

This is  
the ACLU  
Design  
Handbook.

**ACLU**

First edition, September 2017

## **Foreword**

*Michele Moore*

*Chief Communications Officer*

This handbook is the next step in the ACLU's ever-evolving journey as we dare to create a more perfect union. Our new visual identity is an expression of who we are and how we want to change our country.

We express ourselves visually as well as verbally. This handbook gives us visual tools we all can use to communicate effectively. Its companion, the tone of voice guide, offers verbal tools to do the same.

This work is for everyone, no matter who you are or what you do. With these resources, everyone at the ACLU will be able to share our messages and tell our clients' stories like never before.

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# INTRODUCTION

*We are living in the  
Divided States of America.  
Political, economic, and  
cultural divides are widening.  
Fatalism is rampant.*

*Enter the ACLU.*

## **Our Story**

The ACLU is an organization of people who believe in the power of action. Whether in the courts, statehouses, or Congress, we fight to defend the rights that the Constitution guarantees to all of us — regardless of who we are, where we come from, whom we love, or what we believe. Together we take up the toughest civil liberties challenges of our time. We seek to be the place where people can come, no matter their political affiliation, to courageously take action. We seek to inspire those who want change to become the ones who make change.

Today, people who are interested in supporting the ACLU do so primarily donating money. And while money is obviously important, people want

to do more. People don't want to just support our actions; they want to take their own. And we want that too. Because of this, we're expanding what it means to be an ACLU member and supporter. We're evolving from an organization of lawyers and advocates fighting for the people into a larger coalition of people fighting for what's right together — for all of us.

We seek to be the place where people can come, no matter their political affiliation, to courageously take action. We seek to inspire those who want change to become the ones who make change.

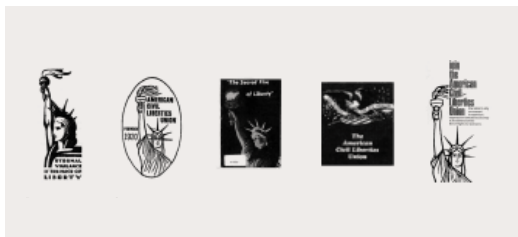
This isn't about one person. It isn't about one party. It's not about taking sides. It's about all of us, coming together to make change happen.

*We the people dare to create a more perfect union.*



## Design and the ACLU

The ACLU is a group of people working to make change. We are not a corporation. It makes sense that for many years, the ACLU had no marketing, no advertising, no design, and not even a logo. The Statue of Liberty was our only symbol. Why do we — a team of lawyers, policy advocates, and communicators working to advance social change — need to think about branding and marketing?



ACLU symbols from the 1930s through the 1950s.

In the second half of the 20th century, as visual culture in America evolved, so did the visual communications coming from the ACLU. People working all over the country created their own logos and posters and t-shirts, all with their own ways of thinking about the ACLU. That work was exciting. It was exuberant. Looking back now, it may seem visually disjointed — dedicated people moving in many different directions.



ACLU communications in the late 20th century.

In 2002, the ACLU became visually united for the first time. That system, featuring an iconic depiction of Lady Liberty and a newly consistent design, brought the ACLU up to date with the visual culture of the time.



National and affiliate logos from the identity system launched in 2002 (designed by a team led by Sylvia Harris, Fo Wilson, and Leila Taylor).

Since then, as technology has evolved, so has our culture. Not only do we encounter more visual imagery than ever before, but also we see it in more places. Social marketing and social media emerged. Today, non-profits like the ACLU use visual marketing to change perceptions and shift conversations.



At this time in history (and this time in the ACLU's history), it's more important than ever to reach out to as many people as possible in as many ways as possible. We must always talk to those who disagree with us, those who have never heard of us, and those who continue to stand with us.

The visual identity in this handbook is bold, colorful, and dynamic. It's engaging and flexible enough to work on every kind of page and screen. But it is also as meaningful as it can possibly be. We want to reach more people while always staying true to our values.

Some call this branding. But we call it our identity. With the tools in this handbook, we are not just expressing ourselves. We can engage new and broader audiences in our work — as we, the people, dare to create a more perfect union.

# IDEAS

*What our visual identity means*

Everything that we do at the ACLU comes out of values that we all share. That often means interpreting the Constitution — and drawing on our experience and expertise to take meaningful action.

With the guidelines in this handbook and the tone of voice guide, each of us can use the skills we have to make our communications better — whether we are publishing a report or making a protest sign or designing an ad.

The ACLU visual identity is built on a foundation of ideas that give meaning to our design choices. This section of the handbook is an introduction to those ideas and the thinking behind them.

*right*

Our inspiration:  
protest signs like these from  
the Civil Rights Movement

*opposite*

Declarations in the  
GT America type family



# WE ARE RESOLUTE

Like generations of changemakers before us, we are firm in our convictions. *We make bold and defiant statements, and we want them to be heard.* This family of typefaces (called GT America), makes our messages clear and assured. Its many styles embrace a variety of voices while staying unified.

NEVERTHELESS  
WE PERSIST

TIME TO  
**ROLL UP  
OUR  
SLEEVES**

**DISSENT  
IS  
PATRIOTIC**

I AM A  
DREAMER.  
**LET ME  
DREAM.**

WE  
KNOW  
**OUR  
RIGHTS**

**SEPARATE IS  
NEVER  
EQUAL**

**WE SHALL  
OVERCOME**

*right*

Our inspiration:  
interpretations of patriotism  
like artist David Hammons'  
*African American Flag*

*opposite*

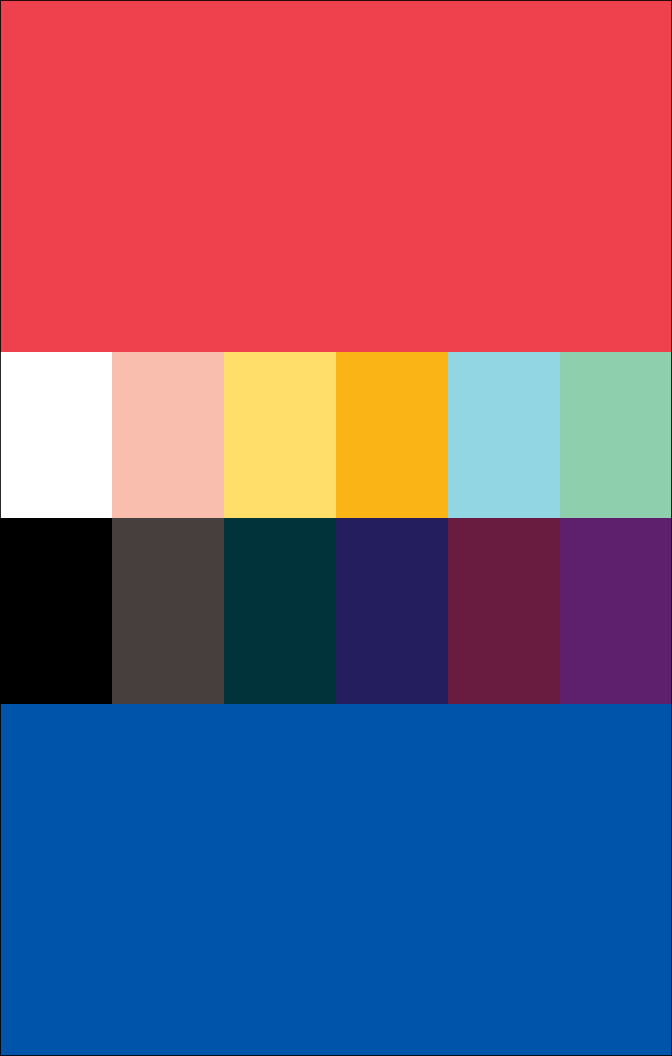
Our official color palette  
(see p. 90 for more)



# WE ARE PATRIOTIC

America is home to many different people and ideas. We honor our past, but we keep moving forward. We are inspired by movements throughout history that have adapted patriotic symbols to celebrate more nuanced perspectives and experiences. We do the same. We are not just red, white and blue. *We are red, everything, and blue.*

LEFT: KNUJLUNK AT ENGLISH



*right*

Our inspiration:  
engravings like this one  
on the one dollar bill

*opposite*

Our modern engraving  
treatment (see p. 135)

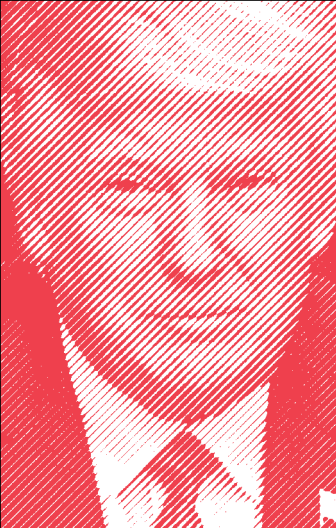


# WE ARE HISTORIC

*The ACLU has made history for nearly a century — and together with our members and supporters, we continue to make history every day.*

Taking inspiration from historical engravings, this distinctive image treatment pays tribute to our past while capturing the energy (and embracing the technology) of today.



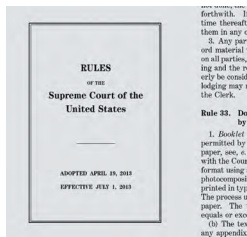


*right*

Our inspiration:  
the Rules of the Supreme  
Court (especially rule 33)

*opposite*

An example of Century  
Schoolbook in use  
(see p. 108)



# WE ARE SERIOUS

We create change through litigation, advocacy, and communications. *We back up everything we stand for with analysis and expertise.* This typeface, Century, adds an authoritative and informational tone to our communications. It's a classic workhorse of American typography — and it just so happens to be the typeface required by law for all Supreme Court briefs.

to private sector employers in  
15 major cities.<sup>37</sup> In cities that  
fair chance policies, job opportu-  
le with criminal histories have ex-  
cantly. When Minneapolis banned  
7, more than 50 percent of job  
riminal convictions, whose records  
y marked as a “concern,” were  
c employment in the first year.<sup>38</sup>  
n, North Carolina, 96 percent of  
riminal records applying for city jobs  
nded for hire.<sup>39</sup>

ack record with “ban the box” has  
g, this policy alone isn’t suffi-  
scrimination if employers make  
hat applicants of color are more  
a criminal record.

## Negligent Hiring Liability

rs refuse to consider applicants  
records for fear that such employ-  
mit crimes on the job. While the  
suits filed against employers for  
g is very small, it is a concern  
ress sensibly.<sup>44</sup> Negligent hiring  
a considerable risk for employers  
r chance hiring, particularly if  
ow EEOC guidance. In fact, one  
ed “[n]o research has shown that

Georgia, Indiana,  
Michigan, New Yo

In states that all

In Durham, N

96%  
of those with c  
applying for ci  
recommended

gent hiring, the Fe  
help shield employ  
that cover the hiri  
nal histories. The  
Department of La  
for individuals wh  
or past drug addic  
for the position.<sup>48</sup>  
and assess an indi  
risk of liability. If a  
the employee after  
apply for private b  
not have been ava  
of the Federal Bor

right

Our inspiration:  
all the people who take action  
to create a better union

opposite

How the elements of  
our visual identity come  
together in layers



# WE ARE LAYERED

Our country has many voices. Likewise, the ACLU represents many people and many issue areas. Our visual identity is inclusive, too. It's built on this idea: *We can be a team without being the same.* We celebrate these differences and layers, but we remain grounded in the values we share.

LEFT: DAVID MORIYA; RIGHT: ELMOREE



**KNOW  
YOUR  
RIGHTS**

**WE'RE  
STRONG**

*right*

Our inspiration:  
this old logo from our archives

*opposite*

Type designer Tobias Frere-Jones drew our new logo to be more contemporary and versatile



# WE ARE TOGETHER

The ACLU logo, partially inspired by one from our history, expresses a very simple idea that anyone can understand, regardless of our culture or experience or identity or point of view. And that shared understanding helps all of us stand together. This is not a new idea. But it is a powerful one. *Out of many, we are one.*

**ACLU** Maine

**ACLU**

**WE THE PEOPLE**  
ACLU

**ACLU**

SHARE THIS VIDEO!



**ACLU**  
IL



**ACLU**

**ACLU**

Texas

# EXAMPLES

*The visual identity at work*



Even with a shared set of values and visual ideas that represent them, there are many ways to use the elements of our system. And while our visual identity encourages freedom, we also need to speak with a strong, unified voice.

This section of the handbook is full of examples of how our ideas can be put into action in the form of sample items like social posts, video graphics, and campaigns, among others. They are here to help and inspire you.

You'll see that like the ACLU itself, these samples are diverse, but they have some things in common. They are bold. They speak clearly. They are dynamic. And they are both accessible and surprising.

## Social Graphics

This is ACLU red and ACLU light orange. See p. 90 and 152 for more on colors and combinations.



# IMMIGRANTS WELCOME

**VICTORY**

**ACLU**

A slightly angled text box creates a feeling of energy and movement. Overlapping the headline shows depth, but make sure everything is readable.

CELSO FLORES

This is a social post about winning an important court case. We want to capture the mood: celebratory, energized, and assured.

**Do the colors show who we are?** p. 90

ACLU red and ACLU light orange are a bright, punchy combination.

**Do the images tell engaging stories?** p. 128

Lady Liberty is a natural choice. And the modern engraving treatment makes it distinctive.

**Is the typography clear and confident?** p. 102

This headline is a bold declaration, so it's in GT America, in all caps.

**Is the layout dynamic and multilayered?** p. 148

The layered image, headline, and “victory” create depth and texture. It's a chorus of voices celebrating, not a dour pronouncement.

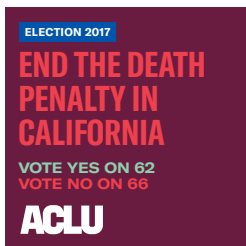
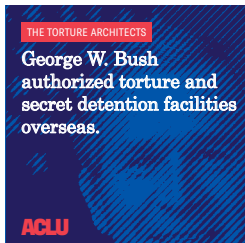
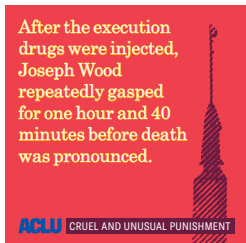
**Is our voice purposeful and consistent?** p. 124

Our headline communicates a victory in plain language. It's upbeat but doesn't exaggerate.

**Are we properly identified?** p. 68

This is the national logo. The blue version ensures that we follow the “red, something else, and blue” rule. See p. 92. for more.

*serious posts*



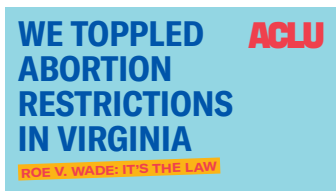
Specific color values and sample color palettes are shown starting on p. 90. Our palette encompasses light and dark colors for different moods and tones.

*celebratory / positive posts*

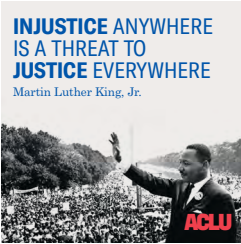
WASHINGTON STATEHOUSE: STEVE PETTEWAY, COLLECTION OF THE SUPREME COURT OF THE UNITED STATES; PORTRAIT: ACLU NATIONWIDE



Premade templates  
of a few standard  
posts are available.  
See p. 156.



*posts that inspire people*



For more on selecting and using photos, see p. 128.

MIDDLE RIGHT: DAVID MORIYA; BOTTOM LEFT: ACLU NATIONWIDE, SOURCED FROM USER-GENERATED CONTENT

**HAVE YOUR RIGHTS BEEN VIOLATED WHILE TRAVELING?**

- Have a customs officer or border agent questioned you about your religion or your political beliefs?
- Have a customs officer or border agent searched or confiscated your laptop or mobile phone, or asked you to provide your laptop password or unlock your mobile phone?
- Have an airline employee questioned you about your religion or political beliefs?
- Have you been denied boarding on a flight returning to the United States?
- Have you been questioned by U.S. law enforcement officers abroad about your religion or political beliefs?

IF SO, CONTACT YOUR ACLU AFFILIATE AT [ACLU.ORG/AFFILIATES](http://ACLU.ORG/AFFILIATES)

**ACLU**

Keep text brief. But if you must include a lot, break it into columns. And use GT America Regular; it's the most legible at small sizes. (It's not clear here because this example is shown at a reduced size to demonstrate layout.) See p. 102 for more on type.



David C. Fathi  
Director,  
ACLU National  
Prison Project

“Handing control of prisons over to for-profit companies is a recipe for abuse and neglect. The memo from Attorney General Sessions ignores this fact.”

“Additionally, this memo is a further sign that under President Trump and Attorney General Sessions, the United States may be headed for a new federal prison boom, fueled in part by criminal prosecutions of immigrants for entering the country.”

**ACLU**

Posts with this much text can't be boosted on Facebook. Use their tool to test your image before posting: [facebook.com/ads/tools/text\\_overlay](https://facebook.com/ads/tools/text_overlay)

**BREAKING**

Court grants request to keep Kentucky's last abortion clinic open, for now.

**ACLU**

**72%**

of Arizonans favor updating our nondiscrimination laws to protect gay and transgender people.



Kentucky is trying to ban abortion by threatening to close the last abortion clinic in the state.

**SO WE SUED.**

**ACLU**

..... To learn how to make and use these text boxes, see p. 112.

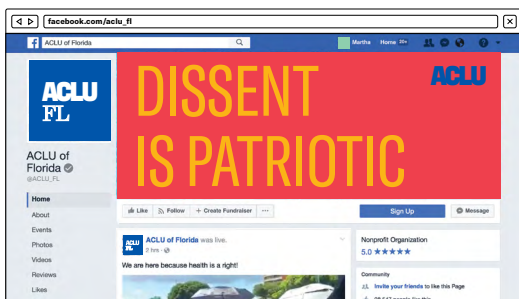


## posts that activate people



The Statue of Liberty is no longer part of our logo, but you can still use images of her in your materials. See p. 142.

## Facebook social media profiles



## Twitter social media profiles

The screenshot shows the Twitter profile for the American Civil Liberties Union (ACLU). The header features a purple and green abstract graphic with the ACLU logo. The profile information includes 22.8K tweets, 5,378 following, 1,198 followers, 13K likes, and 11 lists. A bio states: "The American Civil Liberties Union is a nonprofit, nonpartisan, legal and advocacy organization devoted to protecting the rights of everyone in America." A recent tweet by Jeff Robinson (@Jeff\_Robinson88) is visible, mentioning "The NSA Spies a Second Amendment Buyer" with a link to a Washington Post article. The page also includes a "New to Twitter?" sign-up prompt and a "You may also like" section featuring Bernie Sanders.

The screenshot shows the Twitter profile for the ACLU of Texas. The header features a photograph of a diverse group of people at a rally, many holding rainbow Pride flags. The profile information includes 13.3K tweets, 2,085 following, 16.1K followers, 2,224 likes, and 19 lists. The bio reads: "Make a real difference in protecting freedom and promoting justice when you become a card carrying ACLU member: [aclu.org/join](http://aclu.org/join)". Two tweets are visible: one from the ACLU of Texas (@aclutx) about a discriminatory law in Texas, and another from the ACLU of Texas (@aclutx) about a quick roundup of the anti-immigrant bill. The "Who to follow" section includes Equality Texas, Tx Freedom Network, and Texas Democrats.

## Campaigns and Series

**EVERY  
WOMAN  
EVERY  
STATE**

What we can do to ensure  
that the right to abortion remains  
legal and accessible

**ACLU**  
Iowa

brochure

**69%**

of Americans do not want  
Roe v. Wade overturned

**EVERY WOMAN, EVERY STATE**

**ACLU**

social post

**EVERY WOMAN  
EVERY STATE  
ACLU**

button

A campaign must look coherent across platforms while still fitting in with all ACLU communications. See p. 158 for more.

**Do the colors show who we are?** p. 90

We've chosen a subset of colors from the ACLU palette: red, blue, and light yellow.

**Do the images tell engaging stories?** p. 128

These materials should be a quick read, so they're best left simple, with no image.

**Is the typography clear and confident?** p. 102

We've chosen a subset of typefaces from the ACLU's set: GT America Compressed Regular and Compressed Bold. For each campaign, choose a signature typeface and use it for all headlines and text boxes.

**Is the layout dynamic and multilayered?** p. 148

Our text is set flush left. And text boxes are layered, angled, and placed off center.

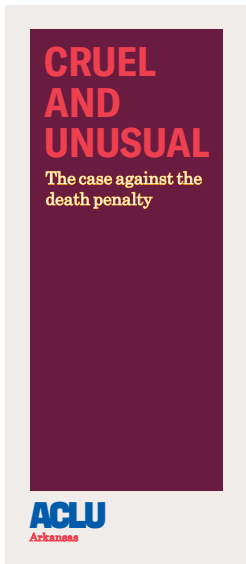
**Is our voice purposeful and consistent?** p. 124

Knowledge is power. No need to editorialize.

**Are we properly identified?** p. 68

Yes. The national logo appears on most pieces, and an affiliate logo can be used for local items.

*campaigns*



brochure



social post



button

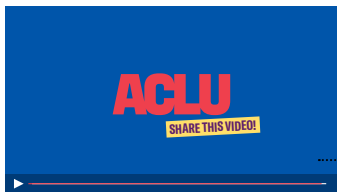
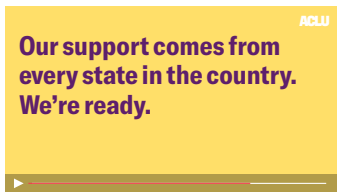
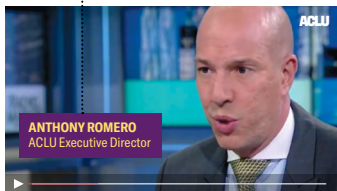
*campaigns*



Stick with a consistent image theme and style to tie the campaign together.

See p. 158 for a fuller discussion about how to create a campaign or series.

## Videos



This is one of our two official “end cards” that close every video. See p. 45 for more.



Our visual identity applies to videos, too.

**Do the colors show who we are?** p. 90

Put names, locations, and other explanations in text boxes for clarity. Keep color consistent throughout your video.

**Do the images tell engaging stories?** p. 128

Keep your videos active by interweaving detail shots and wider views of the scene.

**Is the typography clear and confident?** p. 102

Text can be in GT America or Century, depending on your tone.

**Is the layout dynamic and multilayered?** p. 148

Keep text off center, and look for camera angles that frame the scene asymmetrically.

**Is our voice purposeful and consistent?** p. 124

As with our written communications, focus on solutions to problems and avoid hyperbole.

**Are we properly identified?** p. 68

It's important to keep the ACLU logo visible throughout your video. This is sometimes called a "bug." Ours is the white logo in the upper-right corner. Keep this consistent across all ACLU videos. (See p. 166.)

## *video frames*



### *Lower third*

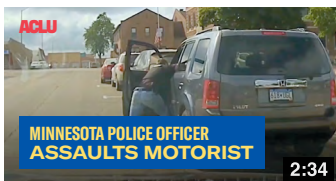
These are used to add names, locations, and other explanations. Put them in a box for clarity.



### *Captions*

These are in GT America Regular. It's the easiest to read. If the background is busy, add a black outline or a text box.

## *video thumbnails*



For thumbnails, the logo should be in the upper-left corner and can be blue or red since it is on a fixed background.

## *end cards*



*Standard end card*  
This should close most videos. We use it for explainers and short animations.



*Alternate end card*  
Use this for serious, documentary-style videos, when an upbeat end card would feel inappropriate.



## Reports

Breaking the subtitle over two lines gives it a little breathing room.

The Excessive Militarization  
of American Policing

# War Comes Home

**ACLU**

SHUTTERSTOCK/LUIS SANTOS

This report is highly researched and needs to communicate seriousness of purpose without looking dull or intimidating.

**Do the colors show who we are?** p. 90

ACLU dark navy is serious. Adding blue, red, and light orange keeps it from looking drab.

**Do the images tell engaging stories?** p. 128

This stock photo nicely communicates the danger at hand. The modern engraving treatment makes it feel like a custom illustration.

**Is the typography clear and confident?** p. 102

We're speaking in a highly informational voice in this report, so Century Schoolbook it is.

**Is the layout dynamic and multilayered?** p. 148

Layering and asymmetry ensure that this report doesn't look stodgy or plain.

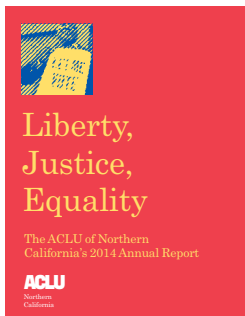
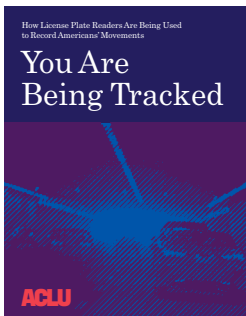
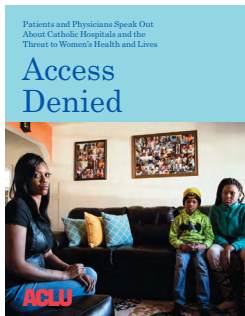
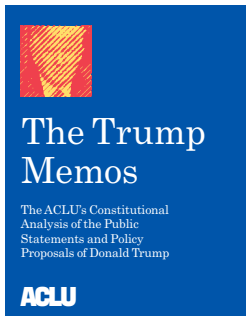
**Is our voice purposeful and consistent?** p. 124

The headline is clear and vivid. It's neither too wordy nor overly clever.

**Are we properly identified?** p. 68

This is the national logo. The red version stands out clearly against the background.

report covers



TRUMP: DOD PHOTO BY U.S. AIR FORCE STAFF SGT. JETTE CARR; FAMILY: DANNA SINGE/ACLU; LET ME VOTE: GIGI PANDJIAN



This is just an example. We don't expect anyone to read this tiny text.

## IN THIS ISSUE

**We Respect NM Women**  
continued on p. 2

**Executive Director's Note**  
p. 3

**Legislative Challenges**  
continued on p. 4

**Stranded:**  
RCBR Fights Disposition  
p. 5

**Board Candidates**  
p. 6

**Board Election Ballot**  
p. 8

VISIT [ACLU-NM.ORG](http://ACLU-NM.ORG) TO LEARN  
MORE ABOUT OUR WORK!



# THE TORCH

The Newsletter of the American Civil Liberties Union of New Mexico

Vol. 51 | No. 1 | Spring 2016



## WE RESPECT NM WOMEN

The ACLU of New Mexico Launches a Bold New Vision for Changing the Conversation about Abortion

**We're lucky in New Mexico.** Our beautiful state is one of the few remaining places in the country where a woman can make deeply personal decisions about abortion without government interference. New Mexicans understand that a woman and her family need access to a full range of reproductive healthcare, including abortion. While other states have enacted more than 300 laws that restrict access to abortion in the past 5 years alone, New Mexico remains a place where women from our communities and across the country can access the safe and legal healthcare our families need.

This respect for women has made New Mexico a target for anti-abortion groups, however. Operation Rescue, one of the most extreme anti-abortion groups in the country with a history of violence against abortion providers, has set up shop in New Mexico. In 2013, anti-abortion groups attempted to pass an abortion ban by ballot measure in Abiquiá, a feat that had never before been attempted at the municipal level. Every year during the legislative session, anti-abortion legislators introduce a slew of bills to try and make it harder. Continued on page 2

## LEGISLATIVE CHALLENGES

A Review of the 2016 Legislative Session

The 2016 Legislative session was one of the toughest in recent memory, but the ACLU of New Mexico was there every day protecting civil liberties, defending access to reproductive healthcare, and pushing back against lawmakers' attempts to try to incorporate their way out of societal problems. Here are some of the highlights from this year's session:

### MASS INCARCERATION

In 2015, New Mexico was shaken by several high-profile crimes, and many lawmakers reacted by promising to increase criminal penalties and push even more people into our already overburdened corrections system. We know that this approach hasn't worked in the past, and does nothing to make us safer or address the root societal causes of crime. The rest of the country is beginning to recognize this, and is moving away from these damaging and unjust policies.

Here in New Mexico, however, legislators introduced more than two dozen bills that would do nothing more than erode civil liberties and contribute to the over-incarceration of communities of color. There was even a "three strikes" bill, which would



have added 12 new felony crimes to the books. What happens when someone gets convicted of three felonies? An automatic life sentence. You're out! Despite this onslaught of bad legislation, we managed to stop many of the bills in committee and improve the ones that made it to the governor's desk. In addition to blocking regressive crime bills, we worked on several bills that would increase protection of civil liberties and find solutions for our broken criminal justice system. Continued on page 4

NOV PROUT  
ORRIN  
ALBUQUERQUE, NM  
PERMIT NO. 53

AMERICAN CIVIL LIBERTIES UNION  
OF NEW MEXICO FOUNDATION  
1000 UNIVERSITY AVENUE, N.W.  
ALBUQUERQUE, NM 87102  
ACLU-NM.ORG



A newsletter should be packed with information — but it shouldn't feel overwhelming.

**Do the colors show who we are?** p. 90

Black is best for long texts. Reserve the ACLU palette for sidebars and images.

**Do the images tell engaging stories?** p. 128

The bottom image was a little bland and needed the modern engraving treatment.

**Is the typography clear and confident?** p. 102

The name of this newsletter is displayed confidently in GT America, as are article titles. The body of the articles are assured and easy to read in Century Schoolbook.

**Is the layout dynamic and multilayered?** p. 148

A column structure keeps things organized and provides space for a little breathing room.

**Is our voice purposeful and consistent?** p. 124

The headlines are affirmative but not braggy.

**Are we properly identified?** p. 68

The affiliate logo is clearly displayed. But there's no special logo for The Torch, as that would detract from the ACLU brand itself. See p. 83 for more on our brand architecture.

## Advertisements

It is our duty, as the people of this country, to ensure that constitutional rights and liberties are guaranteed to all of us.

TAKE ACTION WITH  
**THE ACLU**

**WE THE  
PEOPLE  
DARE  
TO CREATE  
A MORE  
PERFECT  
UNION**

**ACLU**

DONATE TO BECOME A MEMBER  
[ACLU.ORG/JOINACLU](https://www.aclu.org/joinaclu)

This is a magazine ad meant to attract new members. It has to be enticing and bold.

**Do the colors show who we are?** p. 90

The text is huge, so it's ok to keep the colors calm. ACLU blue is always eye-catching. ACLU light azure is close enough so it doesn't distract, but it has more interest than white.

**Do the images tell engaging stories?** p. 128

No image needed. The headline commands plenty of attention.

**Is the typography clear and confident?** p. 102

The headline is a bold declaration, so it's in all caps GT America. So are the calls to action. The longer explanatory text is in sentence case and in Century Schoolbook.

**Is the layout dynamic and multilayered?** p. 148

The asymmetry and large contrast in size make this unconventional yet sophisticated.

**Is our voice purposeful and consistent?** p. 124

Our "quest" is the perfect choice.

**Are we properly identified?** p. 68

The red logo stands out clearly against the background.

**THE MOTTO OF THE  
MILWAUKEE POLICE IS  
BE A FORCE.  
THE QUESTION IS,  
FOR WHAT?**



Jarrett English, Youth Organizer of the ACLU of Wisconsin, believes that the Milwaukee neighborhood of Sherman Park was once "the epitome of a stable, largely Black neighborhood. Now it has been turned into something resembling a police state."

**ACLU**

**ACLU.ORG**

It's okay to reserve ACLU red and ACLU blue for small parts of your layout, as long as they appear somewhere. See p. 92 for more on this.

**WE THE PEOPLE  
DARE TO CREATE A MORE  
PERFECT UNION**

It is our duty, as the people of this country,  
to ensure that constitutional rights and  
liberties are guaranteed to all of us.

**ACLU**

JOIN THE ACLU

**SEPARATE IS  
NEVER EQUAL**

READ THE CASE

G.G. v. Gloucester  
County School Board

**ACLU**

**WE THE PEOPLE DARE TO CREATE A MORE PERFECT UNION**

JOIN US

**ACLU**

**FACT:**

In 2014, The United  
States spent \$1.84 billion  
detaining immigrants.

JOIN US

**ACLU**

**WE THE  
PEOPLE  
DARE  
TO CREATE  
A MORE  
PERFECT  
UNION**

**ACLU**

Posters need to communicate our message and our brand clearly and from a distance.

**Do the colors show who we are?** p. 90

ACLU light yellow is energizing, and together with ACLU red and ACLU blue, it's patriotic but unexpected.

**Do the images tell engaging stories?** p. 128

This image is mostly for atmosphere. It adds texture without distraction.

**Is the typography clear and confident?** p. 102

This bold declaration is set in GT America.

**Is the layout dynamic and multilayered?** p. 148

The asymmetrical type, layered on a subtle modern engraving texture, makes for a poster that's both straightforward and nuanced.

**Is our voice purposeful and consistent?** p. 124

This is our tagline — completed by an inspiring statement.

**Are we properly identified?** p. 68

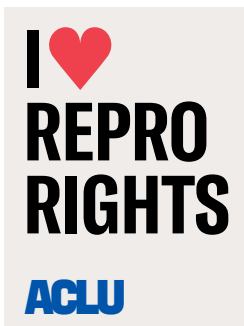
This is the national logo. The red version stands out clearly against the background.

**DISSENT  
IS  
PATRIOTIC**  
**ACLU**

In a crowded protest, the boldest and bluntest signs stand out. Think about the signs from the Civil Rights Movement (p. 14). Keep images simple or don't use any at all.



*protest signs*



# Direct Mail

We fight for your rights in courts, legislatures, and communities throughout the country.

# ACLU

Jane Roe  
123 Mulberry Street  
Town ST 12345

**WE THE PEOPLE**

*With the help of supporters like you, we stand ready to take on any civil liberties violations.*

## ACLU Membership Renewal Notice

Ms. Roe, we count on you when our civil liberties are in jeopardy. Help keep the ACLU at full strength by renewing your membership through November 2017.

The ACLU fights hard to defend the principles embedded in the Constitution because, when those principles are violated, people — often the most vulnerable among us — pay a terrible price. At a time of serious challenges, you can help the ACLU fight for people's rights in the courts, in legislatures, and in the court of public opinion.

Thank you for your support.

# ACLU

To: ACLU Membership Dept.  
125 Broad St, 18th fl.  
New York NY 10004

Fr: Jane Roe  
123 Mulberry Street  
Town, ST 12345

Yes! As I have at other key moments, I am stepping forward to lead the fight to protect our civil liberties by activating my ACLU Membership. Enclosed is my contribution of:

\$30

Other \$ \_\_\_\_\_

To make your gift by credit card, please complete the form on the reverse. Please make checks payable to the ACLU and mail, along with this form, in the envelope provided. Contributions to the ACLU are not tax deductible.

# Renew your membership to the ACLU

**Thank you for your ongoing support to the ACLU.**  
Please renew your membership during this crucial time by filling the form below.

## DONATION

Monthly Contribution Level

\$15    \$20    \$35

\$65    \$100    Other \_\_\_\_\_

## YOUR INFORMATION

First Name

Last Name

## CREDIT CARD BILLING INFORMATION

Address

Address Line 2

City

State

Zip Code

## ADDITIONAL DONOR NAME (OPTIONAL)

First Name

Last Name

## CREDIT CARD BILLING INFORMATION

Address

Expiration Date

Card Security Code

**Fight for Freedom**

Get updates on the Fight for Freedom. An informed membership is freedom's best defense. Sign up for ACLU emails to keep informed and know when to act.

**May we share your info?**

Yes, you may share my name and mailing address with other charities. (Allowing the ACLU to exchange your name helps us to grow our membership and better protect civil liberties.) [Click here to find out more.](#)

**ACLU**

Contributions to the American Civil Liberties Union are not tax deductible.  
Questions? Call (212) 549-2543

## Merchandise

*enamel pins*



*keychain*



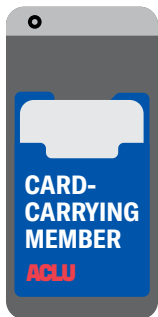
*apparel*



*embroidered patches*



*card case*



*tote bag*



*bumper stickers*



# DETAILS

*How to make things*



This section of the handbook is full of information and instructions about how best to use specific elements of the ACLU visual identity: our logo, color palette, typefaces, pictures, tone of voice, and so on.

In each subsection, you'll first see some basic rules. Please follow them! A visual identity like ours has many opportunities for free expression, so it's essential to make sure we're all playing by the same rules.

Some ACLU communications (like fact sheets and reports) are very straightforward. Some (like social media graphics and videos) can be more fun. But everything can be made better by getting the details right.

# LOGOS

*How to make sure  
we are properly identified*

- *We are known as the ACLU.*

The national ACLU logo is our abbreviation. Not everyone knows our full name, but that's okay. "ACLU" is a household name. We embrace it.

#### National logos



**ACLU**



**ACLU**

#### Affiliate logos



**ACLU**

Ohio



**ACLU**

Massachusetts



**ACLU**

Virginia



**ACLU**

Oklahoma



**ACLU**

Texas



**ACLU**

Nevada



**ACLU**

Illinois



**ACLU**

Missouri



**ACLU**

Utah



**ACLU**

Northern  
California



**ACLU**

Georgia



**ACLU**

Southern  
California

- *Don't create other logos.*

Every day, we see hundreds of logos for different products and organizations. The world is very cluttered. If we created a custom logo for every initiative and campaign, it would dilute the brand identity of the ACLU.

To rise above the noise and stand out, we rely on our official logos. Campaigns and initiatives should not have their own logos. See p. 83 for more on our official brand architecture and p. 158 for more on how campaigns don't need custom logos to be effective.

## National Logos

- *We have a blue logo and a red logo.* Both represent the ACLU equally well. Choose the one that you think looks best in your layout. The only rule is that you should use each one about half the time. We want to rise above the politics of color.

National logo — blue version



National logo — red version



The national logo is very simple, so it can be any size you want.

- *Use the secondary logo and foundation logo only when legally required.*

These versions, with the full name, are less direct (and less impactful). Use them only when it's mandatory for legal reasons. Because of the small text, don't make them smaller than 1 inch wide.

Secondary logo



Foundation logo



.....  
min. 1 inch

- *On busy or very dark backgrounds, use the white logo.*

Legibility comes first.



- *Don't modify the logo.*

For consistency, do not change the colors, make the logo translucent, or add special effects.

Don't stretch or distort it. And don't make your own version of the logo.

wrong color



translucent



with special effects



distorted



distorted



extra element added



diy version



diy version



Note: If for legibility you need to put the logo in a box, there is an official version. See p. 89.

- *Don't crowd the logo.*

If elements get too close, they may look like they are part of the logo. And never block the logo.



- *Don't use the logo in running text.*

The logo should feel special, more than just a word in a paragraph. Simply write out ACLU when mentioning the organization in text.

## **Don't insert the ~~ACLU~~ logo in running text. Simply write out ACLU.**

- *For black-and-white printing, use the provided black logo or white logo.*

When printing in black and white, these show up more clearly than the red and blue logos (which print as gray). But don't use the black logo unless you are printing in black and white! It looks too harsh in a color setting. See p. 88 for black and white logos.



## Affiliate Logos

- *Every ACLU affiliate has its own logo.*  
Each affiliate logo follows a formula. See p. 88 to download your logo. Full names still include the “of” (“ACLU of Affiliate Name”), but our logos are simpler.

**ACLU**  
Affiliate Name

Examples:

**ACLU**  
Ohio

**ACLU**  
San Diego  
and Imperial  
Counties

**ACLU**  
Massachusetts

- *On busy or very dark backgrounds, use the white logo.*  
Legibility comes first.



- *Don't modify the logo.*

For consistency, do not change the colors, make the logo translucent, or add special effects.

Don't stretch or distort it. And don't make your own version of the logo.

wrong color



wrong color



low opacity



drop shadow



in a sticker



reordered elements



diy version



type size



- *Don't crowd the logo.*

If elements get too close, they may look like they are part of the logo. And never block the logo.



- *For black-and-white printing, use the provided black logo or white logo.*

When printing in black and white, these show up more clearly than the red and blue logos (which print as gray). But don't use the black logo unless you are printing in black and white! It looks too harsh in a color setting. See p. 88 for black and white logos.

- *Other versions are for specific use cases.*

Sometimes the situation or available space makes it difficult to use your primary affiliate logo. Other versions are provided for these specific uses. (But you should use your primary affiliate logo almost all of the time.)

---

*One-line logo*

For use on web banners and other short, wide spaces

**ACLU** Affiliate Name

---

*Abbreviated logo*

For use at very small sizes  
(mobile website, etc.)

**ACLU**  
AN

*Social media icon*

For social media profile  
images and posts



---

*Secondary logo*  
Only when legally required

**ACLU**  
AMERICAN CIVIL LIBERTIES UNION  
*Affiliate Name*

---

*Foundation logo*  
Only when legally required

**ACLU**  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
*Affiliate Name*

- *Volunteer chapters use their parent logo.*

For institutional coherence, individual chapters should use their parent affiliate's logo for all communications. If a chapter needs a logo for legal reasons, use the provided template to make one.



There's a template to make these that includes the correct type sizes and spacing. If you need to create one, please use the template!

## Logos on Stationery

Stationery templates are provided. See p. 88 for more on where to download them.



**ACLU**  
AMERICAN CIVIL LIBERTIES UNION  
Massachusetts

211 Congress Street  
Boston MA 02110  
(555) 555-5555  
aclum.org

**ACLU**  
AMERICAN CIVIL LIBERTIES UNION  
Massachusetts

211 Congress Street  
Boston MA 02110



## Brand Architecture

An effective visual identity requires that we use a consistent family of logos. The hierarchical relationship between these logos is what we call brand architecture.

---

### *Master brand*

National logos



Affiliate logos



### *Sub-brands*

Long-term, distinct initiatives that add equity to the ACLU master brand



### *Endorsed brands*

For special projects that occasionally need to be separated from the ACLU



- *Our national and affiliate logos are the center of our brand architecture.*

These logos (and their variations, as shown on the preceding pages) are the core of our brand architecture. They are what we call our master brand. Almost everything we do should feature these logos.

- *Sub-brands are rare.*

Sub-brands are for long-term ACLU initiatives that are distinct from our core work. Sub-brands add value to the ACLU's brand recognition, so their association with the ACLU should be clear and standardized.

Having too many logos can be confusing. We have at most two or three sub-brands across the entire country at any given time.

**ACLU**  
**PEOPLE**  
**POWER**

Sub-brands all look like this. A consistent format adds equity to the ACLU. Straying from this format — or having too many sub-brands — would be confusing.

- *Endorsed brands are also rare.*

Endorsed brands are for special projects that sometimes need to take on a life of their own, separated from the ACLU. For example, in some regions, ACLU Smart Justice is known simply as Smart Justice.

Like sub-brands, endorsed brands are rare. We should use the ACLU name and logo as much and as proudly as possible. We limit ourselves to at most two or three endorsed brands total.

Endorsed brands all follow this format. It is designed to work with and without the ACLU logo.

Use this version only when political considerations make it absolutely necessary. The ACLU should get credit for our work.



- *Never create a sub-brand or endorsed brand, and never design your own logo.*

Almost every piece of communication we make should have one of our main national or affiliate logos. This builds equity for our master brand.

Standard initiatives, departments, and communications campaigns do not require their own logos. See p. 158 for more on how special projects don't need custom logos to be effective.

If you think one of your initiatives should be a sub-brand or endorsed brand, contact the national communications department. If necessary, they will provide official logos that comply with our brand architecture.

---

## Using logos on social media

Many social media sites automatically convert your profile picture into a circle. Our official social media icons are designed so they will still look good when cropped by one of these sites:



Use your provided official social media icon or the national social media icon.



For legibility and organizational unity, don't modify the color or layout.



On special occasions, use the temporary icons provided by ACLU National. But switch back to your official social media icon as soon as the occasion passes.



---

## Resources

All of the national logo files are available for download at [www.aclu.org/NationalLogos](http://www.aclu.org/NationalLogos).

Stationery is available at [www.aclu.org/NationalStationery](http://www.aclu.org/NationalStationery).

### **National logo**

blue, red, white, black

### **Secondary national logo**

blue, red, white, black

### **Foundation national logo**

blue, red, white, black

### **National social media icon**

### **National logo in a box**

blue on white, red on white,  
blue on red, red on blue

### **National stationery**

letterhead, envelope, label,  
business card

The following files are available for each affiliate at [www.aclu.org/AffiliateLogos](http://www.aclu.org/AffiliateLogos):

### **Primary affiliate logo**

standard, white, black

### **One-line affiliate logo**

standard, white, black

### **Abbreviated affiliate logo**

standard, white, black,  
standard box, black box

### **Secondary affiliate logo**

standard, white, black

### **Foundation affiliate logo**

standard, white, black

### **Affiliate social media icon**

### **Chapter affiliate logo templates**

---

## FAQs

### **My background is really busy, and the blue, red, and white ones just aren't showing up clearly. Can I put the logo in a box?**

There is an official way to put the logo in a box. See the opposite page to download these official versions.



There are no box versions of the standard affiliate logos. Use your abbreviated logo or social media icon (which do have boxes built-in) or consider using the national ACLU logo instead.

### **What about black-and-white printing?**

We also have a black version and a white version of all logos. When printing in black and white, these show up more clearly than the red and blue logos (which print as gray).

### **How do I choose between the red and blue national logos?**

The red and the blue logos are of equal importance in our visual identity system. The choice of which to use, and when, should be driven by design and layout. Often, the choice is determined by which other colors are used in your layout. If you are missing blue, use the blue logo. If you're missing red, use the red one.

# COLOR

*How to use our palette  
to show who we are*

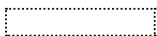


• *This is the ACLU color palette.\**

Red and blue are the ACLU's principal colors. Our palette also includes a range of light and dark secondary colors. When we say "red, everything, and blue," we mean that we have a broad palette. Stick to the colors shown here. You can make almost any mood out of them.

**light colors**

white



ACLU light pink



ACLU light yellow



ACLU light orange



ACLU light azure



ACLU light green



**principal colors**

ACLU blue



ACLU red



**dark colors**

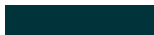
black



ACLU dark gray



ACLU dark green



ACLU dark navy



ACLU dark burgundy



ACLU dark purple



\* See p. 99 for precise RGB, CMYK, and Pantone values.

- *Use red, something else, and blue.*

“Red, everything, and blue” is a core idea behind our identity. (Read more about this on p. 16.) In practice, this means that we always use red, blue, and at least one other color from our palette in every design. Start each piece with red and blue — and then include one or two other colors from the ACLU palette to add variety.



Using just blue (or just red) is monotonous and may come off as partisan.



Using too many colors can feel hectic and juvenile.



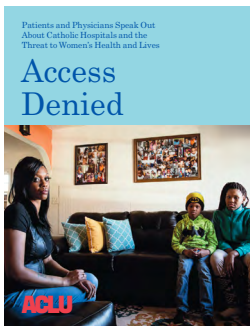
Using red, blue, and one or two other colors is just the right balance.



And your secondary color can be very prominent. Just make sure there's a little red and a little blue somewhere.

- *Red and blue are in everything we do.*

Our visual identity is built on multiplicity, not monotony. Because every piece includes red and blue, these two will be the most frequently used colors overall — but try *all* of the other colors at some point in your communications. Don't get stuck in a color rut by using the same colors for every piece!



- *For legibility, combine colors from different parts of the palette.*

Combining two light colors or two dark colors can make an image or text illegible.

dark background + dark text

light background + light text



- *Use the pure colors. Don't create tints.*

If you need a light color, choose one from the palette. Taking a paler tint from one of the pure colors will look washed out and dull.

ACLU red



tints of red



ACLU light pink



ACLU blue



tints of blue



ACLU light azure



ACLU light orange



tints of light orange



ACLU light yellow



ACLU dark green



tints of dark green



ACLU light green



- *Dark colors look more serious.*

Dark colors automatically feel grave, sophisticated, and weighty. The dark part of the palette is a good place to start if you have a serious message to convey. Here are just a few of the many combinations you might use.



But no need to be so obvious all the time! Occasionally you may want to use light colors to bring a little energy or hopefulness to a serious message.

- *Light colors are energetic.*

Colors in the light part of the palette are a good place to start when you want a celebratory, active, or positive tone. Here are just a few possible combinations (many others exist).



But again, no need to be rigid with your color selection. Celebratory messages feel more distinguished and permanent when rendered in dark colors.

- *For text-heavy pieces, don't go heavy on color.* Large fields of color look best on social media and videos. For very text-heavy printed communications such as letters, reports, and brochures, use a light touch with the color. Black text on a white background is the most legible and least distracting. Confine colors to small accents, like titles and sidebars.

## Background Law Enforcement in California School Districts

California school districts maintain a variety of relationships and arrangements with law enforcement that fall into three general categories: districts with their own police departments, districts that enter into agreements with other municipal police departments to assign officers to campus, and districts that call outside officers to campus on an as-needed basis.

First, some school districts hire and cover their own law enforcement officers, who are employees of the school district. These officers typically are stationed on school campuses in paired or adjacent areas. They possess the general powers as other sworn law enforcement officers in California, including the power to question, detain, and arrest.

\*Based on ACLU-CA calculations of CDE's 2013-2014 data, with the authors' limited and preliminary high school district-only county offices of education and independent charter schools excluded from this list of districts with the most arrests.

2 The Right to Remain a Student

number of counselors for every police officer employed by the district, from a ratio of 9:1 (Monterey) to only 1:1 (Oakland). Despite those wide variations, seven of the ten California school districts reporting the most arrests for 2013-2014 (the most recent year with available statewide statistics) were districts with their own police departments: Los Angeles Unified, San Bernardino City Unified, San Diego Unified, Hackensack-La Paroisse Unified, Clovis Unified, Fontana Unified, and Santa Ana Unified.

**Table A**  
Number of Full-Time Sworn Officers Assigned to Police Departments (2013-2014)

District	Full-Time Officers
Los Angeles	278
San Diego City Schools PD	41
Stockton USD PD	28
Santa Ana USD PD	25
San Bernardino USD PD	25
Compton USD PD	23
Allen High School District PD	23
Terra Vista USD PD	23
Fontana USD PD	16
Merced USD PD	16
Clovis USD PD	13
Redwood Park USD PD	9
Merceda USD PD	8
Hackensack-La Paroisse USD PD	6
Inglewood USD PD	5
Alhambra USD PD	4
Apple Valley USD PD	4
El Rancho USD PD	4
Strawberry Joint USD PD	4

This trend is particularly disturbing given that the ratio of students per counselor in California is 945:1, the highest in the nation and almost double the national average.<sup>12</sup> This means that in California, school counselors are expected to handle the highest numbers of students in the country, and students have severely restricted access to counselor time compared to other states.

3 The Right to Remain a Student

### School Security Officers

In addition to in place of law enforcement officers, some districts use school security officers (school security guards) to perform duties related to law enforcement, school regulations, and campus safety. In some schools, these roles can be held by officers of law enforcement agencies.<sup>13</sup> Oakland, for example, the school district police department oversees about 80 school security officers in addition to seven law enforcement officers.

Second, some school districts enter into agreements or MOUs with county or municipal police departments to station law enforcement officers on or around school campuses. These police officers are also commonly known as School Resources Officers (SROs) or School Safety Officers. For example, the Fresno Police Department assigns a number of police officers to the school district on a permanent or rotating basis. In San Jose, the school district uses a hybrid approach: the police chief is a school district employee who coordinates the activities of permanent site-based officers who are employees of the municipal police department.

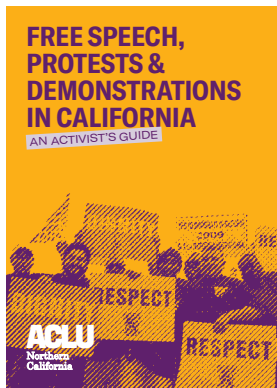
Third, many school districts do not maintain a permanent police presence in their schools but instead call local police officers to campus on an as-needed basis. A small number of these school districts enter into agreements or MOUs with the local law enforcement agencies to govern interactions between school staff, students, and law enforcement officers.

ACLU California

- *When print budgets are limited, limit your palette.*

Full-color printing is expensive. You can instead use one or two Pantone (PMS) colors to save money. (More on these on p. 101.) With these printing limitations, it's okay if your piece doesn't follow all of our color rules for tints and using "red, something else, and blue."

Black-and-white printing is also perfectly fine. When, and only when, you need a black logo for black-and-white printing, see pages 74 and 77.



LEFT: ACLU OF NORTHERN CALIFORNIA; RIGHT: ELMOREE



---

## Tech Specs

 **ACLU red**

RGB 239, 64, 78 (#ef404d)  
CMYK 0, 90, 67, 00  
PMS Red 032 C / Red 032 U

 **ACLU blue**

RGB 0, 85, 170 (#0055aa)  
CMYK 100, 70, 0, 0  
PMS 2175 C / 2175 U

 **ACLU light pink**

RGB 250, 190, 175 (#fabeaf)  
CMYK 0, 30, 25, 0  
PMS 169 C / 169 U

 **ACLU light yellow**

RGB 255, 224, 106 (#ffdf69)  
CMYK 0, 10, 70, 0  
PMS 107 C / 107 U

 **ACLU light orange**

RGB 252, 170, 23 (#fbb416)  
CMYK 0, 35, 100, 0  
PMS 1235 C / 1235 U

 **ACLU light azure**

RGB 146, 214, 227 (#92d6e3)  
CMYK 40, 0, 10, 0  
PMS 304 C / 304 U

 **ACLU light green**

RGB 142, 207, 174 (#8dcead)  
CMYK 45, 0, 40, 0  
PMS 7478 C / 7478 U

 **black**

RGB 0, 0, 0 (#000000)  
CMYK 0, 0, 0, 100  
PMS Black C / Black U

 **ACLU dark gray**

RGB 71, 64, 61 (#463f3d)  
CMYK 50, 50, 50, 60  
PMS Warm Gray 11 C / Warm  
Gray 11 U

 **ACLU dark green**

RGB 0, 52, 58 (#00343a)  
CMYK 100, 60, 60, 55  
PMS 7718 C / 7718 U

 **ACLU dark navy**

RGB 35, 30, 96 (#231e5f)  
CMYK 100, 100, 20, 30  
PMS Blue 072 C / Blue 072 U

 **ACLU dark burgundy**

RGB 105, 27, 64 (#681b40)  
CMYK 55, 100, 60, 30  
PMS 2041 C / 2041 U

 **ACLU dark purple**

RGB 94, 32, 108 (#5e1f6c)  
CMYK 70, 100, 15, 20  
PMS 527 C / 527 U

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## Resources

The following resources are available for download.

### **for Microsoft Office**

The color palette comes pre-loaded with all templates, and is available for download separately at [www.aclu.org/MicrosoftColorPalette](http://www.aclu.org/MicrosoftColorPalette).

### **for Adobe Creative Suite**

Color palette files (.ase) for web (RGB), standard 4-color printing (CMYK), and Pantone printing (PMS) are available for download at [www.aclu.org/AdobeColorPalette](http://www.aclu.org/AdobeColorPalette). The palettes also come preloaded with all templates.

The following site can help you evaluate whether your graphics are clear to people with visual impairment: [color-blindness.com/coblis-color-blindness-simulator/](http://color-blindness.com/coblis-color-blindness-simulator/)

The ACLU also consults the Center for Accessible Technology as a resource to ensure accessibility.

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## FAQs

### **What is the difference between RGB, CMYK, and PMS colors?**

These are different color systems for different production methods.

#### *RGB*

This is for screen display (e.g., web graphics, videos). RGB stands for red, green, and blue. You can use either the individual red, green, and blue values (e.g., 239, 64, and 78, respectively) or the hex code, a special code used by websites that corresponds directly to the same exact color (e.g., #ef404d). These are just two ways of saying the same exact thing. Use whichever one is easier to input in your software.

#### *CMYK*

This is for standard printing. CMYK stands for cyan, magenta, yellow, and black. The numerical values given are for percentages of cyan, magenta, yellow, and black that make up the color.

#### *PMS*

This is for professional (offset) printing. PMS stands for Pantone Matching System. Each PMS number corresponds with a standardized pre-mixed ink. Using pre-mixed inks ensures that colors print accurately, but it's most cost-effective when you have three or fewer colors in your document (e.g., a simple poster, a bumper sticker). These are also the colors you should typically use for screenprinting. Numbers with a C (for "coated") are for printing on paper that has a coating, like glossy paper. Numbers with a U (for "uncoated") are for printing on papers that do not have a coating.

# TYPOGRAPHY

*How to use our typefaces  
to be clear and confident*

## GT America

- *GT America is for our “activist” voice.*

When you want to take a firm stand, use GT America. Use it for expressive, declarative, and opinion-driven statements.

GT America extended thin and extended bold

**FREE SPEECH  
IS A RIGHT**

- *Choose any style you like.*

GT America is a font family with a broad range of thicknesses (from thin to bold) and widths (from compressed to extended).

How loudly do you want to speak? Thinner styles speak in a softer voice, while bold ones are louder.

Different widths don't really correspond with different decibel levels, but they're helpful for creating variety — and for fitting your text in the space available.

COMPRESSED THIN

COMPRESSED REGULAR

**COMPRESSED BOLD**

CONDENSED REGULAR

**CONDENSED BOLD**

REGULAR

**BOLD**

EXTENDED THIN

EXTENDED REGULAR

**EXTENDED BOLD**

• *Mix styles for emphasis.*

Change select words to a different width or a different thickness for emphasis. It lets some words stand out while preserving the wholeness of the statement. (To avoid over-complication, try to vary either thickness or width, but not both.)

**DISSENT** ..... *GT America compressed bold*  
**IS** ..... *GT America extended bold:*  
**PATRIOTIC** ..... Keeping the same thickness (bold) but changing to a wider style (extended instead of compressed) adds emphasis.

**WE** ..... *GT America extended regular*  
**KNOW**  
**OUR** ..... *GT America extended bold:*  
**RIGHTS** ..... Keeping the same width (extended) but changing to a thicker style (bold instead of regular) is another way to add emphasis.

**PREJUDICE**

Emphasis is carefully placed to stress an equivalence.

REWRITTEN

.... *GT America compressed thin*

IS STILL

**PREJUDICE**

.... *GT America compressed bold*

LET PEOPLE  
VOTE

*GT America extended thin:*  
Powerful words don't really need any extra emphasis. And type doesn't have to be loud (bold) to be strong.

~~WE WILL  
NOT  
REST~~

..... *GT America compressed thin*

..... *GT America extended bold:*  
These two styles are different in thickness and width. They're too different and make the statement look disjointed.

To figure out which words should be emphasized, try reading your declaration out loud. Which words do you naturally say louder?



~~WOMEN'S  
RIGHTS ARE  
CIVIL  
RIGHTS~~

Be careful! Different type can imply that words are unequal.

.... *GT America condensed bold*

..... *GT America extended bold*

- *Say it loud: Use ALL CAPS.*

When using GT America to make a bold declaration, use all caps. This will often be the case for social media, ads, and posters.

## THIS IS A BOLD STATEMENT

But for statements longer than 15 words, use normal sentence case or change to Century.

~~IT'S ONE THING TO USHER  
A RALLYING CRY, BUT IT'S  
ANOTHER THING TO SHOUT  
AN ENTIRE SPEECH AT THE  
TOP OF YOUR LUNGS. DON'T  
USE ALL CAPS FOR STATE-  
MENTS LONGER THAN 15  
WORDS.~~

Also, avoid hyphens in big text! ....

## Century Schoolbook

- *Century is for our “informational” voice.*  
When you need to convey facts, legal analysis, or explanations, use Century Schoolbook. Use it for body text and for headlines or titles with an institutional or informational tone.

Century Schoolbook regular

### Findings and Conclusion

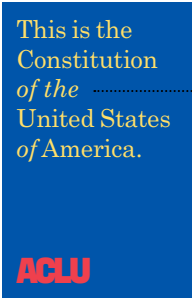
Century Schoolbook italic

### *Civil Asset Forfeiture*

- *Use sentence case or title case.*  
Century Schoolbook isn't for shouting. Only the first letter of a sentence and proper nouns need to be capitalized. For titles, follow capitalization rules for headlines in Associated Press (AP) style.

- *Use italics selectively.*

Italics are an elegant and time-honored way of adding interest when using serif typefaces. (Bold didn't come into wide use until the mid-19th century, and it can look clunky.) For formal titles, such as those on report covers, consider italicizing short words; it lends an extra air of formality.



This is the  
Constitution  
*of the*  
United States  
*of America.*

ACLU

Italicizing only short words is a particular design flourish that should only be used on designed pieces like covers of reports and pocket constitutions. Stick to traditional AP and Blue Book rules for italicizing text in legal documents, letters, and articles.

But don't overdo it. Italics are like salt: A little goes a long way.

~~If you try to make  
everything look  
special, nothing  
looks special.~~

## Type in General

- *Keep color and size uniform.*

Avoid fussiness. Whether working in print or digital, use only one font size (e.g., 14 pt.) and color per headline or per paragraph.

WE MADE  
OUR VOICES  
HEARD

~~WE MADE OUR  
VOICES  
HEARD~~

2017  
Annual Report

~~2017  
Annual Report~~

- *Don't center or justify text.*

A left alignment is easy to read, and asymmetry always feels contemporary. Centering or justifying text can easily look too conventional.

~~The Path to  
Marriage Equality~~

I AM A  
DREAMER

~~I AM  
A DREAMER~~

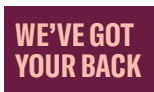
- *Try not to mix GT America and Century in a single headline.*

These two type families speak in two different voices. Avoid combining them in the same headline.



- *Choose colors for maximum contrast.*

If you have a dark background, use a light color for the text, and vice versa. Avoid putting text on top of high-contrast images or patterns. (See p. 90–101 and 157 for more on color.)



- *Use GT America for very small text.*

Although typically GT America is used for our activist voice, it's also handy for very small text, such as captions, chart labels, and photo credits because of its legibility. Use GT America for any text that is 8 pt. or smaller. (And 8 pt. is a good size for captions.)

Figure 1: Graph showing U.S. incarceration rates

PHOTO: Shutterstock

## Text Boxes

You've probably noticed lots of text in boxes. These text boxes are a great way to add another layer of information to your design: Try adding a "victory" banner to a social post, a hashtag to a digital ad, or a pull quote to a fact sheet. Text boxes also help with legibility when you have a busy background. And they add depth and variety to any composition.

- *Text boxes are for short copy.* They're for add-ons and quick reads. More than 25 words is too many.

**BREAKING NEWS**

Research reveals that employees with criminal backgrounds are a better pool for employers.

**VICTORY**

- *Keep it simple: one idea per text box.* Don't try to squeeze in too much! Stick to a single point, and don't add an image.

~~**KNOW YOUR RIGHTS**~~

~~You have the right to remain silent.~~

~~**DISSENT IS PATRIOTIC**~~

- *And one text box per idea.*

It's too disruptive to split up a single headline or phrase into multiple boxes. Stick to one idea per text box — and one text box per idea.



**WE SALUTE YOU!**

- *Keep corners square.*



- *Make the margins even.*

Always leave some space between the edge of the box and the text inside it, and make sure it's even on all sides.



- *Use only one or two at a time.*

Don't overdo it. Your composition will look cluttered or hectic if you use more than two in one poster or post, or on a single page of a multipage document.

- *Angles are your friend.*

On social posts and posters where the tone is less formal, you can think of text boxes like stickers: When you slap it on the page, it probably won't be perfectly level. And that's exactly how we want it.

*Just right:*

It should look like you placed it on by hand. No need to be precise, but if you want a rule, try for something between 2° and 8°.



#BILLOFRIGHTS



HAPPY ANNIVERSARY!

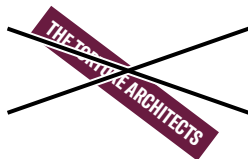
*Too little:*

seems so close to straight that it could just be a mistake



*Too much:*

looks too wacky when it's tilted too far





- *Boxes love layers.*

Text boxes, like sticky notes, work well when layered on other elements. Place them on non-essential areas of an image or at the very edge of a text so it's still readable. (See also p. 155 for more on layering boxes)



- *Don't make text boxes transparent.*

Transparency is bad for legibility — and the sharp look we want. Colors look best at full opacity.



- *Give the logo some space.*

Text boxes that are too close to the logo can look like they're part of it. Give the logo some space and make sure it is always on the top layer.



- *Sidebars are special cases.*

Sidebars in reports and newsletters are a special type of box. Unlike a typical text box, they don't have a word limit and shouldn't be angled.

..... This is a text box.

Law Enforcement Act, which eliminated federal funding for incarcerated individuals seeking to take college courses.<sup>13</sup> While Pell Grants awarded to these individuals made up just one-tenth of a percentage point in the overall program's budget, the impact of this exclusion was dramatic. Where there were once more than 350 degree-granting programs in the nation's prisons, there were only eight in 2005.<sup>14</sup>

In response to advocacy by coalitions like Education from the Inside Out, the Obama administration's Second Chance Pell Pilot Program, which was rolled out in 2016, extends Pell Grants to 12,000 students in 104 penal institutions.<sup>15</sup> Sixty-seven colleges and universities were selected to provide educational services—from vocational certifications, associates and bachelor degrees—at federal and state prisons under this program, and of these, more than 10 percent are colleges that traditionally serve students of color.<sup>16</sup> The program provides \$30 million in Pell grants to incarcerated students in 27 states.

With research clearly showing that in-prison education can help reduce recidivism and increase employability after release, this pilot program should be expanded. And if employment is the goal for the hundreds of thousands leaving prisons every year, then "we need to be asking how does the educational experience contribute to doing more than providing subsistence," says Dr. Michael Lomax, President of the United Negro College Fund.

#### CASE STUDY

### WILEY COLLEGE

Selected by the Obama administration along with 66 other colleges and universities for the Second Chance Pell Pilot Program, Wiley College in Texas, a historically black college, is creating associate and bachelor degree programs in prisons, taught by college professors and teaching aides, beginning in Spring 2017. Wiley will work in three Louisiana penitentiaries, including one women's facility. Students will get the chance to pick from several majors, including criminal justice and sociology. Dr. Tracy Andrus, director of Wiley College's Criminal Justice Department and the college's prison program, sees this initiative as instrumental to elevating the mission at the center of Historically Black Colleges and Universities: equitable opportunity, social justice, and economic mobility.

The programs are a natural fit for the colleges, says Dr. Andrus, who served time in one of the prisons where Wiley will now operate, before going on to earn a Ph.D. in juvenile justice. He sees this as a chance to expand the college's efforts to work with nontraditional students. "This program will serve a population that is not unlike many of the students at Wiley already," he says, noting that students at Wiley often come from the same impoverished communities.

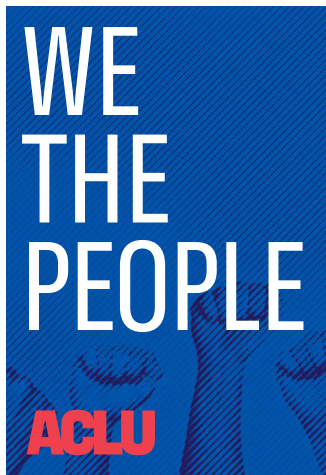
It is critical, he says, to develop spaces for learning in prisons. "Many of these individuals never got a first chance, let alone a second," Dr. Andrus notes. "This can be a critical means of beginning, at least, to correct the structural inequalities that led to policies of mass incarceration."

..... This is not.  
It's a sidebar.

## Our Tagline

“We the People” is the beginning of the Constitution, but it also neatly sums up our attitude toward change: It isn’t the work of one person, or one party, or one side. It’s about all of us, coming together to make change happen.

- *“We the People” is a great headline.*  
It works well as a declaration on a poster, a protest sign, an ad, or a social post.



- *When it's not the headline, it's a stamp.*

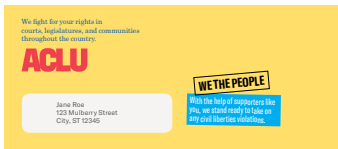
The format is like a text box, but with an outline instead of a solid background. This way it fits within the system — but also stands out.

**WE THE PEOPLE**



- *The tagline stamp can be used freely.*

There are many ways to use the tagline because the tagline stamp can be angled and layered just like a standard text box. See p. 112 for more details on using text boxes.



- *We the People come first.*

There's one exception to the rules: Ordinarily nothing comes too close to or stands in front of the ACLU logo, but we make an exception for "We the People." The tagline stamp is the only thing that can be used over the logo. Place it on the logo as shown below: angled 7° and just touching the U. This feels integrated, but the ACLU logo is still legible.



- *It can also be the start of a great headline.*

"We the People" becomes a rallying cry when you complete the sentence. Here are just a few ideas:

- We the People Dare to Create a More Perfect Union
- We the People Are Stronger Together
- We the People Stand Up for Justice

---

## Tech Specs

Please use one of the provided templates (in Word, InDesign, or Photoshop); which have all of these type settings preloaded and saved in easily accessible styles.

### GT America

*For headlines + declarations*

Case:

All caps

*Tracking (character spacing):*  
0 in InDesign, default in Word

*Word spacing:*  
80% (min. 60%, max. 100%)

*Leading (line spacing):*  
Same as type size  
(e.g., if your type is 18 pt.,  
your line spacing should  
be 18 pt., too)\*

*For very small text*

Case:

Sentence case or title case

*Tracking (character spacing):*  
0 in InDesign, default in Word

*Word spacing:*  
80% (min. 60%, max. 100%)

*Leading (line spacing):*  
125% of the type size (e.g., if  
your type is 12 pt., your line  
spacing should be 15 pt.)\*

### Century

Case:

Sentence case or title case

*Tracking (character spacing):*  
-10 in InDesign, 1 hundredth  
of the font size in Word (e.g., if  
your type is 12 pt., condense  
character spacing by 0.12 pt.);  
but for very small text/cap-  
tions, use 0 (default) instead.

*Word spacing:*  
80% (min. 60%, max. 100%)

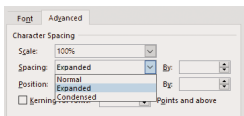
*Leading (line spacing):*  
125% of the type size (e.g., if  
your type is 12 pt., your line  
spacing should be 15 pt.)\*

\*Note: Settings for leading are suggestions only. Very large text, such as the headline of a poster, often looks best with tighter leading, as does text set in very narrow columns.

---

## How to adjust tracking (character spacing)

In Word, go to Font > Advanced. Under Character Spacing, click on Spacing and select Condensed; then, enter your desired adjustment in the “by” field.



In InDesign, open the Character palette and enter your value in the box for tracking.

## How to adjust word spacing

In Word, there is no way to adjust word spacing. In InDesign, open the Paragraph palette, open the menu, and select Justification Settings (the Mac shortcut is shift-option-command-J and the Windows shortcut is Alt+Ctrl+Shift+J). In the row for word spacing, enter 60% for the minimum, 80% for desired, and 100% for maximum.

## How to adjust leading (line spacing)

In Word, choose Design > Paragraph Spacing > Custom Paragraph Spacing. Then choose Exactly and enter your value.

In InDesign, open the Character palette and enter your value in the box for leading.

## Hyphenation

Word processing and design programs can automatically insert hyphens to break long words over multiple lines. Excessive hyphens can be distracting, though. Avoid using hyphens at the end of two successive lines, and never use them in headlines.

---

## Resources

Font packages are already installed on your computers.

For help, contact [branding@aclu.org](mailto:branding@aclu.org).

### **GT America**

The full set of GT America fonts is already installed for communications staff who are responsible for design.

If your core responsibilities do not include design, you need only four styles of GT America (regular, regular italic, bold, and bold italic) for basic Word documents and PowerPoint presentations. These will give you the tools to create basic designs within the brand. They have been installed on your computers.

For help, contact [branding@aclu.org](mailto:branding@aclu.org).

### **Century Schoolbook**

If you have Microsoft Office, you already have Century Schoolbook. If you're having trouble, contact [branding@aclu.org](mailto:branding@aclu.org). (2013 TBC)



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## FAQs

### Can I put the logo in a box?

There is an official way to put the logo in a box. See p. 88 and 89 to learn more and download the official versions.



To ensure consistency, use the provided files rather than create your own.

There are no box versions of the standard affiliate logos. Use your abbreviated logo or social media icon (which do have boxes built-in), or consider using the national ACLU logo instead.

### Can I send these fonts to a freelancer?

The ACLU has enough font licenses to send to the occasional freelancer. Please make it clear that they may use the fonts only for the duration of the project at hand, and they should delete the fonts after it ends.

### Are there any fallback fonts if I'm using a computer or software that doesn't have access to the official fonts?

If you must, you can use these more widely accessible fallback fonts (in order of preference).

*in place of Century Schoolbook*

- Century Expanded
- New Century Schoolbook
- Georgia

*in place of GT America*

- Franklin Gothic
- Arial

### What about other Century fonts, like Century Gothic?

Don't use Century Gothic. It's too different. But Century Expanded and New Century Schoolbook are similar to Century Schoolbook and will do in a pinch.

### I'm filing a brief with a court that requires a different font. What should I do?

Follow the requirements of the court! While the Supreme Court requires some version of Century, not all courts have the same requirements. The rules of the court come first.

# TONE OF VOICE

*How to make sure our words  
are purposeful and consistent*

- *“We the people dare to create a more perfect union” is our quest.*

A quest is a unifying statement that describes who we are, defining our ambition for the world and driving everything we do as an organization.

- *“We the people” is our tagline.*

It distills our quest into a powerful and memorable statement. It succinctly articulates what we stand for, engages key audiences, and reflects how and why we champion everyone's rights.

## **Our Brand Voice**

The ACLU brand voice is the purposeful, consistent expression of our personality, which comes across in all external communications, both those created by the ACLU and by any outside partner working on our behalf.

To better understand how to write in the ACLU voice we've created 6 guiding principles, each rooted in a different dimension of our personality. For more specifics, make sure to check out our full tone of voice guide.

- *We empower action.*

No matter the issue, we don't just tell you what we're doing, we give you practical ways to help and to make change.

- *We're in this together.*

We can't take on every fight alone. Luckily we have allies, and they have us. We're proud to lift one another up and support any way we can.

- *We bring heart.*

We fight for the people behind the issues — the underrepresented and misunderstood whose rights are most often threatened. Therefore, we care deeply and publicly.

- *We see the forest for the trees.*

After nearly 100 years, we've learned to keep things in perspective. It's not about winning the point, but the match.

- *We teach, not preach.*

We keep people informed with credible, fact-based information that's never biased or partisan.

- *We're "We the People."*

Even when discussing complex subjects, we're accessible — never condescending, boring, or elitist.

---

## **Resources**

Please see the companion to this handbook, the tone of voice guide, for more on our verbal identity.

# IMAGES

*How to use images  
to tell engaging stories*

## Photographs

- *A photo is a way to deliver information.*  
Not all communications will need photos. Sometimes words and strong typography alone can be powerful! If a photo won't add information, consider omitting it.

Detailed and informational



General and non-specific



- *Consider who is represented.*  
The ACLU fights for all people: That should be reflected throughout our communications. Take care to be inclusive.

Consider your subjects and how they are represented in the media. As a large institution, we are in a position of power. Many of the people we represent are not. Avoid generalizing about any group or tokenizing any person, and ask yourself whether your image inadvertently silences, victimizes, or reinforces assumptions. We must take care in how we depict all people.

- *Get permission and give credit.*

If you didn't take the photo yourself, you need to confirm permission to use it for your intended purpose.

And always credit the photographer or source: Even if not required by the licensor, we include a credit to give a nod to where we got the image. Our standard credit is in the lower right corner of the image. Follow this simple formula: “photo: credit line” or “footage: credit line.” See p. 146 and 147 for resources and details on proper licensing and crediting.

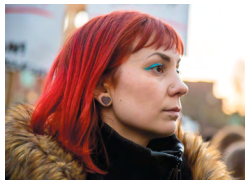


- *Photographs should look real.*

We like portraits of leaders, candid photos of everyday citizens, and on-the-ground documentation of historic events. This is real life, powered by real people.

Look for photos that feel unposed or at least have a natural setting and lighting (instead of looking like the inside of a photo studio).

These photos are candid and naturally lit.



These are believable documentations of actual events (and their message is clear).



- *Photos shouldn't look fake or synthetic.*

Avoid photos that look too posed and generic. And don't use excessive filters or effects. It's okay to adjust contrast, but don't get carried away.

These photos are too posed and generic — they look fake.



Too gauzy

Just right

Too harsh



Don't add fake shadows or spotlights, either.  
Photos should feel authentic and unvarnished.



- *Portraits should feel frank, not formal.*

Sometimes you need a posed portrait. It's okay for the person to look straight in the camera. That directness is great! But look for natural expressions, gestures, and backgrounds.



- *Show context.*

Removing backgrounds removes context and feels synthetic. Avoid overcropping or silhouetting.



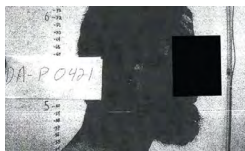
- *Consider your photo's content.*

Sometimes we need to communicate urgency about a difficult, even frightening situation. But our images shouldn't be gratuitous, and they should represent the truth of the subject matter.

This simulation feels overdramatized and manipulative.



This official Defense Department document is objective.



- *Check the resolution.*

Sometimes a photo looks great onscreen, but when it's printed, it looks pixelated and blurry. That's what we mean when we call something low resolution or "low res." The pixel density is too low. Look for at least 300 pixels (or dots) per square inch (that is, 300 dpi). That means if you want the photo to appear 10 inches tall when printed, it should measure 3,000 pixels tall; and if you want to print it 1 inch tall, it should be 300 pixels.

## The Modern Engraving

The ACLU's modern engraving treatment is a distinctive way to set ACLU communications apart.

- *It's better for some images than others.*

The modern engraving is a nice choice most of the time, but it's particularly well suited for some images — and not so well for others. Follow these guidelines:

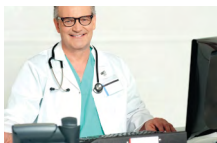
The modern engraving is *good* for

- stock photos or dull images
- low-resolution or poor quality photos
- portraits
- very serious or aggressive topics (when regular photographs feel too graphic)

The modern engraving is *bad* for

- any photo with a license that doesn't explicitly allow for modifications (see p. 146)
- historic photos
- fine art (photographs or paintings where authorship is important)
- photos with very poor contrast

It makes generic stock photos look more distinguished.



Lackluster snapshots become much more interesting.



And it makes portraits feel historic.

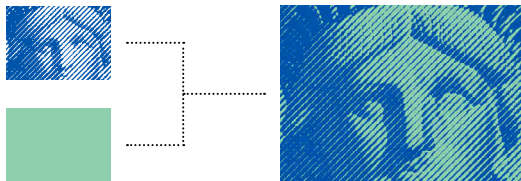


But don't mess with historic or fine art images.



- *Choose two colors per image.*

Make sure there is enough contrast so you can see what is in the image. A good rule of thumb is to select colors from different parts of the palette (light, primary, or dark). You can always select from our premade color pairings (see p. 152).



- *Make sure the engraving lines are visible.*

Determine the approximate size that the image will be first. Then, when you apply the modern engraving treatment, the lines will be appropriately sized.

Lines too fine



Just right

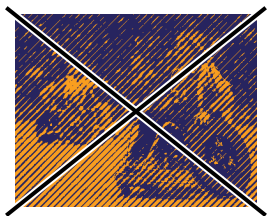


Lines too thick



- *Consider the people in the photographs.*

This treatment has many advantages, but it is not for fine detail. Will it obscure someone's face when you don't want it to? This is something to consider when showing images of people who are under-represented in the media. A clear, straightforward portrait can be more powerful and than one that uses the modern engraving treatment.





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## Making the modern engraving

Download our Photoshop actions (see p. 146), and then follow these steps:

1. Open a photo in Photoshop.

2. Open the Action palette (Window > Actions), select the action you want to use, and hit play. **ACLU Modern Engraving ROUGH** is usually good for images that will be shown small or viewed at a distance (such as on signs and posters).

**ACLU Modern Engraving FINE** is better for mid-sized images and images printed in reading material (such as reports and brochures).

3. The action will run on its own. When the action has finished running, you will see multiple color options in your layers palette (Window > Layers). Turn *one layer on at a time* to see how it affects your image. Choose the one you want to use.

4. Now flatten and save your file using the **ACLU export for PRINT** or **ACLU export for SCREEN** action. These

actions will end on the “save as” screen, and you can save it in any format you like (PNG or JPEG is best for screen, and PSD or TIF is best for print).

5. Test your image in your layout. If the engraving looks too fine, try going back and using the rough action, and vice versa. You can also try resizing your image before running the action.

### For Expert Users

If you are importing your image into InDesign, you may find it easier to stop after step 2, without selecting any color layers. Run the **ACLU export for INDESIGN** action. You can then change the colors dynamically in InDesign: To change the background color (clear by default), change the fill of the image frame; to change the foreground color (black by default), select the image in the frame and change its fill.

This is often faster for advanced users. It's also what you should do if you are printing in Pantone (PMS) inks.

## Other Imagery

- *Illustrations should add information.*

If you can't find a photograph that suits your needs, your next thought may be to use an illustration. But like a photograph, an illustration should deliver information — it shouldn't just be decoration. Ask yourself if an illustration is essential or merely ornamental.

All this illustration does is indicate that it's about making a call — but the text already says that.

Without the illustration, the text can be bigger. This makes for a quicker read and higher impact.



- *The color and style of illustrations should fit with our identity system.*

Look for simple, high-contrast styles that match the clean, straightforward style of our identity system.

When possible, illustrations should be shown in ACLU colors. If the colors clash, try changing them in Illustrator or Photoshop, or turn them into black and white (as long as you have permission to modify your selected image; check your usage license!).



- *Seek permission, and give credit.*

Just like with photos, if you didn't make the illustration yourself, you need to confirm permission, and always credit the artist or source. See p. 147 for more details.

## The Statue of Liberty

- *You can use Lady Liberty.*

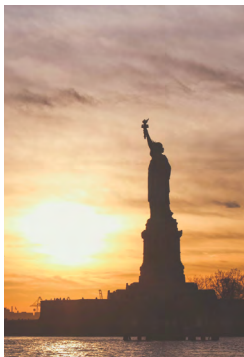
Lady Liberty is no longer part of our logo, but she's still a symbol of our principles.



CLOCKWISE FROM TOP LEFT: ACLU NATIONWIDE, SOURCED FROM SHUTTERSTOCK; ANTHONY DELANOIX; DASSEL, PIXABAY.COM

- *Vary the way she's shown.*

Now that she's no longer part of the logo, there's no need to stick to a single crop, angle, or color.

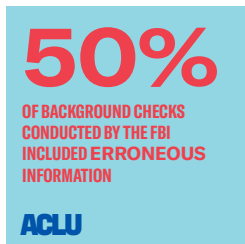


- *Let her be free: don't make her into a logo.*  
Don't attach her to any of our logos. And don't use her in place of our logo. Consistency is important in preserving a unified look.



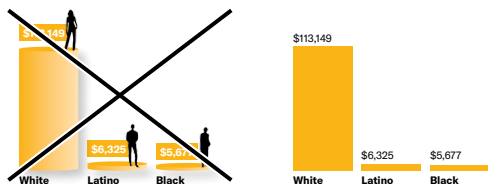
## Information Graphics

- *Facts are facts: Let them speak for themselves.* Information graphics are a good example of why pictures are not always necessary. If the facts are clear and meaningful, we don't need to tell people how they should feel about them. Like everything we say, we're confident in our numbers.

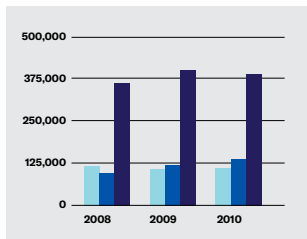


- *Keep them simple and streamlined.*

Visual clutter is the enemy of clear information graphics. Don't use special effects like 3-D shapes or shadows.



Try to keep grid lines to a minimum, too. A few lines may be necessary, but too many make charts and graphs look fussy. Our style is frank and straightforward.



**The Growth of Expedited Orders of Removal and Reinstated Orders of Removal FY 2008–FY 2010**

■ Expedited Removal  
■ Reinstatement  
■ Total Removals

---

## Resources

A set of Photoshop actions for creating the modern engraving is available at [www.aclu.org/PhotoEngravingTool](http://www.aclu.org/PhotoEngravingTool).

There are many sites where you can obtain images legally.

### **ACLU shared images**

Staff are encouraged to share their images with everyone at the ACLU. If you took the photo, commissioned the photo, or confirmed permission for broad general usage, please upload it to the Digital Asset Management System with a link on the Loop at <https://www.acluloop.org/Pages/Image%20Library.aspx> so others can use it. Check back often to see what your colleagues have uploaded.

### **General stock photos**

These sites require that you set up an account, but once set up, you can easily purchase and download images.

- [shutterstock.com](http://shutterstock.com)
- [bigstockphoto.com](http://bigstockphoto.com)
- [alamy.com](http://alamy.com)
- [photoability.net](http://photoability.net) (photos of persons with disabilities)

### **Editorial and news-related stock photos**

- [pictures.reuters.com](http://pictures.reuters.com)
- [apimages.com](http://apimages.com)

### **Public domain images**

Sometimes, images fall out of the boundaries of copyright, such as works produced by the U.S. government or works created before 1923. These photos can be used freely.

- [loc.gov](http://loc.gov)
- [archive.org](http://archive.org) (select images)
- [dvidshub.net](http://dvidshub.net) (military images)
- [defense.gov/Media/Photo-Gallery](http://defense.gov/Media/Photo-Gallery) (military images)

### **Creative Commons licenses**

- [commons.wikimedia.org](http://commons.wikimedia.org)
- [freeimages.com](http://freeimages.com)
- [pexels.com](http://pexels.com)
- [images.google.com](http://images.google.com) (click tools, and under “usage rights,” select your desired license type)
- [flickr.com](http://flickr.com) (use the “all creative commons” or “modifications allowed” search)



---

## FAQs

### **How do I find images that I can use?**

You have several options: You can purchase a stock photo or illustration, find a free image that's in the public domain, or find one that has a Creative Commons license. See the list of resources opposite.

### **What's the deal with Creative Commons licenses?**

As with stock photos, there are different types of Creative Commons (CC) licenses. Check the license and make sure its allowances align with your intended use. Here are some key things to look for:

#### *Attribution*

All Creative Commons licenses (except for CC0) require attribution.

#### *Share-alike*

If you use an image with a share-alike requirement, you'll have to release your own work (featuring the image) with the same or less restrictive Creative Commons license. You won't be able to deny anyone permission to use or publish what you've made.

#### *Modifications Allowed*

This is important if you want to use the modern engraving treatment or modify the image in any way.

#### *Commercial Usage*

You'll need this if you want to sell the product you're making with the image.

#### *CC0*

This license has absolutely no restrictions on usage. It's the same as being in the public domain.

### **Do I need a photo credit?**

Yes. We have a high bar in terms of photo attribution. Even if not required by the licensor, we include a credit to give a nod to where we got the image. Our standard credit is in the lower right corner of the image. Follow this simple formula: "photo: credit line" or "footage: credit line."

# LAYOUT

*How to combine elements  
in engaging and  
multilayered ways*

Our visual identity has many ingredients. How do we combine them? One of the core ideas behind our visual identity is that we are layered: We are a chorus, not a corporation. What we make should look dynamic, human, and warm — never rigid, stodgy, or static.

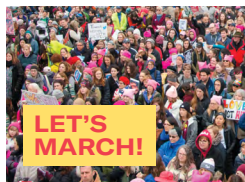
- *Build your file in layers: They provide richness and multiplicity.*

Start with the background and layer on pictures, text boxes, and a logo. Don't be afraid to let elements overlap. This creates nice depth!



- *Asymmetry is dynamic.*

Centered layouts can look too conventional and static. Asymmetrical arrangements are more contemporary and have more movement.



- *Angles add energy.*

Straight elements are calmer and more static. Angled elements have more energy. Consider which effect you want.

Calm



Energetic



To keep things looking neat, limit it to one or two angled elements per piece!

- *Text should contrast with the image below it.*  
If the image is dark, make your text white or light. If it's light, make your text dark.

Text overlaid directly on an image can be very difficult to read for people with visual disabilities. Do it only when the text can be extra large and/or bold, and when your image is somewhat calm.



Note! Facebook penalizes your post if more than 20% of your image is covered by text. Use their tool to test your image before posting: [facebook.com/ads/tools/text\\_overlay](https://facebook.com/ads/tools/text_overlay)



Many other combinations are possible. Experiment! If it's for print, do test prints to make sure the contrast is good on your printer.

- *For busy backgrounds, put text in a box.*

If your background image is just too busy or if it's very high-contrast, you can always put text in a box.



- *Or put your image into a box.*

Another option is to make your image smaller so that it doesn't fill up the entire background. Then you can position it so it stays clear of the text.





- *Be careful of what you cover up.*

When layering a text box on top of other text, just touch the edge of the letters. If you cover too much, it may be hard to read. A good test is to ask someone to take a quick glance and see if they can read it immediately.



When layering a text box on an image, look for calm or unimportant areas that you can cover up without compromising the image.



---

## Resources

There is no need to start your layout from scratch. There are many templates that you can use to begin.

### **Photoshop**

Download templates for creating social posts at [www.aclu.org/PhotoshopTemplates](http://www.aclu.org/PhotoshopTemplates).

- breaking news posts
- victory posts
- quotations

### **Microsoft Office**

Our basic Word document template includes type styles and colors so your letters, memos, one-pagers, and basic reports look polished. Download at [www.aclu.org/MicrosoftTemplates](http://www.aclu.org/MicrosoftTemplates).

### **InDesign**

Download InDesign templates for longer and more advanced text documents at [www.aclu.org/InDesignTemplates](http://www.aclu.org/InDesignTemplates).

- brochures
- one-pagers
- wallet cards
- print-at-home cards
- reports

---

## A Note on Accessibility

Disability rights is one of our core issues. To ensure everyone is able to access ACLU communications as easily as possible, we make sure all of our materials meet certain standards.

### Color

Our color palette has been designed so that all of our colors are perceivable to people with color blindness or other visual disabilities.

All of the ACLU light + dark color combinations meet the highest WCAG (Web Content Accessibility Guidelines) standards **when our text is size 18 pt. or above**. Contrast and legibility are negatively impacted when type is any smaller.

It may be difficult to read text that appears on top of the modern engraving. If your image is busy, make your text larger and bolder, or consider using a box.

### Videos

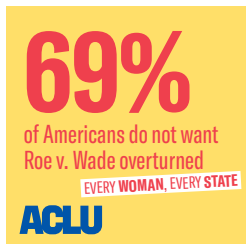
Transcribe spoken text in captions. Include descriptions of sounds as well (e.g., “door closes”).

# CAMPAIGNS AND SERIES

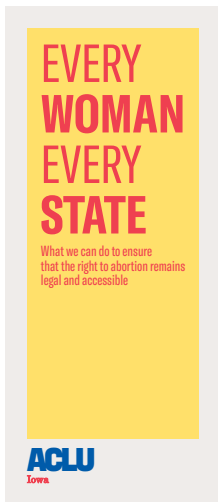
*How to use our visual identity  
to make special campaigns  
and series*

Sometimes we produce many materials on the same topic, theme, or initiative. We want these materials to go together, but we also want them to go with the overall ACLU identity system. The ACLU and ACLU affiliates should get credit for all of the work we do. Here's how you can use our visual identity to stand out *and* fit in.

- *Choose a color combination from our palette.* Pick one or two to use throughout your series (in addition to ACLU red and ACLU blue).



This social posts and this brochure use ACLU red, ACLU blue, and ACLU light yellow.



- *Choose a subset of our typefaces.*

Pick one or two styles of GT America, or choose Century Schoolbook. Use the same typeface for all headlines, titles, and hashtags.

**“I live life on  
my own terms,  
thanks to  
Medicaid.”**

Stacey Milbern

**ACLU**



**“I need Medicaid to  
to get the care I need  
to get out of bed,  
dress, bathe, and eat  
every day. Without it,  
I couldn't stay at the  
dream job I worked  
so hard to get.”**

Andraéa LaVant

**ACLU**



- *Use a consistent image style and theme.*

The more consistency you have, the greater the connection between pieces. Choose images with similar framing, settings, and subjects.

If you're using illustrations, pick a single illustration style and stick with it. They should look like they are all drawn by the same hand.

Series with photographs:



Series with illustrations:



TOP ROW: DANNA SINGE, ACLU

- *Include a national or an affiliate logo.*

The ACLU brand is very powerful. All of our campaigns, initiatives, special events, and departments benefit from being part of the ACLU family.

Every day, we see hundreds of logos for different products and organizations. The world is very cluttered. If we created a custom logo for each of our initiatives and campaigns, this would just add to the clutter — and dilute the power of the ACLU. Campaigns and initiatives should not have their own logos. See p. 83 for more on our official “brand architecture.”





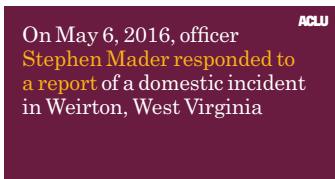
## Video Series

Video series follow the same general rules as print and digital campaigns. Each series has its own perspective and tone — but they all come from the ACLU.

- *Choose a color combination from our palette.*



People Profiles thumbnail



People Profiles frames



- *Choose a subset of our typefaces.*

Pick one or two styles of GT America, or choose Century Schoolbook.



ACLU Explainers  
thumbnail



ACLU Explainers  
frames

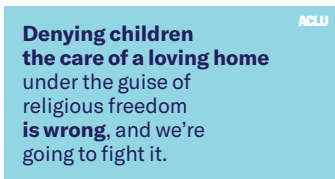


THUMBNAIL: ACLU NATIONWIDE; USA CROWD: ISTOCKPHOTO

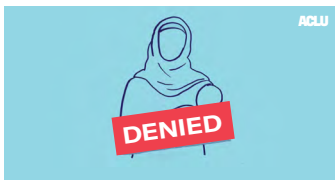
- *Use a consistent video or animation style.*  
If using animation, use the same look for all videos in the series.



Rights Watch  
thumbnail



Rights Watch  
frames

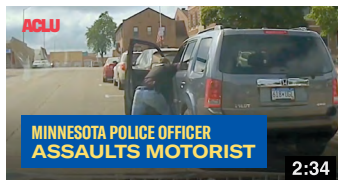


- *Use the ACLU “bug.”*

Keep the ACLU logo visible throughout your video. In video lingo, this is called a “bug.” Ours is the white logo in the upper-right corner. Keep this consistent across all videos.



Note that for thumbnails, the logo must move to the upper left. It can also be in red or blue, since it's placed over a static background and its legibility can be ensured.



---

## FAQs

### **What counts as a campaign?**

The definition is flexible. Any time you want to create a set of materials that go together, it can be considered a campaign.

### **Can I introduce a new typeface for my campaign?**

No. We already have so many typeface styles to choose from. Introducing additional variety to the system would make our work look disjointed.

