

How post-September 11 anti-terrorism measures threaten our civil liberties

 thirdworldtraveler.com/Dissent/SilencingPoliticalDissent.html



excerpts from the book

Silencing Political Dissent

by Nancy Chang

Seven Stories Press, 2002

p20

The first ten amendments to the Constitution-which | collectively comprise the Bill of Rights-guarantee | Americans the political freedoms and individual liberties essential to an open society. The core of the Bill of Rights is the First Amendment, which guarantees our freedoms of speech, political association, and religion, our rights to assemble peaceably and to petition the government for a redress of grievances, and the freedom of the press. These guarantees encourage democratic participation in government by promoting debate on public issues that is "uninhibited, robust, and wide-open," an inquisitive press, and government accountability for its actions.

The remaining amendments in the Bill of Rights safeguard us against undue governmental interference in our lives. The Fourth Amendment protects our privacy against unreasonable government intrusion and surveillance. Its warrant requirement imposes a judicial check on the executive branch. Except in the case of exigent circumstances, a law enforcement officer must obtain a warrant from a neutral and independent magistrate prior to conducting a search or seizure. The warrant must be supported by the officer's written affirmation that there is probable cause to believe

that a specific criminal act has taken place and that the search or seizure that the warrant authorizes will uncover evidence of the crime.

The due process clause of the Fifth Amendment demands fairness from the federal government. On a substantive level, the due process clause protects us against government action "that 'shocks the conscience' or interferes with rights 'implicit in the concept of ordered liberty.'" On a procedural level, the due process clause bars the government from depriving any person-whether citizen or not-of life, liberty, or property without first providing the person with a full and fair opportunity to be heard. The requirement of equal protection of the laws, which the Supreme Court has read into the Fifth Amendment by way of the Fourteenth Amendment, prohibits the government from intentional discrimination on the basis of race, ethnicity, gender, religion, or political belief. And the Sixth Amendment promises a fair trial and the assistance of counsel to those accused of crimes.

p22

THE SEDITION ACT OF 1798

Just seven years after the ratification of the Bill of Rights, the First Amendment came under assault. In an ultimately unsuccessful bid to prevent the Republican Party from gaining power, a Federalist-controlled Congress enacted the Sedition Act of 1798, which made it a crime to criticize the government. Although the Federalists claimed that this extreme measure was justified in light of heightened tensions between the United States and France, curiously, all of the indictments, prosecutions, and convictions under the act were of Republicans. One of the best-known figures to be convicted under the act was a congressman, Matthew Lyon of Vermont. Lyon served a four-month prison sentence for his "crime" of describing President Adams as "swallowed up in a continual grasp for power, in an unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice." The Federalists' misguided quest for political power back fired on them. Lyon and the other Republicans who had been outspoken critics of the Federalists became popular heroes and, in 1801, Thomas Jefferson, a Republican, wrested the presidency from Adams. As president, Jefferson pardoned those who had been convicted under the act.

The worldwide political unrest of the World War I era brought forth a fresh assault on the First Amendment. The Espionage Act of 1917 made it a crime to "willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language" about the United States, or to "cause or attempt to cause, or incite or attempt to incite, insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States." In 1919, the Supreme Court upheld the conviction under the Espionage Act of socialist Charles Schenck, who had printed and distributed pamphlets urging opposition to the draft. The Court's unanimous opinion, authored by Justice Oliver Wendell Holmes, flatly rejected Schenck's argument that his speech was protected under the First Amendment. Instead, the Court held that government may restrict speech when it presents a "clear and present danger" of "bring[ing] about the substantive evils that Congress has a right to prevent." The Court went on to declare that "[w]hen a nation is at war many things that might be said in time of peace

are such a hindrance to its effort that their utterance will not be endured so long as men fight."

The Schenck decision is perhaps best known for the Court's pronouncement that an individual who falsely shouts "fire" in a crowded theater is not protected by the First Amendment. Historian Howard Zinn has suggested that Schenck's act was more akin to someone "shouting, not falsely, but truly, to people about to buy tickets and enter a theater, that there was a fire raging inside." Zinn questions whether the war itself "was a 'clear and present danger,' indeed, more clear and present and more dangerous to life than any argument against it."

