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Rochester, N.Y.

Holly Case’s informative discussion of the West German criticism of Christa Wolf after 1989 reminded me how easy it is for the “winners” of any conflict to denigrate those on the other side. The irony for me is that Wolf was not in any narrow sense a political writer. Nor was she merely an East German writer. Yes, in the 1950s she was a youthful believer in the East German socialist experiment, and she never left the society/polity she had cast her lot with. And, like most serious writers, she primarily engaged with conditions in her own society.

But her writing is relevant far beyond the confines of her small homeland. There is little in Patterns of Childhood, for instance, that could not have been written by a West German born in the eastern territories. More broadly, the thoughts and feelings in works such as “June Afternoon” and “The New Life and Opinions of a Tomcat” are shared by many residents of the post–World War II world, the world she so aptly labeled the “divided heaven.” I’m not referring to the two German republics but to what we now call the “global North,” which was divided for so many decades into the “first” and “second” worlds. Wolf lived in a different part of that world, but the lives and preoccupations of her characters as they make their way through technological, bureaucratic, industrial and ideological society are surprisingly familiar. With relentless introspection, Wolf explored life in such a society. For that she deserves to be remembered, and will be, as the greatest German writer of the last half-century.

Carl Hoffman

Baltimore

It seems frivolous, and cheap, for German intellectuals to squabble over the ethics of their kind many decades earlier, particularly when the critics never experienced the political circumstances of their targets. Future generations may have their own criticisms of these self-righteous gentry. Katharine W. Rylaarsdam

Letters

Secure Children = Secure Society

Brooklyn, N.Y.

Katha Pollitt’s column on attachment parenting is, as usual, provocative [“Subject to Debate,” June 4]. But although much is spot-on, it’s got one crucial flaw and one giant omission. The flaw is that she misunderstands attachment parenting. It’s not a set of practices—nursing or baby-wearing—but rather the theory that raising a “securely attached” child is in everyone’s interest—the child, the parent, the society. Decades of research, including longitudinal studies, conclusively show that as securely attached babies get older, they form better relationships with others, are more flexible and resilient under stress and perform better in every aspect of life, from schoolwork to peer interactions. Their brains, quite literally, are less reactive, more empathic and thoughtful. These are nontrivial findings. And these are the kinds of citizens a democracy needs.

What does it take to create secure attachment? Responsive parenting. That can include breast-feeding, co-sleeping or baby-wearing, but it must include closeness. Baby-wearing, as any parent who has done it knows, helps the parent better understand and respond to the child’s needs. This not only contributes to the child’s secure attachment but through the experience of loving and being close to a child, the parent too becomes more empathic and happier. It’s not a plot to send mothers back into the kitchen. In a market-based society that cares little for human needs, the solution is not to sacrifice children’s emotional welfare so that women can achieve beyond the domestic sphere. The solution is to create family-friendly policies that allow all children to experience responsive parenting from both parents. It isn’t children who are getting a free ride on the backs of women. As Pollitt rightly notes, it’s men—who don’t engage in “daddy wars” because they don’t feel as responsible for child-raising—and our entire society that count on women to raise chil-
The 1 Percent Court

As we go to press, Americans are waiting to see how the Supreme Court will rule on the Affordable Care Act. But the Court’s right-wing majority has already guaranteed that insurance companies and other corporations will continue to have dramatically more say in American politics than citizens. With a pair of decisions on campaign finance, the Court reaffirmed its status as the branch of government most consistently in the service of the 1 percent, at a time when the concentration of income, wealth and political power is reminiscent of the Gilded Age (see Robert Reich, page 11).

The Court’s 2010 Citizens United decision had already given corporations the right to spend freely on behalf of candidates, causes and parties. But that ruling, as dark as it was, left some loopholes. Labor unions, while dramatically less well funded than corporations, still had significant leeway to spend on campaigns. Reformers also hoped that state and local governments would be able to enact limits on corporate campaign overreach.

No more. A June 21 Court ruling in effect requires public employee unions to get permission from their members for special assessments used to advance a political agenda. Traditionally these unions had “opt out” clauses, which allowed workers in an organized shop to indicate when they did not want their fees spent on political action. Now public sector unions must adopt a burdensome “opt in” system, in which workers must give their assent before the union may spend resources on political initiatives. Thus, in the wake of the Wisconsin defeat, when the assault on public employee unions has never been greater, the Court has made it harder for them to respond to the mounting threats.

Just as disturbing is the Court’s 5-4 decision, issued on June 25, which struck down a century-old Montana anti-corruption law barring corporations from contributing to candidates or parties. “The question presented in this case is whether the holding of Citizens United applies to the Montana state law,” the majority wrote. “There can be no serious doubt that it does.”

No matter how the Court rules on healthcare, corporations will now have even more power to shape the debate about responses to it. The decisions also make it harder to move toward the healthcare reform we really need: a Medicare-for-all system that would eliminate profiteering, cut costs and give every American quality care.

The same goes for every other public policy debate. “The Court has adopted a purely corporate agenda,” says former Senator Russ Feingold. “The Supreme Court’s doubling down on its damage to our democracy makes it imperative that we redouble our efforts to fight back.”

That fight-back can take many forms. The November elections become even more important, as America needs a president who will nominate, and a Senate that will confirm, Justices who recognize the threat posed by Citizens United and related decisions. There are legislative remedies, of course, from national disclosure requirements to state and local public financing reforms to laws requiring shareholder approval of a corporation’s campaign expenditures. But the current Court’s “purely corporate agenda” (not to mention GOP legislative roadblocks) suggests that even carefully drawn legislative remedies could be overturned by its hard-right majority. For that reason, we support stepped-up efforts to pass a constitutional amendment reversing Citizens United. As Senator Bernie Sanders has warned, America cannot be “a nation of the superrich, by the superrich and for the superrich.”
United States 1, Arizona 0

Arizona’s campaign to implement its own anti-immigration law and enforcement policy—a campaign emulated by several other states—came to a virtual dead end in June, as the Supreme Court ruled that immigration law is the prerogative of Congress and the executive branch, and that states may not adopt laws or enforcement policies that conflict with federal law. Although many people predicted after oral argument that much of Arizona’s law would be upheld, the Court struck down three of the four provisions at issue as inconsistent with federal law. Even regarding the fourth provision, the “show me your papers” rule authorizing Arizona police to check the immigration status of people they have stopped or arrested, the Court said that it was too early to tell whether it was valid or invalid, and that a ruling on its legality would ultimately depend on how it is applied. If, as seems likely, this provision is enforced in a way that invites racial profiling, it may still be invalid. In short, the decision, written by Justice Anthony Kennedy and joined by Chief Justice John Roberts and Justices Ruth Bader Ginsburg, Stephen Breyer and Sonia Sotomayor, was a victory for the government and a huge loss for anti-immigrant forces. As President Obama, celebrating the decision, said, “I agree with the Court that individuals cannot be detained solely to verify their immigration status. No American should ever live under a cloud of suspicion just because of what they look like.”

In some respects Arizona v. United States should not have come as a huge surprise. The politics of immigration are deeply divided, but conservative and liberal justices have long been united on one thing: immigration law is a federal matter. The immigration power is expressly assigned to Congress by the Constitution, and it obviously implicates basic questions of federal sovereignty and foreign relations. To allow each state to enforce its own immigration law would be a disaster. The Court’s ruling reinforces that principle, holding that states may not interfere with Congress’s power to legislate on immigration, or the executive’s authority to enforce immigration law (as President Obama illustrated the week before the Arizona decision, when he announced that he would exercise his discretion to stop deporting certain young undocumented immigrants).

Two of the four provisions at issue made it a crime under Arizona law to be in the United States in violation of federal immigration law. Arizona argued that since it was only adding state penalties for conduct that federal law had already made illegal, it was acting within its authority. The Court rejected that argument, holding that it is Congress’s decision, not Arizona’s, how to punish violations of immigration law. Arizona made a crime of conduct that Congress chose to treat only as a civil immigration infraction. That, the Court said, is flatly inconsistent with the federal immigration scheme. Under this part of the decision, all copycat state laws that add criminal penalties to federal immigration law will almost certainly be impermissible.

A third provision authorized Arizona police to make warrantless arrests of people they have probable cause to believe were
here in violation of federal immigration law. Arizona said it was just “cooperating” with federal authorities by arresting people who appeared to be violating federal law. Again, the Court dismissed that contention, pointing out that Arizona had given its officers greater power to arrest immigrants than Congress had given its own federal officers. Congress has said that state officers may cooperate with the federal government on immigration, the Court noted, but only when invited to do so (and, under current law, only when first trained in the complexities of immigration law). Whatever “cooperation” means, the Court reasoned, it cannot possibly encompass the “unilateral decision of state officers to arrest an alien for being removable absent any request, approval, or other instruction from the Federal Government.”

Some civil rights and immigrants’ rights groups have expressed disappointment that the Court left standing a fourth provision. It requires Arizona officers to check the immigration status of any person they stop or arrest for some other reason when they have “reasonable suspicion” that the person might be here in violation of federal immigration law and bars the release of anyone arrested before his or her status is determined. This provision, critics rightly assert, is bound to invite racial profiling in its enforcement—it seems highly likely that Arizona officers’ “reasonable suspicion” will be based on racial or ethnic appearance (even though in a state like Arizona, with a substantial Latino citizen population, that’s hardly a reasonable basis for suspicion). But as noted—and contrary to some of the civil rights groups’ criticisms—the Court did not uphold this provision.

Here’s what the Court said about the “show me your papers” provision. First, it noted that the law was challenged before it went into effect, and that on its face it includes several important limitations. The law says that showing an Arizona driver’s license or similar identification is presumed to establish legal status, and it prohibits consideration of race or ethnicity except as permitted by the Constitution. And it says it must be implemented consistent with federal law. Moreover, the Court said, there is nothing inherently inconsistent with federal law for a state official who has lawfully stopped someone for some other purpose merely to inquire into his or her status. The decision about what to do with that person would remain a federal matter.

At the same time, the Court warned that “detaining individuals solely to verify their immigration status would raise constitutional concerns,” and that delaying their release to determine status would “disrupt the federal framework.” But as the law was enjoined by the lower federal courts before going into effect, it had not yet been interpreted by the state courts. The state courts, the Supreme Court speculated, might interpret the provision to avoid direct conflict with federal law—but holding, for example, that it requires officers only to institute checks, but not to complete them, before an arrested person is released. And it stressed that once the law goes into effect, “other preemption and constitutional challenges” could be pursued. Thus, if this provision leads to racial profiling, or to detentions that are initiated or extended for status checks, it can be challenged again—and under this opinion, very likely would be invalidated.

Noted.

DEAFENING SILENCE: On June 17, thousands of New Yorkers marched silently from Harlem to Mayor Michael Bloomberg’s mansion in protest of the New York Police Department’s stop-and-frisk policy. The multiracial, cross-generational show of force united residents, local organizations, religious groups and unions in a resistance tactic first used by the NAACP in 1917.

Stop-and-frisks, in which the police temporarily detain and search people they deem suspicious, have increased by 600 percent since Bloomberg took office in 2002. Eighty-four percent of those stopped in 2011 were black or Latino, even though they comprise roughly 23 and 29 percent of the city’s population, respectively. Tairece Flowers, a 17-year-old from Washington Heights, was with the marchers. “A lot of people are very afraid to walk and be free,” he said. “They feel that the people who are supposed to be protecting them are actually bullying them.”

The Center for Constitutional Rights has filed a federal class-action lawsuit against the NYPD, alleging that its actions violate the Fourth Amendment’s protection against unreasonable searches as well as the Fourteenth Amendment’s equal protection clause. “We’re asking for policy changes—and broad, far-reaching changes, citywide, for the entire police department,” said Darius Charney, an attorney for the plaintiffs.

The first quarter of 2012 marked the highest rate of stop-and-frisks to date. Mayor Bloomberg and Police Commissioner Ray Kelly, who continue to defend the policy, would be wise to listen to the communities they serve: they won’t march in silence forever. ANDREA JONES and MAX RIVLIN-NADLER

INTRODUCING VOTING RIGHTS WATCH:

Last year State Senator Mike Bennett, the sponsor of Florida’s draconian HB 1355, told reporters, “I don’t have a problem making [voting] harder. I want people in Florida to want to vote as bad as that person in Africa who walks 200 miles across the desert. This should not be easy.” If Bennett gets his way, voting in the Sunshine State will indeed be a lot harder, as reporter Brentin Mock documents in “Florida to Minorities: Don’t Vote Here” (page 24). Among other things, Bennett’s bill takes aim at early voting, as well as the voter registration drives organized by black churches and groups like the League of Women Voters.

In the face of these GOP-led efforts to curtail voting rights, The Nation and Colorlines.com have joined to create Voting Rights Watch 2012, a reporting project that will appear simultaneously in both outlets. Mock, along with community journalism coordinator Aura Bogado, will blog regularly on the war on democracy at thenation.com/blogs/voting-rights-watch. Look for their dispatches online and in these pages, as well as contributions from citizen journalists that the initiative will mobilize and train throughout the summer and into the 2012 election. RICHARD KIM
In short, the *Arizona* decision was a near-complete victory for those who have been fighting many states that want to use their laws to make life miserable for immigrants. It concluded with a heartfelt reminder that we are a nation of immigrants, almost as if the Court were pleading with the country for compassion and reason in an area that has been dominated by vitriol and demagogy. We should celebrate *Arizona v. United States* for the roadblock it has erected to the state anti-immigrant movement. Comprehensive immigration reform remains essential at the federal level, but at least this decision means that efforts to target immigrants at the state level are likely to fail.

David Cole

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**Some Justice for Kids**

In May *The Nation* introduced readers to Trina Garnett, serving life without parole in Pennsylvania for a crime she committed in 1976. A severely neglected and abused child with serious mental problems, Trina was 14 when she was arrested for setting a fire that killed two boys on an impoverished block in the Philadelphia suburb of Chester. Represented by a pitifully inadequate attorney who was later disbarred, Trina was convicted and given two sentences of life without parole. The judge, bound by the state’s mandatory sentencing statutes, called the case “one of the saddest I’ve ever seen involving a juvenile.”

On June 25, in *Miller v. Alabama*, the Supreme Court struck down such punishments, ruling that mandatory sentences of life without parole for juveniles are cruel and unusual, in violation of the Eighth Amendment. In a 5-4 decision written by Justice Elena Kagan, the Court held that “such mandatory penalties, by their nature, preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it.” Such characteristics include the recklessness, immaturity and underdeveloped sense of consequences that common sense suggests—and science confirms—define all teenagers. What’s more, Kagan noted, mandatory sentences leave no room to consider the basic distinguishing features of a given case. “Under these schemes,” she wrote, “every juvenile will receive the same sentence as every other—the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one. And still worse, each juvenile…will receive the same sentence as the vast majority of adults committing similar homicide offenses.”

The decision relied heavily on recent Court precedent. In 2005 *Roper v. Simmons* banned the death penalty for juveniles based on the vast neurological differences between teens and adults, which render the former less culpable and thus “less deserving of the most severe punishments.” The same logic led the Court in 2010 to forbid life without parole for teens who commit nonhomicide offenses. That ruling, in *Graham v. Florida*, drew parallels between the death penalty and life without parole, cited by Kagan in *Miller*. “In part because we viewed this ultimate penalty for juveniles as akin to the death penalty, we treated it similarly….” We imposed a categorical ban on the sentence’s use, in a way unprecedented for a term of imprisonment.

So why did the Court limit its ruling to mandatory sentences instead of banning juvenile life without parole altogether? One death penalty lawyer described the decision as “incrementalism at its very worst,” pointing out that under *Miller*, “it would still be OK for a jury to sentence…any 14-year-old to life in prison without the possibility of parole, as long as the jury has the option not to issue that sentence.”

But even as a limited (and split) decision, the ruling is an important rebuke to decades of zero-tolerance reforms that sought ever-harsher punishments for youth. “Adult time” for teens is largely the legacy of criminologists and politicians in the 1980s and ’90s, whose warnings that a new breed of “superpredators” would bring a wave of violent crime were not only false but rooted in racism. While *Miller* does not note the disproportionate impact this had on minority youth like Trina—race is not mentioned once—it reaffirms the need to treat kids as kids.

