

antagonized them and helped lead to the failure of that important meeting.

Gaddis' book provides surprising and intellectually refreshing insights on the origins of the Cold War. He acknowledges that due to the great differences in the political perspectives of the American and Soviet leaders, the Cold War may have been virtually unavoidable. However, Gaddis concludes that if responsibility for the

Cold War must be assigned, the greater blame must be placed with Stalin because he had no Congress, public opinion, or press to contend with.

This is one of the best documented books I have read on the Cold War and believe it should be read by anyone interested in this vital era of American history. In my opinion this book provides considerable evidence that a far less hazardous relation-

ship with the U.S.S.R. could have been attained with a more open and rational foreign policy by the Truman Administration. □

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viewpoint

RICHARD'S LEGACY: NIXON'S COURT AND CRIMINAL JUSTICE

Franklin Roosevelt left to America not only the legitimated gargantuan State, but also the New Deal Supreme Court, which for years continued to justify Uncle Sam's ways to men, approve government meddling, and meddle on its own. From FDR's day until very recently, the biting legal theorizing of Justices Black and Douglas, and the fuzzy liberalism of Chief Justice Warren, touched America deeply. Black, now dead, and Douglas, barely surviving, were the presiding geniuses of the decades-long "Roosevelt Court," which, like the "Roosevelt Revolution" (as conservatives call the detested New Deal), trudged on long after FDR's death.

In 1969 the Roosevelt Court (or the Warren Court, as its later incarnation is known) began to disintegrate, as President Nixon exercised his prerogative and experienced the rare privilege of transforming the Court through appointment of four Justices, who, with one Kennedy appointee—Justice White—comprise now a new, if narrow, majority.

A majority to what end? "Against the Law," says Leonard Levy in his new book of that name, subtitled *The Nixon Court and Criminal Justice*.

I sat at Professor Levy's feet, so to speak, and studied Constitutional Law under him in grad school. I bedeviled him, too—greeting the beleaguered man on more days than he probably likes to remember, with little aphorisms from his cordially detested reactionary Justices, the blessed Willis Van Devanter and James McReynolds.

With his other students I exulted for him when he was awarded the Pulitzer in history for his brilliant *Origins of the Fifth Amendment* in 1969.

From him I learned the invaluable Levy's Law: It all depends on whose ox is being

gored. Meaning, simplified drastically: whatever their rationalizations, the Justices juggle the precedents and rule often according to their own values. No surprise, you say. Sure, but the American likes to think that his Constitution is somehow immutable, that the Supreme Court merely extracts from it the guideposts for judicial rulings forevermore.

Not quite so. Here Levy casts a cold, glaring eye at the "result-oriented adjudication" of the Nixon Court. He finds it "fallen into the control of conservative activists"—a lovely oxymoron, considering the vaunted conservative philosophy of judicial restraint—"whose decisions cannot be explained by any form of strict construction." Levy finds the Nixon Justices "no damn good as judges"; "in them the judicial temperament—disinterestedness, balance, careful reasoning—flickers weakly."

Levy's is a damning book, scrupulously researched, and contrary to what conservative worshippers of the Nixon Court would like to believe, neither distorted nor written to eviscerate this Court by way of praising its predecessor. Levy has criticized the Warren Court in a 1972 book; he attacks "judicial crusaders" whatever their ideology.

Against the Law examines recent Court activity in regard to search and seizure, self-incrimination, the right to counsel, trial by jury, and the death penalty. Perhaps one day Levy will write on the Nixon Court rulings on abortion and pornography, the latter a subject he inflicted on me for the doctoral dissertation I ground out under his impossibly demanding direction.

But there's quite enough in *Against the Law* to accentuate his points, of which a major one is that this Court has gone about its "quiet business of creating its own regressive 'revolution' in the criminal law, striking a pose of doing no more than refusing to open new frontiers"; mean-



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while, "it has systematically closed old frontiers and made daring incursions that cripple many rights of the criminally accused." Levy presents nearly 500 pages with which to argue, and from which to derive a closely reasoned, if arguable, case against the Nixon Court.

Well done, Leonard, and huzzahs to Harper and Row for publishing it now, just when America, short in memory, is putting Richard Nixon behind us, oblivious to the fact that Nixonism lives on through his Court. Quoth the former President: "The decisions of the Court will affect your lives and the lives of your children for generations to come" □

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TRYING OUT RESTITUTION

The concept of offenders making restitution to their victims is being tested in the Georgia prison system. Several methods of restitution are being considered for use in the two-year program, including civil action for compensation, a lien by the victim on the offender's future liberty, a portion of the fine paid to the victim, a system in which the offender is required to work and pay part of his wages to the victim, the attachment of prison earnings, leaving the offender at liberty but attaching his earnings, and monetary adjustments after trial.

Some 600 probationers are being assigned to four community restitution centers in Atlanta, Columbus, Rome, and Savannah. The centers will provide probationary supervision and job placement services, and will ensure that the offenders pay the required restitution. Georgia officials estimate the cost per resident will be about \$1060 per year, compared with the \$4500 per resident cost in the state prison.

