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Iraq: The Case for Immediate U.S. Withdrawal

JOANNE LANDY

IT'S HARD TO SEE HOW the Bush administration is going to win the war in Iraq. Despite all the official bravado, a cloud of doom is descending on the White House, and with good reason: international outrage is mounting at U.S. behavior at Abu Ghraib prison and throughout Iraq, more and more Americans are concluding that the war is going badly, and Iraq is proving uncontrollable with reports, in May, that only 35 percent of Iraqis want U.S. forces to stay. ("The State of Iraq: an Update" by Adriana Lins de Albuquerque, Michael O'Hanlon and Amy Unikewicz, *New York Times*, May 16, 2004.)

Shamelessly, after so much vilification and ridicule of the United Nations, the administration is now hoping that the appearance of UN control can rescue its war. Yet, as the *New York Times* pointed out in describing the selection of the interim Iraqi government, UN control is illusory: "... it has become clear that the United Nations special envoy, Lakhdar Brahimi, played a secondary role in setting up the new government. People close to the envoy say the choices, especially that of the prime minister, Iyad Allawi, were essentially negotiated between the United States and the Iraqi Governing Council, which the occupation authorities put together last year." ("Iraq's New Government Faces Bargaining Over Its Power" by Steven R. Weisman, posted on the *New York Times* website June 2, 2004.)

Will Congress continue to serve as a handmaiden to the war effort, and will the American people permit this war to continue? So far, Congress is going along with the administration; as we go to press it is in the process of disgracefully acquiescing in Bush's request for $25 billion more for the war. At the same time, however, popular support is falling precipitously. A *Newsweek* poll reported in early May that approval of Bush's handling of Iraq has dipped to 35 percent, compared with 44 percent in April. Some 57 percent of respondents said they disapprove.

This is a critical time. While the majority of Americans are not likely in the next few weeks to favor the complete withdrawal of U.S. troops from Iraq, people are starting to consider the option seriously. But to turn this questioning trend into massive popular opposition to administration policy, we in the peace movement have to make the case against keeping U.S. forces in Iraq. The American public certainly hasn't heard any talk of withdrawal from John Kerry, who has spoken essentially about ways to salvage the operation: send 40,000 more troops and "internationalize" the situation while leaving U.S. forces in control. Kerry in effect advocates reconstituting the coalition that conducted the 1991 Gulf War with the imprimatur of the Security Council, which gave the U.S. war crucial cover. *New York Times* columnist Tom Friedman, as usual, has put the argument succinctly and baldly: "The deeper we try to penetrate Iraqi society, especially with tanks and troops, the more legitimacy we need." (April 11, 2004)

Notably, Bush himself is reluctantly coming

JOANNE LANDY *is co-director of the Campaign for Peace and Democracy and a member of the* New Politics *editorial board.* *The author wishes to thank Thomas Harrison and Jesse Lemisch for their assistance in writing this article, and Stephen Shalom for his comments on an earlier draft. The views expressed are her own. In particular, not all of the journal's editors are in agreement about the potential role of the United Nations.* *Her e-mail address is jlandy@igc.org.*

to adopt something akin to Kerry's view of the need for UN cover. Today, Kerry is willing to grant more concessions than Bush on giving marginally greater say to the UN and the other great powers, and on sharing the bounty of reconstruction contracts with other powerful countries — but as the United States' stark position becomes more untenable, Bush may well be willing to make similar concessions in order to preserve the essence of U.S. control.

A fundamentally new U.S. foreign policy could prevent a repeat of the awful scenario unfolding in Iraq today.

The war against Iraq was wrong, first and foremost because it constituted an expansion of U.S. imperial power, but also because of the economic, political and military straitjacket it would predictably impose on the Iraqi people. If the Iraqis themselves had overthrown Saddam Hussein, they might have created opportunities for building a truly democratic state responsive to the needs of the population — though of course there is no guarantee that this would have been the outcome of an internal revolt against the Baathists. The Bush administration's action, however, replaced Saddam Hussein's dictatorship with a governing council wholly accountable to the United States, with members to be added, replaced or fired at will, and designed to carry out U.S. policies on all essential matters.

Meanwhile, the United States intended all along to keep tens of thousands of troops in Iraq long past any formal handover of "sovereignty" in order to insure the perpetuation of its domination of Iraq and strengthen its military presence in the region. The kind of democracy the administration anticipated for Iraq was at best a government managed by compliant pro-U.S. politicians, with formal elections but little or no effective challenge from grassroots unions, independent human rights and social justice organizations, or democratic left-wing political parties. Now it is questionable whether even such a show democracy will actually be allowed, though it is still possible.

The Bush administration's repugnant plan for empire is proving to be a spectacular failure. It would appear that many Iraqis were initially ambivalent about the U.S. occupation, resenting foreign domination while also hoping, mostly out of desperation, that the United States might bring a measure of law and order and some democratic freedoms. Over time the occupation has become increasingly unpopular and now more and more of even the previously uncertain are turning against it. At the same time, throughout the Middle East and the Muslim world generally, popular hatred of the United States, along with a craving for revenge, is growing exponentially. As the United States becomes known as more brutal, torturing prisoners and lashing out not only against the insurgents but also against thousands of Iraqi noncombatants, the most authoritarian and theocratic elements in Iraqi society are strengthened because they seem to be the only ones willing and able to confront the United States. A May poll in Iraq indicating that Moqtada al-Sadr's popularity has surged reveals how the United States has increased the attraction of repressive fundamentalists. ("Iraqi poll shows big jump in support for rebel cleric Sadr," by Roula Khalaf, *Financial Times*, May 20, 2004.) An example of the power fundamentalists have gained under the occupation is the University of Basra, where the *Financial Times* reports that if a female student "wants to attend her classes, she is forced to cover her head with a hijab or risk the wrath of Shia extremists, backed by armed militias, who are intimidating students across the campus." ("Female students taught harsh lessons," by Lina Saigol, *Financial Times*, May 13, 2004.)

The campaign to win the American public over to a policy of immediate withdrawal is critical because while a U.S. victory in Iraq seems highly unlikely under either Bush or Kerry, the

war can be drawn out for months or even years, with the attendant deaths of tens of thousands of Iraqis and thousands of Americans. Those of us who advocate immediate and total withdrawal of U.S. troops are told that doing so will jeopardize Iraqi freedom, but in fact the dynamic is exactly the opposite. The only way the people of the United States can act to end this symbiotic syndrome in Iraq — in which retrograde elements in Iraq feed off of the brutality of the U.S. occupation, while the occupation legitimizes itself by pointing to these retrograde elements — the only way we can enhance the possibility, however remote, of secularism and democracy in that country, is to force the U.S. government to withdraw its troops.

Beyond that, the United States could help prevent a repeat of the awful scenario unfolding in Iraq today by undertaking a new, economically egalitarian, and democratic foreign policy — a keystone of which would be an end to the United States' one-sided support for Israel and de facto hostility to the demand of the Palestinians for their own state. Only such a foreign policy would have a real chance of promoting popular resistance to dictators like Saddam Hussein and political Islamic fundamentalists like Osama bin Laden or Moqtada al-Sadr. Of course, changing U.S. foreign policy in such a basic way would require deep changes at home; corporate capitalist America, under either of the two parties, is incapable of pursing a consistently democratic and just foreign policy. We need an independent progressive mass party, free of corporate control and, ultimately, a socialist America. An important step towards this goal is building a movement for a new foreign policy. Such a peace movement could win important specific victories — like forcing a withdrawal from Iraq — while learning from its experience and educating others about the limits of reform in both domestic and foreign policy spheres as long as capitalism holds sway.

The Bush administration and many leading Democratic Party politicians say that the U.S. cannot just "cut and run," that "failure for the United States in Iraq is not an option." The defenders of U.S. empire do indeed have an investment in being "bitter enders," because they understand that the ability of the United States to exert its power globally will be undermined by a defeat in Iraq. The rest of us, however, have no such stake in continuing this nightmare.

Many progressives believe that the United Nations can resolve the Iraqi crisis in a positive way. In general, however, it is highly improbable that the UN can stand up for social justice and true democracy since it is dominated in the Security Council by countries that have a deep interest in preserving the unfair global status quo. Any one of the five permanent United Nations Security Council members — the United States, Britain, France, Russia or China — can veto any initiative, though usually council members defer to the U.S. as the pillar of the established global order. The council departed from this pattern when it refused to give the U.S. a rubber stamp for the second Gulf war, but despite the reservations of many key countries about the brazen way that the U.S. is trying to manipulate the Iraqi government, the UN is extremely unlikely to actually act to prevent the U.S. from completing its construction of 14 permanent military bases in Iraq and keeping its troops in the country. Nor is it likely to challenge the behind-the-scenes U.S. domination of Iraq by the more than 100 American advisers inserted into the country's governing institutions.

An indication of the Security Council's compromised position is that it has done nothing to challenge the neoliberal economic policies imposed by the U.S.-appointed Iraqi Governing Council, such as privatization of the country's economy and a 15 percent ceiling on taxes. Nor did the council utter a word of protest when in July 2003, U.S. troops attacked members of the Union of the Unemployed engaged in peaceful protests against U.S. military and corporations' treatment of the jobless, or when leaders of the Union were arrested in August 2003. Truly free elections in a truly democratic Iraq would likely result in a mandate for withdrawal of all foreign occupying forces, a reversal of Paul Bremer's Chicago-style economics, and an insistence by the

Iraqi people that they have a right to control their own resources. Yet the UN looks prepared to give its blessing to a "transition" that will keep thousands of U.S. troops in the country, in a position to exert overwhelming power and influence over the forthcoming elections and Iraqi political life. Moreover Brahimi and the UN have not blocked the United States' backdoor work to preserve its power under the new caretaker government. *The Wall Street Journal* reports:

> As Washington prepares to hand over power, U.S. administrator L. Paul Bremer and other officials are quietly building institutions that will give the U.S. powerful levers for influencing nearly every important decision the interim government will make. In a series of edicts issued earlier this spring, Mr. Bremer's Coalition Provisional Authority created new commissions that effectively take away virtually all of the powers once held by several ministries." ("Behind the Scenes, U.S. Tightens Grip On Iraq's Future" by Yochi J. Dreazen and Christopher Cooper, *Wall Street Journal*, May 13, 2004.)

Given the UN Security Council's current role as accomplice to the U.S. in Iraq it would be naïve to expect it, if it were given greater authority, to suddenly change course and promote a vibrant democracy that could totally expel the United States, even though many of the Security Council's members may well wish to diminish somewhat the extent of U.S. power.

One need not support the Iraqi forces currently leading the fight against the United States to favor immediate and complete withdrawal of U.S. troops. Though accurate facts about the military confrontation are hard to come by, and we certainly have no reason to trust American claims, it is quite possible that the anti-U.S. struggle has been captured, at least for now, by viciously reactionary elements — Baathists and political Islamic fundamentalists, the latter bent on installing a repressive religious order on the country. But whether or not reactionaries have achieved control of the antioccupation struggle (and we hope that they have not), the realities in Iraq reveal the gap between the fantasy of a benevolent superpower and the actual role that the United States plays in strengthening the opponents of the trade unions, women's groups, secular forces and human rights organizations that are the only hope for a democratic Iraq.

Some former antiwar activists say that however they might have felt about going into Iraq in the first place, the United States can't now just abandon the country, and that the demand for withdrawal of American troops should be postponed until there is some assurance of democracy and security there. Some have retreated from calling for immediate withdrawal to calling for withdrawal "at the earliest possible moment," which leaves room for prolonging the occupation indefinitely since the criteria for "possible" are quite ambiguous. To adopt this approach would be to fall into a trap, to make a terrible mistake analogous to the debilitating call of some in the antiwar movement at the time of the Vietnam War for "negotiations" rather than immediate withdrawal. The peace movement today needs to go to the American people and convince them that, directly contrary to the arguments given by the Bush administration and its supporters in both parties for staying in Iraq, the only hope for beginning to strengthen the struggle for democracy and security in that country lies in bringing the troops home now. Beyond Iraq, successful popular pressure for immediate withdrawal could be the beginning of a movement for a new, democratic and nonimperial U.S. foreign policy that would be in the real interests of both the American people and the people in the rest of the world. What a joy that would be!

June 2, 2004

The November election poses a dilemma for leftists. Both major parties embrace the agenda of corporate America. Neither challenges the assumptions of American empire, and politics as usual will be followed by a Washington regime that will be at best agnostic toward the needs of progressive social movements if not hostile to it. Against this, Ralph Nader is again launching a crusade against both parties. But the Republican administration of George Bush is seen by many as a seismic step to the right, leading even such an inveterate radical critic as Noam Chomsky to declare his support for the Democratic candidate. Three editors of New Politics *— Stephen Shalom, Thomas Harrison, and Michael Hirsch — offer three perspectives on the difficult choices faced by the left. Readers are invited to respond.*

In Defense of Tactical Voting (Sometimes)

STEPHEN R. SHALOM

I AM GOING TO MAKE an argument for voting for the lesser evil, not always, but sometimes, and in particular this time — in some states. Maybe.

Let me immediately make some stipulations to save pointless posturing. I accept as self-evident that the Democratic Party is a capitalist party and beholden to corporate interests. It is a party of empire. The Democratic Party will not lead us to socialism and only socialism offers a long-term solution to our problems. In short, the Democratic Party is evil — if it weren't, the question of voting for the lesser evil would not arise.

Now not everyone on the left who thinks the Democrats are evil agrees that they are the *lesser* evil. One version holds that the two parties are equivalently evil, that their policies are indistinguishable. After all, didn't the Democrats vote for the Patriot Act and the Iraq war, didn't Clinton gut welfare and push through a repressive crime bill? But there are two flaws in this claim of equivalence.

First, as a matter of simple logic, to show equivalence between the two parties it's not enough to show that on some issues or even on many issues the two parties have the same position. Equivalence means that they are the same on all issues, not just some. For all their similarities, the two parties *don't* have the same position on abortion, on affirmative action, on same-sex marriage, on the minimum wage, on environmental protection, on overtime pay, on taxation, on resuming nuclear testing, and a host of other issues. Yes, of course the Democrats' position on these issues is not what we would want them to be — remember the stipulation: they are evil — but sustaining *Roe v. Wade* is better than reversing it, even if the Democrats won't push for public funding for all reproductive health care, and indeed for all health care. Opposing a constitutional amendment enshrining heterosexual marriage is better than favoring such an amendment, even if most Democrats won't endorse same-sex marriage. And so on.

One could argue, of course, that even though the Democrats and the Republicans are not identical, the differences are so minor as to be *essentially* equivalent, if not actually equivalent. That is, the differences don't matter. But think about the implications of this argument. This argument

STEPHEN SHALOM *is a member of the* New Politics *editorial board. He is the author of* Which Side Are You On? An Introduction to Politics *(2003).*

means that we are saying to African Americans "it doesn't matter to us, it is of no consequence, whether or not you have jobs"; we are saying to women "it doesn't matter to us, it is of no consequence, whether or not you have the right to safe and legal abortions"; we are saying to the poor "it doesn't matter to us, it is of no consequence, whether or not you get overtime pay or an increased minimum wage." Yes, one could object that this isn't what is being said — that's what's actually being said is that *compared to what's really needed*, these minor reforms are irrelevant. But small reforms can mean an immense reduction of human suffering today, while we're waiting for the promise of more thorough-going change in the future. For people living on the edge — as so many are under modern capitalism — the differences between having the right to legal abortion or not, an increased minimum wage or not, less arsenic in drinking water or not — are not at all irrelevant, and may indeed be matters of life and death.

Moreover, consider the implications for our political work of the claim that the differences between the parties are meaningless. If we truly believed that the parties were the same, then we'd also believe that all those progressives working for abortion rights, or defending affirmative action, or working to increase workers' benefits, or protecting the environment were wasting their time. Not just that as liberals — without an understanding of the necessity for socialism — they don't fully appreciate the limits of the reforms they seek. But that their work is literally irrelevant. Certainly this hasn't been the approach of *New Politics*. Twice a year we publish a 200-page issue and if all we needed to say was that the problem is the lack of socialism and the solution is socialism, we could save ourselves a lot of unnecessary editorial work.

Some argue that the difference between Republicans and Democrats is that the former are open about their desire to subordinate all to the rule of capital, while the latter have the same goal but cover it better with humanitarian rhetoric. Better to have the up-front reactionary — goes the argument — rather than the disguised reactionary. At least you know what you're getting and can better confront it.[1] If every difference between Democrats and Republicans were entirely cosmetic, then this argument would have some force. But the differences are not entirely cosmetic. If the way the Democrats try to "sugarcoat" capitalism is by paying a higher minimum wage or making taxes less regressive, then let us have sugarcoating. Of course our job as leftists is to point out the inadequacies of that sugarcoating and to push for more — but not to tell people to reject the higher minimum wage or more progressive taxes because they're just cosmetic. I assume if we can convince workers that having more money is a cosmetic irrelevance, then we can convince them as well that even as they accept small reforms, they should fight for more.

There is a second flaw in the argument that says Democrats and Republicans are indistinguishable given examples like the Iraq war and the Patriot Act. While it is true that the Democrats behaved abominably, spinelessly — you can fill in the adverbs — it is not obvious to me that the outcome would have been the same had the Democrats had more power.

In the case of Iraq, a majority of Democrats in the House of Representatives opposed the war resolution of October 2002.[2]

In the Senate, a majority of Democrats (including Kerry) voted for the resolution, but a majority of Democrats (again including Kerry) also voted for an amendment that would have made war difficult to wage, limiting the authorization to permit war in case of "imminent threat" to the United States, rather than of "the continuing threat."[3] More to the point, it seems extremely unlikely that the war would even have been proposed under a Gore or Kerry presidency (given that it probably wouldn't have been proposed even under a mainstream GOP administration, such as that of Bush senior).

The Patriot Act probably would have passed under any Democratic or Republican president, but the fact that Kerry now wants to amend the legislation in a less repressive direction while Bush wants to extend it in a more repressive direction does not suggest equivalence.

And on the Bush tax bill, where House Re-

publicans were unanimously in favor, Democrats were more than 5-1 against.[4]

So I don't think we can accept the claim of Howie Hawkins that "the majority of Democrats in Congress today are voting in support of Bush's economic and military initiatives," with only "a left fringe" of "about 25 representatives" who are opposed to the bipartisan consensus.[5]

I've heard some leftists argue that both the Bush administration and the Democrats want the United States to rule the world, the only difference being that where the Bushies want to use brute military force to achieve this goal, the Democrats want to use the institutions of global capitalism — the World Trade Organization, the International Monetary Fund, and so on — to achieve the same end. But is the difference between these two approaches really of no concern to radicals? Was the multi-million-strong antiwar movement irrelevant because it tried to stop the war rather than demanding an end to corporate globalization? The latter should be our long-term aim, of course, but stopping a war in the meantime is hardly inconsequential.

Some leftists argue that if we're interested in supporting the lesser evil, the lesser evil is Bush, not Kerry. This argument has two variations. One holds that our best hope for fundamental change is for things to get worse; the second holds that Democrats can enact certain awful policies that Republicans can't get away with. Let me consider each of these in turn.

Gabriel Kolko has suggested,[6] and Alexander Cockburn seems to have endorsed the idea,[7] that the most serious blow against the U.S. empire has been struck by the incompetence and overreach of the Bush administration, alienating its allies as it pursues its unilateralist course. Therefore, if we want to see the empire brought down, we ought to favor the continuation of these self-defeating policies, rather than the more careful and considered imperial policies of a Kerry, policies that might prolong the long-term viability of the empire. This position has two serious weaknesses.

First, it overstates the degree of predictability in human affairs and understates the current dangers. Overreaching sometimes gets its comeuppance, but sometimes it leads to disaster — as discovered by the German Communist Party with its slogan of "after Hitler, us." In a world of nuclear weapons, the militarization of space, and potential environmental catastrophe, we can't afford too many more disasters. Kolko writes "As dangerous as it is, Bush's reelection may be a lesser evil because he is much more likely to continue the destruction of the alliance system that is so crucial to American power." Sure, it may turn out to be the lesser evil, but given the danger that Kolko acknowledges, do we really want to take the chance?

The second problem with the Kolko approach is that it requires us either to be extremely dishonest (publicly opposing war and violence while secretly welcoming every unilateral U.S. bomb dropped) or to appear extremely lunatic (publicly calling for reckless military adventures). Neither seems a winning strategy for the left.

The second variation of the argument that claims the Democrats are actually the *greater* evil points to various policies in history that were enacted by the *less* disposed party because there would have been too much opposition if the *more* disposed party had tried to do so. Nixon was able to make an opening to China because his long record of fanatical anti-Communism shielded him from the right-wing opposition that any Democrat would have faced. Menachim Begin was able to sign the Camp David peace agreement with Egypt because he — unlike the Labor Party — could never be accused of being soft on the Arabs. And Clinton could sign a welfare "reform" bill that, had it been proposed by a Republican, would have elicited a storm of outrage from liberals. There is something to these examples, but their significance can be overstated. Take the welfare bill. In the Senate, Democrats split 25-21[8] in favor of the bill, and in the House Democrats were divided 98-98[9] — quite likely more affirmative votes than if a Republican president had tried to pass the bill. But since all 53 Republican Senators and 230 out of 232 Republican Representatives — majorities in both Houses — voted yea, there's no reason to think a Republican president wouldn't

have gotten his way. Or that the contents of the bill wouldn't have been even worse.

GIVEN THE ARGUMENTS I have raised, why shouldn't we all become Democrats? Why shouldn't we devote our hearts and souls to the Democratic Party? The reason is simple: we are radicals; while we want to achieve whatever small, short-run gains we can for people who are suffering, we know how much suffering will still remain and how only fundamental social change offers any hope of seriously addressing the problems we face. If we put all our efforts into supporting the lesser evil then we have no effort left to eliminate evil. As radicals we inevitably face a trade-off between achieving short-run modest improvements and working for the thorough-going changes we know are necessary. There are several reasons why we need to be building political alternatives to the two-party system of corporate capitalism, why we need to pursue radical change even though we know that today radical change is not immediately attainable.

First, even in bad times, we need to keep radical ideas alive. If future activists have to start from scratch to develop a fundamental critique of existing society and a vision of an alternative, then future change will be that much more difficult. If we falsely encourage people to believe that this Democratic Party band-aid or that liberal program or piece of legislation will solve their problems, then we are misleading them. And we are weakening the case for the long-range fundamental changes that are essential. If we falsely encourage people to believe that John Kerry, for example, has the solution to the problems of war and injustice then we fail in our obligation as leftists to educate people as to the immense limitations of Kerry-style policies.

Second, even in bad times, we need to develop the embryonic institutions and organizations that can later grow and become the vehicles for radical change. Social change doesn't occur in a vacuum; it needs left institutions and organizations to propel it forward. To the extent that our efforts go into building or promoting the institutions and organizations that represent the lesser evil, to that extent we are failing to create the structures for real change. Parties rarely emerge ready to contest state power: it's a long process of building and growing. The process will no doubt involve electoral losses, a painful but necessary step on the path to victory.

Third, it's not just long-run party-building that matters. Most often what determines whether reforms get enacted in the United States is not which of the two main parties officeholders belong to, but the strength of popular movements. It is these movements that forced politicians — Democrats and Republicans — to enact whatever social reforms we do have: labor rights, civil rights, women's rights, and so on. So building these movements must be a central focus of our work.

And fourth, even when our program is currently unattainable, by vigorously promoting it we can often push more mainstream groups further to the left, expanding the boundaries of the possible. Related to this, in conservative times, when the Democrats are invariably moving to the right, pressure from their left may slow or even halt their rightward movement. This benefit, it should be noted, does not depend on any conviction that the Democrats can be induced to become a radical party. The benefit of moving the Democrats modestly leftward is that the result will be marginally less human suffering and marginally more space within which the left can operate.

So what is a leftist to do? There's no automatic formula here. The trade-offs are real, and therefore one has to balance the short-run costs and benefits versus the long-run costs and benefits in each particular situation. If nuclear war or full-fledged fascism were imminent, then it would be mindless moral purism to refuse to address the short-term dangers. If our long-term prospects could be dramatically improved by foregoing short-term benefit, then it would be equally foolish to insist on immediate gratification.

We are faced in the 2004 election with an unusually retrograde Republican administration. It is presiding over one of the largest upward redistributions of wealth in U.S. history, one of the

most serious challenges to civil liberties in half a century, and one of the most aggressive foreign policies in years, made more dangerous by Washington's status as the world's sole superpower. But beyond these distinctions, the Bush administration has been manipulating the political system to entrench its hold on power for years to come. Aside from stealing the 2000 presidential election, it has been gerrymandering Congressional districts to give it a lock on the House of Representatives. The only other time since 1933 that the Republicans have controlled both houses of Congress and the White House was in the first two years of the Eisenhower administration, but at least Eisenhower was checked by an unusually liberal Supreme Court. A Bush victory might give the Busheviks[10] a firm hold on all three branches of government, and the power to make the conservative Supreme Court even worse, as new judges in the image of Scalia and Thomas will be appointed for life-time terms, with long-lasting implications.

Does this mean we should endorse Kerry? No. It is sometimes assumed that the question before us in this (or any) election is which candidate are we to *endorse*, where endorse means vote for, work for, provide funds for, and speak for. To endorse Kerry — whatever its short-term benefits — would come at an immense cost: We would be using our limited time to canvas for Kerry rather than on building radical movements; we would be expending our scarce financial resources on the corporate-backed Kerry rather than on cash-starved grassroots projects[11]; and our message would be the false one of trust in Kerry rather than the radical truth that Kerry and the system are fundamentally flawed. In some extreme circumstances, *endorsing* a Kerry-type might be warranted. But that is not the issue before us. The question, rather, is what we should do for fifteen seconds on Election Day and what we should urge like-minded individuals to do on election day. That is, we can vote for Kerry without endorsing him. We can pull the lever for him (or punch out the hanging chad for him, or whatever) while still, in every other respect working for and speaking for radical change.

Money or energy that is diverted from left projects to the Democrats will hurt the left. Education that soft-peddles the flaws of the Democrats will hurt the left. But how will *a vote* that is diverted in 2004 from some left third party candidate to Kerry hurt us?

1. In some situations, a vote for the Democrat could hypothetically prevent a third party candidate from winning the election. That's not relevant in 2004.

2. A vote for a Democrat could hypothetically prevent a third party from obtaining some crucial proportion of the popular vote that entitles the party to political benefits in the future. Nader didn't come close to doing this in 2000, and it seems extremely unlikely that the Greens will come close in the more polarized election of 2004.

3. A vote for a Democrat could reduce the total going to a third party candidate, thus detracting from the message of that candidate. But, I doubt that the credibility of Nader's message in 2000 would have suffered very much had he received ten percent fewer votes (or that the message's credibility would have been much enhanced if he had received ten percent more votes). On the other hand, those extra quarter million votes might have made a big difference to Gore — not in terms of popular vote, but, if cast in the right states, in terms of winning the election. Put another way, the marginal benefit of a vote for a third party candidate in a winner-take-all system who has no chance of winning is close to zero; while the marginal benefit of that same vote to a major party candidate could be the difference between winning and losing.

Of course, U.S. presidential elections are decided by electoral votes, not by total votes, so the marginal Kerry vote in New York or California in 2004 is worth exactly zero. (Yes, the polls could be wrong, and maybe these states will turn out to be up for grabs, but if so, Kerry doesn't have a chance of winning the election.) Thus, in the "sure" states it makes sense to vote for a third party candidate — better to do something whose impact is close to zero than something whose impact is pre-

cisely zero. But in the close states there is little to gain by voting for a third party — since we can still make our same arguments and build our same organizations and movements, while voting for Kerry.

4. There is a final reason for withholding our *vote* — not just our endorsement — from a Democrat. If we make clear that we will automatically cast our ballots for a Democrat then we play into the Democrats' opportunistic move rightward. In a multiparty proportional representation system, any time a mainstream party moves to the right in an attempt to pick up some middle-of-the-road votes, it is likely to lose a corresponding number of votes to more left-wing parties. But in winner-take-all systems like in the United States, the fact that many voters of left-wing disposition don't want to waste their votes on a third party when they could choose the lesser evil means that the Democrats can afford to move to the right without paying an electoral price. So by automatically voting for the lesser evil we make it more likely that over time the lesser evil will become more and more evil, and perhaps even more evil than the greater evil is today. (The Democratic Party's commitment to the basic principles of the New Deal welfare state, for example, is probably today less firm than was that of the administration of Richard Nixon. Thus, family welfare benefits were nearly twice as high in real dollars in 1970 than they were in 1994, when Democrats controlled the White House and both Houses of Congress[12]; the minimum wage was higher in real terms under Nixon than Clinton.[13])

Now it might be objected that "fortunately" campaign promises don't mean much in the United States, so Kerry is still likely to behave in office better than Bush, even if he campaigns just to Bush's left. This is true: Major party candidates tend to campaign closer to the ideological center than their actual views. But what a politician says during the campaign does place some constraints on the politician's behavior once in office, so keeping candidates from campaigning to the right does matter. And, therefore, we need to be concerned about increasing the costs of their doing so. I will return below to the question of how we can address this concern.

SOME URGE US TO RUN vigorous third party campaigns in every state because the left needs a presidential candidacy in order to reach people with its political message. But having a candidate does not mean that you can participate in debates. Nor does having a candidate mean you are eligible for free television time. Organizations like MoveOn.org have raised money to wage educational campaigns, without being connected to a candidate. MoveOn's ads are increasingly partisan, but if we thought the radical agenda was best promoted through ads, we could do that without having a candidate. The Greens in fact have often done best by building from the bottom up, not from riding the coattails of a national campaign.

There are some who argue that the essential political task is breaking with the Democrats if we want real change. But you only need to "break" with those you've joined with. Voting for a Democrat doesn't mean you've joined them. This is the "endorse" versus "vote for" distinction I made earlier. We also need to break with the wage system. Hopefully, when the left is far stronger than it is currently, working people will take over workplaces and establish an alternative to the wage system. But we don't suggest that people *today* refuse to accept wages. They shouldn't *endorse* the wage system; they should expose its inequities, and work tirelessly to undermine it. But while waiting for the revolution, people shouldn't be asked to forego their wages. Likewise, let us denounce the Democrats and the limits of their liberal policies (not to mention their conservative policies), but there's no reason to forego in the meantime whatever small reductions in suffering might result from voting for the Democrats.

The Democratic Party, it is argued, is the key ideological lynchpin of capitalism, keeping people — our potential allies in the labor movement, the civil rights movement, the feminist movement — from becoming socialists. But I think this argument confuses cause and effect. When there's a problem people naturally seek the simplest solu-

tion, the one that requires the least radical steps, the least disruption to their lives. If there were no Democratic Party people who were dissatisfied with the status quo wouldn't become radicals — they would invent a new liberal party. People will move beyond liberal solutions only when they see them as inadequate. But it is difficult to expose liberal solutions as inadequate when liberals are not in office to try their solutions.

So I'm glad when people move from being staunch supporters of the status quo to becoming advocates of liberal reform — in part because of the marginal benefits of liberal policies and in part because it shows that people are moving in a progressive direction. I believe that when these people try liberal reform, they'll find it lacking, and be open to radical ideas. But some radicals seem to welcome people shifting from the Democrats to the Republicans. Some, for example, cheered the defeat of Democrat Grey Davis in California's recall election because his defeat showed that people were fed up with the Democrats. Yes, they were fed up . . . and they voted for Schwarzenegger, who is worse than Davis. I don't see this as a gain for the left or a demonstration of people's greater political sophistication or an indication that real change is now closer.

When the left *goes into* the Democratic Party, there is indeed a great danger of having to subordinate our message and our politics to those of the corporate-dominated party. But *voting for* is not the same as *going into* the Democratic Party. *Voting for* does not limit our freedom of action or our ability to tell the truth.

It is true that historically many radicals and militants have been bought off by the Democratic Party. Jesse Jackson, for example, gave up on building a genuine alternative in return for a place at the Democratic Party table. Any serious progressive movement has got to give this danger considerable thought. But the Democratic Party is hardly the only danger here and no one has provided a good argument as to why *voting* for a Democrat causes the same dangers as does becoming one of their spokespeople. And while it may be true that paid leaders of various environmental, labor, and reproductive rights organizations have a vested interest in supporting Democrats, I think it is perverse to think that rank and file members of these organizations would have no reason to prefer a Democratic administration to a Republican one but for the propagandizing of their bought-off leaders.

HOW CAN WE PREVENT the rightward drift (if not gallop) of the Democrats?

Often, the importance of preventing the Democrats from moving rightward is a necessary and sufficient reason to run a candidate to their left, even one that can't win and even one whose candidacy may occasionally harm the Democrat's chances. (If there's no risk of harming the Democrat's chances, then there's no reason for the Democrat to stop moving right.) But for such a strategy to work, it is necessary that leftists sometimes refrain from running a candidate and sometimes vote for the Democrat — when the Democrat maintains decent (though of course still deficient) positions. (If leftists will always contest the Democrat and never vote for a Democrat, then there's nothing keeping the Democrat from moving to the right. That is, if the Democrat can never reap leftish votes, then why not try to pick up votes to the right.) So in any particular election, one needs to take account of how horrendous the Democrat is and how horrendous the Republican is.

My own sense is that in the 2004 election, given the unique dangers of the Bush administration, we should be less willing to risk handing a victory to the Republicans. So my advice would be that we should continue making our critique — of both Democrats and Republicans — so that radical ideas stay alive, continue our organizing and grassroots work, our building of alternative institutions — these will be necessary no matter who is president — but on election day itself we should vote for a third party in a safe state and Kerry in a swing state. But . . .

Even in this election (where I believe Bush is a serious danger), in contested states I would not urge an *automatic* vote for Kerry. I would *recom-*

mend a vote for Kerry in contested states — unless he was so appalling that one simply couldn't bring oneself to do it. For some, Kerry's support for the Iraq war, the Iraq occupation, Ariel Sharon, and corporate tax breaks already makes it impossible to vote for Kerry. For others — and I count myself in this group — these Kerry positions are truly horrendous, but Bush is so dangerous that I'd probably still pull the lever for Kerry. But this group's (and my) tolerance for abomination is not unlimited. If Kerry continues moving right — as seems entirely possible[14] — he will fail my puke test (that is, can I vote for him without puking?). And the fact that Kerry's campaign staff must know that there are many who will apply this puke test (whether they do so consciously or not and whether they call it this or not) may place some small brake on Kerry's rightward trend.

This is admittedly not a major brake. And as long as the left is weak, no approach will have much of a braking effect. But consider some other suggested strategies.

Instant run-off voting (IRV) is a voting procedure that allows voters to list their choices in order of preference. If no candidate receives a majority of the vote, then the votes of the candidate with the fewest votes are reallocated to those voters' second choices. And so on until some candidate achieves a majority. The advantage of this procedure is that it allows voters to vote their consciences without throwing away their vote (and helping a Bush to win). This is a reform every democracy ought to institute and we should support it. But notice what happens if we *automatically* list our first choice first and the lesser evil somewhere lower down on the ballot. Then, because the Democrats don't have to worry about the left hurting their candidates, they can continue to ignore the left and move right. IRV works best if it is combined with the puke test. That is, under IRV voters should list the Democrat — unless they simply can't stomach it, which may have the effect of discouraging a rightward move by the Democrats.

Bruce Ackerman has suggested that Nader try to get the same slate of Electoral College electors assigned to him as to Kerry.[15] This, says Ackerman, will allow voters to vote for whom they want but without hurting the Democrat. But even if such a scheme were deemed legal, it would have a serious drawback. It would commit all Nader supporters to vote for Kerry from early in the campaign, with no option of changing their mind if Kerry later fails the puke test. The same drawback applies to the strategy of the New Party. By endorsing Democrats on their own line, they lose whatever leverage progressive votes might have had in keeping the Democrats from moving right.

IF WE DO VOTE for a third party candidate in safe states, as I recommend, which candidate should it be? By the time this article appears, the Green Party will have chosen its candidate. I hope this candidate is not Ralph Nader and there are several reasons to be hesitant about voting for Nader as an independent candidate.

First, Nader's presidential run is an individual effort, not an attempt to build a party that can represent left ideas. He may resent *The Nation* and others for urging him not to run, but to whom is he responsible? Which left constituencies selected him or advised him to run? If we're trying to build a left that prizes above all else its commitment to democracy, is it helpful to support a candidate whose campaign is not connected to the left in any organic way? In 2000, Nader refused to join the Green Party and failed to freely share his contributors' list with the party. This doesn't suggest that the way to build the left is to support Nader, as a Green or not.

A second problem with Nader is that there are signs of some of the same weaknesses that people noted last time around regarding his commitment to various important issues. If one goes to Nader's website and looks under issues,[16] one finds no mention of affirmative action. Until the national women's march of April 25 — more than two months after he announced his candidacy — there was no mention of women's rights. A strong plank on women's rights has now been included, but there's something odd about how he endorses NOW's program verbatim, but can't seem to use

his own words to back reproductive rights. One suspects this is not going to be a significant part of his campaign. If one important reason we support candidates who can't win is for the educational value of their campaigns, then what message does a Nader vote send — particularly to African Americans and feminists annoyed by our support for Nader in the face of Bush's assault on their rights? Nader writes that "The Democrats need to be shown in the field how to appeal to the millions of voters whom they have turned their back on because many of them are against abortion and gun control." Is his method of appealing to these voters to soft-pedal the abortion issue? Now to be sure, politics is the art of compromise, but if we're voting for Nader for educational reasons, shouldn't we want a clearer message?

Third, Nader's rather dubious claim that his candidacy will draw more votes from Bush than from Kerry — that's not what polls are showing — has led him to form ties to some rather unsavory rightwing figures.[17] Is this the message we want to send? Is his soft-pedaling on abortion and affirmative action a way to appeal to rightwing voters? Interestingly, though Nader rejects the strategy put forward by many Greens of campaigning strategically — not contesting Kerry in swing states — he is not above recommending strategic voting to rightwing voters. Here's what he says in his letter to "conservatives upset with the policies of the Bush administration":

> What to do? It depends on your depth of disappointment with the national Republican Party. In the numerous states that are going easily for President Bush, you can vote for the Ralph Nader independent candidacy for the presidency. This will send them a message that you will no longer be taken for granted. If you are beside yourself with a sense of the deep betrayal of conservative philosophy by the national Republican Party in Washington, D.C., you may wish to vote for the Nader ticket regardless of the state in which you reside. I have been for a long time noting the overlapping agreement between more and more conservatives and liberals on the above noted issues facing America. Sure they disagree on other matters, but the specific areas of agreement are very substantial, pretty fundamental and deserving of some individual voter messaging in the upcoming elections.[18]

In mid-May, Nader sought and received the endorsement of the Reform Party. "This endorsement shows that our independent campaign is receiving support from across the political spectrum from people upset with President Bush, and looking to shift the power back to the people so a solution revolution can take hold and solve many of the nagging problems and injustices in our society," declared Nader.[19] The Reform Party, which endorsed Pat Buchanan in 2000, has decent planks on Iraq, the Patriot Act, and trade, but wants to temporarily freeze immigration, convert social security into a system of private accounts, enact greater private property rights, establish a health care system based on free enterprise, and privatize the Tennessee Valley Authority; it rejects any treaty that compromises U.S. sovereignty.[20]

Fourth, Nader's arguments justifying his candidacy strike me as disingenuous and not worthy of a serious left. His campaign, he declares, is going to help bring out Democratic voters for Congressional contests. But it's not clear why he should want to do this unless he supports the notion of lesser evilism. He seems to want things both ways. His candidacy, he says, offers a one-two punch that can help defeat Bush. Come on! Nader continues to reject a campaign strategy that calls for avoiding vigorous campaigning in swing states. My guess is that this is a mistake on every level — even in terms of maximizing his votes, it may well cost him more votes from those progressives in safe states who might have cast ballots for him, but resent his refusal to acknowledge the dangers his swing-state campaign poses.

The case for backing David Cobb, should he become the Green Party candidate, seems to me much more compelling than for backing Nader. Cobb is really part of the Green Party, which is a real organization, going through a democratic process — not very efficiently, to be sure, but democratic nonetheless. Look at the Green Party website, www.gp.org/, and see such links as United for Peace and Justice, ZNet, Democracy Now, and Fair Trade

Coffee. This is *our* party. Cobb favors a safe-states strategy for building the left while not giving undo aid to Bush. Like Nader, he opposes the Iraq war and corporate power. But he also strongly endorses affirmative action, reproductive rights, and gay and lesbian rights.[21] I plan to vote Green and, I hope, for Cobb (in the what-better-be-safe state of New Jersey). But in a swing state, I would vote for Kerry, with my puke test caveat.

Winning people to our politics is no easy task. Socialism is a complex idea, breaking through the media's disinformation is difficult. But anyone who can understand our basic ideas can certainly understand as well that you can work for radical change while also sometimes reducing people's suffering by voting for a lesser evil.

NOTES

1. I leave aside the dubiousness of the claim that the Republicans are more up front about their agenda. Outside their $1,000-a-plate fundraisers they tend not to emphasize their aim of redistributing income to the rich.

2. H J RES 114 , YEA-AND-NAY, 10-OCT-2002, 3:05 PM; QUESTION: On Passage; BILL TITLE: To Authorize the Use of United States Armed Forces Against Iraq

	YEAS	NAYS	NV
REPUBLICAN	215	6	2
DEMOCRATIC	81	126	1
INDEPENDENT		1	
TOTALS	296	133	3

3. www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=2&vote=00236

4. H R 1836, 26-MAY-2001, 10:11 AM; QUESTION: On Agreeing to the Conference Report; BILL TITLE: Economic Growth and Tax Relief Reconciliation Act

	YEAS	NAYS	NV
REPUBLICAN	211		10
DEMOCRATIC	28	153	29
INDEPENDENT	1	1	
TOTALS	240	154	39

5. "No Democrat is going to beat Bushism," An interview with Green Party activist Howie Hawkins by Derek Seidman, posted at www.zmag.org/content/showarticle.cfm?SectionID=33&ItemID=5423

6. Gabriel Kolko, "The Coming Elections and the Future of American Global Power," *CounterPunch*, March 12 / 14, 2004.

7. Alexander Cockburn, "Bush, Kerry, and Empire," *CounterPunch*, April 16/18, 2004, www.counterpunch.org/cockburn04162004.html.

8. www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=104&session=2&vote=00262.

9. clerk.house.gov/evs/1996/roll383.xml.

10. Tom Engelhardt's delightful term. See his weblog at www.tomdispatch.com.

11. I'm not saying that those who don't have a radical perspective — say a liberal labor union — shouldn't provide funds to Kerry. But for radicals — who are likely to be the only source of funds for radical projects — to donate their money (or time) to Kerry is to give up any hope for the left.

12. U.S. House of Representatives, Ways and Means Committee, *1998 Green Book: Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means*, Committee Print WMCP 105-7, 19 May 1998, 414 (table 7-7), available at aspe.os.dhhs.gov/98gb/intro.htm and (in PDF format) www.utdallas.edu/~jargo/greenbook/contents.htm.

13. U.S. Bureau of the Census, *Statistical Abstract of the United States, 2000*, Washington, DC: 2000, 439 (table 699).

14. See, for example, Jim VandeHei, "Despite Rhetoric, Bush, Kerry Agree On Many Issues," *Washington Post*, May 9, 2004, A1; James Rainey, "Kerry Outlines Centrist Strategy in a 'Contract' With Middle Class," *Los Angeles Times*, April 24, 2004, A19.

15. Bruce Ackerman, "2-for-1 Voting," *New York Times*, May 5, 2004, A27.

16. www.votenader.org/issues/index.php.

17. See Ted Glick, "Eights Questions for Ralph Nader," Feb. 24, 2004 www.zmag.org/content/showarticle.cfm?SectionID=33&ItemID=5034; Doug Ireland, "Ralph's Dark Side: Mr. Nader and the Newmanites," Feb. 27, 2004, www.zmag.org/content/showarticle.cfm?SectionID=33&ItemID=5050; and Christopher Hitchens, "Unsafe on any ballot," *Vanity Fair*, May 2004. For concerns regarding Nader's refusal to clearly distance himself from right-wing economic nationalists in the 2000 campaign, see the letters from Chip Berlet and Howie Hawkins in *New Politics*, no. 30, Winter 2001, 190-92.

18. www.votenader.org/why_ralph/?cid=14.

19. Nick Anderson, "Reform Party Endorsement of Nader Could Land Him on Key State Ballots," *Los Angeles Times*, May 13, 2004, A21. Though Nader sought the endorsement, he has not yet indicated whether he will run on the Reform Party line. Kevin Zeese, a Nader spokesperson, said "We'll decide state by state. It depends on the local politics of the state and whether in some states we prefer the independent party line." Katharine Q. Seelye, "Reform Party Backs Nader, Offering Line On Ballots," *New York Times*, May 13, 2004, A22.

20. See www.reformparty.org/PrinciplesIssues/Platform/platform%20planks.htm and issues.reformparty.org/documents/2003platform_amendments.html. The latter page refers to changes in green that are not in fact visible.

21. See www.votecobb.org/, and, on equal rights for all, www.votecobb.org/ej4all.html.

Election 2004

The Dead-End of Lesser Evilism

THOMAS HARRISON

AS THIS IS BEING WRITTEN, in the spring of 2004, John Kerry's advisers, according to the *New York Times*, are "struggling to find a focus," a "defining theme" for his campaign; meanwhile they are "being regularly outmaneuvered by the White House." At first glance, this might seem surprising. The Bush team is managing to run rings around the Democrats precisely at the moment when the President has never been more vulnerable, with the Clarke revelations and the continuing investigations of the 9/11 commission, U.S. atrocities in Falluja, mounting American casualties, exposés of torture used on Iraqi prisoners, and a badly floundering "transition" in Baghdad. Public opinion is sickened by the stories and pictures of vicious sadism and bizarre sexual humiliation at Abu Ghraib prison, increasingly uncertain about the occupation of Iraq and repelled by the lengthening tissue of lies produced by what is undoubtedly the most cynical and mendacious administration in U.S. history.

Polls show Bush's popularity is falling, but not by very much. The President's approval rating might well decline a good deal more if his opponent could really exploit the public's doubts about Iraq and offer a way out. That option is not available to Kerry, and not because he's "unfocussed" or inept, though he seems to be a bit of both. By the time this issue of *New Politics* is published, his handlers will probably have found their "defining theme," but it is unlikely to be Iraq and will probably not be anything very many Americans care much about — apart from, simply, Bush removal, and it remains to be seen whether that will be enough to propel an otherwise relatively issue-free campaign to victory in November.

On Iraq, as on many other critical matters, the gap between Kerry and Bush is so narrow that light could not penetrate it. As everyone knows, Kerry voted in favor of the Iraq invasion, and it's important to remember that at the time the administration's strategy was "shock and awe"; in other words, he was prepared to endorse a massively destructive assault on Iraq, far worse than what actually transpired before Saddam Hussein's Republican Guard collapsed. Since then, Kerry has had his criticisms, but he firmly supports the U.S. occupation of Iraq. For a while he was able to differentiate himself from the White House by calling for a greater United Nations role, but it didn't take long for even Bush to recognize the cosmetic value of bringing in the international organization: nothing like a coat of multilateral makeup to soften the brute visage of U.S. imperial domination.

Bush Lite

ON MARCH 15, 2004, *The Nation* editorialized: "Ralph Nader got a lot of things right" when he appeared on "Meet the Press" to say that the election of 2000 had been stolen, called Bush a "giant corporation in the White House masquerading as a human being" and called for the impeachment of the President over his lies about Iraq. "But," the editors continue, "he got the important thing wrong when he announced he would run for President." Meaning, apparently, it's great to speak the truth as long as you don't run for president, as long as you don't use the highly visible platform that a presidential campaign affords to broadcast these truths and use them to educate public opinion. It must be extremely embarrassing for *The Nation* and other liberal Kerry supporters that their candidate is *incapable* of speak-

THOMAS HARRISON *is a member of the* New Politics *editorial board.*

ing those truths — not because he's a shameless liar like Bush and his gang, but simply because he is as much a part of the Establishment as they.

Kerry can be expected to take a few rhetorical swipes at the corporations and the rich, but this is just for the benefit of the riffraff; he and his wife are two of the fattest of fat cats, his campaign depends on the largesse of corporations and wealthy individuals and he has a long record in the Senate of servicing some of Massachusetts' most powerful businesses But there's no reason to put it in terms of venality; Kerry is no cynical lackey. He *believes* in the fundamental rightness and necessity of corporate power and a government whose first priority is to serve corporate interests. Equality, an end to poverty, a decent standard of living and economic security for all — these are utterly utopian, and the only possible answer to the malcontents and political innocents who dream of a different, a better world is Margaret Thatcher's famous taunt: "There Is No Alternative."

On some level he knows, of course, that Election 2000 was stolen by the Republicans; he might, therefore, even allow himself to consider that smirking, strutting, dimwitted baboon in the White House to be the usurper that he is. But just as Gore and Clinton acted like "statesmen" and counseled quiescence four years ago, Kerry will never publicly question this creature's legitimacy. Nor will he countenance talk of impeaching this proven liar, whose crimes — deceiving Congress and the public in order to win support for a bloody war and occupation that might otherwise have been prevented — surely outweigh lying under oath about a blowjob. No, Kerry's first loyalty is to the system; its stability matters far more to him than mere partisan advantage.

In an "Open Letter to Ralph Nader" (Feb. 16, 2004), *The Nation* rashly predicted: "The odds of this becoming a race between Bush and Bush Lite are almost nil." Famous last words. Whether one calls him Bush Lite or a "kinder and gentler Bush," that is exactly what Kerry has turned out to be. And he more closely resembles the real thing with each passing day.

A Poverty of Expectations

THE PROBLEM IS FAR GREATER than Bush and his coterie. Progressives need a strategy for fighting and defeating not just Bush, but the policies he stands for: imperialism and war, greed run amuck, uncontrolled corporate pillage, a new garrison state at home, and neoliberalism abroad. It makes no sense to support a milder version of the same thing. Even in the limited areas where Democrats differ significantly from Republicans, they tend to cave in over and over again; it never works the other way around. So the political center, and therefore the whole political spectrum, moves steadily right — and this will continue at a faster or slower rate as long as no principled, radical alternative to the Democrats emerges to their left.

In the absence of a serious progressive third party, there is no countervailing pull on this center. In the current electoral campaign the left is so desperately committed to "Anyone But Bush" that it has virtually no programmatic expectations. Apart from a few wistful platitudes in the liberal magazines, nothing is asked of Kerry, except that he win, please, and very little is expected of him if he does. No liberal in his right mind thinks that a Kerry presidency would reduce the military budget, advocate universal health care, put pressure on Israel to withdraw from the Occupied Territories, cut back the country's overseas empire of troops and bases, or pull U.S. forces out of Iraq any time soon.

Most liberals, if they are honest, are quite frank about all this. No, they do not expect any reforms from Kerry, any new initiatives to address the problems of empire, militarism, poverty and joblessness, starved social programs, millions without medical insurance, and so on. All they want, all they expect, is that Kerry will "hold the line" (on existing rights such as abortion, and social entitlement programs), and that he will "keep things from getting worse." That's their Maximum Program.

But trying to stand pat will only ensure that things will get worse. The idea that a sort of stale-

mate, a holding operation, can be achieved, is the worst kind of illusion. Under Clinton, as under Bush, dismantling the welfare state, deregulation, the erosion of civil liberties and abortion rights, widening of the income gap, the growth of unaccountable corporate power, increasing military interventions and arrogant superpower triumphalism proceeded apace. This drift will continue under Kerry, if only at a somewhat slower speed.

We need to change direction. But as long as the creation of an independent progressive party is postponed, rightward drift cannot be halted, much less reversed. The general political climate will become more and more congenial to the most extreme varieties of reaction and even neofascism, and therefore more and more dangerous. This is true *whether or not Kerry is elected*.

Graveyard of the Left

JOHN KERRY IS VERY MUCH in the New Democratic mold, with a few liberal touches added on because of his Massachusetts provenance. While far from the worst, he is nonetheless a fair specimen of the degeneration of the Democratic Party.

Much nonsense is written about the Democratic Party's "progressive soul," but the truth is that the Democrats have always been, in Kevin Phillips' words, "the world's second most enthusiastic capitalist party." The only reason they have been somewhat less openly enthusiastic about this commitment than the Republicans is that since the era of Franklin Roosevelt the Democratic Party has relied on a mass constituency of capitalism's chief victims: workers, the poor and racial minorities. The need to appease them has molded the party into a vehicle that attracts a fair number of politicians who have some qualms about the system — although most of these doubters learn quickly that too many qualms can make it difficult to raise campaign money or ingratiate themselves to party leaders and powerful committee chairmen.

Democrats have long specialized in co-opting and taming potentially radical social movements, and thus preventing a left opposition from developing. This is not a plot; it just comes naturally to liberals who are committed Democrats. But the conservatism of the Clinton years weakened the party's ability to perform this function. Nader's popularity in 2000, which was not at all adequately reflected in his vote, revealed the Democrat's vulnerability on their left. The Kucinich and Dean campaigns were a response to this perceived weakness. A genuine liberal populist* (as well as a slightly wacky New Ager), Dennis Kucinich told the *Cleveland Plain Dealer*: "The Democratic Party created third parties by running in the middle. What I'm trying to do is go back to the big tent so that everyone who felt alienated could come back through my candidacy." Third parties must be prevented. And Howard Dean, whose liberal credentials are questionable at best, nonetheless succeeded, by attacking Bush's Iraq policies and calling on the Democrats to stop acting like Republicans, in drawing masses of young antiwar activists into the Democratic fold — thus preparing them to take the next compromising step of falling behind the pro-war, pro-occupation Kerry campaign once the Dean bubble had burst.

The main reason why Kucinich did so badly in the primaries, and the reason that Dean collapsed so quickly and utterly, is that the fear of Bush drove primary voters to avoid or drop and candidate that seemed "unelectable." This year the

*It is simply amazing that Al Sharpton continues to be classed with Kucinich as a quixotic but principled candidate of the left. The evidence that Sharpton is an unscrupulous demagogue whose only goal is publicity and personal power has been available for years, for anyone who cared to notice it — his endorsement of the rightwing clown Al D'Amato for Senate in 1986, his de facto support of George Pataki against Mario Cuomo in 1994, his cooperation with Michael Bloomberg to defeat Mark Green in 2001. And then there was his long career as an FBI informant, working to entrap black leaders and sports personalities on drug matters. But in this campaign he has been thoroughly exposed. Investigative reporting by Wayne Barrett in the *Village Voice* ("Sleeping With the GOP," Feb. 2, 2004) revealed that Sharpton's campaign was financed and controlled by Roger Stone, a wealthy and especially sleazy GOP "operative" who began as a protégé of Roy Cohn, was involved in Watergate dirty tricks, and worked on every Republican presidential campaign since 1972.

politicians, fundraisers and corporate big shots who control the Democratic Party did not really have any use for a liberal pied piper to lead the disgruntled millions back into their "big tent." Even a John Kerry will do.

By performing this role, Democrats, including liberal Democrats, now and in the past, have helped make the United States the most politically monolithic, conservative and crudely pro-capitalist of all the world's industrial democracies. Nowhere are the putative virtues of the "free enterprise" system less questioned and radical change more feared even by those who would benefit most from it. This society is a medium in which rightwing extremism can flourish — and succeed — as nowhere else, mainly because it encounters almost no resistance. The Democrats either half agree with the right or else capitulate on the convenient assumption that it is too popular to resist. The natural constituents of a fighting left are muted and hobbled by their thralldom to the Democrats, or else driven into apathy and abstention from politics. The ultimate irony, then, is that the Democrats' most important accomplishment is to make America safe for the Republicans and the right.

There was a time when the Democrats' efforts to shore up the system in times of crisis, as in the 1930s and 1960s, produced significant benefits for working people, African Americans and others. Tenuous but real relationships were forged with the labor and civil rights movements — again, relationships meant to "manage" these movements and keep them from challenging the system from the outside — that brought genuine progress through state intervention. This progress, however, was far less than might have been achieved had the Democrats not succeeded in thwarting, say, a labor or social-democratic party. Instead of miserably inadequate Social Security checks, retired Americans might be receiving decent government pensions. We might long have had universal health insurance and free higher education like Canada and Western Europe. In any case, the sort of "fighting liberalism" that could be found (along with rabid Southern racism) within the Democratic Party in its heroic periods, if one can call them that, is pretty much extinct. As is well known, few Democrats would accept the liberal label today — maybe a couple of dozen in Congress — and the vast majority dread it like poison.

New Democrats like Kerry may be more liberal on cultural and social issues (tolerance for racial and sexual minorities, respect for women's rights) than their predecessors, but they are qualitatively worse on corporate regulation, jobs, health care, welfare and a host of other matters that deeply affect our lives. They agree with Republicans that large-scale social programs are futile and that global hegemony for the U.S. military and U.S. corporations is essential. At their best they've been the Republicans' timid accomplices. And it's important to realize that they are *accomplices*, not just cowards who fold under the slightest pressure. The New Democrats, as well as quite a few self-styled liberal Democrats, bear co-responsibility for regressive taxation, war, attacks on civil liberties, and a host of other retrograde developments. But most of the New Democrats are worse than accomplices; they are perpetrators.

Yet *this* Democratic Party can still manage to co-opt labor, environmentalists, feminists, blacks and Hispanics. It can count on their automatic loyalty without offering anything substantial in return, apart from a half-hearted commitment to protect abortion rights, offer civil unions (but not marriage rights) to same-sex couples, possibly protect Social Security from being privatized, at least for a few more years, and some other things — all of which fall miles short of what is really needed to, for example, secure women's control of their bodies, extend equal rights to gays and lesbians and ensure a decent life for the elderly.

Eight Wasted Years

WHEN THE REPUBLICANS are in power, they're so hideous that it's easy to forget how conservative the Democrats have become. But we should remember the atrocious record of the Clinton administration, and recall that, unlike Howard Dean, Kerry has never attempted to distance himself

from that record (which would, in any case, require the repudiation of most of his Senate votes).

As soon as Clinton took office in 1993 he proclaimed deficit reduction, rather than job creation, to be his number one priority, and his administration adhered to austerity policies from then on. The Clinton years saw the lowest level of government spending since Eisenhower, even after a budget surplus appeared in 1998.

The administration's biggest initiatives were on behalf of American business abroad: NAFTA and the "normalization" of trade relations with China. Wall Street never knew better times, of course. But the record-breaking economic boom of the Clinton years had almost no effect on workers, who by the end of the 1990s were still earning less, adjusted for inflation, than they did 25 years earlier. Even before Clinton entered the White House, the United States had some of the worst levels of inequality in the industrialized world, but by the time he left, the income gap had reached truly staggering proportions: In 1990, according to *Business Week*, CEOs at large companies made 85 times the pay of the average factory worker; in 1998 they made 419 times as much. If that average worker's pay had grown at the same rate as the CEO's, he would have been earning $138,350 in 1998. Perhaps the rich would have gotten even richer under a Republican administration, but it's hard to imagine how.

On the environment, differences between Democrats and Republicans are clear. In the first place, unlike most Republicans, Democrats at least acknowledge the reality of such threats as global warming. Yet Clinton did nothing to obtain Senate ratification of the Kyoto Agreement after he signed it. He did not repudiate deals that allowed mining oil drilling, and the logging of old growth forests on federal land. A recent investigative piece in the *New York Times* Sunday magazine shows just how ineffective the Clintonites' "environmentalism" was. The article means to expose the Bush administration's surreptitious dismantling of existing regulations on toxic emissions, but it notes, as background, the efforts of the Clinton EPA to bring industry and environmentalists together and to make the regulations "more palatable" to business; in the end, Democratic officials were shocked to realize that business simply did not want to be regulated at all. Across the board, the policy of the Clinton administration was not strict enforcement of regulations, but "voluntary compliance" and "partnership" with business. So, yes, the Republicans were and are far worse, but the question is: Can a business-friendly Democratic stewardship prevent, or better, reverse, the degradation of our environment?

On abortion rights, Clinton promised a "Freedom of Choice Act" when he ran in 1992, then dropped the subject as soon as he was elected. He did veto Congress's ban on late term abortions, but not restrictions on abortions for federal employees, District of Columbia residents and Medicaid recipients. In fact it was not at the federal level at all, but in the states that the real threat to abortion rights started gathering momentum in the 1990s, and it can be argued that this was facilitated by the demobilization of the women's movement on the assumption that *Roe v. Wade* was safe under a Democratic administration.

Democrats are obviously friendlier to gays and lesbians than Republicans are. But remember how Clinton bowed to the military with his "don't ask, don't tell" policy. The result: a 70 percent increase in discharges of military personnel on account of their sexual orientation. In 1996 he signed the odious Defense of Marriage Act, supported by an overwhelming majority of Democrats, including the late liberal paragon Paul Wellstone, which exclusively defined marriage as a relationship between a man and a woman; it was designed to help states refuse to recognize same-sex marriages contracted in Hawaii. Now, once again, political homophobia is on the rise, aroused by court decisions and mass civil disobedience on behalf of same-sex marriage. Isn't it likely that the climate would be a lot less favorable to the right had the Clinton administration mounted a militant attack on homophobia and a defense of gay rights during its eight years in office? Instead, its policies were marked only by timid, hesitant, even shamefaced sympathy.

Toni Morrison may consider Clinton the "first black president," but he was no friend of African Americans. The Democratic Leadership Council, which he helped found, was created in the first place to combat the influence of Jesse Jackson. Clinton's welfare reform, the first repeal of a major New Deal entitlement in 60 years, disproportionately hurt blacks. And the scandalous response — or rather, nonresponse — of Clinton and Gore to the massive disfranchisement of black Florida voters in the 2000 election should not be forgotten. Here, as so often, the "lesser evil" — Gore and Clinton's Department of Justice — simply allowed the "greater evil" — Jeb Bush, the Republicans on the Supreme Court, and a horde of Republican rioters in Dade County — to get away with it. By relying on the lesser evil you end up with . . . the greater evil. Black civil rights need to be defended with the power of the state. The problems of joblessness, poverty and wretched schools, from which blacks suffer far more than any other group in our society, need political solutions. Are we condemned forever to vote for a party that has basically given up even the pretense of addressing these social ills, simply because it is less vicious than the other party and accompanies its delinquency with unctuous platitudes like, "I feel your pain"?

The issue of court appointments is one of the strongest arguments for sticking with the Democrats. Like his father before him, and like Ronald Reagan, Bush tends to select not moderate Republicans but the most fanatical, authoritarian, bigoted rightwing extremists for the federal bench. These judges are extremely dangerous, of that there can be no doubt. What can we do about it? Elect Democrats? But when the Democrats controlled the Senate Judiciary Committee they waved through an Antonin Scalia (much to the surprise of this latter-day Torquemada, by the way) and would have done the same with just as much dispatch for Clarence Thomas had Anita Hill not stepped forward. During the first two years of the current administration they had enough members in the Senate to filibuster every one of Bush's outrageous appointments — and not just judicial appointments; John Ashcroft's draconian fundamentalism was a matter of public record. And it matters that while Clinton was in office he never appointed the equivalent of Thurgood Marshall or William O. Douglas, but rather Ruth Bader Ginsburg and Stephen Breyer, bland moderates who support the death penalty. One reason the judiciary is so important is that it can use the Bill of Rights to defend civil liberties, including striking down repressive laws. But Kerry, along with a majority of Democrats, voted for the extremely repressive Patriot Act. Is this the man we should trust to put civil libertarian judges in office?

> The New Democrats object to Bush not because he's an imperialist, but because he's an extraordinarily amateurish and unsubtle imperialist.

Neo-Cons and New Democrats

AS MUCH AS THE Kerry team would like to hide from it, foreign policy — and especially Iraq — will be a major factor in this election. It is a sad irony that so many people will be voting for Kerry chiefly because the current administration, with its recklessness, arrogance and brutality, has vastly destabilized the globe and rendered the United States a pariah nation — ironic because it is on foreign policy that the differences between Bush and Kerry are most minute. A mainstream Democrat like Kerry might eschew the strident rhetoric of the Bush Doctrine, but he would never renounce the "rights" it proclaims for U.S. power — to maintain global predominance at all costs and to intervene unilaterally whenever it deems it to be in its "vital interest," including the initiation of preemptive wars.

It is often said that had Gore won the presi-

dency in 2000 there would have been no invasion of Iraq. This is a dubious claim, based on criticisms Gore made of the war when he was no longer in a position of political responsibility. After all, his running mate was Joseph Lieberman, a fervent and unrepentant backer of Bush's war, much worse even than Kerry. In the aftermath of 9/11 it seems very likely that Gore would have launched an attack on Al Qaeda's Taliban patrons. Having done that, he would have been under enormous pressure to occupy Afghanistan and install a puppet regime there, as Bush did. And while his advisers would probably not have been plotting to topple Saddam Hussein even before 9/11, one can imagine Gore — urged on by Lieberman and others — taking advantage of the post-9/11 mood in this country to remove a regime that had long been a thorn in Washington's side. On the other hand, maybe not. We'll never know. But what *is* known is that Kerry, Clinton and all but a handful of Democrats supported the Iraq operation. Some, like Kerry, had misgivings soon after it was underway, but nearly all agree that the United States must now "stay the course."

As is well known, the Bush administration has faithfully carried out the program, proclaimed in the early 1990s, of the neoconservative Project for the New American Century: "maintaining global U.S. preeminence, precluding the rise of a great power rival, and shaping the international security order in line with American principles and interests." Less well known is the fact that Kerry and other New Democrats also believe in the aggressive use of American power — what the Progressive Policy Institute, an arm of the Clintonite Democratic Leadership Council, calls "muscular internationalism."

As James Traub observed in the *New York Times* ("The Things They Carry," 1/4/04), "at least when they're not preaching to the Iowan choir, Democrats generally use hardheaded looking-out-for-No.-1 language that [Condoleeza] Rice herself would have trouble taking exception to. They foreswear 'mushy multilateralism,' in John Kerry's phrase, for what Senator Joe Lieberman calls 'muscular multilateralism' — multilateralism not as source of legitimacy but as an instrument to advance our interests." Traub celebrates the Democrats' substantial success in shedding their image as a peace party, one of the chief indications of which is that "defense spending, once the great threshold issue separating hawks and doves, has been laid to rest."

This point is worth pausing over. The official military budget is now more than $400 billion a year. And when you include supplemental appropriations for Iraq and Afghanistan, it is probably $650-750 billion. Kerry is *not* calling for cutting back on this colossal and dangerous waste of the nation's wealth, and neither did *any* of the other Democratic candidates except Kucinich — and that includes Dean, the "antiwar" candidate. Under a Kerry presidency, the United States would continue to be armed to the teeth, its social programs starved nearly to death, with no real money for education, health, transportation, welfare, refinancing Social Security, rebuilding the cities, etc., etc.

The New Democrats object to Bush not because he's an imperialist, but because he's an extraordinarily amateurish and unsubtle imperialist. Their main criticism of the White House team is that it has alienated U.S. allies with its go it alone strategy. For both New Democrats and neoconservatives, the goal is the same: maintaining global U.S. hegemony. Democrats lament the fact that Bush squandered opportunities to organize multilateral cover for the Iraq operation and to relieve the United States of part of the financial and personnel burden of the occupation.

Kerry supports the brutal occupation of Afghanistan, and is as hostile to the Palestinian cause as Bush. And now that the Iraq occupation faces growing resistance and the censure of world opinion, as the U.S. occupiers resort to ever more vicious methods to maintain their control, Kerry stands squarely with the president. Writing in the *Washington Post*, he declared: "While we may have differed on how we went to war, Americans of all political persuasions are united in our determination to succeed." On Iraq, multilateralism and other foreign policy issues, the differences between

New Democrats and neoconservatives merely parallel those between the Republican Department of State and the Department of Defense; to see John Kerry as the bearer of a different foreign policy is as pathetically naïve as considering Colin Powell a man of peace.

Bush has achieved major gains for the American empire, removing an unmanageable dictator, extending U.S. power into Iraq, with its massive oil reserves, and Central Asia with its abundant natural gas, expanding the global network of military bases (now 750 located in 132 countries), and significantly lessening U.S. dependence on the troublesome, and possibly doomed, Saudi royal family. Kerry would not dare to renounce these gains even if he wanted to — and there's no sign that he wants to. The empire is, and since World War II has always been, a touchstone of bipartisanship. No Democratic leader would consider dismantling it.

And now, no Democratic leader supports withdrawing from Iraq — even though every day that the occupation continues, democratic forces get weaker and both Islamic theocrats and neo-Baathist elements grow stronger. Washington's goal is to make Iraq into a stable client state, ideally with some democratic trappings for the sake of image. The problem, though, is: how can the administration allow even a semblance of majority rule if the majority of Iraqis want a complete restoration of national independence, including no American bases? The Bush people have dug themselves into a very deep hole, but they have been assisted by Democratic spadework.

A Third Party Constituency

THE ARGUMENT IS OFTEN made that while the building of a progressive third party is a necessary long-term goal, this is not the moment to do it: Everything must be subordinated to beating Bush. Now in the first place, this argument is made by liberal magazines, pundits and politicians at every election, not just in 2004. And in the second place, it discounts the significant potential for a third party that already exists.

The past ten years or so have witnessed a vast disaffection from the two-party system and a receptiveness on the part of millions of voters to the idea of a third party. There is, right now, a mass base, as yet unorganized, for progressive independent political action. Polls show that on such issues as universal health insurance, increasing taxes on upper incomes, war and foreign policy and other matters millions of Americans, not just a radical fringe, are to the left of John Kerry. Huge numbers of people are disgusted with corporate crime, the control of politics by money, the celebration of greed and excess — all of which have been glaring features of both parties' administrations over the past decade. They sense that something is terribly wrong, terribly unjust and dishonest about the system itself. In this restive climate, the message of the Greens, or some other radical, independent party, can have significant mass appeal.

So far, despite mass disaffection with the two-party system, only a fairly small number of progressive voters have taken the step of breaking from the Democrats. There are many reasons for this, but one decisive factor is surely the absence of bold, clear leadership. In recent years, the New Party and the Labor Party expressed the impulse toward political independence within the labor movement and among community activists, but neither was willing to incur the wrath of the bureaucracy of the labor movement and the big liberal organizations by actually running candidates in elections (the New Party only endorsed Democrats, some of whom were also members of the New Party). The Green Party, on the other hand, did this from the beginning, and in some parts of the country it has made remarkable strides.