The ruling also recognizes that in an age of historically long sentences for violent crimes, at least some people who do terrible things deserve a chance to change. “This mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it,” Kagan wrote, contradicting Justice Antonin Scalia’s gibber assertion during oral arguments that “I thought that modern penology has abandoned that rehabilitation thing.”

Finally, for the majority of the 2,589 people serving juvenile life without parole, the ruling’s implications are significant. As Bryan Stevenson, who argued the case before the Court, said following the decision, “Most of the kids that have been sent to life without parole were sentenced in mandatory jurisdictions.” Indeed, in Pennsylvania, which has the largest number of these prisoners, not only are such sentences mandatory for certain crimes; there is no age restriction on when a child can be tried as an adult. Kids as young as 11 have faced the prospect of dying in prison under automatic sentencing rules. *Miller* should change this. “When you actually give judges and sentencers the discretion to impose a lower sentence involving a juvenile offender,” said Stevenson, “they frequently impose it.”

In the twenty-eight states with mandatory sentencing statutes

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**Calvin Trillin, Deadline Poet**

**Sheldon Adelson’s Free Speech**

“Casino mogul Sheldon Adelson is on the brink of reaching $71 million in contributions thus far in this election cycle.”

—Roll Call

Yes, money is speech, so the Court has decreed. While Adelson thinks this is splendid, The rest of us wonder, as cash calls the tune, Is this what the Framers intended?
Memory Pill Does for the Brain What Prescription Glasses Do for the Eyes, Claims US Surgeon General Candidate

 Remarkable changes observed, helps restore up to 15 years of lost memory power in as little as 30 days!

SPokane, Washington – Help is on the way for those who routinely lose their car keys, forget to call people back, or misplace their TV remote control.

Just like a good pair of glasses can make blurry vision, sharp and crystal-clear, there’s a new, doctor-recommended memory pill that can do the same thing for your brain, sharpening your memory and mental powers, and making that slow-thinking, sluggish brain as sharp as a tack.

In controlled research studies, the prescription-free formula, known as Procrea AVH® has been shown to increase memory, mood, and mental clarity, but it does much more than that.

Time Travel for Your Brain?

If you have ever dreamed of traveling back in time, this drug-free compound may be the next best thing.

It Was Incredible!”

“I was amazed at how my brain reacted to taking the first tablet,” says Dr. Nemiroff, adding, “it was incredible.”

“I noticed my mental clarity was better, and that my focus was sharper.”

“It’s like reading an eye chart with the right pair of glasses instead of an old pair of lenses. Everything comes into focus, your brain is more crisp, more focused, clearer, and sharper.”

“I felt like I did when I was younger,” adds Dr. Nemiroff, “I had my mental edge back.”

Dr. Con Stough at the Brain Sciences Institute concurs, “It’s a fairly unique, fast-acting process that pumps the brain full of more energy, improves blood circulation to the brain and increases the key neurotransmitters that are responsible for cognitive functioning.”

Elizabeth K. of Rochester, New York experienced a night-and-day difference in her mind and memory.

At the age of 54, her memory was declining at an “alarming rate.”

“I was about to consult a neurologist when I read about Procrea AVH.” Elizabeth decided to give it a try.

A randomized, double-blind, placebo-controlled study on what may be the world’s first truly effective memory pill was conducted at this university research facility.

“It took about a month for the memory benefit to kick in. Six months later, even my husband was impressed with my improved memory. And I am very happy with my renewed mental clarity and focus!”

A ‘Bonus’ Effect?

Elizabeth was pleasantly surprised with one of the formula’s “bonus effects.”

“Within a week I felt a wonderful change in my mood. It was such an unexpected bonus,” smiles Elizabeth.

Dr. Nemiroff became aware of the formula when he was working nearly 80 hours a week as a surgeon.

“I noticed that I would look at a page and read it, but I wasn’t retaining the information as I had before,” he says.

“I began studying everything I could about brain enhancers,” says Dr. Nemiroff.

He read about a US cognitive researcher who had taken a new approach to treating memory loss, addressing the “energy crisis” that occurs naturally in human brains around the age of 40-50.

Author, researcher, preeminent brain expert, and lead formulator for Procrea AVH, Joshua Reynolds, explains, “One-third of your brainpower may be lost by the age of 40, and 50 percent may be lost by the age of 50!”

Half-Blind… and Can’t See It

“If you were to lose half your vision, essentially go half-blind, you would surely notice it,” says Reynolds.

“But the gradual loss of mental acuity and brainpower over many years may be too subtle for people to notice.”

This explains why Procrea AVH users seem surprised at the effects.

Mark S. in Alego, Texas, was worried about being at his best during sales calls.

“I really needed something to help with mental clarity, focus and memory. I have to be at my best when I meet with clients.”

Shortly after he started taking Procrea AVH, Mark was amazed at how sharp and mentally focused he was during his appointments.

“It was definitely a noticeable difference. I was very pleased with Procrea AVH and happy to know it will help me stay at my best.”

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Three clinically validated brain energy nutrients in Reynolds’ formula have been shown to “light up aging brains like a Christmas tree.”

Procrea revitalizes tired sluggish brains cells with a fresh supply of oxygen and key vital nutrients. Plus, it helps restore depleted neurotransmitters, which increase and enhance alertness, concentration, and memory.

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Reynolds is also including, with the first 500 orders, a FREE supply of his powerful brain detox formula, Ceraplex, scientifically designed to help flush away environmental toxins from the brain to help enhance memory and focus even further.

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on the books, prisoners serving juvenile life without parole now
have a shot at a new sentence. This will not happen automatical-
ly: the onus is on inmates—most of them ill-equipped—to seek a
resentencing hearing. As Stevenson points out, “There are a lot
of jurisdictions where there is no right to a lawyer for this kind of
proceeding.” And even if a prisoner has a chance to make his or
her case, there’s no guarantee that he or she will not be given the
same punishment—or a similarly harsh one.

For hundreds of others, sentenced under nonmandatory
statutes, the future is more uncertain. This includes some 300
inmates in California, where legislative efforts to abolish juve-
nile life without parole have repeatedly failed. Stevenson is op-
timistic that even those states will be forced to re-examine their
sentencing practices. After Miller, he said, “I think the Eighth
Amendment would require that kind of review.

For now, Stevenson and his organization, the Equal Justice
Initiative (EJI), will work to secure counsel for prisoners af-
ected by the ruling, some of whom “have been waiting for
decades for the opportunity to have their sentences reconsid-
ered.” While he says “a fair review is much more important
than a quick review,” he acknowledges that “it’s difficult, when
you feel you’ve been wrongly sentenced, to remain patient.”

In Trina’s case, time is not on her side. Thirty-five years after
being locked away, she suffers from multiple sclerosis and can no
longer walk. Her family is increasingly concerned about her de-
clining health and the inadequate medical care she gets in prison.
But she is fortunate to be represented by EJI lawyer Jacqueline
Jones-Peace, who will seek a new sentence, and to have a family
eager to welcome her home should she be freed. Reached at her
home near Chester hours after the ruling, Trina’s sister Linda was
overwhelmed with emotion. She called the decision “a miracle.”

“Words cannot express how we feel right now,” she said.
“We are so grateful.” She is particularly grateful to EJI for
seeking out her sister and taking her case. And she is grateful to
those who read about Trina after all these years. “As children,”
Linda said, “we didn’t have a chance to speak out. We didn’t
have a chance to tell our story.”

LILIANA SEGURA

TTP: NAFTA on Steroids

While the Occupy movement has forced a
public discussion of extreme corporate influence on every aspect
of our lives, behind closed doors corporate America is imple-
menting a stealth strategy to formalize its rule in a truly horrify-
ing manner. The mechanism is the Trans-Pacific Partnership.
Negotiations have been conducted in extreme secrecy, so you are
in good company if you have never heard of
it. But the thirteenth round of negotiations
between the United States and eight Pacific
Rim nations will be held in San Diego in early July.

The TPP has been cleverly misbranded as a trade agreement
(yawn) by its corporate boosters. As a result, since George W.
Bush initiated negotiations in 2008, it has cruised along under
the radar. The Obama administration initially paused the talks,
ostensibly to develop a new approach compatible with candidate

Obama’s pledges to replace the old NAFTA-based trade model.
But by late 2009, talks restarted just where Bush had left off.

Since then, US negotiators have proposed new rights for
Big Pharma and pushed into the text aspects of the Stop On-
line Piracy Act, which would limit Internet freedom, despite
the derailing of SOPA in Congress earlier this year thanks to
public activism. In June a text of the TPP investment chapter
was leaked, revealing that US negotiators are even pushing to
expand NAFTA’s notorious corporate tribunals, which have been used to attack domestic public interest laws.

Think of the TPP as a stealthy delivery mechanism for poli-
cies that could not survive public scrutiny. Indeed, only two of
the twenty-six chapters of this corporate Trojan horse cover
traditional trade matters. The rest embody the most florid
dreams of the 1 percent—grandiose new rights and privileges for
corporations and permanent constraints on government regula-
tion. They include new investor safeguards to ease job offshoring
and assert control over natural resources, and severely limit the
regulation of financial services, land use, food safety, natural re-
sources, energy, tobacco, healthcare and more.

The stakes are extremely high, because the TPP may well be
the last “trade” agreement Washington negotiates. This is be-
cause if it’s completed, the TPP would remain open for any other
country to join. In May US Trade Representative Ron Kirk said
he “would love nothing more” than to have China join. In June
Mexico and Canada entered the process, creating a NAFTA on
steroids, with most of Asia to boot.

Countries would be obliged to conform all their domestic
laws and regulations to the TPP’s rules—in effect, a corporate
coup d’état. The proposed pact would limit even how govern-
ments can spend their tax dollars. Buy America and other Buy
Local procurement preferences that invest in the US economy
would be banned, and “sweat-free,” human rights or environ-
mental conditions on government contracts could be challenged.
If the TPP comes to fruition, its retrograde rules could be altered
only if all countries agreed, regardless of domestic election out-
comes or changes in public opinion. And unlike much domestic
legislation, the TPP would have no expiration date.

Failure to conform domestic laws to the rules would subject
countries to lawsuits before TPP tribunals empowered to autho-
- 

rize trade sanctions against member countries. The leaked invest-
ment chapter also shows that the TPP would expand the parallel
legal system included in NAFTA. Called Investor-State Dispute
Resolution, it empowers corporations to sue governments—out-
side their domestic court systems—over any action the corpo-
ations believe undermines their expected future profits or rights
under the pact. Three-person international tribunals of attorneys
from the private sector would hear these cases. The lawyers rotate
between serving as “judges”—empowered to order governments
to pay corporations unlimited amounts in fines—and represent-
ing the corporations that use this system to raid government
resources. The NAFTA version of this scheme has forced govern-
ments to pay more than $350 million to corporations after suits
against toxic bans, land-use policies, forestry rules and more.

The slight mainstream media coverage the TPP has received
repeats the usual mantra: it’s a free-trade pact that will expand
US exports. But trade is the least of it. The United States already
has free-trade agreements that eliminated tariffs with most TPP countries, which highlights the fact that the TPP is mainly about new corporate rights, not trade. Besides, under past free-trade agreements, US export growth to partner countries is half as much as to countries with which we do not have such agreements. Since NAFTA and similar pacts went into effect, the United States has been slammed by a massive trade deficit, which has cost more than 5 million jobs and led to the loss of more than 50,000 manufacturing plants.

How could something this extreme have gotten so far? The process has been shockingly secretive. In 2010 TPP countries agreed not to release negotiating texts until four years after a deal was done or abandoned. Even the World Trade Organization, hardly a paragon of transparency, releases draft negotiating texts. This means that although the TPP could rewrite vast swaths of domestic policy affecting every aspect of our lives, the public, press and Congress are locked out. Astoundingly, Senator Ron Wyden, chair of the Senate committee with official jurisdiction over TPP, has been denied access even to US proposals to the negotiations. But 600 corporate representatives serving as official US trade advisers have full access to TPP texts and a special role in negotiations. When challenged about the conflict with the Obama administration’s touted commitment to transparency, Trade Representative Kirk noted that after the release of the Free Trade Area of the Americas (FTAA) text in 2001, that deal could not be completed. In other words, the official in charge of the TPP says the only way to complete the deal is to keep it secret from the people who would have to live with the results.

The goal was to complete the TPP this year. Thankfully, opposition by some countries to the most extreme corporate demands has slowed negotiations. Australia has announced it will not submit to the parallel corporate court system, and it and New Zealand have rejected a US proposal to allow pharmaceutical companies to challenge their government medicine formularies’ pricing decisions, which have managed to keep their drug costs much lower than in the United States. Every country has rejected the US proposal to extend drug patent monopolies. This text was leaked, allowing government health officials and activists in all the countries to fight back. Many countries have also rejected a US proposal that would forbid countries from using capital controls, taxes or other macro-prudential measures to limit the destructive power of financial speculators.

However, we face a race against time—much of the TPP text has been agreed on. Will the banksters, Big Pharma, Big Oil, agribusiness, tobacco multinationals and the other usual suspects get away with this massive assault on democracy? Will the public wake up to this threat and fight back, demanding either a fair deal or no deal? The Doha Round of WTO expansion, the FTAA and other corporate attacks via “trade” agreements were successfully derailed when citizens around the world took action to hold their governments accountable. Certainly in an election year, we are well poised to turn around the TPP as well. To learn more and get involved, go to tpp2012.com.

Lori Wallach, director of Public Citizen’s Global Trade Watch, is the author of several books on trade policy and politics.

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Eric Alterman

On the Other Hand... Nothing

The decades-long class war being waged by corporate America and the superrich on the rest of us has been aided tremendously by the media’s tendency to treat both sides as if they are guilty of what only one side is doing. Even the best newspapers will all too often run misleadingly evenhanded headlines above stories that reveal a decidedly less balanced reality. For instance, on June 13, beneath the headline “Campaign Aid Is Now Surfing Into 8 Figures,” the New York Times ran a story demonstrating that it was only Republican campaign aid that was doing so. Well down in the story, we learn that “Democrats have since sought to match Republicans’ super PAC advantage, but with little success. The Adelsons’ $35 million is more than the three leading Democratic super PACs have raised combined.” In fact, nobody at all has given the Democrats a single eight-figure contribution, but the casual reader of the paper—which is most of us—will turn the page with a false understanding of what is no doubt the key dynamic of our politics.

Ditto the story on CBS.com running beneath the headline “A record amount of money spent on Wisconsin recall.” Again, the reader must wade into the story’s fifth paragraph to learn that the words “record amount” actually mean that Governor Scott Walker raised and spent more than seven times the amount of his opponent, Tom Barrett, and bought himself re-election.

The failure in such stories to focus on the way money buys power in our post–Citizens United political universe allows those who seek to promote the interests of the wealthy and powerful to pretend that these corrupted election contests represent a free and fair battle of ideas. A prime specimen can be seen in a near hysterical tirade by Washington Post editorial writer Charles Lane, directed toward anyone and everyone who supported the Wisconsin recall. Following the election results, Lane demanded apologies from—I swear I’m not making this up—rock singer Conor Oberst, unnamed poster makers whose work he found offensive, Post columnist Harold Meyerson, labor leader Gerald McEntee and Nation editor Katrina vanden Heuvel for their refusal to support the election’s winner in advance.

As he admits in his screed, Lane is a hater of public sector unions, whose existence he somehow finds “inherently undemocratic.” Fine, if that’s what he wants to believe. It’s not actually that surprising a view for a former editor of Marty Peretz’s New Republic (may it rest in peace). But the focus on “both sides” spending rather than on the extraordinary imbalance that lets one side drown out the other allows ideologues like Lane to pretend that one set of ideas has triumphed over another without addressing the influence of all those millions. The closest Lane came to acknowledging the role of the money that the Koch brothers and their cronies poured into Wisconsin was to sneer at those who argue it might have had some effect: “Of course Walker exploited existing state campaign-finance law to raise as much money as possible wherever he could. What the heck did his opponents expect him to do? Unilaterally disarm?”