The Supreme Court also upheld the conviction under the Espionage Act of socialist labor leader Eugene Debs based on an impassioned antiwar speech he delivered in Canton, Ohio, in which he counseled those in the audience of conscription age, "You need to know that you are fit for something better than slavery and cannon fodder." Debs, the founder of the Industrial Workers of the World, had been sentenced to a ten-year prison term. From prison, he mounted his fifth and final presidential campaign. His sentence was commuted after thirty-two months by President Warren Harding, and he was released from prison at the age of sixty-six.

THE SMITH ACT OF 1940

The First Amendment came under challenge once again with the passage of the Smith Act of 1940, which made it a crime to "knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence," or to "organize...any...assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence." In the late 1940s, as Cold War tensions between the United

States and the Soviet Union mounted, the Truman administration capitulated to the anticommunist frenzy by indicting Eugene Dennis and ten other Communist Party leaders under the Smith Act for conspiring to organize the Communist Party and for advocating the overthrow of the United States government by force and violence. Following a highly contentious trial in 1949 that stretched over nine months and led to accusations of judicial bias and prosecutorial misconduct, all eleven defendants were convicted.

The Supreme Court, in a plurality opinion written by Chief Justice Frederick Vinson, upheld the convictions of Dennis and his fellow Communist Party leaders under a First Amendment test that provided even less protection of speech than the "clear and present danger" test applied in the Schenck case. Chief Justice Vinson asked "whether the gravity of the 'evil,' discounted by its improbability, justify[ed] such invasion of free speech as is necessary to avoid the danger." Despite the fact that the Communist Party had not used force or violence, Chief Justice Vinson concluded that "[t]he formation...of such a highly organized conspiracy, with rigidly disciplined members subject to call when the [leaders] felt that the time had come for action, coupled with the inflammable nature of world conditions, similar uprisings in other

countries, and the touch-and-go nature of our relations with countries with whom [the leaders] were in the very least ideologically attuned," posed a sufficiently grave danger to justify the convictions of its leaders.

By the end of 1954, Senator Joseph McCarthy had been censured by the Senate, and the anticommunist hysteria that he had done so much to incite began to subside. In 1957, the Supreme Court, in *Yates v. United States*, reversed the convictions of Communist Party leaders under the Smith Act by drawing a distinction between "advocacy of abstract doctrine and advocacy directed at promoting unlawful action." However, it was not until 1969, the final year of Chief Justice Earl Warren's sixteen-year tenure on the Supreme Court—a tenure remarkable for its groundbreaking decisions promoting individual freedom and racial equality—that the Court finally abandoned the cramped reading of the First Amendment adopted in the *Schenck*, *Debs*, and *Dennis* cases.

In the pivotal case of *Brandenburg v. Ohio*, the Warren Court declared that "the constitutional guarantees of free speech and free press do not permit a state to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg* marked a crucial turning point in the Court's First Amendment jurisprudence by establishing that "mere abstract teaching" of "the moral propriety or even moral necessity for a resort to force and violence" cannot be prohibited. Under this new standard, the Court reversed the conviction of a Ku Klux Klan leader based on his statement at a rally for white supremacy that "if our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it's possible that there might have to be some revengeance [sic] taken."

THE COLD WAR

The ruthless witch hunt for communists and their "fellow travelers" during the height of the Cold War—from the late 1940s to the early 1950s—stands out as one of the most sordid chapters in American history. Communist Party leaders were criminally prosecuted and convicted under the Smith Act based on their political views. Witnesses subpoenaed before the infamous House Un-American Activities Committee (HUAC) who refused to answer questions about their membership in the Communist Party or to supply the names of their political associates were imprisoned for contempt of Congress. Federal and state government employees, attorneys seeking admission to the bar, and labor union leaders were required either to sign loyalty oaths disclaiming any association with the Communist Party or relinquish their positions. "Communist-action" and "communist-front" organizations were required either to register with the attorney general, reveal the names and addresses of their officers and members, and account for financial contributions, or to face criminal penalties. As anticommunist hysteria swept the nation, organizations suspected of communist ties found it increasingly difficult to retain their members, much less attract new members and raise funds. Individuals suspected of being sympathetic to leftist causes were subjected to surveillance, blacklisted from employment, and saw their reputations destroyed.

