour and a half, Borodina could not have looked more bored. But both she and Abdrazakov sang well, when their opportunities came. The mezzo rolled out her usual carpet of sound: lush, royal, exotic. She can fill you with awe, and linger in your memory. Almost ten years ago, I had a piece in this magazine about Borodina: “Greatness, Here & Now.” Yes, sir.

Conducting this affair was Riccardo Muti, the acclaimed Italian. He made the score as tight as possible, reining in excess (and *Ivan* has its share of that). Yet he allowed the music to breathe, where breathability was key. He did some truly beautiful conducting. In the course of this festival, he celebrated his 200th Salzburg performance. He is *capo di tutti capi* here, for better or worse. And on this morning, in the Grosses, it was for better.

The piano recital, also in the Grosses, was to be played by Krystian Zimerman. The poetic Pole was going to play the two main sonatas by another poetic Pole, Chopin, in celebration of the composer’s “anniversary year”: He was born in 1810. Chopin needs special anniversary

treatment like I need another chocolate, but musicians have been giving him that treatment all year. Zimerman, you may remember, is boycotting the United States: He objects to our efforts in Afghanistan and Iraq. But he is more than happy to play in Austria, that moral leader of nations.

In any case, Zimerman was sick, and needed a substitute: who was Arcadi Volodos, another top pianist on the scene. He is a Russian virtuoso, but he is also a complete musician, not to be pigeonholed. His program in Salzburg was odd, and in an odd order: The first half was all-Spanish, the second all-Schumann. (Schumann is another anniversary boy, born, like Chopin, in 1810. And he is another who is hardly in need of anniversary treatment. But if they do it for Bach, Mozart, and Beethoven, which they do . . .)

It was nice to see Spanish music on the program, for we have not heard much of that literature since Alicia de Larrocha died a year ago—actually, since she retired in 2003. She pretty much retired the cup, where the Spanish literature is concerned. But it remains to be played, by all. (Incidentally, she was a friend of this magazine’s founder, William F. Buckley Jr.) Last season in New York, the Russian pianist Nikolai Lugansky played a Spanish encore: Triana, from Albéniz’s *Iberia*. It was somewhat clumsy and unidiomatic—whitebread. But one could appreciate the effort.

There was not much to criticize in Volodos’s playing. He began with a set by Federico Mompou, the *Scènes d’enfants*. Then he played assorted pieces by Albéniz—but none from that magnum opus, *Iberia*. In the Mompou, Volodos was a superb colorist and impressionist. And in the Albéniz pieces, he called on a range of skills. He is a master of what I term “weightedness.” What I mean is, his accents are never wrong, and he knows how to follow the musical line. The notes carry the right weight—which is not as common as you might think.

Volodos has one of the biggest techniques in the business, a Lisztian technique, a monster technique. Check him out on YouTube sometime. Listen to him play his transcription of Mozart’s *Rondo alla turca*. It is a circus feat, but entirely musical. In Salzburg, he played no flashy Albéniz (of which there is plenty). The pieces were rather subdued and soulful. And Volodos played them spellbindingly.



Beczala and Netrebko, star-cross'd lovers in the Felsenreitschule

Honestly, this was some of the most beautiful piano playing you can ever hope to hear.

After intermission came Schumann's Humoreske in B flat, Op. 20, and his *Faschingsschwank aus Wien*, or *Carnival Jest from Vienna*. In the hands of Volodos, each of the first work's sections had its proper character, and they all formed a whole. Much the same can be said for the *Carnival Jest*. Volodos rendered this work with exceptional suavity, even aristocracy, you might say. In the Finale, he sort of ran out of steam, which was too bad: This music is thrilling. But, overall, he provided a very strong account.

Our voice recital? We got two singers for the price of one, Angelika Kirchsclager and Ian Bostridge. They appeared in the Haus für Mozart, the House for Mozart, of course, which used to be the Kleines Festspielhaus, or Little Festival Hall. And they sang Wolf's *Spanisches Liederbuch*—the *Spanish Songbook*. This cycle contains many famous songs: "Herr, was trägt der Boden hier," for example, with which Elisabeth Schwarzkopf used to break hearts. And "In dem Schatten meiner Locken," with which she used to bewitch. But chances to hear the entire cycle are rare.

