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## PERSONALITY DISORDER AND THE *FILM NOIR FEMME FATALE*\*

by

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### ABSTRACT

Motion pictures can influence the development of both normal and disordered personality. The *femme fatale* of the *film noir* movies of the 1940s and 1950s is representative of several related personality disorders characterized by histrionics, self-absorption, psychopathy, and unpredictability. This report will examine how various societal factors occurring during World War II and its aftermath influenced the portrayal of these disordered females and how these depictions, in turn, reflected and influenced American culture at the time. Specific reference to issues of criminology, economics, gender, as well as feminist viewpoints on this phenomenon will be explored.

### INTRODUCTION

The 1940s were an era of "women's pictures." For the first time Hollywood assembled an array of films depicting the lives, challenges, and emotions of women. Audiences were almost entirely composed of women prior to 1945. The majority of box office stars were female. World War II induced an unparalleled collective response from women, resulting in new perspectives and rising ambitions. By 1944, 85 percent of women wanted to keep their jobs, whereas at the beginning of the war they viewed themselves as temporary custodians for their males' rightful positions in the workforce when they returned home from the war (Rosen, 1973).

The returning veterans were hesitant to patronize movies depicting women who were assertive, self-assured, and ran their lives smoothly and competently without a male. GI Joe needed reassurance about his own place in society. Displacing females from corporate positions was a critical undertaking. As Anne Leighton in *Harper's Magazine* stated in 1946: "Many American war veterans are silently bearing some unexpected ... difficulties in returning home to what used to be a pleasantly pliable and even appallingly incompetent little woman and finding a quietly masterful creature recognizing no limitations to her own endurance" (Leighton, 1946).

It may be no accident that the overabundance of films exhibiting the *femme fatale* coincided with female acquisition of economic and social clout in real life. In fact, *film noir* movies may be a result of the alteration of forties American culture, symbolizing the female threat to the status quo. Hollywood simplistically depicted this shift in terms of [end page 155] the *film noir femme fatale* – a composite of power, lust, and greed. These motion pictures implicitly criticized women for

considering alternative roles.

The thesis of this report is that the *film noir femme fatale* with her attendant psychopathology was at once a creation of the forties and a reflection of profound shifts in the role of American women in that era. The interplay between personality disorders, the *femme fatale*, and 1940s American culture will be explored. The significance of the character pathology of these fatal women in relation to the women of that time will be examined through an examination of specific films and key scenes and cinematic techniques from *noir* movies.

## HOW MOVIES INFLUENCE BEHAVIOR

Hollywood film operates to legitimate certain values and its depictions help to instill ideology. Motion pictures create an illusion that what occurs on the screen is an objective recording of events, rather than a representation of a certain point of view. Film is a component of a wider system of cultural delineation that creates psychological order that results in a distinctive formation of social reality. Social institutions are sustained by these shared beliefs of what the world is and should be. Films have become part of that extensive cultural system of constructions that represent social reality. Such representations may be appropriated from the culture, embraced as part of the self. When these constructions are internalized, they may mold the self and help to shape our personality. Object relations psychoanalytic theory underscores the role of such representations in deciding the evolution of psychological life (Ryan and Kellner, 1988). An example of such representations is the relationship between exposure to violence in the media and real world aggressive behavior. Numerous major governmental reports since 1972 have concluded that viewing mass media contributes to aggressive attitudes and behavior (American Psychological Association, 1993; Wilson, Kukel, Linz, Potter, Donnerstein, Smith, Blumenthal & Gray, 1997).

Representations of sex also pervade the media. These depictions have repeatedly been shown to exert a profound influence on the sexual mores of viewers, especially youthful ones (Zillmann & Bryant, 1982; Zillmann & Bryant, 1988; Zillmann, 1994). Americans may suffer from a "Sexy World Syndrome" (Strasburger, 1989) in which heavy media viewing contributes to false beliefs concerning sexually transmitted diseases, pregnancy, birth control, sexuality, etc. (Strasburger, 1995).

In this way, visual media, including motion pictures, may be conceptualized as a significant psychosocial stressor. Such psychosocial stressors are among the most important risk factors for the development of personality disorders (Paris, 1996). Personality traits derive essentially from the "unshared environment," the totality of life events unique to each person. Numerous factors which help to forge personality come from outside the family, evolving out of interactions with peers and the community (Paris, 1999). Extra-familial mechanisms known as "group socialization" (Harris, 1998), [end page 156] which include influences coming from peers, schools, and the community, can be as powerful as those coming from parents (Rutter, 1989). Personality traits and disorders are viewed as a product of genetic-environment interaction. Personality disorders are formed by both diatheses (variations in temperament) and psychosocial stressors (life events) (Kendler and Eaves, 1986).

## CLUSTER B PERSONALITY DISORDERS

A personality disorder is "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture." The pattern is evidenced in areas including cognition, affectivity, interpersonal functioning, and impulse control. Inflexibility and a

pervasive impairment in social, occupational, or other significant domains of functioning are hallmarks of a personality disorder. This entrenched pattern is of long duration ([American Psychiatric Association, 1994](#)).

Although ten different personality disorders are defined by the *Diagnostic and Statistical Manual-IV* of the American Psychiatric Association (DSM-IV) ([American Psychiatric Association, 1994](#)), four disorders – the antisocial, borderline, histrionic, and narcissistic – are the focus of this discussion. The Antisocial Personality Disorder is characterized by a disregard for, and violation of, the rights of others. Its traits include unlawful behavior, deceitfulness, impulsivity, irritability, aggressiveness, reckless disregard for the safety of self or others, irresponsibility, and lack of remorse. The Borderline Personality Disorder is defined by instability in interpersonal relationships, self-image, and affects as well as marked impulsivity. Identity disturbance, suicide attempts or self-mutilation, difficulty in modulating oftentimes intense, inappropriate anger, and chronic feelings of emptiness are frequent. A pattern of excessive emotionality and attention seeking is seen in the Histrionic Personality Disorder. Sexually provocative behavior, shallow expressions of emotion, self-dramatization and theatricality, suggestibility, and superficial interpersonal relationships are core features. Grandiosity, a need for admiration, and a lack of empathy distinguish the Narcissistic Personality Disorder. Individuals with this disorder believe they are "special," have a sense of entitlement, exploit others, and manifest envy, arrogance, and haughtiness. These four personality disorders comprise what the DSM-IV refers to as "Cluster B" personality disorders.

### ***FILM NOIR, THE FEMME FATALE, AND CLUSTER B PERSONALITY DISORDERS***

One of the most enduring cinematic representations of character pathology is that of the *femme fatale*, the "fatal woman" who lures men into dangerous or compromising situations. Although reference has been made to her throughout history, she began her cinematic construction in the so-called classic *film noir* era of Hollywood, spanning the [**end page 157**] years 1941-1958. The modern *femme fatale* continues to be a popular screen persona to the present day.

*Film noir* refers to a substantial collection of films that flourished in the United States in the mid-twentieth century. It is identified by its cynical, nihilistic view of the world. Urban crime and corruption along with a depiction of a demise of American culture are its mainstays. Vice, licentiousness, wrongdoing, impulsiveness are all portrayed in a manner and style more realistic than Hollywood had ever attempted before. The real world of *film noir* is "shadowy, crime-ridden, web-like, amoral, and illogical. The Hollywood world is just the opposite" ([Richardson, 1992](#)). America's most fundamental promises – of optimism, wealth, and freedom from fear – are threatened in *film noir* ([Tellotte, 1989](#)).

The fatal woman who leads men to their moral ruination and sometimes death is not unique to *film noir*, but the character reached its apotheosis in the genre. These *femme fatales* represented a concerted attempt by American filmmakers to depict women in a genuine, if somewhat harsh, way. They could be just as "sexually voracious and as potentially murderous as any man, and just as susceptible to corruption and greed" ([Stephens, 1995](#)). They epitomized the range of Cluster B psychopathology, especially antisocial, narcissistic, and histrionic.

These women are defined in terms of their relation to men. Feminist authors have viewed them as energized, intelligent, powerful, and able to elicit strength from their sexuality, cinema portrayals usually reserved for men. Society developed terms such as "dark lady," the "spider woman," and the "evil seductress" as a reflection of our misogynist, phallogocentric worldview ([Place, 1980](#)). *Film noir* is one of the few exceptions to the usual domination of American cinema

by men. It is not the eventual destruction of these women that we remember as much as their potency, drive, and compelling ability to manipulate men through the power of their sexuality. Porfiro (1976) notes that "a host of domineering women, castrating bitches, unfaithful wives and black widows seemed to personify the worst of male sexual fantasies."

During World War II, women were employed in unprecedented numbers in a wide array of industries. Women eagerly entered military production plants to avail themselves of higher wages, while over two million took office jobs (Wager, 1999). American historians have depicted this period as an advancement for the women's cause in the United States. "Rosie the Riveter," the strong and efficient representation of the American woman at war, became the country's heroine. The formerly doting mother, the *mater patriae* (priestess of home and hearth), was challenged by wartime propaganda to become devoted to the war effort, even at the expense of her maternal duties (Diedrich and Fisher-Hornung, 1990). But the ardent response of American women to the war effort to some degree also reflected a pervasive frustration with their traditional gender assignments and their search for even limited amounts of autonomy and self-reliance. The place of women in society was transformed forever. [end page 158]

*Film noir* was associated with this period in a manner that reflected the new role of women in American culture. However, it portrayed many of its females in a critical, disparaging way. This "new woman" was forced to assert herself in ways that our society had not previously sanctioned. She evolved on screen as an evil, duplicitous vixen, sexually powerful and poisonous to the male (Hirsh, 1981). These women may be viewed as figments of male anxieties over the possibility of being replaced in the workforce or even relinquishing some of their patriarchal role in the family and society.

The *femme fatale* thus represents the ultimate misogynistic fantasy. These women are to be feared while simultaneously scapegoated for society's problems. She controls her own sexuality, setting her apart from the patriarchal system. This rupture of the suppression of women by the society was summarized recently: "...women break out of the molds cast for them in the rigid spiritual and social structures of the ruling patriarchy. There's no greater kick in this town than when a woman finally wraps her delicate fingers around the trigger of a .38 Linga and blasts away every bit of genetic encoding and cultural repression in a roaring fusillade of little lead forget-me-nots" (Muller, 1998). She epitomizes the Cluster B personality disorder.

It is important to separate the popularity of the Hollywood bombshell as personalities versus the animosity many American viewers felt toward these *femme fatale* portrayals in selected films. Joan Crawford, Ava Gardner, Rita Hayworth, Veronica Lake, Lana Turner, Jane Russell, Gene Tierney, etc. were worshipped in the forties as popular icons in American culture based on a wide array of film roles. But it is crucial to realize that their screen personae in their *noir* appearances engendered an entirely different reaction to many viewers of the time. A substantial portion of women harbored ambivalent feelings toward them, reflecting the confusion some American women felt about assuming a more passive role after World War II in contrast to their vigorous involvement in the war effort.

For example, the masterpiece of dark cinema, *Double Indemnity* (1944), won numerous Oscar nominations, including for best picture, but was not a box office success. In fact, it was barely profitable. Its portrayal of the ultimate black widow, Phyllis Dietrichson (Barbara Stanwyck), may possibly have contributed to this lack of popularity, since it was released at a time of primarily female spectatorship at the movies. The prosaic, mainstream *Going My Way* won the Oscar for best picture.

In the case of other *femme* stars, their off-screen lifestyle did mirror their *film noir* evil woman portrayals. For example, magazine articles in 1944 described Veronica Lake as "one of the most acute problems in Hollywood" with a "time-bomb mind" (Schroeder, 1944). Although immensely popular early in her career, she soon became infamous for rage reactions, insulting her colleagues, rampant alcoholism, and defrauding her fans by accepting money for autographs, and then refusing to sign. Her private life damaged her reputation irreparably, and she eventually died penniless and alone at the age of 53. [end page 159] Similar controversy plagued Rita Hayworth, Lana Turner, Gene Tierney and others to varying degrees (Burroughs, 1998).

## **NOIR STYLE AND THE POST-WAR DILEMMA OF THE AMERICAN FEMALE**

Within a short time after the end of the war, "the feminine mystique" (Friedan, 1963) defined American cultural attitudes toward women. Women could achieve total contentment by fulfilling the roles of housewife and mother. As one magazine writer exclaimed: "... just being a woman is her central task and greatest honor... Women must boldly announce that no job is more exacting, more necessary, or more rewarding than that of housewife and mother." One Senator even declared that Congress should "force wives and mothers back to the kitchen" to guarantee positions for returning veterans (Chafe, 1990). At the conclusion of the Second World War, returning veterans were granted preference in employment, some companies banned women over forty-five from work, and large corporations reimposed previous policies prohibiting female spouses' employment (Wager, 1999). By 1947, three million women had resigned or been fired from their positions. Even the U.S. Department of Labor promulgated "Recommendations of Separation of Women from Wartime Jobs" (Rosen, 1973).

On closer examination, many women were resentful of their postwar role. "Choose any set of criteria you like," Margaret Mead wrote, "and the answer is the same: women and men are confused, uncertain, and discontented with the present definition of women's place in America." These women questioned whether their "place" was in the home and had learned directly how inequitable their treatment in the labor force was (Chafe, 1990). The employment changes that began with the war "helped to provide a crucial precondition for the emergence of a coherent political movement that challenged traditional values regarding women's and men's proper roles" (Chafe, 1990). The well-documented resistance of an overwhelming majority to abandon their jobs and return home after 1945 illustrates the enthusiasm the female worker had for her new position.

In summarizing feminist critical interest in *film noir*, Place (1980) suggests that "it stands as the only period in American film in which women are deadly but sexy, exciting, and strong." The *femme fatale* has successfully eluded patriarchal ideology. They are victimizers of men, rather than victims of patriarchal exploitation (Wager, 1999). As Richardson (1992) states, "*film noir* depicts spidery women answerable to a host of misdeeds and misadventures. Women connive, steal, and murder. They are not 'fallen women,' victimized by patriarchal exploitation...They are ambitious exploiters, whose misdeeds merit punishment...doled out in disappointment, grief, and sometimes...death."

The style and lighting of *film noir* is unique. Chiaroscuro (i.e. pictorial representations in terms of light and shade without regard to color) dominate their cinematography. "The mood of tragedy is enhanced by a strong contrast of deep blacks [end page 160] and glaring whites – shadows and highlights. In drama we light for mood, we paint poems. Lighting with its ups and downs becomes a symphonic construction paralleling the dramatic sequences" (Silver and Ursini, 1999). Style is crucial in *film noir*. "Like its protagonists, *film noir* is more interested in style than theme, whereas American critics have been traditionally more interested in theme than style (Schrader, 1977).

*Out of the Past* (1947) provides an outstanding example of this interplay of style, personality, and culture. It graphically depicts two contrasting environments. The western town of Bridgport represents the country. It is linked with light, openness, honesty, naturalness, and clean living. Lighting is in Hollywood's typical high-key style. Location shooting with wide-open vistas characterizes its cinematography.

The woman featured in this locale is Ann, the fiancée of the ill-fated protagonist of the movie, Jeff Bailey (Robert Mitchum). She is blond (fair) in contrast to the film's spiderwoman, Kathie Moffat (Jane Greer). She is filmed in bright light and usually appears in daytime outdoor scenes. She is the quintessential All-American girl, trusting her boyfriend without reservation and exuding warmth, stability, and nurturance. She is the "other woman" of *film noir*. Representing the "boring, potentially childbearing sweetheart" (Harvey, 1978), this girl-next-door is tiresomely home loving, with a devotion to the hero (Crowther, 1989).

In the so-called classic Hollywood films of the thirties, female characters were often depicted as powerless, ineffectual figures sheltered in stereotypical female roles of wives, mothers, and daughters. The stereotype of that era was of women so weak and inept that they required the potency and authority of men to survive. They relentlessly seek safety, security, and love from their male heroes (Silver and Ursini, 1998). The character of Ann and her predecessors conforms to the DSM-IV definition of the Dependent Personality Disorder. Individuals with this disorder are fearful and anxious. They have an all-encompassing need to be cared for that induces passive and clinging behavior and fears of separation. Indecisiveness, a delegation of responsibility to others, lack of self-confidence, and helplessness are also noted in this disorder. They represent the ideal American sweetheart envisioned by the returning G.I. hero.

The scenes from *Out of the Past* (1947) which take place in Acapulco, New York, and San Francisco stand in sharp contrast. The stylistic depiction of these cities is linked with darkness, oppression, dishonesty, corruption, and artificiality. Low-key lighting, frequent nighttime scenes, unbalanced compositions, claustrophobic and obstructive framing, and enclosing shadows characterize scenes from these locales. The female lead of these venues is Kathie Moffat, a dark brunette whose scenes usually occur at night or indoors. She is the diametric opposite of Ann: sexual, independent, assertive, cunning, and artificial. Her evil personality must be and will be destroyed in the end.

The narcissism of these fatal women is demonstrated as they often gaze at their own images in the mirror. They are totally self-absorbed. Scenes involving mirrors are [end page 161] quite common with these women. This may represent the devious, cunning nature of these women, where "nothing and no one is what it seems...oftentimes, these tenebrous reflections are more powerful than the real women they mirror" (Place, 1980). Norma Desmond (Gloria Swanson) in *Sunset Boulevard* (1950) exemplified this narcissism by hanging numerous portraits of herself throughout her mansion.

These "mirror shots" are a cinematic technique prevalent in *film noir*. The independence which *film noir* women seek is often visually presented as self-absorbed narcissism: the woman gazes at her own reflection in the mirror, ignoring the man she will use to achieve her goals. The self-absorption of Phyllis Dietrichson occurs in numerous scenes in *Double Indemnity* (1944). The "mirror shots" also indicate women's duplicitous nature: they are visually split, thus not to be trusted. The mirror motif also contributes to the murky confusion of *film noir*: nothing and no one is what it seems.

The quintessential example of the "mirror shot" occurs in *The Lady from Shanghai* (1948). In

the final sequence of the film, Elsa Bannister (Rita Hayworth) is confronted by her adversaries in a hall of mirrors at an amusement park. As the funhouse mirror shatters the frame, they reveal the many faces of this *femme fatale*, in some of the mirrored panels appearing strong and self-confident, in others weak and vulnerable. The spectator joins with the protagonists in viewing all of these aspects of her personality, so that the shot elicits both a literal (physical) point of view and a figurative (emotional) one as well.

The *femme fatales'* long hair, make-up, jewelry, and cigarettes are symbols of their sensuality. These women are very concerned with slick clothing styles that signify what has been described as "to-be-looked-at-ness" (Naremore, 1998). Compelling phallic power is conveyed by the handguns they often possess. Our first glimpse of these spider women is often of her either scantily dressed, wrapped in a towel, or a view of a comely leg (Place, 1980).

The visual presentation of the *femme fatale* is significant. The *noir* heroine is often photographed in a manner that emphasizes her sexuality. She is frequently photographed without softening filters and with abstract lighting techniques, which emphasize a severe, harsh, pallid face. In the picture frame, she is often placed in a superior position vis-à-vis the male. *Film noir* fashion either emphasizes her carnality – extended, running, suggestive dresses – or her autonomy and aggression – square, padded shoulders or tailored suits (Gledhill, 1978).

The famed *film noir* actresses themselves often possessed a physiognomy and cinematic presence reflective of Cluster B personalities. Barbara Stanwyck, the "undisputed first lady of *noir*," had a scornful, taut face and voice. Her posture was tight and defensive in keeping with a tough screen presence. A deadly, cold, sensuality characterized many of her films. Veronica Lake's face barely moved. Her voice and bearing were notable for their angularity, frigidity, and sleekness. She was shy, yet sexy, [end page 162] with a hazy, muddled quality; chiseled features and flawless beauty highlighted by a translucent Nordic complexion completed the picture. An efficient, dominating, wise-cracking quality set her apart. Joan Crawford had a screen persona characterized by fierceness, willfulness, and an almost diabolical, tyrannical ferocity with which she fought her enemies. She could dispatch men without compunction.

The first image and appearance of Phyllis Dietrichson (Barbara Stanwyck) in *Double Indemnity* (1944) exemplifies these issues. We first view her as she coolly emerges at the top of a stairway landing looking down, as if from a pinnacle of power and desire, wearing only a bath towel. As Phyllis comes downstairs, the camera is focused on her legs, where she wears an engraved, gold ankle strap on her left ankle, flashing it at insurance salesman Walter Neff (Fred MacMurray). When she joins him in the living room, she looks cool and sexy in a summer dress, but slightly slutty, with a phony-looking blonde wig and bangs. She never laughs and rarely shows even the merest flicker of a smile on her ivory-hard face. "Blatantly provocative and visibly artificial, her ankle bracelet, lacquered lipstick, sunglasses, chromium hair give her a cheaply manufactured metallic look and synthetic quality" (Naremore, 1998). She represents a self-centered denial of motherhood and a pervasive narcissism. She is a monstrous castrator, exuding charm under pressure, demonstrating control and self-possession. The 1940s female audience would have been intrigued by her power and allure but ultimately repulsed by her antisocial and narcissistic Cluster B personality flaws. Such women could not be allowed to impede the existing social structure. She would need to be destroyed and American patriarchal culture restored.

The cinematic method of the *femme fatale* and the "old husband" is also a mainstay of *film noir*. The *femme fatales* realize their wishes by attaching themselves to men who are rich and powerful. They marry to achieve financial or social advancement, in the process manipulating the desire men hold for them. This inversion and perversion of conventional and legitimate sexual relations is

especially highlighted by the fact that the husbands tend to be old or physically infirm. In *Double Indemnity*, Mr. Dietrichson is altruistic to his wife because of the financial security he can offer. The aberrance of the woman's choice is made explicit when the younger, poorer, but more virile anti-hero Walter sets himself up as a rival.

Another societal factor influenced by *film noir* and its women is criminology. The viewing of *film noir* and its Cluster B disordered characters by the general public may be a reflection of, as well as a contributing factor to, violent crime of the 1940s. Homicide rates usually increase after wars. The U.S. homicide rate jumped from 1943-1950. The murders occurred (1) between family members, usually husband and wife or lovers and (2) two males known to each other who were arguing at the time (Gurr, 1989). The antisocial personality of the *femme fatale* reflected these statistics. In view of our present knowledge of how movies can affect behavior, it is clear that *film noir* and its fatal women could theoretically exert a not insignificant impact on crime rates by glamorizing and tacitly legitimizing aberrant personality disorders. A plethora of *noir* [end page 163] thrillers manifested just such homicides and related crimes in their screenplays. In *Out of the Past* (1947), Kathie Moffat (Jane Greer) murders Fisher (Steve Brodie) while her lover, Jeff Bailey (Robert Mitchum), looks on. Phyllis Dietrichson of *Double Indemnity* (1944) kills her husband and then she is terminated by her co-conspirator, Walter Neff (Fred MacMurray).

The interplay between popular culture, the *film noir femme fatale*, disorders of personality, and criminology has been explored. The *femme fatale* may be seen to reflect certain anxieties over the role of women in the workforce and family of postwar America. The fatal women serve as a repository for the rage and resentment of the returning GIs who needed to project their own insecurities and anxieties onto an accessible target. In many ways, women were even more conflicted over these "bitch goddesses" than men. They admired their strength, power, and sensuousness but were alienated by their deviousness, sociopathy, and licentiousness. The spiderwomen of *film noir* exhibit a personality that reflects the women of the forties and early fifties. The women of that era would see their emerging economic and social power stifled by a repressive male dominated culture that reinforced their return to a domestic, passive existence. It is apparent that women could be fascinated by such personalities but realized in the end that these fatal women were subjugated to male authority just as they had been prior to World War II.

### **CINEMATIC EXAMPLES OF THE INTERSECTION OF THE *FEMME FATALE*, PERSONALITY DEVIANCE, AND CULTURE**

The World War II veteran who returns only to find society disordered and his life in disarray is depicted in a number of *noir* classics. Notable examples of this overlap of the *femme fatale*, psychopathology, and society are found in the *noir* classics *Dead Reckoning* (1947) and *The Blue Dahlia* (1946).

In *Dead Reckoning* (1947), paratrooper Rip Murdock (Humphrey Bogart) investigates the murder of his army buddy with whom he has just returned to the States. He is almost ensnared in the web of the seductress Coral Chandler (Lizabeth Scott) but manages to extricate himself from her, smashing the gangster organization she is involved with in the process. The commentary on women in *Dead Reckoning* is "(1) women are all the same; (2) they are not to be trusted, especially when it comes to money; (3) they will use their sexuality, which they control, or even murder to get money; (4) if you get involved with them, be prepared to detach yourself from them as soon as you learn what they really are...One ignores this prescription about women in *film noir* only at his own peril" (Tuska, 1984).

*The Blue Dahlia* (1946) depicts a veteran, Johnny Morrison (Alan Ladd), returning home to find

that his wife, Helen (Doris Dowling), has been unfaithful while he was serving in Europe. Disgusted, he leaves her. When she is found murdered, Johnny is suspected of the crime. With the help of Joyce (Veronica Lake), competent wife of a **[end page 164]** nightclub owner, he solves the crime and gets the "good" girl when her husband is accidentally shot.

Both of these films, and others like them, in quite literal terms are symbolic of the social and economic restructuring of America after the war. Our hero finds a country lacking structure and morality. A duplicitous *femme fatale* with a markedly disordered personality attempts to seduce and control him. But in the end, through his own ingenuity, sometimes with the assistance of a more pliable, dependable woman, he is able to attain male ascendancy and the Cluster B personality types are vanquished.

Phyllis Dietrichson (Barbara Stanwyck), of *Double Indemnity* (1944), demonstrates a range of vicious, calculating acts. In the very early stages of the film, she seduces a young insurance salesman and manipulates him into murdering her husband after insuring his life. She proceeds to coldly participate in the killing, and we later discover that she had poisoned her husband's first wife. When complications in her scheme develop, she tries to murder the salesman. Toward the end of the movie, we learn that she has been having an affair with her daughter's fiancé while this whole chain of events has been unfolding.

After murdering her husband, Phyllis is located unambiguously as a phallic woman who seeks to usurp male authority (in her desire for money, for the destruction of the family, and for control of Walter). But her inability to fire the fatal shot in the climactic scene with Walter signifies a weakness in her, suggesting she cannot fully live up to her own phallic desire. She is made vulnerable through lust and passion, that is, through her nature as a woman. On the other hand, Walter's comparative potency is callously demonstrated by the ease with which he can pull the trigger on her.

The women on the American wartime home front who viewed the movie were taught that it does not pay to violate patriarchal structure. The maintenance of the traditional home and family during these turbulent times was paramount, and the deviant personalities and behaviors of a Phyllis Dietrichson were simply unacceptable. Character and morality meant something in these times and transgressors would be severely punished. American values had to be preserved for the returning veterans.

## CONCLUSION

The type of character pathology personified in the *femme fatale* may be viewed as representative of certain misogynistic conceptualizations of the women of the time. Concurrently, these screen women may have helped to create a certain cultural image for some real-life women of the 1940s and 1950s as reflected in the areas of fashion and style, personality, and social status. "Bidirectional" causality is therefore noted in regards to the relationship between *femme fatales* and behavioral manifestations of Cluster B disorders in society. These fatal women are both a representation of some aspects of the larger American culture and a causative factor in helping to create **[end page 165]** a certain style and personality for this era. These cinema seductresses, with the potency and strength to annihilate men, may in some ways be viewed as overdrawn, cynical, precursors of the liberated woman of the sixties.

## ENDNOTE

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## **MEDIATING *COPS*: AN ANALYSIS OF VIEWER REACTION TO REALITY TV\***

By

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### **ABSTRACT**

This study examines viewer reaction and response to the reality police program *COPS*. Survey data were collected from 117 undergraduate students enrolled in Justice Studies courses and additional focus group data were gathered from 35 of the respondents. A path model was constructed, positing that gender, race, and having been the victim of a property or a non-property crime would have significant effects upon two attitude scales constructed about policing and fear of crime. These measures of attitude were expected to affect how often respondents watched the program and how violent they perceived the program content to be. Watching frequency and perceived violence in turn were expected to affect how satisfied the respondents were with the *COPS* episode they viewed and the program overall. Using path analysis, the derived model conformed well to the reality of the data producing a chi-square that is small (23.71 with 20 degrees of freedom) and non-significant ( $p=0.26$ ). Some focus group data also complemented the path analytic model stressing the relevance of the program's violent content and desensitizing effects.

### **INTRODUCTION**

Channel surfing televised waves of news, drama, and documentaries has become an American pastime. But clicking the remote control and scanning through a satellite sea of selections has more recently veered television viewers into the realm of reality programming. By rolling news, drama, and documentary styles into one low cost wave with high ratings, reality-programming takes the traumas of life, captured live on film or dramatically reenacted, and turns them into prime time television series. On a continuum from *America's Funniest Home Videos* to *America's Most Wanted*, reality programming gives its audience a glimpse of some of society's most laughable members as well as some of its most lethal.

One pivotal point on the reality programming continuum is the popular prime time series *COPS*. Neither meant to be funny nor an interactive form of crime control, *COPS* is rather a voyeuristic, video-cam perspective on police work (Andersen 1995). Currently in its eleventh season, the program's reel footage is filmed in ride-along fashion with U.S. law enforcement officials. As a crux point on the reality programming continuum, *COPS* has been deemed a form of info-tainment

(Surette 1998; Hallett and Powell 1995), part of the police show genre (Danielson et al. 1996), and a docu-cop show [end page 169] (Andersen 1995). These research classifications, however, are concerned with the program's content rather than the routine viewer's interpretation of *COPS*.

Examining the impact of reality programs, such as *COPS*, is important. Television and the police are both forms of social force and control and when combined in the production of reality, the human impacts of that joint effort can result in more than public entertainment. The symbolic interactionist tradition informs us that being actively engaged people participate in the viewing process. In his examination of *Television Culture*, John Fiske (1987) extends this tradition by holding that people are readers, reactors, and re-interpreters who bring their individual social residual factors to the television screen. Considering Fiske's (1987) contention, it follows that viewer interest and satisfaction with on-the-scene police work packaged into a half hour television series might be significantly related to viewers' a priori thoughts about crime and social control.

This study examines the relationship between the reality television program *COPS* and the social viewers' reaction to it. Data were collected from 117 Arizona State University students enrolled in Justice Studies courses during the spring 1997 academic semester. A path model was constructed, positing that gender, race, and having been the victim of a property or a non-property crime would have significant effects upon two attitude scales constructed about policing and fear of crime. These measures of attitude were expected to significantly affect how often respondents watched the program and how violent they perceived the program content to be. Watching frequency and perceived violence in turn were expected to affect how satisfied the respondents were with a *COPS* episode they viewed and the program overall. Using path analysis, the derived model was found to conform well to the reality of the data. Some focus group data also complemented the path analytic model.

## THE LAW IN TV LAND

At its core, television is a viewable source of information and entertainment, displaying and imitating the traumas of everyday life in relation to the law (Ronell 1995). Whether one is watching *School House Rock's* version of how a bill becomes a law, a John Wayne western, *Law & Order*, *Geraldo*, *Homicide*, *Hard Copy*, *COPS*, *Court TV*, the nightly news, or the latest commercial for accident attorneys at law, justice issues pervade what people see on television. In turn, people watch, and hence make popular, programs that reflect the issues that pervade their lives, minds, and times.

The crime content of television programs is hardly debatable. Immersing the story line, crime even embodies the character content of people on television. For example, such recognizable figures as Deputy Dog, Dan Rather, Forensic Specialist Quincy, and Special Agent Fox Mulder have all dealt with the topic of crime in its many forms: fictional, factual, physical, and futuristic. Carte blanche access to a variety of televised crimes is concentrated in commercial culture, evoking criticism and societal concern (Bogart 1995; Gerbner, Mowlana, and Schiller 1996). Fearing its effects on the future, namely children, the "boob-tube" has been branded a harbinger of Huxley's *Brave New World* or an Orwellian form of thought control, broadcasting a 24 hour [end page 170] overabundance of images and acts of aggression, sex, and violence (Gerbner 1994; Gerbner, Mowlana, and Schiller 1996).

Whether television is a timeless machine propelling and prophesying the production of what H. G. Wells would deem Morlock and Eloi people (Wells 1999), such literarily enhanced fears still embed themselves in the relationship between television violence and the level of violence in society. Researching program content reveals reflections and portrayals of violence that often do

not coincidence with real life. For instance, Bogart (1995:160) points out that property crime receives little air time, while the prime time murder rate soars 1,000 times higher than the actual U.S. crime-clock rate of one every 22 minutes. Over representation of violent crime is posited to take its toll and leave an attitudinal impact upon its viewers (Bogart 1995; Gerbner 1994).

Regardless of its possible impacts, the crime genre is a recognized tradition of television. And of late, the ideological concepts of consumerism and social control inherent to TV land have been gelling crime forms into the latest televised trend, known as reality-based police programming (Cavender 1999). *COPS*, *Real Stories of the Highway Patrol*, *Top Cops*, *L.A.P.D.*, and *America's Most Wanted* are prime examples of current "crime time" (Ronell 1995:109) television. These programs promote the police as an omnipresent force, or as Ronell (1995:113) posits, "their present is not presence: they are television . . . always on, they are on your case, in your face" as you flick through the channels. Still, these programs have high ratings and a reference group of social subjects caught somewhere between "Kansas and Oz" (Ronell 1995:112) tuning into *COPS* and perhaps turning on to their own social interests.

