



First Things First

Is it right to entertain subversive thoughts?

First Things, a New York-based monthly magazine, caused a stir with a recent symposium. Quite an achievement. Normally, such abstractions indulge the authors more than they interest the readers. But Father Richard Neuhaus, the editor-in-chief, has the knack of liveliness, and here was a symposium that was read. The heated reaction to it tells us something interesting about contemporary politics. The premise was that the judiciary has done what the political branches of government will not do: Judges with life tenure have “enacted” the liberal agenda by constitutional interpretation, thereby overriding politics. In so doing, they have raised questions about the legitimacy of the U.S. government.

The contributors were Robert Bork, who has frequently criticized judicial activism, most recently in his best-selling book, *Slouching Towards Gomorrah*; Russell Hittinger, a professor of Catholic Studies at the University of Tulsa; Hadley Arkes, a professor of jurisprudence at Amherst College; Charles W. Colson, chairman of the Prison Fellowship; and Robert George, associate professor of politics at Princeton University. Fr. Neuhaus is a former Lutheran minister who was ordained a Catholic priest in 1991. Today he is parochial vicar at the Parish of the Immaculate Conception in Manhattan.

He described in an introductory essay “an entrenched pattern of government by judges that is nothing less than the usurpation of politics.” The question he

was raising, “in full awareness of its far-reaching consequences,” was whether we have reached or soon will reach the point “where conscientious citizens can no longer give moral assent to the existing regime.” We are not accustomed to speaking of our own government as a “regime,” he noted. Regimes are what other nations have. “The subject before us is the end of democracy.”

Bork discussed such court rulings as *Planned Parenthood v. Casey* and *Romer v. Evans* (declaring unconstitutional a Colorado amendment denying privileged status to homosexuals); and the prospect of court protection for homosexual marriage and euthanasia. “Perhaps an elected official will one day simply refuse to comply with a Supreme Court decision,” Bork wrote. “That suggestion will be regarded as shocking, but it should not be. To the objection that a rejection of a court’s authority would be civil disobedience, the answer is that a court that issues orders without authority engages in an equally dangerous form of civil disobedience.” (More recently Bork has written to Neuhaus emphasizing that he does not question the legitimacy of the government. The whole subject will be explored further in the January issue of *First Things*.)

Hittinger wrote that “it is late in the day,” and either “right-minded citizens will have to disobey orders or perhaps relinquish office of public authority, or the new constitutional rulers will have to be challenged or reformed.” Chuck Colson: “The fervent and ceaseless prayer of every citizen should be that the discussion of resistance and revolution remains an academic exercise... We dare not at

present despair of America and advocate open rebellion. But we must—slowly, prayerfully, and with great deliberation and serious debate—prepare ourselves for what the future seems likely to bring under a regime in which the courts have usurped the democratic process by reckless exercise of naked power.” Robert George reminded us that Pope John Paul II has written that “abortion and euthanasia are crimes which no human law can claim to legitimize. There is no obligation in conscience to obey such laws.”

These were among the highlights. The symposium filled twenty-five pages, and its tone was above all moderate and academic. But the response was strong. The news of that response came in the *Weekly Standard*, a neoconservative magazine whose staff members “are intertwined with the dispute by familial bonds, professional relationships, and ties of friendship,” as the writer David Brooks noted. Headlined “The Right’s Anti-American Temptation,” the article quoted Peter Berger, a sociologist of religion, and the historian Gertrude Himmelfarb, both of whom had resigned in protest from the *First Things* editorial board. “To explore whether the American government is legitimate is a slippery slope,” said Berger, while Himmelfarb thought that any analogy with the American revolution was “absurd and irresponsible.” Another protester was former *Commentary* editor Norman Podhoretz, who saw the symposium “as an outburst of anti-Americanism reminiscent of the anti-Americanism found among left-wing intellectuals in the 1960’s.”