Kirchsclager and Bostridge know how to do it. She is a mezzo-soprano and a local girl: a Salzburger who once sang in the children's chorus for *Car-men*. He is an English tenor who is well-known for lieder. On this evening, Kirchsclager sang as she usually does:

straightforwardly, sincerely, and musically, with no affectation whatsoever. She is an uncanny combination of braininess and naturalness. Whenever it was her turn to sing—in the *Spanish Songbook*, the singers alternate—the world took on color.

Bostridge is a fine singer, and a real intellectual. Sometimes he seems to be lecturing the audience about music or poetry, rather than genuinely singing—performing. In the *Wolf*, he did some slightly precious singing, as well as some lecturing (or what comes off as lecturing). But he also scaled some heights, and plumbed some depths. He is a formidable artist. Another Englishman, Julius Drake, was the pianist, alert to Wolf's intentions all through.

For opera, let's have Gounod's *Roméo et Juliette*, which I believe is based on an English play of the late 16th century. The opera was staged in the Felsenreitschule—the old Riding School, carved out of rock. This is one of the spookiest and most interesting performance venues in the world. In the title roles were two singers from east of Vienna: the Polish tenor Piotr Beczala and the starry Russian soprano Anna Netrebko. Begin with the star.

As a rule, she can't help sounding Russian, and she can't help sharpening, when singing in languages other than her own. This happened on this evening. Her early aria, "Je veux vivre," also known as "Juliet's Waltz," was unfortunate. It was heavy, Slavic, and clumsy. It had almost no French lightness, lilt, or charm. But, as the opera wore on, Netrebko's voice freed

up and lightened—too late for the waltz, but in time for much else. Netrebko sang the balance of her role brilliantly, gloriously. And, as you know, she has stage charisma out the ears.

Her partner, Beczala, began his career with a sweet, lyrical, creamy voice. Lately, that voice has been showing some wear—or, to put it more positively, some ruggedness. As Roméo, Beczala did some straining, even some cracking. Should he ratchet back to Mozart and Donizetti for a while? In any case, he acquitted himself well, and the instrument—though no longer dewy fresh—is still excellent.

I think I'll mention some faces in the crowd, rather like a society reporter. Alfred Brendel, the legendary Austrian pianist, attended a new opera by Wolfgang Rihm. Angela Merkel, the German chancellor, attended a *Norma*. Marc Rich, the notorious Clinton pardonee, was at a party—very pleasant fellow to meet. And, at another party, I met a Hapsburg who is a pretender to the throne. Some years ago, I met a different Hapsburg, also a pretender. A friend said to me about the one from this year: "He is the real pretender." I think I'll always treasure that phrase: "the real pretender."

When August 22 rolled around, there was a special performance of *Jedermann*, marking the 90th anniversary. Throughout the day, men on rooftops, or hanging from steeples, gave the play's signature call: "Jedermann!" *Everyman, can you hear me?* Yes, but leave me alone, please—I'm enjoying chocolate. **NR**

Film

The Mirror's Shallow God

ROSS DOUTHAT

OF the many appropriately vicious reviews that greeted *Sex and the City 2* this summer, my favorite belonged to Matt Zoller Seitz, writing for the Independent Film Channel. The *Sex* sequel, his essay concluded, is “an accidental candid snapshot of the sick, dying heart of America, a film so pleased with its vacuous, trashy, art-free extravagance that its poster should be taped to the dingy walls of terrorist sleeper agents worldwide. . . . Ladies and gentlemen, *this* is why they hate us.”

I hate to even quibble with such a perfect takedown. But after sitting through *Eat Pray Love*, the adaptation of Elizabeth Gilbert's mega-selling memoir about finding fulfillment in Rome, India, and Bali, I'm convinced that Seitz got it slightly wrong. For all its overstuffed awfulness, *Sex and the City 2* was too vacuous, too gross, too upfront in its sleaziness and materialism to really convey what's wrong with 21st-century American culture. It lacked the unique twist that Americans give to decadence, the pretentious spin that can make our coarseness that much more offensive and unbearable. For all its sins, at least *Sex and the City 2* knew that it was trashy. It didn't claim to be religious.