Whenever one is tempted to be generous in one’s interpretation of the origins of the false equivalence that empowers a diatribe like Lane’s, we find ourselves confronted by evidence of a degree of cynicism that somehow manages to exceed our most cynical expectations. Exhibits A, B and C in this regard can be found on Page 1 of the May 31 Politico, in which executive editor Jim VandeHei and chief White House reporter Mike Allen took up the cudgels for the Romney campaign in seeking to blame the New York Times and the Washington Post for alleged liberal bias. The argument complained of two stories on the Romneys, one of which focused on Ann Romney’s interest and investment in “dressage.” That piece, while straightforward and respectful, was attacked by Politico for its “clear implication” that “the Romneys are silly rich, move in rarefied and exotic circles, and are perhaps a tad shady.” The Politico honchos were also unhappy with a lengthy story about Mitt Romney’s high school years, in which former classmates recalled some unpleasant instances of his penchant for bullying his classmates. Its “clear implication”? “Romney was a mean, insensitive jerk.”

The authors complained, meanwhile, that these stories could be contrasted with the modest coverage of Post reporter David Maraniss’s biography of President Obama, in which new details emerged about his pot-smoking days in college and afterward. Case closed, argue the authors: the right’s constant kvetching over alleged liberal bias in the media “often ring[s] true.”

A better example of a news version of apples and oranges would be hard to imagine. In fact, it’s rather alarming that two influential figures in the insider media would be willing to make such a transparently flimsy argument merely to curry favor with Republicans and the Romney campaign. One only has to point out the obvious: Obama has been president for nearly four years. He has a record upon which he can be judged. These personality-driven stories that appear on presidential candidates were all written about Barack and Michelle Obama four years ago—when, yes, his admissions not only of pot smoking but coke sniffing were widely reported. The nonsensical claim by former Bush spokesman Ari Fleischer that “the press never ran probing, sneering stories about candidate Obama, and yet the Washington Post and New York Times are on overtime covering who-cares stories about Mitt Romney” is belied by dozens—perhaps hundreds—of such stories easily available in both papers’ archives. How in the world did the rest of us become so intimately familiar with the likes of the Rev. Jeremiah Wright, Bill Ayers and Tony Rezko were it not for the intense investigation of Obama’s background and history?

On the other hand...
The election of 2012 raises two perplexing questions. The first is how the GOP could put up someone for president who so brazenly epitomizes the excesses of casino capitalism that have nearly destroyed the economy and overwhelmed our democracy. The second is why the Democrats have failed to point this out.

The White House has criticized Mitt Romney for his years at the helm of Bain Capital, pointing to a deal that led to the bankruptcy of GST Technologies, a Bain investment in Kansas City that went belly up in 2001 at the cost of 750 jobs. But the White House hasn’t connected Romney’s Bain to the larger scourge of casino capitalism. Not surprisingly, its criticism has quickly degenerated into a “he said, she said” feud over what proportion of the companies that Bain bought and loaded up with debt subsequently went broke (it’s about 20 percent), and how many people lost their jobs relative to how many jobs were added because of Bain’s financial maneuvers (that depends on when you start and stop the clock). And it has invited a Republican countercharge that the administration gambled away taxpayer money on its own bad bet, the Solyndra solar panel company.

But the real issue here isn’t Bain’s betting record. It’s that Romney’s Bain is part of the same system as Jamie Dimon’s JPMorgan Chase, Jon Corzine’s MF Global and Lloyd Blankfein’s Goldman Sachs—a system that has turned much of the economy into a betting parlor that nearly imploded in 2008, destroying millions of jobs and devastating household incomes. The winners in this system are top Wall Street executives and traders, private-equity managers and hedge-fund moguls, and the losers are most of the rest of us. The system is largely responsible for the greatest concentration of the nation’s income and wealth at the very top since the Gilded Age of the nineteenth century, with the richest 400 Americans owning as much as the bottom 150 million put together. And these multimillionaires and billionaires are now actively buying the 2012 election—and with it, American democracy.

The biggest players in this system have, like Romney, made their profits placing big bets with other people’s money. If the bets go well, the players make out like bandits. If they go badly, the burden lands on average workers and taxpayers. The 750 people at GST Technologies who lost their jobs thanks to a bad deal engineered by Romney’s Bain were a small foreshadowing of the 15 million who lost jobs after the cumulative dealmaking of the entire financial sector pushed the whole economy off a cliff. And relative to the cost to taxpayers of bailing out Wall Street, Solyndra is a rounding error.

Connect the dots of casino capitalism, and you get Mitt Romney. The fortunes raked in by financial dealmakers depend on special goodies baked into the tax code such as “carried interest,” which allows Romney and other partners in private-equity firms (as well as in many venture-capital and hedge funds) to treat their incomes as capital gains taxed at a maximum of 15 percent. This is how Romney managed to pay an average of 14 percent on more than $42 million of combined income in 2010 and 2011. But the carried-interest loophole makes no economic sense. Conservatives try to justify the tax code’s generous preference for capital gains as a reward to risk-takers—but Romney and other private-equity partners risk little, if any, of their personal wealth. They mostly bet with other investors’ money, including the pension savings of average working people.

Another goodie allows private-equity partners to sock away almost any amount of their earnings into a tax-deferred IRA, while the rest of us are limited to a few thousand dollars a year. The partners can merely low-ball the value of whatever portion of their investment partnership they put away—even valuing it...
at zero—because the tax code considers a partnership interest to have value only in the future. This explains how Romney’s IRA is worth as much as $101 million. The tax code further subsidizes private equity and much of the rest of the financial sector by making interest on debt tax-deductible, while taxing profits and dividends. This creates huge incentives for financiers to find ways of substituting debt for equity and is a major reason America’s biggest banks have leveraged America to the hilt. It’s also why Romney’s Bain and other private-equity partnerships have done the same to the companies they buy.

These maneuvers shift all the economic risk to debtors, who sometimes can’t repay what they owe. That’s rarely a problem for the financiers who engineer the deals; they’re sufficiently diversified to withstand some losses, or they’ve already taken their profits and moved on. But piles of debt play havoc with the lives of real people in the real economy when the companies they work for can’t meet their payments, or the banks they rely on stop lending money, or the contractors they depend on go broke—often with the result that they can’t meet their own debt payments and lose their homes, cars and savings.

It took more than a decade for America to recover from the Great Crash of 1929 after the financial sector had gorged itself on debt, and it’s taking years to recover from the more limited but still terrible crash of 2008. The same kinds of convulsions have occurred on a smaller scale at a host of companies since the go-go years of the 1980s, when private-equity firms like Bain began doing leveraged buyouts—taking over a target company, loading it up with debt, using the tax deduction that comes with the debt to boost the target company’s profits, cutting payrolls and then reselling the company at a higher price.

Sometimes these maneuvers work, sometimes they end in disaster; but they always generate giant rewards for the dealmakers while shifting the risk to workers and taxpayers. In 1988 drugstore chain Revco went under when it couldn’t meet its debt payments on a $1.6 billion leveraged buyout engineered by Salomon Brothers. In 1989 the private-equity firm of Kohlberg, Kravis, Roberts completed the notorious and ultimately disastrous buyout of RJR Nabisco for $31 billion, much of it in high-yield ("junk") bonds. In 1993 Bain Capital became a majority shareholder in GS Technologies and loaded it with debt. In 2001 it went down when it couldn’t meet payments on that debt load. But even as these firms sank, Bain and the other dealmakers continued to collect lucrative fees—transaction fees, advisory fees, management fees—sucking the companies dry until the bitter end. According to a review by the New York Times of firms that went bankrupt on Romney’s watch, Bain structured the deals so that its executives would always win, even if employees, creditors and Bain’s own investors lost out. That’s been Big Finance’s MO.

By the time Romney co-founded Bain Capital in 1984, financial wheeling and dealing was the most lucrative part of the economy, sucking into its Gordon Gekko–like maw the brightest and most ambitious MBAs, who wanted nothing more than to make huge amounts of money as quickly as possible. Between the mid-1980s and 2007, financial-sector earnings made up two-thirds of all the growth in incomes. At the same time, wages for most Americans stagnated as employers, under mounting pressure from Wall Street and private-equity firms like Bain, slashed payrolls and shipped jobs overseas.

The 2008 crash only briefly interrupted the bonanza. Last year, according to a recent Bloomberg Markets analysis, America’s top fifty financial CEOs got a 20.4 percent pay hike, even as the wages of most Americans continued to drop. Topping the Bloomberg list were two of the same private-equity barons who did the RJR Nabisco deal a quarter-century ago—Henry Kravis and George Roberts, who took home $30 million each. According to the 2011 tax records he released, Romney was not far behind.

We’ve entered a new Gilded Age, of which Mitt Romney is the perfect reflection. The original Gilded Age was a time of buoyant rich men with flashy white teeth, raging wealth and a measured disdain for anyone lacking those attributes, which was just about everyone else. Romney looks and acts the part perfectly, offhand when he opines that government should not help the poor even poorer, and he justifies it all with a thinly veiled social Darwinism.

We’ve had wealthy presidents before, but they have been traitors to their class—Teddy Roosevelt storming against the “malefactors of great wealth” and busting up the trusts, Franklin Roosevelt railing against the “economic royalists” and raising their taxes, John F. Kennedy appealing to the conscience of the nation to conquer poverty. Romney is the opposite: he wants to do everything he can to make the superwealthy even wealthier and the poor even poorer, and he justifies it all with a thinly veiled social Darwinism.

Not incidentally, social Darwinism was also the reigning philosophy of the original Gilded Age, propounded in America more than a century ago by William Graham Sumner, a professor of political and social science at Yale, who twisted Charles Darwin’s insights into a theory to justify the brazen inequality of that era: survival of the fittest. Romney uses the same logic when he accuses President Obama of creating an “entitlement society” simply because millions of desperate Americans have been forced to accept food stamps and unemployment insurance, or when he opines that government should not help distressed homeowners but instead let the market “hit the

‘We may have democracy, or we may have wealth concentrated in the hands of a few, but we can’t have both.’ —Louis Brandeis

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bottom,” or enthuses over a House Republican budget that would cut $3.3 trillion from low-income programs over the next decade. It’s survival of the fittest all over again. Sumner, too, warned against handouts to people he termed “negligent, shiftless, inefficient, silly, and imprudent.”

When Romney simultaneously proposes to cut the taxes of households earning over $1 million by an average of $295,874 a year (according to an analysis of his proposals by the nonpartisan Tax Policy Center) because the rich are, allegedly, “job creators,” he mimics Sumner’s view that “millionaires are a product of natural selection, acting on the whole body of men to pick out those who can meet the requirement of certain work to be done.” In truth, the whole of Republican trickle-down economics is nothing but reported social Darwinism.

The Gilded Age was also the last time America came close to becoming a plutocracy—a system of government of, by and for the wealthy. It was an era when the lackeys of the very rich literally put sacks of money on the desks of pliant legislators, senators bore the nicknames of the giant companies whose interests they served (“the senator from Standard Oil”), and the kings of finance decided how the American economy would function.

The potential of great wealth in the hands of a relative few to undermine democratic institutions was a continuing concern in the nineteenth century as railroad, oil and financial magnates accumulated power. “Wealth, like suffrage, must be considerably distributed, to support a democratic republic,” wrote Virginia Congressman John Taylor as early as 1814, “and hence, whatever draws a considerable proportion of either into a few hands, will destroy it. As power follows wealth, the majority must have wealth or lose power.” Decades later, progressives like Louis Brandeis saw the choice starkly: “We may have democracy, or we may have wealth concentrated in the hands of a few, but we can’t have both.”

The reforms of the Progressive Era at the turn of the twentieth century saved American democracy from the robber barons, but the political power of great wealth has now resurfaced with a vengeance. And here again, Romney is the poster boy. Congress has so far failed to close the absurd carried-interest tax loophole, for example, because of generous donations by Bain Capital and other private-equity partners to both parties.

In the 2012 election, Romney wants everything Wall Street has to offer, and Wall Street seems quite happy to give it to him. Not only is he promising lower taxes in return for its money; he also vows that, if elected, he’ll repeal what’s left of the Dodd-Frank financial reform bill, Washington’s frail attempt to prevent the Street from repeating its 2008 pump-and-dump. Unlike previous elections, in which the Street hedged its bets by donating to both parties, it’s now putting most of its money behind Romney. And courtesy of a Supreme Court majority that seems intent on magnifying the political power of today’s robber barons, that’s a lot of dough. As of May, thirty-one billionaires had contributed between $50,000 and $2 million each to Romney’s super-PAC, and in June another—appropriately enough, a casino magnate—gave $10 million, with a promise of $90 million more. Among those who have contributed at least $1 million are former associates from Romney’s days at Bain Capital and prominent hedge-fund managers.

To be sure, Romney is no worse than any other casino capitalist of this new Gilded Age. All have been making big bets—collecting large sums when they pay off and imposing the risks and costs on the rest of us when they don’t. Many have justified their growing wealth, along with the growing impoverishment of much of the rest of the nation, with beliefs strikingly similar to social Darwinism. And a significant number have transformed their winnings into the clout needed to protect the unrestrained betting and tax preferences that have fueled their fortunes, and to lower their tax rates even further. Wall Street has already all but eviscerated the Dodd-Frank Act, and it has even turned the so-called Volcker Rule—a watered-down version of the old Glass-Steagall Act, which established a firewall between commercial and investment banking—into a Swiss cheese of loopholes and exemptions.

But Romney is the only casino capitalist who is running for president, at the very time in our nation’s history when these views and practices are a clear and present danger to the well-being of the rest of us—just as they were more than a century ago. Romney says he’s a job-creating businessman, but in truth he’s just another financial dealmaker in the age of the financial deal, a fat cat in an era of excessively corpulent felines, a plutocrat in this new epoch of plutocrats. That’s not surprising, given that many are still bearing the scars of 2008. Nor are they pleased with the concentration of income and wealth at the top. Polls show a majority of Americans want taxes raised on the very rich, and a majority are opposed to the bailouts, subsidies and special tax breaks with which the wealthy have padded their nests.

Part of the answer, surely, is that elected Democrats are still almost as beholden to the wealthy for campaign funds as the Republicans, and don’t want to bite the hand that feeds them. Wall Street can give most of its largesse to Romney this year and still have enough left over to tame many influential Democrats (look at the outcry from some of them when the White House took on Bain Capital). But I suspect a deeper reason for their reticence is that if they connect the dots and reveal Romney for what he is—the epitome of what’s fundamentally wrong with our economy—they’ll be admitting how serious our economic problems really are. They would have to acknowledge that the economic catastrophe that continues to cause us so much suffering is, at its root, a product of the gross inequality of income, wealth and political power in America’s new Gilded Age, as well as the perverse incentives of casino capitalism.

Yet this admission would require that they propose ways of reversing these trends—proposals large and bold enough to do the job. Time will tell whether today’s Democratic Party and this White House have the courage and imagination to do it. If they do not, that in itself poses almost as great a challenge to the future of the nation as does Mitt Romney and all he represents.
The Washington Post’s Problem

Blogger Jennifer Rubin, hired as a right-wing attack dog, is muddying the paper’s good name.

by ERIC ALTERMAN

It is no secret to anyone that conservatives have conducted a remarkably successful, decades-long campaign to undermine the practice of honest, aggressive journalism with trumped-up accusations of liberal bias. They have made massive investments of time and money in groups and individuals devoted to “working the refs,” and these have yielded significant ideological dividends—which, as might be predicted, have only encouraged them to keep it up.

To the extent that conservatives face any difficulty achieving a hearing for their views in journalism (or in academia, for that matter), the phenomenon is less the result of purposeful exclusion than a function of a commitment to maintaining professional standards. To be a good journalist or scholar, one must be willing to follow one’s research wherever it may lead. This is one reason, among many, that conservatives have so far proven almost completely unsuccessful in nurturing and training actual journalists—i.e., those who put evidence before ideology in determining the truth of a given story before explaining it to readers and viewers. Thus, while no newspaper or television news program is without a bevy of right-wing commentators, conservatives remain rare in the nation’s newsrooms. Their absence is evident in the conservative media as well. Take a look at almost any conservative website, TV or radio program, or print publication and you will likely find a mix of ideological cheerleading for its own team and invective aimed at its perceived opponents, glued together by an avalanche of frequently unsubstantiated, tabloid-style gossip and purposeful political rumor-mongering. This has been the formula for almost every one of Rupert Murdoch’s publications (along with some illegal phone tapping and official bribery) as well as the most successful right-wing media personalities, among them Rush Limbaugh, Matt Drudge and Andrew Breitbart. It is also undoubtedly the key reason why their consumers are so misinformed. For instance, against all imaginable evidence, 63 percent of Republican respondents polled in late April and early May 2012 continue to believe that Iraq had weapons of mass destruction, while approximately the same number say they think President Obama was born outside the United States.