The 2000 Nader campaign, when we look behind its very modest vote, indicated more clearly than ever before that there is an organizable constituency out there. Anyone who was active in that campaign, who attended the "Super-Rallies," such as the one in New York City's Madison Square Garden, will not forget the huge, enthusiastic crowds, the enthusiasm and the youth of most participants. Nader himself drastically restricted his appeal by refusing to broaden his focus from a

narrow populist concentration on anticorporate themes. While properly central to a third party message, these needed to be supplemented by aggressive campaigning against racism, sexism and homophobia, issues with which Nader was, and is, visibly uncomfortable. Even so, however, his candidacy resonated widely. We will never know how many Americans actually *agreed* with Nader and would have *preferred* to vote for him, had they not been afraid of electing Bush, but it was almost certainly many times the number of votes he actually received. And even that number would have been much greater if he had succeeded in getting on the televised debates.

So Nader's showing in 2000, far from proving the futility of third party politics, proves the opposite. It is often argued that the U.S. electoral system, with its ancient two-party system and its one-round winner-take-all voting, makes third party politics impossible. But Britain, Canada and Mexico all have a similar system, and none of them have proportional representation or second-round runoff voting; yet all have had successful third parties. Proportional representation and instant runoff voting (IRV) are vital democratic reforms in their own right, because they would permit a much wider spectrum of political opinions to be represented in government, and because they would immensely increase the odds in favor of third parties. But their absence is no reason to postpone the effort to create an independent party now and no reason to believe it cannot be done. In fact, the pressure of a militant and effective third party, able to mount protests and exercise political clout, is probably the only thing that can force the two-party duopoly to loosen its grip on the U.S. electoral system.

Already, in certain localities the Greens have shown what can be done by a radical third party even under the extremely adverse conditions of our electoral system. Their most striking successes have been in California. By astute campaigning, by working with liberal Democrats without sacrificing their own independence, by demonstrating consistency and principle, by tapping into voters' real concerns, and by sheer persistence, the Greens have become the second party in the inner Bay Area — San Francisco, Oakland and Berkeley — as the near-win of San Francisco mayoral candidate Matt Gonzales indicates. Two-time gubernatorial candidate Peter Camejo has a strongly positive statewide reputation. At the time of the recall election in 2003, polls taken after televised debates among the candidates gave Camejo the *highest* rating of all. When the voting took place, Camejo's total, under three percent, was disappointing, again because of the spoiler factor — fear of electing Arnold Schwarzenegger was rampant. But an examination of how those votes broke down shows potential for the future. Nine percent of 18-29 year olds voted Green, six percent of blacks and five percent of Latinos (Camejo is of Venezuelan origin, but the Democratic candidate, Cruz Bustamante, was also Hispanic, and Mexican American to boot). Nine percent of the poorest voters opted for Camejo. And this was, in a way, the hard core, those who resisted the enormous pressure to vote against their principles for fear of "spoiling" the election in favor of Schwarzenegger.

At the moment, it is easy to forget all this. "Anyone But Bush" panic has set in, and unfortunately much nascent third party sentiment will be channeled back toward the Democrats in 2004. In a sense this is an aberration, caused by the intense fear and revulsion aroused by the Bush administration, but if it is allowed to go unchallenged those who have been questioning their old lesser evil voting habits may simply decide that there really can never be an alternative to the Democrats. It seems inevitable that this election will prove to be a huge setback for the cause of independent politics.

The Nader Campaign

ALL WE CAN DO at this unpropitious moment is refuse to fall back into the corrupting and self-defeating patterns of lesser evil politics, and to continue advocating and arguing for independence from the Democrats. For those on the left who refuse to vote for Kerry, the likely choice is Ralph Nader. It is a choice about which many of us have

very mixed feelings.

Nader's decision to run as an independent rather than a Green is understandable. The Green Party is divided on the very issue of mounting an unambiguously independent presidential campaign this year, and it may end up endorsing David Cobb, who advocates a "safe states" strategy: this would mean that the Green presidential candidate would only appear on the ballots of those states deemed "safe" for Kerry. Nader rightly dismisses this strategy as a capitulation to lesser evilism that contradicts the whole point of independent political action. Not unrelated is the problem that the party will not take any position on the elections until its convention in June, which is far too late to begin a serious campaign. On the other hand, had Nader actually *joined* the Green Party when he became its candidate back in 2000, and had he participated in its deliberations since then, things might be different. In any case, Nader always functions as a "star" who is averse to being democratically accountable to an organization.

Nor does Nader seem to have learned much in four years. While his formal positions on gay rights and same-sex marriage are miles ahead of Kerry's, his reluctance to talk about these issues recalls his contemptuous dismissal of "gonadal politics" four years ago. And he is still barely able to pronounce the word "abortion." Nader's willingness to associate with the unscrupulous cult run by Lenora Fulani and Fred Newman — even if he considers them merely useful in gaining ballot access in the states where they control the Reform Party line — can only damage his credibility.

With all his faults, however, Nader represents the only alternative — that is, unless the Greens end up nominating a candidate like Peter Camejo who believes in challenging the Democrats across the board and at every level. The issues on which he is outspoken and eloquent — corporate power, workers' rights, wealth and poverty, globalization, the environment, electoral reform, and many others — are central and all-important. His fame, his unimpeachable honesty and integrity, are enormous assets.

Nader is, of course, hated and feared by Democratic leaders, who patronizingly congratulate him for all the good work he did *before* he flipped out, went on an ego trip and organized an electoral challenge to them.* Nader himself often sows confusion by claiming that much of his electoral appeal will be to conservatives and libertarians rather than liberals, and that he may actually help Kerry get elected by taking votes away from Bush. But the Democrats certainly know that he is a threat to their base, even if, as is likely, he wins even fewer votes in this election than he did four years ago. That is why they will do anything to keep him out of the presidential debates, as they did in 2000. If Nader is allowed on TV to confront Bush and Kerry, his arguments — impeach Bush, withdraw from Iraq, repeal the Patriot Act, make deep cuts in military spending, double the minimum wage, etc. — will appeal mainly to Democratic voters. In the present climate, Nader is unlikely to win over a massive number of voters as a result, but he might succeed in convincing enough people to vote for him to cost Kerry the election.

And this raises an interesting problem. Are Kerry's liberal supporters in favor of barring Nader from the debates? If they believe their apocalyptic warnings, if, as they say, so much is at stake in defeating Bush, how can they take the chance that Nader will hurt their candidate? Robert Kuttner (*Boston Globe*, May 5, 2004) has openly warned that Nader could "siphon off" votes if Kerry does not "distance himself" from the war and occupation in Iraq. Logically, then, Nader's voice should be silenced. Kerry's liberal supporters, if they are serious about doing whatever it takes to defeat Bush, must accept the necessity of a two-way debate — that is, a debate in which none of the positions previously mentioned are articulated — because they certainly won't be by Kerry. While millions sit in front of their TV screens, it would be

*Though Nader is fiercely castigated for costing Gore Florida and therefore the electoral votes he needed to win in 2000, it is arguable that without Nader's candidacy prodding him to make some populist noises Gore's lackluster campaign would have gotten *fewer* votes nationally, perhaps even a minority of the popular vote.

inadvisable to suggest that Bush is guilty of crimes, and not just mistakes, to stand up for civil liberties, to denounce this disastrous war. Better viewers should be subjected to the usual diet of lies, meaningless sound bites and bland political pablum. This is the dangerous logic of "Anyone But Bush."

Hearts and Minds

ELECTIONS ARE NOT ONLY about winning office, but also about getting people to think, raising consciousness and changing public opinion. Indeed, while radicals are still in a small minority it is the educational value of electoral action that counts most. In our relatively apathetic and apolitical society, election season is a time when interest in politics is suddenly heightened. For the left it should be considered a critical time for political education. Raising consciousness, obviously, is the only way the left will ever build a mass opposition that can take power. Moreover, unlike the right, the left needs to foster among its supporters a sophisticated critical understanding of history, social problems and structures of power. It cannot, like the right, simply declare its loyalty to existing conventions and traditions or appeal to prejudice and religious dogma; it must, to a great extent, swim against the stream, push against the enormous weight of deference to authority, passivity and fatalism with which we are indoctrinated from birth.

The Kerry campaign has a deadening effect on popular consciousness. What does it mean when on "Meet the Press" Kerry backs off from earlier charges of atrocities in Vietnam and then allows the egregious Tim Russert to get away with the lie that such charges have been "discredited"? The effect is to reinforce the mindless patriotic myth that America can do no wrong, a myth that only benefits the right. In fact, whatever historical credit Kerry deserves for his role in the anti-war movement, his current position on Vietnam is appalling. In his campaign book, *A Call to Service*, he writes: "I say to both conservative and liberal misinterpretations of that war that it's time to get over it and recognize it as an exception, not as a ruling example of the U.S. military engagements of the twentieth century."

What is the effect when Kerry supports the occupation of Iraq at a time when so many are confused about it, fearing a quagmire, suspecting that the United States had no right to go in to begin with, yet feeling "we" have an obligation to somehow "straighten out" the country before leaving? It increases people's disorientation, making those who are uncertain bow to what looks like a consensus or else simply feel isolated and hopeless. It also demoralizes those who have already been in the streets fighting war and corporate power. That's why it's so empty when *The Nation* and other organs of liberal opinion advocate supporting Kerry without illusions and at the same time building independent movements to "keep his feet to the fire." Supporting Kerry undermines our ability to maintain and build movements by sapping the very sources of opposition in this country.

Lesser evil thinking is conservatizing. Fear of the "spoiler" factor means that millions of Americans do not feel free to vote for candidates who stand for what they actually believe in, and end up voting for politicians whom, for the most part, they despise. And then, having made that commitment, they often begin to discover hitherto unsuspected virtues in their chosen candidate. If, as is currently being rumored, Kerry selects John McCain as his running mate, you can be sure that liberal editors will reveal that the Republican senator from Arizona is not so bad after all. Many supporters of Kerry, the lesser evil, have managed to convince themselves, for example, that the mass same-sex marriages in San Francisco, New Paltz and elsewhere were a terrible idea: drawing attention to the issue, they think, will only play into the hands of the Republicans. Gays and lesbians, in other words, should put their rights on hold for the time being. This is just like the argument that was made in 1960 that the civil rights movement should suspend its demonstrations to ensure Kennedy's election.

If Not Now, When?

THE POLITICS OF THE lesser evil is a very tired

old story, and it has brought us only worse and worse evils. Historically, it has produced an ever-downward spiral of defeat. Some Kerry supporters on the left will admit that this is true, but insist that 2004 is exceptional. One wonders, though: what do they think might happen four years from now, or eight years, or twelve, that would prevent them from making the same choice? It's mysterious.

The United States is a more conservative country than most, but it is not hopeless and unchangeable. Americans are divided and restive in ways that provide opportunities for radicals. And millions have already been mobilized. There has been, for one thing, a vigorous antiwar movement. The great march in Washington on April 25 heralded the possible revival of a militant women's movement. The movement against corporate-driven globalization is alive and well. The outpouring of same-sex couples to get married this spring was a glorious defiance of homophobia. But there is no political party that can bring these movements together and champion their causes. Kerry has nothing in common with them, even if he is better than Bush.

The Greens are crucial to the early stages of building the base for a progressive third party, but it seems unlikely that they can grow, through small-scale accretion, into the party that we need, one that can really contend for power on a national scale. Still ahead is a major political fight within the labor movement and within the big environmentalist, women's, civil rights and gay rights organizations to liberate them, or large parts of them, from political enslavement to the Democrats.

Those who are not prepared to give up on radical politics, but believe they are not being inconsistent in supporting Kerry this year, need to be persuaded that the logic of choosing the lesser evil, in 2004 and in the future, entails ever-greater compromises and inevitable defeat.

Many on the left have already decided that radical change is simply not on the agenda, that radical politics are not "real" politics, and that they must make their peace with the two-party system. Those who are not prepared to give up on radical politics, but believe they are not being inconsistent in supporting Kerry this year, need to be persuaded that the logic of choosing the lesser evil, in 2004 and in the future, entails ever-greater compromises and inevitable defeat. The greater evil, the Republican far right, coddled, enabled and even assisted by the Democrats, will only get bolder and more powerful, and will continue dragging the lesser evil along in its wake. To escape this fate, we must build a powerful left opposition in this country, and it must take the form of a political party, not just a collection of separate movements. This is a job that cannot be postponed; the longer we wait, the worse it gets.

The Deed or the Word

Left Politics and Posturing in the Presidential Race

MICHAEL HIRSCH

VOTING IS A DRAG. John Kerry will get my vote in the November elections, and I'll give it with the same grudging, wintry discontent that I did in the last two presidential elections, when I backed Ralph Nader. In those races, I made statements. Now I want to beat Bush.

But that's not what this piece is about. It's not why a vote for Kerry is inevitable in a year when Bush is vulnerable. It's also not about renouncing my left-wing apostasy or embracing sobering lessons learned in Florida in 2000. Because Nader did not singularly cost Gore the election. It was Gore's inept campaign in Ohio, New Hampshire, Nevada and states other than Florida that cost Democrats the election, too.

It's about how liberals and leftists on both sides of the Kerry-Nader divide can get rabidly exercised about other people's campaign choices, when they both know that power does not come out of an election booth. It comes out of the economic and social movements poised to hold officeholders accountable. It's about never forgetting that the left — the only hope for humanity (and do I exaggerate?) — is not built by electoral struggle but by building the social movements, before, during and after elections.

It is the weakness of those social movements that forces poor choices on us. Beyond the facility of corporate Democrats to co-opt movement leaders into precinct captains or the fecklessness of radicals to form lasting electoral and structural alternatives, a centrist Democrat is sadly our last best shot for ending the White House occupation because no social movements are strong enough to move the country left.

That simple fact hasn't stopped sides from forming up for intramural color war, with the loudest drumming from the punditry. When Nader announced his third run, the usually measured Michael Tomasky, for one, called his supporters "left-wing lions of ideological chastity" and counseled the Democrat primary contenders, to a man, to "attack Nader right now, and with Lupine ferocity." He told *American Prospect* readers how Nader was "a megalomaniac whose tenuous purchase on present-day reality threatens to cancel out every good thing he's done in his life," which, if true, would be a cancellation on the order of the original *Star Trek*.

There was more passion on view in Tomasky's tough love for Nader than in his eight years of covering New York's pug-ugly Mayor Rudy Giuliani, the race-baiting, city-service privatizing, real-estate creature and poster boy for megalomania whom Tomasky characterized in *New York* magazine as someone who ran for office "to the right of how he ruled."

In the same vein, David Corn, writing in the *Nation*, puts the best possible face on Kerry by stripping away the issues. He argues that despite any identifiable lesions, the career of Kerry the man shows "key moments when he displayed guts and took tough actions" and where he has "shown courage, devotion to justice and commitment to honesty, open government and principle-over-

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MICHAEL HIRSCH *is an editor of* New Politics. *He ran as a Dennis Kucinich delegate in the March primary, outpolling the Ohio congressman in New York's 14th C.D. by some 200 votes. An earlier version of this piece appeared in* Democratic Left *(Spring 2004).*

politics. There are few senators of whom that can be said." Few indeed. But except for his biographers and handlers, why should this observation matter?

Making the case for Kerry is no slam-dunk. Problems with the Washington fixture are palpable; they can be lined up and bowled over like candlepins.* But even if Kerry is every bit the political bastard his left detractors say he is, he is — as FDR said of the senior Somoza — our bastard, at least until Nov. 3. Until then, the anti-Bush effort is well-worth building in its own right, if only as realpolitik. It needn't be dressed up by pounding the iron necessity of beating Bush into a tin-plated virtue. Kerry supporters don't have to say the ridiculous or the indefensible on his behalf.

Of course, some critics of the Democratic candidate do offer a real-world model for Tomasky's ravening beasts. John Pilger's *New Statesman* screed, widely distributed over the Internet and on web sites, including ZNet, came illustrated in the original London version with a split screen of Bush and Kerry melded into one face, sharing a lipless sneer. Same man and same agenda. Pilger says pointing to any substantive differences between Bush and Kerry is "a big lie," that distinctions between the two do not "go beyond the use of euphemisms," and that the real objection to Bush by Democrats is to his outspokenness, to his administration's "crude honesty," and not to any policy differences. "The Democratic Party has left a longer trail of blood, theft and subjugation than the Republicans [which] is heresy to the liberal crusaders, whose murderous history always requires, it seems, a noble mantle," Pilger writes. But who doubts that the trail was blazed in a fit of bipartisanship, along with opposition throughout every sector of society, including within the two parties?

What does any of Pilger's biliousness tell us about politics and political choices? Nothing. It's catharsis. Much of the same runs in *Counterpunch*, where Alex Cockburn and friends equate their Kerry bashing with political comment, or in one small left-wing paper that urges readers to "get off the Democratic Party train now," in order to "fight for a new political party," presumably one devoid of those pesky misleaders who seem to muck things up. This without explaining how a second Bush administration could possibly bring that goal of better trains and better leaders nearer.

Counterpuncher Phil Gasper lands a solid jab when he notes how "whoever wins in November, we'll need the biggest and most militant social movements on the ground to fight their policies," but then brings his knee up for a groin shot by saying that "whenever activists get sucked into support for Democrats the movements are weakened and sometimes destroyed." He calls noting differences between the two major party candidates "a mug's game."

At least the Greens bring some humor to the table, as when St. Louis Green Party organizer

* Here's a short list: Kerry supported NAFTA and the World Trade Organization. He joined Bill Clinton in eviscerating public assistance. He hired Rand Beers, boon companion of Bush critic and one-note anti-terrorism Cassandra Richard Clarke and who worked for Bush's National Security Council until last year, as his foreign policy advisor. That might be a clever campaign move, but it's indicative of just how narrow gauged is American foreign policy debate. His stands on the drug war and the Israeli occupation will be only slightly more grounded than Bush's. Nor will he be no less indebted to corporate interests: Kerry's $115 million raised by mid-May pales in comparison to Bush's $200 million money machine. Despite support from Howard Dean, Kerry cannot expect to tap into the breadth of small contributions from the aptly named Deaniacs, though almost a third of Kerry's total has been raised through the Web.

His health care proposals are a fudge — health care transmutes into "health coverage" and back again, on all his literature. If a single-payer health plan emerges, it won't come from a Kerry administration, but because employers resist paying huge health care costs and unions refuse cutbacks, not because Kerry will lead or the corporations will come to their senses and turn on the insurance industry. The only special interests he is likely to stand up to are unions, the poor, and the uninsured.

There also isn't a startling small amount of daylight between Kerry and Bush even on campaign issues. As the *Washington Post* recently noted. both say they would preserve tax breaks while limiting non-military spending. Both prize halving the deficit. Both sell themselves as studiously pro-business and as backers of the Federal Reserve's monetary policies. Cultural issues aside, both are tailoring their campaigns to the centrist voter in the battleground states.

Don Fitz turns the question around, asking "Should the Democrats run a candidate for president in 2004?" and says, with some justification, "If the Democrats were against the Bush program, why would they wait for the election to fight it?"

LET'S SHOVEL AWAY the accumulated sludge. Nader's take on corporate power is on target, as far at it goes. *Crashing the Party*, his account of the 2000 race, is a good statement of first principles as well as a fair treatment of how hard it is to raise political issues in a national campaign, especially absent a social movement running interference for you.

Nader also has every right to run for president, and those who know that defeating Bush is all-important have every right to say "Ralph. Don't run." But they have no right to chant, "unclean; unclean" or vilify his supporters.

Case in point: in 1985, then New York City Clerk David Dinkins, whose reputation then was as an attractive if unremarkable stalwart of the Harlem Democratic Party machine, announced plans to run for Manhattan Borough President. Now more ceremonial, the post was then a powerful one, not yet circumscribed by term limits and still with a big say in city budget and land use decisions, which constitute the bulging piñata of city politics. But Jerry Nadler, then a progressive Assemblyman from Manhattan's West Side and now its Congress member, wanted the job, too. He was roundly denounced by the progressive folk as a racist for running for what was widely regarded as a "black seat." Dinkins went on to be a better mayor than his critics expected, though a far worse one than the electoral left had hoped. Still, it was wrong to say "Don't run," to Nadler then or to Nader now.

The problem I have with Nader's run is not bad faith by the candidate or a belief in "the worse, the better" on the part of his supporters. Neither has to be true. It's how his brand of anti-corporatism doesn't mesh with a political campaign. While he can run a brilliant position-paper operation spotlighting big business domination of political and economic life, don't expect him to target the real dissatisfaction voters have with the Iraq occupation, even its corporate analog, or offer voters an alternative.

Making the case for Kerry is no slam-dunk. Problems with the Washington fixture are palpable; they can be lined up and bowled over like candlepins. But even if Kerry is every bit the political bastard his left detractors say he is, he is — as FDR said of the senior Somoza — our bastard, at least until Nov. 3.

Everything Nader says will resonate as a critique of a bought and paid-for two party system, not a bash at Bush or even a synthetic look at what got bought. If he were instead to frame Bush as an acknowledged corporate tool, he'd play a hero's role in bringing Bush down. But that would detract from building a third party, his acknowledged goal.

Now I want a left-of-center political party, too, one that can harness and represent working class politics in a way the Democratic Party in its big tent, corporate-dominated incarnation cannot. But the time and place to build that isn't a handful of months from November and on the national level, especially when you don't have 50-state ballot access or even a Green Party skeletal apparatus with which to run.

It also isn't fundamentally about bad Democrats and good independents any more. In 1966, Hal Draper, a founder of this magazine, could reasonably write that the destruction of Vietnam's civil society at the hands of the liberal-labor backed Lyndon Johnson proved "that you can't fight the victory of the rightmost forces by sacrificing your

own independent strength to support elements just the next step away from them." Draper argued that "where the choice is between one capitalist politician and another, the defeat comes in accepting the limitation to this choice." But today the issue is not so easily demarcated as working "inside" or "outside" the Democratic Party," or neatly as "Democratic cooptation" vs. "independent political action." The lines draw around: what constitutes political action, independent or otherwise, and in whose interest is it undertaken. By this test, neither Kerry nor Nader shine.

Any politics has to start from an analysis of social forces. Social movements are weak, but not because their leaders failed to resist the siren call of access to the White House or the governor's mansion. Idle chatter about "the class" or "the youth" or "the labor bureaucracy" and its misleaders only reinforces the left's alienation from its own base because it substitutes assertions for analysis.

If the Democratic Party on the national level is dominated by corporate centrists in the Democratic Leadership Council, for example, why not take them on where they live? Or help those who can. Or at least stop chanting that the only function of a Kucinich is — as several left critics insist — as a shill for the party that eats movements whole. While the "principled" left warms itself around a dying fire, the DLC is making history. Bad history, but history.

It writes policy papers that posit incremental improvements over the free market ravings of the right. But by giving token support for environment causes and backing some progressive social initiatives, the group serves as a lifeboat for aspiring officeholders — especially in the absence of any seaworthy lifeboats from the left from which to cling. It also grooms local candidates, understanding that the care and feeding of ambitious and entrepreneurial pols is a necessity. Its list of the 100 rising "New Democratic Stars" includes a slew of city mayors and county executives. These are people in the public eye who are responsible for producing for voters, and include such likely future Democratic superstars as New York's Eliot Spitzer, Illinois's Barack Obama and California's Phil Angelides — all seeking or expected to seek top state jobs.

The DLC even puts out a 'State and Local Playbook" it describes as "a 'menu' of effective, field-tested policy proposals from which model initiatives can be implemented in states, cities and communities around the country." What is the left putting out — even that left that believes in realigning the Democratic Party? "U.S. Troops Out of Iraq," or "Support Gay Marriages," or "Defend Abortion Rights" are reactive programs that do not get to the heart of the American empire, harm the war makers where they live or deliver a body blow to sexual fundamentalists.

There is no left national agenda to guide any elected officials, though municipalities from Santa Monica and San Francisco to New York are better served and activists clearer about housing, health care, wages and other local needs. The contentious AFL-CIO cannot agree on plastic or paper, though its constituent unions are hauling a lot of ashes for the anti-Bush effort. Without an agenda, labor law reform is the most unionists should expect from a Democratic administration in a new century where union workers compose just eight percent of the total private sector workforce, in large part because unions are hamstrung in organizing. New York's labor-leaning Working Families Party strenuously and regularly denies it is even progressive. Even as delegates passed a decent enough anti-Iraq war resolution at its recent state convention, its leaders were busy scotching efforts to do any less than coronate New York's hawk senator Charles Schumer after endorsing his re-election bid.

Who is pushing for an electoral expression of the need to correct such gross inequities as seeing corporate profits surge 87 percent in two years, according to Commerce Department figures, while wages and salaries grew just 4.5 percent in the same period? If you're not in the market, you didn't benefit.

If the pro-Kerry folk tend to be unreflective or even somnolent about how bad the situation is: that in 2004, amidst war, joblessness and poverty, we soldier on and hopefully elect another centrist

Democrat, then the self-styled revolutionary left's sin is to act like lemmings, as though the sea were not instant death and Bush or Kerry do not matter. The candidate of one socialist groupuscule says he is running as "a voice for the international working class in the 2004 U.S. elections." Even bullfrogs don't puff themselves up that much.

Holding to a "socialist politics" without putting any forward means acting like émigrés in your own country, when the truth is there is no socialist politics, principled or otherwise, unless you make it so. Independent political action does not mean independent of politics. Neither does it mean setting up Potemkin villages and calling them political choices. Stanley Aronowitz's ill-starred Green Party gubernatorial campaign of 2002 may have had legs. Nader's 2004 run does not. It's dallying with failure.

What then constitutes success? For longtime supporters of *New Politics*, it means less invoking of first principles and more focusing on what makes those principles pertinent. What are the politics involved in continuing to support "the third camp," which was a historically contingent formulation that opposed rapacious capitalism and blood-soaked Stalinism. With the collapse of the Soviet empire, isn't it once more "socialism" that is the real manifestation of workers' power and autonomy? Similarly, why weep for a lost "third party" when "working class-based politics" in whatever form it takes is the real necessity? In Europe, so-called working class parties only serve their base incrementally better, if at all, judging from the German Social Democratic and British New Labour governments.

When Rosa Luxemburg trashed her German socialist opponents at the turn of the last century, she accused them in essence of repudiating politics. It was the evolutionary socialist Eduard Bernstein who she claimed separated "the conquest of political power" from what Luxemburg saw as the equally necessary "improvement of the condition of the working class." She chided her opponents for saying working people "must not expect to institute socialism as the result of a political and social crisis but by means of the progressive extension of social control and the gradual application of the principle of cooperation." Luxemburg's genius, and the genius of modern Marxists who haven't looked for reasons to abstain from politics, is the understanding that socialists must do both, that one flows from and reinforces the other.

Absent these distinctions, propagandizing for a third party is harmless enough, especially if you valorize consciousness raising and think elections are an opportunity to peddle your wares. But using the election as a chance to establish a franchise or operate a fishing expedition to hook hapless Greens will be criminal if it leads to a Bush suzerainty. Differences like these won't get resolved by talking or fighting from now until November. Instead of an arctic night of long knives, I'd rather see activists working their own sides of the street.

For those who know Bush must be defeated in November, it means stumping for Kerry. It means insisting that the social movements have a voice and face in the campaign and room to grow. It means running the ground war in media markets where the emphasis by the party pros will be on television saturation in the 17 battleground states. It means focusing on local races, where a few dedicated campaigners can make a difference in swinging control of state houses or Congress.

In New York City, for example, it means working in the long-shot Frank Barbaro campaign in Brooklyn-Staten Island against a hardcore right-winger who holds office in a district that boasts the highest union-household density in the nation. Or it could mean backing independent candidates with a chance of winning and who deserve to win, like Matt Gonzalez in San Francisco last year. Or at least building for the future where such local candidates can win.

After November, leftists are going to need each other, unmaimed. If nothing else, we can at least dial the thermostat down and get to work. Anything else is a real mug's game.

Iraq: Questions for the Peace Movement

By

Joanne Landy

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A Post-9/11 Health Check

The State of Our Civil Liberties

NANCY MURRAY

AT THE END OF THE TWENTIETH CENTURY, few Americans would have predicted that within a handful of years, the U.S. Supreme Court would be pondering whether to give the person it had appointed as president of the United States the unchallenged power to strip U.S. citizens of their constitutional rights and hold them indefinitely in legal limbo as "enemy combatants." Few could have imagined that the United States would become a country in which a thousand people could disappear into secret detention. And who would have conceived of uniformed military attorneys filing a brief to the Supreme Court denouncing the administration as a "monarchical regime" that has created "a legal black hole" in which one person, the president, has the power to prosecute, try and execute sentences?[1]

Twenty-eight years ago, as the nation was dealing with the excesses of the Watergate scandal and FBI spying on literally hundreds of thousands of Americans through the COINTELPRO operation, Justice William O. Douglas wrote to a group of young lawyers in language that resonates loudly today. "As nightfall does not come all at once," he warned, "neither does oppression. In both instances, there is a twilight when everything remains seemingly unchanged. And it is in such twilight that we all must be most aware of change in the air — however slight — lest we become unwitting victims of the darkness."[2]

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Today, the darkness is fast approaching. And I am not just referring to the impact of the USA Patriot Act.[3] This legislation is part of a large battery of weapons the government has been using against our rights, and many of its repressive actions have nothing to do with the Patriot Act. For instance, the government has been using "material support" provisions of the 1996 Anti-Terrorism and Effective Death Penalty Act to label people "terrorists" — provisions that were recently ruled unconstitutional by the Ninth Circuit Court of Appeals. The government used a change in immigration regulations — and not the Patriot Act — to hold non citizens indefinitely in the wake of 9/11. On September 20, 2001 it extended the time noncitizens could be held without charges from 24 hours to 48, and then provided for the 48 hour limit to be extended "in the event of an emergency

NANCY MURRAY *has been the director of the ACLU of Massachusetts' Bill of Rights Education Project since its founding in 1987. Since December 2001 she has also been coordinating a Civil Liberties Task Force to campaign for the rights and protections that are the hallmarks of our constitutional system.*

or other extraordinary circumstances" for an "additional reasonable period of time."[4]

The attorney general on October 31, 2001 issued an order permitting the monitoring of communications between lawyers and federal detainees[5] — this had nothing to do with the Patriot Act. On May 30, 2002 the attorney general announced a change in FBI guidelines permitting the Bureau to carry out surveillance on lawful domestic religious, civic and political activity without suspicion of wrongdoing. New guidelines permit the FBI to freely infiltrate mosques, churches and other meeting rooms, to monitor online chat rooms, trawl for information on the Internet, and to conduct full investigations for one year with no evidence that a crime had been committed and no oversight from headquarters.

On November 22, 2003 we learned from the *New York Times* that the FBI has been monitoring antiwar demonstrators and sent a classified memorandum to more than 17,000 state and local law enforcement agencies asking them to report suspicious activity at protests to its Joint Terrorism Task Force units. Again, these actions have nothing directly to do with the USA Patriot Act. Neither does the trashing of international law and the rule of law itself that are at the heart of the Administration's shameful Guantanamo policy. And nowhere in the Patriot Act is the government given the green light to strip American citizens of their constitutional rights and detain them indefinitely in legal limbo as "enemy combatants," the fate to date of Yaser Hamdi and Jose Padilla.

This "health check" will survey what the whole array of post-9/11 measures have meant for 1) the First Amendment guarantees of freedom of expression and assembly; 2) our rights to privacy and to be free from unreasonable searches and seizures; 3) the rights of immigrants. It will then make some general observations about what is wrong with the government's conduct of the domestic "war on terrorism," and finally focus on encouraging signs that our institutions and body politic are gathering strength for the battles ahead.

Freedom of Expression

AT CERTAIN TIMES in our history, the First Amendment has appeared to be under more pressure than it is today. For instance, shortly before the ACLU was formed in 1920, Rose Pastor Stokes got ten years in prison for writing a letter to a St. Louis newspaper that stated: "I am for the people, but the government is for the profiteers."[6] It is difficult to imagine that happening now.

However, today new elements are present which make this a uniquely dangerous time for our First Amendment rights and the functioning of democracy. We now have an administration that is obsessed with secrecy. Ours is supposed to be a transparent government that is accountable to the people, and our right to express our views is bound up with the right to know and to have access to information. Since 9/11 the U.S. government has shunned public exposure of its methods and actions. In October 2001 Attorney General John Ashcroft sent federal agencies a memo stating that if they could find a reason to do so, they should refuse to fulfill Freedom of Information Act requests and the Justice Department would back them up.

This is the same John Ashcroft who on January 22, 2004 told the leaders gathered at the World Economic Forum in Davos, Switzerland that they had to fight corruption in government by letting in sunlight. "Information is the enemy of corruption. Corruption cannot flourish in the light of day." John Ashcroft has denied Americans information concerning the names and numbers of "special interest" detainees, required that secret trials be conducted and that immigration court officials be instructed not to inform the public that certain cases even exist.

As for the First Amendment rights of association and dissent, Section 802 of the USA Patriot Act has provided the government with a potent weapon to use against demonstrators. It defines domestic "terrorist activity" in such broad terms that protestors can be transformed into terrorists if they engage in conduct that "involves acts dangerous to human life that are a violation of the criminal laws of the U.S." if they "appear to be

intended . . . to influence the policy of a government by intimidation or coercion."

Direct attacks on First Amendment rights have taken a variety of forms since 9/11 — from the targeting and deportation of outspoken activists who are not citizens, to preventing peace activists and progressive journalists from boarding planes. Around the country there is evidence that political spying is on the rise in cities like Chicago (where undercover police have been spying on such groups as the American Friends Service Committee), Atlanta, Denver and Colorado Springs. High school students in Lexington, Massachusetts were shocked to learn in March 2003 that the FBI had informed local police that they were planning to join an antiwar walkout. One of them had signed on to a website set up by the group which was organizing the nationwide protest. Imagine the feelings of a California antiwar group called Peace Fresno when one of their members was identified as a detective with the Fresno County Sheriff's Department in a newspaper article about his death in a motorcycle accident.

The heightened surveillance is not just targeted at organized groups. In April 2004 secret service agents questioned a Prosser, Washington high school student whose antiwar drawings were brought to their attention. And shortly before the war against Iraq was launched last year, a professor of Iraqi descent, who is now an American citizen, was visited by the FBI at the University of Massachusetts in Amherst because he had reportedly made "un-American comments."

The ACLU of Massachusetts' concern over this UMass/Amherst incident grew when it was revealed that a member of the campus police at the university was working with the FBI. Because his FBI work was to do with "national security," he was not permitted to report on his activities to his campus supervisor. We filed a Freedom of Information Act to find out how extensive this kind of cooperation between university police and the FBI is on Massachusetts campuses, but we have yet to receive a reply.

There is nothing new, of course, about government infiltration and surveillance, and the chilling impact it can have on the exercise of First Amendment rights. In the 1950s there were the Red Squads checking out dissenters, and in the sixties, government agencies, including the Pentagon, set out to collect information on literally every demonstration of more than twenty people in an effort to keep the antiwar movement under control. When those actions and J. Edgar Hoover's COINTELPRO operation became public and certain safeguards were put in place to protect constitutional rights, we assumed we had put these bad days behind us.

But with new FBI guidelines, the expanded surveillance provisions of the Patriot Act and especially the technological advances brought by computers, our First Amendment rights are today uniquely imperiled. Never before has it been possible for monitoring agencies to carry out such extensive spying and so quickly to pool and share their information in files they can open with the click of a computer key, and which we can never see and challenge. And thanks to the Patriot Act's "non disclosure" or gag orders — which threaten prosecution if government demands for our private records are made public — the extent of government spying may never be known.

Meanwhile, fighting terrorism has become the source of lucrative contracts, with the Departments of Justice and Homeland Security offering grants to local police departments that can demonstrate that there are groups identified as "potential threat elements" (PTEs) in their midst — according to the Justice Department, these elements could be "political, religious, racial, environmental [or] special interest." In Massachusetts 351 cities and towns identified more that 500 PTEs in their applications for funding, while the state police identified only 30. According to the January 30, 2004 *Boston Globe*, "Some rural jurisdictions reported having more potential terrorists than larger cities . . . Some localities cited groups that had no history of violence. In one case, a member of a motorcycle gang made a local list of threats." It is difficult to see how local law enforcement agencies can make a compelling case

for funding without putting suspected PTE groups under surveillance to see what they are up to — what does this mean for our rights of association?

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Today, it is absolutely critical that we make full use of the First Amendment rights we still have on paper to speak out loudly against government abuse — this may be our best, indeed our only protection. And it can be effective. In early February 2004 four peace activists received subpoenas ordering them to appear before a grand jury on February 10. They had attended a forum called "Stop the Occupation! Bring the Iowa Guard Home!" which was held at Drake University on November 15, 2003. The university also received a broad subpoena ordering it to hand over information relating to the forum and records, including membership lists, of the event's sponsor, the local chapter of the National Lawyers Guild. The subpoena was accompanied by a "nondisclosure order" barring public discussion of its contents. On February 9, the same day that the National Lawyers Guild went to court to seek to block the demand for its documents, the U.S. attorney's office for the southern district of Iowa confirmed that an investigation was underway into an antiwar protest that occurred the day after the forum, when civil disobedience was carried out at an Iowa National Guard base. The alarm that rippled across the Internet produced such an outcry that the very next day the subpoenas were withdrawn. The news was greeted with jubilation by a crowd outside the federal courthouse that carried signs saying "You can subpoena U.S., but you will not silence U.S." and "Investigate Halliburton not Iowans."[7]

But no sooner did news of the subpoena withdrawals become public, than it was revealed that a forum that had been held at the University of Texas Law School on February 4, 2004 was being investigated by U.S. Army Intelligence. It was entitled "Islam and the Law: The Question of Sexism?"

Here is one last example of the perils facing the First Amendment in our post-9/11 world. Late in 2003 we learned that the FBI had written to journalists who were reporting on the hacking of the *New York Times* website. They were told to expect USA Patriot Act subpoenas for all their documents relating to the case, including privileged communications, emails, interviews and notes. If they didn't oblige they would be jailed. If they disclosed this request, they could be prosecuted. According to attorney Eleane Cassel, writing in the October 1, 2003 *CounterPunch*, "We only know about these subpoenas because a *Wired News* reporter reported that the FBI had contacted him, no doubt trying to get the word out before the gag order kicks in. Secret subpoenas, secret evidence, secret trials. That's patriotism today."

Search and Seizure

THE USA PATRIOT ACT gives the government extraordinarily broad powers to seize your private records, monitor your telephone, email and Internet use, secretly search your home without telling you until at unspecified later time — and to do so without your knowing any of it is going on and without there being any probable cause to suspect you of wrongdoing.

The volume of information that FBI can intercept under the Patriot Act is simply enormous — for instance, claiming that it needs information to protect against international terrorism, it can now get the credit card records not just of a suspected foreign agent, but of everyone in the company's entire database. Section 215 permits the FBI to visit libraries, bookstores, and all businesses demanding "tangible things" — which could be the records of all books that have been taken out or purchased, or copies of library or

business hard drives simply by asserting that the items are "sought for" in ongoing terrorism investigations. To get your personal records under 215, the FBI does not need to show probable cause that you have done anything wrong or that you are involved in terrorism or work for a country that sponsors terrorism. Librarians and bookstore owners can be prosecuted if they make it public that they have been visited by the FBI.

To understand what is so alarming about Patriot Act search provisions you have to know something about the secretive FISA court, established by the Foreign Intelligence Surveillance Act of 1978. This act was passed by Congress after damaging revelations about the extent of FBI spying on Americans' constitutionally-protected activity under its Counter Intelligence Program (COINTELPRO). The FISA Act set up a new secret Foreign Intelligence Surveillance Court to review government applications for the collection of "foreign intelligence" information to be obtained by the wiretapping of suspected spies. There did not need to be a showing of probable cause of criminal wrongdoing to get such a court order — in this respect it was different from a warrant issued by a magistrate. Although FISA-obtained information was not entirely barred from being used in criminal trials, the intention was to restore the integrity of the Fourth Amendment ban on unreasonable searches and seizures by minimizing the extent to which information obtained without a showing probable cause could be used by criminal prosecutors. From 1978 FISA judges routinely approved some 15,000 warrants. Later on it became clear that many of these orders were based on false allegations. But the FISA court was not set up to second guess the government.

The USA Patriot Act amended the Foreign Intelligence Surveillance Act to make it much easier to carry out surveillance. As long as some intelligence link could be shown, the FBI can now get a FISA court order permitting them to secretly spy on people and can introduce that evidence in criminal prosecutions. Since most Americans had never heard of the FISA court, imagine how startling it was when the court itself, in May 2002, forwarded to the Senate Judiciary Committee a memorandum which challenged USA Patriot Act provisions allowing FISA evidence seized without probable cause of criminal wrongdoing to be used in criminal prosecutions.

In response, the Justice Department appealed to a court that had never before met — a three-judge FISA Court of Review. Meeting behind closed doors, and only listening to government arguments, this brand new court, in its first ruling ever, came down on the side of the Justice Department and upheld section 218 of the Patriot Act.

The result has been an end run around the Fourth Amendment — In the words of Elliot Mincberg, legal director for People for the American Way, "What the Justice Department has really done is to get things put into the law that have been on prosecutors' wish lists for years. They've used terrorism as a guise to expand law enforcement powers in areas that are totally unrelated to terrorism."

According to the September 28, 2003 *New York Times* the government is using the Patriot Act in all sorts of criminal investigations, including an investigation of a political scandal involving Las Vegas strip clubs. In Massachusetts, Assistant U.S. Attorney Michael Ricciuti has publicly stated that the government has used three "sneak and peek" warrants — one in a suspected terrorism case and two to investigate criminal activity.[8]

Although the executive branch has not been successful in pushing the Domestic Security Enforcement Act (the leaked draft of which has been termed "Patriot II") or the Victory Act through Congress, it is continuing to amass power. Section 374 of the Intelligence Authorization Act, signed into law by President Bush on December 13, 2004, enables the FBI to get records from such "financial institutions" as insurance companies, travel agencies, real estate agents, stockbrokers, the U.S. Postal service, casinos, car dealerships and jewelry stores without needing to obtain a court order of grand jury subpoena.

To obtain these records an FBI field agent

only needs to draft a "national security letter" stating that they are relevant to a national security investigation. Businesses risk prosecution if they reveal to anyone that their records have been requested. Rep. Ron Paul, a Republican from Texas, stated in the House of Representatives on November 30, 2003 that "the stealth addition of language drastically expanding FBI powers" had been "written into the bill at the eleventh hour over the objections of members of the Senate Judiciary Committee, which would normally have jurisdiction over the FBI. The Judiciary Committee was frozen out of the process. It appears we are witnessing a stealth enactment of the enormously unpopular 'Patriot II' legislation that was first leaked several months ago . . . this is outrageous and unacceptable."

Congress is undermining privacy rights in other ways. The U.S. Senate Finance Committee recently shocked the Muslim community by requesting that the Internal Revenue Service turn over the donor lists, and confidential tax and financial records of at least 27 Muslim charities and foundations, on the wholly unsubstantiated grounds that they "finance terrorism and perpetuate violence." The request, which became public on January 14, 2004, includes leadership lists, donor lists, and audit materials of such organizations as the Muslim Student Association and the Islamic Society of North America, an umbrella organization for 300 Muslim groups and a third of the mosques in the United States.

Meanwhile, financial bodies and other private institutions are either compelled by the Patriot Act or recruited through government contracts to keep an eye out for "suspicious activity" and to file "suspicious activity reports" — SARS — on clients. The failure to do so can result in criminal charges. Once targeted with a SARS flag, there is no way for people to prove their innocence or even know that such a report is circulating on them. In Massachusetts the Fleet Bank accounts of several Muslim customers were closed without word of explanation, and subsequent attempts to understand why have hit a dead end.

Congress refused to fund the Terrorism Information Awareness program (formerly Total Information Awareness), which the now-retired Admiral John Poindexter was supervising from DARPA, the Pentagon's research arm. However, the building of giant databases that can supposedly be "mined" to reveal "patterns of terrorism indicators" is moving swiftly ahead in intelligence agencies and private corporations, with no accountability to the public and no respect for privacy rights.

One private initiative is being undertaken by ChoicePoint, the Atlanta-based corporation that took over DataBase Technologies (which scrubbed Florida's 2000 voter rolls of thousands of African-Americans on the erroneous grounds that they were convicted felons and hence ineligible to vote). Mara Shalhoup has written a chilling account of the emergence of "a centralized government database in corporate database clothing."[9] ChoicePoint has been given at least $30 million in Homeland Security funds and an unknown number of government contracts with the Justice Department, IRS, Department of Homeland Security, and Pentagon to mine information on Americans in the name of fighting terrorism.

Starting life as the insurance-claims division of the credit-reporting agency Equifax, ChoicePoint went public in 1997. It now has 4,200 employees in 70 offices in 28 states and Washington DC, holds 17 billion records, and has been listed as one of the country's 100 fastest-growing companies. The 1974 Privacy Act prevents the federal government from constructing the kind of database represented by ChoicePoint, but it does not stop the feds from buying information from a private company, and individuals whose information is made available to the government are never the wiser.

Then there is the MATRIX program (Multi-State Anti-Terrorism Information Exchange) — with at least $12 million in federal funds. The ACLU has filed more than 20 Freedom of Information Act requests to try to find out about this data surveillance program. according to Barry Steinhardt, the head of the ACLU's Technology and Liberty program, MATRIX "is fully capable

of rooting through billions of records about the private lives of Americans — and may be doing so already." Billed as a tool for local and state police, it is being housed in the Boca Raton, Florida offices of Seisint, Inc., a private company founded by a millionaire whom police believe flew drugs into the country in the 1980s.

Before long, airline passengers may be subjected to the government's CAPPS II (Computer-Assisted Passenger Pre-Screening) system. Under CAPPS II, a prospective passenger would be required to provide their name, date of birth, home address and phone number. A search of databases will then be conducted to assign that ticket purchaser a color-coded security risk rating. Red: he or she won't be permitted to fly. Yellow: the person will be given extra scrutiny and may or may not be able to fly. Green: the various records — law enforcement, financial, consumer, housing, health, legal — had nothing suspicious about them. The Transportation Security Administration (TSA) has speculated that about five percent of the traveling public — millions of people — will be flagged as high-risk red or yellow. According to the January 12, 2004 *Washington Post*, the government will soon compel airlines to hand over all passenger records as it prepares to implement the CAPPS II program.[10] But in a February 2004 report, the Congressional General Accounting Office stated that the TSA "has not completely addressed" seven out of the eight pressing privacy issues that Congress had said the government must address before it gets any more funds for CAPPS II.

Immigrant Rights

FOR OVER A CENTURY, the U.S. Supreme Court has ruled that noncitizens are "persons" under the Fifth and Fourteenth Amendments, entitled to freedom of expression, association and religion, as well as equal protection and due process under the law. In its 2001 ruling in *Zadvydas v. Davis*, the Court cited with approval a 1953 Supreme Court decision holding that "aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law."

Today in the United States, many noncitizens are reminded of the police states that they fled. Noncitizens who are Muslim, primarily from the Middle East and South Asia, have been the chief targets of Justice Department repression. More than 1,200 of them were rounded up in the aftermath of 9/11, as the FBI responded to nearly 96,000 tips in the first week after the attacks. Many of these people, who were completely innocent of any connection with terrorism and charge with no crime, were held completely cut off from their families and the world in total security confinement, with lights blazing 24 hours a day and their every movement monitored by unseen guards. Many were physically and verbally abused. Their treatment has been harshly criticized by human rights groups, by the Department of Justice's own Inspector General in a 200-page report, and by the ACLU, which in January of this year filed a petition before the Working Group on Arbitrary Detention in Office of the UN High Commissioner for Human Rights on behalf of some of the detainees

The Justice Department trumpets hefty figures to show it is making progress in the "war on terrorism," but it has a major credibility problem. A report released in early December 2003 by Syracuse University's Transactional Records Access Clearinghouse documents that in the two years following 9/11 the Justice Department referred 6,400 people for investigation on terrorism charges. But two-thirds of them were never charged with anything. Of the 879 who were charged and convicted, more than half received no jail time, and 250 less than a year in prison. Only a few got lengthy prison sentences. Among the cases labeled as "terrorist" were 65 involving foreign students who hired others to take their English proficiency exams and 28 involving undocumented immigrants working at the Austin airport. More people received long sentences on international terrorism charges in the two years before 9/11 than in the years since then!

But the domestic war against terrorism goes on, with immigrants bearing the brunt. In Mas-

sachusetts, detention facilities are so crowded that the Suffolk County House of Correction was forced to open a new wing for immigrant detainees. Earlier this year, sixteen of them smuggled out a handwritten appeal, which describes the conditions they are facing. They are being kept locked in cells without toilets for 19 hours a day. They lack access to a law library, typewriter and copy machine to help them prepare their cases. They have to wait on line for two days just to use the telephone, and they cannot get through to their lawyers. They have no religious services, and experience an "extremely bad attitude from the officers."

The Justice Department trumpets hefty figures to show it is making progress in the "war on terrorism," but it has a major credibility problem.

The government's post-9/11 policies have made all immigrant communities more fearful, not just those that are Muslim or have connections to the Middle East. Attorney General Ashcroft has pressed into service a 50-year-old regulation long abandoned as unworkable which makes it a deportable offense to fail to notify the immigration authorities of a change of address within ten days of moving. With the slightest infraction of the rules now grounds for arrest and deportation, and with the Attorney General claiming that state and local police have the "inherent authority" to carry out civil immigration law enforcement, the self-proclaimed "Nation of Immigrants" is a potential minefield for both documented and undocumented noncitizens.

In the past, people who overstayed their visas or were out of status for other reasons — which often included the failure of the INS to process paperwork in a timely fashion — were rarely put in detention, but usually allowed to leave the country voluntarily. 1996 legislation mandated the deportation of immigrants who had been convicted of a crime, no matter how long ago it occurred or how clear the evidence of rehabilitation.

Now all categories of offenders, both civil and criminal, as well as asylum seekers who have failed in their claims, are in danger of being arrested. They are either immediately deported or detained in prisons for months or more than a year in conditions that make it difficult for them to communicate with the outside world and mount a legal defense or even to be located by their families. In keeping with the post-9/11 resort to secrecy, detention centers and prisons are no longer giving out the names of immigration detainees.

Meanwhile, the attorney general is ordering the names of violators of some categories of civil immigration law — including "absconders" with final deportation orders and foreign students with Student and Exchange Visitor Information Service (SEVIS) irregularities — to be entered into the National Criminal Information Center (NCIC) database which police access when they make routine traffic stops.[11] Up to 400,000 "absconders" are being targeted for arrest in "Operation Endgame." These include people who have been victimized by the INS' notoriously flawed record keeping, including those who may never have received notices to appear before immigration judges and were ordered deported after they missed their hearings.

If the CLEAR Act passes Congress there will be financial pressure on police departments to enforce immigration law. The Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act, which has about 120 House sponsors and a companion bill in the Senate, would give those state and local police agencies that help round up out-of-status immigrants a share of fines and forfeited property, and withhold federal funds from those agencies that do not agree to enforce immigration laws. As police chiefs around the country have testified in an effort to stave off the CLEAR Act, police departments are not equipped or trained to enforce complex civil immigration law. Further-

more, performing this role would undermine community policing and prevent noncitizens from coming forward to report crime. Just imagine the tension in our streets if police are encouraged to stop people who "look like immigrants" as they search for "illegal aliens"!

But will Muslim immigrants who obtain citizenship feel more secure in Ashcroft's America? A case going on now in Cleveland may hold the answer to this question.

Fawaz Damra, the imran of the Islamic Center of Cleveland, was arrested on January 13, 2004 and charged with failing to reveal his ties to the Palestinian group Islamic Jihad when he applied for U.S. citizenship in 1993. Islamic Jihad was not put on the government's list of terrorist organizations until 1997. The grand jury indictment against him also states that he failed to disclose an affiliation with groups that supported the Afghan resistance against Soviet occupation, a cause dear to the United States at the time. If convicted, the Palestinian American faces a maximum of five years in prison, and can be stripped of his U.S. citizenship and deported.

The Right Track?

THE GOVERNMENT'S WEAPONS of choice in the war against terrorism do violence to our Constitution and civil liberties without demonstrably enhancing our national security. On the contrary, they could be wholly counterproductive.

Take "guilt by association" and the targeting by religion and national origin — these cast a wide net, which can potentially trap any Muslim citizen who makes a donation to the "wrong" charity, any Arab American who speaks out on U.S. Middle East foreign policy, anyone whose appearance might attract the scrutiny of a citizen snoop, or whose electronic profile might raise flag. Detailed studies of racial profiling based on law enforcement statistics reveal that profiling is a very ineffective method of fighting crime.[12] A scattershot approach to uncovering wrongdoing, it alienates the community from law enforcement rather than building the kind of trust which is the foundation of a healthy society and a critical part of meaningful intelligence gathering. If authorities focus on race, ethnicity or religion, those who do not fit the profile and who may in fact be terrorists will more easily slip underneath their radar.

How about the approach of getting as much information as possible on millions of innocent people and then using data mining techniques to identify the bad guys? We know from the 900-page "Report of the Joint Inquiry into the Terrorist Attacks of September 11, 2001" by the House and Senate Permanent Select Committees on Intelligence (December 2002) and the public sessions of the public sessions held in April 2004 by the National Commission on Terrorist Attacks that the government did not suffer from lack of information in the years and months leading up to 9/11. In fact, it was overwhelmed with information. Intelligence agencies had intercepted millions of hours of telephone conversations and billions of email messages, but they had few translators on staff and lacked the background knowledge and skills of analysis essential to timely decision-making. Turf rivalry, poorly prepared staff, the culture of secrecy and out-of-date technology made many of these agencies all but dysfunctional.

Rather than focusing on fixing these problems, the government wants to get still more information on millions of law-abiding people: and more information is not necessarily better information. Are we really safer when FBI agents monitor web sites involving student antiwar protests? Or when local police and state troopers follow up on every warning of "suspicious" activity called in to the TIPS line? Are these good uses of law enforcement time?

What is being done about matters that should be pressing priorities? How can the same president who from time to time mentions his concern about the threat that an Al Qaeda attack on nuclear facilities could pose to the "homeland" propose in January 2004 the elimination of federal safety standards at nuclear weapons facilities and research labs, permitting private contractors to write their own rules?[13] A public debate about the fundamentals and focus of "national security"

is long overdue.

THE GOOD NEWS in this otherwise dismal health check is that our body politic is far from comatose. Over the past year, the U.S. Congress has begun to show spine, with several pieces of legislation pending that would either repeal provisions of the USA Patriot Act outright, or amend it by narrowing offensive sections and instituting

A public debate about the fundamentals and focus of "national security" is long overdue.

constitutional safeguards. On July 22, 2003, 113 House Republicans joined Democrats to oppose, by a landslide vote of 309-118, Section 213 of the USA Patriot Act that permits the "sneak and peek" searches of offices and homes.

Around the country four state legislatures (Alaska, Vermont, Hawaii and Maine) and some 300 cities and towns, representing more than 50 million people, have passed resolutions opposing portions of the Patriot Act and other government measures that undermine rights and weaken democracy. On February 4, 2004, in a highly symbolic moment that quickened the pulse of communities that had their own resolution campaigns underway, the New York City Council passed a resolution affirming that security measures must "enhance the public safety without impairing constitutional rights or infringing on civil liberties"

At a time when the Bill of Rights is fast disappearing in the deepening twilight, we need to build is a new movement for civil liberties and civil rights across the land. That is beginning to happen, thanks to the efforts of hundreds of thousands of people who are taking Tom Paine's words to heart: "Those who expect to reap the blessings of freedom must . . . undertake the fatigue of supporting it."

NOTES

1. *The Boston Globe*, January 15, 2004. Five military attorneys appointed by the Pentagon to represent some of the Guantánamo detainees before the yet-to-be-convened military commission stated in their brief that "unlike earlier wars, the struggle against terrorism is potentially never-ending . . . The Constitution cannot countenance an open-ended presidential power, with no civilian review whatsoever, to try anyone the president deems subject to a military tribunal, whose rules and judges have been selected by the prosecuting authority itself."

2. William O. Douglas to the Young Lawyers Section of the Washington State Bar Association, September 10, 1976.

3. 8 CRF 287, INS No. 2171-01.

4. 66 Fed. Reg. 55062.

5. Zechariah Chafee, Jr., *Free Speech in the United States* (New York: Atheneum, 1969, 2nd edition), note 8, at 52-53.

6. *New York Times*, February 11, 2004.

7. *The Boston Globe*, October 30, 2003.

8. "Big Brother's Little Helper," www.atlanta.creativeloafing.com/2003-12-04/cover.news.html.

9. JetBlue, Northwest Airlines and American Airlines currently face legal action for violating passengers' privacy rights by handing over personal information to the government.

10. The ACLU filed a lawsuit late last year saying this was a misuse of the crime database since Congress did not give authorization for immigration records to be merged with criminal warrants.

11. See David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work* (New York: The New Press, 2002).

12. Associated Press, January 28, 2004.

Sustaining Democratic Life

An Interview with the ACLU's Anthony Romero

This is a lightly edited transcript of an interview conducted by Mark Dow and Kent Worcester with Anthony Romero in April 2004 in his lower Manhattan office.

New Politics: Yesterday during the September 11 Commission hearings, when he was defending some of the Patriot Act measures that have been criticized, Ashcroft said that a lot of what the Patriot Act did was simply to extend measures that were already in existence.

Anthony Romero: Patently false.

NP: Okay, I'd like you to respond to that. Also, in what specific ways are things worse than they were under Clinton after the 1996 laws that changed so much about habeas review, expanded anti-immigrant measures . . .

AR: It is certainly true that the seeds for the Patriot Act were found in the 1996 law signed by President Clinton, and that were championed by the Justice Department under Janet Reno. That's why it's not surprising to find Janet Reno in some agreement with the policies of the Justice Department under John Ashcroft, because you find the very beginnings, in terms of the erosion of judicial review, questions around court stripping, the limiting of immigrants' rights, all of that preceded the Patriot Act. It became much worse under the Patriot Act, but the seeds of it were certainly found in the 1996 laws with the response to the Oklahoma City bombing and the litigation after that that ensued in terms of both the immigration reform law of 1996 and then also some of the anti-terrorism law — the Illegal Immigration Reform and Immigrant Responsibility Act, the Anti-Terrorism and Effective Death Penalty Act, and the Prison Reform Litigation Act. These were a trilogy of laws that all had a very similar set of undercurrents: to erode judicial review, to limit due process rights for immigrants and for prisoners, shifting burdens of proof onto immigrants and others for potential wrongdoing. What's notable is that the Oklahoma City bombing happened one year before the 1996 laws were enacted, so you took a full year in the legislative process to debate and discuss what the legislation ultimately would look like. That stands in marked contrast to the Patriot Act, which was rammed through Congress in record time — 45 days — after the 9/11 attacks. And the Patriot Act goes many steps further than the 1996 laws. And the statement of Mr. Ashcroft and Mr. Bush that they just really codified what was existing law enforcement practice or policies is untrue; it's just patently untrue.

One example of this radical departure from existing law is seen of course in Section 215 of the Patriot Act, which grants the government expansive and radical new powers in being able to seize employment information, library records, financial information, even, quote, tangible infor-

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ANTHONY ROMERO *is the executive director of the American Civil Liberties Union. He is the ACLU's sixth executive director, and he is the first Latino and openly gay man to serve in that capacity. Born in New York City to immigrant parents from Puerto Rico, Romero was the first in his family to graduate from high school. A graduate of Stanford University Law School and Princeton University's Woodrow Wilson School of Public Policy and International Affairs, he was a Dinkelspiel Scholar at Stanford, a Cane Scholar at Princeton, and a National Hispanic Scholar at both institutions.*

MARK DOW *and* KENT WORCESTER *are members of the* New Politics *editorial board.*

mation, tangible data if you will, that could extend to genetic data on individuals. Even John Ashcroft, before one of the congressional hearings, said that that would extend to genetic data. And that it did so with a much lower standard than probable cause, making it much harder for judges to play their essential role in overseeing the actions of the executive branch. So when you water down these legal standards, you make it much harder for judges to serve as a check and balance on the executive branch. And that power does not need to flow from individualized criminal suspicion. The government can just use it in contexts and circumstances where it does not have individualized criminal suspicion, or which doesn't even show probable cause.

Now, we've been arguing throughout that this is a power that's just too breathtaking, that you don't want to give it to the executive branch, and after a lot of back and forth the Justice Department finally came clean recently, about six or nine months ago, saying that they had never used these Section 215 powers. This was only after a lot of badgering from Congress, that John Ashcroft finally told Congress that he hadn't used these new Section 215 powers.

So the question obviously flows, if you haven't had to use these powers in the last two and a half, almost three years since 9/11, why do you need them? Isn't stockpiling law enforcement powers bad for a democracy? It's like leaving around a loaded gun, saying I don't need to shoot anyone today, but some day I might have to pick up the gun and shoot at someone. The fear we have of course is that at another moment in history, when perhaps there's not as much attention on Section 215, or the Patriot Act, or this attorney general, or another attorney general, maybe someone might want to pick up that weapon and use it under a very different set of circumstances for a much more nefarious use than we can even imagine.

The second example of how the Patriot Act is just a radical departure from existing law and existing law enforcement practice is found in Section 213 which deals with "sneak and peek" searches that allows the government new sweeping powers to be able to come into people's homes, search their personal effects, download information off their computers, and not tell them about those searches for weeks if not months after the fact. Now, it is true, under some limited circumstances, like when the government was investigating organized crime, or when it was investigating crimes having to do with contraband or other issues where the government was worried about the suspect fleeing the jurisdiction or evidence being tampered with, that they always had the ability to conduct those secret, what we call "sneak and peek" searches. It was uneven in various jurisdictions, it was not a matter of established federal law, that in some circuits you could do it certain ways, that in other circuits you could do it other ways, but there was judicial oversight throughout, that it was limited in a certain set of circumstances, in terms of certain crimes, and certain investigations, and what the Patriot Act did was it took that power and it made it apply across the country, and it provided law enforcement agents with that power under any and all criminal investigations.

So basically the Patriot Act allows the government to come into people's homes and conduct secret searches for anything like tax evasion, a crime that maybe some Americans commit — but do you want to grant the government the ability to come rifling through your tax records while you're at work to see whether or not you're cheating on your taxes? What most Americans don't realize is that the Patriot Act went much further than just dealing with terrorism. Most Americans believe that when George Bush signed that law, and John Ashcroft held the sword of Damocles over the heads of members of Congress, that they were providing a remedy to the terrorist attacks of 9/11. And now when the American public understands that what's in the Patriot Act is much broader than dealing with terrorism, they're beginning to feel duped, to really begin to say, we really didn't understand that this was a much larger set of measures, that this wasn't just your generic crime bill, that if it was going to affect any and all criminal investigations, then maybe we should

have had a little more debate, a little bit more discussion, maybe our members of Congress should have engaged it a little bit more vigorously than they did.

Outside the Law

NP: Some of the concerns you're raising have to do with setting precedents, or creating certain possibilities. But then there are actual developments that have alarmed critics, such as Guantánamo Bay. Do you want to talk about what conditions are like there, what are the most serious concerns that the ACLU has, and what do Americans not know about what the government is doing?

AR: Well, the last point is exactly the point. We do not know. We do not know how bad conditions are at Guantánamo, we don't know the experiences of the men who are being held there, we don't know for how long they expect to be held, and frankly our biggest concern is that there is no review or scrutiny of the government's actions in Guantánamo. Only the International Red Cross has been granted access to the detainees in Guantánamo. They have a longstanding practice of not commenting on the conditions that they find when they visit detainees and prisoners of war, although this time they broke with some of their standard practice, and they did offer a very carefully worded statement about what their concerns were for the Guantánamo detainees. Our point is a very simple one, that you can't create an island outside of law where basic rights are denied. That's just not the American way, nor is it the way the international system works.

We do not know how bad conditions are at Guantánamo, we don't know the experiences of the men who are being held there, we don't know for how long they expect to be held, and frankly our biggest concern is that there is no review or scrutiny of the government's actions in Guantánamo.

And what's remarkable is that you have the government argue that, on the one hand, international law and the Geneva Conventions don't apply, because these are not, quote, prisoners of war. If you look at the Geneva Conventions, you actually see that under Article 5 of the Geneva Conventions there is a requirement that if there is a doubt about whether someone is a prisoner of war, you are to provide a hearing to adjudicate that status. And this process worked perfectly well for the American government during Operation Desert Storm, where during the last war that occurred in the Gulf, we had 1,196 individuals who the government asserted were prisoners of war, after Article 5 hearings under the Geneva Conventions, the government continued to hold 310 of them as prisoners of war, and the remainder, almost 900 or so, were determined, under these Article 5 hearings, to be displaced civilians and refugees who were just caught up in the hostilities. That process worked perfectly well for us under Operation Desert Storm. This administration has not made a convincing case as to why that process would not work now.

So on the one hand they say that international law doesn't apply, and on the other hand they say that domestic law doesn't apply, the Constitution doesn't apply because this is not on American soil, this is in the sovereign nation of Cuba, and I'm sure Fidel Castro and the Cuban government would have a very different view of that. We have a perpetual lease that only the U.S. government can rescind in Guantánamo; we have exclusive dominion over the military base there, unlike other military bases we have in Germany, or Japan, or elsewhere. And what's just absolutely untenable is the idea that the government can say, interna-

tional law doesn't apply and domestic law doesn't apply, and we're going to hold these guys for as long as we want without giving them access to their family members and their loved ones.

NP: The Guantánamo cases in the Supreme Court will be argued in a few days, and this issue of New Politics *will probably be at the printer around the time of the decision. In the ACLU's amicus brief in* Rasul v. Bush, *there are arguments about the Geneva Conventions. You're going into the U.S. Supreme Court to argue about international law. What does that mean? Can you reflect a little bit on the future of bringing international law to bear on things going on here?*

AR: First, as good lawyers, we throw every argument that we think might convince the court into our briefs. We believe that the international law argument is one that will increasingly make this Court wary of upholding the administration's actions. I think it's remarkable the level of outcry that we have seen among our allies, not outcry from our critics, which you would expect, but outcry from our allies, from the British, from the French, from the Germans, people in countries and governments that have normally agreed with the U.S. and are working with the U.S. on the war on terror absolutely have broken ranks with the American government. And what's remarkable is that in the Guantánamo case you have a number of briefs that are filed by international groups who have never before weighed in on a domestic civil liberties issue or a civil rights issue in the U.S. You have the International Bar Association, which I think for the very first time filed a brief before the U.S. Supreme Court because the issues are so large, and so significant that they require foreign nonprofit organizations to weigh in on this controversy.

For the U.S. it's kind of interesting; it's very sad when you think about the fact that this government and our country have distanced themselves from a very important legacy that we had, actually a very important accomplishment that we had during the Second World War and after, where we were one of the critical forces for establishing international law. It was Eleanor Roosevelt who played a critical role in the drafting and the thinking about and the articulation of the Universal Declaration of Human Rights. And about those principles found in international instruments, in the international documents were very much based upon our very own Bill of Rights and the Constitution. So somehow, in the last fifty or sixty years or so, we've become much more critical and hostile to international law in ways that I think undercut our patrimony, if you will.

And I think at this point, if we think about these issues, these are all global issues, the war on terror is clearly a global issue, you can't wage a response unilaterally or focus only domestically. It requires an international lens. And so the response to the civil liberties and human rights violations also has to be a global one. Where nonprofit groups like ours are in touch with and working with our counterparts in other countries whether in England or in France or in Germany, and working with some of the human rights activists that you find in the developing world. It's clear that in other aspects of policy, that we understand the importance of globalization, that global laws and global norms will govern tariffs and trade, for instance, or they will govern the environment — at least we hope they will govern the environment. It's only a more recent recognition in U.S. circles that global norms, global mechanisms, global instruments should also play an important role on domestic civil liberties, on domestic civil rights and human rights.

Actually, the U.S. Supreme Court, I think in the last two cases in the last term, sent a very important signal that it was willing to consider international law, in both the *Lawrence vs. Texas* case and in the affirmative action case at the University of Michigan, they directly cited international law, not in a footnote, but actually in the body of the opinion. In the *Lawrence* case they actually cited the decisions from the European Court for Human Rights. So it reflects that the Supreme Court itself is willing not only to consider but is willing to articulate international precedent as authority for whatever decisions they themselves

render.

So it's a long-term effort, but it's one that I think the ACLU, as this nation's oldest and largest human rights organization, addressing the rights of everyone, that we have a role to play in the global movement for human rights. That role is about making sure that we hold the U.S. government accountable for its domestic record under every forum that we can, whether it's under federal courts or the U.S. Constitution, or state courts and state constitutions, or even some of the international instruments and some of the international treaties that the U.S. has ratified.

Now to get back to Guantánamo for a second, Guantánamo is not just a human rights issue; it's also poor military policy. [You might also want to look at] the briefs submitted by military officials and by military leaders who really make the point with convincing clarity that to detain men without access to lawyers and without access to a legal system, and by denying them due process rights indefinitely, puts our own soldiers at risk. Because the only thing that gives our soldiers who are out there in theaters of battle, whether it's in Iraq or Afghanistan or in other military operations that may ensue, the only thing that gives them the comfort to know that they won't be arbitrarily held by nations or by rogue actors is knowing that the U.S. government can always appeal to the Geneva Conventions and the rules that govern war and wartime prisoners. And if we hold other soldiers or other men in violation of those basic norms and international instruments, than our own soldiers have to be a little bit more worried about when they step into uniform and step into battle on behalf of this country.

NP: Isn't it strange that the debates since September 11, a lot of people on the quote-unquote left are for the first time . . .

AR: Quiet? At least initially they were quiet.

NP: Right. But I'm thinking specifically about what you were saying about Guantánamo and that it's bad military policy. We've also heard people on the left talking about whether mass roundups of immigrants, for example, is good law enforcement policy. It's just striking to me that people in that part of the political spectrum are talking about what's good law enforcement. It makes me wonder if the arguments are disingenuous, are just a way of criticizing something that we're already against.