Primarily concerned with program content, most current reality television research has focused on the social dimensions portrayed, rather than the societal reactions provoked, by reality police programs. Similarly, research on the social interests that reality television viewers bring to the set have yet to be fully explored. Nonetheless, some exploratory research has been conducted and more explicit analyses in the area of reality police programming are forthcoming.

Most notable in this area are Mary Beth Oliver's recent studies on reality-based police programs. For example, in Oliver's (1994) study she examined portrayals of crime, race, and aggression on several reality law enforcement shows (including *COPS*), and found through content analysis that violent crimes were overrepresented, as were the number of cases actually solved by police officers. She also found that white people were most frequently portrayed as police officers, while blacks and Hispanics were more often depicted as criminal suspects on the various shows. In a more recent article, Oliver and Armstrong (1999) dealt more directly with the cultivation hypothesis and found that exposure to reality-based police shows is related to viewers having higher estimates of crime (especially of prevalence among African Americans).

Similarly, Hallett and Powell (1995) conducted a study, which specifically targeted viewer interpretations of the *COPS* program, but their viewer/reference group consisted solely of police officers that had taken part in the show's production. In trying [end page 171] to gauge what cops thought about *COPS*, the Hallett and Powell study slighted the routine television viewer from the line of response research inquiry. Still, their research found that the officers thought the program was a good vehicle for gaining public acknowledgment and understanding of the pressures of police work.

Another example of the range of research in this area includes Schlesinger, Dobash, Dobash, and Weaver's (1992) study of *Women Viewing Violence*, in which recording women's reactions to *Crimewatch UK*, a European version of *America's Most Wanted*, was part of the project's stated purpose. This Schlesinger et al. (1992) study of viewer reactions was gender specific and concentrated on explaining the experience of visual violence. Using surveys and focus groups, the study found that the women viewers' reactions to the program were related to their own experience of crime, violence, general orientation to policing, and ethnic background. More specifically, Schlesinger et al. (1992) found in their examination of *Crimewatch UK* that female respondents perceived non-property crimes to be more consequential than property crimes. Women who had been victims of violence expressed a higher fear of crime, yet the majority of the respondents, whether they had been victims or not, expressed a conscious concern about the threat of being

attacked. Presentation of the police in the program was understood for its public image purposes, yet police availability and responses were viewed with varied amounts of doubt and conviction, splintering on the basis of respondent race and personal experience. Other applicable sources include the University of Texas at Austin's national yearlong study (1994-1995) of the amount and types of violence shown on the numerous television series that make up the reality-programming continuum (Danielson et al. 1996). The succinct finding that "police shows are the most violent reality programs" (Danielson et al. 1996:26) sums up these shows' vivid illustration of the social potential for violence to occur in word, act, and consequence.

How reflective of real police work these programs are is a point of discord. In a non-academic excerpt from Debra Seagal's diary (1993), written while she was working as a story analyst for the program *American Detective*, Seagal debunks the editing techniques used to create the so-called reality of reality-based television. Deeming reality-based police programming a "sordid enterprise" (Seagal 1993:53), she details the reduction and augmentation of numerous hours of police film footage that are screened, sliced, and squeezed into the shows. These same processes are discussed by John Langley, the executive producer and creator of *COPS*, on the *COPS* website (2001). However, he refers to them as "recutting or refinishing" to develop integrated shows that provide "an action piece (which hooks the audience), a lyrical piece (which develops more emotion), and a think piece (which provokes thought on the part of the audience)" (Langley 2001). Considering that Langley's interview is offered on a website amidst options to read on show related topics such as, *COPS SHOP*, *DUMB CRIMINALS*, *COP OF THE WEEK*, and *VIDEO PREVIEWS*, Seagal's (1993) interpretation of a profit-oriented editing process seems to be on target. [end page 172]

Just how "real" reality television is has become a new and engaging vein of media research. But just how real the effects of watching television are has been a matter of scholarly analysis and contention since about the beginning of television itself. For the past 25 to 30 years the dominant perspective has been that of "cultural indicators and cultivation." This perspective suggests that what people regularly watch on TV affects their perception of the world (the reality) in which they live (Signorielli and Morgan 1990; Gerbner 1994; Ettema and Whitney 1994).

As noted, violence and crime are common elements of prime time television that, when repeatedly seen, may affect a viewer's sense of the world. The most prominent examination and explanation put forth about the impact of frequent television viewing comes from George Gerbner (1994). Over the past 25 years Gerbner (1994) has conducted extensive research (cultural indicators studies) on the topic and has concluded that the major consequence of extensive exposure to violent crime programming is the "mean world syndrome." He suggests that a steady visual diet of intense situations, especially when they are promoted as real, can instill in avid television viewers a sense of danger, threat, and fear. Thereby, viewers are placed in a politically exploitable position where information is a scarce resource, television their security supplier, and the police their protection on television and in reality (Gerbner 1994). On Gerbner's video *The Killing Screens* (1994), he uses a single program clip to demonstrate television's exploitation of the "war on crime and drugs" – the program clip is a scene snippet from *COPS*.

Signorielli and Morgan (1990) also recognize and research the connection between television and those who view it. Calling the examination process "cultivation analysis," Signorielli and Morgan (and Gerbner, too) are concerned with "long-term, cumulative consequences of exposure to an essentially repetitive and stable system of messages, not immediate short-term responses or individual interpretations" (Signorielli and Morgan 1990:18). And although these aforementioned researchers realize that the mediation of messages, meaning, construct, and context between television and the viewer is a reciprocal relationship, television typically takes the form of an

independent variable in their studies ([Signorielli and Morgan 1990](#); [Lewis 1991](#); [Gerbner 1994](#); [Ettema and Whitney 1994](#)).

Rarely has television taken the role of dependent variable, and rarer still is the examination of a single television show as a delineation of viewers' concerns ([Fiske 1987](#); [Lewis 1991](#)). Road-testing these research rarities is what John Fiske (1987) and Justin Lewis (1990) request. This study responds to that request. Both Fiske and Lewis acknowledge that the television audience consists of socially produced viewers who work the remote control within the web of their own social interests. More specifically, Fiske (1987:83) suggests that viewers scan for programs that provide them the "textual space" to mediate between who they are, what they see, and the way they interpret program content. This paper adopts Fiske's perspective and examines viewer reaction and response to the reality police program *COPS* as interactive reflections of their social selves and interests. [end page 173]

The data gathered to examine Fiske's (1987) perspective suits this study but at the same time exhibits limitations. For instance, time constraints narrowed the episode selection process and respondent recruitment. The sample is relatively small at 121 and the respondents were volunteers and primarily undergraduate Justice Studies majors. Also, no sizeable comparative group of non-Justice Studies students was captured in the voluntary sample nor was one actively solicited. Nevertheless, the honed interests of Justice Studies majors makes them apt and instructive subjects for studying the reality of televised *COPS*.

## METHODS

During the approximate two-month time span between 9/14/96 and 11/20/96, the author watched and videotaped 45 episodes (about 22.5 hours) of *COPS*, including the 1996 season episodes and those re-aired on a nightly basis as program reruns. A single episode was selected and edited to omit commercial advertisements. Episode selection was based on the extent to which the scenarios shown were police calls that corresponded closely to those issues most frequently represented on reality police programs "crime, drugs, violence, and imprisonment" ([Andersen 1995:179](#)). Moreover, the episode was considered a fair representation of the program's typical combination sequencing, described by John Langley (2001) the executive producer and creator of *COPS* as, "an action piece, a lyrical piece, and a think piece."

Specifically, the 10/15/96 (Tempe, AZ: KSAZ 10) episode includes: a) a drug/buy bust with a physical take down scene, b) a stabbing call that is also a domestic violence situation in which both partners have AIDS, and c) a shooting call in which the youthful minority victim ironically turns out to be the offender who winds up behind bars in the show's final scene. The episode also contains d) a roll call scene in which the increasing threat of violence is highlighted at length.

The data reported here were collected from 117 [Arizona State University](#) undergraduate students enrolled in various [Justice Studies](#) courses during the spring 1997 academic semester. Student participation in the project was voluntary, anonymous, and approved by the University Human Subjects Institutional Review Board at Arizona State University. However, an extra-credit option was offered as inducement for participation. Of the 117 students who took part in the study, 75.2% (n=88) were Caucasian, 11.1% (n=13) Hispanic, 5.1% (n=6) Asian, 4.3% (n=5) African American, 2.6% (n=3) Native American, and 1.7% (n=2) other minorities. Participants ranged in age from 18 to 51, with a mean age of 23.6 years. The number of males (n=59) and females (n=58) in the sample was about equal. Additionally, at the time of the study 90.6% (n=106) of the participants indicated that Justice Studies was their current or intended college major.

Demographic characteristics for the Justice Studies undergraduate population were also obtained from the College of Public Programs at Arizona State University (Office of Institutional Analysis 1996). At the time, there were 841 undergraduate students in the program, 55.9% (n=470) male and 44.1% female (n=371). The racial distribution included: 70.6% (n=594) Caucasians, 15.2% (n=128) Hispanic Americans, [end page 174] 4.6% (n=39) African Americans, and 2% (n=16) other minorities. In regards to race and gender, the study sample of volunteers was representative of the Justice Studies population from which it was solicited.

An information letter and two self-administered survey questionnaires were given to all students taking part in the study. The first survey was administered prior to the subjects' viewing of the twenty-minute episode of *COPS*, and the second survey was completed immediately following the video presentation. Each respondent's individual surveys were then stapled together in order to link the pre/post data. In addition to the questionnaires and video presentation, 35 students also took part in five separate focus group sessions, with seven students taking part in each session. These focus group sessions were conducted immediately following completion of the second questionnaire. Selection of focus group participants was based on volunteering in advance and showing up at an agreed upon session. In the case of surplus focus group volunteers, selection rested upon my purposive attempt to capture quotes from an age, race, and gender range of different people. In all, 19 men and 16 women took part in the focus group sessions. Of the participants, 29 were Caucasian, 2 Hispanic American, 2 African American and 2 of Asian descent.

Four of the questionnaire and video sequences, as well as five of the focus group sessions, were conducted in a large, lecture-style classroom on the Arizona State University campus. Five additional sequences were conducted in a smaller conference room in the Justice Studies department, accommodating no more than five students per session.

## MODEL AND MODEL VARIABLES

A path model, incorporating nine variables reflecting the findings previously discussed in the literature review, was constructed, making satisfaction with the *COPS* program the dependent variable. Questions used to operationalize variables were primarily seven-point, Likert-type scale items. Cronbach's alpha was used to estimate general scale reliability as well as the internal consistency of each scale's underlying construct. Still, it should be noted that neither scale construction nor estimates of scale reliability are perfectible measures (Carmines and Zeller 1979; Kaplan and Saccuzzo 1982). In addition to scales, there were also two yes/no questions, one open-ended and one multiple-choice question, used as well. A list of the variables and the questions used to define them follows.

*COPS*. The dependent variable was constructed using a five-item index to gauge *viewer satisfaction with the COPS television program*. The item questions were adapted from Schlesinger, et al.'s (1992) *Women Viewing Violence (WVV)* questionnaire. Specifically, respondents were asked to rate their responses to the five questions on a scale of 1 to 7, with 1 corresponding to a response of "not at all" and 7 being equivalent to a response of "very much." The questions included in the *COPS* index (post survey) were: [end page 175]

- (1) "How important do you think *COPS* is as a television program?"
- (2) "Overall, how realistic do you think the scenarios shown were?"
- (3) "Overall, how entertaining did you find these scenarios?"
- (4) "Overall, how seriously did you take the scenarios shown?"
- (5) "Overall, how exciting do you think these scenarios were?"

Cronbach's alpha for the *COPS* index was .81.

*WATCH*. This model variable pertained to how often the respondent watched the *COPS* television program. Answer options to this single item question were: "several times a week," "once a week," "occasionally (once or twice a month)," "rarely (a few times a year)," and "never" (pre survey).

*VIOLENT*. A single item question from Schlesinger, et al.'s (1992) *WVV* study was adapted to explore viewer estimates of the episode's violence. Respondents were asked, "Overall, how violent do you think these scenarios were?" Their answer selection ranged from 1 to 7, with 1 being "not at all violent" and 7 being "very violent" (post survey).

*POLICING*. A four-item index was utilized to measure respondent perception of the police. Index questions were adapted from Bielby and Berk's (1981) *Criminal Justice Evaluation* report. Respondents were asked to indicate their response on a scale of 1 to 7, with 1 being "strongly disagree" and 7 being "strongly agree," for each of the following statements and questions (pre survey):

- (1) "The police are too willing to use force and violence."
- (2) "Some people say the police frisk or search people without good reason. Do you agree that this happens to people in your neighborhood?"
- (3) "Some people say the police don't show respect for people or they use insulting language. Do you agree that this happens to people in your neighborhood?"
- (4) "Some people say the police rough people up unnecessarily when they are arresting them or afterwards. Do you agree that this happens in your neighborhood?"

Cronbach's alpha for the Policing index was .82.

*FEAR*. A seven-item index measured respondent fear of crime. Items used in the index were adapted from the 1993 *Gallup Poll*. Respondents were asked to rate on a scale of 1 to 7, with 1 being "never" and 7 being "very frequently," how often they themselves worried about each of the following things (pre survey):

- (1) "Getting murdered"
- (2) "Getting mugged"
- (3) "Getting beaten up, knifed or shot" [end page 176]
- (4) "Yourself getting sexually assaulted or raped"
- (5) "Someone in your family getting sexually assaulted or raped"
- (6) "Being attacked while driving your car"
- (7) "Your home being burglarized when you are there"

Cronbach's index alpha was .78.

*V-P and V-NP*. To examine the direct and indirect effects of property (*V-P*) and non-property (*V-NP*) crime victimization within the hypothesized model, respondents were asked two separate "yes or no" questions (pre survey). They were asked "Have you ever been victimized by a property crime?" and "Have you ever been victimized by a non-property crime?". A reply of "no" was coded as 0 and "yes" was coded as 1.

*GENDER*. Respondents were asked to check either "male" or "female" in response to the question item asking, "What is your gender?" (pre survey). The responses were coded as male 0 and female 1.

*RACE*. Respondents were allowed to write in their response to the question "What is your race/ethnic origin?" (pre survey). The responses received were then collapsed into six categories corresponding to those used by the College of Public Programs at Arizona State University. Those categories include: Caucasians, African Americans, Hispanic Americans, Asian Americans, American Indians, and other minorities. However, for the purposes of model analysis the race variable was dichotomized with Caucasian coded as 0 and non-Caucasian coded as 1.

## ANALYSIS

[Figure 1](#) shows the hypothesized path model positioning of the variables described above. This model was constructed to test Fiske's theory that television viewers as social "readers will only produce meanings from, and find pleasure in, a television program if it allows for . . . articulation of their interests" (Fiske 1987:83). According to this interactive reception structure, the model's structure follows suit in proposing that the following paths would be statistically significant based upon the review of the literature. More specifically, the arrowhead path lines in [Figure 1](#) are recursively structured from: 1) *GENDER* (female coded as 1) to *FEAR* of crime (Schlesinger, et al. 1992), 2) *RACE* (non-Caucasian coded as 1) to *POLICING* (Oliver 1994; Oliver and Armstrong 1999), 3) *V-NP* and *V-P* to *FEAR* of crime and *POLICING* (Schlesinger, et al. 1992) 4) *POLICING* to *WATCH* (Fiske 1987), 5) *FEAR* of crime to *WATCH* and *VIOLENT* (Fiske 1987), 6) *WATCH* to satisfaction with *COPS* (Signorielli and Morgan 1990; Gerbner 1994; Fiske 1987), and 7) *VIOLENT* to satisfaction with *COPS* (Schlesinger et al. 1992; Danielson et al 1996).

This model was examined using path analysis. Path analysis is a means for empirically measuring the effects of sequential and compounding relationships among operationalized variables in a theoretical model. The LISREL 8.14 program was used to estimate and measure the hypothesized structuring of paths reflected in [Figure 1](#). [end page 177] LISREL uses the maximum likelihood method and, hence, assumes that the data are multivariate, normally distributed, and without non-random missing data.

The initial model did not fit the data very well. The chi-square with 18 degrees of freedom was 29.01 ( $p=0.047$ ) and the goodness of fit index (GFI) was 0.95. This indicates that the data were unlikely to be generated by the relationships reflected in [Figure 1](#). Based upon an examination of the modification indices produced in the LISREL output, two paths in the initial model were fixed and one path was freed. The two paths that were fixed (i.e. deleted) from the model were those from *V-NP* (Victim of Non-Property Crime) and *V-P* (Victim of Property Crime) to *POLICING*. The path that was freed was the path from *GENDER* to *VIOLENT*. This decision appeared theoretically sound and was statistically justified. Re-estimating the derived path model featured in [Figure 2](#) found the model meaningful. This resulting path model lends support to Fiske's (1987) and Lewis's (1991) notions about viewers' personal characteristics and attitudes mediating a social stake and satisfaction in the television program content they select. [Figure 2](#) also renders all of the direct path coefficients produced from the model estimation procedures. Those paths that were significant (using the critical z-statistic value 1.96) are designated with an asterisk.

To test the model's overall significance, the chi-square index and the GFI were again examined. These goodness of fit statistics for the derived model are listed at the bottom of [Figure 2](#). The chi-square is small at 23.71 with 20 degrees of freedom and non-significant ( $p=0.26$ ). The GFI is 0.96. Overall, the theoretical underpinnings of the model as well as the signs and values of the path

coefficients reveal a model that conforms well to the reality of the data.

Complementing the path analytic model were several themes that emerged during the focus group discussions. Those themes most directly related to the issues of who watches *COPS*, why they watch, and how satisfied they are with the program are highlighted below. Readers are reminded that the sample for this study consists of undergraduate Justice Studies majors, whose chosen field of study indicates a probable, pre-existing high level of interest in the situation scenarios *COPS* covers. Although there is no comparative control group, the sample purposively suits this paper's examination of the vested social interests viewers bring to the television screen.

Crosscutting most of the groups was the theme that those who watch the program are physically and socially removed from what they are shown on the show. This theme suggests that those who watch are typically white working to middle class Americans, wishing to glimpse the lives of the lower class as well as the crimes they commit. The following quote depicts the certainty with which focus group participants classified the "average *COPS* viewer":

I'm sure a lot of them are probably, you know, John Factory Worker or something, which their exciting thing is that they got like a free donut from the candy machine, or something like that. That's their excitement for the day, and they come home and they can turn it off. And even though it's somebody else's [end page 178] reality, it's not theirs and they can sit back and watch it, and you know, get a little bit of adrenaline running through their veins (Eric, 20 year old, Caucasian male).

Following this theme, most focus group participants voiced a concern that what the average viewer was seeing was a censored reality – devoid of white-collar crime, arrests of upper class people, and a police force commissioned to deal with such prime time rarities. When asked if the program was realistic, many students referenced their own experience and understanding of crime and law enforcement, acknowledging that geography and class status play a part in the level and type of crime detection featured on the show. For instance, one student summed up the unrealistic nature of the program saying that:

Depending on the neighborhood, police use different tactics, different attitudes and different perceptions of people in different neighborhoods. An officer in South Phoenix is not going to be the same, have the same persona and the same attitude, when he pulls someone over if he were in North Phoenix. It's two totally different areas; I think in that sense it's not reality. And then . . . look at the areas and the people that are always on these shows, lower to middle income, you never see anyone from like a Paradise Valley-type neighborhood. I'm not saying that they don't do crime, you know, but you say that this is *COPS*, you say this is reality, reality whatever, but not all crime happens on the street (Chris, 27 year old, African American male).

Heightened awareness of law enforcement and crime permeation of all social classes pinpoints the critical and engaged perspective of this sample of Justice Studies students.

Still, the show is popular and has high ratings. Most of the respondents agreed that the general public and at least some of them watch the show for its violent content. This voyeuristic appeal is aptly epitomized below:

I think people watch it for violence, entertainment and violence. I mean it's just real violence. It's not like the movies, it's somewhere that you've either been, or know what's happening there and you see the violence. And I think that's why people watch it. It's reality violence (David, 30 year old, Caucasian male).

Similarly, the respondents recognized their own "rubberneck" (Tiffany, 21 year old, Caucasian female) interests in the program's promotion of the unfamiliar, the other. Synopsizing this curiosity, one woman said:

I think people are always interested in what the criminal justice system is doing, what the cops are doing, and so I think that grabs peoples' attention, just like, you know, with the O.J. trial and all that stuff. People were attracted to it, because that's something that they're not familiar with but they're interested in; there always seems to be an interest in crime. And same as when you are driving down the road and there is an accident, what do you do? You look (Shelly, 25 year old, Caucasian female). **[end page 179]**

Likening the reality of *COPS* to a roadside accident does not singly explain why people watch the program, but it may represent their intersection of social concerns converging on a televised street of life.

The majority of the respondents said that the program did not affect either their fear of crime or their trust level of others. On the contrary, most respondents resounded a concern corresponding to the following quote:

I think that's a problem with the show . . . it distances you. Because I think, oh, this is there but I am here, and I live in this neighborhood, so it's not going to happen to me . . . It makes me not fear crime like I probably should, like anybody should . . . unless I go in those neighborhoods (Marty, 23 year old, Caucasian female).

This diminished fear of crime and heightened sense of social distance might be linked to what the respondents consider to be the coming prospects of reality crime programming.

When asked what they thought lies beyond reality television, the majority of respondents agreed that televised executions were the next step, positing that they probably would be on pay-per-view soon. Pressing toward more violence and crime in the present tense, one respondent described what he thought the next reality television series would be:

Maybe a show where they follow the criminals around; they could call it *CROOKS*, coming even closer to the actual crime (Eric, 26 year old, Caucasian male).

Whether or not *CROOKS* ever becomes a reality, *COPS* is a real program in the here and now, and people have diverse thoughts about the show, its content, and what they do and do not like about it. The focus group discussions reveal that *COPS* is of social interest, it has vested interests, and viewers mediate their own interests to and from it.

## CONCLUSION

Survey and focus group data collected for this study supplement each other as they each offer insight into the Fiske-based theoretical model which structures people and their socially honed interests as prior to satisfaction with a particular television program. Looking specifically at the *COPS* program, I found that the personal variables of *RACE*, *GENDER*, and victimization of a non-property (*V-NP*) crime had varying, but statistically significant direct and indirect effects on viewers' attitudes toward *POLICING*, their *FEAR* of crime, how often they watched the *COPS* program, and how *VIOLENT* they perceived the program content to be. Similarly, frequency of viewing and perception of violence affected their satisfaction with the study episode and the program overall. [end page 180]

Focus group data shored up some pathways of the model, revealing that even in discussion format respondents acknowledged that the violent content of the program was a meaningful attraction factor. Most of the discussants said that the program did not affect their fear of crime but rather desensitized them to violence and attributed crime to neighborhoods and social classes of which they were not a part. Thus, without leaving the safety of their living room their curiosity to see other walks of life could be satisfied.

Empirical findings and inferences, however, must be considered in light of the fact that the sample consisted mainly of undergraduate Justice Studies majors. The nature of their courses, career aspirations, and interests perhaps make them more aware of the realities of crime and law enforcement. Still, this interest is also exactly what Fiske (1987) suggests viewers employ in mediating what they see on the television screen, thus making students of Justice Studies befitting subjects for the purposes of studying the reality of televised *COPS*.

Future research might incorporate a comparative control group of non-Justice Studies majors to contrast results. The results of that study might lead to a larger, more representative sample of the American public for purposes of exploring reasons people choose to watch reality television. Also, a more elaborate causal model including variables like education, place of residence, and a satisfaction scale concerning more than one program might provide insight into the social factors that bring people to watch small screen reality.

The mediation of meaning between the viewer and the television screen revealed throughout this study is a crucial point to consider. Fiske (1987) and Lewis (1991) are correct in requesting audience research, which examines more than television's influence, because to recognize the impact of viewer interactive reception in the social processing of meaning is to recognize the force and the reality of the social viewer.

## ENDNOTE

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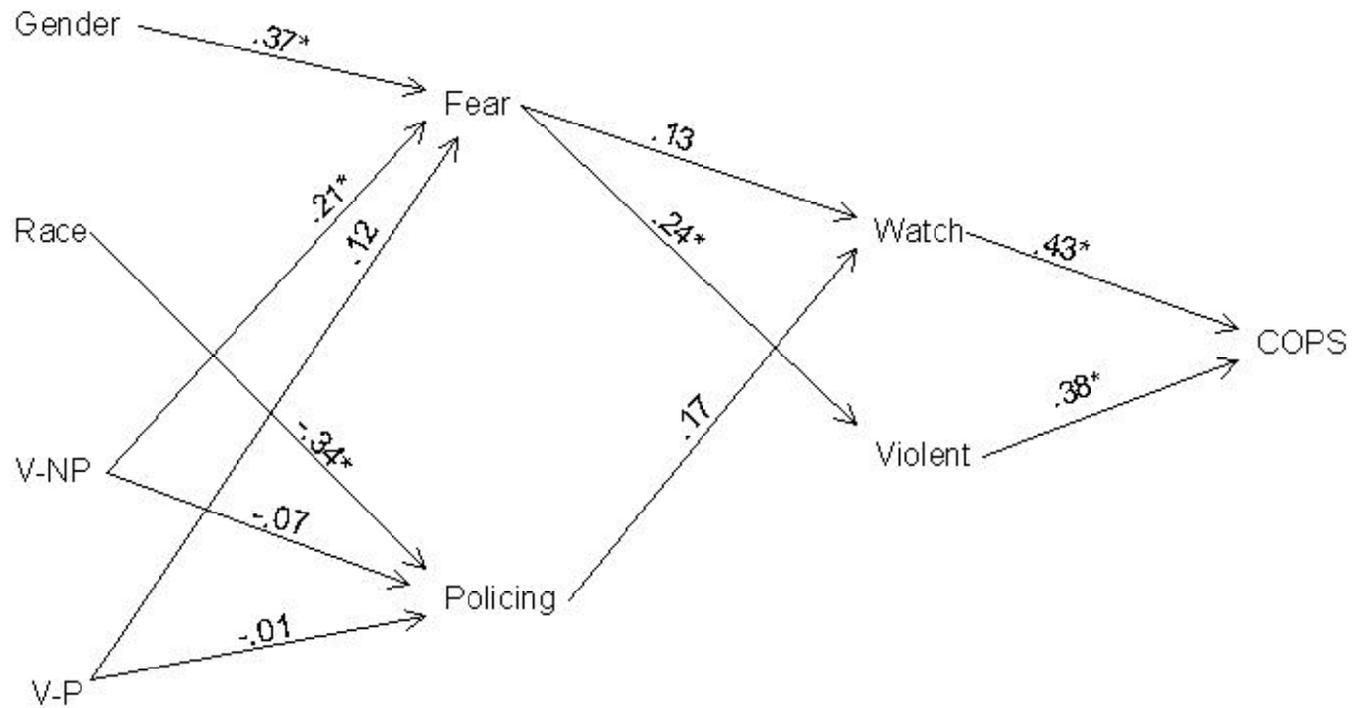
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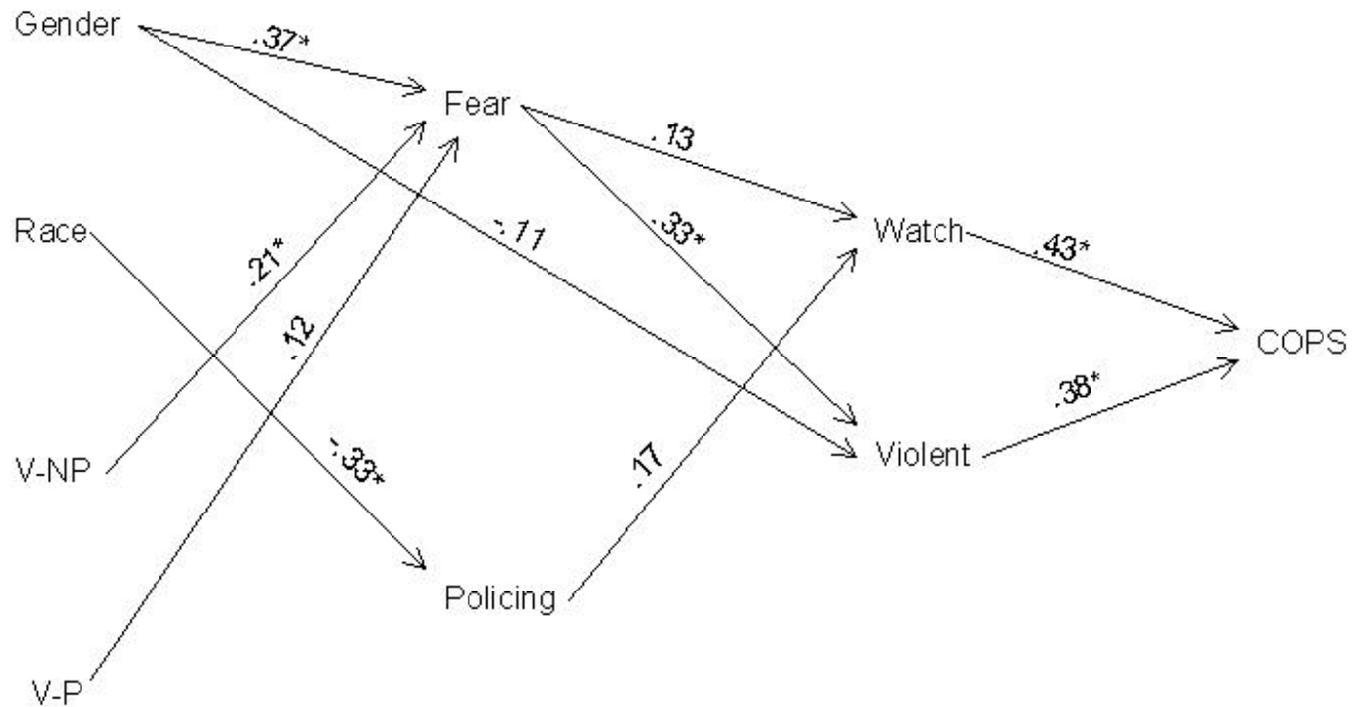
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Figure 1. The Initial Interpretative Reception Path Model Of Viewer Level Of Satisfaction With COPS



\* Designates a sig level  $\leq .05$  Chi-square with 18df=29.09 (P=0.047) GFI=0.95

Figure 2. The Derived Interpretative Reception Path Model Of Viewer Level Of Satisfaction With COPS



\* Designates a sig level  $\leq .05$  Chi-square with 20df=23.71 (P=0.26) GFI=0.96



## **THE ROLE OF TELEVISION NEWS IN THE CONSTRUCTION OF SCHOOL VIOLENCE AS A "MORAL PANIC"\***

by

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### **ABSTRACT**

This work examines the representation of school shootings in the television news media and how these representations have contributed to the construction of school violence as a "moral panic." A review of the literature as it pertains to the media and the social construction of moral panics is provided as well as an overview of the news making process. The discussion is situated within Stanley Cohen's stages of a "moral panic." The article concludes that the presentation of specific events (i.e., school shootings) and elements of popular culture have contributed to increasing levels of fear, misguided political policy, and the development of an industry focused on school violence. In addition, an integrative, broader definition of school violence is suggested.

### **INTRODUCTION**

During the 1997-1998 school year, the American public was riveted by magnified coverage of highly unusual crime stories of school shootings that turned into what some news outlets described as an "all too familiar story." Rather than providing context, the media's labeling of these shootings as "a trend" has tended to exacerbate people's fears about the safety of their children and youth in schools. The result is that misdirected public policy is being generated to safeguard the schools, even though the real threat may lie elsewhere. To remedy the purported "crisis" of classroom violence, politicians have proposed solutions ranging from posting additional police officers in our schools, to eliminating any minimum age at which children may be tried as adults, to expanding the death penalty to juveniles.

According to Barak (1994:6): "The consideration or examination of the interrelationships between media, society and criminology is essentially a dynamic and complex enterprise. It involves the interaction of journalists, sources and audiences that co-exist within a diverse and eclectic cultural and social system." To add value, the study also requires attention to the developing political economy and the sociohistorical experience of news production that exist within the larger organization of mass media. In an attempt to provide equal attention to these interactions, this paper begins with a review of the research concerning the media's role in the construction of moral panics. Next, the discussion turns toward the historical representation of criminals and crime in the film and television genre and how these representations have changed

over time and is then followed by an outline of the news making process. Finally, the article considers the [end page 186] social impact and importance of the news media's role in policy making and the construction of societal fears, focusing particularly on political and corporate decisions in response to the increasing fears of school violence and how each of these are situated in the framework of a moral panic.

## THE CONSTRUCTION OF MORAL PANICS

In 1971 Stanley Cohen investigated a series of "moral panics." Cohen (1980) used the term "moral panic" to characterize the reactions of the media, the public, and agents of social control to youth disturbances. This work, involving the Mods and Rockers, demonstrated how agents of social control amplified deviance. According to Cohen (1980), these groups were labeled as being outside the central core values of consensual society and as posing a threat to both the values of society and society itself, hence the term "folk devils." In addition to Cohen's work, Jock Young's (1971a) book, *The Drugtakers*, also demonstrated the role of the media in the amplification of deviance and thus drew attention to the ideological role of the media in actively constructing meanings, rather than simply reflecting a shared meaning. When discussing the public concern about statistics showing an apparent alarming increase in drug abuse, Young (1971b) observed that the "moral panic over drug taking results in setting up of police drug squads, which in turn produces an increase in drug related arrests." This observation highlights the effect produced by the interaction of the media, public opinion, interest groups, and the authorities, which gives rise to a moral panic.