### **We already have a custom logo for one of our projects. Can we keep using it?**

It's best to make a clean break. The power of the ACLU name lends credibility and authority to your project. Your audience will have no trouble recognizing that your project remains important, even without your custom logo.

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## Notes



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## Notes



## **Any Questions?**

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**Democracy must not be a  
spectator sport. We — and  
we the people — must  
raise justice up and must  
bring peace to our nation  
and must come together.**

**Anthony Romero  
Executive Director**



Security  
Loyalty &  
Science

BY WALTER GELLHORN

CORNELL STUDIES IN CIVIL LIBERTY

ROBERT E. CUSHMAN, ADVISORY EDITOR

SECURITY, LOYALTY, AND SCIENCE



# Security, Loyalty, and Science



WALTER GELLHORN

PROFESSOR OF LAW IN COLUMBIA UNIVERSITY

Cornell University Press

ITHACA, NEW YORK, 1950

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## Preface

THIS volume is one of a series made possible by a grant from the Rockefeller Foundation to Cornell University. For two years a group of scholars working individually under my direction have studied the impact upon our civil liberties of current governmental programs designed to ensure internal security and to expose and control disloyal or subversive conduct. This research has covered federal and state legislative activities in this area, the operation of federal and local loyalty programs, and this book by Professor Walter Gellhorn of the Columbia University School of Law is a study of the administration of security policies in "sensitive" areas. Other volumes in the series include one on the House Committee on Un-American Activities, by Professor Robert K. Carr of Dartmouth College; one on the President's loyalty program and the summary dismissal statutes, by Miss Eleanor Bontecou, formerly an attorney in the Department of Justice; and a survey of state programs for the control of subversive activities, by several scholars working under Professor Gellhorn's editorship. There are monographs dealing with California, by Edward L. Barrett, Jr., of the University of California School of Law; with New York, by Lawrence H. Chamberlain, Dean of Columbia College; and with Washington, by Vern Countryman of the Yale Law School. A final report summarizes the findings of the entire study.

## PREFACE

No thoughtful person will deny or minimize the need for protecting, and protecting adequately, our national security. The right and duty of national self-preservation cannot be challenged. This protection of the national security requires in certain instances the restriction of some of our traditional civil liberties. We have, however, learned by hard experience that we can be made to sacrifice more civil liberty to the cause of national security than is really necessary. There is, therefore, sound reason for examining with objective care the appropriateness and effectiveness of any particular governmental action sought to be justified as a defensive measure against disloyal or subversive persons or conduct. This is what the books in this series undertake to do, and Professor Gellhorn's present study deals with an area in which our national security exacts perhaps its heaviest toll in terms of the normal individual freedoms which must be restricted.

It must be emphasized that the volumes in this series state the views, conclusions, and recommendations of the individual authors. An advisory committee of distinguished men has been associated with this project. They are Messrs. Lloyd K. Garrison of New York, Erwin N. Griswold of Cambridge, Earl G. Harrison of Philadelphia, and Philip L. Graham of Washington. Each volume in the series has been strengthened and improved by the advice and suggestions of this committee, but each volume still remains the work and states the opinions of the person who wrote it.

ROBERT E. CUSHMAN

*Cornell University*  
*Ithaca, New York*

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**SECURITY, LOYALTY, AND SCIENCE**



# Introduction

THE world's polarization into opposing forces has cast a shadow upon the traditionally accepted values of scientists. In days gone by science was broadly viewed as an unselfish effort, international in scope, to expand knowledge for the benefit of all mankind. Today science has come to be regarded somewhat in the nature of a national war plant in which a fortune has been invested.

The ties between government and science in the United States are increasingly tight. The Federal Government alone expends more than a billion dollars annually to support well over 50 percent of all the country's scientific research endeavors. In part this support is untingered by the martial flavor of the times. Studies looking toward preservation of health or conservation of natural resources, toward agricultural abundance or aviation safety, would go forward with equal, perhaps even greater, intensity if peace were in the air. But since the atmosphere is not wholly restful, the prevailing emphasis is on studies related somehow to war. Few major industrial or institutional laboratories are without Army, Navy, Air Force, or Atomic Energy Commission contracts. Military research and development contracts alone number close to 20,000, at a cost each year in the neighborhood of \$600,000,000. This means that nearly four cents of

## SECURITY, LOYALTY, AND SCIENCE

every dollar appropriated for the use of the armed forces, or about one cent of every dollar paid in federal taxes, is spent for research looking toward more effective weapons, equipment, medicines, and utilization of human resources in war. To this must still be added the research monies disbursed by the Atomic Energy Commission and many other civilian agencies as part of their respective programs.

These massive expenditures are acknowledgments of the immense contributions of science toward winning the most recent war—radar, the proximity fuze, the atomic bomb, the lifesaving drugs, and all the smaller mechanisms and techniques that were woven into the normality of military operations. They reflect, too, an awareness that the perils of the future may include still further extensions of military science. The average citizen, it is fair to suppose, is well persuaded that the remote and mysterious laboratory is the very citadel of his defense and the outpost whence to launch attack if need be.

So it is that the old picture of science as the universal benefactor has become somewhat eclipsed by a less lovely picture of science as an armory of devices for waging war more efficiently than any enemy.

Possession of this armory by the United States has not proved to be a wholly unmixed delight. This nation's comfortable consciousness of power is modified by anxious concern lest the armory be invaded by others who themselves seek the knowledge and instruments that constitute military superiority.

To prevent this, physical safeguards are erected. Fences and guards exclude unauthorized persons from scientific laboratories as from ordinary war plants. An Army ground division as well as Air Force units figures in the protection of the Atomic Energy Commission's installation at Hanford in Washington. Special squads of FBI agents are given technical

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indoctrination courses and are then stationed in AEC laboratories. The Los Alamos area is patrolled by uniformed troopers of the Security Service, who far outnumber the scientists in the quarters under guard. Studies of sabotage vulnerability are made and protective measures are initiated at each of the more than 1,300 locations in the United States where work is done in connection with the atomic energy project alone. In addition to military and FBI personnel, some seven thousand persons whose salaries are paid by the Atomic Energy Commission devote full time to guard details and other aspects of "security."

These protections, however, are not enough, for the analogy between the laboratory and the ordinary war plant is incomplete. In science as it relates to military advantage, the great fear is that a competitor foreign nation, specifically the Soviet Union, may learn what American scientists have discovered and may thus diminish this country's margin of real or supposed superiority. Physical barriers may prevent access to areas where work is being done, but they do not furnish full assurance that ideas and information will not pass beyond the enclosed areas. The desired safety must be achieved, if at all, by other devices. This book is about those devices and their consequences.

The first thing to be noted is that, in the name of security, the United States has restricted the interchange of ideas between one scientist and another. How this has been done, how information has become "classified" (in the parlance of the military authorities) or "restricted" (in the parlance of the Atomic Energy Commission), furnishes the material of the opening chapter.

Obviously, however, it is not enough to say simply that the United States thinks it possesses secrets which it desires to withhold from others. Distinguished scientists advised from the first that scientific knowledge could not be monopolized

and that even the closely guarded "secret of the atomic bomb" would not long remain ours alone. The disclosure in the autumn of 1949 that there had been an atomic explosion in the Soviet Union served to demonstrate the soundness of this advice in point of fact, but the question remained whether a mere retardation of scientific work in other countries might not in itself be advantageous to this one. That question is considered in Chapter II, "The Balance Sheet of Secrecy." Whatever be the gains from suppressing the normal flow of scientific data, the costs also must be weighed before the validity of the policy may be assessed finally.

It is arguable that the United States is purchasing *security* at the price of *progress*. A secrecy program is marked mainly by apprehensive and backward glances over one's shoulder, and this may, in short, retard the forward drive of scientific energies into as yet unexplored areas. This phase of the problem warrants close and dispassionate attention. Critics of the present rigidities of secrecy policy have too often been dismissed as impractical sentimentalists or as plainly pro-Russian. Grave matters are involved. They should be considered with realistic detachment rather than with the preconceived notion that truth, if disagreeably comfortless, is unpatriotic. David Lilienthal in one of his last speeches as chairman of the Atomic Energy Commission declared that "we should stop this senseless business of choking ourselves by some of the extremes of secrecy to which we have been driven, extremes of secrecy that impede our own technical progress and our own defense." It would be reckless to ignore the facts one learns from so authoritative a source.

Secrecy is not the only step by which the goal of national safety is sought. The United States, like other countries, has placed selective limitations upon the persons who may engage in some types of scientific work. To some extent this is a direct reinforcement of secrecy regulations, being but a

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means of identifying and accrediting the persons to whom secrets may be communicated. In part, however, an independent consideration enters into personnel restrictions. The position of scientists in contemporary society has been sharply affected by collective fear of Communist influences at home and abroad as threats to American security and independence. The Communists and their more or less formal allies have a scant record of accomplishment or influence in this country. But they are linked ideologically and emotionally to the Soviet Union, the only nation remotely capable of forcefully challenging the military dominance of the United States. Hence they are generally the object of the distrust and disquietude which reflect America's tensions. Since the dread of war underlies many other anxieties, and since the ingenuity of modern science and engineering serves constantly to intensify that dread, it is but natural that the scientist is an especial focus of the pervasive concern about Communists. In later chapters the "security" and "loyalty" programs are discussed in relation to scientists and their work; these are the programs that largely determine who can undertake what researches in America, and where and how.

As in the case of secrecy, an appraisal of the worth of these programs cannot be made solely in the light of their possible advantages. They entail costs, too. It may be that the nation loses more than it gains when, in order to pass on a scientist's eligibility to participate in research, it seeks to examine and confine his political attitudes, his personal associations, and his intellectual drifts. In any event, that question can best be considered after a description of the applicable policies and their administration.

The final answer will not be found in legal propositions, or in constitutional judgments. The Constitution in some circumstances sets a standard of propriety, to be sure; but it is never more than a minimum standard. Much that may be



permissible may not be desirable. In this volume little effort has been made to spell out arguments about the legality or illegality of the courses the nation is following in its treatment of scientific personnel. The issues at stake are deeper than those with which courts customarily deal. If what is being done is in truth desirable, no doubt the appropriate supports can be discovered in law. If what is being done is in truth a disservice to the nation, it must be revised whether or not it is objectionable in a lawyer's sense.

A civilized nation, it has been remarked, is one that cannot tolerate wrongs or injustices—except at home. Even if this salty comment were unqualifiedly exact, the United States could not ignore the importance of finding out whether the tests applied to scientists create injuries without fully compensatory advantages. For it is clearly true, as President Truman told the American Association for the Advancement of Science on September 13, 1948, "We cannot drive scientists into our laboratories, but, if we tolerate reckless or unfair attacks, we can certainly drive them out." The following chapters about the measures which this country has adopted for purposes of self-protection seek to discover whether they serve as an adequate shield against enemies or, instead, as an unintended slashing of the human values that are the strongest elements of the American fabric.

It is not only modern warfare that rests upon technological achievement. Modern civilization does so as well. The preservation and advancement of society will be heavily affected, if not altogether determined, by the tone and quality of future scientific researches. In the United States the relationship between the nation's government and the nation's science is likely to grow closer rather than more distant, because it seems probable that only the Government can readily bear the burden of supporting research that is not immediately productive of profit. While ultimately the organizational

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forms may change, with direction passing from military to civilian hands and with renewed emphasis upon scientific contributions to life rather than to death, the behavior patterns of today will help shape tomorrow. Present security methods and attitudes bear upon scientific advance. That is why they must be explored, identified, and understood.

A further word needs to be said about espionage in this era of international friction. Many persons of wide experience and cool judgment regard our present position vis-à-vis the Soviet Union as perilous in the extreme. In a situation which borders on national emergency, security measures become not only palatable but essential. Moreover, the case of Klaus Fuchs, the British atomic scientist who confessed to a long course of betrayal, has underscored the fact that treachery is more than a theoretical possibility.

Fuchs was an outstanding and trusted scientific worker. His self-exposure as a spy produced an altogether understandable shock of alarm. Fuchs's unmasking is a salutary reminder that in any large group of highly placed men, there may be some who are corrupt or cowardly or hostile. Whether those men are scientists or not, their detection and separation from positions of responsibility is of course a matter of importance.

Some nonscientists smugly suppose that but for Fuchs's revelation of secrets, the Russians would have been incapable of constructing an atomic bomb. They like to feel that American technology is so superior that other countries will remain baffled by scientific problems we have solved, unless the others succeed in stealing our solutions. If this view prevails, one can anticipate an intensified isolation of American science, an even sterner restraint upon discussion of researches, and a sharply suspicious attitude toward the individuals who perforce know about American scientific developments.

But the lesson of the Fuchs case will have been utterly missed if we blindly accept ever more rigid controls in the

hope that security will thus, and only thus, be won. The Russians' achievement of a bomb may indeed have been materially advanced by Fuchs's messages. Responsible scientists, however, are agreed that espionage (even by one so well-informed as was Fuchs) could have had no effectiveness whatsoever unless the Soviet Union were already capable of exploiting the known facts. In the editorial words of the *Bulletin of the Atomic Scientists*, "No spying could have enabled a scientifically and industrially backward state to produce an atomic bomb in five, six, or twenty years." Fuchs's dereliction of duty was grave. So, too, would be the misdeeds of other spies who may conceivably have found employment in American scientific establishments. Grave as they could perhaps be, these misdeeds might still cost the United States less dearly than would excessively rigorous controls. As the following chapters suggest, there are dangers in damming, as well as dangers in wholly unblocking, the streams of knowledge. There are dangers, too, in overcautious selection of the scientists in whom trust is to be placed. American strength rests upon advance rather than upon nervous hoarding of present scientific knowledge. If Fuchs's treachery leads the American public to overlook that fact, this country will indeed have paid heavily for his faithlessness.

# I

## Keeping Secrets

**E**VEN before the United States became a participant in World War II, many American scientists had customarily worked in the atmosphere of suspicion engendered by secrecy. So there is nothing entirely novel about censorship and security controls in research centers. Not until 1945, however, did the dramatic detonations of the atomic bomb bring to general attention the extent to which major endeavors could be carried on without public awareness.

Partly because they themselves were successfully kept from knowing about the bomb until it had burst, many Americans have considerable faith in the feasibility of keeping secrets. This faith has not on the whole been a product of full reflection as to the possible undesirability of secrecy, or of awareness that secretiveness may not be practical in all circumstances.

At the present time the security policies of the United States look toward the preservation of two distinct types of secret. One of these is exemplified by the number of atomic bombs which have been produced, or their whereabouts. If information concerning these matters is not volunteered, stolen, or extorted, they will remain true secrets, not discoverable by research because they are not facts in nature.

The other type of "secret" is exemplified by the exact number of neutrons created in the fission of plutonium. Until re-

cently this information was shared only by a small number of scientists in the United States, Great Britain, and Canada, and the secret could be kept within this narrow circle because no one else had developed the facilities for duplicating the measurements they had made. But of course, as scientific leaders have sought to remind us from the first, the atom knows no national allegiance, and it was therefore only a matter of time until our American "secret" would be discovered by others who would parallel the researches that had afforded us our knowledge—as the French and, more recently, the Russians have apparently now done to a significant degree. When one says that he knows a fact in nature which he intends to preserve as a secret, he means merely that he will not voluntarily reveal his knowledge. Nevertheless the knowledge may be acquired elsewhere. Louis N. Ridenour, himself a distinguished physicist and dean of the Graduate School at the University of Illinois, put the matter this way: "I am saying to you, not that you can not find out what I know, but that you must find it out for yourself, without my help. This may cause you to become annoyed with me, but it cannot keep you in ignorance." <sup>1</sup>

The considerations that bear upon attempted retention of these two types of secrets are different, as is the likelihood of success in the attempt. As to the first type—exemplified by the number of our atomic weapons—Senator Brien McMahon, chairman of the Joint Congressional Committee on Atomic Energy, has strongly suggested that in keeping secret our atomic production figures we "are risking the tested, traditional principles of free and constitutional government," because Congress, being uninformed, "lacks sufficient knowledge upon which to discharge its own Constitutional duties." <sup>2</sup> The number of persons who have information concerning production rates, production quantities, and atomic bomb stock piles is much less than twenty.<sup>3</sup> And Senator McMahon, though

he is the head of the Congressional committee which has the responsibility of keeping intimately in touch with atomic energy problems, is not one of them. The issue of whether or not this type of secret should be revealed impressed the Senator as "tremendously important both from the viewpoint of democratic government and from the viewpoint of national defense." A few days after the issue had been raised, President Truman remarked that he deemed it an inappropriate subject for public discussion, an attitude seemingly shared at the moment by most of Senator McMahon's colleagues in Congress.<sup>4</sup>

But whatever may be the merits of matters of that sort (in which scientists' interest is no different from that of all other citizens), the arguments which bear upon them are not the same as those relating to freer dissemination of information having professional significance.

Existing "scientific secrets" are unlikely to remain so for long if anyone is sufficiently interested in duplicating them. Even in the closely guarded realm of nucleonics scientists in England, Denmark, and Sweden have published material that is still classified in this country, while French scientists under Professor Joliot-Curie and his associates Goldschmidt and Kowarski in 1948 successfully produced a chain reaction in the atomic fission of uranium's light isotope, U-235. The French experimental reactor is of much less power than its American counterparts, to be sure, but according to Dr. Joliot it favorably compares with the first American pile (1942) or the first English pile (1947). The French have proclaimed their intention of publishing their research findings without restriction. If this occurs, it is scarcely to be expected that American observations concerning the phenomena of slow-neutron fission will remain unreported and unknown. The "atomic explosion" which occurred in the Soviet Union in September 1949 adequately evidences that Russian scientists have

achieved a grasp of the subject without awaiting systematic instruction by either their American colleagues or the French.

Americans must constantly remind themselves that the scientific brains of the universe are not providentially concentrated in this country. Recent efforts of propagandists in the Soviet Union to demonstrate that virtually all scientific discoveries were made by Russian nationals have caused merriment in countries where it is not unpatriotic to laugh out loud. American scientists are happily free from this sort of self-adulation. Nevertheless there is perhaps a tendency in uninformed and unofficial American circles almost to match the officially inspired fervor of the Russians. Fortunately for the rest of the world, however, the vaunted scientific superiority of the United States does not derive from some peculiarly national development of human mentality. Many of the ideas, much of the basic research, which have been the solid foundations of American developments have come from abroad. Since the inception of the Nobel awards for distinguished scientific work, thirty-six prizes in chemistry have been granted to Europeans and only five to Americans; of the forty awards in physics, only eight have gone to Americans; thirty-seven prizes in physiology and medicine have been given, of which only six were awarded to Americans.<sup>5</sup> "At present," writes one of our able physicists who himself emigrated from Holland, "the roster of some of our specialized scientific societies reads like the line-up of a Notre Dame football team. In the future, we may not be able to import an Enrico Fermi, whose work was the key to our atom bomb, or a great aerodynamical theorist like Von Kármán, or the outstanding expert on vibrations, Stephen Timoshenko, and many others."<sup>6</sup>

Even in the realms where American technological magic has been regarded as decisive, our debts to other lands are tremendous. It has been said by one distinguished historian, for example, that the resonant cavity magnetron, the revolu-

tionary discovery of British physicists headed by Professor N. L. Oliphant of Birmingham, was "the most valuable cargo ever brought to our shores. It sparked the whole development of microwave radar and constituted the most important item in reverse Lend-Lease." <sup>7</sup> Similarly, the development of the atomic bomb, which so many of us like to regard as a purely American product, would have been unlikely without reliance on the work and ideas of Strassman and Hahn in Germany, Bohr and Frisch in Denmark, De Broglie in France, and many others, including, of course, Albert Einstein. It bears repeating that the men who stimulated this country's interest in attempting to use the Hahn-Strassman discovery of the fissionability of uranium were Enrico Fermi, who had won the Nobel Prize in physics when he was a professor in his native Italy, and Albert Einstein, Leo Szilard, and Eugene P. Wigner, all of whom were mature scientists before they were American citizens.

According to many observers, German scientific endeavors in the period before World War II were enfeebled not only by the racist and political intrusions of the Nazi regime but also by the complacent conviction that German scientists were pre-eminent. This led to abandoning the give-and-take of science; German scientists neither gave of themselves nor strove diligently to learn from the rest. Yet, as events proved, the Germans were far from omniscient and omnicompetent.<sup>8</sup> No doubt the United States, too, can still advance the limits of its scientific understanding by drawing upon the wisdom of others in matters both large and small. Professor Henry DeW. Smyth of Princeton, now a member of the Atomic Energy Commission, tells an illuminating anecdote involving a brilliant young Brazilian, C. M. G. Lattes, who, still in his twenties, has been appointed to a professorship at the University of São Paulo. Dr. Lattes studied at São Paulo and subsequently at the University of Bristol. Then he went to



Berkeley to visit the Radiation Laboratory of the University of California. By applying work he had previously done in connection with the tracks of mesons produced by cosmic rays, the Brazilian scientist quickly discovered that mesons, the forces which hold the particles of the atomic nucleus together, were being produced artificially by the big cyclotron at Berkeley. Until that time the California physicists had been unaware that the cyclotron had been manufacturing mesons for months, though this has subsequently been described as one of the most important events in physics since the war. It may be added, by way of completing this illustration of the international distribution of scientific talent, that the existence of the meson was first predicted in 1935 by Professor Hideki Yukawa of Kyoto University, and that Dr. Lattes while at Bristol was trained by Professor Powell, an Englishman, and Professor Occhilini, an Italian.

Science throughout its history has been strongly marked by coincidences which emphasize how unlikely it is that ideas can be made to flow in narrowly national channels.<sup>9</sup> Chancellor Arthur H. Compton of Washington University, who was one of the outstanding contributors to work on the atomic bomb, received the Nobel Prize in physics in 1927 because of his explanation of the inelastic scattering of light quanta by free electrons. Simultaneously, Peter Debye, now chairman of the Department of Chemistry at Cornell but then a Dutch citizen and professor at the University of Utrecht, was announcing the same conclusions based on parallel researches. American physicists speak understandingly of "the Compton effect"; their colleagues in the Netherlands mean precisely the same thing when they speak of "the Debye effect." In 1949 Professor Edwin M. McMillan of the University of California announced the development and operation of a synchrotron which liberates X-rays of 300,000,000 electron volts and which, it is hoped, will facilitate further research into the splitting

of protons and neutrons into still smaller nuclear particles. The "theory of phase stability" that led to devices of this type for accelerating electrons and atomic nuclei to high energies was advanced by Professor McMillan in 1945, when he invented the synchrotron, and in the same year Dr. Julian S. Schwinger of Harvard invented the microtron, another type of particle accelerator. Independently of the American physicists a Russian scientist, V. Veksler, had proposed the same theory for achieving atom smashing. In the summer of 1945 he published in the *Journal of Physics* of the USSR a description of both a synchrotron and a microtron.<sup>10</sup>

Illustrations of this sort of duplication of creative thinking are as readily found in the biological sciences. The analysis of the contagious and septic character of puerperal fever by Oliver Wendell Holmes in this country and Ignaz Semmelweiss in Austria is a century-old tale that still stirs the imagination. It has its contemporary counterparts. In early 1942 an inter-allies group of scientists, co-operating under the auspices of our federal government, developed an immunization technique which so effectively forestalled typhus fever that not a single American soldier died of it during World War II. Their work was not promptly described in the professional journals, lest enemy troops also benefit. Wholly unaware of the completed researches, a second group working independently in a university laboratory duplicated some of the discoveries and published their findings before the Typhus Commission had released the information already acquired. During the war years two governmentally employed groups, who were separately investigating bacterial warfare possibilities, achieved approximately simultaneously the then unparalleled feat of isolating a bacterial toxin in a completely pure form. Their work was not immediately published because of secrecy restrictions. On May 17, 1946, the accomplishment of one of these groups appeared in print for the first time. On that very

same day a paper was published by Western Reserve University scientists, wholly unconnected with the bacterial warfare project and uninformed concerning the work there, reporting a similar success with the isolation of a bacterial toxin.<sup>11</sup>

These episodes sufficiently illustrate the impossibility of permanently "keeping a scientific secret" or of precluding others from independently duplicating the most closely guarded researches. They suggest, too, that no particular laboratory is likely at any given moment to possess a monopoly of the scientific competence that makes possible the breaking of new ground. And this would be true as well if all the personnel of all the laboratories of any one country were to be lumped together in a single organization. No country, the United States or any other, is so far ahead of the world at large in scientific attainment that nothing remains to be learned from beyond its own national boundaries.

Unfortunately, the choice of whether or not we shall learn from others does not lie wholly with us. Even if the United States were to embark upon a policy of fully publishing the fruits of scientific work in this country, there is no assurance that all others would pursue the same course. Indeed, the contrary seems probable. The Soviet Union has been even more doggedly secretive and isolationist than the United States. It has rebuffed numerous proposals for cultural and scientific exchanges between the two countries, has virtually forbidden direct contact between Russian scientists and those of other countries, and has frowned upon reciprocal disclosures of research findings even in such entirely nonpolitical matters as the investigation of cancer.<sup>12</sup>

For present purposes, therefore, it must be assumed that there will be no neat balance between outgo of our information and intake by us of others' findings. That may, however,

be largely irrelevant. What is now involved is not a species of international bookkeeping, in which purchases and sales are to be recorded. The question to be considered is simply whether restrictions upon the flow of knowledge within the United States may not so gravely impair this country's efficiency that the cost of secrecy will become prohibitive. The issues deserve to be realistically explored without undue moralizing and without supposing a world differently organized from the one we inhabit, that is to say, a world in which international tension and armaments competition will not end soon or, perhaps, ever.

Scientists themselves have not been of a single mind concerning the direction in which our national interest lies. Even though, on the whole, they have not shared the popular enthusiasm for secretiveness as such, scientists have displayed two quite different attitudes toward enforcement of secrecy as a means of maintaining military pre-eminence.

On the one hand, some have asserted that only through unrestricted access to knowledge, in an atmosphere of freedom of analysis and consultation, can science continue to progress. From this standpoint the views of scientists may be summarized as follows:

1. Scientific progress is a prime requisite of the nation's economic and military security. Without it this country cannot keep pace with potential competitors;
2. Scientific progress is unlikely if there is not a full and free interchange of ideas and discoveries;
3. Therefore, national security requires full freedom for scientists and for science.

On the other hand, there are those who believe that since science is not likely to progress except in a democratic environment, which would perish if the Soviet bloc of nations were

to dominate the world, the traditional freedom of scientific interchange must be at least temporarily surrendered. Here the position may be summarized in this way:

1. Modern warfare is total war, involving all national resources, both human and material; every activity of every person; every phase of industry and agriculture; and every form and variety of social and political organization;
2. Scientific knowledge bearing upon any of these national resources bears upon the nation's war potential;
3. Therefore, all knowledge must be considered secret and kept under strict security regulations.<sup>13</sup>

Each of these syllogisms presents difficulty. The frightening products of scientific progress immediately reduce one's enthusiasm for entrusting to possibly irresponsible hands a body of knowledge that might be abused. Acceptance of the second approach, on the other hand, would not only prevent transmission of information to potential enemies but would also immobilize our own scientific resources to such an extent that further development might be stifled while more alert countries overtook and surpassed us.

Because the first of the two propositions has run counter to popular belief and emotion while the second has not been palatable even to the most "security minded," there has been continuing search for mechanisms and policies that protect against dissemination of information without at the same time preventing the acquisition of yet more information of a scientific character.

It is noteworthy that American scientists, by purely voluntary self-restraint, have limited the interchange of ideas and information in some circumstances. In the early stages of the work which led to the atom bomb it was the scientists, not the military, who insisted that there be no discussion of ef-

forts by nuclear physicists and chemists to translate theories into performance.<sup>14</sup> Similarly a detailed technical analysis of the subject of germ warfare, prepared unofficially by scientists at the College of Physicians and Surgeons of Columbia University, was suppressed by them throughout the war years and was not published until 1947.<sup>15</sup>

In point of fact, however, self-restraint can operate in only a limited way today, because it has been supplanted by statutory and regulatory commands that rather thoroughly occupy the field. Trammels upon communication between scientists are not measured by individual discretion. Rather they are imposed by official "classification" of data into various degrees of secrecy, which prevent disclosure to unauthorized persons.

This basic type of restriction long antedated the utilization of nuclear fission for military purposes. But since it was the Hiroshima and Nagasaki bombings that underscored the role of secrecy in science, description of the classification process may well be commenced by reference to the Atomic Energy Act of 1946. We turn now to a consideration of the methods whereby a bit of scientific information acquires its status as a "secret." Later, after examination of the mechanics of secret keeping, there will be further discussion of the effects of the process.

### *Identifying an Atomic Energy Secret*

The law that created the Atomic Energy Commission vested it with tremendous authority to bottle up and conceal scientific information. At the same time the statute perplexedly recognized that complete and permanent secrecy would impair, perhaps fatally, the hope of further advance.

The Atomic Energy Act defines as "restricted data" all information concerning "the manufacture or utilization of atomic weapons, the production of fissionable material, or the use of fissionable material in the production of power." So

long as data are "restricted" in this sense, they may not be transmitted in unauthorized ways without the risk of grave legal penalties.<sup>16</sup>

Only the Atomic Energy Commission may free information from this statutory restriction by determining that it "may be published without adversely affecting the common defense and security." But Section 10(a) of the Act, while again cautioning the Commission "to control the dissemination of restricted data in such a manner as to assure the common defense and security," expresses a Congressional judgment that "the dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to provide that free interchange of ideas and criticisms which is essential to scientific progress." Thus the Commission has been given the baffling task of balancing two superficially antithetical desiderata—on the one hand, secrecy to assure national security and, on the other hand, freedom of interchange to assure scientific progress.

Failure of agreement upon international control of atomic energy has placed the Commission under unremitting pressure to resolve all doubts in favor of security considerations. While scientists may grumble because, as many believe, the "declassification" of data is too slow, the Commission faces the constant threat of Congressional denunciation if it but slightly disarranges the iron curtain of secrecy. A minor but revealing example occurred early in the summer of 1949, after the AEC on April 28, 1949, had shipped one millicurie of isotope Iron-59 to the Defense Research Institute of the Norwegian government. The declared purpose was to aid a study of "the rate of diffusion of iron in steel at high temperatures." Charging that the shipment of this isotope to Norway might lead to valuable developmental research into the attributes of steel and might thus have a bearing upon military programs, Senator Hickenlooper of Iowa thunderously asserted

that the Atomic Energy Commission had been guilty "of a serious breach of responsibility" that involved "potential impairment of our national security." The resulting controversy concerning the shipment of a quantity of material possessing the radioactive equivalent of one one-thousandth of a gram of radium cannot be dismissed simply as a partisan political exercise. Rather, it must be deemed a symptom of a much larger controversy concerning the wisdom of distributing the knowledge gained through scientific research in this country, or of facilitating the acquisition of information by scientists in general.

The true character of the discussion of the Norwegian incident is made abundantly clear by consideration of the nature of the shipment itself. Isotopes have been called "super-charged atoms," a result of bombarding atoms with neutrons. Long before the atomic bomb was devised, isotopes were produced through the use of cyclotrons. With the exception of Uranium 233, Uranium 235, and plutonium, radioactive isotopes are not now thought to be chain-reacting and, so far as research has thus far disclosed, have no utility in the production of power or in the manufacture of atomic bombs. J. Robert Oppenheimer recently told the Joint Congressional Committee on Atomic Energy that even if the isotopes were shipped directly to Russia, he "knew of no way in which this would help them."<sup>17</sup> Their relationship to the bomb is simply that the development of nuclear reactors at the various atomic energy installations and laboratories has multiplied the number of radioactive isotopes available for research purposes. They are, in the words of the Atomic Energy Act, "byproduct material," that is, "radioactive material (except fissionable material) yielded in or made radioactive by exposure to the radiation incident to the processes of producing or utilizing fissionable material." The Commission is authorized by the act to distribute them without charge for research or develop-



mental activity or for medical therapy if distribution will not be "inimical to the common defense and security." Their primary use in research is as "tracers." Since radioactive particles of matter remain identifiable when mixed with other nonradioactive particles of the same description, the path followed by a radioisotope may be traced after it has been mingled with other substances, and thus new light can be shed on the chemical processes of growth and disease, upon the structure of complex materials, and upon the reactions of both organic and inorganic substances in varied circumstances.

Obviously enough, scientific research of any description may conceivably have implications for the military. If the possible were invariably treated as though it were the actual, one would have to conclude that virtually all learning should be kept within this country's boundaries lest it enhance the war potential of some other power. So extreme a position has not as a generality commended itself to the nation's policy makers, for there is recognition that complete confining of scientific knowledge would grievously retard the progress of the United States as well as the progress of its enemies. Yet, as the discussion of the shipment of nonfissionable isotopes has suggested, there is far from complete accord that our national security will in the long run be advanced by facilitating scientific activities throughout the world.<sup>18</sup>

Mindful that the basic question of judgment has no single answer, the Atomic Energy Commission has been distinctly cautious in relaxing the restriction that rests upon scientific data in this field. In the twelve months between November 1947 and November 1948, 1,936 research reports were produced in the laboratories which the AEC controls. Of these reports, over three-quarters (1,567) were deemed by the Commission to contain information that must be kept in a restricted category, and accordingly the reports have been concealed from all but a few selected persons. Two hundred and

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ten of the research reports related to health and biology; in this group 176 papers, 84 percent of the total, were "classified" and held to be nonpublishable.<sup>19</sup> This is especially interesting because research in the fields of medicine and health have traditionally been "open." Even during the years of active war, the military authorities agreed that publication of new medical findings should be encouraged; the classification of material of this sort was minimized, being confined in the main to limited subjects which were deemed to have immediate battle-front importance or which bore on strategy.<sup>20</sup> Not so in the realms over which the Atomic Energy Commission presides. For many long months after the end of the war, not a scrap of medical research material was declassified. In 1946 it was said that "the entire non-secret literature covering the immense amount of medical work on the effects of radiation and of radioactive poisons on living organisms is to be found in Section 8.70 of the Smyth report. Quoted in its entirety, it is: 'Extensive and valuable results were obtained.' " <sup>21</sup> Even today research work in the biological sciences is perhaps less likely to be declassified than is research in physics, chemistry, and metallurgy, though an encouraging drift in the other direction seems to be presaged by a recent AEC report to Congress.<sup>22</sup>

The figures given in the preceding paragraph suggest the present dimensions of the problem, but they scarcely tell the whole story of the amount of information that remains entombed in the secret publications of the AEC. Not long ago the AEC's Industrial Advisory Group completed a survey of the project. When they finished their work, they commented upon the many interesting and valuable techniques they had observed, the new chemical treatments to protect against corrosion, the instrumentation and plastics and other developments that had grown out of research on atomic energy but had only an incidental relation to it. "We have the impres-

sion," added this group of conservative counselors, "that for reasons which are not at all clear, much of this knowledge is still buried in the files and activities of the Commission."<sup>23</sup> It must be borne in mind that the work which now goes forward is a further development of projects which have roots in the past. The record of the underlying researches remains largely unrevealed. Of all the technical and scientific papers that have grown out of atomic energy work, only about 3,200 in all had, as of December 1, 1949, been cleared for release, and these included documents written in the first instance for such varied purposes as oral presentation at public gatherings, publication in newspapers or periodicals, specifications for manufacturing or supply contracts, and so on.

*The AEC's Process of Declassification or "De-secretization"*

A word should be said here concerning the process of declassification by the Atomic Energy Commission. Slowness in bringing past work to the attention of current researchers is not wholly a matter of policy, nor is it a matter of obtuse obstructionism. In part it is traceable to the scope and the complexity of the task.

Determination that data contained in a research report need not be restricted is a responsibility in the first instance of an official in the establishment where the information originates. If he believes that a paper may suitably be declassified, he must refer it to a "Responsible Reviewer"—one of a corps of a hundred-odd persons, of whom most are specialists in various scientific fields, though a few are individuals possessing an editorial rather than a scientific background. The Responsible Reviewer may decide in favor of declassification or he may deny the clearance sought. When in doubt, he passes the problem to one of four outstanding scientists who are known as "Senior Responsible Reviewers"—W. C. Johnson, chairman of the Department of Chemistry at the University of Chicago;

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W. F. Libby, professor in the same department; J. M. B. Kellogg, a division leader at Los Alamos; and R. L. Thornton, professor of physics at the University of California.

All decisions are made in accordance with an officially adopted "Declassification Guide." This document, originally prepared by the Manhattan Engineer District, the Army-administered predecessor of the AEC, has been thrice revised since 1947 conjointly by the authorities of the United States, Canada, and Great Britain. These countries, which shared in the wartime work on the bomb, have pursued identical policies concerning release of the information acquired during the period of their productive partnership. What those policies are, cannot be discussed with precision. The "Declassification Guide" which embodies them is itself a highly restricted document because it lists some sixty categories of nonpublishable information, and thus might possibly serve to identify the types of data having especial bearing upon the production of fissionable materials and weapons.

In addition to moving, via declassification, toward publication of the previously unpublishable, the Commission has taken another important step toward freeing scientific work from restraint. It has defined certain very limited "unclassified areas" in which investigations may go forward and results may be reported without the need of obtaining prior clearance even though they have a tangential relation to atomic energy.<sup>24</sup>

No matter how well intentioned may be the effort to remove secrecy from things which need not be kept secret, the process is a slow one. Ever since the end of the war plans have been afoot to publish a series of technical studies, the "National Nuclear Energy Series," in which would be embodied the research done while atomic energy was still a military project. Some sixty volumes of classified research will ultimately be reproduced for distribution exclusively to project workers who

need access to the restricted data they contain. A second and separate group of sixty volumes, each containing about five hundred pages of unclassified research reports, was planned to be given a much larger circulation by being made available to the scientific community at large. As of January 1949 only a single volume, *The Histopathology of Irradiation from External and Internal Sources*, had been placed on sale. During 1949 the book list grew gradually. An additional volume appeared in June, and half a dozen more titles had trickled off the presses by December. A continuing stream, though a small one, may now be expected. Meanwhile, however, enthusiasm for this publishing project has waned. Some of the researches that produced fresh and exciting results in 1945 have been repeated and have been independently published by men who unwittingly duplicated work laboriously completed during the war, and some of the original work that was scheduled for publication in the "Tech Series" has been submitted to regular periodicals by authors who simply grew tired of waiting. Moreover, many of the research papers that are now deemed eligible for disclosure in the "Tech Series" require a measure of rewriting in order to make them publishable. Busy scientists who have long since passed to other activities are somewhat reluctant to interrupt current work in order to refurbish their old reports.

Whatever be the causes, the delay itself has been unfortunate in its effect. The outstanding industrialists who serve as official advisers to the AEC recently recorded "the distinct impression that a vast amount of nonsecret information about the work of the Commission and its predecessor, the Manhattan Engineer District, has never been published anywhere. This type of material can only be made available if the Commission devotes more effort to the task of sorting out the nonsecret from the secret for publication. Frequently this nonsecret information which has not been published anywhere

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is essential to a clear understanding of that which has already been published in some form." The same body added the conclusion that as to much other information "still classed as secret, the continuance of secrecy is of doubtful value."<sup>25</sup>

Let it be added, to the Commission's great credit, that it reacted positively to this criticism. It appointed a technological working party to search the files of its Patent Branch for matters of industrial use that were unnecessarily secreted there. It stepped up its release of patents and patent applications, thus making available to industry technological information that had previously been concealed. Finally, recognizing that the Russian atomic explosion showed possession of scientific knowledge still withheld from Americans, the AEC in conjunction with Britain and Canada gave renewed thought to releasing rudimentary data concerning already obsolete low-power reactors, as a stimulant of further industrial interest.<sup>26</sup>

### *How Scientific Data Become Military Secrets*

The classification and declassification of information by other federal departments and agencies, notably the military services, are in an even less satisfactory situation.

Power to restrict dissemination of information has not been specifically conferred on federal agencies, though it has long been exercised. The legal authority, so far as it exists, is derived from a general statute having to do with administrative management; it authorizes the head of each department "to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and *the custody, use and preservation of the records, papers and property appertaining to it.*"<sup>27</sup> This broadly stated grant, stemming from statutes which trace back to 1789, is the support of today's elaborate classification of scientific data.

## SECURITY, LOYALTY, AND SCIENCE

Prior to World War II only the War, Navy, and State Departments maintained classification programs that were designed to promote national military security and diplomatic strength, although in late years comparable steps have been taken to assure the security of papers in various specialized fields over which other departments have jurisdiction.

Discussion of the classification programs in general terms is perforce unrealistic. The military services have published skeletal regulations which reveal some of the guidelines but little of the day-to-day practicalities. The published regulations are supplemented by detailed operating instructions which are themselves classified as "restricted" or "confidential." In the nonmilitary departments and agencies there is even less light concerning policies and practices in this general area. Early in 1947 the President directed in Part VI-2 of Executive Order No. 9835 that "The Security Advisory Board of the State-War-Navy Coordinating Committee shall draft rules applicable to the handling and transmission of confidential documents and other documents and information which should not be publicly disclosed, and upon approval by the President such rules shall constitute the minimum standards for the handling and transmission of such documents and information, and shall be applicable to all departments and agencies of the executive branch." The effort to develop a uniform regulation in accordance with this mandate came to grief when, through a news leak, it became known that the State-War-Navy Coordinating Committee had considered placing under security restrictions any information that might prove to be "administratively embarrassing." The resulting outcry and an intensely critical hearing before a committee of the House of Representatives<sup>28</sup> discouraged further efforts to define for all agencies a uniform classification program. The Coordinating Committee itself, which had been created in the first place for quite different purposes and which was only

fleetingly concerned with classification, was dissolved as of June 30, 1949.

For present purposes it is enough to describe in broad terms the systems that have developed in the Army and the Navy, which may be taken as representative and which, moreover, are of particular interest because they affect so sizable a portion of the nation's scientific activity. Unlike the Atomic Energy Act, which at the outset places a blanket restriction on all data relating to atomic energy, the applicable military regulations nowhere fasten an embracive classification on any single type of information. Each document is to be classified individually or left unclassified, subject to future change.<sup>29</sup> The four gradations of classification, in descending scale of severity, are "top secret," "secret," "confidential," and "restricted."

The responsibility for classifying documents is highly decentralized and personal. One of the Army regulations reflects a desire that "the least restrictive classification consistent with the proper safeguarding of the contents may be assigned."<sup>30</sup> It is a fair guess, however, that the natural tendency to "play it safe" is almost certainly magnified when a scientifically unlearned person must make determinations which affect the communicability of scientific data. As Dr. Steelman soberly reported to President Truman, the Army's adjuration to avoid too strict classification simply "runs counter to the hard facts of military life. The classifying officer knows that he will never be courtmartialed for excessive precautions, whereas he might be for some error on the side of laxity."<sup>31</sup> Demonstrations of the soundness of this generalization abound. One example will suffice. In 1942, after the British had sought this country's aid in developing special weapons for use in occupied countries, the Office of Scientific Research and Development requested Columbia University to undertake a "study of the corrosion of copper chloride solution." It was hoped that the



study would lead to improvement in the so-called "pencil," a simple weapon of sabotage containing a time-delay fuse, already in wide use by the armies of the United States, Great Britain, and Russia. Indeed, many "pencils" had fallen into German hands, and German copies were already being used against the British. Nevertheless, for the better part of a year such stern security restrictions were in force that neither Columbia nor those who were immediately engaged in the studies could be apprised of the purpose of their work. The official historian has mildly noted that "the effectiveness of the group was hampered" by this excessive secrecy.<sup>32</sup> There is no record that the classifying officer's unwise zeal led to embarrassment for him.

Of course the fact that a document has been classified as "top secret" or "secret" or "confidential" or "restricted" does not mean that it becomes invisible. It means merely that it passes out of the zone of easy communicability into a zone where reference to it becomes legally and no doubt psychologically difficult. In the first place, classified information is not readily available to all who might conceivably find it useful, but only to those whose position or work gives them some special claim to it.<sup>33</sup> In the second place, when private individuals do gain access to classified information, they are strongly reminded of their obligation to safeguard it. Thus, every contractor whose operations involve knowledge of military matters because perforce he is given specifications to guide his performance of the contract, is made aware that "disclosure of information relating to the work contracted for hereunder to any person not entitled to receive it, or failure to safeguard all top secret, secret, or confidential and restricted matter that may come to the Contractor or any person under his control in connection with work under this contract, may subject the Contractor, his agents, employees, and

subcontractors to liability under the laws of the United States” —which are then cited at frightening length.<sup>34</sup>

*The Declassification of Military-scientific Secrets*

In any classification system some provision must be made for altering or removing an existing classification in the light of changing events and policy. The Army theoretically permits a classification to be cancelled by the authority which affixed it or by any higher authority; and if what is needed is a revision rather than a cancellation, it may be made by any officer who would have been authorized to give the document its initial classification. In some especially important matters there must also be agreement to declassification or revision by other divisions, including Intelligence and Operations. The Navy's regulations state that if a document's custodian believes that its classification is insufficiently restrictive, he must refer it back to its originator or to the Chief of Naval Operations for proper classification. When the need for the original classification is thought to have passed, the document may be placed in a less restrictive category by its originator, his superiors, the chief of a cognizant bureau, or the Chief of Naval Operations.<sup>35</sup>

As might be expected, the urge to declassify does not match the zeal to classify. The wartime experience of the Office of Scientific Research and Development is illuminating in this respect. Here was an organization administered by scientists and devoted exclusively to scientific work. In security matters, however, it took guidance from the services. Their classification regulations were accepted and applied without formal demur, except that the OSRD did seek to avoid assignments which were classed as "top secret" and which had correspondingly rigid requirements with respect to handling, transmission, and filing. Most of the OSRD research projects were

initially classified as confidential or secret. Once this characterization was applied, it was likely to remain forever. "One criticism of the OSRD practice which probably would apply to security precautions generally," wrote an OSRD administrator after the war, "was the persistence of the classification after the reason for its establishment had ceased to exist. A periodic review of all classified items would doubtless have shown many for which the classification could have been lowered or even removed . . . In retrospect it seems possible that the saving in time resulting from handling documents of lower classification would have justified strenuous efforts to find the time for reclassification at an earlier date."<sup>36</sup> But "strenuous efforts" are rarely made in this realm. One despairing researcher has casually offered a suggestion that may warrant serious consideration. He has proposed that the classification of any particular scientific data should automatically drop one notch every six months in the absence of specific action to reaffirm an existing classification. Thus at six-month intervals a "secret" report would become in turn "confidential," "restricted," and "unrestricted" unless affirmative steps were taken to preserve the limitations upon its circulation. In this way inertia would lead to ultimate declassification instead of to retention of unnecessary limitations.

Toward the end of World War II a special problem of declassification arose with reference to the release of the extensive scientific and industrial data that fell into the hands of American armed forces as they penetrated into enemy territory. Acting under his constitutional authority as Commander in Chief, the President determined that these spoils of war should promptly be released in this country for the benefit of the American public, always, however, with primary regard for the omnipresent demands of security. By executive order the President authorized the Director of War Mobilization and Reconversion to take appropriate steps toward

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effectuating publication of information about the enemy's scientific and technological advances. At the same time, however, the Secretary of War and the Secretary of Navy were given absolute and final power to forestall release of data if in the opinion of either one of them "the national military security" would be affected.<sup>37</sup> As is customary, the pressures pushing in the direction of revealing what has hitherto been concealed have proved less steady and on the whole less powerful than the characteristic dead weight of declassification authorities.<sup>38</sup> A somewhat parallel situation arose in the OSRD when it faced the problem of publishing the mass of information that had accumulated during five years of scientific silence. The most important phase of the publication program as it finally took shape was a series known as the "Summary Technical Reports." The coverage of these reports was very broad, a circumstance leading at once to their being placed under tight security restrictions which prevented any public distribution. As a result, only 250 copies of the "Summary Technical Reports" were printed, and most of these have been deposited with the Army and the Navy. A small number have been lodged in the archives for possible future distribution or duplication, though, as an official historian unhappily remarked, "the contents are likely to be obsolete before declassification."<sup>39</sup>

## II

# The Balance Sheet of Secrecy

LIKE most other policies which operate in a complex society, the policy of enshrouding scientific developments in a cloak of secrecy is neither all gain nor all loss. In this instance, however, there is so wide an understanding of the gain that the less obvious but nonetheless real loss may be virtually overlooked during public discussions. It is the purpose of the present chapter to trace the disadvantages of the United States' position as it has been developing in recent years.

But first it is fitting to restate the objectives of the secrecy policy. The resolve to try to "keep secrets" was not the act of perverse or irrational men. It was the act of men genuinely and patriotically convinced that secrecy would retard the military development of possible enemies. Even though the nation's competitors might ultimately be able to duplicate American achievements, nevertheless the attendant expense, effort, and delay were deemed to be positive advantages for the United States. This view is entirely plausible, and the exigencies of the times make it persuasive to most of us. Especially as to the newer weapons of mass destruction such as the hydrogen or the atomic bomb, the dissemination of information concerning American discoveries might create perils which could not subsequently be controlled. Because readier publication of American scientific findings might very well prove

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useful to a hostile power, one instinctively applauds secrecy and restraint. No one wishes to place a club in the hands of a potential attacker.

And yet there is another side to the story. If the policy of secrecy is applied with indiscriminating stringency, it may lead to our own ruin. This is overlooked by many who see secrecy as merely a sort of international sanitation. Those who criticize secrecy are often themselves criticized as insincere or ingenuous. This somewhat discourages honest efforts to re-evaluate a vitally important policy which bears directly upon national well-being.

No matter how fleetingly unpopular it may be to do so, however, one cannot too often stress that strength lies only in a dynamic rather than a static utilization of resources. The United States may find itself left behind on the road to leadership if it contents itself with vigorously marking time. The problem is not one to be viewed entirely as a short-run concern. There is more to be decided than whether a momentary hobbling of scientific traffic would be disastrous to the nation. Of course it would not be. Unfortunately, the present issue does not involve restraints of only a moment's duration. It involves restraints which have already extended over a considerable period of time and which seem likely to continue far into the future unless the balance sheet is reread. The life of a people is long. The effects of a policy on a people must be gauged in terms of future as well as immediate consequences.

### *The Predictably Unpredictable Uses of Scientific Knowledge*

This branch of the discussion may well be commenced by considering the unpredictable course of scientific development. Who knows what value any given discovery may ultimately have? Faraday, when questioned concerning the worth of electromagnetism, countered with another question, "What good is a new baby?" His question suggests the truism that

when circulation of knowledge is discouraged, there is an equal discouragement of speculation and experimentation concerning its applications. The implications of data are frequently more important than the data themselves, but of course the implications cannot be pursued if the data are not widely available.

Vannevar Bush has pointed out that many great advances in medical science "have arisen as by-products from such unexpected places as the dye industry"; occasionally a brilliant medical man has created an entirely novel approach to unsolved problems, but more often the steps forward have come about "because other and neighboring sciences were progressing at a prodigious rate, and applications were bound to occur." <sup>1</sup> So it is with most branches of scientific movement. Information acquired for one purpose has proved to have its largest significance in wholly unanticipated ways. Galvani did not have the electric telegraph and the transatlantic cable in mind when he observed that frogs' legs moved convulsively upon being brought in contact with iron and copper; but that observation was the opening phase of the investigations which led to long-distance communication. The present day is equally likely to see dramatic leaps from one body of discovery to another.

During World War II the nitrogen mustards were seriously considered as chemical warfare agents. Chemists at the University of Iowa successfully synthesized and stabilized some forty different nitrogen mustards. Studies of the toxicity and vesicancy of different compounds were undertaken at the University of Chicago. Biochemical studies went forward at the Rockefeller Institute, Johns Hopkins, and Washington University. Pharmacological and physiological studies were carried out at New York University and Yale. All these experiments were directed toward throwing light upon the possible

utilization of nitrogen mustards for chemical warfare purposes.<sup>2</sup>

In the course of these studies observations were reported concerning the action of one of the nitrogen mustards on bone marrow and on the lymph nodes. From these observations, which were incidental to the main project and which were reported in the general scientific literature only after the war, grew an important series of investigations of the inhibiting effects of the mustards on malignant lymphoma, such as Hodgkin's disease, for which no treatment had been available. This was scarcely a foreseeable result of what was, in the beginning, weapons research.

The applications of British Anti-Lewisite Compound similarly illustrate the unpredictability of scientific progress. With the outbreak of war in 1939 the British, fearful that Germany would employ gas bombs in its attack upon populated centers, worked feverishly on defensive measures. In 1940 the Department of Biochemistry at Oxford submitted to the British Ministry of Supply a secret report concerning a compound that would prevent the blistering effect of the World War I arsenical gas, Lewisite. This compound, known for security reasons simply as OX No. 217, came in time to be called BAL (British Anti-Lewisite). In 1945 the discoverers of this important antidotal agent were at last permitted to publish a brief description of their findings, including the chemical structure of BAL and its mechanism of action. Within a year BAL had been put to successful clinical use in treating arsenic poison complicating the therapy of syphilis and in salvaging the lives of persons who had taken mercury with suicidal intent; subsequently it was found useful in overcoming gold poisoning contracted in the course of arthritis therapy.<sup>3</sup>

Chancellor Arthur H. Compton recently recalled that "fifty years ago we knew already that X-rays were useful for 'seeing'



through objects, such as the human body, which are opaque to ordinary light. It could not then be predicted that X-rays would become a powerful weapon in the fight against cancer. No one could foretell that studies with X-rays would reveal the electron, and with this discovery give us eventually the radio and a host of electronic devices. Such unforeseen developments are the result of every great discovery."

How likely is it that similarly important "unforeseen developments" will grow from the release of atomic energy if the free flow of knowledge about it is persistently blocked? The answer to that question is suggested by another member of the Compton family, Karl T. Compton, until recently the chairman of the Research and Development Board of the National Military Establishment and previously president of Massachusetts Institute of Technology. Dr. Compton, testifying before the Senate Committee on Military Affairs in 1945, drew some interesting lessons from the use of internal combustion engines in the airplane, the automobile, the tank, and the bulldozer. "Suppose, about the time when most of us were boys, and the automotive engine was relatively in its infancy, some agency like the War Department had conceived the idea that this might be very useful as a future military development and had clamped down the imposition of secrecy in the further study of high-octane fuels, metallurgy, thermodynamics, and engine design, and all other features which have to go to build the most efficient possible engine. These conditions of secrecy might have involved a prohibition against doing work in this field without a license and against any discussion with other workers in the same field except by Federal permission, and no right of publication of results unless this commission thought that they would be of no aid to any foreign government. We can easily see what the results of such a policy would have been. Our own development of the automotive engine and the great automobile and aircraft

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business would have been greatly retarded in this country. Other countries operating without such restrictions would have forged far ahead of us. . . . In a similar way, with any development of an important new field of science which may have important practical application for either peace or war, it seems to me that our first consideration for national economy and national security must be to handle this development with a minimum of inhibitions and a maximum of assistance and inducements.”<sup>4</sup>

### *The Compartmentalization of Scientific Work*

In a very direct manner the concentrated effort to “keep secrets” ignores what has just been said about the unpredictable ways in which scientific data prove their significance. A central feature of much secrecy administration is “compartmentalization” of the work that is done in various areas. Secrets, it is thought, are most likely to remain so if they are known to only a few people. The less a man knows the less he can tell, even if he is actively disposed to violate the confidence that has been reposed in him. To minimize what any one person may be able to tell, the secrecy administrators have evolved the homespun security principle that he ought to be told only as much as may be necessary for him to get on with his immediate job. And so it is that scientific labors come to be done in separate compartments, which tend to limit the interchange of knowledge.

From the first the Atomic Energy Commission has been committed to a compartmentalization philosophy, though, inconsistently, there happens in fact to be considerable freedom of interchange within the Los Alamos laboratory. The Commission recently reported that “no person receives more classified information than that needed for the performance of the particular tasks entrusted to him,” a restriction which, as the Commission glumly acknowledged, “may work against

progress since often one person or group will be in possession of information of great value to others.”<sup>5</sup>

The soundness of this observation is fully attested by experiences in comparable areas of scientific endeavor. It is recorded, for example, that at the outset of work in the microwave radar field efforts were made to maintain limits upon the amount of information given each group. Men who worked on separate facets of a single problem were not apprised of their colleagues' efforts, and, indeed, did not even know at times that they had colleagues. This was especially true with reference to the cavity magnetron. The invention of this transmitting tube basically affected the whole project. Nevertheless, men who were assigned to work on a modulator to energize the tube were in the beginning denied knowledge of its design. But progress was so slow, there was such inefficiency and such duplication of research, that the policy was soon abandoned. By the time the war ended, the Army was the publisher of a radar magazine with a circulation of more than 12,000, for it had become apparent that “secrecy cost us in efficiency more than it gained us by keeping the enemy in ignorance.”<sup>6</sup>

The inefficiency of compartmentalization of work—or, more accurately, fragmentation of knowledge—is threefold.

First, fragmentation so narrows the range of expertness that effective utilization of scientifically trained manpower is badly hampered. This country's slowness in World War II in developing fire control with radar for the Navy's long range anti-aircraft guns and main batteries is illustrative. At the beginning of the war our Navy was superior to others in respect of these phases of fire control. The work on fire control was, however, very tightly restricted. When war came, the Bureau of Ordnance was “somewhat unreceptive to new technical groups, which might seek to enter the field”—in part, at least, because “the operation of security regulations had prevented

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other groups from gaining the intimate knowledge of naval fire-control policies to qualify them as 'experts.'” The achievement of results had to be postponed until this lack could be overcome.<sup>7</sup>

Second, compartmentalization prevents full utilization of work that has already been successfully accomplished. The various national laboratories that are engaged in research bearing upon atomic energy, for example, believe that they frequently repeat work that has been completed at Los Alamos, especially in the field of chemistry. The head of a major division there has vigorously asserted to me, “Too damn much is being declassified”; perhaps as a result of his conviction, information flows to Los Alamos from the other AEC projects without a correspondingly strong return current because he refuses to lower the barriers as readily as do his colleagues elsewhere. Within the Los Alamos laboratory itself there is said to be no compartmentalization; as Dr. J. H. Manley, its Technical Associate Director has said, “In the new and strange field in which this laboratory operates, ideas of value may not necessarily always come from the individual who is supposed to have them, and a free flow of problems and information among the senior scientists is important in maintaining progress.”<sup>8</sup> Until recently this recognition of the costs of compartments extended only to the limits of the mesa on which Los Alamos stands. Of late there have been manifestations of readiness to concede that men in other AEC installations have something to learn from Los Alamos and, in turn, to teach it.<sup>9</sup>

Third, compartmentalization necessitates frequent duplication of unfruitful research. The third of these may be even more important than the others, for assuredly one of the highest functions of scientific research is to discover the unpromising approaches and to mark the blind alleys that do not lead to truth. “A research program,” it has been said, “is never a failure. Every incident in its history will prove to be an edu-

cational factor in the next investigation undertaken.”<sup>10</sup> Sir Alexander Fleming, the discoverer of penicillin, had somewhat the same thought in mind when he remarked recently that every research man knows “the weary months spent working in a wrong direction, the disappointments and the failures. But the failures may be useful, for when properly studied they can lead to success.”<sup>11</sup> The trouble with fragmentation of knowledge is that it shuts off awareness of the failures and thus forecloses proper study of them by those who might profit from them.

All along the line, in truth, compartmentalization prevents one scientist’s learning from another in the traditional way. The AEC seeks to minimize this difficulty to some extent by circulating among its various installations and contractors a title-and-author list of all classified reports, as well as a publication called *Abstracts of Classified Documents*, in which the contents of new reports are briefly identified. But this is far from distributing the classified documents themselves, nor does it assure that work in progress will be facilitated by opportunity for direct observation and personal contact between persons whose primary assignments may differ, though they may have much in common in respect of some subsidiary aspect of their researches. This point is well illustrated by a paragraph in the findings of the AEC’s Industrial Advisory Group, to which earlier references were made. The Group in its report to the Commission spoke of the need of increasing the contacts between industry and the Commission, and in this connection mentioned a member of the Industrial Advisory Group who is himself “in charge of an important specific industrial research and development project. Among the knotty unanswered questions in his project is one relating to the type of coolant to be used. During our survey, he observed, firsthand, a unique process that was being worked on in one

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of the Commission's laboratories to solve a problem which was also related to coolants. The Commission's work immediately suggested to him a new avenue of approach to his own special research problem. He remarked at the time that even had he read about the Commission's investigation in the technical journals, the chances are that he would have missed the connection with his own investigations. Direct personal contact with the work in the atomic energy laboratory gave him the concrete experience necessary to see a relationship that he would otherwise have missed." <sup>12</sup>

Such incidents as this make possible "the massive forward movement of technology." If the erection of barriers between compartments prevents this type of experience, the forward movement will assuredly be at a slower pace. For as this episode suggests, the boundary lines of compartments are unreal and unfunctional. Because of the ramifying significance of particular ideas or technical improvements, the happenings in one compartment may have vital interest far beyond its confines. Few major problems of modern science can be neatly labeled and assigned for solution to a single specialist. As the Director of the Atomic Energy Commission's Research Institute at Iowa State College stated the matter in addressing the Electrochemical Society, "It is possible to design reactors in many ways, and the problem of design in each of these reactors requires the combined efforts and knowledge of almost all kinds of scientists and engineers. Basic discoveries in all the fields of physical chemistry, metallurgy and engineering will have to be drawn upon to make the practical applications, and almost any scientific fact in these fields may prove useful in the practical applications of atomic energy." <sup>13</sup>

Finally, compartmentalization and fragmentation take no account of the needs of those who carry on their work outside the area of secrecy. Matters that have been touched upon

within guarded laboratories and in classified documents often have direct importance for activities but slightly related to secret enterprises.

An interesting specific example of this was observed recently at Brookhaven National Laboratory, one of the major research facilities connected with the Atomic Energy Commission. During 1948 and 1949 there was under construction at Brookhaven a new nuclear reactor, the elements of which are within the zone of highest secrecy. At the same time there was being built at Brookhaven a new particle accelerator, a great proton-synchrotron dubbed the "cosmotron," capable of accelerating protons to the velocity of perhaps three billion electron volts. Data related to the cosmotron were not "classified," because the principles which are expressed in the cyclotron, the synchrotron, and like devices are already well understood abroad as well as at home. Those who were responsible for designing the Brookhaven accelerator were dissatisfied with the protective shielding which, used in conjunction with earlier machines of this sort, had guarded the operators against the danger of overdoses of radiation. They felt that a more complete safety device should be installed. The protective shielding around the reactor, or atomic furnace as it has sometimes been called, is said to be highly perfected. But its specifications could not be disclosed without minutely compromising the secrecy that envelops the production of atomic energy through nuclear fission. As a consequence, those who had the Brookhaven accelerator in charge independently developed shielding techniques which they felt were adequate to their needs.

The costs of this sort of duplication can perhaps be measured in terms of time and money, but never in terms of what might have been accomplished if brains had been free to work on the problems of the as yet unknown, instead of on problems which had previously been solved by others. This

was perhaps the thought of the Hoover Commission's "task force" which dealt with national security when it reported in 1948 that the Federal Government "is not getting full value" from its billion-dollars-a-year investment in scientific research and development.<sup>14</sup>

Interestingly enough, the inability to profit from another's thinking cuts both ways. A scientist who is engaged in a secret undertaking may be limited in drawing help from others, even though the data or ideas he wants are wholly nonsecret, because the nature of his questions might possibly suggest the direction of his researches and might thus lift a corner of the veil of secrecy. A senior physicist at Los Alamos, for example, recently acknowledged that he is frequently slowed up in attacking a problem by his inability to consult the recognized leaders in that field. Where formerly he would merely have written to one of his professional peers or spoken to him in an informal way, he is forced by secrecy considerations to delve through all the man's published works, and even then he may fail to find what he needs.

Among the causes of the decline of German science in the nineteen-thirties was a growing tendency to carry on researches in an atmosphere of secrecy. Americans who traveled abroad in those days were shocked to find that German laboratory doors were locked—not, be it added, because of governmental edict, but because colleague distrusted colleague and feared that credit for ideas would be stolen. "In Germany," it has been asserted, "scientists never sat around tables together swapping their experiences of trials and errors, telling of how their work was going, asking each other for suggestions."<sup>15</sup> It was precisely this uncommunicativeness which helped retard research and which made for inefficient employment of trained manpower. Yet, as has been seen, American insistence upon fragmentation of knowledge will perforce have the same ultimate effect upon progress here since it will inhibit the ex-



changes of scientific ideas and the stimulations that come from a comparison of experience.

This is not a purely speculative statement. It has been frequently remarked, for example, that at Oak Ridge, when every moment counted, related groups worked diligently on the same problem without the slightest awareness that there was duplication of effort. It is said, too, that because there was, and still is, a tendency to be especially secretive about information acquired at Los Alamos, the scientists at the gaseous diffusion plant at Oak Ridge (K-25) were at one time unintentionally exposed to great hazard. The staff at K-25 was uninformed concerning the critical mass of the uranium isotope, that is, the amount which will produce an explosion or a deadly burst of radiation. A possibly apocryphal but widely repeated story tells of a visitor from Los Alamos who discovered quite by accident that at one place in the plant the accumulation was approaching perilously near the critical point. By violating security regulations, he was able to give the Oak Ridge staff the information that averted disaster. Few examples so dramatically reveal the disadvantages of compartmentalization; but in terms of retardation of further research, the reported instance is of lesser significance than the daily accumulation of unspectacular delays which remediable ignorance causes.

It is especially disturbing to reflect that the practice of compartmentalization is continuing in this country despite the freshness of observation concerning its demerits during the past war. The National Defense Research Committee and the Office of Scientific Research and Development from the very beginning accepted the policy, initiated by the military, of compartmentalizing information on the grounds of security. This led to incredible difficulties in carrying forward the research upon which the success of our arms depended. One important research project, for instance, involved inquiry into

the effects of various types of projectiles upon structures. The members of this research group, who were students of the defensive properties of concrete and steel, were purposely kept in ignorance of the outcome of tests of the performance of shaped charges against concrete, and were long blocked in efforts to learn the results of projectile firings against reproductions of German pillboxes. Difficulties like this led an official recorder to conclude that "more harm in arresting research and development was done by this compartmentalization of information than could ever have been done by the additional scrap of information that the enemy might have picked up by a more general dissemination of knowledge." <sup>16</sup>

President Irvin Stewart of West Virginia University, executive secretary of the National Defense Research Committee before the war and subsequently the deputy director of the Office of Scientific Research and Development, has acknowledged that compartmentalization made for inefficiency: "In theory," he writes, "the Committee members and later the office of the Chairman had the responsibility for seeing that information crossed divisional lines whenever research would be speeded thereby . . . Unfortunately, however, there were cases in which information in the possession of one division of NDRC was not known to another division, although it would have been very useful to the second division." <sup>17</sup> If barriers had not occasionally been informally and selectively ignored by some of the working scientists, there is reason to believe that many wartime advances would have been delayed if not eliminated. Especially in view of the fact that there appear to have been no seriously indiscreet disclosures of information by American scientific personnel throughout the long years of the war, Dr. Stewart believes "in retrospect that compartmentalization of information to the extent practiced was not in fact needed," though he notes as a high probability that compartmentalization made the military men "more

willing to entrust their classified information to the NDRC during the early period when the ability of the organization to keep secrets had not yet been demonstrated.”<sup>18</sup>

The serious misdeeds of a single naturalized Briton, Klaus Fuchs, and the subsidiary faithlessness of several petty scientific workers in this country should not be allowed to obscure the realities. Fuchs's perfidy, exposed in 1950 by diligent counterespionage, was not a reflection of an occupational characteristic. On the contrary, every available record emphasizes that his behavior was aberrational, unrepresentative of and uncondoned by the scientific community of which he was a part. By this time the scientists' acceptance and performance of responsibility should successfully have overcome the early doubts of the most skeptical military officers, though there seems to be a calculated effort in some Congressional quarters to arouse concern about the "reliability" of scientists as a group. A similarly suspicious attitude on the part of the Japanese army and navy led to rigid and continuing compartmentalization of scientific endeavors in that country, and this, according to an authoritative historian, significantly contributed to the relative lack of scientific progress in Japan during the war.<sup>19</sup>

Here it is pertinent to quote the words of Joseph C. Boyce, now of the Argonne National Laboratory and the official recorder of this country's work in fire-control equipment, proximity fuzes, and guided missiles: ". . . all too often the development of the various components of a guided missile was given to independent groups in the vain hope that the components so developed would function properly together. Unfortunately this tendency still persists in some quarters. Security is usually quoted as the justification for this procedure. Experience of this war has shown considerable parallelism in the independent development of new weapons in various countries. This is to be expected since the fundamental

scientific and engineering principles are available to all nations. Security is wasted if a new development comes too late. Fortunately for us, the Germans and the Japanese made this sort of mistake more frequently than it was made in this country. But enough instances occurred here to waste valuable months.”<sup>20</sup>

It is comforting, in a way, to know that someone else made the same mistakes we made. The comfort vanishes if we discover that those very mistakes are to be continued as a matter of policy not only by the services but also by the Atomic Energy Commission.

### *Loss of Criticism*

Compartmentalization and secrecy not only prevent exchanging the information and the hunches that expedite research. They also prevent objective appraisal of the work in progress. Scientists who are constrained not to talk about what they are doing fail to receive the vigorously honest criticism which may save many a false step or which may lift an experimenter's imagination beyond its present limits.

Here we must distinguish between secrecy that is imposed for the very purpose of stifling criticism and, on the other hand, the stifling effect of secrecy which is imposed with wholly different objectives in view. The use of secrecy restrictions to avoid embarrassing disclosures is certainly not unknown. During the last war, as many witnesses have affirmed, mistakes were often concealed by classifying as secret all information which bore on them, and at times, indeed, controversial subjects which had military implications seemed almost automatically nondiscussable because of “security considerations.” Even the Atomic Energy Commission, which has often professed a desire to furnish the fullest possible measure of information to the public at large, has not eagerly published what would embarrass it. For example, it was not until Oc-

tober 1948 that the Commission made an apparently routine announcement that former Supreme Court Justice Owen J. Roberts and all the other members of the AEC Personnel Security Review Board had resigned. In fact, the members of that board had resigned in a body during the summer, in large part because of dissatisfaction with the Commission's actions on its recommendations. When the announcement was finally made, of course the surrounding circumstances were not recounted, nor was it revealed that announcement would have been withheld indefinitely but for the fact that a committee of scientists had arranged to confer with the Commission about security procedures. As one Commission official has said, "While it did not embarrass us to hold back news of the Roberts board's resignation, it would have been awkward to talk about the board as though it still existed. So, the day before the conference, we set the record straight."<sup>21</sup>

This sort of misuse of "security" occurs in scientific matters too. Early in the last war, for instance, a scientific unit studying structural defense and offense tested some concrete structures by dropping various general-purpose bombs of the then design. The tests revealed drastic defects in the bombs rather than in the structures. But when it was proposed that the observations and photographs that substantiated these defects should be made available to the British, who also had a considerable scientific interest in the subject matter, delays and difficulties suddenly arose. Eventually the scientists' information was communicated, but not until effort had been expended in persuading the military that great harm might result from unwillingness to learn from failure.<sup>22</sup>

In sum, secrecy may be a device to conceal ignorance and error as well as knowledge and success.

But in the present context it is not proposed to discuss intentional flouting of the principle that the opportunity to scrutinize and criticize is the public's chief protection against

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governmental incompetence, dishonesty, or abuse. We are discussing, rather, an unintended by-product of scientific uncommunicativeness, namely, the inability to assess and perchance to assist work the content of which is kept secret. A prominent Cornell physicist who serves from time to time as consultant to a government-supported laboratory in which much secret work is done summed up the matter recently by saying, "Since nobody knows what these people are doing, they are not kept on their mettle. They tend to stagnate for want of honest competition. Secrecy is creating a new class of scientists, inbred and aloof." Who can say whether the projects that are chosen for extended research are chosen wisely? Who can say that they are carried forward in the most effective manner, or that the conclusions derived from them are beyond question? When research is open and its results are published, scientists throughout the country, throughout the world, promptly repeat the experiments in their own laboratories, checking and confirming the published results and computations. Verification of this sort is of course impossible when the results of research are concealed. There is no reason to suppose, however, that secret research is flawless. On the contrary, Dean John R. Dunning of Columbia, a well-known contributor to our wartime scientific endeavors, has asserted that much of the research work done during World War II has subsequently been shown to have been faulty in method or findings.

Mindful that the objective judgments of dispassionate outsiders may be helpful to those who are deeply engrossed in research, the government frequently engages advisory committees or individual consultants to examine particular problems. Thus, for example, a board of eminent medical scientists has toured the research centers of the armed forces, with a view to evaluating the projects which they have launched. But the trouble with this sort of thing is, simply, that it is

not continuous. Professor Smyth, author of the famous report, *Atomic Energy for Military Purposes*, remarked before he became a member of the Atomic Energy Commission in 1949 that it is impossible for an outsider who is only occasionally abreast of what goes on in an AEC installation to know whether it concentrates on fruitful lines of inquiry. Just recently confirmation came from the members of the Industrial Advisory Group, which had been established under the Atomic Energy Act to help develop a program for full utilization of the nation's industrial and research capacity. After more than a year's work, during which it was given access freely to all necessary documents, personnel, and installations, the Industrial Advisory Group emphasized in its final report that "despite the excellent cooperation afforded by the Commission, one of the serious obstacles in making our survey arose out of burdensome security regulations. Difficulties in connection with clearances, the complicated mechanics of arranging for access to people and installations, the elaborate procedures for the safeguarding of notes and documents, as well as other secrecy restrictions, together constitute a formidable impediment to any attempt to study and understand the enterprise."<sup>23</sup>

### *The Psychological Consequences of Secrecy*

The matters which have thus far been discussed have dealt mainly with objective, impersonal consequences of secrecy in science. The subjective aspects of the matter also deserve comment. One of the least tangible and yet perhaps most far reaching of the costs of continued secrecy is its psychological impact on those who deal with classified data.

It is of course perilous to generalize concerning human motivations and human reactions. To say that a number of men are scientists is not to say that they have lost their diversity. There is no single type of scientist and, as a corollary, there is no single response to secrecy. Yet it is possible to advance some

plausible hypotheses concerning the state of mind of many of the persons upon whose insight and skill we depend for continued scientific advance.

It is known, to begin with, that financial considerations rarely induce embarkation upon a scientific career. Scientists as a group in our society have not been highly paid. They have found their satisfactions elsewhere. In 1947 the National Opinion Research Center of the University of Denver studied the attitudes of an objectively selected cross section of American scientists. Those who were interviewed were asked, among other things, to describe the special attractions they found in their careers as scientists. Intellectual and temperamental satisfactions, along with the social value of the work done, dominated all other things mentioned. Only one percent felt that the economic rewards or the security of a scientist's career made it attractive. On the contrary, nearly four-fifths of the whole group thought the scientist's rewards in money and prestige were so slight that no man should enter upon a scientific career in order to reap them.<sup>24</sup> Scientists remain at their tasks because, in the main, they are excited by the search for a particular kind of truth. This sort of excitement has been sustained by a professional fellowship, scattered yet tightly knit. Men who have engaged in research testify with near unanimity that exchanging ideas and data with others has been invaluablely stimulating, not only because it advanced the work in hand but perhaps even more because earning the respect of professional peers has been an incentive to achievement.

Today the exchange of ideas is discouraged by constant stress on maintaining security of information. Men whose work involves access to restricted materials tend to avoid discussion of their activities except with their immediate associates. Scientists who work in the isolation of remote installations like Los Alamos have recently been encouraged to attend scientific and engineering meetings lest their laboratory researches



suffer. But once they are there, they are not encouraged to converse with fellow scientists who do not "know the secrets." They are reminded that inferences can possibly be drawn from what they have left unsaid as well as from what they say. They are warned by the Atomic Energy Commission's Office of Security and Intelligence that even when they are dealing with wholly unsecret matters, nevertheless what they say or write may be "flavored" by their memory of classified data.<sup>25</sup>

When a scientist must be mindful not only of his facts but of his flavor as well, it is understandable that reticence governs his intercourse with the rest of the scientific world. It is difficult to know what can be said and to whom it can be said, for even a scientist who has been "cleared" for access to secret data is not by virtue of that fact alone entitled to unrestricted access; as has been seen, he is entitled to have access only to the data he knows he needs in his own work. Avoidance of discussion becomes the comfortable and perhaps even the necessary course in these circumstances. Thorfin R. Hogness, one of America's great scientists who heads Chicago's Institute of Radiobiology and Biophysics, told the convention of the American Veterans Committee on November 25, 1949, "Most men who were once associated with the atomic bomb project and are now cleared as consultants never ask questions from those now engaged in this work. If they did so, they might be regarded as snoopers. Such is the atmosphere created by secrecy."

An outstanding university professor who serves the Los Alamos laboratory as an adviser each summer recently illustrated the reverse side of the coin by remarking, "When I leave Los Alamos, I turn off like a faucet that part of my mind which dealt with my work there. I do not think about those problems at all until I go back the next summer. This is inefficient, of course, but it is the only way I can be sure that

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classified material will not find its way into my discussions elsewhere.”

So it is that the demanding pressures of secrecy make themselves felt in the behavior and the temperament of those who work in the twilight. Gossip, it used to be said, was the lifeblood of science. Today it is taciturnity rather than gossipiness which is enforced upon scientists as a group trait.

### *Effects of Secrecy on Recruitment and Training*

No matter how large may be the appropriations for research and development in “restricted” fields, they by themselves can produce no work of value. The level of achievement will be determined by the quality of the men and women who can be persuaded to use the appropriations. Experience at hand shows that many well-equipped scientists are reluctant to be subjected to the devices already discussed whereby knowledge is fragmentized and its circulation forestalled. Those who agree to work under the restraints do, of course, unhesitatingly observe them. It is likely to be increasingly difficult, however, to recruit additional strong scientists into laboratories that the government dominates through secrecy controls.

The pinch of this problem has already been felt by the armed forces. “It is disturbing,” says a recent report to the General Staff, “that so few professional scientists find a permanent military career attractive at a time when the research and development budget of the Services is at an all-time high for a period of peace.”<sup>26</sup>

A similar problem affects civilian agencies. Consider the case of the Los Alamos laboratory. It has often been characterized as the best-equipped installation in the world for research in physics, nuclear chemistry, and some areas of biology. It houses, along with all the more conventional equipment, two nuclear reactors devoted to research rather than to large-scale produc-

tion of fissionable materials, a cyclotron, a betatron, a Cockroft-Walton accelerator, a Van de Graaf accelerator of 2.5-million-volt power, and another Van de Graaf of 12-million-volt power under construction. The salary scale for those who work in this magnificently supported laboratory is higher than that of most universities. A staff member has no teaching burdens, but can devote all his time to research, without fear that lack of funds will block the testing of his ideas. Nevertheless the Atomic Energy Commission has sadly acknowledged that it has not yet persuaded an adequate number of qualified persons to enter the scientific paradise its funds have built.

One must avoid an oversimplified explanation of this sort of difficulty, which is by no means limited to the atomic energy program but runs throughout the research activities of the government.<sup>27</sup>

One cause of reluctance to enter government laboratories may very possibly be the "fear of smear"—the fear that one's reputation or at least one's peace of spirit may be impaired by irresponsible persons, in and out of Congress, who make their major appeal to minds befogged by misconceptions concerning "secrets."

The impact of this factor upon recruitment is, of course, difficult to measure. Vannevar Bush, former chairman of the Research and Development Board of the National Military Establishment, has expressed to me his belief that there has been no impact at all. But there is a respectable body of opinion to the contrary, including that of Dr. Bush's successor, Karl T. Compton, who, discussing "this great furor about possible leaks of secrets," has said: "All of us concerned with progress in military research know that the results of this publicity, and some procedures of official investigating groups, have seriously impeded our progress toward security through scientific advancement"; even the taking of consciously calculated risks that confidential data might pass into unauthorized hands

“might be better than creating by law or public opinion conditions which make employment so unattractive that top-flight scientists and engineers go in more comfortable and usually more rewarding directions.”<sup>28</sup>

While one can scarcely be dogmatic about the subjective reactions of potential recruits who have simply declined to be recruited, one may assume with fairness that the conduct of the House Committee on Un-American Activities, especially while under the chairmanship of former Representative J. Parnell Thomas, has not actively encouraged persons to seek a career in government-sponsored research. In all likelihood, however, neither demagogy nor ignorance<sup>29</sup> would, alone, make it impossible to attract able scientists. The fear of embarrassment is merely an added discouragement to recruitment rather than a basic explanation of its failure. An official report to the President in 1947 suggested that the two factors chiefly responsible for making the Government’s research program somewhat unattractive to scientists are “(1) the heavy concentration on military subjects, and (2) the minor emphasis commonly given to basic research.”<sup>30</sup>

The psychological basis of the first of these is easily perceived. Even though the development of improved military mechanisms may be of great importance in a world from which war has not been excluded, the objectives of military research are negative and destructive. Many men who have been trained to think of science as a means of creating good by revealing truth no doubt find it distasteful to readjust values and redirect emotions, as may be required of one who devotes his energies to preparing for war in time of peace.

More important than this, however, according to the Steelman report, is the fact that “the secrecy and censorship which accompany much military research and restrict publication of results make for a competitive handicap in recruiting and retaining the best scientific minds for the Government’s military

program.”<sup>31</sup> Echoing this opinion the Atomic Energy Commission recently observed that “staffing of atomic energy projects is hampered so long as there is feeling on the part of many scientists that employment in the atomic energy program precludes their working on any but ‘classified’ research projects with consequent denial of general publication.”<sup>32</sup>

Professional tradition has long bound the scientist to publish his work for the benefit of and for testing by the rest of the scientific world. “The cumulative nature of scientific knowledge,” writes Nobel Laureate Rabi, “puts the scientist in such great debt to the past and to his contemporary colleagues that his responsibility to present his results can hardly be honorably evaded.”<sup>33</sup>

For the younger man, this tradition is reinforced by self-interest. It is through publication that an as yet unrecognized man establishes his claims to eminence. Universities and other employers of scientists almost invariably request a job applicant to furnish a list of his writings. A scientist who has been allowed to publish nothing may be able to present glowing reports by his former supervisors; but these are rarely as persuasive as the printed records of his own past labors. If the labors have been secret and if disclosure of their results is prohibited or discouraged, the normal path to professional preferment is blocked, and this is a possibility which an ambitious man must take into account in choosing the work he will do.<sup>34</sup>

Avoidance of “classified” researches has been a felt reality at the Brookhaven National Laboratory. This outstanding laboratory, located on Long Island, is sustained by AEC money, but is administered by nine eastern universities, incorporated for this purpose as Associated Universities. Recognizing that the teaching staffs and the students of colleges and universities are capable of making great contributions, Brookhaven has encouraged their participation in its fundamental

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nuclear and radiological research. The laboratory is an ideal field establishment for training graduate students and is a pleasant place in which faculty members may pursue their investigations while enjoying the company of colleagues from all over the country. The work to be done at Brookhaven is mainly of an "unclassified" character, but some of it is "restricted" because it involves the uranium-graphite reactor as a research tool. According to Dr. Leland Haworth, the director of Brookhaven, the qualified men at that installation have so great an antipathy to secrecy that research of large importance in the classified area is being neglected in favor of less interesting subjects that can be discussed without restrictions.

The distaste for entering the darker portions of the scientific hinterlands has been manifested in yet another way. Despite the "glamour" of working in such new and highly publicized fields as radiochemistry and radiobiology, many of the most promising students choose other specialties less hedged about by secrecy. This observation has been made by professors in widely scattered institutions. Although an absolute generalization would be unwarranted by the evidence at hand, there is a fully justified fear that many possessors of brilliant minds will exclude themselves from future research in these important realms. One point which the ablest students have stressed is that the radiobiological or radiochemical work they may undertake to do outside the classified laboratories may prove to be merely a duplication of research that has already been done inside them. They prefer to labor in the light, where they can distinguish between tilled and unplowed ground.

So far as training the scientists of the future is concerned, however, the retention of secrecy poses graver problems than the occasional reluctance of an able man to receive training in radiobiology. The real danger of secrecy in this respect is that to some extent it prevents advanced training altogether.

This danger has two aspects. At the outset we must note

that some sorts of schooling, especially in the nuclear studies, entail the use of machinery that few educational institutions can afford to operate safely. The manipulations required for processing radioactive materials, for example, can be learned only in elaborate installations that are rarely found in universities. The limitations of academic resources therefore require that some of the training in these fields be done in laboratories which the Government controls. The introduction of research students into these laboratories involves a complex employment system devised to safeguard "security." All elements of this system, it has been observed, have discouraged able candidates from entering the research training program.<sup>35</sup>

The second aspect of the danger that effective training will be prevented was discussed by Henry DeW. Smyth in the autumn of 1948 in an address before the University Club of New York. Then, as now, one of the world's best-informed men concerning uranium fission, Dr. Smyth was chairman of the Physics Department at Princeton University. But much of his information had to be withheld from his students. He was not allowed, for example, to tell them how many neutrons are given off in uranium fission. How then, he asked, could the current crop of students learn the fundamental facts on which new engineering plants for the use of atomic energy must rest? How can the scientists of the future be given the insights they need to work on problems of atomic development which baffle the scientists of the present?

These questions raise an issue related to but different from the suggestion previously made, that restrictions upon communicating scientific and technological data threaten to freeze rather than free the limits of knowledge. The issue now raised is whether the formal education of a new generation of scientists will have to be confined to subjects in which secrecy regulations do not inhibit discussion between teacher and pupil. The great Fermi was speaking not long ago of his course in

nuclear physics at the University of Chicago: "I would have liked," he said, "to give my students a certain background to the work in atomic energy. I have a fair notion of what is classified and what is not classified, but still the feeling that I would have had to weigh my words very carefully—I could have been asked embarrassing questions, and I would have been faced with the choice of either telling a student in the open classroom, 'I am sorry, my boy, but this is something that I am not allowed to answer.' And just this uneasiness drove me to stay off the subject. Now, I do not think my lectures would have been extremely effective, but there you have some 50 boys or so who have lost that chance to acquire training in atomic energy problems."<sup>36</sup>

Philip McC. Morse, former M.I.T. physics professor who served for a time as director of Brookhaven National Laboratory and now directs the Defense Department's weapons evaluation group, says flatly, "At present no adequate course in nuclear engineering can be taught at a university; the material is too secret." As a result, he asserts, too few nuclear physicists are trained each year. The few young scientists who work in AEC laboratories or who participate in AEC training programs must be contrasted with the thousands who, in Dr. Morse's opinion, would be receiving advanced nuclear physics training if that sort of training could be had in the conventional way.<sup>37</sup>

And it is thousands rather than a few who are needed. Robert F. Bacher, who gave up his post as an Atomic Energy Commissioner in order to become chairman of the Division of Physics, Mathematics and Astronomy at California Institute of Technology, has expressed himself as being "sure that in the days to come the limitation of trained people will be a very serious one."<sup>38</sup> His concern on that score is duplicated in every informed quarter. It was given fresh emphasis in the spring of 1950, when the AEC announced that the construction of the "breeder reactor" for Knolls Atomic Power Laboratory had



had to be indefinitely postponed. This was a project of very real significance. It had to be shelved because men were needed to work on hydrogen bomb problems and other immediate military matters. L. R. Hafstad, director of the Division of Reactor Development, summed up by saying, "The important point here is that the nation as a whole is short of the kind of manpower that we need in these atomic energy developments."

An increasing number of educational leaders, impressed by the difficulty of concealing a significant portion of their knowledge from the students who look to them for intellectual leadership, have simply withdrawn from contact with classified information. "I want the burden to be on Security to keep classified information away from me, rather than have the burden on me to keep scientific facts from my students," says Professor R. R. Wilson, director of the Laboratory of Nuclear Studies at Cornell University, in explaining why he declines to participate in classified work or even to look at classified documents. His sentiment has been widely echoed by others who are responsible for training youthful scientists. By divorcing themselves from all work in restricted areas, they must sometimes shun projects that are of interest to them as well as of importance to the nation. On the positive side, however, these teaching scientists can freely communicate the ideas and the information which their current inquiries may develop. In that way they avoid the building of barriers between themselves and their juniors, who, within the limits of their competence, are enabled to participate in their mentors' work. The professors' abstention from exposure to "secrets" appears to be necessary if teachers are to commune with their students, but assuredly it imposes severe and, from the point of view of the scholar, wholly irrelevant limitations upon academic work.

In the end society is the loser when the play of scientific curiosity must thus be curbed.

### III

## The Proper Limits of Secrecy

THE costs of secrecy are high. When the freedom of scientific exchange is curtailed, an unfavorable reaction upon further scientific development is inevitable. We pay for secrecy by slowing the rate of our scientific progress, now and in the future. This loss of momentum may conceivably be disastrous, for even from the strictly military point of view "it is just as important for us to have some new secrets to keep as it is for us to hold on to the old ones."<sup>1</sup> If it is unsound to suppress scientific knowledge during the long years of a cold war, the American people may one day discover that they have been crouching behind a protective wall of blueprints and formulas whose impregnability is an utter illusion.

On the other hand, no one can argue that national safety should be ignored by carefree revelation of military secrets. Surprise is an important element of a new weapon, because it reduces the likelihood of countermeasures and thus enhances the effectiveness of the development when it is first utilized. Moreover, concealment of the fact that researches are in progress may be important simply to avoid identifying the areas in which the United States does not deem itself adequately prepared. So it is plain that silence may in itself have military advantage even in connection with the more or less

conventional instruments of warfare like the bazooka, the long-range bomber, and the rocket. When one's mind turns from customary military tools to the more recent engines of catastrophe such as the H-bomb, the germ invasion, and the atomic explosion, one feels even more strongly that silence may be worth its steep costs.

Can these conflicting concerns be reconciled? Is it possible to disseminate the knowledge that will lead to more knowledge, while at the same time giving respect to the military considerations just suggested?

Reconciliation is possible if an effort is made to clarify the line between scientific data and military applications of those data.

Few of the real "secrets" which this country possesses are formulas or principles beyond the grasp of others. The real secrets, chiefly, are the mechanics by which a laboratory theory is translated into a large-scale operation. The distinction is well brought out by Sir Alexander Fleming's recent reminiscence concerning the development of penicillin. While working on an entirely different problem, he chanced one day to note the extraordinary effect of a stray mould on a culture of bacteria it had contaminated. "I worked out some of the properties of Penicillin," Sir Alexander said, "and went as far as I could as a bacteriologist, but I got completely stuck because anything we did to concentrate the Penicillin which the mould produced in its culture destroyed the activity . . .

"Things remained latent from 1929 when I described Penicillin until 1939 when Florey and Chain and their colleagues set out to make a systematic study of the antibiotics which had been described. At that time I understand that they had forgotten Penicillin, but Chain, reading the literature, came across my description of it and thought something could be done chemically. They got a team together and they succeeded in concentrating the active principle about 1,000 times. This

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concentrate they could preserve by freeze drying so they were able to accumulate a stock sufficient to test the therapeutic efficiency first on mice and then on men.

“From the first trials there was no doubt about its efficacy but then came the question of mass production during the war. The Oxford team had shown that it could be done, but this was a vastly different thing from producing it in bulk, and it was only by international co-operation of governments, scientists, industrialists, engineers and everyone down to the lowest grade workman that the production of Penicillin on a large scale was accomplished.”<sup>2</sup>

The difficulty of translating a principle into a process has been succinctly illustrated, too, by a distinguished physical chemist. “Every boy who has had high school physics,” writes Professor Frank Spedding, “knows the principles of the electric generator but this is a long way from being able to manufacture a 50,000 kilowatt generator such as is used at Niagara Falls. Here the real secret is in the technical know-how of how to produce this generator, and this secret is spread among many individuals in many professions such as miners, metallurgists, electrical engineers, chemists, physicists, etc.; no single man, if he wished, could give away the entire secret. So it is, to a much greater extent, with the so-called secret of the atomic bomb.”<sup>3</sup>

The difference between knowledge and know-how is indeed exemplified by some of the processes which lead to the production of fissionable material in large quantities. One of the methods employed to separate U-235 from other uranium isotopes is gaseous diffusion, that is, forcing a gas against a series of metal membranes and capturing the lighter isotopes which first pass through the minute openings in these porous barriers. The understanding of the theory and mechanics of gaseous diffusion dates back to the work of, among others, Lord Rayleigh in England in 1896. But England and 1896

are a far cry from "K-25," the mile-long gaseous diffusion plant in Tennessee where uranium hexafluoride is cycled through some four thousand barriers in what is said to be the largest continuous operation under one roof any place in the world. One may doubt that Lord Rayleigh himself could have envisioned or designed "K-25."

Should we, then, seek to make a distinction between basic science and technology? Should we, in short, suppose that free trade in fundamental ideas will ensure the growth of science, while, on the other hand, guarding the details of our elaboration and effectuation of those ideas will ensure our national safety?

This differentiation is difficult to maintain systematically. The basic and therefore hypothetically innocuous science cannot readily be disentangled from the rest. As has already been observed, the forward movement of scientific achievement rarely depends upon a single flash of genius; rather, it is a consequence of the slow weaving together of many strands. Advance is built upon a selective amalgamation of the work of others, and often it is the failure or the practical limitations of one effort which suggest a fresh and finally successful approach. The realities of engineering and chemical processes frequently set the limits within which general ideas can function beneficially, with the possibility that they will stimulate still more ideas.

Nor, unless the claims of civilization are to be ignored, can the sole test of publishability of scientific work be its possible utilization in military research. Professional communication was successfully blockaded on a short-term basis during a period of active strife, and no one suffered seriously as a consequence. This does not establish that scientific freedom can or should be restrained over a span of many years. Previous pages have described the gradual and undramatic devitalization that is an inescapable concomitant of secrecy. Let us

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now add that abatement of scientific publication because of prolonged international tension would also entail the rigid suppression of discoveries which have great and immediate value to society in peacetime. We live, after all, in peace, not war—an uneasy peace, to be sure, and one shaken by events in Korea, but peace nevertheless. A total war may never come. All humanity prays that it will not. If mankind's intelligence is equal to the task of preserving mankind's existence, large-scale resort to arms will not occur. We must be certain that the hypothetical enhancement of martial advantage in the future is not permitted wholly to obscure the discernible enhancement of human well-being in the present.

Reference to recent developments in biological warfare research will illustrate the choice that lies open.

