

one and the same time, the father urged the son to be a man and forever made him feel like a boy. Wills is amazed that none of the Kennedy sons ever rebelled against Old Joe, whereas the fact is that they were too weakened by his awesome power ever to consider such a course.

*The Kennedy Imprisonment* is even more simple-minded about the role of Rose Kennedy, the boys' mother. Her nobility, Wills says, lay in patience, silence, and suffering. Her children ignored her, he continues, while her husband ran over her roughshod. When Old Joe brought Gloria Swanson to their home in Bronxville, Rose accepted her presence without a murmur; years later, Wills emphasizes, she wrote of that episode in her autobiography as if she did not even understand the nature of her husband's relationship with the movie star. Wills's interpretation, in sum, reduces Rose to a plaster statuette of a madonna. Although she was revered in the Kennedy household, she was much too passive to have had any significant influence upon it.

Rose's autobiography, however, is not the chronicle of a latter-day Holy Mary. Rather, it is the work of a passive-aggressive woman who understood that making explicitly bitchy remarks was not the only way to repay one's husband for his philandering or to make his mistress look like a slut. "Don't get mad, get even" was the bristling slogan of all the male Kennedys, but Rose got even in her autobiography by concealing her vengefulness behind an impeccable courtesy.

In addition to misconstruing Rose's personality, Wills errs in thinking that the personalities of her sons were entirely shaped by their father. Even if the author of *The Kennedy Imprisonment* is ignorant, as apparently he is, of the voluminous psychiatric literature of recent decades that stresses the fundamental importance of mothering in the formation of children's attitudes toward life, could not Wills have looked about him, at the children he himself knows, and realized what a foolish argument he was making? In the case of the Kennedys, it was the mother, not the father, who raised the boys from day to day. On whirlwind trips from the Coast, Joe swept in, gave orders, and departed; Rose was left to carry out those orders. On the basis of her published letters to her sons, one must assume that "if you don't do thus and so, I will tell your father" was her controlling theme, and if it was, then the child-

ishly irresponsible risk-taking to which the boys would be given as adults becomes comprehensible. The sons of Joe and Rose Kennedy had many impressive qualities. Their fatal flaw, however, was that these naughty boys never fully grew up—and their mother as well as their father played a role in their infantilization.

That Garry Wills does not perceive, let alone understand, the psychological immaturity of Jack, Bobby, and Teddy Kennedy may have something to do with the fact that he himself as a writer seems to be frozen forever in

the role of boy wonder. Fifteen years ago, his precocious productivity and *enfant terrible* iconoclasm were the hallmarks of a brightly promising career. In 1982, his performances are shadowed with the pathos of arrested development. Significantly enough, the only Kennedy for whom he feels compassion is the paunchy, defeated Teddy. "Why is he, how *can* he be, so bad?" asks Wills, far more in sorrow than in anger. One has to wonder whether the author unconsciously senses the applicability of that question to himself. □

### THE BRANDEIS/FRANKFURTER CONNECTION: THE SECRET POLITICAL ACTIVITIES OF TWO SUPREME COURT JUSTICES

Bruce Allen Murphy / Oxford University Press / \$18.95

Edwin M. Yoder, Jr.

This already much-discussed book explores, with sometimes impressive scholarship, an intriguing institutional issue: How much do Supreme Court justices distance themselves from the political hurly-burly? How much should they?

Professor Murphy selects as the lab specimens for this inquiry two justices, Louis D. Brandeis and Felix Frankfurter, whose personal integrity has been regarded as unassailable. Murphy is forced to build his case upon a mosaic of activities each of which considered singly is usually less than shocking. A further curiosity is Mr. Murphy's historical appendix, a survey of the off-the-bench political activities of Supreme Court justices since 1789, which in listing egregious examples tends to reduce, even more, the impression that the Brandeis-Frankfurter "connection" was extraordinary.

Indeed, Mr. Murphy insists that it is not his intention to diminish the reputation for probity of either Louis Brandeis or Felix Frankfurter. Yet there is an unmistakable premise here that much of what they did off the bench and after hours was improper.

There can be only two bases for such a judgment—judicial and legal custom and tradition, and the Constitution. As Murphy himself shows,

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however, the tradition is mixed, while the Constitution as usual is silent or sibylline on the degree to which justices may permissibly function as informal political operators or advisers. Presumably everyone would agree that Justice John McLean of the pre-Civil War era offers a limiting case: "He became a sorry figure," writes Mr. Murphy, "placing his hat in the ring in every [presidential] election from 1832 to 1860 and never even getting a party nomination." Otherwise, the due constraints are obscure.