According to Cohen (1980:9), the key elements or stages in a moral panic are:

1. Someone or something is defined as a threat to values or interests;
2. This threat is depicted in an easily recognizable form by the media;
3. There is a rapid build up of public concern;
4. There is a response from authorities or opinion makers;
5. The panic recedes or results in social changes.

It was through Stuart Hall's (1978) approach to ideology that the media's use of moral panics to both define and distort social problems was fleshed out into a general critique of the media's construction of social reality. For instance, mugging was presented in the media as a new and growing phenomenon, when in fact the crime was not new, only the label was. Official statistics did not support the view that mugging was rapidly growing; however, with a name for the crime now in existence old offenses were categorized as such, creating the impression of growth. According to Hall et al. (1978), the media whipped up a moral panic around the issue which served to legitimate an increase in punitive measures; they conclude that the media played a key role in developing and maintaining the pressure for law and order measures. [end page 187]

According to Hall et al. (1978), the media obtain their information from the primary definers of social reality, those in powerful and authoritative positions. The media (secondary definers) amplify the perceived threat to the existing social order, and the police and courts then act to eliminate the threat. The media ensure that the dominant ideas or ideologies are constantly reproduced by relying on the information of the definers of the dominant ideology. Thus, Hall and his colleagues demonstrate the media's ability to enlarge the state's influence into everyday life, the moral panic becoming the vehicle for transmission of the dominant ideology. In other words, "the media tend to reproduce the definitions of the powerful" (Hall et al. 1978: 57). They faithfully reproduce, symbolically, the existing structure of power in today's institutional order. However, Hall et al. (1978) argue that this is not conspiratorial; the media do not set out to divert attention

from root problems, such as economic problems. But these economic problems create strain and the media responds by amplifying the symptoms of the strain.

The term "moral" implies that the perceived threat is not something mundane, but is a threat to the social order itself or an idealized conception of it. The threat and its perpetrators are regarded as evil "folk devils" and excite feelings of righteousness. The response is likely to be a demand for greater social regulation or control and a demand for a return to traditional values. Although there is some disagreement on what constitutes a "panic," there is some agreement on the characteristics of concern and hostility. Concern is over the behavior of a certain group or category of people and hostility, or an increase in fear, is directed toward the group or category regarded as a threat. In addition to hostility and concern, other characteristics such as volatility and disproportionality may be emphasized. Volatility means that the moral panics are likely to appear suddenly and that the level of feverish concern is not likely to last, even if the problem is long-standing. Finally, disproportionality refers to an assumption that the threat or danger is more substantial than is warranted by a realistic appraisal (Goode and Ben-Yehuda 1994). During a moral panic, public anxiety is amplified by publicity in the press which portrays these events as signifying a widespread and deeper moral malaise and as a sign of social disintegration. However, public concern about an issue, in complex societies, seldom results from the indignation of the citizenry alone, but as a result of the roles of many contributors, including the role of the moral entrepreneurs.

Howard Becker (1963) emphasizes the role of "moral entrepreneurs" in defining behavior and individuals as deviant and criminal. Becker (1963) asserts that the public is often stirred up through the mass media by efforts of moral entrepreneurs or moral crusaders, who attempt to rouse public opinion through the media by leading social movements and organizations to bring pressure on the authorities to exercise social control and moral regulation. Becker (1963) describes the moral crusader as fervent and righteous and holding to an absolute ethic; what he or she sees is truly evil with no qualification. [end page 188]

Joseph Gusfield (1963), in his study of prohibition, explains the success of moral crusades in terms of Max Weber's status defense. Gusfield (1963) argues that these crusades stand in for the social discontents of particular social classes or groups. By controlling status issues, the group feeling threatened reasserts its power and values through legislation. Although this single factor explanation is far too simplistic to explain the persistence and rise of moral panics, it does, however, add to the understanding of contextual factors that contribute to moral panics.

Philip Jenkins (1992) contributes the role of "symbolic politics" and "politics of substitution" to the understanding of moral panics. Jenkins (1992) argues that claims makers draw attention to a specific problem, in part because it symbolizes another issue. For example, school shootings raise issues concerning gender relations, without ever actually stating it. Whether an accused shooter is from a dual working parent family or a single parent family, simply reporting the shooter's family arrangement says something about the breakdown of the traditional family structure; thus, the idea is conveyed that someone (usually the mother) has done (or hasn't done) something that either led to this situation or allowed it.

## **HISTORICAL TRENDS IN MEDIA REPRESENTATION OF CRIME AND CRIMINALS**

Film was introduced in 1895 and by 1923 was the most influential entertainment medium in America. The images were universally available, widely consumed, and came to shape and reflect American culture. Film affected the public's values, political views, social behavior, consumption patterns, and worldviews. Film was the first mass medium with the ability to create a mass public –

a homogenous group made up of people with different social, economic, and ethnic backgrounds. From 1920 to 1950 criminals, whether heroic or villainous, were portrayed as decisive, intelligent, and attractive individuals ([Surette 1992](#)).

### *Enter Television*

The growth and public acceptance of television since the 1950s has been enormous and with that acceptance the impact on society's norms, values, consumption, social behavior, public policy, and expectations has been shaped and reflected. In 1987 approximately one quarter of all prime time shows were crime related, whether factual or fictional. According to Ray Surette ([1992:32](#)): "The popular mass entertainment media, first in the form of film and today led by television, have thus become a significant social factor, conveying thematic messages and lessons about whom to emulate and fear in society, what the basic causes of crime are and how crime should be fought." Concerns about the images and messages portrayed have steadily risen. The entertainment media do not claim to be an accurate portrayal of reality, nor do they accurately portray crime and its causation. However, society's ability to discern between fact and fiction is often blurred, resulting in inaccurate perceptions of whom to fear, the basic causes of crime, and the appropriate responses. Media repeatedly convey misleading messages and **[end page 189]** lessons, consistently pointing to individual predatory traits as the cause of crime. Media criminals have consistently become more violent, animalistic, irrational, and predatory and their crimes are increasingly senseless, more violent, and random. Criminality is viewed as an individual choice and other social and economic explanations are irrelevant and ignored ([Surette 1992](#)).

## **UNDERSTANDING THE NEWSMAKING PROCESS**

In order to investigate cases of apparent moral panic, it is necessary to understand how news is developed. The distortions of reality conveyed by the entertainment media are not surprising; they are fiction. However, the similarities between entertainment media and news media, which are expected to depict an accurate and objective view of reality, are unsettling considering the enormous impact of the latter on the social construction of reality.

The images and messages put forth by the news media are remarkably similar to those of the entertainment media. There are two models used to describe the process and criteria by which news media content is created. Realistically, news agencies do not fit neatly into either model but operate somewhere in the middle. At one end is the market model, where the newsworthiness of an event is determined by what is of interest to the public; the facts are objectively reported and realistic information about the world is reproduced. The other extreme is the manipulative model, where newsworthiness is determined not by what is of interest to the public, but by what is of interest to the news agency owners. The ability of the news media, operating under a strict manipulative model, to shape and distort the image of reality is frighteningly apparent ([Cohen and Young 1981](#)).

However, it is far too simplistic to assume that these models are the norm in the arena of news reporting. An organizational model of news processing contains components of both the manipulative and market models ([Surette 1992](#)). Similar to the manipulative model, under the organizational model news is selected based on the needs of the agency. The periodicity, or timing, of the events and how they match the scheduling needs of the agency is a consideration when determining what is reported. Consonance, or how the story ties into prior news themes and explanations, is also a consideration. It is at this point that routinization allows for a threat to be depicted in an easily recognizable form by the media, one of Cohen's ([1980](#)) elements of a moral panic. The organizational model differs from the manipulative and market models in that it is not totally reactive (market) or totally proactive (manipulative). The agency reacts to non-routine

events yet takes part in the creation process for the rest of the news.

In the process of routinization, news agencies rely on respected social institutions or officials that are credible and provide reliable information. This easy influx of news allows the news agencies to utilize their financial resources elsewhere. However it also, as Hall et al. (1978) suggest, leads to the reproduction of the definitions of the powerful. **[end page 190]** This results in news that is dominated by information and interpretations that tend to support the status quo. It also reinforces the respectability of the institutions and organizations providing the information (Chibnall 1981). Hall et al. (1978) also suggest that it is this process that symbolically reproduces the existing power structure.

Crime news makes up a large part of the entire news. Being prepackaged (manipulative) and popular (market), it helps the news organization in its routinization process. Thus, a cycle of newsworthiness is created in which one type of crime is defined as news and will continue to be news. "If this focus on a particular type of event becomes industry wide, a media crime wave results. The crimes chosen as news during this span in effect become the typical 'atypical' event for that period" (Surette 1992:63). Since the traditional definition of news is "that which is uncommon or new," violent crime is seen as more newsworthy because it occurs less frequently. This focus on a particular type of event leads to disproportionality, or the belief that the threat is more substantial than it is truly, a characteristic of a moral panic.

The social importance of these media constructed crime waves is, according to Fishman (1978:533): "1) They enable the media to influence policy by raising public outrage affecting everything from sentencing and preventative measures to society's level of fear. 2) By operating around these themes, other, more often serious significant events or issues do not become news." Therefore, they are less likely to receive public attention, raise concern or fear, or receive resources. Hall et al. (1978) argue that the media do not consciously set out to divert the attention, yet the end result is the same. The root problems are often neglected and do not receive attention.

### ***Local Television News***

Homicide rates have continued to decrease since 1993, yet one out of every seven news stories covered the topic. Coverage of murder has increased 700 percent while overall crime coverage has tripled since 1993. According to a recent survey by Louis Harris for the Center for Media and Public Affairs, local television newscasts are the public's number one source of news. Not only do they get the biggest ratings, but people also rank them as higher in quality and credibility than network news, local newspapers, and any other news source (Grossman 1997). A study conducted by the Rocky Mountain Media Watch found that crime occupied 30 percent of what little time was actually devoted to news (40 percent) in 100 local television newscasts in 56 cities. Incidentally, 36 percent of the airtime was spent on commercials and promos; sports and weather filled 22 percent and another two percent was anchor chatter (Grossman 1997). However, what is most significant and follows from Fishman's (1978) assertion that "more serious and significant events do not become news" is the absence of social and economic investigations, such that the national and local political scene was entirely absent from these newscasts. **[end page 191]**

Crime has become the focus of local television news for several reasons, and each is consistent with the characteristics of the manipulative, market, and organizational models outlined by Surette (1992). Local television newscasts are relatively cheap to produce and a major profit maker for stations. The "eyewitness news" formula has become the standard thematic scheme and there is a lack of pressure on broadcasters to serve their community's needs and interests (Grossman 1997). Marty Haag, Senior News Vice President for the A. H. Belo stations, reports that: "Covering crime

is the easiest, fastest, cheapest and most efficient kind of news coverage for T.V. stations. News directors and station owners love crime because it has a one to one ratio between making the assignment and getting a story on the air" ([Grossman 1997](#)). The crime scene doesn't move; no matter when the reporter arrives, there is always a picture to shoot. There is no need to spend time and money researching; when the cameras arrive, so do supposed witnesses.

### *National News*

On the national network news, the story is much the same. In the school year 1997-1998 there were 6,146 deaths by firearms for the age group 15-24 ([Hoyert, Kochanek, and Murphy 1999:68](#)). Thirty-five of these deaths were a result of school shootings. School shootings represent .5 percent of the gun related deaths for this age group ([National School Safety Center 2001](#)). Network evening news crime coverage for 1998 reported 1392 stories about crime on NBC, CBS, and ABC. Stories on two school shootings – Jonesboro, Arkansas, on March 24, 1998, and Springfield, Oregon, on May 21, 1998 – represented nine percent of ALL network evening news crime coverage in 1998 ([Center for Media and Public Affairs 1999](#)). This is a significant amount of news coverage for a topic that represents only .4 percent of homicides. There were a total of 126 network evening news stories on these two events. In comparison, there were 113 stories on all environmental issues ([Center for Media and Public Affairs 1999](#)). The leading cause of death for the age group 15-19 was accidents with a total of 13,367, more than double the amount of homicides; however, accidents only made up five percent of news reports ([Hoyert, Kochanek, and Murphy 1999](#)). Thirty-five deaths in a single school year is horrifying and tragic, yet small when compared to the approximately 6,000 youth homicides that didn't become national news (These numbers do not include the number of talk show, infotainment shows and news magazine shows who ran specials on the school shootings).

### *Increasing Fear*

The effects of the "media crime wave," which the Center for Media and Public Affairs ([1997](#)) has deemed number 10 on the "Top Ten List of Media Distortions of the 20<sup>th</sup> Century," are apparent throughout the nation. One element of a moral panic, a rapid build up of public concern, is evidenced in public opinion polls. Eighty-five percent of Oklahomans in both rural and urban areas report being "very concerned about school violence," while actual incidents of school violence are rare. The number one reason that **[end page 192]** police come to school isn't violence in the school building, but to take reports of violence in the home. School officials in Tulsa, Oklahoma, confirmed that major incidents of school violence elsewhere are exaggerating perceptions of armed and violent students ([Associated Press 1998](#)).

Cohen ([1980](#)) asserts that a key stage in the development of a moral panic is that there is a response from authorities and/or opinion makers. President Clinton added to the fear of school shootings in this 1997 speech: "We've got about six years to turn this juvenile crime thing around or our country is going to be living with chaos." This said, he then acknowledged that the youth violent crime rate had fallen 9.2 percent the previous year ([Center on Juvenile and Criminal Justice 1999](#)). While youth violence continued to decline, CNN reported: "Teenage time bomb's becoming increasingly more commonplace in America." NBC's *Today Show* news anchor Ann Curry introduced a child psychologist to the audience by asking him to address parents on this "new trend in our schools, shooting each other." When he stated that children are safer in school than anywhere else, she reminded him that this was the fourth incident. Vincent Schiraldi, the director of the Justice Policy Institute, reminded viewers that three times as many people were struck by lightning as were killed in school shootings, while another *Today Show* host, Katie Couric,

declared that "today's youth are more likely to pull a gun than make a fist" ([Glassner 1999: xiv](#)). Lead-ins and sound bites such as these are a complete contradiction of the truth. According to the Bureau of Justice Statistics and the National Center for Education Statistics ([1999](#)), an average of 50 percent all of schools report fights without a weapon; only 12.5 percent of all schools report fights with a weapon and those weapons are not necessarily guns. These newscasters are opinion makers, and the interviews are with authority figures, filling two of Cohen's ([1980](#)) elements of a moral panic. However, what seems most important is that combined these statements define guns and kids as a threat to the values and interests of society, which is also a stage in the development of a moral panic.

## POLICY IMPLICATIONS

Schools are safer than all other locations where kids congregate, including cars and homes. However, municipalities continue to raise taxes to buy state of the art surveillance cameras, metal detectors, and police mini-stations for schools in response to concerns raised by media reports that proclaim: "The coming of Super-Predators – teenage boys who have no respect for human life and kill and maim on impulse, without any tangible motive" ([Associated Press 1995:3A](#)). Responses by authorities and claims makers, a stage in the development of a moral panic, are evidenced by the reactions of several school districts and officials. School districts across the country are taking steps to improve the security of students, faculty, and staff. A boom has erupted in the school security business such that security technology has become a major budget topic for school administrators as well as politicians. Proposed changes in policy are occurring across the country. For instance, California Governor Gary Davis has proposed spending \$100 million of a budget surplus to strengthen school safety programs in his state. The **[end page 193]** money would allow districts to purchase more metal detectors, video surveillance, and other security devices. Washington Governor Gary Locke wants legislators to allocate \$9 million for a grant program to improve school safety. In Wisconsin, it has been proposed that spending on safety measures be exempt from fiscal limits placed on schools. In San Francisco, Mayor Willie Brown is asking for an additional \$1.5 million in his budget to put 26 more police officers in public schools; 56 officers are already deployed in San Francisco schools ([Kennedy 1999](#)).

President Clinton, at the White House Conference on School Safety, proposed \$12 million for project SERV, the School Emergency Response to Violence, which responds to school violence in a similar way that FEMA responds to emergencies. The president has also issued a \$65 million initiative to hire 2,000 community police and school resource officers to work in schools and a minimum of \$25 million in grants to develop and implement community wide school safety plans ([Clinton 2000](#)). Just as Jock Young's ([1971b](#)) work demonstrated how the media's amplification of an issue can result in a moral panic leading to the legitimization of punitive policy measures, the amplification of school shootings has led to both legal and economic changes. These changes are what Cohen ([1980](#)) listed as the final stage in a moral panic.

### *School Safety is Big Business*

With the large amounts of dollars available, a business that once served private investigators, retail companies, and corporate security details has found an entirely new customer base: schools and government funds. Capitalizing on the fears of citizens, and the policy changes that attempt to alleviate these fears, is big business. Companies not only compound the fears through advertising, but also shape the types of solutions that are offered.

The types of equipment available range in cost and effectiveness, and numerous companies offer consulting and safety plan designs. Emergency communication devices, according to Mike Fickes

(1999) of Roland Borg Corporation, are in need because "conventional telephones are inadequate in an emergency. Intercom systems with emergency calling capabilities are vandal proof and one does not need to dial emergency numbers." The company recommends a station in every room, in hallways, and in offices. The cost is \$300 per station. Experts also recommend photo badging systems using bar codes. Not only do these systems act as an alarm system (students, faculty, and staff will notice any unbadged person and report them to security), they are also used to control access. Cards cost approximately \$2.50 each, midrange card printers cost \$3800, and the camera badging station and its software cost \$1800. However, these access control systems require an initial investment of \$10,000 and approximately \$4000 per year in maintenance (Fickes 1999:22). In the 1997-1998 school year, there were approximately 54 million students; if each student were issued a photo badge (this does not include teachers and staff or the initial investment, maintenance fees, and the expense of printers), the cost would be \$135 million. Sensormatic Electronics Corporation [end page 194] recommends closed-circuit television (CCTV) monitors at the cost of \$10,000 per four cameras, monitor, and videocassette recorder. While CCTVs are mainly used for reactive purposes such as illegal entry and vandalism, schools across the country are purchasing them in hopes of preventing violence. As for metal detection and x-ray screening, experts disagree on which is the best method; however, they agree that one or both are necessary. Handheld units for random searches begin at \$150.00 and walk-through units at \$2500. Prices for x-ray screening equipment range from \$15,000 to \$30,000 (Fickes 1999:31). In the 1997-1998 school year there were 136,012 public and private elementary and secondary schools across the nation. If each school bought only one handheld metal detector, the cost would be approximately \$20 million. If each school in the country bought four cameras (CCTV), the cost would be a whopping \$1.36 billion. With these large sums of potential revenues available, it is no wonder that companies such as Siemens Building Technologies have begun to address society's unwarranted fears with advertisements such as "maintaining a safe and secure environment for our schools and our children requires solutions that work." Best Access Systems advertises expertise in "securing a world where kids are free to learn." Finally, Mosler offers the assertion that "schools today need all the answers technology can give them, and then some" (Fickes 1999:30).

All of this comes despite a special report issued by the Office of Juvenile Justice and Delinquency Prevention (Bilchik 1999) in which the reader is told that in the school year 1997-98: "Juvenile violence peaked in the after school hours on school days and in the evening hours on non school days." The violent victimization of juveniles is greatest between 3 and 9 p.m. The highest percent of violent incidents involving a firearm for those under 18 years old, nine percent, occur between 8 and 9 pm followed by seven percent occurring between 3 and 4 pm (Bilchik 1999).

### *School Shootings in Context*

In the academic school year 1997-1998, there were 44,351 public and private secondary schools and 91,661 public and private elementary schools for a total of 136,012 schools (Moody 1998). There are on average 180 days of school per year when schools are in session for a total of 24.5 million school sessions. The nine school shootings in this year represent .00003 percent of the approximately 24.5 million times school was in session for the day somewhere in America. As horrific and tragic as each of these events was, given the number of days individual schools in America are in session, on most days and in most places it is safe for a child to go to school.

Despite the small numbers and percentages of school shootings, stories of youth violence are used by the news media to present a distorted image of the true state of affairs in our schools. In fact, in 1998 the Bureau of Justice Statistics reported that 29 percent of all teenagers believed drug use/abuse was the biggest problem facing kids their age, followed by social pressures, good grades, and sexual issues; only five percent listed crime and violence in school as the biggest problem

([Maguire and Pastore 1999](#)). In **[end page 195]** 1997, parents listed lack of funding and discipline (15 percent each) as the biggest problems facing schools; violence came in fourth behind drug use/abuse. However, in 1998, at a time when teens believed drugs were the biggest problem, parents' fear of school violence rose to 20 percent ([Maguire and Pastore 1999](#)). According to Ray Surette ([1992:88](#)): "the media emphasis on crime has frequently been credited with raising the public's fear of being victimized to disproportionate levels, hence giving crime an inappropriately high ranking on the public agenda." Surette ([1992](#)) concludes that the importance of the relationship between mass media news and the criminal justice system may be greater today than ever before.

### *Columbine*

In 1999 crime news jumped into second place on the list of broadcasts for ABC, NBC, and CBS. Crime news followed the "War in Kosovo" by only two broadcasts. The Columbine High School shooting topped the list of crime stories covered on those evening broadcasts with 319 stories, more than five times the total of any other incident ([Center for Media and Public Affairs 2000](#)). After the smoke cleared, 16 students and one teacher were dead, including the shooters. Students and faculty at Columbine High School, as well as reporters, referred to the shooters as members of the "Trench Coat Mafia." For weeks following the shootings, reports about these modern day "folk devils" saturated the news. These students were labeled "outsiders," "different," and even "strange." Just as Cohen's ([1980](#)) Mod and Rockers were easily identifiable, so were the members of the "Trench Coat Mafia." They wore black clothes and makeup, listened to rocker Marilyn Manson, played violent video games, and designed elaborate web pages. Claims makers, including first lady Hillary Rodham Clinton, used this event to draw attention to the breakdown of traditional values, to attack the entertainment industry, and to rail against those who opposed gun control legislation. "We can no longer shut our eyes to the impact that the media is [sic] having on all of our children," said Mrs. Clinton ([Fleeman 1999](#)). Criminologist Jeff Ferrell ([1998:148](#)) asserts that "as the production and consumption of popular culture lay the foundations for contemporary social life, they also become the basis for a variety of contemporary controversies." It is interesting that not only has popular culture become the basis of controversies, but these controversies are also used by claims makers to argue their beliefs on other issues. These controversies include attempts by politicians, legal authorities, religious leaders, and others to criminalize popular culture.

The late 1980s and 1990s saw the rise of a booming economy, low interest rates, a dot.com generation, latchkey children, a war fought in a faraway land but portrayed via the media using video game like recreations of bombings, and the potential to become extremely rich through technology and start up internet companies. In addition to computerized everything, there was an aging generation of authority figures, claims makers, and moral entrepreneurs who found themselves out of the loop due to the widespread use of a communications system (the computer and the internet) that was not what they were used to. In the 1950s rock and roll was blamed for the breakdown of **[end page 196]** teenage morality and their outrageous behaviors; today Marilyn Manson and rockers like him, video games, and the computer are the elements of popular culture that moral entrepreneurs attempt to criminalize or at least censor.

School shootings, and more generally school violence, have become what Jenkins ([1992](#)) calls "symbolic politics" or the "politics of substitution." Politicians and claims makers draw attention to these specific events because they represent other issues such as gun control, censorship, and morality. One week after the Columbine shootings, President Clinton introduced legislation requiring background checks on sales of explosives and holding parents liable when their children commit crimes with guns. Whitehouse Press Secretary Joe Lockhart said: "Clinton is counting on outrage over the shootings to help push the legislation through, unfortunately oftentimes it takes

tragic events to catalyze work here in Washington" ([Sobieraj 1999](#)). Cohen ([1980](#)) suggests that one response to a moral panic is a call to return to traditional values. This is echoed in both Joe Lockhart's comment as well as Senator George Voinovich's (R-Ohio) statement: "There is something wrong with our society. I think a lot of it has to do with a return to traditional morals and values. Youngsters are not getting the kinds of moral and religious training they once got at home" ([Lowy 1999](#)).

## CONCLUSION

The public has not received the kind of analysis or examination from the media that is needed to give worried parents or concerned policy makers the context with which to judge safety in schools. In reality, kids are more likely to be shot by adults. Adults kill 90 percent of homicide victims under the age of 12 and 75 percent of homicide victims age 12-17 are killed by adults ([Donohue, Shiraldi and Zeidenberg 1998](#)). This is not to say that children face no threats to their safety in school; however, America cannot set rational public policy in the important area of child killings without better information from the media. No one expects the press to ignore tragic killings of kids, whether they occur on school grounds or in other places. But the data contained in this report show that the public and policy makers are done a great disservice if they are led to believe that schoolhouses are a primary locus for juvenile homicides in America ([Donohue, Shiraldi and Zeidenberg 1998](#)).

As other school shootings occur and/or the juveniles involved in the previous shootings are brought to trial, the public discourse could tremendously benefit from the presentation of a broader perspective on juvenile killings. To provide greater context to such cases, the media should at least explain: (1) that school killings are not on the increase; (2) that such killings make up a small minority of all killings of and by juveniles; (3) that children are three times more likely to be killed by adults than by other juveniles; and (4) that there is no trend toward younger and younger juvenile killings. These data are readily available and would tremendously benefit the public's understanding of youth crime. **[end page 197]**

Nine incidents of school shootings in the 1997-1998 school year provided the opportunity for news agencies to develop a thematic routinization of incidents of school violence. What was an atypical event, hence newsworthy, became the typical event; therefore, under the organizational process model, it became routinized and increased in newsworthiness. The results of this media constructed crime wave shaped public opinion, increasing fear of school shootings, contributing to fears of violent teens, fueling public policy such as government funded school safety, and prompting public consumption patterns and an increase in security technology purchases that fulfilled Fishman's ([1978](#)) assertion: "Media constructed crime waves can influence public policy by raising public outrage, effecting preventative measures and levels of fear."

According to Cohen's ([1980](#)) stages of a moral panic, school shootings can be included in the long list of moral panics that arise in all modern societies. The results and effects of this panic can be seen in misdirected policies and changes in the behaviors and actions of school officials, parents, and students. According to Barak ([1994:35](#)): "Nothing can be more important than the mass content of crime and justice news. The omission of certain types of criminality is equally, if not more important than the types of criminality included." One omission that stands out is a broad definition of school violence. The images associated with school violence, via news broadcasts, are bloody and emotional and involve physical attacks. The perpetrators are associated with death, darkness, and some form of "differentness," whether it is appearance or moral. News production is caught up in the need for dramatic structuring and according to Barak ([1994:33](#)): "Crime news is over simplified and reduced to subtle and not so subtle forms of stereotyping that socially construct

criminals and victims alike." In the process it erases considerations of structure and political economy that may deconstruct reality and thereby destabilize our sense of order (Barak 1994). These omissions and lack of considerations contribute to a moral panic.

### ***A Broader Integrative Definition of School Violence***

In light of the dramatic and often detrimental effects a moral panic has on policy decisions and levels of societal fear, it is imperative that the images and definitions of school violence be expanded and integrated. For example, the current definition is one-dimensional and involves physical force or intimidation. Missing in the news media's coverage of school violence are several elements of harm. According to Stuart Henry (2000): "the omission of these broader dimensions causes us to miss much of the content and many of the causes of violence in schools." Henry (2000) asserts that these missing elements of harm include: (1) the emotional and psychological pain that results from the domination of some over others, (2) the focus on interpersonal relationships that ignore the violence of social processes which produce systemic social injury, such as that perpetuated through institutionalized racism, sexism, and classism, and (3) the symbolic violence of domination, or the subtle form of violence that brings coercion through power exercised in hierarchical relationships. It is not until the media apply this multilevel definition to the problem of school violence that a multilevel causal analysis and a [end page 198] comprehensive policy response that takes account of the full range of constitutive elements will follow. In addition to the inclusion of these dimensions, it is important to realize that, as Barak (1994:ix) argues: "Crime and justice news are subject to and inseparable from political, economic and social struggle." These dimensions must be included in representations of school violence if a broader understanding and effective policy decisions are to develop and the news media are to become forums that promote understanding and social movement rather than moral panic.

### **ENDNOTE**

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**[end page 202]**



## ANTONIN ARTAUD: NOAH'S ARK OUTSIDE TIME \*

by

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### ABSTRACT

Antonin Artaud – painter, poet, cineast, and philosopher – was one of the greatest innovators of all time. However, he was also badly mishandled by the psychiatric establishment. Looking like a young god, he was institutionalized in 1937 and abused by electric shocks. By 1947, he looked like an old man – toothless, shriveled, dilapidated, and demented. He committed suicide like his idol van Gogh, who had undergone a similar ordeal. In considering the case of Artaud, this article claims that deviance mates with genius but that too much deviance or too much genius is likely to encounter the savage stigma of society.

The Big Bang made God deaf.  
Anonymous

Et qu'est-ce qu'un aliéné authentique? C'est un homme qui a préféré devenir fou dans le sens où socialement, on l'entend, que de forfaire à une certaine idée supérieure de l'honneur humain. <sup>1</sup>

Antonin Artaud ( 1947 )

*Van Gogh: Le Suicidé de la Société*

### INTRODUCTION

We intend to establish in the present paper the deviance, madness, and genius of Antonin Artaud as an anchor for our thesis concerning the link between insanity, deviance, and innovation. Artaud was born in 1896 and died in 1948. He was one of the founders of the surrealist movement; a poet, painter, cineast, playwright, theater director, and theoretician. His essays *The Theatre of Cruelty* and *The Theatre and its Double* had a strong impact on the French theater. He was in and out of mental institutions for the last ten years of his life. A 1937 portrait of him shows a young, glowing face, with the proud beauty of a god. In contrast, a 1947 photograph is of an old man, with a wrinkled, twisted face, his mouth gaping and his eyes opaque – compliments of electric shocks and psychiatric drugs, the side effects of which were worse than the symptoms of his disease. His

identification with Vincent van Gogh was one of brotherhood in art and misery. His [end page 203] essay on van Gogh was one of his most sensitive and profound works since his identification with his subject was complete; like van Gogh, he committed suicide.

Basically, Artaud's thesis is that society defends itself from great innovators by labeling them mad. In *The Theatre and its Double*, Artaud ( 1958 ) ingrained his dualistic, rather Gnostic, belief that the theater reflects life, yet must liberate itself by expressing the primary instincts of sex and cruelty, engaging in fetishistic rituals, wearing tribal masks, and accompanying the scenes with primitive music. As such it was supposed to have a layer of therapeutic psychodrama. Artaud used lavishly onomatopoeia and gibberish, but required the actors to concentrate on what they were saying and make their replicas with maximum force. His ideas influenced such giants as Roger Blin, Jean-Louis Barrault, Julien Beck, and Samuel Becket, and through them European and world drama. Like his idol Vincent van Gogh, he opted for maximum authenticity, for rejection of the generalized, and certainly petrifying, others. Both of them opted for the ostracism and misunderstanding suffered by the creative innovator since importance lies in the process of art, not in material and social rewards. However, since we consider art to be a communicative process, if only with a single kindred soul, at the end of his life Artaud ceased being an artist. Vincent van Gogh did not sell even one painting (maybe just one) during his lifetime, yet he never ceased to seek dialogue through his art with someone who would understand it. *Per contra*, Artaud invited all the "who's who" in cultural Paris to a theater hall and howled at them with bloodcurdling shrieks. With this non-communicative event, he labeled himself a mad, pitiful has-been.

Artaud revealed himself to be an existential phenomenologist by trying to cope with the essence of the self and to reach the core of the "pure self" by phenomenological reduction. Like his alter ego Vincent van Gogh, he saw himself as the suffering Christ, despised by the demiurgical "others," the *Wiedergeists*, the double-dealing hypocrites. Artaud ( 1986:191 ) said:

Mais il y a quelqu'un qui m'a toujours aimé pour tout ce que j'avais de bon ainsi en moi, non seulement dans mon corps mais dans mon âme (et il n'y a que quelques années que je sais que cet amour et allé à l'hystérie de la folie occulte et de la haine pour mon individu), ce quelqu'un s'appelle Dieu et Jésus-Christ. Car tous les prêtres eurent toujours la plus excessive tendresse pour ma dévotion et ma piété: je ne savais pas tout d'abord mais j'ai su il y a quelques années que toutes les messes de la terre étaient axées sur ma piété.<sup>2</sup>

Well, when Vincent van Gogh depicted himself in one of his paintings as St. Lazarus and as the savior, nobody saw his paintings. But when Artaud claimed that masses were held in churches all over the world for his piety, he was quite well-known, or rather notoriously known, in Paris, and a statement like this guaranteed him the tag of insanity.