While anticommunist fervor ran high, the Supreme Court consistently deferred to the political branches of government on the question of whether restrictions on the First Amendment were justified by the threat that the Communist Party posed. Between 1945 and 1957, HUAC held "at least 230 public hearings, at which more than 3,000 persons testified, of whom 135 were cited for contempt." When a court convicted former college professor Lloyd Barenblatt for contempt of Congress and sentenced him to six months in prison because he had refused to respond to HUAC questioning concerning his political beliefs and affiliations, the Supreme Court affirmed his conviction. The Court found that Barenblatt's First Amendment rights were outweighed by the government's interest in "self-preservation" in a situation where Congress had found that the Communist Party was intent on overthrowing the United States government by force and violence. On this reasoning, the Court affirmed the contempt convictions of civil rights activists Frank Wilkinson and Carl Braden, who, like Barenblatt, had refused to name names when subpoenaed before HUAC.

For similar reasons, the Court upheld a provision of the Labor Management Relations Act of 1947 that conditioned the recognition of labor unions on their leaders' disavowal of communist ties. The Court also upheld a provision of the Internal Security Act of 1950 that required the compulsory registration of communist organizations with the attorney general.

In 1957, however, with its decision in *Yates*, the Supreme Court tentatively asserted itself as a check on the excesses of the political branches. In 1961, in *Scales v. United States*, the Court overturned the Smith Act convictions of Communist Party leaders on the ground that "a blanket prohibition of association with [the Communist Party,] a group having both legal and illegal aims," would pose "a real danger that legitimate political expression or association would be impaired." Similarly, in 1967, in *United States v. Robel*, the Court struck down a provision of the Internal Security Act that barred members of "communist-action" organizations from working at defense facilities. The Court objected to the provision because it "swe[pt] indiscriminately across all types of association with communist-action groups, without regard to the quality and degree of membership."

The Supreme Court's decisions in *Scales* and *Robel* established what is accepted today as a basic tenet of constitutional law: guilt cannot be imposed based solely on one's association with an organization that has both lawful and unlawful ends. Instead, guilt must be personal, and it must be based on clear proof of an intent to further the unlawful ends of such an organization by resort to force or violence. As Chief Justice Earl Warren observed in *Robel*, "[i]t would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties—the freedom of association—which makes the defense of the Nation worthwhile.

THE FBI'S COINTELPRO PROGRAM

Government efforts to suppress political association did not end with the ebbing of Cold War tensions. Between 1956 and 1971, the FBI operated COINTELPRO, a secret political intelligence program that covertly spied on, and interfered with, law-abiding political organizations that were engaged in activities protected by the First

Amendment. The existence of COINTELPRO-shorthand for counterintelligence program-did not come to light until March 1971, when the "Citizens' Committee to Investigate the FBI" broke into an FBI field office in Media, Pennsylvania, and provided the press with documents seized from that office. The program's purposes were sinister. According to a memo written by J. Edgar Hoover-the FBI's controversial director from 1924 until his death in 1972 - on May 9, 1969, COINTELPRO's mission was designed to "expose, disrupt, misdirect, discredit, or otherwise neutralize activities" of individuals and organizations perceived by the government to pose a threat to domestic interests.

COINTELPRO was created in 1956 to investigate the Communist Party, but by 1961 it had turned its attention to the Socialist Workers Party. With the social unrest and upheaval of the mid-1960s, COINTELPRO widened its targets to include the civil rights movement, the black nationalist movement, the white supremacist movement, the women's liberation movement, and the "New Left," which included groups opposed to the Vietnam War. From 1963 until his death in 1968, Martin Luther King Jr. remained the target of a ferocious FBI smear campaign, the goal of which was to "neutralize" him as an effective civil rights leader. The FBI went to the extreme of mailing Dr. King a composite audiotape of recordings picked up by microphones it had planted in hotel rooms he had occupied. The tape was accompanied by a note suggesting that Dr. King commit suicide or face the public release of the tape.

In the case of the FBI's investigation of the black nationalist movement, agents were instructed to "prevent groups and leaders from gaining 'respectability' by discrediting them" and "prevent the rise of a 'messiah,'" such as Dr. King, Stokely Carmichael, or Elijah Muhammed, "who could 'unify and electrify' the movement." In the case of the FBI's investigation of the New Left, agents were instructed to instigate "personal conflicts or animosities" between leaders, create the impression that leaders are "informants for the Bureau or other law enforcement agencies," "have members arrested on marijuana charges," "exploit the 'hostility' between New Left and Old Left groups," and "use 'cooperative press contacts."