Since 1942, when an organization cryptically called the War Research Service began its labors, our country has actively supported investigations looking toward perfection of offensive and defensive measures for use in biological (or "bacterial" or "germ") warfare. In 1943 Camp Detrick in Maryland was set aside as the main center of work in this field, which is now under the jurisdiction of the Chemical Corps of the Department of the Army. There is no doubt about the goals of the biological warfare (BW) project, though the current operations of Camp Detrick are conducted behind an opaque wall of secrecy. "Our endeavors during the war," according to George W. Merck, the chairman of the United States Biological Warfare Committee, "provided means of defending the nation against biological warfare in terms of its presently known potentialities and explored means of retaliation which might have been used had such a course been necessary . . . Work in this field, born of the necessity of war, cannot be ignored in time of peace; and it must be continued on a sufficient scale to provide an adequate defense." To this end large sums of money and the efforts of literally

thousands of persons have been devoted; their purpose has been "to extend the boundaries of knowledge concerning the use of pathogenic agents as a weapon of war and the means of protection against possible enemy use of these agents." <sup>4</sup>

Obviously enough, every phase of the work at Camp Detrick has military significance. If any bit of it is revealed, other nations interested in biological warfare, including potential enemies, will benefit. They will be saved time and expense in discovering infective agents and counter actions against them. They will be spared the necessity of making the same false starts that probably marked our efforts.

These circumstances, however, do not entirely offset the disadvantages of nondisclosure. The Merck Report tells us that intensive investigations were carried out at Camp Detrick into "the effectiveness of antibiotics and chemotherapeutic agents" and into "biological, physical and chemical protective measures" against "various organisms of high disease-producing power." Can we afford to keep our epidemiologists and our general practitioners unaware of the results of these activities, as we must do if our thoughts dwell exclusively on military implications? The infective agents that may be used against man in the course of BW are agents which, after all, may infect him in peacetime as well. Again, the Merck Report makes clear that extensive study was made of "biological and chemical agents which might have been used in attacking our crops," and that this "resulted in certain discoveries which will undoubtedly prove of great value to agriculture." In a dynamic economy like ours, would it be wise to ignore the "great value to agriculture" because those "certain discoveries" may also be of great value to military planners?

The intertwining of interests, the civilian and military, is nowhere more clearly apparent than in the official summary of the more important accomplishments of the Biological Warfare program up to 1946. No matter how scant may be one's

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knowledge of bacteriology or of the waging of war, one cannot fail to perceive that every item of the following list has potentially great significance for public health, industry, and agriculture as well as for BW:

1. Development of methods and facilities for the mass production of micro-organisms and their products;
2. Development of methods for the rapid and accurate detection of minute quantities of disease-producing agents;
3. Significant contributions to knowledge of the control of airborne disease-producing agents;
4. Production and isolation, for the first time, of a crystalline bacterial toxin, which has opened the way for the preparation of a more highly purified immunizing toxoid;
5. Development and production of an effective toxoid in sufficient quantities to protect large scale operations should this be necessary;
6. Significant contributions to knowledge concerning the development of immunity in human beings and animals against certain infectious diseases;
7. Important advances in the treatment of certain diseases of human beings and animals, and in the development of effective protective clothing and equipment;
8. Development of laboratory animal propagation and maintenance of facilities to supply the tremendous number of approved strains of experimental animals required for investigation;
9. Application of special photographic techniques to the study of airborne micro-organisms and the safety of laboratory procedures;
10. Information on the effects of more than 1,000 different chemical agents on living plants;



11. Studies of the production and control of certain diseases of plants.<sup>5</sup>

Since January 1946 about 160 papers and monographs embodying BW researches have been published. The fact that these materials are available for general use reflects enlightened awareness by the Army that the science of peace and the science of war have many common interests. Dr. Rosebury in his excellent book, *Peace or Pestilence*, has traced the value of these reports for "healthy science."<sup>6</sup> Camp Detrick studies on synthetic plant-growth regulators have provided tools to aid in basic research into "the nucleus which dominates the activities of the living cells." The crystallization of botulinus toxin, an unprecedented accomplishment, is likely to spur the final isolation of other bacterial toxins and has "put in the hands of the chemist powerful tools for exploring some of the basic problems of disease." Study of viruses that produce animal diseases has yielded new methods for recognizing them promptly as well as effective vaccines for protection against them.<sup>7</sup> The steps taken at Camp Detrick to control accidental airborne infections "have proved valuable not only in research with highly infective agents there and elsewhere but also in work that requires the exclusion of germs, as in the commercial production of biologicals like liver extracts, which must be handled in a germ-free environment because they are damaged by any attempt to sterilize them with heat or chemicals." The BW experiments on infection carried through the air "have also made available exact methods and refined techniques to attack the most important group of human diseases still uncontrolled by sanitation—the respiratory infections, like influenza and tuberculosis."

The catalog of positive advances made possible by biological warfare research is far from exhausted by these instances, which in any event deal only with immediately foreseeable

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benefits. These discoveries, like other fundamental data, are likely to be of yet further help in ways which no one can as yet know. The given instances sufficiently suggest, however, that a publication policy that adhered strictly to a "guns instead of butter" philosophy would have deprived the nation of a very considerable amount of butter, indeed. The social costs of secrecy are readily seen here, just as they would be if the researches of our agronomists and animal husbandrymen were to be "classified" for fear that a potential enemy might use them to increase its food resources.

When one turns to industrial applications of military researches, the choices become less plain because they are not colored by moral convictions regarding human health. Even so, there is cause for concern in the fact that American industrial efficiency has not been given as much consideration as perhaps it deserves. For instance, there has not yet been full publication of the information gained by the National Defense Research Committee concerning the behavior of materials under strain and pressure. Fundamental knowledge acquired through studies of the various reactions occurring when a gun is fired would have significance for high-compression technology generally. During the war American scientists developed a machinable metal, "Alloy X," which possesses remarkably high strength, moderate ductility, and hot-hardness and is thought to be capable of numerous future applications. But because the erosion-resistant qualities of Alloy X make it useful for lining the barrels of high-velocity guns, even the basic metal from which it was evolved is still a secret withheld from American metallurgists.<sup>8</sup> If military purposes are thought to be advanced by suppressing knowledge of these sorts of scientific finds, we should at least be aware that suppression does not contribute to an ever more abundant economy.

If, then, a general proposition may be suggested, it is this:

Secrecy ought not to be readily attached to scientific or technological matters merely because in some aspects they have military significance. It should be attached unhesitatingly if their sole significance is a military one. Application of this differentiation may be clarified by referring to the several fields of earlier discussion.

Much Biological Warfare research, for example, has been released, but, notwithstanding a generally liberal publication policy, a great deal remains steeped in secrecy. Despite the Merck Report's assurance that Camp Detrick developed "methods for the rapid and accurate detection of minute quantities of disease-producing agents," no details concerning those methods have yet been reported. This seems an indefensible exaltation of military values over human needs. On the other hand, suppression of reports concerning the containers developed for disseminating infectives seems entirely justified. There is no discernible civilian need for specially constructed devices for spreading pathogenic agents, which have been aptly characterized as "BW munitions." They constitute part of the secret techniques of war rather than part of the life-enriching treasury of science. If they remain secret and unrevealed forever, mankind will be the gainer rather than the loser.

The Atomic Energy Commission has refused to declassify a research report on the effects of exposure to a certain chemical compound, because the report was written at Los Alamos and the inference might therefore be drawn that the chemical in question is used in connection with bomb manufacture. Similarly, at the Argonne National Laboratory a report of experiments on the properties of certain uranyl salts was placed under restriction, apparently because the experimenters had suggested that their study might possibly shed light on the separation of uranium isotopes as well as other chemical processes. Suppression of these types of knowledge seems of doubt-

ful wisdom. They may be importantly useful in the planning of industrial operations or in the conduct of researches wholly unrelated to the production of bombs. By way of contrast, chemical research during the war made possible the perfection of unorthodox hand devices and techniques of sabotage for use by guerrilla and resistance forces, looking toward maximum destruction of enemy personnel and property. Most of the weapons produced for this purpose were simple in design and were chiefly of an explosive or incendiary nature. Unfortunately the unconventional devices that were created for field use during the war are suitable for employment by lawless, terroristic, or subversive elements in time of peace as well. The knowledge embodied in these weapons is so unlikely to have legitimate application that continued restrictions upon its publication are fully warranted.<sup>9</sup>

A distinction must properly be drawn between, say, information concerning neutron cross sections of the heavy metals (which, being valuable for further physical research, ought to be revealed) and information concerning the design or mechanism that prevents premature disintegration of an atomic bomb before it has efficiently utilized its charge of fissionable material (which, being essentially a military device, may properly be concealed). A distinction must be drawn between, on the one hand, a new understanding of aerodynamics and, on the other, the plans of a specific military aircraft that undertakes to utilize the new understanding. In short, the design of weapons, reports about their performance and properties, the design of large-scale plants for their production, and, occasionally, specific instruments or processes can be kept under flexible restrictions without any very likely effect upon industrial or scientific advance. But care must be exercised to avoid confusing these matters with principles and practices which expand the edges of understanding and which may be pieced together with other bits of knowledge for the

well-being of mankind. While it is true that the latter may conceivably benefit a potential enemy in some particular, the risk of that benefit is more bearable than the sapping of our own strength.

It would be unfair to suggest that this commonsensical conclusion has been beyond the grasp of our nation's military and atomic energy authorities. Quite to the contrary, there is every reason to believe that existing basic policies are not inharmonious with it.

Unfortunately, however, the effectuation of those policies has been retarded by two forces. One is the force of official inertia, the reluctance to exercise judgment incisively and boldly, the unwillingness to accept responsibility for disclosing information which a later critic may maintain should have remained secret.<sup>10</sup> The other is the force of a badly misled public opinion.

Enlightenment of popular sentiment is difficult so long as political leaders violently denounce the imparting of knowledge as though it were a plot to advance the fortunes of Soviet Russia. Both the Atomic Energy Commission and the services have occasionally manifested readiness to lower the barriers which decelerate scientific progress and which block public understanding of giant governmental efforts to enlarge our resources.<sup>11</sup> Their inclinations in this respect are not stimulated by criticisms such as those addressed to the AEC by a distinguished Senator, who deplored the AEC's reproduction of a photograph of the outside of a small model of the Brookhaven proton-synchrotron ("or some such thing"), a nonsecret research tool, or a prominent Representative's perturbation that the AEC had revealed that Brookhaven has a 420-foot tall tower that emits smoke "which can sometimes be seen for miles around."<sup>12</sup> If secrecy is permitted to become a fetish, rational judgments lose their relevance.

The hope for science in this country and for the nation's

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security is that the public at large will shed its fears, grow in understanding, and cease credulously accepting assertions that safety lies in secrecy. Secrecy is antithetical to the spirit of science.<sup>13</sup> It is socially hurtful. Only for brief periods can it be practiced without destroying the scientific superiority it is intended to preserve. Today the United States holds a position of dominance in world science largely because of its rich resources of technical and scientific manpower, coupled with material facilities that cannot be duplicated by the impoverished countries of Europe and the Orient. Unless this country dissipates its advantages by artificially limiting what the rising generation of scientists may be permitted to learn, its strong ranks of talented, well-trained humans rather than its possession of a body of knowledge are probably the chief guarantor of America's future leadership.

## IV

# The Standards and Mechanics of Security Clearance

SO LONG as war is thought to be just around the corner, every great nation devotes a large part of its wealth and ingenuity to efficient military preparations. In so far as those preparations may involve the development of weapons or equipment, the United States, like other countries, will seek to conceal progress from the eyes of potential enemies in order to maintain the advantage that inventive skill may temporarily give it. Moreover, since the element of surprise is itself deemed a military asset, not only the details of mechanisms but also the extent of their availability may sometimes be regarded as "military secrets," to be withheld from the knowledge of competitors if possible.

Today, as earlier discussion has emphasized, the scientist is the nation's armorer to an extent never before approximated. He is himself the creator rather than merely the guardian of military secrets. Some part of his information must be available to all if civilization is to progress. Other bits of his knowledge may justifiably be buried for short-range military reasons. The dividing line is not hard and fast. The tug and pull of competing considerations will influence the pattern. Somehow, nevertheless, a pattern will emerge. The line is drawn,

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uncertain in direction, fluctuating in purpose, and unstable in duration though it may be. Once it has been drawn, it momentarily determines the dimensions of the area of secrecy. And once that area has been defined by appropriate public authority, there immediately arises a proper interest in assuring that all who work within it will scrupulously observe its boundaries. So long as the boundaries exist, they must not be ignored.

Obedience to public commands is conventionally compelled by penalties upon the disobedient. The fear of detection and punishment deters transgressions. But, as daily sensations remind us, the threat of retribution does not wholly eliminate criminal or other antisocial conduct. At best, misbehavior is merely somewhat diminished. Hence society appropriately seeks for other measures, and especially measures of a preventive character, to forestall injuries to it. In the context of the present discussion, the measure chiefly relied on as a preventive of unreliability within the zone of secrecy is the personnel security program. Through this program the government hopes to sift out the persons who, like the faithless English scientists Alan Nunn May and Klaus Fuchs, might flout restraints which national military needs have generated. Excluding potential malefactors from the area of secrecy may be a surer shield than would be the most severe punishment of wrongdoing after the event. Since the world includes persons who are undisciplined or corrupt or treacherous, there is wisdom in trying to identify them before they are permitted to deal with matters of immediately vital public safety.

The prime purpose of the personnel security program is to assure that acts of sabotage will not occur and that "secret information" will not pass into the hands of others than those to whom it has been entrusted. Thus justified, the program extends to many types of personnel besides scientific workers. The construction gangs that erect the specially designed build-



ings of an atomic energy installation, for example, must be "cleared," as must the maintenance employees, the clerical staff, the guards, and all the others whose jobs involve physical access to restricted areas or use of "restricted data." Similarly the businessmen who wish to bid on contracts to supply certain types of military equipment must be "cleared" before they may read the specifications that will shape their bids; and when a contract is awarded, the process engineers and other technicians, as well as many production workers who are involved in executing it, must be investigated and their "security" established to the satisfaction of public authorities.

A significant qualitative difference does, however, set apart the security investigations of scientists.

In the generality of cases affecting nonprofessional employees the investigators are chiefly concerned with the character of the individual under investigation. Does his past record suggest irresponsibility or inattention to regulations governing his employment? Is he a drunkard who might carelessly reveal confidences? Is he constantly in debt and therefore perhaps susceptible to bribery? Is his an abnormal personality? Does he have a serious criminal record that indicates habitual disregard of obligations to society?

The cases in which a scientist's security has been questioned are in marked contrast. In scarcely a single case involving a scientist, so far as diligent inquiry has disclosed, have the issues been of this sort. The scientists' cases have involved not character, but attitudes; not behavior, but associations; not personality, but opinion.

"Reliability" in these respects is chiefly the concern of the Atomic Energy Commission and the military services. The scope of their authority and the procedures they employ warrant consideration.

*Personnel Security in the Atomic Energy Commission*

The Atomic Energy Act of 1946 emphasizes in many of its sections the policy of hoarding our real or supposed "atomic secrets." As a specific safeguard against revealing these treasures to individuals who might be unworthy of trust, the Act provides that—

1. No individual employed by a contractor or licensee having relations with the AEC may be permitted by his employer "to have access to restricted data until the Federal Bureau of Investigation shall have made an investigation and report to the Commission on the character, associations and loyalty of such individual and the Commission shall have determined that permitting such person to have access to restricted data will not endanger the common defense or security"; and
2. With exceptions not now material, "no individual shall be employed by the Commission until the Federal Bureau of Investigation shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual."

Thus the Atomic Energy Commission is empowered and directed to pass on the eligibility of all who find "restricted data" essential to performance of their scientific duties. In the main these are not scientists who are themselves a part of the AEC staff. The AEC directly employs no more than a hundred scientists, chiefly in administrative rather than research activities. The scientific work that interests the AEC goes forward in university or industrial laboratories or in huge installations that are owned by the AEC but operated by a contractor. The Carbide and Carbon Chemicals Corporation, for example, administers the gigantic plants and

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laboratories in Oak Ridge, and most of the scientists who work there are its employees, not the Government's. Similarly, the weapons research carried on by scientists at Los Alamos is one of the contractual responsibilities of the University of California, which also operates the Radiation Laboratory in Berkeley. So with each of the major centers of work in the field of atomic energy; the laboratories may have been created by the United States, but they are administered by academic or industrial contractors, which hire their own scientific staffs, subject always to the Commission's granting "security clearance" that will permit access to restricted data. When we speak of atomic energy scientists, therefore, we refer for the most part to the faculties of numerous educational institutions; or to the employees of such concerns as Monsanto Chemical Company, the operator of an AEC laboratory at Miamisburg, Ohio, where highly classified process, research, and development work is carried out; or to the staffs of installations like the Argonne National Laboratory, which is operated by the University of Chicago as chief contractor aided by a council of thirty other institutions. The various possible extensions of the program into private employment are readily suggested by the names of the corporations which, being interested in industrial applications of nuclear energy, support the University of Chicago's basic atomic and metals research:

Aluminum Company of America, American Tobacco Company, Beech-Nut Packing Company, Bethlehem Steel Company, Celanese Corporation of America, Commonwealth Edison Company, Copper & Brass Research Association, Crane Company, E. I. du Pont de Nemours & Company, Fairchild Engine & Airplane Corporation, Inland Steel Company, International Harvester Company, Pittsburgh Plate Glass Company, Procter & Gamble Company, Reynolds Metals Company, Shell Development Company,

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Standard Oil Company (Indiana), Standard Oil Development Company, Sun Oil Company, United States Steel Corporation, and Westinghouse Electric Corporation.

The AEC's duty to consider the reliability of many thousands of individual employees has not been an easy one. Between January 1, 1947, and April 28, 1949, the Commission occupied itself with security matters at 151 of its 262 formal meetings, and spent perhaps a third of its entire meeting time on personnel security matters alone.<sup>1</sup>

The Commission inherited a large operation from the Army, which had administered the atomic energy program during its fast-growing infancy. The Army's security procedures had been, to put the matter as mildly as possible, somewhat primitive. Investigations of all employees were made under the direction of Military Intelligence. Those who were suspect were rather abruptly ejected. A man who was subject to being called into military service might find himself hurriedly summoned to leave his scientific researches and to enter forthwith upon less onerous duties in some military outpost. Those who could not be transferred in this way were simply dismissed summarily. Some of the quick decisions in that period were no doubt sound. Some probably were not. There simply was no time to be sure which was which, and war always causes casualties.

In most cases, of course, security clearance was not denied the scientists who were equipped to participate in the program. After all, a large organization was needed, and needed urgently. If every doubt were resolved against every employee, too many might have been ushered out; and there was no time in which effective replacements could be trained. As General William J. Donovan, the wartime head of the Office of Strategic Services, once remarked, "You can have an organization that is so secure it does nothing," or you can decide to move

forward by taking some chances. "If you're afraid of wolves," he added, "you have to stay out of the forest." <sup>2</sup> By and large the Army's Manhattan Engineer District was not afraid of wolves. It granted clearances.

When the AEC took over the MED's operations and its staffs, however, Congress directed that all who remained in work involving access to restricted data must be reinvestigated. To be sure, they were given interim clearance; but continuation of their employment rested on the AEC's finding, after a fresh investigation by the Federal Bureau of Investigation, that the common defense or security would not be jeopardized by their presence on the projects. To this large number of persons who were to be reinvestigated and reappraised were added the thousands of new recruits who entered the rapidly expanding atomic energy field after the war. From January 1, 1947, to April 30, 1949, a total of 141,469 individuals were evaluated by the Atomic Energy Commission. During 1949 there arose a total of 37,561 new personnel clearance cases, and this number may sharply increase as new installations come into being.

Obviously, a fairly elaborate administrative machine is needed to cope with a case load of these dimensions. The investigations themselves are not a burden to the Atomic Energy Commission, because they are conducted in each instance by agents of the Federal Bureau of Investigation. Contrary to a widely prevalent belief, however, the duty of evaluating the investigation reports rests on the AEC rather than the FBI, which is wholly without responsibility for reaching conclusions as to the significance of the facts and rumors its inquiries have revealed. The actual mechanics of decision are these:

1. The FBI report is first considered in a subunit of one of the AEC operations offices, which are located in Chicago, Hanford, New York, Oak Ridge, Santa Fe, Schenectady, and Arco, Idaho. Each of these offices has primary responsibility

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for certain of the activities and installations of the Commission. The initial review of the investigation report is undertaken by the office that has operational jurisdiction over the particular enterprise in which the affected individual will do his work. If, for example, a physicist were recruited for the Knolls Atomic Power Laboratory, administered by the General Electric Company in Schenectady, New York, his security clearance would first be considered by the staff of the manager of the operations office in that city; if he were to work in the atomic energy project of the University of Rochester, where research is done under contracts initiated by more than one AEC office, the papers would "follow the contract" and would accordingly go to the New York Operations Office or to Oak Ridge as the case might be; and if he were to be employed by the Monsanto Chemical Company in the Miamisburg laboratory in Ohio, the file would be studied by AEC officers under Oak Ridge direction.

2. At this stage the investigation reports are analyzed by members of the local security staff and, in difficult instances, by others, including legal counsel and the manager himself. If the analysts decide that "employing such persons or permitting them to have access to restricted data will not endanger the common defense or security," the manager (or his delegate) may grant the desired security clearance. Whenever doubts remain, and especially where certain particular types of evidence appear in the record, the whole file must be forwarded to the AEC's Division of Security in Washington. Despite indications to the contrary in some of the Commission's publications, the fact is that clearance may not be denied by the local Manager of Operations, though of course he may recommend that it should be withheld. In other words, the power to grant clearances has been largely decentralized, but the power to deny clearances has thus far been reserved in a central staff agency. The doubtful cases are considered at head-

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quarters by several strata of reviewers in the Division of Security, and the authoritative decision as to granting or withholding clearance is made there.

When clearance is denied, provision is made for subsequent review procedures, which may be briefly summarized as follows: If the affected individual is already employed under a prior clearance giving him access to restricted data, he receives notification that his clearance is about to be withdrawn. If he so desires, he may have a hearing before a "local personnel security board," appointed by the Manager of Directed Operations for the area in which he is employed. In most cases involving scientists, hearing boards thus far appointed have been composed of a member of the AEC administrative staff, an attorney of reputation in the locality, and a scientist who has insight into the relationship of the individual to the project as a whole. The local board so constituted makes a recommended decision to the local manager, who in turn forwards his recommendation to the Commission's General Manager in Washington. If this is adverse to the employee, he may request further consideration of the case by the Personnel Security Review Board, which may also be asked by the General Manager, on his own initiative, to review any case upon which he desires further advice. The Personnel Security Review Board has no power of final decision; its action is a recommendation to the General Manager to assist him in his final determination as to security clearance. The General Manager may, of course, present important policy considerations to the Commission itself.

The Commission has taken great care to appoint an advisory body that would command public confidence. The original Personnel Security Review Board consisted of Owen J. Roberts, former Supreme Court justice and now dean of the University of Pennsylvania Law School; Karl T. Compton, then the president of the Massachusetts Institute of Tech-

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nology; Joseph C. Grew, former Undersecretary of State; George M. Humphrey, president of the M. A. Hanna Company; and H. W. Prentis, Jr., president of the Armstrong Cork Company. According to its minutes, that board met on seven occasions between July 1, 1947 and September 4, 1948.<sup>3</sup> During this period some forty recommendations were made to the General Manager. The initial members of the Personnel Security Review Board tendered their resignation en masse during the summer of 1948, and ceased functioning in September of that year. They were not replaced until March 10, 1949, when the AEC announced a "permanent Personnel Security Review Board" consisting of Charles Fahy, a Washington attorney and a former Solicitor General of the United States who had had broad governmental experience; Arthur S. Flemming, a former United States Civil Service Commissioner who is now president of Ohio Wesleyan University; and Bruce D. Smith, director of the United Corporation and formerly an official in the War Manpower Commission. More recently Mr. Fahy was appointed a judge of the federal Court of Appeals in the District of Columbia, his place on the review board being taken by Ganson Purcell, who practices law in Washington after having served as chairman of the Securities and Exchange Commission.

This impressive machinery for review and for possible modification of previous decisions works, however, only in the cases that involve "old hands," the people who have been cleared previously by the Manhattan Engineer District or by the AEC itself and who are still at work. Those who seek clearance now in order to commence scientific labors requiring access to classified data have no regularized means of obtaining review of an adverse determination. In their cases, if clearance is withheld, the matter is ended. No charges are stated, no hearing is held, no appeal is possible. Clearance is denied. At present this total absence of any formalized device



to avoid unsound decisions affects many more people than does the presence of the Personnel Security Review Board. The failure to safeguard the rights of applicants for clearance is one of the most serious shortcomings of the AEC. The criticisms to which this deficiency gives rise are discussed more extensively in a later chapter.

From the very beginning of decentralization the AEC instructed its representatives in the field to make favorable decisions only in cases in which no "substantially derogatory information" had been brought to light concerning the applicant. "Substantially derogatory information" was but sketchily defined in the instructions which the AEC's staff received.<sup>4</sup> Not until January 5, 1949, was the Commission able to formulate and announce the factors that may create serious doubts concerning eligibility for clearance. On that day it published its "Criteria for Determining Eligibility for Personnel Security Clearance."<sup>5</sup>

Even these declared criteria are merely suggestive rather than definitive, for the Commission recognizes that no formula can embrace all the variants of human personality and organizational needs. Thus, for example, information that would probably raise doubts about the character of an unknown job seeker might be deemed wholly insignificant in the case of a man who had rendered long and satisfactory service in an atomic energy installation under the close observation of responsible supervisors. Moreover, as the Commission puts it, "a determination must be reached which gives due recognition to the favorable as well as unfavorable information concerning the individual *and which balances the cost to the program of not having his services against any possible risks involved.*" This is a point of especially great importance in connection with the clearance of mature scientists. The number of trained persons is inadequate to supply the nation's present needs. If a scintilla of doubt about a man's reliability

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were to lead automatically to rejection of his potential contributions, we might indeed find ourselves with "an organization that is so secure it does nothing." For this reason the Commission's criteria have been set forth not as decisional principles, but as determinants of the categories of "derogatory information" which create serious doubts. The criteria do not foreclose the possibility that those doubts may be dissipated by other information; they merely serve to identify the cases which call for close attention.

"Category (A)," as set forth by the Commission, embodies types of derogatory information which, standing quite alone, establish a presumption of security risk. In any case of this sort the local manager has no power to resolve doubts in favor of clearance; the file must be at once forwarded to the Division of Security. The topics which Category (A) touches upon include information that the individual or his spouse has engaged in activities involving sabotage, espionage, treason, or sedition, or has had relations with foreign spies or "representatives of foreign nations whose interests may be inimical to the interests of the United States." So far as can be ascertained, information of this sort has been developed in very few if any of the nearly 200,000 cases upon which the Commission has now passed. Category (A) also includes:

1. Continued membership in an organization after the Attorney General has declared it to be subversive, or prior activities in a capacity which should have made the individual aware of its subversive purposes;
2. Advocacy of violent revolution;
3. Omission from or falsification of a Personnel Security Questionnaire or Personal History Statement;
4. Serious disregard of security regulations on former occasions;
5. Insanity;

6. Conviction of felonies indicating habitual criminal tendencies; and
7. Addiction to excessive use of alcohol or drugs.

Apparently these types of seriously derogatory information are rarely disclosed by FBI investigation of persons seeking AEC employment. Members of the AEC staff at several locations have asserted that they know of no case of this sort in which a scientist has been involved. But since it has been impossible to obtain a central office confirmation of these field officers' impressions, one cannot say flatly that there never has been a Category (A) case. What can be confidently asserted, however, is that almost all the cases which have required thought before a decision was reached—and the total number of these is only slightly above two thousand—have arisen under "Category (B)." <sup>6</sup>

Category (B) like Category (A) lists matters that the Commission says would ordinarily warrant a denial of clearance. In these cases, however, the Manager of Operations is empowered to grant clearance if, on the whole record, he thinks it proper; he may recommend against clearance if he is convinced that the presumption of risk has not been overborne by other evidence; or in borderline cases he may pass the buck to the Director of Security in Washington without expressing a judgment one way or the other.

Category (B) cases include those in which either the individual or his spouse—

1. Has shown "sympathetic interest in totalitarian, fascist, communist, or other subversive ideologies";
2. Has been sympathetically associated with any members of the Communist Party or with "leading members" of any other organization the Attorney General has declared to be subversive;
3. Has been identified with a "front" organization when

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the individual's personal views "are sympathetic to or coincide with subversive 'lines'";

4. Has been identified as a part of or sympathetic to a group of subversives who are infiltrating a nonsubversive organization;
5. Has close relatives who live in countries which might exert pressures upon them as a means of forcing the individual to reveal sensitive information or commit sabotage;
6. Lives at the same premises or visits or frequently communicates with friends, relatives, or other persons who have subversive interests and associations;
7. Has formerly had close association with such friends, relatives, or others, now interrupted by distance but perhaps likely to be renewed in the future;
8. Has conscientious objection to military service when the objection is not clearly a product of religious conviction;
9. Has tendencies demonstrating inability to keep important matters confidential; carelessness in observing regulations concerning the use of restricted data; dishonesty; or homosexuality.

The chief differentiation between Category (A) and Category (B) is easy to see. Almost all the situations that fall in Category (A) are matters of personal conduct or character. Almost all the situations that fall in Category (B) are matters in the realm of ideas or associations which do not reveal any actual misconduct on the part of the individual.

This illuminates and emphasizes what is frequently overlooked in descriptions of the personnel security system. The finding that underlies a decision to withhold clearance need not be that the individual has been wicked or, even, that he probably will be wicked. All that is needed is a finding that

the individual *may* be disposed to be wicked or careless at some indeterminately future time. In truth, all that is needed is a finding that the individual's spouse might designedly or otherwise acquire from him and subsequently transmit to others information that has not been released to the public at large.

Predictive or, if you will, precautionary findings of this sort involve very different mental processes from those that occur in the ordinary trial of an issue of fact. In most conventional fact-finding proceedings, an effort is made to achieve an evidential reconstruction of an event that has already occurred. In security proceedings the effort is, instead, to formulate a judgment about the degree of possibility that an event will occur in the future. The extent of the risk that a particular individual will be faithless is not subject to conclusive demonstration. A judgment concerning it involves hypotheses, impressions, experiences, and generalized prejudices (favorable or unfavorable to the applicant), which are brought to bear consciously or, often, unconsciously. It must be clear, therefore, that what is really being appraised in a personnel security case is not any particular question of fact but is, in a word, a man.

Nowhere is this more specifically recognized than in the AEC's "Memorandum of Decision Regarding Dr. F. P. Graham, December 18, 1948." Dr. Graham, later a United States Senator from North Carolina, was at that time president of the University of North Carolina. He was also the president of the Oak Ridge Institute of Nuclear Studies, a non-profit organization of twenty-four southern universities established to assure broad regional participation in the atomic energy educational and training activities that center at Oak Ridge. To give the Institute effective guidance in its development Dr. Graham might occasionally require access to restricted information, and so he had to be "cleared." The FBI

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report on Dr. Graham that was laid before the AEC showed that he had "been associated at times with individuals or organizations influenced by motives or views of Communist derivation." Should clearance therefore be denied? The AEC in one of the two written opinions about personnel security that it has allowed to become public held that clearance should issue. "'Associations' of course have a probative value in determining whether an individual is a good or bad security risk. But," concluded all five members of the Commission, "*it must be recognized that it is the man himself the Commission is actually concerned with*, that the associations are only evidentiary, and that common sense must be exercised in judging their significance. It does not appear that Dr. Graham ever associated with any such individuals or associations for improper purposes; on the contrary, the specific purposes for which he had these associations were in keeping with American traditions and principles. Moreover, from the entire record it is clear in Dr. Graham's case that such associations have neither impaired his integrity and independence, nor aroused in him the slightest sympathy for Communism or other anti-democratic or subversive doctrines."

So Dr. Graham was tried as a man, was found to be worthy of trust, and was cleared in order that the country might have the advantage of his continued participation in the atomic energy program.

Senator Graham, of course, is not typical of the men who may be involved in a security case. He was well known. His actions over many years were publicly recorded. The purposes of his associations were readily inferable from the course of his conduct in other connections. How can the Commission concern itself with "the man" instead of "the associations" in cases where the individual is less prominent and his motives less obvious? The procedures by which this is sought to be done will be examined in a later portion of this discussion.

*Personnel Security in the Military Services*

Important though it is, the personnel security work of the AEC does not touch so many scientists and technologists as does the security program of the armed services. The latter, which may be called military clearance in order to distinguish it from the AEC processes just considered, applies to three large and wholly separate groups of scientific personnel.

In the first group are more than 12,000 scientists employed directly by the Army, the Navy, or the Air Force for work in installations like the Edgewood Arsenal, the Aeroballistics Facility, the Navy Electronics Laboratory, or the Alamogordo guided missiles project. The number of 12,000 includes only civilians with professional civil-service ratings as physical, biological, or agricultural scientists and thus excludes all military personnel who may also be assigned to scientific work.

In the second group are government scientists employed by civilian agencies but engaged in research on military projects. The National Bureau of Standards, a unit of the Department of Commerce, has, for example, undertaken for the Navy a study of the aerodynamic characteristics of aircraft bombs, finned projectiles, and rockets. Similarly the Bureau of Mines of the Department of the Interior has conducted on behalf of the Air Force an investigation of aviation fuels which might influence design of new engines and equipment. And the Tennessee Valley Authority, more or less as a by-product of its research on phosphatic, nitrogenous, and potassic fertilizers, has explored the adaptation of chemical products and processes to the manufacture of munitions. When projects of these sorts involve secret material, all those who may have access to the research data must be cleared even though they are the employees of other official branches of the Government. If the responsible military department withholds clear-

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ance of one of these federal scientists, he must simply be assigned to other work.

The third group, no doubt larger than the other two combined, comprises the scientific personnel employed by educational and other nonprofit institutions or by industrial corporations that have contracted to do classified work for one of the military agencies.

Because so much of the nation's developmental research and productive enterprise is linked with the making or improvement of military articles, the grasp of military clearance has extended far beyond the conventional boundaries of government into the realm of purely private employment. It is most important to note that the procurement agencies of the armed forces have exclusive and discretionary power to determine the extent to which work on contracts is to be classified. Since the military orders of our own government and our political allies absorb an ever-increasing share of American industry, a very large segment of all employment must quickly become subject to personnel security procedures unless the authority to impose classification restrictions is moderately exercised. Without reference to questions of organization or procedure, this prospect can but alarm all who value the American tradition of civilian freedom from military surveillance and restraint. The tendency to "overclassify" may have bitter consequences if not rigorously curbed.

Matters of principle aside, overclassification slows down vital production; when more and more persons must be cleared before work can be commenced, the end result is inefficiency. According to a dispatch by Walter H. Waggoner to the *New York Times* on June 19, 1949, "Officials estimate that as many as 20,000 to 50,000 technicians, engineers, scientists and other key industrial employees either are not working or have only interim clearance on their jobs pending their



specific approval for handling classified processes or materials. . . . The mounting accumulation of security investigations to be made of industrial workers threatens not only to be a drag on important defense contracts that should be completed promptly, officials believe, but also to be a staggering administrative task for the National Military Establishment." Prominently listed among remedies that were being considered to reduce "the welter of investigations clogging the Government's security offices" were declassification of many processes and products and lowering the classification on others so that fewer persons would require clearance.

#### *Scientists Employed by the Military*

The Secretary of any one of the three military departments may remove any departmental employee whose dismissal he regards as "warranted by the demands of national security." This power, conferred by a statute that was enacted in 1942 "To expedite the prosecution of war," is summary and uncontrolled.<sup>7</sup> The only procedural nicety the law prescribes is that "within thirty days after such removal any such person shall have an opportunity personally to appear before the official designated by the Secretary concerned and be fully informed of the reasons for such removal"; then he may submit "such statements or affidavits, or both, as he may desire to show why he should be retained and not removed."

As might be expected, this abrupt authority has been exercised brusquely on a number of occasions. It is to the credit of the armed services that they have sought to moderate their procedures. They have seriously attempted to avoid judgments that "demands of national security" require the degradation of professional men whose chief offense is non-conformism. Moderation and restraint are still needed.

Scientists who are employed by one of the military departments are, like all other federal employees, subject to

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removal under the terms of the "Loyalty Order," which will be considered in later pages. But "loyalty" and "security" may not be coextensive. If a man is thought to be disloyal, of course he is a "poor security risk." On the other hand, a man may be adjudged entirely loyal to his country and yet be deemed objectionable from the standpoint of security because he drinks excessively or his wife holds unorthodox opinions. The distinctions between, as well as the overlapping of, security and loyalty have caused organizational difficulties for the services that each of the three has attempted to surmount in a different way.

The Army's civilian employees, like all government personnel in civilian agencies, are first investigated by the Federal Bureau of Investigation. A supplemental investigation is also made by Military Intelligence. The initial determination that dismissal is warranted by security considerations is then made on the basis of the investigators' report supplemented by any material that may be available in intelligence files. In form the determination is a decentralized one, for the first decisive step is taken by the commanding officer of the area, advised by intelligence officers. He may suspend an employee up to ninety days, at the end of which period he must either reinstate the affected individual or recommend to the Secretary of the Army that he dismiss the man. This recommendation is in due time reviewed by the Intelligence Division, which passes it along to the Secretary's office with a statement of its findings and proposals. If the Secretary's Personnel Division agrees that charges should be pressed, they are sent to the employer with a letter of removal, which takes immediate effect.

There is always reason to fear too great a readiness to act adversely on very slight provocation in cases which involve unpopular elements and in which no opportunity is afforded to hear the other side of the story. Men who are "trigger happy" are unlikely to decide wisely in matters often marked by deli-

cacy of nuance. Recognizing this, the Secretary of the Army in 1948 created a Security Review Board with a civilian chairman, to act as his adviser in these matters. Persons who have been summarily dismissed are afforded an opportunity to appeal to this body. Since every "loyalty case" may also be deemed a "security case" in a department that has authority to dismiss any employee summarily if security is involved, the Army does not observe the procedural and organizational aspects of the President's Loyalty Order; instead it proceeds in each instance under the powers conferred by Public Law 808, the 1942 summary removal statute. The Army's Security Review Board sits only in Washington, and is often only theoretically accessible to those who most urgently desire to appear before it. No funds are provided to make possible the attendance of the affected individual or his witnesses, so that many cases must be reviewed on the basis of documents and written protestations of innocence rather than on the basis of living evidence and arguments. Even so, the Security Review Board recommends to the Secretary that he set aside the decisions in about twenty per cent of all security dismissals, and in a still higher percentage of the cases that are appealed to it.

The Navy Department is even more summary in its acts under Public Law 808. If an employee "occupies a key position or a position of trust" (as many of the Navy's scientific personnel do), he may be removed on security grounds without any hearings whatsoever, whether in Washington or elsewhere, before or after the event. The employee receives a brief explanation of the reason for his having been ousted. Then, if he chooses, he may file with the Secretary a protest against the action. That is all, in theory. As a matter of fact, however, the Navy goes a good deal beyond this in providing procedures which, at least on the surface, are fairer and more orderly. Where the evidence raises a question about an employee's loyalty, a hearing is provided in the field, with an opportunity

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to seek review by the Navy Department Loyalty Appeal Board. An adverse determination by that body is subject to an appeal to the Civil Service Commission's Loyalty Review Board. Of course even if this board recommends the exoneration of the employee, the Secretary of the Navy still retains power to terminate the employment on the ground that "security" so demands. It is perhaps pertinent to note that the chairman of the Navy's appeal board, concerned with both "security" and "loyalty" cases, is the Department's director of personnel, who is generally regarded as the author of the law by which summary removal has been made possible.

The Department of the Air Force operates still differently. Acknowledging that there is a probable though not inevitable nexus between loyalty and security, it provides a single procedure for both types of cases. If a man is dismissed because the commanding officer deems him to be either a security risk or a disloyal person, he may ask for a hearing before a Loyalty-Security Hearing Board. The hearing boards are decentralized, thus overcoming the geographical difficulty that impairs the utility of the Army's Security Review Board. But since the Loyalty-Security Hearing Board is drawn from local personnel, perhaps dominated in some instances by the tradition of subservience to the commanding officer whose judgment is formally under review, the blessing may not be altogether un-mixed. It is noteworthy, however, that Air Force regulations require a majority of the hearing board's members to be chosen from civilian rather than military personnel.

If the local board's decision is adverse, there is in any event an opportunity for appeal to the Air Force Loyalty-Security Review Board, which sits centrally and is not affected by the same psychological pressures that may conceivably operate locally. Where the charge involves loyalty, there is yet another appeal, this time to the Civil Service Commission Loyalty Review Board. Let it be emphasized, though, that

the Air Force like the Navy is not bound by a favorable judgment of the Loyalty Review Board. In the end, of course, a man may still be discharged because he is thought to be a security risk, even if the highest authority in the land were to adjudge him "loyal." Still, the Air Force does seem to go farther than the other two services in waiving the discretionary summariness with which Congress has endowed it.

Research and development programs are heavily relied upon by all three of the armed services as vital adjuncts to forces in being. As a report to the Army's General Staff forthrightly declared, "Success in any future war will depend as much on the effective use of all the scientific resources of the Nation as upon efficient industrial mobilization or skillful command of the fighting forces." <sup>8</sup> It should therefore be a matter of profound national concern that personnel security, when arbitrarily administered, discourages participation in military research by the very men who can supply the talent so vitally needed. The case of Dr. X, a physiologist formerly at the Edgewood Arsenal, is illustrative.

Dr. X became a member of the staff at Edgewood in 1946. At that time he had already established a reputation as an investigator of resourcefulness and high ability. For some years he had had an academic connection in which he had earned the respect of eminent colleagues. He had published some forty papers in the fields of physiology and biochemistry. During the war he participated in important studies, notably those having to do with motion sickness, under the auspices of the Committee on Medical Research, Office of Scientific Research and Development, and the Committee on Aviation Medicine of the National Research Council. Two months after Dr. X began his work at the Army Chemical Center he was curtly informed by a Military Intelligence officer that his clearance had been withdrawn; he was advised that he could resign forthwith "without prejudice" or, alternatively, he would be sus-

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pended and ultimately dismissed "with cause." At no time did he receive formal charges. A security officer, indeed, stressed that there were no charges, but that Dr. X was merely considered a "potential risk." This, he added conversationally, was because X's parents had been born abroad (though they had resided in this country at least since 1905, when X was born in New York City); because he was a member of two non-scientific organizations (neither of which has ever been cited as a "communist front" by the Attorney General or even the House Committee on Un-American Activities); because, further, he had had contact with the late Brig. Gen. Evans F. Carlson, who had aided X's wartime experiments on fatigue and motion sickness, and also with members of the faculty at a leading institute of technology, with whom he had been professionally associated; and because, finally, in 1940 he had attended a lecture given in a university hall by a gentleman who was regarded by the security officer as a "fellow-traveler."

On this flimsy foundation, without hearing or official communication of any sort other than a formal notice of suspension, Dr. X was adjudged ineligible to do the work for which he had just been recruited. Five months later, after X had submitted a self-defensive statement and an impressive array of supporting affidavits, the Secretary of the Army ordered that Dr. X be reinstated with full pay. On November 12 he was recalled to duty. On November 13 he received his salary arrears. On November 14, having been vindicated, he resigned. Since then he has been a member of the staff of a privately endowed institute.

Apart from Dr. X's personal suffering, which must have been considerable, the episode has cost the Army the services of a man who had previously been willing and apparently able to advance its researches. "Rough and ready justice" in personnel security matters is functionally unsound. The rougher it becomes the less ready are we likely to be.

*Scientists Employed Privately on Military Contracts*

Every contract to do research or manufacture for one of the military services contains a Secrecy Agreement. This binds the contractor to obtain written consent before he permits any alien to have access to drawings, specifications, models, and the like connected with execution of the contract. It also binds the contractor to bar the citizens in his employ from having access to any "top secret" or "secret" matters until the appropriate department gives its written consent. Employed citizens may be permitted access to "confidential" or "restricted" data without prior clearance, but this generalized consent may be withdrawn in particular cases if the military service so chooses. No distinction is made, organizationally or otherwise, between scientific personnel and any other class of nongovernmental employees.

In order to conserve manpower and to avoid conflicting decisions, the Army and Navy agreed early in 1942 that the former should execute the industrial personnel security programs on behalf of both services. When the Air Force was separated from the Army in 1947, its insistence upon an active share in administration caused a partial reconstruction of the machinery.

Under the present arrangements, an "army commander"—that is, the commanding general of an area or of the Military District of Washington—is empowered in most instances to issue a "letter of consent" if, in the light of all the evidence presented to him, he is satisfied that the employment of the individual and his having access to classified information will not be "inimical to the interests of the United States." If he is in doubt, the file is forwarded to the Personnel Security Board, which is a tripartite body composed of commissioned officers representing the Departments of the Army, Navy, and Air Force. That board decides whether consent (clearance)

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shall be granted or denied. Its decision ultimately reaches the contractor in the form of a letter from the appropriate army commander or, in the case of the Air Force, from the Commanding General, Air Matériel Command.

At this time, if the decision is adverse, the affected individual is notified in writing that clearance has been withheld; and he is supposedly informed, also, concerning the ways in which he may request a further review of the case by the Industrial Employment Review Board. In numerous past instances, as Army officers have candidly acknowledged, notification of appellate procedures was carelessly omitted, though there has been recent improvement in this respect. Inattentiveness to this detail was no doubt attributable in large part to the rapid demobilization and reassignment of military personnel immediately after the war, which meant that inexperienced and partially trained men were given unaccustomed tasks. The matter is of considerable importance, because neither the existence nor the procedures of the Industrial Employment Review Board have been widely publicized nor, even, made matters of record in accessible documents.<sup>9</sup>

The IERB is wholly separate from the Personnel Security Board. Its members have had no contact with a case before it is docketed with them for review. At that time the appropriate files are moved from the Personnel Security Board to the IERB for a fresh examination. A denial of clearance is appealable by the individual concerned (who may be represented by counsel or by his labor union if he wishes) or by the contractor-employer.

The standards of judgment for determining whether access to classified information will be "inimical to the interests of the United States" have undergone an interesting process of elaboration in recent years.

During the war years a "Joint Memorandum on Removal of Subversives from National Defense Projects of Importance



to Army or Navy Procurement” defined the term “subversive activity” as meaning merely “sabotage, espionage, or any other wilful activity intended to disrupt the national defense program.”

In 1946 a new effort was made to clarify the services’ thinking. Administrative instructions, over the signature of General Eisenhower as Chief of Staff, dealt with “Suspension of Subversives from Privately Operated Facilities of Importance to the Security of the Nation’s Army and Navy Programs.” These instructions emphasized that “No employee should be suspended as a result of idle rumor, normal labor activity, gossip, or anonymous communication, *nor should an employee be suspended for any reason other than a reasonable suspicion that he is engaged in subversive activity.*”<sup>10</sup>

But by 1948 the emphasis that had prevailed during the war and immediately afterward was shifted. No longer was there a focus on activity as an indication of possible subversiveness. Thenceforward the test of danger was to be “a reasonable belief that the individual involved has engaged in one or more of the following activities *or associations . . .*” There then follow twelve topics, all but three of which refer to personal conduct (such as sabotage or encouragement of sedition) or characteristics (such as history of serious mental or emotional instability). The three that involve associations were stated as follows:

“(5) Affiliation with any organization or movement that seeks to alter our form of Government by unconstitutional means, or sympathetic association with any such organization, movement or members thereof;

“(6) Being influenced by or subject to the dictates of any foreign power to an extent detrimental to the interests of our Government or membership in any organization or movement so influenced by or dictated to;

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- “(7) Affiliation with any foreign or domestic totalitarian organization or movement or intimate or sympathetic association with any such organization, movement, or members thereof.”<sup>11</sup>

During the twelve months from July 1, 1946, to June 30, 1947, when the stress was on “subversive *activities*,” the IERB considered only three cases. During the next twelve months, toward the end of which the change from “activities” to “associations” became formally operative, the board received twenty cases. In the next two months, July 1, 1948, to September 1, 1948, thirty new cases were filed with the IERB. During 1949 approximately 110 applications for review were acted upon. Possibly the increased case load is not caused wholly by the present concern with whom a man knows rather than what he does. But a former chairman of the IERB has revealed that virtually every matter which has come before the board since April 1948 has been an “associations” case.

This shift in emphasis is a direct reflection of the “Loyalty Order,” which since 1947 has been used to test the eligibility of persons who desire employment in the federal service. On November 7, 1949, the Secretaries of the Army, Navy, and Air Force formalized the relationship by issuing a new set of “Criteria Governing Actions by the Industrial Employment Review Board.” In the directions they then gave the Board, the Secretaries prescribed that access to classified information should be denied for virtually the same reasons as might throw doubt upon a public employee’s loyalty.<sup>12</sup>

### *The Composition of the IERB*

The Industrial Employment Review Board powerfully affects the status of private persons. It determines whether they may remain in employment for which their own employers deem them to be fitted by education, experience, and aptitude.

## SECURITY, LOYALTY, AND SCIENCE

It is of more than passing interest, therefore, to consider the structure of the tribunal.

Until the closing days of 1949 no civilian sat upon the Board whose decisions operated so directly upon civilians. All its members were military men without special training for adjudication. Four officers composed the administrative court, one voting member drawn from each military service and a nonvoting chairman who was detailed to that duty by the Provost Marshal General of the Army. The chairman, despite his inability to vote, was from the first the true director of the Board's operations. He organized the evidence, conducted the major portion of the questioning during hearings, and formulated the decisions that were reached. No member of the Board, not even the chairman, devoted full time to its work; each of the members except the chairman had as an alternate a brother officer who could sit in his stead when he was otherwise occupied.

The military cast of the Industrial Employment Review Board was strongly criticized during 1949 by the American Association for the Advancement of Science, the American Civil Liberties Union, and others. Partially in response to these promptings a significant change was initiated in December 1949. The IERB was removed from the Office of the Provost Marshal General of the Army. It has been reconstituted as a joint board of the Departments of the Army, Navy, and Air Force, responsible to the Secretaries of those departments rather than to a general officer. Its policies are to be framed or approved by the Munitions Board, a civilian agency within the Department of Defense, which, moreover, has been empowered to appoint a civilian as the IERB's chairman. The members of the IERB (and their alternates) other than the chairman are to be appointed by the respective military Secretaries and may be either officers or civilians. At least one member of the Board must now be a member of the bar. Three

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members of the Board constitute a quorum, but the lawyer-member must be one of the three when a case is being finally decided.

The reorganization of the IERB in terms that give it a somewhat civilian rather than an exclusively military orientation is no reflection upon the officers who have previously staffed the tribunal. They have served conscientiously and, especially in the case of the successive chairmen appointed by the Provost Marshal General, have been reasonably aware that civil rights as well as military security are important to the nation. Occasionally there have been intimations of occupational attitudes that are perhaps irrelevant to the task at hand, as when the Army member in a belligerent and hectoring tone of voice demanded to know why a young scientist had not been in uniform during the war. When the young man mildly replied that his employer had sought his draft deferment because of the importance of the work he was then doing, the officer sneeringly snapped the question, "Nobody stopped you from enlisting, did they?" This sort of occurrence, however, has seemingly been rare; there has been little reason to challenge the Board's members for having blustered or having been willfully blind to favorable evidence. In more cases than not the Board has reversed the unfavorable action of the security officers and has directed that clearance be granted; according to one member of the IERB, it has learned that officers who spend a great deal of time in investigating charges of subversive associations "tend to develop fixations and only look at the bad side of the record."<sup>13</sup>

Nevertheless, there is considerable ground for arguing against the further appointment of officers to sit on this tribunal. The IERB, as a body that determines the economic and social fate of civilians by adjudicating their professional or occupational opportunities, ought to be composed entirely of civilians, answerable to other civilians rather than in part

to military superiors. The body is essentially a judicial one. Service upon it is not a very rewarding side-line activity for a professional soldier. No military knowledge is involved in its deliberations. Whether the material to which access is sought should be classified as "top secret" or "secret" or "confidential" is not a question before the Board. Appropriate officers of the National Military Establishment will already have considered that problem, and will have settled it authoritatively. The IERB concerns itself solely with the citizen's reputation and reliability. An issue of that sort is not within the specific and distinctive competence of the military. As a matter of important principle, members of the Industrial Employment Review Board should be selected from those who are not in the active service of the Army, the Navy, and the Air Force.

This principle is buttressed by one of our most deeply rooted national traditions. From the earliest days of the republic's existence, the American military has been subordinated to civil authority in other than strictly military affairs. Indeed, one of the grievances listed in the Declaration of Independence was that the British had exalted the military over civil power in the American colonies; the first constitutions of Delaware, Maryland, Massachusetts, North Carolina, Pennsylvania, and South Carolina specifically reversed the allocation of control by providing that civil authority should at all times prevail over the military. General Washington himself declined to try civilians before military tribunals until he received express authorizations from the Revolutionary Congress. And in later years the Supreme Court has held with great consistency that action by military authorities having impact upon private rights cannot be sustained merely on the ground that there is "military necessity" for them; only a danger that is "immediate and impending and not remote and contingent," or a specific Congressional authorization, can serve to blur

“the boundaries between military and civilian power,” which, the Supreme Court recently said, have “become part of our political philosophy and institutions.”<sup>14</sup>

This is not merely a matter of interest to legal antiquaries. The history of all the world shows that truly dominant militarism has grown out of the gradual and often even unintentional absorption by the army of state functions, and the performance by soldiers of duties for which military service provides no peculiarly useful equipment. Tribunals manned by officers whose profession is arms rather than justice have in the past produced bizarre conclusions arrived at after shocking procedures.<sup>15</sup> It is praiseworthy that superintendence over the functions of the IERB has, by the recent reorganization, been committed to a civilian chairman before the true nature of those functions had become entirely obscured by reason of their having been too long performed by soldiers. The Secretaries of the military departments now have it within their power to supplant the remaining military members. Thus far they have shown no disposition to do so. All but the chairman of the Board are officers, while other officers serve as the tribunal's executive director and procedural adviser. Competent and disinterested as they no doubt are, they should now be replaced. Happily, no real or supposed threats to public order require abandoning fundamental procedures or reshuffling the division of power between civilian and military authorities in the United States.<sup>16</sup>

#### *Centralization of IERB Proceedings*

The Industrial Employment Review Board is not, from the standpoint of the individual involved in its proceedings, a true review or appellate body. It is, rather, the trial court. At no earlier point has the affected person had opportunity for interview or for hearing, whether formal or informal. At no earlier point, in fact, has he had even a generalized notice

that his status is in question. When, therefore, he is advised that clearance has been denied by the commanding general (who, as we have seen, acts upon the advice of the Army-Navy-Air Force Personnel Security Board), he turns to the IERB for the trial hearing he has not yet had.

In one important respect, however, the IERB is unlike other courts of first instance. When a trial court speaks, it renders a judgment which, ordinarily, is subject to review by some higher tribunal. Not so the Industrial Employment Review Board. It is not only the court of first resort. It is also the court of last resort. Its verdicts are final and unreviewable.

Few systems of law administration in modern society have failed to provide opportunity for correction of errors by the tribunal that first hears a case. The absence of such an opportunity in this instance is made more serious by the fact that the IERB sits exclusively in Washington. This centralization results, as a practical matter, in denial of hearings in many cases. The expense of attendance upon sessions in Washington effectively prevents appellants from presenting their defenses in person or through counsel of their own choice. Witnesses cannot be transported except at a cost that makes it unfeasible to offer their testimony. True, the chairman of the Board or one of its members occasionally leaves Washington in order to hear matters which have arisen at distant points. In no case within five hundred miles of Washington, however, has there been a chance to obtain a cheap and convenient hearing. And even when a Board member does "ride circuit," the appellant may still have long distances to travel before he reaches the assigned place of hearing. Once arrived, he faces only a single officer rather than the Board as a whole; the final decision is handed down by the Board in Washington on the basis of the stenographic transcript and the presiding officer's oral recommendation, which is undisclosed to the appellant and which he can do nothing to counter.

## SECURITY CLEARANCE

A start has been made in overcoming these very real organizational difficulties. The new charter of the IERB permits the creation of regional or area boards, composed as is the central body and possessing the same measure of authority. As yet no regional boards have been created, and responsible officials have privately stated that none will be unless the present case load should unexpectedly increase. Plans are under way, however, to designate referees or trial examiners who will be able to conduct proceedings locally, not with a view to making decisions, but merely to permit a hearing to be held in a suitable place without intolerable expense to the appellant. It is not now contemplated that the referee will do more than take testimony. The resulting record will be forwarded to Washington for authoritative consideration by the IERB itself.

If these plans mature, they will make for improvement in the present situation. But they do not go quite far enough.

The first step must be to recognize the IERB for what it is, namely, a trial board rather than an appellate board, and then to replace it with a true review board to which unfavorable judgments may be appealed.

The second step must be to provide trial boards that will sit in or near the major industrial and educational centers of the country as occasion may arise. Only in that way can the opportunity for hearing become a practical reality in all cases, rather than a mere form of expression. Like the reconstituted review board, the trial boards should be composed of civilians; distinguished citizens could very probably be readily recruited for this part-time public service. A working model is at hand in the personnel security operations of the Atomic Energy Commission. There, it will be recalled, local boards hear the cases in the first instance, subject to later review by a central appellate body. The AEC model may be suggestive of one additional improvement in military security matters.



## SECURITY, LOYALTY, AND SCIENCE

In AEC cases involving a professional employee, a member of his profession sits on the trial board. This affords desirable assurance that the hearings will not ignore the bearing of the respondent's work on the whole project of which he is a part. A similar occupational representation in military security cases might reinforce sobriety of judgment and might encourage general confidence in the fairness of the proceedings.

## V

# The Spreading of Security Requirements

THE world being what it is, one would be naïve indeed to assume that American laboratories are immune from espionage. On June 20, 1949, the President of the United States signed the Central Intelligence Act of 1949. Its purposes and implications were deemed to be so confidential that the House and Senate Armed Services Committees discussed the measure in secret sessions. Then they informed Congress that it was impossible to have a full debate or even to disclose the objects and operation of the proposed statute. The Act provides in part that the Director of Central Intelligence shall have the power, upon his own certificate and without regard to any other laws relating to public expenditures, to spend sums for "objects of a confidential, extraordinary, or emergency nature," without any review of his acts by the Comptroller General, the Bureau of the Budget, or Congress itself. The Act also empowers the Director to appoint highly qualified personnel in order to effect "scientific intelligence functions relating to national security." There is really no reason to suppose that other countries are any less interested than are we in "objects of a confidential, extraordinary, or emergency nature" and in "scientific intelligence functions." What-

ever may be the euphemisms in current use, it is obvious that today as in the past the major powers seek to spy on one another, whether the spying be done in Canada or the United States, or, perchance, the Soviet Union. And so long as we fear that spies may masquerade as scientists, it is understandable that resort will be had to screening processes like those outlined in the immediately preceding chapter.

If the screening were confined to those who had access to classified materials or to restricted areas, the matter might be checked off as simply another of the unpleasant costs of war, cold or hot. In fact, however, official inquiries into individuals' "reliability" goes so far beyond these limits that an entirely new policy question is raised. That question, in sum, is whether the nation gains by extending security clearance requirements, or their equivalent, to large numbers of scientists who are not themselves engaged in classified research projects and who neither need nor have opportunity to acquire secret information.

A few examples will illustrate the dimensions of this new problem.

Not long ago, an eminent British scientist was refused permission to visit American universities having *unclassified* military contracts in his area of specialization, unless he first underwent the conventional clearance procedures. This he could not do within the time limits of his stay in this country. According to a recent report to the State Department, "This man is conservatively estimated to be fully two years ahead of his American colleagues with respect to his field. Hence his visit was largely an opportunity in which American science had everything to gain with little to return. The further researches of our own people, deprived of the opportunity of making a two-year forward step in their work, represent the subsidization of an inferior effort." <sup>1</sup>

The Brookhaven National Laboratory is administered by

## THE SPREAD OF SECURITY

nine eastern universities, Columbia, Cornell, Harvard, Johns Hopkins, Massachusetts Institute of Technology, Pennsylvania, Princeton, Rochester, and Yale, which have banded together for this purpose into Associated Universities, Incorporated. While all of Brookhaven is devoted to Atomic Energy Commission projects, most of the work done there is entirely unrestricted. Brookhaven's radiological and nuclear research is mainly of a basic nature, though it is by no means "purely theoretical." The projects involve such varied matters as designing new particle accelerators, studying the effects of irradiation upon the functioning of the endocrine glands, measuring radioactivity in the atmosphere, exploring the effects of gamma radiation upon various field crops, and investigating the ways in which the human body utilizes iron and other metals. Enterprises of these sorts account for perhaps 90 per cent of Brookhaven's activity and staff. Only the remaining 10 per cent of the work is classified, because it involves knowledge of the planning, properties, and performance of the uranium-graphite reactor that has been built at Brookhaven as a research tool rather than as a large-scale producer of fissionable material.

The Atomic Energy Act of 1946 mandatorily prescribes the clearance of the few Brookhaven researchers who may have access to restricted data. Nothing in the law, however, requires that all the other scientists in that large installation be cleared as a condition of their being employed. Yet it appears to be true that in the past local officials of the AEC have, in the words of one of Brookhaven's administrators, "strongly intimated" that all scientific personnel should be cleared, regardless of the nature of their work. During one brief period of time five out of eight men who had been proposed for appointment to posts involving pure theory and no restricted data were denied clearance and were not employed even though other qualified men could not be recruited in their

stead. More recently this semiofficial encouragement of indiscriminate enforcement of clearance requirements has abated, apparently not so much as a matter of conviction as because it imposed too heavy burdens upon the Federal Bureau of Investigation and the AEC staff, which were compelled to "process" the many cases involving no access to restricted data and hence beyond the scope of their statutory duties.

Now, however, the Associated Universities, Incorporated, voluntarily continue at least a part of the practice that had been unwisely inspired in the beginning. Without obvious prodding by AEC officers (who, incidentally, seem not to have been reflecting any policy formally established by the Commission itself), the Brookhaven administrators still seek clearance for all scientists who are to be stationed at the laboratory more or less permanently rather than merely for temporary duty as, for example, are many university professors and graduate students. The declared reason for the present position is that these scientists may at some future time desire to use the reactor or to consult classified materials. The reason lacks persuasiveness because one side of the reactor is to be declassified, thus making it available to qualified researchers without clearance.

Brookhaven is not alone in pursuing this policy. Industrial laboratories, too, have demanded clearance as a prerequisite of employment, even though the classified work in those laboratories may require the services of only a small number of the scientists who are employed at any one time. This is the case, for instance, at the General Electric Company, although the classified researches that it has undertaken to do under contracts with the Government are physically separated from the rest of its scientific operations, and despite the fact that GE's basic research laboratory had traditionally had an open-door policy. Here again the justification advanced is one of "administrative flexibility." Even though a man is not en-

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gaged in classified research, it might be desirable at some future time to transfer him to it. If everyone is cleared in advance, the reassignment of staff is made easy. Similarly, in Oak Ridge the Carbide and Carbon Chemicals Corporation makes no differentiation between those of its employees who have access to restricted data and those who do not. Michael F. McDermott, the company's Superintendent of Security and Plant Protection, writes: "Carbide, in requesting clearances from AEC, has in all cases sought 'Q' clearances on the theory that while one's designated job may be in a limited area [in which unclassified work is done], there may be times (through visits, transfers or possibly visits to other projects outside of Oak Ridge) when one would be subject to classified data and would then have been cleared for such visits or information."

A third situation, which will be considered more fully in a subsequent chapter, is perhaps yet more alarming. Academic institutions in increasing numbers have manifested an interest in security clearance before making an appointment to teaching or research staffs. This self-created limitation upon institutional freedom has seemingly been induced chiefly by a desire to obtain research funds from federal agencies.

All these extensions of clearance beyond the true scope of security administration are influenced in some measure by a suspicion that lies just below the surface of public consciousness. J. Robert Oppenheimer some years ago asserted in an off-hand and unfortunately quotable way that the best method of transmitting scientific information was to wrap it up in a person. One would exaggerate the significance of the comment if he ascribed all later developments to it. Nevertheless it seems clear that the broadening of clearance is inspired by something more than considerations of mere administrative convenience. It is inspired as well by the fear that one scientist may talk to another outside the laboratory. If he does so, he may communicate information that will become wrapped

up in a person to whom it should not have been disclosed and who may in turn transmit it to unauthorized recipients. "We all believe," once remarked the manager of the AEC's New York Operations Office, "that it is unwise to have unreliable men working with those who are doing classified work. There is no label on a man to indicate the nature of his work, and scientists are a tight community." Somewhat similarly, the General Electric Company's director of research activities has upheld security clearance for the whole staff of a laboratory, classified and unclassified alike, on the ground that it permits all the scientists to talk freely with one another without having to fear "leaks."

The trouble with this sort of suggestion is that it proves at once too much and too little. Perfect security cannot be achieved by extending clearance merely to the "tight community" of scientists in any particular laboratory. The researcher at the various AEC installations is often an academic man who has accepted a short-term assignment. He corresponds with and will soon rejoin his faculty associates. By logical reasoning must one not conclude that they, too, should be cleared lest some of them prove to be "unreliable" and eager to corrupt their colleague, the possessor of classified information? Equally, would it not be necessary to clear everyone with whom an industrial scientist had repetitive relationships, lest his conversational excursions over cocktail glasses contain inappropriate references to his work? A scientist who is designedly or carelessly unmindful of his obligation to avoid revealing restricted data may unauthorizedly transmit information to anyone he knows. If we permit ourselves to be consumed by dread of that possibility, we must either extend security clearance to all who may meet a scientist or, alternatively, must prevent our "cleared" scientists from having contact with the "uncleared" world which surrounds them.

No one is attracted by such drastic extremes. Their un-

palatability is heightened by realization that they are not necessary in fact and, even in their present incomplete approximation, are hurtful to the very cause they are intended to serve, national security.

Of course the fact that scientific espionage has not been dramatically successful in the past does not mean that it will certainly be a failure in the future. It would be foolhardy to take no precautions whatsoever against improper communication of restricted data. Prudent men take precautions against even slight risks. But unless the risks are grave, prudent men do not live constantly in the shadow of fear.

What does the public record show which sheds light on the gravity of the risk that scientists as a group are not quite reliable? It shows, to be sure, that scientists have been among the espionage agents of foreign powers. But the number of spies, so far as we know, has indeed been small—May and Boyer, an Englishman and a Canadian, in Canada; Fuchs, a British citizen, who transmitted intelligence both from England and from this country in which he was temporarily stationed during World War II; Gold, an American chemist not employed in government work at all, who was the conduit used by Fuchs; and a limited group of relatively minor figures who were apparently also on Gold's team during the war years.

Corruption and faithlessness, no matter how infrequently they occur, can never add up to a pretty story. It would be a mistake, however, to attach to a large and devoted profession the repugnance engendered by a few isolated cases involving individuals within that profession. It is impressive that not a single one of the scientists involved in security clearance proceedings during the years of Russo-American tension since World War II has been found to be a spy, either amateur or professional. No basis appears for manifesting an especially distrustful attitude toward American men of science.



## SECURITY, LOYALTY, AND SCIENCE

The House Committee on Un-American Activities has sought, perhaps successfully, to create contrary impressions. Analysis of its reports demonstrates, however, that their substance is slight indeed. Consider, for example, the Committee's utterances that evoked the following sequence of page one headlines in the calm *New York Times* during September 1948:

- September 2: "HOUSE BODY TO SIFT SPYING FOR RUSSIA BY ATOM SCIENTISTS"
- September 8: "WITNESS CALLED FOR ATOMIC INQUIRY  
Secret, Open Hearings Are Set on Scientific Project 'Leaks' "
- September 18: "HOUSE BODY PLANS TO EXPOSE DETAILS OF ATOMIC SPYING"
- September 25: "PUBLIC SPY INQUIRY OFF; 'GRAVEST MATTER' UNCOVERED"
- September 26: "ATOMIC SPY REPORT WILL SHOCK PUBLIC, OFFICIAL DECLARES"
- September 28: "INDICTMENT OF FIVE URGED IN REPORT ON ATOMIC SPYING  
House Group Lists Two Scientists as in Bomb Project"

When the Committee's report was released, it became clear that neither of the scientists specifically denounced by the Committee had been connected with the "Bomb Project" for a number of years. They had been employees in the days of the Army, rather than the AEC, and early in the game they had been called to active military duty far from any laboratory because the Army doubted their probity. Even as to these two the Department of Justice on September 29, 1948, issued an official commentary on the House Committee's re-

## THE SPREAD OF SECURITY

port, asserting that the Department had no evidence that warranted prosecution and stating in part:

“. . . There is absolutely no competent proof here, so far as appears from the report and excerpts of testimony quoted therein, of the actual or attempted communication, delivery or transmittal of information relating to the national defense to a foreign government or to one of its representatives . . . The Committee . . . has uncovered nothing the department did not already have. . . . It has been the considered judgment of two successive assistant attorneys general who studied the facts available, independently and at different times, that the evidence was insufficient for successful prosecution . . . The Congressional ‘reports’ on espionage and loyalty matters . . . are injurious to the principles of free government. . . .”

Nevertheless, the succession of sensational Committee news releases undoubtedly aroused in many unsophisticated minds a feeling that scientists who work on the atomic energy project are a pretty doubtful lot.

This feeling has been fully exploited by repeated announcements concerning “atomic spying by scientists,” each announcement sounding like a fresh revelation. All of them have, however, involved the mere repetition of allegations against the same three individuals, two of whom were those involved in the headline series quoted above, and the third of whom was known until recently simply as “Scientist X.” The accusations against “Scientist X” were released by the Committee on at least three widely separated occasions in precisely the same words. On the third occasion the Committee’s pronouncement was still treated as “fresh news”; on August 16, 1949, the *New York Times* carried a headline, ‘SCIENTIST X’ LINKED TO ATOMIC ESPIONAGE, eleven months after the Committee had first given out the identical story on

September 28, 1948. Finally, on September 29, 1949, the Committee issued a "Report on Atomic Espionage" that told the story once again, the new item being that Scientist X was now identified by name and occupation as a midwestern university professor. All the Committee's allegations related to 1943 or earlier years, and in no instance has the Committee's evidence yet been deemed sufficient by the Department of Justice to support a criminal prosecution.

As for scientists' membership in the Communist Party, with its implication of conflicting loyalties, the Committee has reported what it described as a cell "consisting of five or six young physicists" who were connected during the war with one or another phase of work at the Radiation Laboratory at the University of California, a part of the atomic energy project. None of those named by the Committee has been found guilty of any misconduct in connection with the project. Only one of the group had continued in his employment beyond the war, and well before his public "exposure" by the House Committee the AEC had demanded and received his resignation. According to testimony before the House Committee, he had been a Communist for three months, from January until March, 1943, had paid fifty cents in dues, and had then withdrawn from the party; during this period he had been "a computer, a mathematical computer. I worked a little electric gadget, pushing buttons."<sup>2</sup>

The House Committee's penchant for repetitive denunciation has apparently befuddled unwary readers into supposing that there are more cases and more proofs than in fact exist; evidence is at hand, moreover, that newspapers with dominantly large circulations have tended to be especially generous in reporting exclamations by the Committee, its members, or its staff.<sup>3</sup> It is not too much to say that the loyalty of scientists as a group has become a matter about which there is wide public concern.

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For this reason it is well to emphasize once again that security clearance cases have in truth rarely involved charges that a scientist is himself a "disloyal" person. Without now pausing to describe the charges in detail, we may characterize them generally as involving dissatisfaction with an individual's associations. Sometimes the associations have been entirely personal, as, for example, a case in which a scientist's father-in-law had once been the editor of a Yiddish newspaper of an allegedly radical character; the theory seems to have been that he might have "infected" his daughter, who might in turn therefore be an unwholesome associate for her husband, the scientist against whom the inquiry was directed. Sometimes the associations have been of a professional nature, as, for example, a case in which a distinguished consultant was challenged because two of his colleagues on a university faculty were asserted to be "Communist sympathizers." Sometimes, finally, the associations have been with organizations in which Communists are said to have been active, as, for example, a case in which a young scientist's clearance was long delayed because he had once joined a "United People's Action Committee" for the declared purpose of combating discrimination against Negroes in Philadelphia.

In all instances of these sorts, the root proposition is that the scientist might be indiscreet in the presence of his associates or that he might at some time be induced by them to perpetrate an illegal act, such as divulging secret information. This proposition is not wholly irrational. The chief criticism to be made of it is, simply, that it impliedly assumes a degree of danger that does not exist. Dr. Leland T. Haworth, the director of Brookhaven National Laboratory, recently formulated this thought in a mathematician's terms:

"I suppose that there is always a risk that a man may break security, because he is disloyal or otherwise. The probabil-

ity of any particular scientist's being loyal is not infinitely great. So let us suppose that there is one chance out of ten that a man will be disloyal—certainly a higher supposed probability than the facts seem to warrant. Then let us suppose that the chances of there being any useful information at Brookhaven are about fifty-fifty and that the chances of any particular person's being able to lay his hands on the desired data are three out of ten. The chances of his being able to get the information to some other country in any useful form are surely not more than one out of a hundred. Multiply all these together—.1  $\times$  .5  $\times$  .3  $\times$  .01—and you get .00015, or less than two chances out of 10,000 that information arrives where we don't want it to go. Of course there is always a possibility that a man's mother-in-law or Great Aunt Sally will pick up some useful data from him, but the possibility is so exceedingly small that we ought to disregard it. When we bring up these flimsy 'associations' charges, we're likely to lose more than we gain. We lose the talents of the suspects and we scare hell out of the rest."

This forcefully stated conclusion finds ready support in the known facts. The right to be let alone by the Government, as Mr. Justice Brandeis put it, is "the most comprehensive of rights and the right most valued by civilized man."<sup>4</sup> A number of capable and personally irreproachable scientists who value that right have simply withdrawn from important research positions because they reasonably feared that their relatives or friends, not they, would be smeared in clearance proceedings. Others for similar reasons have declined invitations to undertake assignments of national importance; in instance after instance those who are responsible for recruiting men for the more advanced jobs have confirmed this observation, some of the estimates rising as high as 50 per cent, though most have been substantially lower. Still other well

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equipped persons, having been recruited for work of a non-secret though nevertheless significant nature, have become discouraged by delays in obtaining clearance and have accepted other employment instead. At Oak Ridge and elsewhere, moreover, academic men who have been willing to do work during the summer months have often been prevented from engaging in it because their clearance was not granted until the summer was almost at an end. The numerical aggregate of these losses is considerable.<sup>5</sup> Their significance is even greater than their number because there is not an inexhaustible supply of trained scientists who can be found overnight to replace them.

This fact acquires especial importance because of an ever-growing tendency to avoid recruitment of men and women who might conceivably encounter "clearance difficulties." Many scientists, though already cleared themselves, hesitate to recommend the appointment of a fellow-scientist whose general outlook is thought to be "liberal." Their reluctance to do so is in part the product of tender concern for their scientific friends, whose reputations might be damaged if they were not cleared. In part it is the product of fear for themselves; a man's own reputation may be damaged if his friends have clearance difficulties, for this will immediately suggest that the nominator himself has questionable associations. Needless to say, this dual timidity produces many errors on the side of caution, and thus immeasurably broadens the range of ineligibility.

Two illustrations suffice to make this point. Not long ago there was undertaken an important survey of the medical research facilities of the military departments. Those who planned the project drew up a roster of outstanding medical scientists to conduct the survey. Then it was observed that one of the nominees, a man especially fitted to give advice in one of the key phases of the survey, was reported to have been a supporter of Henry Wallace. Without his even knowing that

he had been considered and rejected, he was promptly stricken from the list and a second choice made. At no time was there any denial of clearance; the name was simply never submitted, in order to forestall the feared embarrassment of clearance proceedings. In all probability there would have been no withholding of clearance if the case had been presented and if the facts had been as supposed; so far as I know, there has not yet been an adverse decision because in 1948 a scientist voted for Mr. Wallace instead of for Mr. Truman or Mr. Dewey or Mr. Norman Thomas. But the rather sour cream of this jest is that the man in question was not a Wallace supporter at all; he had been a sturdy upholder of the Democratic candidate. In sum, the military department was deprived of the services of an eminently qualified and badly needed adviser because of a conscientious but erroneous assumption concerning a fact that was irrelevant in any event. In a second case the occupant of a responsible scientific post in the federal service had recently received his own security clearance after it had been brought in question for rather unsubstantial reasons. Just at that point a vacancy arose in his staff, for which there were two applicants. One, who had had the more extensive experience and who possessed an already established reputation, had freely voiced opinions which, though wholly American, are not acceptable in every quarter. In these circumstances the second applicant was chosen for appointment. Of course the same choice might have been made even if the circumstances had been different, but the decision was very probably a recoil from the proceedings through which the appointing officer had himself so recently gone.

Unless the fear of smear can be pushed farther into the background than it is at present, the skills of many of the nation's ablest scientists will not be fully utilized. Ebullience and unorthodoxy may not be absolute prerequisites of scientific brilliance, but they are certainly compatible with it and

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probably accompany it more often than not. Authoritarianism is by definition inconsistent with intellectual creativeness. The questing scientific mind does not embrace theories without proof, and even accepted theories remain always subject to possible broadening or modification. "The history of ideas," says Alfred North Whitehead, "is a history of mistakes." The entire history of science has been one of battle against orthodoxy—against the orthodoxy of the church, the orthodoxy of dogmatic conviction and intuitive knowledge, the orthodoxy of social, economic, and political opinions of the moment. Although the habit of doubting the perfection of things as they are may sometimes be indulged unwisely, it is almost a necessary attribute of those who contribute to the progress of science. The scientific drudge may live untouched by the turmoil of ideas. The scientific creator is likely to be broadly cultured, complex, alert, and unafraid of the unconventional. Too many men who possess those characteristics are today avoiding work for which clearance must be sought, or are being passed over in favor of more pedestrian spirits.

Sumner Pike, one of the Atomic Energy Commissioners, has cautioned against just this possibility. "The degree of success in our job," he said, "depends fundamentally on considerable numbers of scientific minds of the highest quality to carry on exploration into unknown or dimly perceived fields of research. Such minds must be brilliant, curious, skeptical, and roving. They do not take things for granted. They must examine and re-examine conclusions reached by others before reaching their own decisions." We need many more of that type, adds Commissioner Pike, even though their being accustomed to scientific freedom of expression tends to make them "outspoken on social injustices and unnecessarily tactless in exposing our own troubles here at home."<sup>6</sup> These opinions have been interestingly and perhaps surprisingly echoed by a veteran member of an AEC personnel security



board, who attributes his initial selection to "a New England Republican background and the fact that I had never bothered to think about social and political questions." In the course of his service as security-risk judge, he has concluded that "The men whose clearance status is called into question are usually those who do think about these things, the very kind of men you want on this job. In this business many of the ideas start at the bottom rather than the top, and ideas are likely to grow out of active minds rather than those which accept things just as they find them."

The ends of true national security, as these remarks once again emphasize, are not served by confusing orthodoxy with suitability for scientific service.

Personnel clearance, as earlier pages have indicated, is defensibly prudent when confidential assignments are involved. When a man's acts may heavily affect the community's safety, a judgment concerning his probable future conduct may appropriately be made, even though the judgment is perforce inexact. In such a case society balances risks. On the one hand there is a risk that infidelity may cause grievous injury to the nation. On the other hand there is a risk that an erroneous conclusion about an individual may be grievously injurious to him. It is not unreasonable to conclude that the first of these risks outweighs the second, and that personnel security determinations are therefore well justified. The justification, however, is related to and derives from the existence of potentially grave danger. If danger is in fact not present, or if its degree is inconsiderable, the stated justification vanishes. The extension of personnel security clearances into areas in which they are not demonstrably necessary protects no national interest.

## VI

# The Loyalty of Federal Scientists

THE previous discussion has dealt with the tens of thousands of scientists who are employed in activities in which secrecy and security are thought to be important issues. As has been seen, great effort is made to guard against employment of unsuitable personnel in work of that kind.

Wholly unrelated to the “sensitive areas” that have thus far been considered, some thirty thousand civilians have professional civil-service ratings in federal agencies as chemists, physicists, meteorologists, entomologists, geologists, bacteriologists, pathologists, astronomers, and so on. To that number must be added the many thousands of supporting technical personnel and the yet further thousands of doctors, dentists, psychologists, and the like who are employed by the Veterans Administration, the Public Health Service, and other departments. Even those scientists who do have access to restricted data possess, for the most part, few real secrets—certainly far fewer than many normally self-assertive men ever permit their acquaintances to suppose. As for the scientists who will be discussed in the present chapter, there is no room whatsoever for speculation on this score. They are factually, officially, and unqualifiedly barren of state secrets. They have not the slightest opportunity to deal in restricted data or to magnify their

own importance by multiplying the number of hushes in hush-hush.

The inconspicuous ichthyologist of the Fish and Wildlife Service knows many secrets, to be sure, but they are the secrets of the speckled trout rather than the secrets of national defense. The mine safety engineer in the Department of the Interior peers into dark and hidden places, but the information he acquires has no element of confidentiality. The researcher at the National Cancer Institute explores the unknown, but there is certainly no disposition to conceal whatever he may discover. The Liberian scientific mission of the Public Health Service and the Agriculture Department is engaged in work of national importance, but whatever it learns about *Strophanthus sarmentosus* as a ready source of adrenocortico trophic hormone will not be withheld from the rheumatoid arthritis sufferers of the world. When Dr. Elmer W. Brandes of the Bureau of Plant Industry proved that "yellow stripe," which once threatened the sugar cane industry with extinction, was a virus carried by the corn louse, his work was recognized to be of international significance; but no one was disturbed by the knowledge that Dr. Brandes would not "keep the secret." Dr. Ralph R. Parker of the Rocky Mountain Laboratory of the National Institutes of Health devoted long study to the wood tick and to the spotted fever which it spread with often fatal consequences; the effective vaccine that resulted from his researches was a cause for rejoicing and acclaim rather than for silent concealment. Dr. Charles A. Cary of the Bureau of Dairy Industry discovered a nutrient in milk, later identified as Vitamin B<sub>12</sub>, which helps overcome pernicious anemia; there was no fear that security would be jeopardized if he were to publish his findings, even though they might be translated into Russian. No more was there a feeling that secrecy should be clamped upon Edgar S. McFadden's recent development of a rust-resistant wheat.

## THE LOYALTY PROGRAM

Yet the political views and the associations of all these men, and of others like them, have been a matter of governmental scrutiny almost as though they were entrusted with the latest developments in chemical warfare or rocket design.

### *The Loyalty Order*

On March 21, 1947, President Truman proclaimed that "the presence within the Government service of any disloyal or subversive person constitutes a threat to our democratic processes" and that "maximum protection must be afforded the United States against infiltration of disloyal persons into the ranks of its employees." Accordingly the President on that day promulgated an order—Executive Order No. 9835—"prescribing procedures for the administration of an employees' loyalty program in the Executive Branch of the Government."

By the terms of that decree, every person in the employ of, or seeking to be employed by, any department or administrative agency of the Federal Government must be subjected to a thorough "loyalty investigation." The Loyalty Order, as Executive Order No. 9835 has come to be known, establishes that "The standard for the refusal of employment or the removal from employment in an executive department or agency on grounds relating to loyalty shall be that, on all the evidence, reasonable grounds exist for belief that the person involved is disloyal to the Government of the United States." This is entirely in addition to, rather than a substitute for, the statutes and regulations which, in aid of national defense, authorize the summary dismissal of employees of the State Department, the Atomic Energy Commission, the Central Intelligence Agency, and the several military departments.

Each employee and each new job applicant must file his fingerprints and must answer under oath a detailed personnel security questionnaire, or PSQ. A summary check is then

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made of available records—Civil Service Commission, Federal Bureau of Investigation, Military and Naval Intelligence, House Committee on Un-American Activities, and similar pertinent sources—to discover whether any “derogatory information” appears in connection with the applicant’s or employee’s name. If none is discovered in these files or in the completed PSQ, the FBI, which is the agency in charge of conducting all loyalty investigations, reports that no derogatory information has been found; and there the matter rests. If even a minute amount of derogatory information does appear, a “full field investigation” is undertaken by the FBI, which ultimately turns over its report to the employing agency or, in the case of new employees (who are defined as all those employed after October 1, 1947), to the Civil Service Commission.

In each department or agency one or more loyalty boards, composed of at least three departmental officials, have been designated by the agency head to pass on loyalty cases affecting present employees, while in each region of the Civil Service Commission there has been created a Regional Loyalty Board to consider the cases of new employees. If an agency’s loyalty board makes an adverse recommendation, the affected employee may appeal to the head of the agency or to his designee, and the agency’s final decision (or, in the case of a new employee, the decision of the Regional Loyalty Board) is appealable to the Loyalty Review Board of the Civil Service Commission. Formally the decisions of the Loyalty Review Board are advisory only, but the President himself has indicated that in fact they are to be deemed virtually dispositive. The Loyalty Review Board, composed of prominent citizens under the chairmanship of former Assistant Attorney General Seth W. Richardson, has issued numerous “directives” to the several agency boards, and in general comports itself as though it were

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the immediate administrative supervisor of the other units in the loyalty program.

### *Guides to Disloyalty*

The issue before these administrative tribunals is whether “reasonable grounds exist for belief that the person involved is disloyal to the Government of the United States.” What are the criteria by which so elusive a matter is to be judged?

The Loyalty Order itself describes various “activities and associations of an applicant which may be considered in connection with the determination of disloyalty.” These include:

1. Actual or attempted sabotage, espionage, treason, or sedition;
2. Advocacy of revolution or force to change the constitutional form of government of the United States;
3. Intentional and unauthorized disclosure of confidential documents or information obtained as a result of public employment; and
4. Performance of duty “so as to serve the interests of another government in preference to the interests of the United States.”

Obviously enough, these offenses can be established only by objective evidence of actions already taken and of deeds committed. Without exception they refer to behavior rather than to belief or emotion. A significantly large volume of penal statutes applies to these types of acts, as well as to conspiracies, combinations, and attempts to commit them.<sup>1</sup> It is clear, moreover, that in cases where the available proofs might not be sufficiently clear-cut to sustain a criminal prosecution, the employee would nevertheless be subject to removal from his job. Like other employers, the Federal Government has a comprehensive power to dismiss or otherwise discipline an employee

who is insubordinate, incompetent, or inattentive to the policies he has been instructed to administer. Even employees who, in the inexact but popular phrase, are "protected by civil service" are still subject to being removed "for such cause as will promote the efficiency of the service"; and in the remaining employments to which civil-service laws are inapplicable, there are no significant limits whatsoever upon administrative discretion. Long before the Loyalty Order was born, there was ample power to take protective steps against an employee who was believed to be a saboteur, a sieve through which confidential information passed, or a servant of another nation's interest. The Order somewhat elaborated the procedural steps that were to be taken if this kind of case arose, but it added nothing to the content of the safeguards against these types of misconduct. It is proper to conclude, therefore, that the Loyalty Order was not devised to cope with behavior of these sorts.

Nor was the Loyalty Order at all needed in order to authorize the Government to rid itself of Communists. The Hatch Act, which became law in 1939, provides that no person may be employed by the Federal Government in any capacity if he has "membership in any political party or organization which advocates the overthrow of our constitutional form of government"; and as though to underline its resolve, Congress has inserted in all general appropriation acts since 1941 a reminder that no part of the appropriation may be used to pay the salary of any "person who advocates, or who is a member of an organization that advocates the overthrow of the Government of the United States by force or violence." <sup>2</sup> The Attorney General has unequivocally ruled that by virtue of these laws members of the Communist Party, the Socialist Workers Party, and the Workers Party are instantly removable from any post in which they may be found.

What the Loyalty Order has freshly supplied as a possible

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reason for dismissal may be found in a single subparagraph, the final one of the "standards" listed in the Order and the one which generates most of the loyalty charges:

"f. Membership in, affiliation with or sympathetic association with any foreign or domestic organization, association, movement, group or combination of persons designated by the Attorney General as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means."

Membership is a clear concept, and affiliation, though less precisely ascertainable, has also been given meaning by Supreme Court definition. The acts that tend to prove "affiliation" with a group may be intermittent or repeated, but according to the Court they "must be of that quality which indicates an adherence to or a furtherance of the purposes or objectives of the proscribed organization *as distinguished from mere cooperation with it in lawful activities.*"<sup>3</sup> The term "sympathetic association," as used in the Loyalty Order, adds something entirely novel in American law. It apparently denotes a lesser degree of organizational connection than is involved in affiliation. No doubt it brings within the range of suspicion the "mere cooperation in lawful activities" which the Supreme Court thought to be inadequate as an evidence of affiliation. Thus, for example, a money contribution for a specific and entirely permissible purpose might reflect a "sympathetic association." As a matter of fact, the term has been given an even more extended significance in the day-to-day work of the loyalty boards. "Sympathetic association" with a proscribed organization has customarily been inferred when one is a relative or friend of another person who in turn has



been identified in some way with the organization in question.

In any event, neither membership in nor association with an organization serves, alone, to establish disloyalty. President Truman publicly declared, some months after issuing his order but before its active administration commenced, "Membership in an organization is simply one piece of evidence which may or may not be helpful in arriving at a conclusion as to the action which is to be taken in a particular case." <sup>4</sup> Moreover Chairman Richardson of the Loyalty Review Board has stated that "advocacy of whatever change in the form of government or the economic system of the United States, or both, however far-reaching such change may be, is not disloyalty, unless that advocacy is coupled with the advocacy or approval, either singly or in concert with others, of the use of unconstitutional means to effect such change." Hence, he concluded, "all employees, and all who may aspire to become employees, of the Government, should not only be, but feel, free to join, affiliate or associate with, support or oppose any organization, liberal or conservative, which is not disloyal." <sup>5</sup>

This remark serves to stress what is one of the central problems in the loyalty program. A man may be deemed disloyal if he has associated with a "disloyal" organization as distinct from one which is merely "liberal or conservative." Obviously, therefore, great importance attaches to the choice of the adjective that may best describe a particular group. The Loyalty Order vests that choice in the Attorney General. By virtue of the Order he must pass upon the characteristics of all organizations; and when he has done so, urgent consequences at once appear.

### *The Attorney General's Black List*

The Order contemplates that the loyalty boards will receive from the Attorney General a list of the organizations which,

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“after appropriate investigation and determination,” he has designated as totalitarian, fascist, communist, subversive, or committed to the use of violent or unconstitutional methods. These, it may be supposed, are the disloyal organizations to which Chairman Richardson made reference. Once the Attorney General has spoken, his conclusion is incontestable before the loyalty boards; neither the listed organization nor the employee who has had sympathetic association with it enjoys the privilege of trying to show that the Attorney General was mistaken.

During the administration of Attorney General Clark nearly two hundred groups were identified by him as coming within the scope of the Order. The task cannot have been easy. The terms used in the Order have no well-defined meaning, either in dictionaries or in common parlance. They can be made to mean pretty much whatever one may choose. As recently as February 3, 1949, for example, Senator Taft assured the National Federation of Women’s Republican Clubs that “the fundamental cleavage” between the Republican and Democratic parties was “free government versus totalitarian government,”<sup>6</sup> an application of the word “totalitarian” which the Truman Administration would scarcely endorse. It is interesting to know, too, that only two decades ago when the responsibilities of national administration were borne by Presidents Coolidge and Hoover, the board of trustees of the American Medical Association denounced as “communistic” the provision of publicly supported medical care for veterans whose illness was not directly connected with their military service.<sup>7</sup> In 1947 President Truman asserted in a formal message to Congress that the real estate lobby had engaged in “subversive” activities in seeking to terminate rent control.<sup>8</sup> The amorphous character of such words as “fascist” and “communist” has long been familiar. In some circles the American Legion, the Daughters of the American Revolution, and the

National Association of Manufacturers are regularly characterized as "fascist," while it is well known that the Interstate Commerce Commission, the income tax, and workmen's compensation have in their respective days shared the quality of being deemed "communist." The Attorney General must have been puzzled to know how to draw the lines which would help him gauge an organization's dominant characteristic. The definitions that the Department of Justice created have never been divulged, but they are perhaps deducible from the listings themselves.

All but one of the twenty-two "totalitarian" organizations on the black list compiled by the Attorney General were connected with prewar Japan—the Black Dragon Society, the Hinode Kai (Imperial Japanese Reservists), and so on; the one exception is the Peace Movement of Ethiopia, an organization among Negroes which in the early days of the war sought to stress the common interests of the world's colored populations. If the Attorney General has accurately sensed the meaning of "totalitarian," it seems reasonably clear that the Government is not shot through with so many totalitarian influences as ex-President Hoover thought it was when, at the Republican National Convention in 1948, he wholeheartedly attacked the "totalitarian liberals" and the "totalitarian economics" of the New Deal.<sup>9</sup> It may be assumed that few sympathizers with Japanese imperialism remain in the federal service today.

The "fascist" organizations, as identified by the Attorney General, also number but twenty-two. Nine are relicts of the Nazis, such as the Ausland-Organization der NSDAP and the Kyffhaeuser Bund. Four are reminders of the departed glories of Mussolini, such as the Lictor Society (Italian Black Shirts). The remaining nine have American names—ranging from American Patriots, Inc., to National Blue Star Mothers of America. The initial listing focused on organizations that were

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linked with the defeated regimes of Italy or Germany. The guiding principle of selection was thus plain. The addition of American organizations through a supplemental list leaves the definition less certain. There is a separate grouping of eight organizations that are said to have "adopted a policy of advocating or approving the commission of acts of force and violence to deny others their rights under the Constitution of the United States"—the Ku Klux Klan, the Silver Shirt Legion of America, and others. The distinction between the two, those which are violent and those which are fascist, is not brought out.

The number of "subversive" organizations is reassuringly small according to the list the Attorney General has compiled. There is the German-American Bund, now extinct; the Communist Party, U.S.A., along with the Communist Political Association, its former alter ego, and the Young Communist League, its wholly owned subsidiary; the Socialist Workers Party; and the Workers Party. In other words, there are only three present-day subversive groups, each of which professes to be the true exponent of Marxism and two of which are markedly anti-Stalin in orientation. This listing suggests, though it does not explicitly declare, that a "subversive" organization is one which teaches that the Government must ultimately be overthrown by violence in order to achieve a new economic order.

Still another listing names the organizations that "seek to alter the form of government of the United States by unconstitutional means." One might have supposed that this list and the roster of "subversive" groups would be coextensive. But they are not. The German-American Bund, while "subversive," apparently believed in the Constitution, for it is not on the "unconstitutional" list. On the other hand, the Industrial Workers of the World and the Nationalist Party of Puerto Rico are not "subversive," but are said to favor unconstitu-

tional methods. The three rivals for the mantle of Marx have been awarded places on both lists.

Now we come to the real meat of the black list. There are 108 "communist" organizations. This is a very confusing grouping, in terms of a deducible definition. The Communist Party and the Young Communist League, which are "subversive" and seekers of the unconstitutional, are also "communist." But the "communist" groups include over a hundred that are neither "subversive" nor in favor of unconstitutional methods. The range is noteworthy. The American Committee for Protection of Foreign Born rubs shoulders with the Council on African Affairs, Commonwealth College, and the Washington Bookshop Association. If for the moment we put to one side those groups that have been separately named as "subversive," the striking characteristics of the "communist" organizations seem to be these:

1. Their ostensible purposes are without exception legal and, according to one's taste in these matters, at least debatably laudable;
2. They have numbered Communists among their active supporters or officers, which gives rise to the suspicion that they may have purposes in addition to or even different from those they avow.