Artaud deplored the existential loneliness of man. Artaud ( 1986:213 ) wrote: [end page 204]

Lettre du 7 Avril 1928, page 295: Ma solitude à moi est sans nom et sans bornes, et elle se double de cette horreur de penser que j'ai toujours en réalité été seul, que ma vie ne s'est pas complétée pendant cinq ans de la vie d'un être fait pour moi et qui m'avait pénétré. Je considère maintenant que to m'as toujours été étrangère.<sup>3</sup>

Man is a Tantalus who cannot be saved from his punishment: he is destined never to achieve what

he longs for. Moreover, while the fox has his lair and the bird its nest, man has no place to repose from his misery. Yet again, like van Gogh, Artaud never ceased to seek, indeed crave, a dialogue. He was always attuned to the other, any other, who might open a window into his soul. He never aimed at superficial rapport with the exterior of the other; only a deep dialogue with his inner self would satisfy him.

These Buberian "I-Thou" dialogues were rare indeed. Most of the time Artaud was frustrated and retreated expectantly into his lonely corner, or he became immersed in a catatonic stupor. Artaud understood that the theater is a means for structuring mythogenes which lend meaning to the lives both of performer and spectator, just as the paintings of van Gogh mythogenically linked the artist and his audience over time and space, and revealed some important insight, to both. Artaud was a retreatist, who courted annihilation within history. He possessed a lifelong interest in *Unio Mystica*. He studied the doctrines of Ruysbroeck, San Juan de la Cruz, and Jacob Böehme. We may guess that it was when he could no longer contain the ever-widening horizons of his being that van Gogh committed suicide. Yet for Artaud, suicide was an alternative to seeking union with the all-embracing unity in entirely unknown circumstances, the ultimate adventure in face of the unfathomable. He believed, and wrote to his friend Riviere, that in order to grasp the meaning of being, one must annihilate one's cognition, perceptions, and nervous energy ( [Artaud 1986](#) ).

Artaud was certainly eccentric, deviant, bizarre, and what is commonly known as "mad," yet we wish to ascertain what effect all this had on him and to what insights and creative domains it brought him. Admittedly, being mad revealed to him the meaning of the world. Hence, insanity for him delineated the limits of understanding, yet for the stigmatizing others such reaching out towards the normative boundaries of comprehension constituted madness, since the agencies of social control take deviant and antisocial behavior as a main indication of insanity. Artaud's writings are as explosive as van Gogh's paintings. Still, the work of van Gogh was structured and very communicative, whereas Artaud opted for intellectual anarchy, which in the last analysis cannot be communicative, and therefore does not amount to art.

Artaud identified with van Gogh and felt an inner affinity with him. Yet essentially he wrote about himself since his experience with insanity was very similar to van Gogh's, and both regarded psychiatry and mental asylums as tools of social control, and not of therapy. In his essay *Van Gogh: Le Suicidé de la Société*, Artaud ( [1947](#) ) projected his own experiences and longings – as well as his structured mythogenes – onto **[end page 205]** van Gogh and his art so that the mythogenes were Artaud's while they also related to van Gogh and their common *Weltauschauungen*. Like van Gogh, Artaud saw himself as a martyr of his art and its lack of appreciation by the gross, coarse, and non-refined vulgarians and their artistic institutions. Artaud ( [1986](#) ) called van Gogh an organist of an enclosed storm. This poetic metaphor is apt and forceful, but describes Artaud himself and his contained non-communication more than the expressive torrent of van Gogh's work. Artaud was also convinced that his suffering was sublimated into art, as a theurgic means to transcendence. In his surrealistic, poetic style, Artaud ( [1947:50-51](#) ) denoted van Gogh's paintings as "old sins, which have not yet been absolved." Their absolution would seemingly be effected by their extasis from history onto the synchronic Authentic Domain in transcendence. Artaud projected on van Gogh his own experiences of stigma, ostracism, and the stifling of his excellence during the nine years of his incarceration in mental institutions. It is as if the authorities told him, like they might have told van Gogh, as follows:

Ceux qui un jour lui ont dit:  
Et maintenant, assez, van Gogh, à la tombe, nous en avons assez de ton  
génie, quant à l'infini, c'est pour nour l'infini. <sup>4</sup>

It brings to mind the ostracizers in the Agora of Athens, who were in the process of voting to expel Aristides, who was wandering amongst them *incognito* in the marketplace, from the polis, being fed up with hearing all the time how clever, good, righteous, and talented Aristides was. Hence, both van Gogh and Artaud "preferred" to become mad rather than forfeit their superior conception of human dignity ( [Artaud 1947](#) ). They did not want to conform to the slavish rules of the asylum so they could be declared "cured" and released. They preferred to stay inside the institution rather than feign acceptance of the draconian, petrifying, humiliating routines of the mental hospital. The danger afforded by "madmen" like van Gogh and Artaud to the vulgarians of mediocrity and "total institutions" was their greater lucidity, their ability to see farther, to feel deeper than the average run-of-the-mill.

Artaud ( [1947](#) ), however, used the explosive metaphor that van Gogh's art was like an artistic atomic bomb, uncontainable by the power elites; consequently, their way of defending themselves was to declare van Gogh mad. This is in line with the anti-psychiatric claim that the stigma of madness is a means of social control. Like van Gogh, Artaud's love affairs were total, absolute, and hence impossible. He also regarded art as a goal in itself and not as a means to any material aim. Art is communication through an epistemic wall, which only the creative energy of a van Gogh can effect ( [Artaud 1947](#) ).

Another painter with whom Artaud identified was Paolo Uccello (1397-1475), the Florentine painter of the early fifteenth century. He was a marginal figure of Renaissance art. He was more Gothic than Renaissance, and his personality was split between intellectualism and art ( [Borsi and Borsi 1994](#) ). He was a genius alienated from the main current of the Renaissance art of his time, which was dominated by Brunelleschi, **[end page 206]** Masaccio, and Donatello – so much so, that Alberti did not include him in his directory of artists, *De Pictura*. Precisely this alienation attracted Artaud. One of his alter egos was Paul des Oiseaux, Paul of the Birds (Uccello in Italian is a bird). He had birds in his soul, that ever longed to be liberated. Like Uccello, Artaud had a psychosomatic, rather Gnostic, dualism in his personality. He actually recognized in himself two entities: one dominated by the Gnostic demiurgos, and therefore suspended in an unbearable temporality, and the other in the mystical realm of the spirits envisaged by Christian mystics like Jacob Böehme, Ruysbroeck, and San Juan de la Cruz. He saw himself ever vacillating between these dualities, always within the intersection of phenomena and not within them. Hence, he is mostly marginal to both dualities and alienated from human groups and institutions, like his two role models. Yet, the very suffering, the ostracism by the generalized others, and the clashes with the stigmatizing and depriving groups may be sublimated into profound creativity.

The relationship, however, between pain and creativity is not linear but curvilinear. Some suffering may be enriching, but too much may break the artist, which it actually did both to van Gogh and Artaud. Not only the bourgeoisie rejects the "mad" outsiders, but society itself, aided by its controlling agents, fights the "insane," creative innovators, and the deviants which expand man's limits of awareness and which widen their own, and others', normative being and conception of aesthetics. The bourgeois begrudges the creative individuals for being creative, which he is not. Hence, he ever pushes them in line and if they dare not comply, they pay dearly, with their wellbeing, freedom, and sometimes with their very lives. Such agencies of social control are the crows in van Gogh's last painting, pumping dark lead into the clouds and blood into the earth. Artaud's main concern was his crusade against the psychiatric establishment and its total institutions. He realized that madness is culture-bound, yet he demanded to know what justified declaring van Gogh insane and committing him to a mental institution – this in a world where one eats vaginas cooked in green sauce, where around most of the globe anarchy reigns supreme, and in the so-called orderly western world, government corruption is rife, white-collar crime is the rule, and the bourgeoisie is as dishonest and hypocritical as ever ( [Artaud \[1976\] 1982](#) ).

*Per contra*, all van Gogh did was to put his hand in the fire, as the most ardent, indeed ultimate, manifestation of love for Kee Vos, his widowed cousin. She, of course, interpreted it in her bourgeois fashion as violent madness. The cutting of his ear lobe was a sacrificial offering to an estranged would-be interlocutor who proved to be a traitor: Paul Gauguin. Van Gogh longed for an "I-Thou" Buberian dialogue with him, whereas Gauguin intended it to be an "I-It" manipulation. Van Gogh intended the sacrificial self mutilation, like all sacrifices, to magically reverse the dire course of events and induce Gauguin to stay in Arles in order to organize an artists' commune, with him as prophet, absolute ruler, and aesthetic pace-setter. The xenophobic mob of Arles could never have surmised the mythogenic significance of van Gogh's act and demanded his commitment to a "mad house" where his brain would be numbed with electroshocks. To "cure" a "madman" by psychiatric drugs often means to stifle him into submission by conditioning [end page 207] him like a Pavlovian dog or to singe his psyche into a zombie-like stupor, like Orwell's Winston in 1984, who was tortured into agreeing that two plus two were five.

A society engaged in this kind of atrocity should be regarded as an instrument of organized crime ( Artaud [1976] 1982 ). Hence, Artaud preferred to remain "sick" and not forfeit his superior lucidity, yet the "total institution" and its repressive "treatment" exerted its toll. Artaud entered the mental hospital with radiant eyes, glowing skin, and the countenance of a god. After nine years he became a wrinkled old man with hollow cheeks, a toothless mouth, and blank, opaque eyes. Artaud was the authentic anti-psychiatric writer since he experienced the atrocities of the mental asylum on himself, unlike Michel Foucault, R. D. Laing, and Thomas Szasz who just wrote about them. Psychiatrists are the Orwellian "thought police" curbing rebellious creativity ( Artaud [1976] 1982 ). In order to cache their impotence, psychiatrists invent ridiculous terminology, which explains nothing and serves to further stigmatize, segregate, and alienate their patients ( Artaud [1976] 1982 ). Hence, the hospitals for the insane perpetuate their inmates' affliction, with the side effects of the "treatments" being much worse than the original symptoms. The psychiatrists are the enemies of their patients' ingenuity, and their claim that their charges renounce their unique individuality, which might well be the basis of their creative innovation, is the most frequent cause of their suicidal despair ( Artaud [1976] 1982 ). Artaud realized what more and more modern researchers and scholars have been discovering: that mental illness is a concept of sickness generated by the "poisoned tongues" of psychiatrists ( Artaud 1986 ).

One must be desperately honest in one's quest to examine one's ontological boundaries. Then madness could be instrumental. Insanity could widen and deepen our consciousness, yet many times the mad pay the price of their inner enlightenment by religious condemnation. The church, the rabbinate, and the ulema do not intend to relinquish their monopoly of revelation through their institutions; the madman's "private" revelation is hence shunned and condemned. Also, the psychiatrists wish to show their proficiency in "curing" the insane by burning their brains in the process. However, the only way to fight insanity is to be authentic and refuse to curb one's insights for the price of complacent well-being.

Artaud ( 1986:7, 30 ) goes a step farther than the Cartesian "*je pense, donc je suis*" by postulating: "*Je suis dans mon corps.*"<sup>5</sup> He thus expresses one of the most mind-boggling paradoxes of human existence: why has my body been chosen to be the channel of cosmic awareness, and does every human being feel the same, and how can this paradox be solved? Artaud was most susceptible to solipsism since his eccentricity and deviance set him apart, and the psychiatric drugs and electroshocks reduced his ability and desire to communicate with his surroundings, an ability and desire which were meager to begin with. [end page 208]

## THE SELF BY HIMSELF

Solipsism was reinforced from time immemorial by the fact that man felt himself to be the direct and immediate channel of cosmic awareness. The fact that other men also feel themselves to be the cognitive center of the universe can only be inferred through hearsay, vicariously. There is no logical way to disprove the patently megalomaniac claims of the solipsist. Descartes and Leibnitz did not find a logical way out of solipsism and had to recruit God to extricate them from their quandary. Schopenhauer admitted his inability to refute the arguments of the solipsist and in desperation suggested that he be committed to a lunatic asylum. On one level, the trap of solipsism may be avoided by postulating that all life forms have an inner awareness of the holistic transcendence. On a deeper level, however, there is the question of why the body – the interactive *Atzmi* and the regulating *Iti* – was chosen to serve as a sole perceptive channel of the universe. This meta-dilemma, the insoluble paradox of man's relationship to transcendence, is a metaphysical projection of man's Sisyphean and Tantallic developmental prime movers, which likewise drew their continuity from the inherent impossibility of their fulfillment. This paradox supplies the transcendental push for the developmental quest of a Sisyphus to control the object and of a Tantalus to reach towards it. The core dialectics of Sisyphean quests and Tantallic longings are thus cathected towards transcendence in the form of an insoluble paradox. The logical "law of contradiction" does not seem to apply to this paradox. The "I" who has been chosen to perceive the whole universe is both a totality and a specific unity. Hence the paradox constitutes both an "I" and a "not I," and yet is our metaphysical prime mover. A possible solution to this dilemma may be in the fact that the law of contradiction applies only to the separant vector and to its either/or, computer-like binary application. The paradox, on the other hand, takes in both the separant and participant vectors, which together constitute a system-in-balance between the separant quest for being and the participant longing for nothingness as wholeness. Thus, the law of contradiction in logic becomes a special case of this paradox. The latter is more comprehensive once it is based on the dialectics of the vectors inherent in the actual development of personality (see [Shoham 1979](#) ).

The relationship between the prime movers of the self and the transcendental paradox is presented graphically in [Figure One](#) . The self-object relationship is fueled by the dialectics of the Tantallic longing and the Sisyphean quests, which generate the core energy and prime movers of the self-object dyad and hence form the thing-in-itself or the elusive, Kantian *ding-an-sich*. The self-transcendence dyad is sustained by the search for the solution to the insoluble paradox of a cosmic awareness that flows to a specific body. Both these relationships are close to the participant pole of the self interaction (transcendence and object), whereas the transcendence-object relationship is located on the separant pole of this interaction. The latter is also extraneous to the self and thus constitutes its infernal other, its *Weidergeist* or *demiurgos*. As the self and *demiurgos* are separated and alienated from each other, the separant, least-interest principle governs their relationship. Hence, if the self's quests are too apparent, the demiurgical least-interest principle is liable to frustrate them. Man's quest should not be overt but rather clandestine and secret. This is ordained by the appearance of the light within the mind, evading the hostile demiurgical archons. The whole of the Kabala constitutes *Kochma Nisteret*, **[end page 209]** the secret doctrine, while the Mishna says that "abundance (plenty) be found only in things which the eye cannot perceive," <sup>6</sup> implying that the *demiurgos* will strive to control those things that are physically apparent and deprive man of them. Kierkegaard also postulated that the apparent outside is falsehood, and truth is clandestine. Conversely, the *demiurgos* will try to make man's fears and apprehensions come true. Therefore, Rabbi Nachman of Brazlav's principle counsel to his followers was: "All of life is a narrow bridge but above all one should not be afraid." <sup>7</sup> This could be interpreted as a warning against divulging one's fears to the *demiurgos* in case he causes them to come true as a macabre, self-fulfilling prophecy.

In Gnosis, solipsism is an attribute of the *demiurgos*. In the *Hypostasis of the Archons*, Samael

the chief archon (a synonym for the *demiurgos*) declares: "I am God, there is none [except] me." When he said this, he sinned against the All, and reprimanded him, "you err Samael" (quoted in Foerster 1969). Ialdabaoth, who in Gnosis represents the Creator-God, declares his solipsism as follows: "I am Father and God and there is none above me," to which his mother Sophia Prunikos replies: "Do not lie, Ialdabaoth; there is above thee the father of all, the first Man and Man the Son of Man" (quoted in Jonas 2001). The efforts of the *demiurgos* to present exclusivity are frustrated by the messengers of the light and even by his own mother, attesting to the existence of the Godhead and his creatures. The internalization of the suffering of the other, so that it is felt within our inner self, is not only a basis for an existentialist system of morals but also constitutes a direct inner-consciousness "proof" of the existence of the other.

Solipsism in Judaism can be traced to Ecclesiastes (2:25), which says: "For who can eat and who can feel except for me?" (The faulty and erroneous King James translation is misleading). Here is the claim that only ego can feel the world through his senses. The Talmus goes on to say: "Every man should say that the world was created for Him"<sup>8</sup> Another solipsistic statement is made in the Talmud about one of its sages, Hanina Ben Dossa: "Each day a divine voice proclaims that all the world feeds itself for my son Hanina."<sup>9</sup> This tradition is continued by Rabbi Ezra, the thirteenth-century Spanish Kabbalist, who says: "Man is comprised of all the spiritual entities... Man is comprised of all things and his soul is linked to the Supernal Soul" (quoted in Idel 1988). A more solipsistic view is expressed by the Kabbalist Menachem Recanati who says: "Since man is comprised of all the essences, his power is great and so is his perfection; when he directs his intention and knowledge to draw downwards and cause the emanation out of the 'Nought of Thought'" (quoted in Idel 1988). Kordovero, the sixteenth-century Safedean Kabbalist, states: "Wherever thou standest there are all the worlds" (quoted in Scholem 1987). This solipsism was further developed by Rabbi Nachman of Bratzlav, the Hasidic sage whose doctrines were largely based on Lurianic Kabala, who claimed that his self and the world were one; hence, he could influence the decision making of the Russian Czar (Green 1981). The way out of this solipsism, as envisaged both by Kierkegaard and Rabbi Nachman, lies in the internalization of an other's pain and suffering within ego's inner self. This dynamic serves as a basis for a **[end page 210]** new existentialist morality and, as I shall later elaborate, makes for a partial way out of solipsism.

Indeed, solipsism, and the extrication from it, is a focal concern of existentialism. Sartre succeeded partially in extricating his philosophy from the solipsistic impasse by postulating a transcendental ego common to all beings (Sartre [1957] 1972). In his metaphysical novelette *La Femme Adultere*, Camus (1962) describes with incomparable virtuosity how a young, dejected wife discovers through an ecstatic revelation that her inner self and the spiritual core of all life form and objects partake in a universal unity. Yet this solves only part of the problem. Neither Sartre nor Camus dealt with the question of why ego's specific bio-psycho-social configuration was chosen to be the unique channel of cosmic awareness. Kierkegaard, who was aware of the utility and force of the problem, posited that this paradox of the choice of a given body serves as the conduit for universal consciousness. This paradox is insoluble precisely because, by interpolation, every individual has the same or a similar sense of uniqueness and choice. Thus, this insoluble paradox becomes the basic motivation for man's metaphysical quests, supplementing his Tantalus longings and Sisyphean searches, which interact dialectically as prime movers of his core self. This may serve as a pragmatic experiential solution for solipsism, which is at least more feasible than any *a priori* search for a solution, which invariably would end in a *cul-de-sac*.

My solution for the dilemma of solipsism necessitates a unity of transcendence. In fact, it constitutes a "proof" of a metaphysical holism. Otherwise, we should be confronted with a "scandal" of the multiplicity of consciousness and the absurdity of multiple solipsisms (Merleau-

Ponty [1962] 1994 ). Indeed, how could one account for the feeling of each psyche that it has been chosen as the sole duct for the awareness of the universe, without assuming that all life forms are hooked kaleidoscopically to a single consciousness? As for the paradox of my bio-psycho-social configuration having been chosen as the unique channel for cosmic awareness, it serves as our prime motivation to search for a transcendental meaning to our existence. Moreover, having extrapolated the existence of a unique transcendence from this paradox, it might well be that each individual has been programmed to feel unique *vis-à-vis* the other. This is a simulation of the situation of a unique Godhead faced with a *demiurgos*. Whatever the purpose of the creation of an infinity of different life forms and objects, our metaphysical programmer maximizes his returns by ensuring an infinity of unique creatures faced by demiurgical others, who thus become multiple images of their creator.

## PAIN

Figure Two recapitulates the triangle of prime movers. The dialectical core quests are motivated by a lack – an insatiable Sisyphean hunger for domination of the object and an unquenchable Tantallic thirst for a merger with it. The metaphysical prime mover is man's unattainable quest to solve the solipsistic paradox. Finally, the relationship between the man-God-object triad and the God-object dyad is one of self-other [end page 211] conflict and Godhead- *demiurgos* strife. If these three relationships are abstracted, there is lack, strife, and frustration, which are perceived by the individual as varying in dosages and kinds of pains. Hence, the universal emotive principle is pain. This was expounded by Freud in his pleasure principle, according to which pleasure is the reduction of frustration, irritation, and pain. Freud confined the pleasure principle to intrapsychic dynamics, whereas here pain is regarded as governing both the temporal and transcendental relationship of man. Moreover, our programming in its remarkable ability to utilize a very limited number of parameters – the four nucleotides of genetics, the two core personality vectors – to control and activate creation, utilizes pain not only to activate man but also to preserve him and regulate his relationships. Thus, pain guards the organism against injury, it serves as a communicative medium, it prods man to seek creativity and revelation, and, when internalized by ego, it forms a basis for an existentialist system of ethics. In existentialism, this is marked by the Heidegger's *angst und sorge* and by Kierkegaard's description of human existence as characterized by "fear and trembling." Life is visited by varying degrees of deprivational interaction, yet its motivating efficiency is curvilinear. A moderate dosage of deprivational interaction prods us to act and create, but too much of it crushes us under the Sisyphean stone or the Tantallic rock, in the earlier version of the myth. One cannot create if afflicted by unbearable agony. For revelation, one should "let pain flower," as Kierkegaard counseled, but a crushing blow damns the flow of grace and prevents it from reaching the victim.

Lack, pain, and frustration are ordained by the developmental phases of the human child and adolescent. The fetus is accustomed to a soft, self-sufficient coziness in the womb, only to be expelled into a world of changing temperatures, hard surfaces, and erratic feeding and care by the breast-mother. In early orality we feel an Edenic pantheistic togetherness with our surroundings, only to be confined into the scar tissue of the ego boundary and the loneliness of later orality. Within the family fold, the adolescent usually enjoys an unconditional forgiveness for almost everything he says or does, until the sacrificial rites of passage of the Isaac syndrome thrust him into the cruel "rat race" of socioeconomic competition and full normative and legal responsibility. The openness of the infant and the adolescent expectations of an I-Thou encounter with his surroundings are usually frustrated and meet with an I-It response. Hence, man's relationship with his surroundings is characterized by a deprivational interaction, interspersed with occasional spells of grace. Mytho-empirically, this is represented by Acheron, the Greek river of woe, surrounding hell. Man's communication with his infernal others, to extend Sartre's metaphor, takes place

through a flow of agony. Moreover, man does not initially know that "hell is other people." On the contrary! He is conditioned by previous developmental phases to expect a welcoming and comforting other, only to have his innocence bruised, scarred, raped by the I-It other. According to Lurianic Kabala, God also created the world in order to give and to share his flowing grace. However, the breaking of the vessels caused him to lose control over it and since then he has been confronted by the *Sitra Achara* – the *Weidergeist*. Man in his struggle with his infernal other thus reflects an image of God in his conflict with the *demiurgos*. **[end page 212]** The message here is unequivocal: man in pain reflects a suffering God (Christ). Perfect theistic gods do not suffer. They make their creatures suffer, either to entertain themselves like Roman Caesars watching the throes of man and beast in the arena, or to partake vicariously in the joys and sorrows of their creatures and thus extricate themselves from solitude in eternity. The God of Gnosis, Kabala, as well as existentialism is a suffering God, and hence imperfect and blemished. The Kabbalist sphere of Keter, which is an integral part of the Godhead, is denoted by the *Partzuf of Arich Anpin* – literally "the long suffering" – while Kierkegaard's existentialist God is effectively involved in his creation through his suffering son.

The suffering Christ on the Cross broadcasts an appeal for communication and help on behalf of the blemished Godhead, and a maieutic message to man to seek revelation. Thence, man has the choice whether to open or close himself to the man-God's cry of anguish. When this call of distress is felt within the inner self, it represents the universal awareness of the Godhead. In Gnosis, the soul was initially a part of the Godhead, but afterwards "she fell into a body and came into this life, then she fell into the hands of the robbers." The Gnosis "Exegesis on the Soul" continues like this:

And the insolent tossed her to one another and [defiled] her. Some used her violently, other persuaded her by a deceitful gift. In brief, they dishonored her. She [lost] her virginity, and played the harlot with her body and gave herself to everyone. And the one to whom she adheres, she thinks he is her husband. Whenever she gave herself to the insolent, faithless adulterers that they might misuse her, then she sighed heavily and repented. Again, when she turns her face away from these paramours she runs to others, and they compel her to be with them and to serve them like the lords on their couches. But from shame she no longer dares to forsake them. But they deceive her for a long time [by behaving] in the manner of true and genuine husbands, as if they honored her greatly, and at the end of all these things they abandon her and go. But she becomes a poor deserted widow who has no help – nor does she gain a hearing in her suffering; for she has no benefit at all from them, except the defilements which they gave her when they consorted with her. And those whom she bore by the adulterers are deaf and blind and sickly, their heart is bemused. But when the Father who is above in heaven visits her, and looks down upon her and sees her sighing, with her passion and unseemliness, and repenting over her harlotry which she has committed, and she begins to call upon his [na]me that he may help her, [sighing] with all her heart and saying: "Deliver me, my father, for behold, I will give account to [you], because I have forsaken my house and have fled from my maiden chamber. Once again I turn to you" – when he sees that she is of such a character, then will he resolve to make her worthy that he take pity on her, for much pain has come upon her because she abandoned her house (quoted in [Foerster 1969](#) ). **[end page 213]**

The soul – the particle of Divinity – after falling into its demiurgical body, was exploited, assaulted,

raped, battered, manipulated, and manhandled; yet the soul's cry of anguish pierced the boundaries of history and reached the Godhead.

In a like manner Isaac Yehuda Safrin, the nineteenth-century Hasid and Kabbalist, recounts his revelatory experiences. Because of their importance, I shall quote them at length:

In 1845, on the 21<sup>st</sup> day of the Omer, I was in the town of Dukla. I arrived there late at night, and it was dark and there was no one to take me home, except for a tanner who came and took me into his house. I wanted to pray *Ma'ariv* and to count the Omer, but I was unable to do it there, so I went to the Beit Midrash alone, and there I prayed until midnight had passed. And I understood from this situation the plight of the Shekhinah in exile, and Her suffering when She is standing in the market of tanners. And I wept many times before the Lord of the world, out of the depth of my heart, for the suffering of the Shekhinah. And through my suffering and weeping, I fainted and I fell asleep for a while, and I saw a vision of light, splendor and great brightness, in the image of a virgin adorned with twenty-four ornaments... And she said: "Be Strong, my son," etc. And I was suffering that I could not see but the vision of her back and I was not worthy to receive her face. And I was told that [this was because] I am alive, and it is written, "for no man shall see me, and live...."

It was his [R. Zevi Hirsch's] custom regarding the matter of holiness, to pray in order to bring upon himself a state of suffering, uneasiness and affliction once every eve of Sabbath. This was done in order to efface himself completely before the Sabbath, so as to be able to receive His light, be He blessed, during the prayer and the meal of the Sabbath [eve] with a pure, holy and clear heart. This was his custom regarding the matter of holiness, due to his constant fear lest *arrogan* and *alien thoughts* would enter his heart. Once, on the Feast of Shavuot, hundreds of people crowded around him. Before the [morning] prayer, with the [first] light of dawn, I entered one of his rooms, but he did not see me, for he was pacing about the room to and fro, weeping and causing heaven and earth to weep with him before God. And it is impossible to write it down. And he humbled himself before God with a mighty weeping, supplicating that he not be rejected from the light of His face... then I was overcome by a great trembling, because of the awe of the Shekhinah, and I opened the door and ran away ( [Idel 1988:198](#) ).

His weeping and suffering coincides with the crying and pain of the divine presence – the *Schechina* – and this brings about the revelatory encounter between them. The pain Safrin radiated and the pain of the *Schechina* received by him made him a "flowing stream," a communicative current of pain ( [Idel 1988:85](#) ). In his revelatory experiences [**end page 214**] and his search for the roots of his soul, Safrin was convinced that he was the Messiah, the son of Joseph.<sup>10</sup> Indeed, his being a messiah was necessary for synchronizing between the *Ani*, the inner self, and the *Ayin*, infinity, which contains the same letters but in different order. The message here is that only a messiah, a son of God, can serve as the mediator between the infinity ( *Ayin* ) of the Godhead and the historical self ( *Ani* ). Only the man-God, who is simultaneously both in history and outside it, can effect a union between the Godhead and its particle (soul). Finally, Kierkegaard discusses the man-God's paradoxical "offense" of declaring himself to God ( [Kierkegaard 1941](#) ). Yet through

the common suffering of man and God, which coincides in the man-God, the revelatory communion between man and God is made possible. Man suffering in history cries from his inner self "out of the depths have I cried unto thee, O Lord." (Psalms 130:1). This is reciprocated by the man-God's shriek of anguish: "*Eli, Eli, lama sabachthani?*" Both cries of pain are synchronized in Christ on the Cross. With him the suffering is historical. The suffering of God and man integrates both history and eternity. This is the feat accomplished by the revelatory leap of faith through the communicative force of pain. A blemished, suffering God and man, in "fear and trembling" in history can communicate within an ever-suffering Christ. The savior's kiss continuously seared the forehead of Dostoyevsky's Grand Inquisitor, as a painful communicative reminder of God's presence in the here and now. Camus's judge-penitent's refusal to heed the drowning girl's cry for help in *The Fall* was the existentialist original sin because it blocked the communication between man and transcendence. It prevented the judge-penitent from feeling the suffering of the girl within his inner self and communing with her by saving her. Her unanswered cry of anguish became a free-floating scar that encapsulated both protagonists in their solipsistic solitude.

An answered cry for help, on the other hand, extricates both man and God from their impending solipsism. Indeed, Kierkegaard demonstrates how the crucifixion in an eternal present crosses timelessness and history. The Gnostic messenger, the Kabalist *Shechina*, and Kierkegaard's Christ, who differs radically from the Son of God of institutionalized Christianity, pierce the walls of the demiurgical tornado with their cries of anguish and reach the covert flow of grace within the eye of the storm. Brel's *Ne-me quitte pas*, which is a variation on the theme of separation anxieties, is absorbed into the innermost selves of the audience, thus effecting a direct communication with the artist. Bosch's Christ transmits his suffering to St. Veronica, as symbolized by the image of his face that was imprinted on the handkerchief with which she wiped his face. Christ's suffering radiates from his agonized yet graceful face – stoically calm within the gaggle of vile, ugly, cruel, stupid, covetous, violent, and debauched faces surrounding him – until it seems to reach the innermost serenity of St. Veronica who contemplates Christ's image on the handkerchief. This seems to be visible only to her since she is attuned to the pain emanating from the man-God. The poet Nelli Sacks imagined her pain emanating from one of the stones of the Wailing Wall. Pierre Legendre, a world renowned legal anthropologist, confessed to this author that "*sans le malheur je me sentirais seul*" (without suffering, I feel solitude). In Greek, sympathy is literally **[end page 215]** "common suffering." Indeed, pain extricates both man and transcendence from their ontological loneliness.

The communicative effect of pain was recognized by the sixteenth-century Safedean Kabalists. Abraham Halevi Baruchim woke up every midnight and wandered in the streets shrieking in a bitter voice: "Wake up to honor God – the *Shechina* is in exile, our temple is burnt down and the people of Israel are in great trouble" ( [Scholem 1987:144](#) ). He saw in a vision the holy presence, dressed in black and mourning near the Wailing Wall ( [Scholem 1987:144](#) ). The circle of Lurianic Kabalists in Safed practiced the *Tikkun Rachel*, which involved the following behavior: "They took off their shoes, dressed their heads in mourning and cried with all their might" ( [Scholem 1987:144](#) ). In this way they partook in the suffering of the *Shechina*. The suffering of man and the pains of God coincide within the exiled holy presence. As for the effect of tears as a communicative medium between man and God, Haim Vital says the following:

When a person weeps and sheds tears for [the death of] a righteous man, he also causes tears to be shed on high, and as we find it said, as it were, of God [Himself]: "The Lord God of Hosts will call to weeping and mourning" etc., [or] "my soul shall weep in secret" etc., or as it is written: "Oh, that my head were waters [and my eyes a fountain of tears]" – namely, that I long for the act of the lower [entities], as by their weeping below, they cause "my head to be as waters and my eyes a fountain of

tears." May they do so, and thereby I may also weep for my dead ( [Idel 1988:198](#) ).

Pain thus almost automatically effects a dialogue between man and God.

According to Kierkegaard, the crucified Jesus effects an *extasis*, in the Greek sense, from the sequences of time, and hence his pain is continuously manifest in the perpetuity of the present ( [Kierkegaard 1968:18-19](#) ). The suffering of Christ is also introjected by man as pertaining to his own daily crucifixion. Thus, Christ pierces the imminent solipsism of man by partaking in his suffering self-image. The shriek of a normatively sacrificed Isaac meets God's laments, sent to the innermost being of man through the tribulations of his son on the Cross. The suffering of God as felt by man may break his heart, yet as Nachman of Bratzlav taught: "There is nothing so whole as a broken heart." The calvary of Christ radiates *Lacrimae Rerum* into man, but it also fills him with the *enthousiasmos* (again in the Greek sense) of grace.