In April 1976, following a yearlong investigation, the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, chaired by Senator Frank Church, issued a scathing report documenting in extensive detail the FBI's abuses in its COINTELPRO operations. The Church Committee roundly condemned COINTELPRO for having accumulated, in a manner "indisputably degrading to a free society," massive intelligence information on lawful activity, including protest activity and domestic dissent, and on law-abiding citizens, for purposes "related only remotely or not at all to law enforcement and the prevention of violence." The Church Committee was even harsher in its condemnation of the FBI's frequent resort to its repertoire of "dirty tricks," which included the frequent use of informants and agents provocateurs to infiltrate and disrupt political organizations, illegal wiretaps and break-ins, and the spread of false rumors that caused reputations to be ruined, jobs to be lost, and marriages and friendships to be destroyed.

COINTELPRO was effective in suppressing many of the dissident political movements that burgeoned in the mid-1960s. Groups that were the targets of the FBI's clandestine

actions to "expose, disrupt, misdirect, discredit, or otherwise neutralize" their activities found it difficult to maintain their cohesiveness, momentum, and ability to attract new adherents. The full extent to which COINTELPRO shifted the trajectory of political life in the United States will never be known.

p39

The ruling in *Ex Parte Milligan* had long been forgotten by the time the nation next found itself in a state of crisis. During the Red Scare of the World War I era, the fear that communism would spread from Bolshevik Russia to Europe and the United States fueled government investigations of suspected radical dissidents. When the home of Attorney General A. Mitchell Palmer was bombed by anarchists in June 1919, the administration of President Woodrow Wilson interrogated, arrested, and detained as many as ten thousand resident aliens who had been targeted based on their political ideology. Many of the detainees were beaten and forced to sign confessions. These actions, which came to be known as the Palmer Raids, took place in more than thirty cities and resulted in the deportation of more than five hundred immigrants, not one of whom was proved to pose a threat to the United States.

THE JAPANESE INTERNMENT OF WORLD WAR II

Following the bombing of Pearl Harbor on December 7, 1941, as the United States entered World War II, President Franklin D. Roosevelt issued Executive Order 9066, which mandated the evacuation, relocation, and internment of the 110,000 men, women, and children of Japanese ancestry then living on the West Coast of the United States. While the government had no evidence that any of these persons-two-thirds of whom were United States citizens- were collaborating with Japan, they were kept in preventive detention under harsh and punishing conditions for much of the war.

p43

HOW THE USA PATRIOT ACT UNDERMINES OUR CIVIL LIBERTIES

A number of the USA PATRIOT Act's provisions are uncontroversial. The act nevertheless stands out as radical in the degree to which it sacrifices our political freedoms in the name of national security and consolidates new powers in the executive branch. It achieves these undemocratic ends in at least three ways. First, the act places our First Amendment rights to freedom of speech and political association in jeopardy by creating a broad new crime of "domestic terrorism" and denying entry to noncitizens on the basis of ideology. Second, the act reduces our already low expectations of privacy by granting the government enhanced surveillance powers. Third, the act erodes the due process rights of noncitizens by allowing the government to place them in mandatory detention and deport them from the United States based on political activities that have been recast under the act as terrorist activities.

Blurring the line between ideology and terrorism

Section 802 of the act creates a federal crime of "domestic terrorism" that broadly extends to "acts dangerous to human life that are a violation of the criminal laws" if they "appear to be intended...to influence the policy of a government by intimidation or coercion," and if they "occur primarily within the territorial jurisdiction of the United States." Because this crime is couched in such vague and expansive terms, it is likely to be read by federal law enforcement agencies as licensing the investigation and surveillance of political activists and organizations that protest government policies, and by prosecutors as licensing the criminalization of legitimate political dissent. Confrontational protest activities, by their very nature, are acts that "appear to be intended...to influence the policy of a government by intimidation or coercion." In addition, clashes between demonstrators and police officers and acts of civil disobedience—even those that do not result in injuries and are entirely nonviolent—could be construed as "dangerous to human life" and in "violation of the criminal laws."