Was there not a certain disparity of tone between the symposium participants, murmuring mildly in their dependent clauses, and this vehement response? Richard Brookhiser in his *New York Observer* column used the word “over-

reaction,” and Neuhaus thought that was the right word. But Himmelfarb told me that she found the symposium “very nearly hysterical.” It was a “very passionate statement,” and if abortion is to be the litmus test, then Iran and Iraq, which both prohibit abortion, become “the only legitimate regimes.” We all rejected the radicals’ claim that America was illegitimate in the 1960’s, she said, appealing to unity, and we shouldn’t adopt their arguments now “on this one issue of abortion.” In discussion with Neuhaus, Podhoretz had also brought up the 1960’s, a battleground he did not want to revisit.

Richard Neuhaus responds: “We cannot let the madness of the ‘60’s set the agenda for public discourse today.” I would put it somewhat differently. We, too, disagree with the ‘60’s radicals. But it was their agenda that we disliked, not necessarily their methods. Conjuring up “the 1960’s” as a mad time that we do not want to revisit confuses methods and goals.

Oddly, perhaps, Himmelfarb accepts the moral legitimacy of civil disobedience, which she regards as a proper response for those who feel strongly about some issue. But “you do that as an individual, and you take the consequences.” Neuhaus and company “want to suggest that we all should be taking that position.” She approves of rebellious *action*, it seems, but fears (some) verbal persuasion, which may be irresponsible precisely because it is constitutionally protected. Neuhaus should have broken the law himself—that would have been “the moral thing.” You do whatever it is that is illegal, Himmelfarb said, “and then you go to jail, the way some of those people in the ‘60s did—Berrigan or whoever.” Here that decade reappears as a moral model.

Martin Luther King and the Berrigans did want others to join their cause, of course. Neuhaus was in the civil rights movement, and proudly “went to jail with Martin Luther King.” But he claims that his symposium was not a call to civil disobedience. “If and when that such a call is appropriate, then I certainly expect that I would be involved in the response,” he adds. Of course, one great difference between the civil rights movement and

the restlessness provoked by today’s judiciary is that the former was vast, and hugely popular with the intellectual classes; the latter is tiny and unpopular.

The *First Things* contretemps suggests that the neoconservative agenda now diverges quite considerably from that of the conservative mainstream. The shared agenda provided by the Cold War is a thing of the past. Neoconservatives may not much like the Court’s activism, but they do not much mind it, either. Furthermore, the Court’s persistent tendency is to centralize power (they overturn state laws, almost never federal laws), and that the neocons do not mind at all. Above all they fear the disorder that questions of legitimacy might stir up. They want to preserve a strong central government that is interventionist both at home and abroad.

Meanwhile we should be realistic enough to see that the Left has utterly triumphed in the cultural war. Many conservatives don’t want to hear this bad news, and they have been too busy going to victory parties to notice. Note well: the *New York Times* never gloats, but always warns of a resurgent right, however phantasmagorical. The first order of business is to appreciate that we are losing slowly—even if Bill Clinton was forced to adopt “our rhetoric” in the election. It’s a tiny triumph for the sheep to claim that the wolf must wear sheep’s clothing.

“Decline runs across our entire culture,” Bork warns in *Slouching Towards Gomorrah*. Having described a book burning at Yale, he ends with the comment that “the charred books on the sidewalk in New Haven were a metaphor, a symbol of the coming torching of America’s intellectual and moral capital by the barbarians of modern liberalism.” The radicals, since tenured, are now engaged in dismantling intellectual life at the universities. The media quietly applaud. A majority of the Supreme Court seeks the approbation of the intellectual classes.

Neoconservatives disagree with this analysis. “I think we have won,” says Himmelfarb. “The ‘60’s did not win. Those people had to retreat.” Was Bork too pessimistic, then? No, she liked his book, and wrote a blurb for it. But it is important for people like Bork to be able to write a “resounding critique” of our current sit-

uation without being put in the position of saying “that America has gone... what? Fascist?” as Himmelfarb put it.

Neuhaus cannot see where we are supposed to be having the better of it. “Look at education, look at family policy, look at abortion, look at doctor assisted suicide, look at affirmative action. Where are we winning?” We win some arguments, perhaps, but in terms of policy outcomes, liberal victories are almost never rolled back. Welfare reform? Let us see what happens when they try to thrust pregnant moms into the work force. Government jobs programs will expand, and they will turn out to be more programs than jobs.