What is Murphy's case against Brandeis and Frankfurter? First, that almost from the day he took his seat on the Court in 1916 Brandeis engaged Frankfurter, for most of the period a teacher at Harvard Law School, as a confidential lieutenant in advancing political causes he could no longer personally and openly pursue—from soak-the-rich taxation to unemployment compensation to the de-monopolization of American business.

Second, that between 1916 and Frankfurter's own appointment to the Court in 1939, Frankfurter received a steady subsidy from Brandeis for expenses incidental to Frankfurter's work as an informal Brandeis operative: some \$50,000 in all.

Third—this is perhaps the gravest of the revelations—that Brandeis's private comments were often funneled via Frankfurter into the col-

umns of various publications, including the *New Republic* and the law journals. These shrouded manifestations of Brandeis's political agenda were obviously calculated to shape opinion, even on matters that might conceivably arise before the Supreme Court.

Fourth, that both Brandeis and Frankfurter, working through a network of strategically placed Washington protégés (usually former law students or clerks) continually sought to influence administration policy, especially during the New Deal period.

Finally, Murphy surveys extensively Felix Frankfurter's already familiar role as a Roosevelt adviser, both before and after Brandeis's retirement (February 1939) and death (October 1941). For instance, he discloses that Frankfurter not only advised on Lend-Lease legislation in 1941 (which was already known) but vetted some 30 drafts of the bill: a fact made apparent for the first time, he says, by the Oscar Cox diary at Hyde Park.

There are long discussions of all these activities, but Mr. Murphy concentrates on the thirties. Then, Justice Brandeis, fondly known as "Isaiah," took a dim view of the centralizing tendencies of some advisers around Roosevelt. For instance, he abhorred the National Industrial Recovery Act (except for its provisions favorable to laborers) and was mortally embarrassed when the inept Hugh Johnson, the NRA chieftain, artlessly declared in a radio broadcast in September 1934 that throughout his ordeal as NRA administrator, "I have been in constant touch with that old counselor, Judge Louis Brandeis." This, ironically,

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was a gross exaggeration; for while Brandeis had made no secret among friends of his general hostility toward NRA, "Ironpants" Johnson was not a Brandeis confidant.

The styles of the two justices in their backstage activities differed sharply. Brandeis, working from his study-apartment on California Street, usually contrived to arrange that those who came to consult with him would formally make the first overture, even when the initiative was his. At times, this pretense went to comic lengths. When Prof. Paul Freund was clerking for Brandeis, he received a message from Raymond Moley that "the justice asked to see [Cordell] Hull and I've been able to set it up." When Freund relayed the message, "Brandeis reacted to Moley's words with general alarm: 'No, Secretary of State Hull wants to see me!'"

Brandeis was remote, secretive, austere: "something between Lincoln and Christ in the strange poetical impression he leaves," recalled James Grafton Rogers after attending one of the justice's soirées, "scarcely of this world at all." Certainly, Brandeis took greater pains than Frankfurter to mute and disguise his political role. Gregarious and far from reclusive, Frankfurter functioned in Murphy's phrase as the "double Felix," a political activist who protested that he was in reality a judicial monk. Frankfurter, he writes, "relied on strong arguments, indignantly put, to stifle any suggestion that any impropriety had taken place." This was the source of the prevailing impression that Frankfurter took a "sacerdotal" view of the judge's role, so consecrated to abstinence that it often forbade even harmless unofficial comment. The impression was false.

Indeed, that the political role of both justices was far more extensive than was previously suspected Mr. Murphy shows conclusively. But must we raise our eyebrows quite as high, or quite as indignantly, as he seems to expect? I think not.

No one wishes to be an apologist for judicial impropriety. But for the most part, Mr. Murphy's evidence suggests that neither justice wandered far beyond the norms of Court history and tradition up to their time. The Fortas and Douglas episodes have certainly chilled the climate for extrajudicial adventure, but that was after the retirement and death of both Brandeis and Frankfurter.

The principal worry is not that justices may be corrupt, or may allow their political sympathies to infringe

on judgment. Both Brandeis and Frankfurter were singularly free of the vice of judicial activism, in the sense of confusing personal bias with the law. No one can be comfortable with Mr. Murphy's disclosure that Brandeis occasionally seemed to issue veiled threats that he would use his judicial powers to reinforce his political advice, if disregarded. It would be quite difficult to establish, however, that he did so; quite the contrary, in fact. Notwithstanding a distaste for the policies of the Agricultural Adjustment Administration (which had prompted Brandeis to hint to its chief counsel, Gardner Jackson, that he might "declare war" on the New Deal) the justice voted in the test case to uphold the act. The most that Mr. Murphy can say is that since Brandeis did not write a dissent, but joined Justice Stone's, he might have been inhibited by informal discussion of the AAA.