Environmental activists, antiglobalization activists, and antiabortion activists who use direct action to further their political agendas are particularly vulnerable to prosecution as "domestic terrorists."

p69

Within hours of the terrorist strikes on the World Trade Center and the Pentagon, the FBI, working in close cooperation with the INS and local law enforcement agencies across the country, embarked on a dragnet for suspected terrorists. In its first few days, 75 individuals were rounded up, interrogated, and detained. By November 5, 2001—the last date on which the Bush administration released a cumulative total—the number of detainees had soared to 1,147.5 In April 2002, one expert estimated that the total had exceeded 2,000.

p70

The government's detention of such large numbers of individuals could, in theory, stand as a measure of its success in identifying and rooting out terrorists within the United States. Unfortunately, a number of factors suggest instead that the government is engaging in preventive detention—a now universally condemned practice that the United States last employed, with disastrous results, when it interned 110,000 people of Japanese descent following the invasion of Pearl Harbor. Under the Fourth Amendment, the government may detain a person accused of a crime only on a showing of probable cause that the person has engaged in criminal conduct. Under the due process clause, a person who has not been accused of a crime has a fundamental right to freedom from bodily restraint. The due process clause requires that a noncitizen who has been charged with an immigration violation but not with a crime be released from detention on bond unless he is shown to pose either a danger to security or a flight risk.

p71

Even the Department of Justice has acknowledged that most of the people arrested in the weeks after the terror attacks have since been cleared of any connection to the attacks or terror groups. And the department's six-month report to Congress on the INS's compliance with Section 412 of the USA PATRIOT Act which provides for the

mandatory detention of suspected alien terrorists, establishes that the attorney general has yet to certify a single noncitizen as a terrorist under the act. As Representative John Conyers Jr.-who, as the ranking minority member of the House Judiciary Committee, led the fight in the House in opposition to the USA PATRIOT Act-remarked, "The entire justification for Attorney General Ashcroft's dragnet approach to detaining Arab and Muslim Americans has collapsed with this admission that he hasn't been able to identify a single terrorist."

p92

SILENCING POLITICAL DISSENT

When U.S. national security is threatened, our commitment to the First Amendment and the democratic values it embodies becomes all the more essential. Crises force us to make decisions on the weightiest of matters-whether to declare war, whether to take military action and compel military service, whether to curtail our political and personal freedoms, whom to call friend and whom foe. The specter of casualties-both military and civilian, American and foreign-looms in the balance. Once made, these decisions are certain to carry long-lasting repercussions extending far beyond the geographical confines of the United States.

Public participation in decision making is the hallmark of a democratic society. Open debate that invites the vigorous presentation of opposing viewpoints both enriches our understanding of the problems we face and challenges us to find innovative solutions. Yet, it is precisely at moments like the present, when the national security is under threat, that First Amendment values are most likely to be abandoned in favor of authoritarian rule. With a growing sense of uneasiness, we have witnessed the Bush administration amass enormous new powers in the months since September 11. And we have witnessed the administration, in an effort to maintain a free hand in the exercise of its new powers, employ strategies that are calculated to silence dissent. First, it has questioned the patriotism of those who oppose its policies, thereby fostering a climate of intolerance of dissent. Second, it has sought to discourage political activism by imposing guilt by association. Third, it has restricted access to government information, which has stymied the press, the public, and even Congress in their efforts to hold the executive accountable for its actions.

A QUESTION OF PATRIOTISM

The First Amendment, through its guarantee of the freedom of speech, has sustained America's most prized traditions- independence of thought, diversity of opinion, and the right to the uninhibited expression of one's views, no matter how unpopular. In the words of Justice Robert Jackson:

[F]reedom 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....

The Bush administration has done violence to these cherished traditions by challenging not simply the ideas but the patriotism of its critics. Shortly after the September 11 attacks, Bill Maher, the host of the television show Politically Incorrect, quipped, "We have been the cowards, lobbing cruise missiles from two thousand miles away.... Staying in the airplane when it hits the building-say what you want about that, it's not cowardly." White House Press Secretary Ari Fleischer seized upon Maher's statement and angrily warned that Americans "need to watch what they say," and that "this is not a time for remarks like that."