The second of these characteristics deserves slightly expanded attention. What we are saying is that the apparent purposes of an organization may attract many non-Communists, but that if Communists are able to exercise influence in the organization, they are likely to divert its energies into other channels. Thus, for example, many a non-Communist might join the International Workers Order (which is on the black list) because as a legally authorized insurance company it sells small policies at advantageous rates, while at the same time it affords its members various cultural and social oppor-

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tunities. But there is always the possibility that the Communists who staff the International Workers Order may seek to enlist the organization or its non-Communist members in pro-Communist acts of an entirely political aspect. Clearly there is nothing that is distinctly Communist about the business of writing life insurance or the promotion of Old World folk dancing. The chief differentiation between the IWO and the Metropolitan Life Insurance Company or the Gaelic Society of New York is that Communists are strategically placed in the former and not in the latter two.

Of course this attempt to reconstruct the applicable definitions may not have succeeded. Whatever the definitions may be, they are made operative without even notifying the affected groups that they are under scrutiny and without hearings or informal conferences in which there would be opportunity to establish the character of an organization or its sponsors prior to denunciation by the Attorney General. Mr. Justice Clark, when he was Attorney General, told me that the decision to black-list was never lightly made. He asserted that after subordinate attorneys had analyzed an FBI report concerning a suspect organization, each of his chief assistants was called upon to review a recommended decision; and in cases where opinions were divided, the matter was studied by the Attorney General himself. No doubt the problem is approached soberly, as indeed it should be in view of the effects an adverse decision may have upon an organization's members and upon its own future. Black-listing inevitably causes a decrease in membership rolls, a reduction in contributions, a loss of status as a tax-exempt organization, and considerable harassment in the form of interference with meetings and the like. Whether or not these consequences give rise to questions of constitutionality, as some authorities believe,<sup>10</sup> they are certainly too serious to permit incautious exercise of the great discretion the Attorney General possesses.

As previously noted, the Attorney General's designation is conclusive and may not be disturbed—unless the courts should at some time in the future manifest a hitherto unrevealed readiness to do so. At any rate, the loyalty boards are forbidden to receive from an affected employee any evidence he might wish to proffer concerning the true character of a black-listed group with which he had been linked. This seems to be procedurally sensible. If each loyalty board were compelled to admit proofs and argument about the soundness of the Attorney General's judgment, there would be great duplication of effort and, in time, conflicting determinations. But while there may be wisdom in barring an individual from challenging the black list, despite its important bearing on his own future, the same argument cannot be made against the Attorney General's granting a full hearing to the organization itself in advance of denouncing it.

Some, though certainly not all, of the Attorney General's *ex parte* conclusions are debatable ones, even if the supposed premises are accepted without challenge. For example, the North American Committee to Aid Spanish Democracy was included in a supplemental list of "communist organizations," though it has been defunct for a full ten years. This immediately elicited a public protest by James Loeb, Jr., national executive secretary of Americans for Democratic Action, and Roger N. Baldwin, then the director of the American Civil Liberties Union, who said in a letter to the Attorney General:

"We write as executive officers of two organizations whose undeviating opposition to Communist and Communist-front organizations is generally known and recognized . . . We were both actively associated with the North American Committee to Aid Spanish Democracy as members of the Executive Committee of that organization . . . During the Spanish War, 1936–1939, it was the only broad national

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group which aided the legitimate and duly-recognized Republican Government of Spain . . . Conclusive proof of the control of the Committee came in the period following the Nazi-Soviet Pact and the outbreak of the war later in 1939. The pro-Communist elements were defeated in their efforts to use the Committee to embarrass the Western Allies then at war against Germany, Soviet Russia's ally. The pro-Communist elements were forced to withdraw from the Committee and establish their own group . . . Meanwhile, the Spanish Refugee Relief Campaign, a direct continuation of the North American Committee, continued to operate for several years, giving assistance to non-Communist Spanish Republican refugees. . . ."

Or, to suggest a more contemporary example, consider the case of the American Russian Institute, located in New York and unconnected with similarly named organizations elsewhere in the country. An early list of "communist organizations" contained a reference to the "American Russian Institute." When the directors of the American Russian Institute called informally upon the Attorney General to protest the listing, he acknowledged that a mistake had been made; he informed the Loyalty Review Board that the adverse listing should be confined to "American Russian Institute (*of San Francisco*)," which was functionally and organizationally distinct from the more widely known Institute in New York.

So the matter stood until April 21, 1949, when, without any prior indication of a change of mind, Attorney General Clark notified the Loyalty Review Board that he had added to his black list the following among other organizations:

"American Russian Institute, New York

"American Russian Institute, Philadelphia

"American Russian Institute of Southern California, Los Angeles."



The American Russian Institute of New York, organized in 1926, describes itself as "nonpolitical and nonpartisan, devoted to research on the Soviet Union, and dissemination of the results." It maintains a large reference library, open to the public; publishes a magazine, the *American Review on the Soviet Union*, and an indexed digest, *Russian Technical Research News*, which makes Soviet technological information available to commerce, industry, science, and the Government; and provides translating and research services for newspapers, business firms seeking to trade with the USSR, writers, and students. Its active directors number among other prominent citizens William W. Lancaster, a senior partner in the distinguished law firm of Shearman & Sterling & Wright, counsel to the National City Bank, and Richard B. Scandrett, Jr., a leading New York Republican who has been vigorous among the supporters of Senator Taft. When the directors of the American Russian Institute once more visited Attorney General Clark to tell him that he had made an erroneous classification, he reportedly replied that when he listened to them, his listing of the organization as "communist" seemed perfectly silly, but that when he listened to his assistants, they assured him that the listing was correct.

These illustrative comments about two organizations fall far short of establishing that Attorney General Clark was mistaken in his characterization of them or of any others. In all probability the Attorney General had received confidential information about these groups which made him suspicious of their nature. Even in these days of hypersensitivity it is unlikely that an organization would be denominated Communist merely because it believed that what happened in one-sixth of the world, the Soviet Union, was a matter of legitimate intellectual interest in the United States. This much, however, is clear. The Attorney General's possession of additional confidential information does not establish the correctness of his

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findings. Confidential information, like any other, may be incorrect or misleading because incomplete. When so much of what appears on the surface of an organization is unexceptionable, there is a serious enough question to warrant an orderly inquiry before concluding that the surface is a sham. Thus far no procedure for making such an inquiry has been provided. The issues are too important to be left to intuitive judgments or to untested appraisals of possibly imperfect evidence.

In one other respect the Attorney General's black list seems markedly unfair to those against whom it may be used. Anyone who has been exposed to political realities in the past twenty years knows that many organizations have changed their orientation during that period. The black list reflects no appreciation of this commonplace of American life.<sup>11</sup> An organization with entirely lawful purposes may at some time have been "captured" by the Communists. Its name will then appear on the list as though it had been Communist-inspired and Communist-controlled from its inception, and all who have had contact with it at any stage are thereupon tainted. In only one instance in the whole long black list is there mention of a date that shows when a previously unobjectionable organization became sufficiently Communist to warrant its being denounced. That single exception is "Nature Friends of America (since 1935)." Until 1935, apparently, but not afterward, one could associate with that obscure group guilelessly and without a qualm, motivated solely by friendliness to nature.

All in all, the black list is a rather blunt instrument to use in probing the subtleties of motivation and beliefs which bear on loyalty.

### *The Discovery of Disloyalty*

This excursion into the black list's meaning and method has been necessary because so much of the quest for disloyalty

revolves about that catalog. Note that the object of the search is disloyalty rather than loyalty; or perhaps it would be more accurate to say, as has President Truman, that the search is for the “potentially disloyal.”<sup>12</sup> Nowhere in the Loyalty Order or in the directives, pronouncements, and judgments that have grown out of it has an effort been made to isolate loyalty as an affirmative quality. All the standards contained in the Order are suggested for use as tests of the possible absence of loyalty, rather than as means of discovering its presence. Responsible administrators have been asked in numerous personal interviews to describe the determinants of loyalty. Some have responded that the answer was self-evident. Others have explained their measuring rods of *disloyalty*. Not one has put the matter positively.

Their failure to do so is understandable. In the glowing words of the distinguished historian Henry Steele Commager, loyalty “is a tradition, an ideal, and a principle. It is a willingness to subordinate every private advantage for the larger good. It is an appreciation of the rich and diverse contributions that can come from the most varied sources. It is allegiance to the traditions that have guided our greatest statesmen and inspired our most eloquent poets—the traditions of freedom, equality, democracy, tolerance; the tradition of the higher law, of experimentation, and of pluralism. It is a realization that America was born of revolt, flourished on dissent, became great through experimentation.”<sup>13</sup> To measure men against so high a standard of idealism might produce too many failures. It is no doubt safer and wiser to employ the somewhat less stringent because much narrower negative tests that the loyalty administrators have announced.

What, in brief, are those tests? As has already been seen, mere identification with a black-listed organization is not conclusive proof of disloyalty, though membership in the Communist Party or a splinter of it is an independent cause for

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dismissal under the Hatch Act and the appropriations statutes. Nor, so the Loyalty Review Board has announced, is disloyalty evidenced by "advocacy of whatever change in the form of government or the economic system of the United States, or both, however far-reaching such change may be," so long as unconstitutional means of effecting the changes are not advocated. In summarizing its policies, the Board has identified only two classifications of persons who should be disqualified from federal service:

1. "Persons holding beliefs calling for a change in our form of government through the use of force or other unconstitutional means, who indicate these beliefs by association or conduct"; and
2. "Persons who demonstrate that their allegiance is primarily to some foreign power or influence, and that they desire to overthrow our Government." <sup>14</sup>

These tests seem fairly precise. One cannot quarrel with them as abstractions. Of course existing laws bar the first group, that is, those who seek to alter our governmental structure by force. The Loyalty Order, under the announced interpretation of the Loyalty Review Board, adds nothing in that respect. As for those who have demonstrated their allegiance to a foreign power or influence, looking toward overthrow of our government, elementary principles of self-defense support ousting them from posts of power.

Unfortunately, however, there is little seeming correspondence between the announced tests and the actual administration of the Loyalty Program. Let us study a few of the "charges" and questions that have been deemed to bear on the issue of loyalty.

A recent case involved the fate of a young psychologist employed by the Veterans Administration at one of its hospitals. The first charge against him reads as follows:

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“That you were a member of the American Labor Party of New York, New York, in 1938 and 1939, which was cited as a Communist front organization by the Committee on Un-American Affairs in 1946.”

The Loyalty Order, it will be recalled, speaks of the significance of membership in an organization that the Attorney General has designated as “communist” or otherwise improper. Here, as in many other cases which have been studied, may be seen a broadening of the ranks to admit organizations which others than the Attorney General have denounced. The Attorney General has listed 108 “communist” organizations. The House Committee on Un-American Activities has significantly bettered this record. On December 18, 1948, it published a list of 564 organizations and 190 publications “which have been declared to be outright Communist or Communist-front enterprises.”<sup>15</sup> Groups that the House Committee has stigmatized, such as the Southern Conference for Human Welfare and the United Public Workers of America, are often cited in loyalty proceedings, although the Attorney General has made no adverse determination concerning them. Consequently, a wary federal employee cannot be content to check his associations against the Attorney General’s black list; other lists may yet confound him. The safe thing is to shun all associations whatsoever.

In the present case even that would not have been enough. The defendant was separately charged as follows:

“That in 1941 your name was on the active mailing list of the American Spanish Aid Committee, an organization controlled by the Communist Party.”

This organization does not appear on the Attorney General’s list; the source of information that it was “controlled by the Communist Party” is not indicated. But even if that control

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did exist, the defendant here was charged with no organizational connection other than that his name appeared on a mailing list. If it did so appear, he testified, it had been placed there without his request or consent. Anyone who reviews his own incoming second-class mail over a period of time must find himself bemused and baffled by the variety of "sucker lists" that inexplicably contain his name and address.

As for the merits of the charge concerning membership in the American Labor Party in 1938 and 1939, the dates are of interest. In 1938 our young psychologist had just graduated from college, at the age of twenty-two. When he joined the American Labor Party in that year it was the party of La Guardia and of many idealistic New Yorkers who found slight comfort in the local organizations of the Democrats and Republicans. In 1937 it had helped return Mayor La Guardia to office; in 1938 its major candidate was Governor Lehman, a candidate for re-election. In 1939 the ALP supported President Roosevelt's foreign policy, then under Communist attack, and condemned Communists as "betrayers of the labor movement, antagonists of democracy, and protagonists of dictatorship." The "right wing" firmly controlled the party's offices and policies. In 1940, as in 1939, the ALP's platform endorsed the national defense program and denounced the "tools" of the Nazi-Soviet pact, which then existed. Not until later years and many vicissitudes, which need not now be detailed, did the American Labor Party burst asunder, with the formation of a new Liberal Party under the leadership of David Dubinsky and abandonment of the ALP to his political opponents, including Communists and their supporters. This, then, was the lawful and open political party to which a youthful college graduate belonged in 1938 and 1939, only to discover a full decade later that his professional career was shadowed by the retroactive significance of intervening events in which he was not accused of having played any part.

An additional charge against this same unhappy individual reads as follows:

“That in 1945 \_\_\_\_\_ was an officer of the \_\_\_\_\_ Club of the American Youth for Democracy and that in 1947 you married her.”

The American Youth for Democracy has, it is true, been designated by the Attorney General as Communist, because it is the lineal descendant of the Young Communist League. Note, however, that the quoted charge does not assert an association between the defendant and the organization. It asserts, rather, an association between him and an individual who, at an earlier date, had been a member of the black-listed group. According to the record of the hearing in this case, the allegation concerning the young lady may not have been correct. She testified that she had never belonged to, let alone been an officer of, the group in question. Furthermore, she did not even meet her future husband until two years later, so that there could be no question of his having had any influence upon her alleged membership. But even if we accept the charge's assertion at face value, we nevertheless see how tenuous becomes the thread of inference when it is stretched as far as it has been here.

This is by no means an exceptional instance of projecting the concept of sympathetic association beyond the limits of the Loyalty Order itself. A young medical scientist, for example, has been embroiled in difficulties not because of anything she had done in her scrupulously nonpolitical life, but because her father (with whom she was no doubt “sympathetically associated” even though their residences were separated by nearly a thousand miles) was the director of a black-listed organization. A similar embarrassment was visited upon an executive whose aged father has for decades been the recipient

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of international honors and scholarly recognition; in order to absolve herself of blame, she faced the necessity of establishing not her own but her parent's political purity. In one widely discussed case a distinguished scientist was taxed with having been the sympathetic associate of a member of the I.W.W.; evidence at the hearing established that this dangerous fellow had been a neighbor of the scientist when he was a lad of eight and had then commenced a friendship that could scarcely have reflected political convictions. The *reductio ad absurdum* came when one of this country's outstanding men of science was challenged because he had assertedly failed to admonish his wife at a private dinner party during which she had made statements an anonymous informant thought were critical of American foreign policy and favorable to the Soviet Union.

These instances suggest that disloyalty may be deduced if the affected employee has had family, friendly, or uxorial relations with any person or persons who might be regarded as possibly disloyal. They serve as a cautionary reminder that a man may indeed be known by the company he keeps, rather than by what he himself does. The logical fallacy in this sort of charge is readily apparent. It confuses personal association with political advocacy or endorsement. It proceeds on the theory that an individual who knows a Communist sympathizer is probably a Communist sympathizer himself, although he may know rock-ribbed Republicans or Dixiecrats equally well without being assumed to be their political confederate. It supposes in effect that if a man has talked with a Communist or has read a Communist publication, he will have been persuaded by everything he heard or read in that quarter, while his more numerous contacts with non-Communists and his avid reading of the Luce magazines will have left him untouched. On the whole this attributes to Communist spokes-



men a considerably greater force of personality and persuasiveness than most observers have been able to discover at first hand.

Yet another of the charges against our beleaguered psychologist is interesting. It reads as follows:

“That in 1941 you interceded with a public official, the Secretary of Labor, on behalf of a known Communist who had been dismissed from public office.”

The case in question involved a Mrs. Miller, who was ousted from her post in the Department of Labor by Secretary Perkins on August 1, 1941. The matter arose under the Hatch Act, though for technical reasons the case was brought under the “efficiency of the service” clause of the removal statute. The Department was able to show that the employee had adhered to Communist Party positions in her union and elsewhere, and had solicited a fellow-employee to become a Communist. Since this was the first publicized instance of a civil servant’s being discharged because of Communist affiliations, the case attracted considerable attention at the time. The proceedings were in truth carefully conducted, on the basis of fully stated charges and with close attention to the employee’s rights. Nevertheless, a prominent union of federal employees urged its members, of whom our psychologist was then one, to protest to the Secretary of Labor against what it characterized as an unfair decision because it had not been preceded by a proper hearing. Apparently without personal investigation, he complied with his union’s request, not, it seems, on the ground that the ousted official should not be dismissed even though a Communist, but on the ground that the procedure was improper. Such a communication to a public official scarcely establishes a desire to overthrow the Government.

The significance of the present charge goes well beyond the facts of the particular case. An ominous belief is abroad in

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the country that really loyal citizens should acquiesce in what they believe to be injustice if the victim of the injustice chances to be a Communist. Thus, for example, the California Committee on Un-American Activities has reported its conviction that the American Civil Liberties Union is a Communist organization because it insists that the protections of the Constitution extend to all alike, even including the Communists.<sup>16</sup> There is nothing particularly novel about this sort of prejudicial identification. Many of the victims of delusions about witchcraft in Salem in 1692 were not, as legend has it, the misshapen and unloved crones of the community, but were respectable people who sought to withstand the mania; for their efforts they were promptly "cried out upon" as being witches themselves.<sup>17</sup> In our day an academic scientist, who had agreed to do a job for one of the military services for a period of six months, was charged with disloyalty before finishing the job because "During your period of employment at the University of ——— you made statements to the effect that you believe 'the House Un-American Activities hearings in Washington, D.C., are more of a threat to civil liberties than is the Communist Party because they infringe upon free speech and if this sort of thing is continued there is more danger of fascism in this country than communism.' Further, you have argued that 'as long as the Communist Party is legal it is the duty of every one to protect the Party's rights.' "

The fact that there is nothing novel about ascribing base motives to dissenters does not render any more desirable the present tendency to discourage conscientious protest by identifying disagreement with disloyalty. The loyalty boards have in many cases reflected this tendency by closely questioning defendants concerning their attitude toward the Loyalty Order itself, thus perhaps stimulating a widespread readiness to "crook the pregnant hinges of the knee where thrift may follow fawning." If a man acknowledges belief that the Loyalty

Order does not contribute to the growth of American democracy, this belief may in itself induce a finding that he is disloyal. Questions with equally clear implications have frequently been asked concerning a man's opinions about the Marshall Plan, or American influence in Italian elections, or world federalism. Federal employees have even been interrogated about possessing Paul Robeson records or Howard Fast novels, as though to suggest that artistic commendability and political eligibility are as closely linked in this country as they appear to be in Russia.

The passion for conformity is still more seriously manifested in the field of civil liberties in general and race relations in particular. The chairman of a departmental loyalty board, an amiable and devoted public servant, said to me one day, "Of course, the fact that a person believes in racial equality doesn't *prove* that he's a Communist, but it certainly makes you look twice, doesn't it? You can't get away from the fact that racial equality is part of the Communist line." It comes as no great surprise, therefore, to learn that in a proceeding involving a scientist who had actively participated in the wartime development of the proximity fuze, a member of this loyalty board asked the scientist's supervisor:

"Have you had conversations with him that would lead you to believe he is rather advanced in his thinking on racial matters?—discrimination, non-segregation of races, greater rights for Negroes, and so forth?"

In a case in a different agency a highly rated professional employee was summoned to defend himself against the following charges which were deemed to bear on the issue of disloyalty:

"A confidential informant, stated to be of established reliability, who is acquainted with and who has associated with many known and admitted Communists, is reported

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to have advised as of May, 1948 that the informant was present when the employee was engaged in conversation with other individuals at which time the employee advocated the Communist Party line, *such as favoring peace and civil liberties* when those subjects were being advocated by the Communist Party.

“Another informant, reported to have been acquainted with the employee for a period of approximately three years, from 1944 to 1947, reportedly advised that while informant did not have any concrete or specific pertinent information reflecting adversely on the employee’s loyalty, informant is of the opinion *that employee’s convictions concerning equal rights for all races and classes extend slightly beyond the normal feelings of the average individual*, and for this reason informant would be reluctant to vouch for the employee’s loyalty.”

It is a wry commentary on the loyalty program that charges like these supply an official endorsement of the Communist Party’s propaganda line. The Communists proclaim themselves to be firm believers in peace, civil liberties, and human decency. It seems to many steadfastly democratic Americans that they, rather than the Communists, ought to be given major credit for these laudable beliefs.

In the particular proceeding under discussion there occurred an exchange of questions and answers that encouragingly illustrates the survival of a free soul under pressure. The employee’s former superior was called as a witness, and under questioning testified as follows:

“Q. Getting back to the question of civil liberties, would you say that his feelings about racial relations were of such a nature to indicate to you that he was a member of the Communist Party?

“A. Mr. ———’s opinions on the matter of racial relations

are that he was strongly in favor of equality and equal rights for Negroes. If that makes a man a member of the Communist Party—why, I suppose it makes me one, and I think it probably makes some of you gentlemen [members of the Loyalty Board] one.

“Q. [By the Board chairman] Would you say that Mr. \_\_\_\_\_’s activities concerning civil liberties were no greater than that of the average American person?

“A. No, I would say that his interest in civil liberties was certainly greater than that of the average. I think it is very unfortunate that the average American is not sufficiently interested in civil liberties except when his own are affected. He can get pretty hot about his own, but in too many cases he just isn’t strongly interested in what happens to other people, particularly people of different groups.”

Not all would speak so courageously at a time when a torpid social conscience is a strong guarantor of security and comfort. It is well and good to say that everyone should have the courage of his convictions. But few people do in fact have the fortitude to cling to beliefs that may expose them to calumny and loss. One of the virtues of democracy is its maintenance of a climate in which normally timid persons are allowed to entertain opinions without having to demonstrate heroic qualities. The central tenet of the democratic philosophy is that governmental policy should be shaped by the discussion of men who are free—free to inquire, to compare, to experiment, to debate, and to complain. The loyalty program drifts in the direction of curtailing that freedom.

Consider, in terms of its implications for democracy, the case against a former university professor who had served for more than five years in an important post and who had re-

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ceived the Certificate of Merit for his share in studies that were put to immediate strategic use during the war. He was told that information was at hand showing that he had "participated in Communistic activities" and had "exhibited a pro-Communist and pro-Soviet attitude for several years"; in support of these generalized statements the following specifications appeared among others:

"That you protested the dismissal of a teacher for his Communist teachings; that you favored resolutions to free Tom Mooney . . ."

A former governor of California, a Democrat like the defendant, came to his aid, saying, "If favoring resolutions to free Tom Mooney is evidence supporting a charge of disloyalty, then it applies to millions of disloyal Americans throughout the nation including Republicans, Democrats, conservatives, liberals, business men and workers, bankers and lawyers, members of the American bar who investigated the case, and myself who, as Governor of California, pardoned Tom Mooney." The allegedly Communist teacher whose ouster the defendant had opposed was, according to testimony at the hearing, dismissed because he appeared on a picket line during a lumber strike; the action was said to have been opposed by a very large number of California teachers because of belief that an issue of academic freedom was involved.

Speaking in his own behalf, the defendant said in closing his case: "I have a great personal stake in America. However, I feel it is the duty of every citizen in a republic to participate to the extent of his desire to strengthen it. Particularly, educated people have a special responsibility to use their training for the public good. I have worked both as an individual and a part of a group in strengthening things I believe in. I have tried to determine my stand on issues on the basis of

merit, without waiting to determine whether the communists would be for it or against it."

In the end this particular individual was "cleared." As a matter of fact most of the persons who face the terror, shame, and expense of answering charges of disloyalty are finally acquitted. The latest available figures, as of May 31, 1950, show that of all the cases that went to hearing, less than 13 percent resulted in finally adverse determinations; and if to this is added all these whose cases were still in process of appeal or reconsideration, the total rises to only about 19 percent. This may be contrasted with the percentage of convictions obtained in ordinary criminal cases that are brought into federal and state courts after the return of an indictment. In New York County, over 98 percent of all persons who were indicted during 1946, 1947, and 1948 either pleaded guilty or were convicted after trial; of the cases that actually went to trial, over 85 percent resulted in conviction or admissions of guilt after the evidence had been presented. In the federal courts over the same three-year span 84 percent of all defendants against criminal charges were convicted or pleaded guilty. The striking disparity between these records and the record of the loyalty boards is not a reflection of different attitudes upon the part of the judges. Trials in the federal courts and in those of New York are notably fair; there is no inhumane disposition to hold the innocent guilty. The difference is that loyalty boards commence proceedings against federal employees, involving the scandalous imputation of disloyalty and jeopardizing their whole careers, on far flimsier evidence than will move a prosecutor to proceed against a pickpocket or a stock swindler. In large part this reflects the Loyalty Review Board's conception of the function of hearings. The Board has told the subordinate loyalty boards that charges and hearings are to be deemed merely a part of the process of investigation. Hence the loyalty boards have been urged

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to issue charges whenever their files contain any unexplained "derogatory information," even when that information is on its face inadequate to sustain a reasonable belief that the employee may be disloyal. A memorandum from the Loyalty Review Board emphasizes that "unless the Board concludes from an examination of the whole record that an employee is *clearly eligible*, it is desired that the Board proceed to dispose of the case after hearing and not by determination without hearing." <sup>18</sup> Largely because of this instruction, cases may go to trial for very flimsy reasons and without any real expectation that a finding of disloyalty will be made, for as we have seen "derogatory information" embraces everything that suggests even a rather remote relationship with an objectionable organization or an individual.

### *Social Results of the Loyalty Program*

If the only effect of this were upon the individuals who suffered the costs and concern of facing loyalty charges, the matter would be serious. The shattering financial, psychological, and practical consequences of even a wholly successful defense against charges are commonly recognized, for the stigma is not erased by a clearance and nothing can replace the harrowing months of uncertainty and the loss of friendships that are usual concomitants of loyalty proceedings. If, however, this suffering were offset by an important gain, we might then perhaps be able to agree that efforts to enhance the tone, quality, and reliability of our civil servants warrant the incidental and unmalicious destruction of a few of them.

But there is more at stake than this.

In the field of science, the crudities of the loyalty program discourage efforts to draw into public service the live-minded and experienced men whose talents are needed in many agencies. The distress occasioned by an unwarranted inquisi-



tion by a loyalty board is felt by a wide circle of friends and fellow-workers. Especially in the case of scientists there is a realization that even after a man has been exonerated following a hearing, he may still be subjected to a renewal of the charges and a dusting off of the same evidence if the winds of politics continue to blow strongly. On September 6, 1948, eight of America's great scientists, joining in a message to President Truman and Governor Dewey, deplored the disastrous effects upon scientific recruitment that followed the denunciatory sensationalism of the House Committee on Un-American Activities. Harrison Brown, professor of nuclear chemistry at the University of Chicago; Karl T. Compton, then the president of Massachusetts Institute of Technology; Thorfin R. Hogness, director of the Institute of Radiobiology and Biophysics at Chicago; Charles C. Lauritsen, professor of physics at California Institute of Technology; Philip McC. Morse, then professor of physics at M.I.T. and now operations director of the Weapons Evaluation board under the Secretary of National Defense; George B. Pegram, vice president of Columbia University; John C. Warner, dean of the graduate school of Carnegie Institute of Technology; and Harold C. Urey, professor of nuclear physics at Chicago, concluded that the atmosphere of suspicion surrounding scientists in government was an effective deterrent to procurement and use of their services. What these men said publicly has been echoed privately by scientific men of every level of eminence.

The negative consequences of the Loyalty Order are dramatically realized when able men refuse to engage in public service or choose to leave it for less harassing occupations. All in all, however, the more serious though perhaps more subtle impact is on those who remain in federal service. Former Attorney General Clark remarked in my presence in June of 1949 that never before had the morale of federal officials been so high, thanks to the Loyalty Order. Numerous conversations

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with Government employees have led me to a completely contrary conclusion. Time after time there has been a reflection of suspicion and reserve in human relationships both within and outside the ranks of fellow-employees. One small anecdote is illustrative of many. During 1949 a young scientist was on leave from a federal department in order to complete his graduate work at Columbia University. While he was in residence in New York, his landlord made application to the federal rent control authorities for permission to increase the rent on his apartment by 30 per cent. Other occupants of the large apartment building in which he lived, being faced with the same threat of higher housing costs, requested the help of a neighborhood Tenants Council. This membership group, which employs trained investigators and attorneys, represents tenants who might individually be unable to resist unwarranted rent increases. The young federal scientist, threatened by a formal proceeding in which neither his funds nor his available time would permit his participation, desired to turn over his case to the Tenants Council, as he could do by becoming a member and paying monthly dues of fifty cents. Before doing so, however, he asked a Columbia professor to inquire into the political orientation of the organization. According to the information he received, the Tenants Council engaged legitimately and with reasonable success in its declared work of opposing improper rental demands. But the group was said to have been inspired by and to be largely under the continuing administrative control of members of the American Labor Party. The American Labor Party, in turn, has in late years been heavily infiltrated by Communist elements, so that, though it is not entirely Communist, it is no longer, as it once bade fair to be, the chief political vehicle of organized labor in New York City. Upon being told these facts, the youthful federal employee sighed and said: "Well, I'll just have to try to survive the rent increase. I cer-

tainly can't go to the expense and trouble of fighting it personally. And I'm afraid I can't afford to risk a membership in the Tenants Council. After I receive my doctorate I'm planning to return to the Department. And with things as they are in Washington, one can't be too careful."

It is in the unrecorded accumulation of undramatic episodes like this one that the true effect of the Loyalty Order can be discerned. It has not unmasked spies and saboteurs—indeed, Chairman Richardson of the Loyalty Review Board recently told the Senate that “not one single case of espionage” had been encountered during the three years of the loyalty program, and that the FBI had found no evidence even “directing toward espionage” in the course of its 10,000 full field investigations and 3,000,000 examinations of records.<sup>19</sup> The Order has not led to the discovery and ouster of hordes of Communists. It has not, as Mr. Clark asserted it had, encouraged tranquillity of spirit among federal employees. What it has done—and perhaps not even designedly—is to enforce a new concept of loyalty. This “new loyalty,” as Professor Commager has summarized it, “is, above all, conformity. It is the uncritical and unquestioning acceptance of America as it is—the political institutions, the social relationships, the economic practices. It rejects inquiry into the race question or socialized medicine, or public housing, or into the wisdom or validity of our foreign policy. It regards as particularly heinous any challenge to what is called ‘the system of private enterprise,’ identifying that system with Americanism. It abandons evolution, it repudiates the once popular concept of progress, and regards America as a finished product, perfect and complete.”<sup>20</sup>

Some of the cases involving a federal scientist have included charges that correspondence or contact had been had with some other scientist whose politics were unacceptable. The possibility that a professional acquaintanceship may lead to the opprobrium of a loyalty hearing does not encourage Gov-

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ernment employees to cast themselves incautiously into invigorating currents; the fermenting ideas of science do not always arise in the minds of individuals who can survive ideological litmus paper tests. Nor is zeal for scientific inquiry engendered by fear of political embarrassment. The relationship between the Loyalty Order and professional freedom is well illustrated by the following chronicle.

Commencing in 1943 the American-Soviet Medical Society published in this country the *American Review of Soviet Medicine*, a journal which, as its name suggests, contained translations of articles and reports which had originally appeared in Soviet medical periodicals. Previously the Soviet medical literature had been unavailable in this country, partly because of the language barrier and partly because of the difficulty of obtaining Soviet publications. The *American Review of Soviet Medicine* therefore importantly contributed to our country's knowledge of scientific developments in the Soviet Union, having nothing to do with its economics or with world politics. The October 1943 issue, which was the first, contained translations of articles on "Treatment of Fresh Wounds by Transplantation of Chemically Treated Tissues," "Gunshot Wounds of the Blood Vessels," "Spasokukotski's Method of Feeding in Penetrating Abdominal Wounds," and a number of others that bore on the immediate problems of military surgery. The October 1948 issue of this publication was its last. It contained articles on "The Toxins of Moulds," "Properties of Snake Venom," "Influence of the Spleen on Migration of Ca and Na from Skin and Muscle," "The Influence of Bromide on Castrated Dogs," "The Problem of Scarlet Fever in Public Health Care of Children," and "Fat Embolism in War Trauma Associated with Lesions of Long Bones." The preceding issue had contained articles on "Virus Etiology of Acute Nephritis," "Experimental Phobia," "Surgery for Cancer of the Esophagus," and "Rheumatic Gran-

ulomas of the Lung." Earlier numbers had been devoted to current papers dealing with cancer, tuberculosis, and other areas of active research in both the Soviet Union and this country.

Until the issuance of the Loyalty Order, this scientific journal seems to have been widely read by American physicians engaged in work that might be advanced by knowledge of the results reported by Soviet colleagues similarly engaged. At that time, according to information obtained from the periodical's business manager, there were some 600 members of the American-Soviet Medical Society in Washington; after that Order had been in existence for less than two years, the membership had shrunk to thirty. In March of 1947 there were some 150 subscriptions in Bethesda, Maryland, where are located the National Institutes of Health and the United States Naval Hospital; when the magazine suspended publication, not a single one had survived. In the interval, this non-political magazine had received numerous requests that it be mailed in a plain wrapper, not bearing the publication's name. The conclusion is inescapable that insecurity, engendered in significant measure by the Loyalty Order, caused a flight from exposure to a potentially important body of scientific literature. In order to avoid doubt about their loyalty, federal medical scientists appear to have felt that they must remain ignorant of Soviet researches that might very possibly have furthered their own work in American laboratories. An ironical sidelight on this episode is that the American-Soviet Medical Society had experienced mounting difficulty in obtaining Russian publications from which it drew material for American distribution; the Russians, with a xenophobia that very probably exceeds our own, were seemingly reluctant to let Americans have the benefit of the Soviet scientific findings.<sup>21</sup> Interestingly enough, the flow of Soviet medical journals to this country has recently resumed its

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former dimensions; but there is no longer an American publication that can readily make their contents known to our professional men.

We need not speculate about the possibility of grievous harm to America if there be insistence upon "political correctness" before a scientist may serve his country and his fellow men. German science deteriorated during the Nazi regime not merely because persons of Jewish descent were expelled; they were, after all, only a small part of the scientific population, though as individuals many of them were important figures. Nor was German science brought to its knees by the mythology and pseudo learning which were intended to obscure the errors of racism. True, anthropology and the social sciences were distorted beyond recognition and "Jewish ideas" were tabu in other branches of learning, while "pure research" was frowned upon and "practical" work was encouraged. Even so, genuine scientific effort remained possible. Good work continued to be done in synthetics, rockets, jet propulsion, and other areas. But the previously high quality of research became increasingly spotty. What chiefly sapped the vitality of the German laboratories was that responsibility was too often entrusted only to those who were "politically reliable." The director of all war research in German universities, for example, was Rudolph Mentzel, a second-rate chemist who had risen to be a brigadier general in the Elite Guard. The Army's research program was placed in the charge of a mediocre physicist named Erich Schumann, whose prior studies, at least as reflected in his writings, had been confined to the vibrations of piano strings. Bernhard Rust, Hitler's Minister of Education and a man of no scientific pretensions, was long the overlord of all the state-controlled research institutes. Karl Brandt, Major General in the Nazi Elite Guard, served as Reich Commissioner for Health and Sanitation, and in that capacity superintended a diabolical and ineffectual program

of medical research upon living human bodies. Correspondence between scientific merit and Nazi orthodoxy was fortuitous; it was orthodoxy rather than merit that was the first consideration. The able physicist Bothe was ousted from his professorship at Heidelberg, which was turned over to one Wesch, an inferior scientist but an energetic Nazi as Bothe was not. A captured German report concerning the rocket researches at Peenemünde identifies a Dr. Elvers as an especially competent man, but remarks that he "is merely an anti-aircraft sergeant and thus cannot be placed high in this military establishment." As the "purity" and "reliability" of the scientists became more fully assured, the purity and reliability of the scientific work declined.<sup>22</sup>

More recently there has been mounting evidence that a similar process of politicalizing science is going forward "behind the Iron Curtain." In Hungary, for example, leaders have called for opposition to "reactionary, that is, Western orientation of our scientific and cultural life," while stress is placed upon the desirability of basing physics, chemistry, and astronomy on Marxian principles. In the Soviet Union itself, as has been widely reported, the officially approved Michurin-Lysenko theories of genetics have swept aside those who adhere to "Mendelian errors."<sup>23</sup> Heavy attacks have been aimed as well at physiologists, bacteriologists, and physicists, among others, who have fallen under "western influence" and are therefore politically and scientifically suspect.

No pretense is made here at evaluating the contending scientific ideas that are involved in the Russians' debates. For all that a nonscientist can say, some of the Soviet theories may in time be established as sound, while some of the theories of "Western bourgeois idealists" may prove to be mistaken, as scientific theories often are whether they emanate from West or East. The important thing about the present Russian excitements is, however, that the currents of scientific inquiry

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and thought have been diverted by political considerations. When a scientist's ability, indeed his very standing to continue in state-supported research, is measured by his conformity to political tests, the more exactly objective tests of science lose their force.

These developments in the Soviet Union seem to be closely related to the cold war between that country and ours, just as is the loyalty program of the United States. Since the middle of 1947, as the Department of State has reported in its excellent review of cultural relations between the two countries,<sup>24</sup> the Soviet government has placed every sort of legal obstacle (backed by the threat of heavy punishment) in the way of contacts between Russians and foreigners; relations with Americans have been insistently represented as "a threat to the well-being of the Soviet state." Four prominent Soviet scientists visited this country in late 1946 to inspect American cancer-research centers. Included in this quartet was Dr. Vasili V. Parin, then secretary of the Soviet Academy of Medical Sciences and a man who impressed many American colleagues by his objectivity, ability, and personal qualities. The State Department summarized the visit as follows: "All the latest scientific developments were shown the group during its visit. By this time, however, the Soviet Government apparently began to look with suspicion upon those having contacts with the free world. Upon his return to Moscow Dr. Parin apparently vanished. Then, possibly as a sequel, the Soviet Minister of Health was shortly thereafter dismissed." It is perhaps significant that Dr. Parin, in an address before the American-Soviet Medical Society in New York in December 1946, had said: "It is obvious that our plan [for medical research] includes practically the same problems as those studied in the U.S.A. It indicates once more that modern science is really international in character, and proves once more the need for scientific interchange."<sup>25</sup> This preceded by only a



few months the promulgation by Russia of a new and stringent State Secrets Act, which was followed by a mounting volume of press attack upon scientists who still maintained Western contacts. Scientists who have published articles in foreign periodicals have been stinging rebuked and in at least one known instance removed from a post of responsibility. Beliefs about the universality of science and the desirability of exchanging knowledge are insistently discouraged by attacking the probity of American and other "Western" scientists, who are represented as espionage agents or the willing tools of monopoly capital, eager to obtain Soviet scientific secrets as an aid to aggressive war. Americans who have wished to confer with their Soviet counterparts, like the world-famous Russian cancer specialists Doctors Roskin, Kluyeva, and their associates, have been refused visas apparently for no reason other than that the political purity of the Soviet scientists would best be assured by ending their contacts with the outside.

In terms of the advancement of knowledge throughout the world the isolation of Soviet science as a result of its being politically infused is of course unfortunate. The major loss, however, falls on the Soviet side of the barrier. The matter was well put in an address on December 8, 1948, before the New York County Lawyers' Association by Mr. Justice Robert H. Jackson, who had been the United States prosecutor of the major German war criminals in the Nurnberg trials: "I agree," he said, "that the iron curtain is regrettable. But I think it is ultimately more disastrous to those it shuts in than to us whom it shuts out. If they want to handicap themselves by closing the Soviet Union's eyes and ears to the actions and thoughts of the Western World, I do not think it strengthens them against us. If they want to send their scientists to Siberia because they do not make the cold facts of science, such as genetics, support Soviet political theories, I condemn it as

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inhuman; but I don't think it imperils our security. If it is necessary to maintain Kremlin control over the diversified and scattered Russian people by banishing thought and research, art and drama, that is out of step with their politics, we may deplore it; but we need not lose sleep about its endangering us. The Nurnberg evidence is that the seeds of eventual annihilation for Hitler's power were sown when he began burning books, exiling scholars, persecuting scientists and closing down on information."

We are still far from emulating the Soviet or German policies respecting the content of scientific thought. But let us remember that thoughts are not disembodied entities. They exist in the minds of living people. We take a step, a long and dangerous one, toward scientific immobility when we maintain a program that seeks to fetter minds. The administration of the Loyalty Order has in too many instances laid the paralysis of fear upon federal scientists. They know that disloyalty charges may not only jeopardize their present jobs, but may effectually disbar them as well from nongovernmental employment in their specialties. Minds filled with this sort of un-ease are not likely to be boldly creative in the United States any more than in the Soviet Union.

Perhaps the time has come to consider whether the Loyalty Order deserves to be expunged. In the beginning it was an outgrowth of a decade of political pressure. The House Committee on Un-American Activities set the fire under the pot and kept it roaring from 1938 onward, repetitively proclaiming that the New Deal Administration was shot through with Communists and subversives. In the 1946 Congressional elections the pot was brought to a brisk boil by the Republicans, who placed heavy emphasis upon the need of a large-scale house cleaning in Washington. By 1947 the pot had nearly boiled over completely. The Republican group, not without the support of Democratic elements, seemed on the verge

of enacting legislation that would direct an investigation of the loyalty fitness of each employee. It was against this background that the personnel policies of the Truman Administration took shape. When Mr. Truman announced the Loyalty Order in 1947, it may be that he did so at least in part to deflate an issue that his political opponents had developed with a high degree of success, and perhaps with the intent of forestalling even yet more drastic action by Congress. Whether or not the Order had those purposes, they were in any event among its effects. The Administration's loyalty program, said Representative (now Senator) Mundt, "is almost precisely that which the House Committee on Un-American Activities has been advocating for at least four years"; and Chairman Reece of the Republican National Committee expressed gratification that "the President, however belatedly, has adopted this important part of the program supported by the Republican party and its candidates in the 1946 campaign."<sup>26</sup>

After the Republican electoral success in 1946, the President had appointed a Temporary Commission on Employee Loyalty, with instructions to study the matter and to recommend action. The Commission, composed of representatives of six federal agencies, duly reported that a loyalty program should be initiated. In reaching this conclusion, it indicated the following significant judgment:

"While the Commission believes that the employment of disloyal or subversive persons presents more than a speculative threat to our system of government, it is unable, based on the facts presented to it, to state with any degree of certainty how far-reaching that threat is."<sup>27</sup>

Today the dimensions of the threat may be set forth with considerably larger confidence. As of June 30, 1949, inquiries into the loyalty of 2,541,717 federal employees or would-be

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employees had been made, and presumably additional hundreds of thousands were made in following months. In all but some twelve thousand of these perhaps 3,000,000 cases, the FBI reported that the records were so spotless that no derogatory information whatsoever appeared. By May 31, 1950, the loyalty boards had received reports of 11,844 cases in which investigation had disclosed unfavorable data of some sort—about four-tenths of one percent of the total cases checked by the investigating agency. Upon further full investigation, the great bulk of these cases were found to raise no serious question concerning loyalty. They were closed with favorable findings. In only 478 cases of incumbent employees and appointees was there enough doubt in the minds of the loyalty boards to warrant their making determinations of ineligibility. One hundred fifty-one of the adverse judgments of loyalty boards had already been reversed on appeal to the Loyalty Review Board, and 102 of the cases were still pending. If we assume that every single one of the as yet unreversed ineligible determinations were to be sustained on appeal and if we add to this number all the 1,068 employees who left the federal service after investigation of them had been completed but before adjudication of their cases, we have a gross figure of 1,395, with another 530 cases still unacted upon and resting on the boards' dockets. Since this includes persons who resigned or retired for reasons wholly unrelated to the loyalty program, as well as everyone who has been adjudged to be potentially disloyal, this total surely gives us a workable notion of the dimensions that the Temporary Commission on Employee Loyalty could not state. Indeed, after the investigation of well over 2,000,000 employees had been completed, then Attorney General Clark publicly acknowledged, "While highly paid investigators have used millions of dollars of the people's money, as yet they have failed to uncover one Communist presently working for the Federal Government."<sup>28</sup>

## SECURITY, LOYALTY, AND SCIENCE

The fact is, of course, that the really dangerous culprits, if they do exist, are not likely to be found by the dragnet methods that are perforce the means of executing a wholesale program. It is no criticism of the investigating agency to say that its loyalty inquiries will lead in the main to persons who are merely rebelliously unconventional or outspokenly assertive or even obnoxiously opinionated. The mass investigation of federal personnel will rarely expose the furtive, the corrupt, and the conspiratorial.

In point of fact, not a single individual who has been dismissed under the loyalty program has been indicted or prosecuted for traitorous misconduct that the investigation brought to light. It is worth recalling that the flamboyantly publicized prosecutions of recent years did not grow out of loyalty proceedings. Alger Hiss was fully "cleared" by Secretary of State Stettinius and Secretary of State Byrnes after an investigation of essentially the same type as the present loyalty probes, except that his was perhaps more intensively conducted. Judith Coplon, a Department of Justice employee who has been found to have conspired with a foreign agent, was fully investigated by the FBI before she was assigned to the confidential duties of her job. The investigation at that time disclosed none of the behavior or ideological patterns that led ultimately to her involvement in a crime. Neither suspicion nor detection of her acts arose from the loyalty program, but rather from the internal operations of the Department of Justice itself.

Cases like these suggest that the approach of the present Order might well be supplanted by other more functional steps. One must commence by fully accepting the proposition that the Federal Government, even more than most employers, is entitled to demand and receive the loyalty of those who serve it. The question now presented relates only to the method the Government should use in assuring that its employees

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are in fact loyal. The present method, though it uncovers little evidence of disloyalty, leaves many wounds and produces much wreckage. The social consequences are too great to permit us to ignore the ineffectiveness of the program as it is now conceived.

The personal beliefs of the seismologist, the poultry disease specialist, and the oceanographer should cease being a matter of governmental concern except as they may be objectively reflected in their actions. Once again there needs to be an emphatic differentiation between the loyalty program and the security program discussed in an earlier chapter. The security program involves persons in whom we wish to have the fullest confidence because of the nature of their responsibilities. Confidence cannot coexist with any serious risk that national safety might be jeopardized by unauthorized behavior or speech. The risk may arise from a job incumbent's character or his personality or his associations; and if we perceive the risk, we may simply choose not to take it. In other words, when we withhold "security clearance" we make no finding that otherwise an undesired event will surely come to pass; we merely find that there is an undesirable *possibility* and we seek to avoid even the possibility, let alone the actuality. But the loyalty program is differently oriented. It deals neither with "sensitive agencies" nor with "sensitive jobs." It involves no findings that in some undefined future there may be an improper transmittal of "government secrets," because most of those who are affected by the Loyalty Order know of none. Their work brings them in contact with no matters of national defense or international politics. The Public Health Service student of syphilis and the attorney of the Home Owners Loan Corporation have at least one thing in common: neither one, by virtue of his work, knows anything that even the most vigorous Russo-phobe would fear to have him tell his friends and relatives. When we concern our-

selves with the loyalty of that sort of federal employee, therefore, we deal not with an issue of trustworthiness related to the nation's safety. We deal, instead, with a disloyalty that we must find to exist here and now, a present reality though unrelated to present conduct, being evidenced only by opinions or "sympathetic associations." It is this focus that has caused the disillusioning difficulties of the loyalty program.

Those difficulties would be diminished if we ceased searching for "disloyalty" as a general abstraction and became concerned exclusively with "security." Concededly there are positions outside the "sensitive agencies" that directly involve national safety. Occasionally an entire section or division of an organization may have occasion to deal with classified matters or may be so immediately involved in the formulation of international policy as to render it "sensitive" even though the agency as a whole may not be so. Conceivably, for example, the Division of Territories and Island Possessions of the Interior Department may be intimately connected with the preparation and execution of defense plans, including the location of military installations in outlying portions of the American commonwealth. If that be true, some or all of the personnel of that division may fall within the area of concern about "security." This does not mean, however, that instantly the same concern arises about all the remaining 30,000 employees of the Interior Department, scattered among the Indian Arts and Crafts Board, the National Park Service, the Bureau of Land Management, the Fish and Wildlife Service, and all the other agencies that are segments of that department. Somewhat similarly, the Office of International Trade of the Commerce Department may conceivably have enough power over the flow of strategic supplies and over the conduct of economic warfare to warrant inquiry into the "security" of its personnel. But that is not likely to be true as to the Bureau of the Census or the Inland Waterways Corporation.

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The solution here is to authorize the head of each department and agency to designate the units or particular positions in his department which he believes to be "sensitive." Persons who may be employed in these sensitive posts may properly be investigated in order that there may be full confidence in them. But as for the rest—the typists in the Veterans Administration or the Federal Housing Administration, the scientists in the Allergen Research Division or the Mycology and Disease Survey of the Bureau of Plant Industry—experience under the Loyalty Order demonstrates that constant peering over their shoulders endangers liberty without enhancing loyalty.

This is the administrative device that has been tried with reasonable success in Great Britain.<sup>29</sup> There the power is lodged in each Minister to decide what parts of his ministry require the equivalent of our security clearance. In all, about 100,000 jobs were identified as having security significance. The Admiralty, as has our Department of the Army, concluded that everyone, from the highest to the lowest, must be cleared. Other ministries found no "sensitive" jobs at all. And this is as it should be, for in the variety of modern governmental activities there is room for both extremes.

If this approach be adopted, it will not mean an abandonment of interest in the probity of "nonsensitive" personnel. It will mean merely that observations will be related to behavior rather than belief. Government employees who improperly discharge their duties, whether motivated by disloyalty or mere slovenliness of habit, should of course be identified and appropriately disciplined. This, however, is a matter of administration rather than of detection. The supervisory officials of a functioning unit can more readily determine a staff member's misconduct or carelessness than can even the most vigilant agent of the FBI. The responsibility for efficiency should rest squarely on them. They cannot ful-



fill their responsibility if they tolerate on their staffs employees who are not actively loyal to their jobs. As for misdeeds unrelated to the direct performance of an employee's work, reliance must be placed upon the excellent counterespionage staffs of federal investigating agencies. The thorough work of the Federal Bureau of Investigation has given that bureau the place of public esteem that it occupies. The inherent absurdities of the loyalty program threaten the FBI's deservedly high reputation, for its "loyalty probers" must expend their energies in recording the often ambiguous pettinesses of political expression rather than in uncovering criminality. Releasing the FBI from the thankless and fruitless work to which it is now assigned will enhance the nation's safety. The more broadly we define the limits of our concern with personnel security, the more thinly we must spread attention to it. As has been true so often in matters of public administration, the scattershot of the blunderbuss is less effective than the aimed bullet of the rifle.

More than one hundred and fifty years ago a great friend of American democracy, Edmund Burke, argued that while restraint upon liberty may sometimes be required if liberty itself is to survive, "it ought to be the constant aim of every wise public council to find out by cautious experiments, and cool rational endeavors, with how little, not how much, of this restraint the community can subsist; for liberty is a good to be improved, and not an evil to be lessened." Burke's words are as true today as when he uttered them in 1777. The country will be the stronger for discovering that the restraints of the present loyalty program exceed the needs of national preservation.

## VII

# The Universities and Security

## Searches

THE area of personnel security proceedings has broadened, as has been seen in preceding chapters, until it now reaches scientists who themselves have no direct access to secret data. It is clear, too, that the Federal Government energetically concerns itself with personal or imputed beliefs as distinct from the observable behavior of its employees, in the hope that thus it will be assured of their loyalty. There is a relationship between these matters and the academic cloisters in which novitiate scientists are being educated for the tasks of the future.

Universities have traditionally been the chief centers of pure research in this country. Today Government laboratories and even industrial research laboratories are heavy contributors to fundamental knowledge, but it remains true that academic researchers tend to concentrate upon discovering the basic data, which others may then develop and apply in "practical" ways. Developmental research, unless it is to be devoted merely to elaborating the gadgetry of contemporary civilization, must draw upon the ever-growing stock pile of suggestive ideas and fresh facts which can most readily be supplied by investigators unconcerned with immediate results. Scientific

applications may well be likened to superstructures which must rest upon the solid foundation of preceding experimentation.

During the war basic studies were subordinated to the pressing needs of the moment. The nation used its existing scientific resources to great advantage. Old ideas were exploited in new ways, and new techniques were devised to increase efficiency or productivity. But the times were too hectic to permit the questing, probing, restless experimentation of the fundamental scientist. Recognizing that past successes in applied science were not guarantors of future advance, the Federal Government in postwar years has markedly increased its support of university research. The annual research budget of the physics department of one eastern college has, for example, risen from a prewar \$20,000 to a postwar \$800,000, much of the increment coming from public funds. Perhaps at no previous time in American history have federal monies played so large a part in so many institutions as they do today.

That is not to say that governmental assistance is carelessly extended. In fact, it is given only on the basis of contracts, and with reference to specific projects. The two chief sources of funds have for some time been the Office of Naval Research and the AEC.<sup>1</sup> Before either one lets a contract, it carefully reviews a proposed research project in order to estimate its scientific soundness, the qualifications of the scientists who will participate in it, its relationship to the general areas in which federal support can be justified, and its likely contribution not only to knowledge but to the nation's pool of scientific manpower.<sup>2</sup> The Office of Naval Research—ONR—sponsors well over a thousand separate nonsecret projects, scattered among fully two hundred institutions and ranging in subject matter from astronomy to viruses. Students of the army ant and of white dwarf stars are alike aided by ONR funds, as are many others whose researches will not neces-

sarily (though they may conceivably) have eventual naval applications. ONR's present investment in basic research is larger than the entire prewar national expenditure for that purpose, and accounts now for perhaps as much as 40 per cent of what America spends on "pure science." With similar breadth of interest, the Atomic Energy Commission has entered into contracts with nearly a hundred separate educational institutions, calling for "unclassified" research in chemistry, mathematics, metallurgy, physics, biology, and medicine. Projects involve such diverse topics as research on corrosion of alloys, the effects of the irradiation of peanut seed, and the characteristics and physiological consequence of "flash burns" resulting from bomb explosions. Sometimes the AEC and the ONR join forces to support enlightening but only remotely military studies of a physiological as well as of a physical character.<sup>3</sup>

In addition to these contracts that involve no element of secrecy whatsoever, both the AEC and the ONR occasionally request a university staff to assume responsibility for a "classified" project, or, as one outstanding administrator of academic science put it, "do a little favor here and there." Each "favor" brings into the university the same security apparatus that is operative in laboratories like those at Los Alamos or Oak Ridge. Access to a part of the laboratory and its equipment must be barred. Only those who are "cleared" may work in the project. The problems encountered during the investigation may not be discussed with colleagues. The results of the researches may not be freely communicated either to students or to faculty members.

Taking note of these consequences, the AEC's director of research, Kenneth S. Pitzer, himself a former professor of chemistry, has expressed the hope that secret atomic energy research can be kept out of university laboratories; even the small projects, he has asserted, build up walls that destroy the

open freedom of academic intercourse.<sup>4</sup> It may be well here, by way of underscoring Dr. Pitzer's concern, to repeat that published papers are only one (and not always the most important) means of scientific communication. "To an extent much larger than is realized," writes a prominent educator and researcher, "the transference of scientific ideas from one set of scientific workers to another is effected by means of visits, personal contacts, and letters . . . . Almost every visit of a scientist from one laboratory to his colleagues in another results in the introduction of a new piece of information or point of view that no amount of reading had managed to effect."<sup>5</sup> When a part of the university is, so to speak, blocked off from the rest, the university to that extent ceases generating the ideas and spreading the learning for which it exists.

Some of the leading institutions with large endowments are so fearful lest secrecy invade their halls that they forbid acceptance of any "classified" work whatsoever. But this policy of excluding secret work is both expensive and difficult to maintain. In our era research equipment and staffs cost dearly, and private benefactors are a fast-vanishing tribe. Universities that desire to expand their facilities and their personnel therefore eagerly snatch at subsidies in the form of research contracts. Once the subsidized expansion has occurred with consequent changes in the institution's financial structure and economy, the university must perforce become highly sensitive to anything that threatens continuation of its enlarged scientific program. A few, like the University of Chicago, guard against the possibility of later dislocations by limiting the portion of research which may be governmentally financed. In those schools a withdrawal of support or an irreconcilable clash of philosophy will not destroy the university's scientific experiments altogether, but will simply lead to jettisoning the projects with public funds. Others may face the collapse of their entire program unless they accept whatever conditions

may be attached to the grants. During the fiscal year 1949 federal expenditures for research of all kinds in educational institutions exceeded \$200,000,000.<sup>6</sup> So staggeringly large a sum constitutes a major share of the income of American colleges and creates a condition of dependency which may be unwholesome.

It ought to be said forthrightly that the Office of Naval Research and the Atomic Energy Commission have been exemplary in their behavior toward universities. The terms of the contracts themselves may sometimes narrow the field of research in ways that impair its educational value. But neither one of these major contracting authorities has as yet sought to fasten control upon institutional policies by manipulating the purse strings, and neither one has indicated a desire to do so in the future.

Atmospheres and personnel may, however, change; and with the changes may come new attitudes. Indeed, even without formal declarations, novel trends of educational policy may already be discerned. Consider as a symptomatic instance the case of Cornell University.

When World War II ended, Cornell established a firm policy of prohibiting classified research projects on the campus, as distinguished from the Cornell Aeronautical Laboratory in Buffalo, where classified projects were freely accepted but were obviously remote from the academic activities of the university. This policy, as summarized by former President and Chancellor Edmund E. Day, rested on the following reasoning:

“Since the primary functions of a university are the acquisition and dissemination of knowledge, university research should be such that the results may be freely published. Incidentally, this is a favorable condition for the efficient conduct of fundamental research inasmuch as significant progress is generally the result of the interplay of several minds. A

university campus is particularly suited to such interchange of ideas between those who have specialized in related fields. There is, then, the possibility that when university research is classified the value of the results emanating from it may be reduced because of the impediment to free exchange of discussion between those directly engaged and other scientists of our University staff and, as well, between investigators on our own campus and others of corresponding interests on the campuses of other universities. The difficulties of obtaining security clearance and of the physical handling and filing of papers were also cited. Then, too, there is the possibility that certain of our scientists who have had extensive experience with the effects of classification of research during the war will be highly resistant to working under such conditions in peacetime. One further point is the extreme desirability of retaining publication rights for research studies made by our staff which would be one of the first items eliminated in the case of classified projects, except after obtaining approval of the sponsoring agency.”<sup>7</sup>

But on September 9, 1948, Dr. Day, having noted “the pressures we are receiving from government agencies to modify our policy to some extent,” announced a relaxation of the prohibition. In connection with several existing projects that had commenced on a nonsecret basis, he said, “the government agency concerned has expressed the view that either immediately or within a short period of time, the work under the project must become classified. We may anticipate, I believe, that such pressures will be increased in the case of other projects as time goes on.” After reaffirming the basic policy of abstaining from acceptance of classified projects on the campus “under true peacetime conditions,” Dr. Day stated the conclusion that “current international conditions (the cold war) and the general national defense and security ‘atmosphere’ of the country at the present time justify some

relaxation in strict adherence to that policy, an action bringing us into general conformity with the policy already existent in many other universities." By way of protecting individuals against unwelcome intrusion of "security clearance," the flat stipulation was added that "no professor or graduate student will in any way be *forced* to associate himself with such [classified] work, whether it shall be a project just inaugurated or one involving an extension of previous work."

Cornell is not among the more impoverished American universities. With its large scientific faculties and staffs, it can well afford to tolerate a few individuals who choose not to work under secrecy restrictions or who might be barred from doing so because they could not obtain the necessary clearance. Whether all educational institutions will feel able to exhibit equal tolerance is highly uncertain. A smaller school, with only a few men in each of its departments and with heavy dependence upon government research funds, may be under irresistible compulsion to rid itself of an individual who is not "adaptable" and who "does not fit into the school's research program." The principles of academic freedom, from which all great universities derive their strength, are not protected with invariable vigor by administrators concerned with urgent financial problems.

There have been occasional and untypical instances in which university scientists have unprotestingly accepted the denial of clearance to junior colleagues, though privately expressing the opinion that the denials were unfair; and when the young men were subsequently dropped from their posts, no outcry has been heard despite acknowledgment that the affected individuals were well qualified as scientists. It is true that as yet few difficulties have been encountered by persons who have "tenure" in their jobs. Those (and in absolute numbers they have not been many) whose academic status has been impaired by clearance problems have been the beginners—



the instructors and staff assistants whose budding careers have not yet led them to professorial rank. One cannot assert that the inroads upon academic communities have been serious. It is well to remember, however, that invasions of freedom usually have inconspicuous beginnings. The danger lies in the precedent which those inconspicuous beginnings sometimes serve to establish. Once the fire begins to burn, it stubbornly resists being extinguished. We are still far from emulating the passion for academic destruction that swept over Germany in the thirties. It is nevertheless worth recalling that the intrusion of academically irrelevant considerations into German universities commenced with the unnoticed and unprotested removal of instructors, coupled with reassurances to professors who had tenure.<sup>8</sup> In the short space of the next four years, however, there were "retirements" of three times as many science professors as had dropped from the ranks in the previous four years.<sup>9</sup>

In the main the records of American universities in a time of tension have been excellent. Occasionally, as at one of the most distinguished of the eastern universities, a department head is heard to remark that he will not engage, even for wholly unclassified research or teaching, any man who has been denied clearance at a Government laboratory—and this even though, as earlier chapters have sought to make clear, a denial of clearance does not necessarily involve a finding of reprehensibility. This readiness to outstrip the necessities of the situation does not find general support among university scientists. Most of them, on the contrary, agree with President Conant of Harvard in saying: "The government, of course, must see to it that those who are employed in positions of responsibility and trust are persons of intelligence, discretion and unswerving loyalty to the national interest. But in disqualifying others we should proceed with the greatest caution . . . The criteria for joining a community of scholars

are in some ways unique. They are not to be confused with the requirements of a federal bureau. For example, I can imagine a naive scientist or a philosopher with strong loyalties to the advancement of civilization and the unity of the world who would be a questionable asset to a government department charged with negotiations with other nations; the same man, on the other hand, because of his professional competence might be extremely valuable to a university.”<sup>10</sup>

Academic scientists are not confident, however, that President Conant's views will everywhere prevail. It has already been suggested that the boldly creative scientist may be equally bold, though perhaps not equally creative or informed, about social problems. Men of this stamp are the ones most likely to encounter the doubtings that have previously been described. They may be forgiven for fearing, today, that the repercussions of clearance difficulties will be felt even in the isolated groves of educational institutions. That, at least in part, is why some of the university men decline to participate in either classified or unclassified projects supported by AEC or ONR funds; they are still to be convinced that the security check and the loyalty test will not be applied indiscriminately. And if one asks why reputable people should be concerned, there are only two answers to be given. The first is that many an honorable man cherishes his privacy and will not willingly see it invaded. The other is that the margin of error in our checks and tests is still so great that an entirely innocent person may prefer, if he has an effective choice, to avoid them altogether.

Once again, our major concern is not one of sentiment. In reaching conclusions about the extent to which personnel security and similar procedures may safely be intruded into institutions devoted to learning and teaching, we may properly be guided by an enlightened self-interest. In a sense, and indeed in a very vital sense, the happiness and well-being of

every individual in society is a concern of all; and a truly far-sighted people must weigh against any general policy the personalized distress it may cause even a small number. Here, however, the question of societal advantage may be considered in less immediately human terms. The issue may be reduced to this: Are broad scientific gains probable if the availability of academic research workers for particular problems is conditioned not solely upon their having unassailably sound professional qualifications, but also upon their having unassailably "correct" political attitudes?

One of the dangers which, though not as yet exhibited, inevitably inheres in the military's large-dimensional domination of scientific research in universities is that the idiosyncratic and the unpredictable may come to be deprecated, perhaps in the end ruled out altogether. Opposition to technological change has, historically, been a characteristic of the profession of arms in every country. Despite the evidence to the contrary which is today being provided by the Office of Naval Research, it has as a rule been the pressure of civilians on the military, and not the reverse, which has led to encouraging scientific experimentation and adopting its fruits.<sup>11</sup> Even if this were not so, the conventional rigidities of military supervision looking toward "efficiency," coupled with distrust of the innovator and the heretic, could ultimately standardize scientific effort rather than energize it. General Sir Ian Hamilton, himself a military administrator of stature in the preceding generation, has well said: "In precise proportion as highly organized systems increase the cohesion and momentum of their mass, so they must flatten out the idiosyncrasies and clog the alertness of each of the component particles of that mass. In precise proportion as the machine becomes effective, so do the chances of evolving an engineer of initiative become smaller."<sup>12</sup>

This is not an argument for chaos. It is an argument, rather,

for watchfulness lest practices that are functionally appropriate in only a limited set of circumstances and in only a specialized type of organization creep imperceptibly and needlessly into the world of scholarship. Freedom of the individual scientific worker to choose his own subject may result in a somewhat haphazard pattern of activity, but, if we may believe so great an authority as Enrico Fermi, it is "the only way to insure that no important line of attack is neglected."<sup>13</sup> For that reason, amongst others, governmental support of academic research, whether administered as now through the Navy and the Atomic Energy Commission or, as will soon be the case, through the newly created National Science Foundation,<sup>14</sup> must not be permitted to compromise the independence of university staffs. The daring that leads men into the realms of the unknown cannot be regimented. The mental qualities involved in envisioning and planning projects that may add to human knowledge cannot be prescribed. The capacity to master the techniques of scientific research cannot be confused with the capacity to think respectably, or not at all, about social problems.

To "get research done" requires much more than merely setting aside a given sum of money. Able men and women can be aided by the facilities the money can provide; the money alone produces no results whatsoever. Dr. Alan Gregg, distinguished director of medical sciences at the Rockefeller Foundation and chairman of the AEC's Advisory Committee on Biology and Medicine, has warned that "unless young men can plan lives as research men, they won't go into it or stay in it. Fellowships for a year or so are not enough inducement. One of the difficulties of the machine age is that men fall to treating each other like machines. Good scientific work can be done by our already experienced investigators when money is provided for instruments, consumable supplies, technical assistants, etc. Trained and able investigators are products of

good education, of long training in the atmosphere of scholarly devotion to research and of the conviction that their lives can be spent decently in such careers.”<sup>15</sup>

Today, as for some years past, manpower has been the limiting resource in the nation's research endeavors. In point of numbers the United States lacks the bachelors and doctors of science to man the projects that await attention.<sup>16</sup> In terms of top-notch ability the discrepancy between demand and supply is even greater. In order to close that gap, the Federal Government has of late years provided research fellowships for persons whose training and background support the belief that further educational experience will be in the public interest. The Public Health Service, for example, grants fellowships for advanced study in medicine and related subjects. Similarly, and in order to help build up a pool of men trained to participate in physical, biological, or medical research, the Atomic Energy Commission began an extensive fellowship program.<sup>17</sup> The one-year AEC grants range from \$1,600, for an unmarried person who has not yet earned a graduate degree, to a top of \$4,000, for a married man with two or more dependents who holds a Ph.D. or M.D. degree. During the academic year 1949-1950, 421 young men and women, selected after comparative evaluation of their records and potentialities, were engaged in studies, most of which were wholly nonsecret, on such matters as the effect of radiation on viruses, the biophysics of the nervous system, and the fundamental physical aspects of structure. Despite the range of the projects, all in some way related to the AEC's concerns.<sup>18</sup> A study of the auditory mechanism, for example, has been held to have too incidental a relationship to the atomic energy program to warrant AEC support, though there were no doubts about the value of the project or the capability of the applicant. On the other hand, a fellowship has been granted for work on the theory and design of high-speed calculators, a

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matter that may have importance for mathematical work in general as well as for AEC researchers in particular.

Whatever doubts American universities entertain about the desirability of Government support of academic research have been sharply accentuated by recent events in the AEC's fellowship program.

When the program was launched, the AEC, availing itself of the statutory power to utilize advisory bodies, turned over to the National Research Council the task of selecting the fellows to whom grants should be made. The National Research Council, or NRC, is an adjunct of the National Academy of Sciences. Since the First World War it has functioned as a scientific adviser to the nation upon the request of the Government. For some years it has administered fellowship programs for the Rockefeller Foundation, the American Cancer Society, the National Foundation for Infantile Paralysis, and the like. In doing so it has developed to a high state of perfection the organization of "fellowship boards" composed of eminent educators.<sup>19</sup> These boards have passed on the qualifications of each applicant, the utility of his proposed studies, and the capacity of any particular institution to furnish postgraduate training of the sort he sought. In considering an application, the fellowship boards have examined confidential reports on the candidate from experienced scientists who were familiar with him. In some instances these reports were supplemented by personal interviews. The fellowship board's decision, if favorable, reflected its judgment that the candidate was capable of making substantial contributions to scientific progress and that a grant of a fellowship would therefore be in the public interest. That the Council's methods are successful is attested by the present eminence of some of those whom it has selected for fellowships in the past, including E. O. Lawrence, the inventor of the cyclotron, Samuel K. Allison, director of the Institute for Nuclear Studies at the University

of Chicago, W. V. Houston, president of Rice Institute, and Norris E. Bradbury, director of the Los Alamos laboratory.

From the outset of the program it has of course been hoped that, in one way or another, scientists trained through the fellowship grants might ultimately be useful in the nation's program of atomic energy research. But no commitment as to future employment has been made either by the AEC, any of its contractors, or the fellowship holder himself. Many of the fellows will no doubt continue in research outside the AEC's scope of concern, and some of those who may some day work directly on AEC matters will probably be engaged in entirely unclassified experiments.

Occasionally in the past a project has involved access to secret material, or even working in an AEC installation.<sup>20</sup> Of the 421 fellows in 1949-1950, only 30 were engaged in research that involved restricted data. In instances of that sort, the fellow has had to obtain the usual AEC security clearance, after the intensive FBI investigation and the various analytical procedures that are set in motion in connection with any full-time employee in a restricted area. On the other hand, soon after launching the fellowship program the Commission had established the policy of not requiring clearance where there was no element of access to restricted data or areas. Among the reasons it had advanced for this policy were that "we will obtain more qualified fellows and achieve fuller cooperation from the scientific community of this country than would be the case if we adopted the principle of requiring security clearances at a time when it is contemplated that fellows will not have access to restricted data." Moreover, the Commission added, "it must be recognized that security investigations are costly, and that the cost of these investigations will be kept to a minimum when they are carried out only when the particular person is to have access to restricted data. It is probable that many of the fellows will always be

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engaged in unclassified work, so that the costs of security investigations as to them could well be an unnecessary expense to the Government if undertaken prior to the award of the fellowships.”<sup>21</sup>

So matters stood until May 1949, when a radio sensationalist disclosed that a young Communist had been granted a \$1,600 fellowship to do work at the University of North Carolina. The young man was to study for a doctorate in the field of general relativity, a project without military or commercial applications of any sort and wholly without access to restricted materials; but these were mere details that were lost among the exclamation marks. Almost simultaneously it was learned that a postdoctoral fellow at Harvard, working on an entirely nonsecret endocrinological study, had once attended some Communist meetings, though he subsequently denied vigorously and apparently convincingly that he was in fact a member or supporter of that group.

Then the storm broke. The revelation that the Atomic Energy Commission was supporting the training of suspected Communists created a furious demand that remedial steps be taken. The juxtaposition of “atom” and “Communist” stimulated a fervor of response which was undiminished by the sobering facts that the fellowships involved no danger to secrets of any description. In vain did Alfred Newton Richards, vice-president of the University of Pennsylvania and president of the National Academy of Sciences, urge that educating an exceptionally qualified person, even if a Communist, “will have added one more to the group—now far too small—of those capable of utilizing knowledge of nuclear energy and of its products in the advancement of medicine, biology, agriculture, and, at need, could release for Government classified service another who possessed no disqualifications. The country will have been the gainer by his training.”<sup>22</sup> In vain was this thought echoed by Detlev W. Bronk, president of the



Johns Hopkins University and chairman of the National Research Council. In vain did J. Robert Oppenheimer hammer at the proposition that many discoveries in the past, basic to the present work of the AEC, had been made by persons who could not be cleared, and great discoveries in the future might also come from men whose political purity might be challenged.<sup>23</sup> In vain did President James B. Conant of Harvard object that if all fellows were subjected to standard clearance requirements, the "vast amount of checking and personal investigation" would soon create an "atmosphere of distrust and suspicion in the scientific world" far outweighing any possible gain.<sup>24</sup> In vain did President Lee A. DuBridge of California Institute of Technology assert that "to extend political investigations to young students working in non-secret fields where there is no question of national security involved at all I think is contrary to American principles of democracy"; trying to sift out communistically inclined applicants "would bring the basic ideas of a police state into American youth," and would entail the use of methods "far more dangerous than the small risk of having an occasional Communist on the fellowship rolls."<sup>25</sup> In vain did the executive committee of the American Institute of Physics protest that investigating AEC fellows as though they were AEC employees "would be an unnecessary extension to the field of education of measures appropriate only in secret work."<sup>26</sup>

When all the warnings had been sounded, they were simply ignored. Congress proceeded to enact into law the proposition that no AEC fellowship funds shall be given to "any person who advocates or who is a member of an organization or party that advocates the overthrow of the Government of the United States by force or violence *or with respect to whom the Commission finds, upon investigation and report by the Federal Bureau of Investigation on the character, associations, and loyalty of whom, that reasonable grounds exist for belief*

*that such person is disloyal to the Government of the United States.*"<sup>27</sup> Thus the measure as adopted went beyond the mere barring of Communists from the fellowship rolls, but extended to all applicants for this type of grant the same sort of FBI inquiry and agency determination made in loyalty cases involving regular federal employees. The chief difference is that a federal employee or would-be employee is accorded the privilege of a hearing, albeit an imperfect one, before the dire finding of disloyalty is made. The youthful seeker of scientific training, on the other hand, may suffer rejection and its long-lasting consequences without ever having opportunity to interpose a defense.

What were the reasons for so drastic an action in dealing with a problem of so little real substance? No one seriously supposes that there is a significant Communist element among the applicants for AEC fellowships. The applicants are men and women who have already achieved a measure of academic distinction and who carry the endorsements of experienced scientists and teachers. Few American university professors have discerned any great inroads of communism upon today's student bodies, and it seems particularly unlikely that "infiltration" is considerable among the young people who have devoted themselves to intensive scholarship rather than to the excitements of contemporary politics. That group, as described by Dr. Richards, "is made up of unusual individuals. Their mental qualifications have been found to be exceptionally high; commendatory references have been obtained from their professors with whom they have worked; they have become enamored of science and are preparing to devote their lives to it."<sup>28</sup> Before the AEC had really made up its mind whether or not applicants for fellowships should be investigated, and long before the Congress had turned its attention to the problem, 151 seekers of fellowships had in fact been fully investigated by the FBI. One investigation

turned up the open and avowed North Carolina Communist whose \$1,600 grant touched off the fireworks; another apparently established the "Communist affiliation" which the Harvard fellow seems fairly well to have disproved when given a chance; and two more suggested some sort of "Communist association" short of affiliation.<sup>29</sup> If this same relationship is maintained in the future, it appears that full field investigations of applicants for grants in nonsecret fields will produce one sort or another of "derogatory information" in about 2.5 per cent of all these cases; of this derogatory information, only half will be of a serious nature; and only half of the seriously derogatory information will continue to seem serious if subjected to the test of a hearing; so that when all is done, only two-thirds of one per cent of the applicants will remain under a heavy cloud of doubt concerning loyalty.<sup>30</sup> What impulses moved Congress to unlimber such heavy artillery to blast so minor a target?

The impulses were of course diverse. One position that was stated and restated was that public funds should not be spent to educate a Communist, who by definition is deemed a conspirator against the Government. This position overlooks the fact that the barrier which Congress erected will keep out not only Communists but also those who may be "disloyal" in the much broadened sense. In any event, the question here was clearly not one of economy. The loyalty checks that Congress has commanded will at the most conservative estimate cost annually no less than \$50,000 in direct expenses of investigation, plus the time and attention of security staffs which have important duties elsewhere. The basic issue was not whether money should be spent. The question was, simply, whether a politically objectionable person should be permitted within the area of the expenditure. Senator Hickenlooper explained the matter succinctly when he said: "I think you can say it in a nutshell: I do not believe the American people will stand

for the education of a Communist with public money.”<sup>31</sup> Congressman Durham, vice chairman of the Joint Congressional Committee on Atomic Energy, wished “to keep education as free as possible,” but the grant of a fellowship to a Communist caused him to exclaim: “The country is just not going with us and we have to go to the people and tax them to get appropriations.”<sup>32</sup> Senator Millikin emphasized again that the American people “have the notion, for which considerable support can be developed, that the United States should not be spending the taxpayers’ money to educate anyone who joins a conspiracy against the United States.”<sup>33</sup>

This view was put to the test when the North Carolina Communist disclosed that he had completed his education with the support of the benefits received under the “G.I. bill.” When President DuBridge observed that nobody had complained at that time, or even now, about the fact that a Government educational subsidy had been paid to a Communist, Senator Hickenlooper distinguished the cases by saying: “The G.I. educational bill is based on the theory of an earned stipend. It is the payment for something that has been earned prior to that time.” Dr. DuBridge made the immediate rejoinder that so, too, in a sense, a national research fellowship is an earned stipend. The fellow undertakes to develop his skill and his brains for the nation’s benefit; “he has earned his education by his ability, as proven in his previous work, and he is doing a service to the country by training himself.”<sup>34</sup>

It was Senator Hickenlooper, not Dr. DuBridge, whose views prevailed. Dr. DuBridge disliked the idea that “we are doing a favor to these fellowship candidates by giving them a fellowship.” He preferred to think that “the country is getting a good bargain in spending money to train these men who will be important in the future leadership of science.” The Congress of the United States thought otherwise.

Here is a clear-cut issue. Those whose profession involves

a certain attentiveness to public opinion gave one answer. Those who did not have to face the electorate concluded that the contrary answer was the only sound one. "The people and the Government of the United States have a stake in scientific discovery and invention," said Dr. Oppenheimer, "and it is for this stake, rather than as an act of benevolence toward the recipients of the grants-in-aid, that one must look for justification for having a fellowship program at all." President Conant was sure that no great harm would result even if a Communist did become a fellow, for if he ever sought access to confidential information, he would have to be investigated fully. Meanwhile, "if such a man continues in the field of pure science he may make important contributions." Dr. Gregg stated what he regarded as an axiom, "that this condescension on the part of the Government to give these young men an opportunity is seriously inaccurate and almost to the point of being quite a false view of the situation. We are looking for brains and we are looking for character and when we can find them, it is as good as a business deal with both sides profiting . . . Now, I would not care to open a fellowship program under circumstances that would dissuade a seriously large number of applicants from applying. I would not open with a note of distrust for the simple reason that young men who have their careers to make are pretty concerned about it and if they suspect something that they do not like and can go elsewhere, and thereby avoid it, you will not have them nibbling at it and you will not have a chance to get them." <sup>35</sup>

This last remark suggests another one of the major divisions of opinion between the members of Congress and the members of academic or scientific communities. Throughout the hearings the former made clear their opinion that no true American would be repelled by a requirement of oaths and subsequent official investigations into his character, opinions, and associations. Only conspiratorial enemies of the nation, and

perhaps a few others who were willfully perverse, would hesitate to subject themselves to scrutinizing of their "loyalty." A different position was taken, as with a single voice, by those whose work had brought them in closer touch with young intellectuals than with practical politics.<sup>36</sup> All of them in one form or another stressed the experimentalism of youthful minds and the likelihood that the unorthodoxy of youth would be modified by later experience. All of them felt that many able men would choose not to place their careers in jeopardy by risking the unpredictabilities of a loyalty test. All of them feared that the very process of investigation, involving the questioning of schoolmates and teachers and neighbors, would engender suspicions and uncertainties that would have a seriously adverse effect "on both the atmosphere of our educational institutions and the outlook of one age group of the entire nation."<sup>37</sup>

No one can say with utter assurance which of the conflicting positions is correct. Many professors, however, have been told by able students that they shun federal service today because a careless rejection of them would produce lasting damage to their professional standing. In all probability the fear of rejection is rarely well founded. But men are moved to act (or refrain from acting) not only by reality but also by their images of reality. In a considerable number of instances young men's images of reality have caused highly trained and thoroughly qualified social scientists to withdraw themselves from the potential supply of governmental personnel. The scientific fellowship program will almost certainly suffer from the same sort of slow but debilitating bleeding.

Here it is perhaps well to note yet another division between the Congressmen on the one hand and most of the scientists and educators on the other. The Congressmen tended to doubt that the progress of science would be retarded by excluding the politically detested. They believed, in sum, that there

would be no "bleeding" of the fellowship program if Communists and their supposed followers were kept out of it.

Part of this belief reflects the almost universal sentiment that one who does not share our own particular convictions must be a fool or a knave, or perhaps both. A comment of the ordinarily temperate Senator McMahon is illustrative. In discussing the young North Carolina Communist, who had publicly declared his disbelief that the Communist Party (United States) is controlled from abroad, Senator McMahon remarked: "He says he is in the pursuit of truth. And what more palatable and obvious factor is there, Doctor, to you and to me, than that the Communist Party in this country is part of an international Communist Party and an international conspiracy? . . . So if this fellow is so dense as not to see that, he must be a boob, and he is not worth anything . . . I do not mean that a great scientist has to be a conformist in his political views, and must think exactly as I think. I certainly do not mean that . . . [But] this statement about communism not being a national conspiracy, seems to me to be such a statement as to indicate that he is not very bright,"—and therefore should not have been granted a fellowship.<sup>38</sup> It is only fair to the Senator to add that his expression was enthusiastically seconded by Dr. Bronk, a distinguished scientist himself and the head of a major university.

The danger in accepting the view just quoted is that, despite disclaimers of insistence upon conformity, we may tend to decide whether a man is a "boob" or "not very bright" as a scientist by examining his opinions in nonscientific areas. The conclusion of Senator McMahon and Dr. Bronk that the Communist Party U.S.A. is a segment of an international combination seems to me to be unassailably based on the available evidence. But there must be many other propositions which Senator McMahon, Dr. Bronk, and I accept as palpably correct and which might nevertheless be contradicted by other

mentally competent and disinterested persons. There is peril in insisting that anyone who rejects our own perceptions of truth in matters about which we deeply care must stand condemned. One need only instance Joliot-Curie, the French Communist nuclear physicist who discovered radioactive isotopes, or Lodge, the great British physicist whose faith in spiritualistic phenomena has been shared by few serious thinkers, or Eddington, whose religioscientific ruminations have not commanded as much respect as have his astronomical studies—one need only instance such men to realize that a scientist, like most of the rest of us, can be highly qualified in his own work and yet by some be thought a “boob” when away from it.

Finally, in connection with the fellowship program, one must make especial note of the layman's inability to distinguish between secret and nonsecret scientific work. Many people today equate the nation's strength with its ability to perform scientific miracles. For most citizens, including most members of the Congress, all science is a mystery. The beginning and the ending of terra incognita are but dimly understood, and the methods of exploration are little known. How else can one explain some of the concern lest a Communist-minded youth receive aid in tumor research or in studying plant nutrition? Surely no one presumes that a belief in free enterprise is a necessary qualification for intelligent investigation of the effects of irradiation on animal tissue; and it seems unlikely that new discoveries about cancer will be declared unsuitable for use in this country unless the discoverer can gain a security clearance. But preoccupation with the relatively small area of secrecy in science seems to stimulate an unreasoning fidgetiness about all scientific endeavor. Senator Knowland, for example, discerned what he described as “the calculated risk” that one of the AEC fellows working in a nonsecret research field might not only learn “some important scientific fact in



medicine, or something else," but might also "hit upon a 'superduper' atom bomb, and be off to Russia, as Mr. Eisler was, on a boat, trying to get out of the jurisdiction of this country. And from the calculated risk point of view, he might be just the missing link to furnish information to an international conspiracy which has as its avowed purpose the destruction of the Republic and all that it represents." <sup>39</sup> Similarly, his colleague Senator Millikin was sharp in his reaction to the opinion that an unnecessary expense was involved in investigating the AEC fellows who would be working in nonsecret projects. "I would rather spend a hundred thousand dollars," said the Senator, "or several times a hundred thousand dollars to keep any conspirator against the United States Government out of the field of atomic energy. Put your own dollar sign on it. Write your own check on that." <sup>40</sup>

The immediate consequences of loyalty tests for AEC fellows can be quickly though not happily described. The National Academy of Sciences and the National Research Council on November 2, 1949, notified the Atomic Energy Commission that they no longer desired to accept responsibility for the altered fellowship program. The requirement of FBI investigations of those who neither work on secret material nor are directly preparing for work on AEC projects was regarded as "ill-advised." It raised "grave doubts whether the continuance of the Atomic Energy Commission fellowship program thus restricted is in the national interest." <sup>41</sup> This communication launched a series of further discussions. The AEC was unwilling, as a Government agency, to administer its own fellowship program, feeling quite properly that a scientific or educational organization should be in charge of the matter; it recognized, moreover, that it could hope for little success in effectuating a program that the scientific community would not fully support. Finally, the National Academy of Sciences was prevailed upon to authorize the National

Research Council to administer a drastically reduced AEC fellowship program, but only for a single year. For the academic year 1950–1951 the NRC would recommend no new predoctoral fellowships. Postdoctoral fellowships became available only for advanced training in fields of secret work or in problems that require access to restricted data. The fields of study were limited to those intimately related to the AEC program, such as the chemistry of the elements in the fission-products range. No medical, biological, or biophysical studies were to be undertaken unless they required the use of the special facilities available in the AEC installations or involved access to restricted data; the range of projects was thus narrowed to such matters as the development of radiation instruments as applied to biological and health physics problems of a classified nature.<sup>42</sup> Subsequently the AEC launched a greatly reduced predoctoral fellowship program for less advanced research in the biological and physical sciences. Administration was organized on a regional basis. The distinguishing feature of the new predoctoral program is that “the subjects of research must be sufficiently closely related to atomic energy to justify a presumption that the candidate, upon completion of his studies, will be especially suited for employment by the AEC or one of its contractors.”<sup>43</sup>

The constricted fellowship programs led to making perhaps 75 new postdoctoral awards and 140 predoctoral awards instead of the approximately 500 that had been anticipated before the requirement of loyalty investigations was enacted. Renewals of existing fellowships in some 175 instances allowed completion of nonsecret projects that had not run their full course before the end of the academic year in the spring of 1950. For the future the fellowship program will become in essence merely an element of the researches that are carried on secretly under AEC auspices. No longer will the AEC support the broader, fructifying work of young Americans

at the fast-changing frontiers of science in the atomic age. The midsummer madness that a lone Communist youth aroused in Congress has in the end caused the reorientation of the entire fellowship program. One may well conclude that the blow Congress aimed at Communists has instead left the nation a little less well equipped for the future than otherwise it might have been.

What remains as a question mark is whether the AEC fellowship controversy will prove to have been an isolated episode. For a time there was reason to believe that all who receive grants would henceforth be deemed the recipients of "handouts," to be exposed to whatever qualifying tests might please a somewhat condescending patron. Educators were fearful that college and university faculties whose salaries may be paid in part with funds received from the Government might be subjected to loyalty tests, while students whose educational costs are satisfied out of tax revenues might become objects of censorial concern lest "disloyal" youths be educated at public expense.

These fears were given great impetus by amendments to the National Science Foundation bill in the House of Representatives in 1950. One of those amendments provided that the Foundation should award no scholarship to any person "unless and until the Federal Bureau of Investigation shall have investigated the loyalty of such person and reported to the Foundation such person is loyal to the United States, believes in our system of government, and is not and has not at any time been a member of any organization declared subversive by the Attorney General. . . ." This provision was vigorously opposed by the Federal Bureau of Investigation itself, which did not wish to have the responsibility for evaluating as well as collecting evidence. It was opposed, too, by the Attorney General, the Secretary of Defense, and many others, who felt that the proposal far exceeded the necessities and

would disregard American concepts of justice by penalizing past (and perhaps innocent) membership in an organization listed by the Attorney General.<sup>44</sup>

When the National Science Foundation bill came before Congress for final action, the offensive amendment was stricken. In its place was enacted a provision, section 15(d), that no scholarship or fellowship may be awarded to any individual unless he (1) files an affidavit that he does not believe in or support any organization that believes in the overthrow of the United States Government by force or by any other illegal or unconstitutional methods and (2) takes an oath that he "will bear true faith and allegiance to the United States of America and will support and defend the Constitution and laws of the United States against all its enemies, foreign and domestic." As to researches touching matters of AEC or military interest, of course the customary personnel security measures remained fully applicable in addition.

The contest over the National Science Foundation measure brings into true perspective the contest over the AEC fellows. The question was not whether the recipients of fellowships were a menace to the nation's security. The question was whether they could pass muster as loyal Americans.

Insistence that no youthful researcher may share in a public program unless he can be stamped as orthodox may lead too quickly to sterility. Individuality and intellectual diversity have not been flaws in the nation's structure; they have been its strength as well as its spice, and nowhere has this been more true than in its academic institutions. Freedom as we know it has not grown out of a standardized brand of Americanism; it has grown out of the political disharmony, including even the full range of political extremism, which is a central element of this country's tradition. As to the young it is perhaps especially important that independence be encouraged. The intellectual follies of youth rarely survive ex-

perience. But they have value nonetheless as indications that young people's minds are active rather than lethargic.

Authoritarianism of all sorts has been minimized in the United States, especially in educational matters, because the liberation of man's mind follows the pursuit of doubt rather than the passive absorption of dogma. Americans, having never willingly accepted official dictation of their thoughts, have always looked with disfavor upon official inquiries that could be the first step toward regimentation. All these values may be placed in issue by the further unfolding of the problem raised in the context of the AEC's small fellowship program. Unless the whole educational machinery is ultimately to become "co-ordinated" by governmental demand, investigation of character, associations, and opinion must stop at the academic gates when no vital interest demands that the gates be opened.

## VIII

# The Need for Fair Procedures

PROCEDURAL questions are too often dismissed by non-lawyers with an impatient shrug and the muttered belief that they are “mere technicalities” or “a lot of legalistic hair-splitting.” It is unfortunately true that procedural objections are sometimes used by lawyers to becloud rather than clarify the substantial issues of disputed cases. Occasionally, too, the layman is painfully aware that a certain type of attorney enjoys jousting over technical points without regard for the merits of the controversy. Sound procedures are, nevertheless, powerful handservants of justice. Justice, to be sure, can never be produced by procedures alone. But procedural safeguards can and do minimize the opportunity for *in*justice.

Government, said William Johnson, one of the ablest members of our early Supreme Court, is “the science of experiment.” Through centuries of experiment the processes of governmental fact finding have been refined and improved. By close attention to methods, government has progressively cast off the error-producing crudities that marked the investigations and trials of former days. Now, under the pressure of supposed peril and contrary to all the teachings of experience, some of those same crudities are being reintroduced into contemporary proceedings.

One hears it said from time to time that we should not to-

day be overly concerned with fair procedures because, as some officials have put it in informal off-the-record conferences, in loyalty or security matters "it is far better that nine innocent men should suffer than that one guilty man remain unconvicted." A moment's thought should suffice to dispose of so crass a comment. Fair procedures do not prevent the detection of wrongdoing. We need not convict the innocent in order to avoid freeing the guilty. The choices before us are, rather, whether we shall preserve effective and just means of finding out who is innocent and who is not or whether, on the other hand, we shall carelessly cast a net large enough to enmesh the guilty and the innocent alike. If the latter course be pursued, is it not likely that self-respecting persons will simply shun the area in which the net is being cast?

*A Fair Opportunity to Defend*

Since the signing of Magna Carta in the thirteenth century, notice of charges and an opportunity to be heard before being condemned have been central characteristics of Anglo-American justice. It is vain to give a man his day in court if he has no effective opportunity to prepare for it. To commence a trial without first giving reasonably precise information concerning the matter that is to be heard is to mock the "due process of law" which tradition and constitution alike demand in this country.

Today, despite tradition and constitution, serious inquiries into a person's character and loyalty are often initiated by accusations so broad as to be virtually meaningless.

A university scientist, denied clearance by the Army-Navy-Air Force Personnel Security Board and therefore faced with termination of his appointment, requested notice of the charges against him and a chance to be heard in defense against them. The following is an exact quotation of the accusations he was called upon to meet:

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“(1) That you are sympathetic with the aims of the Communist Party of the United States, its principles and practices; and

“(2) That you associate with persons who are sympathetic with the aims of the Communist Party.”

An employee of a federal agency which by no stretch of the imagination had any “sensitive” work in its charge, received the following statement as an indication of why her loyalty was called into question:

“The Commission has received information that you have been sympathetically associated with Communists and/or pro-Communist individuals.”

A chemist in one of the national laboratories supported by the Atomic Energy Commission received the following charges:

“It is noted that he has stated he is an ideological Communist and although he is not an active party member, or a joiner of Communist organizations, he is sympathetic to the Communist cause.”

Charges like these are patently inadequate. In ordinary proceedings the vagueness of the accusations might be removed by the evidence that would ultimately have to be brought forward in their support. In matters of the sort we are discussing, however, it is not required that the charges be sustained by testimony of witnesses or by any other evidence. In a real sense the charges *are* the evidence, and the burden of overcoming them rests upon the person whose status has been questioned. This may be a well-nigh impossible task. It is not easy to prove oneself innocent of the offense of having stated to an unidentified person at an unspecified time and place that he was an “ideological Communist.” It is not a simple matter to show nonassociation with “pro-Communist indi-



viduals" whose names are not revealed. It is difficult to establish one's lack of sympathy with "the aims of the Communist Party" when there is no specification of what the accuser has in mind. In practice most of the loyalty boards have decently tried to indicate in a general way the evidence that has generated the charges. But the practice varies considerably, not only from agency to agency but even from case to case within a single agency. The upshot is that in a number of instances persons have been compelled to exonerate themselves by proving a general negative, rather than by simply discrediting the evidence against them. As every lawyer knows, this is a difficult feat. It can rarely be performed without expending tremendous exertions to overcome undisclosed and possibly wholly imaginary information of an adverse character.