The real concern is that secret political activities might weigh upon the conscience of a justice, forcing him to mysterious and unexplained withdrawals from cases. That seldom happened with either Brandeis or Frankfurter; nor was either too busy advising to carry a full case load.

Professor Murphy's case, on occasion mildly overstated, becomes extravagant only once. He writes, remarkably: "We must leave it to psychohistorians to comment on whether or not the extreme judicial restraint of Frankfurter's later years on the bench represented an attempt to assuage a guilt over his past extensive political activity." Psychohistorians tempted by this invitation would probably make even greater fools of themselves than usual. The doctrine of judicial restraint is not a matter of the psyche but a solidly founded doctrine, carefully formulated in a tradition that reaches from Holmes to Frankfurter and, later, Alexander Bickel. It is unlikely that probing in so subjective a light would be useful. It would be preposterous to imagine, for instance, that it was some "compensatory feeling" that moved Felix Frankfurter to his embittered personal dissent in the second flag salute case (when, speaking as a member of "one of the most persecuted religious minorities in history," he upheld a state's prerogative to force observance of a patriotic gesture upon the children of Jehovah's Witnesses).

Since justices of the U.S. Supreme Court are notoriously, and I think properly, the jealous guardians of their personal ethics, they will undoubtedly continue to set their own

standards and keep their own counsel about what they do and why. Those standards will vary in strictness with the climate of the age; and Mr. Murphy is safe enough in supposing that the climate is more restrictive now. But the unwritten rule is that war or some other extraordinary national emergency licenses Presidents to demand of justices more expansive unofficial roles, both public and private: Not only the advisory roles taken on by Brandeis and Frankfurter, under Wilson and

FDR, but Justice Robert's chairmanship of the Pearl Harbor inquiry or Robert Jackson's participation in the Nuremberg war crimes trials.

These demands will probably be obliged, although some observers on and off the Court will disapprove. Of the more informal ventures into politics, we are unlikely to know much while they occur. So far, what we haven't known—including the revelations of this book—has done no demonstrable harm to the Court or to the country. □

POLITICAL PILGRIMS:  
TRAVELS OF WESTERN INTELLECTUALS  
TO THE SOVIET UNION, CHINA, AND CUBA  
Paul Hollander / Oxford University Press / \$25.00

Matei Calinescu

A political century like ours has long been in need of a political *sottisier*, which, according to the standard French definition, is a collection or dictionary of memorable stupidities, particularly those uttered by well-known authors. Among other things, Paul Hollander's book contains such a *sottisier* in its copious selection of political gems produced by Western intellectuals who, in search of Utopia, traveled to the Soviet Union, China, Cuba, and other Third World countries between 1928 and 1978. (Probably only the sheer overabundance of material has prevented Hollander from considering post-World War II Eastern Europe.)

Intelligent people, of course, can and do say countless foolish things about all sorts of matters. One might even argue that to be constantly intelligent is to be socially ill-mannered, if not intellectually unbearable. Wittgenstein once complained that a colleague of his, an English philosopher, had one major defect: He was "intelligent all the time." Certainly there are types and degrees of foolishness, and they range from the innocuous to the truly harmful. Political stupidity usually falls within the latter category, particularly if associated with high-minded idealism. It is not merely that idealism or utopianism in politics is bound to fail in our (thank God) imperfect world.

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What is much worse is that it refuses to recognize this failure and, when the opportunity is there, it dogmatically proclaims this very failure a success. And so, while imbecilic political statements might make us laugh, their final effect is disquieting. Political foolishness, after all, very often goes hand in hand with renacious wishful thinking, with what Hollander calls "selective perception" and "selective tolerance," with a strange kind of "provisional" dishonesty in the name of "absolute" honesty, with a will to self-delusion that Czeslaw Milosz has illuminated in *The Captive Mind*. In other words, political foolishness all too frequently derives from a moral stupidity that coexists with a certain intellectual brilliance, but nevertheless condones, promotes, and even supports—whether wittingly or unwittingly makes little difference—both political and moral evil. And since the major moral-political evil of our century is totalitarianism, it is natural that most forms of contemporary political senselessness revolve around the themes of totalitarianism, as manifested in what Jean-François Revel calls the "totalitarian temptation."

As political *sottisier*, therefore, *Political Pilgrims* is a profoundly disturbing book, its hilarity notwithstanding. When Edmund Wilson notes, in his *Travels to Two Democracies* (1936), that Soviet citizens strolling in a "park do really own it and are careful of what is theirs," and then adds that "a new kind of public consciousness has come to