The ACLU, as the nation's oldest and largest human rights organization, has a role to play in the global movement for human rights.

AR: I don't think anyone on the left can be against the need for good law enforcement, and for good national security. Certainly no one who's lived through 9/11, and certainly not anyone at the ACLU, where we're five or six blocks away. Let's face it folks, the government has an affirmative obligation to protect the safety and security of our people, but, and this is a significant but, it must do so within the confines of our laws, and it must do so in a way that comports with the best of American values, and the best of American principles.

Now does that mean that when we argue about the need for ensuring safety and freedom, for making law enforcement arguments, against racial profiling, or making arguments why detentions in Guantánamo put soldiers at risk, does that mean we're being disingenuous? I don't think so. I think it shows that we're willing to adapt under this set of circumstances and that we recognize that the government has this affirmative obligation, and that it must discharge those duties as best and as well as it can. I think there's a certain part of the political spectrum that is very often willing to speak about that they're against, but has a much harder time of describing what they're fighting for. And I think that's one of the things that we try very hard in the ACLU to parcel out, where we think things are necessary and appro-

priate, and where we think they've just crossed a line.

For instance, we do not call for the wholesale repeal of the Patriot Act. There are parts of the Patriot Act that we think were necessary improvements of the law. Providing increased funding for FBI and for intelligence operations. For insuring that our agents had training in foreign languages, and had the expertise and ability to translate foreign documents that might come in to intelligence officers so that we can understand the benefits of this intelligence. The principle that Mr. Ashcroft spoke about last night [before the September 11 Commission] about breaking down the wall between different federal agencies — who would argue with that in principle? We all remember how it was the government, the federal government, Mr. Ashcroft's very own Justice Department that issued Mohammed Atta another student visa two months after he took the plane into the World Trade Center. So who can argue with the need to ensure that the right hand and left hand are working together?

What we argue about is the how, that as you ensure the coordination of activities across the federal agencies, that you not do so in a way that erodes some key protections that are essential. That you not erode the probable cause standard. That you not allow intelligence investigations with much lower standards and much fewer protections on individual rights and freedoms to be used in criminal investigations where you're supposed to have a higher standard.

I also think it's important to note that some of our liberal colleagues on the left were initially as reticent and as quiet as they may now be vociferous. It was enormously frustrating that the ACLU was something of a lone voice in the aftermath of 9/11. And you can go back, and you can pull up the quotes of some of our friends now who have understood where we've gone, and how troubling or how problematic it was. They were members of Congress who normally had been our greatest allies in stopping these actions and policies from getting into law, who were absolutely shut down and too afraid to raise these tough questions. Unwilling, rather, not unable, but unwilling to do their job. And that frankly, it's interesting, this may not endear me to your readers, but I actually think that some of the libertarians on the right wing of the political spectrum, frankly, were much more vocal and critical than some of the lefties.

NP: No, we can accept that.

AR: And I think it is notable that you had individuals like Dick Armey and Bob Barr, and David Kean, and Grover Norquist and Phyllis Schlafly, all critical of the Patriot Act, and of the Justice Department and Mr. Ashcroft. You have Butch Otter, a Republican from Idaho, who was the one introducing legislation in the House to repeal part of the "sneak and peek" provisions. You have Arlen Specter who is one of the cosponsors of a piece of legislation that would repeal a part of the Patriot Act. Now let's ask, where are some of our Democratic senators, and our liberal senators in that struggle? I don't think it falls as easily in terms of left and right as you would like. Certainly — and I'll get off the soapbox after this — certainly when it came to immigration, it was remarkable, even some of our good colleagues in the civil rights struggle were more willing to say, well, you know, before 9/11 I was against racial profiling, but now after 9/11 maybe we do need a little bit of racial profiling. And it was remarkable how willing members of the quote opposition were willing to give the president the benefit of the doubt. It's heartening to see where we've come in three short years, but we cannot forget the very dark moments of that crisis when conservatives and liberals were silenced.

Connecting the Dots

NP: We've been talking about the corridors of power. Let's turn that around and say, for peace activists or antiwar folks in Montana or Iowa, there have been these isolated stories about police . . .

AR: Not so isolated when you connect them all.

NP: How significant is the danger that political protest in this country will be subject to all kinds of arbitrary repression from civil and political authorities?

AR: It's not a question of will be, it's the question of they are, and I think we're only beginning to recognize it now. Of course one of the major criticisms John Ashcroft has leveled against the ACLU and other critics of his government and his policies is that we are "hysterical." And what I love to use in response to that comment of us being hysterical is to just walk people through the actual facts of certain cases and people can decide for themselves. You look at, for instance, the Drake University case, where you have law enforcement officials issuing subpoenas on local campus groups, to obtain their minutes, their meeting records, their finance records, all because they were involved in discussions against the war, and because the government thought it could provide some insight into either illegal or potentially terrorist activities. And that they issued these subpoenas to get the meeting records and to find out who was attending what meetings, and it was only after the ACLU jumped in, the ACLU of Iowa jumped in and said, wait a minute here, why do you need these subpoenas, why do you need this information, that the government ultimately backtracked and said no, we don't really need it, thank you very much.

Connect that dot to an FBI bulletin that was leaked to the *New York Times* about a month earlier, that under the heading "Counter Terrorism Investigation and Analysis" went into excruciating detail only about individuals engaged in their First Amendment rights and in lawful speech. They completely conflated activities like civil disobedience, and protests, and marches, with quote unquote suspected terrorism. The memo reads with an Orwellian ring, the idea that individuals who are engaged in nothing more than turning out for anti-war marches or engaged in exercising their First Amendment rights, were being talked about in this FBI law enforcement intelligence bulletin, that was going to all law enforcement officials, telling them this is what you should watch out for, i.e. individuals exercising their First Amendment rights, and that you were to report any suspicious activities to the Joint Terrorism Task Force. Why, when you have individuals engaged in lawful First Amendment activities, would you have the locus of that activity be the Joint Terrorism Task Force?

You have the lifting of what were the Levy guidelines that were put in place, that were going to make sure that the FBI, because of J. Edgar Hoover's infamous legacy, not get involved in infiltration of political and social and civil movements. And those guidelines were summarily lifted to allow the FBI officials to go into mosques, and infiltrate groups, and attend meetings. And in fact you have stories, you have an article in the *Sacramento Bee* that talked about an FBI agent infiltrating a local peace group, and that the local peace group only found out that he was an FBI agent when he had an unfortunate motorcycle accident and died, and his picture appeared in the local newspaper and the peace activists say, "wait a minute, this is this guy who's been coming to our meetings for the last several months."

You have the shutting down of dissent and debate where even if it's not the actions explicitly of the Justice Department or the FBI, it's the tone they have set which is then reverberated in local- and state-level jurisdictions where you have protesters being turned down for march permits like in New York City, or in Pleasantville, New Jersey, or in Georgia. Or you have instances of high school teenagers being sent home from school because they're wearing a t-shirt that says that Bush is a terrorist and because the school administrators think that's unpatriotic and un-American. Or in the case of a young college sophomore who has a rowdy keg party one night, and the police come out to tell her to turn down the music, and the next day she's visited by the Secret Service because the police had told them that she had an anti-Bush poster on her wall visible through the front door. And that after they had interrogated her, they asked her whether she had any pro-Taliban stuff in her apartment. Or you have the case of these peace activists who now find themselves on the "no-fly" list, and when they go to check into airports, are not allowed to board airplanes because somehow they've gotten onto a list, and they don't know how to get themselves off,

and they don't know what criterion they've used to get themselves on, and ultimately the ACLU has to bring a lawsuit to get at the "no-fly" list because we realized you've got to provide individuals who are adversely affected by these lists at least some mechanism, some recourse.

Democracy is a robust process; it should never be a quiet business.

All of these instances, when you connect the dots, really point to a very different climate of fear, and of the shutting down of dissent and debate the likes of which we haven't seen since the fifties and sixties. And of course it begins with the statements coming from our highest ranking law enforcement official who had the audacity to stand before the Senate Judiciary Committee and basically say, if you criticize me, you're un-American, you're unpatriotic. Your questions and your criticism only, quote, aids the terrorists. That's what set the tone in this country. When you connect these dots, these become the canaries in the coalmine, these are the canaries that begin to become curiously silent, and that show you that the oxygen in the mineshaft may begin to dry up, and it may not be sufficient to sustain democratic life. And that's what we've got to be mindful of, as individuals who are committed to First Amendment freedoms and First Amendment principles, that no matter what, we've got to make sure that this is as loud a process as possible. That whether it is uncomfortable, or whether something is unpatriotic, or whether something is unnecessary or even wrongheaded, that what democracy is is a robust process, it should never be a quiet business. That unfortunately in the times when fear and insecurity grip the nation, and when our political leaders and political pundits seize the fear of the public in a way that shuts down discourse, is the time when you have to worry the most about it.

NP: Speaking of fear and insecurity, Rush Limbaugh . . .

AR: Equal opportunity ally, equal opportunity opponent. We've defended Oliver North, we've defended many individuals whose values and whose statements the ACLU disagrees with. Rush Limbaugh is most recently one of our clients, where we represent his right to medical privacy, which attaches even to people that I don't like to listen to on the radio. But he's got a right to make sure that his medical records are not inappropriately seized by law enforcement officials. And that it makes an essential point that the ACLU is not about liberal or conservative or left or right, this is about core American values that attach to anybody. I don't expect him to be coming out for gay marriage, but I think he realizes now the power of having an ACLU around, and making a point that this is not about somebody fighting a personal battle, but this is about larger points and principles.

And that they could do it to him, what's to make you think they would respect the privacy of an unwed, Latina, immigrant mom who may be conferring with her doctors about an addiction issue. And that's precisely why we find that when you take these seminal moments when an issue is crystallized for the public, even though they may not fully understand what the principles are at stake, they understand that Rush Limbaugh has got his knickers in a twist. And maybe you can pull the camera back and get the public to understand the fact that this isn't about Rush Limbaugh's addictions or problems, this is really about the American public's right to live with privacy rights that protect our autonomy. The right to be left alone is one of the most critical civil liberties that we all have, attached to all of us.

It's always fun to flip the expectations of you on its head. I'm the first gay and the first Latino executive director of the ACLU, and I hire Bob Barr, author of the "Defense of Marriage Act" because he's been incredibly helpful in getting us this kind of coalition of Republicans and individuals on the right who agree with us. It's great to be

representing individuals like Rush Limbaugh. When Pat Robertson initially made the statement that the reason why the U.S. was attacked was because God had lowered his protection on the American public because of the ACLU and of homosexuals and others, and then several months later his ministry also found itself on the other side of government intrusion when they were denying certain permits for his church, and we went to his defense and we offered to represent him because the right to free exercise of religion is important, and even Pat Robertson's operation and his ministries deserve a right to exercise their religious beliefs freely in a country dedicated to the First Amendment. Those are teachable moments where you can show the American public that this isn't about a partisan agenda. That's the power of the work that we do — it's not about liberal or conservative, it's not about Republican or Democrat, it's not about immigrant or citizen, it's just about everybody's rights.

NP: Two final questions. First, in 1951 the National Emergency Civil Liberties Union was formed to defend political activists (some Communists, some not) whom the ACLU and other civil rights groups refused to defend or did not defend when they were brought up before the House Un-American Activities Committee. What are the parameters today of the ACLU's decisions to defend or not to defend?

AR: The ACLU receives many more requests for assistance than we can possibly provide. In deciding on cases that we will undertake, we weigh the seriousness of the civil liberty violations, the number of people affected and the ability to achieve a meaningful result through litigation.

NP: Finally, is it accurate to say the ACLU opposes campaign finance restrictions on First Amendment grounds? If so, that seems like a counter-intuitive reading of freedom of speech. After all, if political speech is correlated with wealth, then how meaningful, really, is the freedom of speech of those who can't afford it?

AR: The implication of your question is that the ACLU opposes all campaign finance laws on First Amendment grounds. That is not the case. We

OMINOUS SIGNS

• The Reagan Administration created a secret government during the 1980s in order to sell arms to Iran and use the funds to finance Nicaraguan Contras.

• Less well known was the Reagan Administration's clandestine scheme, the Armageddon exercises, to circumvent the Constitution and the Presidential Succession Act of 1947 in the event of a nuclear attack and the death of the president and the vice-president. Annually cabinet members — and also Cheney (then a Congressman) and Rumsfeld (then a businessman) — would sneak off to underground bunkers where they would rehearse their roles in usurping power to run the country.

• Before George W. Bush took power in 2001, Rumsfeld, Cheney, Jeb Bush, Paul Wolfowitz, and others drew up a plan for world domination in their Plan for the New American Century (PNAC).

• In December, 2000, Republican staffers from D.C. traveled to Florida and stormed the electoral offices threatening to stop the counting of ballots.

• Before Congress put an end to it in 2003, the Bush Administration had created a Total Information Awareness program to scan all commercial transactions and also personal health records. John Poindexter, of Iran Contra fame, had been put in charge.

• In February, 2004, four peace activists in Iowa were subpoenaed following a peace rally at Drake University. After widespread criticism, the subpoenas were withdrawn.

• About 3,000 prisoners (650 at Guantanamo) are now held in what the Dec. 18, 2003 New York *Times* has called a "secretive universe of a global detention system run by the Pentagon and the CIA." They are denied access to their families and to lawyers.

• Thanks to the bipartisan war on drugs, there are now more than two million Americans in prison, compared to 200,000 in 1973. Thirteen million Americans — almost as many people as the combined populations of Norway, Finland, and Denmark — have been convicted of a felony and have spent some time locked up.

• "We need to execute people like John Walker in order to physically intimidate liberals, by making them realize that they can be killed too. Otherwise they will turn out to be outright traitors." — Ann Coulter, speaking at the 2002 Conservative Public Action Conference

COMPILED BY MARVIN MANDELL

support among other things, public financing, and providing free airtime for qualified candidates. We did oppose the Mc Cain-Feingold legislation because we believed important parts of the bill violated First Amendment rights. We challenged this law on constitutional grounds in the Supreme Court. What most progressives and liberals fail to understand about the new campaign finance law is that it is chilling speech they would normally want to protect. The new law for instance, imposes restrictions on the ACLU in its public education efforts — barring us from running ads prior to the national political conventions. That bar is unconstitutional and wrong-headed in my view, since the ACLU has never opposed or supported any candidate for political office for 84 years.

While it is true that wealth is a factor in whose voices rise above others in political discourse, citizens can offset the political money generated by individual and corporate wealth joining interest group or membership organizations like unions, environmental groups, reproductive rights groups, etc. By pooling resources of individuals who are not wealthy, powerful voices can emerge. MoveOn is an example of such a voice.

As a matter of principle, we do not want to give the government the power to silence certain voices so that other voices can be heard in the name of "leveling the playing field." When the government is given this power to regulate political expression then, more often than not, they will use that power to silence the voices of its critics. An example of this is the recent attempt by the Federal Election Commission to issue regulations that would restrict the advocacy of the so-called 527 groups and non-partisan, non-profit groups like the ACLU. Many groups that supported McCain-Feingold realized that the FEC was embarking upon an ill-conceived gambit to regulate political speech. The outcry was so great that the implementation of the regulations have been delayed indefinitely.

Roundups, Detention, and Other Phantoms of Lost Liberty

MARK DOW

IN AN ALABAMA DISTRICT COURT a few years ago, the Department of Justice made an argument familiar to those who have read immigration cases: it asked the court to keep its hands off. The department argued for what I call "double deference." First, the court should defer to the executive and legislative branches as a matter of course in immigration matters; and second, the court should defer to the jail where the plaintiff was being incarcerated since prison administrators need wide latitude in operating their lock-ups. These were standard arguments, but they were a little surprising this time since the case concerned the state's authority to force-feed an immigration prisoner who was conducting a hunger strike to protest his detention. The prisoner argued that he had a First Amendment right to protest this way. But, able to constrain him inside a contracted, rural jail far from legal help, as well as deep inside the hands-off immigration laws, the state won.[1]

In an ominous indication of long-term plans that Justice — and now Homeland Security — may have in store for immigration detainees, the government's lead attorney in the case wrote in the Office of Immigration Litigation newsletter, "an alien's status in this country may also dictate the degree of constitutional protections he or she may be afforded. . . . Perhaps some of these same constitutional principles can be applied to aliens challenging their treatment while in INS detention."

> Anyone hoping to understand the post-9/11 roundups and secret detentions of noncitizens should bear in mind two facts. First, not a single one of the 1200 persons detained in connection with the investigation was ever charged here with any connection to the 9/11 attacks. Second, on September 10, 2001, the INS was already holding more than 20,000 detainees.

Defending what we call "civil liberties" has been critically important since 9/11, but it has the disadvantage of being defensive; the government's domestic responses to 9/11 did not come out of nowhere.* I will sketch a few connections here among wide-ranging but related policies in which the U.S. government lies about immigration detention; continues to deport legal immigrants for minor crimes; justifies the use of torture in the current wars; and imprisons Mariel Cubans who have completed their criminal sentences.

The Liberal Media

IMMIGRATION PRISONERS ARE "administrative detainees." They are not serving sentences. I be-

MARK DOW *is a member of the* New Politics *editorial board.* *Parts of this article are adapted from his new book* American Gulag: Inside U.S. Immigration Prisons *(2004).*

gan with the example of double deference — to the executive's discretion in enforcing immigration law and to the prisons and jails where immigrant detainees are so often held at profit to the local community which is paid by the federal government for its bedspace — because this black hole was created long before 9/11, and because an understanding of it is therefore crucial to a full appreciation of the treatment of immigration prisoners since the attacks on the U.S.

Anyone hoping to understand the post-9/11 roundups and secret detentions of noncitizens in the United States should bear in mind two additional, salient facts. First, not a single one of the 1200 persons detained "in connection w/ the investigation," as the common phrase has it, was ever charged here with any connection to the 9/11 attacks. Second, on September 10, 2001, the Immigration and Naturalization Service was already holding more than 20,000 detainees.

When it comes to the topic of immigration detention and deportation, the liberal media fail to recognize that the targeting and scapegoating of noncitizens is not a *ping* in the engine; those are the pistons, powering the machine, and they're supposed to sound like that. Secret detentions and mistreatment of prisoners were not merely overreactions in a time of crisis. The immigration detention system has been in place since the Reagan administration, though it has grown significantly since then. From the beginning, the policymakers and custodians have been authorizing "excessive force" against nonviolent prisoners and keeping them from their attorneys. Yet *Washington Post* columnist Richard Cohen, while sympathetic to victims of the post-9/11 roundups, thinks the Department of Justice was "establishing a detention system virtually from scratch" ("Ashcroft's Attitude Problem," 6/10/03). Seemingly oblivious to attorneys' and human rights groups' allegations, Barbara Crossett of the *New York Times* inaccurately and unequivocally reported: "No mainstream critic of the Bush administration's antiterrorism policies suggests that Americans are physically abusing detainees." ("In the Secret-Detentions Club," 8/11/02). The *New Yorker*'s Jeffrey Toobin had weighed in with this analysis: "the detention of a thousand or so people in the initial dragnet after September 11th has produced few stories of true government abuses" ("Ashcroft's Ascent," 4/15/02). The department's own Office of the Inspector General (OIG) would note, "Soon after these detentions began, the media began to report allegations of mistreatment of the detainees." The Patriot Act's Section 2001 requires the OIG to investigate allegations of civil rights violations; the OIG, under Clinton appointee Glenn Fine, has issued detailed reports, most extensively on mistreatment at Brooklyn's Metropolitan Detention Center (a federal prison).[2]

Legal permanent residents of the U.S., born in Laos, Vietnam, and Cambodia. These "indefinite detainees" were incarcerated at the INS facility in San Pedro, California, while their "home" countries refused to take them back. © Photo by Steven Rubin

These were welcome reports: Now Congress should hold hearings on the entire immigration detention regime and ask the OIG to investigate abuse allegations

which human rights groups, individual attorneys, journalists, and prisoners have been documenting for about two decades now.

THE AMERICAN WIFE of an Egyptian charged with immigration violations told the *New York Times*'s William Glaberson, "They don't know how painful this is. They're destroying families" (9/29/01). But they did know, and there was a reason. One priority, as Attorney General Ashcroft said repeatedly, was the prevention of future attacks. Another, about which he was less explicit, was to make it look as if the law enforcement agencies that had made serious errors were now on top of things. What thousands of detainees and their families experienced as destruction was the strategy of "disruption" articulated by the Attorney General: "Aggressive detention of lawbreakers and material witnesses is vital to preventing disrupting, or delaying new attacks," he said in one of many such statements.[3]

Confronted with the critical law enforcement objective of preventing attacks, the department reverted to the long-established rhetorical tactic of blurring the distinction between alien, criminal, and terrorist. In his "explanation" of who was being detained and why, Ashcroft repeatedly implied that all post-9/11 detainees were terrorist suspects. Rather than "live in a dream world," he told a Senate committee, we must "fight back." How? We must "identify, disrupt and dismantle terrorist networks." No one would argue with that. Again the Ashcroft described the administration's tactics as a "deliberate campaign of arrest and detention to remove suspected terrorists who violate the law from our streets." Among these were several hundred detained on "immigration violations." But were these "suspected terrorists"? Getting answers was nearly impossible because blurring the distinction was the whole point. It is in this duplicitous context that the attorney general's own contemptible fear-mongering will survive:

> We need honest, reasoned debate and not fear-mongering. To those who pit Americans against immigrants, and citizens against non-citizens; to those who scare peace-loving people with phantoms of lost liberty, my message is this: your tactics only aid terrorists, for they erode our nationality unity and diminish our resolve.[4]

"No raids, no roundups, none of that," INS Assistant Commissioner for Investigations Joseph Greene told the press. It is true that there were no World War II-style roundups and relocations of American citizens whose ancestry was suspect. But the extensive infrastructure for detention was in place. In addition to the often-cited 1200 post-9/11 detainees, a year and a half after the attacks the INS had detained another 1100 persons in connection with its Absconder Apprehension Initiative, and more than 2700 through its special registration program.[5] Both programs targeted Arab, Muslim, and South Asian foreign nationals. Given government secrecy on these matters, we may never have a full accounting; even the often cited figure of twelve hundred detainees is based on Department of Justice information, but Justice explicitly stopped releasing numbers in November 2001, less than two months after the attacks. (In an elegant illustration of the reflexive nature of this PR secrecy, a Bureau of Immigration and Customs Enforcement spokesperson told me that numbers on "absconder" detentions could not be released — and a BICE director of operations reported those numbers in a public statement to Congress.)

Fox News commentator Michelle Malkin complained: "even after September 11, the mainstream media . . . run[s] scores of cookie cutter sob stories about illegal aliens 'unjustly' detained instead of focusing on the still rising costs to society of an immigration system run amuck." She writes that "the speedy detention and deportation of some twelve hundred aliens suspected of terrorist ties gave the illusion of competence in . . . immigration enforcement."[6] Malkin is in agreement with many critics of the INS when she criticizes the response to 9/11 as at least partially a cover for incompetence. But her own critique of the "sob stories" depends on the Attorney General's calculated disinformation: "Each action taken by the Department of Justice . . . is

carefully drawn to target a narrow class of individuals — terrorists. Our legal powers are targeted at terrorists. Our investigation is focused on terrorists. Our prevention strategy targets the terrorist threat."

> In 1996 Bill Clinton signed legislation that escalated and codified the domestic scapegoating of noncitizens.

Even those more sympathetic to "illegals" than the Fox commentator might reasonably assume that the twelve hundred detainees were "suspected of terrorist ties." FBI agent Coleen Rowley appeared in the spotlight after 9/11 for her public criticism of the FBI's intelligence methods. Less attention was paid to this paragraph in Rowley's letter to the director:

> The vast majority of the one thousand plus persons 'detained' in the wake of 9-11 did not turn out to be terrorists. They were mostly illegal aliens. We have every right, of course, to deport those identified as illegal aliens during the course of any investigation. *But after 9-11, Headquarters encouraged more and more detentions for what seemed to be essentially PR purposes. Field offices were required to report daily the number of detentions in order to supply grist for statements on our progress in fighting terrorism.* The balance between individuals' civil liberties and the need for effective investigation is hard to maintain even during so-called normal times, let alone times of increase terrorist threat or war. It is, admittedly, a difficult balancing act. But from what I have observed, particular vigilance may be required to head off undo pressure (including subtle encouragement) to detain or 'round up' suspects particularly those of Arabic origin [emphasis added].

Whatever might have had to do with security was subordinated to "a deeper and more troubling agenda," wrote two former INS general counsels. The nation's top law enforcement officer more or less admitted this himself. He told the International Association of Chiefs of Police: "The critics . . . would have us return to a reticent law enforcement culture of inhibition which existed prior to September 11, 2001."[7]

Culture of Secrecy

INS SECRECY AND DISINFORMATION did not begin on September 12. Dallas attorney Karen Pennington worked in California in the 1980s, when Salvadoran asylum-seekers were regularly moved from one jail to another to "hide them from their attorneys." The practice has varied but never stopped. "Post-September 11," observes Pennington, "was the first time that they kept them in the same area and just refused to tell you even who they had." Before 9/11, a paralegal with the ACLU Immigrants Rights Project in New York would call area jails for detainee names, and that practice also came to a dead end. As legal representatives discovered that their clients' names were removed from court dockets, detainees were denied access to phones.

And as the Attorney General's subordinate interrogators were telling detainees that they would get out faster without attorneys, Ashcroft himself assured Congress that all detainees had the right to counsel. As detainees were denied access to telephones, Assistant Attorney General Michael Chertoff assured Congress they could call lawyers as well as their families. According to reporter Steven Brill, the Department of Justice strategy of denying detainees access to phone and attorneys was explicit among Ashcroft and his top aides, and Chertoff was in charge of it.[8] Chertoff has since been appointed to the Third Circuit Court of Appeals. In a common pattern, as they were told of allegations about the denial of access to counsel, INS public affairs spokesperson Russell Bergeron said, "If such an allegation exists, we would like to hear about it." In the usual pattern, Ashcroft said, "I would be happy to hear from individuals if there are any alleged abuses of individuals, because that is not the way we do business" — this in response to a *Los Angeles Times* report of precisely such allegations.[9]

In 1970 an *Iowa Law Review* note described the INS's "insistence on maintaining a system of secret law" and its "pervasive attitude of non-disclosure."[10] Subsequent years brought some positive changes. These continued into the Clinton era, when Attorney General Janet Reno urged a "presumption of disclosure" in responses to Freedom of Information Act (FOIA) requests. One month after the terrorist attacks on the United States, in the words of the Lawyers Committee for Human Rights, Ashcroft "effectively reversed" these openings. He advised FOIA office employees that, with few exceptions, when they make decisions "to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions." The administration went even further when the department staff "secretly drafted" the Domestic Security Enhancement Act of 2003 — aka Patriot II — which would "mak[e] it easier for the government to hide whom it is holding and why, and prevent the public from ever obtaining embarrassing information about government overreaching."[11] The *Iowa Law Review*'s observations more than three decades earlier could not be more timely: "Whether secrecy is preferred solely to protect the agency's activities from public scrutiny or because it allows a governmental policy of bias against aliens to be implemented behind the public's back is unclear. What is clear is that the attitude exists in the INS and breeds unchecked, low visibility discretion."

Climate and the Law

THE CULTURE OF LAWLESS law enforcement is surely in debt to the libertine Ashcroft, but that culture was not so inhibited as the man who covered a statue's breasts would have us believe. In 1996 Bill Clinton signed legislation that escalated and codified the domestic scapegoating of noncitizens. Among other pernicious consequences, minor crimes committed years before could now be exploited to trigger deportation proceedings against longtime legal residents. Almost ten years later, these laws have yet to receive the attention — much less the reform — they demand. The nationwide *Fix '96* campaign headed by the grassroots Citizens and Immigrants for Equal Justice (CIEJ) and others disappeared after 9/11.

We return for a moment to deference, where we began. In *INS v. St. Cyr* (April 2001), the government argued that the executive had authority to apply the 1996 anti-immigrant laws retroactively — in order to deport legal immigrants who had pled guilty to crimes which would only later make them subject to deportation — and that Congress had intended to limit judicial review of such retroactivity. Deputy Solicitor General Edwin S. Kneedler asked the Supreme Court to grant the executive "extraordinary deference" since this was an immigration matter. It is absurd, really, that banishing a taxpayer who has lived here legally for decades, who has served in the U.S. military, whose spouse and children were born here, who, like other good Americans, speaks only English — all typical of victims of the 1996 laws — absurd that this is legally considered an "immigration matter" simply because the taxpayer is not a citizen. *Fix '96* should be revived, and our ideas of citizenship must be revised.

In *St. Cyr* the deputy solicitor general claimed that Congress intended to allow retroactive application of the law and to limit judicial review of it. He told the court that this should not be surprising "given the climate in which Congress acted." In other words, we should look to the rhetoric and hysteria which precipitated the new laws — passed by Congress to mark the anniversary of the Oklahoma City bombing by an American citizen — for guidance in interpreting and applying those laws.

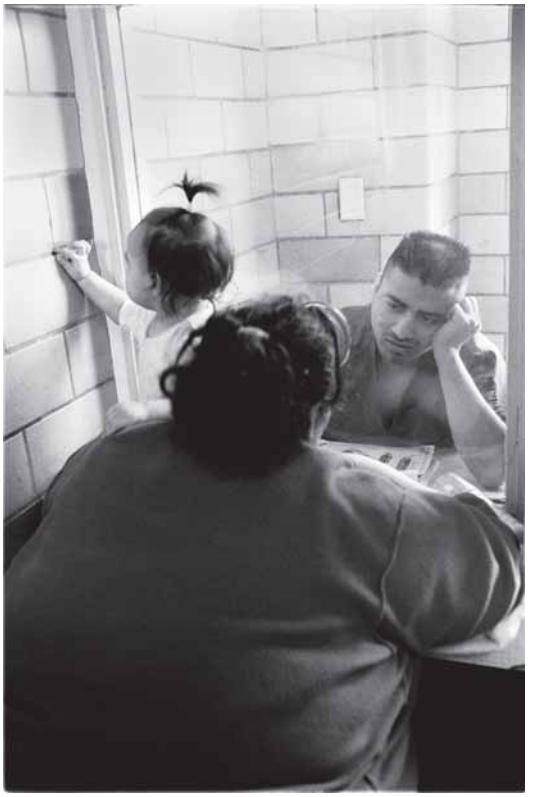
Be on the lookout for continuity. In April 2004 in the Supreme Court arguments about the Guantánamo detentions, Solicitor General Theodore Olson similarly appealed to hysteria in order to justify lawlessness. His opening statement began: "The United States is at war." Justice John Paul Stevens interrupted right away with a question. What if there were no war? Wouldn't the government be making the same argument about the legality of the detentions? Recall that the question before the court was whether the United States has jurisdiction over the Guantánamo Na-

val Base; if it doesn't, then the prisoners there have no access to U.S. courts. So isn't the war irrelevant? Olson conceded the point but couldn't let it go: "It is not irrelevant because it is in this context that that question is raised. . . . It doesn't depend on it" — i.e., his argument doesn't depend on the war — "but it's even more forceful and more compelling" because of it. As in the case for retroactivity a few years before, the solicitor general's point was that the government's arguments should be evaluated not so much on their soundness as on their deafening context. There is no arguing with a mob.

Justice Stephen Breyer acknowledged the ongoing war and said he wanted to help the executive resolve the issue without too much court interference. Yet, he continued, "I'm still honestly most worried about the fact that there would be a large category of unchecked and uncheckable actions dealing with the detention of individuals that are being held in a place where America has power to do everything."

Meanwhile, the *New Yorker*'s legal analyst missed the point on Guantánamo just as he had on the domestic roundups. "Of course," wrote Toobin, "the reason that the military sends detainees to Guantánamo is its absolute security" ("Inside the Wire," 2/9/04). That's a rather surprising "of course," considering that just two paragraphs earlier Toobin quotes the solicitor general's own argument that the United States base in Cuba "is not, and is not remotely like, an American territory." In other words, the U.S. has detained people at its Cuban base — the Haitians and Cubans whom Toobin mentions, as well as Chinese refugees picked up at sea — in the attempt to keep them beyond the realm of any enforceable law. Even the administration practically admits that, yet somehow Toobin cannot.

In the *St. Cyr* case, Justice Ruth Bader Ginsburg addressed the deputy solicitor general: "There's a lot of discretion in Federal agencies, but there's also a concept of abuse of discretion, and you seem to be saying no, there isn't. . . . The discretion is there but it's kind of a lawless discretion. Is that what you're telling us?"



A Mexican man facing deportation has a "non-contact" visit with his wife and child at the Seattle INS detention center operated by the Correctional Services Corporation. © Photo by Steven Rubin

The deputy replied: "The fact that it's not judicially reviewable doesn't make it lawless."

In the *Rumsfeld v. Padilla* arguments about the executive's authority to detain a U.S. citizen indefinitely, Justice Ginsburg asked Deputy Solicitor General Paul Clement a related question: "If the law is what the executive says it is, whatever is 'necessary and appropriate' in the executive judgment" — here she was alluding to the post-9/11 congressional authorization for the president to use "necessary and appropriate force" — "what is it that would be a check against torture?" Ginsburg tried two or three times to get an answer. Clement was evasive, but he answered that there is no check on torture if the president or his subordinates want to use it: "The fact that executive discretion in a war situation can be abused is not a good and sufficient reason for judicial

micromanagement and overseeing of that authority." The deputy said "the military ought to have the option of proceeding with" its captives in such a way that it "can get actionable intelligence to prevent future terrorist attacks."

In *Hamdi v. Rumsfeld* Clement again referred to the necessity of "interrogation without counsel" when the citizen being interrogated might be of "paramount intelligence value." This time Justice Stevens asked whether anything in the law limits interrogation methods. And this time Clement blew a smoke screen by mentioning treaties against torture which he quickly had to concede are not binding. Then he reassuringly told the court that "the last thing you want to do is torture somebody" since that would affect the "reliability" of information obtained.

The questions about torture grew out of the question of limits: In fighting this potentially indefinite war, are there any limits on what the executive can do to U.S. citizens? Jennifer Matinez, attorney for José Padilla, said: "The government asks in this case for basically limitless power. . . . Never before in the nation's history has the court granted the president a blank check to do whatever it wants to American citizens."

But there is a group of noncitizens to whom the executive does have a blank check to do whatever it wants. They are right here at home — and they are at home here, too — and they have nothing whatsoever to do with any allegation of terrorism.

Mainland Guantánamo

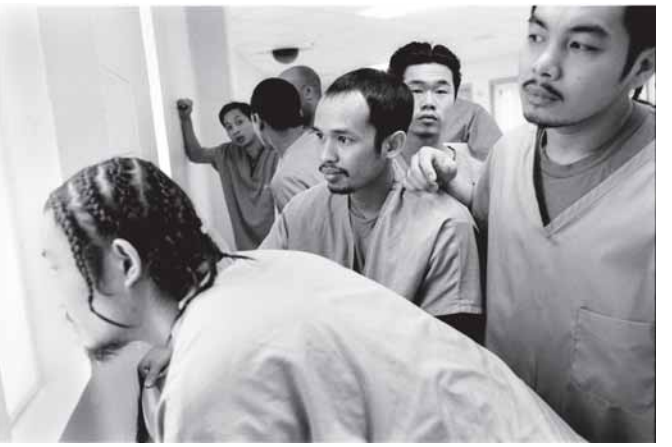
THE DEPARTMENT OF HOMELAND Security's Bureau of Immigration & Customs Enforcement is authorized to detain people for the purpose of ensuring their presence at immigration proceedings or to deport them (the INS was dissolved in early 2003). But what happens when a person cannot be deported because her "home" country will not take her? This circumstance has led to the long-term incarceration of thousands of people — again, "detained" but not serving criminal sentences — from countries including Cambodia, Vietnam, Libya, Iraq, and Cuba, among others. In 2001 the Supreme Court ruled in *Zadvydas v. Davis* that when an immigration detainee's removal or deportation cannot be carried out within a "reasonably foreseeable" period, defined by the court as six months in most cases, the immigration service generally cannot continue to hold that person. But, exploiting an esoteric doctrine in immigration law, the U.S. government claims that more than 1000 current detainees (and countless future ones) are not covered by the *Zadvydas* decision. The largest single group affected by this policy are the so-called Mariel Cubans. Government figures put the number of detained Mariel Cubans at about 750.

> There is no check on torture if the president or his subordinates want to use it.

Allowed to depart the island in 1980 from the port of Mariel, some 125,000 Cubans came to the United States over a six-month period. Because they were "paroled" in by U.S. authorities, they are legally considered not to have "entered" the country. They are "inadmissible aliens" and are treated by the law as if they were at the border "still seeking admission." Their due process rights are thus severely curtailed. Those who never became citizens can still be detained for "almost any reason," as one court put it.

Detention typically begins on completion of a criminal sentence for anything from murder to shoplifting to misdemeanor drug possession — though Mariel Cubans have also been locked up for not being able to afford medical care and for no apparent reason at all. And then — since Cuba will not take them back — the United States can detain them for as long as a few bureaucrats want to. Fidel Castro could also "solve" this abuse by accepting their return. It would hardly be fair to force these people back to Cuba after they have been here for twenty-five years, ever since Presi-

dent Jimmy Carter welcomed them in; but many with whom I have communicated say, not surprisingly, they would rather return than face potential life imprisonment here. Both governments are content effectively to bury these men and women alive, leaving them as pawns in diplomatic maneuvering and "migration talks."



"Indefinite detainees" from Cuba, Laos, Vietnam, and Cambodia, held for the INS by the Bureau of Prisons at "Seatac" in Seattle. © Photo by Steven Rubin

The U.S. government argues that because the prisoners receive annual custody reviews by low-level bureaucrats (with no appeals process) their detention is not "indefinite" — even if it never ends and they only discover this fact one year at a time. It doesn't matter that the reviews are often *not* given annually, nor that the decisions are notoriously arbitrary, nor that lawyers and legal representatives are regularly denied entrance to the hearings in violation of the government's own guidelines, nor that the prisoners themselves are regularly denied access to their own files. In the words of a classic Supreme Court decision: "Whatever the process authorized by Congress is, it is due process as far as an alien denied entry is concerned." As for the unpalatable notion of potentially permanent incarceration of people who came here with U.S. government permission, have been here for a quarter century, and have completed whatever criminal sentences have been imposed, the government argues that because they are given their (supposed) annual custody reviews "the passage of time is irrelevant to [their] claim."

In *Rasul v. Bush* attorney John Gibbons accurately referred to the Guantánamo Naval Base as a "lawless enclave." What should we call it when permanent administrative imprisonment within our borders is *lawful*?

The legalities may be esoteric but the human consequences are not. In 2001, at least 160 Mariel Cubans had been detained by the INS for a decade or more.[12] Teacher and activist Gloria Beckett has been corresponding with Mariel prisoners around the country. Beckett reports this small sample from the many prisoners currently held in federal penitentiaries:

Osvaldo Acosta Garcia, 48, served a year for attempted robbery; he has been in immigration detention ever since (18 years).

Antonio Cuni Medina, about 60, served two years on drug charges; he has been in immigration detention ever since (17 years).

Carlos Chavez Naranjo, 57, served five years for assault; he has been in immigration detention ever since (15 years).

Digno Dimon Sainz, 42, served 11 months on drug charges; he has been in immigration detention ever since (9 years).

Amaury Dominguez Cruz, 45, served four years for possession of a stolen vehicle; he has been in immigration detention ever since (19 years).

Alberto Rodriguez Hernandez, 57, served two years after being convicted (falsely, Beckett believes) of stealing two bicycles; he has been in immigration detention ever since (8 years).

Jorge Hernand Garcia Battle, 41, served two years for a probation violation; he has been in immigration detention ever since (8 years).

Jesse Hernandez Cedeno, 45, served four years on drug charges; he has been in immigration detention ever since (15 years).

Pablo Antonio Iturralde-Hernandez, 48, was convicted of stealing $30 worth of food; he served five years in a "therapeutic community prison" in Puerto Rico; then he was brought back to the U.S. mainland where he has been in immigration detention ever since (13 years).

IT'S NOT PART OF THE popular civil liberties debate or agenda, but the imprisonment of these people is, to me, the preeminent and most long-standing domestic civil liberties issue of our time. The influential right-wing Cuban American sector has, according to various observers, always wanted to distance itself from the darker-skinned, lower-class Mariel immigrants who lived for twenty years under Castro. And the left? The left is too often literally reactionary, and in this case there has been no publicized government action to provoke a reaction. Immigration detention, with the brief exception of the post-9/11 regime, remains largely invisible, and never more so than in the case of the Mariel Cubans.

After doing time on drug charges, Julia Gomez was denied release by the INS because she had nowhere to live. Denied her antidepressant medication, she became suicidal, and after a subsequent hearing was denied release because of a suicide attempt. "The last thing they have to do is just kill us," said Gomez, "but see, they can't do that, though. It's going to be a little bit too much. But they do it mentally. . . . No way out. . . ."

Indeed, if Mariel Cuban prisoners and others are not entitled to any more "due process" than the administration claims, wrote nine of twelve Sixth Circuit Court justices in 2003, "we do not see why the United States government could not torture or summarily execute them" (*Rosales-Garcia v. Holland*). One can only hope that a majority of Supreme Court justices see with equal clarity — and urgency — when they hear the cases of *Benitez v. Mata* and *Crawford v. Suarez-Martinez* next fall.

NOTES

1. See *In Re: Nabil Ahmed Soliman* 134F. Supp. 2d 1238, N.D. Ala.

2. Department of Justice, Office of the Inspector General, *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*, April 2003; a supplemental report was issued in Dec. 2003.

3. Department of Justice Transcript, "Attorney General Ashcroft Outlines Foreign Terrorist Tracking Task Force," Oct. 31, 2001.

4. "dream world": Department of Justice Transcript, "Testimony of Attorney General John Ashcroft: Senate Committee on the Judiciary," Dec. 6, 2001. "stronger and safer": Department of Justice Transcript, "Attorney General Ashcroft Announces the Appointment of the Special Master to Administer the September 11 Victim Compensation Fund," Nov. 26, 2001. "honest, reasoned debate": Attorney General Transcript, Senate Judiciary Committee, "DOJ Oversight: Preserving Our Freedoms While Defending Against Terrorism," December 6, 2001.

5. Greene quoted in Somini Sengupta and Christopher Drew, "A Nation Challenged: The Immigration Agency" *New York Times*, Nov. 12, 2001. 1139 Absconder Apprehension Initiative detentions: Statement of Michael T. Dougherty, Director of Operations of the Bureau of Immigration and Customs Enforcement," House Judiciary Subcommittee on Immigration, Border Security and Claims, May 8, 2003. There were 2781 detentions in connection with special registration, i.e. National Security Entry-Exit Registration System (NSEERS), as of May 25, 2003, according to BICE spokesperson Nancy Cohen (author interview).

6. Malkin, *Invasion*: *How America Still Welcomes Terrorists, Criminals, and Other Foreign Menaces to Our Shores* (Wash., D.C.: Regnery Publishing, 2002), xiv, 205.

7. "a deeper and more troubling agenda": T. Alexander Aleinikoff and David Martin, "Ashcroft's Immigration Threat," *Washington Post*, Feb. 26, 2002. Prepared Remarks of Attorney General John Ashcroft, International Association of Chiefs of Police Conference, Minneapolis, October 7, 2002.

8. Brill, *After: The Rebuilding and Defending Of America in the September 12 Era* (N.Y.: Simon and Schuster, 2003). 145-49; 542-43.

9. Chertoff quoted in Human Rights Watch, *Presumption of Guilt*, 41. Bergeron quoted in Human Rights Watch, *Presumption of Guilt* (41), citing Jim Edwards, "Attorneys Face Hidden Hurdles in September 11 Detainee Cases," *New Jersey Law Journal*, Dec. 5, 2001. Ashcroft ("I would be happy to hear…") quoted in Richard A. Serrano, "Ashcroft denies wide detainee abuse," *Los Angles Times*, Oct. 17, 2001.

10. "Note: The Secret Law of the Immigration and Naturalization Service," *Iowa Law Review*, Vol. 56, 1970.

11. "presumption of disclosure": U.S. Department of Justice, "Government Adopts New Standard for Openness," Oct. 4, 1993. "effectively reversed": Lawyers Committee for Human Rights, *Year of Loss*, p. 11. "to withhold records . . . ": John Ashcroft, Attorney General, "Memorandum for Heads of All Federal Departments and Agencies," October 12, 2001. "secretly drafted . . . . mak[e] it easier . . .": Jack M. Balkin, "A Dreadful Act II," *Los Angeles Times*, February 13, 2003.

12. Dan Malone, "851 Detained for Years in INS Centers," *Dallas Morning News*, April 1, 2001.

"We Have Given Them This Power"

Reflections of an Immigration Attorney

ABIRA ASHFAQ

IN MANY OF MY WALKS FROM THE J.F.K BUILDING, which houses the Boston immigration court, to the train stop at Government Center, I've never once doubted that the real fight against immigration detention practices is in mass organization and coalition building, in education and protest, and not in the court rooms before immigration judges. Judges are conduits, peons of the law, interpreting and reinterpreting restrictive, anti-immigrant statutes enacted through the 1996 Illegal Immigration Reform and Immigrant Responsibility Act and Antiterrorism and Effective Death Penalty Act and the 2001 Patriot Act, delaying cases because they can, meekly establishing the veracity of charges, and mechanically stamping deportation orders.

The individual tilt of the immigration judge (administrative law judges who work under the Department of Justice) is hardly the problem when the law allows little or no relief from deportation and mandatory detention, and the Department of Homeland Security (DHS) brags about aggressive enforcement practices and record high detention numbers. But to a non-citizen detainee who may in that rare instance be eligible for discretionary relief from deportation or a bond hearing, a judge could mean the difference between jail and release, exile and life at home in the United States Hence it is mind numbingly frustrating to find yourself facing judges who want to take the already anti-immigrant system one step further, refusing to exercise discretion in favor of the detainee when they can, acting in ways that are unethical, inhumane, even sadistic and racist.

In 1996 Congress toughened laws covering deportation of legal immigrants with criminal convictions, broadening the types of crimes that made one subject to detention without the right to an individualized bond hearing. For example, under these mandatory detention provisions a person convicted of receiving stolen property with a sentence of one year or possession with intent to distribute drugs could be subject to detention without a bond hearing; the individual judge is not allowed to exercise discretion and consider humane and mitigating factors in a case to release the individual. Also by expanding the definition of aggravated felony to include crimes such as the above, Congress limited relief from removal for many immigrants, chipping away further at the discretion a judge may have in canceling a non-citizen's removal proceedings.

Mehmood Moosa and Shahid Iqbal are two Pakistani Muslims whose cases illustrate the arbitrary nature of immigration court hearings. They were both arrested for immigration violations in early 2003 in an INS raid on an apartment in southern Massachusetts. In February they both had their hearings, before different judges and with

ABIRA ASHFAQ *practiced as an immigration detention attorney between 1999 and 2003 as a Soros Justice fellow and then as detention attorney at Boston College Law School for the Catholic Legal Immigration Network (CLINIC). She is currently working on a research project on women in jails in Pakistan.*

significantly different results.

Mehmood, a thin man in his fifties, appeared before Judge A on a video screen. He was seated in a nondescript little room about fifty miles away from the judge at Bristol county jail in North Dartmouth, Massachusetts, his voice transmitted with a delay, his movements slightly slower, his beard still mildly peppered. I sat in the courtroom with my back facing the video screen, aware that all he could see of me was the back of my head, and if I needed to reach over and whisper to him some last minute lawyerly thing, I couldn't.

Mehmood had no criminal convictions. He was simply a visa overstay, eligible for voluntary departure and release; both forms of relief would allow him the right to ask the judge to set him free and to leave the country on his own, with or without a bond set as surety. Judge A was willing to grant both but she asked the government attorney his position for the sake of legal procedure and etiquette. The attorney said he opposed release and voluntary departure in his typical agency way. She asked him for a reason. He had none. He asked her if he could examine my client. Judge said fine. "Are you a terrorist?" "No sir." Mehmood responded with a lilt that was a bit too servile for my liking. "Have you ever supported a terrorist group?" Mehmood said no, this time his tone even more grating to my ears. Freedom was his to take, not to beg for. Judge A was getting impatient by this time. The DHS attorney relented, registering that the judge won't play.

Judge A then issued an order for his release on his own recognizance, gave him about two months to leave the country, setting a voluntary departure bond at $2,000. Mehmood was released the next day and with a slice of reclaimed dignity, he prepared for his departure.

Shahid, on the other hand, had no such luck. He appeared before Judge B, again from behind a video screen at the same jail. Like Mehmood, Shahid had no criminal convictions and was simply present in the country without authorization. Unlike Mehmood he was clean-shaven, heavy set, and with a thirty-something youthfulness about him. He requested the same relief — voluntary departure and release on bond. The government attorney, a different guy this time, sat back fumbling through the overload of detention files he'd carted into the courtroom at the start of the master calendar hearing. He didn't need to be too diligent because he knew this judge was in the game and playing. "Where did you work?" Judge B asked Shahid taking the cross into his own hands. "Gas station," replied Shahid. "What did you do at the gas station?" "I pumped gas. Sometimes I checked oil if customers asked me to," Shahid responded with a tremor of earnestness. "Checked oil, eh?" Shahid nodded a sincere yes, thinking in that moment that he had a chance, hoping that his courteousness to his gas station customers meant something in the bizarre scheme of immigration. The judge deliberated for a second, swaying and rocking in his seat, reveling in his every day moment of administrative glory. He then reached over his desk with a cat-like stealth, glared into the video screen and said: "Bond denied. You are a flight risk." And with the swiftness of motion, he averted his eyes from the screen, unwilling, perhaps unable, to see the man's despair, stamped and signed his order, and read it out in his trademark

"Are you a terrorist?" "No sir." Mehmood responded with a lilt that was a bit too servile for my liking. "Have you ever supported a terrorist group?" Mehmood said no, this time his tone even more grating to my ears.

* In March 2003, the Immigration & Naturalization Service (INS) was dissolved. Immigration detention and deportation responsibilities were transferred to the Bureau of Immigration and Customs Enforcement within the Department of Homeland Security. For convenience, the immigration service is still often called the "INS." —ED.

auctioneering style. And it was over.

Shahid spent the next two months sitting in jail waiting to be deported. A two-month sentence over nothing. The judge granted voluntary departure but because Shahid was detained and couldn't arrange for his departure, it converted to an order of deportation. An order of deportation in one's immigration record has much worse consequences than an order of voluntary departure (for example, it generally prohibits one from legally re-entering the United States for ten years).

This judge may be conservative. But he is by no means the only one who takes the harshness of the laws one step further and exercises discretion against people like Shahid. There are others. Even the more humane and liberal judges, judges who grant asylum and are revered by non-profit lawyers, feel the pressure of a post 9-11 courtroom. Hence there are arbitrarily different results for very similar cases. And this arbitrariness has huge implications for the respondents. Like Shahid they may spend two extra months in jail waiting to go home and sometimes even longer as there are cases of people waiting for six months to a year and even two years. Moreover, Mehmood with his voluntary departure order may have better luck traveling back to the United States in the future compared to Shahid with his order of deportation.

Most government attorneys operate much like this judge, creating, perpetuating, and relying on racial stereotypes and bigoted assumptions in the courtroom. They march in much like celebrities barely making eye contact with most attorneys in the courtroom representing respondents, U.S. flags pinned in arrogant patriotism to their chests, and act as if it is their national duty to treat every Muslim man as a potential threat, a latent terrorist. Technically the rules of evidence do not apply in immigration court; but it is still shocking how little they sometimes have to go by.

Without any evidence whatsoever except for his religion and country of origin, the DHS attorney at Mehmood's hearing asked him if he had terrorist connections. He did this to impress upon the judge that there were certain assumptions he could get away with and that she too should be concerned. No sensible judge should want to be the one who puts him on the street. She didn't take the bite. But he succeeded regardless. Beneath that one question is a culture of racism, where Muslim-ness is synonymous with something sinister, a person's country is a clue about his criminality. Incidentally, this DHS attorney, a seasoned, sharp, soft-spoken, yet bitter-sounding man in his fifties, eloquently made a case for racial profiling at a talk he gave at Boston College in 2003. I don't think it figured even remotely in his consciousness, language, and perception of the universe what that meant within a human rights framework. I observed another DHS attorney carelessly suggest to an immigration judge that there was an FBI probe on an Algerian man and that he couldn't disclose the nature of the probe, hoping any odd thing he said about a Muslim respondent would be enough for the judge to refuse release on bond. It is trial by suggestion, not evidence.

Moreover, when such assumptions and attitudes towards Muslims and other noncitizens are codified into law under the Ashcroft regime — such as the Patriot Act, federal court cases on secret hearings, immigration court reforms, the special registration rules that required young men from predominantly Muslim countries to report for interviews — the bureaucrats feel justified and even more emboldened in their profiling.

I Don't Want To Be The One To Release Him

I MET ALIM, A MUSLIM from Tanzania, on a stormy cool January day at the Bristol County jail. He had a bond hearing before I met him and he'd been denied release by the judge. I later examined his immigration court file and scrawled across a page was the judge's huge handwriting, denying release with two meaningless words "flight risk." This man had no criminal convictions, no criminal arrests, and used to be a journalist in Tanzania. By overstaying on his visa he too had an immigration violation only. He had the single misfortune of breaking up with a particularly vindictive woman who had attacked him several times,

once in front of a Boston policeman outside the Cambridge District Court, and a second time with a cup of scalding coffee at his workplace. She then called the INS saying that he was wanted by the FBI.

The FBI took the call seriously. They showed up at his workplace, and having nothing on him, they used his visa overstay as reason to arrest him. They sent him to Bristol jail where FBI agents interviewed him three times. Finding nothing on him, they walked away like bored lions leaving immigration hyenas to deal with him. Alim told me that the FBI agents had flipped through his passport. "I bet the stamp in here saying that you stopped over in Oman was of concern," I said half jokingly as I handed a copy of his passport back to him "Yes!" he responded in complete seriousness. All they had was a stopover in the Middle East. It merited three visits to Bristol.

I filed a motion for a new bond hearing for Alim based on "changed circumstances." Once a respondent has had a decision made on a bond hearing, he is only eligible for a new bond hearing if circumstances have evolved since that time, like a conviction being canceled on appeal or the birth of a new baby, etc. Although I knew there was not much of a chance with this judge or much of changed circumstances case, I wanted to do it anyway. Sometimes I get strength from futility, affirmation from dismissal.

I collected police reports and charging documents for the cases involving his ex-girlfriend, prepared his roommates for testimony, and put these before the judge the moment I got to the respondent's table. The courtroom was brimming with lawyers and respondents. It was a particularly busy master calendar hearing with detained and nondetained hearings and there was an urgent whisper of consultation that permeated the air despite the clerk's plea for quiet. The judge glanced at my motion as if I'd placed a vegetarian treat before a hungry carnivore. Refusing to look at it, he yelled at me, accusing me of not knowing the difference between bond and merits hearings. I said softly that I did, feeling the watchfulness of the white lawyers in the room; most of them gray-suit clad and male, behind my back. Merits and bond hearing *are* different but not really. Bond hearings are off the record, while merits hearings are on the record. Bond hearings are about whether to let someone post bond and be released; and merits hearings are substantive concerning whether someone's removal should be canceled. But the same judge conducts them, and at the same time, and there is no particular order or form besides the clicking shut of a tape recorder and the flipping open of a different manila folder.

The judge glanced at my motion as if I'd placed a vegetarian treat before a hungry carnivore.

Alim was, in the meanwhile, at the jail and peering through the video screen only half following the exchange. We had discussed that ultimately we would ask for voluntary departure and we did. When I raised the bond question again, the judge fired back saying that he had no jurisdiction as he had rendered a final order on the merits case by granting voluntary departure. I was appalled. He was either being procedurally tricky or he was anxious about making it through the rest of the cases. He could have easily gone off the record, ruled on the request for a new bond hearing, and returned to the issue of voluntary departure. Even if his ruling were a rejection of the motion, perhaps the ounces of a lawyer in me would have been satisfied. Clutching my motion, and moving towards the swinging wooden door, I pleaded. "Judge, I asked you for a new bond hearing *before* the decision." "Counsel, you protest too much," he said making it clear to me the conversation was over.

Jurisdiction for release requests and bond shifts to the immigration district director after a final immigration court decision. I came back to my office and photocopied in a frenzy, repack-

aged the motion and submitted it to the district director of INS. They get a million letters a day. I didn't think it was read. Two weeks later at a local meeting between immigration attorneys and INS officials, I went up to the assistant district director and mentioned Alim. "Can I call you tomorrow about this?" He said yes with a professional kindness that everyone should be wary of, nodding as he offered his listening face.

Rushing out of my swearing-in ceremony at the U.S. District court the next day — where in an ironic parallel to my universe the pro bono coordinator made a pitch to the ninety-four starry-eyed attorneys being sworn in to practice in this federal court, that they must assist in pro se habeas petitions for prisoners and INS detainees — I called the assistant district director from the basement of this grandiose courthouse. He said he couldn't release him. He did not want to be the one taking the risk. What risk? I wondered. Alim was a journalist from Tanzania on a brief stint with Store 24. He even entered on a valid visa. I reasoned with him for a few seconds, pointing to Alim's credentials, his lack of a criminal conviction, hopelessly banking on his authority to set Alim free. No use. He did not want to exercise it, he told me curtly, and our conversation was over well before the thirty-five cents ran out on me.

The Racism Never Stopped

WHILE THERE WERE DEFINITELY more Muslims in jail post 9-11, in numbers I hadn't seen before in 1999 and 2000, and there were the 1,000 or more men detained in the New York-Pennsylvania area after 9-11, the most number of detainees in New England detention centers are still Black and Latino. Most of them are detained for illegal re-entry, criminal convictions for which they have completed their sentences and immigration violations. Judges and government attorneys never got kinder towards them. It is almost as if the codified hatred towards Muslims is an additional thing to pile onto the garbage heap of racism.

In March 2003, I appeared before the same roguish judge from Shahid's case for a bond hearing. This time it was for a Haitian man, Michel, who lived in Cambridge, Massachusetts and sounded more American than he did Haitian. He was eligible for cancellation of removal, a form of relief which if granted allows one to resume legal permanent residence in the United States. If released on bond, he'd be able to prepare for his cancellation trial in a more efficient and dignified manner and return to court in suit and tie instead of peering through a video screen in an orange jumpsuit or dragged in by guards in olive green, his hands and feet in chains. I've always felt it is easier for a judge to deny a person relief when he is already in jail and on the verge of being deported versus being out and going about his normal life. Moreover, in cancellation hearings a judge's decision to grant a person permission to stay in the United States is based on their proving that the good in their life outweighs the bad. Looking like a prisoner is hardly a great starting point to have things tip in your favor. Clothes do make the man and the government knows this.

Michel had been in federal immigration custody since January 2002, and for about a year and a half before that in state custody. During his year in immigration custody, he was shuttled between jails in Massachusetts, Georgia, and South Carolina. Despite being bond eligible, he never once got a bond hearing, this right lost, somehow overlooked in the web of bureaucracy and the perpetual shuttling up and down the coast. Immigration lawyers will tell you a respondent must *ask* for a bond hearing or he won't get one. Not true. There are ways to get around it ethically and responsibly. In vivid contrast in another courtroom across the hallway, a Jamaican man was similarly unrepresented. The judge told him about his right to a bond hearing, and asked him if he wanted one. He said yes and she conducted it and issued an order for his release on his own recognizance. It was a different matter altogether that the government did nothing to release this Jamaican man. At his next hearing two weeks later, the judge was incensed and he was finally released.

I had met Michel for the first time a week before his final merits hearing. I helped him prepare for testimony, but I told him I couldn't rep-

resent him on the merits, as I had no time to prepare his case. I agreed, however, to ask for a bond hearing on his behalf since I felt this was an egregious omission on the judge's part.

I spoke to Michel at Bristol through a soundproof tinted glass screen and by telephone. He had allegedly misbehaved and was in the hole for it. He'd lost his privileges and despite his imminent court date, I wasn't allowed to meet with him in an attorney-client meeting room, face-to-face, paper-to-paper, and pens readily exchangeable for signatures. I could barely see him or even hear him over the clamor of a court-administered program being conducted in the background. County inmates were lecturing seven-to-fifteen-year-old boys on the ills of drug use. A guard hovered around me, several degrees too close for my comfort, as he exchanged documents between Michel and myself. But we managed somehow after four hours of trying to hear one another and figure out each other's expressions.

A week later in court I showed up a little before nine. This hearing was supposed to start at nine. The DHS attorney did not show up until 9:40. The hearing did not start until 9:45 a.m. I asked for a bond hearing and it was granted. The DHS attorney grilled Michel for forty-five minutes about his arrests and convictions. When I asked for a direct after his cross, the judge said I have only five minutes because it was already past eleven and the hearing was supposed to end at 10. "So whose fault is that?" I mumbled under my breath. Then making the best of my five minutes, I asked Michel to talk about the circumstances of his arrests by the Boston police. The judge interrupted me saying he did not want to hear it. I gave up and moved on to rehabilitation, a perfectly legitimate area for direct examination given that the matter was whether Michel was fit for release. I asked him to talk about the programs he had attended while in jail. Even more irate this time, the judge pulled forward in utter disgust saying he didn't want to hear it. "How is this relevant? This is a bond hearing not a cancellation hearing. We are concerned with his dangerousness only." He alternated his voice, loud and soft, to create an effect and instill just the right amount of terror. I backed off. He went on to deny release on bond.

I left the room despairing and angry. Michel was dragged away by the guards to the back elevator. Ten minutes later I returned to the courtroom to collect a forgotten file and I found the judge and the government attorney who looks like a human version of Brutus from Popeye cartoons engaged in an intimate discussion, probably about how they'd tackle the next set of cases. They were unfazed by my appearance, unconcerned with any notion of bookish ethics.

I had told Michel during my clumsy meeting with him that he did not sound remorseful enough. He said he knew that. He also said he knew what the judges wanted to hear. I've heard this from other young, black men as well. They know judges want them to accept responsibility, express remorse, say they are guilty and sorry, ashamed and reformed, follow a script, look straight and sit upright, and grovel for release. This is the story they want to hear and nothing else.

As soon as a respondent starts to talk about how he may have been framed, how it wasn't his fault, what the accentuating circumstances were, or about the guy who got away, judges will go into convulsions and interrupt them. They say they don't want to relitigate a conviction. Criminal convictions trigger deportation proceedings for noncitizens, and immigration judges cannot guess whether the conviction was valid.

However most immigration and defense lawyers are fully aware that defendants often take guilty pleas for myriad reasons other than guilt. Still they shudder at the thought of a respondent appearing before an immigration judge and professing innocence on a certain conviction. Judges hold close to their heart the mantra "conviction is fact and they must not redetermine guilt or innocence." Regardless, they delve into the nature and circumstances of the crime in their decision to grant cancellation, and in a very important way, they do end up relitigating the alleged crime. But allowing the respondent to narrate the nature and circumstances of his arrest and conviction in a way

other than embracing guilt and accepting responsibility is anathema to them.

The unfair workings of the criminal justice system and its coercing of defendants into taking guilty pleas thus has perverse consequences in the immigration detention system. And no one seems to be challenging any of this. There are dozens of law review articles written on the criminal justice system in the United States and the prevalence of wrongful guilty pleas but it is beyond the current conception of immigration practice to raise this in immigration court or even at professional conferences. Racial profiling and the criminalization of youth of color are now within a certain level of popular imagination, but you'd be up to strange antics as an attorney if you raised this in a cancellation hearing.

> Ten minutes later I returned to the courtroom to collect a forgotten file and I found the judge and the government attorney who looks like a human version of Brutus from Popeye cartoons engaged in an intimate discussion, probably about how they'd tackle the next set of cases.

Indefinite Detention

Bassam, a Palestinian refugee from Syria, showed up at my office at Boston College. It took me a few seconds to recognize him. For two years I had seen him only in the orange or blue jail uniform, and here he was wearing jeans, t-shirt, and a black leather jacket. Unlike my Pakistani client, Shahid, who spent two months in jail waiting to go home after the judge's decision, Bassam spent *twenty-four* months in INS custody. Bassam was finally released at midnight on a deserted street near the Coast Guard buildings on the Boston piers. He had no money besides a useless three hundred dollar check he couldn't cash until the next day. He walked into a bar looking for an Arab friend who worked there. He wasn't working there at the time, but as his luck would have it that day, he saw another friend of his at a second bar, also a former detainee, an Algerian, who agreed to put him up.

Bassam's last six hours before freedom were marked by painful restraint. He was shackled in the back of a van along with six other men as they traveled between New England cities picking up and dropping off detainee cargo. "Dominicans," he told me, all of them, besides him. Bassam said earlier on the day he was released, Miguel, who works for the INS at the prison, got him. Bassam thought he was being transferred to a different unit where he really didn't want to go because he had friends in EB, the unit he was in. "Well, you really prefer EB over the street?" Miguel asked jokingly. Miguel who is usually just as bureaucratic and authoritative as the other jailers was, I imagine, glowing in that moment of absolute power when a man tells another he is to be set free, teasing him casually about the possibility of continuing in incarceration. Bassam probably said "wow" in response. He said "wow" about fourteen times as we sipped coffee at the college cafeteria, acutely and intensely aware of four day-old freedom.

Bassam spent those twenty-four months in detention at three different jails. Even when he was in the van on his way to being processed for release he had an irking feeling he was being taken to another jail. He is Palestinian and diabetic. I told him lefties have a soft spot for Palestinians and he grinned, looking embarrassed over his coffee. He was born in and lived all his life in Syria though. Frankly, Bassam annoyed the heck out of me in prison garb because he would ask me the same question ten times hoping I would give him a different answer, wishing that with every passing minute I had somehow gained insight about what the government had in store for him. And the nausea I contain whenever I am visiting a jail

would suddenly threaten to spill out in tantrum.

Bassam was ordered deported by an immigration judge in the spring of 2001 and was waiting for travel documents from the Syrian Consulate in order to be sent home to Syria, but these documents never arrived. Bassam paid for their not arriving with twenty-four months of his life. Generally a detainee cannot be deported without travel documents from the consulate. Even though I wasn't strictly representing Bassam, I called the Syrian Consulate a dozen times for these documents. They told me to call back and ask for Naeem. Consulates always seem to tell you to call back and ask for men with only first names who usually don't call you back. Naeem didn't call back.

The issue for Syria was whether Bassam qualified for Syrian travel documents as he was born a Palestinian refugee in Syria. If only Naeem would tell me what to do or put it in writing that they couldn't issue him travel documents, it would have been helpful, and Bassam could have been released earlier. But I was never able to speak to him. At one point I was at my wit's end, and I asked an INS officer what I could do to facilitate the process of getting travel documents. He told me to try the Palestinian Authority (PA) if Syria was being uncooperative. I was taken aback for an instant. It was really just a delay tactic, a thing to get me off his back, a way to reject yet another custody review with a one line statement that they have just requested travel documents from the PA and need at least three months to hear back from them. I mentioned this to Bassam. We agreed never to bring up Palestine again. Luckily, the officer who I spoke to had not bothered to make any notation about this in the computer.

A few learned detainees I have worked with will tell you INS cannot hold you for more than six months under a Supreme Court decision, *Zadvydas v. Davis (2001)*. They are wrong on the law, right on wishful thinking. While it is true that *Zadvydas* held some immigrants have constitutional rights and a statute that permits the indefinite detention of people raises serious constitutional questions, the ruling did not set a time limit to the period of detention. In grappling with what is a reasonable time period for holding someone the judges said that after the six-month period, once an "alien" provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the government must furnish evidence sufficient to rebut that showing. This means the government could use this to indefinitely detain a person and they do, citing that the detainee has not demonstrated that his removal is not likely, and at the same time citing numbers of successful deportations to a particular country.

In Bassam's case, after the presumptively reasonable period of six months was over by the end of 2001, the government denied his release stating that they had in the past successfully deported many Syrians and that Syria is taking people back. In the written decisions denying release after his last two custody reviews, they didn't offer so much as a single statement about why Syria wasn't taking *him* back. Bassam did not have a violent record. He'd only written a few bad checks. He was not a flight risk. If released on U.S. soil he would be on an order of supervision which meant he would report to the INS every month or so, and if he failed to show up even once, the government could revoke his order of supervision and rearrest him, and he'd be back at the Bristol County jail. Even by their own hawkish reasoning, there seemed no legitimate reason to continue to detain him this long.

Bassam told me the next day he went to Fleet to get his $300 check cashed and they wouldn't do it because he had no picture ID. He showed them his order of supervision, saying the INS gave this to me, and they still weren't impressed. He spoke to a manager who Bassam tells me was Pakistani because his last name was "Ahmed": and he cashed his check, shook hands with him, said: *"Al-ham-do lillah."* Our people are in trouble. Best of luck." I slept easier that night. My mind is at ease at a client's release or maybe I was getting used to the noises in my new Somerville apartment.

Taking Risks for Change

THE IMMIGRATION SERVICE USES euphemisms

such as "detention" and "detention center" when they really should be calling it what it is: imprisonment and jail. Bassam did not spend two years in detention. They can call it that but he was at three different county jails in Massachusetts and Rhode Island. Michel similarly was shuttled from a jail in Massachusetts to a jail in Georgia. Shahid spend his last two months in America as a prisoner at Bristol. And jail has none of the extra privileges implied by the word detention. You get jail food. You wear jail clothes. You can't take a walk when you want to. You may be locked down in a cell for up to eighteen hours a day. You can't get more visitors than other inmates. You obey the rules of the jail. The jail guards treat you like any other prisoner. The administration gives you a number, a bed and a commode, and library hours just like any other prisoner. In fact you are worse off because you cannot participate in the educational programs county inmates can participate in.