In fact, even after the exertions have been made in cases of the types discussed in preceding chapters, one never knows whether he has addressed himself to the evidence on which the charge was based. Let us consider in this connection an entirely nonpolitical accusation, in order to exclude any emotional or ideological overtones. Here is a "model charge" set forth in the language officially recommended by the AEC's General Manager in his instructions to the staff:

"The Subject, according to the information obtained from responsible persons, is indiscreet in his conversations when intoxicated and has discussed in public places restricted information relative to his work."

If one suppose himself for the moment to be "The Subject," what does one do in order to meet this charge? Of course The Subject at once rallies the best available character witnesses, who will testify that he never becomes intoxicated or that, if he does, he is not indiscreet in his conversations. He offers the testimony of his local pastor to prove how highly he is regarded in his home community. All in all he makes a

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highly persuasive showing that he is an admirable fellow indeed. But when everything is said and done, has he disproved the charge? Of course he has not, for none of his witnesses was present at the times and places when he was said to have been indiscreet.

Why then, asks the layman, does he not produce witnesses who were present at those times? The answer is, obviously, that The Subject cannot find out when or where his misdeeds allegedly occurred. Whatever evidence there is on these points reposes in the FBI investigation report, and may not be revealed. Unless the FBI's informant agrees to be named, the fact that he furnished material is held under a pledge of secrecy. If the time, the place, the surrounding circumstances were spelled out in a charge, The Subject might be able to identify the person who had made adverse statements about him. And if this were possible, the FBI believes (and has persuaded the other agencies) that there would be great difficulty in obtaining the comments that now fill its reports.<sup>1</sup>

It is hard for most Americans to realize that, in proceedings of such great seriousness, decision may rest in the end upon the unrevealed testimony of undisclosed informants. This is not a matter of protecting "undercover agents" or counterspies. It is, rather, a matter of guaranteeing the anonymity of unofficial informers—social acquaintances, fellow-employees, neighbors, tradespeople, and the like, who would perhaps be embarrassed if The Subject knew what they had said about him. Yet it is precisely in this setting that the traditional American procedures of confrontation, cross examination, and rebuttal have their greatest importance. Vital as they may be to The Subject, who may otherwise be victimized by the malice or mistake of the informer or the erroneous recording of the investigator, these procedural protections are no less valuable to the body that must make a decision concerning disputed facts. They are surely among the most effective instruments

known to the law for discovery of the truth. They make possible a searching of motives, accuracy, and veracity. Nowhere, perhaps, is that sort of searching more important than in cloudy disputes about loyalty and security.

General William J. Donovan, the wartime head of the O.S.S. and certainly no stranger to problems of espionage and counterespionage, has expressed belief that "much more could be disclosed to the employees than is currently disclosed." In his view of the matter, a sharp distinction should be drawn between the casual and the professional source of information. As General Donovan puts it, "There seems no reason why the anonymous informant who is not in the regular employ of the FBI and whose testimony is relied on by the Board should not be revealed to the employee . . . If non-confidential informants do not want to stand up and be counted, then their information should be used only as possible leads and not be made the basis of a record which cannot be refuted. And where it is impossible to reveal to the employee the *source* of the evidence against him, as in the case of confidential informants, the employee should at least be fully apprised of the *contents* of the testimony." <sup>2</sup>

In one of its recent reports the Joint Congressional Committee on Atomic Energy has discussed the case of an employee about whom derogatory remarks had been made in an anonymous letter. When the FBI followed up the letter, it obtained damaging statements from several informants. In due time charges were filed and a hearing scheduled. Then the local hearing board, acting in response to the affected employee's pleas, made an especial effort to persuade the four principal witnesses to appear. Three of them agreed to do so. One of them, who had earlier given the FBI apparently relevant information, declared under oath that "he had no basis in fact whatsoever to support" his statements. The sworn testimony of the other witnesses as well seems to have been drastically

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weakened, for the hearing board proceeded to clear the affected employee. The case, as the Joint Committee well said, "serves as warning that an informant may perhaps give the FBI highly unfavorable advice, but, when placed under oath before a local board, deny all that he had said, admit that he knows little or nothing about the employee, and admit further that he bore him a grudge." <sup>3</sup>

This does not constitute a criticism of the FBI. The impressions of casual, nonofficial informers may sometimes properly serve as leads to more conclusive evidence; there is certainly no reason why the FBI should reject "tips" even though they themselves do not constitute proof of anything. As former Attorney General Clark once stated, when embarrassed by the contents of an FBI file which had been read into evidence in a judicial proceeding, "That hearsay or gossip should appear in the investigative reports is to be expected. It is in this way that complaints and information accumulate." <sup>4</sup> Moreover, there is much to be said for Mr. J. Edgar Hoover's view that the FBI should record all the material it may acquire, leaving it to others to evaluate the significance of what has been recorded. The practice of indiscriminate recording, however, places an especial obligation upon fact finders to avoid drawing conclusions merely because a statement is embodied in an FBI file. One ought always to recognize the riskiness of relying upon the fallible testimony of individuals whose ability and desire to recollect and narrate truthfully have not been subjected to the test of cross examination.

In one case involving an Oak Ridge scientist, the FBI reported that six persons had told its agents that the man's wife was an active Communist. This was enough to raise a question about the scientist's suitability for continued employment. When the case came on for a hearing, the AEC asked the six witnesses to appear voluntarily to give their testimony openly, although if they had declined to do so their statements to the

FBI would presumably have been utilized in any event as "statements by confidential informants." At the hearing, three of the six said they knew of no Communist leanings, although one said that she had heard office rumors which she herself did not believe. A fourth witness testified that he had heard the employee's wife say, "The Russian government has done more for their people than the American government has done for their people." A fifth witness claimed he had seen the employee's wife at Communist meetings, but his testimony was vague and contradictory, and he was unable to identify her photograph when it was mixed with others. As the hearing progressed, the cumulatively damaging "evidence" simply vanished. The suspicions aroused by the unchecked testimony were dissipated, the affected employee was cleared, and a capable scientist was saved for the nation's undermanned laboratories.

Cases like this are no novelty in the experience of any lawyer or, indeed, of any police investigator, newspaper reporter, or business executive who has sought to ascertain the true facts amidst a mass of conflicting statements. That is why the Supreme Court believes that "judgment on issues of public moment" is likely to be treacherous if based on testimony "not subject to probing by judge and opposing counsel."<sup>5</sup> In the loyalty and personnel security cases, the adverse evidence is not only not subject to "probing," but much of it is actually unknown to the person against whom it is used and he therefore has no opportunity whatsoever either to discredit or rebut it. And if by chance the defendant in one of these proceedings were to guess the identity of his accusers and were to desire their presence as witnesses, nothing could be done to compel their attendance if they chose to remain away. Neither the loyalty boards nor the Industrial Employment Review Board nor the Atomic Energy Commission has been given power to issue subpoenas, to pay fees and expenses of an em-

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ployee's witnesses, or otherwise to assist the development of the defendant's case. It is only fair to add, however, that a considerable number of boards have conscientiously tried to encourage the appearance of those whose testimony might be relevant. Several boards, moreover, have held hearings in different states in order to facilitate the production of witnesses.

If, as the investigating agency is convinced, disclosure of the adverse testimony is often not feasible, some other sort of protective mechanism must be developed in order to minimize injustice. As Mr. Justice Jackson said when Attorney General, investigative reports sometimes include "the statements of malicious and misinformed people."<sup>6</sup> We know, too, that courts view with great suspicion the testimony of informers, even when given in open court and subject to the safeguards of judicial trials.<sup>7</sup> We are aware that in times of political and social tension a whole community may become infected with the "informing spirit."<sup>8</sup> When denunciation of the citizenry becomes widespread, its reliability tends to decrease, for a sense of exactitude rarely accompanies a frenzied desire to "expose." Political talebearing feeds on the poisons of fear and suspicion. It helps create yet larger fears. Ultimately those fears serve to distort the truth, occasioning distress in the end to both the fear-ridden and the fear-victimized.

All these considerations point up the need for further procedural safeguards than now surround the use of FBI reports. In all probability the courts, while recognizing that present methods would not satisfy the constitutional requirements of due process, will hold that due process need not be afforded a federal employee in connection with his job.<sup>9</sup> The employee has no "property interest" in his position, and a long chain of judicial utterances suggests that the Government owes its employees no legally enforceable obligation to accord them fair treatment. This, however, is not the heart of the question.

The true issue is not whether the Constitution *forces* the Government to observe the rudimentary procedural decencies. The issue is whether the Government ought to observe them voluntarily as a matter of policy rather than because of compulsion. At present the Loyalty Order itself provides that charges need be only as specific "as, in the discretion of the employing department or agency, security considerations permit . . ." Shockingly vague charges of the sort set forth earlier in this discussion show how loosely this discretionary power has been exercised. Moreover, the FBI's insistence upon non-identification of witnesses when it is "essential to the protection of the informants or to the investigation of other cases that the identity of the informants not be revealed," seems to have been indiscriminating. Nondisclosure of the witnesses' identity has been the rule not only when concealment was "essential," but also when it would have been merely embarrassing or inconvenient to name the informants. Whether the Constitution demands them or not, fairness and moderation are the responsibility of government—a responsibility owed to public employees and to all other citizens alike.

### *Findings and Decisions*

Arbitrariness can be minimized if care is exercised in formulating the specifications of a charge of disloyalty. Injustice can be lessened by rejecting the undisclosed testimony of unidentified witnesses. But these are not the only means of diminishing caprice and mistake.

In courts and generally in administrative agencies specific findings furnish a foundation for dispositive judgments, so that the relationship of the conclusion to the evidence may be discerned. In an appellate court, moreover, the process of reasoning leading to decision is customarily reflected in a written opinion, which is then subject to critical examination by the legal profession and the public at large. While perhaps

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not necessary in repetitive situations marked by only a narrow range of facts and by well-defined criteria of judgment, formal opinions are especially useful in areas where the standards of discretion are still evolving. When an adjudicator knows that he must record his judgments and give reasons for them, there are fruitful psychological effects. In Felix Frankfurter's words, we all feel much more responsible "if we have to sit down and write out why we think what we think."<sup>10</sup> As the Attorney General's Committee on Administrative Procedure said, "There is a salutary discipline in formulating reasons for a result, a discipline wholly absent where there is freedom to announce a naked conclusion. Error and carelessness may be squeezed out in the opinion-shaping process."<sup>11</sup> In proceedings that are subject to judicial review, the courts have repeatedly emphasized "the need for clarity and completeness in the basic or essential findings on which administrative orders rest."<sup>12</sup> Especially in cases where decision may have been based on one or more of several possible grounds, or where the play of discretion may be extensive, there is a well-settled judicial conviction that the administrative tribunal should carefully explain what its thoughts were.<sup>13</sup>

In the face of this sort of sentiment, the fact finders in loyalty and personnel security proceedings almost uniformly fail to make findings or prepare opinions which will illuminate their decisions. Of all the agencies that operate in this field only the Industrial Employment Review Board, through procedural regulations which became effective near the close of 1949, provides that "the decision of the Board, which shall state its reasons therefor, will be set forth in writing." Experience with this innovation is as yet too limited to permit appraisal of its effects.

The Loyalty Review Board has taken an extreme stand in support of mystification instead of explication. It has gone so far as actually to forbid the preparation of findings or explana-



tory statements by any of the boards whose work it superintends. This prohibitory directive assures that whatever is rational in the loyalty program will be obscured, while the irrational is fostered through being concealed.

Even the Atomic Energy Commission, which on the whole has exhibited a keener sensitivity to human values than have some of the others in this trouble-laden business, has been inattentive to the matter of findings. Its procedures contemplate that the Personnel Security Board which conducts the initial hearing will recommend to the local AEC manager that clearance should be withheld or granted, as the case may be. The manager reviews the recommended decision and transmits it with his own recommendation to the General Manager of the AEC in Washington. If the recommendation is adverse, the employee is informed of it and is given opportunity to seek review by the three-man Personnel Security Review Board. That body, which is purely advisory, then makes its recommendation to the General Manager, who, perhaps after first consulting the Commission on policy issues, takes the ultimate step of issuing or denying clearance. At no point in this long chain of recommendations and judgments is any statement given the employee as to the reasons for the decision that so vitally concerns him.

So far as the affected employee is concerned, the absence of any particularization often leaves him wholly in the dark as to the nature of his offense. In an earlier section we have noted the generality of some of the charges. If at the end of such a case no reasonably specific findings have been recorded, the employee has not only gone to hearing without having been apprised of what was to be heard, but may come away at last without ever learning what it is that supposedly warrants his loss of standing. Even in the cases in which charges are adequately detailed, he has no way of knowing which of the charges have been sustained by the hearing board; and so he is handi-

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capped in focusing his further efforts to clear his good name. Moreover, few hearings confine themselves to the charges that were stated at the outset. Hence one cannot be sure whether the decision relates to some of the formal charges or, rather, to some other issue that was freshly introduced during the hearing.

The transcript of hearing in a case involving a nuclear scientist has been selected at random from those available and has been analyzed specifically to illustrate the intrusion of new issues into a formal proceeding on charges. Here there were but four charges. The first accusation was that the scientist had at one time read a certain left-wing publication. The other charges were to the effect that three of the man's relatives by marriage had been reported to be Communist sympathizers. During the hearing the following additional matters were extensively explored:

1. The co-operative movement in the United States and the defendant's opinions concerning either co-operative or state ownership of property;
2. The defendant's reading habits, unrelated to the particular charge;
3. The defendant's approval or disapproval of "our capitalistic form of enterprise in the United States";
4. The defendant's beliefs as to whether the country was being well-governed by the present Administration;
5. The depth of the defendant's convictions about eliminating racial injustices;
6. The allegation that one of the defendant's in-laws had been interested in "assisting members of the Abraham Lincoln Brigade in Spain in regaining American citizenship";
7. The employment record of the defendant's father and the extent of his participation in labor union affairs.

The formal charges in this case were so scantily treated during the hearing that they appear to have been deemed almost irrelevant. Once the hearing started, the signal was given for a virtually limitless inquiry. In this particular case the man was cleared. If he had not been, it would be difficult to say whether the adverse finding rested on the declared charges or whether, instead, they related to the defendant's opposition to racial discrimination, his failure to give enthusiastic endorsement to the free enterprise system, or his parent's union activity.

The hearing just reviewed is by no means exceptional. Each case typically involves an inquiry into many aspects of an individual's social and political life. The choice of what inquiries should be pursued is largely, though not exclusively, influenced by the inquisitor's hypotheses and standards, rarely articulated, often unconscious, and not invariably sound. This but emphasizes the need of candor and care in stating the real grounds of a decision, so that erroneous presuppositions and irrelevancies may be detected if they have affected final judgment.

If the boards announce their reasons as well as their results, they will be constantly reminded of the gravity of the acts they perform and will be stimulated to relate their conclusions to the evidence at hand.<sup>14</sup> Unexplained decisions cannot be subjected to effective analysis either by the immediately affected employee or by a public that does not desire that decency be garroted in the name of safety. Judgments that a man is "disloyal" or that his having access to restricted data will "endanger the common defense or security" ought never to be made unless they reflect rationally defensible conclusions from specific findings. Any lesser requirement leaves too great room for whim, malice, or plain stupidity.

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### *Action on Applicants for Employment*

Procedural defects of the sorts discussed in preceding sections are properly censurable. But even defective procedures are better than none at all. That is why the Atomic Energy Commission has been especially subject to criticism despite its generally moderate approach to personnel security problems. Unlike other agencies dealing with these ticklish issues, the AEC alone consistently fails to provide some sort of hearing opportunity for a person whose entry into employment is conditioned upon his obtaining clearance.

Under the Loyalty Order a "new employee," defined as a person entering a federal position after October 1, 1947, is entitled to a hearing before a regional loyalty board appointed by the Civil Service Commission if his loyalty is doubted. To be sure, a person who had been flatly rejected by an employing agency because of real or fancied question about his loyalty would probably never know why he had not been hired. Ordinarily, however, employees in the general Government service are put on the job for a probational period during which the loyalty check or investigation is made. Thus they become "new employees" with whatever procedural privileges attach to that status. Under military clearance procedures, moreover, a person whose employment in private business has been blocked by the military's Personnel Security Board is assured a hearing before the Industrial Employment Review Board. But if clearance is denied a scientist who needs an AEC clearance in order to enter upon work with classified data, he may never be able to discover why his clearance has been withheld. Nor may he challenge the soundness of the adverse decision. An AEC hearing is available only in connection with the possible revocation of a clearance that has already been granted on a prior occasion. Newcomers have no rights whatever.<sup>15</sup>

As a consequence, applicants for employment encounter markedly increased perils and perplexities. A scientist who has been recruited for particular work in one of the national laboratories, or who has sought employment by an AEC contractor such as the General Electric Company, may be kept in suspense for literally months while his eligibility is being judged. If doubts arise, they are not disclosed to him, nor is he afforded an opportunity to shed light upon them. Sometimes the decision is so intolerably delayed that the applicant simply moves to other jobs in order to avoid starvation. Ordinarily the financial or professional consequences of a delayed or denied clearance are as disastrous to scientist-applicants as they are to the "old hands" in the atomic energy program. The future employment opportunities of a construction worker or truck driver are not likely to be drastically lessened by his having failed to obtain an AEC clearance at some point in his life. This is not so, however, in the case of a man equipped for work as a nuclear chemist or physicist or radiobiologist. If the AEC has rejected him on security grounds, his whole professional career will be shadowed and confined. He will almost certainly find fewer and fewer chances to utilize his professional skills, for clearance requirements, as we have seen, are being steadily broadened rather than narrowed. In sum, a scientist, whether he is an applicant or a man already at work in an AEC installation, may be virtually ruined if he is held to be unemployable as a bad security risk.

What, then, are the reasons for differentiating between incumbents and applicants in respect of the procedures by which eligibility is determined?

The chief reason is not even debatably defensible. It is, in brief, that cases can be disposed of without accountability. This has been achieved in some instances by informally intimating to a would-be employer that a security *doubt* exists concerning a named applicant for whom clearance has been

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sought. When this is coupled with a suggestion that decision will not soon be forthcoming and that perhaps the employer may want to consider another man for the job, the hint needs no further reinforcement. In cases of this sort, the offer of employment is likely to be withdrawn, the applicant being given whatever explanation the employer deems suitable. Through this device the AEC's security officers are spared the unpleasant difficulty of actually deciding whether the available evidence warrants a denial of clearance. Reliance upon this substitute for judgment should be firmly repressed by the AEC itself. There is no justification for it, in morality or even in terms of administrative expediency. When an application has been made for permission to give a scientist access to restricted data, the professional qualifications of that scientist have been approved by the proper employing authority. Thereupon the AEC's duty becomes clear and single. The AEC should decide the issue of security clearance. The obligation to do so is evaded rather than fulfilled when AEC staff officers covertly influence the employer to withdraw the clearance application. It is in just such cases that the opportunity for ill-informed and unfair judgments is greatest, for in these instances the file may be closed without apparent administrative responsibility and without the careful findings which reinforce that responsibility.

The exact extent of the practice just discussed is, of course, unascertainable. In the nature of things it is private and unrecorded. That it is widespread is, however, unquestionable. In the whole period from January 1, 1947, to April 30, 1948, the AEC *formally* denied clearance to only 173 individuals out of the 141,469 applications for clearance that had been investigated by the FBI and evaluated by the Commission. These included casual laborers and all other classes of employees. Yet one of the officials of Brookhaven National Laboratory has asserted that during approximately the same period

of time he himself knew of at least one hundred recognized atomic scientists who had failed to receive clearance and had never learned the reason.<sup>16</sup> A recent report of the Joint Congressional Committee on Atomic Energy lends support to the opinion, based on interviews of numerous employers and AEC officers, that the formal denial of clearance accounts for a minor fraction of the cases in which clearance is in fact withheld. The Committee, reporting on October 13, 1949, disclosed that as of that time clearance had been "formally denied" in 216 cases. In 333 additional cases, however, clearance was "denied through an expedient," the persons concerned being job applicants who were simply not hired "as a result of their FBI reports." In 874 further instances involving job applicants, the requests for clearance were withdrawn "because [the Committee says without elaboration] they had meanwhile decided to work elsewhere."<sup>17</sup> These figures suggest that about six out of seven cases in which doubts arise are disposed of without formal action though with the same effect as though a security decision had been made.

The other reasons for the AEC's no-hearing policy are perhaps less objectionable, though on the whole they are scarcely adequate justifications for withholding protection against prejudice or mistake. They are, in brief, that hearings are expensive and, if they become numerous, annoyingly inconvenient.

In considering these reasons, one must start with the basic proposition that the grant of a hearing is not a mere act of formal courtesy. It is, rather, a means of enabling the Commission to arrive at a just and discerning conclusion. In this respect it has as great importance for the Commission as for the applicant. Convenience is a luxury the Commission can ill afford if it results in confusion masquerading as assurance. And that is exactly what the avoidance of hearings in applicant cases does produce.

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This can readily be inferred from the experience of the AEC in cases involving present staff members who, unlike the applicants, may demand that they be heard before they are stigmatized. In each of these cases a full field investigation by the FBI had been made. The investigation had disclosed information which, on its face, appeared so serious that responsible and intelligent security officers believed clearance should be withdrawn. But when those same cases went to hearing, it was almost invariably found either that the information was misleading or that its apparent implications were overborne by other pertinent facts of which the authorities had been ignorant. As was said recently by Dr. John A. Swartout, director of the Chemistry Division of Oak Ridge National Laboratory, who has sat on numerous AEC hearing boards, the reader of a security file is "overwhelmed by the succession of testimony . . . and the accumulation of information which combine to set a pattern pointing to the unreliability of the suspect"; but then one learns more about the case and discovers "how misleading such an accumulation of information can actually be." That is why, in his informed opinion, the decision is frequently against the granting of clearance "when the review is based only on the file," while reversal of an adverse decision is nearly invariable when there has been a chance to meet the seemingly damning evidence.<sup>18</sup>

It would be silly to suppose that a hearing for an applicant would not be equally likely to dissipate the objections to him. The fact is that the security file can rarely tell the full story about any man. Although every word it contains be unassailably accurate, the file is yet unlikely to give a rounded impression of the subject. This is not because the FBI or anyone else has suppressed evidence that is favorable. On the contrary, Mr. Hoover has emphatically instructed his agents that they are not conducting an investigation for the purpose of establishing doubts. The object of the inquiry is to acquire



full knowledge, the good along with the bad, about a man. It nevertheless remains true that the primary reason for having an investigation at all is to discover whether any information exists that might be deemed derogatory; and though the investigator also reports whatever favorable comments may come to his notice, the drive of his inquiries is inevitably in the direction of what is adverse rather than commendatory.

Furthermore, even when there is the best will in the world on the part of both the information giver and the information recorder, there is always room for serious defect in an investigation report. Consider the matter of mistaken identity simply as one example of possible error. The former deputy administrator of the Office of Scientific Research and Development has asserted that a major personnel security problem during the war "arose from cases of mistaken identity in which the person wanted by the National Defense Research Council happened to bear the same name as some other person whose record was not such as to endear him either to the military service or to any other organization interested in honest operations."<sup>19</sup> The frequency of this problem of mistaken identity is evidenced by the fact that out of the first 7,667 full field investigations that were conducted under the Loyalty Order, 494 were discontinued because the derogatory information appearing in the files proved to have related to someone else.<sup>20</sup> The FBI, as Director Hoover recently wrote with justifiable pride, often successfully demonstrates that information furnished it in connection with loyalty inquiries "is incorrect or the wrong person is involved," so that exoneration instead of conviction flows from the FBI's work.<sup>21</sup> It would be almost miraculous if this sort of self-detection of error occurred every single time error was present.

Finally, there is rarely a security file which is so clear that no judgment is required for its evaluation. When a possibly incomplete record is read in such a way that all the possible

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inferences are made to fall in a single direction, the likelihood of distorted (even though conscientious) judgment is very considerable. Still fresh in public memory is the disclosure that during the summer of 1949 Army officers had declared to be "unemployable," presumably because "disloyal," a large group of distinguished Americans including Gordon R. Clapp, chairman of the Tennessee Valley Authority, Professor George S. Counts of Columbia University, Roger N. Baldwin of the American Civil Liberties Union, and many other educators and authorities whose services were desired by our occupation authorities in Germany. When the matter came to light through enterprising journalists, the Army's top officials were as amazed as they were embarrassed.<sup>22</sup> No one sought to justify the absurdity of so characterizing an important public administrator who had been confirmed in his post by the Senate after a searching inquiry, a prominent teacher whose record as an anti-Communist was certainly no secret, and a civil libertarian who had but recently completed surveys in Japan, Korea, and Germany at the personal request of the American military governors of those countries.

In cases of this sort one can be made readily aware of the crudities and the misapprehensions that sometimes flow from reading a loyalty or security dossier. In cases that involve less conspicuous personalities, however, there is little likelihood that a lapse of intelligent judgment will ever be recognized. Most of the scientists for whom AEC clearance is sought are not great men whose position in the community is so assured that a denial of their clearance would be greeted with derisive hoots. They are, in the main, young men of competence but not yet of note. When clearance is withheld from one of them by an AEC security official's say-so after examination of the file, the decision may be as debatable as was the Army's. Unlike the Army's, it is not likely to attract public attention. Since it deals only with a "routine case," it will remain un-

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noticed, uncorrected, and unconscionably hurtful to all concerned.

An opportunity to challenge a judgment of rejection is a vital necessity if needless damage is to be avoided.<sup>23</sup> The AEC cannot afford to wreck and abandon any of the precious resources of scientific personnel available for its enterprises.

## IX

# Concluding Thoughts

NATIONAL, ideological, and economic rivalries have created a modern age in which crisis is commonplace rather than phenomenal. The hazards of an unquiet world cannot be ignored. Awareness of those hazards is reflected in the policies and procedures this book has described. They are intended as countermeasures against danger. One can have small quarrel with their basic purposes.

Not every one of the actions taken in the name of national safety has, however, been praiseworthy. Some have been superfluous. Some have produced too little advantage at too high cost. Some have been crudely developed.

On the whole our national policies about secrecy in scientific matters are intelligently formulated. But the policies seem too inflexibly applied. In part this inflexibility is a product of popular pressures. These pressures reflect misconceptions about the nature of scientific knowledge, coupled with a grossly mistaken belief that the intelligence which creates new understanding is largely if not exclusively concentrated in the United States. The effort to "keep scientific secrets" is explicable as a military expedient, but it can never be wholly successful. All history demonstrates that problems solved by the laboratories of one country ultimately yield to

research in others, so that permanent bottling up of "secrets" is a virtual impossibility.

Nevertheless it is feasible and sometimes desirable to restrain the dissemination of scientific learning for short periods of time. Public authorities in the United States do this today by "restricting" or "classifying" information, so that its unauthorized transmittal becomes not only a breach of professional trust but a crime against the state. The justification for this enforcement of secrecy is, of course, that possible enemies will thus be hampered in the development of their military or industrial resources. The trouble with insistence upon silence is that it is so likely to be overemphatic. Then its debatable virtues are quickly offset by heavy costs.

In the first place it is worth remembering that the progress that produces our "secrets" has always depended upon free exchange of scientific insights. We can expect to gain equally in the future from the work done elsewhere, unless we shut ourselves off from all the world lest the world learn from us. Then, too, it is well to recall the important ways in which scientific developments have implications unforeseen and unforeseeable. When German physicists demonstrated the fissionability of uranium, they were not thinking about atomic bombs. Similarly, a body of knowledge that has immediate military interest may have its most valuable, though entirely unpredictable, uses in quite unrelated settings. That is why "compartmentalization" of research has never been found efficient. The work done by one scientific investigator may have tremendous urgency for some wholly separate research project. When barriers are erected that block off one researcher from another, scientists are prevented from exchanging their learning in traditional ways and consequently everyone's rate of advance is slowed. Fragmentation of knowledge makes for inefficient training, and for imperfect utilization of available manpower. It discourages adequate application of work al-

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ready done. It causes unnecessary duplication of unfruitful research. It forestalls the constructively critical advice of fellow scientists. And all these consequences are felt outside as well as within the particular areas of science in which secrecy is sought to be maintained.

Further, the constant stress on security, with the attendant discouragement of scientific interchanges, is having an intangible but real psychological effect on American scientists. A prevalent hesitancy to communicate with one's professional colleagues flows from uncertainty as to whether one's words may unwittingly reveal "secrets." This hesitancy is marked not only among those who work directly in military science, but also among teachers where its consequences are especially hurtful to the nation. Because of artificial limitations upon what can be taught, students are all too often given imperfect training in subjects that must be mastered if the next scientific generation is to build successfully on the foundations now being laid.

Perhaps in the field of secrecy excessive weight has been given to short-run values. Suppressing knowledge of American discoveries and developments may, it is true, hamper our adversaries. But suppression retards our own progress, too. And since at the moment no other country can match America's trained manpower and material resources, failure to utilize fully what we learn handicaps us probably more than it does our competitors.

Even were this not so, the case for sternly enforced secrecy would be unclear. The issue cannot be properly evaluated if only the short-run aspects are considered. Today the world's great nations live tensely, but they live at least formally in peace. While the risk of war is tragically real, there is no certainty that an explosion will occur soon or ever. If every phase of our national existence were to be ordered as though we were already engaged in a total war, or would be so engaged by

tomorrow at the latest, the existence would be a grim one indeed. The welfare of the humans who populate the United States deserves advancement by instrumentalities other than munitions. There is real peril, in terms of the nation's future, in focussing solely upon the possible military implications of scientific or technological advances while ignoring their power for good in millions of civilian lives.

In sum, unless secrecy is to be permitted to choke advance, it must be cautiously invoked and then only as to matters of solely military significance. Information that has value for further general research or that can enhance the economic or physical well being of the world by being given peaceful applications ought not be buried. It ought not be buried even if we can see that somehow it might conceivably be pieced together with other bits of information to the benefit of a potential enemy in wartime. For Safety does not lie in Secrecy. It lies in the purposeful utilization, stimulation, and encouragement of the nation's intellectual resources.

Putting to one side the question of managing scientific data and turning for a moment to the management of scientific personnel, we find a somewhat parallel overstressing of concern about dangers and an understressing of concern about the humans whose services we need. Of course there is a proper place for precautionary measures. Sifting of some sort is entirely reasonable before one selects the staffs to whom important undertakings are entrusted. The only valid issue is whether protective actions have been so imperfectly designed that they jeopardize the democratic values they are meant to safeguard.

In this connection a differentiation must be made between the so-called personnel security cases and the so-called loyalty cases. The former involve scientists who must be "cleared" because their work requires them to have access to data within the zone of secrecy. Most of them are not employees of the

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United States, but are on the staffs of universities or of industrial corporations having contractual relations with a governmental agency. Until recently, on the other hand, the loyalty cases affected federal employees exclusively; of late the requirement of loyalty testing has been extended by Congressional demand to students whose sole connection with the Government is that they have been awarded fellowships to further their studies. The loyalty cases, unlike the personnel security cases, involve no problem of "security risk," because those whose loyalty is in question have no contact with secrets.

In both these categories the chief inquiry has been into the ideas or associations of the scientists involved. Few if any cases have involved conduct or, even, character. By procedures far from polished, unquestionably competent scientists have been summoned to answer neighborhood gossip, to explain isolated acts of kindness, to divorce themselves from the political attitudes of any of their relatives or other associates who happen to be "left wingers," and, in short, to establish their Americanism by proving that they are just like everybody else. Because some are unwilling to subject themselves or their families to inquisitions into their supposed opinions rather than their observable conduct, American scientific programs are often denied the services of high-spirited and badly needed men.

More important than the immediate loss of these talents, however, is the gradual acceptance of a political litmus paper test as a proper measurement of a scientist's qualifications, even when his work is wholly unrelated to confidential affairs. There is grave risk in judging men by their beliefs rather than by their behavior and their professional competence. In other countries there has been a discernible relationship between political eligibility tests and the decline of scientific achievement. There is no reason to suppose that, over a period of time, this country's experience would be any happier in that



respect. Without either minimizing the demands of national security or magnifying the perils of our present course one can soberly urge re-examination of the measures now enforced.

In summary terms, the best course would be to shift the emphasis from "loyalty" as an abstraction, and to place it instead on "security." Whenever a position is "sensitive" in the sense that an incumbent will gain access to confidential matters of military or international concern, the probity of the incumbent must be assured; and in this context an inquiry into attitudes and associations may conceivably have relevance. But in any event the number and scope of investigations into these matters should be limited to the fullest possible degree. For the balance—the great bulk of the cases in which searching probes are commonly being made into what a man thinks or reads or whom he knows, rather than into what he does—larger reliance should be placed on administrative supervision than on political detection.

The danger to freedom which inheres in the present emphases of the personnel programs is, in a sense, not immediate. Although literally millions of persons have been subjected to suitability tests in which complete orthodoxy has been a guarantor of success, they yet constitute a minor fraction of the whole population. Moreover, it would be a mistake to suppose that only the orthodox have passed the tests. The unorthodox are as a rule found to be acceptable, but only after a travail their more conventional brothers have been spared. Still, the very fact that there is this difference in experience may have a large social significance. The nation's identification of conformity as a prime ingredient of reliability must ultimately discourage the acquisition and discussion of new ideas.

Now, obviously enough, there is nothing intrinsically valuable in new and "radical" ideas. More often than not they fall into the oblivion they deserve because they are overborne

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by the solid facts of experience. Nevertheless the ferment of new ideas is a tonic in any community. Many a novelty which was scoffed at yesterday has managed to survive, to become the dogma of today. The generating forces by which minority sentiment of one kind or another has changed into majority acceptance have been the life forces of American democracy. This country has constantly been altered without being shattered. It has not suffered the violent changes which unyielding rigidities sooner or later produce. Instead, it has been preserved by evolutionary gradualism.

If protest and criticism had been stilled, social evolution would of course have been impossible. It is only through awareness of defects that improvements come to pass. So it is that the detractor, the dissenter, the reformer has played a centrally important role throughout our history. Time after time some "troublemaker's" dissatisfaction with things as they happened to be, has drawn attention to problems which might otherwise have become magnified through being too long ignored. His has been the opinion that bit by bit became public opinion until, more often than not, it was no longer recognizably his at all.

There is nothing novel about the fact that holders of dissident opinions are not as a rule the most popular figures on the American scene. What is new is that their unpopularity is in a sense governmentally recognized through the proceedings we have been discussing. This is no boon to the United States. Every society that stilled protest by compulsion or fear has suffered immobilization and ultimate decay. That is why it would be perilous to enforce a concept of loyalty which substantially equates it with approval of, or at least non-opposition to, the political, economic, and social practices which at any given moment are dominant in the country.

Neither the loyalty program nor present personnel security procedures were meant to embody any such view. In operation,

however, they inescapably do so to a considerable degree, for it is the dissidents rather than the conformers who get in trouble—and everyone except the most sturdily convinced or the psychotic runs away from trouble if he has a chance. The programs are candidly directed at Communists, who are regarded as the disciplined tools of a foreign power. But the inquiries the Government pursues go far wide of their mark. Effectively if unintentionally, the focus upon opinion as a measure of loyalty tends to discourage the holding of any opinion at all.

No scientist who has confined his interests to his laboratory, his flower garden, and his golf game has been touched by scandal. In the main those to whom the Government has brought distressing embarrassment were ones who became concerned, in a perfectly legal way, about racial discriminations or the Franco government or the importance of peaceful relations with the Soviet Union. Knowing this fact, many people now avoid the areas of nonprofessional debatability lest they jeopardize their professional futures.

If individuals were unrestrainedly to talk and organize together concerning the issues of the day, they might of course propagate many a badly mistaken idea. They might well be victimized, as others have been victimized, by persons who slyly play on honest emotions for political purposes. They might create unsettling and unnecessary doubts in place of a desirable certitude. But these are the normal wastages of the democratic process, the cost of encouraging free men to be boldly inquisitive concerning the problems of their times.

Those who devised the programs were not evilly disposed toward the great tradition of freedom in the United States. They may, however, have been ill-advised. "Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men," the Supreme Court said in an

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opinion by Mr. Justice Jackson in 1943. But efforts to discourage dissent have rarely succeeded. "As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever-increasing severity. . . . Those who begin coercive elimination of dissent soon find themselves exterminating dissenters." Our whole constitutional order was designed to avoid that end by preventing that beginning. The freedom to differ—which is assuredly among the sharpest of the distinctions between the United States and the totalitarian states—"is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." <sup>1</sup>

Does this observation skirt the real issue? Is it not arguable that the impact of our safety policies upon unpopular persuasions is merely incidental, while their real thrust is against international conspirators who masquerade as honest men? Of course that is the policies' intended direction. The difference between aim and effect is a consequence of inquiring into the beliefs and sympathies of vast numbers of individuals, on the wholly unsubstantiated theory that unsound opinion is the equivalent of unsound conduct, advocacy the equivalent of action. This is the defective core of the programs as now framed and administered.

In times like the present it is not comfortable to advise the alteration of programs that have as their declared goal the confusion of the nation's enemies. But in the field of science, as these chapters have sought to show, the loyalty and security programs have made only small and highly debatable advances toward the goal. Such as those advances were, they have been gained too dearly. It will require a high degree of personal and political courage for public figures to acknowledge the facts and now propose fundamentally remedial steps. Those who insist that shaky procedures and speculative findings, injustice

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and hardship, are not the tools with which to build security, are likely to be misrepresented and denounced. Courageous men have, however, acknowledged error in the past. Courageous men will do so in the future. They may say, as did a prominent Bostonian in 1692 when Massachusetts was in the grip of a panic of an intensity which dwarfs our current disquietude, "It is irksome and disagreeable to go back when a man's doing so is an implication that he has been walking in the wrong path; however, nothing is more honorable than, upon due conviction, to retract and undo (so far as may be) what has been amiss and irregular." <sup>2</sup>

# Appendix A

## *Declassification Policy*

THE following lists of topics indicate the general present content of “Unclassified Areas” (work that can be conducted and published without prior AEC clearance), “Declassifiable Information” (data that must be officially declassified before release for general publication), and “Classified Information” (restricted data that will not be cleared for general publication). The lists are merely indicative, rather than precise statements. They are drawn from the AEC’s *Fifth Semi-annual Report* (1949), pp. 108–109.

### *Unclassified Areas*

In general, item (a), the unclassified areas, covers the pure science related to atomic energy but not plant processes or specific experimental data of vital project importance. It includes:

- (1) Pure and applied mathematics, except that applying to specific classified projects.
- (2) Theoretical physics (except the theory of fission, of reactors, and of neutron diffusion, and weapon physics).
- (3) All physical (except nuclear) properties of all ele-

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ments of atomic number less than 90. Nuclear properties of most isotopes.

(4) The basic chemistry of all elements (except for the analytical procedures and technology of the production of fissionable materials) and the physical metallurgy of all elements of atomic number less than 83.

(5) Instrumentation, including circuits, counters, ionization and cloud chambers, neutron detectors (excluding fission chambers), electronuclear accelerators, such as cyclotrons, betatrons, Van de Graaff generators, etc.

(6) Medical and biological research and health studies (excluding work with elements of atomic number 90 and above).

(7) Chemistry and technology of fluorine compounds (except the specific applications in AEC installations).

### *Declassifiable Information*

Item (b), the declassifiable information which may be expected to be found in the general literature after official declassification, includes:

(1) Most reactor and neutron diffusion theory, except for those parts involving semiempirical methods or related to specific assemblies.

(2) Certain physical properties of isotopes of elements of atomic number greater than 90, and the nuclear properties (except for certain neutron and fission characteristics) of isotopes of elements greater than 90.

(3) Analytical procedures (except for production applications); most physical and process metallurgy of elements of atomic number greater than 90.

(4) Medical and biological research and health studies with elements of atomic number 90 and above.

(5) Certain properties of experimental reactors, such as: fluxes, neutron distribution not revealing lattices

and information regarding thermal columns, and the velocity spectrum in the thermal column.

*Classified Information*

The types of information covered by item (c) are clearly classified information:

(1) Information on the production of fissionable material—equipment used, technology, handling, and disposition—including the technology of production of feed materials—and specifically all quantitative and qualitative output data.

(2) The technology of production and power reactors, including design, operating characteristics, and working materials.

(3) Information dealing with nuclear weapons and their components, including production technology, handling, disposition, testing, and technical data relating to military employment.

(4) Certain information relating to the operations and facilities of the United States atomic energy program which may be of value to an enemy in sabotage planning, or in studies of the strategic vulnerability of the United States or defense potential of the United States with respect to atomic weapons.



# Appendix B

*AEC Criteria for Determining Eligibility  
for Personnel Security Clearance  
(January 5, 1949)*

THE United States Atomic Energy Commission has adopted basic criteria for the guidance of the responsible officers of the Commission in determining eligibility for personnel security clearance. These criteria are subject to continuing review, and may be revised from time to time in order to insure the most effective application of policies designed to maintain the security of the project in a manner consistent with traditional American concepts of justice and rights of citizenship.

The Commission is revising its hearing procedure entitled "Interim Procedure" for the review of cases of denial of security clearance and for the conduct of hearings for employees desiring such review. The Interim Procedure announced April 15, 1948, places considerable responsibility on the Managers of Operations and it is to provide uniform standards for their use that the Commission has adopted the criteria described herein.

Under the Atomic Energy Act of 1946, it is the responsibility

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of the Atomic Energy Commission to determine whether the common defense and security will be endangered by granting security clearance to individuals either employed by the Commission or permitted access to restricted data. As an administrative precaution, the Commission also requires that at certain locations there be a local investigation, or check on individuals employed by contractors on work not involving access to restricted data (Commission authorization to be so employed is termed "security approval").

Under the Act the Federal Bureau of Investigation has the responsibility for making an investigation and report to the Commission on the character, associations and loyalty of such individuals. In determining any individual's eligibility for security clearance other information available to the Commission should also be considered, such as whether the individual will have direct access to restricted data, or work in proximity to exclusion areas, his past association with the atomic energy program, and the nature of the job he is expected to perform. The facts of each case must be carefully weighed and determination made in the light of all the information presented whether favorable or unfavorable. The judgment of responsible persons as to the integrity of the individuals should be considered. The decision as to security clearance is an over-all, common-sense judgment, made after consideration of all the relevant information, as to whether or not there is risk that the granting of security clearance would endanger the national defense or security. If it is determined that the common defense and national security will not be endangered, security clearance will be granted; otherwise, security clearance will be denied.

Cases must be carefully weighed in the light of all the information, and a determination must be reached which gives due recognition to the favorable as well as unfavorable information concerning the individual and which balances the

cost to the program of not having his services against any possible risks involved. In making such practical determination, the mature viewpoint and responsible judgment of Commission staff members, and of the contractor concerned are available for consideration by the Manager of Operations.

To assist in making these determinations, on the basis of all the information in a particular case, there are set forth below a number of specific types of derogatory information. The list is not exhaustive, but it contains the principal types of derogatory information which indicate a security risk. It will be observed that the criteria are divided into two groups, Category (A) and Category (B).

Category (A) includes those classes of derogatory information which establish a presumption of security risk. In cases falling under this category, the Manager of Operations has the alternative of denying clearance or referring the case to the Director of Security in Washington.

Category (B) includes those classes of derogatory information where the extent of activities, the attitudes or convictions of the individual must be weighed in determining whether a presumption of risk exists. In these cases the Manager of Operations may grant or deny clearances; or he may refer such cases to the Director of Security in Washington.

#### *CATEGORY (A)*

Category (A) includes those cases in which there are grounds sufficient to establish a reasonable belief that the individual or his spouse has:

1. Committed or attempted to commit, or aided or abetted another who committed or attempted to commit any act of sabotage, espionage, treason or sedition;
2. Established an association with espionage agents of a foreign nation; with individuals reliably reported as suspected of espionage; with representatives of foreign nations whose in-

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terests may be inimical to the interests of the United States. (Ordinarily this would not include chance or casual meetings; nor contacts limited to normal business or official relations.)

3. Held membership in or joined any organization which has been declared to be subversive by the Attorney General, provided the individual did not withdraw from such membership when the organization was so identified, or otherwise establish his rejection of its subversive aims; or, prior to the declaration by the Attorney General, participated in the activities of such an organization in a capacity where he should reasonably have had knowledge as to the subversive aims or purposes of the organization;

4. Publicly or privately advocated revolution by force or violence to alter the constitutional form of Government of the United States.

Category (A) also includes those cases in which there are grounds sufficient to establish a reasonable belief that the individual has:

5. Deliberately omitted significant information from or falsified a Personnel Security Questionnaire or Personal History Statement. In many cases, it may be fair to conclude that such omission or falsification was deliberate if the information omitted or misrepresented is unfavorable to the individual;

6. Violated or disregarded security regulations to a degree which would endanger the common defense or national security;

7. Been adjudged insane, been legally committed to an insane asylum, or treated for serious mental or neurological disorder, without evidence of cure;

8. Been convicted of felonies indicating habitual criminal tendencies;

9. Been or who is addicted to the use of alcohol or drugs habitually and to excess, without adequate evidence of rehabilitation.

*CATEGORY (B)*

Category (B) includes those cases in which there are grounds sufficient to establish a reasonable belief that with respect to the individual or his spouse there is:

1. Sympathetic interest in totalitarian, fascist, communist, or other subversive political ideologies;
2. A sympathetic association established with members of the Communist Party; or with leading members of any organization which has been declared to be subversive by the Attorney General. (Ordinarily this would not include chance or casual meetings, nor contacts limited to normal business or official relations.)
3. Identification with an organization established as a front for otherwise subversive groups or interests when the personal views of the individual are sympathetic to or coincide with subversive "lines";
4. Identification with an organization known to be infiltrated with members of subversive groups when there is also information as to other activities of the individual which establishes the probability that he may be a part of or sympathetic to the infiltrating element, or when he has personal views which are sympathetic to or coincide with subversive "lines";
5. Residence of the individual's spouse, parent(s), brother(s), sister(s), or offspring in a nation whose interests may be inimical to the interests of the United States, or in satellites or occupied areas thereof, when the personal views or activities of the individual subject of investigation are sympathetic to or coincide with subversive "lines" (to be evaluated in the light of the risk that pressure applied through such close

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relatives could force the individual to reveal sensitive information or perform an act of sabotage);

6. Close continuing association with individuals (friends, relatives or other associates) who have subversive interests and associations as defined in any of the foregoing types of derogatory information. A close continuing association may be deemed to exist if:

- (1) Subject lives at the same premises with such individual;
- (2) Subject visits such individual frequently;
- (3) Subject communicates frequently with such individual by any means.

7. Association where the individuals have enjoyed a very close, continuing association such as is described above for some period of time, and then have been separated by distance; provided the circumstances indicate that a renewal of contact is probable;

Category (B) also includes those cases in which there are grounds sufficient to establish a reasonable belief that with respect to the individual there is:

8. Conscientious objection to service in the Armed Forces during time of war, when such objections cannot be clearly shown to be due to religious convictions;

9. Manifest tendencies demonstrating unreliability or inability to keep important matters confidential; wilful or gross carelessness in revealing or disclosing to any unauthorized person restricted data or other classified matter pertaining either to projects of the Atomic Energy Commission or of any other governmental agency; abuse of trust, dishonesty; or homosexuality.

While security clearance would ordinarily be denied in each of the foregoing categories (A), and (B), security approval,

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as distinguished from security clearance, might be warranted in those types of derogatory information mentioned under Category (B) above.

The categories outlined hereinabove contain the criteria which will be applied in determining whether information disclosed in investigation reports shall be regarded as substantially derogatory. Determination that there is such information in the case of an individual establishes doubt as to his eligibility for security clearance.

The criteria outlined hereinabove are intended to serve as aids to the Manager of Operations in resolving his responsibility in the determination of an individual's eligibility for security clearance. While there must necessarily be an adherence to such criteria, the Manager of Operations is not limited thereto, nor precluded in exercising his judgment that information or facts in a case under his cognizance are derogatory although at variance with, or outside the scope of the stated categories. The Manager of Operations upon whom the responsibility rests for the granting or denial of security clearance, and for recommendation in cases referred to the Director of Security, should bear in mind at all times, that his action must be consistent with the common defense and national security.

# Notes

## Chapter I

1. Dean Ridenour's comment on secrets was made in *Hearings before the Senate Special Committee on Atomic Energy*, 79th Cong., 1st Sess. (1945), p. 537; also printed under title "Secrecy in Science," 1 *Bulletin of the Atomic Scientists*, No. 6, p. 3 (1946).

2. Senator McMahon stated the problem of secrecy in relation to Congressional duties in an address before the Economic Club of Detroit, January 31, 1949.

3. The small number of those who know about atomic production figures was brought out by former AEC Chairman Lilienthal in *Hearings before the Joint Congressional Committee on Atomic Energy*, 81st Cong., 1st Sess. (February 2, 1949), p. 6.

4. The prevailing attitude toward discussion of atomic energy problems is well described in Anne W. Marks, "Washington Notes," 5 *Bulletin of the Atomic Scientists* 158 (1949).

5. J. R. Newman and B. S. Miller, in *The Control of Atomic Energy* (McGraw-Hill, 1948), pp. 179-180, recapitulate the testimony of leading American scientists concerning our past dependence on basic research conducted in other countries.

6. The comment on the foreign origin of leading American scientists is by S. A. Goudsmit, *ALSOS* (Henry Schuman, 1947), pp. 238-239.

7. The comment on the resonant cavity magnetron appears in James Phinney Baxter III, *Scientists against Time* (Little, Brown & Co., 1946), pp. 141-142. Additional discussion of important contributions to us by British and Canadian scientists appears in the same volume at pp. 119 ff. The contributions of British scientists to war researches that are sometimes regarded in this country as "100 percent American" are well summarized by J. G. Crowther and R. Whiddington, *Science at War* (Philosophical Library, 1948). Incidentally, Karl T. Compton, after acknowledging that the English magnetron tube made our radar possible, has written that in postwar Japan he "saw an essentially similar magnetron tube which had been described in publication by the Japanese even



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earlier" than the British discovery. Surely this is a striking illustration of the international distribution of scientific talent. K. T. Compton, "Science Fears an Iron Curtain," 36 *Nation's Business*, No. 6, pp. 47, 60 (1948).

8. In connection with German attitudes toward scientific supremacy, it has recently been said by Frederick Seitz, professor of physics at the University of Illinois, "In 1940 the Germans possessed air supremacy on the basis of developments which had taken place five years earlier. At that time they were completely confident that their accumulation of talents was so unique that it would be essentially impossible for any other nation to match them in the near future, let alone outstrip them. Yet that is precisely what the United States did in a remarkably short time." F. Seitz, "The Danger Ahead," 5 *Bulletin of the Atomic Scientists* 266 (1949).

9. The discussion of coincidence in science draws in part upon a statement of Dean Ridenour in *Hearings before the Senate Special Committee on Atomic Energy*, 79th Cong., 1st Sess. (1945), pp. 537-538; also in "Secrecy in Science," 1 *Bulletin of the Atomic Scientists*, No. 6, p. 3 (1946). Further illustrative material may be found in Lancelot Law Whyte, "Simultaneous Discovery," 200 *Harper's Magazine* 23 (February 1950).

10. Dean Ridenour, in the statement cited in note 9 above, asserts that Veksler had suggested an accelerator of the synchrotron type fully two years before it was developed in this country. He adds: "The synchrotron involves a magnet, whose design is straightforward but complicated. McMillan is presently (1945) building a synchrotron, on funds supplied by the Manhattan District [the Army-administered atomic energy project which was the precursor of the Atomic Energy Commission]. When a physicist at M.I.T., who is also planning the construction of a machine of this type, asked McMillan for his magnet design, he was told that the Army would not permit the release of information on the magnet. Whom are we attempting to handicap by such restrictions? Surely not the Russians; they not only invented the synchrotron, they did it earlier than we did."

11. For fuller discussion of the isolation of bacterial toxin, see Theodor Rosebury, *Peace or Pestilence* (Whittlesey House, 1949), pp. 77-78, 188; the papers in question are C. Lamanna, O. E. McElroy, and H. W. Eklund, "The Purification and Crystallization of *Clostridium botulinum* Type A Toxin," 103 *Science* 613 (1946), and L. Pillemer, R. Wittler, and D. B. Grossberg, "The Isolation and Crystallization of Tetanal Toxin," 103 *Science* 615 (1946).

12. Discussion of Russian rebuffs of American overtures may be found in *Cultural Relations between the United States and the Soviet Union*, U.S. Department of State Publication, 3480 (April 1949), especially at pp. 2, 5, 10, 16, 17, 18-19.

13. The summaries of scientists' conflicting opinions concerning secrecy policy are derived from *Administration for Research* (Vol. III of *Science and Public Policy, A Report to the President*) by John R. Steelman, chairman, the President's Scientific Research Board (October 4, 1947), pp. 34-37.

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14. The voluntary imposition of publication restraints in connection with prewar nuclear energy research is well described by H. H. Goldsmith, "The Literature of Atomic Energy of the Past Decade," 68 *Scientific Monthly* 291 (1949).

15. The voluntarily suppressed report on germ warfare is entitled "Bacterial Warfare: A Critical Analysis of the Available Agents, Their Possible Military Applications, and the Means for Protection against Them," by Theodor Rosebury, E. A. Kabat, and M. H. Boldt. It was submitted to the National Research Council in the fore part of 1942 but was not published until May 1947, when it appeared in 56 *Journal of Immunology* 7.

16. The prohibitions against communicating "restricted data" may possibly apply (and penalties may possibly attach) even to communication of relevant data that have been acquired through independent research and wholly without relationship to the official operations of the United States in the field of atomic energy. See J. R. Newman and B. S. Miller, *The Control of Atomic Energy* (McGraw-Hill, 1948), pp. 216 ff. Compare H. S. Marks, "The Atomic Energy Act: Public Administration without Public Debate," 15 *University of Chicago Law Review* 839, 845 (1948).

17. Dr. Oppenheimer commented on radioisotopes in the hearing before the Joint Committee on Atomic Energy, *Investigation into the United States Atomic Energy Project*, 81st Cong., 1st Sess. (June 13, 1949), p. 284.

18. The problems of the AEC's isotope program are discussed in the report of the Joint Congressional Committee on Atomic Energy, *Investigation into the United States Atomic Energy Commission*, 81st Cong., 1st Sess., Senate Rep. No. 1169 (1949), pp. 42-47.

19. The figures on AEC classification decisions are derived from statistics in Appendix 6 of the AEC's *Fifth Semiannual Report* (1949), p. 180.

20. Wartime classification policy as to medical research is described in Irvin Stewart, *Organizing Scientific Research for War: The Administrative History of the Office of Scientific Research and Development* (Little, Brown & Co., 1948), pp. 290-291.

21. The comment on failure quickly to declassify medical research is in L. N. Ridenour, "Secrecy in Science," 1 *Bulletin of the Atomic Scientists*, No. 6, pp. 3, 8 (1946).

22. The AEC's *Sixth Semiannual Report* (July 1949) is devoted largely to a discussion of the Commission's work in biology and medicine. A sampling of the AEC's declassification work, covering January 1950, shows that in that month 69 reports of work in atomic energy laboratories were abstracted and made available upon request. These reports fell into five classifications: Biology and Medicine, 16 reports (226 pages); Chemistry, 23 reports (680 pages); Engineering, 1 report (12 pages); Mineralogy, Metallurgy, and Ceramics, 5 reports (56 pages); and Physics, 24 reports (490 pages). See AEC Release No. 267, March 12, 1950.

23. The quotation from the *Report to the U.S. Atomic Energy Commission*

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by the Industrial Advisory Group appears in 71 *Mechanical Engineering* 205, 208 (1949), and in 5 *Bulletin of the Atomic Scientists* 51, 53 (1949). Impressed by this report, the AEC appointed a working party of representatives of technical and engineering societies and the business press to commence in early 1950 an examination of technological information in AEC files bearing upon metallurgy, with a view to determining its possible value to American industry. The study was planned as a trial program to determine how much material of special interest to industry is still classified but potentially declassifiable. See AEC Release No. 239, December 28, 1949.

24. A summary statement of the areas that the AEC now denominates as "Unclassified," "Declassifiable," and "Classified" appears in Appendix A, at p. 235 of this volume.

25. *Report to the U.S. Atomic Energy Commission* by the Industrial Advisory Group, in 71 *Mechanical Engineering* 205, 207, 212 (March 1949).

26. The work of the technological working party set up by the AEC in response to the Industrial Advisory Group's recommendation is described in AEC Release No. 281, April 25, 1950.

The listing of patents available for licensing on a nonexclusive and royalty-free basis is reflected in AEC Releases Nos. 261, 279, 283, and 294, Feb. 24, April 21, May 8, June 27, 1950. As of July 1, 1950, a total of 138 Commission-held patents had been released; and more than half of these had been listed within the immediately preceding five months. In addition the Commission occasionally made separate announcements of developments of commercial or industrial interest, e.g., AEC Release No. 274, March 29, 1950, announcing the development of a new inexpensive paperlike filter material designed originally for filtering fine radioactive particles from contaminated wastes, but apparently useful also in many types of industrial filtering.

The release of data about low-power reactors, electromagnetic separation, and other wartime processes now more or less obsolete, had not officially been announced as this book went to press. It was foreshadowed, however, in utterances by AEC members (e.g., by Commissioner Gordon Dean in an address before the Blue Pencil Club of Ohio, Columbus, Ohio, May 28, 1950) and in press dispatches that were informally confirmed to me by AEC officials. See Anthony Leviero's reports to the *New York Times*, June 15, 1950, p. 1, col. 8, and June 25, 1950, p. 10E, col. 1.

27. The statutory base of classification of documents by the several departments is to be found in 5 U.S.C. § 22.

28. See *Investigation of Charges that Proposed Security Regulation under Executive Order 9835 Will Limit Free Speech and a Free Press*, Hearings before a Subcommittee of the House Committee on Expenditures in the Executive Departments, 80th Cong., 1st Sess. (1947), pp. 4, 13; and see also Fritz Morstein Marx, "Effects of International Tension on Liberty under Law," 48 *Columbia Law Review* 555, 560 *et seq.* (1948).

29. "Document," as that term is used by the Army, includes, among other

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things, "printed, mimeographed, typed, photostated, and written matter of all kinds; . . . correspondence and plans relating to research and development projects, and all other similar matter." 10 CFR (Cum. Supp.) 5.1(b). The Navy's regulations are similarly inclusive, though they make no specific reference to research and development projects. Navy Regs. (Rev. 1944), art. 76(1)(a).

30. The quoted expression in favor of moderate classification is found in Department of the Army, 10 CFR 5.1(b).

31. *Administration for Research*, note 13 above, p. 36. See also *National Security and Our Individual Freedom, A Statement on National Policy* by the Research and Policy Committee of the Committee for Economic Development (December 1949), p. 23: "More important than the letter of a regulation is the spirit in which it is administered. At present, there is one-sided emphasis upon the importance of secrecy in the indoctrination of officers both military and non-military. A government official is rarely commended for disclosure. He may, however, be reprimanded or otherwise disciplined for 'under-classification,' that is, for failure to make material confidential or secret."

32. Columbia's difficulty in its copper chloride study is described in W. A. Noyes, Jr. (ed.), *Chemistry, Science in World War II* (Little, Brown & Co., 1948), p. 433.

33. The Navy's regulations furnish the following summary of disclosure policy, illustrative of the effective narrowing of the range of transmissibility of classified information:

"Information as to the existence, nature or whereabouts of 'secret' matter shall, except as specifically authorized by the Chief of Naval Operations, be disclosed only to those persons in the Government service whose official duties require such knowledge. 'Confidential' matter may be disclosed to persons in the Government service who must be informed, and to other persons therein when, under special circumstances, such disclosure is to the interest of the Navy. 'Restricted' matter may be disclosed to persons of discretion in the Government service when it appears to be in the public interest.

"Information as to the existence, nature, or whereabouts of 'secret' matter, shall, except as authorized by the Chief of Naval Operations, be disclosed only to persons not in the Government service who under conditions of absolute necessity must be informed. . . ." U.S. Naval Regs. 75½(4)(b) and (c).

The Army regulations provide more broadly that classified information may be discussed with governmental personnel and private individuals who have a legitimate interest in it, though there is no suggestion of what constitutes a legitimate interest or who is to determine whether it exists. 10 CFR (1944) 105.2(b).

34. The Army Contract provision appears in CFR (1947 Supp.) Title 10, 805.401-2; the Navy clause, having similar purpose, appears in Naval Procurement Directives, March 16, 1944, Enclosure C, 11261 C.

35. Army and Navy regulations bearing upon the declassification process may be found in 10 CFR 5.1(b)(7); U.S. Naval Regs. 75½(2)(b) and 75½(2)(c).

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36. The persistence of no longer defensible classifications is discussed by Stewart, note 20 above, p. 252.

37. The relevant orders about publishing information captured from the enemy are Executive Orders No. 9568, June 8, 1945, and No. 9604, August 25, 1945, CFR Supp. 1945, Vol. 3, pp. 78, 108.

38. At the end of June 1950, however, the Air Force through its School of Aviation Medicine released two volumes, 1,300 pages, devoted to *German Aviation Medicine, World War II*. These volumes reflected German researches during the years 1939-1945, and described equipment and data on "researches of general interest in physiology, biophysics, psychology and pathology." *New York Times*, June 27, 1950, p. 53, col. 6.

39. The fate of the "Summary Technical Reports" is discussed by Stewart, note 20 above, p. 291. On May 22, 1950, a portion of one volume of the "Summary Technical Reports" was declassified and was then published by the AEC as a *Handbook on Aerosols* because the wartime research on the behavior of dusts, fumes, and mists had an immediate bearing on preventing atmospheric contamination by radioactivity. AEC Release No. 285.

### Chapter II

1. Vannevar Bush, *Modern Arms and Free Men* (published by Simon & Schuster; copyright, 1949, by The Trustees of Vannevar Bush Trust), p. 101.

2. A description of wartime research in connection with the nitrogen mustards appears in W. A. Noyes, Jr. (ed.), *Chemistry, Science in World War II* (Little, Brown & Co., 1948), pp. 166-168, 243, 247, 250, 251, 256-258.

3. The BAL story is pieced together from the following sources: R. A. Peters, L. A. Stocken, and R. H. S. Thompson, "British Anti-Lewisite (BAL)," 156 *Nature* 616 (1945); H. Eagle and H. J. Magnuson, "Systematic Treatment of 227 Cases of Arsenic Poisoning," 30 *American Journal of Syphilis, Gonorrhea, and Venereal Diseases* 420 (1946); W. T. Longcope and J. A. Leutscher, Jr., "Treatment of Acute Mercury Poisoning by BAL," 25 *Journal of Clinical Investigation* 557 (1946); C. Ragan and R. H. Boots, "Treatment of Gold Dermatitis with BAL," 133 *American Medical Association Journal* 752 (1947).

4. Dr. Compton's remarks on the retarding effects of secrecy appear in *Hearings before Senate Committee on Military Affairs on S. 1297*, 79th Cong., 1st Sess. (1945), p. 625.

5. The AEC commented on its compartmentalization policy in its *Fifth Semi-annual Report to Congress* (published by the Government Printing Office as *Atomic Energy Development, 1947-1948*), pp. 83, 84.

6. Compartmentalization in radar research is discussed in L. N. Ridenour, "Secrecy in Science," 1 *Bulletin of the Atomic Scientists*, No. 6, p. 3 (1946); also in *Hearings before Senate Special Committee on Atomic Energy*, 79th Cong., 1st Sess. (1945), pp. 538, 539, 542. And compare E. U. Condon, "Science

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and Security," 107 *Science* 659, 662 (1948): "With the microwave field at the Radiation Laboratory in Cambridge, Massachusetts, there was no compartmentalization whatever . . . More than that, there were frequent secret conferences on special topics, attended by hundreds of staff members. People in all parts of the subject went to a great deal of trouble to keep those in other parts fully informed. I believe that a great deal was gained by this lack of compartmentalization in the field of microwave radar." Dr. Condon adds the observation that in the atomic bomb project, compartmentalization prevented the acquisition of data that were badly needed by project workers, but that the British scientists (who were not hampered by compartmentalization rules) were able to supply some of the desired information; he expresses the belief that "we would have had a much harder time with the atomic bomb project had our British friends not short-circuited compartmentalization for us."

7. Naval fire-control difficulties are discussed in Joseph C. Boyce (ed.), *New Weapons for Air Warfare*, Science in World War II (Little, Brown & Co., 1948), p. 95.

8. Dr. Manley's comments on compartmentalization appear in his article, "The Los Alamos Scientific Laboratory," 5 *Bulletin of the Atomic Scientists* 101, 105 (1949).

T. R. Hogness, director of the Institute of Radiobiology and Biophysics, University of Chicago, in an address on "Security, Secrecy, and the Atom Bomb," delivered before the American Veterans Committee on November 25, 1949, attributes the Los Alamos policy to its former director, J. R. Oppenheimer. Oppenheimer "argued that the design of a bomb was too great a responsibility for just a few men. He needed the ideas of many, and many of the best ideas came from unexpected sources. Had the hierarchic attitude been adopted at Los Alamos, we might not have had the bomb."

9. Mervin J. Kelly, executive vice-president of the Bell Laboratories, served as an AEC consultant in the early summer of 1949. He later testified before a Congressional committee that "within the remainder of the atomic energy activities area, by that I mean Oak Ridge, Argonne, Hanford, I found good liaison and good cross-connections of knowledge between the programs. Actually, the week after I left there was an internal scientific meeting at Los Alamos of the scientists from these different laboratories, all of them being cleared, and, therefore, they could talk about the basic physics that was fundamental to this job. They were having a meeting much like the physical society meetings, except on classified material, and the contacts on matters of business on the technical things that flow between these organizations were in very good standing and being well done." *Investigation into the United States Atomic Energy Project*, Hearing before the Joint Committee on Atomic Energy, 81st Cong., 1st Sess. (July 7, 1949), p. 812.

It is only proper to add, nevertheless, that the scientists at other installations have steadily maintained, contrary to Dr. Kelly's impression, that they do not receive adequate information concerning the work done at Los Alamos. The

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meeting to which Dr. Kelly refers is apparently one of the semiannual "information meetings" at which scientists from the various installations discuss restricted data, not including, however, data that have a bearing on weapons, a rather large exclusion.

10. The comment on the educational values of a research failure comes from E. H. Land, president and research director of the Polaroid Corporation, in *The Future of Industrial Research* (Standard Oil Co., 1945), p. 84.

11. Sir Alexander Fleming commented on unsuccessful research in his Dedication Address, Oklahoma Medical Research Foundation, July 3, 1949.

12. *Report to the U.S. Atomic Energy Commission* by the Industrial Advisory Group, in 71 *Mechanical Engineering* 205, 208-209 (1949); also in 5 *Bulletin of the Atomic Scientists* 51, 54 (1949).

Subsequently, and perhaps influenced by the above-cited report, the AEC has somewhat relaxed its restraints upon industrial information. Thus on October 21, 1949, at the sessions of the National Metal Congress and Exposition in Cleveland a number of technical papers were read by AEC researchers, giving to the assembled manufacturing experts a considerable amount of previously unavailable research information on alloys and metals, including uranium, thorium, and beryllium.

13. The comment on scientific interrelations in reactor design is by F. H. Spedding, "Chemical Aspects of the Atomic Energy Problem," 5 *Bulletin of the Atomic Scientists* 48, 49 (1949).

14. *The Report of the Committee on the National Security Organization, Commission on Organization of the Executive Branch of the Government* (1948), III, 151, emphasizes that while it is important to save money by avoiding unnecessary duplication of research, the more important thing to the nation is the risk that we have not adequately developed "skill in making and utilizing scientific advances."

15. Dr. Lawrence S. Kubie's comments on German research habits may be found in *Hearings before Senate Committee on Military Affairs on S. 1297*, 79th Cong., 1st Sess. (1945), p. 618.

16. The quoted conclusion about the costs of compartmentalization is from John E. Burchard (ed.), *Rockets, Guns and Targets*, Science in World War II (Little, Brown & Co., 1948), p. 322.

17. Irvin Stewart, *Organizing Scientific Research for War: The Administrative History of the Office of Scientific Research and Development* (Little, Brown & Co., 1948), p. 28.

18. *Ibid.*, p. 29. For a similar explanation along with suggestive discussion of the deadening consequences of compartmentalization, see Joseph C. Boyce, note 7 above, pp. 98-100.

19. The Japanese military's attitude toward scientists is discussed in James Phinney Baxter III, *Scientists against Time* (Little, Brown & Co., 1946), p. 10: "Both services distrusted the civilian scientists, especially if they had been educated in America, England, or even Germany. They consequently refused to

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give them sufficient information, and hampered research by security regulations pushed to the limits of fantasy. . . ."

The head of the Board of Technology of the Japanese War Cabinet is quoted as having told Karl T. Compton, former chairman of the Research and Development Board of the National Military Establishment, that "There was no cooperation between the army and the navy. A general would rather lose the war than shake hands with an admiral. And as for our scientists, we were treated by the military almost as if we were foreigners." Address by Dr. Compton, "Science and National Strength: Some Lessons from World War II," delivered at the Aeroballistics Facility, Naval Ordnance Laboratory, June 27, 1949.

20. Boyce, note 7 above, p. 275.

21. For a suggestion that the AEC publicists "sometimes wrap newsworthy activities in the same fog of misunderstanding they are supposedly on hand to dispel," see Layton Lewis, "The Fifth Report: A Press View," 5 *Bulletin of the Atomic Scientists* 93 (1949).

22. The episode of the concrete structures and the bombs is discussed in Burchard, note 16 above, p. 318.

T. R. Hogness, director of the Institute of Radiobiology and Biophysics of the University of Chicago, asserted in an address before the American Veterans Committee on November 25, 1949: "Secrecy can also be used as a cloak to cover inefficiency. Between World Wars I and II some of the branches of the Army were operated very inefficiently. It is sufficient to remind you that effective tanks were developed by our country only when the last war was well along. But who knew about this inefficiency other than the departments involved?"

23. The Industrial Advisory Group was appointed in October 1947; its report is dated December 15, 1948. The text of the report is printed in full in 71 *Mechanical Engineering* 205 (1949) and in part in 5 *Bulletin of the Atomic Scientists* 51 (1949).

24. The survey of scientists' opinions was reported at full length in *Administration for Research* (Vol. III of *Science and Public Policy*), Report of the President's Scientific Research Board (October 4, 1947), Appendix III, pp. 205-252.

25. See, e.g., *Taking a Chance*, AEC Security Pamphlet No. 2 (1948), a widely circulated leaflet that grimly tells the story of a man who, after working briefly in one of the secret laboratories, had written a monograph which might have "revealed to an inquiring mind secrets that might be of value to another nation." "Possibly," the pamphleteer adds, "he reasoned that because the authorities at Oak Ridge had removed all secret data from his notebooks he was completely free to use in any way everything that remained. He forgot, of course, that they had not excised his memory and that everything he wrote might be flavored by that memory."

Samuel K. Allison, wartime director of the "Metallurgical Laboratory" of the Manhattan Project, has expressed the belief that "the existence of an inner core of secret facts vitiates whole areas of scientific inquiry and technological



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development extending far from the actually classified data. No one can remember from day to day just what is classified, and to be safe, avoids discussing whole fields of research and technology." "The State of Physics; or the Perils of Being Important," 6 *Bulletin of the Atomic Scientists* 2, 4 (1950).

The AEC itself has reinforced the disinclination of scientists to discuss wholly nonsecret matters. On March 14, 1950, it peremptorily directed all its contractors (including universities) to tell their employees to avoid discussion of all technical information bearing on thermonuclear weapons (hydrogen bombs), whether classified or not. Several days later this direction was somewhat "toned down" and became merely a request rather than an abrupt command. See a review of this matter in *New York Times*, March 30, 1950, p. 1, col. 6. More recently Commissioner H. D. Smyth reportedly expressed the opinion that it "makes a great deal of difference who is giving out information" and that men who have had access to classified data should "realize that they themselves cannot always make a sound judgment on the significance of what they have written, however well acquainted they are with certain phases of the project." *New York Times*, April 29, 1950, p. 17, col. 8.

26. The lament about the lack of allure in a military-scientific career appears in *Scientists in Uniform, World War II, A Report to the Deputy Director for Research and Development, Logistics Division, General Staff, U.S. Army* (1948), p. 31.

27. A recent poll of scientists, conducted by the National Opinion Research Center, University of Denver, revealed that "among scientists employed by the Federal Government, only 37 percent felt that the greatest career satisfaction could be obtained in the Government; only 5 percent and 1 percent respectively of industrial and university scientists agreed with them. Of all groups combined, only 11 percent preferred a Government career in terms of satisfaction, while 31 percent preferred industry and 48 percent the university environment. The remaining 10 percent preferred consulting work or some other activity." *Administration for Research* (Vol. III of *Science and Public Policy*), A Report to the President by John R. Steelman, Chairman, the President's Scientific Research Board (October 4, 1947), Appendix III, p. 205.

28. Dr. Compton is quoted by John E. Pfeiffer in "Top Man in American Science," *N.Y. Times Magazine*, Oct. 17, 1948, p. 68.

29. As an example of plain silliness the following United Press dispatch from Washington, dated September 6 and appearing in the *New York Times* of September 7, 1948, p. 20, col. 6, warrants preservation:

"The House Committee on Un-American Activities is trying to find out why a group of scientists has chosen a part of Africa, rich in uranium, to set up a \$9,000,000 astronomical laboratory.

"Representative John McDowell, Republican, of Pennsylvania, a committee member, stated that an investigator for the House Group was looking into a venture involving American, Belgian, French and Dutch scientific interests.

"We are not undertaking this check-up as an attack on science, but in these

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days it is essential to learn such things as the source of the financing and who is behind the whole business,' Mr. McDowell said."

The next day the Belgian Colonial Ministry rather testily announced that two Belgian astronomers, Raymond Courtrez and Lucien Boss, were in the Belgian Congo to find an emplacement for an observatory, sponsored by the official institute for scientific research in Central Africa. "These activities are purely scientific in character and have nothing to do with the Belgian Congo uranium. They do not justify any investigation by the Un-American Activities Committee of the United States Congress."

The House Committee's interest stemmed from the fact that the internationally famed Harvard astronomer, Professor Harlow Shapley, was among the directors of the research group; he is not, however, among those who are dearly beloved by the House Committee. There is no way of telling whether the Committee's inability to differentiate between, on the one hand, the fissionable isotopes of uranium and, on the other, large natural deposits of wholly nonexplosive uranium ore is attributable to deliberate distortion or merely to dismal lack of knowledge.

30. Discussion of the unattractiveness of the government's research program appears in *Administration for Research* (Vol. III of *Science and Public Policy*), A Report to the President by John R. Steelman, Chairman, the President's Scientific Research Board (October 4, 1947), p. 162.

31. *Ibid.*, p. 163. The Steelman report notes in passing that "some contributions of civilian scientists in the Office of Scientific Research and Development were withheld from the public during the war for security reasons. They were, however, revealed at the end of the war with a lion's share of the credit to the military establishments rather than to the scientists actually responsible for the work." Naturally enough the scientists did not join in the applause. *Ibid.*, p. 165.

32. The AEC's comment on the denial of opportunity to publish researches appears in its *Fifth Semiannual Report to Congress (Atomic Energy Development 1947-1948)*, p. 107 (1948).

33. I. I. Rabi, "Publication Is the Chief Responsibility," 4 *Bulletin of the Atomic Scientists* 73 (1948).

34. On the subject of withholding opportunity to acquire prestige, compare the following comment in the Steelman report, cited in note 30 above, p. 164: "A major factor in the professional recognition of a scientist is his attendance and presentation of papers at meetings of professional scientific societies. Both the scientist and the Government gain prestige and recognition by adequate representation at such meetings. Despite this fact, attendance at meetings is limited by lack of travel funds in most scientific units of the Government . . . It appears to be penny-wise and pound-foolish to pay a man several thousand dollars a year for his special scientific competence and then deny him the means to maintain that competence at a high level for the Government's benefit.

"Not only is this policy uneconomic as it applies to scientists, but it fails to

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recognize that progress in science depends in the final analysis upon intellectual stimulation. As J. R. Oppenheimer stated before a congressional committee in October 1945, " \* \* \* the gossip of scientists who get together is the lifeblood of physics, and I think it must be in all other branches of science \* \* \*."

For recognition of the publication problem as it affects Los Alamos, see testimony of Dr. Norris E. Bradbury, director of the laboratory there, in *Investigation into the United States Atomic Energy Project*, Hearings before the Joint Committee on Atomic Energy, 81st Cong., 1st Sess. (July 7, 1949), pp. 820-822.

The Joint Congressional Committee on Atomic Energy recently reported that "The adverse effect of secrecy upon scientific morale is being reduced through periodic seminars and conferences attended exclusively by persons who possess security clearance. Dr. Bradbury depicted these sessions as a vehicle whereby Commission experts not only exchange ideas and stimulate one another's thinking but also gain recognition, within the limits of the cleared group, for accomplishments which once might have attracted the applause of scientists generally. Circulation of technical papers among cleared personnel produces the same result. An ambitious young physicist is, therefore, less likely to reject atomic energy employment for fear that secrecy would prevent him from building a reputation." *Investigation into the United States Atomic Energy Commission*, 81st Cong., 1st Sess., Senate Rep. No. 1169 (1949), p. 36.

35. The difficulty of introducing students into the research training program was discussed by Robert M. Boarts, professor of chemical engineering, University of Tennessee, in an address entitled "Nucleonics and the Graduate Program in Chemical Engineering," delivered before the American Society for Engineering Education, June 15, 1948. Recently the AEC has established a reactor development training school at Oak Ridge; the student body, numbering 90, will be made up of industrial engineers, government employees, and recent college graduates. The school was opened to "meet the need for that rather unique combination of engineer and physicist so necessary to provide talent for the rapidly growing reactor field." AEC Commissioner Gordon Dean, in an address entitled "Atomic Energy in War and Peace," delivered before the American Medical Association, June 26, 1950.

36. Testimony of Enrico Fermi before the Joint Committee on Atomic Energy, *Investigation into the United States Atomic Energy Project*, Hearing, 81st Cong., 1st Sess. (1949), p. 871.

The transcript of an AEC press conference on March 29, 1950, shows at page 8 the following comment by Commissioner Smyth: ". . . in order to prepare for the technological development of 5 or 10 or 15 years from now you have to have men trained in universities. And it is very difficult to train men when you have secret projects going on. I might illustrate this by telling you that during the war we had a course at Princeton in nuclear physics. We had to look around to find somebody on our staff who had no connection with the Manhattan Project, because no one who was working for the Manhattan Project would dare to try to separate in his mind what he could say and what he

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couldn't say. The result was that—with all due respect to the man we got to give the course on nuclear physics—he wasn't an authority on nuclear physics, and those men didn't get very good training."

37. Dr. Morse stated his conclusions about education in nuclear engineering in an address before the 1948 New York Herald-Tribune Forum, reported in the *N.Y. Herald-Tribune*, October 24, 1948, sec. X, p. 56, col. 5.

38. Dr. Bacher discussed the need for trained personnel in his testimony before the Joint Committee on Atomic Energy, *Investigation into the United States Atomic Energy Project*, Hearing, 81st Cong., 1st Sess. (July 6, 1949), p. 783.

### *Chapter III*

1. The comment on the need of having new secrets is by E. U. Condon, who added, "The price we have to pay in order to grow in knowledge is some giving up of present knowledge in order that we may continue to grow." "Science and Security," 107 *Science* 659, 660 (1948).

2. Sir Alexander Fleming's remarks on penicillin manufacture occurred during his Dedication Address, Oklahoma Medical Research Foundation, July 3, 1949.

3. The distinction between principle and process was brought out by F. H. Spedding, director of the Atomic Research Institute at Iowa State College, "Chemical Aspects of the Atomic Energy Problem," 5 *Bulletin of the Atomic Scientists* 48, 49 (1949).

4. The so-called "Merck Report" was issued by the War Department on January 3, 1946. The full text appears under the heading, "Official Report on Biological Warfare," in 2 *Bulletin of the Atomic Scientists*, Nos. 7-8, p. 16 (1946). The report was subsequently withdrawn from circulation by the War Department. For three years no statements concerning BW emanated from the military. The next release on the subject was a brief and general statement by Secretary of Defense James Forrestal, March 12, 1949, intended to counteract exaggerated impressions concerning the potency and state of development of biological warfare. The Forrestal statement is printed in 5 *Bulletin of the Atomic Scientists* 104 (1949). Then, for more than a year, the subject lapsed back into the silences in which the Army has habitually enveloped it. Secretary of Defense Louis Johnson next mentioned BW in his semiannual report to the President dated March 31, 1950, at pp. 69-71. He remarked that "complete" and "detailed" studies had been made concerning a number of disease agents infectious for man, domestic animals, and crop plants, but that it would be unwise from a security viewpoint to publish these studies.

5. The list of BW research accomplishments is taken from the official Merck Report, 2 *Bulletin of the Atomic Scientists*, p. 18.

6. For fuller treatment of BW researches and their beneficial possibilities, see Theodor Rosebury, *Peace or Pestilence* (Whittlesey House, 1949), pp. 186 ff.

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7. Some of the BW work, it may be noted in passing, illustrates the efficiency which flows from noncompartmentalization of scientific effort. An introductory note to one of the series of reports, after remarking the varied personnel that shared in the researches, asserts: "The highly successful outcome of the work in developing protective measures against rinderpest, one of the most devastating diseases of cattle, including improved methods of vaccine production plus fundamental observations significant to virus-disease research, constitute an outstanding contribution to veterinary science and another shining example of what can be accomplished through collaboration of scientists from several fields." R. E. Shope *et al.*, "Papers on Rinderpest Virus," 7 *American Journal of Veterinary Research* 133 (1946).

8. For discussion of Alloy X and of other developments which are of potential industrial interest, see John E. Burchard (ed.), *Rockets, Guns and Targets*, Science in World War II (Little, Brown & Co., 1948), pp. 394, 422-423.

9. The development of sabotage devices and of security restrictions on them is discussed by W. C. Lothrop, "History of Division 19: Weapons for Sabotage," in W. A. Noyes, Jr. (ed.), *Chemistry, Science in World War II* (Little, Brown & Co., 1948), pp. 434, 437.

10. Robert F. Bacher, former AEC Commissioner, speaking on the subject, "Our Progress in Atomic Energy," at Los Angeles Town Hall, October 3, 1949, said: "A good many of the developments in atomic energy have been shrouded in a veil of secrecy. Information about the design and production of weapons and the production of fissionable material has been very closely held. But the veil of secrecy has a tendency to spread like a fog and cover all sorts of other subjects as well. No one wants to be responsible for making information generally available which someone might claim should remain secret. As a result, many developments are kept secret which might have led to major advances elsewhere in American industry."

11. An address by then Commissioner Robert F. Bacher before the American Academy of Arts and Sciences on February 9, 1949, contained extensive discussion of the reactor program of the AEC. R. F. Bacher, "The Development of Nuclear Reactors," 5 *Bulletin of the Atomic Scientists* 80 (1949). Without detailing matters of design, he described the types, purposes, and limitations of the nuclear reactors then in existence or in contemplation. His candid exposition reflected a trend that was apparent also in the Commission's *Fifth Semi-annual Report*. Further, the AEC took the initiative in discussions with the Air Forces, the Bureau of Aeronautics, and the National Advisory Committee on Aviation looking toward release of basic information in the so-called Lexington Report on the feasibility of developing a reactor to propel an aircraft. See testimony of Carroll L. Wilson, AEC General Manager, in *Hearing before the Joint Committee on Atomic Energy*, 81st Cong., 1st Sess. (February 2, 1949), pp. 25-26.

12. Hearing cited in note 11 above, pp. 14-17.

13. Karl T. Compton, then the chairman of the Research and Development

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Board of the National Military Establishment, has summarized the conflict between secrecy and science in the following terms:

"Unfortunately, secrecy and progress are mutually incompatible. This is always true of science, whether for military purposes or otherwise. Science flourishes and scientists make progress in an atmosphere of free inquiry and free interchange of ideas, with the continual mutual stimulation of active minds working in the same or related fields. Any imposition of secrecy in science is like application of a brake to progress. . . . It is much easier for the average citizen to understand secrecy than it is for him to understand the conditions necessary for scientific progress. I am sure that the pendulum has recently swung so far in the direction of concern over secrecy regarding even little details and unimportant people that our real security is suffering. It is suffering from the slowing up of progress because attention is being diverted from the really big things which need to be done." Dedication Address at the Aero-ballistics Facility, Naval Ordnance Laboratory, White Oak, Maryland, June 27, 1949.

### *Chapter IV*

1. Figures on the AEC's devotion of time to security problems are given in the report by the Joint Committee on Atomic Energy, *Investigation into the United States Atomic Energy Commission*, 81st Cong., 1st Sess., Senate Rep. No. 1169 (1949), p. 85.

2. General Donovan commented on the need of taking some calculated security risks in a press interview reported in the *New York Times*, August 31, 1948, p. 3, col. 8.

3. Figures furnished by the AEC in *Hearings before the Joint Congressional Committee on Atomic Energy*, 81st Cong., 1st Sess. (February 2, 1949), p. 30, show that the Personnel Security Review Board met only once between July 1, 1947, and December 31, 1948, at a total travel cost of \$151.94. I am unable to account for the discrepancy between the Board's minutes and the Commission's records, but believe that the former are more reliable in this instance.

4. The AEC General Manager's instructions concerning derogatory information are contained in Bulletin GM-80, dated March 30, 1948. Though the document bears no indication that it is classified, it has apparently never been published and a number of officials have declined to discuss its contents as though they were matters of high policy. The text of the Bulletin, which was subsequently obtained, does not warrant the secretiveness with which it has at times been surrounded.

5. The full text of the "Criteria" appears in Appendix B, pp. 238-244 of this volume. It was officially published in 14 *Federal Register*, No. 3, p. 42 (1949).

6. The Joint Congressional Committee on Atomic Energy reported on October 13, 1949, that, of the 150,000 investigations which the FBI had by then

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completed, only 2,125, or one in every seventy, brought forth any data that required special attention, and these were facts "usually involving character alone." *Senate Report No. 1169*, 81st Cong., 1st Sess. (1919), p. 66.

7. The summary power to remove employees of the military departments was conferred by Public Law 808, 77th Cong., 2nd Sess., 56 Stat. 1053, § 3.

8. The comment on the importance of scientific resources is by A. C. McAuliffe, Major General, GSC, in a foreword to *Scientists in Uniform, World War II*, Report to Deputy Director for Research and Development, Logistics Division, General Staff, U.S. Army (1948).

9. Announcement concerning the composition, procedures, and decisional standards of the Industrial Employment Review Board was made by Secretary of Defense Johnson in a press release (Rel. No. 544-49) on December 5, 1949.

10. The Eisenhower directive concerning "suspension of subversives" is printed in War Department Pamphlet 32-4, December 10, 1946.

11. The criteria of judgment concerning personnel security in 1948 were published as Army Mem. No. 380-5-10, April 2, 1948, p. 9.

12. The Criteria, the full text of which can not be found in the Federal Register or the Code of Federal Regulations, state that access shall be denied "if, on all the evidence and information available to the Board, reasonable grounds exist for belief that the individual: . . . 6. Is or recently has been a member of, or affiliated or sympathetically associated with, any foreign or domestic organization, association, movement, group, or combination of persons (a) which is, or which has been designated by the Attorney General as being, totalitarian, fascist, communist or subversive, (b) which has adopted, or which has been designated by the Attorney General as having adopted, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or (c) which seeks, or which has been designated by the Attorney General as seeking, to alter the form of the government of the United States by unconstitutional means; provided, that access may be granted, notwithstanding such membership, affiliation or association, if it is demonstrated, by more than a mere denial, that the security interests of the United States will not thereby be jeopardized."

13. The Secretary of Defense and the military secretaries apparently agree with this observation, for there is only one limitation upon the appointive power that has been lodged in the secretaries of the Departments of the Army, Navy, and Air Force, namely: "No person who has served with an investigative agency of any of the Departments within one year preceding his appointment shall be eligible for appointment as a member or alternate member of the Board . . ."

14. *Duncan v. Kahanamoku*, 327 U.S. 304, 324 (1946).

15. Discussion of recent experiences with military tribunals of which the United States must be ashamed may be found in A. Frank Reel, *The Case of General Yamashita* (University of Chicago Press, 1949); and see the description of the military judicial system in Hawaii by Attorney General Garner Anthony

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in a report to Governor Ingram M. Stainback, December 1, 1942, quoted by John P. Frank in "Ex parte Milligan v. The Five Companies: Martial Law in Hawaii," 44 *Columbia Law Review* 639, 652 (1944).

16. In a recent statement on national policy the Research and Policy Committee of the Committee for Economic Development stressed the conviction that civilian supremacy is essential to freedom and that "without effective civilian control there is danger that security policy will be made more and more by the military alone and in terms of the individual problems of military defense for which they are responsible rather than in the larger terms of security and freedom." C.E.D., *National Security and Our Individual Freedom* (December 14, 1949), pp. 6, 11.

### Chapter V

1. *Science and Foreign Relations*, Dept. of State Publication No. 3860, May 1950, at p. 80. Chapter VI of that document, a report by Dr. Lloyd V. Berkner reviewed by the Department's Steering Committee and unanimously approved by the Advisory Committee of the National Academy of Sciences, is devoted to "Control Over the International Flow of Scientific Information—Persons and Material." It contains other examples of the extension of security practices into wholly unclassified areas of activity.

2. *Hearings Regarding Communist Infiltration of Radiation Laboratory and Atomic Bomb Project at the University of California, Berkeley, Calif.*, House Committee on Un-American Activities, 81st Cong., 1st Sess. (1949), pp. 280 ff.

3. An excellent analysis of the press treatment of the Committee's charge that Dr. Edward U. Condon, director of the National Bureau of Standards, is "one of the weakest links in our atomic security," has been completed by the Columbia University Bureau of Applied Social Research, under the direction of Prof. Robert K. Merton. It is fully reported by J. T. Klapper and C. Y. Glock in "Trial by Newspaper," 180 *Scientific American*, No. 2, p. 16 (1949).

4. Brandeis, J., dissenting with Holmes, Butler, and Stone, JJ., in *Olmstead v. United States*, 277 U.S. 438, 478 (1928).

5. The Joint Congressional Committee on Atomic Energy recently reported that 874 persons had withdrawn applications for clearance because, before action in their cases had been completed, they decided to work elsewhere. *Senate Rep. No. 1169*, 81st Cong., 1st Sess. (1949), p. 66. It must be stressed, however, that not all of these 874 persons were scientists.

6. S. T. Pike, "Witch-Hunting Then and Now," 180 *Atlantic Monthly* 93, 94 (1947). And compare C. E. Merriam, "Some Aspects of Loyalty," 8 *Public Administration Review* 81, 84 (1948): "The basis of modern scientific and technological progress which is the key to our civilization is not found in complete conformity and docility, but in critical attitudes leading to invention and advance in public as well as in private business. We must be on the alert for unorthodox,



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original, creative minds, capable of discovering new relations and better ways of doing things in peace as well as in war."

### *Chapter VI*

1. The pertinent references to laws governing misconduct of the types described in Executive Order No. 9835 will be found in a comprehensive and penetrating article by T. I. Emerson and D. M. Helfeld, "Loyalty among Government Employees," 58 *Yale Law Journal* 1, 27 ff. (1948).

2. The statutory bar against employment of Communists in the federal service is found in the Hatch Act, § 9A, 53 Stat. 1147, 1148 (1939); *H.R. Rep. No. 616*, 80th Cong., 1st Sess. (1947), p. 4.

3. The Supreme Court's views on the meaning of "affiliation" are expressed in *Bridges v. Wixon*, 326 U.S. 135, 143-144 (1945).

4. The President's statement about the significance of membership in an organization is set forth in the *New York Times*, November 15, 1947, p. 2, col. 3; its substance is repeated in the official "Regulations for the Operations of the Loyalty Review Board," 13 Fed. Reg. 253, 254 (1948). In this respect the Loyalty Order is considerably less drastic than the statute that created the Economic Cooperation Administration. Section 110-c of the Foreign Assistance Act of 1948, 62 Stat. 142, 22 U.S.C. § 1508-c, provides that no one may be employed until after investigation by the FBI and certification by the Administrator that the individual "is loyal to the United States, its Constitution, and form of government, and is not now and has never been a member of any organization advocating contrary views." This restriction, embodying what might be called the doctrine of perpetual guilt, might well be deemed an unconstitutional bill of attainder within the holdings of the Supreme Court in *Ex parte Garland*, 4 Wall. 333 (1867) and *Cummings v. Missouri*, 4 Wall. 277 (1867), in the latter of which Mr. Justice Field said: "The theory upon which our political institutions rest is, that all men have certain inalienable rights—that among these are life, liberty, and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to every one, and that in the protection of these rights all are equal before the law. Any deprivation or suspension of any of these rights for past conduct is punishment, and can be in no otherwise defined."

5. Chairman Richardson's comments on joining organizations are reported in the *New York Times*, Dec. 28, 1947, p. 28, col. 6.

6. Senator Taft's identification of the Democratic Party with totalitarianism is reported in the *New York Times*, Feb. 4, 1949, p. 13, col. 4.

7. For comment upon the days when veterans hospitals were deemed communistic see H. N. Rosenfield, "Experts Are Never Right," *Antioch Review*, Spring 1949, pp. 3, 6.

8. President Truman's denunciation of the real estate groups as subversive is recorded in the *New York Times*, July 1, 1947, p. 20, col. 8.

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9. Mr. Hoover's opinion about totalitarianism is reflected in the *New York Times*, June 23, 1948, p. 8, col. 5.

10. See, e.g., "Designation of Organization as Subversive by Attorney General: A Cause of Action," 48 *Columbia Law Review* 1050 (1948). The first appellate decision handed down was *Joint Anti-Fascist Refugee Committee v. Clark*, 177F. (2d) 79 (District of Columbia Court of Appeals, 1949); Judges Proctor and Bennett Clark concluded that the black list could not be attacked by an organization that was placed on it; Judge Edgerton dissented. The Supreme Court has agreed to review this decision when it convenes in the autumn of 1950; certiorari was granted, 339 U.S. 910 (1950). *National Council of American Soviet Friendship, Inc. v. McGrath*, involving the same issues as the *Joint Anti-Fascist Refugee Committee* case, was decided by the Court of Appeals without opinion on October 25, 1949; and certiorari has been granted in that case as well, 70 Sup. Ct. 978. *International Workers Order v. McGrath*, decided by the Court of Appeals on March 22, 1950, has not yet been officially reported, but may be found in Pike-Fischer *Administrative Law* 52a. 21-36. A petition for certiorari has been filed by the IWO in that case, but had not been acted on by the Supreme Court prior to its adjournment in the summer of 1950.

11. The Attorney General has, however, recently modified the listing of the Società Dante Alighieri as a fascist group. According to the Italian Embassy, the Department of Justice has notified the society that its inclusion among the fascist organizations on the black list "does not apply" to the group as it is now constituted nor "to any of its activities since its re-establishment at the end of the second World War." See *New York Times*, November 13, 1949, p. 9, col. 5.