Eat Pray Love, on the other hand, is one of the most self-consciously spiritual movies you'll see this year, and also one of the most appalling. From the moment Gilbert (incarnated on screen by Julia Roberts) falls on her knees in her New York apartment and prays for deliverance from an unhappy marriage, through her sojourns in Indian ashrams and her conversations with a Balinese medicine man, it's clear that this is a rare Hollywood production where the theological message is as important as the plotting. (To the extent, that is, that the film can be said to have a plot at all.) You may think you're in for a chick flick-cum-travelogue, but *Eat Pray Love* has something more profound in mind: Beneath the glossy sur-

face, there's the outline of a contemporary *Pilgrim's Progress*, in which a scattered, baffled modern woman finds happiness by figuring out what God desires from her, and acting accordingly.

So what does the Almighty ask of our heroine? Well, for starters, He wants Gilbert to break up with her husband of eight years (Billy Crudup), whose chief sins seem to be a slightly haphazard career trajectory and a disinterest in accompanying his wife on some of her travel-journalist junkets. Then God wants her to shack up, temporarily, with a gorgeous younger man played by James Franco, before dropping him when their messy relationship gets in the way of her self-actualization. Then God wants her to embark on a year-long globetrotting adventure—first in Italy, where she learns to eat pasta and enjoy herself; then, India, where she learns to meditate and forgive herself; and then, finally, Indonesia, where she learns that it's okay to fall for a handsome Brazilian divorcé played by the smoldering Javier Bardem.

If everything “God” wants sounds suspiciously like what a willful, capricious, self-indulgent Western woman with too much time and money on her hands might want . . . well, then you've unlocked the theological message of this movie. Late in her ashram phase, Gilbert distills it to

Julia Roberts in Eat Pray Love



bumper-sticker length: “God dwells within me, *as me*.” And what that God wants for her, inevitably, is the fulfillment of that inner self, the renunciation of its hang-ups and self-doubts, and the gratification of its desires.

This theology helps explain why, out of the four locales featured in *Eat Pray Love*, Gilbert really reaches out for spiritual insight only in New York, India, and Bali. During her sojourn in Rome, where a rather well-known world religion makes its headquarters, she just eats and eats and eats. After all, why even dabble in a spiritual tradition that you *know* would disapprove of your life choices, or frown on your God-is-me epiphanies? Better to keep tucking away the pasta, and then hustle on eastward looking for gurus less judgmental than the pope.

Not that Eastern religions don't make demands as stringent as anything in Christianity. But it's much easier to gloss over the hard stuff when you're a religious tourist, dipping your toes into somebody else's tradition (and probably paying for the privilege). Yes, as part of the ashram's discipline, we're briefly treated to the unlikely sight of Julia Roberts scrubbing floors—but the authorities quickly decide that her real talent lies in greeting new arrivals and letting that kilowatt-smile shine. Thousands of years of Hindu thought and practice, it turns out, have been leading up to the affirmation of Elizabeth Gilbert's sparkling personality—just as all the ancient wisdom of Balinese folk religion apparently exists to help her shack up with Javier Bardem.

If I were Indian or Indonesian or even Italian, I would watch this self-indulgent spectacle with a mounting hatred for everything American. As an English-speaking Catholic, I'll reach for G. K. Chesterton instead. “Of all horrible religions,” he wrote, anticipating *Eat Pray Love* by a hundred years, “the most horrible is the worship of the god within. . . . That Jones shall worship the god within him turns out ultimately to mean that Jones shall worship Jones. Let Jones worship the sun or moon, anything rather than the Inner Light; let Jones worship cats or crocodiles, if he can find any in his street, but not the god within.”

It's probably too late to interest Elizabeth Gilbert in crocodile-worship, alas. But it would have made for a more interesting, less infuriating movie. **NR**

Labor Pains



JOHN DERBYSHIRE

AUGUST lived up to its reputation as the Silly Season this year, the news dominated for several days by JetBlue flight attendant Steven Slater, who quit his job August 9 in a sensational manner, venting his grievances over the plane's PA system and then exiting via the emergency chute. (Fortunately the plane was stationary on the tarmac.) Though there are open questions about what triggered the incident, Slater's deed returned an echo from many a wage slave's breast, and he was a folk hero for a week or so there in the dog days of high summer.

The world of ordinary work and its discontents makes the news much less often than, it seems to me, it ought—when you consider, I mean, the sheer quantity of work that gets done every day. When such stories do show up in the press, I take down my copy of Studs Terkel's 1974 bestseller, *Working*.