As the newspaper of the nation’s capital—and, hence, the capital of conservative power—the Washington Post has been more susceptible to political pressure than most media institutions. In the past, the paper sought to purchase peace with ideological cheerleaders, providing space on its op-ed page to a plethora of right-wing pundits. Indeed, with George Will, Charles Krauthammer, Kathleen Parker, Mike Gerson, Marc Thiessen, Robert Kagan and the like, there’s clearly no shortage of right-wing voices in the Post’s opinion pages. Nor is there any shortage of right-wing misinformation, as in the case of Will’s widely derided arguments for climate-change denialism or Thiessen’s fervid romance with Bush-era torture.

But with the advent of blogging as a key component of contemporary journalism, the paper faced a new problem. It goes without saying that the Post should employ a conservative blogger. On the liberal side, it boasts Greg Sargent, a hard-working professional journalist who advances news stories regardless of whether they critique or flatter his own side. But the liberal blogosphere is filled with many such reporters, trained at places like The American Prospect (where Sargent previously worked), The Nation, Think Progress, Talking Points Memo, the Huffington Post and so forth. On the right, however, such journalistic bona fides are rare indeed. Here, the conservative lack of emphasis on—or interest in—the independent investigation of facts ran up against the Post’s need to maintain its traditional reporting standards. As Andrew Ferguson of the neoconservative Weekly Standard admits, “The great missing element in conservative opinion journalism has been reporters.”

The Post was forced to address this conundrum as it simultaneously grappled with a series of undoubtedly more serious challenges, ones that may threaten its very survival. These included the collapse of its business model—something all newspapers face—and a steep decline in the power and prestige of its product. It has recently lost many storied practitioners to its competitors, including not only the (now vastly superior) New York Times but also Politico, whose frenetic, up-to-the-millisecond political coverage almost always beats that of the Post. Add to this a crisis of leadership at the top after attempts by the paper’s publisher and president to exploit its journalistic power for cash via expensive, exclusive salons, followed by a failed cover-up by executive editor Marcus Brauchli of his own role in them; and then attempts by Post Company chair and CEO Donald Graham to lobby lawmakers for favors for the paper’s sister enterprise, the Kaplan Higher Education Company, whose nefarious activities in the world of for-profit education have been the subject of considerable media and official scrutiny. Then throw in the effects of endless rounds of buyouts of the paper’s most experienced (and therefore expensive) reporters and editors, the closing of every last one of its national bureaus, its shutdown at the 2012 Pulitzer Prizes, and many more problems than we have room to mention here, and you have a crisis of institutional self-confidence for the paper’s leadership—a crisis that has naturally made it harder for...
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the Post to resist the ideological pressure on its journalism that conservatives are so adept at applying.

All of this is evident in the ongoing saga—one might say “crisis”—of the Post and its conservative bloggers.

The Post’s first attempt to fill this position lasted all of seventy-two hours. Twenty-four-year-old Ben Domenech had been a low-level Republican staffer before beginning to blog on the right-wing site RedState.org, where he established a name for himself by referring to Coretta Scott King as a communist on the day of her funeral and suggesting that gay blogger Andrew Sullivan needed “a woman to give him some stability.” He termed the members of the Supreme Court “worse then sic the KKK,” dubbed filmmaker Michael Moore “Fatty Fat Fat Fat,” and called then–Post blogger Dan Froomkin “a lying weasel-faced Democrat shill.” Such juvenile name-calling apparently made him attractive to the Post editors who hired him in 2006, but unfortunately it was accompanied by a predilection for plagiarism as well. After liberal bloggers revealed numerous such examples in Domenech’s work, Post editors had no choice but to ditch their damaged goods with a minimum of ceremony and a maximum of professional embarrassment.

Once bitten, the editors waited nearly four years before settling on a replacement, Reason.com’s Dave Weigel. A left-wing libertarian, Weigel did a fine job with his straightforward coverage of the conservative movement—so much so that high-profile conservatives like David Frum and Ross Douthat praised his reporting. So, too, did executive editor Brauchli, who noted that “Dave did excellent work for us.” Unfortunately, Weigel made some unflattering comments about individual conservatives on a private, now defunct liberal listserv called Journalist. When these were leaked to various blogs, Post editors went into a collective tizzy. “We can’t have any tolerance for the perception that people are conflicted or bring a bias to their work,” Brauchli announced. The Post needed to be “completely transparent about what people do...and completely transparent about where people stand.” And so Weigel had to go as well.

Brauchli’s explanation for Weigel’s forced departure, however high-minded, was actually nonsensical. The Post has traditionally employed all kinds of journalists with all kinds of opinions. Privileged reporters like the late David Broder were invited to write a front-page news story one day, an opinion column on the same topic for the op-ed page the next, and then give a paid speech about it on a third. Current Post columnist Dana Milbank joked that Hillary Clinton was a consumer of “Mad Bitch” beer in an attempt at humor on the paper’s website, and he also called journalist Nico Pitney a “dick” in a CNN studio—and yet his job at the paper remained secure. The problem with Weigel, it appears, was not his comments, but rather that the Post’s editors had apparently been under the misapprehension that he was a right-winger when they hired him and hence might appease the right’s unhappiness with the paper. The Post’s then-ombudsman, Andrew Alexander, admitted as much when he explained, “Weigel’s exit, and the events that prompted it, have further damaged the Post among conservatives who believe it is not properly attuned to their ideology or activities.” Alexander went on: “Ironically, Weigel was hired to address precisely those concerns.” In other words, the journalistic quality of Weigel’s work was irrelevant to his hiring and his (effective) firing. What mattered was his ideology.

The Post’s third (and so far final) attempt to “address” conservative “concerns” in a way that might be more “properly attuned to their ideology” came with the hiring of Jennifer Rubin. Like Domenech, Rubin was hired as an ideologue, not a journalist. A former Hollywood lawyer without a single article to her credit before 2007, she had worked briefly as an editor for the right-wing Pajamas Media and as a blogger for Commentary, where she developed a specialty in venomous attacks on liberal American Jews who deviated from the magazine’s hard-line pro-Likud policies. At the time of Rubin’s hiring by the Post, her op-ed page editor, Fred Hiatt, admitted that he “did not read her regularly.” Perhaps he should have. At Commentary, Rubin’s fulminations

A crisis of institutional self-confidence has made it harder for the Post’s leadership to resist ideological pressure from conservatives.

were frequently at odds not only with any conceivable journalistic justification but also with simple common sense. For instance, she published a 3,800-word article investigating the reason American Jews supposedly “hate” Sarah Palin, in which she managed to quote exactly one American Jew (Naomi Wolf). In so doing, she ignored an avalanche of polling data demonstrating that American Jews did not “hate” Palin any more or less than most Americans—especially liberals. “In a strikingly unified response from liberals as well as conservatives,” an Atlantic writer noted of the article, “most commentators are trash ing the piece as illogical, poorly-argued, and anti-Semitic.” In addition to her animus toward dovish and liberal American Jews—which, by the way, is most of them—Rubin displayed an obsessive antipathy toward President Obama. Indulging the most paranoid ravings of right-wing jingoists, for instance, she insisted the president’s “sympathies for the Muslim World takes precedence over those, such as they are, for his fellow citizens.” She accused him of being “the most anti-Israel U.S. president (ever),” and insisted that supporters of Israel “must figure out how (quite literally) the Jewish state is to survive the Obama presidency.” Even more egregiously, Rubin quoted, in apparent approval, an elderly Jewish woman in Florida who professed to see “parallels” between Nazi Germany under Hitler and the United States of America under Barack Obama.

Rubin’s work first came to widespread public attention in July 2011, when, immediately after two related terrorist attacks in Norway that resulted in nearly eighty fatalities, she wrote, “There is a specific jihadist connection here.” Rubin insisted that the bombing and shooting rampage proved “a sobering reminder for those who think it’s too expensive to
wage a war against jihadists,” and then used the balance of her post to attack Senator Saxby Chambliss, who “would have us believe that enormous defense cuts would not affect our national security,” as well as President Obama, who “would have us believe that al-Qaeda is almost cut and that we can wrap up things in Afghanistan.” She followed up that post with a tweet: “Norway bombing and why we shouldn’t slash defense—IT IS A DANGEROUS WORLD.”

The murderer, of course, had no “jihadist connection” whatsoever but turned out to be a blond, blue-eyed, pro-Zionist Norwegian right-winger, Anders Behring Breivik.

When Rubin returned to her blog, she exacerbated her problem by doubling down on her faulty logic and foolish clichés: “That the suspect here is a blond Norwegian does not support the proposition that we can rest easy with regard to the panoply of threats we face or that homeland security, intelligence and traditional military can be pruned back.” As before, just who was putting forth such a “proposition” went unnamed. “To the contrary,” she continued, “the world remains very dangerous because very bad people will do horrendous things.”

Finding the paper in the midst of yet another contretemps over its conservative blogger, Post ombudsman Patrick Pexton weighed in, acknowledging Rubin’s mistake but largely excusing the weakness of her column and her tardiness in correcting it by citing “several factors,” particularly her “faith”:

What compounded Rubin’s error is that she let her 5 p.m. Friday post remain uncorrected for more than 24 hours. She wrote four other unrelated blog posts that night, through about 9 p.m. Police officials in Norway at 8:33 p.m. Washington time had made their first statement that the suspect had no connection to international terrorism or Muslims. Rubin should have rechecked the facts before signing off, and Post editors should have thought about editing her post more that night.

But Rubin has a good defense. She is Jewish. She generally observes the Sabbath from sundown Friday until sundown Saturday; she doesn’t blog, doesn’t tweet, doesn’t respond to reader e-mails. When she went online at 8 p.m. Saturday, her mea culpa post on Norway was the first thing she posted.

The Sabbath defense would be interesting if it held up, but as I noted in a column for the Center for American Progress, it doesn’t. Wired blogger Spencer Ackerman, who had speculated similarly, managed to correct his blog entry at 7:45 p.m., forty-five minutes before the Norwegian authorities’ announcement. He wrote that his mistake “should teach all of us in the media—this blog included—a lesson about immediately jumping to ‘jihadi!’ conclusions.” What’s more, sunset (the moment the Jewish Sabbath begins) occurred that evening at 8:20 p.m. in Washington, DC—35 minutes after Ackerman managed to correct his own mistake, and well before Rubin posted the final of her four items that evening.

Pexton went on to note in Rubin’s defense that “liberals and conservatives don’t talk to each other much anymore; they exist in parallel online universes, only crossing over to grab some explosive anti-matter from the other side to stoke the rage in their own blogosphere”—an odd complaint for a newspaper that purposely segregates its pundits into “left-leaning” and “right-leaning” camps. So “if your politics are liberal and you don’t generally read Rubin, but you read her Norway posts, you probably would be pretty offended. But if you are a conservative, or someone who reads Rubin regularly, you’ll know that this is what she does and who she is.”

This was yet another amazing admission on the part of the Post. For what Pexton was saying is that Rubin’s regular readers—i.e., conservatives—should not be expected to value journalistic accuracy, because this is not “what she does and who she is.” And here the Post was more than happy to oblige.

A second Rubin-related crisis occurred not long after, in October 2011, on the release of Israeli kidnap victim Gilad Shalit by his Hamas captors. Rubin, who as a Post employee had traveled to Israel at the expense of the anti-Obama Emergency Committee for Israel, chose to retweet a message from one of its co-founders, Rachel Abrams (wife of Elliott Abrams, stepdaughter of Norman Podhoretz and sister of John Podhoretz). It read: “gilad is free and home. now round up his death-worshiping captors and turn them into food for sharks,” and linked to a blog post that elaborated on the point:

Then round up his captors, the slaughtering, death-worshiping, innocent-butcherings, child-sacrificing savages who dip their hands in blood and use women—those who aren’t strapping bombs to their own devils’ spawn and sending them out to meet their seventy-two virgins by taking the lives of the school-bus-riding, heart-drawing, Transformer-doodling, homework-losing children of Others—and their offspring—those who haven’t already been pimped out by their mothers to the murder god—as shields, hiding behind their burkas and cradles like the unmanned animals they are, and throw them not into your prisons, where they can bide until they’re traded by the thousands for another child of Israel, but into the sea, to float there, food for sharks, stargazers, and whatever other oceanic carnivores God has put there for the purpose.

Shocking as the hatred, violence, racism and malevolence contained in the Abrams/Rubin tweet was, such sentiments were not entirely new to Rubin’s readers. Writing in the Columbia Journalism Review, Ali Gharib noted that Rubin had “at least four times...quoted, linked to, and endorsed Rachel Abrams’s notion that Jews in America have a ‘sick addiction’ (in Rubin and Abrams’s words) to the Democratic Party.” Pexton got off the bus here and cited the Post’s digital guidelines for social
media, which note that Post bloggers “reflect upon the reputation and credibility of The Washington Post's newsroom,” and hence “must be ever mindful of preserving the reputation of The Washington Post for journalistic excellence, fairness and independence.” But by embracing what Pexton termed “the Abrams brand of incendiary rhetoric,” which “pollutes our discourse and erodes the soil on which reasonable solutions and compromises can be built,” the Post ombudsman concluded that Rubin's actions constituted “a huge disappointment.”

It was editorial-page editor Hiatt's opinion that mattered, though, and he stood by his woman. Asked by Gharib specifically about the “sick addiction” that Rubin attributed to American Jews, Hiatt replied, “As a general matter, I agree with you about the demonization of opponents by means of using terms of mental illness…. I haven’t attempted to censor columnists who use such terminology, but I don’t like it much.”

These were some of Rubin's most high-profile journalistic transgressions, but they are hardly the only ones. Indeed, barely a day goes by without a Rubin post filled with nasty name-calling attacks on a group or individual she deems overly dovish on Israel. For instance, Rubin has constantly berated the “fraudulent... faux ‘human rights’ groups that provide cover for de-legitimizers of the Jewish state,” as well as that alleged “all-star...Israel-hater” Daniel Levy, former Israeli peace negotiator and adviser to Ehud Barak, and “the not-very-pro-peace, pro-Israel J Street,” among many possible examples.

Rubin's obsession with Barack Obama hasn't mellowed much either. She still attacks him, Likud-style, as an “apt negotiator on behalf of the Palestinians and a thorn in Israel's side,” who has “alienated Jewish voters” and “re-McGovernized the [Democratic] party, which now stands for appeasing despotic powers, turning on allies and slashing defense spending.” (Rubin fails to mention that virtually every poll of Jewish voters has put Obama's level of support at well over 60 percent—his most loyal constituency after African-Americans.) And while the talk of Nazis and Obama's alleged love for Islam have been tamed a bit, Rubin's penchant for hate-filled fantasy has hardly been quelled. Indeed, when, for instance, Obama used the phrase “thinly veiled social Darwinism” to describe Paul Ryan's budget, she claimed, “The supposedly erudite Obama labeled Ryan a race suprema-cist,” adding, “Either the president is ignorant of the term he used or he's getting an early jump on playing the race card. In either event, it’s uncalled for and repulsive.” Nonsense. “Social Darwinism” is understood by all but Rubin to refer to an economic philosophy championed by Herbert Spencer, among others, that promotes the so-called survival of the fittest. Race is not entirely ignored in the most famous examination of the term, Richard Hofstadter's 1944 Social Darwinism in American Thought, but the historian's focus is on its class applications, which have traditionally been used to build support for laissez-faire economics of the kind Ryan espouses (minus his fondness for corporate welfare, of course).