More ominous yet was the warning of Attorney General Ashcroft, who, as the nation's top law enforcement officer, heads the Department of Justice and all of its divisions, including the FBI, the INS, the Bureau of Prisons, and the U.S. Attorneys. Testifying before the Senate Committee on the Judiciary in December 2001, Ashcroft admonished that "those who scare peace-loving people with phantoms of lost liberty...your tactics only aid terrorists, for they erode our national unity and diminish our resolve," and "[t]hey give ammunition to America's enemies and pause to America's friends."

The administration's willful refusal to recognize the distinction between core political speech, which enjoys the full protection of the First Amendment, and the crime of treason, has produced an environment in which those who question the soundness of our government's response to the events of September 11 have been faced with visits from the FBI, death threats, and other adverse consequences.

p97

In August 2002, the Department of Justice scheduled to launch Operation TIPS, the code name for the Terrorist Information and Prevention System. The initial phase of this nationwide terrorism reporting system will involve one million American workers in ten cities whose ranks will include truckers, mail carriers, train conductors, and utility workers, and who will constitute a formal network for reporting suspected terrorist activities.

p98

On September 14, 2001, Congress granted President Bush broad and open-ended authority under the War Powers Act to use force, not only against nations but against any "organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States." Convinced that military action would not prevent further acts of international terrorism against the United States, Representative Barbara Lee cast the lone vote in Congress against the resolution and called for diplomatic efforts "to ensure this never happens again." For holding true to her principles, Lee found herself accused of being a traitor and the subject of death threats.

p101

PENALIZING SPEAKERS FOR THE REACTIONS OF THEIR LISTENERS

When the government penalizes speakers for the reactions of their listeners, it sanctions the heckler's veto. But the First Amendment protects controversial speech "unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest." Justice William Douglas, speaking ~ for the Supreme Court in *Terminiello v. Chicago*, explained J that "a function of free speech under our system of government is to invite dispute," and that speech "may indeed best serve its high purposes when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." As Justice Douglas warned, penalizing speakers for the reactions of their listeners leads to "the standardization of ideas, either by legislatures, courts, or dominant political or community groups."

... If intolerance of unorthodox views continues unabated, Americans will soon become as adept in the art of self-censorship as the citizens of the world's most dictatorial regimes. When Americans are intimidated into keeping dissident views to themselves, our public discourse is constricted, the First Amendment is diminished, and democracy itself is under attack.

p103

The USA PATRIOT Act creates a new federal crime of domestic terrorism; it appropriates funds for information-sharing systems between federal, state, and local law enforcement agencies; and it grants enhanced surveillance powers to the executive branch. As a result, political activists and the organizations with which they associate are more likely than ever to become the targets of government tracking, surveillance, and infiltration.

p109

THE RISING COSTS OF POLITICAL ACTIVISM

Since the Boston Tea Party, confrontational protest activities have played a vital role in the struggle for political and social justice in the United States. Our nation's independence from Great Britain, the abolition of slavery, suffrage for women, the passage of federal civil rights legislation, and the withdrawal of American troops from Vietnam were won not by academic debate but by vibrant mass movements that challenged the status quo with passion and verve.

THE CRITICAL ROLE OF CIVIL DISOBEDIENCE IN POLITICAL AND SOCIAL JUSTICE MOVEMENTS

To great persuasive effect, each of these movements made principled use of nonviolent civil disobedience-acts of moral conscience in which individuals publicly and deliberately violate a law to protest government policy. Certainly the success of the American civil rights movement in breaking the stronghold of de jure, or officially sanctioned, racial segregation is largely attributable to the courageous and inspirational examples of Rosa Parks, who was arrested in Montgomery, Alabama, for sitting in the white section of a bus and refusing to move back to the black section; Martin Luther King Jr., who was beaten and jailed for sitting down at whites-only lunch counters in defiance of the South's Jim Crow laws; Fred Shuttlesworth, who was fire-

hosed and set upon by dogs for leading peaceful marches in protest of segregated schools in Birmingham, Alabama; and thousands of others who placed their lives on the line for the cause of racial equality.