Physical pain is the tool of the *demiurgos* for guarding "his property" – the body. Without the pain incidental to bodily injury, disease, and death, most human beings and many other creatures would probably take their own lives. The *demiurgos* thus controls a built-in safety mechanism to keep the inmates – exiled particles of divinity – incarcerated in their temporal prison (i.e. the body). Without pain the souls would easily destroy their prison body and revert back to their origin in the Godhead. The demiurgical *ananke*, the coercive cosmic forces, as well as evolution, also avail themselves of pain in order to **[end page 216]** implement their aims. If one exceeds one's *moira*, one's fate in life, the Furies strike with a vengeance in order to push the deviants back into line. Those who do not fit the designs of evolution are wiped painfully yet unceremoniously out of history. Suffering and history are true phenomena, yet pain is also instrumental in jostling man out of his complacency in his demiurgical body and his fear of eternity (death). Man's revolt against his demiurgical *ananke* and *moira* is thus prompted by pain, and some suffering (though not too much) is also necessary for revelation and creativity.

Dostoyevsky says that one should be worthy of one's suffering. In our model this would mean that one must first experience an impasse, a fall, a breaking of the vessels, an exile, in order to embark subsequently on the rebellious road of creativity and revelation. This is expressed by Kierkegaard as "letting the pain flower" and represented by Rabbi Nachman's seeking of hardship and suffering in order to reach a higher rung of grace.

In existentialism, suffering, if it does not crush the protagonist, leads him to a deeper insight into himself and into his relationships with his surroundings and with transcendence. This is the professed reason for Rabbi Nachman's search for *Machloikess* with his surroundings, a disagreement or quarrel, in order to experience the cathartic pain and the suffering leading to spiritual relation. "We begin to live," said Yeats in his autobiography, "when we have conceived life as tragedy." As for creativity, there is Damocles who never danced so well as under the sword hanging over his head. A Celtic myth tells of a bird that thrusts itself on a thorn in order to sing its most beautiful song. Ezra Pound wrote his most powerful cantos after the "braves" of Pisa imprisoned him in a cage in the marketplace to be laughed at and spat upon by the passers by.

The conception of Kierkegaard and Rabbi Nachman as to the cleansing value of pain was shared by Kordovero who said: "Those who suffer willingly will be cleansed and purified... until they become as clean and pure as silver (quoted in [Scholem 1965:45](#) ). Suffering is thus a precedent condition ordained by the holy presence prior to salvation ( [Scholem 1965](#) ). In Mandaean Gnosis, suffering and exposure to "destructive lions" and to the carnivorous dragon that surrounds the world preceded the healing and deliverance of the human soul from its demiurgical tribulations

( Foerster 1969:224 ).

The suffering of the other, as internalized by the self, brings one first to recognize his existence as a separate entity, and enables one to sympathize and empathize with him. This nonverbal communication, which has to be reached through dialogue, generates with the self a flow of grace that is shared (as inferred epistemologically by the self) with the other. This is the essence of Dr. Rieux's feeling of grace when he treats the sick and tries to ease their pain, although he knows that he can never vanquish the plague. In order for the treatment of physical and mental ills to be authentic and hence effective, the healer must empathize with a concrete sufferer and not with an abstract or imaginary one. Many times people "identify" with the suffering of actors in films or characters in novels, thus avoiding the need to identify with real sufferers or help an actual person in pain. In a like manner, the Magid Abraham Ben Eliezer preached that "a person cannot be aroused [end page 217] (morally and authentically) by a book as he may be waken and aroused by actual crying and bitter shrieks" ( Scholem 1987:243 ).

Opening up to the suffering other is a prime communication dynamic that extricates man from solipsism. It posits both healer and sufferer in the grace of an authentic encounter within a present that becomes continuous, in that it lends meaning outside sequential time both to the life of the helper and to that of the person helped. Thus, Mother Theresa, treating the lepers of Calcutta, saw in them the image of the suffering Son of God. This might lend a new interpretation to St. John's dictum: "For God so loved the world that he gave his only Son, that whosoever believeth in Him should not perish, but have everlasting life" (John 3:16). God needed communication with man about his predicament and he needed man to effect a mending, a Kabbalist *Tikkun*, through creativity and theurgic revelation. The *causa causans* for the sacrifice was, therefore, the crossing between time and eternity effected by the crucifixion, so that the Godhead's anguish outside of time would be heard and heeded by man within history. As each human being or, for that matter, each creature is epistemologically transcendental to ego, the feeling of the suffering of the other and a readiness to respond to it is a dialogue with both the transcendental and temporal Son of God. The covenant between the man-God and God-man represented by any authentic dialogue is wrought by common suffering.

## THE SOLIPSISM OF ARTAUD

The solipsism of Artaud was reinforced by his body-centered *Weltanschauung*, his belief that the human body, or rather his body, was the only ontological reality. His inability and lack of desire to solve, at least for himself, the paradox of solipsism led him to anoint himself the Bishop of Rodez; later as the savior, he finally held the megalomaniac view that he was the center of the universe and that all Creation and its creatures were just marionettes playing for him in a command performance.

Artaud's most ambitious goal was to reunite by somatic alchemy Man and Woman into a self-sufficient hermaphrodite ( Artaud [1976] 1982 ). Thence, the solipsistic Artaud would not need to pursue the pain bearing love of another person and the conflict-ridden sex between male and female, but would be a self-satisfying Ouroboros. As for transcendence, Artaud professed a one-upmanship on the dialectical concept of the Christian triunity and the *coincidentia oppositorum* of alchemy. His unity was completed by the annihilation of multiplicity and the "big-crunch" like compression of all Creation into the potential of timeless, spaceless singularity ( Artaud [1976] 1982:69-105 ). Artaud was certainly an existentialist in his conception of life, of being thrown unto death with fear and anxiety. This anxiety was both somatic and spiritual. He could remember it, since he was sick with meningitis at the age of five. He writes:

Je me souviens depuis l'âge de huit ans et même avant, m'être toujours demandé qui j'étais, ce que j'étais et pourquoi vivre... Je me demandais [end page 218] pourquoi j'étais là – et ce que c'était d'être là et en quoi la question se pose et pourquoi se poser la question d'être ou de n'être pas, lorsqu'on vit et qu'on est là... Je me demande ce qui est Moi, non pas moi au milieu de mon corps... mais en quoi peut consister ce moi qu'on appelle être, être un être parce que j'ai un corps? M. habitude, M. nausé, M. manie, M. dégoût, M. crampe, M. vertige, M. fessée, M. calottes vont de pair avec M. insurgé, M. réponse, M. larmes, M. suffoqué dans une âme scandalisée – pour composer un moi d'enfant, une conscience petite enfant, la conscience d'un petit enfant (Artaud 1986:187). <sup>11</sup>

He did, however, carry out a phenomenological reduction of both life and death, and psychoanalyzed himself out of his fear of them. He followed his alter-ego – Paolo Uccello, or as he called him in his writings, Paul of the Birds – in what he imagined the master to have had done: He traced all the paths of his thoughts within his body. Thence, he lived towards his death without pain, with a slow disintegration parallel to the entropy of his body ( Artaud 1986:31 ). His choice manner, however, of rebelling against death was creativity. Like van Gogh's painting, Artaud's writing was an affront to death. Art and life were synonymous. For him authentic art was not for entertainment; rather, it must lend meaning to the life of the artist and, through him, to others who open up to his creativity. Above all, art is not an ego-trip for applause and recognition, but a means for dialogue, for fusion with other human beings, for feeling their body and soul, for permitting them to breath and tremble in unison with the artist ( Artaud 1986:190 ). One also lifts oneself by authentic art onto synchronicity, to partake of the authentic domain, where all authentic art is stored forever, for exposure to kindred souls attuned to the artist. "Madness" for Artaud was a means to widen and deepen his consciousness until it soared to the Authentic Domain in transcendence ( Artaud 1986:186 ).

" *Il n'y a pas d'autre issue a la pensée pure que la mort,*" <sup>12</sup> said Artaud ( 1986:38 ), and he thus revealed himself as an existentialist: a companion to Heidegger, who saw being as a *Geworfenheit zum Tod mit Angst und Sorge*, and to Camus, who regarded the dilemma whether to commit suicide or not as the most important issue in philosophy. He was not afraid of death since love and its sublimation into creativity confronts and thwarts the apprehension of death ( Artaud 1986 ).

A revelation induced "madness" can lead to conflict between the artist's new consciousness and its previous state. Yet, this changed consciousness may be the basis for innovative creativity, and the triggered revelation may well be the foundation of a deeper and richer art. Hence, revelation is an energizing dialectic for creativity. Still, the relationship between madness and creativity, as we have stated, is not linear but rather curvilinear. Some madness may induce the widening of consciousness and fuel revelations, which would feed creativity, but an excessive madness could be an alternative to creativity, leading to autism, solipsism, and self-destruction; this actually happened to both van Gogh and Artaud. Van Gogh went mad only when he could not paint any more, but Artaud chose to renounce creativity for madness, which he believed [end page 219] would expand his realm of consciousness and inner awareness. However, he paid a price. He swallowed his tongue, so to speak ( Artaud 1986:163 ). He forfeited reason and logic, and when he tried to communicate again in the catastrophic theater hall encounter with his friends, all he could emit were blood-curdling shrieks, which were incomprehensible, embarrassing, and harassing to his audience. As for van Gogh, Artaud described his last painting, *Wheat Field and Crows*, in the most heartbreaking of metaphors. Since van Gogh knew already that he would commit suicide shortly, the crows were carrying away the evil that could not touch him anymore. Indeed, the crows were

running away since down there, on the bloodstained earth, is death, and the low skies are equally ominous. The blood that flows from van Gogh's gunshot wound lent the bloody tonus to the earth, and the dim light was already leaving the field dirty with a mixture of putrid wine and blood.

Artaud's most interesting innovation is mytho-empirical, surrealist and ideational; it is related to his identification with Paolo Uccello, whose fresco of Noah's Ark depicts it as a refuge for the mad, the deviant, and the pariah. A *stultifera navis* in the synchronic Authentic Domain outside history. This Noah's Ark contains the authentic reservoir by mythogenes of creativity stored in synchronicity, and waiting for the "right conditions and opportunities" to land back into history and fructify the wastelands. Mytho-empirically, this Noah's Ark is a structured limbo between the hell of history and timeless paradise. The raven belongs to the powers of demiurgical evil. When released, it did not come back. The dove came back with an olive branch – a creative mythogenic symbol of an I-Thou dialogue with history. Also, the Midrash points out that Noah, before coming out of the ark, forced the hand of God and squeezed out of him a promise that he would not be molested when emerging from the ark to resettle within history. Hence, the creative innovators, shunned and persecuted in their lifetimes, would bequeath their creations back into history only when the artistic power cliques and establishments did not interfere.

The process of relegating authentic creativity onto the Authentic Domain within the mytho-empirical Noah's Ark starts with the mythogenes of longing and experience, which "lift" the work of art onto timeless synchronicity. This is the artistic mythification of reality, lending metaphysical significance to history. This is very much like the Hassidic "worship in the concrete," which sanctifies profane reality. Artaud understood that life can gain meaning, if at all, through *coincidentia oppositorum* by means of art. The "philosophers's stone" of alchemy is the artistic achievement which transforms the commonplace into an artistic triumph. Indeed, Artaud himself longs to partake of the transcendental Noah's Ark by a "*denudation epidermique*" and an emergence from his ego boundary, which is clinically known as one of the manifestations of autistic schizophrenia.

The ontology in Noah's Ark does not need verbal communication. It is the mytho-empirical projection of pantheistic early orality, or rather the metaphysical womb of the structured Authentic Domain. It stores the seeds of art and culture to disseminate again [end page 220] the atrophied, degenerate, or corrupt cultures, wiped out as dysfunctional by the pitiless decree of evolution. Artaud existed in the spiritual ark, away from and beyond his historical body. He escaped the drudgery of daily life and exchanged it for the moratorium of madness. His Noah's Ark was a place of deliverance from infernal history. It was a delving into the "mystical orchard" from which one may not reemerge. Artaud remained in Noah's Ark, never returning, until his suicide.

Noah's Ark was believed by some church fathers, notably Origen, Tertulian, and Augustine, to be a permanent haven designated by divine wisdom to save humanity from periodic disasters, which could not have been prevented by the good God. This rather Manichean and Gnostic approach may have influenced Uccello, who depicts Noah's Ark as filled – contrary to the Scriptures – mostly with sick, mutilated, and dejected humans, and led by an authoritarian, majestic figure standing as if at the helm of a ship, who was in all probability the image of Augustine himself ( [Borsi and Borsi 1994:185-187](#) ). Noah's Ark, as a cosmic place of refuge encapsuled outside of time, was adopted and elaborated by Artaud, replete with a psychotic identification with Uccello. Uccello, the bird, felt himself transformed into synchronicity outside reality. He became a Noah saved from temporality ( [Artaud 1986:39](#) ).

Artaud was not alone in Noah's Ark, but was flanked by the luminaries of the Italian Baroque: Donatello and Brunelleschi ( [Artaud 1986:26](#) ). These creative innovators, together with many

others, indeed countless others since the capacity of a timeless and spaceless capsule is infinite, cruise eternally outside history, seeking the proper recipients of the endless varieties of creative mythogenes stored in the Authentic Domain of Noah's Ark. The landing of the mythogenic dove onto a historical time and place depends on background factors hospitable to the seedling mythogenes, enabling them to take root on their new host. Of special importance was Uccello's portrayal of Noah's Ark as a haven for deviants, contrary to the Darwinian conception of the evolutionary selection of the fittest. This is in line with the hypothesis hinted at by Artaud, and developed by us in the present paper, about the link between deviance and creative innovation. If indeed the outcasts, the pariahs, have a greater chance to see things differently, both materially and aesthetically, and hence to innovate, the admittance of the socially divergent into Noah's Ark is evolutionarily functional for creativity and innovation. Hence, the historical *stultifera navis*, which was the total institutional solution for the incarceration, indeed the elimination, of deviants, sinners, and insane people of medieval communities, was mytho-empirically transformed into Noah's Ark, the ahistorical refuge of the mythogenic structures of creative innovations.

Madness for Artaud was a means of extricating himself out of history and onto synchronicity, the atemporal refuge of Noah's Ark. There, with the mythogenic innovations of the nonconformist, stigmatized, and inspired madman, he would be stored in cultural limbo, outside history, until the olive branch in the beak of the dove signified it was time for his innovations to land back into history, where they would be welcome and accepted, not rejected and ignored as before. Noah's Ark is the mytho-empirical [end page 221] storage of the great innovations in art and science, which were liable to "rock the boat," to upset the cultural system in their time. Hence, Noah's Ark is the mytho-empirical projection of the Authentic Domain and serves as a storage for extreme innovations; when the time comes for the acceptance of these innovations, they will enter the more favorable atmosphere and be readily accepted by the artistic and cultural institutions.

## ENDNOTES

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1 . "What is an authentic deviant? It's a person who preferred becoming mad in the social sense in order not to forfeit a certain superior idea of human dignity" [Translation prepared by the author].

2 . "But there is somebody who always loved me for the good that was in me. Not only in my body but also in my soul. This somebody is called God and Jesus Christ. All the priests had always had great tenderness for my devotion and my piety. I didn't know this but it dawned on me that all the masses in the world have been performed for my piety" [Translation prepared by the author].

3 . "A letter from the 7th of April 1928. My solitude has no name and no sense and it doubles from the horror of thinking that I have always been by myself and that my life has never been complete and I have always been a stranger to myself" [Translation prepared by the author].

4 . "Those who told him one day: and now, enough with you van Gogh, to the grave, we have had enough of your genius, as for eternity, it's for us eternity" [Translation prepared by the author].

5 . "I am in my body" [Translation prepared by the author].

6. Talmud Ta'anit, 17.

7. The core of Rabi Nachman's doctrine is based on Lurianic Kabala and hence is relevant to this contest.

8. Talmud Sanhedrin, 37, side A.

9 . Talmud Ta'anit, 24, side A.

10. .J.I. Safrin, Megillat Setarim (1994). Zohair Hai; p.1; Side B. **[end page 222]**

11 . "I remember from the age of eight, and even before that, asking myself always who I was, what I was I and why go on living. . . I asked myself why I was there – why being there and what was it being there and on what one poses the question and why pose the question of being or not being since one lives and one is there. . . I am asking myself who is me and what is not me within my body. . . But what consists this me, what does it feel what one calls being, to be a being because one one has a body? Me habit, me nausea, me manic, me disgusting, me cramps, me vertigo, me shitty, me docile which goes together with me rebellious, me answering, me tears, me stifled in a scandalized soul – to compose a me of a child, a conscience of a small child, a small conscience of a child" [Translation prepared by the author].

12 . "There is no other issue to the purity of thought beside death" [Translation prepared by the author].

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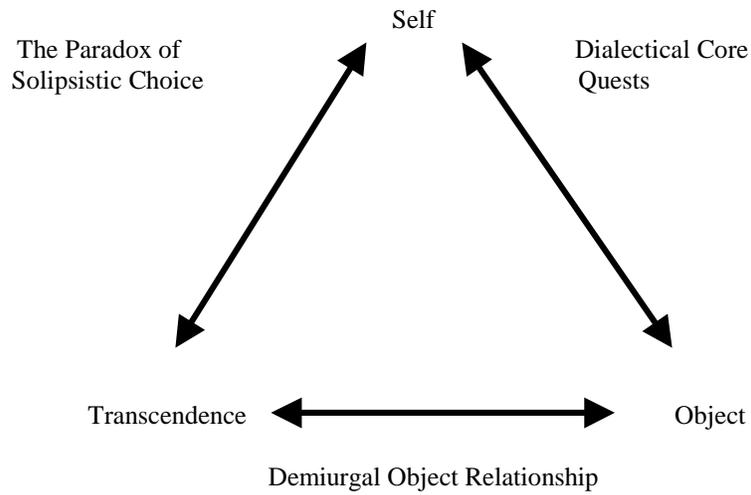
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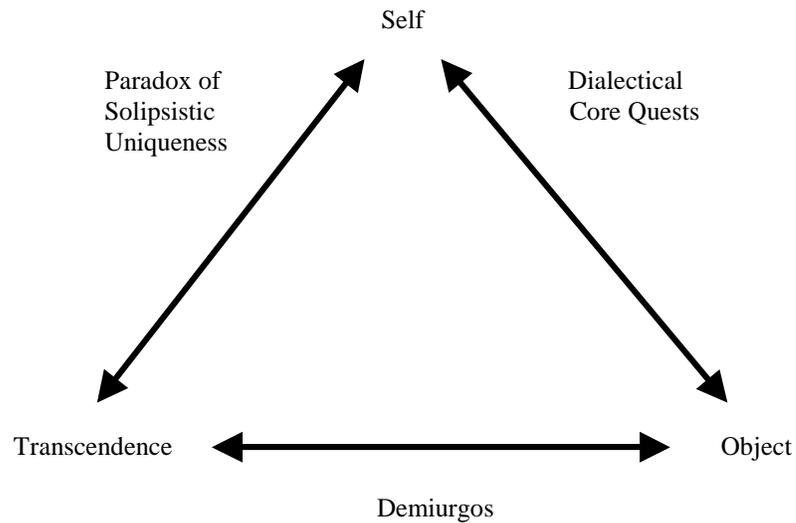
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**FIGURE ONE: THE RELATIONSHIP BETWEEN THE PRIME MOVERS OF THE SELF AND THE TRANSCENDENTAL PARADOX**



**FIGURE TWO: A RECAPITULATION OF THE TRIANGLE OF PRIME MOVERS**





## WHY DO THE NON-HEATHENS RAGE?\*

by

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Book: *The Tyranny of Good Intentions*  
Authors: Paul Craig Roberts and Lawrence M. Stratton  
Publisher: Roseville, CA: Forum, Prima Publishing  
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### INTRODUCTION AND OVERVIEW

*The Tyranny of Good Intentions* discusses, or at least alludes to, some of the most important issues about democracy. The authors' different perspectives could add important insights to these subjects. The lead author, Paul Craig Roberts, is an economist who was trained in public choice theory, served in the Reagan administration as an Assistant Secretary of the Treasury, and was a leading "supply sider" instrumental in shaping the 1981 Tax Act. Mr. Stratton is a lawyer. Together, they could have created a synthesis of law and public choice theory that would improve our understanding of how *well*-intentioned officials could produce tyranny. The questions they raise (albeit, often only implicitly) are the right ones:

- How can nations that value liberty so highly engage in tyranny?<sup>1</sup>
- What groups are most at risk of being tyrannized?
- How are acts of tyranny ended?
- Do perverse incentives lead prosecutors and regulators to act like tyrants?
- Can ethical public sector leadership prevent, or at least reduce, tyranny?

Public choice theory could provide a useful lens to view these issues. Economics is famous for suggesting that public policy has unintended (usually negative) consequences. The last question raises one of the most interesting topics that a host of different academic fields are struggling with. The general topic is *trust*. Public policy, evolutionary biology, economics, and management theorists, as well as ethicists, are all coming to appreciate that one of the most critical factors in a community is the degree of trust among its members. Altruism turns out to be common in many facets of life. When trust is eroded, whether by corruption or fraud, the social and political ties weaken and politics and business suffer. Moreover, as the authors' note, the ethical tone a leader sets is disproportionately powerful in influencing the behavior of subordinates. As they assert, when the leader is corrupt or fraudulent, it is likely that many followers will also [end page 225] be

corrupt or fraudulent. Similarly, the authors are correct that ethical leadership and ethical training can constrain people from acting on the basis of perverse incentives.<sup>2</sup> It is a revolutionary change for public choice theorists to modify their models (which assume that public sector employees simply maximize their self-interest) and include concepts of altruism, ethical leadership, professional mores, and agency culture. Thus, the book could have advanced not only our understanding of tyranny, but also been a breakthrough in advancing the public choice literature.

The jacket has an eye-catching collection of blurbs, with Milton Friedman in the lead, Alan Dershowitz arguing that the book shows that "government oppression is not a right-left issue," and G. Gordon Liddy (with no sense of irony, despite his active role as a tiny tyrant) decrying the "steady erosion of the rights of U.S. citizens."

I agree with the authors' *nominal* thesis that denying groups civil liberties and a meaningful franchise leads to tyranny. Paternalism has nearly always failed to prevent tyranny.

So, I found myself reading a book I thought was raising many of the most important questions, written by authors who seemed to be well placed to make a dramatic fusion of old-style public choice theory with the modern findings about trust, and sounding a clarion call for liberty, which is my favorite overture. The literary theme they adopted, *A Man for All Seasons*, based on the life of Sir Thomas More, is one that I use in teaching. I begin my public management class with the classic film, and use it to introduce the topic of ethics. I should love the authors' book. Instead, I found myself ever more mystified. The first problem was the title; the authors aren't serious about the phrase "good intentions." Their opponents are villains, "evil incarnate."

The second problem also involves the title; there is little or nothing worthy of the label "tyranny" discussed here. Overwhelmingly, the book protests white-collar crime cases against super elite Americans, environmental regulations, and the civil rights laws.

The third problem is that the book ignores all of the difficult issues because it assumes away all the tensions and tradeoffs in public policy. There are no real issues. All our decisions are easy. The book is of a *genre* that I didn't know existed until I began teaching at the University of Texas. Austin has public access channels on cable TV dominated by hard right programs. One variant attacks non-Protestant faiths. The other is militia programming. The authors' message is the militia's message. Regulations and laws can be done away with because they accomplish "little of value" (*Id.*, 32). White-collar crime prosecutions can be eviscerated because they do not involve "real" crimes (*Id.*, 93). Clean up of toxic waste sites can be ended because such sites pose no risk to health, the contrary view is "hysteria" (*Id.*, 79). Anti-discrimination laws can be ended [end page 226] because racism never existed. Slavery had nothing to do with racism. The KGB is to blame for the belief that Americans were racists (No, I am not making this up -- Mr. Roberts is.<sup>3</sup>). The risk that private criminals, left unchecked, could reduce the society's liberty is ignored, as is the possibility of someone like Bill Gates acting like a private tyrant.

The biggest problem, however, is that the authors systematically remove from English and U.S. history all major acts of tyranny. Implicitly, the authors illustrate one of the principal means by which tyrannical systems were sustained by these two nations most famous for prizing liberty – by studiously ignoring the victims. The authors go far back into English history to assert the critical importance of "the Rights of Englishmen" (which became the source of the rights in our Constitution and our Bill of Rights protecting criminal defendants). Because they argue that denying these rights leads to tyranny, I waited for them to describe any of the four classic proofs from English history of this thesis. England tyrannized blacks, Irish Catholics, colonial natives, and

the poor, and paternalism was the pretext. These groups became "the other," defined as outside the full protection of the dominant society. An explosive mixture of hate, bigotry, and fear led to periodic savagery and pervasive malign neglect and exploitation. Millions of people died and hundreds of millions of people lost their liberties due to these acts of tyranny. The authors say not a word about them.

As with England, the classic acts of tyranny in America (e.g., slavery) do not warrant mention. Why the same failure to use these terrible acts by America, which show that a denial of individual rights leads to tyranny? Their inclusion would falsify the authors' *real* views, that our super elites (who are exemplary) are tyrannized while "the other" is the problem. As with many anti-evolutionists,<sup>4</sup> Mr. Roberts is a fervent believer in *social Darwinism*. The irony is that this book teaches us almost nothing about tyranny through what it says, but much about tyranny through what it omits. England and the U.S. prove that nations can value freedom while enslaving others. It was not an accident that the word "slave" was not in our Constitution. The exclusion of the victim from the document made it easier to continue to tyrannize blacks. Similarly, English law simply ignored slavery in the colonies.<sup>5</sup> Roberts and Stratton have unintentionally illustrated how *real* tyrannies are maintained. The victims disappear from the tyrants' histories.

The fifth problem is that the book does *not* show that tyranny, in Professor Dershowitz's phrase, "is not a left-right issue." The authors' villains are on the left, their heroes on the right. The heroic protector of civil liberties was – J. Edgar Hoover. Franklin Roosevelt and Chief Justice Warren are villains. The book is wholly one-sided in other ways. For example, prosecutors are evil. Conclusory statements by defense counsel are treated not as advocacy, but as ultimate fact (requiring neither supporting analysis nor citation). There are no complex human beings in this book, only cartoon caricatures drawn with chunky crayons.<sup>6</sup> **[end page 227]**

So, how well do they deal with the important questions their book at least implicitly raises? As I will show, very poorly by any standard of scholarship. They aren't clear in their analysis, or rigorous, and they are relentlessly one-sided. Many of their facts are wrong and they rarely provide citations. They rely on *ad hominem* attacks on their foes and rhetoric replaces reason. Government workers do not have good intentions; the authors repeatedly liken them to Nazis.

Thus, the book implicitly raises another question. Why, at their very moment of triumph, is the raging right becoming overtly hostile to our nation's government? *Why do the non-heathens rage?* Ironically, Mr. Roberts used to claim that the *central* problem in America was such pessimism and hostility towards America on the part of leftist elites (a "denunciatory ethic"<sup>7</sup>).

The claim that the government is filled with Nazis is important. Attitudes like this lead to disturbed persons deciding that it would be a good thing to murder a couple hundred strangers, including their children in a day care center, because they work for the federal government in Oklahoma City. Instead of wanting to *build* trust between the public and government workers, the authors believe that the only hope for escape from our tyrannical government is the complete destruction of such trust. As the saying goes, if we believe absurdities, we will commit atrocities.

## **ENGLAND AND "THE RIGHTS OF ENGLISHMEN"**

### ***The Authors' Focus on English Elites***

The authors' chapter on English history is meant to convey three central ideas. First, England was exceptional among all other nations in providing such individual rights; therefore, it alone

escaped tyranny.<sup>8</sup> Second, these rights were won by the heroic sacrifice of her elites. Third, Blackstone was the great expositor of these individual rights, Bentham their great enemy.

The two victims of tyranny the authors discuss were contemporaries, Sir Edward Coke and Sir Walter Raleigh (Raleigh). The authors neglect to inform the reader that Raleigh's tyrannical prosecutor was – Sir Coke! Raleigh, like Coke, was persecuted for being on the losing end of a power struggle. Raleigh was himself a tyrant, as the historian Paul Johnson (1997:13) explained:

[T]he English ... passed a series of laws, in the 14<sup>th</sup> century, known as the Statutes of Kilkenny, which constituted an early form of apartheid. \*\*\* [E]ven so English settlers continued to "degenerate" and intermarry with the Irish and become Irish themselves.... Raleigh [took] a ruthless part in suppressing [an uprising in 1580]. [end page 228] He had killed hundreds of "Irish savages," as he termed them, and hanged scores more for treason, and had been handsomely rewarded with confiscated Irish lands which he was engaged in "planting."

"Planting" meant settling Protestants in Ireland as colonialists on the confiscated lands. Sirs Coke and Raleigh illustrate how willing elite Englishmen who cherished (their own) liberty were to deny liberty to others. Coke and Raleigh were characteristic of English elites in this regard. By presenting Coke and Raleigh as their only examples of victims of English tyranny and as champions of liberty, the authors demonstrate either their lack of knowledge about English history, or their willingness to distort it.

### ***England and Slavery***

One of England's most popular songs, "Rule, Britannia!," makes clear the abhorrence of slavery felt by this liberty-loving people: "Britains never, never, never will be slaves!" But this was sung on England's slave ships and on its West Indies slave plantations. A million Africans may have died at English hands through the slave trade. Bizarrely, Blackstone's *Commentaries* cited a case holding that if a slave were brought to England the slave must be freed, as a testament to the English love of liberty (see Boorstin 1996: 208 n. 111). This right was, obviously, meaningless to English slaves. Slavery was highly profitable to England (Foner 1998: 32).

### ***Ireland, England's First Colony***

The Irish are a classic example of how easy it is to justify tyranny. For the English, the Irish were literally and figuratively "beyond the Pale."<sup>9</sup> The authors argue that property rights and the right to bear arms are critical to the protection of civil liberties. Ireland is the best example I know to support this argument. For centuries, England had a deliberate policy of trying to end Irish ownership of land and other productive resources. The policy took time, but was spectacularly successful. The Penal Laws reduced Irish Catholic land ownership to roughly five percent by the mid-19<sup>th</sup> century. The Penal Laws also forbade Irish Catholics to own weapons.<sup>10</sup>

For centuries, the English viewed Africans and the Irish as subhuman. Thomas Cahill (1995: 7) explains:

To an educated Englishman of the last century, for instance, the Irish were by their very nature incapable of civilization. "The Irish" proclaimed

Benjamin Disraeli, Queen Victoria's beloved Prime Minister, "hate our order, our civilization, our enterprising industry, our pure religion.... This wild, reckless, indolent, uncertain and superstitious race have no sympathy with the English character. Their ideal of human felicity is an alternation of clannish broils and [end page 229] coarse idolatry [i.e., Catholicism]. Their history describes an unbroken circle of bigotry [!] and blood." The venomous racism and knuckle-headed prejudice of this ... simply passed for indisputable truth.

Indeed, some English writers made the blacks=Irish=apes equation explicit. Cahill (1995: 6) quotes the historian Charles Kinglsey's response to *post-famine* Ireland:

I am daunted by the human chimpanzees I saw along that hundred miles of horrible country. *I don't believe they are our fault* [Cahill's emphasis]. I believe that there are not only many more of them than of old, but that they are happier, better and more comfortably fed and lodged under our rule than they ever were. But to see white chimpanzees is dreadful; if they were black, one would not feel it so much, but their skins, except where tanned by exposure are as white as ours.

The Irish were routinely portrayed as drunken simians in English political cartoons. The Penal Laws made mass starvation of Irish Catholics inevitable by taking away virtually all of their land and dividing the meager remains into tiny plots that could (economically) grow only the potato – known to be subject to periodic blight (Foster 1989: 201). Roughly a million Irish died in *An Gorta Mor* (Gaelic for "The Great Hunger") and well over a million emigrated to escape starvation (many dying in the effort on the "coffin ships").<sup>11</sup> The English response was shaped by bigotry, a religious devotion to *laissez faire*<sup>12</sup> and the desire to receive rents from the "planted" Protestant landowners. While Marie Antoinette never said "let them eat cake," a *London Times* editorial essentially said: let them eat steak.

We have great faith in the virtues of good food. Without attributing the splendid qualities of the British Lion wholly to ... beef steaks, we may [say] that a people ... reared on solid edibles will struggle long and hard against the degradation of a poorer sustenance....

For our parts, we regard the potato blight as a blessing. When the Celts once cease to be potatophagi, they must become carnivorous. With the taste of meats will grow the appetite for them. With this will come steadiness, regularity, and perseverance; unless indeed the growth of these qualities be impeded by ... Government benevolence.<sup>13</sup>

Tens of thousands of Irish were already near starvation by the time of this September 22, 1846, editorial. The editorial reflected English ideology and policies.<sup>14</sup> Ireland's tenant farmers produced large amounts of meat, eggs, etc. for their Protestant landlords, who in turn often rented the land from absentee English owners. England's policy, even when several thousand Irish were dying from starvation every day, was to continue to export [end page 230] these foods to England to pay the rents (*Id.*, 5). Ireland was a net *exporter* of food during much of the blight. Public choice theory's favorite chastisement is to complain that individuals engage in "rent-seeking behavior," but Ireland in the great starvation is the ultimate example of rent-seeking behavior gone wrong.