No less transparent than Rubin's Obama hatred has been her slavish devotion to the political fortunes of Mitt Romney. Not surprisingly, her affection tends to take the form of abusive invective directed toward Romney's opponents. As several candidates challenging Romney saw their fortunes rise during the Republican primary season, each one also came in for highly personal attacks from Rubin. When Rick Perry appeared to be Romney's main rival, she lambasted him in eight posts in a single day, according to Politico, and wrote sixty columns overall adding up to 38,722 words—including “sleepy,” “hostile,” “dreadful,” “provincial,” “clingy” and “buffoon.” When Newt Gingrich was the flavor of the month, Rubin termed him an “egomaniac” whose “hyperbolic rhetoric” would leave the GOP “(correctly) mocked.” When Rick Santorum was barely registering as the (even more) conservative alternative to Romney—but one who proved a useful hammer with which to beat Gingrich—Rubin wrote post after post singing his praises, noting that “in comparison to his opponents, [Santorum] has come to be seen as a practical politician rather than an ideological zealot.” Once Santorum appeared to be a threat to Romney, however, Rubin gave him the treatment previously meted out to Perry and Gingrich: the same fellow she had insisted was “no extremist” would likely be labeled a “‘wacko’ and ‘zealot’” by most Americans once they got wind of his positions, she now argued.

It is true that the Washington Post has bigger problems than the serial inaccuracy and incivility of its right-wing blogger. Indeed, it may appear to some to be a frivolous concern at a time when the institution's survival may be at stake. But the question for the house that Ben Bradlee and Katherine Graham built is not merely whether it will survive, but how. Will the paper's various troubles drag down its journalistic practices to the point where it can no longer be depended on to stand up to powerful interests—something that once made it such an important newspaper?

In his engaging portrait of Bradlee, Yours in Truth, Jeff Himmelman recounts an incident from 1969 in which two young Post reporters, Leonard Downie and Jim Hoagland, had worked for months on a story about racial discrimination in the Washington savings-and-loan industry. Titled “Mortgaging the Ghetto,” it was scheduled to run over a ten-day period. Just before that happened, a group representing the industry went to Bradlee's office and told him that if the series ran, they would pull all their advertising from the paper—representing, even then, about $1 million in revenue. What did Bradlee tell Downie? “He puts his hand on my shoulder and he says, ‘Just get it right, kid,’ and walked away.”

The series ran. The advertising was pulled. And the Post went on to become the great newspaper that not only set a standard for accuracy and bravery in the profession, but helped to demonstrate the power (and beauty) of the First Amendment in American democracy. That the same institution that risked so much for so long simply to “get it right” now publishes—and defends—a writer who cares nothing for the truth, but rather dedicates herself to spewing childish insults at the president of the United States as well as the millions of people who reject her ideological obsessions, is a potent symbol of how far it has fallen. In its desperation to appease conservative critics, the paper has created the perception that it is willing to sacrifice the very values and practices that, in a previous era, defined its purpose. And no less disturbing: no one in a position of authority appears even to care.
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Is There Freedom After Torture?

Suleiman Abdallah is still haunted by his years as a US prisoner in the “war on terror.”

BY CLARA GUTTERIDGE

In fall 2009, I found myself in a Tanzanian hotel lobby, sitting across from Suleiman Abdallah, a lanky man with a goofy smile and a broken tooth. Over the next few days, he would describe in excruciating detail how he had been captured in Mogadishu in 2003 by a Somali warlord and handed over to American officials, who had him rendered via Kenya and Djibouti to Afghanistan for five years of detention and torture. Imprisoned in three different US facilities, Suleiman had been unceremoniously released from Bagram Air Force Base the year before, with a piece of paper confirming his detention as well as his innocence. By the time I met him, he was a free man, living with his mother and attempting to rebuild his life.

I had first come across Suleiman’s case in 2006. At that time my work at the British legal charity Reprieve involved searching for information about prisoners who had been “disappeared” by the United States in the “war on terror.” Finding people was like assembling a jigsaw puzzle for which one had first to hunt for the pieces. Evidence of Suleiman’s existence was available only in fragments: a 2003 CNN report that one Suleiman Abdallah had been captured by Somali and Kenyan security personnel; other media reports suggesting that there had been help from plainclothes American officers and a notorious Somali warlord named “Mr. Tall.” A subsequent report placed Suleiman in Kenya, whose security minister announced that he was to be flown to the United States for trial, for offenses related to the 1998 embassy bombings in Nairobi and Dar es Salaam.

In fact, Suleiman never arrived in the United States, and none of the authorities ever disclosed his whereabouts. Suleiman joined the growing list of disappeared prisoners held at undisclosed locations with no access to a lawyer, tracked by a handful of global NGOs.

As in other countries caught in US crosshairs following the attacks of September 11, 2001, a bounty system emerged in Somalia in 2002, whereby people were captured by local warlords and sold to the CIA as “terror suspects” in return for cash. In lawless Somalia, anyone without local protection is highly vulnerable; as with many others, the main operating factor in Suleiman’s abduction appears to have been that he was a foreigner with few local connections.

As East Africa’s quiet war on terror became an increasing focus of my work, Suleiman’s file grew steadily more intriguing. Shuttled through the global system of secret US prisons, he remained mostly invisible. His name appeared in the margins of a confession barred by a Kenyan court in 2005 for having been obtained through torture. A 2007 report from West Point suggested that upon capture Suleiman was initially presented to the CIA as Fazul Mohammed, a Comorian terror suspect who was eventually killed by Somali police in Mogadishu last year. Elsewhere, media reports confirmed that as a young man, Suleiman’s nickname was “Travolta” because of his love of dancing.

But I still had no idea where Suleiman was being held. My questions probing his whereabouts evoked only blank faces from the former US prisoners I interviewed around the world. Finally, in 2008 I learned “off record” that Suleiman was being held at Bagram by American troops. About a year later, I discovered that he had been released. I arranged to visit him at his home on the Indian Ocean.

At our first meetings in Stone Town, the crumbling capital of Zanzibar, Suleiman would turn up wild-eyed, refusing food because eating upset his stomach. We soon forged a routine of driving together into the bush, where, he said, he could find peace. On our first trip, Suleiman drove to a derelict underground prison that had once been used by Arab slave traders, a dungeon that presumably resembled the first place he was held in Afghanistan, a secret prison he called “The Darkness.”

When Suleiman arrived there, he thought he was back home in Zanzibar, so overwhelming was the distinctive smell of the coral reef. (A clinical psychologist would later explain that olfactory hallucinations are a common response to extremely stressful situations. They are the brain’s way of making one think there is something familiar to hold on to.) In fact, Suleiman was thousands of kilometers from his familiar Indian Ocean reefs, in an underground prison in central Afghanistan.

“It was pitch black, with constant noise and not enough food,” he recalled. His American interrogators would pour freezing cold water on him and beat him, saying, “We know you are a sea man, but here we have more water than out there in the sea. It never stops raining here.” Suleiman also describes being hung from the ceiling in the “strappado position,” slung in chains so that his toes just touched the floor. He also says American interrogators would take the ablution

Clara Gutteridge is a human rights investigator who documents national security–related abuses in the East and Horn of Africa. She was formerly resident fellow at the Open Society Justice Initiative and Deputy Director of the Secret Prisons team at Reprieve. Follow her on Twitter at @GutteridgeClara.
jug (used by Muslims for ritual cleansing before prayer), and stick its long spout up his rectum.

In mid-2003, Suleiman arrived at Bagram, where he was ordered to stand within the outline of a square drawn on the floor. "From today onward, your name is 1075," the American guards told him. "You are in our box, and we have five basic rules: One: No talking. Two: Don't look around. Keep your face down. Three: Don't touch anything around the cage. Four: Don't speak. Five: Don't run." Later, one of the guards looked at tall, skinny Suleiman and said, "You must be related to Snoop Dogg. Maybe he's your father." After this Suleiman's name at Bagram was Snoop Dogg.

At Bagram, Suleiman never saw the sun, only the constant, blinding lights hanging just above his wire-mesh cage. He says he would look at the birds flying among the rafters, swooping down to peck around his cage. Bird droppings fell from the high ceiling through the mesh. Watching them, Suleiman would think, "Look at me today! I am on the side that the birds ought to be. I am in the cage, and they are free!"

Suleiman was finally released in July 2008. What prompted the decision is unclear. Authorities most likely realized that he had little intelligence to offer and posed no threat. So they let him go.

In the early days after his release, Suleiman hardly slept. Walking along an empty Zanzibar beach, Suleiman described how he would wake at night, panicking that he was back at Bagram. The only way he had found to ease his anxiety after a flashback was to play with the baby rabbits his family kept in a hutch in the yard. Shrugging, Suleiman explained that his family told him he was crazy for playing with rabbits in the middle of the night.

In the spring of 2010, Suleiman met with an American legal team, along with Kenyan and American medics who specialize in assessing and treating victims of torture. Suleiman had reached out in a plea for help rebuilding his life. The purpose of their trip was to conduct a medical evaluation and discuss his legal options. Sondra Crosby, a Boston-based medical doctor who works with Physicians for Human Rights, describes the clinical evaluation as "unorthodox, to say the least."

"We had to conduct the assessment over two days in a hotel room, because in Zanzibar we had no access to clinical facilities," she recalls. "The litany of abuses described by Suleiman included severe beatings, prolonged solitary confinement, forced nakedness and humiliation, sexual assault, being locked naked in a coffin and forced to lie on a wet mat, naked and handcuffed, and then rolled up like a corpse. It was extremely tough. There were times when both of us clinicians, and the patient, broke down in tears."

Suleiman's legal options were few. "There is currently no political or judicial avenue available to a person like Suleiman who has been wrongly by the United States," explains attorney and professor Joe Margulies, author of Guantánamo and the Abuse of Presidential Power. "In limited circumstances, like prisoners at Guantánamo, people can seek their release in court, but no one can seek anything more than that." Under both the Bush and Obama administrations, he notes, "any suggestion that the US should compensate an innocent man for the wrong done to him is a...nonstarter."

"Suleiman's post-traumatic stress disorder left him unable to work and without means to support himself," says Crosby. "His lack of self-sufficiency has led to further depression and feelings of inadequacy and shame, because he has to rely on his family for his basic needs."

Crosby is now working with a European psychologist on a plan to take Suleiman to a torture rehabilitation center in Britain for six months of intensive therapy. After that, he will return to Zanzibar, where he will have local support to start a microeconomic project building a small business. She is optimistic: "Now all we need is the funding!"

So far, finding funding has proven difficult. "But more important," says Crosby, "recently, I have detected something new in our communication—hope. Suleiman is now hopeful about his recovery and future. And I am hopeful that it is possible to repair the wounds my country has inflicted."
Florida to Minorties: Don’t Vote Here

If GOP lawmakers get their way, voting will become much more difficult in the Sunshine State.

by BRENTIN MOCK

A Von Bracy, 63, understands the stakes in Florida’s current voting rights battle all too well. Her father, the Rev. Thomas Wright, is a civil rights luminary and former NAACP president who spent much of the 1960s fighting segregation, often under threat of death. When his chapter of the NAACP sued Alachua County Public Schools to desegregate, a teenage Bracy sacrificed her senior year to help integrate a white school. She has no fond prom memories; instead she remembers the people spitting in her face, the regular chants of “nigger” that greeted her, and the beating she took from a group of white male students, who went unpunished.

Bracy’s beating was so traumatic that she stayed home from school for the next three days wondering whether to go back. But in the end, she returned. Bracy told the Voices of the Civil Rights project, “I refused to allow them to win.”

That was her thought this spring, too, as she plunged the New Covenant Baptist Church—the Orlando congregation she leads with her husband—into a voter registration campaign more dangerous than it has been in a generation.

In May 2011, Gov. Rick Scott signed into law HB 1355, a bill that once again put Florida at the center of the national debate over free and fair elections. The law dramatically changed the rules for both early voting and voter registration, creating a process so complex and legally risky that groups like the League of Women Voters opted out of registering in the state altogether. Instead they sued, charging that the law is unconstitutional and violates the National Voter Registration Act. In late May of this year, a federal judge blocked the law’s most controversial provisions pending a trial. (In June, in a separate case, the Justice Department sued Florida to stop Secretary of State Ken Detzner from purging the rolls of 2,600 alleged noncitizens, hundreds of whom have since been shown to be legal voters.)

HB 1355’s still unfolding story offers a stark example of the changes that have taken place in the conversation about voting rights nationally over the past two years. Besides Florida, dozens of other states have passed or debated onerous changes to their voting rules since 2010. Advocates of these measures claim that the true threat to democracy isn’t low voter registration or turnout—it’s fraudulent voting.

But as the Florida ACLU recently pointed out, voter fraud is rarer than shark attacks in the state, a claim backed up by PolitiFact, which found just forty-nine investigations of fraud in Florida since 2008. In June the Orlando Sentinel reported that 178 cases of alleged voter fraud had been referred to the Florida Department of Law Enforcement since 2000, with just eleven arrests and seven convictions. So if fraud is virtually a nonexis-

Brentin Mock, a journalist based in New Orleans, is the lead reporter for Voting Rights Watch 2012, a reporting partnership of Colorlines.com and The Nation.
Souls to the Polls—an early voting event led by black churches—turned voting into a cultural, even spiritual experience for many black voters. Early voting itself started in response to the Bush v. Gore debacle in 2000, which was exacerbated by voters having to wait in long lines at polling places. In 2002, counties were allowed to implement early voting systems at their discretion to eliminate this problem. In 2004, a statewide early voting system was set up, allowing voting to take place in the two weeks leading up to election day. On the Sunday before the election, choirs and preachers gave their best performances during morning services to get churchgoers motivated to vote that day. Thousands came out, including about 200 from Bracy’s church, which has roughly 1,200 active members.

Congresswoman Frederica Wilson, at the time a state legislator in Miami, helped organize Souls to the Polls in southern Florida in 2008 and remembers “food at the polls and music and gospel singing, so people enjoyed themselves while waiting. They served fried chicken, barbecue and fish sandwiches. It was great. We were voting in the first black president.”

Almost 54 percent of black Floridians voted early in 2008. A third of all early voters on the Sunday before election day were African-Americans; a quarter were Latinos. Obama proceeded to win Florida by just under 3 percentage points, much of that due to winning Orange County—which includes the city of Orlando—by the largest margin of any Democratic candidate in sixty-four years.

Registration was way up as well. In 2008 there were 1,468,682 African-American Floridians registered to vote for the general election, about 84 percent of whom registered as Democrats. There were twice as many registered black Democrats in 2008 as the total number of registered African-Americans in 1994, and more than the total number registered in 2004. This was largely thanks to community-led registration drives, responsible in both 2004 and 2008 for registering twice as many black and Latino voters as whites.

In addition, black and Latino turnout was boosted by then-Gov. Charlie Crist’s 2007 restoration of ex-offenders’ voting rights. Before 2007 Florida was one of three states that permanently disenfranchised all people convicted of felonies. But Crist amended the law so that nonviolent felons could more easily have their voting rights restored. More than 150,000 Floridians regained the right to vote as a result, according to the Brennan Center for Justice.

One of Scott’s first moves upon becoming governor was to reverse Crist’s reforms. Now, those with nonviolent felonies must wait five years after release from jail before being considered for voting rights restoration and must have no new convictions during that time. Those convicted of violent felonies must wait seven years. If you have unpaid restitution, you’re ineligible for restoration—and even to apply for a hearing, you must obtain copies of all the original court documents connected to your case.

These changes have dramatically scaled back the number of people who do apply. As of March 1, 2011, one week before Scott signed the law, there were close to 99,000 pending clemency cases involving the restoration of civil rights. As of May 2012, there were only 22,958 cases pending.

The changes in the voter registration process were equally stark. LaVon Bracy walked me through how she became a third-party voter registrar under the new law. The process seemed custom-made for creating errors and provoking penalties.

To begin, Bracy first had to fill out Form DS-DE 119 and send it to her county supervisor of elections, who then approved her as a voter registration agent. After that, she was assigned an identification number, which had to be recorded on every voter registration application she collected so that each one could be traced back to her. She then had to fill out Form DS-DE 120, an affidavit swearing that she understands she’ll be charged with a felony—with a penalty of up to five years’ imprisonment—if she attempts fraud. If she enlisted any staff or even walk-up volunteers for registration activities, they would also have to sign the affidavit acknowledging they understood the penalties.

When registering voters, she had to time-stamp each application so that the county knew exactly when the forty-eight-hour deadline clock started ticking for that specific registration. Within that forty-eight hours, Bracy made copies of each completed registration form and stored it in a white binder. She also had to review every application to make sure it was accurately filled out—because if anything was wrong, she could be charged with fraud.