12. The President's characterization of the loyalty probe is reported in the *New York Times*, November 15, 1947, p. 2, col. 2.

13. H. S. Commager, "Who Is Loyal to America?", 195 *Harper's Magazine* 193, 198 (1947).

14. The Loyalty Review Board's differentiation between permissible advocacy and impermissible allegiance is embodied in a statement of Chairman Richardson, *New York Times*, December 28, 1947, p. 28, col. 6.

15. The long lists of the House Committee may be found in its document entitled *Citations by Official Government Agencies of Organizations and Publications Found to Be Communist or Communist Front* (1948), p. 1.

16. The views of the California Committee, under the chairmanship of Senator Tenney, concerning the American Civil Liberties Union, appear in the *Fourth Report of the Senate Fact-finding Committee on Un-American Activities* (1948), pp. 107 ff.

17. See the scholarly and exciting study of Prof. Marion L. Starkey, *The Devil in Massachusetts: A Modern Inquiry into the Salem Witch Trials* (Alfred A. Knopf, 1949).

18. The Loyalty Review Board's Directive II started the ball rolling in the direction of issuing charges and holding hearings unless the case was so alto-

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gether plain as to be considered "clearly favorable." This was reinforced on September 29, 1949, by Memorandum No. 48, which again stressed that notices of charges should be issued to employees "in cases in which a finding clearly favorable to the individual is not clearly warranted." The loyalty boards were instructed to cease trying to find out what sort of finding was warranted by any means short of a hearing.

General Donovan has criticized this approach, saying: "Under the existing system, many cases of no substance reach the Loyalty Board which must then take on the first responsible job of eliminating unwarranted complaints. Doing this at an earlier stage would alleviate the burden of work placed on the Loyalty Boards and relieve the employee from the harassment of a protracted Loyalty hearing." W. J. Donovan and M. G. Jones, "Program for a Democratic Counter Attack to Communist Penetration of Government Service," 58 *Yale Law Journal* 1211, 1236 (1949).

19. Chairman Richardson's summary of the loyalty program was given in testimony before a Senate subcommittee on April 5, 1950. See *New York Times*, April 6, 1950, p. 1, col. 5.

20. H. S. Commager, note 13 above, p. 195.

21. The difficulties of obtaining Soviet scientific periodicals is well described in R. Peiss, "Problems in the Acquisition of Foreign Scientific Publications," 22 *Department of State Bulletin* 151 (1950).

22. With the above analysis of the decline of German scientific achievement under the Nazis, compare Vannevar Bush, *Modern Arms and Free Men* (paper-bound ed.; Simon & Schuster; copyright, 1949, by The Trustees of Vannevar Bush Trust), pp. 87-88:

"Why were they [the Germans] so far behind [in atomic bomb research]? Bombing and the destruction of needed industrial facilities account for some of the lag. Limited availability of critical materials accounts for some. But the real reason is that they were regimented in a totalitarian regime. There was nothing much wrong with their physicists; they still had some able men in this field in spite of their insane rape of their own universities. They were not as able as they thought they were, or as they probably still think, for their particular variety of conceit is incurable. But they were able enough to have made far greater progress than they did. Their industry certainly demonstrated that it could produce under stress such complicated achievements of science and engineering as the jet plane. Their Fuhrer and their military were certainly keen for new weapons, especially a terror weapon with which to smite England. Yet they hardly got off the starting line on the atomic bomb.

"A perusal of the account of German war organization shows the reason. That organization was an abortion and a caricature. Parallel agencies were given overlapping power, stole one another's materials and men, and jockeyed for position by all the arts of palace intrigue. Nincompoops with chests full of medals, adept at those arts, presided over organizations concerning whose affairs they were morons. Communications between scientists and the military

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were highly formal, at arm's length, at the highest echelons only, and scientists were banned from all real military knowledge and participation. Undoubtedly the young physicist who penetrated to the august presence of the Herr Doktor Geheimrat Professor said *ja* emphatically and bowed himself out, if he did not actually suck air through his teeth. The whole affair was shot through with suspicion, intrigue, arbitrary power, formalism, as will be all systems that depend for their form and functioning upon the nod of a dictator. It did not get to first base in the attempt to make an atomic bomb."

23. The fullest account of the genetics controversy in the USSR appears in a recent volume by Professor Conway Zirkle, *Death of a Science in Russia* (University of Pennsylvania Press, 1949), in which a large number of documents are collected in a valuable translation. And see also the May 1949 issue of the *Bulletin of the Atomic Scientists* (Vol. 5, No. 5) containing articles by Dunn, Dobzhansky, and others on the suppression of free investigation in genetics in the USSR; also, H. H. Plough, "Bourgeois Genetics and Party-Line Darwinism," 18 *American Scholar* 291 (1949); P. E. Mosely, "Freedom of Artistic Expression and Scientific Inquiry in Russia," 200 *The Annals* 254, 269 *et seq.* (1938). There is, however, some expression of opinion that there is considerable hyperbole in accounts of the "liquidation" of biologists who persist in "bourgeois heresies." For this view, see articles by Marcel Prenant (of the Sorbonne) and Jeanne Lévy (of the Faculty of Medicine in Paris) in *La Pensée*, No. 21, pp. 29, 33 (1948). Translations appear under the titles of, respectively, "The Genetics Controversy" and "Lysenko and the Issues in Genetics," in 13 *Science & Society* 50, 55 (Winter 1948-1949).

24. *Cultural Relations between the United States and the Soviet Union*, State Dept. Publication 3480 (April 1949).

25. Dr. Parin's speech in New York was reported in 4 *American Review of Soviet Medicine* 292, 297 (1947).

Former Ambassador Walter Bedell Smith in his memoirs, *My Three Years in Moscow* (J. B. Lippincott Co., 1950), p. 293, says explicitly, "Dr. Parin, on his return, was tried and sentenced for prematurely revealing the secrets of Soviet Science."

26. The Mundt and Reece statements about the Loyalty Order appear in a round-up of opinion reported in the *New York Times*, March 23, 1947, p. 48, col. 4. The political background of the Loyalty Order is extensively developed in T. I. Emerson and D. M. Helfeld, note 1 above, pp. 8-20.

27. *Report of the President's Temporary Commission on Employee Loyalty* (1947), p. 21.

28. Attorney General Clark's comments on the first 2,000,000 loyalty investigations are reported in the *New York Times*, September 19, 1948, p. 28, col. 4.

29. A brief description of British experience may be found in D. C. Williams, "How Britain Tests Loyalty," *Nation*, November 5, 1949, p. 444. As of the autumn of 1949 some sixty civil servants (out of 100,000) were faced with charges after investigation. About twenty were cleared of the charges. Most of the

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others, who either declined to contest the charges or who were not successful in their defense, have simply been transferred to other positions (of equivalent grade) in "non-sensitive" areas.

### *Chapter VII*

1. The authority under which the ONR and the AEC expend research funds is derived from the following statutes:

Section 3 of the Atomic Energy Act of 1946, 60 Stat. 755, 758, directs the Atomic Energy Commission ". . . to insure the continued conduct of research and development activities . . . relating to—(1) nuclear processes; (2) utilization of fissionable and radioactive materials for medical, biological, health, or military purposes" and for "processes entailed in the production of such materials for all other purposes, including industrial uses . . ." The Act itself creates a Division of Research in the AEC, which has set up advisory bodies to help it select the projects for which funds should be made available.

The ONR draws its power from Public Law 588, 60 Stat. 799, 5 U.S.C. § 475 (1946). This statute recognizes that long-range research must be set up on a more solid basis than is possible when annual appropriations must be sought for specific projects of foreseeable utility. The ONR is established to perform duties "relating to the encouragement, promotion, planning, initiation, and coordination of naval research and the conduct of naval research in augmentation of and in conjunction with the research and development conducted by the respective bureaus and other agencies and offices of the Navy Department."

To a much lesser extent than either the ONR or the AEC, the Public Health Service encourages research by nongovernmental institutions and individuals. Its authority derives from the Public Health Service Act, § 301, 58 Stat. 691, 42 U.S.C. § 241, which speaks of ". . . studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man. . . ."

2. The AEC's program of university research, especially in the biological sciences, is discussed in the *Sixth Semiannual Report* (July, 1949), pp. 112 *et seq.* and 161 *et seq.* And see J. E. Pfeiffer, "The Office of Naval Research," 180 *Scientific American*, No. 2, p. 11 (1949); A. T. Waterman and R. D. Conrad, "The Office of Naval Research," 16 *American Scholar* 354 (1947).

3. An example of studies only remotely military supported by the AEC and ONR is found in a University of Rochester project reported by L. E. Young *et al.* in "Hemolytic Disease in Newborn Dogs Following Isoimmunization of the Dam by Transfusions," 109 *Science* 630 (1949). Current jointly sponsored projects include cloud-chamber cosmic ray studies at the University of Washington, Beta-ray spectra studies at the University of Southern California, and research in radiobiology and chemical genetics at Amherst College. As of April 1950 the AEC was supporting 67 nonsecret research projects in the physical

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sciences, and in addition shared with the ONR in supporting another 60 non-secret physical research projects. The 127 projects were scattered among 83 different institutions. AEC Release No. 280, April 26, 1950.

4. Dr. Pitzer's remarks on the subject of keeping atomic energy research out of university laboratories occurred in the course of a press conference, reported in the *New York Times*, January 19, 1949, p. 29, col. 4.

5. The remarks about the transference of scientific ideas are quoted from J. D. Bernal, *The Social Function of Science* (George Routledge & Sons, Ltd., 1939), p. 303.

6. *The Hoover Commission's Task Force Report on Public Welfare*, Appendix P, pp. 557-590, accumulates federal expenditures for educational purposes, including research. The notations for research for fiscal 1949 total \$204,713,000.

7. Dr. Day's remarks are quoted from a memorandum from him to Dean C. C. Murdock, Dean S. C. Hollister, and Vice President T. P. Wright, entitled "Policy Relating to Classified Research on the Campus," September 9, 1948.

8. The experience of the German academic community has been touched upon by Leo Szilard, "The AEC Fellowships: Shall We Yield or Fight?," 5 *Bulletin of the Atomic Scientists* 177 (1949):

"A few months after the Hitler government was installed in office, it demanded that instructors of the Jewish faith be removed from their university positions. At the same time, every assurance was given that professors who had tenure would remain secure in their jobs.

"The German learned societies did not raise their voices in protest against these early dismissals. They reasoned that there were not many Jewish instructors in German universities anyway, and so the issue was not one of importance. Those of the dismissed instructors who were any good, so they pointed out, were not much worse off, since they were offered jobs in England or America. The demand of the German government for the removal of these instructors did not seem altogether unreasonable, since they couldn't very well be expected wholeheartedly to favor the nationalist revival which was then sweeping over Germany. To the learned societies it seemed much more important at that moment to fight for the established rights of those who had tenure, and this could be done much more successfully, so they thought, if they made concessions on minor points.

"In a sense the German government kept its word with respect to those who had tenure. It is true that before long most professors who were considered 'undesirable' were retired; but they were given pensions adequate for their maintenance. And these pensions were faithfully paid to them until the very day they were put into concentration camps, beyond which time it did not seem practicable to pay them pensions. Later many of these professors were put to death, but this was no longer, strictly speaking, an academic matter with which the learned societies needed to concern themselves."

9. The play of politics upon education in Germany is described in E. Y.

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Hartshorne, "The German Universities and the Government," 200 *The Annals* 210, 223 (November 1938): In the four years after the National Socialist Party came to power, 44 per cent of all the teachers in the natural science faculties of German universities disappeared from the faculty rosters; in the medical faculties, 48.8 percent of the teachers were dropped. The percentage increase over the loss of professors in the preceding four years in these two groups was, respectively, 185 and 218 per cent. Hartshorne says that "there can be no doubt that the German scientists who were ousted from their University positions by National Socialist legislation were attacked not as chemists or historians or mathematicians, and so forth, but as 'State enemies' according to the official definition, in terms of ancestry or political viewpoint."

10. President J. B. Conant's remarks about the qualifications for joining a community of scholars are quoted from *The President's Report, 1947, Harvard University*, pp. 3, 4.

11. The military profession's traditional coolness toward the novelties of science has been touched upon by Waldemar Kaempffert in "Science, Technology, and War" in *Civil-Military Relationships in American Life* (ed. Kerwin; University of Chicago Press, 1948), pp. 14, 16: "An army is a highly organized and planned artificial society. . . . Since war is a matter of life and death, victory or defeat, it might be supposed that new death-dealing inventions would be eagerly sought. But innate opposition to change is as inherent in soldiers as it is in financiers and industrialists. . . . There was less cultural lag in science during the war recently ended than in any of its predecessors. The reason is to be found in the way research was organized. In the past the military dominated research. Even before war was declared on the Axis powers, President Roosevelt had created the National Defense Research Committee, later merged into the Office of Scientific Research and Development. Civilian scientists sat with representatives of the Army and Navy on various boards, but the civilians outnumbered the military. Hence the boldness of thinking and experimentation . . ."

For relevant comments, see Vannevar Bush, *Modern Arms and Free Men* (Simon & Schuster, 1949), pp. 26, 33, 61.

12. The quotation of General Sir Ian Hamilton is from his book, *The Soul and Body of an Army* (Edward Arnold & Co., 1921), pp. 61-62.

13. Enrico Fermi's comment on free choice of research projects is quoted by M. Polanyi in "The Foundations of Freedom in Science," 2 *Bulletin of the Atomic Scientists* 6 (December 1946).

14. The National Science Foundation was created by Public Law 507, 81st Cong., 2d Sess., which became law on May 10, 1950. Among its other duties, the Foundation is authorized and directed "to initiate and support basic scientific research in the mathematical, physical, medical, biological, engineering, and other sciences, by making contracts or other arrangements (including grants, loans, and other forms of assistance) . . ." When this book went to press, the Foundation was not yet organized; its National Science Board and Director

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had not been appointed and appropriations of funds had not been made. In due time, however, it was anticipated that the Foundation would be the sponsor of most of the nonsecret research now supported by the Federal Government through the ONR and the AEC. The case for the National Science Foundation is stated, among other places, in Vol. I of *Science and Public Policy*, A Report to the President by John R. Steelman, Chairman, the President's Scientific Research Board, pp. 31-35 (1947). And see also the extended record of hearings, covering nearly a thousand pages, on proposed science legislation, embodied in S. 1297 and related bills, before the Senate Committee on Military Affairs, 79th Cong., 1st Sess. (1945).

15. Dr. Gregg's remarks about researchers are quoted from his article, "We Must Not Lag in Medical Research," *New York Times Magazine*, August 7, 1949, p. 13, at 74.

16. The manpower problem in American science is extensively considered in the Steelman report, cited in note 14 above, at pp. 14-23.

17. The most extensive descriptive material in print concerning the Atomic Energy Commission Fellowship Program is probably to be found in the record of hearings on that subject before the Joint Committee on Atomic Energy, 81st Cong., 1st Sess., May 16, 17, 18, and 23, 1949. A list of the AEC fellowships for 1949-1950 appears in the AEC's *Sixth Semiannual Report* (July 1949), pp. 183-189. A description of the fields of specialization of the fellows appears in the record of the hearings, above, at pp. 181-197.

18. The relationship of AEC fellowship projects to the AEC's other concerns is indicated in the testimony of Detlev W. Bronk, chairman of the National Research Council, before the Joint Committee on Atomic Energy, *Hearing on Atomic Energy Commission Fellowship Program*, 81st Cong., 1st Sess. (1949), pp. 80-81.

19. The composition of the fellowship boards set up by the NRC to pass on AEC fellowship applications is shown in the AEC's *Sixth Semiannual Report* (July 1949), pp. 183 ff.

20. At the end of 1949, research work was being carried on in Brookhaven National Laboratory by fifteen graduate students; at the Argonne National Laboratory, by ten; and at Oak Ridge, by seven. These were not necessarily fellowship recipients.

21. The quoted reasons for the AEC's policy as to clearing fellows are set forth in a letter from the Commission to Senator Hickenlooper, dated October 11, 1948, printed in the record of the hearing cited in note 18 above at p. 7.

22. Dr. Richards' and Dr. Bronk's remarks about educating a Communist appear in the record of the same hearing at pp. 14, 72-74.

23. Dr. Oppenheimer's comment upon the sources of great discoveries appears in the same record at p. 89.

24. Dr. Conant's objections to widespread investigations are recorded in the same volume at p. 159.

25. Dr. DuBridge's sentiments about investigating students were expressed



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in a hearing before the Joint Committee on Atomic Energy, *Investigation into the United States Atomic Energy Project*, 81st Cong., 1st Sess. (July 8, 1949), pp. 848, 849.

26. The views of the American Institute of Physics concerning investigations of AEC fellows are reflected in a telegram from five of its board members, addressed to Senator McMahon, reported in the *New York Times*, May 27, 1949, p. 10, col. 2. The signatories were George R. Harrison, editor of the *Journal of the Optical Society of America*; Paul E. Klopsteg, director of the Northwestern University Technological Institute; F. W. Loomis, head of the Physics Department of the University of Illinois; George B. Pegram, vice president of Columbia University; and Wallace Waterfall, secretary to the governing board of the Institute.

27. The law regarding AEC fellowship funds is found in Sec. 102-A of the Independent Offices Appropriation Act, Public Law No. 266, 81st Cong., 1st Sess. (1949). The section was added to the Act as a rider during the Senate's consideration of the appropriation bill. It was debated in the Senate on August 2, 1949 (95 *Cong. Rec.* 10822-10829); but when it came up in the House, even a reading of the text of the rider was dispensed with and the measure was adopted by unanimous consent, August 15, 1949 (95 *Cong. Rec.* 11739).

28. Dr. Richards' description of fellowship applicants is quoted from his testimony before the Joint Committee on Atomic Energy, *Hearing on Atomic Energy Commission Fellowship Program*, 81st Cong., 1st Sess. (1949), p. 14.

29. The results of the investigations of 151 fellows are touched upon in a colloquy between Senator Knowland and Dr. Shields Warren, director of the Commission's Division of Biology and Medicine, in the record of the same hearing, at pp. 16-17.

30. In connection with estimates of the dimensions of the "loyalty problem" among fellowship applicants, it may be worth recording that the AEC, without awaiting an explicit command from Congress, receded from its original position because of the furor created by the North Carolina Communist's fellowship. It decided early in the summer of 1949 to require all fellows to execute a loyalty oath and affidavit; moreover, it decided to require in the future that a check be made of existing FBI records. During the summer of 1949 the first group of fellows, numbering 497, were called on to execute the prescribed loyalty oaths and non-Communist affidavits. The North Carolina Communist refused as did two others. Whether the two others refused because they could not subscribe the oaths or because of opposition to them in principle is not known. The three fellowships, out of these 497, were thereafter withdrawn.

31. Senator Hickenlooper's belief about what the American people will stand appears in Joint Committee on Atomic Energy, *Hearing on Atomic Energy Commission Fellowship Program*, 81st Cong., 1st Sess. (1949), p. 65. At p. 66 Senator Hickenlooper differentiated between the fellowship program and other federal-aid-to-education programs. The latter, he observed, involved aid to educational institutions, rather than particular individuals. While it is true

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that a Communist might benefit from a school-aid measure, indeed might even be compelled to benefit by virtue of compulsory attendance laws, still "it is not a specific subsidy to the individual."

32. Congressman Durham's related remarks are quoted from the same record, at p. 104.

33. Senator Millikin's comments were made at a subsequent hearing before the Joint Committee on Atomic Energy, *Investigation into the United States Atomic Energy Project*, 81st Cong., 1st Sess. (1949), pp. 850-851.

Lieutenant General Walter Bedell Smith reports that a similar drift of thought has been brought to its logical culmination in the Soviet Union. He tells us that in the USSR "Higher Education is reserved for those who develop a 'political consciousness' to a very high degree or for the offspring of the new Soviet aristocracy." *My Three Years in Moscow* (J. B. Lippincott Co., 1950), p. 114.

34. The exchange between Senator Hickenlooper and Dr. DuBridge concerning AEC fellowships appears in the last-cited hearings at p. 853. And see also p. 850. Senator Hickenlooper had made a similar analysis of the G.I. bill of rights on an earlier occasion, saying that the educational opportunities provided under that law "are considered to be an earned matter of right, which has already been earned and paid for. The consideration has been given for that. Under the fellowship program it is a matter of governmental grace. It is extending a gratuity that is not considered to be an earned award, except as such gratuities may develop some potentials." *Hearing on Atomic Energy Commission Fellowship Program*, p. 60.

35. Dr. Oppenheimer's explanation of the reason for a fellowship program appears in the last-cited hearing record, at p. 89. Dr. Conant's related opinion appears at p. 159, and Dr. Gregg's at p. 93.

36. Some of the expressions of distinguished academic persons on the subject of submitting to oaths and investigations are perhaps worth recording.

Enrico Fermi, *Investigation into the United States Atomic Energy Project*, Hearing before Joint Committee on Atomic Energy, 81st Cong., 1st Sess. (1949), p. 868: ". . . to be considered a poor risk is no irrelevant matter for a young man who has not had a chance to be established. A young man who is trying to acquire that competence that may eventually lead him into establishing himself may properly object to the danger of being so branded. I believe that the percentage of those who would be properly weeded out by a loyalty investigation is extremely small, but I believe that a widespread investigation of students not engaged in secret work would have a very depressing influence."

Lee A. DuBridge, *ibid.*, pp. 855, 859: "The harm comes from the very considerable number of perfectly honest and loyal men who will be disqualified on evidence which is quite inconclusive and possibly even wrong.

"Now, during the war I saw many people, honest and loyal men, disqualified for employment in war programs on misunderstandings, on incomplete information, on misunderstood information, on all sorts and kinds of informa-

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tion, some of which might be true and some of which the truth could not be verified. There will be a large number of perfectly loyal and able young Americans who will be disqualified. That will be a very serious matter to them.

"How many of these people who are said to be Communists or fellow travelers—and, incidentally, the terms are not very clearly defined—simply have a sort of political feeling usually on the basis of youthful naivete that here is something new they wish to explore because it has some attractive features?

"They will get into it and get sick of it in a couple of years and be out of it and be better and more loyal Americans perhaps as a result of their practical introduction to communism and the Communist conspiracy. It is not as though these people are permanently tied up and are forever subversive citizens. They may not be. If they are, they should be investigated by the FBI, and they should be brought through the normal legal procedures for necessary punishment for any illegal or subversive action. But let's not extend police-state methods to a large section of American life in the hysterical fear that one or two such fellows are going to overthrow the country. I do not think they will."

James B. Conant, Joint Committee on Atomic Energy, *Hearing on Atomic Energy Commission Fellowship Program*, 81st Cong., 1st Sess. (1949), p. 159: ". . . there is always a good chance that, as in the past, a certain number of young Communists would have a revulsion of feeling and leave the party. I trust Congress will not take any action which will of necessity involve proceedings creating an atmosphere of distrust and suspicion in the scientific world as I feel certain the loss to the country will far outweigh the possible hazards involved in the calculated risk of the method now used."

J. R. Oppenheimer, *ibid.*, pp. 89-90: "They [i.e., 'loyalty' procedures] involve secret, investigative programs which make difficult the evaluation and criticism of evidence; they take into consideration questions of opinion, sympathy, and association in a way which is profoundly repugnant to the American tradition of freedom; they determine at best whether at a given time an individual does have sympathy with the Communist program and association with Communists, and throw little light on the more relevant question of whether the man will in later life be a loyal American. It would be foolish to suppose that a man against whom no derogatory information can be found at the age of 20 was by virtue of this guaranteed loyal at the age of 30. It would be foolish to suppose that a young man sympathetic to and associated with Communists in his student days would by that fact alone become disloyal, and a potential traitor. It is basic to science and to democracy alike that men can learn by error.

"My colleagues [on the General Advisory Committee to the AEC] and I attach a special importance to restricting to the utmost the domain in which special secret investigations must be conducted. For they inevitably bring with them a morbid preoccupation with conformity, and a widespread fear of ruin, that is a more pervasive threat precisely because it arises from secret sources. Thus, even if it were determined, and I do not believe that it should be, that

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on the whole the granting of fellowships, or, more generally, of Federal support to Communist sympathizers, were unwise, one would have to balance against this argument the high cost in freedom that is entailed by the investigative mechanisms necessary to discover and to characterize such Communist sympathizers. This is what we all have in mind in asking that these intrinsically repugnant security measures be confined to situations where real issues of security do in fact exist and where, because of this, the measures, though repugnant, may at least be intelligible."

A. Newton Richards, *ibid.*, p. 16: "The effect of a disqualification by AEC of a successful applicant on political grounds, would be a stigma—a wound—which would be apt never completely to heal—and it would be given at an age at which it could well produce the greatest degree of damage. It is intolerable to me to think that in order to assure our taxpayers that their money is not being spent in the training of Communists, we must subject a most precious part of our intellectual resources to the risk of hurt involved in such investigation, where no question of security is involved."

37. The words quoted relating to the effect of investigations upon educational atmospheres and the outlook of youth are from a statement, endorsed by all members of the AEC's General Advisory Committee, signed by them June 6 and published August 5, 1949. It appears in 110 *Science* 197 (August 19, 1949). In part it reads as follows: ". . . we are horrified by the prospects of moving this whole semi-police apparatus into the realm of youth. We believe that the reputation of many young people of the country might be . . . impaired by rumors growing out of such a system of investigation of prospective fellowship holders. Older people can see in proper perspective calls from FBI agents, they can answer questions about acquaintances without feeling that the man being investigated is under suspicion. But young people of university age are likely to react quite differently. An atmosphere of suspicion and uncertainty is likely to be generated by the activities of federal agents among many groups of friends in colleges, universities, and in local communities. In short, the results of requiring investigations of candidates for fellowships will have serious repercussions throughout the country. . . ."

And see also the letter of Marshall Stone, chairman of the Department of Mathematics at the University of Chicago, resigning from the NRC's Post-doctoral AEC Fellowship Board for Mathematics, Physics, and Chemistry. The letter appears in 110 *Science* 191 (August 19, 1949).

38. Senator McMahon's remarks about the intellectual qualifications of the North Carolina Communist were made before the Joint Committee on Atomic Energy, *Hearing on Atomic Energy Commission Fellowship Program*, 81st Cong., 1st Sess. (1949), pp. 60-61.

39. Senator Knowland's description of "the calculated risk" will be found in the record of the same hearing at p. 43.

40. Senator Millikin's statements regarding the expense involved in the investigation of AEC fellows were made at the hearing before the Joint Committee

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on Atomic Energy, *Investigation into the United States Atomic Energy Project*, 81st Cong., 1st Sess. (1949), p. 852.

41. The views of the National Academy of Sciences, and of the National Research Council which is its adjunct, were embodied in a statement drawn up at Academy meetings on October 24-26, 1949, communicated to the Commission on November 2, 1949, in a letter from A. N. Richards, the Academy's president, to Carroll Wilson, the AEC's General Manager.

42. The 1950-1951 fellowship program was described by the AEC in its Release No. 236, December 16, 1949. Copies of the correspondence between the Commission and the National Academy of Science are annexed to this same release. More recently the AEC has initiated an additional small program, involving up to four fellowships per year, for training in industrial medicine immediately related to work at atomic energy installations. All candidates must be fully investigated and must have a security clearance. AEC Release No. 292, June 25, 1950.

43. The AEC's new predoctoral fellowship program is described in AEC Release No. 256, February 12, 1950. The administering bodies are Associated Universities, Inc.; Oak Ridge Institute of Nuclear Studies, Inc.; a board appointed by the Argonne National Laboratory; and a board established by the University of California.

44. Official correspondence concerning the National Science Foundation amendment and the stated reasons for its ultimate rejection by the Congress can be found in the *Conference Committee Report to Accompany S. 247*, 81st Cong., 2d Sess., House Rep. No. 1958 (1950), pp. 13 ff.

### *Chapter VIII*

1. The policy of withholding information about the sources of FBI information long antedates the Loyalty Order and is not by any means confined to loyalty or personnel security cases. For example, in *United States v. Kohler Co.*, 18 *U.S. Law Week* 2035 (E. D. Pa., June 28, 1949), it was held that a defendant in an antitrust action was not entitled to learn what the FBI had been told by customers and others with whom the defendant had had business dealings. But in a case like that, unlike the ones we are now discussing, the stories told to the FBI could not be used as evidence against the defendant unless they were repeated in open court.

The policy of nondisclosure was explained in the following terms in 40 Op. Atty-Gen., No. 8, pp. 46, 47, April 30, 1941:

"Disclosure of the reports would be of serious prejudice to the future usefulness of the Federal Bureau of Investigation. As you probably know, much of this information is given in confidence and can only be obtained upon pledge not to disclose its sources. A disclosure of the sources would embarrass in-

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formants—sometimes in their employment, sometimes in their social relations, and in extreme cases might even endanger their lives. We regard the keeping of faith with confidential informants as an indispensable condition of future efficiency.”

2. General Donovan's views are embodied in an article by him and Mary Gardiner Jones, "Program for a Democratic Counter Attack to Communist Penetration of Government Service," 58 *Yale Law Journal* 1211, 1235 (1949).

And see also John Lord O'Brien, "Loyalty Tests and Guilt by Association," 61 *Harvard Law Rev.* 592 (1948).

3. The case of the employee who had a chance to face his accusers is discussed in *Senate Rep. No. 1169*, 81st Cong., 1st Sess. (1949), pp. 59, 68.

4. Mr. Clark's comment on gossip in FBI reports appears in the *New York Times*, July 2, 1949, p. 2, col. 7.

As to the extent of this accumulation of gossip, a former Attorney General, Homer S. Cummings, has revealed that as early as 1919 the "General Intelligence Division" of the FBI, under J. Edgar Hoover's direct supervision, had compiled "suspect indexes" containing some 200,000 names of persons who were thought to have engaged in "radical activities." Mr. Hoover subsequently acknowledged that the "counterradical" activities which were conducted under his direction were not at that time within the Department of Justice's jurisdiction "as there has been no violation of the federal laws." Homer S. Cummings and Carl McFarland, *Federal Justice* (Macmillan, 1937), pp. 429, 430. One can only guess to what astronomical heights the number of dossiers has risen since 1919.

5. The Supreme Court's words about the unreliability of unprobed testimony are quoted from *Eccles v. Peoples Bank*, 333 U.S. 426, 434 (1948). In a case in which the plaintiff's claims of injury were supported entirely by affidavits, the Court refused to issue a declaratory judgment, saying: "Judgment on issues of public moment based on such evidence, not subject to probing by judge and opposing counsel, is apt to be treacherous . . . Modern equity procedure has tended away from a procedure based on affidavits and interrogatories, because of its proven insufficiencies. . . ."

6. Mr. Jackson on April 30, 1941, declined to furnish certain FBI reports to the House Committee on Naval Affairs, saying: "Disclosure of information contained in the reports might also be the grossest kind of injustice to innocent individuals. Investigative reports include leads and suspicions, and sometimes even the statements of malicious and misinformed people. Even though later and more complete reports exonerate the individuals, the use of particular or selected reports might constitute the grossest injustice, and we all know that a correction never catches up with an accusation." 40 Op. Atty-Gen., p. 47 (1941).

7. On the judicial attitude toward informers' testimony see, e.g., *District of Columbia v. Clawans*, 300 U.S. 617, 630 (1937); *Colyer v. Skeffington*, 265 Fed. 17, 69 (D. Mass., 1920, opinion by Anderson, C.J.), reversed on other grounds

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in 277 Fed. 129 (C.C.A. 1st, 1922); *Todd v. State*, 246 Pac. 492 (Okla. Crim. App., 1926); *People v. Loris*, 131 App. Div. 127, 130 (2d Dept., 1909); *State v. Bryant*, 97 Minn. 8, 10 (1905).

8. Occasionally the informing spirit has been officially inspired, as in recent years in Hungary, Russia, and elsewhere. Even in our own country the stimulation of the informing spirit is not unknown, as witness the request by then Police Commissioner Toy to the people of Detroit on July 7, 1949: "If anyone suspects a city employee of being a Communist or a Red sympathizer, we would welcome the information, either signed or anonymous. Those signing the letters will be protected." Historical consequences of unbridled denunciations may be studied in E. S. Mason, *The Paris Commune* (Macmillan, 1930), p. 286, and in Walter Duranty, *USSR* (J. B. Lippincott Co., 1944), p. 223. Duranty, describing the sequel of the Soviet "treason trials," says, "The clouds of doubt and anxiety became a storm of frenzy and hysteria, until no man knew whom to trust, and children denounced their parents, brother attacked brother, and husband accused wife. The 'Great Purge,' as it was called, raged for nearly two years, from 1936 to 1938, and caused vast confusion, disorganization and distress at the very time when Stalin was doing his utmost to prepare his country for war."

9. There has not yet been a great deal of litigation in which loyalty proceedings have been challenged. In one case, *Washington v. Clark*, 84 F. Supp. 964, 967 (D. District of Columbia, June 28, 1949), Judge Holtzoff wrote: "If the requirements of due process laid down by the Fifth Amendment of the Constitution of the United States were applicable to the discharge of a Government employee from the service, this order would not comply with those requirements. . . . But the requirements of the due process clause . . . do not apply to the employer-employee relationship as between the Government and its employees. An employer does not have to grant to his employee a formal trial, with all its pomp and circumstance. . . ."

This curious judicial characterization of due process as being "pomp and circumstance" appears to have influenced the same judge's thinking in *Bailey v. Richardson*, Pike-Fischer *Administrative Law* 31c. 223-7 (D. District of Columbia, July 27, 1949), in which he wrote: "The only difficulty from the plaintiff's standpoint is that she was not confronted with the evidence against her, and was not informed of the names or the identity of the witnesses who gave the information against her. We must bear in mind, however, that a Government employee is not entitled to an open trial under the Constitution . . . The Court realizes that it is most unusual not to disclose to a person the evidence against him, but . . . there is no legal or constitutional right in plaintiff to have a hearing of any kind."

The District of Columbia Court of Appeals affirmed the judgments adverse to Washington and to Bailey on April 17 and March 22, 1950, respectively. The court's opinions are not yet officially reported, but the *Bailey* case appears in

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Pike-Fischer *Administrative Law* 31c.224. The Supreme Court granted certiorari in *Bailey v. Richardson* on June 5, 1950, 70 Sup. Ct. 1025.

For other cases, not involving loyalty issues, manifesting a similar judicial unwillingness to intervene in matters affecting a federal employee's status, see *Carter v. Forrestal*, 175 F. 2d 364 (App. D.C., 1949), and cases there cited; Howard C. Westwood, "The 'Right' of an Employee of the United States against Arbitrary Discharge," 7 *George Washington Law Review* 212 (1938).

10. Felix Frankfurter's comments about stating the grounds of one's conclusions appear in his summary of the Cincinnati Bar Association Conference on Functions and Procedure of Administrative Tribunals, in 12 *University of Cincinnati Law Review* 117, 260, 276 (1938).

11. The views of the Attorney General's Committee on Administrative Procedure on the subject of findings and decisions are embodied in its *Final Report*, 78th Cong., 1st Sess., Senate Doc. No. 8 (1941), p. 30. In the same section of its report the Committee emphasized that "the exposure of reasoning to public scrutiny and criticism is healthy. An agency will benefit from having its decisions run a professional and academic gauntlet." Moreover, "the parties to a proceeding will be better satisfied if they are enabled to know the bases of the decision affecting them. Often they may assign the most improbable reasons if told none. Finally, opinions enable the private interests concerned, and the bar that advises them, to obtain additional guidance for their future conduct."

And see also J. P. Chamberlain, N. T. Dowling, P. R. Hays, *The Judicial Function in Federal Administrative Agencies* (Commonwealth Fund, 1942), pp. 60-61.

12. The Supreme Court's emphasis on the need for clear findings is reflected in *Colorado-Wyoming Gas Co. v. Federal Power Commission*, 324 U.S. 626, 634 (1945); and see also *Beaumont, S. L. & W. Ry. Co. v. United States*, 282 U.S. 74 (1930); *Florida v. United States*, 282 U.S. 194 (1931); *Yonkers v. United States*, 320 U.S. 685 (1944).

13. The courts' attitude toward the especial desirability of findings when there are several possible bases of administrative decision is well illustrated by *Niagara Frontier Co-operative Milk Producers Bargaining Agency v. Du Mond*, 297 N.Y. 75, 74 N.E. 2d 315 (1947); *United States v. Chicago, M., St. P. & P. R. Co.*, 294 U.S. 499 (1935); *Elite Dairy Products, Inc. v. Ten Eyck*, 271 N.Y. 488, 3 N.E. 2d 606 (1936); *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608 (1946).

14. The suggestion that loyalty and security decisions should be accompanied by an indication of reasoning finds an interesting parallel in the "Canons of Judicial Ethics," published in 54 *Reports of American Bar Association* 927 (1929). Canon 19, dealing with judicial opinions, states: "In disposing of controverted cases, a judge should indicate the reasons for his action in an opinion showing that he has not disregarded or overlooked serious arguments of coun-



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sel. He thus shows his full understanding of the case, avoids the suspicion of arbitrary conclusion, promotes confidence in his intellectual integrity and may contribute useful precedent to the growth of the law."

Even in connection with patent applications and many similar administrative matters of considerably less moment than a human career, there are legal requirements that opinions be supported by reasons. See, e.g., *Notice Required on Rejection of a Patent Claim*—35 U.S.C.A. § 51 (1940); *International Standard Electric Corp. v. Kingsland*, 169 F. (2d) 890, 892 (App. D.C., 1948).

15. The AEC is fully aware that newcomers do not have the procedural protections accorded "old hands." In its *Fourth Semiannual Report* (July 1948), p. 15, the AEC announced: "Whether hearings should be granted to applicants for employment, as they are for persons already employed on atomic energy work, is a matter currently under consideration. . . ." In its *Fifth Semiannual Report* (January 1949), p. 123, the AEC said: "As the Fourth Semiannual Report states, the Commission is studying the desirability of granting hearings to applicants for employment who have been denied clearance." Frequent inquiries concerning the progress of these studies have been given the laconic response, "Still studying." As a matter of fact, in a few exceptional cases hearings have been accorded applicants. No pattern or policy seems to have been reflected in these cases; for all that appears, they were merely instances in which the applicant's friends or attorneys were sufficiently exalted to obtain special consideration.

16. The figures on AEC formal denials were supplied the author by the Commission. The estimate of the number of scientists who had not received clearance was given to the press by Dr. William A. Higinbotham, associate director of the Electronics Division of Brookhaven. *New York Times*, May 29, 1949, p. 1, col. 3.

17. The Committee report that discusses clearance statistics is the *Report on Investigation into the United States Atomic Energy Commission*, 81st Cong., 1st Sess., Senate Rep. No. 1169 (1949), p. 66.

18. The comments upon the difference between a file review and a hearing review are derived from an address delivered on September 21, 1949, by Dr. John A. Swartout, as part of a Symposium on Security Clearance and the Scientist, during the 116th national meeting of the American Chemical Society. The full paragraph from which phrases have been quoted reads as follows: "In the course of reading the security files on such individuals, one is overwhelmed by the succession of testimony by witnesses and the accumulation of information which combine to set a pattern pointing to the unreliability of the suspect. How misleading such an accumulation of information can actually be is best illustrated by another reference to the 'average case.' During consideration of questionable cases, the files are usually reviewed by a number of the AEC security force. Their comments and conclusions are recorded. In a few abnormal cases, more than one 'hearing' has been held either before the local board or in a more informal session with security officials. It is very pertinent

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that, when a review is based only on the file, the decision is, as a rule, against the granting of clearance, whereas the hearings in which the sources of information are confronted nearly always have reversed this decision completely." Dr. Swartout's address has been printed in 5 *Bulletin of the Atomic Scientists* 337 (1949).

19. The question of wartime experience with cases of mistaken identity is touched on in Irvin Stewart, *Organizing Scientific Research for War* (Little, Brown & Co., 1948), p. 30.

20. The figures about discontinuance of FBI investigations because of mistaken identity are given in W. J. Donovan and M. G. Jones, note 2 above, pp. 1229-1230.

Officials of Carbide & Carbon Chemicals Corporation, the operator of Oak Ridge, stated in an interview with the author that they know of FBI reports that are shot through with erroneous allegations and mistakes in identity. For this reason they would support, though they would not themselves urge initiating, a policy of granting hearings to applicants. One experienced officer said that there was frequent confusion between a man and his similarly named relatives. Another said that especially in cases involving Negroes there is a tendency on the part of sheriffs and others who give information to the FBI to make erroneous identifications.

21. J. Edgar Hoover's remarks about mistaken identity are to be found in a guest column he wrote for the *New York Daily Mirror*, June 22, 1949, p. 4, col. 1, which reads in its pertinent parts as follows:

"The primary responsibility of good law enforcement is to protect the welfare of the community. This entails not only detection of the evil-doer, but exoneration of the falsely accused.

". . . Each complaint or bit of information received is thoroughly checked to its ultimate source, and many times our inquiries reflect that the data received is incorrect or the wrong person is involved.

"Recently, in connection with the loyalty of government employes program, we received allegations that a government employe, who also was a member of a labor union, might be a Communist Party member. Investigation revealed that an individual with the same first and last names, but a different middle name, was a Communist, but the government employe was a different individual.

"In another case, the FBI got derogatory information about an individual, whose father and mother, living in a West Coast city, were allegedly members of the Communist Party. Investigation showed, however, that the individual was the son of parents, with identical first and last names, from an Eastern city.

"The FBI was able, in both of these cases, through careful investigation, to ascertain the facts—and thereby to keep unsullied the reputations of two Americans."

22. The Army's difficulties with the question of "employability" may be traced through a succession of newspaper dispatches. The initial disclosure of

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the ruling in the Clapp case was in a report by Jack Raymond from Frankfort, appearing in the *New York Times*, June 10, 1949, p. 1, col. 3. Later stories appear in the *Times* of June 11, p. 1, col. 4; June 15, 1949, p. 1, col. 2; June 16, 1949, p. 4, col. 3. In a letter to the American Civil Liberties Union dated July 15, 1949, Secretary of the Army Gordon Gray insisted that the characterization of Roger Baldwin and others as "unemployable" had not been done by a responsible Army source, and said that "instructions have been given to remove from the records any reference to these or other persons as unemployable by the Army and that the fact that such term may have been used casts no reflection upon the persons concerned. . . ." He added that there would be no prejudice against any of these people because of the listing in the event their services were needed in the future.

23. In connection with the AEC's loss of personnel through failure to accord a hearing to applicants, the Joint Congressional Committee on Atomic Energy has this to say in *Senate Rep. No. 1169*, 81st Cong., 1st Sess. (1949), p. 64: "Another [file] relates to a person who never became a Commission employee. He applied for a job and was rejected as a security risk on the basis of his associations, whereupon he renounced any desire to serve with the Commission but demanded a hearing and full loyalty appraisal as a means of exonerating his name. Normally the Commission reserves the benefits of its security review procedure to actual employees about whom a question has arisen, excluding job applicants. In this case, however, the individual believed that his friends and associates knew why he had been rejected; that his chances of securing employment elsewhere were bound to suffer; and that his damaged reputation entitled him to a clean-cut, official finding. Under the circumstances the Commission made a special exception and appointed a local board. After a hearing and evaluation by ranking AEC security officers, the individual was finally determined to be eligible for clearance assuming that he were an employee; and thus he succeeded in removing the original imputation of disloyalty.

"AEC witnesses informed the committee that applicants present a puzzling problem: If the Commission or a contractor desires to hire them, they must be encouraged to mark time for 2, 3, 4, 5, or even 6 months without accepting other regular employment, while the FBI completes an investigation; then, if the investigation means that they cannot be hired for security reasons, the encouragement previously given causes them to make inquiries and often, with the help of rumors and gossip, to glean the truth; in that event they are apt to press tirelessly for a full explanation and an opportunity to clear themselves. The committee itself knows of at least one eminent scientist who refuses to seek Commission employment for fear that, if rejected on security grounds, he could not—as a mere applicant—be permitted a local board hearing and a chance to confront accusers who may be listed in his FBI file."

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1. The Supreme Court's observations about coercive elimination of dissent and the freedom to differ are in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 640-641, 642 (1943).

2. The Bostonian whose words are quoted was Thomas Brattle, a leading citizen. While the Salem witchcraft frenzy was still alive, he wrote a circular letter analyzing the trials and the evidence adduced. His letter is quoted by Marion L. Starkey, *The Devil in Massachusetts* (Knopf, 1949), pp. 224-225.

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**I**N a book of this sort, in which interpretation and opinion play so large a part, no one but the author himself can be assigned responsibility for the product.

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WALTER GELLHORN

*June 1950*



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# Reflections on Civil Liberties in an Age of Counterterrorism

Conor Gearty

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# Reflections on Civil Liberties in an Age of Counterterrorism

## **Abstract**

This article examines the historical origins of civil liberties and shows their importance to systems of government rooted in the principles of representative democracy. It argues that the subject of civil liberties needs to be distinguished from issues related to criminal justice and human rights, and that too broad a deployment of the language of civil liberties can lead to the importance of civil liberties being underappreciated by the wider public. The article considers how the integrity of the language of civil liberties and the representative system of democracy as a whole can be preserved in the face of the strong challenge to these values that has become increasingly apparent since the 9/11 attacks.

## **Keywords**

Civil disobedience--Law and legislation; Terrorism--Prevention--Law and legislation

# REFLECTIONS ON CIVIL LIBERTIES IN AN AGE OF COUNTERTERRORISM<sup>©</sup>

BY CONOR GEARTY\*

This article examines the historical origins of civil liberties and shows their importance to systems of government rooted in the principles of representative democracy. It argues that the subject of civil liberties needs to be distinguished from issues related to criminal justice and human rights, and that too broad a deployment of the language of civil liberties can lead to the importance of civil liberties being underappreciated by the wider public. The article considers how the integrity of the language of civil liberties and the representative system of democracy as a whole can be preserved in the face of the strong challenge to these values that has become increasingly apparent since the 9/11 attacks.

Cet article examine les origines historiques des libertés civiques, et montre leur importance pour les systèmes de gouvernement enracinés dans les principes de la démocratie représentative. Il avance que le sujet des libertés civiques doit se distinguer des problèmes liés à la justice criminelle et aux droits de la personne, et qu'un développement effréné du langage des libertés civiques peut faire que l'importance des libertés civiques soit sous-appréciée du grand public. L'article analyse comment l'intégrité du langage des libertés civiques et le système représentatif de la démocratie dans son ensemble peuvent être préservés face au défi farouche lancé à ces valeurs qui s'affirme de plus en plus depuis les attentats du 11 septembre.

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The philosophical formulation of the question of rational law—the question of how an association of free and equal citizens can be constructed through the means of positive law—forms the emancipatory horizon of expectation within which the resistance to what appears as an unreasonable reality becomes visible.

—Jürgen Habermas, *The Postnational Constellation*<sup>1</sup>

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<sup>1</sup> (Cambridge: Polity Press, 2001) at 58.

## I. THE PROBLEM DEFINED

The critical perspective that we bring to the present state of the law, or to this or that proposal for change, is formed in large part by our understanding of what we, as a political society, are committed to, and of what we believe ourselves to be capable. This set of expectations is in turn made possible by the kind of institutional structure within which we, as active citizens, find ourselves. The better our framework, the more open it claims to be, the more justice it delivers, then the more critical we are of decisions that, to our eyes, involve departures from what we believe the system to be capable of achieving, and from what, furthermore, we think it ought to provide. Hence, the great disappointments are always suffered by egalitarian campaigners in democratic systems, not only under occasional reactionary administrations but under left-wing and social democratic ones as well. Enough is never done because enough can never be done (short of the achievement of an egalitarian revolution that the twentieth century has taught us will produce, at best, a brief mirage of progress, and, at worst, unnecessary bloodshed and counter-reaction).

The fate of the socialist-minded activist in modern democratic politics is that of the perpetual bemoaner, lamenting the reactionary zeal of the Right or the betrayals of the governing Left, as the case may be. Even when progress is acknowledged to be evident, it is inevitably condemned by such critics as too little, too late, or (even worse) as a token morsel thrown down to put them off the scent. The tone of politics on the Left in contemporary democracy is routinely one of doom and gloom, of betrayal and anger, rather than of optimism and pragmatic policy ambition. Such language is at odds with the sunnier idealism with which socialist ideas started and neither is it particularly appealing at election time. The attraction of the third way to very successful left-leaning politicians like Bill Clinton and Tony Blair lies in the way it has allowed them to escape the negative rhetoric of their political heartlands without formally entering the enemy's right-wing territory. The goal of democratic success in the societies in which they have found themselves has necessitated that both men switch away from their respective political bases—the bastions of the left-wing political activists with their dreams of equality and their constant disappointments—towards a middle ground populated by a quite different sort of person, one with much more run-of-the-mill ambitions for the state and for what it can and should do for those within its jurisdiction.

These people, and there are far more of them than there are political enthusiasts of any sort, have a different set of assumptions about the framework of government than those of the actively involved and, as a result, their critical perspective on what can and cannot be achieved will

often be very different from that of the engaged political player. And because many of these individuals vote, it is their version of achievability, of what is to be expected, of what emancipatory initiatives should be undertaken, that really counts. This is frustrating for the political activist who is involved in agitation, meetings, and planning around the clock, such being their nature. It is also annoying for the thinker who has sat quietly in his or her office and worked out exactly why equality is a moral imperative. Why should the version of the possible to which the activist and the scholar have come be usurped by these once-every-four-years citizens? It may be democracy and they are stuck with it, they know that. But they cannot help accusing their own leadership of letting them down, of even betraying them when (in the hope of re-election) that leadership notices these whimsical occasional citizens, who may only vote every four years but who read the papers and form judgments everyday. The disappointments of the Left flow from the minority status of its emancipatory horizon of expectation, which in turn results from its ambitious and (other than at the level of woolly rhetoric) self-defeatingly sectional view of both how effectively to construct an association of free and equal citizens and which policies to promulgate within such a body.

The area of civil liberties provides an extreme example of this dissonance between persons who are politically engaged (usually on the Left), on the one hand, and the general population, on the other. Few subjects excite the political activist, the liberal, and the concerned lawyer more than the need to protect civil liberties. The term is frequently called into action as a shield against governmental proposals for change in a wide range of areas, such as police powers, criminal justice, prisons, terrorism, public order, criminal procedure, data protection, surveillance, and identity cards. Indeed there are many others; civil liberties has become a catch-all phrase, denoting many kinds of conduct that may not self-evidently seem to engage the term but that have been dragged within its remit by government attack. Where privacy is concerned, often there is not even any individual behaviour involved, but rather some part of a person, such as voice, genetic code, or blood, that it is considered necessary to protect from the state. Organizations deeply rooted in civil society devote themselves to the protection of civil liberties, the subject being defined in this reactive way. Lawyers' associations are usually also committed in the same manner. There is rarely talk of "the enhancement of civil liberties" with a consequent need for focus on and discrimination as to what the term entails. As a result of this reactive nature, the effort of identification and definition only rarely arises; a civil liberty becomes known by the fact of a government attack upon it.

It may be because of this openness of meaning that the language of civil liberties is so often deployed against so many proposals for action by the state, but the truth would seem to be that the wider community does not invariably show the same solicitude for civil liberties that is revealed so persistently and so frequently by the political activist, the liberal intellectual, and the public lawyer. Seats in parliament do not usually depend on a representative's voting record on civil liberties. Nor do the opinion polls punish politicians for making proposals condemned as invasions of our civil liberties. Indeed, the opposite may even be the case; such criticisms have the entirely counterproductive effect of causing the electorate to believe that the government might indeed be on to something worthwhile, concerning drug control, for example, or serious crime or anti-social behaviour. Having been condemned consistently by civil liberties groups for his cavalier approach to freedom, U.K. Home Secretary David Blunkett was nevertheless rated the third most popular member of the British cabinet in a poll taken shortly after the 2003 attack on Iraq began.<sup>2</sup> His rating remained exactly as it had been a year before, notwithstanding the enactment in the interim of draconian anti-terrorism legislation that excited the indignation of civil libertarian activists as few bills have in recent years.

There is something almost stylized about the way that civil libertarian issues feed into the modern political discourse. A proposal is presented by a government minister on crime, immigration, terrorism, or some other contemporary issue. It is then attacked by the civil liberties lobby as was to be expected, indeed (for reasons mentioned above), perhaps as was even thought politically desirable by the minister. This or that change may or may not then be made, dependent on the strength of the "lobby" in the individual case. There is no particular sense of the civil libertarian perspective being integral to the debate, other than to the extent that the minister is satisfied that the measures being proposed do not unacceptably erode civil liberties. Such assertions are invariably made, with ministers rarely denying that civil liberties matter, instead claiming that civil liberties concerns have been "fully taken into account" (or some such phrase). What are not fully or (sometimes) even partially regarded are the views of the primary defenders of civil liberties, the activist non-governmental organizations (NGOs) and lawyers dedicated to their protection from government abuse. These defenders of civil liberties have become something akin to the trucking association or consumer groups: no more than a hurdle that occasionally lies in the way of enactment of

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<sup>2</sup> Alan Travis, "War Makes Hoon, Straw Cabinet Stars" *The Guardian* (23 April 2003) 1.

legislation that may be hard or easy to get by depending on the particular issue.

In its modern form, the protection of civil liberties has become the work of a lobby, not the duty of the entire citizenry, whose claim to act on behalf of the whole of society is not shared by this wider audience; indeed the general public is far more likely to see the civil liberties crowd less as the defenders of their own freedom, and more as the shop stewards of thieves, terrorists, and “fat cat” lawyers. This is an attitude that is frequently encouraged by government. Sometimes even deeper, politically motivated hatred is directed at civil libertarians. The attacks on the American Civil Liberties Union (ACLU) in the United States have sometimes reached a pitch of hostility reminiscent of the Cold War era, as when Presidential Candidate Michael Dukakis was forced to defend his membership of the organization in the 1980s. In the United Kingdom, recent Labour Home Secretaries have been able to use their authority in a movement traditionally committed to civil liberties as a platform for serious efforts to distinguish the protection of civil liberties (to which they as ministers say they are and remain committed) from the ostensible protectors of those same freedoms (who are described as self-serving or fanatical or as “not living in the real world”).<sup>3</sup>

The world-changing events of September 11, 2001 (9/11) have had their own large effect on the traditional discourse of civil liberties, piling further pressure on the term, connecting it once more with anti-patriotic elements and widening still further the division between the popular and the liberal/activist perceptions of what the protection of civil liberty entails. This disconnect was already evident by the time of the attacks on the Twin Towers, the Pentagon, and United Airlines Flight 93 over Pennsylvania; it was not generated by those events. What is new about the era that has been ushered in by 9/11, however, has been the willingness of individuals within the leadership in certain democratic states to deepen further their hostility to the language of civil liberties, to open up a new front in their assault on the liberal/activist understanding of the phrase by asking publicly whether now is the right the time to give up on civil liberties altogether, at least insofar as certain suspect groups and perhaps also other undesirables are concerned. Since 9/11, the debate regarding civil liberties is no longer entirely about who protects civil liberties better, the politician or the civil

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<sup>3</sup> The phrase is that of the United Kingdom’s Home Secretary David Blunkett, used in May 2003 in the course of a speech rebutting criticisms of certain legislative proposals from a retired senior judge: see John Steele, “Blunkett takes swipe at judges” *The Daily Telegraph* (15 May 2003), online: *Telegraph News* <<http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2003/05/15/nblunk15.xml>> (date accessed: 21 July 2003).

libertarian; instead, it is increasingly about whether the civil liberties of certain groups can afford to be taken into account *at all*. This is a dramatic and relatively new twist, the first breach (in the democratic era outside of formal war at least) in a previously unqualified (at least rhetorically) commitment to the equal protection of the laws, and an indication perhaps of future assaults on the whole idea of civil liberties by a rival discourse rooted exclusively in concerns of national security and counterterrorism.<sup>4</sup>

The danger inherent in these developments (both pre- and post-9/11) for the activist or civil libertarian position simply cannot be exaggerated. If current trends continue, such citizens will find that the rhetorical and indeed practically-expressed priorities that they believe have been taken for granted for generations will be turned on their head: where there was freedom, there will now be security; where there was individual liberty, there will henceforth be the interests of the state; where there was due process, there will be almost casual executive discretion; and so on ad nauseam. The civil libertarian who persists in using the traditional language will cease not only to be at odds with the prevailing, more community-minded point of view, but will also become merely eccentric, of historical interest perhaps, a curiosity certainly, and irrelevant. The traditional Liberal's language kit will be full of tired metaphors redolent of a past era, while those who count—those who tell the police what to do and arrange the detention camps and the telephone intercepts, sanction the torture and so on—will have the renewed freshness of phraseology that flows from a rejuvenation of fear. The civil libertarian will become like the jaded priest clinging to homilies reminiscent of an age long past.

The major shift in language described above is not yet complete. The idea of civil liberties still carries some resonance not only with the liberal activists, but also with the wider community and with some political leaders. Behind the times as always, certain judicial cultures are only now developing strong civil libertarian perspectives (the American judicial culture, having been earlier in the civil libertarian game, are closer to the exit than the rest). There is still a sense of the idea of civil liberties being in conflict with more modern needs such as for national (or homeland) security, rather than having been wholly vanquished by such needs. It is still possible that a catastrophic overreach of state power (a guerilla-war defeat for U.S. forces in Iraq; a failed invasion; a pre-emptive attack on North Korea that goes wrong; U.S. economic collapse) or some monstrous overplaying of the anti-civil libertarian hand (mass detention; the careless use of torture) might reconfigure the political landscape so as to permit the

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<sup>4</sup> A new perspective that has been able to build on the distinction between the resident or citizen and the non-resident or alien which has, to some extent, always been in the law.

re-emergence and reassertion of the traditional language. However, the more likely eventuality at the time of writing is a continuation of the slow and inexorable decline in the traditional idea of what is entailed by civil liberties, the continuation of its marginalization, and its eventual replacement by the new security paradigm.

In order to fight back effectively, something that (we have to believe) is still possible even at this late stage, proponents of civil liberties must develop a much clearer intellectual strategy than has been evident in the past. This strategy should be rooted in a proper understanding of the historical origins of the term, and should also express a clear view as to what civil liberties does (and, more to the point, does not) encompass. Slimmed down and historically aware, a new revitalized and confident language of civil liberties need not go down without a fight: we owe that at least to those generations of past activists without whose struggles we would have nothing now to defend.

## II. THE ORIGINS OF CIVIL LIBERTIES

Our first task is to clarify the terms that we are using. Let us begin by asserting that the heyday of civil liberties, the moment in time when this version of freedom imposed itself on the historical imagination, occurred in England in the seventeenth century. It was during the last decades of this period that the liberty and freedom (both in the broadest sense) of property owners were successfully asserted against the absolutist inclinations of the Stuart monarchy. After a few, quasi-democratic turnings that led nowhere, the constitutional settlement of 1688 eventually emerged, securing property owners the enjoyment of freedom and liberty in general, and the civil liberties that came with such freedom in particular: namely the right to vote for representatives in the sovereign parliament and the ancillary rights of expression and assembly that went with, and made meaningful, that right to vote. The connection between civil liberties and freedom at the abstract level of political theory was made very early, and the link between civil liberties and parliamentary sovereignty was likewise present at the birth of civil liberties in their modern form. The power of the phrase lay in its ability both to reach up into the clouds of abstract philosophy and, at the same time, down into the fields of pragmatic constitution-building (as we would call it today).

During the nineteenth century, there was a marked expansion of the categories of holders of civil liberties in what today we would call the old



democracies.<sup>5</sup> During this period, the right to vote was extended beyond the property-owning men to men generally and then to women as well. The ancillary freedoms of liberty, expression, association, and assembly during this time also came to be enjoyed by a far wider set of persons than had previously been the case, with a climate of official tolerance gradually replacing the atmosphere of repression with which the period began. From being an essential tool in the elite's government in its own interest, civil liberties gradually emerged as an entitlement available to be claimed by all, and to the protection of which it was thought governments and other components of civil society ought to be dedicated.

How did these changes come about? Each political environment has its own story to tell. As far as Britain is concerned, the advances of the seventeenth century were secured via what we would call today civil disobedience (the deliberate, principled breach of a law judged unjust), but they also required much more than this, embracing what we would now describe as terrorism (the indiscriminate killing of civilians or assaults on their property practised by subversive elements in order to communicate a message to government or to secure an advantage over the authorities) and military-style insurgency (attacks by organized subversive forces on the political and military authorities of the day). Because rival armies eventually took to the field, the conflict in seventeenth-century England also embraced civil war without resorting to the intervening stage of guerrilla warfare. After the radical changes of the 1690s, there were fairly robust coalitions of interests determined to obtain for themselves the civil liberties that earlier generation of revolutionaries had secured for the propertied. Realizing these ambitions required action on the streets and in the printing presses. There were lots of crowds shouting slogans and threatening revolution, assembling where they should not have done, and, generally (from the legal point of view), making criminal nuisances of themselves.

A brisk survey of the period will find plenty of examples of civil disobedience, direct action, and even terrorism. There was, of course, conventional parliamentary engagement as well, such as the reform legislation passed in Britain in 1832 and 1867. These various techniques of securing change were, in their nineteenth-century context, certainly about many things, but from the perspective of this article it is worth noting that

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<sup>5</sup> For the present purposes we will define the nineteenth century as the Age of Democratization that extends from 1789 (French Revolution) to the general emergence of the universal franchise in the West (to use the term loosely) in the aftermath of the First World War. For a more extensive discussion of civil liberties see K.D. Ewing & C.A. Gearty, *The Struggle for Civil Liberties: Political Freedom and the Rule of Law in Britain, 1914-1945* (Oxford: Oxford University Press, 2000).

they were at least partly about achieving a situation of general respect for civil liberties; civil liberties were the *end*, not the *means* to the end, as the other forms of action (terrorism, civil disobedience, and civil war) had been in the seventeenth century and were in the nineteenth. These other tools of political change were mechanisms for securing outcomes rather than—as was the case with civil liberties—efforts to achieve agreed democratic procedures for change. This important difference may explain why, historically, the Right has shared (in a frustratingly ill-defined, inconsistent, almost whimsical, romantic kind of way) the Left's attachment to civil liberties. The origins of the subject are deeply conservative: it is about joining the status quo, not subverting it.

Thus it was during this age of democratization that the meaning of civil liberties emphasized not the creation or enhancement of these freedoms, but rather the need for them to be accorded respect and protection. The subject was not about fabricating something wholly new; instead, it was about sharing out among the many something that was already available to the few. What then was that "something"? Clearly the right to vote was the first essential requirement. As for the ancillary freedoms of liberty, expression, association, and assembly, those seeking respect for their civil liberties (among a mixture of other goals) during this period were not demanding that they be given these rights in the way they were demanding the right to vote. Rather, they were insisting that they be allowed to exercise these rights without state interference. They wanted to protest without being shot and to publish political pamphlets without being jailed. It is true that certain laws, against combinations, for example, or sedition, might well have been regarded by nineteenth-century radicals as irredeemably bad. But we can guess that the democratic agitators and union activists of the time would not have been conscious of calling for the abolition of all the laws that were deployed against them: those of trespass, breach of the peace, unlawful assembly, and binding over. It is more likely that to the extent that they thought about it at all, they believed it was necessary to have some public order law on the books. It was more a case of seeking to ensure that these laws were no longer exercised in a way that effectively destroyed their civil liberties.

This is a key point of principle. Under the traditional British system, theoretically everyone had these ancillary civil liberties, except insofar as they were removed by the operation of law. In practice, however, because the law extended so widely, a group's or an individual's civil liberties could be effectively extinguished by the hostile exercise of official discretion, if the authorities chose to act antagonistically. When we understand this point we can see why the subject of civil liberties so often resolves itself into a study of official discretion: consider the British and Irish cases of *Beatty v.*

*Gillbanks*,<sup>6</sup> *O'Kelly v. Harvey*,<sup>7</sup> and *Duncan v. Jones*.<sup>8</sup> All three of these decisions involved not just the police and magistrates deciding to break up a hostile gathering: there was an element of pre-planning on both sides, especially in *Duncan v. Jones*. The law on the protection of civil liberties involves analysis of the hostile exercise of official discretion on the spot as it were. It also involves study of the hostile exercise of such discretion, provoked by the peaceful action of persons intent on asserting their civil liberties: Mrs. Jones outside the training centre, Mr. O'Kelly at his meeting, and Captain Beatty and his team of Salvationists. Here the subject of civil liberties comes very close to that of civil disobedience. The latter is about the principled defiance of a law judged unjust; these cases are about the principled defiance of an unjust exercise of a discretion under a law that might in itself not be regarded as unjust.

We should now briefly summarize what we have been saying so far. First, civil liberties are those freedoms that are necessary to the proper functioning of a decision-making assembly designed on the representative principle (the right to vote, the freedoms of speech, assembly, and association). Second, though pre-democratic in its origin, the concept of civil liberties was ideally suited to the democratic era: the wider the range of persons entitled to representation, the more the civil liberties of the propertied few became the "rights" of the many. Third, civil liberties facilitate an effective system of representative government; they are not about achieving any particular political outcome; they differ, therefore, from forms of political agitation (civil disobedience, terrorism, military insurgency) that are extra-parliamentary in nature and that are invariably driven by a commitment to policy outcomes rather than procedural integrity. Fourth, while the subject of civil liberties does involve the imposition of certain positive obligations on the state (mainly related to the right to vote and the prevention of disruption of the civil liberties of others by private parties), it is primarily concerned with ensuring that there is no inappropriate interference by the state with those civil liberties (expression and assembly, for example) that are essential both to the proper exercise of that right to vote and to the political activity that occurs all the time in a democracy, whether or not a vote is in the offing. Fifth, the subject is, as a result of all that we have said, more narrowly defined than is commonly assumed; criminal justice, for example, should be regarded as outside the remit of civil liberties proper, as should prison law and police powers

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<sup>6</sup> (1882), 9 Q.B.D. 308.

<sup>7</sup> (1883), 15 Cox C.C. 435.

<sup>8</sup> (1935), [1936] 1 K.B. 218.

generally. It is recognized that all these subjects can impact on civil liberties to the extent that official discretion, exercisable under these laws, impacts on the right to vote or the ancillary rights of expression and assembly. Sixth, and finally, the special case of the right to vote apart, the subject is primarily about the exercise of official discretion under the law, rather than about the laws themselves. It follows that what especially interests the civil libertarian scholar is the practice of civil liberties, what the subject looks like on the streets rather than on the statute book.

### III. THE TAMING OF DEMOCRACY

From this vantage point, we can see that the triumph of democratic forms also represents a victory for the idea of civil liberties. The two are inextricably interconnected. Democracy is about ensuring that the representatives of any given community get to decide what is in the best interests of that community, with each elector having an equal say in the outcome of the elections that determine who is to sit in the representative assembly. Civil liberties are about guaranteeing that equal say. It might have been thought that the achievement of democracy would have secured the future of civil liberties for all time, making the current attacks on them literally impossible to imagine. But that is to underestimate the fragility of the hold that representative democracy has on our political imagination. The drift away from a commitment to civil liberties described in the first part of this article has not come out of nowhere. It is a subset of a wider and more fundamental corrosion in allegiance to the idea of representative democracy itself. This weakening of confidence in democracy has made easier the assaults on civil liberties that have (as we have seen) nearly completely wrested from it its traditional, democracy-reinforcing meaning. While at the same time as the language of western-style democracy has been reaching further and further across the globe, what is entailed by democracy has been shifting before our eyes, becoming in the traditional western democracies, more and more about presidential-style, media-friendly, business-oriented leaders, and in the new democracies being less and less about process (the right to vote, expression) and more about outcomes (the "right" kind of market-sensitive policies; the most agreeable leadership to foreign eyes; Western or U.S. control of vital national assets; and so on).<sup>9</sup>

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<sup>9</sup> The most explicit exponents of this new brand of democracy are to be found in the Project for the New American Century, which is housed in the American Enterprise Institute, an organization with very close contact with the present U.S. administration. For a summary of their views see "Where Next?" *New Internationalist* 356 (May 2003) 4, online: <<http://newint.org/issue356/currents.htm>> (date

It is not entirely accurate to talk of the corrosion of the democratic ideal as though there was once a golden age of untrammelled commitment to the representative paradigm. The victory of the democratic principle was fragile even at the moment of its achievement and its hold on the twentieth-century imagination was always precarious. The hatred for democracy shown by nineteenth-century defenders of the capitalist status quo was rooted in the assumption that victory for the representative principle was bound to usher in a transformation of society that was guaranteed to lead to the extinction of their way of life. This is also what democratic socialists tended to believe<sup>10</sup> and what the propagandists of democracy maintained. The people were bound to vote for equality if given equality of voting power. From the socialist perspective, the problem with this approach lay in its commitment to process rather than outcomes. We have already noted that civil liberties have a procedural character that differentiates them from more outcome-based techniques of securing political change, such as terrorism or civil disobedience. What mattered about civil liberties was that the people should have the power to decide; less important was what, in fact, they chose to mandate their representatives to do.

Through this chink in the nineteenth-century coalition between the twin forces of socialism and democracy, reactionary elements were able to mount a brilliant rearguard action, accepting representative democracy in principle, but at the same time throwing up various smokescreens and performing innumerable tricks so as to confuse or dazzle the newly liberated masses onto their side. Some of these manoeuvres were relatively benign, even beneficial, such as the expansion of welfare provision that was enacted in many Western states at around the same time. Less attractive was a new emphasis on imperialism, which in Britain, for example, created a basis in nationalism for the support that came to be shown by a substantial number of working-class people for the Conservative Party: Benjamin Disraeli is still revered by Tory ideologists precisely because he was the first to see that electoral reform did not necessarily entail the obliteration of the ruling class.

In the twentieth century, the mechanism for controlling the optimistic, egalitarian impulses of the democratic ideal has been constituted out of ingredients that can be described, using a familiar contemporary metaphor, as both "tough and tender." As far as the latter is concerned, the concessions initiated by or wrought out of the rich and propertied classes

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accessed: 23 June 2003).

<sup>10</sup> See Edward Bernstein, *The Preconditions of Socialism*, ed. and trans. by Henry Tudor (Cambridge: Cambridge University Press, 1993).

have continued, accelerating after the Russian revolution of 1917 and the establishment of what, for many years, looked to be a real alternative to capitalist democracy. Substantial gains have been made, and continue to be made, for the majority of the people that would not have been available in the absence of the democratic assertion of the indelibility of the linkage between political power and the wishes of all those affected by the exercise of that power. By contrast, the tough side of the new democratic age has been evident in an emphasis on national security and the need to be ever-vigilant to protect the democratic system from threats (both external and internal) to its existence. The tension between these two models of politics, one taking democracy and equality as its starting point, the other focusing emphatically on national survival, has been a constant of the democratic era. The first model is hopeful, oriented towards freedom and civil liberties, optimistic and confident, inclined towards equality and social justice. The second is gloomier, more anxious, fearful of the future, and pessimistic about progress, with no time for ambitious programs or radical reform.

It has been through the language of war that the national security model has found its clearest expression. In the western democracies, the world wars of 1914–18 and 1939–45 provided many well-known opportunities for the evasion of democratic duties, from the postponement of elections through to the large-scale suspension of civil liberties. More interesting from the perspective of this article have been the “cold” wars that have been pursued (waged is perhaps not quite the right word) in times of peace. There was the “red scare” of the 1920s, the well-known activities of the McCarthyites, and (to use perhaps an apt term) their fellow travellers in the United States and abroad during the 1950s.<sup>11</sup> The actions taken against Left and socialist groups under the aegis of these various cold wars in the United States and Britain, but also across the democratic world, served to rein in the potentially wilder and more excessive enthusiasts of democracy, without disturbing the democratic ideal to which all were able to feel they remained committed. The persecution of left-wing activists simply belonged to a different discourse and therefore did not engage with the democratic self-image of these states, much less cause embarrassment to their democracy-loving citizens. The fence that surrounded the democratic playing field, reducing its space for action, was invisible to most of those who played the game. Believing themselves to be wholly sovereign, they did not notice that truly radical ideas never occurred to them; the few who wandered out of the designated playing area were quickly arrested and

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<sup>11</sup> See Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (New York: Oxford University Press, 1990).

expelled from normal politics. Identified as threats to national security, left-wing activists were denied civil liberties.

The idea of terrorism has been around for a long time and has served for decades as an adjunct to the national security paradigm. The British government was able to persuade elected representatives in parliament to enact harsh anti-civil libertarian measures on the basis of the threat of Irish-based terrorism in 1939, 1974, 1976, and 1984.<sup>12</sup> The last of these measures, passed when the Cold War had entered what we can now see as its final phase, extended these powers to encompass international terrorists, a prescient indicator of how things were to develop. For with the end of the collapse of Soviet power and the consequent conclusion of the Cold War, the “terrorist threat” has come into its own as the primary basis for stifling the natural energy of the democratic ideal. It is not just about the laws, though these were beginning to come thick and fast well before 9/11, such as legislation in 1996, 1998, and 2000 in Britain, and in 1996 in the United States, for example.<sup>13</sup> It is also—and primarily perhaps—about the atmosphere that is engendered in democratic states by the endless talk of terrorism and the threat it poses to our whole way of life. How can a community concentrate on bettering its lot when it is constantly worried about its future? Fear is a great dissipater of political energy that might, if left alone, be effectively spent elsewhere, on tackling inequality for example, or on addressing world poverty. At very least, the attacks of 9/11 have served to make this point even more obvious, transforming the idea of counterterrorism from a residual weapon in a bigger war into a full-scale, self-standing, and permanent War on Terrorism, capable of being waged against visible and invisible enemies, in different ways as policy demands, and without the need for very much action on the enemy side.<sup>14</sup> For those always searching (consciously or unconsciously, institutionally or

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<sup>12</sup> C.A. Gearty & J.A. Kimbell, *Terrorism and the Rule of Law: A Report on the Law Relating to Political Violence in Great Britain and Northern Ireland* (London: CLRU, School of Law, King's College, 1995).

<sup>13</sup> See generally on the British side, Clive Walker, *Blackstone's Guide to the Anti-Terrorism Legislation* (Oxford: Oxford University Press, 2002).

<sup>14</sup> See on the legislative and political reaction in the United States, Nancy Chang, *Silencing Political Dissent: How Post-September 11 Anti-Terrorism Measures Threaten our Civil Liberties* (New York: Seven Stories Press, 2002) as well as two excellent reports by the Lawyers Committee for Human Rights: “A Year of Loss: Re-examining Civil Liberties Since September 11,” online: <[http://www.lchr.org/us\\_law/loss/loss\\_main.htm](http://www.lchr.org/us_law/loss/loss_main.htm)> (date accessed: 19 June 2003) and “Imbalance of Power: How Changes to U.S. Law and Policy Since 9/11 Erode Human Rights and Civil Liberties,” online: <[http://www.lchr.org/us\\_law/loss/imbalance/powers.pdf](http://www.lchr.org/us_law/loss/imbalance/powers.pdf)> (date accessed: 19 June 2003).

individually) for ways to hinder democratic growth, this new war could not have been more perfectly designed.<sup>15</sup>

The battle over the language of civil liberties identified in the introduction is part of a larger conflict over what the idea of (representative) democracy entails. The public discourse in all democracies has invariably involved a tension between, on the one hand, the egalitarian/activist/liberal model of what democracy can achieve for its citizenry and, on the other, the national security/"we-are-all-doomed" paradigm, with its emphasis on survival at all costs. The events of 9/11, preceeded as they were by an extraordinary judge-made election in the world's most powerful democracy, have given a firm upper hand to those whose inclination is to emphasize the need for national security and whose view of democracy is driven more by the desire for it to deliver certain outcomes than for its procedure to be clear and fair. Since 9/11, the language of democracy itself is at risk of being turned into an adjunct to U.S. foreign policy, emphasizing American-style liberty and freedom rather than the need for elections and civil liberties.<sup>16</sup> From the perspective of the civil libertarian wedded to what the phrase used to mean, this is a gloomy scenario indeed. With the protection traditionally afforded civil liberties by society's commitment to democracy being washed away before their eyes, what hope do civil libertarians have of avoiding being drowned in the subsequent authoritarian deluge?

One big twentieth-century idea that looms large and loud in our contemporary discourses, achieving more notice than civil liberties protection has ever managed, has been missing so far from the analysis presented here. Where do human rights fit in the dismal catalogue of democratic decline which has just been mapped out in general terms? Was this not supposed to be the big idea of the post-Cold War age? Where is the language of human rights when it is most needed?

#### IV. THE DOUBLE-EDGED PROMISE OF HUMAN RIGHTS

In its modern form, the idea of human rights first took root in the immediate aftermath of the Second World War. Promoted by Franklin Roosevelt during the war, and given force by the *Universal Declaration on*

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<sup>15</sup> Particularly worrying is the development of a U.S. military command for the United States. For the details see Robert Dreyfuss, "Bringing the War Home: in the name of fighting terrorism, the army has established a domestic command" *The Nation* (26 May 2003) 18.

<sup>16</sup> See Paul Berman, *Terror and Liberalism* (New York: W. W. Norton, 2003) arguing for a "new radicalism" and a "liberal American interventionism" to promote "democratic values throughout the world" (quotations from flyleaf).



*Human Rights*, this new language seemed to express well the desire of humanity to make a fresh start after the horrors of the years just past. As set out in the *Universal Declaration*, the range of human rights inherent in us all is vast, covering basic aspects of our individual dignity, many civil and political rights, and also a range of social and economic entitlements.<sup>17</sup> This United Nations (UN) document was, of course, intentionally unenforceable, self-consciously a mission statement for humanity rather than an immediately realizable set of goals for the people who read it. In their stronger, judicially-enforceable form, human rights of the immediate post-war period were narrower in focus, largely restricted to civil and political rights, or what we have called here civil liberties. The new constitutional arrangements for the defeated Fascist powers contained rights guarantees of this sort, and a novel regional co-operative arrangement in Europe (the Council of Europe) produced a judicially enforceable Convention primarily concerned with civil and political rights, the *European Convention on Human Rights and Fundamental Freedom*.

The drafters of these documents, essentially the victors in the Second World War, were dedicated supporters of democracy, but they were equally vehement opponents of communism, and indeed of any kind of radical form of socialism. The link between market freedom and democracy was in their minds an indelible one. They were therefore faced with the challenge that the democratic socialists of the nineteenth century had failed, and with which, for example, the current U.S. regime in Iraq is wrestling: how do you design a democratic system that always produces the answer you want? The civil libertarian/human rights charters of the post-war period provided part of an answer to this when they embraced the right to property within their remit and (usually) made it impossible for any legislature, however democratically constituted, to tamper with that right (other than as was permitted by the qualifications on the guarantee that were invariably set out in the framework document itself). These basic human rights documents also generally permitted exceptions to be made to civil liberties where these were judged to be required to protect the democratic character of the state. The rights to freedom of expression, assembly, and association, for instance, can, in most human rights charters that matter (for instance, those that can bite on conduct at the political level), be set aside where the executive judges such action to be “necessary in a democratic society” or some-such phrase. Further exceptions can frequently be made for public emergencies and the like: a whole scholarship

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<sup>17</sup> *Universal Declaration of Human Rights*, GA Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948).

around “derogations” from basic human rights has grown up reflecting this fact.<sup>18</sup>

These characteristics of this immediate post-war wave<sup>19</sup> of human rights development, designed to copper-fasten democracy from both right- and (more to the point) left-wing attack, have been followed up in most of the domestic bills of rights that have been incorporated into the national arrangements of old and newly emerging (that is, post-colonial) states from the 1950s onwards. Civil and political rights—civil liberties—are given positive protection, but not as absolute entitlements: their protection must yield both in individual cases from time to time (where the one who deploys such freedom must be controlled in the interests of democracy) and also more generally in periods of acute political tension (a situation of public emergency). The explosion of rights talk that has followed the end of the Cold War reflects the beacon-like quality of this language as a repository of many of our better feelings about our fellow humans in an increasingly competitive world.<sup>20</sup> Its force has threatened to swamp more traditional discourses within it, such as that which has been under scrutiny in this article. Does the language of civil liberties gain from having been so enmeshed in this new human rights metaphor?

At one level, the constitutionalization of civil liberties protection in human rights charters and domestic bills of rights has clearly provided added protection for civil liberties. The old problem of a properly elected legislature choosing to attack civil liberties (a case of the democratic child biting the hand that feeds it its legitimacy) has always been a real one. It is a variant of the means/ends dilemma that is inherent in every democrat’s determination to see a fully-sovereign legislature in place—the definition of success is that there is no ready means of controlling what the elected assembly chooses to do. Locating civil liberties in a constitutional code that oversees such legislatures may diminish the sovereign purity of the latter, but it does at least give civil liberties a fighting chance of surviving, even in the teeth of some whipped-up (or genuine) popular anger. There is plenty of evidence of the existence of such charters, codes, and bills of rights having had a disciplinary effect on the way that legislatures have

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<sup>18</sup> A.W.B. Simpson, *Human Rights and the End of the Empire: Britain and the Genesis of the European Convention* (Oxford: Oxford University Press, 2001); Jaime Oraá, *Human Rights in States of Emergency in International Law* (Oxford: Clarendon Press, 1992).

<sup>19</sup> Francesca Klug, *Values for a Godless Age: The Story of the UK’s New Bill of Rights* (London: Penguin Books, 2000).

<sup>20</sup> But for a critical appraisal of the trend, see Kristin Sellars, *The Rise and Rise of Human Rights* (Stroud: Sutton, 2002); Stephen Holmes & Cass R. Sunstein, *The Cost of Rights* (New York: W. W. Norton, 1999).

approached the limiting of civil liberties within the jurisdictions for which they are responsible.<sup>21</sup> The more courts charged with the enforcement of such documents come to regard civil liberties as important, the more a fighting chance of their survival increases. And as suggested above, the old paradigm of a class-based judicial branch wholly immune to the necessity of protecting political activists outside the ruling elite no longer holds good, at least not to the same extent as in the past.<sup>22</sup>

On the other hand, the constitutionalization of civil liberties has proved less secure than might have been imagined. First, there are certain disadvantages in being caught up in a fungible kind of way in the ever-growing and ever-more-unwieldy basket of human rights. While it is perfectly true that the initial focus in the early international and domestic documents on human rights was on civil and political rights, the subject has greatly expanded since then, and the insights in the *Universal Declaration* about what it means to be human have been translated into further documents (at both the international and domestic levels) that deal with a far wider range of subjects than civil liberties.<sup>23</sup> Indeed, the extent of international human rights is now such that it presents a full and, to the social democrat, very pleasing account of how life should be, but it cannot by any stretch be described as politically uncontroversial, even in democratic systems of government of the best sort and particularly not where the openness of the electoral system has permitted the rise of authoritarian proponents of liberal capitalism. It has surely been quite proper to develop international law as a cutting edge in the changing of attitudes to equality, discrimination, poverty, and the abuses of minority groups across the world, but this forging ahead has left civil liberties looking like just a few freedoms among the many, with no special or different call on our attention.

Second, and following from this first point, in its (to this author at least) laudable drive to improve the lot of humanity, international human

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<sup>21</sup> For a European and U.K. perspective on this issue see C.A. Gearty, "Civil Liberties and Human Rights" in Peter Leyland & Nick Bamforth, eds., *The Contemporary Constitution* (Oxford: Hart) [forthcoming in 2003].

<sup>22</sup> A trend assisted in some jurisdictions by reforms to the process of judicial appointment. For an update on the fast-moving U.K. position, where a range of proposals for radical change have been made, see The Department of Constitutional Affairs, online: <<http://www.lcd.gov.uk/>> (date accessed: 21 July 2003).

<sup>23</sup> See generally Ian Brownlie & Guy S. Goodwin-Gill, *Basic Documents on Human Rights* 4th ed. (Oxford: Oxford University Press, 2002).

rights law has left the idea of democracy in its slipstream.<sup>24</sup> To the activist human rights lawyer, the nation state often seems to stand in the way of progress, to act as a barrier between the progressive ideas of human rights and the people these ideas are meant to serve. This is the case whether or not the representatives of such places are democratically elected. Of course, the more democratic a state, the more likely the government is to engage properly and fairly with the proponents of international human rights, but despite this convergence, the relationship remains an adversarial one, at least to some extent. Meanwhile, international law has provided no alternative democratic framework to facilitate the development of human rights standards, to rein in the international human rights activists where necessary, or to ensure the effective enforcement of the codes of rights that are agreed, properly connecting them (if need be) to democratic judgments about resources. The lack of this international democratic culture, allied to the habit of seeing national governments as standing in the way of change, has caused the international human rights lawyer to be less inclined to see that civil and political rights are as important as they were once believed to be. These rights are about consolidating democracy, but what good has democracy been in delivering the outcomes in which the proponents of international human rights profoundly believe? This division between human rights and civil and political rights has been to the marked disadvantage of the latter.

Third, there is the problem of the capacity for override available in most human rights charters that incorporate civil liberties within their remit. Exceptions and derogations can be made to human rights, the focus of which will usually be on civil and political rights rather than on other social and economic entitlements since it is to the limitation of the former that a state, even a democratic one, will usually look when trying (or asserting that it is trying) to defend itself. It is true that the relevant international and domestic documents usually provide an appropriately restrictive framework for the operation of exceptions to, and derogations from, fundamental human rights: there is much talk in the documents and the case law of necessity, a proportionately “pressing social need,” and the like. All this is excellent in that it disciplines the state authorities minded to depart from civil liberties to think before doing so. Nonetheless, certain

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<sup>24</sup> “Democracy used to be a word that international legal commentators preferred to avoid”: Susan Marks, “The End of History? Reflections on Some International Legal Theses” (1997) 8 E.J.I.L. 449. The “used to” here attests to some progress in the area, evidenced by the material covered in Marks’ piece. See generally the work of Thomas Franck, especially his “The Emerging Right to Democratic Governance” (1992) 86 Am. J. Int’l L. 46.

disadvantages inevitably flow from the existence of such suspensory opportunities in human rights charters.

First, the very availability to the state of a course of conduct that can ignore (or greatly reduce) respect for civil liberties puts before the executive authorities an option for action that would previously have been unthinkable, there having been no words previously available to describe it: a wholesale departure from civil liberties without recourse to primary, democratically-rooted legislation to mandate such action. The override clauses contained in typical human rights charters can, in most states, be actualized without proper democratic accountability. Having been offered a button marked “self-destruct,” it would be surprising if governments—even non-malicious ones—did not occasionally succumb to the temptation to press it. This is especially so in the atmosphere after 9/11, and has already produced a derogation in the United Kingdom. Where legislation restrictive of civil liberties is promoted, often in tandem with the declaration of such states of emergency, this constitutional language of crisis and national security provides a ready shorthand for draconian action: witness the range of repressive initiatives taken in the aftermath of 9/11 in countries with theoretically impeccable bills of rights. We can only guess at what might have happened in the United States if the drafters of that country’s Bill of Rights had thought to put in it an emergency override clause.<sup>25</sup>

Second, there is the problem of the fragility of the linguistic safeguards built into the exception and derogation clauses in the typical human rights document. As noted above, the controlling words may read impressively, but the reality is that the judicial arm given the responsibility of overseeing their application, whether international or national, will invariably—and perhaps even (in democratic terms) rightly—accord the executive a high degree of latitude in its judgment as to what is required to protect the state. The point is attested to in case law from across the world.<sup>26</sup> Even the absolutist guarantees of the U.S. *Bill of Rights* have been shown not to be what they seem when interpreted by the judges in light of war or war-like domestic circumstances.<sup>27</sup> Save in wholly exceptional circumstances, judicial challenges to derogations from, and exceptions to, civil and political rights made in the name of national security usually end

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<sup>25</sup> For a taste of the implications for civil rights, due process of the changes in legislation, and in the political climate generally in the United States, see the reports of the Lawyers Committee for Human Rights, *supra* note 14, and *Al Odah v. United States*, 321 F. 3d 1134 (2003) (C.A. D.C.).

<sup>26</sup> See in the United Kingdom, *A v. Secretary of State for the Home Department*, [2002] EWCA Civ 1502.

<sup>27</sup> A well-known example is *Dennis v. United States*, 341 U.S. 494 (1951) (S.D. N.Y.).

in failure.<sup>28</sup> This is the case even in those jurisdictions where the contemporary judicial fashion is for careful protection of civil liberties. Human rights may be a trump in the pack of political cards, but the interests of national security is the trump of trumps, carrying all before it.

Third, and following from the second point, there is the problem of legitimization. An attack on civil liberties that takes place baldly, either extra-legally or via legislation designed for just this purpose, has at least the virtue of being out in the open, and, therefore, being clear for all to see.<sup>29</sup> Of course, there is still debate about the nature of the attack, how serious it is, and whether it is justifiable, but the discussion is at least framed in the appropriate way. But a restriction of civil liberties that takes place within the framework of a human rights document (either a “necessary” exception to free speech, for example, or an action to counter a “public emergency”) can be presented as not an attack at all, but rather as an action *mandated* by the state’s *commitment* to human rights. Far from infringing human rights, the repression is (fully) compatible with them. This legitimization of what might have been considered by the naïve to be an attack on civil liberties then draws added strength from the (almost inevitable) judicial decision upholding the emergency action as valid, that is, in accord with human rights standards. So internment, censorship, proscription, and the like are *consistent with* rather than *departures from* human rights standards. The repressive state can deepen its reactionary engagement with domestic political dissent while all the time asserting confidently and (in legal terms) correctly that it is *respecting* human rights standards. Most members of the population do not notice the shrinking of the political marketplace of ideas, or, if they do, they can be assured that the protestors they see being dragged away from the shopping mall,<sup>30</sup> the internees whom they read about being locked up without charge for years on end,<sup>31</sup> or the organizations they find it is no longer lawful to join<sup>32</sup> are actually all being dealt with in a way that is in perfect harmony with “the very best human rights standards,” a fact attested to by all the “human rights experts.” And it is not impossible to imagine that torture, called by another name of

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<sup>28</sup> An important European Court of Human Rights example is *Brannigan v. United Kingdom* (1993), 17 E.H.R.R. 539.

<sup>29</sup> Where the action is truly heinous, there may be difficulties of detection of course, but “out in the open” means here self-evidently a departure from civil liberties standards.

<sup>30</sup> *Appleby v. United Kingdom* (6 May 2003), Strasbourg (Eur. Ct. H.R.), online: <http://hudoc.echr.coe.int/Hudoc1doc2/HEJUD/200305/appleby%20et%20al.%20-%2044306jnv.chb4%2006052003e.doc> (date accessed: 28 July 2003).

<sup>31</sup> *Supra* note 26.

<sup>32</sup> *O’Driscoll v. Secretary of State for the Home Department*, [2002] EWHC 2477 (Admin).

course, and surrounded by judicial safeguards (at least initially), could fit itself neatly into this new human rights paradigm.

## V. THE PROBLEM ADDRESSED

We end where we started with the problem of language. Just as in 1984 the Ministries of Peace and Love meant war and internal security,<sup>33</sup> so today we have departments of defence engaging in hostile action abroad, and a set of guaranteed human rights to underpin internal repression at home. Of course, the point is exaggerated, but with our political language changing at such speed and with so vast a power as the United States seemingly engaged in reshaping our understanding of what democracy means (both internally and externally), who can be so sure that the next longish resting place for the language that governs our social organization might not be along these lines? The battleground over which our next bit of this part of human history is being fought is the field demarcated “democracy” and it is to the patch in that area marked “civil liberties” that we need now to return. Proponents of the current drift away from traditional assumptions about what democracy and civil liberties mean are vocally scathing of the sectionalism, the lack of realism, and the self-interestedness of the civil liberties lobby. Defenders of political freedom counter with assertions about the importance of democracy and the need to respect our traditional liberties. Who is likely to emerge victoriously from this conflict?

At the moment it is no contest. Governments hold all of the cards, including a full set of both suits of trumps. Behind them, largely unaccountable and sometimes entirely secret, security organizations feed their democratic leaders chilling stories of imminent terrorism and easily usable weapons of mass destruction. These horrifying narratives are then passed on to the wider electorate shrouded in mystery and (more to the point) always (the issues being so sensitive) scantily dressed so far as any detail is concerned. Democratic cultures play their part in maintaining this atmosphere of fear, often whipping it up voluntarily, sometimes fabricating dramatic versions of the truth out of information supplied by the security state.<sup>34</sup> The intellectual community is even developing some momentum behind a radical critique of the whole idea of democracy, with authors beginning to stress—to the widespread praise of distinguished

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<sup>33</sup> George Orwell, *1984* (London: Penguin Books, 1989).

<sup>34</sup> On the media, see Arundhati Roy, “The Ordinary Person’s Guide to Empire” *In These Times* 27:12 (26 May 2003) 17.

colleagues—the inconvenience and disadvantage of traditional ideas of representativeness and accountability.<sup>35</sup> At the very least, the content of what is meant by democracy is under scrutiny, with the substantive understanding that emphasizes U.S.-style freedom gradually supplanting the traditional, process-based commitment to free elections and the sovereignty of the people that used to be what the idea of representative democracy entailed.

Against these forces are ranged a puny alliance of intellectuals, liberals, lawyers, and dissidents who are not even clear about what they mean by civil liberties. The fashion of postmodernism does not help here, with its distaste for objective meaning and its reluctance to commit itself to any true sense of right and wrong. As the influential philosopher Richard Rorty has remarked, it is “central to the idea of a liberal society that, in respect to words as opposed to deeds, persuasion as opposed to force, anything goes.”<sup>36</sup> It follows that a “*liberal society is one which is content to call ‘true’ whatever the upshot of such encounters [as between openminded forces] turns out to be.*”<sup>37</sup> The various governments in power in the liberal democracies of the world have set about such a redescription with gusto since 9/11, though whether any true-blooded liberal or even Rorty’s liberal ironist would regard it as an improvement is not so much an open as a rhetorical question, destined to elicit an automatic negative.

The winners in this unequal battle of the labels should not be called right merely because they have won, or are winning. Such passivity ill-suits the civil libertarian Left, which forged its identity in action, often against seemingly hopeless odds. It is not inevitable that Rorty and his fellow ironists are right and there is nothing worth fighting for out there, beyond words: modified forms of foundationalism that demand that there is still space for democracy, civil liberties, and human rights remain available for use by those temperamentally so inclined, and these perspectives fit such activists better than the jaded “know-all/know nothing” superiority of the postmodern scholar.<sup>38</sup> But even if Rorty and his school are right, then we nevertheless owe it to past generations of fighters and activists who struggled for democracy and civil liberties, often dying for these causes, or

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<sup>35</sup> See Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* 1st ed. (New York: W.W. Norton, 2003), reviewed by Niall Ferguson, “Overdoing democracy” in *The New York Times Book Review* (13 April 2003) 9.

<sup>36</sup> *Contingency, Irony, and Solidarity* (Cambridge: Cambridge University Press, 1989) at 51-52.