Depending on the jail, you may or may not be mixed up with county inmates. It always intrigues me when progressive lawyers pick the issue of mixing when talking about detention conditions for immigration detainees — as if contamination by people who are serving or waiting to serve a sentence makes the system far more intolerable, and separation would be humane. I don't necessarily disagree. Most immigration detainees are there for immigration violations or have criminal convictions for which they have long completed their sentences. I've heard detainees say themselves say how this guy is a murderer or that guy a drug dealer; but I've always felt they say this partly because immigration detention in its elusive, arbitrary, unpredictable and often "no end in sight" nature is so unbearable that every little and big thing is and should be a concern. In a strictly reformist sense, the government needs to stop renting bed space at county jails where counties are incapable of administratively treating immigration detainees differently than their own inmates.

I hate jails not only because they are dehumanizing and degrading, but also because of this staleness in the air which is impossible to describe. It is intangible, yet real and sickening, like a viscous mixture of racism, xenophobia and authority. You can only have a feel for it when you are denied access because you don't have a proper ID, or your bar card has expired, or you have a nose ring, or made to wait four hours to get in because you came during "headcount" or "feeding." Correctional officers don't like being called "guards," we were told at Plymouth County Correctional Facility, because they are trained in administering correctional centers and guards could be security guards at a restaurant. It is okay, however, to call the rest of us "aliens," and lunch, "feeding," and counting the detainees "headcount."

I once overheard a guard tell a young Latina that she couldn't visit with her husband face to face for four months. She said that she had been seeing him for the last several weeks, to which he said she was not supposed to. The woman reacted not with pounding her fist on the desk, yelling at the correctional officer, and demanding to speak to a higher-up, but with a calm and almost flirtatious: "Oh, really? Oh." Any sign of protest would have barred her from the facility. And that is just how authority functions out here.

By shutting you out or shutting you in, the legislators who made detention mandatory for many groups of immigration detainees knew what they were doing. By giving themselves so much control over someone's freedom, constantly manipulating lawyer and family member access to prisons, jails, and lawmakers hope to silence protest from family members and lawyers, frighten resistance, transform rage to subservient smiles. I don't know whether legislators thought immigration violations are so serious that noncitizens should be incarcerated for them or whether incarceration is so bad that immigration violations must be very serious.

Although I still firmly believe the ultimate struggle lies in the street, it also lies with lawyers and judges in aggressive reform in administrative courtrooms. Lawyers should creatively and constructively intervene in the racist justice system of the immigration courts. They must strategically call on government attorneys who make assump-

tions, perpetuate stereotypes and play unethical; they must refuse to strike deals when these deals come at the expense of a higher principle, shame them, and maintain a constant state of dogmatic protest. If government lawyers can make evidence out of race and national origin, we should use information on racial profiling, criminalization of people of color, and police misconduct against minorities at hearings. And this can be done without losing cases, without sacrificing the profession, and without being dismissed as some fringe, radical lawyer who doesn't get paying clients. Openly and without apology. Many lawyers are taking risks in immigration court; many more should.

All it took was one article in a Boston newspaper initiated by a respondent's psychiatrist about the immigration judge I've mentioned off and on in this article to get him suspended and off the bench while lawyers for years had maintained an eerie silence about his practices. It is silence that becomes complicity with the government in an attack on immigrants, their rights, liberties and dignities. *We* have given them this power and it is ours to take back.

Immigration judges too should be critical of government practices; it isn't okay that the Jamaican was imprisoned for two weeks more than he should because the INS could and did ignore the immigration judge's order. I think the government trial attorney should have to spend two weeks in Bristol for the mistake because incarceration is a big deal.

It isn't okay that a detainee should wait for twenty-four months in jail to get a travel document to go home. A federal court judge in 2003 dismissed Bassam's poorly researched, untidily formatted, handwritten habeas petition requesting release because he'd confused the issues. In one desperate breath he asked for release from detention, asylum in the United States, complained about the treatment of Muslim detainees, and professed his deep ties to the country. The judge dismissed the asylum claim citing exhaustion. Bassam had explicitly told the judge he didn't wish to pursue asylum earlier in immigration court. Ignoring the ties and treatment issues, the federal judge dismissed the request for release citing to the government's contention they've deported people to Syria in the past.

It isn't okay that a detainee should wait for twenty-four months in jail to get a travel document to go home.

It shouldn't have to be this way. Federal court judges and their clerks need to be able to distinguish the issues and see this habeas for what it was, regardless of prisoner's procedural mistakes, and for the very serious issue it raised: Twenty-four months of unaccounted disappearance of a man.

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Concerning a Small Matter of Definition

C. DOUGLAS LUMMIS

IN THE OCTOBER 10, 2002 ISSUE of the *New York Review of Books*, and in the three subsequent issues, the following classified advertisement appeared, listed as "miscellaneous":

> CONTEST: $1000 prize to the first person who offers a definition of "terrorism" that both a) captures its character as a mode of combat, and b) excludes all U.S. military strategy and tactics. Respond to NYRB Box XXXX. Society for Promotion of Accuracy in Political Speech. Frank Bardacke, Douglas Lummis, Jeffrey Lustig, founders.

We placed this ad because we were concerned that while the government of our country has begun a "war against terrorism," a war that has already destroyed many lives and promises to destroy many more, has put the fragile structure of international law under the wrecking ball, and has no foreseeable end, government officials and the general public seem deeply confused about what "terrorism" is. This is serious, for without a clear definition, how can one be sure where to attack, or who is qualified to be the attacker? For the U.S. military to qualify as a body capable of carrying out such a war, it would have to be possible to define "terrorism" so as to satisfy both condition a) and b) as stated above. We decided to sponsor a contest to see if anyone could do that.

We received 52 responses, all before the U.S. war against Iraq began. Some were comments (two in the form of photographs), some were parodies, but many were serious entries. The serious entries were of two types. Some of the better examples of the first type are:

> Warfare conducted against civilians to wrest concessions from enemy regimes and change their policies.
>
> A form of violence that has the effect of filling an entire population with terror.
>
> The use of political violence or warfare against civilians, by means of arms of mass destruction or tactics that violate the laws and customs of war, with the purpose of terrorizing the population and/or obtaining concessions from or imposing decisions to the government.

These approach the wording used by the U.S. Department of Defense: "the unlawful use of — or threatened use of — force or violence against individuals or property to coerce or intimidate governments or societies, often to achieve political, religious, or ideological objectives." Each captures an aspect of terrorism. Terrorism is violence intentionally inflicted on noncombatant civilians; it aims to terrify an entire population; it violates the laws and customs of war; it is (unlike, say, bank robbery) carried out for political or religious motives.

If the contest required only condition a) — the definition must capture the character of terrorism as a mode of combat — these would be strong contenders. However none of these entries addresses condition b) — the definition must exclude all US military strategy and tactics. Is it self-evident that if terrorism is defined as outside the law, or even simply as violent and terrifying, the U.S. military has been excluded automatically? Is the possibility that any U.S. government actions might fit these descriptions unthinkable?

C. DOUGLAS LUMMIS *is the author of* Radical Democracy *(Cornell University Press, 1996). His most recent book is* Is Japan Really Going to Junk its Peace Constitution? *(Heibonsha 2003; in Japanese) Frank Bardacke and Jeffrey Lustig helped draft this piece.*

Some entries of the second type are:

> Act or acts of violence (usually ruthless) against life and property, aiming at political objectives, but performed by non-military forces on behalf of extra-legal organizations.

> The expression of clandestine groups or individuals committed to surprise violent operational attacks, often deadly, sometimes suicidal, against both civilian and constituted authority designed to create fear, confusion, general demoralization, weariness and hopelessness with the ultimate long-term objective of forcing regime change and/or [changes in] regime policies.

These definitions share the belief that the U.S. military can be excluded by defining terrorism by its perpetrator (extralegal organizations or clandestine groups) rather than by its character. What mainly matters is not what is done, but who did it. This definitional strategy, with of course many variations, wields great authority in American society today. It is used by the U.S. State Department, which tells us "the term 'terrorism' means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational or clandestine agents, usually intended to influence an audience." And that is how the word is used by government officials, in journalism, and in daily conversation.

Unfortunately, neither of these definitional strategies works. Each of the above definitions describes a mode of violent actions, and then either assumes or states that such actions are limited to extralegal, non-governmental groups. Why are they thus limited? Is it because governments never ever do such things? Or is it because when governments do such things, we call them by a different name?

In moral and legal discourse there is precedent for such selective usage. We call forcible confinement "kidnapping" when it is done outside the law, but "arrest" or "imprisonment" when it is done by state authorities. We call killing "murder" when it is done outside the law, and "execution" when it is done on the order of a legitimate court. The words "kidnapping" and "murder" have illegality and illegitimacy built into their meanings. Though, as I will argue below, being outside the law is part of its essence, "terrorism" is not the name of a particular illegal act, but rather of a strategy carried out by a variety of different acts. Most notable among these, as mentioned by most of the contest entrants, is the intentional killing of noncombatants. But the intentional killing of noncombatants is illegal no matter who does it. The laws of war, whether traditional, embodied in modern international law, or stipulated in the military codes of states, do not say that the intentional killing of noncombatants is a war crime "unless carried out by uniformed members of state military organizations." On the contrary, it is primarily uniformed military that these laws were designed to restrain. The acts that constitute terrorism do not cease to be crimes if carried out by military personnel. If anything, they become more criminal.

Terrorism is not the name of a crime; it is the name of a strategy, "a mode of combat" as we put it in our contest announcement. The acts that constitute terrorism are in the same category as other modes of combat such as frontal assault, flank attack, pincers movement, siege, saturation bombing, assassination of leaders, gas attack, torture of prisoners and the like. Some of these are legal and some are not, but we do not call them by different names depending on who does them. We do not define "torture" as "the practice by non-state actors of inflicting pain on prisoners to obtain information and/or confessions." Torture is torture, whoever does it. The same is true of terrorism. Defining state terror as impossible will not, unfortunately, make the practice disappear. We need first to define what kind of activity terrorism is, and then to look and see whether any government activities — or for the purposes of this contest, any U.S. military activities — fall within that definition. If the U.S. military has strategies that walk like terrorism, talk like terrorism, feel like terrorism, look like terrorism, and have the effect of terrorism, then they are terrorism.

Terrorism as Public Policy

WHAT, THEN, IS TERRORISM? We were surprised

that none of the contestants began with what seemed the obvious, looking up the word in the Oxford English Dictionary or some other authoritative source. The OED definition is instructive:

> 1. Government by intimidation as directed and carried out by the party in power in France during the Revolution of 1789-94; the system of the 'Terror' (1793-94).
>
> 2. *gen.* A policy intended to strike with terror those against whom it is adopted; the employment of methods of intimidation; the fact of terrorizing or condition of being terrorized.

"Terrorism" originally meant a method used by a government to subjugate its people by killing some of them at random. Crucial to the Reign of Terror was the collapse of law. Under the rule of law, we can have a pretty good idea of which sorts of actions are likely to bring down state violence against us, and which are not. Knowing this, it's possible to pick a course of action that is relatively safe. Under the Reign of Terror, this safety map was dissolved. Speech or behavior that was innocent yesterday could be a capital crime today; today's model *citoyen* could be under the guillotine tomorrow. When violence follows no fixed, known rule and is carried out at random, there is no path a person can choose that will ensure safety. Death can come to anyone, any time. Thus, terror.

The meaning of terrorism later expanded to include not only a strategy in the state's war against its people but also one that people can use against the state or a colonized people can use against a colonizing power. It also can be used in warfare between states. The strategy is to demoralize the enemy by refusing to follow any rule in selecting victims, so that no one in the enemy group can feel safe. "Refusing to follow any rule" means, for states using terror against their citizens, refusing to follow a known criminal code, so that the people will have no idea what acts are punishable. For a military at war it means refusal to follow the laws of war that prohibit killing noncombatants, leaving no way to make oneself immune from attack. For a clandestine organization fighting against a government, it means not only refusing to obey the criminal code and the laws of war, but also following no rule or system in selecting victims.

Thus, terrorism differs from assassination, with which it is often confused. Assassins do kill noncombatants, but not randomly: they know who their victims are, for they select them on the basis of what they have done or what positions of authority they hold. The terrorist who throws a bomb into a restaurant or under a commuter bus doesn't know who will get blown apart, and probably doesn't care. The message is, no one is safe. What these forms of terrorism share is *radical illegality*. Illegality is not simply an unfortunate side effect; it is the essence of the strategy. Terrorism derives its particular force, its *terror*, not from the scale of the damage or the numbers of the victims, which may be small, but from its refusal to follow any rule of law or of human civility. It is an attack on civil society itself.

From the time it became clear that the airplane was going to be invented there began a long debate among military theorists on how it could best be used as a weapon. Some favored using it for close air support of troops in the field. Some favored using it to bomb factories that produced military supplies. Some favored using it to bomb all industrial centers no matter what they produced. And some argued that it should be used to bomb civilians. This last position came to be called the Douhet model after the Italian General Giulio Douhet, who wrote in support of the idea in the 1920s. According to Douhet, indiscriminate bombing of cities would eventually destroy the people's will to resist, and cause them to rise up and force their government to end the war. "A people who are bombed today as they were bombed yesterday, who know they will be bombed again tomorrow and see no end to their martyrdom, are bound to call for peace at length." The Douhet strategy also came to be called, correctly, "terror bombing." For example, it was called that by no less an authority than Winston Churchill, to describe what the RAF was doing in Germany during World War II.

While the Douhet model was positively

adopted by the RAF, the U.S. military, at the beginning of the war, clung to the idea that bombing should be limited to close air support in combat zones, and military targets such as factories and warehouses. But, famously, this limitation broke down as the war progressed, and disappeared altogether in the firebombings carried out in Germany and Japan, and in the atomic bombings of Hiroshima and Nagasaki.

"The people there are dead because we wanted them dead."

The gradual transition in the use of the term can be traced in Alex P. Shmid's 1983 study *Political Terrorism*. In that work, Schmid collected 108 definitions of terrorism dating from 1936 to1981. Reading through them one can get a sense of the long struggle that took place between those who clung to the original definition, in which state terrorism is included, and those who were searching for a definition that would make state terrorism invisible. Among the former, perhaps the most succinct and eloquent is that of Raymond Aron (1966):

> An action of violence is labeled "terrorist" when its psychological effects are out of proportion to its purely physical result. In this sense, the so-called indiscriminate acts of revolutionaries are terrorist, as were the Anglo-American zone bombings. The lack of discrimination helps to spread fear, for if no one in particular is a target, no one can be safe.

The definitions that try to exclude state terror generally use one of the two strategies described at the beginning of this essay, and none has the lucidity of Aron's. Taken together they form a fine example of Orwell's principle that the quality of political writing deteriorates when the writer has something to hide.

We will refrain here from making a long list of U.S. bombing campaigns since WWII that were carried out on the Douhet terror bombing model, and turn instead to the situation today. Does anything in U.S. strategy and tactics fall within the definition of terrorism?

We will not find the answer to this by searching the public pronouncements of military spokespersons. They are forced by international law, by U.S. military law, and by both domestic and international public opinion to say that the U.S. military never intentionally targets civilians. This is an important difference from nongovernmental terrorist groups. The claim that civilians are never targeted, even if false, preserves the public principle that civilians *ought not* to be targeted. But the problem is that it preserves this principle only in hypocritical form, for of course government leaders know differently, and the troops (at least the veterans among them) in the air and on the ground also know differently. We hear a lot about smart bombs, but during the war against Afghanistan the U.S. military was also dropping 2000-pound dumb bombs. What for? An officer on the USS Carl Vinson gave a persuasive explanation: "A 2000-pound bomb, no matter where you drop it, is a significant emotional event for anyone within a square mile." "Significant emotional event" is a dry euphemism for "terrifying." I don't know which 2000-pound bomb the officer was referring to, but if it was the CBU-75 Sadeye, it was a cluster bomb that contains 1800 one-pound bomblets, each containing 0.7 pounds of TNT with 600 razor-sharp steel shards imbedded in it, lethal up to 40 feet. These are scattered over an area equivalent to 157 football fields; presumably nothing — military, civilian, old, young, male, female — survives within this space. Many of the bomblets fail to go off and become landmines, the perfect random killer. The people who drop these bombs know all this.

Or consider the AC-130. This is one of those gigantic cargo planes modified so that it can shoot 20 mm and 7.62 mm Gatling guns and a 105 mm howitzer out the side door. It circles around its target like a giant roc, and rains down fire from all sides. We hear that within seconds its Gatling

guns, firing up to 6000 rounds per minute, can fill an area the size of a football field with one round per square foot (how they love those football fields!). We hear that part of its utility is the terrifying effect of the deafening sound of its huge propeller engines combined with the boom of the howitzer coming from high in the sky. The terror it inflicts has been embodied in its nicknames: "Dragonship," "Spooky," "Spectre." It is effective against military targets like tanks and trucks, but it is also used for area bombardment. It was used in the U.S. invasion of Panama, in the first Gulf War, in Somalia, in Albania, and in Operation Enduring Freedom. For example, it was the AC 130 that attacked the Afghan town of Chowkar-Karez on October 22 and 23, 2001, killing, it is said, 93 civilians. This was the incident that provoked the notorious comment from a Pentagon official, "The people there are dead because we wanted them dead."

Or consider the BLU-82B, variously nicknamed Big Blue or Daisy Cutter. This was, until recently, the biggest non-nuclear bomb the U.S. military had. It is described as being the size of a Volkswagen beetle but much heavier: at 15000 pounds ordinary bombers can't carry it, so it has to be delivered from an MC-130 cargo plane, flying at an altitude of at least 6000 feet to keep the blast from damaging the plane. It was originally developed to rip open helicopter landing fields in the jungle of Vietnam, but it has since been used as an antipersonnel weapon both during Desert Storm and in the war against Afghanistan. At least two were dropped on Baghdad in the recent U.S. invasion of Iraq. Its lethal radius is reported as between 300 and 600 feet ("five football fields" according to another source). Military people say that its "psychological effect" is at least as useful as the material destruction it wreaks. British troops who saw it used in Afghanistan thought the United States had started using nuclear weapons. There are reports of GIs breaking down in tears while describing its effects.

And while the U.S. military is trying to persuade the world that it is phasing out such dumb monsters as the Daisy Cutter and replacing them with weapons of surgical precision, it has just last year completed and tested a bomb more monstrous still. Weighing in at 21,500 pounds, and with a lethal radius of half a mile, it is called Massive Ordnance Air Blast, which awkward name is designed to yield the Biblical acronym MOAB, and further to yield the nickname Mother Of All Bombs. Like the Daisy Cutter, it can only be delivered from a C-130 cargo plane, presumably at an elevation still higher than 6000 feet. Although the first news reports of its testing claimed it had been made ready "just in time" for use in Iraq, we have seen no reports that it was actually used during the invasion.

Or consider the CBU-72/B, a cluster bomb that contains three BLU-73/B fuel-air explosives (FAE). Each of these holds 75 lb of ethylene oxide. The first explosion turns this into an aerosol cloud 60 feet in diameter and 9 feet thick; the second explosion ignites this, "turns the air into fire" according to one description. The effect was modeled on the vapor cloud explosions that sometimes occur in oil refineries and the dust cloud explosions that plague the grain storage industry. The particular advantage of this bomb is that there is no such thing as "taking shelter." The cloud follows the victims anywhere; they will even inhale the burning fuel. Even if they are in deep bunkers, the explosion burns up all the oxygen from the air, and creates a vacuum that ruptures the lungs and other internal organs. And if it fails to ignite, it is still a killer: the aerosol itself is as lethal as poison gas. The United States dropped 254 of these during the first Gulf War where, like the Daisy Cutter, it was particularly valued for its "psychological effect." In the 1990s the U.S. military began phasing this weapon out, but apparently there are still some hundreds still in service.

Terrorizing the Enemy

"PSYCHOLOGICAL EFFECT" IS ANOTHER euphemism for terror. Of course, it is no violation of the laws of war to try to terrorize the enemy's military forces. If these weapons are used, as U.S. military spokespersons will say, only against legitimate military targets, then that is not a violation of in-

ternational law, and it is not terrorism. But this claim is belied by the very nature of the weapons: the intention to "kill all" is designed into them. Given their massive lethal effect, how often could one find a military target so isolated from civilian life that no noncombatants would be affected? And it doesn't matter if at a press conference some colonel or general says "Oops!" or "Sorry about that!" and labels it "collateral damage." That term misidentifies a strategy as a mere tactic gone wrong. These weapons of mass destruction are built to obliterate any living thing within a huge area; if the civilians in that area are also obliterated it is not like being hit by a stray bullet. The people who drop these bombs drop them with the intention of killing everybody who's down there. When they all turn up dead, you can't call it an accident.

In case there is any reader not yet convinced that these weapons have terrorism designed into them, I will turn to the clinching case: nuclear weapons. There is no need here to describe what nuclear weapons do; everybody should know that. Nuclear weapons are utterly incapable of distinguishing civilian from military targets. They are terrorism writ large: instead of blowing up everybody who happens to be in a restaurant or commuter bus, they blow up or irradiate everybody who happens to be in a city and torture their descendents. Nuclear weapons have no use but terror bombing. Oh, yes, they may have a deterrent effect. But how is this deterrent effect produced?

"Deterrence should create fear in an opponent's mind of extinction," according to a recently declassified 1995 position paper of the U.S. Strategic Command. "The United States should have available the full range of responses, conventional weapons, special weapons, and nuclear weapons. Unlike chemical and biological weapons, the extreme destruction from a nuclear explosion is immediate, with few if any palliatives to reduce its effect." Of course this is inaccurate; there are people even today dying of the radiation effects of the nuclear attacks on Hiroshima and Nagasaki. But the report goes on, "Although we are not likely to use nuclear weapons in less than matters of the greatest national importance, or in less than extreme circumstances, nuclear weapons always cast a shadow over any crisis or conflict in which we are engaged. Thus, deterrence through the threat of use of nuclear weapons will continue to be our top military strategy."

The vagueness of the expression "not likely" is not accidental; it is strategy. When asked if nuclear weapons are stored in its bases in, for example, Japan, where they are illegal, the U.S. military always answers, "It is our policy neither to confirm nor deny the presence of nuclear weapons in any particular location." The Japanese government uses this to assure the public that there aren't any in the country, but any potential U.S. enemy country has no choice but to assume that there are. Similarly "not likely" says to the general public, "don't worry, we probably won't do it," and to potential enemies, "but we might." Moreover, while critics of nuclear weapons are assured that (unlike weapons possessed by "rogue states") America's nuclear weapons are in rational hands, this is not, the Strategic Command tells us, the right message to send to the enemy.

> While it is crucial to explicitly define and communicate the acts or damage that we would find unacceptable, we should not be too specific about our responses. Because of the value that comes from the ambiguity of what the United States might do to an adversary if the acts we seek to deter are carried out, it hurts to portray ourselves as too fully rational and cool-headed. The fact that some elements may appear to be potentially "out of control" can be beneficial to creating and reinforcing fears and doubts within the minds of an adversary's decision makers. This essential sense of fear is the working force of deterrence. That the United States may become irrational and vindictive if its vital interests are attacked should be a part of the national persona we project to all adversaries.

This sort of "Madman Strategy" (as it was called by Kissinger and Nixon) means letting the enemy know that if the United States is defied it might respond by ignoring the strictures of international law and the traditional laws of war, and even the rules of "rational" military strategy, and

start killing vindictively and at random. In short, it is a threat of terrorism, in the strictest sense of the word.

The Madman Strategy is not something idiosyncratic to this or that president or cabinet member, but is U.S. military policy. This helps explain the behavior of the U.S. government in the last two years. Perhaps it can also help to explain the ballyhoo surrounding "Shock and Awe," the alleged war plan for smothering Iraq under a rain of fire and brimstone that was leaked to the press before the invasion began. According to the reports of that plan, on the first day of the attack, 300 to 400 missiles would fall on Iraq, more than were used in the entire 40 days of the Gulf War. On the second day, the same. And so on. Harlan Ullman, who helped develop Shock and Awe (and presumably coined this new euphemism for terror), was quoted as saying, "So that you have this simultaneous effect, rather like the nuclear weapons [sic] at Hiroshima, not taking days or weeks, but minutes." It's not clear what he means by "days and weeks": the blast and burn effects of the atomic bomb took seconds, the radiation effects continue to this day. It seems our military experts are a little muddled about what happened at Hiroshima and Nagasaki. But it's clear enough what Ullman is trying to say: the destructive power of Shock and Awe would surpass that of the bombing of Hiroshima. Apparently this was a boast, as was the comment by a Pentagon official, "The sheer size of this has never been seen before, never been contemplated before." (This would put it ahead not only of the atomic bombings of Japan, but also of the area bombings/fire bombings carried out in Japan and Germany.) The same official said, "There will not be a safe place in Baghdad." Presumably this person knows the vast majority of the 8 million people living in Baghdad are civilians.

Had this attack been carried out, our contest would have been rendered obsolete, and even quaint. But instead of being, as advertised, the most horrendous terror bombing of all time, "Shock and Awe" was PR. While, for whatever reason, U.S. military leaders did not find it convenient to execute Shock and Awe in their invasion of Iraq, they did succeed in making known to the world that they have the ordnance, the operation plans, and the will to do so when the time is right.

As I mentioned at the beginning of this article, some of the entries we received were parodies. For example,

> A subjective term for violent acts invoking terror in its victims and associates, the flipside of just and honorable pre-emptive strikes and differentiated from such solely in the eye of the beholder.

> Use of violence or intimidation against civilian populations for political, economic, or religious purposes without prior sanction of the U.S. government.

> Terrorism is the threat or use of force, by anyone except the United States and its clients, against defenseless people with the intention of pressuring their governments.

The author of the last of these continues, "It so happens this is the working definition of terrorism for the United States," and its sympathizers. It is true that these parodies, as well as some of the dead-serious entries quoted above, do capture how the word is currently used in mainstream discourse. Why, then, do they fail as definitions? The answer is that while the capture current use, they don't capture reality, because in current use the word has become a doublethink word. Terrorism originally referred straightforwardly to an action of government. During World War II and for some years thereafter, area bombing was called terror bombing. Today this side of the word has vanished from mainstream usage. This is not because state terror, and in particular U.S. state terror, have disappeared. As I have sought to show in this essay, it has not. Rather the distortion of the word is the result of a politically motivated campaign seeking to make state terror invisible by removing from our language the means for naming it.

As a speech act, to use the word under its "working definition" is to engage in a positive act of deception, both of oneself and of others. It is to

use language not to describe reality but to conceal part of it. The problem with self-deception is that when you conceal something from yourself you have both to know what it is in order to conceal it, and not to know it after you conceal it, which is why it is called doublethink and why it is unhealthy to the spirit. What is remarkable is that the notion of state terrorism has not entirely vanished from political discourse. Opponents of U.S. policy do talk about it, but in mainstream discourse the term has come to sound like an oxymoron, or simply biased name-calling, rather than the name of a real phenomenon. In Orwell's *1984*, doublethink succeeded under totalitarian rule. It is frightening to see how powerful a force it can be even in a situation where speech and the press are technically free.

TWO MORE CONTEST ENTRIES deserve mention, both consisting of photographs. One begins with the headline, "U.S. Policy Made Simple." Below that are two photographs of destroyed buildings. The one on the left has above it, "New York, September 11, 2001," and below it, "Terrorism." The photo on the right has above it, "Jenin, April 18, 2002," and below it, "Counterterrorism." At the bottom of the page is written, "Any Questions?"

The other is a photograph by Robert Stolarik of a woman of Asian descent fleeing the collapsing World Trade Center in New York. On the photograph, just to her right, has been pasted the 1972 Pulitzer Prize winning photograph by Nick Ut of little Phan Thi Kim Phuc fleeing a U.S. napalm attack in Vietnam. The two women are running side by side, their arms in the same akimbo position, the same look of terror on their faces. Above the photographs is written, "A la recherché du temps perdu," and below, "No one has a monopoly on terror." These photographs make clear, in way that words cannot, that what matters about terrorism is not the formal status of the perpetrator but what is done to the victims.

U.S. Libraries and the "War On Terrorism"

MARK HUDSON

IN THE DAYS AND WEEKS following the September 11, 2001 Al Qaeda terrorist attacks in the northeastern United States, there was a sudden proliferation of U.S. flags and other patriotic imagery in public libraries across the nation. U.S. public libraries have traditionally displayed U.S. flags inside or atop their buildings, even though they are financed by local and state tax money and receive little if any federal funding. But the new patriotic décor went well beyond any simple statement of solidarity with the nation in a time of crisis. At one of my local public libraries, the entrance doors were emblazoned with flag stickers and the slogan "United We Stand." There were flags and slogans such as "God Bless America" at the circulation checkout points, at the reference desk and on the book carts. Another library I frequented at the time displayed a red, white and blue poster with photos of various U.S. military aircraft dropping payloads of bombs. Similar examples of patriotic overkill were reported from libraries all over the country.

While most librarians, library workers and patrons probably regarded this as an innocuous development in the context of the times, at least a few found it somewhat disturbing, given the historic obligation of libraries to make information and knowledge available to all in an atmosphere free from intellectual intimidation of any kind. As the Bush administration prepared the population for the invasion of Afghanistan and an open-ended "war on terrorism," many librarians wondered whether, surrounded by such hyper-patriotic symbolism, library patrons would be less willing to inquire or request materials about, say, historic Arab grievances regarding U.S. foreign policy in the Middle East, or the roots of twenty-first century Islamic fundamentalist terrorism in the U.S.-sponsored jihad against the Soviet-backed Afghan government of the 1980s, or the address and phone number of the local peace and justice organizing center. In other words, would patrons fear that such requests might be seen as inappropriate in an atmosphere of implied unanimity and library support for U.S. foreign policy?

In response, the American Library Association's Social Responsibilities Round Table endorsed a "Statement of Concern on the Use of Flags in Libraries' Public Areas" at the ALA Midwinter Meeting in January 2002, which warned that "such unusual displays may create an intimidating atmosphere for some library users who may be deterred in their requests for materials and assistance" and urged "libraries to be sensitive to these concerns." SRRT representatives on ALA Council (the governing body of the association) also introduced several war-related Council resolutions at the meeting. However, the resolutions against secret tribunals and against the war in Afghanistan were both defeated by Council, while another on intellectual freedom and the use of torture in war or peace was prevented from coming up for a vote because of a quorum call.[1]

Of course, by the beginning of 2002 worries about pervasive patriotic imagery in libraries (which gradually abated along with the more generalized nationalist hysteria that followed September 11) were already being displaced by growing concern over the passage of the USA Patriot Act by Congress in October 2001. Librarians were and continue to be particularly concerned about the

MARK HUDSON *is a reference and instruction librarian at the University of Pittsburgh at Johnstown. He is a member of the Progressive Librarians Guild and the American Library Association's Social Responsibilities Round Table.*

impact of Section 215 of the law, which allows the FBI to compel production of a library patron's circulation and internet use records, based only on the claim that the information may be relevant to an ongoing investigation related to terrorism or intelligence activities and not on any constitutional "probable cause" standard. The warrant for releasing the records is issued by a FISA (Foreign Intelligence Security Act) court, which deliberates in secret, with no review or hearing available to challenge its decision. Section 215 overrides state library confidentiality laws in forty-eight of fifty U.S. states. Furthermore, a librarian or other library worker served with a FISA warrant may not disclose its existence or the fact that a patron's records were produced, under penalty of law.

The inclusion of this "gag order" in Section 215 of the Patriot Act may be related to the FBI's experience with the "Library Awareness Program" of the 1980s, in which FBI agents visited libraries seeking information about Soviet-bloc nationals supposedly accessing unclassified technical reports in government document collections. The librarians who were contacted were mostly hostile and uncooperative, they spoke to the press about the contacts, and the program generated a considerable amount of negative publicity for the FBI. Perhaps the Ashcroft Justice Department has drawn the lesson that library surveillance can produce the desired results only when librarians are cowed into silence.

And what exactly is the desired result, assuming the FBI doesn't really expect to prevent the next terrorist attack by tracking down the guy who reads the *Electronic Intifada* at the local library? As John Buschman argues, libraries are "the concrete place of the democratic public sphere" in the Habermasian sense of the term.[2] By organizing intellectually diverse collections and making them freely available to all, and through outreach and the extension of services to disparate communities, libraries contain within themselves "the possibility of communicative reason, truth verification, rational argumentation, and the providing of alternatives and alternative public spaces — all essential to a democratic culture."[3]

The Patriot Act's assault on the privacy rights of library patrons needs to be seen in the context of a larger ruling-class attack on democratic culture itself, aimed at replacing what remains of the democratic public sphere with a highly commodified, intellectually repressive, corporate mass media culture. Although the library profession has resisted this attack, it has done so belatedly and inconsistently, and its rank and file is confused and divided.

At the January 2002 Midwinter Meeting where the ALA Council majority rejected resolutions against secret tribunals, the war in Afghanistan and the use of torture, it did at least pass a "Resolution Reaffirming the Principles of Intellectual Freedom in the Aftermath of Terrorist Attacks," introduced by the ALA Intellectual Freedom Committee. However, the resolution did not specifically mention the Patriot Act passed three months earlier. The IFC also circulated a draft "Privacy Interpretation" of the Library Bill of Rights at the meeting, which was adopted by Council at the June 2002 Annual Meeting. But again, this document did not mention the Patriot Act. Not until the January 2003 Midwinter Meeting did ALA Council pass a "Resolution on the USA Patriot Act and Related Measures That Infringe on the Rights of Library Users." However, the Council majority rejected a move by SRRT councilors to call for the repeal of the entire law, calling instead on Congress to "amend or change those sections" that abridge or threaten freedom of inquiry and expression, without even specifying which sections were to be amended or changed. A number of state library associations subsequently voted to endorse the January 2003 ALA resolution, and some passed their own resolutions. At the January 2004 Midwinter Meeting, SRRT councilors again proposed calling for repeal of the entire Patriot Act, but again the Council majority stopped short of addressing the entire law or even specific sections.[4]

However, the January 2004 "Resolution on Proposed Amendments to the USA Patriot Act" did represent a step forward, because it expressed support for a number of bills pending in Congress

calling for the repeal or amendment of specific sections of the law. ALA lobbying efforts probably played some role in getting these bills introduced, although Bernie Sanders credits Vermont librarians with educating him on the issue. In October 2002 the Vermont Library Association adopted an "Open Letter to Vermont's Congressional Delegation" regarding the Patriot Act, to which over two hundred Vermont libraries and librarians have subsequently added their names. Thus the Vermont letter, unlike ALA's resolutions, actually put individual libraries and librarians on record as opposing the library-related sections of the Patriot Act.[5]

In March 2003 Sanders introduced the "Freedom to Read Protection Act" (H.R. 1157), which would "amend the Foreign Intelligence Surveillance Act to exempt bookstores and libraries from orders requiring the production of any tangible things for certain foreign intelligence investigations, and for other purposes" under Section 215 of the Patriot Act. Since then several other bills have been introduced in the Congress and Senate that would repeal, amend or sunset sections of the law.[6] However, it is doubtful that any of these will pass Congress (let alone win the two-thirds majority required to override a Bush veto) in the absence of massive, nationwide grassroots pressure.

ALA has done a reasonably good job of lobbying legislators on the Patriot Act, as well as providing practical information for libraries about how to protect patron confidentiality and prepare for the possibility of FBI visits.[7] But it refuses to join with organizations such as the ACLU and the Bill of Rights Defense Committee in calling for the repeal of the entire law on constitutional grounds, and until recently it has done very little to encourage activism among librarians and library patrons at the grassroots level. A positive step in this regard is the Campaign for Reader Privacy, a nationwide effort ALA launched in February 2004 with the American Booksellers Association and the PEN American Center. The goal of the campaign is to obtain one million signatures in libraries, in bookstores and online in support of legislation amending Section 215 of the Patriot Act.[8] This is a step in the right direction, but taken as a whole, ALA's response to the law has been overcautious and inconsistent up to now.

ALA's bureaucratic, go-slow approach can best be understood in the context of what Buschman calls the association's "drift toward a business model of representing the profession," and it is consistent with ALA's inaction on a number of issues in recent years — for example, the association's refusal to take a stand on the outsourcing of library services or on intellectual freedom in the workplace, on the grounds that these are local management issues. It is also consistent with ALA's increasing emphasis on public relations, "customer service," "branding," and corporate partnerships such as the much-ballyhooed marketing plan "@ Your Library."[9] The fear that being "too political" will alienate vendors, corporate partners or library "customers" is having a profoundly conservatizing effect on both the association and the profession itself.

The natural counterpart to ALA's corporate leadership model is a kind of confused passivity among many rank-and-file librarians, a typical example of which appears in a recent article in *Computers in Libraries*. The author, Andrew Pace, "sorta chuckles [sic]" at John Ashcroft's "looking like a boob" for calling librarians who oppose the Patriot Act "hysterics," then goes on to deride librarians who advocate posting signs in libraries informing patrons about the privacy implications of the law as "Chicken Littles" employing "political scare-tactics." In Pace's view, librarians should focus solely on "ensuring short-term retention of usage records" and preparing for the inevitable FBI visit, as if practical procedures to protect patron privacy and informing patrons about the implications of the Patriot Act are somehow mutually exclusive.[10]

But librarians who understand that the struggle against the Patriot Act is a struggle to defend democratic culture and the public sphere reject such false choices, and they are actively engaged in informing their communities about the threat to intellectual freedom posed by the Patriot Act. They are organizing their collections to include the widest diversity of ideas and viewpoints on the many local, national and interna-

tional issues related to the U.S. "war on terrorism," while providing free space for people to rationally debate these issues in their communities. They are active in local Bill of Rights defense campaigns aimed at passing resolutions against the Patriot Act at the local and state level and building grassroots pressure on Congress to repeal the law. Many are speaking out against the war itself.[11] Others are involved in efforts to democratize the media system that so misinforms U.S. residents about what their government is doing around the world.

Most librarians do not see the war itself as a library issue, even though war and the chaos it unleashes are always inimical to libraries and their collections.

SINCE THE LATE 1960s and the founding of the Social Responsibilities Round Table, the library profession has been divided between those who believe librarians ought to be actively engaged in the society they serve and those who think they should remain neutral on social issues and focus exclusively on institutional objectives.[12] In the era of corporate globalization, "war on terrorism" and the Patriot Act, the social responsibilities question has taken on new urgency because the very survival of the library as an alternative sphere of democratic culture may be at stake. There is consensus in the profession that the Patriot Act is a "library issue," even if there is less agreement about what librarians should be doing vis-à-vis the law. But most U.S. librarians do not see the war itself as a library issue, even though war and the chaos it unleashes are always inimical to libraries and their collections. The destruction of Iraqi libraries in April 2003 in the aftermath of the U.S.-led invasion demonstrated this simple, obvious fact once again — as if we needed yet another example. Furthermore, librarians ought to understand as well as anyone that war has always served as a cynical rationalization for attacks on intellectual freedom and democratic culture. In fact, opposition to war would be as natural and logical a position for the library profession as the defense of intellectual freedom. Add to this the huge diversion of public capital in the U.S. from essential social services such as libraries to the maintenance of global military supremacy, and opposition to the war and militarism should be as natural and logical a position for the library profession as the defense of intellectual freedom. It is ALA's embrace of corporate business ideology that is obscuring this simple truth.

NOTES

1. These and other SRRT resolutions and statements on international issues are available online at www.pitt.edu/~ttwiss/irtf/resolutions.html.

2. For Habermas's concept of the public sphere, see Jürgen Habermas, "The Public Sphere: An Encyclopedia Article," in *Critical Theory and Society: A Reader*, ed. Stephen Eric Bronner and Douglas MacKay Kellner (New York: Routledge, 1989), 136-142.

3. John E. Buschman, *Dismantling the Public Sphere: Situating and Sustaining Librarianship in the Age of the New Public Philosophy* (Westport, CT: Libraries Unlimited, 2003), 46-47, 179.

4. See www.ala.org/ala/oif/ifissues/issuesrelatedlinks/usapatriotact.htm for links to ALA and state library association resolutions on the Patriot Act.

5. "USA Patriot Act Letter," www.vermontlibraries.org/patriot.html.

6. "Pending Legislation Concerning the USA Patriot Act," www.ala.org/ala/oif/ifissues/issuesrelatedlinks/pendinglegislation.htm.

7. "FBI in Your Library," www.ala.org/ala/oif/ifissues/fbiyourlibrary.htm.

8. "ALA, ABA, PEN launch petition drive to restore privacy safeguards to USA Patriot Act,"www.ala.org/ala/pr2004/prfeb2004/privacysafeguardspatrio.htm.

9. Buschman, *Dismantling the Public Sphere*, 132-140.

10. Andrew K. Pace, "Toward a More Practical Patriotism," *Computers in Libraries*, April 2004.

11. "Librarians for Peace," http://libr.org/peace.

12. Stephen Joyce, "A Few Gates: An Examination of the Social Responsibilities Debate in the Early 1970s and 90s," *Progressive Librarian* 15 (Winter 1998/99), 1-13.

Liberty vs. Security? Lessons from the First Red Scare

BONNIE HONIG

IN A RECENT, IMPORTANT BOOK, *Enemy Aliens,*[1] David Cole defends the rights of the foreign born and those identified with foreign causes. He warns that we should not repeat the mistakes of the past by limiting the liberties of others in order to safeguard our own security. He points out, powerfully, that throughout the last century when Americans have been fearful of foreign enemies and political conspiracies or terrorist cells, they have justified the illiberal treatment of those whom they regarded as dangerous — immigrants in the First Red Scare, Japanese Americans in World War II — in terms of the need to secure the people's safety.

Deportations, round ups, and internment camps were tolerated because they seemed to affect *others*, not *us*, as far as mainstream Americans were concerned. But, Cole argues, what began as injustice against foreigners (in the First Red Scare) later turned to affect American born minorities (Japanese Americans in World War II) and eventually spilled over to affect American citizens of all races and backgrounds (McCarthyism).[2] Thus, in the name of self-interest as well as justice, Coles argues, Americans in the current emergency context would do well to stand up for the liberties of *others* before the injustices done to those like Yasser Hamdi, yield principles and techniques of law enforcement, combat, and administrative discretion that are visited upon us all.

As valuable as Cole's intervention is, it also replays a by now familiar script in which rights and their recognition by courts constitute an oppositional politics, as such, and that script has a certain limiting grip on the contemporary American political imagination. Without in any way intending to make light of the importance of rights, especially in the context of present day emergency politics, I would like to consider other resources with which to understand and resist the further enhancement of state power and executive discretion that are invariably occasioned by emergency politics. As we await Supreme Court rulings on the Guantánamo Bay and enemy combatant cases currently under review, it seems worth noting that the standard opposition in terms of which the issues in these cases are usually framed — liberty versus security — is partial and inadequate. Beneath that emergency-oriented or emergency-dictated position lurks a more quotidian set of issues about the range, effectiveness, and legitimacy of administrative versus judicial versus popular political powers in a democracy.

Emergency-occasioned "trade-offs" between security and rights, are not, contra the early twentieth century German (and later Nazi) jurist Carl Schmitt and others, *sui generis*. Debates about them belong to larger debates about the risks and benefits to democracies, in emergency as well as non-emergency times and spaces, of administrative versus judicial power.[3] The executive branch is said to be best suited for emergency politics because it is, as Alexander Hamilton argued, more efficient, unencumbered by the deliberative processes characteristic of courts, not subject to time-consuming procedural requirements, and free of

BONNIE HONIG *is Senior Research Fellow at the American Bar Foundation and Professor of Political Science at Northwestern University. A longer version of this essay will appear in Lawrence Douglas, Austin Sarat, and Martha Umphrey, eds.* The Limits of Law *(2005).*

security-compromising requirements of publicity and transparency.[4] Hamilton's view still holds sway: Whether rightly or wrongly, real or imagined, emergencies enhance executive power and increase citizens' dependence upon the administration's good offices. Emergencies give administrative powers an advantage in what is an ongoing, daily struggle for jurisdictional autonomy. In other words, although the to and fro between administrative and judicial governance is most visible in exceptional times and spaces that are least domesticated (emergency, national security, immigration politics, border policing, colonial governance), the to and fro is not itself exceptional.

The focus on security versus rights as the centerpiece of emergency politics, a focus to which we are driven by the government's use of its powers to imprison, detain and deport in times of emergency, does not capture all the dimensions of emergency politics, which are most fundamentally about the distribution of governing powers and the mechanisms by which they may be held accountable. The liberty versus security debate is, from the perspective of administrative jurisdictional jockeying, a second or third order issue: important, to be sure, but it is the tail, not the dog.

On the contemporary scene, critics of administrative discretion and civil libertarians tend to respond to executive expansions of discretionary power not with a counterpolitics but with claims of rights. They try to rejudicialize the contested terrain in two ways: They contest the relocation of decision-making power from normal judicial settings to administrative sites;[5] and (or) they press for the expanded judicialization of nonjudicial sites by, for example, claiming that people have procedural rights of due process even in nonjudicial settings.[6] Such causes seem obviously worthy of support but in and of themselves they offer no guarantees. For one thing, historically, when courts have maintained jurisdiction, they have nonetheless suspended their jurisdictional autonomy and deferred to executive branch claims in times of emergency, a tendency metaphorized for most Americans by the name Korematsu.[7] And, second, proceduralization itself cuts many ways. For example, Alan Dershowitz has called for the proceduralization or judicialization of torture. Dershowitz proposes that government interrogators be required to seek the issuance of a warrant by a magistrate "authorizing nonlethal torture." When we require government torturers to get judicial approval, we risk domesticating torture, Dershowitz concedes. But, he goes on to argue, since torture will go on anyway, we may as well bring it into law's fold and secure, both for ourselves as a society and for those being "interrogated," the protections and benefits of judicial procedure.[8]

Thus, for those who want to put human rights and the dissenting politics they are meant to protect onto more certain ground, merely participating in the to-and-fro of judicialized processes versus administrative discretion will not be adequate. (It may be necessary, but it will not be sufficient.) The two poles operate in an oppositional yet partnered relation and the terrain they stake out together is too formal to really grapple with the political issues at stake. The point is illustrated by Louis F. Post, Assistant Secretary of Labor during the First Red Scare. Because he fought for procedural rights and due process during the arbitrary round ups of the Palmer Raids, Post is often lauded as a principled proceduralist who anticipated later Court rulings on the rights of noncitizens. But Post was no mere proceduralist. He began his career in post-Civil War South Carolina, documenting the testimonies of KKK members detained under President Grant's suspension of habeas corpus. About Grant's decision to suspend habeas corpus in order to break the Klan, Post never protested. For Post, a champion of proceduralism in 1919-20, proceduralism was not a good in itself — it was simply one of law's many mechanisms, a mechanism whereby all sorts of political aims could be pursued.

Bound by Law

THE FIRST RED SCARE is said to have begun on April 28, 1919, when a homemade mail bomb arrived at the office of Ole Hanson, the Seattle mayor who had crushed a strike by shipyard workers just three months earlier. A day later, another bomb arrived at the home of former Senator Tho-

mas Hardwick, exploding and maiming the unfortunate person who opened the package on Hardwick's behalf. Postal authorities located thirty-two other bomb packages before they were delivered. (Sixteen had been held back for insufficient postage, an oversight that also stalled some of 2001's anthrax mailings.) These had been sent in a likely bid for May Day delivery to, among others, John D. Rockefeller, Postmaster General Burleson (who had used his powers to censor newspapers and other organs of opinion that were critical of the U.S.'s war involvement), Judge Kenesaw Mountain Landis, and other enemies of organized labor as well as immigration restrictionists. Curiously, some with more liberal leanings were also on the list of addressees, among them, Senator Hardwick, Supreme Court Justice Oliver Wendall Holmes, and Secretary of Labor William B. Wilson.

The April bombings were followed by another round 6 weeks later, in June, when a new series of bombs exploded in eight different cities at the same hour. One of these — a suicide bomber, an Italian anarchist from Philadelphia — damaged Attorney General Palmer's house hurting no person but himself. Even with the technologies of communication and transportation of the early twenty-first century, it is a great feat of coordination to get a series of bombs to explode in eight different cities at the same time. How much more impressive is such a feat, and more terrorizing, in a time in which communications and transportation are primitive by comparison with ours? It seems hardly surprising, then, that a sense of vulnerability overtook the nation. As one historian puts it, "Terrorism had come to America's own doorstep."[9] "There had been terrorist attacks in the United States before, but nothing so coordinated and menacing. Most of the previous attacks were isolated bombings, conducted by self-proclaimed anarchists. This was different. During the latter half of 1919, the threat of terrorism sent Americans into a frenzy of fear."[10] We can understand this, perhaps, by analogy to our own current context. Prior to 9/11, there had been previous terrorist acts on the United States as well — the attempted World Trade Center bombing in 1993 and the attack on the USS Cole. Both of these were troubling and yet neither really "prepared" people for what happened on 9/11.

The villains of the first Red Scare are still relatively well-known but one of the period's heroes is all but forgotten. Louis Freeland Post, Assistant Secretary of Labor, defended the rights of the foreign born against those like Attorney General Palmer and J. Edgar Hoover (a mere 24 years old at the time and already the head of Palmer's General Intelligence Division, also known as the anti-radical division), who sought in wholesale deportations a solution to the anarchist threat and the problem of dissident action in the United States Mindful of the recently formed Third International, the aim of Palmer and Hoover was "to destroy the Union of Russian Workers and the new Communist Party."[11] From late 1919 to early 1920, a series of raids known as the Palmer Raids swept up five to ten thousand (estimates differ) aliens and lined them up for deportation under the Sedition Act of 1918.[12] Outraged by the arbitrariness of the Department of Justice's actions, Post took action when the opportunity arose.

Until 1920, John W. Abercrombie, solicitor general for the Department of Labor, worked in tandem with Commissioner of Immigration, Anthony J. Caminetti, going so far as to issue five thousand blank deportation warrants for use by Palmer's agents. When in March, Abercrombie left the Department of Labor to run for the Senate, Post took charge of deportation oversight and stopped the department's cooperation with Caminetti's Immigration Bureau and Palmer's Department of Justice. Taking advantage of the language of the Act that created the Department of Labor, Post usurped, in accordance with the law, the de facto power of the Commissioner of Immigration to decide the fates of detained aliens. Post "asserted the right to decide deportation cases without prior briefing [i.e. by Caminetti or his agents] and ordered that all records be sent to Washington for his personal review."[13] This move was continuous with earlier efforts made by Post, ever since he took up his position as Assistant Secretary of Labor in 1913, to consolidate the power of the Department of Labor

over its Bureaus.[14]

Having claimed jurisdiction and the power of decision, Post then began to whittle away at the category of deportability. First, he got Labor Secretary Wilson to rule that membership in the Communist Labor party was not a deportable offense. A "student of radicalism," Post persuaded Wilson that the Communist Labor Party was more moderate than the Communist Party of America. Since only the latter did not disavow the use of violence, it could only be membership in the latter that was, strictly speaking, a deportable offence.[15] This directly contradicted the less nuanced position of J. Edgar Hoover, who insisted that "both organizations have arbitrarily pledged themselves to overthrow the Government of the United States . . . therefore . . . the Communist Labor Party and persons who are members thereof fall within the provision of the Act of Congress approved Oct. 16, 1918."[16]

Second, Post decided, again contra Hoover and Palmer and Caminetti, that what he coined "automatic membership" was not grounds for deportation. Automatic membership meant that a person was taken to be a member of the Communist Party if his name was found on their rolls. But the party padded its rolls, listing inactive or unpaid former members and borrowing names from lists of other related but nonidentical organizations. Post insisted that no one could be deported simply for having their name on a list. Some evidence had to be shown that the person in question consented explicitly to membership in the outlawed party.[17] This requirement substantially raised the evidentiary bar.

Third, and most radically, Post applied to administrative cases standards of evidence and due process that normally would have been thought at the time to obtain only in judicial settings, not administrative ones.[18] "Since deportation was not a criminal proceeding, and the prisoners were not citizens, Caminetti, Palmer, and Hoover claimed that the constitutional guarantees of right to counsel, to confront one's accuser, reasonable bail and habeas corpus were not applicable."[19] Post took the opposite view, repeating over and over that aliens facing deportation deserved constitutional protections of habeas corpus no less than citizens, and that protections traditionally thought of as attached to criminal investigations should apply also to administrative processes if not as a matter of law then simply as a matter of fairness. Fairness, after all, is what those protections were designed to capture or secure; or, in more purely procedural terms, those protections are proxies for an otherwise elusive fairness. Deportation — even if it is an administrative matter — must be fairly administered and so it made sense, Post argued, to follow those existing rules and procedures (the criminal law's due process, etc.) that, in other venues, serve as proxies for fairness.[20]

In short, Post bound himself by law. Claiming he had no choice because he was bound by rights that he himself attributed to those whom others (including some of the courts) thought rightless, Post used his discretionary power to limit his discretionary powers again and again. For example, he ruled that aliens' self-incriminating statements could not be used against them if those statements had been made without benefit of counsel.[21]

Finally, Post used all his powers of reasoning and all of the law's resources to find in favor of aliens marked for deportation whenever possible. He employed the distinction between political and philosophical anarchism to the benefit of those charged (only the former was actionable under the law). And he second-guessed the self-incriminating statements of the detainees. Here is his account of his decision in the case of a self-professed anarchist, a well-known activist from Mexico named Flores-Magon:

When asked about his political beliefs, Flores-Magon said he was a "communist anarchist." But Post did not take him at his word. He read further:

> I considered what his saying he was an anarchist meant. And if I had stopped there I should have been obligated to deport him . . . I should have done as I did in the case of Emma Goldman, whose case stood wholly on that one word. She said she was an anarchist and I deported her and I should have done the same in his case. But I

> found on reading further [the record of Flores-Magon's interview] his meaning of the word did not tally with the definitions of anarchism as anyone who has investigated the subject knows; and because it did not tally, I came to the conclusion he was a man in favor of government and not opposed to government and that determined the case. . . . I decided to cancel [the warrant] because he was not an anarchist within the meaning of the law (230 HT).[22]

It will be apparent from this line of reasoning that almost anyone (with the exception of the unfortunate Emma Goldman) could in such a way be found not to be an anarchist, or at least not to be in violation of the law. Post used the law and the rule of law's procedural requirements to create technicalities that would undo or counteract the Sedition Act's (at least some of its deniably) intended effects.

In this way, in three months, Post and two assistants, working 10 hour days and deciding as many as 100 cases per day, managed to free 2-3,000 or perhaps even as many as 6,000 (estimates differ) detainees. One historian refers to Post's actions as an "insurrection against Palmer." Indeed it was and Palmer knew it.[23] When, by the spring of 1920, Post had canceled the warrants of most of the detainees and released them, Palmer was livid: He charged Post with abusing his discretionary power and "demanded that Post be fired for his 'tender solicitude for social revolution.'"[24]

Post was not fired but he was called before the House Committee on Rules to answer Palmer's charges.[25] Was Post implementing the Sedition Act or was he using his discretionary power to undo it?[26] The public's impression and that of the members of the Committee was that when Post canceled a deportation warrant, he was in effect freeing an "alien after he was found guilty and ordered deported." (Indeed, one of his antagonists at the hearing of the House Committee on Rules snipped: "We have given you time to empty the jails as far as you could" [Mr. Johnson, Chair of the House Committee on Rules, 254, HT].) Post countered with the legally more precise claim that "Cancelling [sic] a deportation warrant is nothing more than finding a verdict for the defendant." That is, a warrant (which is all Palmer and Hoover could issue) was merely a charge, not a finding. It began a process of investigation, rather than marking the end or conclusion of one. This clarification turned the tide of public opinion in Post's favor.[27] The Committee was not so quickly won over, though, and moved to take issue with Post's most radical invention: the rules under which Post found in favor of or against the charged aliens.

Some Humanity

POST'S DISCRETIONARY DECISION to apply the more stringent criminal procedure rules to an administrative process was one of the core issues before the Committee on Rules. Post defended himself, deploying ideals of Americanism, constitutionalism, separation of powers, and limited government, appealing to an ideal of self-limiting administrative power that could otherwise be limitless in its reach, arbitrary in its application, and despotic in its actions.

> My contention is that when the executive department of the Government is the absolute judge of whether a man shall remain in this country or not, and the courts will not interfere, we should see to it that no injustice is done to the man. . . . And that is the reason — not that I am applying absolutely criminal law to administrative process, although I think the principles of criminal law, the protections of criminal law, ought to be accorded; yet I know that we cannot accord them as criminal law. But I can take from the criminal law its humane, its just, its American, its constitutional principles of protection to the liberty of the citizen and apply it when I am acting for the executive department of the Government. And I doubt if the Senate of the United States will condemn that attitude . . . I have drawn from the criminal law its principles which recognize the rights of the individual and especially his right to a fair trial, to a fair decision as to whether he is guilty or not, before he is penalized in any way. And to send a man who has been here 10 or 15 or 20 years — to take him away from his family and send him out of the country on an administrative warrant, a mere police warrant, until it gets to the Secretary of Labor, is to penalize him and to penalize him in a very drastic and very

un-American way (80-81, HT).[28]

Post emphasized the administrative character of the warrant to underline the finality of the judgments involved: "we should be all the more careful in judging these cases because he [the alien who has lived here ten or fifteen years] has no redress in the courts when an administrative judgment is given. And therefore I say that there are principles of the criminal law which ought to be applied by the administrative department of the Government unless there is the strongest reason, in each individual case, for not applying them."[29]

Post's appeal to an ideal of a self-limiting executive power did not move the committee, at least not right away. One questioner, in particular, could not fathom why an executive branch administrator possessed of broad discretionary power would bind himself by judicial rules and procedures which, in the absence of such self-binding, would be inapplicable. Mr. Garrett. "Congress has passed this act; it has made it administrative; and it has put it in the hands of executive officers to enforce. . . . I would say that it was a fair presumption that Congress intended, in the passage of that act, irrespective of the differences between the rights of aliens and the rights of citizens under the Constitution of the United States, to eliminate the rules that would be applicable in court." To this Post responded, (in what must have been at least partly mock horror): "In other words, the United States Government — because this is the exact point — when a complaint is made against a man under this law and the case comes before the Secretary of Labor, he must deport the man, whether the man is innocent or guilty? You did not mean that?"

Garrett demurred, of course, but Post went on: "That is the issue, however. . . . The issue is: Not whether those who violate the law shall be deported, for we are deporting them . . . but whether those who have not violated the law shall be deported" (80-81).[30] With criminal procedures acting as a proxy for fairness, and with a commitment in place to the imperfect proceduralism presupposed by the rules of criminal justice, there was no extraprocedural place from which to call 'guilty' those who were not legally deportable according to the legal and procedural lines drawn and followed by Post.

And then there were the borderline cases. Throughout, Post admitted that although his own decisions were fully within the law, another might have decided the same cases another way, even using the same criteria (e.g. 68, 230, 248, HT). Having usurped the power of decision, and having legally defined the boundary of decision as narrowly as possible and embraced the ensuing 'constraints,' Post took full responsibility for the decision that remained, even owning a certain inclination to favor people facing hardship. For example, in cases where the person in question was, say, the father of dependent children born in the United States, Post said that person should be given "the benefit of the doubt." (78, HT) "I think that some humanity should come into the trial of these cases when there is some doubt as to guilt" (79). This led to another typical exchange:

> The Chairman (interposing). 'Yet if there had been enough men of that kind in the country to endanger the country, the fact that they had children born here that they would have to be separated from if they were deported, would not be any mitigation of the offense, would it?' Mr. Post. 'Did you understand me to say anything to the contrary?' The Chairman. 'No; and yet we should be keen to detect those who are keen to overthrow the Government of the United States.'
>
> Mr. Post. 'I said I was not keen to do it on flimsy evidence, and where there was any doubt. I never refrained from doing it in any case where the membership in the organization was clear, no matter what the hardship was. I could not sleep at night for thinking of some of the cases where the man had to be sent out. They were good, hard-working and useful men, who would have made good American citizens; but it was proved that they were members of this organization, even though they did not know what its purpose was; even though they thought they were joining an organization of men from their own country; even though they thought that they were going to school. I have deported such men, because the evidence showed that it was clear that they belonged to the organization'" (HT, 78-79; emphasis added).

With such oratory, delivered in a public venue

and reported on daily in the nation's newspapers, Post sought to (re)humanize those whom Palmer and Hoover had successfully demonized. But Post knew that humanism and oratory were not enough (neither to change the nation's path, nor to save himself and the ideals — and calm — he represented). They were necessary but not sufficient to his cause. Their resources were not powerful enough to undo the effects of his opponents' demonological politics, at least not right away. Post was a lawyer, though he had practiced only briefly and thirty years before. He knew the law well and exploited its resources to the best of his abilities, which were considerable. Reviewing thousands of cases in a matter of weeks, he almost always found the detail, technicality, or doubt that might warrant a detainee's release.

Palmer and Hoover cast Post as an arbitrary, untrustworthy administrator whose aim was to undo the law. They claimed, by contrast, to be law's servants, operating in adherence to the requirements of the Sedition Act and the will of the legislators who passed it. Post responded by casting himself as law's strictest adherent and casting his opponents as arbitrarians and securitarians whose own decisionism was poorly cloaked by pseudo-legality. The success of Post's strategy depended largely upon whether his creative use of law and legal technicality would persuade or enrage the public and the members of the House Committee on Rules.

As aliens subject to executive administrative power, the detainees lacked the rights Post attributed to them. Post used his administrative powers to grant them rights they did not have juridically. He also advised them to invoke the writ of habeas corpus while in detention, even though he knew no court would likely side with them.[31] He understood the power and powerlessness of law. He knew that law cannot be pressed into new directions unless claims, even — or especially — illicit ones, are made in its name and using its terms. And then Post (before the Committee, in his practice at the Department of Labor, in relation to the Department of Justice) acted as if these rights, which had no juridical existence apart from his own contestable administrative rulings, bound him, as if he had not himself granted them, as if he merely deferred to the force of those rights or channeled them, and acknowledging their power to limit the range of his discretion — the very discretion whereby he granted or acknowledged the rights in the first place. All by itself, the rule of law did not secure nor mandate that outcome. And Post never implied that it did.

Thus, when one of Post's more antagonistic questioners asked: "You realized, of course, Mr. Secretary, that all of these rules that you had laid down — or the imposing of these deportation regulations — that every one of them operates to make it more difficult to deport the alien?" Post not only accepted the implied criticism, he embraced it: "Every rule in the interest of personal liberty makes it more difficult to take personal liberty away from a man who is entitled to his liberty."[32] (247-8, HT) That entitlement, possessed even by the most vulnerable alien and secured in this instance by one man's discretionary administrative power was the check used by one executive agency to force itself as well as other loci of executive power to chasten their powers.

Of course, the fact that the Department of Justice had failed to "find more than four firearms and a few tons of propaganda pamphlets in the possession of the four thousand supposedly violent revolutionaries they arrested" only helped establish Post's case that aliens were people too and perhaps even good Americans (even if not citizens).[33] The bombings of 1919 had been real and devastating in their coordination; they had induced in most Americans a real and not unwarranted sense of vulnerability. But fears of cabals and networks of anarchists poised at the ready to attack the United States were waning in the face of little evidence to support them and in the face of doubts, prompted and fed by Post and his supporters, regarding the Department of Justice's use of arbitrary administrative powers to fight those specters.

IT IS OFTEN SAID that the First Red Scare ended when the country chose hedonism over politics, shifting its focus from Italian anarchists to American flappers, from homemade bombs to homemade whiskey.[34] But couldn't we just as well say that the

Red Scare ended when the country — and even a hostile Congressional committee — chose democracy over despotism, and fairness over arbitrariness in the exercise of governmental power? Because that is what happened (for one brief moment, anyway; Sacco and Vanzetti were yet to come).[35] The Committee on Rules found in Post's favor. Soon after, Palmer's political career was destroyed (he had been planning to run for the presidency) when he testified, much less effectively than Post, before the Committee regarding the Department of Justice's handling of what Post came to call (and many others came to think of as) the "deportations delirium."[36] It was a huge victory. But J. Edgar Hoover survived and went on to thrive.[37]

In the context of these events, it is tempting to think the whole history of the American state's development into a national security state over the course of the twentieth century can be summed up by simply doing the math: Post was 71 years old at the time of these events; Hoover was 24 and lived for a half century after Post, perfecting and using the policing and surveillance techniques he first developed as head of Attorney General Palmer's anti-radical division. Hoover was in this period already keeping files on various liberals, including Post, Brandeis, and Frankfurter, as well as black leaders like Marcus Garvey and labor leaders. It would be only four years until Hoover got the opportunity he needed to institutionalize his techniques and the demonological perspective that animated them.

In 1924, Hoover was made head of the Federal Bureau of Investigation. Post died just five years later and his initiatives, by contrast, were never institutionalized. They passed out of the Department of Labor with him, months after the hearings, when the president he served left office. It is ironic that, of these two administrative exercisers of discretion, the man who stood up boldly for the rule of law never succeeded in institutionalizing his ideals so that they could survive, law-like, in his absence, while the man who stood for discretionary executive power eventually succeeded in creating an institution that would, even well after his own death and for a very long time to come, exercise power arbitrarily and secretly, in ways consonant with his own personal, often paranoid, vision.

Beyond Post

UNTIL NOW, I HAVE TREATED Hoover and Post as villain and hero, respectively. But my aim is not simply to write a history of great men. If Post and Hoover are of interest to us now, it is not only because the story of their engagement may inspire us to act well in challenging settings, but also because they name and order twin impulses in American political culture that may be in conflict but nonetheless together drive our national responses to emergencies (real or imagined). American political culture has within it elements that are both demonological *and* inclusive, particularistic and universalistic, securitarian *and* willing to take risks, in favor of both discretionary and proceduralized power, and oriented toward both a centralized, powerful administration and a fractured or divided and chastened sovereignty.

The challenge for democratic activists is how to mobilize the energies of the latter in each of these pairings, in order to offset and balance, not thwart, the former. The problem we face is that our contemporary political scene is dominated largely by the impulses personified by Hoover and no longer by those personified by Post. We are living in an era that is, as it were, *post-Post* because of the particular way the two impulses traced here played themselves out. The rights-centered future of American politics won out in the period after Post's victory, a period in which Post was blackballed from the public lecture circuit by supporters of Palmer and Hoover. It was not the chronological facts of the matter (Post's age and Hoover's youth) but rather the political battles that were won and lost after Wilson's departure from office that paved the way toward that future — our present. We are left with the civil libertarianism that animates the courageous rights-centered arguments of people like David Cole, but without the Progressivism and Henry George'ism that breathed life into Post's. We are left, in short, with only the shadows of the rights Post fought for. Some of those rights are now more firmly entrenched juridically than they were then and this has led many to talk about how much

"progress" the last century witnessed regarding rights. But none of these rights is lodged in anything like what Post had — a visionary counterpolitics that sought to stand up to executive power overreaching in the setting of everyday as well as emergency politics.

Louis Post is said by one historian to have "anticipated Supreme Court rulings of half a century later."[38] Noncitizens facing administrators (in nonemergency settings) do now have some of the procedural rights that Post discretionarily granted to Palmer's detainees in 1920. But the term "anticipation" operates in an end-of-history temporality that credits law with all the agency (phenomena — like rights — are not real until the law says they are), and leaves to people like Post only the perspicacity or good fortune to line up on the right side of the law before (or after) the law has spoken (or in anticipation of its one day doing so). Moreover, that end-of-history temporality implies that law only steps forward, never back. Yet, at the moment, in the not-quite-emergency setting of the war on terror, noncitizens and some citizens — enemy combatants and others — are denied all the procedural rights granted their predecessors by Post. Finally, to identify Post's struggle as an *anticipation* of what came later is to misidentify the "rights" for which he struggled as the same thing as the rights for which others struggle now. But the rights that Post valued were not the same as contemporary liberal rights. The rights he inaugurated were embedded in the context of an administrative counterpolitics and a commitment to chasten executive power that current demands for rights do not partake of, as such. In fact, current demands for rights tend to do the opposite, in many ways paradoxically enhancing some elements of state power for the purposes of protection from both state and private agencies.

Post did not anticipate the law. He used all the law's resources and even invented some in order to render the Constitution more democratic, that is to say, to render it more responsive to the needs, rights, and views of the actually existing people over whom government power was brought to bear.[39] And, for better or worse, the law — through the agency of other interpreters, administrators, judges, and activists — eventually found its way to some of the democratic commitments and ideals that so moved Louis Post.

Post pursued many substantive Progressive goals while at the Department of Labor. Specifically, he sought to develop labor arbitration procedures so as to diminish strike violence and to improve the Department of Labor's services to black labor. His innovations were short-lived. They were swept aside when he was pushed into the defense of proceduralism — as we all are — by the demands of emergency and demonological politics. In the realm of proceduralization, a dangerous realm in 1920, as now, Post took advantage of the ambiguity that left others in doubt as to whether it was he or the law that was the primary agent of his controversial administrative decisions. If some concluded that the "law made him do it," then so much the better for both him and the law, he must have thought. But not so for us. The democratic vision and agency that brought Post to exploit law's resources as he did are what is most missing and most necessary in the current political scene, in which bold liberal upholders of rights and anxious defenders of national security are plenty but committed democratic idealists are all too scarce and their visions all too thin.

NOTES

1. David Cole, *Enemy Aliens* (New York: New Press, 2003).

2. See my more critical assessment of Cole's depiction of the events as first involving foreigners and then moving finally to envelop citizens over the next 30 years in "A Legacy of Xenophobia," *Boston Review*, December 2002/January 2003.

3. I say times *and spaces* because contra Carl Schmitt (*Political Theology*, Cambridge, MA: MIT University Press, 1985, translated by George Schwab) and Clinton Rossiter (*Constitutional Dictatorship: Crisis Government in the Modern Democracies*. New Brunswick: Transaction Publishers, 1948, 2002), emergency powers are not just temporal; they may be spatial. Or, better, even when they are temporal, they are also always spatial: We are not all equally subject to the effects of emergency rule — some have the wealth or power or profile to opt out of many constraints and remain uncriminalized and even, in some cases, uncriminalizable by new security measures.

4. William Scheuerman challenges this still common sense assumption regarding supposedly inherently quick executive power versus supposedly inherently slow legislative processes

in "Rethinking Crisis Government," *Constellations* vol. 9, no. 4, Dec. 2002.

5. See Andrew Arato's "The Bush Tribunals and the Specter of Dictatorship," *Constellations*, 9:4, Winter 2002, and David Cole, *Enemy Aliens*.