She then physically transported the applications to the county. She could also mail them, but if any application arrived late, she’d be fined $50 per application ($250 if her tardiness was found “willful”). Other tardiness violations could raise the...
fines as high as $1,000 per application. If a completed application was lost in the mail or on the way to the county office, and someone else delivered it days later, that would elicit a fine. Also, the law demanded that registrars fill out monthly and quarterly reports on the number of people they registered, and would penalize them if they failed to hand in those reports on time.

Florida had turned what used to be a proud act of civic engagement into an experience as demanding as applying for a business loan and far more complicated than buying a gun. What's more, these cumbersome rules do nothing to prevent deliberate fraud; they only increase the chances that mistakes are made—mistakes that can then be labeled evidence of attempted fraud to justify further restrictions on voting rights.

Although these rules are now blocked pending the resolution of the federal suit, they may have already had their intended effect. According to the New York Times, 81,471 fewer Floridians had registered to vote as of May 2012 than during the same period before the 2008 elections.

When Bracy knocks on doors today, she finds people whose spirits are broken. Many of her voter registration appeals are rejected. She hears a lot of fears and concerns, much of it based on misinformation. “Some feel that registering to vote will interfere with their welfare check,” Bracy said, “or that you’ll be harassed when you’re registered to vote.”

The misinformation is serious enough that the state’s Division of Elections addresses it on a webpage, “Election Myths vs Facts,” which dispels notions like “If a voter owes child support or has pending warrants against him or her, the police will arrest the voter at the polls.”

These rumors, however, play on a deeply held set of emotions that scholars have long tracked within black and immigrant communities in the South—a well-founded distrust of local authorities.
Extreme Eccentrics

by BARRY SCHWABSKY

“Those who maintain that modern art was started by mental cases would seem to be right,” admitted Clement Greenberg in 1946, less than a decade after the Nazis’ notorious exhibition of Entartete Kunst (Degenerate Art). Only “mental impulses so strong and so disconnected from the actual environment” as those that plagued Van Gogh, Cézanne and Rousseau, he offered, could have allowed them the courage or naïveté to venture so far into the unknown; and only after them could cooler, canner figures like Matisse and Picasso begin exploring this new terrain in full consciousness of the consequences. Writing just after the war, Greenberg could have had no inkling that such a pursuit might one day at least promise to become a normal profession with a clear career path and, for some, a fat paycheck, pretty much like law or dentistry.

But if in the beginning the pursuit required, at minimum, “an extreme eccentric” who could “shut his eyes with Cézanne’s tenacity to the established examples before and around him,” how much more maladjustment or nonconformity must it have taken for the early collectors of this art, even coming as they did a generation or more later, to bet their fortunes on its future? It’s hard to remember now, when any prudent portfolio of investments includes contemporary art—and the more extreme, the better—that buying the works of avant-garde artists once seemed even madder than making it, and this long after the deaths of pioneers like Van Gogh and
Rousseau. Albert Barnes was one of those extreme eccentrics, and he discovered just how naïve he was in 1923 when he exhibited part of his collection—works by Soutine, Modigliani, Matisse and others—at the Pennsylvania Academy of Fine Arts in Philadelphia. The local papers deemed it a scandal, and medical authorities thought the art worthy of the insane. From then on, Barnes was at war with almost any person or institution that claimed cultural authority in his hometown.

In any case, having already chartered an educational foundation to promote his ideas, Barnes was in the process of creating his own counterinstitution, and by 1925 it was operating in the Philadelphia suburb of Lower Merion. This wasn’t a typical museum:

If Barnes was a progressive idealist, he was also litigious, foul-mouthed, a control freak.

Barnes took seriously the idea that his was a place of instruction, so there was no welcome mat for idle visitors. Barnes’s “prime and unwavering contention has been that art is no trivial matter, no device for the entertainment of dilettantes, or upholstery for the houses of the wealthy,” and the Barnes Foundation’s bylaws specifically forbade “any society functions commonly designated receptions, tea parties, dinners, banquets, dances, musicals or similar affairs.” The foundation was to be a place where people came to be taught what art was, according to the philosophy Barnes had developed under the influence of John Dewey, and anyone not enrolled as a student had no reason to be there.

The nearly ninety-year history of the Barnes Foundation has been a tortuous and contentious one. It’s easy to ascribe this to Barnes’s contrary, self-contradictory personality. A boy from the wrong side of the tracks who made good, he studied medicine but didn’t take to its practice. Instead he became a coprophagic crank, and his little institution with its great art collection became increasingly insular—even more so after his death in 1951. The only opening came by way of legal action. In 1960 the State of Pennsylvania finally succeeded in forcing the foundation to post public hours, which it did grudgingly: two days a week, by appointment only. In appearance, nothing else had changed.

But Barnes’s will contained a few time bombs. One was a requirement that the foundation’s endowment be invested exclusively in government bonds. During his lifetime, Barnes had handled money with an astonishing combination of skill and luck, but a requirement that would have withstood the Depression was no match for postwar inflation. With expenses outrunning income, the endowment steadily dwindled. Second, Barnes stipulated that any successors to his board must not be affiliated with any prominent local educational or cultural institutions, all of which he saw as enemies to the last. Instead, future board members were to be appointed by the trustees of Lincoln University, a historically black institution whose alumni include Thurgood Marshall, Langston Hughes and Kwame Nkrumah.

Barnes’s chosen board members turned out to be pretty hardy. By 1988, when Lincoln appointees finally became a board majority, the university’s great days were past: an increasingly cash-poor gallery was in the control of an equally penurious college (and one that had no real art department). Worse still, the Lincoln trustee who ended up becoming president of the foundation was a man nearly as litigious as Barnes himself (at least according to legal journalist John Anderson in his 2003 book Art Held Hostage: The Battle Over the Barnes Collection), and who saw the foundation mainly as the vehicle for his own rise within Pennsylvania Republican politics. When he floated the idea of selling off some of the art to save the foundation, the art world cried horror. But the Barnes was broke.

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ration with Violette de Mazia), in printings dated 1990, 1986 and 1959, as if they had been found in a clean-out of the foundation’s storage. Yet Barnes’s writings were praised in their time not only by Dewey (as one might have expected) but by Pound (who called The Art of Painting “the most intelligent book on painting that has ever appeared in America”), as well as drawing more measured responses from Alfred Barr and Leo Stein. The painter John Sloan’s remark that Barnes “knows more about art than any artist needs to know” may have been a backhanded compliment, but who else could have earned it? In any case, what has been in a literal sense preserved, like flies in amber, are the peculiar arrangements of paintings and objects that had a chance to see it, you won’t be able to stay away from the new one if you have any interest in Impressionist and modernist painting, which can be viewed here as nowhere else. Matisse, in particular, stands out in all his glory, including aspects easy to overlook in other collections: wherever did that bizarre yet effectively nebulous lavender background to a 1918 still life of anemones come from, or the surprisingly Lautrec-like reclining figure in another work of the same year—in which, moreover, the artist somehow makes oil paint look more like pastel? And you’ll learn as much about Cézanne here as anywhere when you notice in a flower still life of 1896–98 an explosive energy one would not have expected from that quietly furious master.

Barnes created on the walls of the original foundation building in Merion. These arrangements are surprising because they recall the salon-style manner of hanging in the nineteenth century or, in their intermixing of paintings with all sorts of small craft objects such as andirons and horseshoes, what’s been called the “bricobracomania” of that era—everything that the modernism Barnes loved had in principle opposed. But the association is misleading. Barnes’s arrangement had other justifications altogether, and, as Braddock says, they constitute works of art in their own right, aiming “to repeat the operations of the individual painting on the level of the gallery” and become “expressive not only in pedagogical, public ways but in more hermetic, subjective, inward ways as well.” The new building preserves the “wall pictures” that Barnes orchestrated so carefully and can be understood as a museum encasing his original museum, which in turn embraces the works within it. Just as any museum necessarily changes the meaning of the art it contains, this new museum changes the meaning of the old one, in ways that will be revealed only in time.

Whatever you may have thought of the old Barnes Foundation (and even if you never

From another angle, the proof of Barnes’s eye can be found in the way his selections by minor artists could almost convince you that they are much better than you imagined. I never gave more than half a thought to Jules Pascin, but suddenly I think I might have been mistaken. Even the normally cloying work of Marie Laurencin looks pretty good. And as for an artist like Alfred Maurer, who I’d always thought was underrated, now I know where to point for the proof.

Instead of curating to illustrate an artist’s development, or to showcase his or her most typical works, Barnes concentrated on art that appealed to him most strongly as “plastic form” without reference to biography or history. In so doing, he highlighted features of the artist’s aesthetic that may be obscured when other museums—not without good reason—place their works in determinate historical contexts. Barnes allows familiar artists to be seen differently. Since his time, the tide of taste has turned decisively against Renoir, one of his favorite artists, while continuing to reinforce the importance of another favorite, Cézanne. At the Barnes it becomes possible to see the forgotten affinities between them, to perceive something of Renoir’s sensual ecstasy in a Cézanne like The Allée of Chestnut Trees at the Jas de Bouffan (ca. 1888), and to notice how his The Large Pear (1895–98) seems to rock like a boat on a wave of overwhelming feeling; while a Renoir landscape such as Dovecote at Bellevue (ca. 1888–89) possesses an intensity of conviction one would have thought was entirely Cézanne’s.

Leo Stein, too, was devoted to Renoir with a passion that now seems hard to recover. The qualities Stein said he found so moving—“the shadow of death has never clouded the art of Renoir and if he has a limitation, it is the very simplicity, the serene graciousness of his pure and noble joy”—may now encapsulate what strikes us as false in it. An excellent exhibition that recently closed at the Metropolitan Museum in New York City, “The Steins Collect: Matisse, Picasso, and the Parisian Avant-Garde”—which was first shown at the San Francisco Museum of Modern Art, and which I was lucky enough to see at its second venue, the Grand Palais in Paris, as well as more recently in New York—tells a story as important to the history of modernist collecting as Barnes’s, and just as ambiguous. Although the name of the youngest of the five Stein siblings, Gertrude, counts for the most these days, thanks less perhaps to her extraordinary writings than to her equally remarkable talent for self-mythologization, the key figure was really her slightly older brother Leo. He was important for Barnes as well, to whom he became, according to Braddock, “a mentor” who encouraged Barnes’s acquisition of work by Matisse and the pre-Cubist Picasso.

What unites Barnes and Leo Stein and distinguishes them from Gertrude is their aversion to Cubism, in contrast to her avid embrace of it. There are plenty of Picassos at the Barnes Foundation, but they are early ones, and they pale beside their Matissean neighbors. To Barnes’s eye, “the very great majority of cubistic paintings have no more aesthetic significance than the pleasing pattern in an Oriental rug”—a remark that betrays how his faith in the universality of aesthetic values was allied to a definite hierarchy among those values, with the highest achievements being those of representation. Cubism, in this view, had strayed too far into abstraction. Leo likewise saw in Picasso’s Cubism mere “diagrams” that “were abstract simplifications and not a whit more real than things with all their complexities,” so that “when he became an intellectual at a contemptible level of degradation I couldn’t accept it.” His dislike of his sister’s writing is in part a dislike of the way she used Cubism as a paradigm for prose.

Leo and Barnes shared more than taste:
each was incapable of meeting a contrary viewpoint with anything but contempt. Nor were Leo's so vehemently voiced passions necessarily lasting. What Brenda Wineapple has said of the Steins' father—"He was certain of something only until he lost interest in it, and then his loss of interest was complete"—was also true of Leo. Having cultivated a zeal for art in his younger sister and then his elder brother, Michael—their two middle siblings seem always to have been second-class citizens in this family—he eventually lost interest, finally declaring even Cézanne a "squeezed lemon." Needless to say, the dissipation and sorriness were entirely Leo's. Yet the years when he and Gertrude together were amassing art on a heroic scale (considering their relatively limited means) represent the beginning of true avant-garde collecting. Their trove of Matisses was not as various as Barnes's would be, but starting with Woman With a Hat (1905), which Leo had to have despite its at first seeming "the nastiest smear of paint I had ever seen," their Matisses remain unremittingly radical. And despite Leo's inability to follow Picasso into Cubism, his and Gertrude's taste in pre-Cubist Picasso seems notably shrelier than that of Barnes.

Like Barnes, Leo expected his contemplation of avant-garde art to culminate in a fully worked-out program of aesthetics. His distillation was a book with the unpromising title The A-B-C of Aesthetics, published in 1927 and apparently never since reprinted in full. Fervent opinions constantly revised do not a systematic thinker make. Besides, Leo was already losing interest in the fight. Although he had been the energizing partner of the odd couple he'd formed with his younger sister, a relationship of near incestuous intensity, his passion for art emerged from their breakup with much of its force spent. It's hard to tell whether it was Picasso or Alice B. Toklas whom Leo resented more, but either way, he was as bitter as any spurned lover. To Barnes he would later write, "Gertrude and I are just the contrary. She's basically stupid and I'm basically intelligent." Ironically, her "stupidity" ended up being worth more than his intelligence. She continued to be the proponent of Picasso, while the banner of Matisse passed to their brother Michael and his wife, Sarah. Michael, by the way, is the exception who proves the rule that early avant-garde collectors were necessarily eccentrics at the least, if not prey to madness. Responsible for husbanding the family's inheritance so that his younger siblings would never have to work, Michael seems to have been a paragon of equanimity. Never tempted to intellectualize his love of art like Leo, or to play at being a genius like Gertrude, he might have been the quintessential bourgeois relaxing in his armchair evoked in Matisse's famous Notes of a Painter of 1908. Sarah was the couple's thinker.

Picasso aside, how did Gertrude's collecting proceed in the postwar years, when her fame grew and she began to resemble, as Picasso had long before predicted, the mask-like portrait he'd painted of her in 1905–06? It's better not to look, unless you're willing to countenance that Leo's opinion of Gertrude's mind was correct. There were a few unexpected highlights, like the uncanny 1925 portrait of René Crevel by Pavel Tchelitchew, and a decent Picabia among the various clunkers by him, but most of Gertrude's later discoveries are rubbish. Her taste became as dismayingly as her politics. (She once began translating the speeches of General Pétain into English.) The exhibition's finale, a massive memorial portrait of Gertrude painted just after her death by one Francis Rose, an English painter she'd purchased many works from, is enough to make you weep—and not for joy. The better course might be to turn back and walk out the way you came in, admiring once more along the way the grandeur of the art the Steins collected in the two decades after Leo's discovery of Matisse in 1905, and considering how, while the true avant-garde never loses its radicality, the eye for it can be a passing thing.

**Landlocked**

by HENDRIK HARTOG

There is one sentence that almost always finds its way into any discussion of property law. Found in William Blackstone's Commentaries on the Laws of England, it states that nothing "so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe." For those who understand property as a foundational and natural right, Blackstone's sentence stands as an inspiration, and his notion of "sole and despotic dominion" as a kind of shorthand for the nature of property ownership within American constitutionalism.

But Blackstone was much cagier about the nature of property ownership than this sentence suggests. After mentioning "sole and despotic dominion," he offers a series of qualifications and challenges. "Pleased as we are" with what we own, he states, "we seem afraid to look back to the means by which it was acquired." He concedes that there is "no foundation in nature or in natural law, why a set of words upon a parchment should convey the dominion of land; why the son should have a right to exclude his fellow creatures from a determinate spot of ground, because his father had done so, before him." What is and what is not property; what can be held as "ours" in private, as opposed to what belongs in common or to the community or the state—according to Blackstone, all of this and more is rooted in historical circumstances and understandings, not in nature. The particular ways we hold property—for example, that in modern America a corporation has an unquestioned right to close factories and abandon workers and communities, while those workers and communities have no similar right to stop them from going—is simply what we do, or what we have done, just as sons in Blackstone's day took "by right" from their fathers.