### ***England's Practice of Tyranny in its Colonies***

As badly as the Irish fared, some colonial native populations suffered far more. Australian aborigines were hunted for sport and for bounty payments to the brink of extinction. Torture and rape were common before murder. The usual virulent racism prevailed.<sup>15</sup>

Even where the natives were Aryans, as in the Punjab, and even into the 20<sup>th</sup> century, the English resorted to tyranny. Four hundred peaceful, unarmed protestors (ironically, protesting the denial of the normal rights of a fair trial) were murdered at the order of General Dyer in Jallianwala Bagh, India, on April 13, 1919 (you may remember the scene in the movie *Gandhi* – it was not exaggerated). Many hundreds more were left by Dyer, without medical aid, to die of their wounds. The massacre only stopped because Dyer's troops ran short on ammunition. Dyer's infamous explanation for his actions was: "I fired and continued to fire ... it was no longer a question of merely dispersing the crowd, but one of producing a sufficient moral effect...."<sup>16</sup>

### ***English Tyranny at Home***

Poor Anglican Englishmen were also subject to tyranny. Thousands of poor Englishmen were executed for trivial crimes under the infamous Waltham-Black Act, hundreds of thousands imprisoned (for the crime of being poor) in workhouses and debtors' prisons. Thousands more were press-ganged into the Royal Navy in circumstances that carried the certainty of being brutalized and an exceptionally high risk of death. Tens of thousands were transported to distant colonies. At the time Blackstone wrote, roughly *five percent* of adult Anglican males could vote. The vagrancy laws were used to arrest the poor. Labor contract breaches by workers were crimes. It was a capital crime for a bankrupt to conceal assets. Intense labor by poor children, particularly orphans, as young as eight years old was common. The kids worked more than sixty hours a week and were frequently whipped. Sexual abuse of the young girls by the managers was a recurrent problem. Young children worked and died in the coal mines. Only well to do males could serve on juries.<sup>17</sup>

### ***The Authors' Thesis that Formal Legal Rights Equalize Power and Insure Fairness***

These four areas of English tyranny would clinch the authors' historical case. **[end page 231]** None of them is mentioned. To the authors, England, after the "Glorious Revolution," was just how Blackstone pictured it in his *Commentaries*, a legal Eden in which the rights of Englishmen made all English equal. The authors phrase it this way:

Throughout the ages government rested on power. After centuries of struggle, culminating in 1688 with the Glorious Revolution in England, government was relocated in the will of the people (*Id.*, xi-xii).

\*\*\*\*

Before the Rights of Englishmen empowered people, the source of an individual's power was the number of armed men he could rally, or the difficulty of subduing a castle or keep. Because power was unequal, rights were unequal. The Rights of Englishmen ended the idea that might makes right. Until then ... [n]othing but the king's good nature prevented law from being a means of oppression (*Id.*, 19).

\*\*\*\*\*

When law resides in the will of the people, the elites, who wish to proclaim their will from on high, lack power (*Id.*, 37).

I will discuss only three major flaws in the authors' historical vision. First, the Glorious Revolution did not make power equal. The authors think that power did not depend on force after the Dutch Prince was put on the English throne. Try telling that to blacks, Irish Catholics, the Scots, any native people colonized by the English or poor Englishmen and women (or *Americans* – note the Declaration of Independence and the Revolutionary War). *All of the English abuses intensified after the Glorious Revolution.*

Second, it is naive to believe that force will not be used because it is "disallowed." This point has two parts. Force will *not* be disallowed against "the other." I have cited examples of such use of force. Further, even if force is *formally* disallowed, private or public enforcers may have *de facto* immunity from prosecution as long as they direct their force against "the other." Murder was a crime in the United States, but blacks were lynched with impunity.

Third, it is illogical to think that power must be equal if force is disallowed. The claim that English "elites" "lack[ed] power" after the Glorious Revolution is staggering. No country approaches England's fame for its class distinctions. The English are obsessed with the role of their elites; the BBC exports watched here often make class distinctions a key plot element.

Obviously, the King and the House of Lords were elites with considerable power [end page 232] in Blackstone's day. The "House of Commons" has been a misnomer through most of its history. The members were invariably from the elites in the time period the authors focus on. As Barbara Tuchman (1984: 134) explained, the Common's leadership was the province of nobility in Blackstone's day:<sup>18</sup>

This was the pattern of the British minister. They came from some 200 families inclusive of 174 peerages in 1760, knew each other from school and university, were related through chains of cousins, in-laws, stepparents and siblings of second and third marriages, married each other's sisters, daughters and widows and consistently exchanged mistresses.... Of some 27 persons who filled high office in the period 1760-80, twenty had attended either Eton or Westminster, went on either to Christ Church or Trinity College at Oxford or to Trinity or Kings at Cambridge.... Two of the 27 were dukes, two marquises, ten earls, one a Scottish and one an Irish peer; six were younger sons of peers and only five were commoners [including] three who through the avenue of law became Lords Chancellor.

The "new blood" in the House of Commons was pure blue:

In the election of 1761, 23 eldest sons of peers entered the House of Commons at their first opportunity after reaching 21.... (*Id.*, 135)

Nor was democracy a remotely accurate description for the selection of members of the House:

It had settled into a ... static body of members who owed their seats to "connexions" and family-controlled "rotten" boroughs and bought

elections, and gave their votes in return for ... positions, favors and direct money payments (*Id.*, 140).

As I have noted, only about five percent of adult males could vote, but that greatly *overstates* the scope of democracy because rural gerrymandering meant that rural lords had vastly more representation in parliament than did urban residents (*Id.*, 141). This is the system in which the authors assert the elites had no power. Blackstone, who was elitist and proud of it, would have been horrified by a system in which the elites lacked all power ([Boorstin 1996: 178-79](#))

### ***The Authors' Confusion about the Roles and Views of Blackstone and Bentham***

Another major flaw lies in the authors' lack of understanding of why these forms of English tyranny eventually declined, albeit, not until well after the Glorious Revolution. Among those most responsible for reducing that tyranny is Jeremy Bentham, [end page 233] who provided the intellectual impetus to the reform movement. Their attack on Bentham gets the facts exactly reversed:

Young Jeremy Bentham wanted to remake the world. Sitting in Blackstone's Oxford classroom he quickly grasped that English law was a barrier. Liberty – what Blackstonian law secured – has always been a barrier to those who want to remake society. When law resides in the will of the people, the elites, who wish to proclaim their will from on high, lack power (*Id.*, 37).

But, *law did not reside in the will of the people* in Blackstone and Bentham's day. The people did not elect Parliament. Blackstone, in his *Commentaries*, supported denying the right to vote to all but the elites ([Boorstin 1996: 160](#))<sup>19</sup>, and all non-Anglicans (*Id.*, 78-79). As a member of the House of Commons, he voted to exclude the reformer John Wilkes from Parliament ([Boorstin 1996: xiv](#)). Power also resided in the King, and Blackstone's views on kings are one of the reasons Bentham dismissed him as intellectually dishonest. Blackstone argued that the law provided a remedy for every legal wrong. Faced with the problem that, due to sovereign immunity, there was no remedy against the King, Blackstone claimed that the King could do no wrong, and went on to rhapsodize about how the King could not even be imperfect in his thoughts (*Id.*, 125). Blackstone, of course, knew this was absurd. Perhaps fortunately, King George III did not. He read Blackstone's *Commentaries* on royal rights while still in manuscript, which helped shape his determination to *rule* England and its colonies ([Smith 1966: 467-68](#)). He ruled so poorly that America declared its independence. Blackstone also gave a nudge toward our revolution by voting with fellow Tory hard-liners *against* repeal of the Stamp Act.

Bentham, by contrast, pushed reform bills to extend the right to vote to non-elites and non-Anglicans and opposed colonialism. His influence on Prime Minister Peel led to a dramatic reduction in crimes calling for capital punishment (*Id.*, 553, 594, 564). Bentham's policies changed over time, and were often complex, but the authors' disdain for him seems particularly strange given the fact that Bentham generally *opposed* governmental intervention in the markets ([Rodgers 1987: 22-23](#)).

Further, most law in that era was not made by Parliament, but by judges. This "common law" was the focus of the *Commentaries*. English judges of that era were elites and they assuredly did not reflect "the will of the people." Blackstone argued that Parliament (which the authors implicitly assume *did* reflect that will) should virtually never change the common law ([Boorstin 1996: 71, 74](#),

83, 105), while Bentham called for Parliament to pass statutes establishing the law.

So, if the authors support systems of government that insure that law reflects the will of the people, Bentham should be their patron saint. Blackstone's efforts to portray an undemocratic, religiously prejudiced system as an Eden and to keep the formulation [end page 234] of law wholly within the power of English elites should be repugnant to the authors.

## AMERICAN HISTORY AND TYRANNY

Having ignored or reversed the facts of English history, the authors turn to Eden II, America. The story on this side of the Atlantic is that we inherited "the Rights of Englishmen" and became the only other non-tyrannical nation in the world. Bentham's poison, however, the willingness to limit individual rights for some public official's notion of the greater good, slowly eroded those rights until our Constitution became as "dead as a doornail" and our nation a tyranny (*Id.*, 180).

The authors follow the same pattern in eliminating from U.S. history every major act of tyranny, even though each act would provide superb support for their purported thesis that denial of individual rights leads to tyranny. While it is possible that the authors simply did not know that England had frequently acted tyrannically after the Glorious Revolution, no adult American is unaware of slavery, and Mr. Roberts lived during the time period when several of these acts of American tyranny occurred. Thus, the exclusion of these acts from the book was intentional.

After reading a large number of Mr. Roberts' "e" columns, three reasons for excluding the major acts of American tyranny emerged, which I summarize here and then discuss briefly below. First, as with the English examples of tyranny, including the major examples of American tyranny would ruin the authors' timeline. America is supposed to begin as a bastion of liberty and only succumb to tyranny after Bentham's evil influence slowly erodes respect for individual rights. In fact, the worst forms of tyranny, against blacks and Native Americans, occurred earlier in our history.

Second, discussing the major acts of tyranny would turn the authors' purported hero, J. Edgar Hoover, into a villain and one of their major villains, Chief Justice Warren, into a (flawed) hero. Worse, many conservative politicians (e.g., Nixon and McCarthy) contributed to tyranny.

The principal reason for excluding the real acts of tyranny, however, is that the victims are politically incorrect from the authors' perspective. No one, I had thought, disputed that various minorities had been the primary victims of American tyranny. The authors not only dispute that; they view such minorities as the *problem* and "white, heterosexual, able-bodied males (WHAMs) as the real victims in our society. Indeed, the most oppressed people in America are overwhelmingly WHAMs – they are the richest people in America." [end page 235]

### *A Timeline of Major American Acts of Tyranny*

Your list will differ from mine, but I'm confident that we would have a broad overlap on the key aspects of tyranny in the United States.<sup>20</sup> Most of us would start with the treatment of Native Americans and slavery, including the horrific Fugitive Slave Acts, which sought to force the entire nation to assist slavers. These were the earliest in time, longest lasting and most violent forms of tyranny. Then, in rough historical order:

1. The Alien and Sedition Acts of John Adam's presidency. The latter made virtually any criticism of the government a crime (Foner 1998: 43).

2. Barring Asian-Americans from citizenship and land ownership, and periodic pogroms
3. Civil War suspensions (by both the Union and the Confederacy) of *habeas corpus* and arrests (in the Confederacy, even summary execution) for public dissent ([Foner 1998: 98](#))
4. General Forrest's massacre of black POWs after the surrender of Fort Pillow
5. The "Black Codes" (which essentially sought to recreate slavery)
6. The KKK's reign of terror that was so instrumental in bringing an end to Reconstruction
7. "Jim Crow" laws, lynching, and disenfranchisement of blacks in the South
8. The public and "privatized" war against unions<sup>21</sup>
9. The tactics used by the U.S. in fighting the Philippine guerillas ([Zinn 1995: 305-13](#))
10. The World War I Sedition Act and the mass street sweep arrests in search of draft "slackers"
11. Attorney General Palmer's raids and the "Red Scare"
12. The compelled sterilization of roughly 60,000 Americans ([Associated Press 2001](#))
13. The internment of Japanese-Americans during World War II
14. McCarthyism
15. Hoover's files on government officials and COINTELPRO. The acronym stood for "Counter Intelligence Program" (the series of illegal FBI operations to destroy the effectiveness of groups that Hoover hated, mostly leftist, but also the KKK and civil rights leaders such as the Reverend Martin Luther King, Jr.) ([Gentry 1993](#))
16. Nixon's presidency. The "enemies list," the "Plumbers," Watergate, the Huston Plan, the use of the IRS against political enemies (*Id.*).

The authors note only, and very briefly, that the FBI "infiltrated" the KKK and "wired" Reverend King and that Palmer's raids were criticized (*Id.*, 145-46). The context is an effort to establish FBI Director J. Edgar Hoover as the 20<sup>th</sup> Century's greatest protector of civil liberties. **[end page 236]**

### ***Ideological Selectivity in Identifying Villains and Heroes***

Mr. Roberts regularly denounces "political correctness" and claims that liberals won't criticize other liberals. "What's important to a liberal depends on whose ox is being gored."<sup>22</sup> Mr. Roberts also emphasizes how critical it is to hold government officials accountable for their misdeeds.<sup>23</sup>

In *The Tyranny of Good Intentions*, however, the authors show a slavish adherence to political correctness. Their heroes can commit horrific acts of tyranny without accountability. Only a left-leaning ox (a "lox"?) is in danger of being gored. The authors discuss Mr. Hoover under the subtitle: "The Lost Ethics of J. Edgar Hoover."<sup>24</sup> They say that Hoover had a "firm rule against practices that might taint law enforcement with unscrupulous behavior" (*Id.*, 145). What they don't tell the reader is that the firm rule was a cynical cover. Yes, Hoover, at various times, had many written rules about unscrupulous practices, and his publicity machine pointed out those rules. However, Hoover also routinely ordered his agents to break those rules and engage not simply in "unscrupulous" but outright illegal practices ([Gentry 1993](#)). The authors also leave the impression that Hoover opposed the Palmer raids and wanted to ensure that the bureau never again engaged in such abuses (*Id.*, 145-46). In fact, Hoover was an active supporter of the Palmer raids and an advocate of mass arrests ([Gentry 1993: 95-102](#)). The authors then cite a 1932 memorandum from Hoover opposing the investigation of the communists. Hoover hated communists, investigated them continuously, saturated the party with informers, bugged and wiretapped them and their friends, families and acquaintances, and had a COINTELPRO program of illegal tactics devoted to communists for well over a decade (*Id.*, 442). He also constantly smeared people who were not communists by asserting they were communists. The memorandum the authors cite does show how Hoover's written positions often failed to reflect his real views and practices.

While omitting any express reference to COINTELPRO, the authors do obliquely mention two examples of such efforts, those against the KKK and Reverend King. The FBI finally took on the Klan, at the insistence of the Kennedy Administration, in the wake of the murder of three civil rights workers. Hoover was a racist, and ignored Klan murders for decades (*Id.*, 441-42). In Hoover's case, the authors cite good intentions as an excuse for tyranny:

The FBI's wiretaps of Martin Luther King, Jr., and infiltration of the ... Klan ... tainted Hoover's reputation with civil libertarians. \*\*\* [T]he ... Klan was suspected of being capable of organizing violent acts against civil rights agitators, and Martin Luther King, Jr., was suspected of having communist ties. These suspicions may have been poorly based, but they do not appear to have been concocted in order to target anyone (*Id.*, 145).  
**[end page 237]**

Really? The Klan was not "suspected" of "being capable" of "violent acts." The Klan was known to engage in terror and murder. Who, but these authors, would write a sentence today that termed civil rights workers as "agitators?" Who but these authors could write that the "suspicion" that the Klan was violent towards "agitators" "may have been poorly based?"

Now take the case of Reverend King. The claims of communist "influence" most assuredly were "concocted in order to target" him. The illegal "investigation" of Dr. King had no pretense of being related to a crime. He was targeted because Hoover was a racist and viewed Dr. King as the strongest black leader. The FBI's express goal was to remove King from leadership. Its tactics were reprehensible. Perhaps most revealing, however, is the FBI's reaction to King's "I Have a Dream" speech. This famous exhortation of love and patriotism sent shock waves through the FBI's senior leadership precisely because it was so effective, convincing Hoover to spur his illegal efforts to smear King and get him to resign or commit suicide (*Id.*, 527-29).

The authors' best lines on Hoover, however, (indeed, the funniest lines in the whole book) are:

The purpose of Hoover's files on politicians was to protect the bureau from political misuse. The files were a defensive weapon (*Id.*, 145).

This remarkable claim is made without any supporting citation. The logic is fascinating. Yes, Hoover kept voluminous, secret files on politicians' sex lives, personal habits, and disreputable associates. Yes, Hoover made it known to politicians that he had dirt on them (a defensive weapon is no good as a deterrent if no one knows you have it – as we know from *Dr. Strangelove*). But Hoover broke the law with good intentions. Untrue, Hoover used the files as blackmail to ensure generous appropriations, life tenure, and to intimidate critics ([Gentry 1993](#)).

Mr. Roberts is quick to rely on good intentions as an excuse for tyranny by folks who share his ideology or fight his ideological foes. Where would a defender of the absolute right to individual liberty and the sanctity of democracy stand on Pinochet's coup against Chile's democratically elected president, Salvador Allende, and the subsequent disappearances, tortures, and murders of leftists? Pinochet is dear to Mr. Roberts' heart because he placed "Chicago school" economists in charge of the economy and fought communists. Therefore, Pinochet is not a tyrant, but a hero, and those trying to bring him to trial are – tyrants!<sup>25</sup>

Or take Kosovo, the Albanians are Moslems, the Serbs are Christians. In the midst of the Serb campaign of "ethnic cleansing" (via mass rape and murder) of these Moslems, Mr. Roberts

claimed: "The Albanians in Kosovo brought their suffering on [end page 238] themselves." In the context of *whites*, Mr. Roberts warned that "once a race or class is assigned collective guilt, all protections fall away."<sup>26</sup> Yet, he claims that Albanian females "brought [rape] on themselves."

Similarly, Nixon, our President who was most eager to deny rights to anyone not on the right, gets a pass (Kutler 1997). Watergate, the Plumbers, the enemies list, the use of the IRS to attack political opponents, and the Huston plan authorizing illegal break-ins, none of this is worthy of mention in a book about American tyranny.<sup>27</sup>

In addition to their heroes getting a pass on their acts of tyranny, the authors' villains get their positive contributions to liberty scrubbed from history. Chief Justice Warren increased liberty. The authors laud the right against self-incrimination, but before *Escobedo v Illinois* and *Miranda v Arizona*, poor defendants' rights were ignored. The authors praise the right to counsel, but poor people had no meaningful right to counsel before *Gideon v. Wainwright*. The Warren Court made America far more democratic by insisting on "one man, one vote" in *Baker v Carr and Reynolds v Sims*. Warren expanded rights against unreasonable searches, particularly bugging. Indeed, conservatives abused him because he expanded liberty.

### ***Viewing Minorities as the Problem, Not the Victim***

Mr. Roberts' "e" columns, and a prior book by the authors attacking the *Brown v Board of Education* decision, provide the principal reason for their otherwise inexplicable failure to discuss any of the worst acts of American tyranny. These acts would prove the authors' nominal thesis, that denial of liberty leads to tyranny, and would also allow far more effective attacks on the authors' villains (i.e., FDR and Earl Warren's culpability for the internment of Japanese-Americans<sup>28</sup>). The problem is that the examples would undercut the author's real thesis, that rich, white American elites are the primary victim of tyranny.

Mr. Roberts's most intense views come in describing the contribution he believes the civil rights laws and immigration of non-Europeans make to tyranny. First, it is critical to understand his starting position (which also appears to be shared by his co-author): slavery had nothing to do with racism, and the Civil War had nothing to do with slavery. Indeed, the belief that white racism was ever common in the United States is a product of a successful KGB disinformation campaign and bias against the South.<sup>29</sup> In a May 10, 2000, column entitled "Anti-South Prejudice," Mr. Roberts argued:

The South wanted out of the Union because [of] tariffs.... [end page 239]

\*\*\*\*\*

Our education system has produced a generation of students who believe that slavery was invented by Southern racists for no other reason than to deny blacks self-esteem.

For their self-esteem, blacks need to understand that every race has been held in slavery.

\*\*\*\*\*

Slavery in the Southern colonies was not born of racial animosities but of the need for a work force. It was an economic institution that provided labor so that land could be exploited where there was no indigenous population. Slavery was on its way out in the South as population density increased and a free labor market developed.

Slaves happened to be black in that historical period because it was black slavers who were the suppliers of slaves. \*\*\* Black political activists should get their own history straight and stop trying to rewrite the South's.<sup>30</sup>

This quotation is remarkable for many reasons, but four stand out. First, black slavery is justified on the astonishing grounds that our genocidal impact on Native Americans was so great that there was "no indigenous population" (to enslave??). Second, every factual assertion, other than the fact that every race has known slavery, is false.<sup>31</sup> Third, Mr. Roberts doesn't think that the two *southern* "black political activists" he criticizes in the column are part of "the South's" history – they should "get their own history straight." Fourth, the passages are also eerily similar to one of the most infamous Supreme Court decisions, *Plessy v Ferguson* (upholding segregation of rail cars). Kluger quotes the passage from *Plessy* in his book, *Simple Justice*:

We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it.

Kluger (1976: 80) then comments:

Of all the words ever written in assessment of the *Plessy* opinion, none have been more withering than those ... [of] Yale law professor Charles L. Black, Jr., who [said that in] ... the two sentences... "The curves of callousness and stupidity intersect at their respective maxima. [end page 240]

It is clear from their prior book that the authors of *The Tyranny of Good Intentions* think that *Plessy* was properly decided – which makes them very close to unique.<sup>32</sup>

Second, Mr. Roberts believes that non-whites and non-Christians endanger our country. In "Giving the Gift of Christ," a December 17, 1999, editorial in the *Naples Daily News*, he wrote:

There is plenty of room for cultural diversity in the world, but not within a single country. ... A hodgepodge of cultural and religious values provides no basis for law – except the raw power of the pre-Christian past.<sup>33</sup>

Mr. Roberts has written that whites are being "ethnically cleansed" by non-white immigrants:

When I first came to Washington, D.C., 25 years ago, the only international-looking people one saw were in the diplomatic community. Now, it is every third person. \*\*\* In 1965, the Democrats, who lost the

South, changed the immigration rules in order to build African, Asian, and Hispanic constituencies that would vote Democratic. \*\*\* The formerly all-white ... Cupertino, Calif., [was] ... overrun by Chinese immigrants... <sup>34</sup>

It's not clear what an "international-looking" person is, but having lived in the Washington, D.C., area for many years, I can confirm that few residents are Native Americans. I now live near Cupertino; its web site shows that as of 1990, roughly one-quarter of its citizens are of Asian origins. It remains a wealthy Silicon Valley community. In another part of this same column, he bemoans fights between Arab-Americans and European-Americans in Dearborn, Michigan – the town I grew up in. It is a very small, but diverse, world. The Democratic Party, which Mr. Roberts refers to as "aka the Nazi party" (*Id.*), is bad because (unlike the Nazi party!) it has diverse supporters. Mr. Roberts' April 24, 2000, column "Genocide in the Classroom" states:

Whatever the Democratic Party has become, it is no Camelot. Voter profiles show that essentially 100 percent of homosexuals,<sup>35</sup> lesbians, feminists, and class action lawyers vote Democrat, as do 90 percent of professors, media, Hollywood, public employee unions and handicapped persons, 85 percent of blacks, 70 percent of Hispanics, and businessmen seeking protection against a government shakedown. It is a party of disgruntled intellectuals, victims groups, thugs, haters, and crass opportunists who are united by a shared sense of moral superiority.<sup>36</sup>

The recent vote for Gore confirms the Democratic party's ethnic ties:

A map ... of the vote by county shows a tiny Gore presence. Gore's vote is **[end page 241]** confined to Hispanic counties in the Southwest, the California coastal counties, Portland, Oregon, the counties bordering Puget Sound in Washington, Minnesota and urban areas of Great Lakes states, Jewish counties in Florida, heavily black counties in the Southeast and heavily urbanized areas of the Northeast...

The Democratic Party is a ... revolutionary party, committed to overthrowing ... traditional American morality, principles, institutions and people.

Democrats favor open borders because the millions of Third World immigrants pouring into the United States have no tradition of constitutional government and a rule of law.

The longer the borders stay open, the sooner the country will be lost.<sup>37</sup>

Then, reminiscent of Disraeli's attack on the Irish as being "bigoted," and with a similar lack of self-examination or irony, Roberts says "Democrats have the advantage of the fanatic's belief in the moral righteousness of their issues. Like Communists, Democrats can muster the power of hate."<sup>38</sup>

Elsewhere, he complains of "white genocide" through immigration in Europe and the United States. He asks the following question:

Our current immigration policy means that by the year 2050 Americans of

European descent, a group that comprised 90 percent of the population in 1960, will be in the minority and will have lost control over their political destiny.

How does this differ from being overrun by the Chinese Army?<sup>39</sup>

I will leave the reader to answer this question.

He believes that non-European immigrants offer only one advantage – they are corrupt. "In the end, the live-and-let-live Third World culture of bribery might be what saves us from intrusive government."<sup>40</sup> (Putting aside the accuracy of the assumption that bribery is a universal attribute of the third world, Mr. Roberts has not experienced pervasive corruption if he thinks it makes government better. In fact, economic theory suggests that corrupt government officials would deliberately make government *unresponsive* in order to increase opportunities to extort bribes.)

### ***The Real Victims of U.S. Tyranny: Elite Whites***

"Tyranny" takes four forms: progressive taxation, regulation that interferes with property interests, anti-discrimination laws and affirmative action, and white-collar crime [end page 242] prosecutions. According to Mr. Roberts, the 1990s were a period of utmost repression of super elite Americans.

"In our time hatred of 'the rich' is a political phenomenon, much like hatred of the Jews in National Socialist Germany...." "We crush the rich with taxation because of envy. Government is our instrument for oppressing the rich."<sup>41</sup> (The April 15 crush produces such rich white whines!). Roberts continues:

Successful Americans are chattel of government. They are required to deliver between one-third and one-half of their annual incomes to government as the price for not being hauled off to prison. [They are like] feudal serfs and 19<sup>th</sup> century slaves. Successful Americans are among the most exploited people in world history, and the demagoguery they endure is endless<sup>42</sup>

Regulation compounds the oppression of taxation. Mr. Roberts states that:

Americans loathe their government – federal, state, and local, legislative, regulatory and judicial – for many reasons. No aspect of our lives has escaped assault by government determined to force ideological doctrines down our throats. \*\*\* The Constitution of the United States has been reduced to a scrap of paper.

The regulatory bureaucracies have amassed [sic] unimaginable powers, ... and these powers are used to serve ideologies at the expense of the people just as happened in [Nazi] Germany and Communist Russia. (*Id.*)

Not all whites are equally under assault. Straight, white males are the principal victims of bias:

If you are a white heterosexual able-bodied male (WHAM), you need to

understand that affirmative action is not about leveling a playing field. It is about leveling you.

Homosexual and disabled white males also vote against you. The latter have achieved preferred status and homosexuals are demanding it.

Feminists have split many white heterosexual women from you. It has become dangerous for a WHAM to marry. .... You can be blameless, but your wife can walk away with another man, your children, half of your property and pension and a good chunk of your earning for many years to come. If you resist, your wife may hit you with child abuse charges. You will not get a fair trial.

You are losing the ability to reproduce as your women influenced by feminists [**end page 243**] increasingly eschew procreation.<sup>43</sup>

White males who try to fight back at their loss of power are demonized:

You have no leaders, no organization, and no spokesmen. Anyone who attempts to rouse you immediately becomes an outcast. They are slandered and called names. They lose their job and their voice. You have nowhere to go and no way of protecting yourself from the vicious propaganda that is targeted against you. You are too politically weak to cap the immigration that is making you into a minority in your homeland.<sup>44</sup>

This phenomenon exists throughout Europe:

The European political establishment has dealt with the problem by attempting to brand anyone who raises the immigration question a Nazi. England's Enoch Powell, Denmark's Pia Kjaersgaard, Austria's Jorge Haider, France's ... Le Pen have each suffered this fate.<sup>45</sup>

The problem is not that "the other" (e.g., blacks) is abused; the problem is that modern Americans worry *too much* about others. In an April 26, 2000, article entitled "Welfare State Causes Genocide in Europe," Mr. Roberts said:

The "compassionate" welfare state is proving to be an effective method of exterminating European peoples and their cultures. \*\*\* This has become a political question that scares the politicians who have chosen welfare over cultural integrity. \*\*\* So much is in the way: sexual promiscuity, the feminist pursuit of a masculine role for women, the security of an old age provided by taxpayers, and an "other-directedness" that diverts attention away from family toward the unfortunate. In small towns in the South of the United States, high school students are bagging groceries for donations to finance their travel to distant towns where, they explain, they are going "to build houses for the poor." Shouldn't these kids be painting their grandmother's house or helping an aunt with a garden? But this is not seen as rewarding. Our "other-directed" culture teaches them that their duties are to unknown persons in far away locations. This is not a culture built to

last.<sup>46</sup>

Mr. Roberts appears to be attacking the efforts of a fellow Georgia native, former President Carter's "Habitat for Humanity" program. A culture that teaches its children to help the stranger and the poor cannot last? Coming from one who stresses his Christianity, this seems heretical. Perhaps I misconstrue the parable of the Good Samaritan (*Luke* 10: 25-37). [end page 244]

These writings make clear why the authors of *The Tyranny of Good Intentions* ignore acts of tyranny against "the other," indeed, deny that such acts occurred. It also becomes clear why their examples of tyranny will overwhelmingly focus on the super elite.

### WHITE-COLLAR PROSECUTIONS AS TYRANNY

The authors do not expressly limit themselves to elites; there are some examples of non-elites' persecution in the book. However, by weight and passion, the book focuses on super elites: the cases against Microsoft and Archer-Daniels-Midland (ADM), Michael Milken (Drexel's "junk bond king"), Charles Keating (of Lincoln Savings & Loan) and a related case against one of Lincoln's myriad law firms (known as "Kaye, Scholer").

I have some personal knowledge of the cases against Charles Keating, Kaye, Scholer, and Milken (though my personal knowledge of the latter is tangential) because I served in several different, fairly senior capacities in the agencies that regulated S&Ls. Milken had substantial involvement with roughly ten S&Ls, and Lincoln Savings was one of them.<sup>47</sup>

In their prior book, *The New Color Line*, the authors (1995: 143) complained that:

The increased emphasis on prosecuting nebulous "white-collar" crime, rather than following criminal evidence wherever it leads, reflects a growing pressure for racial balance in criminal prosecutions.

Race goes virtually unmentioned in *The Tyranny of Good Intentions*. The book complains that "inner city" juries are letting (black) criminals off (*Id.*, x). It also complains about a movie on Rubin ("Hurricane") Carter's legal problems:

This movie provided an opportunity to educate the public about corruption in the criminal justice system, but in our politically correct era most viewers will conclude that Hurricane Carter was the victim of racism. The emphasis on racist "white justice" – as if whites are any safer – blinds the public to the real problem with the criminal justice system: the erosion of the Rights of Englishmen....(*Id.*, 173).

But, whites are safer; they do not get stopped for "driving while white," they are less likely to be assaulted by police, and even if they are druggies they are less likely to be arrested and to do hard time than is the case for Latinos and blacks. Moreover, there is compelling evidence that Carter's legal problems were partially due to his race (*Hirsch* 2000: 54-55, 114-17, 126, 147-51, 264-73). In sum, the authors' strong views on race underlie their skepticism of white-collar crime cases. [end page 245]

The authors' sentence about white-collar crime in their prior book also provides evidence of the "priors" they brought to the book I am reviewing. White-collar crime goes in quotation marks,

suggesting it is a misnomer. White-collar crime is "nebulous." They do *not* believe that white-collar, as opposed to blue-collar, crime investigations come from "following criminal evidence wherever it leads." Unfortunately, the authors do not acknowledge their priors.

### ***Microsoft***

The authors' treatment of the antitrust case against Microsoft is illustrative of the way the authors try to make their case. It is one (very large) part *ad hominem* attack on political opponents, one part conservative "law and economics" theory, and one Emeril Lagasse-like "BAM!!!!" of rhetoric hurled onto the tyranny *de jour*.<sup>48</sup> The personal nasties start in the third sentence of the authors' complaints about the Microsoft case. We are told that the Assistant Attorney General in charge of the Antitrust Division was "ambitious and previously unknown" (*Id.*, 174). Putting aside the fact that these authors normally think ambition is a virtue, how do the authors know this? They present no examples, no citations. Joel Klein is simply declared guilty of bringing a baseless case because he was a nonentity who wanted fame. As Mr. Roberts phrases it in an "e" column (which calls for Klein to be "impeached" because he sued Microsoft):

Ayn Rand is scathing in her comparisons of the government class with the entrepreneurial class. She could rewrite her story today using real characters.

Microsoft's Bill Gates, a genius who has done more good for mankind than any government ever has; Bill Clinton, a scumbag...; Assistant Attorney General Joel Klein, a third-rate bureaucrat who advances his lackluster career by attacking America's most famous businessman; Judge Penfield Jackson, a disgraceful tool who issues whatever rulings the government needs to attack Microsoft.<sup>49</sup>

If Roberts is correct that Klein is a "third-rate bureaucrat," then we have the most extraordinary public servants in history. I don't know Joel Klein, but I took an hour on the web to find out about him. He was born in Queens into a working-class family and grew up in public housing. He graduated from Harvard Law School. He did so well there that he made law review, went on to clerk for a famous federal appellate judge, then for Supreme Court Justice Powell. This means that he was one of the smartest lawyers of his generation.