Drawing inspiration from the writings of Henry David Thoreau and Mohandas K. Gandhi, Dr. King wrote from a prison cell in Birmingham that civil disobedience was integral to the struggle to win civil rights for African-Americans:

I submit that an individual who breaks a law that conscience tells him is unjust and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law.... [T]he present tension in the South is a necessary phase of the transition from an obnoxious negative peace, in which the Negro passively accepted his unjust plight, to a substantive and positive peace, in which all men will respect the dignity and worth of human personality. Actually, we who engage in nonviolent direct action are not the creators of tension. We merely bring to the surface the hidden tension that is already alive. We bring it out in the open, where it can be seen and dealt with. Like a boil that can never be cured so long as it is covered up but must be opened with all its ugliness to the natural medicines of air and light, injustice must be exposed, with all the tension its exposure creates, to the light of human conscience and the air of national opinion before it can be cured.

p112

Civil Disobedience as Domestic Terrorism

... the USA PATRIOT Act defines a new federal crime of domestic terrorism that stretches beyond recognition the common understanding of the term "terrorism" as premeditated and politically motivated violence targeted against a civilian population. The new crime's wide ambit covers any "acts dangerous to human life that are a violation of the criminal laws," if they "appear to be intended...to influence the policy of a government by intimidation or coercion" and if they "occur primarily within the territorial jurisdiction of the United States." The looseness of this definition allows the government to group nonviolent civil disobedience in the tradition of Thoreau, Gandhi, and King together with the Al Qaeda network's ruthless attacks on civilians, all under the single banner of terrorism.

p119

Law Enforcement Monitoring of Political Activists

Since September 11, local police departments, with massive infusions of support and technical assistance from the Department of Justice and the FBI, have been busily refurbishing their "red squads"-the police units that became notorious during Hoover's reign as the FBI's director for spying on, infiltrating, and disrupting left-wing political organizations in cooperation with the FBI. Their methods of political intelligence are varied and include reading the literature of "subversive" political groups, interviewing people who attend their rallies, infiltrating the groups, and developing informants within the groups.

p126

Attorney General Janet Reno

"The American public's understanding of the workings of its government is a cornerstone of our democracy."

p127

President Bush has taken measures to restrict access to President Reagan's records, which were scheduled for release under the Presidential Records Act of 1978 on January 20, 2001. President Bush delayed the release of these records for months on end, and on November 1, 2001, he issued an executive order that essentially overrides the act by executive fiat. Faced with the Watergate scandal and President Nixon's assertion of proprietary claims over the records and tape recordings created during his administration, Congress passed the act in order to ensure public ownership and control over presidential records. Under the act, a president's records are to be opened for inspection twelve years after he leaves office. But President Bush's executive order grants the incumbent president, as well as former presidents, vice presidents, and their representatives, the power to veto the release of records based on a simple claim of executive privilege.

p129

A COMPLIANT PRESS CENSORS ITSELF

Historically, the press has played a crucial watchdog over government operations. In 1971, the Supreme Court refused to block the New York Times and the Washington Post from publishing, over the strong objections of the Nixon administration, a classified study of the Vietnam War that exposed the government's use of secrecy and deception to gain the public's support for the war. The study, which has come to be known as the Pentagon Papers, had been commissioned by President Johnson's secretary of state, Robert McNamara, and was leaked to the press, in an act of civil disobedience, by Daniel Ellsberg. As Justices Hugo Black and William Douglas explained in their concurring opinion:

In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy.... The press was protected [from government censorship] so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the govern

p136

Since September 11, more than a thousand antiterrorism measures have been proposed in state and local jurisdictions across the nation, and already a number of them have become law. These measures threaten to criminalize speech and protest activities, limit the availability of public records, expand government surveillance powers, and promote participation in acts the legislature deems patriotic.

Unfortunately, noncitizens who engage in political activities today run the risk of being placed in detention and deported under the USA PATRIOT Act or for minor

immigration violations. Noncitizens from Arab and South Asian countries are being selectively targeted by the Department of Justice for "voluntary interviews," and in campaigns to deport "absconders." It is critical that citizens engage in political activities on their behalf.

The decision whether this nation will uphold the Bill of Rights-or acquiesce in its surrender-will ultimately fall to the judiciary. In the nine months since September 11, four trial court judges have issued rulings finding antiterrorism measures to be illegal, in defiance of a tradition in which the judiciary has bowed to the wishes of the political branches of government in times of crisis. Justice William Brennan, in a 1987 speech presented in Jerusalem, urged that we "build bulwarks of liberty that can endure the fears and frenzy of sudden danger-bulwarks to help guarantee that a nation fighting for its survival does not sacrifice those national values that make the fight worthwhile."

[● Dissent page](#)

[● Index of Website](#)

[● Home Page](#)