The best that property holders can hope for is that the laws remain “in our favor.” Whether or not they will depend, as Blackstone knew, on who made the laws and how they will be interpreted and enforced. Thus, to build on Blackstone's qualifications: the fantasy of “sole and despotic dominion” will always depend on a changing mix of political, constitutional and institutional decisions. Whatever that dominion was and is depends on what particular courts at particular times might value as legitimate uses of property as well as on contingent and changeable historical judgments. Whose rights are exalted and whose claims are denied depends on whose interests the police and other public agencies decide to protect. In our day, this depends on local zoning boards, environmental agencies and the precedents of the Supreme Court. There would be no property rights without a law prohibiting theft, without institutions protecting the owner and enforcing his or her title of ownership against the “no right” of those who might otherwise "claim"

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**Hendrik Hartog, who teaches history at Princeton University, is the author, most recently, of Someday All This Will Be Yours: A History of Inheritance and Old Age.**

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**American Property**

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or “take” or “regulate.” Nor would there be property rights without laws that made others vulnerable and obligated. And, as Blackstone adds at the end of the paragraph regarding “sole and despotic dominion,” property also depends on settled habits (what we might call longstanding constitutional commitments) and on the ignorance of “the mass of mankind.” It would be “well,” Blackstone thought, if they obeyed the laws... without scrutinizing too nicely into the reasons of making them.”

Ever since the construction of the modern American law school curriculum in the mid- to late nineteenth century, the first-year course called “Property Law” has served to introduce students to that peculiar mix of political, constitutional and institutional decisions, to the practices and the changeable norms, that make some claims to the use of resources seem so strong that they become rights, while others remain mere claims. “Property Law,” the course, reveals exactly what Blackstone thought should not be scrutinized too closely by the mass of mankind. It is the place where many of the practices that actually make our world run have been conveyed to those who will soon play a central role in the management of those practices. Law students have often hated the course—but beneath the seemingly dull collection of practices, precepts and precedents lies unparalleled access to a way of understanding power in a society based on private property. Done right, the course becomes a window into some of the secret knowledge of society.

S
tuart Banner’s American Property is a largely successful attempt to do the course right and, even more subversive, to induct nonlawyers—those who have never and will never enter a law school classroom—into that secret knowledge. For the most part, lay versions of property law have made it appear merely arcane and inaccessible, full of fusty rules and anachronisms, as if it were the instantiation of natural rights (or at least a corrupted version thereof). But American Property is something else. Ostensibly a history of the ways judges and other legal actors have argued about what constitutes “property,” it offers a generally persuasive and always accessible reconstruction of how particular claimed resources—waterpower at one moment, copyright at another, clean air, the airwaves, access to beaches, the capacity of suburbanites to sustain a homogeneous racial community at others—have become and remain contested in the law. Unlike most historians of property, who usually pick a single critical standpoint or truth about who owns what in America (natural right, inequality, exploitation, beggaring the environment), or who track particular phrases or positions as they have been mobilized throughout American history, Banner builds a portrait of property in the United States by exploring transitory conflicts and settlements.

There is a weak argument lurking in the book about a tendency over the past two centuries toward the specification of property rights. Moments of community control, public ownership, or collective or common ownership are usually undone by a drive toward individualized property rights. Banner doesn’t explain this drive and mostly leaves it unexplored. Still, the public airwaves are auctioned off as, in effect, private goods; copyright is extended into an indefinite future; and organisms—forms of life—will get patented. Banner’s narrative arc is consistent with an underlying story often told in property law courses and in the casebooks that shape them. One might note that Blackstone also recounts a version in the chapter that begins by discussing “sole and despotic dominion.”

And yet, that weak argument is countered throughout the book by Banner’s general sense of the contingency—the near indefiniteness—of property settlements and understandings. The episodes he recounts in their historical specificity undercut any notions of the primordial nature of property relations. American Property is not just a revelation of the secret knowledge of American property law but a chronicle of how that knowledge was amassed, told through a sequence of exemplary tales and moments.

T
he bedrock of that secret knowledge in a capitalist and commodified economy is land, because it’s where we all live—together and singly—and also because land law becomes a metaphor for other property relations. Living on land requires, in its very nature, shared use—of water, of the air, of security and protection. Living on land has also meant active engagement with government at all levels.

Why so many Americans have been so committed to the private ownership of land and other resources is not a matter that Banner explores. He begins the book with a portrait of various early nineteenth-century voices celebrating the remaking of property as a realm for private use and capitalist exploitation. But that is just the prologue to an account of how more or less greedy users of property confronted a world filled with others, including others committed to various forms of collective ownership or, more often, to challenging particular greedy users. The stories in the book’s early chapters are almost all about interferences with prospective or actual uses of land and other resources, as well as how their “owners” dealt with these vexations and obstacles and worked to gain acceptance for the partiality of “ownership” in the real world, which was a shared world.

Central to the secret knowledge of property law is the recognition that property rests on the state. Most of the land that white America first lived on had to be expropriated—whether purchased or taken more or less violently—from Native America. Expropriation required an active and militarized state. To know what one owned, to be recognized as a legitimate possessor of property, relied on a series of steps usually including the payment of taxes and the recording of title in the county records office. Ownership usually involved the protection of the local police, and sometimes the state militia or the army. Even when a property owner exercised what property law calls “self-help”—for example, by evicting a tenant, pulling a gun on a trespasser or hiring Pinkertons—he or she knew (or should have known) that it was necessary to follow the rules of self-help set out by the state; otherwise, legitimate self-help would be redefined as criminal violence. Over the course of the past two centuries, the realm of legitimate self-help has dramatically narrowed. Meanwhile, throughout the twentieth century, the value and use of what one held increasingly depended on engagement with zoning boards and a variety of regulatory agencies.

The presence of the state is pervasive throughout Banner’s narrative. There is no period in American history that lies “before” regulation or public vexations. Private property has always found its origins, its recognition and its security in the largesse of the state, even as much of the sentimental claptrap that passes for historical understanding continues to deny that truth. The belief in what is sometimes called the prepolitical character of property, the Lockean fantasy that property comes into being before government and does not in its “nature” depend on government, is not simply the sectarian fantasy of conservative ideologues; even movements for social justice and reform participated in the silliness. In the 1960s, as described by Banner, the young Yale Law professor Charles Reich formulated a radical conception of “new property”—of government largesse, property created directly by public law—as a way to legitimate the claims of welfare recipients. For Reich, the goal was to endow welfare mothers with the same respect and capacity that private
property owners had always enjoyed within the American constitutional order. By calling a welfare check "property," Reich and the legal-services lawyers who developed his formulation in later litigation could identify and challenge the unfairness and inequality contained in the reigning assumption that what welfare recipients got from government was merely a gift that could be withdrawn at will. For a variety of strategic reasons, it was politically and constitutionally useful for Reich and the lawyers who worked with his formulation to imagine government largesse as something "new" and different from ordinary forms of property. Yet, as Banner notes, what Reich formulated as "new" in 1964 was little different from what would have been the case for all recognized property owners at any time in American history.

Banner’s book traces many familiar struggles over the terms of government regulation of private property, and many of those struggles have been framed as stories about the "takings" clause of the Fifth Amendment of the federal Bill of Rights. The Fifth Amendment forbade "takings" of property for public use without just compensation, and it also required that any "taking," even with compensation, had to be for distinguishably public purposes. Until well after the Civil War, that amendment did not apply to the actions of state governments or their agencies (including municipalities). But state constitutions contained similar restrictions, and so state courts became, throughout much of the nineteenth century, the primary locus for litigating questions about government takings.

Early on, state courts usually insisted that the "mere" loss of value as a result of government regulation was not a "taking" that required compensation. The laying of urban streets meant that some basements would be flooded or the foundations of some houses weakened. An internal improvement, such as a canal or a railroad or a rebuilt port, might mean that a business was ruined. A public health or fire prevention measure might require the structures on one's land to be torn down. Such losses were understood, at least during the early years of the nineteenth century, as part of the complex balance sheet that all property owners were presumed to carry within their heads. The gains from living in a growing community had to be balanced against the risks of particular losses. To use a Latin phrase often mobilized by the courts, such losses became damnum absque injuria, uncompensable harms. So long as government agencies were acting in ways that were recognizably part of their "police power"—that is, within their constitutionally accepted sphere of activity—individual property owners who suffered losses would have to consider them part of the costs of doing business. In a boom-and-bust economy in which land values fluctuated constantly and the uses of land were fluid, one was expected to recognize such risks. The affected owner still had her or his property; as long as it wasn't entirely worthless, the loss was not the government's problem.

Yet, as Banner describes, lawyers for some property owners soon found ways to challenge what was never a settled understanding about the legitimacy of such losses. The police power was all well and good, according to those lawyers, when applied to others' properties or the community as a whole. But it became illegitimate when applied to particular individuals with the resources to hire competent and imaginative counsel. Property could be reformulated as a bundle of rights. That reformulation meant that each piece (or "stick") of the bundle could be understood as takable. Once courts learned to rule that a piece of the bundle had been lost or removed or transferred, then the property owner might be entitled to compensation. Further, lawyers learned that government could be held to standards of "due process." Notions of public use—of what were legitimate government purposes—were under continuous lawyerly attack.

Like many legal historians, Banner pays little attention to the political contexts within which such legal innovations and judicial decisions occurred. As a result, Jacksonian and later expressions of disgust with the corruption of legislatures and public activity, including internal improvements, play no part in his narrative. Nor does he reflect on the continued salience of anti-statism and libertarianism in American public life, or address the ways that popular versions of constitutional norms may have restrained the reach of government action so that many forms of such action remained either unthinkable or off the table. (This is the explicit theme of The Anti-Rent Era, Charles Murray's brilliant study of land reform in nineteenth-century New York State.) There is an alternative history—one that isn't part of Banner's secret knowledge—which emphasizes a constitutionally constrained sphere of public action in the nineteenth- and twentieth-century United States and directs attention to more radical proposals for reform and change that never achieved institutionalization. That alternative political history has itself been subject to challenge and critique in recent years by historians of government and "the state." Some historians and political scientists would today insist that American governments were surprisingly experimental and innovative throughout much of the nineteenth century. What Banner does show, however, is the extent to which any particular judicial decision about the effects of regulation on a specific property holding would be contingent and uncertain. There were always at least two opposing, coherent and constitutionally recognized understandings available for a court—and few regulatory or constitutional understandings were ever final or unchangeable.

In a later chapter of the book, Banner describes the rise of twentieth-century zoning as a systematization of the more piecemeal regulation of land characteristic of nineteenth-century America. He presents the zoning
story, as property law courses and casebooks often do, as enmeshed in a multi-century history of nuisance regulations designed to prevent uses of property that produce and impose harms (“externalities,” in the preferred term of the art) on neighbors. Traditional nuisances included brickyards (which produced dust) and tanneries (which poisoned downstream waters) as well as many smokestack industries. By the twentieth century, conceptions of urban and suburban nuisances had been expanded to include Jewish garment workers in a high-class retail area, apartment houses and their residents in fancier neighborhoods, and African-Americans anywhere that white America did not want them.

There was a traditional counterargument to the enforcement of nuisance law, known as “coming to the nuisance.” A property owner had no business complaining about a nuisance, even an unquestioned one, if she or he had moved in with notice of its presence. In so doing, one had presumably incorporated the disagreeable presence of the nuisance into the purchase price or into one’s own calculation of future uses for the property. The nuisance might even have become an amenity, part of what made ownership attractive—or perhaps it just cheapened the cost of entry into the area. In any event, someone who had “come to the nuisance” took the land despite notice of its presence, and that meant one had to live with it or move elsewhere.

Banner then retells the familiar story of Euclid v. Ambler (1926), in which the Supreme Court legitimated zoning, and he does so by invoking and developing the nuisance metaphor. (A different version of this story, brilliantly developed by Daniel Rodgers in Atlantic Crossings, describes zoning instead as part of a transatlantic body of Progressive reforms concerned about housing in an urbanized society.) If a zoning plan and a zoning board were understood as an institutional presence to which a property owner “came,” about which she or he had notice, and whose terms she or he could influence by participating in the democratic processes of the local community, then zoning became an innocent regulation of property. That the decisions of the zoning board might have the effect of taking away a variety of profitable uses of the property mattered not at all; so long as the owner had notice and could participate in the board’s processes, such decisions were not, in the end, “takings” as deserved constitutional relief or undoing. And that would be the case even when the consequence was to restrict what an owner could do with her or his property to one permitted use (for example, as a single-family house).

In postwar America, the zoning board became a central feature of urban and suburban public life, a source and emblem of much of what land ownership would mean in American society. One paradoxical result was that the decisions of a local zoning board (and, later, environmental review board) would now be understood as an integral feature of a property owner’s “sole and despotic dominion.” To live in suburban America meant a right to own zoned property. One also acquired the right to rely on the board’s practices—in particular the comprehensive plan for the community drafted by the board—confident that a “nuisance” (such as a shopping center or a low-rent apartment house) would not be built in violation of the plan, and able to participate in changes to it when new needs arose, like the desire for ratables (such as a shopping center or clean industry) to keep property taxes low. To be an active user of one’s property in modern America meant participating in zoning boards and in the elections that produced them. Blackstone’s notion of “sole and despotic dominion” now required an understanding of variances and environmental impact statements, and of the political economy that produced zoning and other regulatory decisions. To get close to “sole and despotic dominion” in the twentieth and
twenty-first centuries implied active membership in a community, a public life. That is and remains one aspect of the secret knowledge that law school “Property Law” teaches.

But what that secret knowledge also reveals is how uncertain any extrapolation from this history necessarily remains. As Banner explains, conservative legal reform groups have worked hard in recent years to undercut any sense of the moral or legal inevitability of state regulations. For the most part, they’ve focused their attention more on environmental regulations and eminent domain proceedings—slum clearance and blight removal and so-called aesthetic regulations—than on zoning as such. They have reinvigorated the “bundle” metaphor and played to a “property rights” politics that assumes government regulations (or at least the regulations one doesn’t like) almost always overreach. And they have won notable victories before the Supreme Court and, even more, in the court of public opinion—victories that leave unsettled for the future what once would have been considered settled understandings. No property law teacher in the late twentieth century, for example, would have predicted the uproar generated by Kelo v. City of New London, the 2005 Supreme Court decision that reaffirmed the time-honored constitutional understanding that eminent domain proceedings were presumptively not takings, so long as a public purpose was defined and the government willing to pay “just compensation.” What the terms of eminent domain law will be later in the twenty-first century is now anyone’s guess.

The secret knowledge contained in a law school course on property law—drawn primarily from the language and worldviews of appellate judges—doesn’t provide all the secrets of what it means to hold property in this society. Not only does politics remain veiled in Banner’s account, just as it often is in such courses, but so is the grungy reality within which the terms of despotic dominion gain content. There is nothing in American Property about the daily corruptions that shape and have always shaped who gets what—how the railroads were built, how radio frequencies are distributed, how phone companies are regulated, how bank financing is obtained, for example, or how structures and resources and forms of private wealth are actually built and destroyed. Although he claims to take his history into the present, American Property has already been overtaken—as so often happens—by recent events, and there is nothing in the book about the crisis of bank foreclosures that have become such a part of our daily experience.

But most important, at least to my way of thinking, Banner offers little about what the sociologist Pierre Bourdieu might have called the “habitus” of property ownership in America, the tacit and unchallengeable understandings of what it means to hold property. For beneath all the contestation that is so wonderfully brought out in Banner’s book lie realms of apparently fixed, unchanging and incontestable truth. In particular, American Property doesn’t dwell at all on the intergenerational transmission of property, which economists know is responsible for the majority of the inequality in our society. Jefferson may have thought that the Earth properly belongs in usufruct to the living, but that thought has for the most part been kept out of property law, as well as from Banner’s book. Nor is there anything in Banner’s pages about “testator’s freedom,” the peculiar Anglo-American understanding that parents are free to choose who their heir will be by writing a will—that, indeed, no one is an heir or heiress until the will writer is dead. Banner also skims on explaining the almost constitutional presumption that public ownership is always problematic, that resources yearn to become privately possessed, and he passes over entirely the deep belief that private ownership conveys a realm of freedom—a capacity to use according to one’s own lights, including waste or misuse.