6. In *Laws Harsh as Tigers* (Chapel Hill: University of North Carolina Press, 1995), Lucy Salyer studies approvingly the process whereby Chinese would-be immigrants sought the expansion of judicial protections while dealing with highly discretionary and not very accountable administrators of the Chinese Exclusion Act. The literature on scholarly calls to proceduralize discretionary administrative agency is glossed in and exemplified by Martin Shapiro in *Who Guards the Guardians? Judicial Control of Administration* (Athens: University of Georgia Press, 1988).

7. For a good example of this strategy, see Shannon Stimson's discussion of the early turn of the American state to military courts in order to diminish the impact of jural freedom in American trials: *The American Revolution in the Law* (Princeton, NJ: Princeton University Press, 1990).

8. Alan Dershowitz, *Why Terrorism Works* (New Haven: Yale University Press, 2002), chapters 4 and 5.

9. Bruce Watson, "Crackdown!" in *Smithsonian* 32 (11), February 2002), 52.

10. Although at the time, of course, it was not so called (the Second Red Scare had not yet occurred). The events were referred to by Post as the 'Red' Crusade. The above summary of events draws on Bruce Watson (2002) as well as on William Leuchtenburg, *The Perils of Prosperity 1914-32* (Chicago: University of Chicago Press, 1958).

11. Charles Howard McCormick, *American National Biography*, Vol. 17, ed. John Garraty and Mark C. Carnes (New York: Oxford University Press, 1999), 731).

12. A vivid sense of the fears surrounding these raids is given by Clancy Sigal, a Hollywood screenwriter whose 2002 op. ed. provides an excellent counter to Leuchtenburg, who downplays popular fears at the time. Says Sigal: "The anarchist threat was terrifying, just as the terrorist threat is now. Most Americans supported Attorney General Palmer's campaign against the 'Reds' — an ill-defined menace that went far beyond the small group of actual anarchists that was blamed for pretty much anything that smacked of social conflict — including at various times, the women's suffrage movement, a Chicago race riot, and a wave of paralyzing industrial strikes." Sigal's parents were at high risk in such a setting: "foreign-born, Jewish, radical labor organizers, who had actively participated in several turbulent strikes, [they also] had no fixed address and were living in sin. They were arrested, jailed and almost deported during the infamous Palmer Raids of 1920 and 21 (sic)." Later, Sigal learned from his mother that his father had been beaten by federal agents on his way to jail. Both were released later, she after a few days, he after a few weeks, and were not deported, though many of their friends were. "The raids," Sigal continues, "were a living presence at our house. At a later time, when J. Edgar Hoover's FBI came around to question me during the cold war, my mother politely met them at the door, invited them in for coffee and charmed them out of their intended purpose. But she was pale and terrified when I got home. In an understandable slip of the tongue she said: 'The Palmers have been here. What have you done?'" (Clancy Sigal, "John Ashcroft's Palmer Raids," *New York Times*, March 13, 2002, A25)

13. Dominic Candeloro, "Louis Post and the Red Scare of 1920," in *Prologue: The Journal of the National Archives*, Spring 1979, Vol II, no. 1: 41-55: 44. Caminetti resisted the takeover, of course, but Post replied that "power over deportation matters had never been given to the bureau [of immigration] and that Caminetti was merely an agent who had been assigned to brief cases for him." As Post later put it in his testimony before the Committee on Rules, "The Commissioner General of Immigration is not the dictator to the Secretary of Labor in warrant cases. It has been assumed by the committee that makes this complaint [the charges made by the Committee on Rules] that he is the dictator in effect, and that the Assistant Secretary [Post himself] was culpable for overruling him." But this assumption was wrong, Post insisted over many hours of testimony, in which he repeatedly characterized the Immigration commissioner as a "sheriff" to the Dept. of Labor and as a mere advisor and, finally and most brutally, as possessed of "no more authority than the private secretary of a Secretary would have" (227, "Investigation of Administration of Louis F. Post, Assistant Secretary of Labor, in the Matter of Deportation of Aliens", CIS-NO: H247-4, House Committee on Rules, Apr. 27, 30 and May 7, 8, 1920, henceforth: House Testimony or HT).

14. Dominic Candeloro, "Louis Freeland Post: carpetbagger, singletaxer, progressive." PhD dissertation, University of Illinois at Urbana-Champaigne, 1970, 155-165 inter alia.

15. "The mere innocent member who is guilty of nothing but joining an organization. . . . I don't think that any man with an *American mind* would wish to have that kind of man deported without showing some evidence that he was culpable" (263 HT).

16. Quoted in Candeloro, 1970, op.cit. (45), citing Palmer's testimony before the House Committee on Rules. Secretary of Labor Wilson held open hearings on this matter and "stunned Hoover and the Justice Dept." when he ruled "that membership in the Communist Labor party was not a deportable offense because members were not required to know of or subscribe to the Party's goals or tactics as a condition of membership; he flatly rejected Hoover's brief and argument on the subject" (Richard Powers, *Secrecy and Power: The Life of J. Edgar Hoover*, 118.)

17. "In other words, the principle 'Once a member, always a member,' is not true, in my judgment, in these cases, provided there is a withdrawal from membership in good faith." (Post. HT, 77)

18. Thirty years later, Hannah Arendt articulated one of the insights that motivated Post: That an innocent but stateless person subject to administrative state power could paradoxically improve her position by breaking the law and gaining thereby the scrutiny but also the procedural protections to which those accused of criminal law violations have a claim: "Only as an offender against the law can he gain protection

from it." (*Origins of Totalitarianism*. New York: World Publishing Company, 1951, 1958: 286).

19. Candeloro, 1970, 46.

20. Post himself invoked an eighth circuit Court of Appeals case, *Whitfield v. Hanges*, when he said in his testimony, "an alien, once lawfully admitted and resident in this country . . . has the same constitutional rights, except as to voting and purely citizenship rights . . . that the citizen has," and Post added, this "is good *American* doctrine" (223, HT; emphasis added). But this decision does not suggest that an administrative procedure should be held to the more stringent requirements of criminal law. Thus, it is true, as Charles Howard McCormick says, that Post's legal position *anticipated* later court rulings (McCormick, 1999), though I will quarrel with that term — "anticipation" — below. (McCormick mentions specifically *Wong Yang Sun v. McGrath* (1950) and *United States v. Brignoni —Ponce* (1975). (Cf. Candeloro who says that "Post's dedication to upholding the procedural rights of the defendants anticipated Supreme Court rulings of half a century later" [46; Candeloro, 1970].)

21. Regarding his disregard for statements made by aliens without benefit of counsel, Post said to the House Committee: "If there is any objection to that stand that I took, the quarrel is with the United States district judge in the West and with the Supreme Court of the United States in its unanimous decision. I based that on the principle of the case of Re Jackson, in the United States District Court for Montana, in which the decision was by Judge Bourquin; and on the case of *Silverthorm v. The United States*, which was an appeal taken to the Supreme Court and decided January 28, 1920" (78, House testimony).

Post's ruling on this matter directly reversed an earlier change introduced by Hoover: in response to a pamphlet that advised aliens not to answer questions without benefit of counsel, Hoover amended immigration regulations "to delay the right to a lawyer until the case 'had proceeded sufficiently in the development of the facts to protect the Government's interests.' The amendment took effect on Dec. 31, 1919, one business day before the raids began" (Cole, *Enemy Aliens*, 120 and passim.).

22. Two other considerations entered into the case for Post, which he mentions at other times at the hearings: Magon had six American born children dependent upon him and, as a dissident, would very likely have been killed had he been returned to Mexico. Thus, Post said that even had he found Magon deportable, he would have imprisoned him in the U.S. until such time as he could be assured of the man's safety in Mexico.

23. Leuchtenburg, 79. Cf. McCormick.

24. Leuchtenburg, 80. (Cf. Watson, 2002) Leuchtenburg says that thanks to Post, of the 5000 arrest warrants sworn out in late 1919, "only a few more than 600 aliens were actually deported." (81)

25. Salyer (239), Cole (123), and others suggest Post was impeached or "brought up on impeachment charges," referring to the hearings discusseded to here. In fact, he was not impeached. An impeachment resolution was introduced "unostentatiously," by Kansas congressman Homer Hoch. But the resolution "did not come formally before the House" and although it should then have gone to a preliminary inquiry by the Committee on the Judiciary, "the Speaker referred it to the Committee on Rules," (whose record is here referred to as House Testimony [HT]). In Post's view, the Speaker took a wise course: "[T]he Judiciary Committee is a judicial branch of the House. It could not gracefully dispose of such a resolution without reporting its judgment. But the Committee on Rules is a political branch which could, without any breach of judicial deportment, smother the whole proceeding if it discovered that the impetuous Mr. Hoch had gone off on a false scent. Like the nearsighted hunter of the familiar anecdote, the Speaker aimed to hit if the object were a deer, but to miss if it were a calf," (Post, *The Deportations Delirium*, 232-4). Thanks to Stephen Daniels for pressing me to clarify this point.

26. This, in a nutshell, is the recurring question in the literature regarding administrative power: Lucy Salyer parses it, using a quotation from attorney Max Kohler, who criticized the Bureau of Immigration's exercises of administrative power under Commissioner Williams (1911), "The discretion wielded by men like Williams to interpret law turned immigration officials from 'law-enforcers' into 'self-constituted law-maker[s]." (154)

27. Even such "unfriendly" witnesses as the *Spokesman-Review*, (a newspaper so characterized by Post) were entirely persuaded by this clarification. See Louis Post, *The Deportations Delirium* (Chicago: Charles H. Kerr, 1923).

28. Note how Post here meets Hoover on his own ground, vying with him for the right to be called the truest American and casting his opponents' violations of proceduralism as un-American. Post found support in this from the rhetoric of District Court Judge George W. Anderson, who reviewed Justice Dept. activities in hearing *Colyer v. Skeffington*, and said: "Talk about Americanization! What we need is to Americanize people that are carrying out such proceedings as this. We shall forget everything we ever learned about American Constitutional liberty if we are to undertake to justify such a proceeding as this" (quoted in Salyer, 238). Note too Post's key phrase above — "on an administrative process warrant, a mere police warrant until it gets to the Secretary of Labor." Post signals here his determination to divide the role of accuser from judge in deportation cases. He was very aware that a 'police mentality' "develops in institutions such as the Immigration Bureau, in which those who issue the warrants are the very same people as those who ultimately decide the cases (HT, 229 and 239 ff.) Unsurprisingly, then, and largely for these structural reasons, the whole spirit of the Bureau, he said, "was the police office spirit of keeping the alien out or putting him out without much regard to facts" (229). "Most of the men in this service that I have come into contact with are perfectly honorable and honest men and intend to be good officials" [p. 239]. And later, "I am not making any imputation against the man: it is human nature — he would naturally feel that it was up to him, if he has asked for a warrant, to see that that warrant was not asked for thoughtlessly, and so as a rule he would be very apt to find that the man whose arrest he had asked had, upon examination, turned out to be what he had supposed he was in the beginning. Consequent-

ly, a police spirit develops naturally. . . .The effect of that is to turn that inspector into a police investigator." [246]. The problem was structural and the so was the solution: separation of investigative and decision powers.

29. Post, *Deportations Delirium*, p. 254, emphasis added. Notably, with the phrase "strongest reason," Post leaves room for emergency considerations although he maintains his focus on "individual" cases.

30. That is not the *only* issue, however. Another is the separation of powers. Post's first response to Garrett's first iteration of the question cited above lights on this: "For myself, I do not see how Congress can compel the executive department of the Government to do anything other than execute the law that it passes" (HT, 81). (Presumably, Congress cannot compel the executive to implement the law in any particular adverbial fashion.)

31. "The Supreme Court has held that Congress has turned this whole matter over to our administrative department of the Government; that the question of whether an alien shall be allowed to continue to reside in the United States is a question of sovereignty and belongs on the Executive side of the Government and not on the judicial side. Consequently the courts have refused, on writs of *habeas corpus*, to interfere with the decisions of the administrative side of the Government in these cases unless there is absolute lack of jurisdiction. Where there is no evidence at all to support the case for deportation, the courts will interfere on *habeas corpus*. But they will not review the merits of the case, because they say, it is a question of sovereignty turned over to the Executive department of the Government and they have no right to cross the line" (Post, 253, *Deportations Delirium*).

32. This response seems to have utterly turned Congressman Pou, of Louisiana, who then suddenly expressed his admiration for Post — "I want to say, Mr. Secretary, that my feeling is that in what you have done, speaking for myself, I believe you have followed your sense of duty absolutely" (HT, p. 248) — and ceased his questioning which, until that point in the proceedings, had been vigorous and aggressive.

33. Candeloro 1970, 50.

34. Leuchtenburg says "The election of Warren G. Harding, amiable but bumbling Republican presidential candidate in 1920, marked a desire for release from political turmoil and a chance to enjoy the pleasures of peace. . . .The 1920s, despite their chauvinism and conservatism, were hostile to the spirit of the Red Scare; the decade was one when interest in politics was at its lowest ebb in half a century, and Palmer was defeated less by liberal opponents than by the hedonism of the age." (Leuchtenburg, 81).

35. Since the Sacco and Vanzetti case was just months away and their execution a full seven years later, this statement may seem Panglossian. I don't mean, however, to imply that with Post the forces of democratic good triumphed over evil, merely to say that a lot rides on how we render these moments in American history and to call attention to the anti-political scripts that govern our reception of these events now. Did Americans abandon Palmer because they preferred to party? Or because they were disgusted by his methods? Or both?

36. *The Deportations Delirium* is the title of the book Post wrote about his role in the events recounted here.

37. Though it was thought and actually hoped that Hoover, who replaced the corrupt Billy Burns, would, as one reporter put it, ""forget the teachings of Mr. Palmer under the more intelligent leadership of Mr. Stone [who had fought Palmer's crusade and was the new attorney general charged with cleaning up government after the Teapot Dome scandal]. It would be worth a great deal to the American people to be assured that the Department of Justice is what the name signifies and not the Department of Hysteria and Intolerance." (Powers, 146) In short, it was hoped, ironically, that Hoover would prove to be more Post than Palmer. This must have irked Hoover, who lost every direct, public battle he had with Post. Indeed, Hoover saved a nine-stanza poem (excerpted below) about Post in a scrapbook along with a colored-in newspaper photo of Post. Hoover's biographer speculates that Hoover may have colored the photo or penned the poem (Powers, 121-22):

> The Bully Bolsheviki
>
> Disrespectfully dedicated to "Comrade" Louie Post
> 1.
> In every city and town
> To bring on Revolution
> And the old USA to down
> 2.
> They'll soon be raising hell again
> In every city and town
> To bring on Revolution
> And the old USA to down
> . . .
> 6.
> And when he's lost his nice fat job
> And is looking around for some work
> They'll ask him to come to Russia
> With the Bolsheviks he'll lurk

The poem instantiates the demonology Michael Rogin studied (in his incredibly current 15+ year old book, *Ronald Reagan, the Movie and Other Episodes in American Political Demonology* [Berkeley: University of California Press, 1987]). Here was Post, a Declaration of Independence radical, tarred as a Bolshevik for standing up for procedural fairness and depicted as Russian for his efforts to limit executive power in a divided government system that is supposed to be committed to such institutional (self-) limitation. I guess Hoover saw the truth of what I am arguing here — that Post was no mere proceduralist, that he was using procedurlism to advance substantive political goals with which Hoover was very much in disagreement.

38. Candeloro, 46. Cf. 55: "Post's legal training and human sympathies allowed him to anticipate the judicial trend toward greater attention to the rights of the accused."

39. Candeloro attributes Post's steadfast refusal to be swept up in the anti-red hysteria to his "deep roots in the democratic radicalism of the Declaration of Independence and the Bill of Rights." (55)

Historians, Repression, and the Iraq War

JESSE LEMISCH

ACADEMICS AND INTELLECTUALS across various disciplines and from around the country have been increasingly alarmed about the impact of the Patriot Act, threats to scholarly inquiry, blacklists, Bush administration deceptions and distortions, restrictions of access to government records and a number of other recent measures which impinge on civil liberties and the free practice of their work. Historians, led by a new organization, Historians Against the War, have expressed these concerns at annual meetings of the American Historical Association and the Organization of American Historians since 2003. As a result, on March 25, 2004, the Executive Board of the Organization of American Historians (OAH) met in Boston and created a committee "to investigate reports of repressive measures having an impact on historians' teaching, research, employment, and freedom of expression."[1] The committee is to "collect and verify reports of actions by the government, officials of schools, colleges and universities, and self-designated groups dedicated to political surveillance, and report its findings periodically in the *OAH Newsletter* and in any other form the Executive Board deems appropriate." The OAH (www.oah.org), "the largest learned society dedicated to the study of American history," recently appointed David Montgomery, a distinguished Yale University labor historian, to chair this committee.

In setting up this committee, the OAH responded to an initiative originally taken in February 2004 by Historians Against the War (www.historiansagainstwar.org). HAW was founded at the American Historical Association meeting in January 2003, when it began circulating a statement asking for "a halt to the march toward war against Iraq" and expressed concern over "the undermining of constitutional government in the United States, the egregious curtailment of civil liberties and human rights at home and abroad, and the obstruction of world peace for the indefinite future" (2,200 people ultimately signed this). HAW's activities have included a traveling panel on war resistance/conscientious objection, publications (both on and off-line), a listserv, a speakers bureau, consideration of antiwar legal strategies, marching in antiwar protests, activities within professional associations, and organizing teach-ins and sessions at learned society meetings, colleges, universities and at the 2004 Socialist Scholars Conference. In addition to the 2003 statement mentioned above, HAW has so far gathered around 1,300 signatures for the following statement:

> As historians, teachers, and scholars, we oppose the expansion of United States empire and the doctrine of pre-emptive war that have led to the occupation of Iraq. We deplore the secrecy, deception, and distortion of history involved in the administration's conduct of a war that violates international law, intensifies attacks on civil liberties, and reaches toward domination of the Middle East and its resources. Believing that both the Iraqi people and the American people have the right to determine their own political and economic futures (with appropriate outside

JESSE LEMISCH, Professor Emeritus of History at John Jay College of Criminal Justice, CUNY, *is a member of the steering committees of Historians against the War and of the Alliance of Radical Academic and Intellectual Organizations. He has recently been active in support of the Columbia University teaching assistants strike (see www.hnn.us/articles/4820.html). He will have an essay on history and activism in Jim Downs and Jennifer Manion, eds,* Taking Back the Academy! History of Activism, History as Activism *(2004).*

assistance), we call for the restoration of cherished freedoms in the United States and for an end to the U.S. occupation of Iraq.

HAW's activities are broader than were those of the Historians Radical Caucus of the 1960s,[2] but it does function as, among other things, a radical caucus within the professional associations. HAW is affiliated with another new organization, the Alliance of Radical Academic and Intellectual Organizations — www.leftalliance.org — that includes such organizations as the Union for Radical Political Economics, and the Modern Language Association Radical Caucus.[3] At the April 2003 meeting of the OAH in Memphis, shortly after the war began, HAW introduced and the Executive Board and business meeting passed a resolution addressing "the threat to free speech in the current climate" and affirming "rights guaranteed by the First Amendment, and the necessity of open debate of . . . United States foreign policy." HAW introduced a similar and somewhat more detailed resolution at the January 2004 Washington meeting of the American Historical Association, where it was passed unanimously by the business meeting and accepted by the AHA Council.[4]

HAW's Letter to the OAH

To: OAH Executive Board
From: Historians Against the War
February 16, 2004

Both the Organization of American Historians and the American Historical Association have taken cognizance of threats to freedom of speech, historical inquiry, and access to public records, which have materialized since the attacks of 9/11 and the subsequent wars in Afghanistan and Iraq. Both organizations have resolved to uphold those rights by unanimous votes at their respective business meetings and approval by the OAH Board and the AHA Council. Historians Against the War urges the OAH Executive Board to implement the Organization's resolution by establishing an ad hoc committee of historians to investigate reports of repressive measures having an impact on historians' teaching, research, employment, and freedom of expression.

Although the proposed ad hoc committee could not be expected to adjudicate specific academic freedom cases, it could and should collect and verify reports of actions by the government, officials of schools, colleges and universities, and self-designated groups dedicated to political surveillance, and report its findings periodically in the *OAH Newsletter* and in any other form the Executive Board deems appropriate.

We also urge the Executive Board to explore the possibility of joint action with the AHA and the sharing of information with other organizations concerned about freedom of expression.

Among the reported developments which have alarmed historians and which illustrate, but unfortunately do not exhaust, the matters into which the ad hoc committee might choose to inquire are the following:

- Restrictions of research and surveillance of library use under the USA Patriot Act, the repeal of which has been advocated by a growing number of faculty senates
- Reports of teachers, especially in high schools and community colleges, reprimanded or confronted with suspension or nonrenewal for allowing students in their classrooms to express opposition to the occupation of Iraq
- Reports of politicization of the grant process at the National Endowment for the Humanities, with flagging and rejection of grants in areas deemed politically sensitive
- Exclusion, harassment, and demeaning treatment of foreign-born historians and students by the Immigration and Naturalization Service and the State Department
- Restriction of historians' access to government records, and new limits to enforcement of the Freedom of Information Act
- Systematic denunciation of historians who have criticized government policy by Campus Watch, No Indoctrination, Students for Academic Freedom, and other groups
- Hostile government scrutiny of foreign language and area studies programs and legislation, passed by the House, to establish an advisory board to review the curricula and faculty views in such programs as receive federal funds
- Dismissals and refusals to employ faculty

members allegedly on the basis of their views on foreign policy (Charges found plausible could be referred to the AAUP.)

This list is not intended to provide an agenda for the ad hoc committee, but rather to indicate some of the reported developments that prompted the OAH and the AHA to adopt their resolutions.

Sincerely yours,

DAVID MONTGOMERY, Farnam Professor of History Emeritus, Yale University
ALAN DAWLEY, Professor of History, The College of New Jersey
JESSE LEMISCH, Professor of History Emeritus, John Jay College of Criminal Justice, CUNY

* * *

[The following previously passed resolutions were included in the letter above.]

RESOLUTIONS OF THE OAH AND THE AHA

At the 2003 convention the OAH Executive Board approved this resolution, which was subsequently adopted at the business meeting:

> In view of the threat to free speech in the current climate, the Organization of American Historians affirms the centrality of dissent in American history, the sanctity of the rights guaranteed by the First Amendment, and the necessity of open debate of public policy issues, including United States foreign policy, in order to maintain the health of this democracy.

The American Historical Association at its January 2004 convention adopted a similar resolution, though one that focused more sharply on the work of historians. The Council subsequently approved it:

> In view of current efforts to restrict free speech in the name of national security, the American Historical Association affirms the sanctity of rights guaranteed by the First Amendment, the decisive importance of unfettered discussion in the pursuit of historical knowledge, the necessity for open debate of United States foreign policy and other public issues in order to safeguard the health of democracy and of our profession, and the need for open access to government records and archives.

SHORT BIBLIOGRAPHY ON HISTORIANS AND THE CURRENT REPRESSION

Below is a sampling of the materials that HAW had before it when it drafted its letter to the OAH. This does not pretend to be a complete listing on repression of historians, and (with exceptions noted) it does not deal with literature that appeared after HAW submitted its letter — Jesse Lemisch

National Endowment for the Humanities

• "Humanities Endowment Returns to 'Flagging' Nontraditional Projects," *Chronicle of Higher Education*, January 16, 2004

Repression of Campus Conferences and Protests

• Drake University antiwar conference; University of Texas at Austin conference on Islam. See subsequent reports: "The Drake Affair: A University Tries to Sort Out Why the Federal Government Subpoenaed Student Records after an Antiwar Conference," *Chronicle of Higher Education*, March 5, 2004; "Army Says Intelligence Agents Went Overboard Questioning Academics in Texas," *Chronicle of Higher Education*, March 26, 2004.

Internet Faculty Blacklists

• *Campus Watch*: www.campus-watch.org
• *No Indoctrination*: www.noindoctrination.org
• *Students for Academic Freedom*: www.studentsforacademicfreedom.org; see "Patrolling Professors' Politics: Conservative Activists and Students Press Campaign against Perceived Bias on Campuses," *Chronicle of Higher Education*, February 13, 2004

The USA Patriot Act

• *American Library Association*, "The USA Patriot Act in the Library": www.ala.org/ala/oif/issues/usapatriotactlibrary.htm
• *Faculty Senate Resolutions in opposition*: Univ. of Pennsylvania: www.upenn.edu/almanac/v49pdf/030408/040803.pdf; Pennsylvania State University: www.theonetruebix.com/2002/11/14/1303.html; Appalachian State University: www.bordc.org/AppStateFac-res.htm; Marshall University: www.Marshall.edu/senate/MINUTES_2002-2003/FS-4-24-03.htm; Wichita State Univ.: www.webs.wichita.edu/senate/M3-10-03.htm; New Mexico State Univ.: State Univ. of NY at Potsdam: www.potsdam.edu/faculty_senate/Agenda_ Minutes%2002-03/FS_Minutes_0r-21-03.rtf; Univ. of Wisconsin-Oshkosh: www.uwosh.edu/faculty_staff/palmeri/commentary/iraq/htm

Disabling Obstacles to Visits by Foreign Scholars

MORATORIUM ON PUBLISHING PAPERS BY FOREIGN SCIENTISTS

• Subsequent report: "Publishers Grapple with Trade Embargoes," *Chronicle of Higher Education*, March 5, 2004. (Compare "Ban is Eased on Foreign Work," *New York Times*, April 5, 2004)

ADVISORY BOARDS UNDER HR 3077

• American Council on Education, "H.R. 3077, The International Studies in Higher Education Act: www.ga3.org/ct/ep1kbJ91FjvR
• "The Clash over Middle East Studies," *Chronicle of Higher Education,* February 6, 2004
• Modern Language Association Emergency Resolution 2003-A on Title VI Funding, December 29, 2003
• Subsequent Report: Bruce Craig, "The Battle Continues: Advisory Boards and the Title VI Higher Education Act," [American Historical Association] *Perspectives*, April 2002: www.historians/org/perspectives

NOTES

1. Lee W. Formwalt, Executive Director of OAH, to Jesse Lemisch, April 2, 2004 (e-mail). See also, History News Network, "Historians Against the War Petition the Organization of American Historians (OAH)," March 25, 2004: www.hnn.us/articles/4319.html. Readers may want to scroll down below the article to locate right-winger David Horowitz's response, attacking some historians in and around HAW and the OAH as "liars," "Stalinists," "Communist," "political radicals posting as historians" and engaged in "political witch-hunts."

2. See Jesse Lemisch, "Radicals, Marxists, and Gentlemen: A Memoir of Twenty Years Ago," *Radical Historians Newsletter*, no, 59, November 1989. Two members of the HAW steering committee were in the AHA Radical Caucus of 1969: Staughton Lynd and Jesse Lemisch. See Jim O'Brien, "Be Realistic, Demand the Impossible: Staughton Lynd, Jesse Lemisch, and a Committed History," *Radical History Review*, issue 82 (Winter 2002), 65-90.

3. For some attention to the Alliance of Radical Academic and Intellectual Organizations, as well as to HAW, see Jesse Lemisch, "2.5 Cheers for Bridging the Gap between Activism and the Academy; or, Stay and Fight. To Which is Added an Account of Radical Scholar-Activists in the Wake of the Iraq War," in Jim Downs and Jennifer Manion, eds, *Taking Back the Academy! History of Activism, History as Activism* (New York: Routledge, 2004).

4. At the 2004 AHA and OAH meetings, many HAW members supported resolutions brought in by Yale's Graduate Employees & Students Organization (www.yaleunions.org/geso; www.leftalliance.org) against Yale's intimidation and coercion of union organizing efforts. But the GESO resolutions were not formally endorsed by HAW *organizationally*, on grounds that HAW is and should remain a "single-issue" organization.

This is part of a larger debate within HAW: Are we just against the Iraq war, or do we seek new directions in American foreign policy? Do we oppose U.S. empire, and the wars to come? Are we anticorporate, anti-imperial, antiprivatization, anti-IMF/WTO, against militarization, and for women's rights and social justice, both domestically and internationally? Do we seek to scrutinize the domestic roots of U.S. foreign policy?

As this is written, HAW is internally divided on issues of organizational democracy and leadership, and on political questions, especially regarding calling for immediate U.S. withdrawal from Iraq vs. a "popular front" strategy. And while opposing Bush's policies and seeing them as in part departures from the past, we also have disagreements as historians about continuities and discontinuities in the history of American foreign policy. I do not look back on the era of Cold War "containment" as some sort of golden age, nor would I uncritically accept past and present Democratic Party foreign policy. My own preference is that we seek to persuade a broad constituency of the relevance of radical alternatives to American foreign policy. My answer to the questions asked in the preceding paragraph is, "yes." Since there is some ABB ("AnybodybutBush") feeling in HAW, I want to be sure that HAW does not become a *de facto* supporter of likely Democratic presidential candidate John Kerry, whose position on the war is unacceptable, including sending more U.S. troops and seeking multilateral means to continue the war, and/or the use of the UN as a "beard" to cover continued U.S. domination of Iraq. I favor immediate withdrawal from Iraq, the termination of plans for U.S. bases there, and rescinding of U.S. privatization of the Iraqi economy.

The New Unity Partnership

Sweeney Critics Would Bureaucratize to Organize

HERMAN BENSON

WHAT JOHN SWEENEY DID UNTO LANE KIRKLAND IN 1995 may now be done unto him. On September 18, this year, Sweeney announced he would run for reelection as AFL-CIO president, along with Rich Trumka, secretary-treasurer, and Linda Chavez-Thompson, executive vice-president. But his term of office doesn't expire until mid 2005, almost two years to go.

Ordinarily, such a premature declaration would seem strange. Not this time, however, because Sweeney needs to forestall a not-so-subtle drive by five international union leaders to push him out. They had planted stories in *Business Week* and in the *American Prospect* about his probable "retirement" in 2005 (news to him!); they were already mulling over the choice of his successor. The pressure on Sweeney continues. When the *New York Times* reported that he would run for reelection, it added, "Some labor officials questioned whether Mr. Sweeney might reverse himself and . . . not seek another term." [What "officials"?]

The five were banding together, they said, because at a time when labor must grow or die, the AFL-CIO remains passive and impotent. Calling for change, they propose to show the way to organize the unorganized. And so memories of the 1995 AFL-CIO convention in New York! That's when Sweeney, at the head of a coalition of international presidents, proclaiming that labor must grow or die, called for change and proposed to lead the federation in a drive to organize the unorganized. His drive for change succeeded only partially. He was elected AFL-CIO president to head a new leadership; he beat the drums for organizing; he called upon affiliates to put forces in the field; he recruited hundreds of eager students for demonstrative summers of organizing.

But it didn't work. Now, eight years later, back to square one. Despite his exhortation, the response from the established labor leadership was limp. There have been some gains in organizing, but the unionized section of the private, nongovernmental workforce remains at the dangerously low 9 percent.

Now, the five restive international union leaders, publicly expecting Sweeney to bow out, have joined together in a formal organization, partially inside the AFL-CIO and partially outside, complete with a name, New Unity Partnership. Time and tide wait for no one. They intend to reorganize themselves and then demonstrate to the labor movement how to organize the unorganized. The implication of their message: Lane Kirkland and Tom Donahue, the AFL-CIO old guard and all their predecessors, talked of organizing; but did nothing. Sweeney promised to organize, but accomplished next to nothing. But this time, really and now, they will organize.

Together, the five international presidents make up an odd combination: Douglas McCarron, Carpenters union; Bruce Raynor, UNITE; John Wilhelm, Hotel union; Terrence O'Sullivan, Laborers; Andy Stern, Service Employees.

In 1995, the Carpenters and UNITE both voted for the old guard against Sweeney, the reformer. The other three backed Sweeney. When

HERMAN BENSON, *editor of* Union Democracy Review, *is the author of* Rebels, Reformers, and Racketeers: How Insurgents Transformed the Labor Movement *(2004).*

McCarron pulled the Carpenters out of the AFL-CIO, Sweeney announced that Carpenter locals would be barred from AFL-CIO state and city federations. In a serious rebuff, an unusual coupling of the building trades and the New Unity Partnership defeated Sweeney and blocked his move.

> Now, eight years later, back to square one.

Wilhelm and O'Sullivan head two unions once heavily infiltrated by organized crime. Their unions, at least at the national level, were freed from organized crime, not by internal insurgency and reform, but by the U.S. Department of Justice. Wilhelm and Stern, who have both earned reputations as modern, progressive leaders, are allied with McCarron who exchanges mutual public expressions of admiration with President Bush.

Unlike Sweeney, the Partnership starts out with a scientific plan scrupulously worked out on paper by research workers, complete with graphs and statistical charts. The NUP program is inspired by a 44-page analysis prepared by Stephen Lerner of the SEIU organizing staff. The key aim of any organizing effort, according to this plan, is for unions to win a decisive market share in industries by increasing "union density" and controlling the "labor supply" and so gain the ability "to take wages out of competition and raise standards."

According to Lerner, here's the problem: "The current structure of the labor movement stands in the way of organizing workers and building increased strength for workers at every level of the labor movement." And so, they would reorganize the labor movement, but *really* reorganize it: Unions must stop taking the lazy way out; no more picking up whatever is easy to organize; and so no more "general workers unions" that reach out for anyone who will pay dues, from laborers to nuclear scientists. They must concentrate on increasing that "density" in their assigned basic markets. We have to get rid of that clutter of little organizations, those "corner store" unions which are happy with a tiny, selective membership so long as they pay enough dues to sustain the officers' salaries.

The graphs and charts demonstrate that American industry is shaped into 15 great segments: services, government, manufacturing, mining, etc. And so, we have to get rid of that useless proliferation of impotent unions and organize into 12-15 big, powerful unions, each in its defined industrial segment. To get there, we must eliminate the defectives, merge some, swap locals and members, and end with those powerful few, each with its authorized clearly defined sphere of influence.

Wheels and Charts

THE FORMATION OF THE NUP has been compared with the rise of the CIO within the old AFL, but differences are more striking than similarities. The CIO arose in response to the turbulent, spontaneous, often uncontrollable initiative of thousands of workers. The NUP arises out of the brain of well-meaning idealistic union staffers. The ideological flavor of the plan recalls the old-fashioned disputes of yesteryear; a weird combination of old AFL conservatism with its strictly assigned jurisdiction and the old radical industrial unionism with its imaginary unions concocted out of wheels and charts.

The five in the NUP promise to plunge forward. Success, they say, will induce others to join in. It will be interesting to see how they solve their own immediate problems. One of the five, the SEIU, has many of the characteristics of the "general workers" union they want to abolish. Will it swap away all its government workers and other incidentals? Will the Laborers union fork over its 500,000 mail handlers and the millions of dollars in federal insurance money that goes along? Will the Laborers and Carpenters merge into a single construction union and convince, say, the IBEW electrical workers to join and surrender the autonomy it now enjoys in its limited field? UNITE has nothing to swap; its basic industry is in col-

lapse. Who will define the limits of its ultimate imperial domain? Such questions, limited when confined within the NUP five, would be magnified a thousand-fold if extended to the rest of the labor movement.

Like many a grand plan emanating out of the minds of great thinkers, the NUP project requires that its leaders be endowed with extraordinary authority. Naturally, they are impatient with questions of union democracy. Not necessarily hostile to the idea as an abstraction, but impatient with anyone who would focus on the subject as a practical need.

Union democracy can be a spur to organizing, by making the labor movement more attractive to recruits.

"It is too narrow to talk of union democracy only," writes Lerner. (Would it not be "narrow" to talk only of anything?) "If only 10 percent of workers in an industry are unionized it is impossible to have real union democracy because 90 percent of the workers are excluded." An elusive formulation which implies that the 10 percent, we who are organized, must wait for our union democracy until that 90 percent come along, which could be a long, long time. Actually, as many union activists insist, union democracy, can be a spur to organizing by making the labor movement more attractive to recruits. But the NUP seems to see union democracy as an inconvenience, even an impediment; in any event, its whole program is permeated with that narrow spirit.

Those few massive unions, with their exclusive jurisdiction, would allow no refuge for workers who, fed up with a highhanded officialdom, seek more congenial representation. This is the no-raiding pact elevated to the point of fanaticism.

The NUP proposes to eradicate any element of autonomy for state and city AFL-CIO federations; all delegates would be selected by the internationals, not by affiliated locals. State and city federation presidents could serve only part-time. The federations would be ruled by full-time executive vice presidents, not elected by the delegates, but appointed by the national AFL-CIO. The local federations would lose control over their own money; all per capita payments would go to the national AFL-CIO. These organizational trappings are never explicitly justified; they are simply enunciated and shoehorned to fit into the NUP conception of a newly bureaucratized labor movement.

This vision of a highly-centralized labor movement that restrains membership initiative in an authoritarian straightjacket is no mere bad dream, no reverse utopia. The model is already in operation. The Carpenters union has already been reorganized to show the way. Its locals have been reduced into impotent units. Merged into sprawling regional councils, locals are not permitted to pay any officers or staff members; their main source of income, the work tax, is taken over by the councils. Locals have lost all control over collective bargaining. No member can hold any paid staff position in the council or any local without the permission of an all-powerful executive secretary treasurer. Local delegates, who elect the EST, cannot hold a paid union job without his or her endorsement.

Experts and Idealists

SUPPORT FOR THE NUP comes from divergent sources: from a younger generation of union leaders, social idealists (for want of any better term) who are impatient with the slow pace of progress and will let nothing to stand in the way. With them are the congenital authoritarian types. What binds them together, at this juncture, is the conviction that if they could be relieved of the 'narrow' restraints of democracy, with all power placed in their hands, they could save the labor movement. Unskilled, low-wage workers, immigrants, and even undocumented workers make up a large part of the membership of four of the five NUP unions: Laborers, SEIU, Hotel, and UNITE. Huddled

masses yearning to be free, make way for the experts and idealists!

The five unions are already reaching out to others who they feel share their values, in particular, the Teamsters and the United Food and Commercial Workers. They hope for support from liberal Republicans, and from Karl Rove, Bush's chief advisor.

They are not likely to reshape the whole labor movement. Extensive resistance is unavoidable: on the one hand, from grassroots local leaders and rank-and-file activists who would welcome an effective program to organize the unorganized but want a voice in running their own unions; on the other hand, from complacent, entrenched office holders who simply distrust any program of action, good or bad. In any event, given the current political and economic trends in the country and in the world, even the best program of organization will continue to run into heavy employer resistance.

The NUP aim — a vigorous organizing campaign — is undermined by an ideology of bureaucratism that can be summarized thusly, arm determined leaders with unrestrained centralized power. Give them the money to pay a disciplined staff and the authority to control it. Avoid being diverted by demands for "union democracy." Steel yourself against whining local complaints from those already organized. Go full speed ahead to win decisive "market share" by increasing "union density."

In its blend of dedication and authoritarianism and its preoccupation with the mechanics of organizing, the NUP evades the politics of union organizing. That is, not politics in the narrow sense of electing Democrats instead of Republicans, or maneuvering cleverly between them, or beefing up labor's standard political action program, but politics as broad social policy. In a nation narrowly poised between conservative and liberal wings contending for power, the critical political problem is how to create a climate receptive to unionism. How to influence people and shift the balance of opinion toward sympathy for programs of social justice — including the right to organize.

It is ironic, but labor can learn something from the Bush camp, which says it has discovered a new weapon of mass instruction. They report that, after years of effort, they have accumulated a mailing list of 6,500,000 potential supporters whom they will rely upon to bring the right-wing message to the voting population. This conservative popular army is now essential, they realize, because voters are becoming skeptical of what they hear from the mass media; they tend to shrug off those blaring radio and TV ads. Hence, the Republicans want to rely more on direct human contact; voters can be moved most by what they hear from friends and neighbors, at social gatherings, and at work.

In this, the labor movement should be way ahead. In a generation of effort, it has accumulated a list of 16,000,000 — 13,000,000 in the AFL-CIO alone. This is more than a mailing list; it is roster of dues paying members whose lives, and families' lives, are directly affected by their union membership. Here is labor's popular army, the force that could mold the mind of the nation. But our labor leaders, including the New Unity Partnership, have a serious political problem, an internal union problem. The union army does not respond with enthusiasm to their call.

That reality was on display in heavily unionized California in the fall 2003 during the recall campaign. To stop the recall of Governor Davis, AFSCME reports, it alone "made 643,000 calls to California union members. We sent 127,639 pieces of mail to our union members and retirees, and distributed 140,000 flyers in English and Spanish, and some 5,000 AFSCME volunteers worked from the beginning of the campaign through election day."

Failure! Few must have been listening. In "a GOP power grab," Arnold Schwarzennegger swept in with a huge majority.

Even more cruel was March 2004 with its New Hampshire and Iowa primaries. Here, where labor political advocates find their most favorable soil, selectively Democratic, a majority of the union voters rejected candidates vigorously endorsed by union leaders. More than half said no in Iowa and

three-quarters in New Hampshire.

Those who would effectively organize the unorganized at this juncture, should recall Walter Reuther's admonition: Unionize the organized! The need is to create a sense of identity between members and their unions so that they become recruiters for the cause and defender of its principles in the broad public.

And for that, the labor movement needs an expansion, not limitations, on workers' rights in their unions. For the right to speak up without fear of retaliation, the right to run for office without niggling restrictions, to criticize incumbents and their policies, to fair referrals from hiring halls, fair trials, fair elections and referendums, accurate information on workers' rights on the job and in the union hall. Convinced that their union belongs to them and is truly a force for social justice, members can be inspired to transmit that conviction to the nation.

IF A MAJOR BREAKTHROUGH for the labor movement requires cultivating the spirit of freedom in unions and not its stifling, the New Unity Partnership is off the track. By disparaging union democracy, even violating it, the New Unity Partnership undermines the very basis of its own campaign to organize the unorganized.

But it does seem clear that the NUP will put substantial resources into organizing. If they follow through, we can expect progress; bureaucracy at its best, spiced with a dash of idealism, is bound to chalk up some real achievements in organizing. If they fail, it will be another in a line of disappointing and discouraging efforts. And so, while we can't wish them well in their drive to bureaucratize the labor movement, we can only hope for successes in their effort to organize. In any event, the defense of union democracy will remain more relevant than ever.

Convinced that their union belongs to them and is truly a force for social justice, members can be inspired to transmit that conviction to the nation.

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Reclaiming Democracy

A Lesson from Zanon

ANN SCHOLL AND FACUNDO ARRIZABALAGA

INSIDE THE FACTORIES IN Jakarta's export processing zones (EPZs), workers toil in inhumane conditions where temperatures often reach 40 degrees Celsius (104 degrees Fahrenheit) and an average wage is $1 per day.[1] Here items are produced for export, mainly for big brand names such as Gap, Nike and Reebok. It is estimated that it would take an Asian worker one hundred centuries working nine hours per day six days a week to earn Nike's CEO Philip H. Knight's $5.2 billion dollar fortune![2] On the Mexican side of the U.S. border, Tijuana is also an investor's paradise: *Maquiladoras* provide cheap employment and flexible labor laws free from government regulation. This means corporations can force female employees to resign if they become pregnant.[3]

In these EPZs and in "standard" working factories from the British midlands to the Argentine hinterlands people are manufactured along with the goods. The monotony numbs the brain, the repetitive movements dull the senses, the clockwork routine gnaws the personality and the utter deprivation transforms humanity to utility to a market component. It is difficult to differentiate this wage labor from slave labor.

Raul Godoy (right) on a demonstration. Photo by Nicholas Pousthomis.

Raul Godoy, a union leader from Zanon ceramics factory in southern Argentina, said he "dreamt about ceramics" when he worked from six in the morning until ten at night on the automatic production line.[4] Raul's six-month "flexible" contract gave him little security. That was until the employees took control of the factory.

ARGENTINA'S ECONOMIC CRISIS in December 2001 left over half the population living below the poverty line.[5] The Washington-backed dictatorship that instigated the country's crippling debts from 1976 to 1983, later followed by a full embrace of neoliberal policies under Menem's governance during the 1990s, has made a large, if not defining, contribution to the ruin of a once prosperous nation. Under the International Monetary Fund's austerity measures labor has been deregulated. In the past two years unemployment has increased drastically and so has the informal labor market. *Cartoneros* — unemployed families — now roam the streets by horse and cart looking for rubbish to recycle. Driven by necessity for food and work, the *piqueteros* — the jobless urban poor — block roads to claim employment. As the gap between the haves and have-nots increases, the elite enclose themselves in guarded parks and bar their houses in a vain attempt to protect themselves from the poor — Argentina's "unpeople."

In this context, perhaps the most lucid reaction was what Zanon's workforce did. After their factory fell bankrupt, the staff faced the deep abyss of unemployment. Instead they took control of production, and for almost two years the factory's 350 workers have not only continued to produce,

ANN SCHOLL *is a social anthropologist and is 27 years old.* FACUNDO ARRIZABALAGA *is a lawyer and is 31 years old. Ann is English and Facundo is Argentine and they both currently work as freelance journalists in Argentina.*

Workers taking a break at an occuplied textile factory. Photo by Nicholas Pousthomis.

but have doubled output, and all without the owners. The employees transformed themselves from mere workers and market components into members and bosses and everyone is paid the same wage. The numbing tedium of factory work has been replaced by allowing employees to develop and participate. Raul Godoy describes how the workers feel liberated now that they control their own future.[6]

All this was not possible without the support of the local community in Neuquén, the town where Zanon is based in the Patagonian Andes. The Mapuche indigenous community provided them with clay when regular suppliers retracted after the takeover. The factory now also gives monthly donations to local hospitals, schools and kindergartens. Zanon is an innovative experiment in cooperative work that transgresses class, effectively creating a new economic model. Decisions are made in *asambleas* — meetings where everyone participates and has their say; a form of direct democracy.[7]

Zanon is one of 160 companies that have been occupied by workers since the movement began in the late 1990s when neoliberal policies caused national firms to fall bankrupt. Around 15,000 people are employed this way throughout Argentina.[8] The businesses range from metal works and schools to medical centers and a hotel, all differing in method, but based on the philosophy that the workers are in control.

HOWEVER, IT WOULD BE idealistic to herald Zanon and the occupied factory movement as the "new Argentina." Much of the population still aspires to be part of Europe and identify far more with their roots at the other side of the Atlantic than with the bold national sociopolitical struggles that they often derogatorily dismiss.

On December 4, 2003 the police brutally repressed a demonstration involving Zanon workers and unemployed people in Neuquén. The police fired rubber bullets at protesters, which caused Pedro Alveal, who works in Zanon, to lose his eye.[9] This shows that Argentina, like the United States and Britain, is reluctant to forgo the present neoliberal economic system for a new egalitarian alternative. The use of force to repress public opinion, here, and at the protests against the proposed Free Trade Area of the Americas (FTAA) in Miami last November, demonstrates that as corporate rule becomes stronger so does their need to resort to violence to repress the growing social movements and resistance.

The proposed FTAA, which is effectively an extension of the North American Free Trade Agreement (NAFTA), will predictably extend the exploitation that it caused when it was implemented back in 1995. NAFTA gives corporations the freedom to move where labor is cheapest and regulation least stringent: When workers in the United States ask for improved working conditions or plan to strike, corporations put up signs

Inside an occupied textile factory. Photo by Nicholas Pousthomis.

outside factories threatening to transfer to Mexico.[10] "Free" trade agreements not only decrease working conditions in the First World, but breed the brutal exploitation in the EPZs in Tijuana and Jakarta.

The Zanon workers are a courageous and inspiring example for people all over the world. They indicate a path towards a compassionate participatory economic system where humanity and production can work side by side.

NOTES

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The Seductions of Islamism

Revisiting Foucault and the Iranian Revolution

JANET AFARY AND KEVIN B. ANDERSON

FEBRUARY 2004 MARKED THE TWENTY-FIFTH ANNIVERSARY of the Iranian Revolution. From September 1978 to February 1979, in the course of a massive urban revolution with millions of participants, the Iranian people toppled the regime of Muhammad Reza Shah Pahlavi (1941-1979), which had pursued a highly authoritarian program of economic and cultural modernization. By late 1978, the Islamist faction led by Ayatollah Ruhollah Khomeini had come to dominate the antiregime uprising, in which secular nationalists, democrats, and leftists also participated. The Islamists controlled the slogans and the organization of the protests, which meant that many secular women protesters were pressured into donning the veil (*chador*) as an expression of solidarity with the more traditional Iranian Muslims. By February 1979, the shah had left the country and Khomeini returned from exile to take power. The next month, he sponsored a national referendum that declared Iran an Islamic republic by an overwhelming majority. Soon after, as Khomeini began to assume nearly absolute power, a reign of terror ensued.

Progressive and leftist intellectuals around the world were initially very divided in their assessments of the Iranian Revolution. While they supported the overthrow of the shah, they were usually less enthusiastic about the notion of an Islamic republic. Foucault visited and wrote on Iran during this period, a period when he was at the height of his intellectual powers. He had recently published *Discipline and Punish* (1975) and Vol. I of *History of Sexuality* (1976) and was working on material for Vol. II and III of the latter. Since their publication, the reputation of these writings has grown rather than diminished and they have helped us to conceptualize gender, sexuality, knowledge, power, and culture in new and important ways. Paradoxically, however, his extensive writings and interviews on the Iranian Revolution have experienced a different fate, ignored or dismissed even by thinkers closely identified with Foucault's perspectives.

> Foucault's Iran writings contribute something important to our understanding of this major social philosopher.

Attempts to bracket out Foucault's writings

JANET AFARY *and* KEVIN B. ANDERSON *are the co-authors of* Foucault, Gender, and the Iranian Revolution: The Seductions of Islamism *(forthcoming). Janet Afary teaches history and women's studies at Purdue University and is the author of* The Iranian Constitutional Revolution, 1906-11: Grassroots Democracy, Social Democracy and the Origins of Feminism *(1996). Kevin Anderson teaches political science and sociology at Purdue and is the author of* Lenin, Hegel, and Western Marxism: A Critical Study *(1995) and the co-editor of the* Rosa Luxemburg Reader *(2004).*

on Iran as "miscalculations," or even "not Foucauldian," remind one of what Foucault himself had criticized in his well-known 1969 essay, "What Is an Author?" When we include certain works in an author's career and exclude others that were written in "a different style," or were "inferior," we create a stylistic unity and a theoretical coherence, he wrote. We do so, he added, by privileging certain writings as authentic and excluding others that do not fit our view of what the author ought to be: "The author is therefore the ideological figure by which one marks the manner in which we fear the proliferation of meaning" (Rabinow 1984).

Throughout his life, Foucault's concept of authenticity meant looking at situations where people lived dangerously and flirted with death, a site where creativity originated. In the tradition of Friedrich Nietzsche and Georges Bataille, Foucault embraced the artist who pushed the limits of rationality and he wrote with great passion in defense of irrationalities that broke new boundaries. In 1978, Foucault found such morbid transgressive powers in the revolutionary figure of Ayatollah Khomeini and the millions who risked death as they followed him in the course of the revolution. He knew that such "limit" experiences could lead to new forms of creativity and he passionately threw in his support. This was Foucault's only first-hand experience of revolution and it led to his most extensive set of writings on a non-Western society.

Distinctive Positions

FOUCAULT FIRST VISITED IRAN in September 1978 and then met with Khomeini at his exile residence outside Paris in October. He traveled to Iran for a second visit in November, when the revolutionary movement against the shah was reaching its zenith. During these two trips, Foucault was commissioned as a special correspondent of the leading Italian newspaper *Corriere della Sera*, with his articles appearing on page one of that paper. He published other parts of his writings on Iran in French newspapers and journals, such as the daily *Le Monde* and the widely circulated leftist weekly *Nouvel Observateur*. Student activists translated at least one of his essays into Persian and posted it on the walls of Tehran University in the fall of 1978.

Foucault staked out a series of distinctive political and theoretical positions on the Iranian Revolution. In part because only three of his fifteen articles and interviews on Iran have appeared in English, they have generated little discussion in the English-speaking world. Many scholars of Foucault view these writings as aberrant or the product of a political mistake. We believe that Foucault's writings on Iran were in fact closely related to his general theoretical writings on the discourses of power and the hazards of modernity.

Long before most other commentators, Foucault understood, and this to his credit, that Iran was witnessing a singular kind of revolution. Early on, he predicted that this revolution would not follow the model of other modern revolutions. He wrote that it was organized around a sharply different concept, which he called "spiritual politics." Foucault recognized the enormous power of the new discourse of militant Islam, not just for Iran, but globally. He showed that the new Islamist movement aimed at a fundamental cultural, social, as well as political break with the modern Western order, as well as with the Soviet Union and China.

The Iranian experience also raises some serious questions about Foucault's thought. First, it is often assumed that Foucault's suspicion of utopianism, his hostility to grand narratives and universals, and his stress on difference and singularity rather than totality, would make him less likely than his predecessors on the left to romanticize an authoritarian politics that promised radically to refashion from above the lives and thought of a people, for their ostensible benefit. However, his Iran writings showed that Foucault was not immune to the type of illusions that so many Western leftists had held toward the Soviet Union and later, China. Foucault did not anticipate the birth of yet another modern state where old religious technologies of domination could be refash-

ioned and institutionalized; this was a state that combined a traditionalist ideology (Islam) with the anti-imperialist discourse of the left, but also equipped itself with modern technologies of organization, surveillance, warfare, and propaganda.

Second, Foucault's highly problematic relationship to feminism becomes more than an intellectual lacuna in the case of Iran. On a few occasions, Foucault reproduced statements he had heard from religious figures on gender relations in a possible future Islamic republic, but he never questioned the "separate but equal" message of the Islamists. Foucault also dismissed feminist premonitions that the revolution was headed in a dangerous direction. He seemed to regard such warnings as little more than Orientalist attacks on Islam, thereby depriving himself of a more balanced perspective toward the events in Iran. At a more general level, Foucault remained insensitive toward the diverse ways in which power affected women, as against men. He ignored the fact that those most traumatized by premodern disciplinary practices were often woman and children.

Third, an examination of Foucault's writings provides more support for the frequently-articulated criticism that his one-sided critique of modernity needs to be seriously reconsidered, especially from the vantage point of many non-Western societies. A number of Middle Eastern intellectuals have been grappling with their own versions of the Enlightenment project over the past century. The questions in the Middle East are quite concrete. Should such societies, which are often dominated by secular or religious despotic orders, ignore the juridico-legal legacies of the West? Or can they combine aspects of Foucault's theory of power and critiques of modernity with a modern secular state? This is an issue that is hotly debated in many Middle Eastern countries today, especially in Iran and within Iranian exilic communities. Indeed, there are some indications that Foucault himself was moving in such a direction at the end of his life. In his 1984 "What Is Enlightenment?" essay (Rabinow 1984), he put forth a position on the Enlightenment that was more nuanced than before.

Foucault's Analysis

In France, the controversy over Foucault's writings on Iran is well known. For example, during the debate that followed the September 11, 2001 terrorist attacks on New York and Washington, a prominent French commentator referred polemically and without apparent need for any further explanation to "Michel Foucault, advocate of Khomeinism in Iran and therefore in theory of its exactions," this in a front-page op-ed article in *Le Monde* (Minc 2001). Even French commentators more sympathetic to Foucault have acknowledged the extremely problematic nature of his stance on Iran. Biographer Didier Eribon (1991), himself an editor at *Nouvel Observateur* and a friend of Foucault, wrote: "The criticism and sarcasm that greeted Foucault's 'mistake' concerning Iran added further to his despondency after what he saw as the qualified critical reception" of Volume I of the *History of Sexuality*. Eribon added: "For a long time thereafter Foucault rarely commented on politics or journalism." Eribon has furnished us with what is to date the most detailed and balanced discussion of Foucault and Iran. Another French biographer, Jeannette Colombel (1994), who was also a friend of Foucault, concludes that the controversy "wounded him."

> Foucault dismissed feminist premonitions that the revolution was headed in a dangerous direction.

The English-speaking world has seen less discussion of Foucault's Iran writings. One exception is the intellectual biography by the political philosopher James Miller (1993), who characterized Foucault's Iran episode as one of "folly." Miller was the only biographer to suggest that Foucault's

fascination with death played a part in his enthusiasm for the Iranian Islamists, with their emphasis on mass martyrdom. David Macey, the author of the most comprehensive biography of Foucault to date, was more equivocal. Macey (1993) regarded the French attacks on Foucault over Iran as exaggerated and mean-spirited, but he nonetheless acknowledged that Foucault was so "impressed" by what he saw in Iran in 1978 that he misread "the probable future developments he was witnessing." Elsewhere in the English-speaking world, where Foucault's writings on Iran have been only selectively translated and the contemporary French responses to him not translated at all, his Iran writings have been treated more kindly. His last two articles on Iran, where he rather belatedly made a few criticisms of the Islamic regime in the face of the attacks on him by other French intellectuals, have been the most widely circulated ones among those that have appeared in English up to now. They are the only examples of his Iran writings to be found in the three-volume collection, *The Essential Writings of Michel Foucault*, issued recently by the New Press (Foucault 2000).

Foucault's problematic treatment of Iranian Islamism was partly due to the fact that he ignored the warnings of Iranian and Western feminists as well as secular leftists, who, early on, had developed a more balanced and critical attitude toward the revolution. This undercut what were in other respects some valuable analyses of the nature of the shah's regime and its Islamist opposition.

Foucault carried out a probing analysis of the shah's regime in his October 1978 article for *Corriere della Sera*, "The Shah Is One Hundred Years Behind the Times."[1] He wrote that in Iran, "modernization" took the form of the shah's authoritarian policies. Situating himself in a postmodern position, he argued that the shah's plan for "secularization and modernization," handed down by his father Reza Shah, a brutal dictator known for "his famous gaze," was itself retrograde and archaic. Here one can discern echoes of his *Discipline and Punish*, published three years earlier. The Pahlavi shahs were the guardians of a modernizing disciplinary state that subjected all of the people of Iran to the intense gaze of their overlords. Most notably, Foucault was criticizing the surveillance methods and disciplinary practices adopted by the regime of Muhammad Reza Shah and his notorious secret police, the SAVAK, whose methods and practices remained brutal and retrograde.

Later, in February 1979, just after Khomeini had assumed power, Foucault made an astute prediction in his article, "A Powder Keg Called Islam," also in *Corriere della sera*. He mocked the hopes of French and Iranian Marxists, who had believed that Khomeini would now be pushed aside by the Marxist Left: "Religion played its role of opening the curtain; the Mullahs will now disperse themselves, taking off in a big group of black and white robes. The decor is changing. The first act is going to begin: that of the struggle of the classes, of the armed vanguards, and of the party that organizes the masses, etc."

In ridiculing the notion that the secular nationalist or Marxist left would now take center stage and displace the clerics, Foucault made a keen assessment of the balance of forces. Indeed, he exhibited quite a remarkable perspicacity, especially given the fact that he was not a specialist on either Iran or Islam. Even more importantly, he noted, a new type of revolutionary movement had emerged, one that would have an impact far beyond Iran's borders and would also have major effect on the Israeli-Palestinian conflict: "But perhaps its historic importance will not hinge on its conformity to a recognized 'revolutionary' model. Rather, it will owe its importance to the potential that it will have to overturn the existing political situation in the Middle East and thus the global strategic equilibrium. Its singularity, which has constituted up until this point its force, consequently threatens to create its power of expansion. Indeed, it is correct to say that, as an 'Islamic' movement, it can set the entire region afire, overturn the most unstable regimes, and disturb the most solid. Islam — which is not simply a religion, but an entire way of life, an adherence to a history and a civilization — has a good chance to

become a gigantic powder keg, at the level of hundreds of millions of men."

While Foucault's insight into Islamism's global reach was surely prescient, this was undercut by Foucault's uncritical stance toward Islamism as a political movement. In October 1978, during the period when the first nationwide strike was taking place in Iran, he decided to publish his views on Iran in French for the first time in an article entitled "Of What Are the Iranians Dreaming?" for *Nouvel Observateur*. Foucault described the current struggle in mythic terms: "The situation in Iran seems to depend on a great joust under traditional emblems, those of the king and the saint, the armed sovereign and the destitute exile, the despot faced with the man who stands up barehanded and is acclaimed by a people."

As to the saintlike Khomeini's advocacy of "an Islamic government," Foucault was reassuring. He noted that "there is an absence of hierarchy in the clergy" and "a dependence (even a financial one) on those who listen to them." The clerics were not only democratic; they also possessed a creative political vision: "One thing must be clear. By 'Islamic government,' nobody in Iran means a political regime in which the clergy would have a role of supervision or control. . . . It is something very old and also very far into the future, a notion of coming back to what Islam was at the time of the Prophet, but also of advancing toward a luminous and distant point where it would be possible to renew fidelity rather than maintain obedience. In pursuit of this ideal, the distrust of legalism seemed to me to be essential, along with a faith in the creativity of Islam."

Foucault also attempted to reassure his French readers concerning the rights of women and religious/ethnic minorities. His sources, who were close to the Islamists, assured him: "With respect to liberties, they will be respected to the extent that their usage will not harm others; minorities will be protected and free to live as they please on the condition that they do not injure the majority; between men and women there will not be inequality with respect to rights, but difference, since there is a natural difference." He concluded the article by referring to the crucial place of "political spirituality" in Iran and the loss of such spirituality in early modern Europe. This was something, he wrote, "whose possibility we have forgotten ever since the Renaissance and the great crises of Christianity." Already poised for the sharp responses he knew such views would receive in the highly charged world of Parisian intellectual debate, he said that he knew that his French readers would "laugh" at such a formulation. But, he retorted, "I know that they are wrong."

Islam as a Political Force

FOUCAULT'S SUGGESTION THAT HIS *Nouvel Observateur* article would stir up controversy turned out to be correct, perhaps more so than he had anticipated. *Nouvel Observateur* published, in its November 6 issue, excerpts of a letter from the pseudonymous "Atoussa H.," a leftist Iranian woman living in exile in France, who took strong exception to Foucault's uncritical stance toward the Islamists. She declared: "I am very distressed by the matter of fact commentaries usually made by the French left with respect to the prospect of an 'Islamic' government replacing the bloody tyranny of the shah."[2] Foucault, she wrote, seemed "deeply moved by 'Muslim spirituality,' which, according to him, would be an improvement over the ferocious capitalist dictatorship, which is today beginning to fall apart." Why, she continued, alluding to the 1953 overthrow of the democratic and leftist Mossadeq government, must the Iranian people, "after twenty-five years of silence and oppression" be forced to choose between "the SAVAK and religious fanaticism?" Unveiled women were already being insulted on the streets and Khomeini supporters had made clear that "in the regime they want to create, women will have to adhere" to Islamic law. With respect to statements that ethnic and religious minorities would have their rights "so long as they do not harm the majority," Atoussa H. asked pointedly: "Since when have the minorities begun to 'harm'" the majority?

Returning to the problematic notion of an Islamic government, Atoussa H. pointed to the bru-

tal forms of justice in Saudi Arabia: "Heads and hands are cut off, for thieves and lovers." She concluded: "Many Iranians are, like me, distressed and desperate about the thought of an 'Islamic' government. . . . The Western liberal left needs to know that Islamic law can become a dead weight on societies hungering for change. They should not let themselves be seduced by a cure that is perhaps worse than the disease." Foucault, in a short rejoinder published the following week in *Nouvel Observateur*, wrote that what was "intolerable" about Atoussa H.'s letter, was her "merging together" of all forms of Islam into one and then "scorning" Islam as "fanatical." It was certainly discerning on Foucault's part to note in his response that Islam "as a political force is an essential problem for our epoch and for the years to come." But this prediction was seriously undercut by his utter refusal to share any of her critique of political Islam. Instead, he concluded his rejoinder by lecturing Atoussa H.: "The first condition for approaching it [Islam] with a minimum of intelligence is not to begin by bringing in hatred." In March and April 1979, once the Khomeini regime's atrocities against women and homosexuals began, this exchange would come back to haunt Foucault.

While many prominent French intellectuals became caught up in the enthusiasm of the Iranian upheaval in late 1978, none followed Foucault in siding so explicitly with the Islamists against the secular Marxist or nationalist left.

While many prominent French intellectuals had become caught up in the enthusiasm of the Iranian upheaval in late 1978, none to our knowledge followed Foucault in siding so explicitly with the Islamists against the secular Marxist or nationalist left. Others with more background in Middle Eastern history were less sanguine altogether, notably the leading French specialist on Islam, Maxime Rodinson. An historian who had worked since the 1950s in the Marxian tradition and the author of the classic biography *Muhammad* (1961) and of *Islam and Capitalism* (1966), his leftist credentials were very strong. Rodinson's prescient three-part article entitled "The Awakening of Islamic Fundamentalism?" appeared on the front page of *Le Monde* in December 1978.[3]

As he publicly revealed some years later, in this article Rodinson was responding to Foucault's earlier evocation of a "political spirituality." However, in a time-honored tradition of Parisian intellectual debate, Rodinson chose not to name Foucault. For those in France who had followed Foucault's writings on Iran, however, Rodinson's references in this December 1978 article were clear enough, as they undoubtedly were to Foucault himself. Rodinson poured cold water on the hopes of many on the left for an emancipatory outcome in Iran. He pointed to specific ways in which the ideology of an Islamic state carried with it many reactionary features: "Even a minimalist Islamic fundamentalism would require, according to the Koran, that the hands of thieves be cut off and that a woman's share of the inheritance be cut in half. If there is a return to tradition, as the men of religion want, then it will be necessary to whip the wine drinker and whip or stone the adulterer…Nothing will be easier or more dangerous than this time-honored accusation: my adversary is an 'enemy of God'." Bringing to bear the perspectives of historical materialism, he wrote: "It is astonishing, after centuries of common experience, that it is still necessary to recall one of the best attested laws of history. Good moral intentions, whether or not endorsed by the deity, are a weak basis for determining the practical policies of states." What lay in store for Iran, he worried, was not a liberation but "a semi-archaic fascism."

By spring 1979, these controversies came to a boil. At the March 8, 1979 International Women's Day demonstration, the repressive character of Iran's new Islamist regime suddenly became quite apparent to many of the Iranian Revolution's international supporters. On that day, Iranian women activists and their male supporters demonstrated in Tehran against an order for women to re-veil themselves in the chador worn in more traditional sectors of society. The demonstrations continued for five days. At their height, they grew to fifty thousand in Tehran, women as well as men. Some leftist men formed a cordon around the women, fighting off armed attackers from a newly formed group, the Hezbollah or "Party of God." The demonstrators chanted "No to the Chador," "Down with the Dictatorship," and even the occasional "Down with Khomeini." One banner read, "We made the Revolution for Freedom, But Got Unfreedom," while others proclaimed "At the Dawn of Freedom, There Is No Freedom." For their part, the Hezbollah chanted "You will cover yourselves or be beaten," but their response was mainly nonverbal: stones, knives, and even bullets. After support demonstrations also took place in Paris, Simone de Beauvoir issued a statement of solidarity on March 19: "We have created the International Committee for Women's Rights (CIDF) in response to calls from a large number of Iranian women, whose situation and whose revolt have greatly moved us…We have appreciated the depth of the utter humiliation into which others wanted to make them fall and we have therefore resolved to struggle for them."

On March 24, a highly polemical article directed against Foucault appeared in *Le Matin*, a leftist daily that had editorialized forcefully against what it called Khomeini's "road toward counter-revolution and moral regulation." Entitled "Of What Are the Philosophers Dreaming?"[4] and written by the feminist journalists Claudie and Jacques Broyelle, it derided Foucault's enthusiastic praise of the Islamist movement: "Returning from Iran a few months ago, Michel Foucault stated that he was 'impressed' by the 'attempt to open a spiritual dimension in politics' that he discerned in project on an Islamic government. Today there are little girls all in black, veiled from head to toe; women stabbed precisely because they do not want to wear the veil; summary executions for homosexuality; the creation of a 'Ministry of Guidance According to the Precepts of the Koran;' thieves and adulterous women flagellated." Alluding to his *Discipline and Punish*, they referred ironically to "this spirituality that disciplines and punishes." The Broyelles mocked Foucault's notions of "political spirituality" and asked if this was connected to the "spiritual meaning" of the summary executions of homosexuals then taking place in Iran. They also called upon Foucault to admit that his thinking on Iran had been "in error." Foucault's response, published two days later, was in fact a non-response. He would not respond, he wrote, "because throughout 'my life' I have never taken part in polemics. I have no intention of beginning now." He wrote further, "I am 'summoned to acknowledge my errors'." He hinted that it was the Broyelles who were engaging in thought control by the manner in which they had called him to account.

Unproblematic Sympathy

AT THIS POINT THE CONTROVERSY was fueled by the appearance of Claire Brière and Pierre Blanchet's book *Iran: la Révolution au nom de Dieu*, published at the end of March. It included a lengthy interview with Foucault by the two authors that discussed the events in Iran. The interview, which appears to have been conducted before Khomeini assumed power in February, was entitled "Iran: The Spirit of a Spiritless World." Unfortunately for Foucault's reputation, this enthusiastic discussion of Iran's Islamist movement was mentioned frequently in reviews of the book, which appeared in the immediate aftermath of the March women's demonstrations and amid the growing reports of atrocities against gay men, Baha'is, and Kurds. The book achieved a certain notoriety because of its timeliness and months later, it was still the most prominently displayed title on the Iranian Revolution in Paris bookstores.

In the interview, Foucault began his analysis

of Iran by complaining that "the Iranian affair and the way in which it has unfolded have not aroused the same type of unproblematic sympathy as Portugal, for example, or Nicaragua." He deplored the Western left's "unease when confronted by a phenomenon that is, for our political mentality, very curious." In Iran, he added, religion offered something deeper than ideology: "It really has been the vocabulary, the ceremonial, the timeless drama into which one could fit the historical drama of a people that pitted its very existence against that of its sovereign." Because Shi'ism had been part of the Iranian culture for centuries, and because the revolutionary drama was played out through this religious discourse, Foucault believed that Shi'ism, "a religion of combat and sacrifice," would not play the role of a modern ideology, one that would "mask contradictions." What Foucault perceived as Iran's unified historico-cultural discourse system seemed to override those "contradictions" with which, he acknowledged in passing, "Iranian society" was "shot through."