Many smart people make poor lawyers. So, what kind of a lawyer is Klein? A hedge fund analyst wrote an "e" column that proved prescient. He warned that "the Street" characteristically underestimated government lawyers: **[end page 246]**

When I was in law school at Harvard, I would hear periodically about how the smartest guys at the school were trying to work for this red-hot boutique firm in Washington with a lead litigator who had a record for brilliance in front of the Supremes.<sup>50</sup>

The litigator was Klein. So, if he's third-rate, our public sector "A" team must be awesome. You know what really happened though; the authors do not know Klein and made no effort to learn about him. He brought the antitrust case they didn't like, and he worked for the government. It followed inexorably that Klein must be incompetent. Further, because it is inconceivable to the authors that people who take actions they oppose could be motivated by "good intentions," it also follows that Klein must be acting improperly. Because Klein won, it follows that the government

lawyers and judge must have been abusive. Facts cannot penetrate these ideological givens.<sup>51</sup>

Far from being some antitrust tyrant, cloture had to be invoked to break a filibuster against Klein's nomination to head the Antitrust Division. His opponents were concerned that he was too *weak* in enforcing the antitrust laws. Once he brought the action against Microsoft, its political supporters bragged to Mr. Gate's local paper how they had sent a message to Klein to back off the case by attacking the Antitrust Division's budgetary request ([Grimaldi 1998](#)).

The authors' smear of Klein isn't even internally coherent. It requires Klein, for the purpose of *aiding* his reputation, to *knowingly* bring a *baseless* lawsuit in front of a conservative judge appointed by *Reagan*. Bringing a baseless lawsuit in front of a judge who is likely to be hostile to your position is a great way to destroy your reputation.<sup>52</sup>

The attack on Judge Jackson is equally incoherent. *Why* has this conservative, Republican Reagan-appointee ruled against Microsoft? Even the authors' penchant for conspiracy theories fails them at this point, so they substitute pure bile – the judge is a "disgraceful tool" of Klein.

But Klein is only an appetizer; David Boies is the main course. One would think Boies would present a few problems for the authors; he is widely considered the best civil trial lawyer in the country and Klein (the ambitious) had Boies (a private lawyer) take the lead and gain the extraordinarily favorable publicity. Moreover, why did Boies get such favorable publicity? Because he greatly out-lawyered Microsoft's counsel and repeatedly destroyed the credibility of Microsoft's witnesses and counsel. This is how the authors deal with these facts:

[Boies is] famous for eating with his hands in Washington, D.C., restaurants and gambling in Las Vegas. Boies's legal hallmark is an ability to manipulate **[end page 247]** witnesses and lure them into indefensible positions.

... Boies recognized that Microsoft was a high-profile case that could be tried in the media and that Bill Gate's childlike personality would make him a poor witness (*Id.*, 175).

With defenders like this, Gates needs no enemies. The first quoted sentence is typical of the *ad hominem* attack the authors launch on anyone they oppose. It is also characteristic in terms of quality; they get an "A" for rancor, but they don't have any good dirt on the people they hate.

The second sentence is equally silly. Remember that the authors stressed in their discussion of Sir Walter Raleigh's prosecution (on the basis of a written statement) that the outrage was the denial of the right to "confront" (cross-examine) the witness. Suddenly, cross-examination becomes "manipulat[ion]" if conducted by a lawyer they oppose. Honest witnesses do not get "lure[d]" into "indefensible positions." Boies destroyed the credibility of a whole series of Microsoft witnesses because they decided, in consultation with their counsel, to stake out indefensible positions that were contradicted by their own records.

But the argument becomes a self-parody in the second quoted paragraph. Gates did destroy his credibility in his deposition. This happened not because he was "childlike" (unless the authors mean what most of us have seen as parents when our four year old tries to tell a fib, but does it so badly that you have to suppress the urge to laugh). Gates got in trouble for the most common reason any adult witness looks bad – trying to be too clever by half. He couldn't understand

common questions; he couldn't remember things no trier of fact would believe he couldn't remember. He ended up looking evasive. He was snide, even rude. Adam Liptak's (2001) recent review of the two books out on the trial<sup>53</sup> notes that they show that:

Bill Gate's disastrous deposition, which played a central role in the trial, was a comic masterpiece of evasion and obfuscation.

The side dish of law and economics theory comes in this passage:

Microsoft was hauled into court because defeated competitors sought to regain through ... campaign contributions and government lobbying what they had lost in the marketplace. The political agitation against Microsoft created Klein's opportunity (*Id.*, 175).

This claim that the Justice Department brought the case because of "political contributions" is not supported by any citation or example. While some of the victims of [end page 248] anticompetitive actions by Microsoft did urge suit, their *substantive* arguments in an excellent legal memorandum were what proved influential within the government.<sup>54</sup>

The authors' treatment of the merits of the case is wholly one-sided and often inaccurate in such fundamental ways as to undercut their credibility. For example, they lament that the substantive issues in the case were over the head of the "jurors, reporters, and the judge himself" (*Id.*, 176). But there were no jurors; the case was tried to the Judge Jackson. The authors' claim that the Jackson's action in bringing Judge Posner into the settlement discussions proves that the case was over his head is nonsensical. If anything, using a more senior judge to seek a settlement is the mark of a self-confident trial judge.

The rhetoric of tyranny comes in the final paragraph of the authors' section on Microsoft:

Klein and Boies succeeded with their plan to substitute a personal attack on Bill Gates in the place of anticompetitive conduct by Microsoft. Their success, in full view of the public and the legal profession, in using law as a weapon against Microsoft is a clear indication that our legal system has degenerated into tyranny (*Id.*, 176).

I think what has degenerated is our use of terms for terrible acts. We devalue words like tyranny, and real victims of tyranny, when we apply it to acts we simply disapprove of. Deposing a witness (particularly a brilliant one represented by able counsel) is not "tyranny." It is an utterly normal, proper action. The credibility of the lead witness for a party is often decisive, and those who come off looking evasive have, for thousands of years, lost credibility. But it is good to know that the authors disapprove of personal attacks.

### ***Michael Milken***

Another super elite victim of tyranny is Michael Milken, the former "junk bond king" who brought Drexel, Burnham Lambert from raglan to riches to rags. The recipe is the same: smear the prosecutor, explain why the defendant is a candidate for sainthood, throw in a dash of law and economics, and finish with a jolt of rhetoric about tyranny. Milken's prosecutor was Mr. Giuliani:

One of the masters of this art [of plea-bargaining], Rudolph Giuliani, rode

it to the mayoralty of New York City. \*\*\* While U.S. Attorney ... he boasted ... that in his experience the major difference between so-called white-collar criminals and real ones is that the former "roll a lot easier." The criminal charges create "a conflict between what they appear to families, friends, co-workers, and what they're doing in the secret part of their life. It tends to move them toward confessing, putting it [end page 249] all behind them."

Giuliani's chilling words echo the belief of Cesare Beccaria ... that torture measures an individual's sensitivity to pain, not his guilt. Just as a medieval torturer assessed "the muscular force and nervous sensibility of an innocent person" in order to "find the degree of pain that will make him confess himself guilty of a given crime," the modern prosecutor wields the instrument of psychological torture (*Id.*, 93).

Think how much fun a deconstructionist could have with these two paragraphs of bile. First note the words that the authors put in Giuliani's testimony: "so-called white-collar criminals and real ones." No, they didn't put that phrase in quotation marks, but they tried to give readers the impression that this was the substance of Giuliani's testimony. Giuliani did *not* testify that "so-called" white-collar criminals are not "real" criminals. What the authors reveal, unintentionally, is their *own* view – a hidden presumption that underlies their book.

Giuliani's analysis of why such criminals might plea bargain is coherent and unobjectionable. The second paragraph is so over the top that it again undercuts the authors' credibility. This is their "logical" chain: Giuliani believes that *guilty* white-collar defendants feel a psychological conflict that pushes them to confess, medieval torturers were expert at getting *innocent* people to confess, therefore, Giuliani is like a medieval torturer. Q.E.D.?!?

Next, Milken as hero. "Milken was a hugely successful innovator who single-handedly revolutionized financial markets" (*Id.*, 94). He was a "genius" with "extraordinary vision" (*Id.*, 94, 99). He was dedicated to his family and "philanthropy" (*Id.*, 95). The authors neither inform the reader that other writers have much more negative views of Milken's skills and character nor do they respond to these critics.<sup>55</sup>

The law and economics spin to Milken is brought in by the authors' reliance on Dean Fischel's (1995) book *Payback: The Conspiracy to Destroy Michael Milken and his Financial Revolution*. The title shows the passion he feels about the downfall of his former client. Dean Fischel is a leading conservative law and economics scholar. He is skeptical that insider trading should be criminal. He acknowledges several of Milken's violations the law, but views them as "technical." The authors do not tell the reader that Milken was Fischel's client. Rather than discussing the merits of the case, they simply rely on Fischel's conclusion that Milken was a hero.

The authors do make an interesting point about the prosecution's tactics in an attempt to explain away the fact that Michael Milken, despite hiring some of the world's best criminal lawyers and being confronted with what the authors claim was zero [end page 250] evidence of criminality, decided to plead guilty to a whole range of felonies. The irony is that the explanation underscores their unwillingness to inform the readers about cases that would better prove their point, but which they find politically incorrect because the facts would harm their ideological allies:

Resorting to a tactic that has never been approved by the U.S. Supreme

Court, [they] threatened to indict Milken's ... brother Lowell unless Milken pled guilty (*Id.*, 97-98).

The phrase "never been approved by the U.S. Supreme Court" is an interesting one. It is crafted to make it appear that the Court does not approve of such tactics. In fact, the Supreme Court has permitted a mother of two small children to be *executed* when the *sole purpose* of charging her with crimes was to put pressure on her husband to confess. The name of the mother, of course, was Ethel Rosenberg. Worse, the decision to prosecute Ethel was made at a time when the government had no evidence she had committed any crime, much less treason. Moreover, the trial denied them "the Rights of Englishmen." Among the abuses was a series of *ex parte* meetings between the trial judge and the prosecutors as to whether both Ethel and Julius should receive the death penalty. The case rested entirely on co-conspirator testimony secured by plea-bargaining. Prior inconsistent statements by these witnesses were suppressed. Eventually (and contrary to their earlier sworn testimony), these witnesses would claim that Ethel had served as Julius' typist. The FBI sent three agents to Sing Sing the day of the execution in the hopes that Julius would crack. They had prepared questions to interrogate Julius:

In the thirteen pages of questions [the FBI] had intended to ask Julius Rosenberg, only one concerned Ethel. Yet nothing more chillingly sums up the Bureau's whole case than that single query: "Was your wife cognizant of your activities?" ([Gentry 1991: 429](#)).

Thus were two young kids orphaned.

By way of contrast, Lowell was Michael's right hand man at Drexel, and the prosecutors could prove he was intimately involved in Michael's felonies. Still, I disagree with such tactics. Both the left and the right have a tendency to overlook prosecutorial overcharging when the victim is a political opponent. If we want to build liberty, we need to provide it to our political foes.

The rhetoric about tyranny in the Milken case is unintentionally revealing:

If government coercion can "roll" a billionaire, Democrat, Jewish financier who was one of the country's most productive economic resources, what *can't* it do to a poor, black, inner-city youth or a middle-class citizen (*Id.*, 99)? [**end page 251**]

Why is it relevant that Milken was a "Democrat" and "Jewish?" The implication is that it was harder *under the Reagan administration* (the entity that investigated and secured a guilty plea from Milken) to prosecute Milken because he was a Democrat and Jewish. The only logical inference is that the authors think that Jews are less likely to be prosecuted for white-collar crimes than non-Jews. This puts them at odds with Dean Fishcel ([1995: 5, 184](#)), who hints that Milken may have been prosecuted *because* he was Jewish. There is no evidence that Giuliani's decision to prosecute Milken had anything to do with his religious or party affiliation. Once more, I think the case for "tyranny" against Milken is nonexistent. Plea-bargaining is not like medieval torture.

### ***ADM -- Price Fixer to the World***

The antitrust case against ADM is perhaps the most bizarre antitrust case in history, but the authors' formula remains the same. The authors complain of "the government's own dirty hands in fabricating a case" (*Id.*, 102). But the authors present no evidence that the government sought to

"fabricat[e]" a case against ADM. Characteristically, they ignore the evidence, though there is an unusually good public record of the facts in the white-collar cases they label tyrannical.

The authors then cite law and economics theory to suggest that ADM couldn't have been engaged in effective price-fixing because the price of its products fell. Further, as a low-cost producer it would have been unprofitable for ADM to limit its market share, which is what the antitrust suit alleged. "Facts, however, had nothing to do with the case" (*Id.*, 101). But this is really bad economics. The fact that prices for ADM's products were (at times) falling and that it faced buyers with substantial monopsony power would provide a powerful incentive to restrict quantity ([Simpson & Piquero 2000: 177](#)). ADM had an incentive to restrict quantity because that was the only way to get its rivals to agree to do the same. In *fact*, as tapes prove, ADM agreed with its competitors to restrict output for the purposes of raising prices. Further, the cartel did restrict supply and raise prices ([Eichenwald 2000: 266-67](#)).

What is bizarre about the case is Mark Whitacre, a senior ADM official, who told the FBI that ADM was engaged in price fixing and who became an undercover agent for the FBI, taping a series of price fixing meetings. Whitacre was a liar and a thief. He lied to the FBI on many occasions, and he embezzled substantial amounts of money from ADM while he was secretly working for the FBI. In short, he was an FBI agent's and prosecutor's worst nightmare. At the very moment when they intended to bring down a massive, international price fixing conspiracy, their star witness turned out to be a liar and an active thief. The prosecutors had to revoke his immunity agreement and prosecute him, which they did successfully (he received a much more severe sentence than the more senior ADM executives who were caught on tape negotiating the cartel's terms). **[end page 252]** Whitacre's worthlessness as a witness doubtless greatly diminished the size of the fine ultimately negotiated with ADM for its antitrust violations. The fact that it still ended up as one of the largest in history, \$100 million, gives a former litigator like me good evidence of the strength of the case against ADM (as did reading extensive excerpts from the tapes in Eichenwald's book). The tapes also make clear that Whitacre did not create the cartels. Instead, they were ADM's customary means of doing business in product lines Whitacre had no control over. Indeed, the international cartel Whitacre was involved in, lysine, was formed years before Whitacre joined ADM. In fact, the conspiracy was formed before either ADM or Whitacre was involved in lysine production (*Id.*, 76-78, 108-111, 243-45). Further, the ADM investigation led to the discovery of massive price fixing in other areas, particularly vitamins, which were costing consumers hundreds of millions of dollars (*Id.*, 559).

The authors conclude: "With the ubiquitous plea bargain, prosecutors have reinvented torture" (*Id.*, 104). The facts of the case show that ADM pleaded guilty to real crimes it committed.

### ***Charles Keating and Lincoln Savings***

The authors discuss what was admittedly the weakest case against Charles Keating, California's prosecution of him for aiding and abetting securities fraud. They ignore the stronger cases in which Keating's direct, personal culpability was established. Keating ultimately pleaded guilty in the federal case. The *state* case against Keating was controversial among prosecutors. It occurred because the L.A. District Attorney wanted to get credit for being the first to indict the most notorious felon in the S&L debacle. The U.S. Attorney was opposed to the state case going forward, afraid that it would interfere with his prosecution (he proved correct). The authors' factual presentation about Keating is fictional.

They picture Keating as the owner of a "prosperous" real estate company (ACC) whose purchase of Lincoln Savings was supported with "favorable financial terms" by the federal

regulatory agency (the "Bank Board"). This is not accurate. ACC was a deeply troubled company when it acquired Lincoln Savings. Further, Keating did not receive any support, financial or otherwise, from the government in acquiring Lincoln Savings ([Black 1989](#)).

Keating did not put up a penny of his own money to buy Lincoln Savings – his purchase was funded entirely by Milken. Characteristically, Milken caused ACC to issue many more junk bonds than were necessary to buy Lincoln Savings. This met three of Milken's goals simultaneously. It maximized Drexel's fees for both issuance and sale. It left ACC grotesquely overleveraged (fancy words for being deeply in debt), which meant that Milken had great leverage over Keating. Most importantly, it turned Lincoln Savings [**end page 253**] into what became known in the trade as a "captive." Soon, Lincoln Savings would buy a billion dollars in junk bonds (overwhelmingly from Drexel). Milken "churned" the junk bond pool to build fees. When junk bonds began to lose value, Milken increasingly stuffed Lincoln Savings with the junkiest of the junk bond issues, magnifying losses to the taxpayers. Milken had direct control over Lincoln's junk bond portfolio, trading it at will. Lincoln Savings learned at the end of each day in a telex from Drexel what bonds it now owned, and at what price it had sold prior bonds. Having captives like Lincoln Savings allowed Drexel to manipulate its reported default rate and sustain junk bond prices at an artificially high level.<sup>56</sup>

Lincoln Savings was a nest of nepotism, and the high salaries were paid primarily by ACC, not Lincoln Savings. This posed two problems for Keating and family. ACC, on a stand-alone basis, was insolvent and losing money. ACC lost money because it was not a good home builder, it had enormous interest expense due to the very high cost junk bonds it had issued, and the Keating family salaries were exorbitant (*Id*; [Black 1989](#); [Mayer 1990: 172-73](#)).

All of this meant that Lincoln Savings's strategic plan under Keating was always quite simple: it had to funnel large amounts of cash up to ACC to forestall ACC's bankruptcy and maintain the Keating family's lavish life style. Keating used three tactics to fulfill that strategic plan. First, he used fraud to create fictional profits at Lincoln Savings, which were used to justify making dividend payment to ACC. When the Bank Board ordered an end to the dividend payments, he continued to use fraud to create fictional profits, then used fictional income tax liability to upstream roughly \$100 million to ACC. When the Bank Board discovered the tax scam and ordered it halted, Keating ordered ACC to do the thing that finally made an arcane S&L crisis into a national scandal: he had ACC sell *uninsured* junk bonds to Lincoln Savings depositors, in Lincoln's branch offices.<sup>57</sup> ACC decided that the best place to sell these bonds was in branches serving retirement communities. Keating had turned from defrauding the federal government generally to defrauding individuals – and the individuals he picked were overwhelmingly *widows*.

For the first time, an S&L failure would leave tens of thousands of victims uninsured, with individual losses totaling \$250 million. The S&L debacle now had a human face – and it was your grandmother's face you saw when you turned on the television. One widow, in her 70s had lost all her savings. It turned out that she was saving to purchase a special van – to transport her quadriplegic daughter. She was the sole means of support for the daughter, who was in her 40s. A widower, distraught at the loss of his savings, committed suicide. As humans, we empathize with the plight of individuals, not statistics.

All truly great disasters involve many factors coming together at the same time, [**end page 254**] and Lincoln Savings fits that pattern. It was the most expensive failure of all time, \$3 billion. Many of the top law firms and audit firms in the country had aided Keating in looting Lincoln Savings. Keating, who had more political muscle than any other CEO, had enlisted five U.S. Senators (the

"Keating Five") to try to get the regulators to go easy on Keating's violations (I took the notes of that meeting that led to the Senate ethics investigation [[Calavita, Pontell, & Tillman 1997: 1996](#)]). Keating had also achieved something unprecedented in U.S. financial regulation; he had used his political muscle and threats to sue the Bank Board to secure the removal of his regulators (me and my colleagues – who were warning of Keating's crimes and the likely, catastrophic failure of Lincoln Savings). Our memoranda were thorough and hard hitting, not bureaucratic mush, and made it clear that the Bank Board's cave-in to Keating was a scandal. We also made powerful witnesses in the congressional hearings after Lincoln Savings's failure (which led to the resignation of the top S&L regulator, Danny Wall [[Black 1993](#)]). Moreover, Lincoln Savings collapsed at the same time as the newly elected Bush Administration finally ended the cover-up of the scale of the debacle and the public began to be told that it would cost the taxpayers well over a hundred billion dollars to fix it. Keating promptly compounded his problems by holding a "press conference" (a misnomer, for Keating read questions *he* had written, read answers to his own questions, and refused to take questions from the press):

One question ... has to do with whether any financial support in any way influenced several political figures to take up my cause. I want to say in the most forceful way I can: I certainly hope so ([Mayer 1990: 221](#)).

The authors ignore the evidence of Keating's fraud, and portray him as a great businessman. "Lincoln, listed by *Forbes* as the nation's second most prosperous thrift in 1987, became the symbol of the S&L crisis two years later" (*Id.*, 52). The type of fraud engaged in by those who controlled S&Ls (what I term "control fraud") routinely created massive fictional profits ([NCFIRRE 1993: 3-4](#); [Black, Calavita & Pontell 1995](#)). Lincoln was already insolvent in 1987, and it continued to lose money until it closed.

Keating is pictured as a scapegoat. "The real estate collapse, which decimated both ACC and Lincoln, was caused by negligent U.S. policymakers. Most economists attribute the fall in real estate values to ill-conceived monetary and tax policies" (*Id.*). Coming from a lead author who was an Assistant Secretary of the Treasury under Reagan, and who claims to have been a "supply side" leader in formulating those "ill-conceived ... tax policies," this argument is surprising. It is certainly correct that the 1981 tax act, which Roberts influenced, created strong economic incentives to make real estate investments that made no economic sense, by creating abusive "tax shelters." These perverse incentives contributed to regional real estate "bubbles." Keating, far from being an innocent victim of the collapse of this bubble, was a leading contributor to it. Lincoln Savings's massive, uneconomic real estate investments in a regional market that was **[end page 255]** already glutted increased real estate losses.<sup>58</sup> Still, Mr. Roberts is correct that his "negligent" and "ill-conceived" policies did much to harm the economy.<sup>59</sup>

### ***The Kaye, Scholer Case***

The authors' discussion of the successful enforcement action brought by the federal S&L regulatory agency, the Office of Thrift Supervision (OTS), against one of Keating's most prominent law firms, Kaye, Scholer, Fierman, Hays & Handler, is full of factual errors. The authors' primary criticism is that the OTS required Kaye, Scholer to inform on its clients. That is false; the OTS position is that Kaye, Scholer made false statements to the regulators on behalf of Charles Keating. The OTS would have *loved* it if Kaye, Scholer had been a "zealous advocate" on behalf of its *client's* interests. Instead, Kaye, Scholer assisted Charles Keating (who was *not* its client) in looting Lincoln Savings (*the client*). The OTS had a very strong case against Kaye, Scholer – which is why it settled the claim for over \$40 million ([Simon 1998: 253](#)).

The authors' secondary criticism is the *way* the OTS brought its action, which is controversial. The authors claim that the OTS "froze" the firm's and the partners' assets. That is not correct. The OTS had extensive settlement discussions with Kaye, Scholer prior to bringing the enforcement action. In those discussions (and in comments its counsel made *after* the OTS brought its action), Kaye, Scholer's position was that bringing suit against it would destroy the firm. Specifically, it claimed that its creditors would refuse to loan it new funds and would demand immediate repayment of existing loans and that many partners would withdraw from the firm and take their capital with them. The result would bankrupt the firm and make it impossible for OTS to collect even if it won a large judgment. That may have been a scare tactic on Kaye, Scholer's part to try to get the OTS to accept a smaller settlement, or it may have been accurate based on the firm's knowledge of its creditors and partners. The impact on the OTS was to spark thought of how to sue Kaye, Scholer without ruining the agency's ability to collect a large judgment. The result was the "asset preservation order" that OTS issued. This deliberately did *not freeze* the firm's or its over one hundred partners' assets. Instead, it prevented abnormal withdrawals of firm *capital* – it allowed normal firm payments to keep it operating.

The non-Draconian nature of the OTS order is what posed the greatest litigation headache for Kaye, Scholer. The statute allows such OTS orders to be issued *ex parte* with no prior notice to the defendant. That is an extraordinary power, and one that can be abused. Recognizing the risk of abuse (or mistake), Congress has provided that the party subjected to such an order can immediately challenge it – not before the OTS, but before an independent entity, a federal district court. Kaye, Scholer could have gotten an immediate hearing before the court attacking the order. Due to the lengthy settlement discussions, in which the OTS had laid out its claims, Kaye, Scholer was prepared to [end page 256] bring such a challenge. Kaye, Scholer even had one of the country's leading legal ethics scholars, Geoffrey Hazard, lined up with a draft opinion. (Characteristically, the authors cite Professor Hazard without informing the reader that he was retained by Kaye, Scholer – or that he authorized release of his opinion without ever reading OTS' complaint!) Kaye, Scholer settled instead of filing because it knew that its legal position was weak.

## THE AUTHORS' SUGGESTED REMEDIES

The authors' hearts clearly aren't in their final chapter "What is to be Done?" They say they're including it because "Authors who expose such a deplorable state of affairs are expected to provide proposals for reform" (*Id.*, 176). They approach reforms with the zeal of a dutiful 16-year-old taking calculus (which he detests) because his Dad expects him to do so. The chapter is notable in several respects. First, instead of discussing reforms, much of the chapter presents their claim that Microsoft and tobacco companies are the victims of tyranny, then detours to attack gays. Second, while the book suggests a number of reforms, none is discussed in the final chapter because the "plight of American democracy is beyond the reach of legal reform alone" (*Id.*).

### *The Reforms that the Authors Raise, but Later Ignore*

The reforms suggested by the authors to the criminal justice system would eviscerate white-collar crime prosecutions of elites and reduce blue-collar prosecutions. The authors call for an end to all plea bargaining, all use of "stings," all use of informers and undercover operations, and suggest that prosecutors bear a risk "similar to medical malpractice for bringing unjustified cases" and that juries that acquit defendants should be permitted to *indict* the prosecutor for bringing unjustified cases (*Id.*, 60, 84-85). Street criminals can frequently be caught in the act or identified through witnesses or physical evidence. Non-elite white-collar criminals (e.g., small embezzlers) can be caught by internal firm controls and frequently confess when confronted.

Control frauds, which cause vastly greater losses, involve elite white-collar criminals. They can "turn off" or avoid internal controls and use the firm both as a "weapon" to commit fraud and as a shield against prosecution. They hire the top law firms and auditors in the country with firm resources to "bless" their frauds. Absent cooperating witnesses, which means plea-bargaining, convicting elite white-collar criminals would be extremely unlikely. I can attest from substantial personal experience how reluctant prosecutors are to bring complex fraud cases against control frauds. If the prosecutors could not make plea bargain and faced indictment if they lost a case, elites would be untouchable. Because the authors believe that these elites are the most oppressed Americans, and because they believe white-collar crime is not "real" crime, they view this immunity as desirable. I believe it is the primary goal of these suggested "reforms." [end page 257]

### *The Authors' Ultimate View -- Only a Revolution will Do*

The authors' "one hope" for the ideological revolution they believe essential is "the universal failure of government" (*Id.*, 177). This failure, they hope, could lead people to reject the legitimacy of the U.S. government. "The American republic established by the Founding Fathers is long gone, destroyed by the Civil War and the New Deal" (*Id.*, 182):

Today Americans increasingly feel defenseless in the face of the government that they supposedly control. What was formerly a patriotic, flag-waving element of the population has been organizing itself for the past few years into private militias (*Id.*, 177).

In short, the authors offer a useful insight into the mind of the militia, put into a seemingly respectable book endorsed by Milton Friedman and Alan Dershowitz. Government has never done anything useful; if not hamstrung it will leap into tyranny. The Civil War – which led to constitutional amendments prohibiting slavery, providing the right to due process and equal protection of the law, and granting the right to vote to black males – somehow destroyed the American republic. Apparently the republic, which enslaved blacks, was not tyrannical, while freeing blacks was tyrannical. How the New Deal destroyed the republic is even less clear.

Was the country a republic, and non-tyrannical, when its racist and religious bigots were "patriotic, flag wav[ers]?" The militias do not control government in the United States, which enrages them, but was the nation less tyrannical when their predecessors in the Klan controlled many local governments?

By the close of the book, which you may recall was supposed to be about "good intentions," the authors' have "locked and loaded" and unleash this militia-mode burst at government workers:

Homogenous bureaucracies staffed with ideological zealots will devour the rights of the American people in the name of their causes, just as German Nazis and Soviet communists devoured the rights of their subjects (*Id.*, 176-77).

At a time of surging budget surpluses, full employment, ever lower federal income tax rates for the rich, ever higher percentages of national income and wealth going to the richest of the rich, the turning of the word "liberal" into a label a politician must avoid at all cost, the collapse of communism, the triumph of neo-classical economics, a consensus on the need to "reinvent" government, lower crime rates, and reduced rates of out-of-wedlock births, why has pessimism captured the raging right? Why, with the death of J. Edgar Hoover [end page 258] and the

resignation in disgrace of President Nixon leading to a dramatic *reduction* in abuses by the FBI, does the raging right see "Nazis" (or is it communists?, since we're "homogenous ... ideological zealots," we bureaucrats must all belong to the same dictatorial movement, but which one?) and "black helicopters" (filled with third world UN troops) everywhere?

The ragin' right is living in an America they no longer understand or appreciate. It is no longer a white, Protestant country. It is no longer a country in which men rule absolutely the home, the office, and the government (though men remain extremely dominant in the latter two spheres). Because women normally work outside the home, they have far more independence than at any time in our history. It is no longer a country in which bigotry is respectable. It is no longer a country in which it is fine to despoil nature. Worst of all, the right senses that there is no way to go back. The Republicans can control the Presidency, both houses of Congress and the Supreme Court, but the country will continue to become more diverse and women will not withdraw from the workforce. Because the ragin' right cannot embrace Latinos, they see demographics as destiny and know that things will get (from their perspective) much worse.

### **ALIENATION AND TRUST**

While the authors purport to decry the alienation of Americans from government, they are contributors to that alienation. Indeed, that is reason for the book. They want the reader to believe that government officials are tyrants. They want whites, particularly straight, able-bodied, rich, Republican males to view themselves as being oppressed by the government, feminists, Democrats, and minorities. They routinely demonize their opponents.

All of this is corrosive of what other scholars, of all mainstream ideological varieties, have been arriving at a consensus on – the immense value of trust to civil society.<sup>60</sup> Adam Smith was half-right about the butcher when he observed that we rely not on his altruism but his self-interest to provide us with good meats. Self-interest is helpful, but insufficient in many instances. What happens when the butcher has sold his business, with the deal closing in two weeks? We want a butcher who will not sell us cheaper, unsafe meats during that two weeks. When we are a stranger passing through a town we will never visit again, we want to be able to go to butcher without being sold unsafe meats. If safety regulations are expensive to comply with and if compliance is hard to observe, and some disreputable butchers violate the rules and gain a competitive advantage, we want our butcher not to cheat, even if he could get away with it and profit. When cheating is widespread and trust erodes, transaction costs go up in the private sector. In the public sector, something far worse happens. When the government responds to widespread cheating with rules designed to prevent abuses, bureaucratic delays to honest citizens increase and trust in the government erodes. The stage is set for **[end page 259]** a perverse spiral. The authors, of course, view Americans' remaining trust in government as misplaced and a problem.

This attack on trust and the U.S. government represents a radical shift in Mr. Roberts' views. He (1984: 255) had identified the *central* U.S. problem as a "denunciatory" ethic on the part of liberal elites. Similarly, in their book attacking the *Brown* decision, civil rights laws, and affirmative action, these co-authors argued that the flaw in all such measures is that they displaced that which was essential to community: "goodwill" (Roberts & Stratton 1995: 170). Now, they relentlessly attack goodwill, arguing that groups they disfavor will destroy America, demonizing all who disagree with them, and conclusively presuming that government actions are evil.

### **ETHICAL TRAINING, LEADERSHIP AND AGENCY CULTURE**

In scattered instances, the authors hint at the importance of ethical training and leadership and professional mores in preventing tyranny. They note that in nations controlled by corrupt leaders, the government is likely to be pervasively corrupt (*Id.*, 140). They argue, though I believe the facts prove the opposite, that J. Edgar Hoover set such a firm moral tone at the FBI that individual agents rarely engaged in abuses (*Id.*, 145). They note that prosecutorial ethics have long required the prosecutor not simply to seek convictions, but to seek justice (*Id.*, 63). They also argue that the rapid expansion of the ranks of prosecutors in response to the war on drugs weakened prosecutorial cultures that emphasized restraint and the importance of seeking justice (*Id.*, 137).

All of these arguments are a cause for joy, for they come from believers in "public choice" theory, which attempts to explain governmental behavior as a simple exercise of maximization of individual self-interest by the governmental decision-makers.<sup>61</sup> Understanding that ethical norms are critical, that the training government officials receive and their ideological views may be decisive, that agencies develop cultures that constrain individual actor's choices – all of these aspects would make public choice theory far more nuanced if the theory were broadened to include them. Unfortunately, the authors do not analyze these issues, and by the time they get to their recommendations chapter, they ignore all of these matters.