<sup>37</sup> *Ibid.* at 52 [emphasis in original].

<sup>38</sup> Particularly good are Habermas, *supra* note 1 at 113-29, and Steven Lukes, “Five Fables about Human Rights” in Stephen Shute & Susan Hurley, eds., *On Human Rights: The Oxford Amnesty Lectures, 1993* (New York: Basic Books, 1993) 19.



being imprisoned, or treated harshly for holding fast to their convictions, not to forsake their world view without so much as a murmur of dissent. Even the flightiest of language tricksters appreciates the power of the idea of solidarity, and if all we had left was a sense of solidarity with the brave democratic souls of the past who have made us what we are, then that should be enough to energize a fight back.

What is to be done? Firstly, there is some intellectual pruning that is urgently needed. The branches on the tree of (civil) liberty marked “criminal justice,” “prisoners’ rights,” “civil actions against the police,” and so on need to be lopped off and sent across to other discourses. Civil liberty is not about the length of a criminal sentence, the state of a country’s jails, or whether a victim should be compensated for alleged police brutality. These are important issues to be sure, but they belong elsewhere, and the controversy that surrounds them has confused the subject of civil liberties and debilitated its capacity to communicate its message.<sup>39</sup> The core of the subject lies in the protection of political freedom. Civil liberties is concerned with making representative democracy work. Its perspective on the world idealizes the arrangement of our public space in a way desired by the people within that space, with each being accorded equality of respect so far as their choice is concerned. Thus, civil liberties is about securing free and fair elections and ensuring that wealth does not dominate such elections. It is also about ensuring that the political atmosphere around such elections, and in society generally, is free and open with all views being able to be heard, even if not believed. Though once invariably wedded to a particular outcome (socialism), today’s civil libertarians are committed to the process rather than to what it is likely to deliver; they may have private opinions on the latter, but these do not make them more or less civil libertarian in their perspective.

Secondly, having sharpened the remit of the subject, adherents to it should go on the attack. They should challenge current assumptions about the national security state, hold conferences in which they propose change—on campaign funding, on media ownership, on political speech—rather than merely react defensively to the latest piece of aggressive speculation by the post-democratic liberal extremists. A broad front should be possible, from the unions concerned about freedom of association on the Left to nostalgic civil libertarians on the Right. The need to redress the international law presumption away from democracy and towards human rights should preoccupy the modern civil libertarian whose

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<sup>39</sup> For an original and penetrating analysis of the field of criminal justice see Andrew Ashworth, *Human Rights, Serious Crime and Criminal Procedure* (London: Sweet & Maxwell, 2002).

energies should be as sharply focused on the global as on the local.<sup>40</sup> Politics is certain to present flashpoints around which mass campaigns can be built, the purpose of which should be to reindulcate into the wider public some grasp of the importance of freedom and civil liberties. The consciousness-raising that occurred before and during the Anglo-American attack on Iraq in the spring of 2003 might, with care, be extrapolated into a broader political agenda. The requirement for an explicit renewal of anti-terrorism laws in the United Kingdom provides an opportunity for critical engagement with the national security state.<sup>41</sup> The U.S. Senate has already had to back down from making permanent “the sweeping antiterrorism powers” in the 2001 Act, though this is seen by informed observers as a retreat that “clears [the] way for [a] new bill.”<sup>42</sup> Nevertheless, there is still a fight out there to be had: the atmosphere in the United States may be bleak, but it is not (yet) so awful that a debate cannot even be had.

Finally, the advocates of civil liberties need to grit their teeth and remember afresh some of the techniques of political campaigning that they have forgotten and that their opponents have mastered in recent years. Civil libertarian campaigners need to relearn the virtues of patience and focus, and to remind themselves of the importance of such traditional socialist values as fraternity and solidarity. They need to reach out to the wider community, and use techniques of communication that connect with this audience and that are not to be sniffed at merely because they were not used in generations gone by. Advertising and branding need not be the exclusive weapons of the anti-civil libertarians, nor should money be on one side only. The aim should be for a scholarly reassertion of what civil liberties mean and why democracy matters, which can then be focused on particular political campaigns. These movements would then be able to draw support from a global coalition of civil libertarian-minded citizens fully aware of the intellectual underpinnings of what they were arguing for. A link between the scholar, the liberal lawyer, and the trade unions seems vital here. If properly funded, such a campaign would be able to enjoy the benefits of modern techniques of communication and marketing. This does not require a single movement, but it does suggest more coordination than

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<sup>40</sup> See Harry Shutt, *A New Democracy: Alternatives to a Bankrupt World Order* (London: Zed Books, 2001); Alison Brysk, *Globalization and Human Rights* (Berkeley: University of California Press, 2002); Tim Dunne & Nicholas J. Wheeler, *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999).

<sup>41</sup> The committee of privy counsellors charged with reviewing the 2001 Act is expected to report by the end of the year.

<sup>42</sup> Eric Lichtblau, “Aftereffects: Surveillance, G.O.P. Makes Deal in Senate to Widen Antiterror Power” *New York Times* (9 May 2003) 1.

is at present to be found; anarchy remains as attractive as it has always been, and just as futile. If the democratic and civil libertarian agenda is in place and working, the outcomes—fairness, justice, and equality of opportunity for all—will come over time.

# **Useful Notes on Anarchism**

TVTropes

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Anarchy is, and always has been, a romance. It is also clearly the only morally sensible way to run the world.

– Alan Moore<sup>(1)</sup>

Of all the political philosophies that have existed throughout history, anarchism is perhaps the most misunderstood. With general impressions ranging from the idea that Anarchy Is Chaos<sup>(2)</sup> to scary images of Bomb-Throwing Anarchists<sup>(3)</sup> from popular fiction, what most probably don't realise is there's actually a wealth of complex and multilayered ideas associated with anarchism that have had an impact on radical politics, the arts, and even mainstream culture.

The definition of anarchism to most people means “belief the state is bad and shouldn't exist.” However, while all anarchists are anti-statists, it is not the only or, in most cases, even the primary part of their ideology.

Anarchism is the belief that *rulership* as a whole, not just the state, should not exist – as indicated in its Greek roots, an- [no] -arkhos [ruler] – and that people should instead organize their social relations and institutions through voluntary cooperation without hierarchies of power. So what characterises anarchism is not anti-statism so much as anti-authoritarianism.<sup>1</sup>

This means that most anarchists would not welcome a reduction in state power if it meant an increase of other kinds of authoritarianism as a result. For example, privatising a public health service may weaken the state, but increase the power of corporations, and thus anarchists would probably oppose doing so. Though generally speaking, they don't support state or private management of things. Instead, anarchists push for voluntary, localised, and cooperative institutions organised from the bottom-up through decentralised networks and run via processes of participatory democracy<sup>(4)</sup> and workplace self-management<sup>(5)</sup>.

Another way of thinking about anarchism is that it's “democracy without the state” or “socialism when it occurs on a voluntary basis”. This tends to confuse many who

1. associate the word democracy with representative government; and
2. especially those who associate the word socialism with statism.

In fact, the word democracy originally meant *direct* democracy, like in Ancient Greece. And the word socialism originally referred to a number of economic systems in which economic institutions were run by those who actually worked in them. It's the earlier meanings of both words that anarchists use when talking about them. This also applies to their use of the word *libertarian*. Which, despite its modern Anglo-American use to mean *laissez-faire* capitalist, was actually first used by anarchist socialists to mean “anti-authoritarian”. A frequently used synonym for social anarchism is *libertarian socialism*.

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<sup>1</sup> Other terms for “archism” which anarchists use to describe what they oppose include: authority, hierarchy, power (as in power over others), domination, oppression, governmentalism, and heteronomy (the inversion of au-

<sup>(1)</sup> tvtropes.org

<sup>(2)</sup> tvtropes.org

<sup>(3)</sup> tvtropes.org

<sup>(4)</sup> roarmag.org

<sup>(5)</sup> libcom.org



In addition to the systems of centralised power found in statism and capitalism, anarchists also support dissolving all forms of social hierarchy and domination (i.e., rulership) – such as sexism, racism, queerphobia, ableism, speciesism, and the domination of nature – and restructuring society on a decentralised and horizontalist basis.

There are two main categories of political anarchist thought, divided chiefly by what kind of economic system they want to build.

- *Market Anarchists* want a stateless free market economy made up of producer and consumer cooperatives and self-employed professionals instead of private corporations and wage-labour. While once very popular, especially in America, market anarchism has ended up becoming a minority in the larger anarchist canon.
- *Social Anarchists*, on the other hand, want what could be called a “free commons”,<sup>2</sup> in which systems of decentralised and localised planning of the economy (by directly-democratic popular assemblies and worker-controlled enterprises) replace traditional market relations. In terms of numbers, this is by far the most prominent anarchist tradition and is what most people are referring to when they talk about “anarchism” without prefixes.

Both of these in turn are sub-divided into four overall proposals for different economic systems, each associated primarily with a different anarchist “founding father”, with the first two being forms of market anarchism and the later two social anarchism:

- *Mutualist anarchism* (Pierre-Joseph Proudhon)
- *Individualist anarchism* (Benjamin Tucker)
- *Collectivist anarchism* (Mikhail Bakunin)
- *Communist anarchism* (Peter Kropotkin)

Despite their differences, they all share a social commitment to the ideal of organising things on the basis of “voluntary, non-hierarchical cooperation”.

Anarchism was extremely popular in labour movements around the world in the late 19<sup>th</sup> and early 20<sup>th</sup> century, so much so that for a time it surpassed Marxism as the principal philosophy of working class struggles. Historian Benedict Anderson makes the case that anarchism was in fact the first “anti-systemic” movement that was fully global in scale, having influence in areas Marxism didn’t reach for decades, like Japan, the Philippines, Latin America, Egypt, and Southern Africa.

Its popularity waned somewhat after the Russian Revolution in which Marxists took power for the first time. Then after a last hurrah in the late 1930s, in which there was an anarchist revolution in Spain and Catalonia<sup>(6)</sup>, it flickered out in terms of appeal in the Global North except

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tonomy). These are not used as synonyms however. Each of the above describe different types of rulership (archy/archism) which apply more or less depending on the context.

<sup>2</sup> See here<sup>(7)</sup> for some basic info on what’s meant by “commons” in a modern context.

<sup>(6)</sup> libcom.org

<sup>(7)</sup> commonstransition.org

for occasional influences within environmental, anti-war, and student movements, though it still maintained an active presence in other parts of the world.

After a long time in a relative political wilderness, anarchism has seen something of a resurgence in worldwide political and social movements since the 1999 World Trade Organisation protests in Seattle over corporate-led globalisation policies, and especially since the 2011 “squares movements” around the world like the Arab Spring and Occupy Wall Street<sup>(8)</sup>.

The anthropologist David Graeber has opined that most social movements in the present day – structured through horizontal networks of cooperation rather than top-down hierarchies – are basically anarchist in their principles, even if they don’t necessary use the word to describe themselves.

For those new to anarchist ideas, there’s been a massive project aimed at explaining everything about (social) anarchist theory, practice, and history called An Anarchist FAQ available at this link<sup>(9)</sup>, and a series of introductory videos on social anarchist/left-libertarian ideas is available here<sup>(10)</sup> and here<sup>(11)</sup>. Some good book-length intros can be found in *Demanding the Impossible: A History of Anarchism* by Peter Marshall, *Anarchy in Action* by Colin Ward, *Red Emma Speaks* by Emma Goldman, *Anarchism and Its Aspirations* by Cindy Milstein, and *A Living Spirit of Revolt* by Ziga Vodovnik.

(**Note:** As *social anarchism* is by far the majority tendency within anarchism as a whole, most of the following article will address primarily what social anarchists believe, but with occasional explanations of what market anarchists desire when the two differ.<sup>3)</sup>)

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<sup>3</sup> Because of its predominance and significance in contrast to the other schools of thought, some have argued that social anarchism should be considered the only form of anarchism and the sole legitimate users of the A-word, with the other self-described anarchists merely being “anarchistic” or left-libertarian. This article doesn’t say this position is the correct one, but it does grant social anarchism, as the mainstream tradition, the privilege of being the only tradition referred to simply as anarchism without prefixes or suffixes. So from here on, social anarchism is referred to as just “anarchism”, while market anarchism (the other political anarchist school) and philosophical anarchism always have a qualifying term before them.

<sup>(8)</sup> [www.aljazeera.com](http://www.aljazeera.com)

<sup>(9)</sup> [anarchism.pageabode.com](http://anarchism.pageabode.com)

<sup>(10)</sup> [m.youtube.com](http://m.youtube.com)

<sup>(11)</sup> [m.youtube.com](http://m.youtube.com)

## Basic Values

The values of political anarchism emerged from the same Enlightenment humanist milieu which animated most of the progressive movements of the 19<sup>th</sup> century, and so the broad anarchist tradition adheres to the same Enlightenment ideals of reason, progress, individuality, and social justice, developing them in an anti-authoritarian direction. At the political level, it can be seen as a kind of fusion of classical liberalism and democratic socialism, thus its alternative name: *libertarian socialism*. At the intellectual level, it draws its ethos from an opposition to hierarchy and domination, and from support for individual autonomy, mutual aid, and horizontal cooperation.

However, while anarchism as a political tradition only emerged in the 1800s, philosophically anarchist (or “anarchistic”) ideas and practices can arguably be found in every era and every part of the world – from indigenous tribal confederations to peasant revolts to urban social movements – whenever people resist hierarchical domination and organise on the basis of voluntary cooperation where power is decentralised to each individual. Anarchist theorists have always tried to take account of these struggles and work what people are already doing into a coherent framework for future activity.

## Anarchism as Method

In contrast to Marxists and liberals, who usually start at the abstract level and come up with theories and practices for people to adhere to apart from their own lived experiences, anarchists try to tease out what anarchistic elements already exist in societies, and in what people are doing in their struggles for freedom and equality; then try to work out theories in which those elements could be pushed in a more explicitly anarchist direction.

So while for Marxists and liberals, practice should follow theory, for anarchists, theory needs to follow already-existing practice. As Ashanti Alston explained, “One of the most important lessons learned from anarchism is that you need to look for the radical things that we *already* do and try to encourage them”. Anarchistic elements (called “potentialities”) always exist within every social situation, like “seeds beneath the snow” which can be grown into wider movements if cultivated in the right way. And most anarchists as a rule don’t regard it as crucial for people to call themselves anarchists as long as their activities are anarchistic in their ethos.

## Foundational Beliefs

At the baseline level, anarchists support the same triad of left-wing values that animated the French Revolution of the late 1700s: *freedom*, *equality*, and *solidarity* (the more gender-inclusive term for what’s meant by “fraternity”), and believe that each of the three is a necessary condition for the other two.

At the same time, they oppose what they call the “unholy trinity” of authoritarianism: religion, capital, and the state, and believe that each thrives of the existence of the the other two. “Religion” here can also be understood to encompass authoritarian ideologies in general, including: nationalism, ethnic supremacy, caste systems (like in the Indian subcontinent), patriarchy, and heteronormativity, though this doesn’t preclude the practice of non-authoritarian forms of spirituality (as long as they don’t throw science and reason out the window).<sup>1</sup>

Anarchists tend to reject the traditional dichotomy of individualism vs. collectivism as a false one. Instead, they promote what political theorist Alan Ritter calls “communal individuality”: the view that the free flourishing of the individual and self-realization are only truly possible in a liberated society of equals, where the autonomy of one is the precondition for the autonomy of all. For this reason, they see the fights for individual freedom and for social justice as one and the same.

They also tend to be extreme civil libertarians with regard to social issues, stressing the sovereignty of the individual and advocating the full freedom to do anything as long as it doesn’t interfere with the equal freedom of others; valuing cultural *unity-in-diversity* and the celebration of alternative and hybrid lifestyles. It should surprise no one that anarchists were some of the first modern proponents of what’s now called free love and polyamory<sup>(12)</sup>; as well as one of the first political movements to support the inclusion of LGBT+ people. Unlike many other libertarians and leftists, anarchists aren’t that concerned with achieving same-sex marriage, but only because they tend to support the *abolition* of marriage as a state-sanctioned institution.

## Ethics

In terms of ethics, anarchists vary somewhat. While a minority adopt ethical egoism and the belief that the only good is the satisfaction of the individual will, most proponents of social anarchism gravitate towards what are called *consequentialist*<sup>(13)</sup> ethics, and support anarchism out of the belief that it would ensure the greatest freedom and well-being for the greatest number of people.<sup>2</sup>

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<sup>1</sup> Rudolf Rocker, in his “anarchist bible” *Nationalism and Culture*, claimed every state and ruling elite require some kind of religion in order to maintain their grip on power. While supernatural beliefs are the most common ideology to justify “natural hierarchies” between rulers and ruled, in the twentieth century, he argued, nationalism and its offshoots had become the new religion used to control people. In the early twentieth century, many anarchists would say that neoliberalism — belief in rugged individualism, materialistic consumerism, and self-actualisation through the “free market” — has taken its place.

<sup>2</sup> Italian anarchist Errico Malatesta put it like this: “The end justifies the means. This maxim has been greatly slandered. As a matter of fact, it is the universal guide to conduct. One might better express it thus: each end carries with it its own means. The morality or immorality lies in the end sought; there is no option as to the means. Once one has decided upon the end in view, whether by choice or by necessity, the great problem of life is to find the means which, according to the circumstances, will lead most surely and economically to the desired end. The way in which this problem is solved determines, as far as human will can determine, whether a man or a party reaches the goal or not, is useful to the cause or—without meaning to—serves the opposite side. To have found the right means is the whole secret of the great men and great parties that have left their mark in history”.

<sup>(12)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(13)</sup> [www.raikothe.net](http://www.raikothe.net)][[web.archive.org](http://web.archive.org)]]

Peter Kropotkin, an anarchist philosopher and scientist, devised an ethical system<sup>(14)</sup> that started from an evolutionary basis, and blended elements of consequentialism with what would now be called *virtue ethics* (virtue-consequentialism).<sup>3</sup>

What almost all anarchists would agree on, however, is that ethics should be constructed on an entirely secular basis, with religion playing no part in conceptions of what's right and wrong. Indeed, Mikhail Bakunin, arguably the theoretical founder of social anarchism, claimed that all forms of hierarchical domination (rulership) in the material world are ultimately rooted in supernatural beliefs. Some even reject the use of the word "morality"<sup>(15)</sup>, in the sense of an objective standard of good and evil, and think that ethics is a separate concept; supporting the creation of a "non-moral ethics" if you will. They also tend to reject the concept of "rights" as a basis for ethics — as they stem from either moral or legal fictions — in favour of freedoms and equalities.

Roughly speaking, the principle of *anti-domination* serves as a grounding for all other ethical considerations. Anarchists start from the premise that it should be wrong to dominate others or to be dominated oneself, then build the rest of their non-hierarchical modes of action from this basic ethic. *Mutual aid* — voluntarily cooperating with others in ways that benefit both the self and the one being helped — acts as the social glue which binds anarchists together in their ethical commitments.

Also important to them on an ethical level is the concept of *prefiguration* or "prefigurative politics": the belief that the means used to achieve an end must embody the content of that end in practice, for the reason that means inevitably *shape* ends. It's for this reason that anarchists (usually) oppose the state-socialist tactic of taking governmental power, as they hold that you can't accomplish libertarian ends via authoritarian means (though there are some anarchists who advocate voting to prevent the state from becoming more authoritarian, such as Noam Chomsky).

## Human Nature

A common misconception is that anarchists believe Rousseau Was Right<sup>(16)</sup> and that human nature is inherently good. On the contrary, one of the main reasons they oppose large-scale concentrations of authority is that they think the flaws in the human condition lead people to be corrupted by too much power. This isn't to say that they're cynics about humans, but they are cynics about hierarchical power and the effect it has on people, fully agreeing with Lord Acton's Dictum "Power corrupts. Absolute power corrupts absolutely". Power over others that is, not power over your own life. After all, powerlessness also corrupts.

Anarchists believe humans have two different tendencies running through them as a result of their natural evolution: one that encourages people to be selfish, egotistical jerks; and another that encourages them to be sociable and cooperative.

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<sup>3</sup> A family of ethical systems in which the greatest good for the greatest number over the longest time is best realised through adherence to various virtues. Unlike deontological ethics (where ethical principles must be adhered to irrespective of consequences), virtue-consequentialism allows one to bypass what virtues may be appropriate in certain contexts in favour of considering the direct consequences an action may have and acting accordingly.

<sup>(14)</sup> [theanarchistlibrary.org](http://theanarchistlibrary.org)

<sup>(15)</sup> [www.positiveatheism.org](http://www.positiveatheism.org)

<sup>(16)</sup> [vtropes.org](http://vtropes.org)

- *The Egotistic Tendency*: Characterised by mutual struggle within and between groups, dom-  
inative behaviour, and narrow self-interest.
- *The Mutualistic Tendency*: Characterised by mutual aid within and between groups, solidar-  
ity, and enlightened self-interest.

They have a contextual view of human nature, believing that the egotistic tendency or mutu-  
alistic tendency manifests itself more depending on the environment people develop in, and that  
if you structure the social environment in a more socialistic and cooperative way, the mutualis-  
tic tendency is more likely to be nurtured than the egotistic tendency. So anarchists are neither  
biological determinists nor social constructionists but accept that humans are a product of both  
natural evolution (first nature) and socialisation (second nature), while holding to the normative  
belief that mutual aid proves more beneficial to the human species than mutual struggle.

## Long-Term Goals

Anarchism, meaning *rulerlessness*, could be summed up as a fully horizontal plane of power  
relations, where each individual has maximal freedom in the context of maximal equality and  
solidarity. The desire is to decentralise (or “flatten”) power to such an extent that individuals  
and groups can’t feasibly wield hierarchical authority over others, as everyone’s power acts as a  
check on everybody else’s.

Most anarchists accept that a 100% egalitarian distribution of power is probably impossible,  
but is still valuable as an ideal to continually aspire to, dissolving hierarchy wherever it appears  
and pushing ever closer towards complete liberation in all things.

The more specific institutional structures they see making up such a set of social conditions  
are:

- A stateless participatory democracy, made up of voluntary confederations of “free com-  
munes” (self-governing localities).
- A libertarian socialist “economy of the commons”, based on worker self-management of en-  
terprises, communal stewardship of resources, and decentralised planning of the economy  
by both communities and workplaces.
- A civil libertarian society in which anybody can do whatever they want, as long as  
they’re not harming anybody else; embodying a spirit of inclusiveness, justice, and  
unity-in-diversity.

### Short-term and Mid-term Goals

While a stateless participatory democracy, libertarian socialist economy, and civil libertarian  
society is their long term goal, anarchists also have various short-term and mid-term goals which  
they see as desirable both as a means of making life under capitalism/statism more tolerable, as  
well as pushing society in a more liberatory direction. These include things like:

- an unconditional Basic Income to replace existing welfare programs
- building a more unionised workforce

- creating more cooperatives
- localising/regionalising the production of goods (especially food and manufacturing)
- creating alternative currency systems such as LETS
- pushing for interest-free banking to replace usury and fund self-managed enterprises
- legalising recreational drugs
- legalising illegal forms of sex work and organising sex workers into unions and cooperatives
- opposing intellectual property laws
- supporting animal liberation causes
- protecting natural environments from destruction
- supporting the replacement of fossil fuels with green energy
- reforming prisons and pushing for the release of political prisoners
- decentralising and ecologising the urban environment
- and reforming cultural attitudes that are sexist, racist, classist, queerphobic, speciesist, or anti-ecological.

# Key Principles

As a basic rule of thumb, political anarchism (despite its internal differences) could be summed up in the following six principles:

- Individual Autonomy
- Voluntary Association
- Mutual Aid
- Self-Organisation
- Free Federation
- Direct Action

To clarify each of these principles in more detail ...

## 1. **Individual Autonomy**

*(Concerning persons as individuals)*

The sovereignty of the individual person and their freedom to do whatever they want as long as they're not harming anyone else.

## 2. **Voluntary Association**

*(Concerning persons in relation to other persons and in relation to groups)*

The idea that all relations and institutions should be organised voluntarily with the guarantee that any individual or group can disassociate/secede from an association whenever they choose, and either join another or found their own.

## 3. **Mutual Aid**

*(Concerning persons in relation to other persons and groups in relation to other groups)*

The practice of positive reciprocity; or helping others out just as they help you out, building common bonds and providing the basis of solidarity. Also called “mutuality” or “sociality” when described as a concept instead of a practice. Contained in the principle is the recognition that no act is fully self-interested (egoistic) or self-negating (altruistic), but contains concern for both the self and for others.

## 4. **Self-Organisation**

*(Concerning persons in relation to each other within groups)*



Organising within associations being done through horizontal cooperation and participatory decision-making by all members involved, also called participatory democracy. While some anarchists have criticised what's commonly *called* democracy (i.e., representative government), they do support decisions being made in a manner that is direct, participatory, and autonomous. In fact, this is actually closer to what the word *democracy* originally meant. Though this is only as long as the democracy is on the basis of voluntary association and respects individual autonomy.

## 5. **Free Federation**

*(Concerning groups in relation to other groups)*

In keeping with their commitment to decentralisation of power, anarchists support organising things on a large scale through federations/confederations of voluntary, directly-democratic associations, with each component unit remaining self-organising while also being part of a larger whole that cooperates to take care of issues that require a bigger geographical scope than local autonomous associations allow.

## 6. **Direct Action**

*(Concerning individuals, groups, and all the ways they relate to each other)*

This means accomplishing tasks without mediation. Removing representation and bureaucracy from activity, replacing both with immediate (direct) self-activity of people doing stuff for themselves and by themselves.

And all six could in turn be condensed into the formula:

Anarchism = Autonomy + Cooperation

# Politics

The type of political system (polity) anarchists want to create could be characterised as “democracy without the state”. Or more specifically, a decentralised system of local-level participatory democracies. A *municipal-confederation* in place of a nation-state.

The core unit of such a confederation is called a *free commune*, a territorial entity just large enough to be an autonomous political body, but small enough to be self-governing without the need for statist bureaucracy; for example: a small town, a city ward, or a rural parish. And each free commune would itself be composed of a variety of voluntary associations, webbed together by mutually-agreed contracts into a larger political-economic whole. In other words, an anarchist free commune is a kind of “mini-republic” self-governed by its residents, where direct participatory decision-making replaces political hierarchies.

The word “commune”, by the way, just means a local residential area (roughly synonymous with “municipality”) and doesn’t have anything to do with “communes” of the hippie or cult variety.

## Autonomous Self-Organisation

While some older anarchist literature uses the word “political” as a synonym for “statist”, later anarchists make a distinction between politics (the collective administration of social affairs) and statecraft (the monopolisation of politics by a centralised system of rulership).

In the absence of centralised political power, anarchists desire creating political structures which are autonomous — meaning voluntary and self-organising — and where decision-making flows from the bottom-up instead of the top-down.

While this can be characterised as democratic in the broad sense, anarchists are not in favour of “democracy” in an uncritical capacity. They support direct (face-to-face) forms of participatory democracy only as long as they’re subordinate to the principle of autonomy, *autonomous democracy* if you will. And some anarchists even dislike calling their principles of decision-making “democratic” at all, owing to the associations the word can have with majorities forcing their will on minorities.

Still, since the 1960s, anarchists have used the word democracy in its popular meaning as a shorthand way of describing how they want to make collective decisions and coordinate things, as long as the process is voluntary and respectful of the individual’s freedom to dissent and disassociate.

This autonomous version of directly-democratic self-organisation takes the form of:

- communal *self-governance* in politics
- workplace *self-management* in economics
- personal *self-sovergnty* in society

Anarchists also support decentralising decision-making power down to the smallest and most localised scale possible, so as to ensure that the maximum number of people are able to shape the political and social policies that will affect them.

## Free Communalism and Confederalism

The political dimension of anarchism is called *free communalism* – i.e. free communes confederated together via mutually-agreed contracts. This means replacing the nation-state and representative democracy with a municipal-confederation and direct democracy; mainly organised through local networks of participatory, face-to-face, neighborhood assemblies.

Each self-governing free commune (municipality) making up such a confederation would be part of it voluntarily and free to secede from it at any time. The desire is for “law” to become more a collection of contractual agreements between residents of a given locality instead of something externally imposed upon them by structural violence.

For taking care of issues that go beyond the local level, anarchists propose creating inter-municipal “administrative councils”<sup>(17)</sup> made up of mandated delegates (spokespersons rather than traditional representatives in a parliament) who would communicate the wishes of the community that sent them and negotiate the coordination of large-scale projects, e.g., building a cross-country rail system.

The core “levels” of an anarchist confederation are:

1. Municipal/Communal<sup>1</sup>
2. Regional/Cantonal<sup>2</sup>
3. National/Confederal.<sup>3</sup>

With an additional sub-level below the Municipal, the Local, made up of the network of democratic assemblies. People at the Local level would appoint spokespersons to a Municipal administrative council, the Municipal council would then send one of its members to Regional council, and so on; with regular rotations of the position to prevent anyone becoming too comfortable in the job. Policy-making still lies exclusively at the Local level, and is only ever done directly by the people in popular assemblies, with administrative councils only having the power to act as conduits for the decisions already made at the ground.

Also, at the municipal scale, public utilities would be administered by “commissions” organised by the particular service<sup>(18)</sup>, e.g., sanitation, telecommunications, transport, etc. The various “working groups” set up around the General Assembly in Occupy Wall Street could be seen as a small-scale version of this.

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<sup>1</sup> the core “levels” of an anarchist confederation are

<sup>2</sup> Made up of federated municipalities/communes.

<sup>3</sup> Made up of federated regions/cantons.

<sup>(17)</sup> [theanarchistlibrary.org](http://theanarchistlibrary.org)

<sup>(18)</sup> [theanarchistlibrary.org](http://theanarchistlibrary.org)

## Historical Precedents

There's actually some historical precedents for this kind of free communalist polity, like the leagues of free cities and guilds that existed in Europe during the Middle Ages (such as the Hanseatic League<sup>(19)</sup>) which for a time looked like they could've represented a decentralised alternative to the then emergent nation-states.<sup>4</sup> Other examples would be the town hall democracy<sup>(20)</sup> that existed in much of New England prior to American independence. That said, most anarchists today would criticise these models for their religious basis, coercive moral norms, and involuntary nature, and insist that all institutions in an anarchist society should be established on the basis of voluntary association, with the freedom to disassociate guaranteed to any individual or group taking part.

More contemporary examples of anarchist(-ish) political systems are the Zapatista<sup>(21)</sup> Councils of Good Government in southern Mexico – where indigenous rebels seized rural and urban areas and declared them autonomous from the Mexican government – and the network of communal assemblies which have sprung up in the Rojava<sup>(22)</sup> (western Kurdistan) region of North Syria; inspired<sup>(23)</sup> in part by the political theories of anarchist Murray Bookchin. Other examples, which cropped up during the twentieth century, occurred in Spain and Catalonia during the Spanish Civil War<sup>(24)</sup>, and in Ukraine (the Free Territory) roughly concurrent with the Russian Revolution. Anarchist philosopher John P. Clark claims that the Sarvodaya Shramadana Movement in Sri Lanka is also roughly anarchist in its principles, being inspired in large part by philosophical anarchist Gandhi.

## Affinity Groups

For socio-political concerns that are outside the scope of formal politics and public deliberation, they support – in the present as well as in the future – people forming what are called *affinity groups*<sup>(25)</sup>; small groups of no more than about twenty people who cooperate around a specific issue or cause. Each affinity group does its own thing and takes care of its own affairs, while also federating into “clusters” (collections of affinity groups) who organise things through spokescouncils made up of rotating spokespersons (or just “spokes” for short).

Affinity groups usually start out as a collection of friends who unite around a specific concern and attempt to build ties with other like-minded groups based on mutual aid. In the present they tend to focus more on struggles within communities than on workplace organising, which tends to be the concern of trade unions.

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<sup>4</sup> Well, there was one which did survive, Switzerland; which was formed as a communal confederation of independent cantons. While it later took on most of the characteristics of a traditional nation-state, its more decentralist political structures and history of direct democracy have always made it attractive to social anarchists as a “halfway house” between the nation-state and the stateless communal-confederations they have in mind.

<sup>(19)</sup> [www.britannica.com](http://www.britannica.com)

<sup>(20)</sup> [new-compass.net](http://new-compass.net)

<sup>(21)</sup> [roarmag.org](http://roarmag.org)

<sup>(22)</sup> [roarmag.org](http://roarmag.org)

<sup>(23)</sup> [vimeo.com](http://vimeo.com)

<sup>(24)</sup> [vtropes.org](http://vtropes.org)

<sup>(25)</sup> [shawnewald.info](http://shawnewald.info) or [shawnewald.info](http://shawnewald.info) [[web.archive.org](http://web.archive.org)]

## Decision-making Principles

As for decision-making within such social or political institutions, anarchists have a dislike for the notion that the majority should be entitled to dictate to a minority about things, even a minority of one. Having said that, most anarchists do support majority voting for decisions as long as it takes place on a voluntary basis, with all parties taking a vote agreeing in advance to be bound by the decision. So again, for democracy, but only when it's subordinate to individual autonomy.

Some, however, are so opposed to the idea of "tyranny of the majority" that they only support consensus decision-making, where even a single person can veto a decision supported by 99% of the association. Most anarchists today support a combination of consensus, majority voting, and supermajority voting depending on the context.

According to anarchist theorist Michael Albert, the general principle to hold to when making decisions is that each person should have "decision-making input in proportion to the degree they're affected by the decision". In other words, if you're at work and want to put a picture of your boyfriend on your desk, that's a decision that only affects you, thus only you should have decision-making input with regard to that action. However, if you want to bring a boom-box to work and blast anime theme songs at full volume, that's a decision that affects your co-workers, thus they should also get a say.

## Forms of Power

Anarchists are often mischaracterised as being against all forms of power and authority. With regard to authority, it would be more accurate to say they're always *sceptical* of authority, but are willing to accept certain forms of it as justifiable as long as it is minimal, voluntary, and above all, temporary. So a social directing committee set up during an emergency and the parent/child or teacher/student relationships are okay by anarchists, but permanent or even semi-permanent hierarchies of command are not.

As for power, along with intersectional feminist theorists, anarchists make a distinction between *power-to* (ability to do something) and *power-over* (control of others), supporting the dissolution of the latter so as to increase the amount of the former held by everyone — that's what "power to the people" means: decentralisation of power away from centralised hierarchies to horizontal networks of individuals. Anarchists wish to create situations in which power-to is equally distributed so as no individual or group can be in a position to wield power-over anyone else. There's also a third form which anarchist Cindy Milstein calls *power-together*, when people exercise their power-to collectively as equals through horizontal cooperation. So the basic anarchist view of power could be broken down as:

1. *Power-to*: the basic sense of power as the capacity to affect reality. The basis of individual autonomy.
2. *Power-over*: power-to wielded as domination and/or manipulation of others in hierarchical and coercive settings. The basis of rulership.

3. *Power-together* (or “power-with”): power-to wielded as non-coercive, non-hierarchical influence and initiative among people who view themselves as equals. The basis of participatory democracy through voluntary association.

## Power Structures and the Ruling Elite

Power structures on the other hand are a slightly different matter. In sociology and political science, “structures” are like the ingrained habits of entire societies, constellations of relationships which shift and alter themselves with changes in the distribution of power, increases of knowledge, and changes in shared beliefs. Most methods of studying a critiquing social structures could be classed as either “methodological individualist” (or atomist, like most liberals) or “methodological collectivist” (or holist, like most Marxists). The former see personal agency as determining the social structure, while the latter think the opposite is the case. Social anarchists take a kind of middle path, seeing agency and structure as co-creating each other, and placing the focus on the interrelations between individuals. Anarchist eco-political theorist Alan B. Carter calls this approach *methodological interrelationism*.

Anarchist sociologist C. Wright Mills claimed that the structure of almost all societies was characterised by power being concentrated in the hands of a social-political-economic *ruling elite* (though he used the less specific term “power elite”). This goes beyond traditional socialist conceptions of an economic ruling class. The ruling elite includes the ruling class, but also those who wield other non-economic forms of social power, like politicians, religious figures, celebrities, public intellectuals, and media personalities. So while to be a member of the ruling class means owning large amounts of capital (financial wealth), you don’t necessarily have to be rich to be a member of the ruling elite. Anarchists don’t believe that all groups comprising the ruling elite have the same goals and use the same tactics to control everyone else (many of them openly despise one another), but they are united on certain key issues and their points of agreement are what define the hierarchical structure of a society, and the dominant ideology and ethos of the society which help reinforce the structure.

## Anti-Bureaucracy

Despite anti-bureaucratic rhetoric nowadays coming from the right-wing, anarchists have been staunch critics of bureaucracy as both an ideology and practice since the mid 19<sup>th</sup> century, and supportive of building political structures that do away with it in favour of forms of administration that rely upon direct participation, local autonomy, and decentralised coordination.

Mikhail Bakunin attacked what he called the bureaucratic class (now more often called the *managerial class*) and criticised Marxism out of the belief that what it would bring about was not economic democracy, but a “red bureaucracy”. In his essay *God and the State* he offered one of the earliest theoretical critiques of what’s now called “technocracy” — rule by an elevated class of experts. In the mid twentieth century, Colin Ward lambasted the grey administrative rationality that pervaded much of the post-war world after the construction of the welfare state (“which trades social welfare for social justice”) and recommended bottom-up, decentralist alternatives for organising society.

More lately, anthropologist David Graeber has outlined an anarchist systematic critique of bureaucracy in his book *The Utopia of Rules* (2015). He argues that contrary to neoliberal (market fundamentalist) conventional wisdom, capitalist society has become *more* bureaucratic, not less, with so-called free trade reforms and privatisation. The organisational ethos of public and private institutions is now indistinguishable, with both existing as part of a larger system for the extraction of rents/profits for the benefit of a ruling elite; all of which is backed up by an ever-increasingly militarised state system of structural violence, saying, “Whenever someone starts talking about the ‘free market,’ it’s a good idea to look around for the man with the gun. He’s never far away.”

# Economics

If anarchist politics are “democracy without the state”, then anarchist economics might be described as “democratic socialism without the state”. While different visions exist among anarchist of what a post-capitalist economic system should be like, a rough model they would all agree on would be a decentralised network of horizontally-organised enterprises — each one administering itself through *worker self-management*. Differences emerge when it comes to issues like the role of markets, the role of incomes and prices, and among social anarchists regarding whether the economy should be primarily worker-directed (by the democratic enterprises) or community-directed (by the democratic popular assemblies), or some combination of the two.

## Anti-capitalism

Economically, anarchists oppose capitalism (with the exception of anarcho-capitalists), and instead advocate replacing private corporations and wage-labour as the primary forms of enterprise with self-employment, worker-run cooperatives, commons-based peer production, and other economic institutions organised on a horizontal, rather than hierarchical, basis. However, they are divided on what specific form a post-capitalist, post-statist economy should take, as well as the best means for achieving it — with some calling for the armed overthrow of the state and corporations, and others calling for a nonviolent “dual power” strategy in which federations of democratic cooperatives, popular assemblies, affinity groups, and other institutions work together to gradually replace hierarchical society by opting out of it.

The issue of capitalism might seem from the outside to be a divisive one for anarchists, although this is only due to terminology. Most anarchist literature, and most anarchists, define “capitalism” in the same way Marxists do (the system of wage-labour, which according to Marxism is exploitative). However, the term “capitalism” is also commonly defined by non-anarchists as “free-market economics” (i.e., when all economic activity takes place outside the state). Most anarchists consider the two meanings to be separate concepts, with “capitalism” being used in the same sense as Marxists and “free market” being used to refer to the second definition.

For the remainder of this article, “capitalism” and “free market” will be used with these definitions. Therefore, a person can be both anti-capitalist and pro-market (i.e., arguing for a society of self-employed people interacting and exchanging on a purely voluntary basis; the mutualists and individualist anarchists share this position). This was in common with classical liberalism. On the other hand, someone can be pro-capitalist and anti-market by such definitions (arguably, Mussolini-style corporatism fits this).

Hence, the anarchists from Pierre-Joseph Proudhon on were opposed completely to what they called capitalism (i.e., the existence of wage-labour, landlordism, and usury), with only the so-called “anarcho-capitalists” supporting it. They find commonality, however, in opposing the coercive mechanisms of the state, though often for different reasons; and most anarchists don’t



consider self-described anarcho-capitalists (or “voluntaryists”, as they’re also called) to be anarchists, considering the two terms to be mutually exclusive.

## Class Analysis

In seeing themselves as part of an economic class struggle for democratic, worker control of the means of production, anarchists place strong emphasis on the importance of how economic classes affect human society and shape the forms other trans-class hierarchies (race, gender, sexuality, ecology) manifest themselves. They go beyond traditional theories of class which see the primary classes as being the capitalist class and the working class, seeing things more broadly as the ruling class and the *popular classes* – which includes the traditional working class but also every other economic category outside the ruling class. Each “class” (singular) is itself composed of several smaller classes (plural) which have at times competing interests with each other; such as between public sector and private sector workers or between the capitalist class and political class when it comes to the rulers.

Some anarchists also view class relations in triadic, not dualist, terms, with three primary classes instead of two

- The Ruling Elite<sup>1</sup>
- The Managerial Class<sup>2</sup>
- The Popular Classes<sup>3</sup>

It’s the middle one, the managerial class, which have been traditionally ignored by most class analyses. Their job is to manage the relations between the ruling classes and the popular classes, and they often occupy the most empowering forms of work relative to other forms of labour done by the popular classes below them – which are most often rote, monotonous, or dangerous.

Each of the classes have competing class interests and different desires for what kind of economy and society they would like to create. The ruling class want to maintain their position at the top, using divide-and-rule tactics to keep everyone from uniting against them. The managerial class want to push things in a more technocratic and bureaucratic direction, putting themselves more at the forefront. The popular classes want to unite worldwide, put aside racial, gender, national, and religious differences, and create a economic system that dissolves all economic classes and puts economic activity under popular control.

The popular classes want economic equality. The managerial class wants *more* equality (but not too much, as that would mean they would lose their positions of privilege). While the ruling classes want to maintain inequality as much as possible, only lessening in it when it threatens to undermine the system itself.

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<sup>1</sup> A constellation of powerful classes which includes the economic ruling class – the owners of the means of production – but also those who wield other forms of social power who don’t necessarily own means of production, like politicians and religious figures.

<sup>2</sup> Managers, professionals, the police, university professors, journalists, doctors, lawyers, writers, and public intellectuals. Also called the professional-managerial classes, the coordinator class, and the “New Class” (by Marxists).

<sup>3</sup> The traditional working classes (or “proletariat”) plus the rural peasantry, the unemployed, and basically everyone else who isn’t a member of the above two classes.

## Private Property vs. Personal Property

While frequently found criticising the institution of “private property”, anarchists make what they see as an important distinction between private property and *personal* property, opposing the former while embracing the latter. The distinction is made when it comes down to their standard of what should constitute legitimate claims to land, dwellings, and personal items, which is generally guided by the *possession principle* first laid out by Pierre-Joseph Proudhon.

Basically, if something is defined by (A) active personal use; (B) consistent occupancy; and (C) with the provision that someone else isn’t already doing so, you can claim it as your personal possession. For this reason it’s also called the “use and occupancy” rule. (This doesn’t, by the way, have anything to do with what’s called “homesteading”, which is popular among many libertarian capitalists). So in other words, anarchists fully support an individual’s ability to claim things like a home, car, personal possessions, etc., but not large-scale productive resources like factories, hard capital, or natural resources, which can only be defined by absentee ownership.

In fact, this is why they argue — contrary to laissez-faire capitalists who claim to be anti-statists — that capitalism couldn’t even exist without the state, as its monopoly on the use of physical coercion is what enables some people to claim private property rights over stuff they don’t use or occupy themselves. A single individual could theoretically defend their personal property with just a gun, while it’s difficult to imagine how a businessman could defend his claim to a factory or forest by himself without invoking the power of a state to prevent people from taking over such resources themselves.

## Common Ownership of the Means of Production

The productive resources in any given locality — the means of production, distribution, and investment — anarchists claim, should be “owned” (or rather *stewarded*) as commons<sup>(26)</sup> by all the residents of that locality, then allocated to enterprises on a contractual basis, with the resources they use reverting to being commons when the enterprise is dissolved. This is called “usufruct”, in which the people running an enterprise are not the owners of the resources they’re employing, but are still granted user rights as long as they’re making use of them. You could divide social anarchist categories of exclusive use vs. open access into three levels:

- *Commons*: Stewarded by everyone in a locality. With two subdivisions, open access (like forests) and zero access (like unused plant and machinery)
- *Usufruct*: Still in common ownership but granted by the community to an individual or group on a contractual basis for a particular purpose, like to set up an enterprise. If the terms of the contract were broken (say, if the enterprise used the resources it was given to wreck the environment) then the property could be repossessed and put “back on the commons”.
- *Possession*: Personal property defined by use and occupancy. Has two subdivisions: inalienable (like arable land, which you can’t destroy) and disposable (which you can destroy).

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<sup>(26)</sup> [www.youtube.com](http://www.youtube.com)

Social anarchists see these commons organised within each self-governing community as forming part of a greater *free commons* (in contrast to a free market) encompassing the entirety of the municipal-confederation. Market anarchists, on the other hand, support these local commons within the context of a larger free-market economy and tend to be more okay with individual or worker ownership of enterprises rather than common ownership.

## Welfare State vs. Welfare Commons

It often confuses many libertarian capitalists how anarchists can claim to oppose the state while still defending government-provided welfare programs against cuts and privatisation. This is only because anarchists tend to see the welfare state as it exists now as a lesser evil to a potential corporate state in which almost everything is privatised and the poor and marginalised are left without any kind of socio-economic safety-net, which they see as an essential feature of any free egalitarian society so as to give each person a baseline standard of living — they call this the *guaranteed minimum* (or “irreducible minimum”).

In the long term, however, they support providing this guaranteed minimum through a network of voluntary associations nested in each community rather than through a paternalistic state which ends up making people dependent on it — i.e., a welfare *commons* in place of a welfare state. This idea has its roots in the many forms of working class self-help and mutual aid that existed prior to modern welfare programs, such as friendly societies, mutual insurance, cooperatives, and trade unions. In the short- to mid-term, anarchists are likely to support proposals for a universal *basic income* over increases in public spending on social programs.

They also see it as essential, in their long-term goal of dismantling the state, to dismantle it *in the right order*, attacking first those apparatuses of state power that prop up corporations and finance capital, and leaving until last the aspects of the state that provide a socio-economic safety-net.

## Economic Analysis (Marxian Influences)

Unlike Marxism, there’s never really been a distinctly anarchist school of economics — in terms of a systematic analysis and critique of political economy — as most anarchists felt that Karl Marx’s critique in *Das Kapital* was the definitive word on the subject. It’s worth pointing out, though, that a lot of the ideas found in Marxian economics were first articulated by the anarchist Pierre-Joseph Proudhon, even if Marx explored them more thoroughly. For this reason, many anarchists, while opposing Marxist politics and sociology, still follow the Marxian school of economics when it comes to critiquing capitalism. (One anarchist, Wayne Price, has even written a whole book called *Marx’s Economics for Anarchists*.<sup>(27)</sup>) However, they tend to do so with nuance, taking issue with many of its more economic/technologically deterministic conclusions. Peter Kropotkin, Errico Malatesta, Alexander Berkman, and others also rejected the labour theory of value, claiming that the question over what gives things value is so multi-faceted and complex that it can never be adequately quantified.

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<sup>(27)</sup> [theanarchistlibrary.org](http://theanarchistlibrary.org)

Examining their writings on economic matters, the classical social anarchists could be said to have had a (very rough) theory of value of their own in which value and prices were co-determined by three overlapping factors:

1. Labour
2. Utility<sup>4</sup>
3. Power relations<sup>5</sup>

While some other economists of the time (eg: Alfred Marshall) argued that *both* social labour and subjective utility (affected by supply and demand) shaped value, rather than one or the other, one could argue that the missing factor was power, which few but the social anarchists took account of. The way the rough theory works is as follows: labour contributions — mediated by various power relations — form the “backbone” of value and the foundation for market prices, which then go up or down slightly due to changes in supply and demand. And labour, power, and utility each play a larger or smaller role than the others depending on the context.<sup>6</sup>

## Economic Analysis (Beyond Marxism)

In the late 20<sup>th</sup> and early 21<sup>st</sup> century, a few anarchist thinkers attempted to develop economic ideas outside of Marxism. Michael Albert and Robin Hahnel, in addition to creating a proposal for an anarchist economic system called “participatory economics”, developed an analysis of classes that differed from the Marxian Proletariat/Bourgeoisie dichotomy. They claimed that there was also a third class in between workers and capitalists called the “professional-managerial class” or “coordinator class” that most leftists had failed to take into account. They credit anarchist Mikhail Bakunin as one who did; he called it the “bureaucratic class” and “aristocracy of labour”. Robin Hahnel specifically also developed a critique of the capitalist employer-employee relationship that doesn’t rely on the labour theory of value or Marxian “exploitation theory”, but attacks it as unjust given that it comes about due to an inequality of relative *bargaining power* between workers and the owners of workplaces. Most of their theoretical work is available on the website ZNet<sup>(28)</sup>.

Greek political philosopher Takis Fotopoulos also developed a historical analysis of capitalism and the market economy that views economic systems as unified political-economic-social structures (just as Kropotkin did), and claims that you can’t examine the economy without also taking into account the political, social, and ecological factors that shape economic behaviour. He also invented a theoretical social anarchist political-economic system called *Inclusive Democracy*, which blends the Social Ecology theories of Murray Bookchin with the ideas of fellow Greek

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<sup>4</sup> Conditioned by supply and demand

<sup>5</sup> Such as monopoly shares of the market, class inequalities, and social hierarchies.

<sup>6</sup> Labour would have played the largest role of the three in feudal and early capitalist societies. Power played the biggest role in the centrally planned economies under Marxist regimes. While utility perhaps plays the largest role in certain non-material products nowadays in the age of the Internet and computerisation. But all three factors matter, even if one (or two) contributes more to value than the other(s).

<sup>(28)</sup> zcomm.org

libertarian socialist Cornelius Castoriadis. His book, outlining his core ideas, is available for free here<sup>(29)</sup>.

The Mutualist writer Kevin Carson took the basic economic ideas of Proudhon and the American individualist Benjamin Tucker and mixed them together with elements of several economic schools into a synthesis laid out in his book *Studies in Mutualist Political Economy* (available free here<sup>(30)</sup>). In it, he devised a new version of the labour theory of value (which incorporates aspects of the subjective theory of value) as well as offering a history of capitalism that tried to show that it was the state, not the market, that was the primary cause of most of the problems with capitalism. In particular, he lays out how the state subsidises and supports large-scale, centralised institutions instead of smaller-scale, decentralist ones. He also put forward a vicious critique of intellectual property laws (patents, copyrights, and trademarks), which he claimed are the way states and corporations centralise power today and create artificial scarcity where the Internet and new technology could in fact create abundance.

David Graeber, in his first book *Towards an Anthropological Theory of Value*, also developed a new version of the labour theory of value, which expanded the traditional version of it by taking into account not just so-called “productive” labour, but also the immaterial, symbolic, and reproductive labour of persons and activities not generally regarded as important to the formation of value; in particular the domestic and caring labour of women — in a later essay<sup>(31)</sup> summarising this formulation he renamed it the *ethnographic theory of value*. It places at the centre of value-creation the social “production” of human beings instead of the material production of consumables.<sup>7</sup>

In *Debt: The First 5000 Years*, he put forward an anarchist perspective on the history of debt and money, arguing that in the modern era it has become an excellent means for the 1% to keep control of the 99% by keeping them subordinate under both financial and moral burdens (relying on the maxim that “one must repay one’s debts”).

## Incorporating Other Economic Perspectives

Social anarchists claim that the economic realm is really a subset of the political realm, so most of what people think of as “apolitical” economic issues are unavoidably embedded in political structures created and backed up by state violence, almost always in the service of a ruling elite. So economic realities are largely the product of political realities, not the other way around as most neoclassical economists claim. As anarchist historian Iain Mc Kay points out, Pierre-Joseph Proudhon was one of the first economists to propose an endogenous theory of money — that money has its origin in state systems — and so most social anarchists have naturally incorporated

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<sup>7</sup> In Marxian economics, it’s the other way around: material production is placed at the centre of analysis as the primary form of value-creation, while the social production of human beings is given secondary status as “reproduction”. Graeber argues that this perspective should be flipped, with material production being seen as emergent from social production.

<sup>(29)</sup> [www.inclusivedemocracy.org](http://www.inclusivedemocracy.org)

<sup>(30)</sup> [www.mutualist.org](http://www.mutualist.org)

<sup>(31)</sup> [www.haujournal.org](http://www.haujournal.org)

modern monetary theory (MMT<sup>(32)</sup>) into their analyses, which is most popular with the Post-Keynesian school of economics.

Lately, especially among social anarchists, there's been a lot of support for the relatively new school of Green economics, which has much in common with the Social Ecology methodology of Murray Bookchin and makes many normative proposals that social anarchists find favour with, like de-growth, a steady-state economy based on production-for-use instead of for profit, localized production based on human-scale technologies, and an unconditional basic income fulfilling the guaranteed minimum.

More recently still, many social anarchists have taken on the ideas and methodology of the *power economics* school of Jonathan Nitzan and Shimshon Bichler, whose ideas have a remarkable similarity to the economic theories of Peter Kropotkin. Their thesis is that there is no real-world dichotomy between the economy and polity, and that capital (self-expanding money) should be understood as commodified power, symbolising the capitalists' ability to creatively order and restructure the world around them.<sup>8</sup>

The duo have even given a degree of critical support for social anarchists in the wake of the Occupy movement, encouraging them to adopt the capital-as-power<sup>(33)</sup> framework: "Anarchists imagine a world without corporate/state organizations, nationalism, racism, institutionalized religion and other xenophobic barriers to a humane society. And as outcasts of a society besieged by all those ills, we share their aspiration for direct democracy". They've made their (very weighty) tome encapsulating their theories available for free here<sup>(34)</sup>.

## A Social Anarchist Political Economy(?)

Peter Kropotkin said that while Marxian economics focuses on the production process, and liberal economics focuses on the distribution process, an anarchist economics should shift focus to the consumption process, meaning that it should be oriented around how to best satisfy people's needs, maximising their biological, psychological, and social well-being.

While no such school of social anarchist political economy (SAPE) was ever developed, fragments of such a tradition can be found in the writings of the social anarchists themselves on economics — focusing on power, hierarchy, and ecology rather than just material conditions — and there have been elements of other economic schools which approximated social anarchist concerns, namely:

- Autonomist Marxism — examining processes of social production as a whole, not just material production, and how class struggle (and social struggle more broadly) is the main driver of socio-economic progress
- Post-Keynesianism — in particular its stress on debt and its theory of money

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<sup>8</sup> Particular importance is placed upon the ability of capitalists to control "expected future earnings"; with their "power" consisting chiefly of being able to capture future revenue streams, not how much money and stuff they own in the present. After all, finance (what's been capitalised) is itself based upon speculation on future outcomes.

<sup>(32)</sup> [neweconomicperspectives.org](http://neweconomicperspectives.org)

<sup>(33)</sup> [dissidentvoice.org](http://dissidentvoice.org)

<sup>(34)</sup> [www.jayhanson.org](http://www.jayhanson.org)

- Green economics — in wanting to replace growth as a metric of economic progress and view economies as embedded within ecological systems
- Capital-as-power — for its breaking of the dichotomy between politics and economics and its examination of power relations at the roots of economic realities
- Critical Realism — when applied to economics, Critical Realism tries to analyse how people are both created by and co-creators of their socio-economic circumstances

The first social anarchist essay anthology to explicitly focus on economic issues *The Accumulation of Freedom* was released in 2012 and incorporates insights from the above traditions as well as from social anarchist theory generally. Another essay anthology focusing more narrowly on participatory economics (a proposed social anarchist economic model) called *Real Utopia* was released earlier. However, a fully thought-out scholarly discourse with its own distinct class analysis, theory of value, methodological framework, hypothesis of socio-economic development, and other key elements remains to be created, though the material described in the above section could potentially provide the basis for one.

## Social Issues

The view of anarchists on society is that most of its core problems are rooted in interpersonal relations and institutional structures based on unequal distributions of power (decision-making ability). In contrast to Marxists, who see the primary problem as being “exploitation” (in the economic sense), anarchists see the primary problem as *domination* (in the wider social sense), with domination itself stemming from social *hierarchy*.

Anarchists use the word “hierarchy” in a very specific sense, to mean power relations in which one party is subordinate to the will of another *primarily to the higher party’s benefit*; i.e., they aren’t opposed to all systems which rank things one on top of the other, even though such systems are often referred to as hierarchies. They view the amount of freedom in a society as being in inverse proportion to the amount of hierarchical power; pushing wherever possible for relations, institutions, and structures characterised by horizontal cooperation and individual autonomy. For this reason, anarchists regard a mere political revolution (in institutional structures) to be insufficient, pushing for a full *social revolution* in institutional structures, interpersonal relations, and in social consciousness.

So in addition to opposing the power hierarchies of the state and corporations, they also oppose the social hierarchies of racism, sexism, queerphobia, ableism, colonialism, speciesism, and the domination of the natural world for extractive purposes. Thus key components of anarchist theory and practice are

- Anti-racism
- Anti-nationalism<sup>1</sup>
- Feminism<sup>2</sup>
- LGBT+ liberation
- Animal liberation<sup>3</sup>

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<sup>1</sup> However, nationalism is not synonymous with national liberation, and most would still support the national liberation struggles of colonised peoples, which can in fact be potentially anti-statist in character; like the recent anarchist support<sup>(35)</sup> for the anti-statist, anti-capitalist Kurdish struggle in Turkey (North Kurdistan) and Syria (West Kurdistan or “Rojava”).

<sup>2</sup> and masculism when it’s supportive of feminism.

<sup>3</sup> This is a particular focus of anarchists who follow the Deep Ecology school of thought. More traditional social anarchists, while virtually always supporting animal rights to a degree, tend to be more moderate about it (i.e. very few traditional social anarchists would oppose owning a dog or they may be willing to accept some animal experimentation as a “necessary evil” when it comes to medicinal research).

<sup>(35)</sup> [anarchism.pageabode.com](http://anarchism.pageabode.com)



- Radical environmentalism<sup>4</sup>.

Lately, there's also been broad support for the theory of intersectionality<sup>(36)</sup>, the idea that forms of oppression need to be examined in relation to one another and how they "intersect" with one another. In fact, many of the theories of anarcho-feminist Emma Goldman and Eco-anarchist Murray Bookchin pioneered ideas which nowadays would be called intersectional.

Of all the forms of hierarchy and domination, special importance is given to class, which, while not being seen as the primary hierarchy, is the *all-inclusive* hierarchy as economic exploitation affects everyone subject to more particular forms of domination. So while anarchists support uniting class-based campaigns for control over the means of production with trans-class campaigns for inclusion and social equality, they are opposed to "cross-class" alliances with members of the ruling elite, even if they suffer some forms of non-economic domination (eg: with gay or black members of the business class, with feminist female politicians, or with corporate environmentalists).

The values of personal self-realisation and unity-in-diversity are very important to anarchists. While they push for a democratic public realm in which science and reason serve as the foundation for societal organisation, their commitment to individual autonomy and civil libertarianism means they also support a private realm in which people are free to practice whatever kind of lifestyle or identities they want as long as they're not harming anyone else. Nudism, voluntary nomadism, and exploration of alternative forms of sexuality have long been popular among certain anarchists and supported by the broad anarchist movement for their disruptive effects on conventional morality and authoritarian social mores.

*Communal individualism* is seen as the personal and social ideal in place of either individualism or collectivism as traditionally understood, opposing both the commercialist egoism of market capitalism, and the grey uniformity and group-think of authoritarian socialism. Other more recent terms for this ideal are *collective autonomy* and *participatory culture*. Overcoming the tension between self and society and the manufactured conflict between the two is an issue anarchists have always placed strong emphasis on. As Emma Goldman put it, "There is no conflict between the individual and the social instincts, any more than there is between the heart and the lungs: the one the receptacle of a precious life essence, the other the repository of the element that keeps the essence pure and strong. The individual is the heart of society, conserving the essence of social life; society is the lungs which are distributing the element to keep the life essence — that is, the individual — pure and strong".

Also, in contrast to libertarian capitalists (especially anti-state *voluntaryists* who follow the Austrian school of economics) anarchists are not approving of any social relations at all just because they're "voluntary". Something being voluntary is regarded as necessary, but not sufficient, to be considered anarchist; the other necessary component is non-hierarchy. To put it as a formula:

- Anarchism = voluntary association + horizontal organisation

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<sup>4</sup> Though the type of environmentalism supported differs among different strains of anarchism. Social anarchists tend to be closer to the rationalist, humanist, pro-technology environmentalism of Social Ecology. "Post-left" types

<sup>(36)</sup> [www.wsm.ie](http://www.wsm.ie)

- Voluntaryism = voluntary association + any form of organisation

Some anarchists would go further and posit that without a non-hierarchical structure, an arrangement cannot be truly voluntary due to the unequal negotiating positions of the parties involved. After all, members of the working class must eat, and without a job, their ability to do so in a capitalist society is vastly decreased, so they are in a fundamentally weaker negotiating position than their employers.

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gravitate more towards technophobic and mystical ideas found in Deep Ecology and in the anti-civilisation ideology of primitivism.

# Conception of History

## Historical Naturalism

Marxists have a particular analytical method they use to study history and human society called historical materialism. To give a brief synopsis of the theory, it says that human society is composed of

1. A material/technological/economic *Base* (basically a society's technology and economic set-up) which determines the shape of its ...
2. Ideological/cultural/legal *Superstructure* (basically, culture, religions, laws, and the state).

Think of society as a cake with icing on top. The icing (Superstructure) may make it look like it's made of one thing, but when you peel the icing away you see the real substance of the cake (its Base). And the type of cake (Base) you have will always determine what kind of icing (Superstructure) is on top for people to see.

The general idea is that if you want to figure out what's really going on in a society, you need to look at the nature of its technological and economic infrastructure, and examine the interests of its ruling class, drawing out the inherent contradictions latent within. Historical materialism was developed in part as a reaction to the the philosophy of idealism associated with GWF Hegel in 19<sup>th</sup> century Germany, which claims that it is primarily collections of ideas, not material forces, which shape historical progress. Marx and Engels agreed that history proceeds along a mostly linear path in different stages, but thought that it was primarily technology and economics that drove this process, with ideas largely being conditioned by material factors.

Many latter day scholars of Marxism argue that what's now called historical materialism was more Engels' creation than Marx'. Marx was more focused on the dialectical components of their theories and Engels with the materialist parts.

While a few anarchists also use this method, the mainstream find it tends to reduce social phenomena to economic relations and subordinates non-economic forms of social struggle to class struggle. Peter Kropotkin remarked that claiming human social behaviour was caused by economics was like saying botany was "caused" by heat, ignoring every other factor. Rudolf Rocker devotes the first chapter of his *Nationalism and Culture* to attacking historical materialism and suggested the will-to-power among humans was just as important to the development of societies. Murray Bookchin used the same dialectical method as Marxists to claim that material determinism was self-contradictory, stressing that ideas were just as important to how people behaved, and that social hierarchies couldn't simply be reduced to economic classes. David Graeber now claims that historical materialism is itself "a crude kind of idealism" as it denies the material force ideal activities have, as well as the ideal nature of material activities, with the Base/Superstructure model itself being remarkably undialectical. So for most social anarchists:

- material conditions are central, but not primary, to conditioning human society and how it develops
- the relation between *material conditions* people live in and their *social consciousness* is reciprocal, instead of the former determining the latter
- non-economic power hierarchies (racism, sexism, queerphobia, speciesism, ecological domination) are shaped by economic class relations but are not reducible to them
- the drive of people to gain social power in general over others is at least as important as the drive of ruling classes to gain economic leverage over the producing classes
- human progress doesn't proceed along a fixed path with a linear trajectory
- changes in social consciousness can precede (and cause) changes in material conditions

While this social-ontological perspective — in between idealism and materialism — was never given a formal name, anarchist anthropologist Brian Morris has used the term *historical naturalism* to describe it. Meaning they accept the naturalist (non-supernatural) and realist view of reality, and see economic factors and classes as vital to understanding how the world works, but also place importance on ecological and ideological forces as shapers of human behaviour and development; in particular the effects of hierarchical power on both its wielders and those subject to it. The drive of humans to have power over others — from primeval foragers to modern nation-states — is seen as at least as important a force of social development as the material conditions they exist in. Jesse Cohn explains the anarchist conception of history as being akin to working with clay: humans shape and reshape the world using the material and ideational resources at their disposal, equal parts created by and creators of their social evolution.

The historical materialist method is to “scientifically” draw out the contradictions in capitalism and locate the most advantageous things for proletarians (those subject to capital) to do. Historical naturalists on the other hand also criticise capitalism (and all forms of domination) on an ethical level. They see in human history that two organisational forms have always been in tension with each other: the authoritarian form (hierarchical and centralised) and the libertarian form (democratic and decentralised). A historical naturalist then would attempt to tease out the most libertarian elements (called “potentialities”) latent in a society’s economic, social, and cultural make-up, and try to push them to the forefront, driving the society in a more anarchistic direction.<sup>1</sup>

This differs from Hegelian dialectical idealism and Marxian dialectical materialism in that both of these see historical progress as proceeding along a predetermined track, and concluding in a final stage or “end of history” (Absolute Spirit for Hegel, stateless communism for Marx). Historical naturalism would claim there is no final stage, and that there are always paths not taken in

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<sup>1</sup> Bookchin created a particular version of this approach called dialectical naturalism within his Social Ecology philosophy. It stresses the importance of a non-hierarchical view of nature, an ethics of unity-in-diversity, and the realisation of freedom as something to be achieved through “actualising potentialities” latent in societies. He used the word potentiality in an idiosyncratic manner to refer only to positive, anarchistic elements, and the word “capabilities” to refer to other latent possibilities which could also be actualised. In other words, if a society has within its structure the possibilities to achieve either libertarian socialism or fascism, only the former is a “potentiality” while the latter is only a capability.

history depending on whether or not certain potentialities are actualised. Humanity could just as well regress backwards into barbarism as achieve a utopia.

Many anarchists also combine historical naturalism with another approach called complementary holism<sup>(37)</sup> (see the Philosophical Origins section for more info on this), using both as tools for social analysis. Both tend to be more “bottom-up” methodologies while Marxism tends to be “top-down”.

## Organic Society

Early forms of human community are generally believed to have been mostly non-hierarchical and egalitarian by anthropologists and archaeologists. Anarchists call this early form of humanity “organic society” due to its connection to nature prior to its integration into urban environments, which on one hand dissolved many tribal/ethnic divisions that existed among different bands of humans, but on the other led to some of the first solidified class divisions and the emergence of debt, commercialisation, and made possible large-scale organised warfare and imperialism. This dual-nature of the city is illustrative of the dialectical tension between the “legacy of freedom” and “legacy of domination” in human history, as the two are usually wound up together like the double helix structure of DNA.

This move from organic society to civilisation (city-based culture) created a kind of rift between the natural world (first nature) and human activity (second nature), as the relation of humans to the natural world gradually came to be seen as one of hierarchy – in line with the increasingly hierarchical relations of humans towards each other – in which ecology was increasingly seen as as mere “resources” to be extracted from. Though this didn’t become a major environmental problem until the coming of the imperialist nation-state and capitalism, where human alienation from the natural world became even more pronounced, especially seeing as the ruling classes overseeing this extractivist process were insulated from the ecological consequences of their actions – which often happened to indigenous populations of other countries, who often rebelled violently to defend their natural environments. Because of their rootedness in the natural world, organic societies could be said to have more of a connection to nature, and more likely to defend it from spoiling.

Anarchist political scientist James C. Scott argues that many organic societies existing in the present – like the people of Zomia<sup>(38)</sup> in South-East Asia – far from not having discovered the state and commercial civilisation, consciously resisted integration into them, as every part of their social structure seems consciously designed to keep the state at arms length. This tends to be part of a recurring theme in human social evolution, for “hill people” to prefer organic society and “valley people” to build cities and states. Not to say that organic societies are inherently less dominative than city-dwellers. Many hunter-gatherers and hunter-horticulturists are very patriarchal and violent towards other tribes, while some archaeological evidence suggests that the earliest cities may have been quite egalitarian.

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<sup>(37)</sup> [zcomm.org](http://zcomm.org)

<sup>(38)</sup> [www.boston.com](http://www.boston.com)

## The Emergence of Hierarchy

Mikhail Bakunin, Rudolf Rocker, and Murray Bookchin all linked the rise of social hierarchies with supernatural beliefs (religions, gods, and demons) which created what the latter called “epistemologies of rule”: conceptions of the universe itself being structured along hierarchical lines. The first physical-world hierarchies believed to have arisen were either age-based or sex-based, followed by chiefdoms, then with the rise of agriculture and cities came formal monarchies and oligarchies. With these also came the rise of economic classes (ruling classes, popular classes, with managerial classes in the middle) which encompass all other existing hierarchies of age, gender, ethnicity, and sexuality.

Elisee Reclus tried to make clear that ecological and geographic factors played a large part in conditioning how a society would evolve, and that social development wasn't a one-way street in which humans start out as non-hierarchical bands of hunter-gatherers and end up as centralised states with market economies. This is largely imposing the particular way in which European societies evolved (unique to the temperate zone of the Earth) upon the rest of the world, which has entirely different ecological conditions and geographical layouts, and thus different conditions for human development. Because hierarchy and centralised political power came to define Western Europe, many historians and social scientists tend to look at such organic societies as “backwards”, seeing their own cultures as the image of what they need to “catch up” to.<sup>2</sup>

Murray Bookchin offered an anarchist account of the development of human societies from a social-political and ecological perspective in his work *The Ecology of Freedom: The Emergence and Dissolution of Hierarchy*. David Graeber put forward a similar account from an economic perspective in *Debt: The First 5000 Years*. Earlier accounts can be found in *Mutual Aid: A Factor in Evolution* by Peter Kropotkin and *Nationalism and Culture* by Rudolf Rocker. What they all have in common is viewing hierarchy and domination as sources of violence and misery, and seeing individual autonomy and horizontal cooperation as liberatory alternatives. They also see the relationship between material forces and social ideas/consciousness as reciprocal (co-creating each other) rather than the Marxist view of the former determining the latter.

None of them try to romanticise organic societies of the past or present, or say that the coming of civilisation wasn't a positive movement. Merely that the linear view of history associating the emergence of hierarchy and centralised power with progress is wrongheaded, arising from a largely Eurocentric worldview. The state may have been a “historically necessary evil” if we wanted to have intellectual and technological advancement, but there there may also have been less hierarchical paths that could have been taken had conditions been different or different forces prevailed.

## Money, Markets, and Market Economies

The conventional narrative about the origin of money and markets in liberal political economy (the neoclassical, Keynesian, and Austrian schools) is that early humans started out bartering their goods with each other (“I'll give you three chickens for a goat/five apples for a bag of

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<sup>2</sup> Jared Diamond, in his book *Guns, Germs and Steel*, expresses a similar perspective, explaining that western Europe didn't develop the way it did because of any innate superiority in the European “race” (races don't even exist as biological differences) but because its position in the temperate zone gave it an abundance of resources which it used to its advantage. Especially horses (for travelling across long distances), sheep (for an easy source of material

eggs”), from which they then invented money to make exchanges more convenient, followed by the spontaneous emergence of markets and complex credit systems to accompany them.

- Communal economies/Barter → Money/Markets → Credit (then states)

The problem with this narrative is that there isn't a shred of archaeological or anthropological evidence to support it. As David Graeber outlines in his anarchist history of debt and money, most early organic societies actually had “gift economies” in which land and resources were communally owned. Barter only tended to occur between people who didn't know each other, sometimes even enemies. Far from states being antithetical to markets, the first markets were in fact *created* by early states in Mesopotamia (and probably Mesoamerica) as a way of breaking up and “de-cluttering” bureaucratic administration. Credit systems in early cities and states preceded both formal monetary and barter systems. Official money originally emerged from the commercialisation of war debts from imperial conquests. Barter, far from being a form of proto-money, is in fact an attempt to replicate money among people who are already used to market-monetary structures. So a more accurate picture of economic history would be:

- Communal economies/Credit → (then states) Markets/Money → Barter

What this narrative also reveals is that when people are left alone, they tend to gravitate to commons-based economic structures (sometimes horizontal, sometimes hierarchical), while market-monetary calculation only tends to become the organising principle of the economy and society when the threat of violence is present, such as from a band of raiders or a state.

Also, markets are not exactly the same thing as market *economies*. Markets have existed as *parts* of economies for as long as state-like structures have existed, but always within wider social economies subject to political and communal regulations. For example, the Islamic Caliphate had, by today's standards, very open markets, but in the context of a social-economic system in which usury (making money off of money without producing anything) was expressly banned on moral grounds. It was only with the enclosures of the commons<sup>(39)</sup> that the market (singular instead of plural) became the central organising factor in national economies, when European states “nationalised” the dispersed local markets that were embedded in broader communal economies. These national market economies later became internationalised via imperial conquest and colonial subjugation of indigenous populations, trying to integrate them into the global state-market system that was being established in the Age of Empires.

This age was also the beginning of the *growth imperative*, (also called *extractivism*) which associated progress with increased commercial expansion and the enlargement of industrial output. This also had ecological implications as growth increasingly came to be associated with the conquest of nature and treating it hierarchically as both an inexhaustible well of resources and a dumping ground for any negative externalities. Takis Fotopoulos documented this process and the ideology underpinning it in the first part of his *Towards an Inclusive Democracy*.

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for making clothes with), and cows (for food and leather). Unlike Reclus, he thinks statism and capitalism are positive developments.

<sup>(39)</sup> [anarchism.pageabode.com](http://anarchism.pageabode.com)

## The Nation-State vs. The Municipal-Confederation

Contrary to Marxists, who view the coming of the nation-state and capitalism as inevitable and “progressive” relative to feudalism, social anarchists view them as neither. Before the nation-state and capitalism, there existed alternative political and economic forms which anarchists think could have provided a decentralist alternative. For example, the free cities and communes (both kinds of autonomous “municipalities”) that existed outside feudal authority in medieval Europe, which often formed into leagues/confederations with each other — such as the Hanseatic League<sup>(40)</sup> and city-republics of Italy. Also the independent guilds of artisans and other workers, and the systems of commons which allowed rural populations to sustain themselves without wage-labour. Similar structures existed in Africa in the form of tribal leagues and among the indigenous peoples of North America, especially the Iroquois Confederacy.

Peter Kropotkin’s long essay *The State: Its Historic Role*<sup>(41)</sup> offered an anarchist analysis of these institutions and the historical “path not taken”.

The ascendant nation-states (made more powerful from 1500 on through colonialism outside of Europe) and the municipal-confederations for a time existed in tension with one another. Through a mix of economic strangulation and military coercion through raids and wars, the nation-state won out over the municipal-confederations. This provided the political ground for capitalism to be born through the enclosures of the commons, which threw peasants off the land they collectively managed, forcing them to seek a living through wage-labour in the industrialising towns and cities. And of course the conquest of the Americas and Africa<sup>(42)</sup> forced the native peoples of those regions into the European nation-state model and the early forms of capitalism and landlordism. This destruction of commons-based forms of economy<sup>(43)</sup> and their replacement by commercial ones was the first form of what’s now called the accumulation of capital (financial wealth).

Peter Kropotkin objected to the Marxist term for this process, “primitive accumulation”, as it implied that it only happened in the past. In reality, state and capitalist dispossession of the commons is a continual and ongoing process which continues to this day, especially in more agrarian parts of the world like India and South America.

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<sup>(40)</sup> [www.historytoday.com](http://www.historytoday.com)

<sup>(41)</sup> [theanarchistlibrary.org](http://theanarchistlibrary.org)

<sup>(42)</sup> [theanarchistlibrary.org](http://theanarchistlibrary.org)

<sup>(43)</sup> [www.youtube.com](http://www.youtube.com)



# Gender Liberation

The first person to call himself an anarchist, Pierre-Joseph Proudhon, had some pretty nasty sexist views. However, virtually every single self-identified anarchist after him has rejected his patriarchal beliefs and argued that they were actually in contradiction to everything else he stood for as a proponent of a non-hierarchical society. Since the 19<sup>th</sup> century anarchists have been at the forefront in pushing for the equality of women with men, liberty in sexual affairs, and freedom of gender expression; most often in conflict with dominant mores and even with other radicals.

## Anarcha-feminism

While the term “anarcha-feminism” was only coined in 1975 by the second-wave feminist Peggy Kornegger, in the sense of advocating full gender equality anarchism has arguably been feminist in its ethos since at least the 1860s. Emma Goldman was one of the first anarchist writers to specifically address gender issues and the plight of women in her essays and activism, and was also one of the first to attack homophobia and the persecution of non-heterosexual people. Unlike the first-wave feminists however, early anarcha-feminists like Goldman, Lucy Parsons, Louise Michel, He Zhen<sup>(44)</sup>, and Voltairine De Cleyre saw little point in getting votes for women, as they believed that statist representative democracy would only continue women’s subordination but with women’s complicity. Early anarchist feminists examined women’s lack of freedom not only in relation to their legal inequality to men and patriarchal cultural attitudes, but to their lack of economic self-reliance, as most of the labour traditionally done by women — domestic work, raising children, emotional support — wasn’t remunerated, leaving almost all women economically dependent on men. The first explicitly feminist anarchist group, La Voz de la Mujer (“The Voice of Women”) was founded in Argentina in 1896<sup>(45)</sup>.

During the Spanish Civil War, a famous anarchist women’s group called the “Mujeres Libres” (“liberated women”) was founded to push for female equality within the context of the emergent anarchist society, as most male anarchists at the time still harboured sexist attitudes<sup>(46)</sup>, despite their radicalism in other areas; combined with the problem of a lot of them using the free love<sup>(47)</sup> (polyamorous) ethos of anarchism as an excuse to bone just about any girl in sight, then getting mad when the girls did the exact same thing in reverse. (Sound familiar?<sup>(48)</sup>).

Although there has always been a feminist current in anarchism as a whole, it’s only lately that anarcha-feminism has made progress at the theoretical level. Within the wider feminist movement, anarcha-feminists advocate<sup>(49)</sup> what’s called *intersectionality*, the view that women’s

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<sup>(44)</sup> libcom.org

<sup>(45)</sup> anarchism.pageabode.com

<sup>(46)</sup> theanarchistlibrary.org

<sup>(47)</sup> tvtropes.org

<sup>(48)</sup> tvtropes.org

<sup>(49)</sup> anarkismo.net

domination must be seen as part of an intersecting web of different hierarchies such as class, race, and sexuality, and that there may be areas where women are actually at an advantage relative to men. They also tend to oppose “sex-negative” forms of feminism which want to ban pornography, prostitution, and BDSM. Hardline criticism also comes in for anti-transgender forms of feminism like radical feminism and political lesbianism.

## **Queer Anarchism**

Anarchists were also some of the first political voices to push for the equality of LGBT+ people. The first ever gay magazine *Der Eigene* (The Unique) was started by individualist anarchist Adolf Band and inspired by the philosophy of Max Stirner. German anarchist psychoanalyst Otto Gross also wrote extensively about same-sex sexuality in both men and women and argued against its discrimination. Male anarchists such as Alexander Berkman, Daniel Guerin, and Paul Goodman also discussed their gay and bisexual experiences in their writings. Lately, the famous queer theory scholar Judith Butler has identified as a “philosophical” anarchist and contributed material to anarchist essay anthologies.

Anarcha-queer people and writers are critical of the institution of marriage, seeing it as a restrictive institution historically tied to female subordination. By contrast, they tend to be highly supportive of polyamory, which has long been a part of anarchist practice under the term “free love”, and encourage people to stop viewing romantic and sexual relationships through both a heteronormative and mononormative lens – the former means viewing things as if heterosexual, heteroromantic, and cisgendered relations are the the only legitimate forms of sexual/romantic/gender expression. The latter means viewing things as if monogamy is the only legitimate type of sexual/romantic relationship.

For those who were into monogamy, anarchists proposed the idea of “free unions” which weren’t sanctioned by state legality. The idea being that people could still hold a ceremony to solidify their long-term romantic commitment and refer to each other as husband or wife, but their union wouldn’t be a legal practice, so there would be no such thing as divorce other than people agreeing to split up.

# Race and Nationality

From the late 1800s, anarchism has been a worldwide movement which tried to unite the popular classes of the whole world across national boundaries with the goal of replacing capitalism, statism, and hierarchy generally with an international confederation of confederations of libertarian socialist societies. It thus naturally opposes all forms of racism, ethnic supremacy, nationalism, colonialism, and imperialism (the subjugation of a people by an external state).

It takes account of how non-white peoples are made into “the Other” (with a capital-o) and sees as an essential component of social revolution the dissolution of white supremacy as both an institutionalised and mentally internalised form of hierarchy — especially by those who may not realise they have internalised it.

Differences in race and nationality are commonly weaponised by ruling elites as a means of dividing people who would otherwise have common cause in opposing their rulership. These differences are made to form the basis of hierarchies as part of a divide-and-rule tactic. For example, the category of “the White race” was only invented in the 1600s as a way to prevent African slaves and European indentured servants in the American colonies from joining together to overthrow the colonial ruling class.

As a case in point of just how artificial the concept of “whiteness” is, when it was first devised, it only applied to people from European *Protestant* countries. It specifically excluded the Irish, Polish, Slavs, Spaniards, Italians, and Jewish people — all of whom were only admitted into the White race in the 1800s with the influx of Catholic and Jewish migrants to North America, which served to prevent them making common cause with Black, Native American, and East Asian workers. Hispanic people even went back and forth in the government’s eyes from being non-White, to White, then back to non-White again depending on the political and economic situation.

Similar divide-and-rule tactics were historically employed in Latin America, Australia and New Zealand, and in Southern Africa (witness the legacy of Apartheid).

## Race and Colonialism (Historical)

Anarchists have attacked all forms of racism since very early on, and as labour organisers were founders of some of the first trade unions to organise across racial lines, when most other unions at the time were only interested in uniting workers of their own ethnicity. They organised multi-racial unions of blacks and whites in South Africa, Korean immigrant workers with native Japanese in Japan, blacks, whites, and mixed workers in Brazil and Argentina, whites and

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<sup>1</sup> Yes, Europe is a subcontinent (like India) not a continent. It’s part of the exact same landmass as Asia, which together are known as Eurasia. Realising you’re on the same piece of land as the Chinese, Indians, middle easterners, and others is something that immediately de-centres how you look at the world and the people in it. Europeans and people of European descent thinking of themselves as the centre of the whole world is something that needs to change pretty damn quickly as far as anarchists are concerned.

Amerindians in Peru and Mexico, Afro-Cubans and Euro-Cubans in Cuba, whites, blacks, and indigenous peoples in the US and Australia (under the IWW) and in Europe tried to organise Jewish people with Gentiles when so much of the subcontinent was fervently anti-semitic.<sup>1</sup>

As a result, anarchism and syndicalism tended to thrive in the late 19<sup>th</sup> and early 20<sup>th</sup> century among immigrant populations and in more agrarian (colonised) parts of the world, what would now be referred to as the Global South.

The reason it had the leg over Marxism at this period in history was that Marxism tended to think socialism could only be established in heavily industrialised countries (eg: the U.S., Britain, Germany) and that imperial conquest of the Global South was a progressive development – as it would bring industrialisation and centralised governance, which in turn would make socialism feasible. Anarchists rejected this view, and also saw revolutionary potential in agrarian populations which hadn't yet been industrialised.

This changed however when Lenin took power in Russia, who, as well as establishing the first so-called example of “socialism” on a national scale, changed traditional Marxist theory to advocate a “two-stage” theory of revolution, in which nationalist attempts to throw off imperialism in the Global South were okay as he believed capitalist imperialism had now reached a stage in which it was no longer progressive, and thus no longer useful for creating socialism. And so many peoples in the Global South who would have previously supported anarchism and syndicalism started to gravitate to Marxism and nationalism.

## Race and Colonialism (Today)

Where it still had a presence in the Global North, anarchism tended to be an overly white political movement, while still being hostile to all forms of legal and cultural racism. In the last few decades however, anarchist people of colour<sup>(50)</sup> (POC)<sup>2</sup> have been coming more to the fore-front and working out means of struggle<sup>(51)</sup> which challenge both white supremacy along with capitalism, the state, and all other forms of domination.

African-Americans in particular have formed a distinct tendency known as Black anarchism, which integrates traditional anarchist analyses of class and hierarchy with strategies unique to the African-American experience. They oppose the notion that oppressed races/nationalities can simply put aside their identities in favour of a broad “class solidarity” which fails to acknowledge the extra privileges white workers enjoy. Ashanti Alston<sup>(52)</sup> opined “Every time I hear someone talk about my people as if we are just some ‘working class’ or ‘proletariat’ I wanna get as far away from that person or group as possible, anarchist, Marxist, whatever”. Lorenzo Kom'boa Ervin has written a book outlining a distinctly African-American version of the social anarchist project called *Anarchism and the Black Revolution*<sup>(53)</sup>.

It's essential to take account of the fact that oppressions are contextual, and while white people are the most dominant racial group in the Global North, other ethnicities occupy that position

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<sup>2</sup> A term used to refer to everyone who isn't racialised as white. Very important to not confuse this term with “colored”, an old US term for African-Americans

<sup>(50)</sup> [www.coloursofresistance.org](http://www.coloursofresistance.org)

<sup>(51)</sup> [zinelibrary.info](http://zinelibrary.info)

<sup>(52)</sup> [m.youtube.com](http://m.youtube.com)

<sup>(53)</sup> [theanarchistlibrary.org](http://theanarchistlibrary.org)

in different parts of the world. In most of the Middle East, for example, Arabs enjoy the position of dominance relative to Kurds, Yezidis, and other groups. Similarly, in Tibet the dominant racial group is Han Chinese, with Tibetans in particular facing vicious discrimination.

In India, the religious and status-based hierarchies of the caste system fulfil most of the same criteria for racism in other parts of the world and function as a similar means of “racialising” people into divided ranks based on heritage, leading to discrimination, exclusion, and violence. The levels of oppression and exclusion suffered by the Dalit (“untouchable”) caste in India could in many ways put Jim Crow laws and Apartheid to shame.

## **Decolonisation**

An issue that’s become pressing for anarchists in recent years is the plight of indigenous peoples<sup>(54)</sup> in the Americas and Australia, who often live in wretched economic conditions and are treated as virtual aliens on the land masses their people have spent millennia on. Recognising the (mostly unacknowledged) privileges being classified as white brings someone – especially in parts of the Global North where POC are ethnic minorities – is something white anarchists have to try to come to terms with and try to work against in terms of how they relate to people of colour – especially if they happen to live on colonised land.

## **Nationhood and National Liberation**

Anarchists are opposed to nationalism, both because it encourages national chauvinism and xenophobia, and because it is inevitably tied to establishing a nation-state in which the popular classes and ruling classes are seen as having shared interests. A nation-state is not the same thing as a sense of nationhood however. German anarchist Gustav Landauer said that a nation could simply be thought of a “a community of communities” and didn’t necessarily have to be tied to a state. So while anarchists have the long-term goal of erasing all national borders which divide one state from another, they still think nations would continue to exist as a shared collective identity among people – but without the “us and them” mentality that pervades the concept now.

Nor is national liberation synonymous with nationalism, although the two most often have been tied together. National liberation refers to the struggle of a people – who consider themselves a nation – to emancipate themselves from colonial rule by an imperial power. Unlike nationalism, this doesn’t necessarily involve a wish to set up a separate nation-state with a native ruling class to replace foreign rule. It has the potential to be anti-statist, anti-capitalist, and internationalist in its aspirations. Most anarchists have recommended working within national liberation struggles and trying to push them in an anarchistic direction from inside them. They remain very sceptical of anything relating to nationalism or any ideology which venerates one group of people above another.

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<sup>(54)</sup> [intercontinentalcry.org](http://intercontinentalcry.org)

# Ecology

Most of the classical anarchists didn't place a huge focus on ecological issues, but some — most notably Peter Kropotkin<sup>(55)</sup> and Elisee Reclus<sup>(56)</sup> — explored ideas and raised concerns in their geographical and scientific writings which today would be regarded as proto-environmentalist and expressive of an ecological worldview. Reclus in particular deserves credit for being pretty much the first person to espouse an unambiguously green perspective in his scholarship.<sup>1</sup>

Since the late 1960s, when green concerns became more of an issue on the world stage, new trends in anarchism emerged which added an environmental focus to its anti-authoritarian ideas, eventually leading to a new tendency called eco-anarchism or green anarchism.

Eco-anarchists were early advocates of replacing fossil fuels with green energy, protecting wilderness, animal liberation, localising food production, and ecologising urban landscapes. Many also find that viewing the lived environment in terms of its bioregions<sup>(57)</sup> instead of nation-states is a good way of reorientating oneself to an ecological worldview: non-hierarchy, mutual aid, conservation, and decentralism.

## Social Ecology

“Social Ecology”<sup>(58)</sup> was coined by Murray Bookchin, whose book *Our Synthetic Environment* was released six months before the more famous *Silent Spring* by Rachel Carson, the book widely credited with kickstarting the modern environmentalist movement. Social Ecology takes the anarchist perspective of seeing social problems as stemming from hierarchy and domination and applies it to humanity's relation to nature: seeing the negative way humans treat the environment — such as pollution, landscape spoiling, and animal cruelty — as being rooted in the negative ways humans treat each other. As a solution, Social Ecologists seek to utilize technology for ecological rather than profit-driven ends and to decentralize institutions into small-scale eco-communities operating through direct-democracy.

At the theoretical level, it views the world as divided into:

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<sup>1</sup> Anarchist philosopher John P. Clark has even claimed that he not only anticipated nearly every important facet of the 20<sup>th</sup> century green movements, but was in fact the best anarchist theorist<sup>(59)</sup> ever in terms of the quality of his ideas; his influence was not as great as that of Bakunin, Kropotkin, or Goldman due to most of his thought being espoused through very long scholarly works in which his political philosophy was dispersed throughout rather than laid out in condensed form for a general audience.

<sup>(55)</sup> [zabalazabooks.net](http://zabalazabooks.net)

<sup>(56)</sup> [theanarchistlibrary.org](http://theanarchistlibrary.org)

<sup>(57)</sup> [www.cascadianow.org](http://www.cascadianow.org)

<sup>(58)</sup> [www.social-ecology.org](http://www.social-ecology.org)

<sup>(59)</sup> 72.52.202.216

- *First Nature* (the natural world) The wilderness landscapes humans first emerged from and non-human animals; usually thought of as simply “nature” as distinct from “culture”.
- *Second Nature* (the human social milieu) Everything created by human efforts: cultured landscapes, farm land, gardens, and cities; usually thought of as being separate and distinct from nature but in fact existing within it.

The problem, Bookchin claimed, was that humans developed ways of living together that were based on hierarchy and domination instead of democracy and cooperation. This in turn meant that they applied this same hierarchical logic to first nature, treating it as something to be dominated and extracted from instead of treated in a mutualistic manner. The goal therefore should be to restructure second nature (human society) in a libertarian and egalitarian way so as to reintegrate it with first nature, forming a dialectical synthesis of the two he called “free nature”.

Other Social Ecologists besides Bookchin include political scientist Takis Fotopoulos, anthropologist Brian Morris, political activist Janet Biehl, philosopher John P. Clark, anarcho-syndicalist Graham Purchase, and several Scandinavian activists associated with the online journal *New Compass*<sup>(60)</sup>, though the latter tend to see themselves as non-anarchists while still remaining libertarian socialists.

Social Ecology tends to be sceptical of other green schools of thought who blame humans as a whole for environmental problems instead of hierarchical social structures, as well as the more “mystical” forms of Eco-philosophy which conceive of nature in religious, as opposed to rational terms.

An introductory essay by Bookchin is available here<sup>(61)</sup>.

## Others

Other green anarchist movements such as Deep Ecology and anarcho-primitivism came later and see ecological problems lying not in the authoritarian ways humans treat each other, but in humanity itself as a species. While Social Ecology was developed within the social anarchist movement, Deep Ecology was developed outside it by the Norwegian philosopher Arne Naess and then caught on among many green anarchist activists in the Pacific Northwest. Deep Ecologists believe that all life forms have a right to existence apart from or even in opposition to human needs, and society must be radically restructured to accommodate this.

Primitivists move even further, believing the human population must be significantly reduced, with the few humans that remain going back to a hunter-gatherer way of life, leaving behind all technology more sophisticated than those found in the neolithic era. As you might expect, Social Ecologists and primitivists do *not* like each other, with most social anarchists contesting<sup>(62)</sup> the claims of primitivists to even be anarchists.

While primitivism exerted a large influence upon anarchist activism in the 1990s and early 2000s, it has seen a decline since then<sup>2</sup> with Social Ecology coming back in popularity after

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<sup>2</sup> Many primitivists have even renounced connections to anarchism and consider primitivism to be a separate

<sup>(60)</sup> [new-compass.net/](http://new-compass.net/)

<sup>(61)</sup> [www.kurdishquestion.com](http://www.kurdishquestion.com)

<sup>(62)</sup> [shawnewald.info](http://shawnewald.info)

Bookchin's death in 2006. It has exerted a large influence on the social-political thought of the Kurdish revolutionaries in Turkish and Rojava (Syrian) Kurdistan, especially its focus on confederated municipalities running themselves through direct democracy, and on their aspirations to redesign their urban areas as Eco-cities composed mostly of green spaces.

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and distinct ideology.



# Technology

Despite some more contemporary trends among anarchists towards technophobia and neo-Luddism, the broad anarchist tradition has been largely enthusiastic and supportive of the liberatory potential of technology to remove needless toil from work, automate production, and enhance communication and transport among regions. They have no love, however, for the kind of centralised, mass production systems of technology which have dominated economies since the Industrial Revolution. Peter Kropotkin, in his book “Fields, Factories, and Workshops”<sup>(63)</sup>, recommended radically decentralising the scale of technologies, localising production so as to move closer to communal self-sufficiency, and integrating mental and manual labour.

Later, in the 1960s, Murray Bookchin claimed that decentralist and human-scale technology was the only means to provide a high standard of living while maintaining ecological balance. Social anarchists think one of the main problems of capitalism regarding technology is that it actually holds technological innovation back, channelling its development into producing destructive military weapons and planned obsolescence in consumer goods instead of building things to last and eliminating dull, dirty, and dangerous forms of labour with automation.

Nowadays there’s a lot of anarchist support for micro-manufacturing, small-scale shop production, the open-source hardware movement<sup>(64)</sup>, and of course enthusiastic support for the Internet and especially the free software movement<sup>(65)</sup>. There’s also considerable crossover with the Peer-to-Peer<sup>(66)</sup> (P2P) movement as well, in which the non-proprietary sections of the Internet are viewed as an actually-existing free commons, whose principles of decentralised cooperation, horizontal and networked association, and participatory organisation should be expanded to the so-called real world.