What's more, when Blanchet warned of uncritical euphoria with respect to the events in Iran, referring to his and Brière's experience in China during the Cultural Revolution, Foucault refused the implications of a more questioning, critical stance. Disagreeing directly with Blanchet, Foucault insisted on the uniqueness of the events in Iran vis-à-vis China: "All the same, the Cultural Revolution was certainly presented as a struggle between certain elements of the population and certain others, certain elements in the party and certain others, or between the population and the party, etc. Now what struck me in Iran is that there is no struggle between different elements. What gives it such beauty, and at the same time such gravity, is that there is only one confrontation: between the entire people and the state power threatening them with its weapons and police." Here, Foucault's denial of any social or political differentiation among the Iranian "people" was absolutely breathtaking.

Finally, about nine-tenths of the way through the interview, after more prodding by both Blanchet and Brière, Foucault acknowledged a single contradiction within the Iranian Revolution, that of xenophobic nationalism and anti-Semitism. We can quote these statements in full, since they are so brief. First, he noted: "There were demonstrations, verbal at least, of virulent anti-Semitism. There were demonstrations of xenophobia, and not only against the Americans, but also against foreign workers [including many Afghans] who had come to work in Iran." Then, somewhat later, he added: "What has given the Iranian movement its intensity has been a double register. On the one hand, a collective will that has been very strongly expressed politically and, on the other hand, the desire for a radical change in ordinary life. But this double affirmation can only be based on traditions, institutions that carry a charge of chauvinism, nationalism, exclusiveness, that have a very powerful attraction for individuals."

Here, for the first time in his discussions of Iran, Foucault acknowledged that the religious and nationalist myths through which the Islamists had mobilized the masses were full of "chauvinism, nationalism, exclusiveness." At the same time, however, and what continued to override the possibility of a more critical perspective, was the fact that he was so enamored by the ability of the Islamists to galvanize tens of millions of people through such traditions that he ignored the dangers. Strikingly, in the entire interview, Foucault never addressed the dangers facing Iranian women, even after Brière recounted, albeit with a big apologia for the Islamists, an incident in which she had been physically threatened for trying to join a group of male journalists during a 1978 demonstration.

At the end of March, soon after *Iran: la Révolution au nom de Dieu* appeared, a review in *Le Monde* emphasized the interview, calling Foucault's position "questionable." Days later, another critique of Foucault appeared in a review in *Nouvel Observateur* by Jean Lacouture, the veteran journalist and biographer. Lacouture argued that the book "poses important issues with a rather abrupt simplicity that becomes most apparent in the concluding conversation between the two au-

thors and Michel Foucault." The biggest problem with the book and with Foucault's contribution, Lacouture added, was the way in which "the unanimous character of the movement" was emphasized in a one-sided fashion. Something similar to this so-called "unanimity" for Islam was also observed, erroneously it turned out, during China's Cultural Revolution of the 1960s, he concluded. Still another attack on Foucault soon appeared in *L'Express*, a mass-circulation centrist weekly, in which the prominent journalist Bernard Ullmann wrote that Foucault's interview "did not have the same prudence" as the rest of the book in assessing the possible dangers of an Islamist regime in Iran.

> Foucault deplored the Western left's "unease when confronted by a phenomenon that is, for our political mentality, very curious."

Foucault never responded directly to these various attacks on him in the reviews of *Iran: la Révolution au nom de Dieu*. Unlike some of the previous attacks on his writings, for example those by Sartre and de Beauvoir on his *The Order of Things* (1966), hardly anyone defended Foucault's Iran writings. One exception was the post-structuralist feminist Catherine Clément, who wrote in *Le Matin* that Foucault had simply "tried to discern what has escaped our intellectual expectations" and that "no schema, including that of 'Human Rights' within our tradition, can be applied *directly* to this country, which makes it revolution from its own culture." Foucault published two more articles on Iran in April and May 1979, one of them for *Le Monde*, in which he made a few very mild criticisms of the revolution. Then he lapsed into silence over Iran.

The Significance of Gender

IN THE TWO AND A HALF DECADES since 1979, the tremors set off by the Iranian Revolution helped in no small way to spark an international series of Islamist movements. Radical Islamists have taken power or staged destructive civil wars in a number of countries, from Algeria to Egypt and from Sudan to Afghanistan, in the latter case with U.S. support. These regimes and movements have been responsible for hundreds of thousands of deaths and for numerous setbacks to women's rights throughout the Muslim world. Islamism gained such power and influence during a period when equally retrogressionist Christian, Hindu, and Jewish religious fundamentalist movements were also on the rise, all of them inimical to women's rights. The September 11 attacks were a dramatic and horrific example of the dangers of such religious fanaticism.

Two questions for today emerge from Foucault's Iran writings. First, were these writings aberrations, largely the product of his ignorance of Iranian history and culture? This is what Maxime Rodinson suggested in his critiques of Foucault. We think not. We note that de Beauvoir and other French feminists took a markedly different stance, one that holds up better today, although they had little specialist knowledge of Iran. We suggest that Foucault's Iran writings reveal, albeit in exaggerated form, some problems in his overall perspective, especially its one-sided critique of modernity. In this sense, the Iran writings contribute something important to our understanding of this major social philosopher.

A second issue for today concerns the whole issue of religious fundamentalism, more important than ever to debates over the crisis of modernity since September 11, 2001. The international left's failure to chart an adequate response to religious fundamentalism is not Michel Foucault's problem alone. It is ours today as well. And this is no easy task, just as in past decades it was not easy to chart a leftist perspective independent of Stalinism and Maoism. As Maxime Rodinson later wrote, with a measure of Gallic humanism: "Those who, like the author of these lines, refused

for so long to believe the reports about the crimes committed in the name of the triumphant socialism in the former Tsarist Empire, in the terrible human dramas resulting from the Soviet Revolution, would exhibit bad grace if they became indignant at the incredulity of the Muslim masses before all the spots that one asks them to view on the radiant sun of their hope. Michel Foucault is not contemptible for not having wanted to create despair in the Muslim world's shantytowns and starving countryside, for not having wanted to lose hope, or for that matter, to lose hope in the worldwide importance of their hopes." And, as we have seen above, hope needs to be tempered by a critical spirit cognizant above all of the significance of gender in an era of religious fundamentalism.

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NOTES

1. These and other quotations from Foucault's Iran writings are from the appendix to Afary and Anderson, where they are all translated, in most cases for the first time.

2. This letter is translated in the appendix to Afary and Anderson.

3. Rodinson's critiques of Foucault are translated, some of them for the first time, in the appendix to Afary and Anderson.

4. Beauvoir's statement, and Broyelle and Broyelle's article, are translated in the appendix to Afary and Anderson.

What Is Plutocracy?

ROSSEN VASSILEV

THE LAST U.S. PRESIDENTIAL ELECTION AND RECENT FINANCIAL SCANDALS involving high-flying American CEOs and top politicians in Italy, France and Germany have revived the more than century-old debate about the role of money in politics in general, and the illicit marriage between government and concentrated economic power known as plutocracy in particular.[1] Today the term plutocracy is used repeatedly, albeit rather casually, by social critics, such as 2000 Green Party presidential candidate Ralph Nader and commentators like Kevin Phillips, Paul Krugman, Paul Kurtz, William Keegan (who has unwittingly revived the old Paretian term "plutodemocracy"), and others.[2] But very few users have bothered to define clearly the term plutocracy and its *differentia specifica*. In this respect there is a gap in the theoretical literature that cries out to be filled.

So, what exactly is "plutocracy" and what are its main characteristics? For analytical and comparative purposes it is necessary to define a concept that provides a clear idea of what plutocracy is and what its essential elements are. The term is derived from the Greek word *ploutokratia*, meaning "government based on wealth" — combining *ploutos*, wealth, and *cratos*, rule or government.

Like democracy, plutocracy is a controversial, value-laden, and imprecise term. According to one dictionary, it has several different meanings: (1) government by the wealthy; (2) a wealthy class that controls the government; and (3) a state or society in which the wealthy classes rule.[3] Yet the essence of plutocracy has been defined more broadly as "the determination and ability of wealth to reach beyond its own realm of money and control politics and government as well."[4] There are many conceptual definitions of plutocracy — such as, for example, "government by or in the interests of the rich"[5] — but very few, if any, operational ones. Although various writers differ widely on the precise definition, they generally agree that plutocracy is an oligarchic form of government[6] based on the rule of the economically dominant social classes.

According to at least one writer, over the last twenty years or so the world has witnessed a quiet revolution, or "the silent takeover,"[7] by what might be best described as global corporate plutocracy. But are there any historical precedents of a plutocratic form of government? In fact, there are very few examples of a true plutocracy in history, even though plutocratic-like regimes may have existed as governing systems in both antiquity and modern times. In ancient Athens, for instance, Plato (427-347 B.C.) warned against the danger of plutocratic "oligarchy," that is, a "regime based on property ownership in which only the rich hold office and the poor have no share in government," and in which "the rich receive praise and respect and public office; (while) the poor are despised."[8] In the Roman Republic, the struggles of the plebeian masses led by the Gracchi brothers against the Roman plutocracy nearly sparked a civil war between 131 and 121 B.C.

In fact, the term plutocracy has been in use only since the mid-seventeenth century. The Italian theorist Vilfredo Pareto (1848-1923) applied it to his study of the political ramifications of in-

ROSSEN VASSILEV *served as a diplomat at the Bulgarian Mission to the United Nations from 1980-1988. He is presently Lecturer in the Department of Political Science at Ohio State University.*

creased wealth concentration in modern capitalist societies, after observing that over 80 percent of all private property in Italy was owned by 20 percent or less of the Italian population. Pareto called the Western democracies of his day "demagogic plutocracies" or "pluto-democracies" resulting mainly from (a) the enormous growth, concentration and political clout of private wealth; (b) the unequal distribution of wealth and power in a class-divided society; and (c) the growing political importance of two social classes: the class of rich financial "speculators" accounting for the plutocratic or "demagogic" tendencies of the "pluto-democracies," as well as the "workers" class, which Pareto believed to be responsible for the more populist or democratic trends of the "pluto-democracies." The political dominance of the first class — consisting of "merchants, industrialists, public work contractors, financial operators, 'speculators' and the like" — "usually produces plutocratic societies and therefore, since plutocracy is deficient in inherent strength, the end result is almost inevitably demagogic or military plutocracy . . . " According to Pareto, modern parliaments and popular elections are the "effective instrument" of demagogic plutocracy:

> Indeed it now seems clear that the modern parliamentary system is to a great extent bound up with the fate of plutocracy — prospering with it, declining with it. Transformations of the parliamentary system — which can also be termed transformations of democracy — closely follow the vicissitudes of plutocracy.

For Pareto, the *raison d'etre* of such regimes is "spoliation," that is, the plunder of the governed majority of the population — sometimes through legal and sometimes through illegal means — by the governing class of plutocrats.[9]

Another Italian classical elite theorist, Gaetano Mosca (1858-1941), similarly dismissed representative democracy and the competitive elections it is — in theory at least — based upon. He specifically rejects the assumption that elected officials are the "mouthpiece" of the majority of the electorate, insisting instead that their rich "friends" rather than ordinary voters get the people's representatives elected to office:

> When we say that the voters "choose" their representative, we are using a language that is very inexact. The truth is that the representative *has himself elected* by the voters, and, if that phrase should seem too inflexible and too harsh to fit some cases, we might qualify it by saying that *his friends have him elected*. In elections, as in all other manifestations of social life, those who have the will and, especially, the moral, intellectual and material means to force their will upon others take the lead over the others and command them.[10]

Karl Marx was even harsher in his judgment of representative democracy, claiming that the so-called democratic governments of his day were "handmaidens" of the plutocratic "bourgeoisie," that is, the wealthy class of owners of the means of economic production in capitalist societies. According to Marx, wealth and power go hand in hand. "The executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie," concluded *The Communist Manifesto* (1848).[11]

Even Adam Smith, the eminent Scottish philosopher, social theorist and classical political economist, so beloved (and largely distorted) by neoliberal free-marketeers, wrote in his epic *The Wealth of Nations* (1776) about the "inequality of fortune" which had helped create an oligarchic government "for the defence of the rich against the poor:"

> The rich, in particular, are necessarily interested to support that order of things, which alone can secure them in the possession of their own ad-

> Over the last twenty years or so the world has witnessed a quiet revolution, or "the silent takeover," by what might be best described as global corporate plutocracy.

> vantages . . . . Civil government, so far as it is instituted for the security of property, is in reality instituted for the defence of the rich against the poor, or of those who have some property against those who have none at all.[12]

Theodore Roosevelt, who throughout his presidency battled moneyed interests, also warned against the dangers of plutocracy, insisting that ". . . of all the forms of tyranny the least attractive and the most vulgar is the tyranny of mere wealth, the tyranny of plutocracy."[13]

For the purposes of this article, plutocracy will be understood as a system of government in which wealth — private and corporate — is the principal basis of power. More specifically, it is a political regime that is based on (1) vast concentration of wealth and power in few hands allowing the government to be controlled, directly or indirectly, by the wealthiest members of society; (2) private and corporate wealth determining political clout which makes rather meaningless the democratic process of public contestation of political office and competitive, multiparty elections — even in countries where such a process does exist — since money rather than votes ultimately decides elections; and (3) an unequal distribution of wealth and money power among the members of society negating most constitutional guarantees of basic civil and political liberties, save for property rights, market freedom and corporate privileges. This definition is an ideal type in the Weberian sense, all of whose criteria must be closely approximated before a regime can be called plutocratic.

Plutocratic regimes may come in different shades — some quasi-democratic and others unabashedly authoritarian. A plutocracy may exist in the form of a presidential, parliamentary or semipresidential republic; or it may be a constitutional monarchy, or even a Latin American-style military dictatorship. Of course, plutocracy is nowadays most frequently dressed in a pseudo-democratic garb. But the form does not really matter, since it does not change the essence of such a regime, which is rule by a well-organized moneyed minority that governs ostensibly in the name of all the people, but mostly in its own selfish interests.

The rest of this article will deal with various aspects of the latter-day plutocratic form of government, including the different shapes and forms in which it manifests itself around the globe today, the social classes that it benefits directly and that have come to represent it, and the fundamental differences that separate it from genuine democracy in spite of all its spurious democratic claims and legalistic pretensions. It will also discuss the new type of corporative arrangement between state and society that has emerged as a result, namely the corporate welfare state. The article concludes that the imminent global triumph of the modern plutocracy may indeed be a foregone conclusion, which is a sad prediction for the future of liberal democracy in the new millennium.

Concentrated Wealth

THE FIRST COROLLARY FROM this ideal-typical definition of plutocracy is that the influence of concentrated wealth — mainly corporate wealth nowadays — on governance can be exercised either by the wealthy directly ruling the country, or more typically by the wealthy using their money to control the government indirectly. This indirect control can be exerted positively — through "legitimate" financial contributions or, in some cases, illegal bribery to influence the political processes — or negatively, by subverting financially the government of the day — via the nonpayment of taxes, not investing at home ("capital strike"), or threatening to move or actually relocating profitable businesses and jobs abroad ("capital flight"). This latter subversive tactic proved very effective in undermining and ultimately scuttling the reformist domestic policies of French President Francois Mitterrand's first Socialist government elected in 1981. By contracting the economy and increasing domestic unemployment, it can be a serious threat to any government that does not dance to the tune of business interests. An analogous case is the deep class conflict in Venezuela between the rebellious well-to-do strata of the population and

the popularly elected government of President Hugo Chavez, whose redistributive economic policies are strongly supported by the poor but are equally vehemently opposed by the rich. The ongoing campaign to unseat Chavez by any possible means is an attempt to limit the perceived threat to local and international business interests from the recent electoral reversals in Venezuela and Brazil.

> "There are two important things in politics. One is money, and I can't remember what the other one was."

During the 1896 presidential campaign, William McKinley supposedly said that "There are two important things in politics. One is money, and I can't remember what the other one was." As if to prove McKinley right, today a would-be candidate needs at least $20 million in campaign funds just to register to run for the U.S. presidency. The trend toward the polarization of income and concentration of ownership in the hands of a select few makes it possible for the wealthy classes to transform an ostensibly democratic regime into plutocracy almost overnight.

Following the old saying that "money is the mother's milk of politics," more and more of the super-rich are using their superior private resources to compete for high political office, discouraging other candidates from running in the political races and overwhelming their opponents with money — to the detriment of ordinary people willing to serve in public office and the active involvement of the citizenry in decision-making. Probably at no other time have so many among the rich and the powerful — like NYC Mayor Michael R. Bloomberg, for one — run for and served in high elective or appointed office, thus following in the footsteps of the Rothschilds, the Roosevelts, the Rockefellers, and the Kennedys. The popular media have already noted the disproportionately large number of millionaires and even multimillionaires serving in the U.S. Congress and in the cabinets of both Bill Clinton and George W. Bush, compared to their relatively miniscule percentage of the general population. In another telling example, the richest Italian alive, multimedia *capo* and billionaire Silvio Berlusconi, has for the second time in a decade bought his way into the post of Italian Prime Minister. Financial scandals and corruption charges threaten to topple him along with his conservative cabinet for the second time since 1994, but Berlusconi is resisting legal and public pressures to resign and is defending successfully his grip on the top government position by using the power of the Italian state and his own vast private fortune. Many Italians call him "a modern-day Mussolini" — and not just because he claims that Il Duce "killed no one" while in office.

Even where the Croesuses of today are not directly part of the government, the latter can hardly escape their influence and indirect control. As just one example, the British press used to describe Australian-born media czar Rupert Murdoch, a very close confidante of former British Prime Minister Margaret Thatcher, as one of "the main powers behind the Thatcher throne" and indeed "the phantom Prime Minister" of the Thatcher era:

> Rupert and Mrs. Thatcher consult regularly on every important matter of policy, especially as they relate to his economic and political interests. Around here he's often jokingly referred to as "Mr. Prime Minister," except that it's no longer all that much of a joke. In many respects he *is* the phantom Prime Minister of the country.[14]

Murdoch has used his enormous clout in the media and in right-wing politics to extend his multimedia empire into the U.S. market through the gradual buildup of his politically influential *News Corporation* chain and even recently cornering the $7 billion direct TV market.

In post-Soviet Russia, a small group of

wealthy *mafiosi* businessmen, proudly calling themselves "oligarchs," has exerted enormous influence over the new, "democratic" leadership by either participating directly in government — with multimillionaire tycoon Boris Berezovsky serving for a time as deputy chairman of the powerful National Security Council, for instance — or by "lending" huge sums of money to former President Boris Yeltsin (especially during the 1996 presidential election), his family, and other corrupt politicians at both the national and regional levels. Although weakening somewhat under President Vladimir Putin, the plutocratic hold of the "oligarchs" on the Russian government has allowed these *biznesmeni* of dubious origins and reputations to pillage the once enormous wealth of their now bankrupt country in a gigantic swindle disguised as "privatization" of valuable state assets — basically giving away public property for free to Kremlin protégés and insiders.[15]

Whenever the laws sanction the practice of bribing politicians in and out of government — usually through so-called "soft money" (the unlimited contributions to political parties from corporations, labor unions, and individuals) and other legal contributions, or through large lobbying outlays — the huge expense of electoral campaigns and the often meager salaries that public service pays compared to the private sector tend to force politicians to cater to the needs and demands of large corporations, which can contribute most generously to their war chests and even cover their personal expenses. This allows big-money, mostly corporate, interests to buy politicians and even entire political parties, set the political agenda, and pass or change public laws and regulations. The first thing that such kept politicians do when they come to power is cut the taxes of the same wealthy interests which have bankrolled their climb to the top, as occurred in the United States under Presidents Reagan and George W. Bush, or in England under Prime Minister Thatcher.

The campaign finance laws, as they exist in many countries today, enable the deep-pocketed corporate elite to bend the government to its own narrow, often self-serving, purposes. A good example of such improper influence is the collapse of the U.S. savings and loan industry in the late 1980s, which cost American taxpayers a staggering $1.4 trillion. S&L high rollers had taken advantage of relaxed government regulation in the Reagan era to make highly speculative investments involving substantial risk to their thrifts. Many of them also plundered the savings of their depositors, freely dipping into other people's money with the knowledge that the federal deposit insurance (up to $100,000 per savings account) would protect them from ever having to pay back what they had stolen.

As the failing S&L industry headed for financial ruin, Charles Keating Jr. and other S&L executives turned for support to corrupt congressmen — the "Keating Five"[16] being the most infamous among them — who intimidated federal auditors and helped cover up the ailing state of the poorly managed thrift institutions. After the inevitable collapse of Keating's Lincoln Savings and numerous other freewheeling S&Ls, it was revealed that the "Keating Five" senators had received substantial campaign contributions — both directly and indirectly — from Keating and his associates, totaling over $1.3 million. When asked if he thought that his campaign contributions to the five senators had led to the adoption of "favorable" federal banking regulations, Keating replied with a wicked smile, "I want to say in the most forceful way I can: I certainly hope so."[17]

Since the major media outlets (TV and radio stations, newspaper chains, magazines, Internet service providers, and other media conglomerates) are also owned and controlled by giant corporations, access to the mass media and to politically-relevant information becomes limited to only what serves corporate interests which are thus able to define the national political agenda, shape the policy debate, and brainwash the general public, excluding any alternative ideas and visions.[18] Because Italian Prime Minister Silvio Berlusconi controls — directly or indirectly — over 90 per-

cent of the TV media market in Italy (through the three private channels that he owns and the government-owned public channels that he controls), he has been able to use his enormous media and political power to highjack the legislative process and distort the criminal justice system in order to obtain immunity from criminal prosecution and keep himself and his many businesses out of legal trouble.[19] Monopoly control over the mass media renders meaningless the public debate over whether or not the Fourth Estate is successfully doing its job of being the ever-alert guardian of democracy, reminding us of the old complaint by the American journalist, writer and columnist A.J. Liebling that "freedom of the press is guaranteed only to those who own one." In an age of electronic information and communication technologies, only those who can buy television time and reach millions of viewers through well-oiled propaganda and public-relations campaigns and expensive TV ads can really exercise their right to free speech.

The Transformation of Politics

THE RESULTING CORPORATE DOMINANCE of politics has changed modern democracy into plutocracy — a trend that started long before the 1980's but has accelerated and intensified since then. This is because political parties and the candidates for political office are now more financially dependent on campaign contributions from big business than ever before. With the exception of wealthy candidates like Ross Perot, Steve Forbes, Jon Corzine, and Arnold Schwarzenegger, no political aspirant can run a successful campaign today without raising millions of dollars, which makes elected politicians beholden to "generous" wealthy interests after the election. For example, U.S. presidential and congressional candidates running in the 2000 elections spent a record $1 billion, most of it campaign contributions. With the price of elective and appointive office going up each year, the corruption of money has reached into the deepest recesses of the political system, touching every political institution, including even the supposedly "neutral" judiciary. This enables the new dominant political power, the rich corporate donors, to tell politicians what they can and cannot do or say, which makes a mockery of the democratic principle of elected representatives expressing "the will of the people." As former Minnesota Governor Jesse Ventura recently remarked, "Our whole political system is based on bribery."[20]

Of course, the major political parties have always been in the deep pockets of large corporations. As early as 1876, President Rutherford B. Hayes noted that the U.S. government of his day "...is a government of corporations, by corporations and for corporations."[21] Today, when the policies of the main parties in North America, Japan and Western Europe are nearly identical, and there is little or nothing to be gained from changing the party in power at the ballot box, the electoral system — especially of the "first-past-the-post," "winner-take-all" variety — gives voters only the illusion of choice. During the 2000 presidential campaign, Green Party presidential candidate Ralph Nader complained that "Corporations have taken over the government and turned it against its own people." For once elected to office, obedient and subservient politicians of all political stripes run over each other to defend and protect business interests — usually at the expense of the rest of society — kissing and worshipping the hand that feeds them. As British voters have discovered to their chagrin, it makes little difference if Conservative John Major or New Laborite Tony Blair is at the helm of their cabinet government.

Plutocracy thus arises as a result of the decay and hollowing-out of democracy and the transition to a more hierarchical, elite-based form of government. Robert Michels's famous Iron Law of Oligarchy[22] ("Who says organization says oligarchy") is now supplemented by the Golden Rule of Plutocracy ("He who has the gold makes the rules"), as modern political parties have lost their ideological moorings and come to be dominated by business interests and pro-business politicians. As a result, special interest groups are becoming

more brazen and aggressive in their efforts to buy elections, many voters are progressively disillusioned and dissuaded from casting a ballot, while elections are becoming less and less competitive or, as in the case of the recent recall gubernatorial election in California, are turning into a political farce.

In some corners of the globe, such as Latin America, plutocracy has been a fact of life for at least the past two centuries or so — and still is. But the plutocratization of society has now progressed quite significantly in all parts of the world, where political power has fallen into the hands of a few hundred rich, often foreign, business groups and corporations, forming a single worldwide corporate oligarchy. Today just 200 gigantic multinational corporations account for over half of the world's industrial output.[23] With national wealth concentrated in fewer and fewer hands, markets are now more important than democratic politics, politicians and political parties are owned by big-money interests, and the pursuit of economic goals such as optimal market efficiency and greater worker productivity now outweighs political, social or moral concerns. As Noreena Hertz writes, in a deregulated global market in which elected governments are the spectators, rather than the actors, corporations have emerged as a powerful political force, bringing national and local governments to heel through their decisions about where to locate, hire and operate.[24] Political and economic realities being what they are, governments everywhere are forced to pay obeisance to the whims and demands of footloose financial capital at the expense of national sovereignty, equity, the environment, worker protection, and public health, thus contributing to the notorious "race to the bottom." Not even Fidel Castro's Cuba has been able to escape the necessity of having to play by the economic rules of global capitalism.

The burgeoning plutocracy of today is clearly a by-product of the triumph of market liberalism in the 1980s and 1990s, which gave business the opportunity not only to reap windfall profits, but also to strengthen enormously its political muscle and influence decision-making with money. Globalization has generated a truly massive shift in power from politics to economics, from states to markets, from politicians to businessmen, and from elected governments to special interest money, removing many of the traditional social constraints and moral inhibitions on the business elite. The political clout of transnational corporations has been further strengthened by the dramatic transfer of state power and sovereignty to pro-market, business-friendly multilateral organizations, such as the International Monetary Fund, the World Bank, the World Trade Organization, the North American Free Trade Agreement, and the like.[25] Pope John Paul II has complained that under globalization, "the wealth produced often remains in the hands of only a few, with a consequent further loss of sovereignty of national states, already rather weak in the area of development."[26]

> Robert Michels's famous Iron Law of Oligarchy ("Who says organization says oligarchy") is now supplemented by the Golden Rule of Plutocracy ("He who has the gold makes the rules").

But such a consequential transfer of power cannot be without a political cost to society. In his best-known book *The Great Transformation*, the Hungarian-born economist Karl Polanyi (1886-1964) warned against the political consequences of the rise of an untrammeled world market, one of them being excessive "economism," that is, putting the market above society and promoting the economy to the point where economic decision-making becomes concentrated in a few hands and escapes societal control. Contrary to the nostrums of classical liberal orthodoxy that

Polanyi opposed, the emergence of an unregulated and "unembedded" market may in fact become a threat to social justice, individual freedom and democracy. For democracy cannot survive for long the extreme social inequality produced by free markets. For Polanyi, the tension between the "logic of the economy" and the "logic of society" can destroy democracy by eroding democratic equality, economic equity, and social cohesion[27] — which is what we are increasingly seeing today. It is this threat to democracy that has generated the global and constantly spreading resistance to the power of plutocracy — which has taken a most visible and most effective form in the burgeoning anti-globalization movement spanning all five continents.

An Aristocracy of Wealth

WHATEVER THEIR CONSTITUTIONAL GUISES and legalistic pretensions, plutocratic societies are ruled by powerful elites composed of some of the wealthiest and most prominent members of society — "the rich and the well-born" in the words of Alexander Hamilton, one of the U.S. Founding Fathers. These elites are ideologically unified by a single dominant free-market philosophy advocating the spread of unfettered capitalism around the world, which David Korten has dubbed "corporate libertarianism."[28] Elite members follow this ideology, also known as the "Washington consensus," with blind faith and sometimes nearly fanatical devotion.[29]

While furious battles over money, privilege, and turf may divide this otherwise tightly-knit group of plutocrats, they are consensually united from within by their fundamentalist convictions pitting the marketplace against the individual and society, both of which are sacrificed on the altar of economic efficiency and the pursuit of profit. Claiming to be a meritocracy, the plutocratic elite exercises tight control over the national government in the belief that what is good for its members is also good for the country. Its apologists in the media and academia zealously promote the reigning market fetishism and some (like U.S. Senator Mitch McConnell, for example) openly defend the plutocratic practice of corrupting electoral politics, representative government, and public policy as a First Amendment right.

C. Wright Mills called this interlocking and self-perpetuating group composed of business, government and military leaders "the power elite," which is bound by shared *Weltanschauung*, privileged social backgrounds, and interchangeable careers crisscrossing big business, the government and the military.[30] Note in this respect the permutations in Colin Powell's career path — from a decorated army general to millionaire businessman, and now to U.S. Secretary of State. Mills also pointed out in his seminal book *The Power Elite* that:

> The very rich do not reign alone on top of visible and simple hierarchies. But that they have been supplemented by agents and by hierarchies in the corporate structure of the economy and of the state does not mean that they have been displaced. Economically and socially, the very rich have not declined . . . .they are still very much among us — even though many are hidden, as it were, in the impersonal organizations in which their power, their wealth, and their privileges are anchored."[31]

According to Mills, not only are the "corporate rich" at the top of the private capitalist economy, but they are also a vital component of that "interlocking directorate" involving also government bureaucrats and the top brass that constitutes the triangular "elite of power."

While plutocracy may theoretically coexist with any economic system, it is modern capitalism with its unprecedented concentration of income, property and wealth in the hands of a few — witness the most recent *Forbes 400*'s list of ultra-rich owners of tens of billions of dollars worth of assets — that has made possible the rise of a powerful ownership class capable of taking over the reigns of government and excluding all other classes from the inner workings of democracy.

The close association between plutocracy and latter-day capitalism is no historical coincidence — for both are intrinsically based on the

vast concentration of private wealth and the polarization of society between rich and poor. Plutocracy cannot by definition exist under conditions of economic egalitarianism. But neither could capitalism, which is built on social relations of inequality and exploitation that it perpetuates *ad infinitum*. To put it somewhat more crudely, capitalism needs wealthy owners of capital who would invest their money in the privately owned economy in order to reap personal profits, which is what keeps the economy going. In addition to greed and profit-seeking, capitalism also needs a large number of poor folks who must sell their cheap labor to the employer class of capitalists and capital managers in order to make a living, and without whose collective work the economy would grind to a halt. In other words, capitalism would cease to exist should differences of income, wealth and status disappear in a land of perfect equality.

That is why plutocracy may be a far better and more natural companion to Darwinian capitalism than liberal democracy has been — or ever will be. For there is an inherent and irresolvable tension between capitalism, which is built on deep economic and social disparities, and democracy that is putatively based on political and legal equality among all its citizens, no matter what their income or wealth.[32] Therefore, it would not be too far-fetched to conclude that plutocracy, rather than democracy, is the ultimate political counterpart to a world capitalist economy which in its historical path over the past 500 years has passed through several different political systems — from absolute monarchy to representative government, then to liberal democracy, and now, increasingly to plutocracy.

Plutocracy and Democracy

IT IS CLEAR BY NOW that in spite of its protean mimicry, plutocracy is not the same thing as democracy. In a true democracy, participation in the exercise of authority is predicated on political equality: each citizen has an equal opportunity to influence the political agenda and contribute equally to the collective choice of political leaders. Thus each citizen has an equal voice in public affairs, especially in voting — one person, one vote. By contrast, plutocracy is skewed towards those with superior private resources, greater purchasing power and organizational abilities, replacing mass democracy with an elitist alternative, namely the rule of organized money based on unprecedented concentration and polarization of wealth. When not directly involved in governing the country, the members of the small but powerful plutocratic elite, representing mostly financial and business interests, tend to shower professional politicians with ever more money and gifts, not so much to buy elections — the outcomes of which are predetermined and rarely in doubt nowadays — but instead to gain privileged access to the elected government and thereby shape public policy and legislation, especially the tax code, which as a result now overwhelmingly favors the rich over the middle class or the poor.

Democracy is replaced by plutocracy when money-hungry politicians are bribed and controlled by wealthy moguls and large corporations willing to foot the bill "to get out the vote." For example, the previous U.S. president enjoyed a close, though not widely publicized, relationship with the late Sam Walton, owner of WalMart and the richest American at the time of his death in 1992. Bill and Hillary Clinton interrupted their 1992 presidential bid only once — to attend Mr. Walton's funeral. No more widely known was the very close relationship of the current occupant of the White House with the ex-CEO of the failed Enron Corporation. George W. Bush used Ken Lay's corporate jet throughout his 2000 presidential campaign. Another example was Ronald Reagan's so-called "kitchen cabinet," a group of right-wing millionaires and multimillionaires who financed his political career from the California governorship to the White House, including beer magnate Joseph Coors; A.C. Rubel, chairman of Union Oil; Justin Dart of Dart-Mart; Leonard Firestone of Firestone Tire and Rubber; Henry Salvatori, oil developer; Holmes Tuttle of Ford Motors and Rexall; Taft Schreber of MCA Inc., and several

other rich plutocrats.

In a plutocracy, candidates for political office are not accountable to the electorate but instead are indebted to their campaign contributors and other wealthy donors. On election day, ordinary voters do little more than rubber-stamp the choices made by corrupt special interests, that is, the plutocrats — and even the use of primary elections, referenda and recall voting cannot hide or change this reality. The system of privatized campaign financing, which is so characteristic of plutocratic societies, is clearly working against the public good, as wealthy donors expect and regularly receive sweetheart deals, tax breaks and credits, government subsidies, and other concessions and favors, most often involving taxpayer money — in return for their campaign contributions and other payments to political parties and politicians. Those without money are left out, since they have no effective means (save for their individual vote, which counts for little) of influencing either key political incumbents or how the government runs the country. Even the once powerful trade unions — long considered the rival of big business, at least in the West European social democracies — are now almost entirely excluded from the policy process.

> Plutocracy may be a far better and more natural companion to Darwinian capitalism than liberal democracy has been, or ever will be.

As a result, a new, state-dependent capitalism has emerged, namely the corporate welfare state, in which the central government controlled by rich special interests has assumed major responsibility for welfare provision to big business via various corporate entitlements, support programs, government financing, and military-industrial Keynesianism, usually on the backs of ordinary taxpayers. The corporate welfare state provides generous benefits and services to meet the welfare needs of corporations in the form of direct subsidies, grants, government-guaranteed low-interest loans, lower taxes and tariffs, tax incentives, government contracts, and various other state guarantees against business failure and bankruptcy, even in cases of corporate abuse, crime and mismanagement. On the pretext that the wealthy classes who own and control the economy need to be given incentives such as higher profits and lower taxes in order to invest more and create new jobs, it protects the business community against unexpected losses resulting either from market speculation or from unfavorable economic conditions at home and abroad, including those incurred from foreign competition and protectionism.

For instance, the U.S. government — long known as the most ardent champion of the "free market" and "free trade" — is spending annually $300 billion in agricultural supports and $400 billion in subsidies to the pharmaceutical industry alone. Even more federal dollars are spent to subsidize the high technology sector, especially the high-tech armaments industry, as even a prosperous corporation like Microsoft receives well over a $1 billion from Uncle Sam every year. And Western Europe and Japan are known to give no less government money — perhaps more than the United States — to their own businessmen and corporations (the combined refusal of these three axes of advanced capitalism to end such protectionism led to the collapse of the WTO meeting at Cancun, Mexico, in September 2003).

Replacing the post-WWII social-welfare state and its "war on poverty," the new corporate welfare state socializes the business risk by bailing out financially troubled corporations, banks and important groups of wealthy investors. This is done either through direct government intervention at home (from the recent bailout of the airlines industry to the bailout of the little-known Long-Term Capital Management, a politically well-connected hedge fund whose rescue cost over $3.5 billion), or through IMF-organized

bailouts of threatened rich investors from the First World in various Third World countries. Abroad, it calls for an imperialistic foreign policy of conquering foreign markets, pools of cheap local labor, and the mineral wealth and other natural resources of foreign countries — peacefully through "free" trade and speculative foreign direct investments (FDI), if possible, or by force of arms, whenever necessary — all in the name of world peace, democracy and economic freedom. At home, the new corporate welfare state plunges society into an era of social Darwinism and survival of the economically fittest. It wages ruthless class warfare against society at large, whose non-elite members are plundered thrice — once as producers who are exploited and underpaid in the workplace, a second time as consumers who pay extortionist prices for everything from housing to health care, and finally as taxpayers who must make up the taxes not paid by globetrotting, absentee corporations headquartered in tax havens abroad and taking advantage of numerous tax shelters and other domestic tax-avoiding schemes.

While the illegitimate relationship between concentrated wealth and political power is not new — witness the excesses of the Gilded Age (1870-1890) and the Roaring Twenties — it could eventually overwhelm the ever-shakier foundations of modern democracy by turning it into another commodity for sale. For the global triumph of plutocracy would mean the slow but certain death of democracy as such. The early symptoms of democracy's demise can already be seen — low voter turnout (except among more affluent voters), declining levels of trust in government and other public institutions recorded in one public poll after another, alienation from traditional mainstream politics, mistrust of politicians' hidden agendas, the dramatic decline of political parties, endemic official corruption, and growing rejection of representative democracy as co-opted, corrupt, and in the pay of rich special interests.

Plutocracy also means the triumph of unregulated laissez-faire capitalism, the blurring of boundaries between the private and the public, and the glaring inability of public institutions to counter monopoly power, safeguard the rights of common people, and protect society from the abuses of wealth. But plutocracy means above all that ordinary people are denied the right to elect their government, as the only real power is in the hands of huge corporations and their top managers, who are not popularly elected but can use the influence of corporate wealth to subvert and thwart the will of the majority. As former Supreme Court Justice Louis Brandeis warned, "We can have a democratic society or we can have great concentrated wealth in the hands of a few — we cannot have both."

Historically, the greatest threat to democracy is that when plutocracy is in danger of losing control, it may discard its democratic facade and opt for fascism, that is, an elite-based dictatorship — as the bourgeois plutocracy of Pareto's Italy did after World War I. But if one takes a factually-based view of the current situation, in which democracy conjoined with globalized capitalism is increasingly undermined by the arrogance and ubiquity of money culture and political corruption, there is a more realistic but no less sinister danger lurking in the future.

The rising bourgeoisie of the eighteenth and nineteenth centuries needed representative government to break free from the shackles of absolute monarchy, the feudal nobility, and the Church. Although triumphant in the twentieth century, the bourgeois class again needed representative democracy to beat back the radical challenges of socialism, communism, anarchism and other egalitarian ideologies espoused by the lower classes. Now that the threat of communism is defeated and the global left has been tamed or co-opted, the need for democracy is not so obvious and even the mere possibility of radical participatory democracy is seen as a threat to unfettered global capitalism and plutocratic power. After the end of the Cold War and the fall of Communism especially, there is no longer any need to bribe the working classes, so that the latter would not embrace the Communists or other radical enemies

of capitalism. Nor is there, for the same reason, any need to buy the ideological allegiance of their representatives — the trade unions and the social-democratic parties. At this historical juncture, when economic rationalism and market absolutism reign supreme and the meaning of democracy is equated with the "free choice" of the marketplace,[33] mass democracy becomes disposable as an outdated political institution and may be replaced by plutocracy in a democratic mask (although to some extent this has always been the case). In spite of the post-Cold War mood of democratic triumphalism, the sun may be setting on the age of democracy, as the world seems to be drawing near the new age of plutocracy.

The new corporate welfare state socializes the business risk by bailing out financially troubled corporations, banks and important groups of wealthy investors.

A Historical Victory

THE TERM PLUTOCRACY HAS BEEN used historically to connote a type of regime in which a small group of oligarchs is able to exert disproportionate power and leadership in government and in society due to their private or collective wealth. Today the emergence of a powerful elite wedded to corporate wealth and might has brought back into fashion the use of the term, especially among social critics concerned by the virtually unchallenged growth of money power and the surrender of all political authority to it. For money has become by far the most prominent and important factor in politics today.

This article undertook the task of mapping out the ideal type of plutocracy, that is, of "a government of the rich, by the rich and for the rich." It has largely done so, describing in particular the antidemocratic fallout from the unrestrained wealth buildup at the top, the worldwide growth of income inequality, and the pervasive use of political money to corrupt and subvert democratic institutions. For there is little doubt that what we are witnessing today is the takeover of democracy's governing institutions by corporate and private wealth, turning representative democracy into a fraudulent justification and legitimation of the rule of the new "princes" of financial power.

The rise of a global corporate oligarchy marks the final historical victory of the world bourgeoisie and its capitalist ideology over all rival social classes and their political philosophies. The growing plutocratization of modern societies is also the most serious among the political, social and economic implications of globalization. It is a manifestation of the self-assertion of advanced globalization capitalism in the political arena, concentrating political power in the hands of already concentrated economic power. Given the distorting effect of economic power on democracy, the processes of globalization that are so strongly influencing political and socioeconomic events today need to be redirected towards strengthening democracy rather than allowing it to be overtaken and supplanted by the dominance of big business and market-generated private wealth.

The power and independence of governments may indeed be "withering away" but in a manner that Karl Marx could have hardly anticipated — being replaced by the omnipresence and omnipotence of big-money interests, as transnational corporations take over the role and functions of government all over the world in the name of capitalism, free markets, and economic globalization. The death throes of democracy may give birth to a new era, leaving all nations with only one choice — to join the worldwide move towards plutocracy and its rapid consolidation. Of course, this is far from being the only possible choice today. There is an alternative — at a time of a democratic crisis millions upon millions of resisters united in the anti-globalization movement may arrest the growing

power of plutocracy and save democracy from an impending demise.

NOTES

1. The term "plutocracy" seems to have been favored by earlier commentators — and not only by those on the left — especially during and immediately after the so-called Gilded Age. As Kevin Phillips writes in *Wealth and Democracy: A Political History of the American Rich* (New York: Broadway Books, 2002), "By the 1880s the idea of a nation in the grip of plutocracy was widespread, supported by a flowering descriptive vocabulary" (p. xxii). See, for example, Thomas M. Norwood, *Plutocracy, or American White Slavery* (New York: American News Company, 1888); Milford W. Howard, *The American Plutocracy* (New York: Holland Publishing Co, 1895); Scott Nearing, *The Great Madness: A Victory for the American Plutocracy* (New York: Rand School of Social Science, 1917); Scott Nearing, *The New Slavery: or the World Made Safe for Plutocracy* (Chicago: Socialist Party of the United States, 1920); David G. Philips, *The Reign of Guilt: Plutocracy and Democracy* (New York: J. Pott, 1905); Richard F. Pettigrew, *Triumphant Plutocracy: The Story of American Public Life from 1870 to 1920* (New York: Academy Press, 1922); Gabriel A. Almond, *Plutocracy and Politics in New York City* (Boulder, CO: Westview Press, 1998), originally presented as the author's Ph.D. thesis (University of Chicago, 1938); among many others.

2. Phillips, *Wealth and Democracy*. Phillips is convinced that big business has bought control of the political parties and the national political agenda. See also Paul Krugman, "Plutocracy and Politics," *The New York Times*, June 14, 2002, p. A37; Paul Kurtz, "The New American Plutocracy," *Free Inquiry Magazine*, 20:4 (2000); William Keegan, "The Wealthy Are the Winners," *The Times Union* (Albany, NY), November 13, 2000, p. A7. According to Keegan, "plutodemocracy" is "a system under which the rich rule in the name of the people, but largely in their own interests."

3. *The American Heritage Dictionary of the English Language*, 4th edition (Houghton Mifflin Co, 2000).

4. Phillips, *Wealth and Democracy*, p. xv.

5. Phillips, p. xi.

6. First identified and classified in Aristotle's *Politika*, an oligarchy is a form of government that is based on the "rule of the few" over the many. The classical elite theorists Gaetano Mosca, Robert Michels (1876-1936), and Vilfredo Pareto equated oligarchy with the selfish rule of a self-regulating and self-perpetuating elite class having domination over the larger society. According to Seymore Martin Lipset, a modern oligarchy is "the dictatorial rule of the small upper stratum" (Lipset, *Political Man: The Social Basis of Politics*, Garden City, NY: Doubleday, 1960, p. 31).

7. See Noreena Hertz, *The Silent Takeover: Global Capitalism and the Death of Democracy* (London: Heineman, 2001).

8. Plato, *The Republic*, (New York: Norton, 1985), pp. 241-242.

9. S.E. Finer, ed. *Vilfredo Pareto: Sociological Writings* (Totowa, NJ: Rowman and Littlefield, 1976), pp. 316, 315 and 114-117.

10. Gaetano Mosca, *The Ruling Class* (New York: McGraw Hill, 1939), p. 154.

11. Karl Marx and Friedrich Engels, *The Communist Manifesto* (New York: Norton, 1988), p. 23.

12. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, vol. 2 (Indianapolis, IN: Liberty Classics, 1981), p. 715.

13. Theodore Roosevelt, *An Autobiography* (New York: Scribner).

14. Quoted in Hertz, *The Silent Takeover*, p. 103.

15. For a news account of more recent developments regarding post-Soviet Russia's oligarchs, see "Handful of Corporate Raiders Transform Russia's Economy," *The New York Times*, August 13, 2002, pp. A1, A6.

16. The Keating Five were Senator Alan Cranston of California, Senator Dennis DeConcini of Arizona, Senator John Glenn of Ohio, Senator Donald Riegle of Michigan, and Senator John McCain of Arizona.

17. See James R. Adams. *The Big Fix: Inside the S&L Scandal. How an Unholy Alliance of Politics and Money Destroyed America's Banking System* (New York: John Wiley & Sons, 1990); Michael Binstein and Charles Bowden. *Trust Me: Charles Keating and the Missing Billions* (New York: Random House, 1990); Kitty Calavita, Henry N. Pontell, and Robert H. Tillman. *Big Money Game: Fraud and Politics in the Savings and Loan Crisis* (Berkeley, Calif.: University of California Press, 1997); Kathleen Day. *S&L Hell: The People and the Politics Behind the $1 Trillion Savings and Loan Scandal* (New York: Norton, 1993); Robert Emmet Long (ed.) *Banking Scandals: The S&Ls and BCCI* (New York: H.W. Wilson, 1993).

18. The Internet has so far been only a partial exception to this ominous trend.

19. See "The Prime Minister and the Press," a host interview with Alexander Stille, *Wide Angle*, PBS, August 1, 2003.

20. *Hardball with Chris Matthews*, "Special Edition: California Recall," MSNBC, September 24, 2003.

21. Quoted in David C. Korten, *When Corporations Rule the World* (West Hartford, CT: Kumarian Press, and San Francisco, CA: Berrett-Koehler Publishers, 1996), p. 58.

22. See Robert Michels, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy* (New York: Free Press, 1966).

23. Manfred B. Steger, *Globalization: A Very Short Introduction* (Oxford: Oxford University Press, 2003), p. 48.

24. Hertz, *The Silent Takeover*, p. 154.

25. Joseph E. Stiglitz, *Globalization and Its Discontents* (New York: Norton, 2002).

26. "John Paul II: Globalization Must Not Be a New Form

of Colonialism," *The Houston Catholic Worker*, online at www.cjd.org/paper/capital.html.

27. Karl Polanyi, *The Great Transformation* (Boston, MA: Beacon Press, 2001).

28. See Korten, *When Corporations Rule the World*, p. 74.

29. See Stiglitz, *Globalization and Its Disconents*.

30. See C. Wright Mills, *The Power Elite* (New York: Oxford University Press, 1957).

31. Mills, p. 117. See also William G. Domhoff, *Who Rules America? Power and Politics* (Boston: McGraw Hill, 2000).

32. For more on the intricate relationship between modern capitalism and political democracy, see Gabriel A. Almond, "Capitalism and Democracy," *PS: Political Science and Politics*, September 1991, pp. 467-474. See also David Held, *Models of Democracy* (Stanford, CA: Stanford University Press, 1987), pp. 186-220.

33. See Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1982).

LETTERS

The CP and the CIO

NELSON LICHTENSTEIN'S REVIEW ON Communist-led unions (*NP* 36) left me a bit stunned, albeit pleasantly stunned. The Nelson Lichtenstein I knew from politics years ago wasn't the first labor historian I'd have expected to conclude that "the Communist unions were significantly better than non-Communist or anti-Communist unions"! Still, the evidence he presents from Stepan-Norris and Zeitlin's book as well as others seems compelling, and he presents it well.

Two caveats, though. When Lichtenstein attributes the critique of CP-linked CIO leaderships to "those influenced by the Trotskyist analysis of Stalinism," I wonder if he is implicitly fostering a picture of Trotskyist practice in the Congress of Industrial Organizations as distorted as the picture of Communist practice that he refutes. As I argued in *Max Shachtman and His Left*, the general Trotskyist critique of the CP's role in the CIO could be and often was combined with a quite flexible policy in practice, including a willingness to ally on occasion with Communists against their CIO opponents. Even as late as 1947-49, not only in the Socialist Workers Party but also in the Workers Party, Trotskyist trade unionists like Cochrane and Haskell argued against backing Reuther against the CP.

My second reservation is about Lichtenstein's statement that the "CIO's greatest triumphs came when its affiliates linked union power and political program to push forward the New Deal and the coalition that sustained it." Of course I agree that shop-floor militancy should be linked to a political program. The question is, which political program? None of the evidence Lichtenstein presents in his review shows that Communists were more effective in the CIO in 1936-39 and 1941-45 than they were in other periods. An overall comparison would be interesting. Of course Lichtenstein knows the history better than I do; but Bruce Nelson at least suggests that the ILWU leadership at least was at its most effective in the transitional years 1934 and 1935, when its political strategy was not tied in to the Democratic Party. Last I heard Lichtenstein was a Labor Party supporter, so I'd expect him to agree — but then, I've been surprised before.

PETER DRUCKER
Amsterdam, the Netherlands

I READ WITH INTEREST Nelson Lichtenstein's review of *Left Out: Reds and America's Industrial Unions*. He summarizes the authors' thesis, that regardless of their politics, Communist Party members in the larger CIO unions made "real radical, democratic achievements." He further states that ". . . there can no longer be much doubt that when it came to actual trade union practice, the 16 or 18 CIO unions that fell within the Communist orbit were usually effective labor organizations that were at least as internally democratic as other affiliates, negotiating contracts equal or superior to those of the unions led by non-communist officials." Your reviewer further states that the authors' modus operendi was to visit a library that contained copies of the relevant collective bargaining contracts and study them.

When I read this type of latter-day analysis, it reminds me of Faust's remark about theory being gray and the golden tree of life being green. What I mean to say is that sitting in a library reading contracts will not hack it. The problem lies in answering the question, where they able to enforce the agreement? And only those who had to live with it can know that answer.

I was a member of an AF of L union, the Sailors Union of the Pacific, from 1940 to 1952. Its counterpart on the east coast was the National Maritime Union-CIO, which was launched around 1937 and controlled and operated by the Stalinist Communist Party from its inception until the McCarthy era. As far as I can remember we were eternally at war with them, trying to prevent them from taking us over. I distinctly recall a conversation I had with our Secretary, Harry Lundberg, wherein I asked him just exactly what was the difference between us and the NMU and his answer was, "We enforce our agreements [con-

tracts] and they don't. They're too busy defending the Soviet Union," which was a common phrase in those days. In other words, their real mission in life was bringing a workers' paradise, á la the Soviet Union here to the U.S. and anywhere else they functioned and using their positions in the union toward those political ends.

We shouldn't be so disdainful of Theodore Draper, Irving Howe, and Sidney Lens. They did a tremendous job in their time of exposing the crimes of Stalinism both inside the labor movement as well as in the greater outside arena. On the other hand, my hat is off to those who can sit down in a library and analyze those long-winded legal documents that we called our labor agreements.

JOE GLADSTONE
Santa Cruz, California

Reply to Drucker and Gladstone

I'm happy to have my brief mention of Trotskyist work in the trade unions given a more nuanced reading, but I think the general line of *New Politics*, and *Labor Action* before it, was one of thoroughgoing opposition to the Communist role within the CIO and other unions of that era. My review of the *Left Out: Reds and America's Industrial Unions* was not designed to renounce that well-founded political and moral hostility, but merely to assert that one of the polemical arguments of that era does not seem to hold up, i.e. the view that on the shop floor "red" unions were inferior to those led by leftists or even more conservative types because of the Communist allegiance to the Soviets. Indeed, one might well argue that in an era when capitalism seemed on shaky legs, it was absolutely imperative to fight the growth of Communist influence within the trade unions, because they did seem to poise such a seemingly attractive and militant alternative to either reaction on the one side or to a genuinely democratic and independent working class movement on the other. That, after all, was the meaning of "third camp" politics.

Peter Drucker is right, of course, to point out that in the early postwar era, when politics moved to the right, some Trotskyists did find themselves in alliance with the Communists on several occasions. This was especially true when it came to civil liberties and civil rights issues, or to issues of internal union bureaucratization and Cold War alignment.

I do think the American electoral system is rigged against independent initiatives by labor and other progressive groups. This was true in 1934 as well as today. Add to this a new historical appreciation for just how unique was the New Deal moment and one might well come to the conclusion that the most efficacious task of the left in that era was to create a kind of political bloc, with elements of the Democratic Party at its core, in which trade union power might express itself. I grant you that there have been moments: 1934, 1936, even 1948 and 1968, when something more seemed on offer, and I think at those historic junctures most readers of *New Politics*, including this one, would put their energy into the formation of an independent political movement. But in general the landscape was tilted against such an initiative and we might as well recognize that in the class war, as in other conflicts, some initiatives are more likely than others to end in defeat.

Joe Gladstone is right that a proper understanding of labor history must make use of a set of documents far more nuanced and informative than an archived set of collective bargaining contracts. I think an examination of *Left Out*'s footnotes indicates that Maurice Zeitlin and Judith Stephan-Norris do in fact make use of many other sources, including the memoirs of a wide variety of old militants. But his letter substantiates my larger critical point. Whatever the shop or deck practices of the Communist-line unions — and when it came to the NMU vs the SUP the racial practices of the latter left much to be desired — the most potent, destructive legacy of the Communist unions was precisely their larger sense of world politics, which linked their fortunes, militant or not, to the defense of a monstrous dictatorship.

NELSON LICHTENSTEIN

The Bolsheviks

WITH ALL DUE RESPECT TO Ernie Erber, recent scholarship including Orlando Figes' *A Peoples' Tragedy* and Robert Service's biography have exposed Lenin as the architect of a one-party dictatorship that ruled through force and violence. Lenin had the utmost contempt for democracy, soviet or bourgeois, and was directly responsible for the violent suppression of peasant uprisings and workers' strikes. He unleashed the Cheka and founded the gulag. He banned all opposition par-

ties as well as factions within the Communist Party. He openly called for the extermination of "class enemies."

The primary difference between Lenin and Stalin was that Lenin's reign of terror did not extend to the Communist Party itself. Another difference was Lenin's more respectful attitute toward national minorities, but when it came to establishing a dictatorship with absolutely no respect for democratic rights and civil liberties, Lenin was the direct precursor to Stalin.

Unfortunately, Trotsky was as guilty as Lenin. The "war communism" that Trotsky prized so highly was the prototype for Stalin's totalitarianism, with the same exception. Trotsky spared the party whereas Stalin purged it ruthlessly. But for the overwhelming majority of the population, war communism was hell, which is one reason why Trotsky was so easily isolated and defeated later in the 1920s.

Finally, I was disturbed by Ernest Erber's choice of heroes: Robespierre, the revolutionary terrorist, Napoleon, the dictator and imperialist, Cromwell, the dictator and butcher of Ireland, and Martin Luther, who called for the extermination of rebellious peasants and the persecution of Jews. Not a democrat among them.

BENNETT MURASKIN
Morris Plains, NJ

Reply to Bennett Muraskin

My review of *A Century of Violence in Soviet Russia* by Alexander N. Yakolev was simply that — summary information on the book's contents with pertinent critical observations. It was not an expository presentation of my views on the overall subject matter, i.e. the role of Lenin and the Bolshevik Party in the October Revolution and in the founding and early history of the Soviet state. My critical comments focused on whether the author, Yakolev, had valid grounds and historical evidence for contending that there was a seamless continuity in policy and practice from that of Lenin to that of Stalin. In taking issue with my review, Bennett Muraskin argues that there was such a seamless continuity. This, essentially, is where we differ about the book and my review of it — and about the transition from Lenin's policies and practices to those of Stalin.

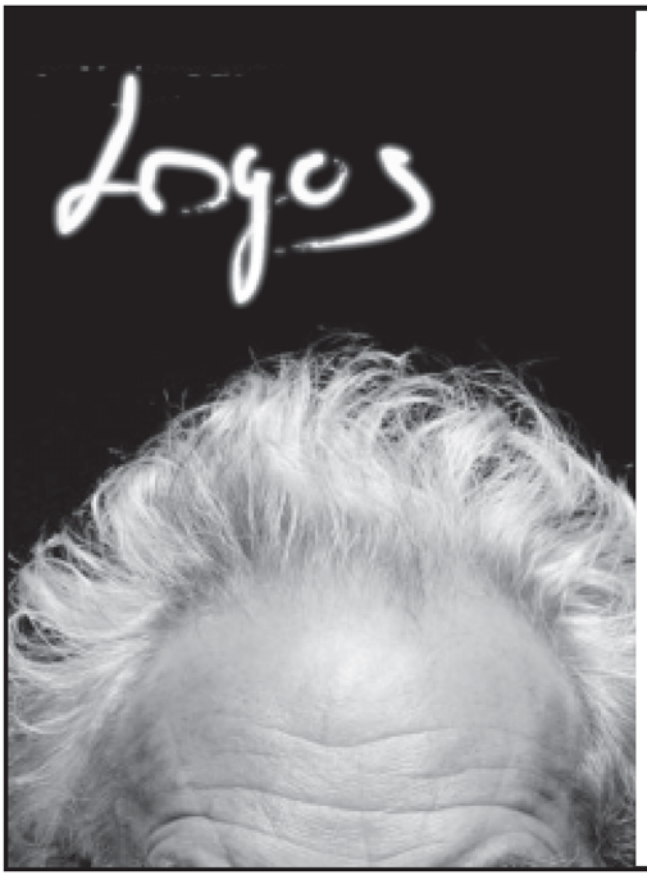
Muraskin contends that Stalinism was not a betrayal of the October Revolution, but rather its seamless continuity. His citation of "recent scholarship" is hardly relevant since the specific facts are not what is in dispute, but, rather, their interpretation, i.e. their broad historical interpretation. That is why Muraskin's references to specific conduct and actions by Lenin, Trotsky et al are irrelevant and, in the overall, ahistorical.

Lenin's specific concepts and conduct, though validly subject to critical review and judgment, cannot constitute the basis for evaluating his place in history as based upon the overall and total effect of his role upon the progress or retrogression of human civilization. Lenin's role was a contribution to the progress of humanity. Stalin's role was a contribution to retrogression, both within Russia and on a world scale.

Individuals whose roles were an overall contribution to the progress of civilization are not necessarily heroes of mine, as Muraskin mistakenly avers. In the specific case of Lenin, I wrote reams of anti-Leninist criticism in the course of my long life, making my definitive political break with Leninism some 55 years ago, when I resigned from the quasi-Trotskyist left, have never had reason to regret it or to reconsider. And it has never diminished my lifelong adherence to socialism.

A final word of advice to Muraskin, if I may, is that he would benefit by reading Rosa Luxemburg's contemporary (1917-18) critiques of Lenin's (and Bolshevik Party) conduct during and after the October Revolution.

ERNEST ERBER



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BACK OF THE BOOK

Policy Shifts

REVIEW BY DAVID CUNNINGHAM

ONE STRIKING CHARACTERISTIC of the public debate over civil liberties sparked by the Patriot Act and other post-9/11 policies is the unusually broad range of individuals troubled by the issues raised. Far from the usual narrow band of left-wing civil libertarians that might generally be voicing their concerns at an ACLU meeting, recent Bush administration policies have been questioned by active left- and right-wingers, as well as by centrists and even those who normally remain distant from politics-as-usual. The various agendas that sustain this broad coalition have remained remarkably stable, largely resistant even to the attorney general's implications of treason in his now-famous declaration that such questions are not only inappropriate but dangerous, giving "ammunition to America's enemies, and pause to America's friends."

The hot-button issues that tend to raise such populist ire — seizures of library and financial records, wiretaps and other surveillance with only minimal justification, and the like — are those that impact U.S. citizens. But by far the most extreme shifts in policy since 2001 have been directed toward noncitizens. Under the guise of the war on terror, so-called "foreign nationals" have been sweepingly profiled and selectively detained through secretive measures that place them outside of the purview of the American court system. In his newest book, *Enemy Aliens*, Georgetown law professor David Cole exhaustively details the immediate implications of such acts for aliens, and also more broadly demonstrates that such policies have historically served as pretext to limiting the rights of U.S. citizens.

Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism

DAVID COLE

New York: New Press, 2003
256 pp. $24.95

Cole begins with specific accounts of "aliens" such as Ali Al-Maqtari, a Yemeni national married to an American citizen and recent Army inductee. On the basis of vague suspicions the couple raised in late 2001 — tied entirely to Middle Eastern cultural markers — their car was searched, and both were detained when officials came across two box cutters and photos of New York. Al-Maqtari was held for two full months without bond, despite the fact that no evidence pointed to his being a viable threat to the community or flight risk. To justify his detention, the FBI employed a so-called "mosaic" argument, predicated upon the fact that counterterrorism work requires even innocuous information to be evaluated within a broader context that allows agents to fully assess a suspect's ties to terrorist plots. As Cole notes, this policy effectively assumes that suspects are guilty until demonstrated innocent, as all evidence is treated

DAVID CUNNINGHAM *is an assistant professor in the department of sociology at Brandeis University. He is the author of* There's Something Happening Here: The New Left, the Klan, and FBI Counterintelligence *(2004).*

as potentially incriminating until a complete investigation allows agents to rule out the possibility of terrorist links.

Cole also focuses on Yasser Hamdi and Jose Padilla, whose more publicly visible cases have, separately, both reached the Supreme Court in 2004. These two men embody the blurred boundaries between citizen and noncitizen, and, for Cole, they represent the risks inherent in accepting double standards in the legal treatment of immigrants. Both are U.S. citizens; Hamdi was captured in Afghanistan, allegedly fighting with the Taliban against coalition forces, while Padilla was arrested in Chicago, suspected of seeking to deploy a "dirty bomb." The Department of Justice has declared both to be "enemy combatants," meaning that they have been removed from the legal system, indefinitely detained in the absence of criminal charges, and denied access to a lawyer or other conventional legal recourse. While at least several hundred other individuals have been detained under similar pretexts at the U.S. military base Guantánamo Bay, Cuba, the Padilla and Hamdi cases represent the first attempts to deny access to the legal system to U.S. citizens captured either abroad or within the nation's borders.

Cole's case is compelling. He argues that public tolerance of these legal double standards is misguided because such policies provide a foundation for the government to establish precedents that inevitably have a very real effect on citizens in the long run, as the Padilla and Hamdi cases illustrate. He also makes the same case on both practical and moral grounds, explaining why targeting ethnic communities as suspect (rather than using them as intelligence resources) becomes demonstrably counterproductive as a security strategy as well as abandons the defining principles of the Bill of Rights and widely-supported human rights declarations and treaties.

Many readers who don't require a book-length treatment to be convinced of this broad argument will be pleased to see that Cole offers many useful narrower insights as well. He presents a nicely balanced analysis of various provisions of the Patriot Act, supporting specific measures that allow intelligence agencies to confront technological realities as well as better share information, while roundly criticizing other provisions that employ a "guilt by association" logic to prevent anticipated terrorist acts. He also provides a useful antidote to seemingly ubiquitous claims that the artificial "wall" erected between criminal and intelligence investigations was responsible for FBI lapses prior to 9/11. Cole correctly reminds us that the establishment of the Foreign Intelligence Surveillance Act (FISA) court in the late 1970s was designed to make it easier for agents to monitor national security threats by lowering the "probable cause" standard required in criminal cases so long as agents could demonstrate, with "reasonable suspicion," that targets were tied to a foreign power. He sees FBI shortcomings as instead rooted in the Bureau's own organizational makeup, especially its inability to effectively share information and analyze data. Most importantly, Cole proposes a host of solutions — ranging from coordinating the actions of intelligence organizations to fostering dialogue between the government and civil liberties and human rights advocates — that do not require the erection of legal double standards or guilt by association logics.

Much of Cole's argument is couched within his discussion of the "history lessons" posed by national security measures enacted in response to past political crises. While always prescriptively important, his conclusions do at times fall short as a thorough analysis of the dynamics that govern state policy. To be fair, Cole is clear that his goal is not to comprehensively make the historical case. But he does seek to offer a "new perspective" on existing accounts, one that "highlights both the important function that antialien sentiment and tactics have played in the development and rationalization of political repression, and the virtually ineluctable tendency of such measures to extend across the citizen–noncitizen divide." (85) This last phrase is key for his overall argument; for Cole, the temporal link between the targeting of noncitizens and citizens may vary in length, but it is in any case "inevitable." (5)

There are certainly cases that appear to fit this

model. Cole compellingly presents anti-anarchist measures in the early 1920s and the internment of Japanese-American citizens during World War II as ideal examples. Others, such as the FBI's mid-1960s move to extend their counterintelligence activities from Communist-tinged "subversives" to domestic "hate" organizations such as the Ku Klux Klan, seemingly fit the pattern as well. But fully understanding how and why these transitions occurred requires moving beyond the relatively narrow focus on legal decisions that Cole offers here. William Keller has convincingly shown how bipartisan congressional maneuverings enabled the FBI to mobilize their considerable counterintelligence resources, and that these political negotiations provided the key impetus for their repression both of noncitizens in the 1950s and citizens in the 1960s.[1] For Keller and other FBI historians, Congress played a key role during this period not through the passage of new legislation, but instead through the actions of budgetary allocation and other subcommittees, who enabled newly-expanded latitude for intelligence activities. Elsewhere, I have shown how internal organizational dynamics were the driving force behind the FBI's expansive targeting of political dissent through the 1960s, when the Bureau saw itself as effectively autonomous, free from legal policies and constraints.[2] Taking these dimensions into account allow us to see more clearly how political crises — both international and domestic — can serve as precipitating events that yield broad political support for policy shifts as well as the space necessary for opportunistic intelligence agencies to expand their activities.

Enemy Aliens does, however, serve as an essential reminder of why it is in our collective interest to resist policies that restrict the freedoms of noncitizens in the name of national security. It is a book certain to be on even the shortest lists of important post-9/11 writings on the domestic fallout from the U.S.-orchestrated war on terror. And few would be better suited to make this case than David Cole. As he recounts in this book, Cole's very first trial as a young lawyer in the mid-1980s involved well-known political poet and author Margaret Randall, who faced deportation charges under the 1952 McCarran-Walter Act for her alleged support for "the doctrines of world communism" in her writings.

Randall eventually won her case and was allowed to remain in the United States, and Cole has since devoted much of his professional energy to issues of immigrants' rights and constitutional freedoms. His experience with, and commitment to, these issues is evident here. While Cole is certainly a sophisticated legal scholar, his greatest gift may be his ability to craft legal arguments that illustrate the tangible human, rather than solely the more abstract political, consequences of recent Bush administration actions. In so doing, Cole provides plenty of ammunition for the expanding constituency opposing new limitations on the freedoms of both citizens and noncitizens.

NOTES

1. William W. Keller. *The Liberals and J. Edgar Hoover: Rise and Fall of a Domestic Intelligence State* (Princeton, NJ: Princeton University Press, 1989).

2. David Cunningham. *There's Something Happening Here: The New Left , the Klan, and FBI Counterintelligence* (Berkeley, CA: University of California Press, 2004).

A Dangerous Ignorance

REVIEW BY MARC KARSON

NAT HENTOFF'S LIFE-LONG *cause celebre* has been as custodian of the Constitution's Bill of Rights. Energized and frightened by the Bush Patriot Act of October, 2001, he has written an incisive attack on the administration's legislation for depriving Americans of rights which the framers of the Constitution intended to be secure from government violation.

The War on the Bill of Rights — and the Gathering Resistance

NAT HENTOFF

New York: Seven Stories Press, 2003
176 pp. $18.00

The War on the Bill of Rights is a short polemic of 176 pages, but it is not the work of a pamphleteer. It admirably fulfills the standards expected of scholarship. Unlike Attorney General John Ashcroft, who Hentoff declares "seldom cites Supreme Court precedents" in testifying before Congressional committees, Hentoff 's book includes historic Supreme Court decisions and justices' opinions buttressing his thesis. One such case, *Ex parte Milligan* (1866) has particular relevance to today's justifications for wartime restricting of civil liberties. The Lincoln government had contended that in wartime "martial law and military tribunals were thoroughly justified to keep the nation safe." The U.S. Supreme Court, however, later decided otherwise, that the Constitution was law to be observed in war as in peace.

Hentoff points out that "the Bush administration is denying American citizens, designated enemy combatants solely by the President, the essentials of *habeas corpus* and other basic American due process rights as they are being held, incommunicado, indefinitely." Hentoff is also disturbed that Chief Justice Rehnquist wrote in his book, *All the Laws but One: Civil Liberties in Wartime*, that it is difficult to quarrel with Lincoln's suspending of *habeas corpus* during the Civil War.

Hentoff devotes several pages to a discussion of the case of Yaser Hamdi, an American citizen who was brought from Afghanistan to a naval brig where he has been imprisoned incommunicado and without access even to a lawyer, the President having declared him an enemy combatant. This, the government argues, puts him out of reach of regular protections enjoyed by citizens, including *habeas corpus*. As this review is being written, his case and that of Jose Padilla, another U.S. citizen, this time arrested on U.S. soil at a Chicago airport and suspected of terrorist involvement, are being argued before the Supreme Court. Shortly before this hearing both prisoners were allowed to see their lawyers in a closely monitored interview, which Hamdi's lawyer has described as not amounting to access to counsel as mandated in the Sixth Amendment.