“Steady as you go,” say the neocons. You’re winning already. Don’t rock the boat, don’t risk being labeled extremist. Don’t delegitimize yourselves by moving over into that dark terrain off to the right. The neocon position in this regard is congruent with that of the liberals, who forever warn of right-wing victories and an imminently resurgent Christian right. Sometimes it’s not clear who applies the labels and who warns of their application. In any event, most conservatives like being told they are winning and obediently troop off to their victory parties. Meanwhile the liberals take their numerous and all too real judicial victories to the bank.

One consequence of the neoconservative policing of opinion is that the spectrum of respectable opinion creeps ever leftward. So does the political debate (now we have reached gay marriage). Neocons wield no influence over the Left, which is too vast and variegated an entity. In any event it rejects rules of ideological etiquette and is unperturbed by such cries as “distasteful!” (leveled at Neuhaus). Liberals say: No enemies to the Left. Conservatives are told: No friends to the Right. This asymmetry is to be found all over the Western world—the Christian world in particular. Liberals understand elementary mechanics. Those further from the center enjoy greater leverage, and make the liberals look moderate by comparison. Guilt by association does not exist on the Left. Those on the Right, on the other hand, are afraid of being labeled. This political asymmetry explains the drift toward cultural dissolution. ❧

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hen Bill Clinton announced the resignation of Leon Panetta, he paid lavish tribute to his departing chief of staff. "He has become my great friend," the president

said, "more than my countryman, more than my fellow Democrat, more even than my fellow worker." Clinton paused a moment before bestowing the ultimate compliment: "In the language of his people, he is my *paisan*." After the heartfelt hug that has become the administration's male-bonding trademark, the president turned to Panetta's successor, Erskine Bowles. The contrast was striking. A technocrat with none of Panetta's public warmth, Bowles stood stiffly at the microphone and pronounced himself a man of "organization, structure and focus" who would bring "clearly-defined goals, objectives, and timelines" to the White House.

In Panetta, the president was losing one of his best representatives: the outgoing chief of staff was a skilled speaker who could effectively plead the administration's case on the TV talk shows. He also had valuable connections on Capitol Hill, where he served as congressman from California for sixteen years. And he brought some measure of organization to the chaotic Clinton White House. But for all his importance, Panetta never played a major role in one critical White House function: controlling the damage from the array of scandals plaguing the administration.

It's a job that promises to be even more important in a second Clinton term than in the first. If that is the case, the president will need a chief of staff who has proven he can take ethical shortcuts, keep close tabs on investigations, and stonewall Congress. If his history in Washington is any indicator, Erskine Bowles is the man for the job. Bill Clinton may have lost a *paisan*, but he gained a co-conspirator.

Bill's Small Business Man

Erskine Bowles belongs to a well-known and politically active Southern family. His father, Hargrove "Skipper" Bowles, was a businessman and Democratic activist who ran unsuccessfully for governor of North Carolina in the 1970's. His wife, Crandall Close Bowles, is heir to a giant South Carolina textile fortune (she was also a classmate of Hillary Rodham Clinton's at Wellesley). Bowles's brother-in-law, Elliott Close, ran a losing race against 93-year-old South Carolina Senator Strom Thurmond last November. For his part, Erskine Bowles started an investment company that made him a millionaire at a fairly early age. He has also served on a variety of boards and civic projects in his home state and is—along with two brothers-in-law—among the owners of the Carolina Panthers NFL football team.

In 1992, Bowles volunteered to raise money for Bill Clinton. Bowles was no long-time Friend of Bill; he had never met the Arkansas governor before the campaign. But Bowles raised a lot of money, and by all accounts the two men, Southerners who outwardly seemed to share little except a passion for golf, became fast friends. It certainly didn't hurt that Bowles made a \$100,000 interest-free loan to Clinton's inaugural committee—to go along with a second \$100,000 loan made by his wife's company. When Clinton moved to the White House, he

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