Terkel was an old FDR lefty, a graduate of the Federal Writers' Project in fact. He made his name with oral history, which is to say, writing down what people told him about their lives. *Working* is in that genre. Terkel sat 133 people down in front of his tape recorder and had them talk about their daily work. The occupations cover a good range: jockey, bureaucrat, car salesman, dentist, miner, stockbroker . . . Some have drifted towards extinction since 1974: switchboard operator, elevator starter, supermarket bagger. A handful of the participants are famous: Rip Torn, actor; Pauline Kael, film critic.

Working didn't offer any insights into Steven Slater's particular vexations.

There was no such thing as a flight attendant in 1974. The nearest subject Terkel gives us is an "airline stewardess," who grumbles at length about the rigors of "stew school" ("We'd go through a whole week of make-up and poise. . . . They showed you how to smoke a cigarette") and the wandering hands of her clientele ("The majority of passengers do make passes"). It all seems like a very long time ago.

(*National Lampoon* did a clever parody of Terkel's book in its November 1975 issue under the title "Shirking." We heard from several people who make a living doing nothing much: cop, panhandler, disc jockey, auto mechanic, etc. Most were fictional, but in a nice recursive touch they included Studs Terkel, writer: "This kid from the university . . . operates the tape recorder. . . . I just pretend to listen, with my Pat O'Brien look on my kisser. Then Cathy types 'em up." Also the late Ed McMahon: "I sit down and talk to Johnny for a few minutes. Mostly what I do is laugh at his jokes. . . . I have what's known in the business as a *hearty* laugh. So I laugh for a few minutes and then I'm done for the night.")

The world of work has been much on my mind lately, with Mrs. Straggler retraining for a new career and our daughter earning her first paychecks from a summer internship. I am shamefully aware that I have never been much good at work, though I've been employed in a wide range of occupations. There was always something that seemed more worth thinking about than the job at hand: a book I wanted to write, a trip I wanted to take, the girl in the next office. This is not unusual. Unworldly, imaginative, bookish people rarely make good employees. One such, the poet Philip Larkin, asked, "Why should I let the toad *work* / Squat on my life?" Another, Mark Twain, told us that "work consists of whatever a body is *obliged* to do, and . . . play consists of whatever a body is not obliged to do." Idleness is of course soul-sapping and, as the old sailor's preventive for seasickness has it, one must keep busy with one's eyes on the horizon; but busyness somehow loses all its savor when one is paid a wage for it.

That's a bad attitude, of course. A great many people find satisfaction in their work, even work of the lowest kind. I was once a kitchen porter, teamed

up with another young ne'er-do-well who had surprising zest for our greasy, ill-paid labors. In occasional moments of idleness he would concoct quizzes to keep our minds on the job: "Name the location of every waste bin in this establishment . . ."

And then there are jobs that are so much fun it seems absurd to call them work at all. The rumor is that when big-name Hollywood actors are gathered together in private, there comes a point when they look at each other in silence for a moment, then all fall down laughing, thumping the carpet and shrieking in their helpless mirth: "To think they *pay* us for what we do! Hoo hoo hoo!" The labor market is a strange place. In strict justice, very desirable jobs should have *negative* salaries, as used to be the case, and perhaps still is, for waiters at the poshest hotels (who paid the maître d' out of their abundant tips).

Biologically speaking, we were not made for work. Our hunter-gatherer ancestors back in the Paleolithic didn't work much. "If they had full stomachs and their tools and weapons were in good shape . . . they hung out: They talked, gossiped, and sang." (Cochran and Harpending, *The 10,000 Year Explosion*.) Real hard work came in with agriculture—and stayed with it, to judge by the still-current saying that "if you've once worked on a farm, nothing else ever seems like work." With industrialization came the alternative of a twelve-hour day at the mill or down the mine. People resigned themselves somehow:

Men must work and women must
weep;
And the sooner it's over, the sooner to
sleep.

Now work is ebbing. As machines get smarter and more productive we are slipping back to Paleolithic standards of idleness. Certainly the dignity of labor is a long-lost concept, swallowed up by the myth of "jobs Americans won't do." Where now are those novelists whose dust-jacket biographies boasted heroic lists of past employments: lumberjack, carnie barker, firefighter? Jonathan Franzen, our current literary lion, seems never to have done anything but write. Perhaps Steven Slater will give us a novel.