Judge Robert Doumar, a Reagan appointee who first heard the Hamdi case in response to an *amicus* brief by the Center for Constitutional Rights and others, was scathing about the lack of evidence provided by the government, particularly in regard to the accused man even having been a combatant, having apparently surrendered to the Northern Alliance before combat broke out. However, the Fourth Circuit Appeal Court, as Hentoff shows, appeared to abdicate all responsibility to check into facts as stated by the government and simply said Hamdi's detention was warranted if those facts were accurate. Hentoff argues that this allows the executive branch to play the roles of all three powers of government that the Constitu-

MARC KARSON *is an emeritus professor of political science at Mankato State University and author of* American Labor Unions and Politics, 1900-1918 *(1958).*

tion separates. To judge by reports of the questioning by Supreme Court Justices during the current hearing, they are torn between wishing not to undermine the government in its fight against terrorism and concern not to endorse total abrogation of the rights of a category of accused Americans, some finding it very disturbing that the government claims the right to hold such persons for questioning indefinitely, there being no indication as to when this unusual war will end.

In his chapter, "The Patriot Enforcers," Hentoff quotes former public officials whose basic concept of patriotism and American individual liberties are akin to his own. In *West Virginia State Board of Education v. Barnette* (1943), Supreme Court Justice Robert Jackson's majority opinion stated:

> Freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.
>
> If there is any fixed star in our constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein.
>
> We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.

Nat Hentoff concludes this chapter by reproaching Attorney General Ashcroft and President Bush for their "dangerous ignorance of the essence of Americanism."

He faults the media who, "with few exceptions," (*The Nation*, the *Capital Times*, *The Progressive*, the *New York Times*, and the *Washington Post*) "are failing to report consistently, and in depth, precisely how Bush and Ashcroft are undermining our fundamental individual liberties." He is also critical of a number of Democratic congressional figures — Tom Daschle, Dick Gephardt, Al Gore, John Edwards, John Kerry, Joe Lieberman, Charles Schumer, and Hillary Rodham Clinton — for not opposing the Patriot bill. This brings to my mind an incident from the early 1950s, when I was a young scholar recently returned from studying under Harold Laski at the London School of Economics. I had a conversation with Senator Hubert Humphrey, whom I had admired for his progressive record in the Senate. I was particularly thrilled at his successful fight at the 1948 Democratic Convention for the adoption of a civil rights plank demanding establishment of a Fair Employment Practice Committee and enactment of federal anti-lynching and anti poll-tax laws. During the conversation I asked him why he voted for the McCarran Internal Security Act that Truman had vetoed. He replied: "Marc, I'm tired of the Democratic Party being labeled soft on Communism." Humphrey was not the first, nor will he be the last political office holder to vote not his conscience but the result his vote would have on his reelection prospects.

Hentoff does a thorough job of listing the Patriot Act provisions that violate civil liberties. He writes: "One of the worst assaults on our liberties in the USA Patriot Act is *not* subject to the sunset clause. It is now a permanent part of our laws. The new act includes 'Sneak and Peek Warrants', as they are cosmetically called now. In J. Edgar Hoover's day, they were known as warrantless 'black bag jobs.' Ashcroft legalizes, with warrants, burglars with FBI badges." As described by the American Civil Liberties Union, this provision 'would allow law enforcement agencies to delay giving notice when they conduct a search. This means that the government could enter a house, apartment or office with a search warrant when the occupant was away, search through her property and take photographs, and in some cases, seize physical property and electronic communications, and not tell her until later.'"

Wiretapping of multiple phones and computers used by terrorism suspects can occur more easily than in the past because multiple court or-

ders are not needed even when more than one jurisdiction is involved. Government agents can listen in on conversations between lawyers and their clients in federal prisons without a prior court order. With a warrant from the secret Foreign Intelligence Surveillance Court, bookstores and libraries can be ordered to reveal names of people and what they are reading, lists can be obtained of books bought or borrowed by persons only under suspicion of having links to terrorists. Both librarians and bookstore owners are prohibited from informing anyone, including the press, that such searches have occurred.

Covert FBI agents can mingle with unsuspecting Americans assembled for religious purposes or public meetings. Hentoff notes: "These eavesdroppers do not need any specific evidence, not even a previous complaint that anything illegal is going on or is being contemplated." We can "be spied upon and put into an FBI dossier because the organizers of the meeting are critical of members of the government, including Ashcroft. We do not expect the casually dressed person next to us to be a secret agent of the Attorney General."

IN THE BOOK'S FINAL CHAPTER, Hentoff criticizes Ashcroft for having "instilled fear not only among immigrants here, many of them with long deep roots and families in this country, but also among citizens across the political spectrum." His last sentence asks: "When will Congress rid us of this despoiler of the Constitution?" Given that he had written in the second chapter that the House approved the Patriot Bill by a 337 to 39 vote and the Senate by 98 votes to one, his question must be considered rhetorical. Nor is it realistic to believe, as he does, that there is "a most remarkable surge of grass roots resistance . . . to the USA Patriot Act and the stream of unilateral abuses of the Constitution by the Attorney General." The majority of Americans seem indifferent to the erosion of their civil liberties and are supportive of a militaristic, nationalist, and right wing regime. Hentoff finds some comfort in that "more than 130 towns, cities, county councils — as well as three states" passed resolutions to show their opposition to the Patriot Act, with university centers such as Ann Arbor, Northampton, Berkeley, Cambridge and Eugene prominent in the list.

There are those who are not alarmed by the Patriot Act's threat to civil liberties. The nation lived through many previous periods of such attacks. They cite past instances such as the Espionage Act of 1917 under which Industrial Workers of the World leaders were sentenced to imprisonment for opposition to conscription in World War I, the Sabotage and Sedition Acts of 1918, the House Un-American Activities Committee in the 1940s and 1950, the McCarran Internal Security Act of 1950, the imprisonment of Communists in 1949 for teaching and advocating the overthrow of the government, and the jailing of the blacklisted Hollywood Ten merely for membership of the Communist Party.

But this overlooks the damage done to individuals such as harassment, persecution, loss of employment and imprisonment, and leads to a complacent attitude that virtue ultimately triumphs over vice and civil liberties always regain their constitutional sanctity. History tells us what has been but such knowledge cannot be taken as evidence that the scenario will repeat itself and civil liberties will always survive. History is legion with examples in Latin America, Asia and Africa that tell otherwise. At a time when the Bush administration says it is fighting a war to establish a democracy in Iraq, it ill behooves it to be seen by the world as damaging constitutional civil liberties at home.

With all credit due to Hentoff for his timely and well-done book, the disastrous policies of the Bush administration require more than books to overcome them. *New Politics* readers will recognize the following words, inscribed on a tombstone in Highgate, London: "Philosophers have always tried to interpret the world. The point is to change it."

Leadership Matters

Review by Michael Wreszin

The title of this volume might lead readers to think it is another chapter in the ongoing critique of black intellectuals in the tradition of Harold Cruse's *Crisis of the Negro Intellectual* or, more recently, Cornel West's chapter, "The Crisis of Black Leadership," in his *Race Matters*. Those are highly analytical and interpretive works whereas this volume is a comprehensive survey and synthesis of the history of black leadership in America's racial struggles since the post-Civil War period. It is not focused on the controversies between black intellectuals, academics, and literary figures. Nor is it a work of original scholarship based on archival sources. It is an impassioned portrayal of the major black leaders and their role and positions in the on going struggle for racial equality in the United States. As such it is a narrative history as well as a reference work. The book will be particularly useful to those teaching courses in African-American history since the Civil War on the high school and undergraduate level.

The Rise and Fall of Modern Black Leadership: Chronicle of a Twentieth Century Tragedy

H. Viscount "Berky" Nelson

Lanham, MD: University Press of America, 2003 400 pp. $55

Nelson, with concise and deft portraits, manages to sum up the stance and political conduct of a vast array of characters. He begins with a careful survey of such nineteenth century leaders as Frederick Douglass, Edward Blyden, Bishop Henry MacNeal Turner, Martin Robinson Delaney, the Reverend Alexander Crummell, Booker T. Washington, W. E. B. Dubois and a host of lesser known figures. In almost every case there is a sharp thumbnail portrait and evaluation of the subjects "leadership" role and perspective. His discussions, while often critical, are fair and evenhanded. He notes correctly that Booker T. Washington had a "multiple personality far more complex than the 'twoness' DuBois would discuss later in the *Souls of Black Folk*." Nelson insists that all of these leaders in the late nineteenth century "were deeply race conscious." He means that they felt a deep responsibility toward the race as a whole that "was demeaned, hated, and reviled by white society." They all understood the racism of American society whether or not their tactics differed, some advocated emigrating abroad, others sought compromises to achieve a circumscribed acceptance, and still others insisted on waging a vigorous fight for total equality.

His point is that in the postwar years there was a unity of purpose. Nelson traces the depressing struggle of black leadership to challenge the rigid color line from what Rayford Logan called "the nadir" of black history with the betrayal of reconstruction. This disaster is followed by the disappointments of the Progressive Era when they thought genuine reform was possible. And then came the appalling exploitation of blacks during WWI that led to the urban riots and lynchings in the war's aftermath. Throughout this grim history, Nelson sees Booker T. Washington as one of the first in a long line of "toadies" and "quislings" who, when push comes to shove, blamed the victims for their travails. But Nelson feels that black leadership from Washington to Monroe Trotter to Dubois maintained a "unity in design and purpose."

There are a few omissions here. Nothing is said concerning Monroe Trotters' angry dispute with Woodrow Wilson or the altercations of

Michael Wreszin *is Professor Emeritus from Queens College and the Graduate Center of the City University of New York. He is the biographer of Dwight Macdonald. He taught African American history on the graduate and undergraduate level for nearly a decade.*

Oswald Garrison Villard with W. E. B. Dubois during the early days of the NAACP. But he is surely correct that there was a growing militancy among blacks and that Dubois spoke for scores of African Americans when he said: "We are cowards and jackasses if we do not marshal every ounce of our brain and brawn to fight the forces of hell in our own land." (83) The leadership was still "race conscious" and fighting for the protection and future of the race in America. But always lurking in the wings, in Nelson's narrative, is the deleterious consequences of success in the struggle. As early as the twenties, despite its being one of the most racist decades since the Civil War, there arose a small, burgeoning black bourgeoisie whose inevitable self interest led to compromising accommodation.

With a rise to middle class status in the leadership ranks came a change in perspective. Nelson has a blanket notion that whenever the black middle class entered the fray it struggled not for the people, not for the "mass of blacks," but for the careerist interests of the middle class. While this antagonism toward the more bourgeois aspirations of some of the leadership is a prominent theme in the historiography of the racial struggles in America, it may be a bit simplistic and even unfair. Often, as Darlene Clark Hine has shown, the maneuvers of black professionals to end segregation in the law, medicine and other fields helped expand and enrich "the arsenal of protest strategies that equipped activists in the classic civil rights movement…" (*Journal of American History*, March 2003, 1294)

Nelson has a tendency to see the fight for integration, much like Harold Cruse, as a middle class struggle. He is drawn to the fiery rhetoric of the nationalists and separatists because they sought to appeal to the truly dispossessed urban black working class and the poverty stricken. He does have a sophisticated understanding of the antagonism between Garvey's movement and the black American leadership. He feels that black leaders "missed a chance to develop a strong intra-racial bond when the black American bourgeoisie's historical disdain for the masses prevented them from visualizing or understanding the broad appeal of black nationalism espoused by Marcus Garvey." (109) He fails to mention that Dubois actually collaborated with the government in having Garvey deported. In his discussion of Garvey's success Nelson never entertains the notion that black nationalist movements in America have often been driven by despair; that when blacks see no hope in achieving genuine racial equality they are drawn to nationalist and separatist movements.

On the other hand he does not seem to see the move for integration politics as based on a strong hope that genuine reform is possible. Nelson simply sees integration as a "middle class" perspective that is often self-serving in its neglect of the poverty stricken black masses. There is in Nelson's racial conception a kind of ambivalence found in Dubois. There exists a tension between the devotion to the race spirit, race identity, the race ideal and the concept of nationality that is becoming a part of the national community. Nelson firmly believes that genuine black leadership, by definition, had to hold loyalty to race as primary.

By the time Nelson gets to the Depression and the New Deal he sees a leadership that has lost its race consciousness and become more interested in self-preservation — "a trait that extended throughout the entire twentieth century." This becomes the unrelenting theme of the book: betrayal and compromise at the expense of the mass of black people. In Nelson's despair one can hear Dubois who in the late nineteenth century, lamented the vacillation in the black community:

> race action is stifled, race responsibility is shirked, race enterprises languish, and the best blood, the best talent, the best energy of the Negro people cannot be marshaled to do the bidding of the race. (Dubois, "The Conservation of Races," in Eric J. Sundquist, ed., *W.E.B. Dubois Reader*, 43)

In Nelson's view, when black leaders adhered to the New Deal objective of bolstering the American middle class they contributed to the development and maintenance of the black bourgeoisie at the expense of the black masses. Beyond rheto-

ric, it is never made clear what possible alternatives there might have been.

Nelson is not a student of black intellectual history. There is little evidence that he has read or is even familiar with the writings of Theodore Draper, Adolph Reed, Stephen Steinberg, Cornel West, Manning Marable, Michael Dyson, Robin Kelley and others who have addressed many of the same concerns in the pages of this journal as well as elsewhere. But Nelson is not focused on the role of black intellectuals; his book deals almost exclusively with the active leadership in the black civil and political rights movements. As a consequence, there is a kind of innocence and, perhaps, professional naiveté to this volume that exposes Nelson's unfamiliarity with the intellectual history of the period and an uncertainty as to his own politics and agenda. At one point he refers to I. F. Stone as a novelist (188) and to Martin Luther King's "Letter from a Birmingham Jail" as a "classic tome." (342 note 17) These apparent weakness lend a kind of strength so the persuasiveness of the volume. There is very little of the backbiting and mean-spirited street fighting that often characterizes intellectual academic debates. Nelson, speaking as an appalled witness to the tragedy he describes, presents his observations, evaluations and outrage in a straightforward way. He struggles to present the political conduct of black leadership by tracing the various positions of the significant participants, and some not so significant, as they confronted the consistent and devastating racism of American society.

While he repeatedly speaks of the neglect of the black masses there is no evidence that he is approaching this from a Marxist or even radical perspective. Perhaps his approach to the material is best described, in the contemporary vernacular, as a kind of homegrown populism and an antagonism toward what he sees as the often self-serving careerism of some of the leadership in various black movements. At one point, when discussing the African Blood Brotherhood, he remarks that despite their radicalism "the organization maintained a strong sense of purpose and joined other black organizations in a demonstration of unity." One wonders why "despite their radicalism?" Does Nelson think that radical organizations don't have a strong sense of purpose? They are usually faulted for their zealousness.

He is very good on the Communist Party's genuine contribution to the struggles for racial justice. He is also aware of the party's opportunism. But here, as well as elsewhere, there are omissions: no mention of Angelo Herndon, the American Labor Party, or Vito Marcantonio. Nelson pulls no punches in his criticism of the NAACP and other organizations that distanced themselves from Paul Robeson as he was harassed by the government for his pro-Soviet positions. On Gunner Myrdal, Nelson shows no familiarity with Stephen Steinberg's leftist critique even though Steinberg's argument would lend support to Nelson's interpretation. Nelson would also reject Myrdal's notion of a "dilemma" concerning race and agree with Steinberg that Myrdal's own evidence "depicts the systematic, willful, and ruthless subjugation of an entire people." (Stephen Steinberg, *Turning Back: The Retreat from Racial Justice in American Thought and Policy*, 41)

By the time Nelson reaches the post-World War II period his indictment of the bourgeois vision of black leadership verges on the shrill. At one point he declares that "with the exception of Reverend Adam Clayton Powell no black leader of the early 1950s championed the cause of homeless, destitute African Americans." When, what he calls, the "black triumvirate" — A. Phillip Randolph, Bayard Rustin and Martin Luther King — made demands on Eisenhower he notes that even here the primary concerns were for middle class reforms. Only brief mention is made of the most relevant desire of working-class blacks; namely, fair employment. The government, they argue, should "remove the barriers which have limited the employment of Negro citizens in all U.S. installations abroad, including the foreign service." Nelson adds that presumably the black masses were hardly contemplating work abroad and that the triumvirate never made a demand for equal access to jobs for working class African Americans in the United States. (192)

Nelson may carry this argument too far when he insists that the 1963 March on Washington failed to address the "needs of the working class and poor." He concedes that Randolph, Rustin and Whitney Young did recognize "that economic stability was essential for the stability of black society." But, as the march's organizers, they refused to make a statement "equating racism with inferior class status." Nelson doesn't mention that the slogan of the March on the official buttons called for "Jobs and Freedom." Nor is there any discussion of the role that the United Auto Workers played in organizing and financing the March. By this time Rustin, Randolph and Reuther were very much focused on the economic issues. Nelson insists that that the only organization to really address the anger "fomenting within black urban youth of the north" was the Nation of Islam. (208) But the NOI and even Malcolm did not organize the masses, and Nelson's assertion that those masses "embraced the slogan" of black power (219) is doubtful. The great majority of African Americans have hardly been radicals or revolutionists. In the United States asking one to be both red and black was too much for the average black citizen.

It is also surprising, and even a bit disconcerting, that in his very favorable portrait of Bayard Rustin he makes no mention of Rustin's homosexuality. Given the harassment of the government and the pressure put on King because of this factor it cannot be ignored when discussing the problems of the movement.

As the narrative approaches the present, few leaders escape criticism for their failures to address the terrible poverty of the black masses. Kweisi Mfume and even Ron Dellums are criticized for not doing enough to help downtrodden blacks. Since there are no examples of success of any substance on this issue, one wonders whom Nelson would tout as a model and what they would have been capable of doing. Even King, on this issue, despite his plans for a poor people's march is taken to task for not accepting Ella Baker's question: "What's the use of integrating lunch counters when Negroes can't afford to sit down and buy a hamburger?" Nelson points out that King didn't accept Baker's question and fired her, thereby alienating many of the student activists in CORE and SNCC.

In a final analysis Nelson does note that King finally understood that accessing a desegregated restaurant was irrelevant if African Americans failed to earn a decent wage. (226) King had learned the importance "of elevating the income and quality of life of the poor black masses" when he led a march through the racist suburbs of Chicago, which Nelson fails to mention, and when he planned a poor people's march on Washington, and when led the trash collectors' strike in Memphis.

THE VOLUME ENDS WITH a harsh critique of black leadership for its ineffectiveness in responding to disenfranchisement during the election of 2000 and for offering very little criticism of those anti-affirmative action academics, Abigail and Steven Thernstrom. It is a depressing narrative since it traces a century of frustration, particularly with reference to the alienation of the black poor. In his epilogue he charges that recent black leadership "failed to deal effectively with the insidious aspects of racism that severely affected the black masses." He closes with an outraged litany of despair:

> Union discrimination prevented black men from acquiring work and confined African Americans to low income neighborhoods. An inferior educational system limited black upward mobility. Unfair application of the law evidenced by racial profiling by law enforcement agencies rendered blacks defenseless and insecure. These realities retarded the development of scores of African Americans and kept the race mired in poverty. Since a disproportionate number of blacks remain poorly educated, jobless, incarcerated, prone to premature violent deaths, suffer from unwed motherhood, survive on welfare, and face lower life expectancy rates than whites, blacks as a race have yet to enjoy the full comforts of citizenship.

Nelson notes that the blame for these horrendous conditions is usually "attributed to the

long-standing victims of racism instead of those who eschew responsibility for or contribute to the servile condition of disadvantaged blacks."

In the current political climate most of these horrendous conditions are not even conceded to exist, and if they are, they are often seen as a product of black pathology. More depressing is the feeling that the solution to these problems seems so hopeless. Nelson concludes with a three part program of what is to be done: strengthen race consciousness, find an effective way to stifle the quislings and toadies who serve the white racists, and develop a black leadership that can presumably be the conscience of the nation. This is an eloquent plea but hardly likely to occur. White America, which is most of America, seems firmly convinced that all is well on the racial front, that contrary to the overwhelming evidence presented in this narrative, the battles for equality have been won and that there is at long last a level playing field, regardless of race. The fact that this is so widely believed and so devastatingly illusory is even more depressing. But it is one with all the other myths that a majority of the population seems to believe. James Baldwin, in a passage from "The Fire Next Time," published first in the *New Yorker* no less, wrote:

> The American Negro has the great advantage of having never believed that collection of myths to which white Americans cling: that their ancestors were all freedom-loving Heroes, that they were born in the greatest country the world has ever seen, or that Americans are invincible in battle and wise in peace, that Americans have always dealt honorably with Mexicans and Indians and all other neighbors or inferiors. . . .

It is nearly a half-century since Baldwin wrote these lines. These myths remain so solid, apparently, that they support our present gangster regime. H. Viscount Nelson's sense of outrage is a welcome relief from the blandness of contemporary rationalizations. The anger and compassion in this volume provide a fine contribution to contemporary college course readings and might even inspire a more committed leadership and scholarship.

Multiculturalism and Science

Review by Mel Bienenfeld

Multiculturalism has become mainstream. Across North America and Europe, school curricula are checked for accurate representation of non-Western and non-white cultures. Research examining the culturally conditioned character of all aspects of knowledge has not only gained a hearing in academic journals, but has sometimes been integrated into popular textbooks from kindergarten on up.

All of this has its limitations, of course. Overt resistance still exists, and debates remain over what constitutes multicultural extremism. Perhaps more importantly, it would be naïve to think that the popularization of multiculturalism has eliminated Eurocentric bias or solved the problem of the relation between the West's intellectual modernism and its continuing history of imperial domination.

How much appreciation have even highly educated Westerners gained of the contributions of other cultures? Are we aware of the degree to which our own achievements derive from other civilizations? An assessment of our knowledge of non-Western science in particular would be important, not least because of the tremendous success of the rational, anti-mystical, and empirical approach to knowledge that the West integrated from about the sixteenth century.

Science writer Dick Teresi's book is a helpful step in this regard. Its strength is its concise yet detailed summary of scientific knowledge and practice in non-Western civilizations from the ancient and medieval worlds. Readers who may be aware that knowledge of astronomy, mathematics, physics, geology and chemistry in ancient Egypt, Mesopotamia, China, India or the Americas reached high levels of sophistication may yet wonder whether this knowledge was scientific: whether it was developed according to a rational tradition of systematic study and careful generalization, was self-critical, and valued credible information from any source above reliance on local authority. Teresi presents a strong case that much of it was.

Lost Discoveries: The Ancient Roots of Modern Science — From the Babylonians to the Mayans
By Dick Teresi
New York: Simon and Schuster, 2002
464 pp. $15

His purpose, however, is more than this. He reports that the consensus among Western scholars has been, and remains, that science originated in the West — specifically, ancient Greece — and that modern science owes little to non-Western cultures. His book's title suggests not just that significant science was done in other cultures, but that Westerners continue to deny that this science played a central role in the development of our own.

Readers may be familiar with the Greece-to-European-Renaissance-to-Scientific-Revolution story (with a passing reference to the Arabs who "kept learning alive" during the Dark Ages). It is still common in popular accounts like those of Carl Sagan or Jacob Bronowski. The layperson may reasonably wonder, however, whether the multicultural agenda has begun to penetrate this scholarly "consensus," and whether perceptions about science beyond academic circles have changed in recent decades.

Teresi's example of a January 2000 *Science* magazine article, in which a timeline of ninety-six of the greatest scientific achievements in history included only two from outside the West, is

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Mel Bienenfeld's *"The Case against Market Socialism" appeared in* NP *no. 19 (Summer 1995).*

telling. The article refers to the period before classical Greece as the "Prescientific Era," in which natural phenomena were explained "within contexts of magic, religion, and experience."[1] But this and other examples Teresi cites do not constitute a systematic analysis of contemporary thought on the matter. For a full discussion of the endurance of Eurocentrism in the history of science, readers must look elsewhere.

In my own field of mathematics, liberal arts students in history of mathematics classes have commonly studied the numeration and arithmetic systems of the Babylonians, Egyptians, and Maya for about twenty years now. Their importance in the evolution of place-value numeration systems, the introduction of zero, and their superiority to the Greek and Roman systems is made clear, as is their role as antecedents to our own system, developed originally in ancient India and used widely by Arab scholars and merchants before Europeans belatedly adopted it. Is this an indication that Western bias is breaking down? A range of scholars have recently investigated non-Western and ancient science, as Teresi's citations show. Have they made no inroads?

Not only does Teresi's attitude seem unnecessarily negative, but his admiration for the achievements of other cultures leads him to reach beyond the bounds of information relevant to his case. In each chapter he freely includes developments whose status as progenitors or anticipations of European scientific ideas are, often by his own admission, highly questionable.

On reading his account of his research for the book, one is tempted to perceive him as a newly-converted zealot. Having begun as a critic of multicultural educational programs that propagated extravagant claims (ancient Egyptians flying over the Nile in gliders, etc.), Teresi set out to write a book proving that there is no evidence of science having been done in non-European cultures. He assembled an advisory team of scientists and historians with a variety of attitudes towards, and backgrounds in, multicultural studies, and wound up rejecting the "Greek origins" hypotheses.

A STORY OF THE "ancient roots of modern science" would make a nice book, quite apart from the question of the continued dominance of a Eurocentric consensus. This book does, in a sense, tell that story, though the picture is muddied by Teresi's more expansive multicultural agenda.

There is plenty to tell, even if we restrict ourselves to discoveries whose connection to future scientific progress is clear. Mesopotamian civilizations beginning in the third millennium BC conducted systematic studies of celestial events, developed sophisticated mathematical procedures for describing and predicting them, and recorded centuries of astronomical observations on their clay tablets. The mathematical notation and knowledge they developed include contributions to arithmetic, algebra, and trigonometry. The Vedic civilization of ancient India (1000-500 BC) used rules for calculating geometrical quantities in the design of their sacrificial altars that led to accurate approximations for irrational numbers, something that the Greeks, with their weak numeration and arithmetic systems, were unable to do.

In the Classic period of Indian civilization (beginning around 500 AD) the astronomer Aryabhata improved the geometric model of planetary motion developed by the Alexandrian Greek Ptolemy. Long before Kepler, Aryabhata suggested that the orbits of the planets were elliptical. He also proposed that the earth rotates, that the moon and planets shine by reflected light, and that the earth's shadow explains lunar eclipses. (His work was translated into Latin in the thirteenth century.)

In a clear example of the crosscurrents of knowledge that enriched the ancient world, Indian astronomers compiled compendia of Greek, Egyptian and Roman discoveries. They established observatories and a school of mathematics and astronomy, developed observational instruments, and compiled tables of information (in a characteristic versified form). Indians from the Vedic through classical periods also made important contributions to metallurgy and industrial

chemistry.

Astronomy was one of the oldest sciences in which a high degree of sophistication was developed, because of the close and evident connection between celestial events and human affairs. Practical-minded Egyptians concerned with accurately predicting the annual flooding of the Nile developed a 365-day solar calendar (complete with leap year), and their organization of the hours of darkness according to the motion of groups of stars is the predecessor of our 24-hour clock. Ancient Chinese astronomers, part of the imperial bureaucracy, established a tradition of recorded observations, developed sophisticated instruments (which were among the antecedents of those used by later Europeans), invented quantitative cartography using a grid system, and completed a socially organized project to estimate the size of the Earth centuries before the Greek Eratosthenes (their estimate, like his, was very roughly accurate).

An advanced, institutionalized astronomical practice and knowledge was also characteristic of New World civilizations. The Maya of Central America were obsessed with their intricate calendar and its relation to celestial events. Astronomical and calendar concerns led to the development of mathematics as a specialized discipline, and Mayan public architecture was designed in part to allow sunlight and shadow to indicate events like the solstices. To the south, the Incas did the same by laying out their cities and towns as a "giant cosmogram," so that the positions of heavenly bodies over particular points defining direction from a central site would indicate planting times and other events.

The accomplishments of Islamic civilization in particular ought to be better known to educated Westerners. By the tenth century, Arab scholars had produced unequaled astronomy texts, developed a system of spherical measurement involving trigonometric functions, invented the algebra of equations, compiled tables for timekeeping, and manufactured sophisticated astrolabes, sundials, quadrants, and compasses. They established observatories to which caliphs attracted "celebrity" scholars whose status then drew others.

Arab "natural philosophers" were familiar not only with Greek scholarship but also with ancient Mesopotamian, Indian and Chinese texts. They debated the nature of matter, time and space, and often took a critical attitude towards Greek (Aristotelian) concepts.

Islamic scientists set world standards in several areas. A master work on optics by Abu Ali al-Hassan ibn al-Haytham (known as Alhazen in the West) drew from Greek thought but tested mathematical consequences of physical hypotheses with careful experimentation and measurement. Part of an empirical tradition not present in deductively-oriented Greek thought (and yet to emerge in Europe), Alhazen became a leading authority. His work permeated political and communications barriers into Europe, where it became the standard until the seventeenth century. Arab chemists isolated important compounds and compiled books of formulas, experiments and apparatuses that eventually reached Europeans.

Both Chinese and Islamic scholars investigated geologic phenomena, the former beginning centuries before Christ. The ancient Chinese classified minerals, measured the intensity of earthquakes, and invented the magnetic compass, later (in medieval times) coming to an understanding of magnetic declination before the Europeans. Chinese in both periods pioneered cartography and understood (more consistently than their European counterparts) that fossils are the remains of extinct creatures. Arabic scientists of the eleventh century determined the specific gravity of many minerals and hypothesized a changing earth via geologic processes like sedimentation, erosion, and earthquakes, while Christians (until the Enlightenment) held fast to the belief that Noah's flood was the only event that changed the earth as God made it.

THE PUBLICATION DATES OF the sources Teresi cites for much of this history range across the twentieth century. If he were able to show that this body of work has not been sufficiently well received, he would have made a strong case for a project to reformulate the history of science. But

instead, his book takes us down a different path. In Teresi's eyes, almost any useful knowledge system of the natural world appears as science, and any insight bearing some similarity to a later result of Western science is an antecedent.

Some of his (implicit or explicit) arguments for expanding the notion of science beyond what the modern tradition accepts as such are quite reasonable and would be interesting to discuss further. Systematic study of nature, for example, has often served religious purposes and been imbued with mystical ideas. The alchemical goal of transmuting substances to spiritually more perfect forms (gold), beginning in both ancient Egypt and China, remained part of chemical practice until the European Enlightenment (though some Islamic scholars rejected it). But it did not prevent the development of a practice of careful measurement, increasingly sophisticated classification schemes, and well-designed apparatuses.

An empirical tradition coexisted in many cultures with prescientific ideas like the Chinese notion of *ch'i* (energy flow), invoked in a purely speculative explanation of phenomena. Chinese astronomers tried to reveal the relationships among the earth, the emperor, and heaven. Precise, rational methodology led to the measurement of time and direction necessary for Muslims to pray toward Mecca at the appointed hour. Astronomy, beginning as the study of the connection between celestial events and human affairs, was linked for most of its history to astrology; in Europe, Brahe and Kepler still cast horoscopes for a living.

Another interesting issue is the boundary between accurate and expansive empirical and practical knowledge, on the one hand, and science, on the other. Here too, a certain degree of generosity towards the premodern is warranted, as is the appreciation of non-Western knowledge systems for their own sake. But an account of all such achievements, interesting and impressive as they may be, does not establish that they ought to be considered among the roots of modern science.

Teresi informs us, for example, of North American stone structures and earth mounds that may or may not have been sun clocks, depending on interpretation; admires the astronomical and geographic knowledge of oceanic navigators; discusses the careful categorization of soil types in East African cultures and the extensive knowledge of herbal pharmacology among Amazonians and West Africans. Beyond appreciating these knowledge systems on their own grounds, he often strains to conclude that many of them prefigure Western scientific developments.

He quotes an anthropologist to the effect that American Indians understood geological processes "as metaphor." In a creation myth of the Shoshone of present-day Wyoming, Ocean Old Woman carries her children into the mountains in a water jug. "One possible interpretation," says Teresi, is that the sea has had an influence on mountains a thousand miles away. If so, this is accurate geological knowledge, but Teresi neither discusses how the Shoshone may have come to this conclusion nor proves that they picked up clues missed by Europeans.

Teresi's advisors (whose comments he quotes) tell him that to interpret classical Indian astronomical texts as espousing a heliocentric universe and universal gravitation is "a stretch," but he seems unable to resist making a point of mentioning it anyway. In Hindu and Buddhist philosophical systems, he finds anticipations of atomic theory, a wave concept of matter, and the vibration of molecules, in spite of skeptical comments made to him by one of his physics advisors. A tenth-century Islamic philosophical movement (Ikhwan al-Safa) held that a void was impossible, that matter or spirit always fill space; Teresi points out that according to contemporary quantum mechanics particles continually pop in and out of existence even in "empty" space, and concludes that quantum mechanics is "very Ikhwan in spirit."

Sometimes Teresi allows himself to comment freely without advice. Mentioning the different herbal vibrations of energy associated with particular Yoruba deities, he says "We believe something similar today. Every atom (or molecule) vibrates at specific frequencies" (294). His geology advisor, though, seems as enthusiastic as Teresi when she refers to the Hawaiian notion that is-

lands float above the ocean floor as "an impressive early statement of the gist of the continental drift idea" (273).

IN HIS CHAPTERS ON cosmology and physics, Teresi critiques modern scientific practice itself. He begins with a comparison of creation myths from many cultures. Before describing each in detail, Teresi summarizes them in a table, perceiving in each one a similarity to a corresponding twentieth century cosmological theory. In this context he cites a 1985 work by physicist Edward Harrison arguing that we are as culturally fixated on the dominant cosmological theory — the so-called inflationary big bang — as any society has ever been. Harrison, at least according to Teresi, considers the universe ultimately unknowable and our scientific perception of it as only one in an ongoing list of culturally specific "masks," ways of structuring reality.

Teresi then charges that current cosmological theory is driven only by the cultural need to structure reality and by considerations of logical self-consistency. He quotes experimental scientists to the effect that evidence for it is weak at best and impossible to gather at worst. A lay reader is hard pressed to decide whether this is the case, especially since the concepts are not easily accessible.[2] The ancients combined science with religion and social constructs, Teresi remarks; "that we have done any differently is a delusion…unlike physicist or chemists, who welcome threats to their paradigms, modern cosmologists…[defend] their chosen model against all evidence" (191).

Cosmologists, of course *are* physicists, and most would certainly argue that they seek experimental verification as much as any scientist.[3] But in his section on physics Teresi makes similar charges, this time inveighing against "our society's, and the media's, obsession with theory" that purportedly encourage the development of ever more encompassing theoretical frameworks at the expense of experimental attempts to refine, verify or dispute existing theories.

This particular peeve has little to do with "lost discoveries" that may have rooted Western science. Contentiousness between theorists and experimenters, implied by some of Teresi's anecdotes, may indeed exist, though it is hard for lay readers to evaluate its meaning by reading a few short pages. Regarding "media" bias toward the theoretical, a casual perusal of the *New York Times* science pages (for example) would reveal that stories on empirical discovery (photos from the Hubble telescope, decoding the human genome, medical research, etc.) are featured as often as are grand ideas like string theory or the fate of the universe. Teresi would have done better sticking to a narrower theme.

THE MOST INTERESTING ASPECT of Teresi's book is viewing the history of science as part of the broad sweep of cross-cultural development. The last chapter on technology is perhaps the most fun, reminding the reader that aspects of technical culture taken for granted over centuries originated somewhere, often in unexpected contexts. Educated readers may be aware that paper, printing, gunpowder, guns, the stirrup, the compass, and porcelain originated in China. But the Chinese are also responsible for canal lock gates, fishing reels, hot-air balloons, the umbrella, mechanical clocks, paper money, the iron plow, and many other innovations.

The earlier Sumerians already had extensive knowledge of smelting, domestic animals, writing, canals, dykes, wheeled vehicles, military technology, and hydrology. The Egyptian state had a Department of Irrigation; Muslim progress in grain milling included the invention of the windmill; New World civilizations (in addition to their impressive architecture) first vulcanized rubber, laid out cities in grids, and (in the case of the Incas) developed a planned system of tunnels and bridges. Ancient South Asians maintained a remarkably consistent system of weights and measures over centuries. The bathrooms of an Indian city of 2800 BC had toilets with wooden seats draining through standardized plumbing into a sewer system. Classical India was famous for its steel, and Indian textiles were superior to the European until the Industrial Revolution.

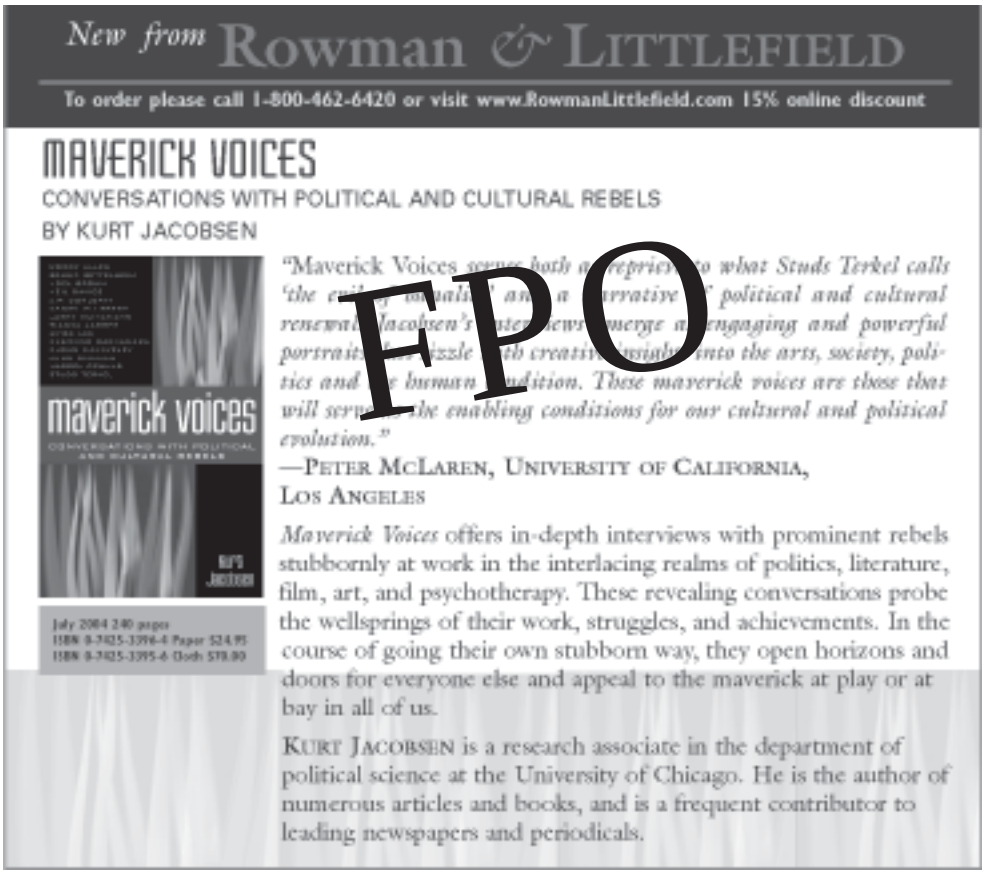
Technology is not necessarily science, and this entire chapter can be seen as peripheral to Teresi's argument. But it should serve to ground the idea that, whatever the merits of the case regarding the cultural gaps in contemporary history of science, we can use more good popular literature (like Teresi's, even with its shortcomings) on the development of knowledge across cultures.

NOTES

1. "Pathways of Discovery," *Science*, January 14, 2000.

2. Brian Greene's *The Elegant Universe* (1999) and *The Fabric of the Cosmos: Space, Time and the Structure of Reality* (2004) contain excellent readable introductions to current cosmological science.

3. See Greene's *The Fabric of the Cosmos* for a discussion of current attempts at experimental verification of string theory.



Diminishing Welfare: A Review Essay

REVIEW BY BETTY REID MANDELL

NEOLIBERALS HAVE MADE IT CLEAR they want all the money they can get for business investment and profit. One way they try to get it is to cut back on state benefits for social needs and to privatize social services. How successful have they been? In the European Union there is much talk about the "crisis of the welfare state." Is there really a crisis? The essays in this edited collection seek to find answers to these questions.

Diminishing Welfare: A Cross-National Study of Social Provision

EDITED BY GERTRUDE SCHAFFNER GOLDBERG AND MARGUERITE G. ROSENTHAL

Westport, CN: Auburn House, 2002
408 pp., $28

There is a wealth of interesting information in this book, with chapters on nine countries — the United States, Britain, France, Sweden, Italy, Japan, Hungary, Germany, and Canada — along with an introduction and conclusion.

Gertrude Goldberg's introductory chapter traces the history and theory of welfare states. Chancellor Otto von Bismarck created the first national social insurance program in Germany in the 1880s, fearing the militancy of German workers and hoping that a state-supported welfare system would be insurance against socialism. He hoped that it would cause the social democrats to "sound their siren song in vain."[1] Other Western European countries followed the Bismarckian model of welfare in their social insurance provisions. In this model, existing hierarchies were maintained. Civil servants were treated more favorably in order to secure their loyalty. Class divisions were consolidated by a divide-and-conquer strategy of providing distinct programs for different class and status groups.

Britain followed a different path in the 1940s with a plan devised by Sir William Beveridge under the Labour government. British citizens had suffered a severe economic depression, followed by a devastating war, and the Beveridge plan promised cradle-to-grave security, based on the same principles of pooling and sharing as the emergency measures of the war. The plan included universal health care, comprehensive social insurance, national assistance programs, and a children's allowance, as well as measures to maintain employment and prevent mass unemployment. Means-tested assistance to the poor was to continue but be reduced as insurance coverage was enlarged. In contrast to the Bismarckian plan of divide-and-conquer, the British plan emphasized solidarity. It did not aim to lessen inequality, but it sought to provide an income floor below which no one could fall.

Goldberg says that the welfare state should be a permanent feature of capitalism in order to maintain stability. Claus Offe described the welfare state in Western Europe as "an irreversible structure, the abolition of which would require nothing less than the abolition of political democracy and the unions." (*Contradictions of the Welfare State*, 1984) Yet history shows that a strong welfare state is not irreversible, as it has been attacked and weakened during the last two decades. James O'Connor predicted as much, writing in *The Fiscal Crisis of the State* (1973) that the two basic functions of the capitalist state, capital accumulation and legitimation, are incompatible — social welfare, which facilitates legitimation, will inevitably give way to accumulation.

BETTY REID MANDELL *is a member of the* New Politics *editorial board. She has been a welfare rights activist since the 1960s and is co-author of* Introduction to Human Services: Policy and Practice *(2002).*

Ways to Cut

HOW DO NATIONS cut welfare? Let me count the ways. The social welfare scholar Paul Pierson has identified three ways for states to retrench welfare provisions: (1) shifting benefits from universal to means-tested; (2) shifting responsibility from the public to the private sector; and (3) revising benefit and eligibility rules to achieve a qualitative change in the nature of the particular program. (157)

I would add six more to this list: (1) stigmatizing the program through the mass media, thereby reducing political support and inducing fear among potential recipients so that many do not even apply; (2) not publicizing the program so that potential applicants don't even know the program exists; (3) making the program physically inaccessible; (4) enforcing moralistic behavioral requirements that people are either unwilling or unable to comply with; (5) bureaucratic obstructionism which prevents or discourages people from applying, and which illegally removes people from the rolls; and (6) devolving responsibility for welfare from the federal to the state and local level.

In the United States, the means-tested AFDC program (Aid to Families with Dependent Children; now TANF or Temporary Assistance to Needy Families) is a prime example of social control and bureaucratic abuse of power. Behavioral requirements, always a prominent feature of the old AFDC program, are more punitive than ever under TANF. Assistance is limited to five years. There is a work requirement, and if parents don't find a job they are forced into "community service" (workfare) programs, without the protections of regular jobs such as a minimum wage or the right to strike. Many parents are "sanctioned" (have their benefits reduced or ended) for failure to comply with bureaucratic rules, often due to a bureaucrat's error.

Many states instituted the Family Cap program, which denies assistance to children born after the family is on TANF. Teenage parents are subject to rigid supervision of their school attendance, and required to live with an adult or in a special program in order to obtain assistance. Parents are denied assistance if they have not had their children immunized. Some states have threatened to sterilize women who receive benefits. Programs have been funded to encourage marriage. No more than one year of education and training is allowed, and that has to be vocational.

The United States has always delivered many of its social services through private organizations, but the 1996 welfare reform allowed a massive increase in privatization of public services. Lockheed and IBM are among the large companies contracted to administer welfare services.

In the United States, the very word "welfare" is pejorative. U.S. officials have done a masterful job of stigmatizing welfare. President Reagan's story about the non-existent "welfare Cadillac" helped to pave the way for the eventual demise of AFDC as an entitlement.

Many welfare offices are inaccessible by public transportation, and many welfare recipients don't have cars. Welfare has been made even more inaccessible by closing welfare offices. As I write, welfare advocates successfully fought against closing a welfare office in Revere, Massachusetts. In the past decade, about two-thirds of the 60 offices in the state have been closed.

Bureaucratic obstructionism includes long waits in the welfare office, calls not being taken or returned, disrespectful treatment of clients, requirements of unnecessary documentation, complex application forms, worker and computer error. All of these are rampant in U.S. welfare offices. An example of excessive bureaucratization was the food stamp application form, which was 16 pages long until advocates persuaded officials to cut it down to 4 pages.

Devolution occurred in the United States with the passage of the PRWORA (Personal Responsibility and Work Opportunity Reconciliation Act), which ended welfare as an entitlement and turned it over to the states in the form of block grants. This has resulted in decreased spending on welfare. The Bush administration is currently proposing to give Medicaid to the states in the form of block grants. It is not always the case,

however, that welfare is more generous when it is controlled by the federal government. In France, for example, Paris wants centralized control of the various work-based pension programs in order to cut back benefits more easily, as workers in specific sectors of the economy have militantly opposed cuts in their pensions.

Social welfare scholars agree that residual, means-tested, social programs lose political support because they separate the more wealthy and middle class from the poor. Means-tested programs give administrators discretion over cases, make a distinction between the "deserving" and the "undeserving," and are vulnerable to bureaucratic abuse of power. They also spend more on control, rather than actual provision.

States often cut back programs by stealth, cutting first the programs that have weak or no political support before attempting to cut the more politically protected programs. The United States has been cutting the Social Security program gradually and without much media attention. Amendments passed in 1977 during the Carter administration altered the basis of calculating benefits so that claimants in 2000 received only 43 percent of average earnings, in comparison to 54.4 percent in 1981. The Reagan administration removed survivor benefits for post-secondary students between the ages of 18 and 22. A recent amendment initiated a gradual increase of the full-benefit retirement age from 65 to 67 between 2000 and 2007. (46-47)

Full Employment

FULL EMPLOYMENT IS A dominant theme of this book. Goldberg says that full employment is a necessary base for a strong welfare state. "Full employment was part and parcel of post-war welfare states, particularly the most advanced ones." (1) Full employment was important in the Beveridge plan because it would make it easier to finance welfare when more people work and pay taxes, and fewer benefits are needed to pay for the costs of unemployment. Beyond these fiscal considerations, Beveridge believed that full employment was a benefit in its own right as it would give people the opportunity of useful service. Goldberg clearly agrees with this, as she details the physical and psychological problems suffered by unemployed people.

Full employment was part of post-war welfare states, particularly the most advanced ones.

Britain continued its official commitment to full employment through the 1960s, even though it never actually achieved it. The U.S. Congress, however, rejected a full employment policy in the 1940s in favor of maximum employment with price stability. In the two decades after the war, the unemployment rate of most industrialized countries was relatively low. Some social welfare scholars refer to this period as the "Golden Age" of welfare. Patricia Evans says that this was probably an overstatement, but "the so-called Keynesian welfare state appeared to marry, in principle at least, the broad objectives of capitalism and social protection with a fair degree of compatibility." (75)

However, the concept of full employment during this period was essentially a gendered one. Welfare programs initially were predicated on the concept of a "breadwinner's wage," assuming that the main wage earner in the family would be the man while his wife would stay home to care for him and his children. "In the 1960s, when nearly full employment was reached in a number of countries, the labor force participation of women, though varied, was low in all of them." (12)

Goldberg argues that one reason Western capitalist countries expanded welfare during the Cold War was to compete with "Communism's combination of full employment and comprehensive benefit systems."(9) She also says that the lapse, or even demise, of the commitment to full employment occurred because capitalism "no

longer has to compete with a system that provided full employment and a modicum of economic security, if not freedom and prosperity." (351) Maybe European countries were competing with Communism in their welfare states, but the main competition the United States engaged in was the arms race. In her muted praise of full employment under Communism, Goldberg does not mention that this was achieved at the price of forced labor and slave labor camps in Soviet Russia. After all, slaves in the United States before the Civil War also had "full employment."

Welfare for Caretakers

WAGED WORK IS GOOD for mothers only if it is preferable to the alternatives. Many mothers in Stalinist countries would have preferred to stay home rather than work long hours in factories. Stalinist countries, which wanted women in the work force, glorified women workers while minimizing the importance of their child caring tasks. While Goldberg argues for redefining work to include pay for vital family care of the very young, the frail elderly, and the disabled, she also says that "welfare," as it is now understood in the U.S., would be residual (means-tested) in a full-employment economy. She implies that this is a desirable solution for parents who stay home to care for their children. Yet she knows that residual programs are politically vulnerable and subject to cutbacks and stigmatization. For example, there is both a universal and a residual program for children in the United States — the universal Social Security and the means-tested TANF. In contrast to the bureaucratic nightmare and stingy benefits of TANF, Social Security pays benefits to over 3 million children and their parents without imposing any behavioral requirements, and at a much lower administrative cost than TANF. Most U.S. citizens are not even aware of this fact, while they have been bombarded with propaganda about "welfare."

Goldberg does not explore the possibility of a universal program for caretaking in the United States, even though some of the countries described in the book have such a program in the form of a Children's (or Family) Allowance. When Canada eliminated its Children's Allowance in 1993, the means-tested program that replaced it began to carry the same stigma that is so pervasive in the TANF program.

There have been various proposals to create a universal program for caretakers. The Committee of 100, a group of academics including Gwendolyn Mink, has called for a caretakers' allowance. Theresa Funiciello, author of *Tyranny of Kindness* (1993), has recently proposed a refundable caretaker's tax credit that would provide a tax refund for caretakers of children, the aged, and the disabled. This would be a universal program that would benefit the middle class as well as the poor, and so would have more political support than the current welfare program. It would bypass the present welfare bureaucracy with its high administrative costs and its abusive treatment of clients.

There is a small but militant international Wages for Housework movement with offices in Los Angeles and London which calls for wages for caretakers. During the 1960s, the economist Robert Theobald proposed a guaranteed annual income and the National Welfare Rights Organization made that one of their goals. A type of guaranteed annual income called a basic income has been discussed in the European Union.

Conservatives and neoliberals are more attracted to programs that encourage individual ownership, using the mantra of "self sufficiency" to publicize them. These supplement a family's income and so give some support to caretakers, but they cannot take the place of a program that provides a family's total income when the family breadwinner is unemployed. The Individual Development Accounts (IDA) is one such program. These match public money with private savings, creating a nest egg for an individual to buy a house, start a business, or go to college. There are a few IDA programs in the United States, particularly in public housing. In his campaign for the presidency, Joe Lieberman proposed IDAs.

Britain's Tony Blair has called for an "ownership society." Under the Thatcher government, public housing was privatized beginning in 1981 with a "right to buy" policy that gave tenants op-

portunities and incentives to buy their own homes. This took about 2 million dwellings out of the public sector. This was a popular policy and many people benefited from it, but many could not afford to buy, leaving only the very poor in public housing, and it reduced the supply of public housing from 30 percent of all housing in 1981 to only 19 percent in 1996. Both President Clinton and President George W. Bush have touted the benefits of home ownership and supported policies to implement this. Asset development is another approach. The British Parliament in 2003 established what has become known as "baby bonds" — small government financed trust funds for each newborn in the country. Small sums will be deposited and invested for each newborn infant, and available for withdrawal at age 18. In 1998, then-U.S. Senator Robert Kerrey introduced similar legislation to create what he called "KidSave" accounts, which would guarantee every child $1,000 at birth, plus $500 a year for children ages one to five, to be invested until retirement.

An Overview

GOLDBERG CONCLUDES THAT there is a convergence of welfare state policies, "given the resurgence of classical liberalism or neoliberalism and its dominance in much of the capitalist world today." It might be more accurate to say that due to U.S. hegemony, large nation-states are developing parallel social policies, following what they call the "U.S. model."

Unemployment and underemployment have risen in the past decade in all the countries studied and contingent work has risen in a number of the countries. Inequality has also risen, and poverty has risen in six of the eight countries where data was available. Single mothers had high rates of poverty in all countries but Sweden.

Regional and international organizations have put pressure on welfare states. The Canada-United States Free Trade Agreement (FTA) of 1989 and the inclusion of Mexico into the North American Free Trade Agreement (NAFTA) in 1994 put a downward pressure on Canada's social benefits. The European Union exerts pressure on all member countries through its requirement that to be eligible to join the EMU, a country must limit its net new borrowing to 3 percent of GDP. This has led to cuts in social welfare in several European countries. (However, Germany and France have violated the limit.) Japan's system of import restrictions and subsidizing farmers is beginning to break down under strong pressure from other countries (especially the United States) and the World Trade Organization. Japan will be opening up its markets, and this deregulation will hurt small businesses. The government promised to open up the agricultural market as a result of the General Agreement on Tariffs and Trade (GATT).

Hungary's deep indebtedness makes it particularly dependent on foreign creditors, and the International Monetary Fund, in particular, has pressed for an American-style residual welfare state and workfare strategies. When the World Bank was displeased with persistent social security deficits, it refused release of a $2 million loan earmarked for transforming social security until changes that it desired were implemented.

There is much talk about a "third way" for the welfare state. The Labour government under Tony Blair describes itself as the "third way," distinguished from "Old Labour" and the "new Right." It prefers a greater role for the market rather than "Old Labour" policies of social and economic planning, government ownership of key industries, and welfare collectivism. "The ideology of the 'third way,' as advocated by Chancellor Gerhard Schröder and Britain's Tony Blair, is that the current social security benefits might still be too generous and might produce an inactive attitude on the part of beneficiaries. The view that social welfare expenditures are an obstacle to innovation, growth, and employment has even gained influence among leftist politicians." (241) At a recent summit meeting. Gerhard Schroeder, Jacques Chirac, and Tony Blair, "called for a fresh push to cut red tape, promote new technologies, and avert a crisis in social programs that Europeans hold dear."[2]

In Sweden, a deficit-reduction austerity pro-

gram contributed to a rise in unemployment which brought the Social Democratic Party (SAP) back to power in 1982. They proclaimed a "third way" to recovery, to distinguish it from the Keynesian approach of the Mitterand government in France and the neoliberal approach of the Conservative British government under Margaret Thatcher.

Social welfare scholars debate the issue of whether, or how much, the welfare state has been retrenched in the last 20 years (the time period that this book explores). Paul Pierson believes that retrenchment is difficult because the welfare state develops powerful constituencies of people who fight against cutbacks in programs that they have come to rely on. Pierson believes that "the mobilization of labor or the working class and its ability to form coalitions with other classes are key variables determining differences in welfare state development among advanced nations." (15) It is true that countries such as Sweden and France, where the welfare state has been strong, have had a long tradition of labor militancy and have been slow to retrench. Goldberg states that Sweden's welfare state in the 1980s seemed impregnable and at that time even the conservative Chirac wouldn't tackle the welfare state in France. In the United States there has been little resistance to cutbacks in the means-tested AFDC, but there is strong opposition to cutbacks in the universal Social Security, which is sometimes called "the third rail" of politics — touch it and you die.

The authors of this book believe that the welfare state has, with some exceptions, been slowing since the 1970s and during the last two decades of the 20th century has been reversing its progress. There is a growing privatization of social services, and a wider reliance on individual responsibility with a heavy stigma on "dependency." Even when budgets for social welfare were increased, they were not increased at the same rate as before and increases were not sufficient to meet increased need such as the growing numbers of old people, single parents, or the unemployed. A larger proportion of welfare budgets has been going to pension systems as the population ages in industrialized countries, and to medical care as medical care and medicine get more expensive. Both the quality and the amount of social services have been cut back in many countries.

> There is much talk about a "third way" for the welfare state.

There have been trends toward replacing universal income benefits with selective, means-tested provisions, and toward incorporating social benefits into the tax and employment system, favoring the working poor over people without paid jobs. (The Earned Income Tax Credit in the U.S. is an example of this.) In many countries there are growing disparities between the rich and the poor and increasing poverty, especially child poverty. Contingent work and low wages have in-

Courtesy of Jeff Danziger (www.danzigercartoons.com)

creased, and women have been hurt the most. Transfer payments are not as effective at eliminating poverty as they once were, although in many countries they have successfully reduced the poverty of the aged. I will summarize the authors' findings on the nine countries studied.

The U.S. Case

THE UNITED STATES has been described as a reluctant welfare state, and as a semi-welfare state. It provides the least benefits to parents and the unemployed. It has the highest poverty rate, and the highest rate of inequality of income and assets. The poverty reduction effect of transfer payments is the lowest in the U.S., compared to the other eight countries studied. The U.S. has subscribed wholeheartedly to a neoliberal ideology and has privatized welfare programs the most. In contrast to the universal health care systems of Canada and the UK, the U.S. has a private system that costs more than the public systems in Canada and the UK and does not provide any health insurance for about 44 million people. The prescription bill recently passed by the U.S. Congress helps pharmaceutical companies more than old people.

Race has played a leading role in stunting the development of welfare programs in the United States.

Race has played a leading role in stunting the development of welfare programs in the United States. When Social Security was first established in 1935, it mainly covered workers in heavy industry, most of whom were white males. Southern legislators made sure it did not cover domestic work or agricultural work, where most black people were employed. Southern legislators and welfare officials also kept the AFDC program from covering many black families. It was not until the 1960s and early 1970s that large numbers of black families received AFDC, as a result of a powerful welfare rights movement. Yet the media has conveyed the mistaken impression that welfare is mainly a black program, and racism has helped to impede the development of a more humane program for parents and children.

Unions in the United States have generally bargained for health care and other services as private occupational benefits for their members. They were unable to achieve universal health care or other universal programs like those in Europe. Retrenchment of the United States welfare state began under President Carter, and continued under President Reagan. The most drastic retrenchment occurred in 1996 with the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), signed into law by President Clinton who had vowed to "end welfare as we know it." This ended AFDC as an entitlement and sent the money to fund TANF in block grants to the states. It gave the states great discretion in administration. It encouraged privatization, which helped to weaken state unions. It forced women into low-wage jobs, increased hunger and homelessness, and lowered the wages of everyone in the unskilled work force. It encouraged "faith-based" social services. TANF was most cruel to immigrants, eliminating their right to TANF, food stamps, and Supplemental Security Income (SSI). Some of those cutbacks have since been somewhat softened.

Social Security has been under attack for some time, but the current attack is distinguished by a well-financed campaign of Wall Street and corporate America to have all or part of the trust funds invested in the stock market or other private assets instead of government bonds. The attack was muted somewhat when the stock market crashed, but President Bush and other conservatives are still pushing for privatization of a portion of Social Security.

Recently Alan Greenspan told a congressional committee that Social Security benefits for baby boomers should be cut to help reduce the growing budget deficit. The economist Gilbert Metcalf

calls this the third move in the Social Security Shell Game.[3] The first move in the shell game occurred over 20 years ago when payroll taxes were raised, which fell more heavily on working people than on the rich because payroll taxes are only paid on wage and not capital income and because most payroll taxes only apply to income below a limit ($87,000 in 2003). The second move in the shell game occurred with the Bush tax cuts, which helped the rich more than the less affluent and increased the federal debt, thereby obliterating the Social Security surplus. If the cap were removed and if the rich had to pay Social Security taxes on all their income, as they do for Medicare, that would bring in $80 billion annually, more than enough to cover anticipated social Security shortfall.

There have been cutbacks in unemployment insurance, a federal-state program. The automatic extension of benefits by the federal government when unemployment is high was eliminated during the Carter and Reagan regimes and replaced by emergency extensions when unemployment is high. There has never been a federal means-tested program for people who have exhausted unemployment benefits. Many states have completely eliminated their general assistance programs that provided cash to the unemployed. Food stamps are the only assistance that they can get, and they too have been cut back.

There have been severe cutbacks in housing assistance. Currently, there is a freeze on Section 8 vouchers that subsidize private rents for low-income people. Childcare has also been cut back. There is no guarantee that a parent who leaves the TANF rolls for a job can get childcare. However, they get priority over the working poor, and this has exacerbated the division between the welfare poor and the working poor. Spending on the mentally ill has decreased by one-third since the 1950s. More mentally ill people are in prisons than in hospitals.

There have been increases in social welfare through the tax system. One is the Earned Income Tax Credit, which began in 1975 and has expanded since. It provides refundable benefits to working people regardless of whether they have paid taxes. EITC now spends more federal money than was budgeted for AFDC in the late 1990s or than its successor TANF is actually using. It raised more children out of poverty in 1996 than all other government programs combined, although it provides less money to the very poor and nothing to those without money. Employers like the program because it subsidizes wages and may reduce the incentive of workers to fight for higher wages. It has functioned more to offset the decline in wages than to better workers' conditions. However, in 2003 the government began an attempt to cut back the EITC through stricter eligibility requirements and investigation of claimants.

Welfare activists in the United States have been struggling to improve the PRWORA, which was originally scheduled to be reauthorized in 2002. The reauthorization effort became stalled in a political tug of war between Republicans, who wanted tougher work requirements, and Democrats, who wanted increased federal money for childcare and education and training. The Bush administration's proposed funding is woefully inadequate to the proposed need. There is hope that John Kerry as president might substantially improve the welfare system, but there is little reason for confidence given that he voted for the 1996 welfare reform bill.

The Canadian Case

IN HER CHAPTER ON CANADA, Patricia M. Evans reports that Canada has traditionally provided a stronger safety net than the U.S., yet there have been severe cutbacks. "The traditional protection offered by transfer payments has declined, and the only universal program that remains is Medicare, Canada's health insurance program." (76) The cuts fall most heavily on women, who not only have lost their jobs in the social service sector, but receive fewer benefits and must increase their unpaid caring work as services are reduced. Unemployment has risen, fewer workers are working full-time and full-year, and higher-paid workers are working longer hours. Wages have declined

and inequality has increased. There have been severe cuts in unemployment insurance.

The federal presence in social programs began to diminish in 1990. User fees in health care have increased and coverage has been cut back. Cutbacks in hospital and nursing care increase the reliance on relatives and friends (mostly women) to provide care in the home. There is growing public concern about the "two-tier" health service, in which the affluent can buy health care but others must rely on the public services. The political fallout from the cuts to health care has been serious, and both federal and provincial budgets have increased payments for health care since 1999.

The social assistance program for families looks more like that in the U.S., with a new emphasis on workfare, more intensive investigation of recipients, and more stigma on "welfare." Benefit rates were frozen in the 1990s. The majority of recipients have experienced benefit cuts and single unemployable people have been hardest hit.

By the time the Chrétien government was elected in 1993, universality had ended in child and elderly benefits. This eliminated a citizen's right to income support. However, its income-tested benefits still reach a large proportion of the population. In 1995, nearly 4 of every 10 elderly individuals received a full or partial income-tested supplement in addition to their basic Old Age Security. That reduced the poverty rate of the elderly to one-third the U.S. rate. The Canada Child Tax Credit provides income-tested benefits to about 80 percent of Canadian families with children. Although the principle of universality has been eroded, Canada's social provisions are still much stronger than those of the United States.

The United Kingdom

IN "DIMINISHING WELFARE: The Case of the United Kingdom," Jane Millar notes that Margaret Thatcher's right-wing anti-welfare rhetoric mirrored that of Ronald Reagan. Both Reagan and Thatcher wanted to weaken the safety net so that workers would have to take any job, no matter how low the wages or how demeaning the work.

Conservative policies in the 1980s and 1990s increased the number of poor people and worsened their situation. Wages have become increasingly unequal. There has been a high level of long-term unemployment, a decline in full-time employment, and an increase in contingency and part-time jobs. These problems fell hardest on women, older workers, the youth, and ethnic minorities. Labor market deregulation reduced both trade union and individual rights. And there has been increased stigma against the unemployed.

Privatization has taken particular hold in public sector employment, housing, and pensions. Unions successfully challenged the legality of some privatization policies under a 1977 European Directive that mandated that the conditions of workers should have been protected as they were transferred from the public to the private sphere. The Conservatives fought the unions, but the Labour government accepted that the law had been broken and reimbursed up to 1,500 local government workers.

Pensions have been partially privatized. When the government gave people a choice of either the government pension or a private "contracted out" employer-provided scheme, both employers and unions resisted this. The government changed its strategy, providing substantial incentives to opt out of the government pension and into private pensions. While this halved the future cost of the government pension, it increased the total cost to the government through lost revenues and incentive payments. There has been much corruption in the private pension plans. Changes in Social Security have included reductions in benefits and a substantial shift from national insurance to means-tested benefits to provide more targeted support to those most in need. Stringent work requirements were introduced, but substantial benefits were added for the working poor, including the child tax credit and family allowance.

The Conservative government proposed to abolish some benefits to lone parents and Labour decided to go ahead with these cuts. There was widespread opposition and it caused considerable adverse publicity. The savings were relatively small, but the move signaled that the Labour govern-

ment would not give priority to improving benefit levels for those not at work. Its main thrust was to improve benefits to those in work or to help nonworkers move into work. It claims to be "promoting opportunity rather than dependence." (174)

In 2004, Tony Blair proposed to charge a $5400 tuition fee at public universities, a system with a proud tradition of public funding. He met severe opposition from the ranks of his ruling Labour Party. This, along with opposition to his joining the U.S. in the war on Iraq, came close to toppling the government. However, he survived the crisis when Parliament voted for the tuition increase by a narrow majority.[4] (316-311)

Italy

ENRICA MORLICCIO, ENRICO PUGLIESE, and Elena Spinelli discuss the case of Italy. When the fascists reigned from 1922 to the end of World War II, they destroyed mutual aid societies and cooperative organizations and reduced the effectiveness of programs that had been created in an earlier period as a result of union agitation.

Between the 1950s and the 1970s, Italy's welfare system retained much of its fragmentary nature, but also adopted some universal programs such as health care. The first democratically elected Italian Parliament after the war debated between a universalist system, which saw the citizens as the base of the welfare system, and the meritocratic/worker-based approach, which saw the workers and their paid contributions as the base. The unions favored the work-based approach, which was adopted. According to this view, needy citizens not covered at work would have recourse only to social assistance. The unions complain that their work-based contributions have been used for social assistance for people who have not made contributions, particularly for the unemployed in southern Italy. This has created some resentment between the industrial workers of the north and the agricultural workers of the south.

In contrast to European societies where the industrial working class generated pressures from below, the agricultural working class was more powerful in Italy, along with traders and artisans. These groups have enjoyed social security and pension benefits out of all proportion to their financial contribution. This system helped the Christian Democrats to stay in power since their constituency came largely from small professionals and self-employed people, who benefited most from the system.

The right-wing government from 1994 to 1996 was forced to resign after a general strike called in opposition to its proposal to reduce pensions. It was a left-wing government that succeeded in reducing social expenditures in order to reduce the public deficit. "Reform of the welfare state" has been a widely publicized objective of the government. There has been increasing privatization and residualization, targeting benefits to the poor alone.

A friend in Italy[5] describes the current system as follows: there are no real financial assistance rights in Italy, except the social old age pension and invalidity pension. The former is low, under 500 euro per month, available at age 60 for women and 65 for men. Unemployed people usually get 6 months pay when they lose their job. However, new laws privatize, introduce "flexibility," and short term work. If people are poor they can go to their local town hall where they are given small subsistence allowances. Mothers with dependent children can get these, but as soon as the children are adults they must support her. And there are still religious institutions largely staffed by lay social workers and subsidized by the state (the church is still a big lobby). The health service is free for GP visits and hospitalization but there are more "tickets" which means charges for medicine, specialist visits, etc. There is quite a lot of local variation, and there will be more so as regional governments become stronger. There is also the question of the Italian mentality which tends to see any advantage to be gained for family and friends as acceptable whether legal or not, leading to corruption at all levels.

Japan

MASAMI NOMURA AND KIMIKO KIMOTO entitle

their chapter "Is the Japanese-Style Welfare Society Sustainable?" In theory, a welfare system helps to insure the stability of a society. The authors ask why Japan has been stable despite having a weak welfare system. One reason is that after World War II, the unions pressured the corporations to develop private welfare systems. Each large corporation has its own union, but there are no unions in smaller companies. Large corporations developed their own generous welfare systems, using them to insure loyalty from employees. Employees of large corporations were expected to dedicate their lives to the company while their wives stayed home to care for the children. Employees in smaller businesses and the self employed often needed to have their wives in the labor market. Japan relies heavily on the family to provide care for children and the aged and disabled. The daughter of the oldest son is expected to care for aged parents. As part of its campaign to encourage mothers to stay home, the government gave full time housewives pensions without requiring them to contribute.

The only time the ruling Liberal Democratic Party liberalized welfare was in the late 1960s - early 1970s, when the ruling party faced a challenge from progressive local governments. In big cities such as Tokyo and Osaka, people elected left-wing mayors or governors. One of the slogans of these officials was "welfare first." They established many nursery schools, introduced free medical care for the aged, paid children's allowances, and supported schooling for the handicapped. In response to this challenge, the LDP began to support more welfare. In 1971, the children's allowance was introduced. In 1973 free national medical care for people over 70 was introduced, and pension benefits were raised.

However, the oil crisis in 1973 triggered a panic in the nation and the government shifted from a "welfare first" stance to "reexamining welfare." The Japanese believed that other industrial countries were suffering the "industrial country disease," meaning low productivity and budget deficits resulting from heavy welfare benefits. The government carried out a campaign to cut social spending and to stigmatize welfare. The government linked welfare to divorce, crime, drugs, and other problems. Japan also has not informed people of the existence of the welfare program. It is estimated that only 9 percent of those eligible actually receive public assistance. (306) Single mothers are forced to find a job, generally in the low-paid labor sector. Many old people work to support themselves. Since 1983 people have been required to pay part of the fees for medical care.