Because the book is designed as a collection of purported horror stories, and because they come to bury government, not to praise or save it, the authors do not examine any *success* stories and attempt to explain why they believe a particular agency has not engaged in tyranny. They also ignore agency effectiveness; we need agencies that fulfill their missions effectively, efficiently, and fairly (and those missions have to be appropriate). The failure to examine success stories and agency effectiveness helped produce a book that ends with bile instead of reforms. [end page 260]

### WHAT REFORMS FOLLOW FROM THE AUTHORS' LOGIC?

The authors' logic would suggest the need for reforms that are often the opposite of the reforms they actually allude to. For example, their analysis is that it is critical to attract superb individuals to the public service (e.g., they repeatedly decry "third rate" bureaucrats) and train and lead them in a highly ethical fashion. However, one of the reforms they suggest is the reinvigoration of the "delegation" doctrine. Few things would be more effective in maximizing the difficulty of recruiting and retaining the best government officials than the delegation doctrine. Under the delegation doctrine, appointed officials would have very little opportunity to make judgments based on expertise. Their function would be to mechanically implement extraordinarily detailed statutes (because making substantive rules would be largely made illegal). The type of people we want as government officials would not do so if the job were reduced to the level of mindless functionaries who could not even stop clear evasions of such statutes. Some elected officials might welcome the return of the delegation doctrine – until it happened. Then, faced with the need to become experts on exotic details of hundreds of different fields, they would rue the day that the delegation doctrine was reanimated.

What is needed is a fusion of some of the authors' timely emphasis on fairness with the stress on efficiency and effectiveness coming out of the "reinventing" government movement. That movement sees citizens as "customers." That may be a useful conceptualization for many purposes, but it breaks down when applied to involuntary spheres (e.g., prosecutions). Efficiency and effectiveness in the context of criminal justice is not enough; it can come at the expense of fairness, and abuses can cause monstrous harm to individuals and society.

We want something very special from prosecutors, something far different than what their

educational preparation has stressed. Prosecutors are litigators, and the fundamental thing one is taught in litigation is zealous advocacy on behalf of your client. Coupled with the universal desire to win, the need to win to advance in the job, and the fact that the folks one prosecutes are overwhelmingly people who arouse one's disgust rather than compassion, it is not hard to slip from prosecutor to persecutor. It takes a strong ethical culture to counteract these tendencies. Training alone cannot build such a culture; the bosses must demonstrate through their own actions that they are serious that the prosecutor's duty is not simply to win convictions, but to seek justice. This is not a war that can be "won." Rather, it is a process that has to be maintained for all time. There will be lead prosecutors who are unethical or merely pathetic managers. A well-developed ethical culture is the best first line of defense (the courts and legislature are the second and third lines) against such lead prosecutors.

It will never be perfect, but generally speaking, prosecutorial and police abuses in the U.S. are vastly *reduced* from earlier in our history. Prior generations have improved [end page 261] the system greatly, making the "Rights of Englishmen" *effective* for far more people than ever in our history. Each generation has the responsibility to continue that improvement.

I agree with the authors that the drug war, the rapid expansion of criminal justice system personnel, and hysteria are causing serious problems of fairness. Contrary to the authors' position, the burden of the drug war clearly does fall *much* more heavily on blacks and Latinos than whites. There is a strong suspicion that police testimony in drug cases often involves perjury (e.g., about "plain sight"). This is intolerable; it creates a rot that cannot be contained. Similarly, it has now become routine for there to be press leaks from some prosecutors' offices in major cases. This is illegal and unjust. It can only persist in offices where the lead prosecutor permits it to continue. Strong ethical leadership could promptly end most of these abuses.

We should also build trust. The love of liberty is one of the things that many Americans of every political persuasion and background share. As Myrdal (1944) understood, it is our national creed. We often fail to live up to that creed, but our nation has returned over and over to it as we have progressed and realized that none of us is truly free while we deny freedom to others because of our all-too-human flaws. Emphasizing that creed is one way to rebuild trust. Prosecutors who seek to convict the innocent, or are indifferent to whether they convict the innocent, are unethical. This is something all Americans can agree on and work to reduce.

There are practical ways to achieve this goal. We need to be careful in picking our lead prosecutors. We are not. Getting the job of top prosecutor is almost always a product of politics. We need to pick leaders who care passionately about justice as our top prosecutors. They can, and usually will, set and reinforce the proper ethical tone. We also need to preserve the exclusionary rule. Finally, we need to prosecute prosecutors if they do suborn perjury.

## CONCLUSION

I noted that the authors implicitly raise five important questions:

- How can nations that value liberty so highly engage in tyranny?
- What groups are most at risk of being tyrannized?
- How are acts of tyranny ended?

- Do perverse incentives lead prosecutors and regulators to act like tyrants?
- Can ethical public sector leadership prevent, or at least reduce, tyranny?

The authors suggest answers to all but the third question. Had they addressed the third question, and examined the history surrounding the first, I think their analysis and recommendations would have changed. We have a long history in the United States, [end page 262] England, and other "Western" (speaking culturally rather than geographically) democracies that were former English colonies with "the Rights of Englishmen." We know how valuable those rights are, and how highly our ancestors' prized them. We also know this paradox; it was precisely that knowledge and appreciation that led to the pervasive denial of such rights to "the other" through much of our collective history. For example, whites knew that these rights were the keys to power, freedom, and safety, which is *why* blacks were stripped of these rights. These acts of tyranny ended because our ancestors gradually defined more and more residents as part of the community: the "us" rather than "the other."

No honest appraisal of our history can make rich, white, straight, able-bodied, Christian males the principal victims of tyranny. The principal victims have been those who look different from the English, believed in a disfavored religion, or opposed the interests of the dominant society (e.g., labor movements and radicals). As bigotry has declined and tolerance increased, tyranny has been greatly reduced. The authors' spread intolerance, a "cure" that makes the disease worse.

## ENDNOTES

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1. I use the word in its conventional senses as involving either (or both) exercising pervasive political power by denying any meaningful right of political participation to the polity and using that political power to seriously oppress others through extra legal or sham legal (e.g., "show trials") procedures.

2. [Roberts & Stratton 2000:140, 145.](#)

3. "The GOP and the White Vote" ([www.vdare.com/pcr\\_gop\\_whitevote.htm](http://www.vdare.com/pcr_gop_whitevote.htm); accessed 1/15/01); ([www.newsmax.com/commetarchive.shtml?a=2000/5/10/170132](http://www.newsmax.com/commetarchive.shtml?a=2000/5/10/170132); accessed 12/6/00).

4. (<http://www.newsmax.com/commentmax/print.shtml?a=1999/8/18/075417>; accessed 9/9/01)

5. England had widespread slavery ("villeins") for hundreds of years and even penal and gallery slavery for a time in the 16<sup>th</sup> century, but thereafter, English laws *prohibited* slavery -- even as England became one of the major slave nations in the 18<sup>th</sup> and 19<sup>th</sup> centuries ([Bush 1996](#)). English law ignored slavery in the colonies until it first banned [end page 263] the slave trade and then provided compensation to free slaves in the West Indies in the 19<sup>th</sup> century.

6. And no lavender in that box of crayons! As their score-settling spins out of control, the authors detour to attack gays, who they none too subtly compare to pedophiles and practitioners of bestiality (*Id.*, 180-81). No, it has nothing to do with their thesis, they just wanted to share their

hate with us before closing their book two pages later. The authors' love of liberty doesn't extend to gays. Though they quote with approval the common law's enshrinement of a man's home as his castle (*Id.*, 12), they think it a good thing to arrest gay adults engaging in consensual sex in the privacy of their own homes (*Id.*, 181).

7. [Roberts 1984: 257](#).

8. They adopt the English national myth that they were the new "chosen people," ([Johnson 1997: 19-21](#); Shakespeare, *Richard II*, II.i. ["This other Eden, demi-paradise"]) -- then improve upon it. Eighteenth century England becomes Eden (and Eire is ejected), complete with a serpent (the father of utilitarianism, Jeremy Bentham) and a sage, Sir William Blackstone (author of the *Commentaries on the Laws of England*). The standard English myth embraces the Whig reforms (expanding the franchise, ending slavery, reducing discrimination against non-Anglicans and limiting child labor). The authors ignore those reforms. The authors' views strongly resemble those of 18<sup>th</sup> century Tories who, like Blackstone, opposed most reforms. The intellectual most identified with these reforms was -- Jeremy Bentham ([Smith 1966: 584](#); [Rodgers 1987: 27](#))!

9. The "Pale" was the area of Ireland (Ulster) under Protestant control.

10. The Penal Laws were an outgrowth of the "Glorious Revolution" (in which English Protestants invited William of Orange to depose the Catholic king of England, James II). Irish Catholics supporting James II were defeated at the Battle of the Boyne. Parliament breached the peace treaty that William signed with the Irish and further suppressed Irish Catholics by means of the Penal Laws. The authors discuss the Glorious Revolution as the culmination of England's road to liberty, ignoring its effects on non-Anglicans. All non-Anglicans were deprived of some critical rights, but the repression of Irish Catholics was much more severe ([Smith 1966: 370-71](#)). Edmund Burke ... described the Penal laws as [being as] "well fitted for the oppression, impoverishment and degradation of a people, and the debasement in them of human nature itself, as ever proceeded from the perverted ingenuity of man." The Lord Chancellor was able to say: "The law does not suppose any such person to exist as an Irish Roman Catholic" ([Irish Famine Curriculum Committee 1998](#)).

11. [Golway & Coffey 1997: 4](#); [Takaki 1993: 143-45](#). [end page 264]

12. Actually, English law limited market rights severely. The infamous "Corn Laws" were one example of this. These laws worked systematically to harm the Irish economy, with the goal of helping the English economy. As with the ability of English and U.S. elites to have slavery and devotion to freedom coexist, many English felt no qualms in insisting on *laissez faire* when it came to responding to mass starvation in Ireland, even though government interference with the markets was decisive in producing that starvation.

13. The editorial also contains these classics:

There was but one way [holding public work wages to subsistence levels] to avoid a calamity [dependency on English relief] compared with which the potato blight is trivial.

\*\*\*\*\*

[T]he Irish peasant had tasted of famine and found that it was good [because of the dole].

\*\*\*\*

Extended suffrage ... for a peasantry who have for six centuries consented to alternate between starvation on a potato and the dole...! You might as well give them bonbons....

([www.people.Virginia.EDU/~eas5e/Irish/Notfamime.html](http://www.people.Virginia.EDU/~eas5e/Irish/Notfamime.html); accessed 1/25/01).

14. Many English tried to prevent starvation, including Prime Minister Peel, whose efforts cost him control of the government and split the Tory party, and the remarkable Quakers.

15. Some of these atrocities were committed by the Irish. "Transportation" to Australia was a common sentence for both Irish common criminals and political prisoners ([Hughes 1998: 181](#)).

16. *Indian Express Newspapers 1997* (quoting from Dyer's August 25, 1919 report to the General Staff Division). Later, when Gandhi was asked what he thought about "English civilization," he replied that he thought it was a good idea.

17. Executions for minor crimes ([Smith 1966: 563-64](#)); press gangs ([Boorstin 1996: 198 n. 53](#)); transportation ([Hughes 1998](#)); limited franchise ([Tuchman 1984: 141](#)); workhouses and debtors' prisons ([Rooke 1970: 22, 66](#)); child labor ([Smith 1966: 587-88](#); [Rooke 1970: 42-45](#)); property requirements for jurors ([Boorstin 1996: 231 n. 19](#)). [end page 265]

18. And beyond. Things were no better 70 years later ([Smith 1966: 576-77](#)).

19. His logic was that non-elites lacked the independent will requisite to be a responsible voter. Non-elites would fall under the influence of the rich if allowed to vote. The franchise was limited to the rich to protect the non-elites from falling under the influence of the rich.

20. My list does not include the treatment of indentured servants, Latinos, women, homosexuals, Jews, Catholics, or the Irish, all groups that experienced substantial repression. German-Americans faced substantial oppression during World War I. Others see abortion, the U.S. use of atomic weapons against Japan, the Vietnamese War and the sanctions on Iraq as acts of tyranny. Clearly, much broader lists are possible. As the reader will see, all-inclusiveness is not necessary for my purposes here, for the authors ignore all of these acts.

21. (Then) Judge William Taft wrote his wife about the 1894 Pullman strike: "It will be necessary for the military to kill some of the mob before the trouble can be stayed. They have only killed six ... as yet. This is hardly enough to make an impression" ([Tuchman 1962: 409](#)).

22. ([www.newsmax.com/commetarchive.shtml?a=1999/6/2/071408](http://www.newsmax.com/commetarchive.shtml?a=1999/6/2/071408); accessed 12/6/00)

23. In a column entitled "Shame on Us" he wrote: "It is no favor to a person to refuse to hold him or her accountable. By refusing to hold the Clintons accountable, we enabled further misdeeds ...." (<http://www.townhall.com/thcc/content/roberts/robe082098.html>; accessed 9/9/01).

24. "Ethics" is an ironic term when applied to J. Edgar Hoover, for he "lost" them early in his career and was a petty thief stealing from the taxpayers ([Gentry 1991: 740-46](#); [Summers 1993: 186-88, 222-24](#)).

25. "A Political Kidnapping" 12/9/98 *Investor's Business Daily*  
(<http://Independent.org/tii/news/981209Roberts.html>; accessed 9/9/01).

26. (<http://www.newsmax.com/commentarchive.shtml?a=1999/6/3/070115>; accessed 9/9/01);  
([www.newsmax.com/commetarchive.shtml?a=2000/4/24/100319](http://www.newsmax.com/commetarchive.shtml?a=2000/4/24/100319); accessed 12/6/00).

27. Huston was the former head of the ironically named, "Young Americans for Freedom." The further irony is that when Hoover's objections scuttled the Huston plan, the White House responded by having Krogh and Liddy (an ex-FBI agent) create "the Plumbers." [end page 266] The Plumbers did the illegal break-in of Ellsberg's psychiatrist's office. Liddy then joined "CREEP" and planned the Watergate break-ins and buggings ([Gentry 1993](#)).

28. As California's Attorney General, Warren was a strong advocate of the internment, while J. Edgar Hoover opposed it ([Kluger 1976: 661-62](#); [Takaki 1993: 378-82](#)). The contrast should have made the internment one of the authors' leading examples of tyranny, but their refusal to admit to the existence of prejudice and its role in producing tyranny disqualified its use.

29. "The GOP and the White Vote" ([www.vdare.com/pcr\\_gop\\_whitevote.htm](http://www.vdare.com/pcr_gop_whitevote.htm); accessed 1/15/01).

30. ([www.newsmax.com/commetarchive.shtml?a=2000/5/10/170132](http://www.newsmax.com/commetarchive.shtml?a=2000/5/10/170132); accessed 12/6/00).

31. The Civil War was fought over the South's fear that the Republicans would restrict the spread of slavery to new states and not enforce the Fugitive Slave Act, reducing the slave states's political power. The South did not secede because of tariffs. There was, of course, an indigenous population in the South before the arrival of Europeans. Slaves did not just happen to be black; European laws and customs after the 1600s ended the practice of enslaving whites. Slavery was not fading out in the 1860s; it was highly profitable and growing. Racism most assuredly was the norm in the United States, and not just the South, and not just prior to the Civil War. Indeed, the heyday of "scientific racism" and racist histories continued well into the 20<sup>th</sup> century ([Kluger 1976: 305-08](#); [Rodgers 1987: 164](#); [Gould 1981](#); [Foner 1998](#)).

32. As with Roberts's spurious claim that Southern slavery was fading out before the Civil War, Roberts and Stratton ([1995: 30](#)) claim that segregation was fading out in the South before the NAACP began bringing legal challenges. The problem was that blacks were "impatient" (*Id.*, 31). Their response to the old question: "If not now, when?" is: "whenever."

33. (<http://www.insidenaples.com/today/editorial/a50641q.htm>; accessed 9/9/01).

34. ([www.newsmax.com/commetarchive.shtml?a=1999/6/16/072949](http://www.newsmax.com/commetarchive.shtml?a=1999/6/16/072949); accessed 12/6/00).

35. Mr. Roberts has intense feelings about gays. In his column "Cultural Destruction in the Military" (11/17/98) he blames feminists and gays:

Hillary's appointees have succeeded in their assault on the last bastion of heterosexual males. \*\*\* The destruction of our military's culture is intentional [end page 267]

(<http://www.newsmax.com/commentmax/print.shtml?a=1998/11/19/080332>; accessed 9/9/01).

Confusingly, in his column "Our Homeless Future" (2/12/99) he wrote:

Not even U.S. Marines could meet the demands of Sparta's training. If confronted with Spartan standards, the personnel in our feminized Army and navy would drop like flies  
(<http://www.newsmax.com/commentmax/print.shtml?a=1999/2/12/083513>; accessed 9/9/01).

However, Sparta's version of "male-bonding" should be problematic for one who wants to preserve the military as "a last bastion of heterosexual males."

36. ([www.newsmax.com/commetarchive.shtml?a=2000/4/24/100319](http://www.newsmax.com/commetarchive.shtml?a=2000/4/24/100319); accessed 12/6/00).

37. ([www.newsmax.com/commetarchive.shtml?a=2000/11/15/221856](http://www.newsmax.com/commetarchive.shtml?a=2000/11/15/221856); accessed 12/6/00).

38. ([www.newsmax.com/commetarchive.shtml?a=1998/12/23/093310](http://www.newsmax.com/commetarchive.shtml?a=1998/12/23/093310); accessed 12/7/00).

39. ([www.newsmax.com/commetarchive.shtml?a=2000/6/12/193700](http://www.newsmax.com/commetarchive.shtml?a=2000/6/12/193700); accessed 12/6/00).

40. ([www.newsmax.com/commetarchive.shtml?a=1999/6/16/072949](http://www.newsmax.com/commetarchive.shtml?a=1999/6/16/072949); accessed 12/6/00).

41. ([www.newsmax.com/commetarchive.shtml?a=1999/1/20/090540](http://www.newsmax.com/commetarchive.shtml?a=1999/1/20/090540); accessed 12/7/00).

42. (<http://Members.aol.com/CallGuy190/roberts.html>; accessed 9/9/01).

43. ([www.vdare.com/whams.htm](http://www.vdare.com/whams.htm); accessed 12/6/00) Mr. Roberts is very upset about feminists. Women are perpetrators, not victims. For example, in "Marines Under Feminist Attack" (11/14/97), he wrote:

Ever since the Tailgate [sic] scandal, which was orchestrated by feminists and destroyed naval aviation, the military brass have been running, in fear of their careers, from the feminists that Clinton unleashed on the military.  
(<http://townhall.com/thcc/content/roberts/robe111797.html>; accessed 9/9/01)

The reader may have shared my misapprehension that drunken naval aviators orchestrated the sexual assaults on women. In language that brought to my mind the Jack D. Ripper character in *Dr. Strangelove* (who obsessed about "precious bodily fluids"), Mr. Roberts [**end page 268**] tells us that the male is more likely to philander. Nature gave him the stronger urge, because he has the fertilizer. If he is indifferent to spreading it, life could die out. The stronger urge is the male's burden ([www.newsmax.com/commetarchive.shtml?a=1999/7/28/073331](http://www.newsmax.com/commetarchive.shtml?a=1999/7/28/073331); accessed 12/6/00).

(Many women agree that some males spread a lot of fertilizer.) In this same column he says that women have become "unpaid prostitutes" and reaffirms the old double standard based on his belief that promiscuity impairs women's, but not men's, ability to attain emotional intimacy.

44. ([www.vdare.com/whams.htm](http://www.vdare.com/whams.htm); accessed 12/6/00).

45. ([www.newsmax.com/commetarchive.shtml?a=2000/4/26/090855](http://www.newsmax.com/commetarchive.shtml?a=2000/4/26/090855); accessed 12/6/00).

46. ([www.newsmax.com/commetarchive.shtml?a=2000/4/26/090855](http://www.newsmax.com/commetarchive.shtml?a=2000/4/26/090855); accessed 12/6/00).

47. My 15 minutes of fame came from discovery of Keating's memorandum: "Highest priority. Get Black ... kill him dead...." and his *Bivens* suit (a case that allows suits against government employees in their *individual* capacities for breach of constitutional rights) against me for \$400 million. The suit was dismissed with prejudice after our "Rule 11" letter to his lawyers. (Rule 11 allows sanctions against attorneys for pressing a case they know has no legal merit.)

48. Other characteristics include excluding all information inconvenient to the authors' claims, not identifying seemingly neutral sources as being on the defendants' payrolls, innuendo, and unsupported assertions. For example, they discuss the criminal case against Messrs. Altman and Clifford without ever mentioning that the case was about them fronting for BCCI (informally known as the "Bank of Crooks and Criminals, International") -- the most notorious banking fraud in world history, or that criminologists who have studied the case think that they did in fact serve in that role ([Griffin & Block 2000](#)). The prosecutor, Robert Morgenthau lost the case, which leads to this classic innuendo: "how many other defendants did Robert Morgenthau successfully frame" (*Id.*, 59-60)? No citations are offered to support rhetorical bombs such as the claim that prosecutors "routine[ly] suborn[] perjury" (*Id.*, 136) and "if prosecutors need to fill a quota of white-collar criminals, they must find businessmen to frame" (*Id.*, 60). First, they do not establish that there are such quotas. Second, if there were quotas, they could be met without framing anyone. In my experience, the number of worthy white-collar crime cases against elites (not including petty embezzlements, etc.) always greatly exceeded white-collar crime prosecutorial and investigative resources. Every time I made a high priority criminal referral against a fraudulent S&L CEO, I knew that I was implicitly letting a lower priority white-collar criminal off the hook. **[end page 269]**

49. ([www.newsmax.com/commentarchive.shtml?a--2000/4/12/081714](http://www.newsmax.com/commentarchive.shtml?a--2000/4/12/081714); accessed 2/3/01).

50. (Cramer, [abcnews.go.com/sections/business/street/cramer\\_1218/index.html](http://abcnews.go.com/sections/business/street/cramer_1218/index.html); accessed 2/3/01).

51. As Mr. Roberts has urged: "Only propagandists insist on lying in the face of facts"

([www.newsmax.com/commetarchive.shtml?a=1999/1/20/090540](http://www.newsmax.com/commetarchive.shtml?a=1999/1/20/090540); accessed 12/7/00).

52. Klein was reluctant to bring a broad antitrust case and tried to settle the case (on terms Microsoft could have easily lived with) prior to bringing suit ([Auletta 2001](#); [Heilemann 2001](#)).

53. [Auletta \(2001\)](#); [Heilemann \(2001\)](#).

54. [Auletta \(2001\)](#); [Heilemann \(2001\)](#).

55. [Stewart \(1992\)](#); [Bruck \(1989\)](#); [Mayer \(1990\)](#).

56. [Akerlof & Romer \(1993\)](#).

57. The authors claim that such arrangements were "common" (*Id.*, 51). They were rare.

58. ([Black 1998: 219-24, 234](#); [Akerlof & Romer 1993](#); [NCFIRRE 1993: 8](#)). But for the passage of the 1986 Tax Reform Act which ended most of these abusive tax shelters, and Bank Board Chairman Gray's "re-regulation" of the S&L industry beginning in late 1983, these real estate bubbles would have grown much larger, perhaps to levels similar to Japan. The Japanese economy, a full decade later, has still not recovered from its bubbles.

59. Conversely, their claim that the 1989 Act that finally ended the S&L debacle "ruined" many "successful thrifts" by showing "bad economic sense" in requiring *phony* "goodwill" to be removed from S&L balance sheets is wrong and preposterous in terms of economics. Everyone admits that the goodwill was an accounting fiction that was devoid of economic substance ([NCFIRRE 1993: 38-39](#)). For an S&L that was *truly* "successful" (i.e., profitable on a real economic basis, as opposed to a phony accounting basis), the removal of the fictional goodwill would have been irrelevant.

60. For a conservative perspective, see [Fukuyama \(1995\)](#); for a communitarian view, see [Fisse and Braithwaite \(1994\)](#), for [Gore's \(1993\)](#) perspective, see the report of the National Performance Review. [end page 270]

61. The book demonstrates the weakness of conventional public choice theory. The authors state explicitly the function which they claim prosecutors seek to maximize: "their conviction rate is their performance indicator" (*Id.*, 89). That is a plausible (if reductionist) claim, but it is wholly inconsistent with the authors' thesis in the book. If a prosecutor wants to maximize a conviction rate, she should 1) go after clearly guilty people; 2) avoid novel theories; 3) avoid complex cases; and 4) avoid defendants who have huge resources to spend on defense. The book claims that prosecutors do the opposite of each of these four factors, and ignores the inconsistency.

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**Review of *The Outsider: A Journey into My Father's Struggle with Madness*<sup>\*</sup>**

by

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University of Minnesota

Book: *The Outsider: A Journey into My Father's Struggle with Madness*

Author: Nathaniel Lachenmeyer

Publisher: Broadway Books, New York

Year: 2000

How does a highly intelligent, suburban-dwelling, happily married father of one, who has a promising career as a sociology professor, come to occupy a world of poverty, homelessness, and institutionalization? Six years after breaking off contact with his schizophrenic father, Nathaniel Lachenmeyer discovers that his father has died, alone, of heart disease in a decrepit studio apartment in Burlington, Vermont. Furthermore, it is evident that the elder Lachenmeyer, Charles, was living in extreme poverty at the time of his death, and had been transient and hospitalized for extended periods in the preceding years. This discovery prompts the author to retrace the events of his father's life during the fourteen years since his parents divorced, focusing especially on the latter period during which they were out of contact and Charles' circumstances clearly deteriorated. The result of this search is the story of a son's struggle to understand the mechanisms by which he and his father moved apart and the world his father lived in as a sufferer of schizophrenia.

Lachenmeyer's memoir is an insightful and clearly genuine inspection of his life and the impact of severe mental illness on his family. At times, his writing is captivating in its simplicity and clear depiction of intense emotion, as when he describes his mother telling his father she wants a divorce: "He sits down on the bottom step and covers his face with his hands...I am crying. My mother is crying. My father is crying. Each of us knows it is over; our family has died." Lachenmeyer also effectively portrays his own role in the family's trajectory by straightforwardly describing his own flaws and speculating about the role his confusion, intense emotion, arrogance, and selfishness as a young man may have played in his father's homelessness and eventual demise. The multidimensionality of his character contributes significantly to understanding the ways schizophrenia impacts entire networks of people, as opposed to corroborating a model in which the mentally ill person suffers alone and in a social vacuum.

Furthermore — a unique feature for a memoir — the author has clearly done an impressive amount of research to reconstruct the events of the last fourteen years of his father's life. He marshals multiple types of information collected from diverse sources, including records from police, courts, and two mental hospitals in Vermont and New Hampshire. He also conducted interviews with an impressive array of people who knew his father at various stage of his life, including relatives, college professors, graduate school advisors, employers, friends, police officers, judges, and bartenders and food service providers who knew his father when he was transient.

These sources of information allow the author to triangulate his own knowledge with that of people who had contact with his father at other times in his life. Lachenmeyer presents this information in combination with other primary sources, including letters from their eight years of correspondence after Charles left home, a collection of answering machine tapes with messages recorded by his father during periods in which he was highly delusional, and newsletters Charles distributed during the same time period to a large group of subscribers describing a CIA conspiracy designed to control his thoughts. By integrating these various types of information, Lachenmeyer presents a coherent, well-documented, and authoritative timeline of events from his father's childhood in the 1940s until his death in 1995. [end page 277]

Ultimately, however, the author relies on this extensive research precisely because he had very little first-hand interaction with his father after Charles moved out of the house; Lachenmeyer could not have written this memoir without the support of other people's accounts of his father's life. This distance in their relationship generates a speculative quality in the narrative, which, in turn, has implications for the larger project and the audiences for whom it is most appropriate.

First, Lachenmeyer ties together several component of his research with speculation about what his father was thinking and how various events may have impacted his schizophrenia. For example, he asserts that Charles's interaction with his own mother, a strict adherent of Christian Science, created a situation in which he was forced to question his own understandings of reality, and that these interactions laid an early groundwork for his later struggles to discern reality when he was delusional. Later, Lachenmeyer draws repeated attention to Charles's doctoral research on double-bind theory (a social psychological theory of interaction) and his work in a mental hospital as efforts to understand his own familial origins and their impact on him. While these interpretations are corroborated by the author's mother (former wife of Charles), and they are useful and interesting points, Lachenmeyer pursues them throughout the book at the cost of minimizing their analytic leverage. He notes, in fact, that double-bind theory is "no longer widely accepted as an explanation for what causes schizophrenia...most researchers are in agreement that (it) is caused by an interaction of neurological and environmental factors" (p.73). In light of this information, the author's subsequent focus on these early events of Charles' life leave unanswered questions about the neurological basis for Charles's problems, as well as the impact of later life changes such as job changes, relocations, socioeconomic upheaval, and divorce. To the degree that Lachenmeyer is trying to understand how and why schizophrenia disrupted his family, his speculation and relatively singular focus on Charles's mother and his early research preclude discussion of other, perhaps important, topics. Perhaps more important for the author, however, is the fact that his story is much more compelling in the places where he relies on his own memories and personal experiences with his father; it is the strength of his personal accounts that draws attention to the weaknesses of the reconstructed portions of the history.

Second, there is a striking absence of details concerning the day-to-day difficulties that arise in families wherein a member is severely mentally ill. One of the primary things to be gained from in-depth examination of a single case is a detailed account of the graphic, ongoing frustrations and interactional challenges that characterize severe mental illness. Lachenmeyer is unable to provide this type of information, especially during the last six years of his father's life when they were not in contact. While it is possible that this was a stylistic choice on the part of the author, the reconstructed history he presents is rather mechanistic and generalized; it clearly illustrates how mental illness can lead to unemployment, poverty, and homelessness, but these changes are distilled, with few exceptions, from the firsthand experiences of a family torn apart by schizophrenia. This issue is particularly important because it calls attention to two additional questions which are central to the book and yet remain unclear: Is Charles Lachenmeyer essentially more similar to, or more different from, other people with schizophrenia? By extension, who is the

intended audience of this book?

In an Author's Note at the beginning of the book, Lachenmeyer presents a three-page description of schizophrenia, including its causes, symptoms, treatments, and costs to society. Based on this introduction, I assumed his primary goal was to provide an extended case description of how schizophrenia affected his father, himself, and their family relations. In many ways, however, Lachenmeyer presents his father as atypical of mentally ill people and systematically avoids elaborating unattractive characteristics that normally accompany serious mental illness. For example, he revisits on several occasions the topic of Charles's intelligence and education, and how, at times, he was able to present himself in a coherent and impressive way in the midst of an otherwise delusionary period. In this way, he was sometimes able to secure employment and avoid hospitalization. Implicit in Lachenmeyer's description of these events is the idea that his father was unique in these abilities. While Charles was [end page 278] certainly a demographic outlier to the general population in terms of his educational level, and likely in his intelligence as well, this tendency to transition in and out of lucidity is relatively common among people with schizophrenia. Based on the author's presentation of these events, it is unclear whether we are to understand Charles's experiences as typical or extraordinary of schizophrenia. If it is the former, that issue remains vague in the text, obscuring points that might be made about schizophrenia more generally. If it is the latter, the relevance of schizophrenia becomes ambiguous.

Another example is Lachenmeyer's point that his father only stole food on two occasions, despite his prolonged homelessness. This characterization of Charles as particularly honest implicitly compares him with other people who might be more inclined to steal food under similar circumstances. Again, it is unclear whether the author views his father as relatively typical or relatively exceptional among other people with schizophrenia. If Lachenmeyer intends the former, the connection between his father and the population of people with schizophrenia is unclear; if he intends the latter, the book is less instructional about mental illness and more a narrative about his particular family. It remains ambiguous, however, whether these aspects of the presentation are stylistic choices or artifacts of the reconstruction of Charles's history — is the story told this way because Lachenmeyer avoids a negative characterization of his father, or simply because they had too little interaction for him to tell that story?

On the last page of the book, Lachenmeyer writes, "If I could have one wish, it would be that my father were still alive and that there would have never been any reason for me to write this book." This quotation suggests that the primary impetus for the book is Charles's death, not his schizophrenia. While mental illness is intimately tied to Charles's homelessness and death, it seems by the end of the book that mental illness is secondary to Lachenmeyer's interest in understanding his father's life more broadly. This theme of familial struggle stands, albeit subtly, in contrast to the focus on mental illness presented at the beginning of the book and in its title.

Of course, the issues I describe here are primarily differences in emphasis, which are salient to audiences — both academic and lay — in varying ways. For example, many aspects of Lachenmeyer's work would be of interest to scholars of family, deviance, and social psychology. Most generally, this book tells a story of family trauma and how individual members attempt to manage discrepancies and distortions within the family while simultaneously attending to an outside world untouched by their drama. Lachenmeyer's emotional journey, while treated as a subtext in the book, provides a firsthand account of struggling to manage his identity as the son of a severely mentally ill man — in many ways, his story could have been told by a child touched by other types of deviance such as substance abuse, domestic violence, or incarceration. Family scholars interested in absent family members (e.g., soldiers missing in action, traveling salesmen), for example, might also find parallels in Lachenmeyer's experience of dealing with a father absent

due to mental illness. Additionally, this work provides a clear description of how mental illness can lead to homelessness, which is useful to audiences interested in stratification, urban studies, or mental disorder. Ultimately, however, these connections are tethered to aspects of Lachenmeyer's work that are secondary to his focus on reconstructing the events of his father's life. While it is useful to have a detailed articulation of how mentally ill people may experience massive changes in their socioeconomic status, *The Outsider* is not as strong a resource for understanding schizophrenia as some other pieces based on more direct, sustained interactional experience with a mentally ill family member (cf. *Angelhead: My Brother's Descent into Madness* by Greg Bottoms, Crown Press, 2000). It remains, however, an impressively-researched and introspective detailing of one person's struggle to understand events that fragmented his family and shaped his identity.

#### ENDNOTE

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