It may be that those shared understandings—ones born of historical contingency but deep-rooted nonetheless—underlie the legalized conflicts that give shape to the history of modern property law. Lawyers can learn to fight and innovate on a seemingly safe terrain, because for the most part they leave the really serious stuff alone, all the while reproducing those shared understandings even as they change the surface of the law. Contingency may rest on not asking the harder questions. And so we find ourselves returning to Blackstone’s ambivalent paragraph, to his uncertainty about what we actually know when we say we know property law. No book, though, can do everything, and Stuart Banner’s does much. Every secret is not revealed, but some things are: how American lawyers and judges have talked and argued about property law, and how their talk and argument have shaped what it is. That’s enough secret knowledge for one book.

Impossible to Tell

by JEREMY BASS

Is there a poet more visible in contemporary American culture than Robert Pinsky? In addition to receiving many well-deserved awards, Pinsky has placed himself before the camera’s eye more often than most writers, let alone poets, appearing on both The Colbert Report and—as himself—in an episod of The Simpsons. His role as unofficial ambassador of poetry is not without justification: the only US poet laureate appointed to three consecutive terms (1997–2000), Pinsky dedicated much of his initial time in the post to establishing the Favorite Poem Project, a multimedia venture that invites Americans of all cultural persuasions to read, record and discuss their favorite poems (favoritepoem.org). The project was fostered by two ideas Pinsky had been exploring in his critical writing for decades: that “poetry is a vocal, which is to say a bodily, art,” and that it is a fundamentally social, and therefore political, act. The Favorite Poem Project received some 18,000 submissions during a one-year open call and logged, in response to a collection of fifty videos, some 25,000 letters. Its success has disproven many theories about the irrelevance of poetry in the wider culture, even as the project takes the considerable risk of making a poem’s relevance seem solely a function of its popularity. The project has also provided substance for Pinsky’s claim, in his prose collection Poetry and the World (1988), that “the true political component of poetry is the sense of whom the poem belongs to.”

Pinsky’s Selected Poems shows that being popular doesn’t entail being predictable. This new volume does what any good Selected should do: present a vision—carefully shaped by its author—of the trajectory of

Jeremy Bass (www.jeremybass.net) is a musician and poet based in New York City.
that poet's career. But Pinsky's approach is somewhat unusual: the selections from his early books are scant and have been placed at the back of the volume, while those from his recent work are more plentiful and, placed at the front, receive a proportionately greater amount of emphasis. Pinsky has also included sections culled from some of his recent sequences, presenting what feel like new poems, altered by their changed context. While intrusive in a larger sense, this deliberate reshaping is salutary, providing a fresh, invigorating look at a poet whose work has become so familiar that it can be easy to forget how idiosyncratic and downright strange his recent poems are, and how distinct his early work was at the time of its inception.

We “all dream it, the dark wind crossing/ The wide spaces between us,” ends Pinsky’s first poem from his first collection. The poem is appropriately titled “Poem About People,” and the volume is called Sadness and Happiness (1975). Pinsky's strongest work has a rough, musical vibrancy that makes these titles sound drab, but it is important to remember the aesthetic disposition of the era in which he first began writing. Robert Lowell still dominated the poetic landscape, and imitators of confessional and Beat poetry proliferated, saturating the field until the more egregious tendencies of each had become period styles. “It is all bosh, the false/Link between genius and sickness,” came Pinsky’s rebuttal, in “An Essay on Psychiatrists,” to the confessional and Beat cults of personal suffering. At the same time, in response to the flabby and nearly ubiquitous free verse of the day, he often wrote in unhurried iambic pentameter. In the same poem, Pinsky delivers a restrained elegy for his early mentor at Stanford University, the poet and critic Yvor Winters:

He drank wine and smoked his pipe more than he should;  
In the end his doctors in order to prolong life  
Were forced to cut away most of his tongue.  
That was their business. As far as he was concerned  
Suffering was life’s penalty; wisdom armed one  
Against madness; speech was temporary; poetry was truth.

Aside from this stirring poem, Pinsky would take two important lessons from his time at Stanford with Winters: an unFashionable belief that “prose virtues… Clarity, Flexibility, Efficiency, Cohesiveness” are essential to a poet’s technical repertoire; and an openness to the available traditions of poetry, to work by poets other than his like-minded contemporaries, no matter where they fell on the stylistic or political spectrum.

Sadness and Happiness was followed a year later by a book of criticism, The Situation of Poetry, in which Pinsky attempted to transcend polemical arguments about aesthetic and social divisions in the poetic canon by emphasizing the availability of a rich and varied tradition. In that book he also used the term “discursive” to describe poems that prize a sense of verbal and conceptual motion—“neither ironic nor ecstatic”—as a way of conveying the impression of a mind or sensibility at work: the movement between images and ideas is as important as the components themselves. In Pinsky’s view, this mode of discourse makes for “some of the most exciting, overwhelming moments” in poetry, “when a poet breaks through into the kind of prose freedom and prose inclusiveness [and] claims the right to make an interesting remark or to speak of profundities, with all of the liberty given to the newspaper editorial, a conversation, a philosopher, or any speaker.” In this context, Pinsky's second volume of poetry, An Explanation of America (1980), seems almost inevitable: a discursive, book-length poem that attempts to encompass the diverse array of forces, both historical and personal, that have shaped the formation of the country (as well as Pinsky’s poems). Part of what is so pleasing about Pinsky’s Selected is that it neither skips over this period in his career nor dwells on it longer than necessary. In retrospect, however, Explanation seems more a necessary lengthening of breadth and scope that made possible History of My Heart (1984), The Want Bone (1990) and The Figured Wheel (1996).

In the great poems from these books—“The Figured Wheel,” “History of My Heart,” “Shirt,” “At Pleasure Bay,” “Ginza Samba,” “The City Dark” and “Impossible to Tell”—Pinsky forged his mature style, a poetry that blends social and musical ambition in an inimitable and polyphonic manner. Pinsky has documented his love of jazz and the saxophone in many of his poems and essays, and his best poems often feel—however carefully planned—like the most exquisitely timed solos. The statement of a theme, followed by a variation; the theme repeated, a fourth higher; then another variation, interwoven with and yet branching off from the underlying pattern; the melody veering into the near stratosphere before pulling back again as the riff returns; a flurry of notes, unexpected and yet seemingly inevitable, signaling the solo’s end. Throughout “Impossible to Tell,” from The Figured Wheel, the title phrase is used in much the same way a composer would use a primary theme:

Impossible to tell his whole delusion.  
In the first months when I had moved back East  
From California and had to leave a  
message

On Bob’s machine, I used to make a habit  
Of telling the tape a joke; and part-way through,  
I would pretend that I forgot the punchline,  
Or make believe that I was interrupted—  
As though he’d be so eager to hear the end  
He’d have to call me back. The joke was Elliot’s,  
More often than not. The doctors made the blunder  
That killed him some time later that same year.  
One day when I got home I found a message  
On my machine from Bob. He had a story  
About two rabbis, one of them tall, one short,  
One day while walking along the street together  
They see the corpse of a Chinese man before them,  
And Bob said, sorry, he forgot the rest.  
Of course he thought that his joke was a dummy,  
Impossible to tell—a dead-end challenge.
Each time the title phrase returns, it is changed by its context and presentation. Though the words “impossible to tell” are always the same, they ring—much like a similarly varied refrain from “At Pleasure Bay”—“never the same way twice.”

Other poems from this period unfold in a similar but subtler fashion. “Shirt” uses a recurring rhythmic pattern to stitch to the actual physical components of a shirt—“The buttonholes, the sizing, the face, the character/Printed in black on neckband and tail”—such disparate events as the Triangle Shirtwaist Factory Fire, George Herbert’s love affairs with African slaves, the plight of Scottish and Malaysian factory workers, and a phrase from Hart Crane’s The Bridge (“shrill shirt ballooning”). “History of My Heart” harnesses much of the same rhythmic propulsion but relies more on the interlacing of stories to generate its structure. The poem, a watershed when it was published, illustrates Pinsky’s most common compositional approach: divergent strands are woven around a central theme, creating a mosaic of historical fact, lyric description and personal history. No particular theme or image receives greater emphasis than another, any more than one note in a musical phrase or composition receives more weight except in the role it plays in creating the greater whole. These poems are deeply personal yet openly intelligible, steeped in history and the culture of the day. To a mind receptive to the strengths of Shakespeare as well as Eliot, Ginsberg as well as Keats, autobiographical material would seem no more or less important than a historical battle or the construction of a bridge; neither would be worth throwing away in favor of the other.

After the release of The Figured Wheel, which won the Academy of American Poets’ Lenore Marshall Prize and was nominated for the Pulitzer, Pinsky was appointed poet laureate. Jersey Rain, published three years later, drew on earlier strengths but signaled a shift into new territory, the boundaries of which were not immediately clear. The poems in Jersey Rain were both shorter and longer in scope, more fragmented and more discursive at the same time. “Samurai Song” seems to build its tense, clipped tercets from the lyrics of a half-forgotten song—“When I had no eyes I listened./When I had no ears I thought./When I had no thought I waited”—while “An Alphabet of My Dead” uses alphabetic ordering to generate a series of prose poems almost ten pages long. “Vessel,” an ode to the poet’s body as it falls asleep, is written in off-rhymed, near-pentameter couplets. Far from seeming long-winded or forced, these poems attest to Pinsky’s continued exploration of forms both invented and traditional, as well as the principle that one mode—free verse or couplets, prose poem or song—is ultimately just as arbitrary, and indispensable, as another. The dense texture of these poems, such as “The Green Piano” (“Aeolian. Gratis. Great thunderer, half-ton infant of miracles”), creates an increasingly supple and powerful music while blending outer and inner worlds. If Pinsky began his career by writing elegant, loose, discursive poems, his later poems seemed to be aging into a powerfully concentrated mix of styles:

Stone wheel that sharpens the blade that mows the grain.
Wheel of the sunflower turning, wheel that turns
The spiral press that squeezes the oil expressed
From grain or olives. Particles turned to mud
On the potter’s wheel that whirls to form the vessel
That holds the oil that drips to cool the blade.

Gulf Music, Pinsky’s most recent volume, is an unexpectedly dense and seemingly chaotic collection. One of its best pieces, “Rhyme,” which opens Selected Poems, seems to have whirled out of the knotted, cyclical works of Jersey Rain: “Air an instrument of the tongue,/The tongue an instrument/Of the body, the body/An instrument of spirit,/The spirit a being of the air.” In others, such as Gulf Music’s title poem, the interweaving of worldly and personal history recalls Pinsky’s most memorable work: “The hurricane of September 8, 1900 devastated/Galveston, Texas…. Eight years later Morris Eisenberg sailing from Lübeck/Entered the States through the still-wounded port of Galveston.” But instead of threading these strands on recurring phrasing or intertwined plots, Pinsky uses pure sound—the mimicking of musical sounds (“walla whirledy wah,” “bawa”) first aired in his poem “Ginza Samba”—to shift from story to story. He even begins the poem with a couplet of pure noise: “Mallah walla tella bella. /Trah mah traah-la, la-la-la./Mah la belle. /Ippa Fano wanna bella, wella-wah.” The source of his strange syllable-sounds is the music of Henry “Professor” Longhair, an early New Orleans blues musician whose story is also mentioned alongside Pinsky’s grandparents, Texas hurricanes and TV shows. In Gulf Music, Pinsky’s use of music and fragmentation brings the poems to a near incantatory pitch, almost song, an achievement that paradoxically makes his earlier poems—though no less important or impressive—seem almost traditional, as if they had already become part of an accepted poetic vocabulary that Pinsky was forced to challenge again in his own lifetime.

Ever alert and responsive to shifts in idiom and formal innovation, Pinsky often writes in his latest work as though he were taking cues from a younger generation of poets who, in turn, were influenced and inspired by him. The success of poems like “Poem With Lines in Any Order” and “Poem of Disconnected Parts,” both from Gulf Music, hinges on their ability to strip away and deliberately obfuscate narrative in a manner that feels engaging and pleasurable, rather than contrived. In this they are unlike much contemporary poetry, which displays a similar athletic ability with language alongside innovative, imaginative thinking, but is often more overwhelmed by its materials than master of them. This failure, I think, arises from the fear of making a statement, from the aversion of poets to hold themselves accountable for the dialogue initiated by the materials, tenets and tendencies of the day. Statements are risky and unstylish still. But Pinsky long ago set out to claim “the right to make an interesting remark or to speak of profundities.” What is admirable about his work is that he is able to reach for profundities in a way that neither negates the enduring power of the lyric nor sounds inflated or portentous. Any technique he applies toward this end—destabilizing the central speaker, using sound as a structural principle, focusing on the lens culture and history, experimenting with compositional structures—is grounded in the desire to communicate more forcefully with an audience assumed to be listening. (“I have always assumed unconsciously that people want poetry,” Pinsky says in an essay from Poetry and the World.) The fierce conviction that we find poems “as necessary as food” anchors Pinsky’s virtuosity in what Frank Bidart has called the “radical given”: the reason behind the speaker’s need to speak, a poem’s reason for existing.

Selected Poems charts the course of a varied, prolific and still evolving career. Here is proof, bound in a single cover, of a lifetime’s singular achievement: Pinsky’s poems offer a liturgy for our culture and time, the scrolls in which our shared history and art, our joys and our griefs can be divined. Incantatory and songlike, yet imbued with the communicative clarity of prose, these poems fulfill what Pinsky calls “our social responsibility as poets”: to carry on the music of the dead, to bear witness to what we see, and to make the unpoetic poetic for generations to come.
## Puzzle No. 3245

**Joshua Kosman and Henri Picciotto**

### Down

1. Steps clumsily around remnant of fire and starts to fall (10)
2. Tormentor is born near capital of Latvia, amid Communist uprising (7)
3. Inflexible back (5)
4. and 21. Accident with whammy bar on some electric guitars? (6,6)
5. Limits of HBO series going into kinky sex (8)
6. Eleven bats surrounding animal doctor like a beloved rabbit (9)
7. What some people want to do to Obama: sway, convert, etc. (7)
8. Slippery eels, otherwise (4)
9. Depicts, ultimately, under false pretenses (10)
10. Love to hide new gown inside a shirt (9)
11. Hides treasure on the periphery in shady recess (8)
12. They say Mary Jane will cajole (7)
13. Flatten dedaredevil was first outside (7)
14. The one-thousand-and-fifth letter: in this puzzle, it’s E (5)
15. I heard you were a pitcher (4)

### Across

1. Dispatches from Suez: nudes, oddly (5)
2. Type of poetry: loud, flip, infused with energy (4,5)
3. Young alien interrupts groom (7)
4. Tormentor is born near capital of Latvia, amid the limits of HBO series going into kinky sex (8)
5. Slippery eels, otherwise (4)
6. Eleven bats surrounding animal doctor like a beloved rabbit (9)
7. What some people want to do to Obama: sway, convert, etc. (7)
8. Slippery eels, otherwise (4)
9. Depicts, ultimately, under false pretenses (10)
10. Love to hide new gown inside a shirt (9)
11. Hides treasure on the periphery in shady recess (8)
12. They say Mary Jane will cajole (7)
13. Flatten dedaredevil was first outside (7)
14. The one-thousand-and-fifth letter: in this puzzle, it’s E (5)
15. I heard you were a pitcher (4)

### Solution to Puzzle No. 3244

<table>
<thead>
<tr>
<th>ACROSS</th>
<th>DOWN</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 PRO-PAGAN D.A. DOWN 1 PRE-ACHING 2 (a)Ome + LET’S 3 2 def. A + LIEN (rev.)</td>
<td></td>
</tr>
<tr>
<td>6 hidden in SIN 5 DISCO + VERY 7 OCANADA</td>
<td></td>
</tr>
<tr>
<td>13 MEAN + T 14 anag. “lion weight” 18 anag: 20 CAS (rev.) + TV</td>
<td></td>
</tr>
<tr>
<td>22 M(O)RON (rev) 23 D(rippin)GIS</td>
<td></td>
</tr>
<tr>
<td>26 fle(a) anag: 27 anag: 28 HAL + O</td>
<td></td>
</tr>
<tr>
<td>B(S)OME + A(B)E + A(T)E</td>
<td></td>
</tr>
</tbody>
</table>

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Kosman & Picciotto explain “How to Work *The Nation’s* Cryptic Puzzles” at thenation.com/puzzle-rules. Their blog, Word Salad, can be found at thenation.com/blogs/word-salad.
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