The authors say that there are few political forces demanding the expansion of welfare. However, they do not mention that a women's movement was responsible for an expansion in services for the aged. Middle-aged working women, severely burdened by the lack of facilities for care of the aged, mobilized and struck for their demands. This forced the ruling LDP to introduce reforms in the 1990s, including long-term care insurance and support services for care of the aged. Younger women postponed or avoided marriage and/or childbirth in order to pursue their careers and work. This resulted in a decline in fertility below what the government considers necessary to sustain further economic growth, prompting the government to increase child care facilities and other family support services.[6]

The authors believe that the Japanese-style welfare society is not sustainable in the long run. The pension schemes of the big companies are suffering huge deficits, owing to low interest rates, and some pension funds have already collapsed. Large firms are getting smaller and have reduced their core male employees, moving older employees into part-time contracts rather than life-time employment. The authors predict that with the gradual increase of women in the labor force and the decreasing birthrate, the government may be forced to increase child care facilities and services for the aged.

Germany

GERHARD BÄCKER AND UTYE KLAMMER address the case of Germany. Germany has a strong welfare state that has been under attack in the past decade. The "economic miracle" of the postwar

period has given way to growing unemployment and slower economic growth, as well as stiffer international competition. The burden of reunification with East Germany caused special problems for Germany. Rising unemployment reduced contributions to social insurance and led to increased expenses for the unemployed.

Strong unions helped to create and protect the welfare state, not only social provisions but also employment protections. German labor law provides protection against dismissal, occupational health and safety regulations, sickness benefits (full gross wages for the first six weeks of an illness), child care leave (legal entitlement of either father or mother to a leave of up to 36 months after the birth of a child, including a return-to-work guarantee), and paid leave to care for sick children (10 days annually per child and parent). The unions fought for and won a 37 hours work week — 35 hours in the metal industry — and six weeks paid vacation. In addition, work councils give employees a share in policy making.

Strong unions helped to create and protect the welfare state, not only social provisions but also employment protections.

The German welfare system is segmented into occupational groups. The Christian Democratic Union, with the exception of its left wing, tended to support this segmentation, while the labor unions and the Social Democratic Party (SPD) tended to support unitary programs for the entire labor force, with a guaranteed minimum income for all.

The system favors the improvement of benefits for those with a continuous work record. Because women generally make lower wages and have more interrupted work histories, they receive smaller benefits. German welfare regulations put single mothers at a particular disadvantage.

Health care benefits began to be cut back in 1989, and there were cutbacks in the pension system in 1989 and again in 1996. Eligibility levels for unemployment insurance have been tightened, and it is more difficult for the unemployed to refuse work beneath their qualifications. "Those employees who are relatively safely placed in the labor market are receptive to the idea that unemployment, especially if it is long-term, is the result of personal failure, and consequently cuts in benefits meet with general approval." (236) Women and children are especially hard hit by cutbacks, particularly women in East Germany who suffered higher unemployment rates than men. Once out of a job, women have a harder time finding reemployment and their average period of unemployment is almost twice as long as that of men.

While Germany's level of social assistance is still generous by international standards, there is growing inequality and a rise in poverty. "Welfare benefits manage to lift recipients close to the poverty line. However, the steeply rising number of recipients of income-tested social assistance clearly is a result of the dismantling of the different social insurance benefits in Germany." (239)

In 1998 the SPD heavily criticized the cuts in social security that had occurred under the conservatives, and restored some of them. However Chancellor Schroeder launched welfare reforms last year and has faced stiff resistance. "Despite the discourse of politicians and academics, the social welfare state continues to enjoy a high degree of public acceptance." (213)

France

MARK KESSELMAN describes "The Triple Exceptionalism of the French Welfare State." The French have been strong in their opposition to the neoliberal welfare agenda. Kessleman says, "Although 'laissez-faire' is a French term, it has few champions in France." (181) Among the nine countries studied in this book, French citizens take the prize for fighting hardest against welfare cutbacks, and France remains one of the strongest

welfare states in the world.

France initially based its welfare system on the Beveridge system of universal coverage. However, because many well-organized occupational groups that had achieved coverage prior to 1945 — industrial workers and miners, railway workers, and civil servants — successfully fought to retain their previous coverage and pensions, a uniform system was not achieved. There is a division between the general regime, which covers most of the population, and special regimes for specific groups.

"Although 'laissez-faire' is a French term, it has few champions in France."

One reason for the strength of France's welfare system is that women have achieved substantial political power. In 2000 a "parity law" was passed which requires all political parties to nominate an equal number of men and women for elected bodies. "Within several years, women should achieve close to equal representation within all of France's representative institutions. Women, having a greater stake in the welfare state, are more likely to support it as public officials." (185)

France had a long period of economic growth after World War II. However, this began to change in the 1970s and since then France has had a high rate of unemployment and a decline in stable, full-time jobs. In efforts to revive the ailing economy, the Socialist Mitterand government initiated reforms from 1981-1983 including a substantial raise in social benefits, expansion of public sector employment, and a vigorous industrial policy. Private businesses and international investors were hostile to the policies and withdrew capital investment. This, coupled with the recession in the early 1980s resulted in a severe economic and financial crisis. Yet welfare provisions were not cut back until 1995.

France has fully universal medical coverage. Family allowances were originally instituted in order to promote large families and encourage mothers to stay home. As a result of pressure from the women's movement and the Gaullist government's modernization program, family policy changed dramatically in the 1960s and 1970s. The new goal was to enable women to work outside the home. Family programs were created to provide vocational training for women, subsidized child care, preschool instruction, paid maternity leave (16 weeks of leave at 84 percent of earnings), and the right to parental leave for three years following maternity leave. France provides universal childcare. All French 4- and 5-year-olds are enrolled in the Ecole Maternelle system, as are more than 90 percent of 3-year-olds and 30 percent of 2-year-olds. This system is "widely regarded as the jewel of the French educational system,"[7] which has attracted international attention.

France provides generous benefits to single mother families until the child is 3, after which it is assumed that the mother will enter employment.[8] It also pays part of the cost for hiring someone to care for young children in the home when the parents are working, and provides a child care allowance to a parent to care for a seriously ill or handicapped child.[9]

The stability of the welfare state began to be seriously challenged in 1995, when Prime Minister Juppé announced a series of reforms that "represented virtually a declaration of war on labor unions, especially those in the public sector." (203) He proposed cutbacks in pensions and in the nation's health system, as well as revamping the state-run railway system and partially privatizing the state telecommunications agency.

The reaction was swift: over 2 million people demonstrated. In the face of this overwhelming opposition, Juppé retreated on some points. He shelved plans to curtail pension benefits for public sector employees and agreed to put on hold the restructuring of the railway system. However, he did not retreat on his plans to cut health care benefits.

In 2003 the government proposed cutbacks

in the pension system and also decentralization and partial privatization of public education. As Vincent Presumey has explained: "The Chirac-Raffarin government's intention was to inflict on the country's labor and social movements a lasting defeat on the scale of Reagan's dismantling the air traffic controllers union in the early 1980s or Thatcher's smashing the miners union in the mid-1980s."[10]

The workers and students waged a massive strike of protest in May-June 2003. Over a million people demonstrated in Paris on May 25. However, the strikers did not achieve most of their objectives. The government's pension proposals were ratified by the legislature, and some (but not all) of the decentralization proposals were implemented. But this was not the end of the fight. In March 2004 "President Jacques Chirac and his ruling conservative party suffered a crushing defeat in regional midterm elections, with the opposition Socialists and their Green and Communist allies seizing control of the vast majority of regional councils. The results marked a sharp rebuke for the government's attempts to reform France's costly health-care, pension, and education systems."[11] Both Alain Juppe, the head of the ruling party, and Jean-Pierre Raffarin, Chirac's prime minister, said their planned reforms would continue to be implemented, but leaders of the victorious Socialist Party called the results a repudiation of Chirac's policies.

Critics of the French welfare state claim that the overly high cost of unskilled labor acts as a drag on economic productivity and job creation. Wage costs are high as a result of France's minimum wage, which is 40 percent higher than the minimum wage in the United States. Some critics charge that by seeking to reduce unemployment by shrinking the labor force (through early retirement and shortening the work week to 35 hours), welfare programs limit growth and employment. (Kesselman presents the shortened work week as entirely a government plan, when in fact the workers fought for it.) "Studies project that France's policy of reducing the work week from 39 to 35 hours will have only a marginal effect on its high joblessness." (347)

Sweden

HELEN LACHS GINSBURG AND Marguerite G. Rosenthal discuss Sweden, which they call "the poster child of advanced welfare states and the *bête noir* of its opponents." (104) Even though there has been retrenchment since 1990, it is still one of the world's strongest welfare states. The Save the Children's annual "Mothers' Index" found that, among 117 countries studied, mothers and children fare best in Sweden.[12]

Overall, Sweden and Finland are generally the most effective welfare states in reducing both married and single mothers' poverty using social transfers, tax credits, and employment supports.[13] Both countries have individualized their tax systems, eliminating tax differences based on family status.[14] Single mothers are often privileged in social programs such as subsidized childcare programs, housing allowance, and child support advance payments (in which the state pays child support when the absent parent cannot or does not).[15] Both married and single mothers generally have the lowest poverty rates in Sweden, Finland, and France and those countries have by far the most generous employment supports for mothers. They are also nations that have a high participation of women in political positions. Sweden is second only to Norway on the United Nations gender empowerment index, and women make up about 44 percent of Parliament.

Sweden's famous child-care system is highly subsidized. By the mid-1990s, 86 percent of preschool children with two working (or studying) parents and 91 percent of children in single-parent households were in publicly supported child care. Parental leave for birth or adoption replaces wages for 360 days, if each parent takes at least 30 days leave. An additional 90 days is compensated at a very low flat rate. Parents can also take up to 60 days of leave per year for the care of a sick child under the age of 12, compensated at 80 percent of wages. In an effort to increase usage by fathers, parental leave was extended by one month in 2002, with two months reserved for the mother and two

months reserved for the father.

Sweden has been a pioneer in public programs to enable the elderly to live in their own homes as long as possible. Homelessness is rare and substandard housing is virtually unknown in Sweden. Affordable housing has been assured through public ownership and financing of large portions of the housing stock and income-tested housing benefits for families and the elderly. Sweden has universal health insurance, and universal allowances for families with children as well as a national pension.

Most Swedes prefer public to privately provided social services.

Sweden's strong welfare state, high job security, and strong commitment to equality were won by working-class movements, the Social Democratic Party (SAP), and its close ally, the Swedish Trade Union Confederation (LO). Sweden pursued full employment policies from the mid-1930s until fairly recently. The welfare state generated employment and served as an economic stabilizer, keeping up consumption when unemployment increased and helping to prevent a 1930s-style depression. When social services were extensive, as in the Nordic countries, large numbers of people, especially women, got jobs as child-care workers, home health aides, and other service providers.

The SAP began to endorse neoliberal policies in 1982. The country faced a dismal economy, growing unemployment, a burgeoning deficit, a worldwide economic slump, high oil prices, and inflation. The new slogan of the SAP was "'first growth, then redistribution," with growth assumed to require major increases in corporate profits. A profit-driven recovery and deregulation were favored by capital and were also pushed by a powerful clique of neoliberal economists in the SAP. "These policies helped pave the way for growing inequalities and for the crisis of the 1990s." (110)

Financial deregulation set off a wildly speculative real estate boom and led to a bank crisis in 1992 and 1993. The government had to bail out some of Sweden's largest banks. As the SAP veered more toward the right, it lost its traditional base. After the SAP won the 1994 election, it "adhered to neoliberal policies as relentlessly as it had once worked for full employment." (115) There were many cuts in welfare programs during the 1990s. The current generous pension system is being gradually phased out and replaced by a far more complicated and market-oriented one. In addition, workers now have private accounts, financed by a 2.5 payroll tax (part of the overall 18.5 payroll tax). "Thus, Social Democratic Sweden has accomplished what a conservative U.S. Congress thus far has been unable to do, but what the new Bush administration may accomplish: partially privatizing its old age pension system." (126)

There has been some privatization of housing. Childcare facilities were underfunded to cover the rising numbers of children enrolled, and fees have been raised. Elder care has significantly retracted. Health care continues to be universally available, but there are marked and growing disparities in health status across socioeconomic groups. Expenditures on social assistance have increased as a result of mass unemployment and cutbacks in social benefits. The assistance is relatively generous but highly discretionary, resulting in inequities. It enforces behavioral norms, particularly requirements to work. Overall, the Swedish welfare state remains strong but there is an increased reliance on means-tested programs over the past decades. Powerful business interests have and still are pushing for privatization, which has already made an inroad in the new pension system. Most Swedes, however, prefer public to privately provided social services.

Hungary

PHINEAS BAXANDALL describes Hungary's welfare in "Hungary: Retrenchment amid Radical Restructuring." He says that "Communist social policy was premised on full employment far more than any Western welfare state ever was. The guar-

antee of a job had been a central pillar of state socialist legitimacy ever since post-war reconstruction, when the Communist Party staked its claim on having put the nation back to work." (275) Wages were purposely kept low to achieve the goal of rapid industrialization.

Baxandall does not discuss the dual burden that women faced by working full time and having full responsibility for caretaking work. Hungary claimed to be liberating women by giving them equal status to men. Yet they not only expected full-time work of women; they also expected women to do all the caretaking work.[16] Women now had the right to engage in productive work, "but they must not make the mistake of losing themselves in the muscular, productionist, heroic (male) proletariat: to be a woman is to nurture children (and do housework)."[17] One of the reasons for the violent rejection of the Hungarian regime in 1956, in addition to material hardship and injustice, was resentment about the treatment of women and the demand to "give the mother back to the family."[18]

During the Communist era, welfare benefits were almost exclusively employment-based. All able-bodied people were expected to work. "Social consumption" was preferred to personal consumption. This changed somewhat after the 1956 revolution when the government, faced with a crisis of legitimacy, increased consumption and wage levels, and increased programs for old age pensions, sick leave, child benefits, public medicine, and maternity benefits.

After the demise of the Communist regime there was large scale economic restructuring, which included price liberalization, subsidy cutbacks, and the opening of foreign trade to the West. Local governments were given the responsibility of administering social assistance, which is discretionary and highly residual, going to those who have exhausted other benefits, especially unemployment insurance. Applicants for emergency aid must be far below the poverty line to receive aid. Many people do not bother to apply because the payments are so small. Women are hit hardest because a higher proportion of them are unemployed.

The value of pensions has fallen and the retirement age has been increased. Health care was made less universal in 1992. There is a growth of health care for the very rich. Unemployment benefits have been reduced. The state essentially abdicated responsibility for housing provision in favor of various schemes to help people take out loans and obtain material for building their own homes. Local governments were encouraged to sell housing to their current residents at less than market rates. While these measures were popular, they reduced the supply of public housing. "While the values of the population still strongly support egalitarian and active government, there is little capacity for collective action in defense of social protection." (291)

Next Steps

UNIVERSAL WELFARE PROGRAMS have powerful constituencies who fight to retain their benefits and have won major victories against government cutbacks. Means-tested programs such as TANF have little political support and must join with powerful allies. The National Welfare Rights Organization achieved significant victories in the 1960s and early 1970s because they were allied with the Civil Rights and antiwar movements. The women's movement would seem to be a logical ally for welfare recipients today, since the majority of welfare recipients are women. Countries where women have strong political power, as in Sweden and France, have strong women-friendly services such as universal day care and generous family leave provisions.

The leadership of the National Organization for Women (NOW) has been exemplary in their resistance to welfare reform, but they have been unable to bring along large numbers of their constituency. Some feminists, preoccupied as they are with getting ahead in the work world, think there is nothing wrong with requiring welfare recipients to work, even if the work is flipping burgers for the minimum wage.

The March for Women's Lives in Washington, DC on April 25 presents an opportunity to give welfare issues national attention and to mo-

bilize support by feminists. The National Network of Abortion Funds has formed the Access and Equality Contingent to broaden the focus of the march from an exclusive focus on reproductive rights to a broader focus that includes the right to have children and to have the resources to care for them. I am encouraged by the response of the march's leadership and the sponsoring organizations to our efforts to give significant attention to low-income women's issues. The co-director of the march, Loretta Ross, is an African-American woman who is very active in getting low-income women and women of color involved. Speakers at the march will include women of color, welfare recipients, and other low-income women. Through the Welfare Law Center internet listserv, I have been able to get several welfare rights groups across the nation to work on organizing for the march, and we have developed a flyer about welfare. An African-American senator in the Massachusetts legislature, Dianne Wilkerson, has raised money for three busloads of women of color from Boston. The Access and Equality Contingent will continue its work after the march to mobilize low-income women, and is planning to conduct voter registration drives.

Labor is another potential ally. Welfare recipients have always been in and out of the paid work force. Now that there is a five-year lifetime limit to welfare benefits, they will have no other source of subsistence but paid work, and workplace organizing will be crucial. Resistance to welfare retrenchment needs to focus on full employment as well as on the welfare programs themselves. Living wage campaigns in the United States are an important part of the struggle, as are union struggles to keep jobs, wages, and benefits. Unions have occasionally become involved in welfare issues, as in New York City where workfare took away jobs from unionized workers. The head of the AFL-CIO in Massachusetts, Robert Haynes, supports struggles against welfare cutbacks. In his speeches, he tells about how welfare helped his family survive when he was a child. A coalition of welfare and union activists in Boston, Working Mass, supported the Verizon workers when they went out on strike, and gave strikers information about food stamps and other benefits.

The Labor Project for Working Families, founded in 1992 by the California Bay Area Labor Councils, AFL-CIO, helped to win the first and only state paid family leave for working Californians. Many unions have won family-friendly benefits for their members. Service Employees International Union (SEIU) organized 604 former welfare recipients in Milwaukee, Wisconsin who care for their parents, employed by the nonprofit agency New Health Services (NHS). These workers were paid at the rate of $7.10 an hour, with no benefits of any kind. After their union was certified, they went on to negotiate a contract for higher wages, improved training, health insurance, and pension benefits.[19]

Churches have also given strong support to the welfare struggle, especially the Catholic Church, Unitarian/Universalists, the American Friends Service Committee, and the United Church of Christ.

Our strongest ally may eventually be the middle class. I go to a welfare office in Boston to tell people about their rights and to help them get the benefits to which they are entitled. I see an increasing number of people who have lost good jobs. One woman had been laid off from a job with a women's foundation that paid her $65,000 a year with benefits. The foundation had been hard hit by the stock market crash and had to lay off workers. One man had lost a well-paid job as a construction worker. Many have used up their unemployment benefits and have been unable to find another job. They are shocked to discover that there is absolutely no program that gives cash benefits to able bodied unemployed workers. All they can get is food stamps. Many middle class people are only one paycheck away from welfare. When enough of them realize that they too are deserving of a safety net, we will have a powerful constituency to struggle with us for a more humane welfare state.

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In The Shadow of Cairns

REVIEW BY LEV LAFAYETTE

LATE LAST YEAR THE AUSTRALIAN LEFT lost one its most well-known and respected figures, Dr. Jim Cairns. As a leading figure in the social-democratic Australian Labor Party, Cairns was highly involved in opposing the right-wing Catholic "Groupers" who were destabilizing the Australian union movement in the 1950s He campaigned against the "White Australia" immigration policy in the 1960s, became chairperson of the Vietnam moratorium movement, reached the position of Deputy Prime Minister under the reformist Whitlam government in 1974, and founded the Down to Earth "alternative lifestyles" organization in 1976. Active until the very end of his life, Cairns was a popular figure at Melbourne market places, selling his books during the 1980s and 1990s. Even in his final years, he opened the Labor Left Activists and Supporters Conference of 2001 and was part of the Valentine's Day march against the invasion of Iraq; wheelchair-bound, the 89 year-old activist bore a simple sign, a testament to his life: "Make Love, Not War."

Keeper of the Faith:
A Biography of Jim Cairns
Paul Strango
Melbourne, Australia: Melbourne University Press, 2002
464 pp. $34.95

Paul Strangio's fine biography, *Keeper of the Faith*, was published just a few months before Jim Cairns died. An academic of politics and history himself, Strangio has a particular interest in "grassroots democracy" and the conflict between systematic imperatives and those of just and popular opinion. Starting with a sympathetic introduction to Cairns' highly impoverished early life — his father died in WWI when Cairns was an infant and he was raised during the depression — Strangio maps the intellectual development of Jim Cairns: as an undercover detective; his time in military service; as a student and PhD in economic history; as a tutor and lecturer in the same at the University of Melbourne; and eventually as a national member of parliament.

Not surprisingly, the last named makes up the bulk of the text — some six of the ten chapters. It begins with Cairns' election as the member for the inner urban seat of Yarra in the 1950s. This area was renowned for the sort of thuggery characteristic of right-wing members of the working class. When the infamous split between the left social-democratic and Catholic right wings of the Australian Labor Party occurred, Yarra was the place where it was strongest in the entire nation. The election for the seat was described as "the most violent in Australian history."

Strangio maps out Cairns' rapid rise to power and influence following his election. In the midst of the Cold War, the Marxist-influenced Cairns was disliked by many within the Labor Party, not the least for his cool and distant demeanor. Nevertheless it was the conservative Liberal-National coalition government that was the main subject of his sharp intellect and knowledge of economic matters. During this time Cairns' greatest achievement was overturning the bipartisan "White Australia" policy, recognizing not only the racist content but also the economic foolishness of Australia not engaging with Southeast Asia.

At the same time, however, a greater issue came to the fore: Australia¹s involvement in the Vietnam War. Cairns railed against the military intervention and advocated the right of Vietnam

LEV LAFAYETTE *is a doctoral candidate at the Ashworth Centre for Social Theory at the University of Melbourne. He has just completed a political study of Dr. Jim Cairns.*

to self-determination. In 1966, primarily due to Cairns' activism, the Labor Party engaged in an election campaign opposing conscription that the government had imposed the previous year. However, at that time the public was still not fully aware of the horror that was Vietnam and the Party was soundly defeated as Australia went "all the way with LBJ," as the conservative Prime Minister quipped at the time.

Cairns was undaunted. He continued his campaign against conscription and the war and was elected national chairperson of the Vietnam moratorium movement. In 1967 and 1968 he contested the leadership of the Labor Party, failing narrowly on the second occasion. As opposition to the war grew, so did the desperation of those who opposed these "communists and unionists." In 1969 a group of men broke into Cairns' home and severely assaulted him. Contrary to what was predicted, this seemed to strengthen Cairns. In 1970 he led an estimated 100,000 people through the streets of Melbourne in a march against the war. This move was severely criticized by the mainstream press who saw it as an invitation to violence and anarchy. Instead, Cairns showed not only the strength of the antiwar movement, but also established the street march as a legitimate and now permanent feature of Australian political life.

Cairns at an anti-Iraq war demonstration in Melbourne, Feb. 14, 2003.

In late 1972 a reformist Labor government was elected nationally under Gough Whitlam, and Cairns became Minister for Overseas Trade and Minister for Manufacturing Industry. With a commitment to both foreign engagement and economic planning, Cairns silenced many of his critics who were flabbergasted that a Marxist could perform these roles so well and win praise from some of the most senior members of said industries. When Labor was re-elected in 1974, having dissolved parliament due to an intransigent Senate, Cairns became the deputy leader of the Labor Party, Deputy Prime Minister of Australia, and Treasurer.

In formal political terms, this was undoubtedly Cairns' finest moment. However disaster was looming. On one side, there was the OPEC oil crisis and stagflation, to which Cairns took a Keynesian approach. Not only did the budget blow out, but Cairns made the grave error of attempting to raise funds through Tirath Khemlani, a Pakistani banker, and from George Harris, businessman and president of the Carlton football club, and he denied to parliament that he had done so. To add to this, Cairns had appointed the talented, attractive and, to conservative Australia, exotic Eurasian Junie Morosi as his private secretary. Their relationship was subject to significant public innuendo.

The final chapter of Strangio's book is entitled "Some wacko theory" and covers Cairns' political life following the defeat of the Whitlam government (1975) and his retirement from parliament (1977). During this time Cairns sought to build the environmental and countercultural movement and established the Down to Earth group that manages the annual Confest. Moving away from economic analysis and systematic political action, Cairns instead advocated the virtues of radical psychoanalytic theory and cultural change, taking source material from anthropology, psychobiology, and his newfound interests, feminism and the rise of the Greens as a political force.

In many ways Strangio has done Cairns a superb justice. Whilst many have criticized Cairns as being both too distant in his parliamentary years and simply far too left field subsequent to that,

Strangio tells his story with the sort of seriousness and sincerity that were part of Cairns' own personality. Thoroughly researched (drawing on his 1998 doctoral thesis from Deakin University with the same title) Strangio clearly has the ability to make a political history readable and to successfully integrate a narrative of how an undercover cop could become a leader of the counterculture, how a Marxist could become Deputy Prime Minister and Treasurer, and even how a person could have a public affair and yet remain a devoted husband.

Furthermore, Strangio makes his own contribution by countering mainstream ideas that view Cairns with a sort of nostalgia for the heady days of the left wing in the Labor Party. Strangio argues — and makes a very good case — that the influence of Cairns on Australian public reasoning has been vastly underestimated, even if mention of the name does draw blank faces at undergraduate classes and the Australian Labor Party has largely disowned him. In fact, the degree to which Cairns has been disowned was indicated by the Party holding a "members only" memorial for Dr. Cairns in 2003 which was attended by less than 150 people — a deep insult to a person who always sought the views of the common person in the public arena.

PARTIES TO THE LEFT OF the Labor Party have been ambivalent in their assessment of Cairns' life and work. The Democratic Socialist Party, which is a leading force inside the broader Socialist Alliance, has described Jim Cairns' life in tragic terms, complaining that he could not see the need to "reject the pro-capitalist straitjacket of the ALP, and build a new party for radical change out of the huge momentum developed during the anti-Vietnam War movement of the 1960s and early 1970s." In the non-Socialist Alliance Trotskyist camp, Nick Beams from the International Committee of the Fourth International claims that Cairns did not understand the laws of the global capitalist economy and that he became a prop for the system: "Contained within Cairns' life is the rise and collapse of the program of social reformism and the party that once espoused it." On the non-Trotskyist left, Pauline Mitchell, writing in *The Guardian*, newspaper of the Communist Party of Australia, considers Cairns' passing as signifying the passing of the protest era, a comment that is empirically false if there ever was one!

The reality of Cairns is more complex than the opinions of these people. In his own unbalanced manner, Cairns covered the field of political reformism and cultural radicalism. A critic of both social democratic and old left authoritarianism, he quickly grasped the rise of the "new social movements" based on civil liberties, feminism, and environmentalism. At the same time he never gave up a commitment to democratic planning in economics, social welfare, infrastructure investment, and the involvement of the working class in political and cultural change. As much as many on the left are loathe to admit, Australians are still living in the shadow of Jim Cairns. Flawed as his own solutions may have been, he raised the problematic concerns that still face us.

Puede encontrar articulos en espanol de Barry Finger, Samuel Farber y otros autores de *NP* en www.inisoc.org

Fight What Power?

Review by Brian Keizer

Nineteen eighty-nine marked the pop culture high water mark of the new black nationalism. If for nothing else than the twin release of Spike Lee's *Do the Right Thing* and Public Enemy's *Fear of A Black Planet* containing the film's theme song "Fight the Power," 1989 would stand as the year that will be unspooled in the reductive and absurdist video replay of American pop culture to delineate the moment young African Americans obsession with Malcolm X, the Black Panther mythos, Kente cloth, and politically conscious rap were a new wave. But there was of course the ancient backstory of centuries of chattel slavery, a civil war and the middle distance rear view mirror story of the civil rights era and the dead black twin towers of African-American striving, Martin Luther King, Jr. and Malcolm X. In the immediate backstory there was the campus divestment movement to force the hand of South African apartheid, police brutality in New York leaving in the public mind markers as fresh as Diallo remains now: Eleanor Bumpers, Michael Stewart, Howard Beach.

In 1989 in *New York* magazine, prior to the release of Spike Lee's *Do The Right Thing*, Joe Klein, he of Anonymous *Primary Colors* fame, declared that the movie would cause race riots in the streets of New York, a puzzling claim for any first time viewer today. But I remember sitting in the theater at the North American premier and wondering if a film or a song could bring forth the "long hot summer" of racial riot and discontent that so many New Yorkers had expected for a decade. The fire next time came, of course, three years later in Los Angeles instead.

A Right To Be Hostile:
The Boondocks Treasury
Aaron McGruder
Foreword by Michael Moore
New York: Three Rivers Press, 2003
256 pp. $16.95

Taking its title from the cauldron of that late eighties black nationalist race movement (cf. Public Enemy and EPMD) *A Right To Be Hostile: The Boondocks Treasury* is Aaron McGruder's fourth compilation of daily strips from his cartoon strip that revolutionized the funny papers again (cf. Trudeau's *Doonesbury* and Breathed's *Bloom County*). Started in his college days at the University of Maryland in the college newspaper, the *Diamondback*, *Boondocks* has been syndicated since 1999 and presently appears in 250 newspapers with a combined readership of 30 million. For the uninitiated the strip follows the adventures of Huey P. Freeman, black nationalist revolutionary culture thinker elementary school nerd, and his younger brother Riley (Thug Life) Freeman, recent transplants from inner city Chicago in their new white suburban neighborhood where they've moved with their grandfather who has retired to the burbs to grumble out his days in crime-free peace.

Michael Moore, in his foreword to the book, weighs in on the first time he encountered the strip: "I can't remember what those kids were doing in the first *Boondocks* comic I saw, but I do remember exactly what passed through my mind when I read it: How the hell did this get into a daily newspaper?" Reflecting on the *Boondocks* phenomenon — a torrent of critical hosannas, an instantly fanatical readership, and the censorship of various newspapers — Moore asks, "How long can the *Boondocks* get away with the things it says? How far will he take it tomorrow? How on earth

Brian Keizer *is a writer and filmmaker who lives in New York City. He is a founding director of Central Park SummerStage and his work has appeared in* SPIN, *the* San Francisco Bay Guardian, *and the book* 50 Ways to Fight Censorship *(1991).*

can the most truthful thing in the newspaper be the comics?" McGruder, like Moore and Al Franken, is now a liberal media star who has made a number of television appearances from news networks to Bill Maher and is in demand on the college lecture circuit. He makes it clear in his introduction that "a part of me believes that without September 11, the *Boondocks* would have ended sometime in 2002 — a victim of early burnout and creative frustration." The grind of daily cartooning is legendarily rigorous and one factor that probably hastened McGruder's burnout is the climate of irony and humor in our popular culture. In the early Reagan years when *Bloom County* first appeared, the strip's sly insinuation and surreal edge seemed a daily rorsach questioning the mindset of Reagan's forced golden age, the technocratic right-wing shining city on a hill where wealth trickles slowly down a hill longer than any corner Coolidge's depression-era promised prosperity never made it around.

In a *Salon* interview in October 2003, upon his semi-return to the funny pages, *Bloom County* creator Berkely Breathed spoke about the present climate when asked whether satire of American politics is still possible: "I think there's both a saturation point and a failure point in events being beyond satire. I started stripping in 1981, the same month MTV started. Daily satirical comment was either *Doonesbury* or *The Tonight Show*. The horizon was clear. We had the whole playing field. You young punks just try to imagine that there wasn't even a World Wide Web. Michael Jackson jokes passed as edgy comedy in *Bloom County*. Now. Lord, now. The din of public snarkiness is stupefying. We're awash in a vomitous sea of caustic humorous comment. I hope to occasionally wade near the black hole of pop references only obliquely without getting sucked in with everyone else."

Since 1999, McGruder with *Boondocks* has swallowed that black hole in its entirety and spun out four years of a classic cartoon with wit and attitude to spare. *Boondocks* comic kick rises out of the natural anarchism of childhood mated with the edge of lively Afrocentric kids who thrive on acting out. The natural generational tension between they and their grandfather and the basic fact that they, the Freeman boys, are dependent on him juices the mix. With Huey and Riley, McGruder created two embryos of the predominant struggle in hip-hop expression — the politically conscious rebel and the thug out to pimp the game of U.S. life to its knees, taking all the spoils and the riches in the process. Set against the natural tussle of brotherhood and overseen by a civil rights era no-nonsense salt of the earth grandfather, the Freemans' nuclear family couldn't help be, to quote Public Enemy's Chuck D., "louder than a bomb."

Boondocks rose to prominence and frothy critical reception at the height of Clinton's second term, deep into the Lewinsky scandal and the heyday of the dot com boom. America was, to quote a classic phrase from Allen Ginsberg, who passed away in April of 1999, in a "silly mood." But from WTO protestors to the negative creeps at Columbine who so resented the complacency of their Abecrombie and Fitch high school environment, there existed anger and deep distrust with the bacchanalia of American life that attended the greatest rise in mass wealth in human history. What better time for the funny pages to act up? The daily comic page of most newspapers is a patchwork of outmoded adventure yarns, superheroes, *Garfield*, *Cathy*, *Peanuts* reprints, *Dilbert*, and that satirical institution *Doonesbury*. *Boondocks* exploded off the page.

While practically everyone loved the immediately realized world of the Freemans, McGruder was frustrated by trying to continue to tell narrative stories in such a small space. Hence 9/11 led him to a more declaratively political stance. The dichotomy between the classic narratives of the early years and the more static compositions of the post 9/11 *Boondocks* gives shape to the entire compilation.

In the introduction, McGruder states that *Boondocks* is not as good a strip as *Calvin and Hobbes*, *Doonesbury*, *Bloom County*, or *Peanuts*. I would beg to differ. The early, more narrative-heavy *Boondocks* strips in which we get to know

Huey and Riley, their granddad, the mixed race couple down the street and their biracial daughter, in which we see Huey and Riley do daily aesthetic battle against the whitewashed Shangri-la of their suburb are truly masterful narrative cartooning — funny, original, cool and fluid. Riley's vandalism crusade in which he tags all the banal street names (the Freemans live on Timid Deer Lane) with rappers' monikers, Huey's tirades against the Black Entertainment Television, and his constant revolutionary education running headlong into the maw of the school system and his granddad are uproarious. The pleasures of each strip are bountiful. And here's the news. That really does not change much. What changes is McGruder's thematic thrust. The characters remain finely defined enough that it only becomes clear over time how Huey now so often seems locked in a singular environment, either at his computer or in front of the television where he either reacts to the news or blogs in response to it. Interestingly enough the shortcomings of these strips only come into relief when compared to alternative cartoons like Tom Tomorrow and David Rees' *Get Your War On*.

Rees' strip became a cult classic after 9/11. In the strip (now compiled into a book) a series of outlandish deadpan declarations by office workers accrue in panel after panel building an absurdist landscape that simulates the cold horror show humor of watching the immediate aftermath of 9/11 and the multistage war on terror as Dubya promises preemptive ass whuppings on evil doers while we go about our work and watch. In the days immediately following 9/11 the Rees' strip captured the perfect universal gut reaction of "What the fuck is going on?" The language, the adult horror of the worker drones marks it as a comic that could only exist on the web or in alternative weeklies. The later *Boondocks* strips in this collection pale in comparison to the impact of Rees's strip, yet still contain the most radical African-American presence distributed widely in American culture. And they still outshine most all of the funny pages.

With the more starkly political *Boondocks* strips McGruder might have seemed less groundbreaking in relation to alternative weekly cartoonists like Tom Tomorrow, Ben Katchor ,and now Rees, the first two having been at the forefront of the nineties rebirth of alternative cartooning. But it is important to analyze what was groundbreaking about *Boondocks* and the daily critique against the American system it represents. By 1999, hip-hop was the primary youth culture in America. Hip-hop celebrities were national celebrities not just icons for the urban market. Sales of rap CDs to white suburban kids drove the market and deepened a phenomenon in which whites felt more comfortable commenting on black celebrities like the then Puff Daddy, or Snoop Dogg, than ever before.

Thus, McGruder's attack on the vagaries of hip-hop style and celebrity would be lost on no one. He could conduct a critique of African-American pop culture and American pop culture and have them read as one and the same. It is actually twice as impressive that so sharp were the edge's of the *Boondock*'s humor that in this absurdist age of water cooler wise crackers and suburban whites judging the authenticity of black culture based on pimp sterotypes and looking to jump off to the next hot thing that *Boondocks* did not rise and fall as a cult strip, but distinguished itself as an instant classic.

But looking back at the race moment of 1989 from the twenty-first century, we can see why *Boondocks* daily revolution is a sad reminder of revolutionary art minus the existence of a revolutionary movement. Public Enemy exist as history, legends who sonically and lyrically redefined rap and rock; Spike Lee continues to work as one of the world's premier filmmakers. But no one confuses their work with the fire next time. Their success over time stands as a reminder to political artists that the fickle trends of the consumer market will, after a rush of popularity, look to write off your achievement as a bygone fashion trend.

Hence, interestingly enough, McGruder's Huey P. Freeman's existence is a comic rebuff to American revolutionary tradition, as at base the humor of hearing revolutionary thoughts pour out

of a child has a quaintness given the fact that no one believes a revolution is anywhere in sight. Rather than the caustic dismissal of Tom Wolfe's "Radical Chic," and "Mau Mauing the Flakcatchers," Huey's tragic-comic figure is the other side of the coin, the child of 1989 who can't imagine that none of his friends find his concerns fashionable or arresting. Minus a real meaningful movement, the historical chain of black counter-revolutionary striving is rendered a farce, a brilliant soundtrack to stoke the tiny cadre of isolated believers ears and eyes open for the next battalion. Moreover, the greater irony, that the revolutionary struggle of an African-American insurgency in America would amount in the language of post 9/11 to "domestic terror," is a topic broached only glancingly by *Boondocks* but central to the thematic flatness of some of those later strips.

According to a recent profile in the *New Yorker*, McGruder outsources the artwork for the daily strip and is putting the final touches of the pilot of the *Boondocks* television show. Moreover, his primary artistic pursuit is film and television. As he told *New Yorker* writer Ben McGrath, "I wanted to be a cartoonist and like six months after that I got signed, and I'm here . . . And ten years from now I'll be like, getting an Academy Award. This is not the beginning and end of my life." *A Right To Be Hostile: The Boondocks Treasury* might be the end of a golden age for the *Boondocks*, or signal the end of a phase in the development of a great cartoon creator.

The still untapped narrative possibilities of *Boondocks* raise perhaps the most critical questions to McGruder's career as a cartoonist. The comic frisson of the hardcore brothers out of inner-city water is ripe for making a straw man out of suburbia, but it also helps to isolate the critique of African-American mores and postures as simply a media critique. Will Huey and Riley ever return to the old neighborhood and check themselves in relation to inner-city realities? How will their attitudes be affected? By abandoning narrative in the cartoon for attitudinal jousting with the zeitgeist, don't you just relinquish the representation of the complex reality of African-American life that is still absent from the American mainstream? Colin Powell, R. Kelly, P. Diddy, Oprah Winfrey, Kobe Bryant, and O.J. Simpson are front-page news but class action lawsuits with African-American plaintiffs, segregated decaying schools, and the American jail complex as plantation are buried stories with real faces and humorous undersides hatched in pain. How and if he finds a way to bring the humor of the suburbs and the city together with real kick and not just the snarky quick aside will probably define how McGruder is remembered as a cartoonist no matter what else he achieves. Probing beyond race and deeper into America's class delusions would make *Boondocks* a strip to remember long past those gloomy days of the early twenty-first century when McGruder imagined himself battling Dubya strip by strip through November 2004.

A Two-Fisted Critique

REVIEW BY MARTIN COMACK

THE LATE MARTY GLABERMAN was a radical Renaissance man — he was successively (and often in combination) a skilled machinist, a Marxist theoretician, a foster parent, and a publisher, an academic, a Little League Baseball coach. A socialist since his Brooklyn adolescence, Glaberman followed his radical instincts after his graduation from City College and joined the blue collar ranks in the heavy industries of Detroit. By the Second World War, he was active within the so-called Johnson Forest Tendency, a small but intellectually dynamic Trotskyist split-off notable for the presence of the West Indian Marxist C.L.R. James and the Russian emigre Raya Dunayevskaya. Upon his retirement from factory labor and encouraged by the rise of the New Left, Glaberman returned to school to earn his PhD and begin a new career as a teacher and lecturer. From the 1950s until his death, he produced an abundance of essays, books, articles and observations on politics, radical social change and the labor movement — many of the best of which are included in this volume.

Punching Out & Other Writings
MARTIN GLABERMAN
Illustrated with Cartoons
Edited and Introduced by Staughton Lynd
Chicago: Charles H. Kerr, 2002.
231 pp. $15

Beyond the immediate environs of the shopfloor, Glaberman regarded contemporary unions as basically bureaucratic dictatorships whose real purpose is the discipline and control of its often restive membership in the interests of labor peace and social stability. The labor contract itself ensures that the union must function as an appendage of the corporation and an enforcer of management's sole prerogative to direct the productive process.

Although unions were originally formed against the bitter and violent resistance of employers, the militancy and collective confidence displayed by mass-production workers during the Depression and the war years was soon constrained by the labor contract and channeled into formal institutional structures that grew increasingly bureaucratic and authoritarian over time, fenced in by federal law and defended by Cold War rhetoric. The struggle for control in the workplace, for satisfaction in the work process itself, was abandoned in favor of bargaining for wage increases and higher consumption.

By the 1950s, national trade unions more nearly resembled their corporate counterparts, staffed by platoons of officials, lawyers and functionaries with agendas, interests and lifestyles far removed from the concerns of their dues-paying constituents in the industrial plants and factories. This, Glaberman insists, must inevitably be the case, whether or not the organization considers itself to be following "progressive" policies or merely practicing "meat-and-potatoes" business unionism. The union is, after, all, an institution of capitalist society.

As a longtime UAW member, Glaberman is well-positioned to expose and deconstruct the progressive myth surrounding the United Auto Workers under the regime of Walther Reuther. Exercising considerable influence for years within the liberal wing of the Democratic Party, Reuther's UAW was long held up as a model of progressive "social" unionism. And this despite the fact that Reuther's ascension to power resulted in his own personal dictatorship and the growth of a powerful bureaucratic machine that routinely crushed

MARTIN COMACK *is a doctoral candidate in political science at Northeastern University.*

independent locals, stifled internal dissent and union democracy, and acted to preserve a racist and sexist seniority structure. By then, auto workers had begun to refer to their own union officials as "them."

Labor leaders, Glaberman points out, are not more class consciousness than the rank and file, nor is the working class itself necessarily synonymous with organized labor. Glaberman's two-fisted critique of the assumptions of the American left in this collection of essays is informed by his two decades as an auto worker and machinist on the assembly line, his long and close association with C.L.R. James, and his subsequent sojourn in the academic world. Glaberman might be best considered what C. Wright Mills called a "plain" Marxist, always insistent that class consciousness is forged at the point of production, and is thereby the result of actual experience — the alienation of daily life under capitalism. "Most intellectuals," he notes, "believe that activity is the result of consciousness. What I submit is that consciousness is the result of activity.... people can be transformed only in activity." (129) Glaberman explodes many of the preconceived notions of the left, and places himself at odds with the majority of socialist intellectuals, Marxoid vanguardists and most union officials. For the latter, working people are often regarded as credulous, backward, and, like children, in need of superior guidance to ensure that they vote for the right candidate, follow the correct party line, do as they are told.

But in contradiction to such elitist conceptions, Glaberman is able to point to the most significant social changes of the last seventy-five years in America, transformations that were made possible not by electoral processes nor by obediently working within the system. Rather it was the workers' sit-downs and general strikes of the thirties, the civil rights sit-ins and boycotts of the fifties, and the anti-war movement of the Vietnam era all extra-parliamentary phenomena, often illegal in method — that confronted government and corporate interests and forced them to give ground before new social forces. And these radical explosions generated organizations of direct, participatory democracy in response to the concrete necessities of the moment — strike councils, student action groups, community associations, committees of soldiers and veterans.

Although preceded by years or even generations of resistance and day-to-day struggle, such mass movements — whether reformist or revolutionary — are, according to Glaberman, "like all popular uprisings, massive spontaneous events" (138) that cannot be forecast in advance by public opinion polls or dialectical analyses. After decades of study of the racial situation in America, where was the sociologist who predicted the sudden explosion of the civil rights movement? Likewise "if some social scientist had examined the workers in the industrial suburbs of Budapest in September of 1956, or the industrial suburbs of Paris in 1968," Glaberman argues, "There would have been no evidence of the coming social upheaval." (139) It is well to remember, he points out, "that what the Hungarian and French workers did was thought to be impossible." (140)

Despite the evidence that "modern revolutions take place as mass, spontaneous outbursts," (180) even in totalitarian states like Communist Hungary and Poland, such phenomena have not been subjected to careful study and analysis — indeed, they have been largely overlooked. This, contends Glaberman, is because "the perceived wisdom of the Left" cannot admit to the possibility of social revolution without the authoritarian leadership of a revolutionary vanguard — an attitude of mind that ignores the experience of the last half-century.

The cartoons and illustrations found throughout the book are taken from workplace newsletters and shopfloor broadsides. Many feature a worker named Egghead (no doubt the offspring of the IWW's dull-witted Mr. Block) who trusts in the goodwill of the corporation, remains blissfully ignorant of the provisions of his contract, and admires the "smart people" who run his union.

STAUGHTON LYND HAS PROVIDED an informative introduction to this selection of writings and speeches, and conveniently arranged them

under headings dealing with trade unionism, the working class, and "Revolutionary Moments" respectively. If much of what is included in this collection must be considered as polemical in nature, Glaberman is at least able to make his case with an immediacy and clarity of expression not often found in left discourses. Controversial and disturbing as his conclusions may be to some, Lynd urges the earnest reader to engage Glaberman's arguments: "What he asked, and I as his editor ask on his behalf, is that these ideas not be evaded but be squarely faced." (xiii) Let the debate begin.

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The Passion of Robert McNamara, or Sympathy for the Devil?

KURT JACOBSEN

DOES IT SEEM A TRIFLE CHURLISH to heap scorn on former Defense Secretary Robert McNamara's rueful reminiscences? I mean, do you suppose that Donald Rumsfeld ever had or ever will have a second thought in his sublimely brusque life? Can you even imagine Rummy or anyone else in the truculent Bush Jr. gang publicly admit that, goldarnit, they were just plain flat wrong and they're sorry? So if a sadder but wiser McNamara has a burning yen to dispense bitter wisdoms on the dark art of foreign policy after Vietnam, why not say thank goodness for small graces? Measured against the itsy-bitsy, teensy-weensy moral caliber of the our frisky neocon artists, McNamara begins to resemble a refreshingly repentant Lear-like figure lurching out of the blasted memory hole of the 1960s to tell his cautionary tales. So behold a stellar cast member of the hubristic "best and the brightest" of the Kennedy-Johnson years who has gone through a wrenching moral reckoning with all his errant words, deeds and, don't forget, numbers.

The Fog of War: Eleven Lessons from the Life of Robert S. McNamara
EARL MORRIS, DIRECTOR
Sony Pictures Classics, 2003

Still, in Errol Morris' Oscar-winning documentary *Fog of War*, McNamara, an incorrigible whiz kid well into middle age, manages to appear both mighty contrite and wholly unapologetic too. A neat theatrical feat. One drawback with whiz kids who stay that way too long is that they usually suck up to the status quo. Who else but devotees of the dominant order would reward their precocity anyway? The really quick and quirky kids learn to be extremely sly around authorities or else get shunted aside. Celebrated whiz kids excel at embracing conventional mindsets and spiffing them up, rather like ad execs concocting improved detergents for supermarket shelves. The "best and the brightest," as journalist David Halberstam dubbed the glittering intellects populating the 1960s White House, got where they were, above all, because they had a knack for pandering to their superiors. No less so than the worst knuckle-dragging Neantherdals in the Pentagon, these Ivy League sophisticates were captured by their own delusive paradigms and models, were snared inside their own supremely well-reasoned assumptions and arrogance.

McNamara's personal agony is that he was sharp enough even in the mid-1960s to see that he had helped entangle his credulous country in an ugly, unwinnable and immoral war. The fact that he tarried thirty years before spilling this news in his apologia/apology book, *In Retrospect* (1995), did not endear him to every reader. The queasy question still rattling around inside this kid-glove treatment of a documentary is, did McNamara's vaunted ability to relate scarce resources efficiently to alternative objectives desert him in Southeast Asia or — Nuremberg defense, folks — was he just a glorified gofer for the President? McNamara understandably leans to the latter explanation, primly portraying himself as loyal to a fault to the Office of the President, if not to the oaf in office.

In 1962 MacNamara jauntily told the press that "every quantitative measurement we have shows we are winning" in Vietnam but by the

KURT JACOBSEN *is a research fellow in the Department of Political Science at the University of Chicago. His most recent book is* Maverick Voices: Conversations with Political and Cultural Rebels *(2004).*

autumn of 1966 McNamara privately urged a negotiated settlement that included elements of the National Liberation Front. Once it dawned on him that North (and insurgent South) Vietnamese leaders were a tad more determined than the United States to " bear any burden" to win, he demurred inside inner circles and made a slithery exit to the World Bank (where he may have inflicted even more ruin, though that's another story). His pronounced silence after departing LBJ's administration in February 1968 was that of a good fellow with a terribly familiar moral blind spot, that of a functionary whose loyalty trumps truth. Daniel Ellsberg, for one, lamented the squandering of the opportunity McNamara had to state his major misgivings openly and perhaps help halt conflict sooner. Half of the Memorial Wall in D.C. could have kept a smooth surface sheen (sans engraved names); God knows how many Southeast Asians could have escaped mutilation and death.

But McNamara boldly confesses that he was nothing if not conventional in his zealous quantitative view of Southeast Asian political struggles. Vietnam became a whiz kid's war, where experts tried to apply violent force precisely to persuade a resilient and ill-understood enemy to capitulate. By the time the last U.S. chopper fled from a Saigon roof top in April 1975, they imprecisely rubbed out, by McNamara's estimate, 3.8 million Vietnamese. LBJ, the cynical hulking Texan, may have ordered his slick Secretary of Defense to perform all the dime store realpolitik calculations but McNamara, lovingly gazing into his shimmery cost-benefit crystal ball, avidly conjured up all the bloodstained equations that made that venture seem sane to so many for so long. At an excruciatingly crucial level, Vietnam always was, as CIA heretic Sam Adams entitled his expose, *A War of Numbers*. Yet McNamara, the rigid numerologist, also admits on screen that he was neither bashful nor squeamish about resorting to arithmetical sleight of hand to answer the political needs of the moment for dear old LBJ. So why play the blushing virgin?

In his post-mortem musings, *In Retrospect* and (coauthored) *Argument Without End*, which together serve as a rough script for this indulgent documentary, McNamara actually blames Vietnamese allies for furnishing mischievously made-up statistics. Why whoever would think of such a thing? Indeed, a Vietnamese official wryly told a reporter in the early 1960s: "Ah, statistics. The Americans love statistics. If they want the numbers to go up, they will go up. If they want them low, they will go down." You needn't be inscrutably Oriental to fiddle with figures; anyone could play and almost everyone did. One suspects that other players — ranging from command post bureaucrats to platoon leaders — probably lacked the Vietnamese's bewildered bemusement at this reverent fixation on "hard" numbers, as if they simply must have concrete correlates in the real world.

Morris zeroes in, so to speak, on the seductiveness of mind-numbing numbers: body counts, crossover points, weapons captured, enemy defections, villages "pacified," sorties flown, and so on. How many brows furrowed, tears fell, blood spilled, and hearts and minds shattered for the sake of a shaky metaphor of falling dominoes? Morris interlaces the interview segments with superbly apt graphics: my favorite is a stunning stereopticonic image of a fuselage full of hurtling numbers falling like bombs to pulverize the innumerate pagans below. Morris spits out handy conversions to help us grasp the magnitude of World War II firebombings of Japan (51 percent of Tokyo incinerated equals 51 percent of New York City, and so on). The iconic row of dominoes flopping across a dingy map of Southeast Asia need only have been shown once — but perhaps some points bear repetition.

McNamara hailed from what biographers like to call humble beginnings. Not quite Abe Lincoln log cabin, but close. The depression era youth scraped cash together to get through Berkeley, served in the Army Air Force alongside the insatiable Curtis LeMay picking bomb targets ("We burned over one hundred thousand in Tokyo"), taught at Harvard Business School briefly afterward, and imported his panoply of shiny statistical techniques into the Ford Motor Company

where he rapidly rose to the top spot just as JFK invited him to shape up the troglodytic Department of Defense. The new guy worshipped at the altar of statistics, which he believed unlocked every imaginable mystery. McNamara also felt that he had to "give something back," mostly via his chilly mission of "maximizing efficiency" wherever he set foot. Yet is a job that was not worth doing worth doing well? That's the nasty question that he answered so wretchedly in Vietnam.

In the hair-trigger Cuban missile crisis, however, "we lucked out." Many years later he learned that, contrary to U.S. intelligence reports, 162 Soviet nuclear weapons were ready to blast an American invasion force, and much else, to kingdom come. He acutely appreciated how frightfully close the planet came to being obliterated, and never forgot. The civilian genius with slick-backed hair and wire rim glasses gamely confronted a musty backward-looking Pentagon. The wily joint chiefs, he laments, successfully opposed a nuclear test ban treaty because the Russians supposedly would violate it by tests on the dark side of the moon: "And we lose 17 to one advantage" in missiles as the arms race accelerated. What audience would not be on McNamara's side?

Fog of War is a very tricky expedition into the heart of imperial darkness, as refracted through the tormented McNamara. The eleven foreign policymaking rules McNamara issues are prudent ones but, if you want to get fussy about it, they often tend to cancel each other out. (Rationality will not save us: Get the data; use proportionate means, empathize with the enemy, and so on.) Neither do these rules, or their absence, explain why the United States was in the business of devastating Vietnam. One of the "revelations" in *Fog of War* that makes some viewers gasp is McNamara discovering when meeting Vietnamese counterparts in the early 1990s that they were, good heavens, nationalists above all and by no means pawns of Chairman Mao. The whole lousy war was one big misunderstanding. Here is a pungent Monty Python moment that demands John Cleese stomp in saying "Sorry!" to every soul he foolishly has just sliced to ribbons. The trouble is that the Pentagon Papers that McNamara himself ordered to be assembled show that plenty of intelligence officials were well aware of these facts, and U.S. forces moved in anyway.

It's hard to discern, at first, whether Morris is as dim a bulb as his off-camera questions imply, largely because McNamara exerts a great deal of control over his own performance, no matter how scintillatingly open he seems. McNamara still is the sturdy brylcreamed warrior poised for abstract derring-do, a savvy guy whose sincerity always is melded to canniness. So was Morris the silly plaything of a cunning Mephistophelian character? Morris's documentaries include *Dr. Death* that features a tenaciously abstract designer of execution instruments, and a short documentary about a autistic scientist (see Oliver Sacks' *An Anthropologist on Mars*) whose vocation is, despite an inability to make emotional contact with human beings, to refine methods for slaughtering livestock. Methinks there may be a wickedly sly carryover theme from these strange projects into *Fog of War*, and that the trio needs to be seen as a set to be appreciated as arch explorations of highly intelligent people bewitched in peculiar ways by symbols.

Is *Fog of War* a naïve or lopsided exercise in finger pointing? When bankers want to cry safely, they go to the opera. When McNamara wants to cry safely, he goes to retrospective conferences or, in this case, obliges a probing documentary filmmaker. McNamara does not even recall if he gave the order to use Agent Orange, although it happened on his watch. (If a barrel of this dioxin-laced herbicide turned up in Iraq today authorities no doubt would label it as a WMD.) McNamara's fits of conscience arose as he realized that nothing about the whole Vietnam imbroglio added up. In 1962 he says he sensed this was not a war the United States needed. Yet evidently the "flexible use" doctrines of the era and the overpowering impetus of U.S. arms (the very possession of them) propelled the United States into deeper involvement.

There are huge passages of special pleading but it is, after all, McNamara's show. Let the other

guys make their own documentaries. Still, McNamara does a considerable public service by revisiting those events and commenting caustically on his own systematically misguided judgments. McNamara ultimately blames LBJ, and those advisers to whom the insecure LBJ was susceptible, for the Vietnam war. McNamara has long argued the Oliver Stone line that JFK, in a pinch, would have pulled out of Vietnam. Who the heck knows? At least McNamara offers a sort of apology. Apart from Bobby Kennedy (to whom he grew close), he was the only major figure in the administration who did so. Former National Security Adviser Walt Rostow, fierce and unrepentant, may be nearer the norm, and a role model for the Bush gang.

McNamara has since done penance by supporting nuclear disarmament, challenging some establishment shibboleths, and exposing the unabashed conformity of many high IQ dolts and ideologues in policy circles. You have to start where people are, including our increasingly deranged elites. McNamara dislikes gushing, so his mea culpas are implicit thoughout his testimony. Yet recall that this is the bright guy who also reamed up "Project One Hundred Thousand," filling military ranks with test-deficient youth in order to help keep draft numbers down and protect the more qualified likes of Dick Cheney, George W. Bush, and Dan Quayle from seeing combat. The project was packaged as if it were a well-meaning social service program but operated as yet another elite-friendly affirmative action program to preserve the well-connected from the consequences of their parents' clueless aggression. That nifty pet project, as well as many others (the JASON group's electronic battlefield, etc.), didn't warrant mention in the documentary.

LBJ rashly posed the choice in Vietnam at the outset as conquest or appeasement when it was neither. A tape recording of LBJ is used to exculpatory effect up to a point. (LBJ, fearful of rightwing opinion as much as McNamara elsewhere says he himself was, demands macho reactions to perceived Red mischief.) McNamara's placating line that "We all make mistakes" is the egregiously lame excuse it usually is. "Forty years ago this country went down a rabbit hole in Vietnam and millions died," Earl Morris said in his Academy Award acceptance speech in March. "I fear we're going down a rabbit hole once again. And if people can stop and think and reflect on some of the ideas and issues in this movie, perhaps I've done some damn good here." Well, okay.

Like a modern Marley's ghost rattling chains and ledgers, can McNamara stir a change in course in Iraq by the neocon Scrooges? Such people seem hopelessly heedless by inclination, upbringing and privilege. Why would an insipid frat boy with lousy grades, a drunk-driving record, a spotty (to say the least) National Guard record, no intellectual spark, and no aptitude for anything beyond boorishness find himself a multimillionaire and U.S. president? What conclusion could Bush reach except that there must be a God and Dubya was the wormy apple of his eye? Empathize with the enemy, McNamara advises. When we are done doing that with this odious lot, what then, Mac?

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Carlo

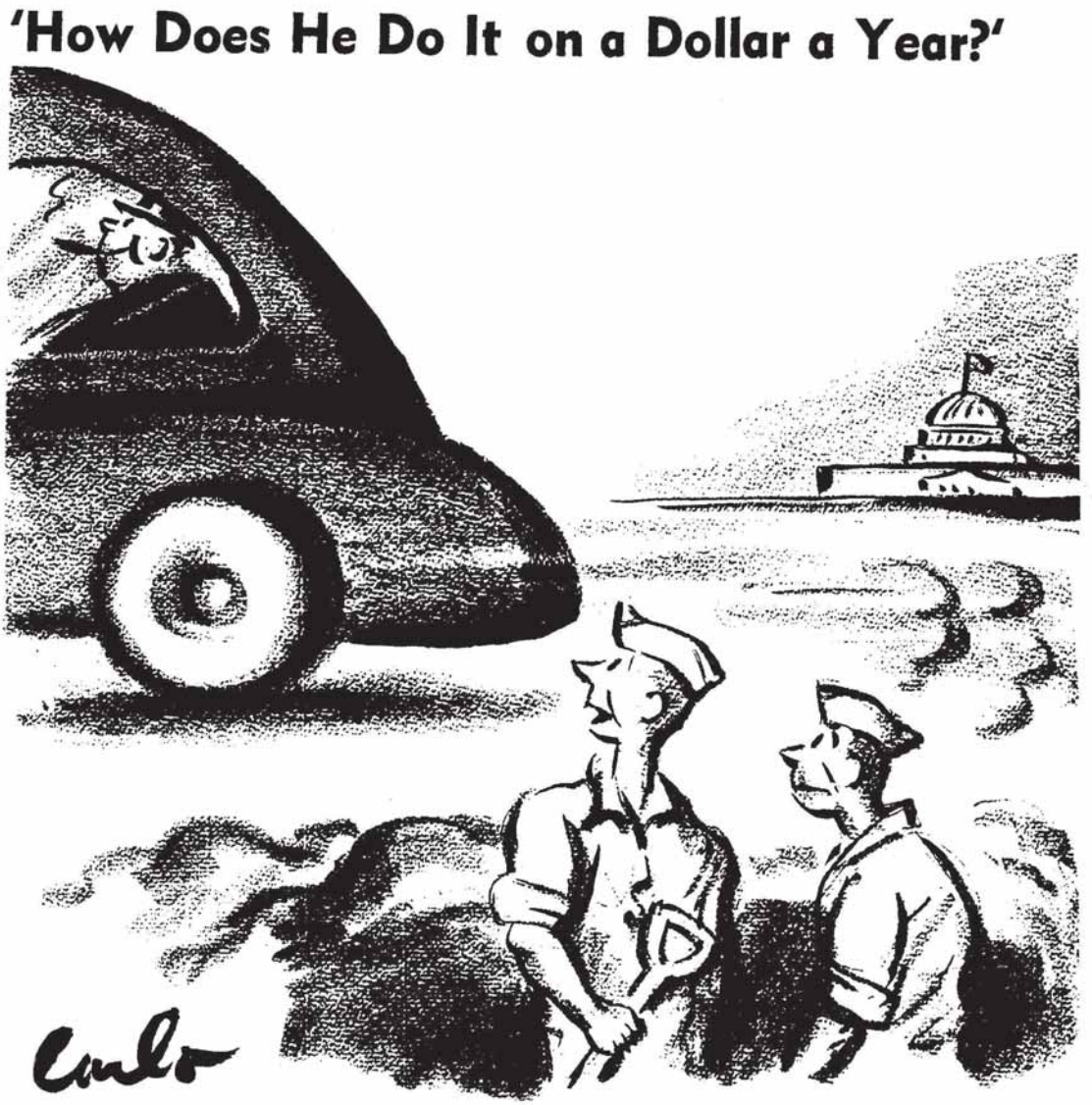
"Carlo" was the pen name of Jesse Cohen (1909-1979), one of the most gifted radical cartoonists of the midcentury period. After beginning his career in the commercial press while in his teens, Cohen's sketches first appeared in the radical press — specifically, in the *New Militant*, the publication of the Workers Party of the United States — in 1935. Within two years, he was drawing exclusively for the small-circulation newspapers of the Trotskyist left, mainly the Socialist Appeal, the Northwest Organizer, and then, beginning in 1940, the Workers Party weekly *Labor Action*, where he reached the peak of his art as a caricaturist and satirist.

Carlo's cartoons were immensely popular in his movement. The Trotskyists, and later the Shachtmanites, were dissidents within a larger left, and they faced the difficult task of communicating their views and program and of differentiating themselves from other left tendencies. Carlo's cartoons, which *Labor Action* usually featured on the front page across several columns, were an essential tool of communication. Carlo's editors, such as Felix Morrow and Carlos Hudson on the *Northwest Organizer*, and Irving Howe on *Labor Action*, remembered his speed and utility. Howe recalled in his memoir *A Margin of Hope*: "Give him a tip, a theme, and he quickly converts it into an image . . . heavy lines, bold chiaroscuro, sometimes caustic, often witty." Writing to Carlo from Coyoacan in December 1937, Trotsky declared: "The entire population of our household admires every week your drawings in the *Socialist Appeal*. Diego Rivera finds them excellent. You are not only a magnificent artist but a genuine revolutionary and thus a precious contributor to our common fight."

Jesse Cohen was born in New York City. He was the fourth of five children of Jewish immigrants from Odessa. He studied at the Art Students League and later worked as a copy boy at the *New York World* in the late 1920s. Under the pen name "Cowan" he drew for the *Boston Evening Transcript* from 1930 to 1934, and his cartoons were sometimes reprinted in the *New York Herald Tribune*'s weekly page of selections of the best cartoons from around the nation. His brother Joseph Cohen recalled that Jesse made enough money to support his siblings and his mother during the early 1930s.

As a radical cartoonist Carlo tackled certain topics over and over again: the treachery of Stalinism, the dangers of fascism, the decay of capitalist society, and the virtues and potential power of the industrial worker. His caricatures of Stalin, grinning smugly with a pipe in his mouth and blood on his hands, still convey the contempt held by the Trotskyists toward the revolution's great betrayer. Carlo's capitalists, invariably clothed in top hats, cutaway coats, and striped pants, are eternally cleaning up profits while crying for government favors and worker sacrifice.

One of Carlo's best cartoons, reprinted here, shows two bewildered GI's digging a ditch as they watch a smiling, cigar-smoking captain of industry roll by in his chauffeur-driven car, with the Capitol dome in the background. The question that one of the GI's asks — "How does he do it on a dollar a year?" refers the corporate executives who ran government agencies for "a dollar a year" during World War Two. The cartoon "Sh-h-h — You're Disturbing National Unity!" highlights the role that Communists played in opposing strikes

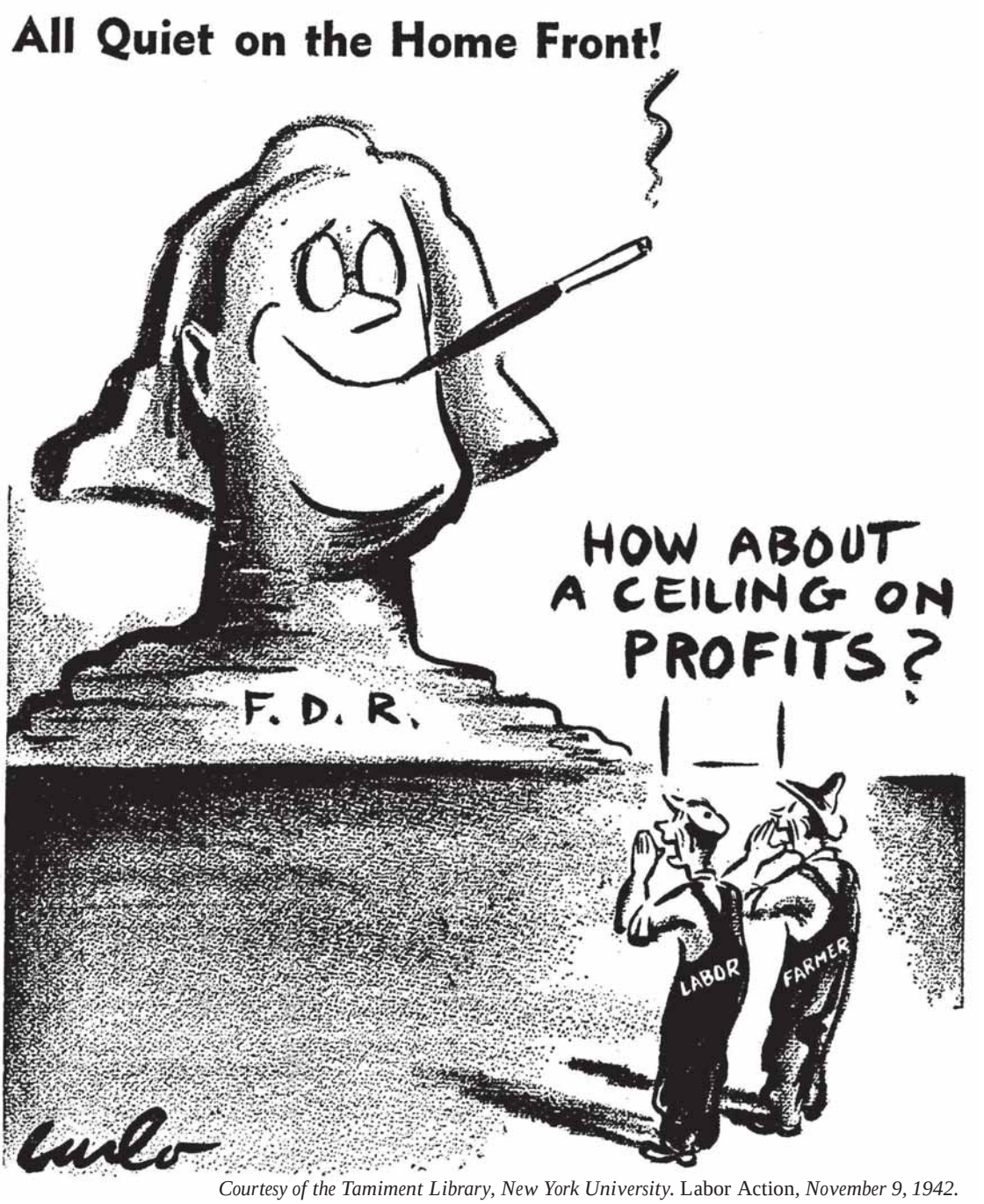


Courtesy of the Tamiment Library, New York University. First published in Labor Action, *August 31, 1942.*

as a threat to the war effort. "All Quiet on the Home Front!", which appeared in the early 1940s, shows workers and farmers as natural allies pitted against an elusive Sphinx (aka FDR).

Carlo, who was known as Joe Carlo or Joe Cohen by his movement comrades, was remembered by them as shy and introverted, "insecure in a world he never made," in the words of Rube Singer. Living alone in New York and for several periods in San Francisco, he made a number of friends among the Workers Party rank-and-file but does not seem to have been particularly close to the party leadership, or to the writers whose work he illustrated.

Carlo stopped drawing political cartoons at the end of the 1940s, and turned to abstract painting, to which he devoted himself for nearly three decades, producing hundreds of canvases. In this he resembles the character Vito in Harvey Swados's 1970 novel *Standing Fast*, with the cru-



Courtesy of the Tamiment Library, New York University. Labor Action, *November 9, 1942.*

cial difference that Carlo never enjoyed Vito's material and critical success. Instead, Carlo made a living as a touch-up artist for the *New York Post* and as a used book dealer, while painting for his own pleasure. When he died of cancer in 1979, his sister inherited his trove of paintings — but only a handful of originals of his cartoons.

JON BLOOM

Courtesy of the Tamiment Library, New York University. Labor Action, *October 5, 1942.*