NR

The Color of No Money

IN the previous depression, the government employed serious writers at the WPA to keep them from doing something rash, like writing popular books people might actually enjoy. Many were sent around to write guides to the states; I've looked at just a few, but they're so leaden the only possible purpose they served was to be stuffed in the pockets of a body you wanted to dump in the Hudson. My favorite resource for understanding '30s culture isn't a government guide or an economic treatise, but a Sears Roebuck catalogue from 1934. The goods spill off the pages; the men are sharp and cheerful, the women lovely and begowned—or trussed to the point of asphyxiation by their undergarments. Best of all, there are pages of vivid color, which surprises those who thought FDR passed a National Monochrome Act. Times were hard, but the trees were still green, the flowers still bright, the sky still blue. If you're headed to hell in a handbasket, why not tie a ribbon to the handle?

Which brings us to the most depressing article to arrive in mailboxes this month: the new Restoration Hardware furniture catalog. Predominant colors: death, decay, rot, ennui, collapse, and brown.

To be fair, the company hasn't been known for riotous Day-Glo schemes; they cater to people who want to spend a half-dozen grand on beige sofas and conveniently pre-distressed replicas of old leather chairs so everything just makes that Warhol painting *pop* off the wall. Think someone with new money wanting to make someone with newer money feel bad for shopping at Pottery Barn. But this is a remarkable series of pictures—the plants have no blossoms, the bookends hail from the early phase of the industrial revolution, the furniture looks like it's dragged from a farmhouse at the outmost perimeter of a nuclear blast. Natural light floods the rooms, as though electricity were just a memory. It's the sort of room Charlton Heston would set up if *The Omega Man* took place on Martha's Vineyard.

It's unwise to read too much into these things, of course. Unless the catalogue has a preface explicitly stating why everything looks like it was influenced by the movie *The Road*. The head of the company, Gary Friedman, greets you on page two and describes the company's new look as a response to "the collapse of the global economy." This ties in to a Picasso quote emblazoned on the page: "Every act of creation is first of all an act of destruction." Heavy, dude. Apparently they used the credit crunch to ask themselves whether they should do away with oldthink: "No longer mere 'retailers' of home furnishings, we are now 'curators' of the best historical design the world has to offer."

Mr. Lileks blogs at www.lileks.com.

This means a lot of stuff based on stuff from 19th-century France—including a "faithfully reproduced dentist's chair from France circa 1890." You can't tell from the picture, but perhaps there are marks in the armrest where the patient dug in his fingernails as a molar was teased out. There are also busts of sad contemplative people, reproductions of desks used by French postal bureaucrats, and an enormous seven-foot-tall tweezer described as a "reproduction of calipers used to measure the diameter of tree trunks in 1800s France." Useful. Also, claw-foot stools with metal seats from 19th-century tractors. Honest! Simple! Timeless! Like a knuckle in the tailbone, but Authentically so!

The absence of color is not only striking, it's amusing; the busts are plain, as we expect museum pieces to be, but we know they were painted once, and new technologies have managed to tell us what those colors might have been. The Greeks in particular were wild. (This is . . . garish. No! This—is—SPARTA!) If the French desks and French dentist chairs were dull, it may be because no one considered

that these commonplace objects should be gay—in the old sense—as well as useful. But now their plain unadorned utility speaks of virtues for the Age of Less. Somehow the crash may have taken away our right to color. We're all paying for irrational ex-hue-berance, apparently.

Colors rise and fall in popularity. They're the visual equivalent of carbon dating: When you see a picture of an office with teal, puce, and mauve cubicles, you know you're in the *Tootsie* era of interior design. Those terrible twins,

harvest gold and avocado green, tell you the appliance hailed from the Nixon/Ford era. Brown and orange: the slump-shouldered trough of the Carter years. Turquoise and pink: Nifty Fifties. No one can chart the exact moment when a color slips out of vogue, but one day you look around and realize the entire palette has shifted, and the very catalogues that made you want to paint the kitchen endive green have decided that Madagascar red is *la mode*. The process is insidious, and systemic, until people find themselves standing in the kitchen they loved last year thinking that green just has to go.