As another part of the innovative program, the state plans to overhaul its prison industry program. The plan calls for establishing a semi-private prison, set up by private industry, which would pay for the housing, subsistence, and salaries of inmates. The state would provide the inmate labor force, security, and a graduated release program for the inmates.

SOURCE:

- "Georgia Forced to Seek Alternatives," *Criminal Justice Newsletter*, July 15, 1974.

VICTORY FOR IBM

A significant milestone in antitrust law was reached in January when a Federal appeals court reversed an antitrust judgment in a case brought against IBM by the Telex Corporation. Telex had made a name for itself in data processing by producing inexpensive copies of IBM computer peripheral devices—often by stealing IBM trade secrets. When such policies did not produce the expected success, Telex decided it might be more profitable to sue IBM on charges of monopolizing the computer peripherals business and engaging in predatory competitive practices (for trying to compete against copies of its own machines). The trial court had originally con-

ceded Telex's thefts and awarded IBM \$21.9 million in damages, but had also found IBM guilty of monopolistic practices, for which it was ordered to pay Telex \$259.5 million.

The appeals court, however, has struck a resounding blow for justice and the free market. It upheld the finding of willful theft of IBM trade secrets, but reversed the trial court's finding of monopolistic practices by IBM. It found the trial court's definition of the "relevant market" to be in error, and stated, "This fundamental misconception affected the remainder of the court's decision." Further—and more important—it ruled that IBM's competitive responses to Telex were not "predatory" or "monopolistic" as these terms have been used in antitrust history: "The evidence establishes that IBM's actions constituted valid competitive practice." The judge noted that the trial court had admitted that IBM's specific actions were wholly lawful in themselves, but supposedly "became unlawful only because of IBM's size." This pernicious doctrine has now been rejected.

The January appeals court ruling came on the eve of IBM's biggest challenge: the beginning of its trial on Justice Department charges of monopolization of the data processing industry. The Justice Department's case rests on premises similar to those advanced by Telex, and rejected by the appeals court. IBM's pretrial brief sets forth an impressive case that its success in electronic data processing has been earned "through competition on the merits—new product innovation, superior service, and price competition." The government's case, says IBM, "is at bottom an attack on IBM's success through competition," and reflects the view that "success itself must be punished—and the consumer be damned." These views are supported by Solicitor General Robert H. Bork who has publicly stated that "the government's suit stands revealed as an attack on outstanding commercial success as such." IBM is mounting a carefully-researched, well-documented, principled defense of free and open competition, supported by such free-market economists as George Stigler, Sam Peltzman, and Hendrik Houthakker (all of whom are designated trial witnesses or economic experts for the defense). The results of the long trial will be a landmark ruling for or against justice and free competition.

SOURCES:

- *Telex Corp. v. IBM*, U.S. Court of Appeals, Tenth Circuit, Jan. 24, 1975.
- "\$259 Million Telex Award Against IBM Overturned," AP (Denver), Jan. 25, 1975.
- "IBM Says Government Hasn't a Case on Competition Issue," *Datamation*, Feb. 1975, p. 69.
- "Pretrial Brief for Defendant IBM," *U.S.A. v. IBM*, U.S. District Court, Southern District of New York, Jan. 15, 1975.

TWO STEPS FORWARD, ONE STEP BACK

Socialist attempts to implement the "ideal" of "from each according to his ability, to each according to his need," have failed time and again, reflecting the reality that people work best when motivated by their own self-interest. In recent months this truth has been reconfirmed by the world's largest socialist nations: the USSR and the People's Republic of China.

In January *Pravda* carried an article by research scientist Yuri Yoloviev calling for a major economic drive to produce small-scale garden and farmhouse implements to raise productivity on the country's private farm plots. Though they comprise less than 4 percent of the USSR's arable land, the private plots produce 35 percent of the country's meat, 37 percent of its vegetables, 63 percent of its potatoes, and 20 percent of its wool. All work done on private plots must be done in people's spare time, after putting in full-time work on the state-owned collective farms. Yoloviev admitted the vital importance of the private plots and pointed out that their tremendous production is achieved, not only with spare-time labor, but with completely obsolete tools. He called for production of small hand tractors, drying ovens, juice presses, and improved cooking stoves to further expand the private farms' productivity.

Reality is dawning on the Chinese leaders as well. The new national constitution announced in January for the first time specifically guarantees people's right to work for their own and their families' benefits, within certain broad and undefined limits. Industrial workers have been granted the right to work for their own benefit, so long as their private labor does not interfere with state enterprises or their work for such enterprises. Farmers have for the first time been guaranteed the right to till private plots for their own profit and to make small manufactured articles for sale. Chinese residents of Hong Kong report that their relatives on the mainland are suddenly eager to receive money from abroad and are quite excited over the new economic freedoms. The Chinese government has finally faced the fact that whenever restrictions on individual enterprise have been lifted over the past 25 years, production has soared. "Chinese ingenuity invents a host of small ways to make life better when the entrepreneurs know they will benefit directly and immediately from their labors," reports correspondent Robert S. Elegant from Hong Kong.

Only Cuban officials are still keeping their heads in the sand. Castro's government has now made it a crime for individuals to