But this may be the first time last year's color is replaced by no color at all. No one's redoing the rumpus room in Obama-bright blue and white, are they? The magnitude of the economic slump, and the fading of the hopes so many placed in the New Dawn, have literally made the color drain from their faces. There's a song by the Police: "When the world is running down, you make the best of what's still around." Someone has to curate the leavings of our civilization, but a 19th-century French tree calipers seems like a case of misplaced priorities.

NR





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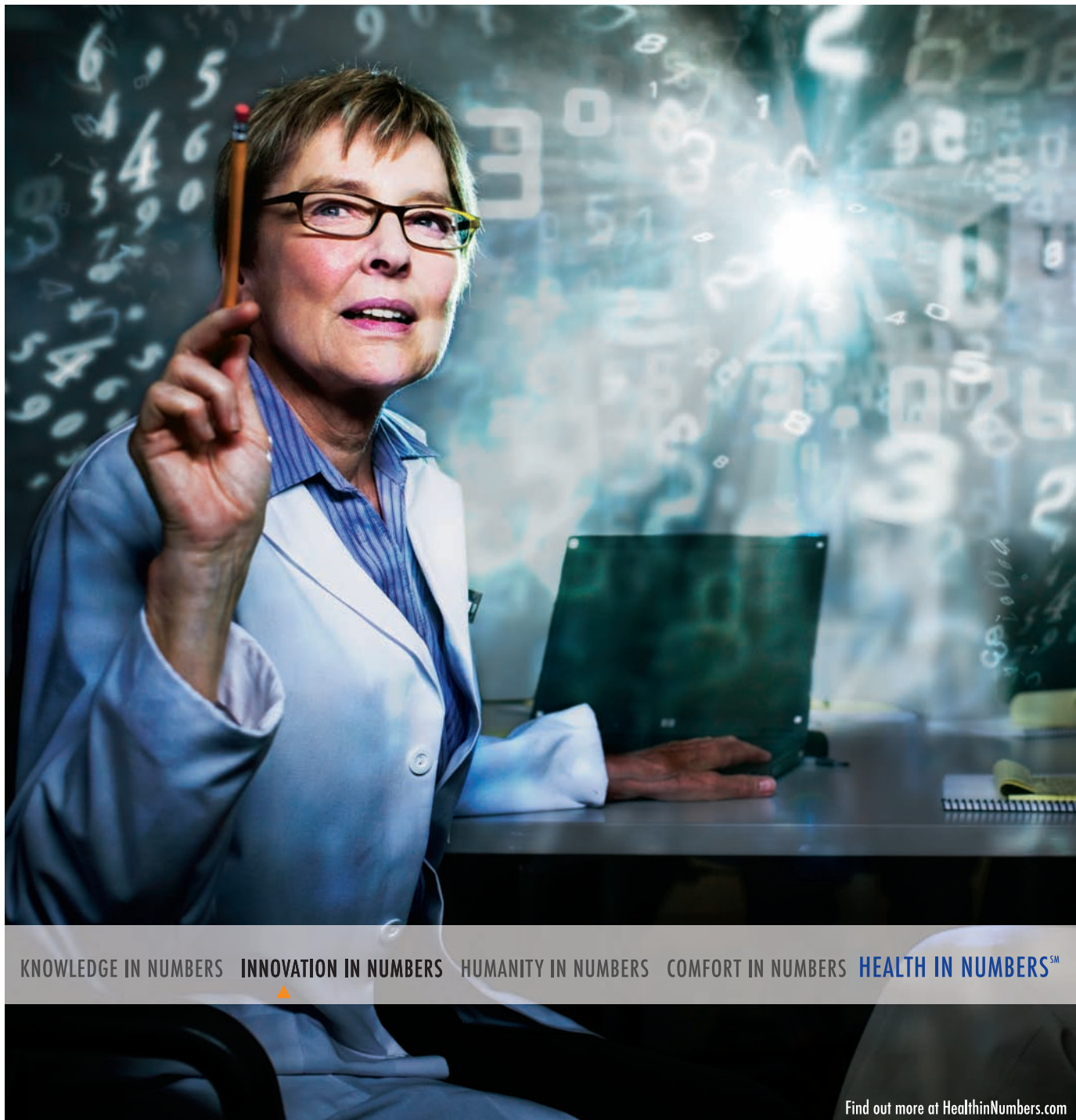
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