## Technological Evolution

In line with the anarchist conception of history (see above) that for every form of progress achieved through hierarchy and centralisation there was a horizontal/decentralist “path not taken”, anarchists apply this same analytic to technology. Just as Kropotkin believed it may have been possible for politics and economics to evolve through municipal-confederations instead of nation-states, he also thought it may have been possible to avoid the brutal, polluting, and centralised shape the industrial revolution took under capitalism; that it may have been possible to have had “industrialisation from below” led by guilds and small-scale shop production had federative and commons-based forms prevailed. He wrote a book, *Fields, Factories, and*

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<sup>(63)</sup> [c4ss.org](http://c4ss.org)

<sup>(64)</sup> [en.m.wikipedia.org](http://en.m.wikipedia.org)

<sup>(65)</sup> [www.infoshop.org](http://www.infoshop.org)

<sup>(66)</sup> [p2pfoundation.net](http://p2pfoundation.net)

Workshops<sup>(67)</sup>, laying out a decentralist, cooperative, and ecological alternative to capitalist and statist kinds of technology.

Inspired in large part by Kropotkin, American left-libertarian theorist Lewis Mumford put forward a roughly historical naturalist history of technology, or more broadly speaking, “technics” — this analysis was in turn taken up by social anarchists like Murray Bookchin and market anarchists like Kevin Carson. Technics comes from the Greek *techne*, which refers to both techniques and technologies, basically ways of doing things (by human or machine hands) which can be formalised and systematised. This view of technological evolution hypothesises three phases in the development of technics since the Middle Ages:

- *The Eotechnic Phase*<sup>1</sup>
- *The Paleotechnic Phase*<sup>2</sup>
- *The Neotechnic Phase*<sup>3</sup>

With the coming of the Internet and computerisation one could argue that we are now in a fourth phase which could be called the *Cybertechnic Phase*, which, like the neotechnic phase, is structurally decentralist, but is being used by centralist institutions for hierarchical purposes; with artificial scarcity created by intellectual property when cybertechnic technology offers the possibilities for real abundance. Murray Bookchin claimed in the 1960s that the then new cybertechnic technologies and eco-technologies provided the preconditions for a *post-scarcity* economy if only they were developed in a decentralist, democratic, and liberatory direction.

## Technics and Metis

James C. Scott takes a similar views of technics, also stressing the importance of another kind of knowledge called “metis” (another Greek term).

- *Technics*: (Techniques and technologies) Knowledge and practices which can be formalised and systematised.
- *Metis*: More nuanced knowledge and practices which can’t be boiled down to a set of formal rules. Basically practical, on-the-ground methods of getting stuff done that exist only a series of “shorthands” between working people.

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<sup>1</sup> Roughly 1100–1750. Characterised by the first complex pulley systems and early mechanical devices. (Decentralist)

<sup>2</sup> Roughly 1750–1900. The coming of steam power and industrialisation. Characterised by the enclosure of the commons, the birth of the factory system, mass production for profit, and hierarchical divisions of labour. (Centralist)

<sup>3</sup> Roughly 1900–1990. The discovery of electricity and its many applications. Had the potential to move beyond the centralised industrialism of the paleotechnic phase and encourage more decentralist alternatives based on small-scale workshop production and home manufacturing. Ended up getting channeled into paleotechnic forms of mass production instead. (Decentralist)

<sup>(67)</sup> c4ss.org

Scott claims that while states and other centralised institutions require metis to get stuff done, their very function is ironically premised on its lack of importance. They justify their existence on the idea that decentralised, commons-based forms of organising are inferior to centralised hierarchies, while at the same time relying on people to “go beyond the rulebook” and take practical initiative (metis). Colin Ward said similar things regarding how the “formal economy” is dependent upon the workings of the “informal economy” like unpaid labour by women and forms of cultural creativity which are co-opted for commercial purposes. This, anarchists claim, represents the contradictions inherent in centralised hierarchies and the superiority of decentralist and directly-democratic alternatives.

# Social Institutions

Changing the overall ethos of society and culture in intellectual terms isn't regarded as sufficient for building a directly democratic world and anarchists see the need for social institutions (that aren't strictly political or economic) to solidify non-hierarchical and libertarian relationships.

## Education

Anarchists have always placed a strong emphasis on education, in particular self-education and teaching tailored to the needs to the individual learner. For this reason they tend to support democratic schools<sup>(68)</sup> in which students themselves collaborate with teachers in forming the curriculum and the school environment functions more to facilitate self-education than to proscribe a fixed standard that each student should adapt themselves to. Francisco Ferrer and social critic Ivan Illich wrote a lot about pedagogy from an anarchistic point of view.

## Housing

With regard to housing, anarchists tend to disagree with others on the left, especially welfare state supporting social democrats, that publicly-owned housing is a good thing. While they would agree that each person should rightly have a home to live in, they want direct tenant control over living arrangements instead of them being handled by external authorities.

Sociologist Colin Ward wrote a book, *Housing: An Anarchist Approach*, in which he praised attempts at self-built homes and community-based projects like Community Land Trusts and housing co-ops. He claimed, in opposition to Labour Party supporters against the buyout of councils flats by co-ops, "I believe in social ownership of social assets, but I think it a mistake to confuse society with the state. Co-operative ownership seems to me to be a better concept of social ownership than ownership by the state".

Ward also laid out a set of general principles for building and architecture processes, saying that while professional architects and civil engineers may be necessary to draw up the plans for how buildings will look, the people who use the buildings, whether tenants or other users, need to be the ones who drive the process, though coordinating meetings and a rigorous process of consultation.

A lot of anarchists are also heavily involved in the squatters' movement and promote the occupation of disused buildings so as to make use of them, often setting up intentional communities organised on non-hierarchical principles.

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<sup>(68)</sup> [www.youtube.com](http://www.youtube.com)

## Crime and Judicial Matters

As for judicial and criminal issues, this is one area where anarchist literature is somewhat scant. Anarchists don't imagine that all crimes will magically disappear once an anarchistic society is constructed, but they do like to point out that the vast majority of crimes are either crimes against the state or crimes against private property, and that if you eliminate statism and capitalism, you eliminate these entire categories of crime, with only crimes of individuals against each other remaining.

How to deal with these offences is a topic of dispute among anarchists. James Guillaume in his pamphlet *Ideas on Social Organisation* recommended that such offenders as murderers, rapists, and thieves be placed in a "special house" rather than a jail and prevented from leaving until the rest of the community deems them fit to re-enter society, while Peter Kropotkin recommended setting up institutions of voluntary arbitration to settle disputes rather than criminal courts, hoping that social censure would help eliminate violent and coercive elements among people.

## Defence and Security

As for collective self-defence, anarchists are obviously opposed to any military or standing army. Anarchists of a more pro-market persuasion propose setting up cooperative defence agencies which members of a given locality pay dues to in exchange for security and protection. Anti-market anarchists, on the other hand, tend to support locally-based militias staffed by volunteers and neighbourhood watch committees instead of a traditional police force.

They are somewhat divided on whether people should be armed or not. Market anarchists (hailing mostly from the U.S.) as a rule tend to be very pro-gun and oppose absolutely all forms of gun control. Social anarchists tend to be a bit more sceptical, while still opposing bans on gun ownership in every situation, bringing them into conflict with most others on the left. The social anarchist political scholar Jason Royce Lindsay criticised American gun culture, claiming it deludes people into believing they have more power over the state than they really do.

## Finance

Democratising finance is one of the oldest components of the anarchist economic vision, first being suggested by Pierre-Joseph Proudhon; finance being the "means of investment" under capitalism. The early mutualists sought to create "mutual banks" which would be used to fund the creation of worker cooperatives and other self-managed economic institutions to gradually replace capitalist and state enterprises, and to eliminate usury (charging interest for loaned money).

The social anarchists from the First International on went further in seeking the full socialisation of investment in the hands of local communities. Many also suggested replacing traditional money with "labour vouchers" (nowadays these would take the form of digital credit points on debit cards) which unlike conventional currency, would be created at the point of receiving income and would cease to exist upon purchase of an item; in much the same way as frequent flyer miles or restaurant loyalty points work. Participatory Economics and Inclusive Democracy both support such proposals.

Other anarchists go even further in their long-term goals in wanting to replace all forms of money, incomes, and prices completely by creating a gratis-based gift economy in which people can take goods freely from stores “according to need”. Though most would concede that this would only be workable on a large scale once certain preconditions are met — such as the production of food and manufacturing being as decentralised and localised as possible (near or total communal self-sufficiency) with a great deal of labour automated away by technology.

## Arts and Entertainment.

With regard to the creation of art in the contemporary world, anarchists are fond of pointing out that the only reason that every single movie, tv show, video game, book, album, etc. couldn't be made available right now for free through the Internet is the existence of intellectual property laws (patents, copyrights, and trademarks), as all of the above could in theory be distributed gratis for downloading and streaming due to there being little-to-no material cost involved. They feel that abolishing IP laws (especially copyrights) would unleash a multitude of creative endeavours as people would be able to use all the non-material resources available (including editing software) to improve upon and create their own works of art and entertainment, distributing it online as part of a participatory culture<sup>(69)</sup>. It's for this reason that there's a lot of overlap between anarchists and the free software movement<sup>(70)</sup>.

The anarchist art critic Herbert Read argued that every good artist (and by extension entertainer) needed three things in order to be able to create good art:

1. *appreciation*, that is, peer recognition
2. *patronage*, or a source of income so as to be able to earn a living from their work; and
3. *liberty* in their creative endeavours.

The problem is, he claimed, the second (funding) often conflicts with the third (creative freedom), as the sources of an artist's income often have a vested interest in the kind of art they create supporting (or at least not offending) their economic or ideological agenda. In the Middle Ages, the problem was Church funding and not being able to offend religious sensibilities. In the modern day, the problem is corporate and state funding, and not being able to offend commercial capitalist interests. Read believed that a return to a kind of guild system for artists could offer a solution, where artists themselves controlled their investments and were insulated from commercial pressures and external political interests.

While not an anarchist himself, the fantasy novelist China Miéville<sup>(71)</sup> suggested a system that most anarchists would find appealing, where authors (and other artists and entertainers) are paid salaries for doing creative work rather than being paid per the profits for their individual products, as they could be distributed for free online. While this would obviously mean that most of the big-name artists and entertainers could no longer make millions, he pointed out that for most struggling artists it would actually be a pay upgrade, allowing them to devote

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<sup>(69)</sup> [en.m.wikipedia.org](http://en.m.wikipedia.org)

<sup>(70)</sup> [www.fsf.org](http://www.fsf.org)

<sup>(71)</sup> [vtropes.org](http://vtropes.org)

themselves to their craft full-time. An anarchist entertainment industry could therefore be based on cooperatives (based on location) and democratic guilds (based on art form), where big-scale art/entertainment projects like blockbuster movies would be greenlit based on perceived quality instead of potential profitability.

# Additional Concerns

## Anthropology

Of all the social sciences, anarchists have been most consistently drawn to anthropology. Contemporary anthropologist and anarchist David Graeber believes that this may be because, as proponents of a stateless and non-hierarchical society, anthropology shows that such social set-ups are indeed possible; given that anthropologists devote their careers to studying them.

Anthropological elements are found in the works of classical anarchists like Peter Kropotkin and Elisee Reclus, by twentieth century anarchists Murray Bookchin and Colin Ward, and by modern-day anarchists who are by profession anthropologists like Brian Morris and the aforementioned David Graeber. Jeff Shantz has argued that auto-ethnography<sup>(72)</sup> in particular – people from marginal groups giving first-person accounts of their lives and experiences – can be regarded as an especially anarchistic form of anthropology.

There's also a lot of mucking about in anthropology by so-called “anarcho-primitivists” like John Zerzan, though their works tend to suffer from selective reading and romanticisation of hunter-gatherer lifestyles. Most anarchists admire certain features of such communities – mutual aid, reciprocity, communality, ecological stewardship – but have no desire to regress back to such states of affairs, abandoning all sophisticated technology. It's important to keep in mind that many (perhaps most) hunter-gatherer societies are in fact very hierarchical and patriarchal.

David Graeber has written a broad outline for an anarchist school of anthropology available here<sup>(73)</sup>.

## Psychology

In their views on social psychology, anarchists believe that social hierarchies create “lopsided relations of the imagination” which make both the highers and the lowers in the hierarchy stupid, uncaring, and violent but in different ways. Hierarchies also make it so that the lowers (the working classes, women, people of colour) are always more psychologically empathetic towards the highers (the rich, men, whites) than the other way around. This is because those on the receiving end of hierarchical power have to understand how their masters' minds and social environments operate in order to get by in life, but those on the top don't have to know much about the worlds of their subordinates<sup>1</sup>. Anarchists hold that society can only achieve genuine

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<sup>1</sup> Notice how ordinary people know a lot about the lives of the rich and famous, but the rich and famous frequently don't even know what the minimum wage is. Likewise how women tend to be more savvy on the lives of men than men are on the lives of women.

<sup>(72)</sup> [www.strath.ac.uk](http://www.strath.ac.uk)

<sup>(73)</sup> [theanarchistlibrary.org](http://theanarchistlibrary.org)



psychological well-being through creating conditions of material equality, personal freedom, and social relations built upon horizontal cooperation, communal caring, and mutual aid.

With regard to personal psychology, anarchists stress the importance of interdependence, but also individual self-reliance and autonomy, encouraging persons to chart a middle way between collectivist groupthink and rugged individualism in their quests for self-fulfilment and self-realisation. It's considered a bad idea to try to analytically separate a person with psychological problems from the social conditions in which they develop, and an even worse practice to try to adjust them to a negative environment, as negative environments are seen as the main cause of messed up mental states in the first place; especially relations and institutions characterised by authoritarianism, cut-throat competition, and repression. They have long attacked sexual repression in particular as damaging both to the individual in their self-development, and to wider society. Alex Comfort, author of the famous erotic liberation manual *The Joy of Sex*, was himself an anarchist.<sup>2</sup>

American anarchist Paul Goodman co-created a psychological method called Gestalt Therapy<sup>(74)</sup>, which blends western clinical approaches with aspects of eastern philosophy, in particular Buddhism and Taoism (both of which tend to be popular with anarchists for psychological/spiritual reasons). It is focused on bringing the patient/practitioner into the "present moment" and helping them to regain self-determined direction over their own lives.

Today, psychologist Dennis Fox has outlined a specifically anarchist psychological approach here<sup>(75)</sup>. There's also an anarchist-inspired form of psycho-physical group therapy called somatherapy<sup>(76)</sup>.

## Media Analysis

One of the most famous anarchists of the last few decades is Noam Chomsky, who places a special focus in his work on how mass media is used by states and corporations to create the illusion of popular agreement with what those powerful forces do to the public. With Edward S. Hermann, he developed an anarchistic approach to studying mass media called the propaganda model<sup>(77)</sup>. It holds that state and corporate media are structured in a way which imposes a rather uniform perspective with the aim of shaping general opinion along certain lines. A number of factors condition this hegemonic worldview and how its gets expressed:

1. *Ownership* of the medium
2. *Funding* sources of the medium
3. *Sourcing* of content for the medium
4. *Flak* by states, businesses, special interest groups, and other mediums

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<sup>2</sup> Something he once remarked he would preferred to be remembered for, being far more proud of his anarchist and pacifist works than his one book on sexuality.

<sup>(74)</sup> [psyclassics.com](http://psyclassics.com)

<sup>(75)</sup> [theanarchistlibrary.org](http://theanarchistlibrary.org)

<sup>(76)</sup> [backalleyradio.wordpress.com](http://backalleyradio.wordpress.com)

<sup>(77)</sup> [beautifultrouble.org](http://beautifultrouble.org)

## 5. *Fear of a perceived “enemy”*.<sup>3</sup>

Also, while most media sources do compete with and disagree with each other, at the same time they have a certain set of common aims and interests on which they align to reinforce the status-quo in popular consciousness and push the agenda of the ruling elite. Anarchists have always tried to establish their own non-profit, alternative forms<sup>(78)</sup> of media to enable marginalised voices an outlet they are routinely denied in the mainstream, attempting to create an anti-authoritarian and democratic counter-narrative to the dominant ideology.

## Urban Planning

Social anarchists have a long history<sup>(79)</sup> of association with town and city planning, stressing the importance of decentralised scale over the gigantism of the megalopolis, ecologising the urban environment by making it majority green space and powered by renewable energy and eco-technologies, and neighbourhood designs which emphasise communal self-reliance over the atomisation of modern city life. They loathe urban sprawl, suburbanisation, urban congestion, and especially car culture.<sup>4</sup> Paul Goodman even once wrote an (only half joking) article proposing to ban private cars from Manhattan.

The proposals of anarchist urbanists like Elisee Reclus, Paul Goodman, and Murray Bookchin were very similar to what’s now called New Urbanism and New Pedestrianism, and similar to utopian city-planners like Ebenezer Howard and the Garden cities movement. Colin Ward was an urban planner by profession and wrote extensively about the subject.

## Spirituality

While anarchism has always been extremely hostile to religion in general and organised religion in particular, most anarchists view spirituality as a separate concept and feel that the need to feel part of something larger than oneself is an essential part of the human condition that needs to be nurtured. So while promoting a public realm in which science and reason are the basis of managing social affairs, they also support a private realm in which individuals and voluntary associations are free to pursue self-realisation through whatever means feel right, as long as they accept the consensus on the scientific method and rationalism as the primary means of solving collective problems.

Early anarchists were drawn to American transcendentalist philosophy for its communal individualism and libertarian ethos, and to the more esoteric traditions of major Abrahamic religions while still remaining secularists: Gnostic Christianity<sup>(80)</sup> and Sufism for example. Since the

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<sup>3</sup> The big “enemy” in the west used to be Communism, but since the fall of the Berlin Wall and later 9/11, the “enemy” has been designated as Islam.

<sup>4</sup> Which as well as being a source of pollution, only exists to the extent that it does because of state subsidisation of the auto industry and the state construction of motorways to help facilitate their growth, shutting out possibilities for more ecologically sound public transport; and making the urban landscape evolve along automobile-centric lines.

<sup>(78)</sup> [www.wsm.ie](http://www.wsm.ie)

<sup>(79)</sup> [www.occupiedlondon.org](http://www.occupiedlondon.org)

<sup>(80)</sup> [vtropes.org](http://vtropes.org)

twentieth century, anarchists have gravitated towards the more anti-authoritarian tendencies of Eastern philosophy, especially Taoism<sup>(81)</sup> and Buddhism<sup>(82)</sup>. Many even consider the dialectical *Tao Te Ching*<sup>(83)</sup> to be a proto-anarchist text. Leo Tolstoy<sup>(84)</sup> is sometimes regarded as an anarchist (though he never described himself as one) and his panentheistic, pacifist form of Christianity provided much of the influence behind a tradition calling itself “Christian anarchism”, as did elements of the American Catholic Workers Movement. Because of anarchism’s opposition to religion with its belief in supernatural authority, there’s some debate as to whether this can be regarded as a form of anarchism or merely “anarchistic”.

Robert Anton Wilson<sup>(85)</sup> and Alan Moore<sup>(86)</sup> – both of whom were secular agnostics – promoted a playful, pick-and-mix approach to spirituality and mysticism, incorporating elements of Western Esoteric traditions (Gnosticism, Kabbalah<sup>(87)</sup>, Tarot<sup>(88)</sup>, Chaos Magick) with Eastern mystical traditions (within Taoism, Buddhism, Hinduism<sup>(89)</sup>) and other arcane practices (from paganism, shamanism, and Wicca<sup>(90)</sup>) into an aestheticised form of personal psychology for personal self-realisation. John P. Clark has attempted something similar under the pseudonym “Max Cafard”, supposedly a snarky Cajun wizard with an interest in bioregionalism and French Situationism.

Anarchist philosopher Simon Critchley has spoken of the necessity for anarchists to recapture a religious sensibility while remaining without religious faith, as that dimension of human experience usually occupied by faith is a vital part of the personality and of community, even if the supernatural beliefs that go along with it are not.

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<sup>(81)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(82)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(83)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(84)</sup> [tvtropes.org](http://tvtropes.org)

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<sup>(87)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(88)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(89)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(90)</sup> [tvtropes.org](http://tvtropes.org)

# Strategies for Change

## Direct Action and Electoralism

In wanting to transition from the current hierarchical society to one based on voluntary cooperation without rulership, the question of how to get from “here to there” is one that has been of crucial concern to anarchists of different stripes from day one. However, it’s also an issue which has divided them, though they would all at least agree that the strategy of taking state power and strengthening it to bring about libertarian socialism is out of the question. As a consequence, they tend to oppose taking part in electoral politics both on principle and out of the belief that it’s ineffective compared to *direct action* (grassroots activity unmediated by formal political institutions).

However, some anarchists like Noam Chomsky recommend what’s called “defensive voting” (using your vote as a form of self-defence against the state) in situations where a certain candidate or party winning an election could be catastrophic, like a fascist coming to power or a war being launched.

A few others support what’s called “destructivist” voting (named by an obscure 1870s anarchist called Paul Brousse). This means taking part in municipal elections (though never national elections) so as to devolve the powers of local governments to directly-democratic neighbourhood assemblies, and to municipalise enterprises before turning them over to worker self-management. It was recommended by several anarchists in the First International for a time (even, briefly, Bakunin and Kropotkin), and was later pushed by Murray Bookchin as part of his broader strategy of “libertarian municipalism”. Though this is a minority position, with most anarchists being against taking part in *any* form of electoral politics, believing it to be useless at best and counterproductive to movement-building at worst.

In general, direct action and grassroots self-organisation are the primary methods anarchists recommend for accomplishing their goals. That means resisting all the different forms of hierarchical power through popular social struggle, as well as trying to create concrete examples of anarchism in a positive sense, namely associations which run on the basis of free cooperation and egalitarian self-ordering by their own participants.

They don’t put much faith in even a well-meaning government to do the right thing by the socially oppressed, relative to the oppressed themselves through bottom-up forms of collective self-help. Though that’s not to say they oppose making demands on the government from the outside, through protest and civil disobedience, and this usually entails (1) demanding the state reduce its own authority over people, and (2) redirect it’s resources (as long as it has them at all) towards helping the general population rather than the ruling elite.

## Anarchist Approaches to Revolution

In contrast to other self-described “revolutionaries”, anarchists have always stressed that they want more than just a political revolution (a change in governments), but a more all-encompassing social revolution – that is, a transformation in political, economic, and societal structures, changing people’s social consciousness as well as institutions. They also stress that revolution (transformation) is a process, not an event, and that the word doesn’t just refer to erecting barricades and storming government buildings. The Industrial Revolution being just as transformative as the French Revolution.

Pierre-Joseph Proudhon, the first person to self-identify as an anarchist, foresaw social revolution involving the gradual exodus of the people from the capitalist state system through the construction of alternative institutions: cooperatives, credit unions, interest-free banks, and confederations of free communes. He imagined that the new libertarian socialist order would chip away at the old order, which would shrink as more people became part of the non-capitalist counter-economy. This strategy of exodus and dual power is still a popular strain in anarchist thought, later being elaborated by thinkers such as Gustav Landauer, Paul Goodman, and Murray Bookchin.

When movement anarchism became a thing however – in the 1860s and 1870s – the set of strategies shifted from the gradual withdrawal from capitalist-statism to a destructive break with it, advocating (like republican and nationalist movements of the time) a popular uprising which would smash the existing system and usher in the new one.

At first, inspired by the Paris Commune of 1871, this involved recommending acts of collective insurrection, leading many anarchists to try taking over small municipalities in Italy and Spain, with the intention of turning them into free communes. The idea being that this would cause a domino effect of the people in other parishes, towns, and cities becoming inspired to mirror such actions, turning their local areas into free communes with libertarian socialist economies. This was called *propaganda by the deed*: belief that living examples of socialist revolution proved more effective than writing pamphlets or making speeches; that is, written and oral propaganda. And just to clarify, the word *propaganda* back then didn’t mean brainwashing (as it mostly does today), was a term roughly synonymous with what’s now called public relations (PR): getting your message out there.

After a string of failures however, and the successful assassination of Tsar Alexander the 2<sup>nd</sup> in Russia, focus shifted to acts of individual insurrection, targeting royals and businessmen in the hope that this would give the masses the confidence to rise up and overthrow the governments and the structures of private property.

This didn’t work either. In fact, the violent acts of individual *attentats* (political assassins) only served to alienate the general population, leading to the now-popular image of anarchists as bomb-throwers in black trenchcoats. A lot of these attentats also, probably, looked to have serious mental health problems given the description of their personalities and behaviour. Others came from extremely deprived and brutal backgrounds, turning to such actions out of desperation and misplaced thirst for vengeance. Anarchists, who had bad press to begin with, started really getting a bad rep when targets expanded to include random members of the wealthy or royalty who hadn’t even done anything.

Attention then turned to the growing labour movement as a possible channel through which revolution could be catalysed. The spread of capitalism around the world meant that more and

more people were being turned into wage-workers (as opposed to self-reliant farmers), and thus hostile to the poor conditions they were placed in while doing unhealthy industrial work. While critical of the tendency of many unions to pursue parliamentary politics, anarchists saw potential in strikes and labour struggles to:

- A. Get people organising along anarchistic lines, practicing worker self-management and socialist distribution of resources; putting in place the underlying structure of the future society, making the transition easier.
- B. Turn the modest demands of mainstream unions (higher wages, shorter hours, better conditions) into opportunities to confront capital and the state directly, eventually turning strikes into riots and riots into a full-blown popular uprising.

This strategy was already discussed by Mikhail Bakunin and others in the First International in the 1860s and 1870s. But it became really relevant in the 1880s through to the 1910s, as the labour movements of the world became more and more successful and relevant. This led to the birth of anarcho-syndicalism as a distinct strategic approach which centred the workplace, the industrial working class, and trade unions (“syndicates” in French) as the primary vehicles of revolution. Though a lot of anarchists, such as Errico Malatesta and Emma Goldman, discouraged people from emphasising syndicalism too much, arguing that focusing on economic issues alone could cause anarchists to neglect political, societal, and individual-level issues.

For example, at the 1907 Amsterdam Congress of anarchists, some expressed the idea that the strategy of revolutionary syndicalism (trade unionism) was “enough in itself” to realise anarchist goals, and that anarchists should dissolve themselves into the wider labour movement. Errico Malatesta came out staunchly against this view, claiming that while workers’ struggles were important, they were (by themselves) conservative unless they were pushed in a more social libertarian direction, and that specifically anarchist political organisations would be necessary, not just anarchists working within trade unions. This came from his view, contrary to Marxism, that mass struggle has as much to do with *will* (fighting for a chosen ideal) as with *material interest* (reacting to the mechanical processes of the economy).

Such anarchists also cautioned against the idea that “revolution” would involve dispatching the old order in one fell swoop, claiming that the whole process would take years. Emma Goldman went as far as claiming it would take literally *hundreds* of years before the world was fully anarchist in a meaningful sense, stressing the stickiness authority had in relation to human beings.

In other parts of the world (outside the industrialised regions), anarchists were involved less with industrial syndicalism and more with other popular movements closer to their particular circumstances. These included peasant uprisings (eg: Ukraine), and national liberation struggles (eg: Korea and Manchuria). Today, anarchists who focus excessively on the industrial working class and trade unions are referred to by the derisive term “workerism”; which means fetishising workers and the workplace as a site of struggle.

The most successful example of an attempted anarchist social revolution, Spain in the years 1936–37, involved *both* trade unions and a popular uprising by anarchists, as well as attempts to transform culture and kinship relations at the societal level, with libertarian education and anarcho-feminist organising being crucial.

## Evolution and Revolution

Elisee Reclus claimed that evolution and revolution were two variants of the same process, with evolution being the incremental changes which occur on a continuous basis, and revolutions being moments of sudden rupture, preceded by a long period of evolution beforehand.

Even those anarchists who saw social revolution as involving a popular uprising (like the French Revolution) didn't think libertarian socialism would just spontaneously establish itself. They held that while the abolition of the state and subsequent devolution of power to localities would open up the necessary space/opportunities for creating anarchism, the actual process itself would take several years of hard work. This would entail the constructive efforts of spreading anarchist ideas and practices among the general population, reorganising the polity and economy along decentralised and horizontalist lines, as well as the defensive work of making sure the state, capitalism, or hierarchy in general don't reemerge from the remnants of the old order. In other words, anarchists should focus on "evolution" both before *and after* "revolution"

Peter Kropotkin claimed that social revolution should be conceived in three stages, not a simple two stage "before and after" framework:

1. Preparation
2. Fermentation
3. Transformation

Nowadays, while the tactics of syndicalism and insurrectionism are still considered important, the anarchist strategic toolkit has expanded to include: societal revolts against repressive cultural and kinship relations; ecological struggles for defence of the environment and for animal liberation; communalist initiatives to build networks of popular assemblies in neighbourhoods; and technological campaigns involving projects against state/corporate surveillance and intellectual property, and for the internet being made into a digital commons, also involving the constructive use of decentralist eco-technologies as positive elements in an anarchist economy of the commons.

A minority of anarchists don't actually believe that transition to a full anarchist social order is possible, or at least not on a large scale. Instead, they view anarchism more as a set of practices for the here-and-now, as a way to realise autonomous spaces of freedom and autonomy in a sea of authoritarianism, as well as a politics of "permanent protest" against every form of hierarchy and domination. They view anarchism as primarily evolutionary rather than revolutionary. People like Colin Ward and James C. Scott fall into this camp.

This came close to becoming the default version of anarchism in the mid 20<sup>th</sup> century – after the (anarchist) Spanish Revolution and World War II, but before the revival of anarchism in the New Left of the 1960s – as establishing a completely stateless non-hierarchical world seemed ever more impossible. This position was called "resistencialism" by its detractors, meaning concerned only with *resisting* authoritarianism instead of dissolving it.

## Sites of Struggle: The Commune (Municipality) and the Workplace

A “site of struggle” in socialist discourse refers to a place – physical or institutional – where people contest the powers-that-be and try to transform that place into something more liberatory.

For anarchists, there are many different sites of struggle, owing to the many different sites of hierarchical power. Though two in particular stand out as primary to anarchist attempts at social transformation:

- **The Commune:** (aka Municipality) The local territory where people live, corresponding to small towns, city districts, or rural parishes.
- **The Workplace:** The enterprise where people work, producing things for consumption and providing services, whether public utilities or recreational.

The goal is to transform statist municipalities into liberated *free communes*, self-governed by their own residents through autonomous directly-democratic processes; and to turn capitalist corporations into liberated *cooperative enterprises*, self-managed by their own workers through workplace democracy. Plus transform broader societal relations in culture (race, nationality, religion) and kinship (gender, sexuality, disability) by means of creating an anarchistic counter-culture which prefigures the liberatory and inclusive values of the future society.

While early on, during the the mid-to-late 1800s, there was an even balance in focus between the commune and the workplace, over time the workplace started to hold a more and more important place in anarchist attention, especially with anarchist involvement in the workers’ movement and the rise of revolutionary syndicalism (trade unionism), and later by anarcho-syndicalism in the 1920s. Though the commune retained its importance for anarchists organising in more agrarian parts of the world, where the people were united more by their community in the countryside than by their trade in the city.

There was a little bit of tension early in the 1870s and 1880s over whether a post-capitalist economy should be organised primarily through self-governing communes or self-managed syndicates, but these tensions between pro-commune and pro-syndicate factions became a lot more pronounced in the early 20<sup>th</sup> century, especially after the birth of anarcho-syndicalism – a fusion of social anarchism and revolutionary syndicalism – in the 1920s.

Confusingly, the commune-oriented group – the “communalists” – tended to call themselves “anarcho-communists”, even though many of them also supported revolutionary syndicalism as a tactic.

While the worker-oriented group – the “workerists” – tended to call themselves “anarcho-syndicalists”, even though they tended to support a free communist economy.

This dual meaning of “communist” within anarchism – organisation through communes and a moneyless commons economy – has befuddled both anarchists and non-anarchists, hence the reason that the use of communism to mean commune-ism is often retroactively referred to as communalism.

Those who focused more on the commune tended to see revolution coming about from a *popular uprising* which would seize the means of governance from the state, then reorganise things on free communalist lines. They also tended to support a post-capitalist economy which was community-directed by the self-governing communes.



Those who focused more on the workplace tended to see revolution coming about from a *general strike*, where militant trade unions keep amping up the struggle against capitalists until finally an economy-wide lockdown was declared, forcing the ruling classes to abdicate control over the means of production to the workers. They also tended to support a post-capitalist economy that was worker-directed by self-managed enterprises and federations of industrial syndicates.

In the early twentieth century, there was often a conflict of ideas and practices between these two tendencies.

- **Anarcho-Syndicalists** (workerists) generally wanted a free communist economy – no state, no markets, no money – but wanted to achieve it via industrial proletarian class struggles through trade unions.<sup>1</sup> They also wanted the future society to be organised with the self-managed workplace at the centre of things, with the economy being composed of federations of worker-run enterprises.
- **Anarcho-Communists** (communalists) generally supported taking part in syndicalist struggles, but saw them as only one tactic among many, not as the primary locus of social struggle.<sup>2</sup> They also wanted the future society to be organised with the self-governing commune as the centre of things, with the economy being composed of confederations of directly-democratic communities.

In Japan in particular, the two tendencies fought bitterly with each other from the 1920s onwards. The pro-commune anarchists came to see their tradition as representing “pure anarchism”, while regarding pro-syndicate anarchism as a deviation from the philosophy’s anti-hierarchical ethos, believing that making the industrial workplace the centre of a stateless society would replicate capitalism’s structure instead of dismantling it. Indeed, Japanese thinkers like Shuzo Hatta made some of the only original contributions to the pro-commune school of social anarchism after Kropotkin, while the rest of the anarchist movement moved closer to a pro-syndicate position, barely mentioning the free commune at all.

As the twentieth century progressed, social anarchism grew more and more towards “work-erism” rather than “communalism”, possibly due to the world becoming more industrialised, and thus industrial workplaces becoming more important as sites to spread anarchist ideas and fight against capitalists.

However, in the second half of the century, some anarchists, such as Murray Bookchin, argued for focusing more on the commune, claiming that in the era of the welfare state, the working class and trade unions had been bought off by reforms and no longer had the potential to dismantle capitalism and the state; attacking anarcho-syndicalism as too class-centric and too accepting of the “work ethic” found in both capitalism and state socialism. Transformative change should therefore be waged by a convergence of oppressed social groups (women, people of colour, LGBT+ folks) and focus more on creating democratised communities rather than trying to organise workers into radical trade unions.

While there is a historical conflict between these two tendencies, later alliances between class-based and trans-class forces in events like Occupy may mean that some of the balance between

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<sup>1</sup> However, a few went even further and attacked syndicalist organisation, claiming it replicated the logic of the capitalist workplace instead of

<sup>2</sup> However, a few went even further and attacked syndicalist organisation, claiming it replicated the logic of the

the two sites of struggle could be restored. Many social anarchists today even use “anarcho-communist” and “anarcho-syndicalist” as interchangeable, though the latter is still preferred among those of a more traditional worker-centric school of class struggle.

In terms of post-capitalist economic models, there’s a general agreement that it should be *both* community-directed and worker-directed, with popular assemblies in free communes and workers’ councils in cooperative enterprises forming a symbiotic relationship with each other.

## Getting Stuff Done: Anarchist Organisation

Despite popular belief, no anarchists are opposed to organisation (adjective), because this is pretty much impossible anyway, given that even two people working together is organisation in the most basic sense. However a minority have occasionally voiced criticism of formal “organisations” (noun).

Owing to social anarchism’s birth out of the debates within the First International during the 1860s and 1870s, in which they were booted out and deceived by the Marxists, many anarchists felt scared by the experience, and developed a suspicion of formal organisations. As a result, they advocated only organising in small affinity groups and clusters of such groups, largely out of fear of succumbing to the bureaucracy and betrayal of the First International under Marx and his followers.

The majority of anarchists however argued that the problem was only with centralised and hierarchical organisations, not formal organisations as such. Following this hypothesis, they tried to build political organisations and trade unions which were as decentralised, participatory, and anti-bureaucratic as they could, structuring them on the basis of *federalism* – which in anarchist parlance means the association of autonomous (organisational) units on a lateral basis, so that each component part retains independence while also being united as a larger whole.

This split over strategy and tactics turned into two rough approaches over how to achieve anarchistic aims in the short term, and how to transition to an anarchist society in the long term:

- **Mass Anarchism:** Trying to turn anarchism into a mass movement of the people; educating, agitating, and organising the oppressed through building political organisations, trade unions, and cooperatives which were run on anarchist lines, as well as working within broader liberatory movements.
- **Insurrectionary Anarchism:** Trying to catalyse the oppressed into revolutionary action through “propaganda by the deed”, performing spectacular acts of violence and property damage to instil a sense of popular confidence that a large-scale uprising was possible.

Aside from the question of how to bring about a social revolution to transform things into anarchism, there remained divisions within anarchism over what kind of post-capitalist economy there should be – eg: free collectivism or free communism. This sometimes led to arguments within organisations as to whether they were really fighting for the same thing. Support for anarchist communism (a moneyless economy with distribution “according to needs”) ended up becoming the majority tendency in most countries, though anarchist collectivism (an economy which retained incomes and prices with distribution “according to deeds”) became the majority

in Spain, anarchism's main centre of activity. Support for free collectivism was also a minority position among anarchists in countries where free communism was the default position of anarchists.

A possible solution to this problem was advocacy of "anarchism without adjectives", where the question of free collectivism vs free communism was left to each individual free commune in the post-statist society, recommending that anarchists shouldn't be divided over the future when they needed to remain united to dismantle capitalism and the state.<sup>3</sup>

In the first half of the twentieth century, and especially after the destruction and betrayal of anarchists during the Russian Revolution, disputes also arose over what kinds of formal organisations anarchists should try to build, in particular over how strict the organisation should be. Out of these debates came:

- **Platformism and Specificism:** These two approaches developed independently of each other (platformism in East Europe, specificism in South America), but came to most of the same conclusions, such as the need for anarchist political organisations which were tightly structured, had a general agreement on ideas and practices, and had an ethos of collective responsibility among its members rather than a loose "anything goes" attitude to what members did. One of the main points of unity being that each organisation should only espouse one post-capitalist economic system, namely anarchist communism.
- **Synthesis Anarchism:** (aka Synthesism) This approach developed in opposition to platformism, which was felt by some to be too doctrinaire and against plurality in anarchist thought and action, in particular its position on only allowing one kind of post-capitalist economic model. Synthesism instead tries to "synthesise" different anarchist schools in one organisation, enabling every kind of anarchist to work together.

To this day, advocates of the synthesis approach argue that platformist organisations are too strict and aren't able to attract enough members because of their insistence on getting everybody to agree on everything. Platformists/specifists in turn argue that synthesist organisations may have larger numbers, but aren't able to do much in practice due to their members constantly disagreeing with each other. Synthesists claim platformists lack pluralism, while platformists claim synthesists lack standards.

## Organisational Dualism

In setting up anarchist organisations to accomplish aims and goals, anarchists have proposed a twofold strategy. On one hand, setting up groups and federations which are specifically anarchist in their principles and which espouse a particular form of anarchism (eg: communist anarchism or collectivist anarchism), on the other, working within more mainstream groups (like trade unions and grassroots organisations) to push them in a more anarchistic direction from the inside.

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capitalist workplace instead of

<sup>3</sup> The term "anarchism without adjectives" at first only included social anarchists – supporters of free collectivism or free communism – but was later expanded to include forms of market anarchism. Some market anarchists even use the term today to describe a situation in which a "free market", rather than a confederation of free communes, is the basis of the future social order. A lot of social anarchists are not happy with this, and so sometimes

This is called *organisational dualism*. Both specifically (*especificismo*) anarchist groups and anarchists working within non-anarchist groups create links with each other to tackle issues on both fronts.

The strategy of organisational dualism conceives of social struggle in terms of two “levels”: (1) the Political Level, which is specifically anarchist and made up of anarchist activists with a consistent set of ideas and practices; and (2) the Social Level, which is the general non-anarchist population. Anarchism will always be held by a militant minority of the people at the political level, rather than the mass of the people at the social level, so anarchists see the need to organise both as political anarchists, and as part of broader coalitions of popular social forces. In practical terms, this entails two approaches:

- **Specificism (Political Level):** Having specifically social anarchist political organisations, with a general agreement on theory and strategy.
- **Social Insertion (Social Level):** Anarchists getting involved in more mainstream social movements, both to help them accomplish common goals, and to act as an anarchistic influence, pushing such movements away from centralism and hierarchy and towards decentralism and horizontal cooperation.

When operating within more mainstream organisations, most often collaborating with people who aren't political anarchists, it's understood that it's not a top priority to get everyone else to declare themselves an anarchist as long as they're practicing forms of direct democracy, mutual aid, and voluntary cooperation. Most anarchists acknowledge that if society is transformed along libertarian socialist lines, it probably won't be under the *name* anarchism, but that this doesn't really matter as long as anarchism itself is what's being practiced.

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specify that they're only for “social anarchism without adjectives.

# Social Transformation

Anarchists agree with most other radical socialists that *class struggle* (of the popular classes against the ruling elites) is a necessary part of social transformation, though they tend to disagree with many, especially Marxists, who see economic class as the only/primary form of oppression, with others — like race, gender, sexuality, nationality, ecology — being secondary or at worst a distraction.

Rather, they see it as necessary to integrate class struggle with trans-class forms of struggle<sup>(91)</sup>, unifying them in a way that makes purely class-based issues (like workplace organising) complement non-economic concerns (like fights against gender or ethnic oppression, or defence of the environment) as part of an intersectional *social struggle* against all forms of hierarchy and domination, whatever the specific tactics used for achieving an anarchist society.

Furthermore, social struggle in the traditional sense is just one form of social transformation which anarchists have used to realise their aims. Others include militant attempts to destroy authoritarianism rather than struggle consistently against it, and more pacific attempts to reform societal and institutional relations through gradual changes in behaviour, culture, kinship, and the types of economic structures in the society.

To offer a brief run down of the various strategies that have been proposed to dissolve hierarchical society and bring about libertarian socialism, they are:

## Insurrection

*Destruction of the dominant powers through militant uprisings*

This means armed struggle to violently overthrow the state and private capital, and then set up a confederation of worker councils and popular assemblies in their place. The tactic of “propaganda by the deed”, which was popular in the second half of the 19<sup>th</sup> century, involved committing acts of violence against ruling elites in the hope this would incite the working classes to rise up and get into insurrection mode. As the now common image of the Bomb Throwing Anarchist<sup>(92)</sup> terrorist proves, this didn’t work. In fact, it only served to alienate most working people by associating anarchism with mindless terrorism.

What few proponents this tactic has today at least agree that they need to get popular support for the uprising *before* committing any acts of violence, and that isolated acts of terrorism don’t do much besides turn people off their cause.

Though, to be fair, propaganda by the deed first referred to armed struggle in a collective sense, such as militias taking over a small town and turning it into an autonomous territory, not assassinations or bombings. When seen in this context, the idea seems more appropriate and likely to inspire further popular uprisings.

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<sup>(91)</sup> [www.afed.org.uk](http://www.afed.org.uk)

<sup>(92)</sup> [tvtropes.org](http://tvtropes.org)

## Struggle

*Confrontation with the dominant powers through mass organising*

This is social struggle (of which class struggle is the main part) in the more familiar sense. Mass organising by anarchist groups and other transformative forces to push against existing forms of domination, with the intention of winning enough victories against capital and the state to trigger the downfall of the capitalist state system.

Varieties of this approach are *platformism* and *specifism* and the more famous tactic of *anarcho-syndicalism*. While many have (somewhat inaccurately) used this term to refer to a certain type of social anarchist economic system,<sup>1</sup> it's actually a strategy of achieving libertarian socialism through the use of trade unions. Anarcho-syndicalists propose setting up anarchist syndicates (unions), as well as establishing an anarchist presence in mainstream unions, so as to get as many working people organised as possible and eventually declare a general strike (or "general lock-out of the capitalist classes") to shut down the capitalist economy until the capitalists and landlords agree to sign over control over the means of production, distribution, and investment to the federation of syndicates that would have been established, who would then reorganise the economy on the basis of decentralised worker self-management.

Anarcho-syndicalism, as a strategy, is still very popular today despite having been developed over a century ago in very different economic circumstances. It's also the one that's been most successful thus far, winning many labour victories through trade unions in the early 20<sup>th</sup> century with the Spanish Revolution of 1936<sup>(93)</sup> successfully establishing a libertarian socialist economy for a short time (before being suppressed by Marxists on the Republican side of the Spanish Civil War).

## Creation

*Escaping from the dominant powers and constructing a positive alternative to them; prefiguration of the liberated world to come*

This involves escaping the capitalist state system by creating counter-institutions to it — like worker cooperatives, directly-democratic popular assemblies, affinity groups, democratic schools, interest-free banks, intentional communities — and then linking them all together into a confederated network, so as to contest the power of corporations and governments over the administration of society.

This creation of positive alternatives is called *dual power*, or sometimes *counter-power*. Strategists of dual power see this process of "exodus" from hierarchical society as creating an anarchist *transfer-culture* which will prefigure the forms the new social-institutional structure will take "within the shell of the old".

It also entails conscious changes in personal (kinship) and cultural behaviours, prefiguring the kinds of mutualistic relations which will characterise a post-hierarchical world. This is often done through arts and aesthetics, creating a counter-culture as part of the broader transfer-culture mentioned above.

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<sup>1</sup> One which would be worker-directed (by federations of worker councils and syndicates) rather than community-directed (by popular assemblies and confederated municipalities).

<sup>(93)</sup> [vtropes.org](http://vtropes.org)

Most want this whole endeavour to be as nonviolent as possible, while still defending the use of self-defensive violence as a last resort to prevent the dual power structure from being dismantled by state or corporate power. It was originally devised by Proudhon and is the primary strategy recommended by market anarchists, though several social anarchists like Gustav Landauer, Paul Goodman, and Murray Bookchin have supported it as well.

Some even see the politics of creation (dual power) as compatible with the politics of struggle (including anarcho-syndicalism), with trade unions and other popular organisations confronting capital directly (and defending workers from its effects) while the dual-power institutions try to route around it, offering people an escape from capitalism and from the state.

# Philosophical Origins

## Philosophical Anarchism

Anarchistic ideas and notions have arguably existed throughout most of human history, with traditions such as Taoism<sup>(94)</sup>, Buddhism<sup>(95)</sup>, and Ancient Greek Cynicism containing many notions with anarchist characteristics. Many tribal societies from pre-history to the present, such as the Nile Valley Nuer or Iroquois Confederacy, also had or have methods of non-hierarchical organisation which mirror the anarchist ideal of a society without rulership or centralised political authority.

Early forms of what were later called “mystical anarchism” can be found in many radical religious movements throughout the Middle Ages. In Islam with sects like the Kharijites, the Najdiyya, and the Muzzalites. In Christianity with movements like the Brotherhood of the Free Spirit, John Ball in the English Peasant Uprising, the Taborites, and Thomas Müntzer in the German Peasants Uprising, who after snapping from torture screamed his belief “All things should be held in common!” Most of these mystical movements adhered to a set of ideas called “millenarianism”, where the common people conceived of the “world turned upside down” with their rulers dispossessed and the Kingdom of Heaven was established materially on Earth.

Also worth mentioning is the late medieval essay *Discourse on Voluntary Servitude* (1576) by Étienne de La Boétie, which has been admired by every anarchist since for how it explains the ways rulership secures its power not just by brute force and coercion, but by convincing the ruled that it is in their own interest to let others dominate them.

The words “anarchy” and “anarchism” themselves arose in the mid-1600s during the English Civil War as an insult hurled at fringe radical groups. While this epithet for the most part had no basis in fact, two groups which were active at the time — the Diggers and the Ranters — had ideas and practices which were quite close to anarchism. (The Diggers have their own folk song<sup>(96)</sup> which expressed many of their proto-anarchist sentiments.)

Some view the English radical William Godwin as the first modern philosophical anarchist, from his work *Enquiry Concerning Political Justice* (1793) in which he espoused proto-anarchist views about the state and the then-emerging economic system of capitalism in England.<sup>1</sup> A few decades later in Germany, an obscure girls school teacher wrote a book called *The Ego and its Own* under the pseudonym Max Stirner. While largely ignored at the time, it was later rediscovered in the 1890s (along with William Godwin’s book) and praised by anarchists for its anti-authoritarian individualist philosophy.

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<sup>1</sup> It is perhaps worth noting that Godwin himself acknowledged a large debt to Edmund Burke for his *A Vindication of Natural Society*. Burke himself later claimed that the work was satire, but some commentators have argued that he meant it in earnest and felt it necessary to disavow it for political reasons.

<sup>(94)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(95)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(96)</sup> [www.youtube.com](http://www.youtube.com)



Other movements of the same period with philosophical anarchist ideas were the French revolutionary faction the Enragés (enraged ones), who felt the revolution wasn't going far enough, pushing for direct democracy and economic equality; and the American transcendentalists of the early to mid 19<sup>th</sup> century: Henry David Thoreau<sup>(97)</sup>, Walt Whitman<sup>(98)</sup>, and Ralph Waldo Emerson<sup>(99)</sup> being the most famous.<sup>2</sup>

Finally, Robert Owen and the cooperatives movement in the early 1800s laid the ground for a lot of the theoretical and practical directions socialism and anarchism would take as the century wore on. Irish cooperativist William Thompson penned an in-depth critique of capitalism long before Marx did, and they also attempted to form communal settlements which brought their ideas into practice, similar to what would later be called the dual power strategy. British Owenites notably proposed an prototypical form of what would later be called syndicalism.

## Political Anarchism

However, while *philosophical* anarchism can be identified in many places and in almost every time period, *political* anarchism did not emerge as a self-aware school of thought until the 19<sup>th</sup> century in Europe. According to German anarchist Rudolf Rocker, anarchism could be seen as the confluence of two earlier social and political philosophies: liberalism and socialism, or more accurately, classical liberalism and democratic socialism. Thus, the alternative term for anarchism, libertarian socialism.

Intellectually, it can be thought of as an outgrowth of the Enlightenment ideals of humanism, reason, progress, and individuality developed in an anti-authoritarian and socialist direction.

French writer and politician Pierre-Joseph Proudhon was the first thinker to call *himself* an anarchist with the book *What is Property?* (1840), from which came the famous slogan: "property is theft". It's important to note that Proudhon did not mean *all* forms of what we could call "property" by this, only those not defined by personal possession. In other words, he supported personal property (defined by use and occupancy) but opposed "private" property (when defined by absentee ownership), which he felt was based on theft of others' personal property.

While Proudhon and a few other thinkers called themselves anarchists in the 1840s and 1850s, anarchism didn't really get organised as a cohesive movement until the mid 1860s within the famous socialist group the IWMA (International Working Men's Association), also called the "First International", as there's been at least three others that came after it. Although the First International is most well-known today because Karl Marx and Friedrich Engels were members, for a time it actually contained more anarchists than Marxists — until, that is, they were expelled in the early 1870s by Marx himself.

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<sup>2</sup> Academic Ziga Vodovnik claims that the transcendentalists could even be regarded as the first modern exponents of cultural anarchism<sup>(100)</sup>, a term coined by anarchist philosopher John P. Clark to describe the "cultural struggle" of challenging dominant values based in authoritarianism and replacing them with liberatory values based in autonomy, egalitarianism, and communal individualism; trying to achieve a cognitive transformation in people as well as a political-economic transformation in institutions. They certainly had a big impact on anarchists in America, such as Emma Goldman, during the 19<sup>th</sup> century.

<sup>(97)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(98)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(99)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(100)</sup> [en.m.wikibooks.org](http://en.m.wikibooks.org)

## Relationship to Marxism

Having developed out of the same European socialist movement that Karl Marx was a part of, anarchism's relationship to Marxism has always been ambivalent. While many anarchists accepted Marx's critique of capitalism and (with nuance) the Marxian school of economics, they strenuously rejected Marx's politics, in particular the tactic of taking state power as a way to bring about socialism. For anarchists like Mikhail Bakunin (Marx's rival in the First International), the state was inherently an institution of class rule, and could never be used to bring about a classless society, as it would just corrupt whatever group laid their hands on it. (Bakunin's view is generally regarded as having been Vindicated by History<sup>(101)</sup> in light of what happened in the Soviet Union<sup>(102)</sup> and other nominally Communist countries).

They also tended to reject the Marxist conception of history — historical materialism — which claims that economic and technological factors are the fundamental driving force of human development. Anarchists saw this perspective as reductionist and ignoring important social factors that weren't directly related to economics — their own conception of history might best be termed *historical naturalism*.<sup>3</sup>

Also, while Marxists see the proletariat (the urban industrial working class) as the fundamental agents of revolution, anarchists also saw revolutionary potential in the rural peasantry and social outcasts (the lumpen-proletariat), which Marxists tend to dismiss as “backwards”. They also feel that it's important to appeal to those subject to hierarchy and domination as “the people” and not just as an economic class. So you could say that Marxists interpret class struggle to mean “worker struggle”, while social anarchists interpret it as “popular struggle”.

## New Left Philosophy

During the New Left era, Michael Albert, Robin Hahnel, Noam Chomsky and others attempted to develop an anarchistic alternative<sup>(103)</sup> to the methodology of economic Marxism called complementary holism<sup>{104}</sup>. Instead of the Marxian model of an economic base determining an ideological superstructure, complementary holism conceived of human society being made up of four accommodating and co-reproducing “social spheres”:

- the *political* sphere<sup>4</sup>
- the *economic* sphere<sup>5</sup>

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<sup>3</sup> his means that they accept the naturalist (non-supernatural) view of the world that sees science and reason as the best means for achieving knowledge, but don't accept the idea that everything that happens in a society is ultimately caused by economic/technological conditions. Indeed, the anarchist David Graeber has argued that historical materialism, in a way, isn't materialist *enough*, in that it denies the materiality (and thus material significance) of intellectual/affective forces, as well as the idealist components of so-called material forces.

<sup>4</sup> The means of governance, jurisprudence, and coercion. Comprising the state, government, legal system, and military.

<sup>5</sup> The means of production, distribution, and investment. Comprising workplaces, shops, physical infrastructure used for making things which can be consumed, arable land, natural resources, transport, and electricity-generation.

<sup>(101)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(102)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(103)</sup> [www.walkingbutterfly.com](http://www.walkingbutterfly.com) {104}

- the *kinship* sphere<sup>6</sup>
- the *cultural* sphere<sup>7</sup>

With each of the four spheres existing in an ecological context, incorporating Murray Bookchin's theory of Social Ecology<sup>(104)</sup> — which also developed out of the sixties counter-cultural environment.

They came up with this model in large part due to what they felt was Marxism's inadequacy when it came to addressing issues of race and gender in a United States context. At the time, many in the black power/Chicano movements could at times act as if racial oppression (cultural sphere) was the most important hierarchy to get rid of, or how the nascent feminist movement emphasised gender inequality (kinship sphere) as the most pressing problem. Marxists tended to be dismissive of race and gender struggles as distractions from the workers' class struggle (economic sphere), while a few anarchists could at times act as if taking down the state should be the main focus of oppositional campaigns (political sphere). All of these movements, it was claimed, needed to stop thinking of domination in monist terms and examine how their oppressions relate to each other in holist terms.

In other words, they were countering what's called the "linchpin" view of oppression: the idea that there's one main form of oppression (e.g. class or patriarchy) which, if gotten rid of, will cause all other oppressions to crumble, like a lynchpin causing something to unravel if pulled loose.

The four spheres are used for social analysis and examining how different social factors affect one another. For example, how patriarchal gender relations (kinship sphere) are reproduced in the workplace (economic sphere), or how racial, ethnic, or religious discrimination (cultural sphere) is heightened further and reproduced through oppressive state laws (political sphere).

But at the same time these hierarchies can also be transformed within each sphere, leading to co-transformation in the other spheres. Like how removing anti-queer discrimination in the kinship sphere can force the political, economic, and cultural spheres to catch up; or how devolving political power to communities of colour transforms both spheres at the same time.

The complementary holist model also stresses the importance of a the "third class" in-between the ruling classes and the working classes called the *managerial class* (or coordinator class) whose ideal is neither capitalism nor worker self-management but a kind of left-wing bureaucracy. It is this class, they claim, who is best served by traditional state-socialism and social democracy. A broad outline of these ideas is available here<sup>(105)</sup>.

Also developed around the same time, by the Combahee River Collective, were the ideas of intersectionality, a framework for examining how different social oppressions interact with each other, which has a broad overlap with the complementary holist model and has since become a staple of social anarchist theory.

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<sup>6</sup> (Personal social identities) Comprising gender, sexuality, disability, and family relations.

<sup>7</sup> (Collective social identities) Comprising racial, ethnic, national, geographic, and religious relations.

<sup>(104)</sup> [www.kurdishquestion.com](http://www.kurdishquestion.com)

<sup>(105)</sup> [www.afreesociety.org](http://www.afreesociety.org)

## Relation to Other Philosophical Ideas

Over the last century, anarchism has had a complex set of relationships with other philosophies too. Repression of much anarchist political and labour organising in the late 19<sup>th</sup> and early 20<sup>th</sup> century meant that a lot of anarchist thinkers ended up channelling their ideas into more intellectual pursuits. For instance, anarchism (especially individualist anarchism) had a large influence on the development of early Modernism, Dadaist art, and surrealism in the early years of the 20<sup>th</sup> century. From the end of World War II to the rise of the 1960s counter-culture, anarchists helped influence various American and European bohemian movements, such as the Beats and hippies, informing their philosophy of trying to live outside the boundaries of “the system”.

In the later years of the same century it also blended with certain forms of postmodernism<sup>(106)</sup> and poststructuralism to create a hybrid many started calling “post-anarchism”.

However, many anarchists, such as the ecological theorist Murray Bookchin, lambasted these developments as moving away from anarchism’s roots in rationalism and support for the liberatory power of scientific realism. At around the same time, Bookchin himself developed his own philosophical approach called *dialectical naturalism*, which blends the dialectical thought of GWF Hegel, Karl Marx, and Mikhail Bakunin with his own theory of Social Ecology.

There’s also something of an affinity between anarchism and American pragmatism<sup>(107)</sup>, with both supporting a “whatever works” attitude to solving problems, with the US writer Paul Goodman inspiring many a student radical with his common sense, pragmatic approach to anarchism.

Lately, there’s been a drift in anarchist thinking towards the philosophy of Critical Realism<sup>(108)</sup> (originally devised by Roy Bhaskar) – which is a sort of middle-way between scientific positivism and postmodernism. The famous anarchist anthropologist David Graeber, fellow anthropologist Brian Morris, and literary critic Jesse Cohn have used Critical Realism to elucidate their theoretical work, finding that it chimes well with the overall social anarchist approach to philosophising. Roy Bhaskar’s Critical Realism has a lot in common with Bookchin’s philosophy, though the two were unfamiliar with each other’s work during their lifetimes.

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<sup>(106)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(107)</sup> [www.anarkismo.net](http://www.anarkismo.net)

<sup>(108)</sup> [international-criticalrealism.com](http://international-criticalrealism.com)

# Main Schools of Thought

Views on economics among anarchists could be divided into four different but overlapping schools of thought, each of which developed at different times in response to different economic and social circumstances.

## Mutualism

Pierre-Joseph Proudhon, who started writing in 1840, argued that property, except when based in personal possession (i.e. occupancy and use), was theft. His reasoning was laid out exhaustively in *What is Property?*, with most if not all anarchists accepting it. Opposition to “private property” (anything besides actual possession) in addition to the state is near-universal to anarchism, though some have used the term in a positive way to support property that is the product of one’s own labour. Along with this, most opposed sexism, racism, homophobia, classism and social hierarchy generally. Proudhon did not in fact oppose the concept of a free market, supporting workers’ associations (cooperatives) and mutual banks (similar to modern credit unions) to compete away industrial capitalism. His school of thought is termed *mutualism*. While it fell out favour for a long time, it has recently been revived by the economic theorist Kevin Carson, who has integrated it with elements borrowed from the thought of other left-wing, pro-market writers.

## Collectivism

Mikhail Bakunin, a Russian noble turned radical writer who was imprisoned for his politics, escaping into exile, followed Proudhon and broke with him on many issues, supporting collective work without markets and workers’ self-management. Bakunin also linked opposition to religion, especially organized, hierarchical forms, to his view of anarchism, seeing God as the ultimate authority. He turned a saying of Voltaire’s<sup>(109)</sup> on its head: “If God really existed, it would be necessary to abolish him.” He was a strong rival of Marx in the First International, and the two fought a long war of words over control of the organization until Bakunin’s followers were expelled from it by Marx’s. Bakunin’s school of thought is called *anarcho-collectivism*, and could be considered a sort of middle way between mutualism (markets but with cooperatives instead of corporations) and communism (in which markets and even money would be abolished).<sup>1</sup> The best outline of how a collectivist anarchist economy would work in practice is the pamphlet *Ideas on Social Organisation*<sup>(110)</sup> by Bakunin’s friend James Guillaume. Participatory Economics

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<sup>1</sup> It’s important to note that the term collectivism here is purely an economic term, not a social one. It refers only to the collectivisation of industry, not giving priority to the collective interest over that of the individual.

<sup>(109)</sup> tvtropes.org

<sup>(110)</sup> theanarchistlibrary.org

(Parecon) and Inclusive Democracy (ID) could be considered contemporary forms of collectivist anarchism.

## Communism

Peter Kropotkin, a Russian prince who, like Bakunin, gave it all up for radicalism<sup>(111)</sup>, advocated full libertarian communism on the principle “from each according to his ability, to each according to his needs”, favouring abolition of money in favour of free access to communally-owned goods, although with voluntary, direct democratic participation: *communist anarchism*, or later *anarcho-communism*.<sup>2</sup> Many on first impression may find the term communist anarchism odd, given the modern day associations of the word Communism with the statist, centrally planned economies of the former Soviet States. However, in the 19<sup>th</sup> century, the word communist simply referred to any economic system that lacked both a state and money, where goods were distributed according to need. It is this original sense of the word that anarchists refer to when talking about communism. Kropotkin provided a general outline of anarchist communism here<sup>(112)</sup>.

## Individualism

Meanwhile, in the United States, a very different brand of anarchism emerged. American writers such as Benjamin Tucker, Lysander Spooner, William Green and others set out an ideal very close to Proudhon’s, with even more emphasis upon an “anti-capitalist free market”, in which self-employed craftsmen, artisans or farmers were paid their “full wage” and land title was possession-based only. In short, *individualist anarchism* argued for a society where every individual was a “capitalist” (in the Marxist sense, i.e. an owner of capital). Essentially, they held to the Labour Theory of Value along with support of free markets – “cost is the limit of price” was among their key slogans. Their ideal was a stateless economy made up mostly of self-employed artisans and shopkeepers. This school of thought began slowly dying out in the late 19<sup>th</sup> century as social anarchism (collectivist or communist) took over, with immigrants from Europe such as bringing it to the forefront of US anarchism.

## Social Anarchism & Market Anarchism

As they stand today, the four main economic schools mentioned above could be grouped into two categories:

*Market anarchism* (containing mutualist anarchism and individualist anarchism), which seeks a non-capitalist free market made up of self-employed professionals and worker-run cooperatives, and ...

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<sup>2</sup> The terms anarchist communism and *anarcho-communism* originally meant different (albeit related) things. The former referred to a society structured without a state, markets, or money, while the latter term was (confusingly) used in the early 20<sup>th</sup> century to refer to those who wanted a community-directed economy rather than a worker-directed economy (which is what most anarcho-syndicalists were pushing for). The terms sounded so similar that people ended up using them as synonyms.

<sup>(111)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(112)</sup> [www.fourmilab.ch](http://www.fourmilab.ch)

*Social anarchism* (collectivist anarchism and communist anarchism), which seeks to replace the market with a free commons involving decentralised, directly-democratic planning of the economy, either by community assemblies or worker councils; or some combination of the two.<sup>3</sup>

While differences in terms of desired outcomes do exist between these two tendencies, most anarchists don't have a problem with each self-governing free community in an anarchist confederation deciding for itself what particular economic system they want to have. Errico Malatesta, although himself a social anarchist, conceived of various different municipalities practising collectivism, communism, mutualism, and individualism all existing side-by-side. Likewise, Benjamin Tucker, although viciously opposed to anarcho-communism, conceded that local communism was okay by him as long as it was voluntary. So a free commons and free market are not necessarily at odds with each other as their proponents both accept "voluntary, non-hierarchical cooperation" as a basic principle of organising things.

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<sup>3</sup> Some would consider Mutualism to also belong to this tradition, though the way it has been developed by other thinkers besides Proudhon means that its modern version now has more in common with individualism than with collectivism and communism, hence the reason for separating it from social anarchism in this article.

## Other Tendencies

The following are not so much independent schools of thought like the four economic traditions listed above, but more tendencies with regard to specific issues that find expression across each of them. The tendencies listed after syndicalism aren't considered part of the anarchist mainstream, as they lack a philosophical connection to the historical anarchist movement, and many don't regard them as anarchist at all (especially the last three).

### Egoism

At around the same time Proudhon was penning his socialist attacks on property and the state, another writer, Max Stirner, wrote a similar attack on these and other authoritarian institutions from a more individualist perspective in *The Ego and Its Own* (1845).

Stirner did not label himself an anarchist, but his rejection of the state, capitalism, and, well, basically all institutions means he has been counted with them. He believed that rights, property, the state, conventional morality and God were all “spooks” holding back the individual from themselves, since all these are placed above them. It's worth noting that Stirner, while believing the individual's right to act was unlimited, advised that it would be best if they respected each other as individuals, to let each flourish, even saying people could not have their full self-expression absent communion with others, so they could join together voluntarily in a way he called the “Union of Egoists”, which was similar in principle to what most anarchists now call voluntary association, but less formalised. Here is a classic text by the Situationist International, advancing a socialist form of egoism. Stirner denounced authoritarian communism of his time, but a kind which respected individuals and lent them full expression of themselves is viewed to be compatible with his ideas. Even the anarcho-communist Emma Goldman was a big fan, and saw Stirner's ideas as fully compatible with her own.

### Pacifism

In the late 19<sup>th</sup> century Russian novelist Leo Tolstoy<sup>(113)</sup> (who, like Bakunin and Kropotkin, was a Russian noble who renounced his title) embraced a form of Christian, pacifist anarchism — though like Stirner and Godwin before him, he didn't use the label anarchist himself. Unique among anarchist trends for its total rejection of violence, even in self-defense or defense of others, Tolstoy advocated essentially the same ideas as Bakunin or Kropotkin, his countrymen and more famous anarchists, but with complete pacifism. His work deeply influenced Mohandas K. “Mahatma” Gandhi<sup>(114)</sup> (who knew Indian anarchists in London early in his activism, while disagreeing with them over the issue of using violence) in addition to *Civil Disobedience*, by Henry

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<sup>(113)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(114)</sup> [tvtropes.org](http://tvtropes.org)



David Thoreau<sup>(115)</sup>. Critics argued his ideas were fit only for saints (though many think Gandhi was such). Another prominent anarcho-pacifist was the American public intellectual Paul Goodman, who became a kind of go-to guy for student radicals in the 1960s opposed to the Vietnam war. While initially supportive of radical youth movements, he later became critical of them for abandoning nonviolence and decentralist organising for militant action and Marxist-Leninism.

## Syndicalism

The turn of the 20<sup>th</sup> century saw another trend, which advocated for revolutionary unions to overthrow capitalism and the state using militant industrial organizing, sabotage, general strikes and overall working-class solidarity. This is called *anarcho-syndicalism*, from the French word for labour union – “chambre syndical.” It was less a separate school of thought than tactical view, since followers were invariably social anarchists in the collectivist or communist mould. The Spanish Revolution<sup>(116)</sup>, often pointed to as their greatest (albeit doomed<sup>(117)</sup>) triumph by social anarchists, utilized this in the CNT (*Confederación Nacional del Trabajo*- National Confederation of Labour), which organized a worker’s revolt in 1936 following the military coup led by Francisco Franco against the elected Spanish Popular Front government. The CNT and FAI (*Federación Anarquista Ibérica* – Iberian Anarchist Federation) ran much of northeast Spain, centred in Catalonia, along anarchist lines with no small success for the next three years until the revolution was crushed by a combination of Stalinists and Francoist forces.

It is important to note, however, that while syndicalism is typically associated with anarchism, this does not mean that all syndicalists are anarchists; some of them are actually very authoritarian. Mussolini in fact called his economic model National Syndicalism, as did Franco, though this meant something completely different, as fascist “syndicates” were government-created trade associations which ran industry<sup>(118)</sup>. It’s like a Venn diagram, in that there are non-anarchist syndicalists and non-syndicalist anarchists who favour other tactics for achieving libertarian socialism.

## Propaganda of the deed

Like anarcho-syndicalism, this isn’t a school of thought, but rather the tactic prominent in the last decades of the 19<sup>th</sup> century of killing powerful figures in society, both to avenge their perceived abuses but also to inspire revolt through such “attentats” (acts that would draw attention). Needless to say, this backfired spectacularly, allowing the anarchist movement to be painted as mindless terrorists. A few made this even worse by targeting random people. Heads of state assassinated included the President of France, the Empress of Austria, the King of Italy, and the President of the United States in 1901, around the time propaganda of the deed ended. Almost no anarchists today actually advocate this, so it could be considered something of a Discredited Trope<sup>(119)</sup> in philosophy, though a lot of self-described “insurrectionary anarchists” of the present

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<sup>(115)</sup> tvtropes.org

<sup>(116)</sup> tvtropes.org

<sup>(117)</sup> tvtropes.org

<sup>(118)</sup> tvtropes.org

<sup>(119)</sup> tvtropes.org

day (the kind who tend to break shop windows at protests) would seemingly like to see this tactic restored and are highly critical of nonviolence as an ideology, claiming it “protects the state”.

## Lifestylism

“Post-left” and “lifestyle” anarchism has become widespread in modern times, something Murray Bookchin and others disapproved of. Lifestylism could be summed up as viewing anarchism more as a means of personal rebellion in the here-and-now than transforming all of society in the long-term. These are marked by a tendency to reject classical social anarchism’s left-wing, working-class organizing and goals or at least complement them with ecological or animal rights issues. Veganism and dumpster diving (combined as “freeganism”—eating only food that is reclaimed after being discarded) have become common for such lifestyle anarchism, in addition to using the system (especially where it has an ecological impact) to the lowest degree possible. The group Crimethinc<sup>(120)</sup> are the most prominent exponents of this brand of post-left/lifestyle anarchism.<sup>1</sup>

## Primitivism

Primitivists emerged from the nascent green anarchist milieu in the Pacific Northwest in the late 20<sup>th</sup> century and are heavily inspired by both Deep Ecology and anti-civilisation ideology. They view all forms of complex technology as corruptive and wish to abandon it in favour of a hunter-gatherer way of life, significantly reducing the human population as a necessary stage in this goal. Some even reject language (at least in a written fashion), counting, and acknowledging the passage of time as oppressive — which they consider remnants of “symbolic culture”. Primitivists cite that tribal groups don’t have domestication<sup>(121)</sup> (i.e. farming) tend to be more egalitarian than those with domestication<sup>(122)</sup>. Some argue that while technology itself isn’t inherently oppressive, the structures that it requires to exist are. An example can be seen in weapons. In an primitivist society, theoretically, everyone would have access to stone or wood based weapons, or at the very least, could use their own body as a weapon, putting them on a mostly even playing field. When advanced technology comes into play, those with access to the means to create more powerful weapons will have an advantage against those who do not. (i.e., a person with a wooden spear would either be killed by, or have to submit to a person armed with a firearm.) Whereas if everyone had access to the same type of weapons, this playing field would force people to at least attempt to work together in a more voluntary fashion.

They are heavily criticised by social anarchists<sup>(123)</sup> as a source of great embarrassment for their association with the a-word. Like voluntaryists, most social anarchists don’t consider prim-

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<sup>1</sup> Though their more recent writings and activities have seen them drift more towards social anarchism, focusing more on social change than personal rebellion. However they still tend to reject the label “leftist” to describe their politics.

<sup>(120)</sup> [www.crimethinc.com/](http://www.crimethinc.com/)

<sup>(121)</sup> [www.psychologytoday.com](http://www.psychologytoday.com)

<sup>(122)</sup> [discovermagazine.com](http://discovermagazine.com)

<sup>(123)</sup> [propertyistheft.wordpress.com](http://propertyistheft.wordpress.com)

itivism<sup>(124)</sup> to be a form of anarchism and regard it as a separate ideology. Lately, many primitivists have agreed, and have begun to regard their ideas as distinct from anarchism<sup>(125)</sup>.

## **“National Anarchists”**

Ugh. Let’s just say the less said about this crowd the better.

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<sup>(124)</sup> [libcom.org](http://libcom.org)

<sup>(125)</sup> [www.thewildernist.org](http://www.thewildernist.org)

# Anarchism and the arts

## Art Theory

Anarchists have long seen great potential in the arts for expanding people's consciousness in a liberatory direction, stressing the importance of "social art" — that explores social, political, and intellectual concerns — over the idea of "art-for-art's-sake" favoured by the Romantic school of thought. The literature professor Jesse Cohn has argued<sup>(126)</sup> that anarchists hold to a critical aesthetics<sup>(127)</sup> that views the value of art/entertainment in terms of its anti-hierarchical ethics; appreciating a work in terms of how it supports vs. challenges the established order based on hierarchy and domination.

He also proposes what he calls an "social anarchist hermeneutic" (method of interpretation) for the purposes of textual analysis (oh, and by the way, in literary theory, a "text" refers to anything that can be analysed, not just the written word).

The anarchist hermeneutic proposes that *meaning* lies neither entirely in the text being analysed, nor entirely in the mind of the person doing the analysing. Rather, meaning is what emerges from the interplay between the two, so finding out meaning — especially in art — is as much a process of creation as of discovery.

When trying to figure out the meaning of a movie for instance, it's not enough to take into account just what the writer/director intended or just what significance the movie has to you based on your personal/cultural history. You need to see the meaning as a process of "negotiation" (or dialectic) between the text itself and you, the audience. This is why meanings can alter over time (as the semiotic/cultural signifiers of audiences change) but the texts remain largely the same. So meaning always exists in that tension between the text itself and the person(s) enjoying it/reflecting upon it.

In his book *Underground Passages* (2015), Cohn traces the history of anarchist "resistance culture" around the world and the kinds of arts/literature/entertainment admired by and produced by anarchists. Classical anarchists greatly admired what nowadays would be termed "high art", especially works that blended high concepts and important issues with popular folk traditions, and tended to dismiss most examples of romanticism and mass culture as sentimental, decadent, and escapist. In other words, they liked art/entertainment that was "accessible but thought-provoking", which made the audience think critically about what was wrong with hierarchical society and work out liberatory alternatives to the status-quo.

They hoped that liberatory art could help create an anarchistic *transfer-culture* which would help transform society as it existed in the present — by teasing out what was already liberatory/progressive in the existing culture — and transition people from the authoritarian world to the libertarian socialist one.

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<sup>(126)</sup> [www.academia.edu](http://www.academia.edu)

<sup>(127)</sup> [www.infoshop.org](http://www.infoshop.org)

In terms of art appreciation, Herbert Read, in his collection of essays *To Hell With Culture*, argued against seeing art “culture” as a distinct sphere of human society, saying that we should view it as embedded in everyday practice instead of putting it on pedestal above ordinary life, summing his attitude up as “the quality of a society should be judged by how good its pots and pans are”. So the cultural goal of the anarchist could be conceived as making even the mundane into (what’s now considered) high art.

Also, Rudolf Rocker in his magnum opus *Nationalism and Culture* argued that every artist and work of art should be looked at as “Of their time, not of their place”. He claimed that there was no such thing as national art, given that artists borrow and meld influences from all parts of the world. Instead, he saw the necessity of viewing art as a global, international phenomenon that should ideally try to draw out the spirit of the times the artist lived in, and how all the epochs that came before worked their way into it. In other words, viewing art as a commons.

## Art Practice

The neo-Impressionists, who were a group of late 1800s painters inspired by anarchism, claimed that there ought to be three functions of anarchist art:

- Propagation of the anarchist cause
- Documentation of the real conditions of the oppressed
- Envisioning of positive alternatives to the present order of things

The first of these was intended to bring people over to social libertarian causes and ways of thinking; the second was meant to awaken people to the problems created by statism, capitalism, and social hierarchy in general, exposing them as irrational effects of a flawed system; and the third was supposed to help people see beyond the confines of authoritarian society, showing that a more rational and humane alternative was possible and necessary. As well as Impressionism and neo-Impressionism, painting styles which anarchists have been drawn to include futurism, dada, surrealism, (infrequently) abstract expressionism, and collage art.

In music, there’s a long tradition among anarchists of taking popular songs (including religious hymns and national anthems) and rewriting them with radical far-left lyrics, “Imagine a revolutionary, libertarian socialist version of “Weird Al” Yankovic<sup>(128)</sup> and you’ll get the idea”. Japanese anarchists for example wrote a song called “Anarchist Melody” that was set to the tune of “Oh Christmas Tree” and several anarchist rewritings of the French national anthem and popular folk-diddys exist.

The association of anarchism with punk music and punk culture is well-known, with bands like Crass, Subhumans, and Chumbawamba pushing anarchist, pacifist, anti-fascist, and pro-queer messages in their lyrics. Even punk movements who weren’t explicitly anarchist frequently had anarchist influences, like Riot Grrrl and Pussy Riot. For the record, despite their famous song “Anarchy in the UK”, the Sex Pistols were about as close to anarchism as Pluto is to the Sun. They merely appropriated the iconography of actual anarcho-punk bands like Crass without taking

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<sup>(128)</sup> tvtropes.org

the “anarcho-” part seriously, viewing it as little more than a rebellious-sounding chant. Though another form of “punk” most don’t realise has anarchist roots, in fact, is steampunk<sup>(129)</sup>.

Visual art has been a popular means by which anarchists disseminated and explored anti-authoritarian ideas. Wall murals, graffiti, single-panel satirical cartoons, and most recently image memes are used to attack various forms of domination and to highlight the positives of autonomy, solidarity, and horizontal cooperation. Comics and sequential art more generally are also praised by anarchists. Alan Moore, perhaps the most renowned comics writer of his generation, is himself an anarchist and frequently explores anarchistic themes in his work (most notably *V for Vendetta*<sup>(130)</sup>).

In novels, there’s a long association with works that take a critical or satirical look at existing society and point out its hypocrisies and how its problems mostly originate in relations, institutions, and beliefs founded on centralised power, greed, and unquestioned authority. They particularly appreciate stories that focus on the plight of oppressed and marginalised groups of people — women, people of color, indigenous peoples, queer people, anthropomorphised animals, the working classes — told from their point of view. There’s also a great appreciation for the science-fiction and fantasy genres and utopian fiction, especially works like those of Ursula K. Le Guin, William Morris, Ken Macleod, Kim Stanley Robinson, and Iain M. Banks, who use fantastical and imagined settings to explore alternative visions of how societies might work. The purpose being to paint hierarchical society as it exists at present as unreal and absurd compared to a more rational and liberated anarchistic ideal.

Anarchist theorists themselves also frequently wrote about art and literature on the side after discussing issues like politics and economics.

- Peter Kropotkin wrote a book about Russian literature.
- Emma Goldman wrote a book about the revolutionary potential of modern drama, which was huge in her day, much like movies are today (she was a massive fan of Henrik Ibsen<sup>(131)</sup>).
- Gustav Landauer part-timed in his early days as a literary critic.
- Voltairine de Cleyre wrote of the importance of a “double reading” of books: the first reading for pleasure, examining the book in the spirit it was intended by the author, and the second reading to pick it apart and examine it critically for what it says about the society it came from and how it might say things that the author didn’t intend.
- Rudolf Rocker devoted a long chapter of his massive theoretical work *Nationalism and Culture* to art history.
- David Graeber arguably invented Buffy Studies by writing the first academic essay<sup>(132)</sup> examining *Buffy the Vampire Slayer*<sup>(133)</sup>, and has since written anarchist analyses of fantasy fiction and, notably, superheroes<sup>(134)</sup>.

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<sup>(129)</sup> [steampunkanarchist.wordpress.com/](http://steampunkanarchist.wordpress.com/)

<sup>(130)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(131)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(132)</sup> [mikeholt.tripod.com](http://mikeholt.tripod.com)

<sup>(133)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(134)</sup> [thenewinquiry.com](http://thenewinquiry.com)

- Paul Goodman and Erich Mühsam wrote that the goal of good art (specifically poetry for the former and theatre for the latter) should be to make people realise the affinities they have with one another, breaking down their alienation, and bring them together as a community – or more accurately, a counter-community with shared values opposed to those of the existing hierarchical society.

Paul Goodman also stressed the importance of theatre, which in the late 19<sup>th</sup> and early-to-mid 20<sup>th</sup> century was a key means of spreading anarchist ideas to working class audiences. In his own day he was involved in the famous Living Theatre<sup>(135)</sup> in New York City, which was a sort of haven for playwrights of an anarchist and radical pacifist sensibility.

In contemporary times, as noted by anarchist academic Jeff Shantz, there’s a lot of anarchists involved in DIY forms of artistic production, especially since the advent of the Internet. Anarchists tend to view culture itself as a sort of commons which should belong to everyone – viciously opposing all intellectual property, especially copyrights – with the practice of fan labour (fanart, fanfiction, fan songs, and the like) actually being very in-keeping with the anarchist ethos, as is the practice of sampling in hip-hop.

Also, the tradition of taking existing works and repurposing them with radical messages continues. One anarchist even did a graphic novel where Tintin starts a social revolution called *Tintin: Breaking Free*. Comedy memes have also become a favoured method of spreading anarchist ideas, such as “Pictures of Kanye, Words of Noam”; in which Kanye West is depicted espousing the anarchistic sentiments of Noam Chomsky.

Writers, artists, and entertainers who openly declared an affinity with political anarchism are somewhat rare, although a few notable ones are: Oscar Wilde<sup>(136)</sup>, James Joyce<sup>(137)</sup>, George Orwell<sup>(138)</sup> (in his early days), Charlie Chaplin<sup>(139)</sup>, Ursula K. Le Guin<sup>(140)</sup>, Michael Moorcock<sup>(141)</sup>, Robert Anton Wilson<sup>(142)</sup>, Alan Moore<sup>(143)</sup>, Grant Morrison<sup>(144)</sup>, and (uh...) Woody Harrelson<sup>(145)</sup>.

A partial list of works inspired by anarchism can be found at the bottom of the Political Ideologies<sup>(146)</sup> page.

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<sup>(135)</sup> [www.livingtheatre.org](http://www.livingtheatre.org)

<sup>(136)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(137)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(138)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(139)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(140)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(141)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(142)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(143)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(144)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(145)</sup> [tvtropes.org](http://tvtropes.org)

<sup>(146)</sup> [tvtropes.org](http://tvtropes.org)

# Glossary

Like many political and philosophical discourses, anarchism has its own assortment of key terms. Some of which are more familiar terms but used in a somewhat idiosyncratic way compared to other political traditions. The most important ones are as follows.

**Anarchy:** From the Greek *anarchos*, meaning “without rulership”. Anarchists frequently point out that the term actually means “without rulers, not without rules”, and that what they seek is not chaos or disorder, but voluntary, decentralised, non-hierarchical order. What most people are really referring to when they use the word anarchy (rulerlessness) would more accurately be defined as anomie (orderlessness). Because of the negative association of the noun, most anarchists today only ever say *anarchism* and avoid using the word anarchy.

**Atheism:** A key intellectual foundation for anarchist thought, with anarchists viewing religious authority and unquestionable supernatural beliefs in general as the root of all other forms of hierarchy and domination. This is because they promote, in the words of Murray Bookchin, “epistemologies of rule” in which nature/reality itself is conceived as having a natural hierarchical order where the strong are on top and the weak obey or are destroyed for the benefit of the strong. While there have been a few philosophical anarchists who were religious<sup>(147)</sup> (for example Leo Tolstoy<sup>(148)</sup> interpreted the teachings of Christ as being compatible with anarchism, and several anarchists have argued the *Tao Te Ching*<sup>(149)</sup> is a proto-anarchist text), the broad anarchist tradition has been almost entirely anti-theistic and supportive of science, rationalism, and critical thinking<sup>(150)</sup> as enemies of authoritarianism.

**Authority:** Contrary to popular belief, anarchists are not against *all* forms of authority. Mikhail Bakunin once said “Does it follow that I reject all authority? Far from such a thought. When I need shoes, I defer to the authority of the boot maker. When a bridge needs to be built, I defer to the authority of the architect. But I allow neither the boot maker nor the architect to *impose his authority upon me*.” In other words, anarchists, while always at least *sceptical* of authority as a concept, are okay with certain forms of it as long as they are (1) voluntary; (2) temporary; and (3) minimal. So temporary and minimal forms of authority like the relationships between parent/child, teacher/student, doctor/patient (all of which ideally exist for the benefit of the one subject to authority and not the wielder) are okay by anarchists as long as they’re organised in as equitable a way as possible. They are, however, opposed to all forms of *authoritarianism*, forms of authority that are involuntary, permanent, or maximal.

**Autonomy:** While most often used to mean independence or self-reliance, the etymological root *nomos* (from which the “nomy” part comes) means “order” or “law”. So what autonomy more fully means is more along the lines of “self-ordering” or “self-determination”; with its opposite being *heteronomy* (other/external-ordering). This can be collective as well as individual and this

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<sup>(147)</sup> en.wikipedia.org

<sup>(148)</sup> tvtropes.org

<sup>(149)</sup> tvtropes.org

<sup>(150)</sup> www.infoshop.org



more specific meaning — self-ordering free of external determinations — is the way anarchists use the word.<sup>1</sup>

**Autonomism:** A form of anti-authoritarian Marxism with a lot of similarity to social anarchism. Adherents of each philosophy frequently cooperate with each other. Like social anarchists, autonomists want a stateless participatory democracy and libertarian socialist economy, and are also against using the state as a way to bring this about. Unlike social anarchists, they root themselves at the theoretical level in Marx and Engels’s writings instead of Bakunin and Kropotkin’s. They’re also still very much committed to the theory of historical materialism (which many anarchists find reduces social issues to economic ones), though unlike most Marxists who use the methodology, they don’t see forms of social struggle relating to race, gender, sexuality, or ecology as less important than class-based struggle. This is because they see capitalism as having fundamentally changed since the decline of industrialism and the coming of the internet, with “immaterial labour” (the provision of services and creation of non-material products) having replaced material/manual labour as the most important form of work to the running of capitalism. Thus, they see the primary “site of struggle” against capitalism as no longer being the factory/workplace (like when industrial capitalism reigned), but the city/metropolis — anarchist Murray Bookchin felt the same way, though he thought the city, not the workplace, should *always* have been seen as the primary site of struggle.<sup>2</sup>

**Balanced Job Complexes:** Where people in a workplace do a variety of tasks, sharing and rotating both the enjoyable and dirty work, instead of the ultra-specialisation that pervades capitalist and state enterprises. Many anarchists see these as a good way of avoiding managerialism, as people would take it in turns to be managers instead of having management be a fixed layer of the workplace above ordinary workers.

**Capital:** Self-expanding money. Or more specifically, financial wealth which can be used to create more financial wealth, usually through buying and trading stocks and bonds.<sup>3</sup> While capital originally referred to finance and only finance, the term later came to refer to other forms of wealth, both tangible and non-tangible. Such as plant and machinery (hard capital), natural resources (natural capital), and even social skills and group relationships (social capital). Though the proper meaning only refers to intangible finance. Anarchists cite the capitalisation non-economic phenomena like social relations as evidence of just how much the logic of capitalism is penetrating everyday life.

**Capitalism:** Used by anarchists to mean an economic system characterised by (1) primarily private ownership of the means of production, distribution, and investment; (2) production-for-profit rather than production-for-use; and (3) wage-labour as the main form of legal work. They don’t agree that capitalism should be defined as simply “voluntary exchange” (as this has existed for thousands of years before the birth of capitalism) or the presence of markets (as many anarchists support markets, just not private businesses). And unlike both Marxists and (funnily

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<sup>1</sup> The Greek libertarian socialist philosopher Cornelius Castoriadis was perhaps the main theorist of autonomy/heteronomy as concepts and their importance to social change.

<sup>2</sup> Anarchist and anthropologist David Graeber, while supportive of autonomism for other reasons, has criticised the idea that the importance of “immaterial labour” to the economy is a new thing, saying that if you look at human history, it’s always been important. The only reason it doesn’t tend to get as much focus as manual labour is, he claims, simple sexism, as most of what’s now termed “immaterial” work in history was done mostly by women.

<sup>3</sup> While the stock market is often talked about as the centrepoint of the capitalist system, it’s really the bond market that matters most to how the whole framework functions.

enough) libertarian capitalists, they view capitalism as inherently statist and argue that without a state or state-like entity to enforce (absentee-owned) private property, capitalism couldn't even exist.

**Class:** Economic hierarchy. Different classes are defined in anarchism not so much by income differences, but how they relate to the means of production. The ruling class (part of the ruling elite) owns the means of production, while the working classes (the plural form is important here) – or *popular classes* – operate them. Unlike in Marxism – in which there are only two key classes – many anarchists claim that there is an important third class in between the rulers and the workers/popular classes called the “professional-managerial class”, or just *managerial class* for short. This class coordinates relations between the rulers above and the workers below, monopolising important information and empowering forms of work. It includes (obviously) managers, university professors, doctors, lawyers, and most people in professional occupations. While all anarchists would generally agree that class formations are important, unlike most Marxists they don't think everything can be reduced to class or economics, and they also think that appealing to people as “the people” is just as important, if not more so, than appealing to them as workers (so that they're not just reduced to their economic function).

**Commission:** Used by the social anarchist James Guillaume to refer to local institutions tasked with carrying out various operations in a locality, usually public services like sanitation, transport, communications, and others. The various “working groups” set up within Occupy Wall Street could be seen as a small-scale version of these.

**Commons:** A collective pool of resources (physical or intellectual) which anyone can partake of or contribute to, some of which are open-access, while others are cooperatively managed by their users. Forms an important part of contemporary anarchism, in which the goal is seen as the creation of a widespread *free commons* (in contrast to a free market) administered via decentralised, horizontal cooperation. The trope of “tragedy of the commons” is frequently cited as a case against such a set up. Anarchists argue that the real problem with the tragedy of the commons is the selfish and profit-driven behavior, not the fact that there's a common pool of resources. The commons can be seen as the “third way” of economic organisation beyond both state (public property) and market (private property). Commons are stewarded rather than “owned”. Making temporary exclusive use of common resources is called *usufruct*, which is only granted to certain individuals or groups with the understanding that their user rights over the resources will dissolve after an agreed time has elapsed or goal accomplished.

**Commune:** What social anarchists see as the central political/social unit of an anarchist polity. A self-governing territorial area of no more than about 15,000 people. The word commune in most European languages simply means a small-scale local area – like a small town, rural parish, or city ward. However, in English, the word has (perhaps unfortunate) associations with hippies and even cults. For this reason, in English the word *municipality* tends to be used instead to mean the same thing; with a voluntary confederation of communes/municipalities being the core structure of an anarchist society. With each commune/municipality administering itself through a local network of directly-democratic popular assemblies and other voluntary associations.

**Communism:** Used in two different ways by anarchists depending on how the word is spelled. With a capital-c, Communism has come to refer to the totalitarian regimes ruled by Marxist-Leninists in the twentieth century. With a small-c, communism refers to an economic system that operates without a state, markets, or money and things are organised on the basis “from each according to ability, to each according to need”. The small-c definition is in fact older than

what Communism has come to mean in mainstream political discourse — which is actually the exact polar *opposite* of what late 19<sup>th</sup> century radicals used the word to mean. The weird thing is, not even the Marxist governments of the time referred to the economic system they had as communism, which they believed was still yet to be achieved. The confusion arose because all such governments were ruled by Communist Parties, so westerners came to associate the term “Communism” with the centrally planned economic systems they had — even though the Communist Parties themselves never called them that.

**Cultural Anarchism:** Spreading anarchistic ideas and values throughout general culture; part of trying to create an anarchist transfer-culture that will raise people’s consciousness of non-hierarchical, democratic, and cooperative alternatives to the status quo. Coined by communitarian anarchist and Social Ecologist John P. Clark.

**Decentralism:** The idea that, wherever possible, institutions should be decentralised, devolved, localised, and otherwise scaled down to a smaller and more immediate scale, so that people are better able to directly participate in and manage them.

**Democracy:** Used to mean direct, participatory democracy rather than representative democracy. In fact, most anarchists would regard representative “democracy” as a contradiction in terms, as democracy (which means “people power” in the original Greek) for most of its history was thought of as *by definition* direct and without representation. Representative government, they find, is a more appropriate term. It should be noted that anarchists didn’t always use the word in a positive sense, with the classical anarchists still mostly equating it with representation and majority rule. Since the 1960s, however, most anarchists have reclaimed the word to refer to the participatory decision-making processes they always supported anyway.

**Dialectic:** An important part of much anarchist philosophy, concerned with how opposing forces interact with each other and shape future developments by becoming synthesised. Also a form of analysis in which social structures are critiqued in terms of how they internally contradict themselves (for example, if a society founds itself on the ideal of equality, but doesn’t realise it in practice), with progressive changes being regarded as the “working out” of these contradictions; like a knotted piece of rope unraveling itself.<sup>4</sup>

**Direct Action:** Grassroots actions and forms of organising that are unmediated by formal political institutions. What anarchists promote as a means of getting stuff done in place of electoral politics and capturing state power. Not the same thing as protesting. Protesting is about challenging existing authorities to do something, whereas a direct-actionist approach is to bypass the authorities, start doing it yourselves without their approval, then basically saying “come at me bro” if they ask you to stop.

**Domination:** Being subject to centralised/hierarchical power and unable to act autonomously (self-determining). The core thing anarchists are opposed to; used synonymously with “rulership”. Domination is somewhat broader than oppression, as the word oppression tends only to be used for persons while domination can also apply to non-human animals and to the natural world,

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<sup>4</sup> While normally associated with the German philosophers G.W.F. Hegel and Karl Marx, many Eastern philosophical traditions — especially Taoism<sup>(151)</sup> and Zen<sup>(152)</sup> — are also highly dialectical, as they deal with the interplay of opposite forces (eg: Yin and Yang) and how they create new totalities as a result of one negating the other, then the negation itself being negated. The formula of dialectic is typically phrased as “thesis-antithesis-synthesis”, though the terms Hegel used were the more cryptic “identity-negation-totality”.

<sup>(151)</sup> tvtropes.org

<sup>(152)</sup> tvtropes.org

which anarchists see as also being subject to hierarchical domination. Along with prefiguration (means-ends consistency) the principle of *anti-domination* is the most pervasive ethic in anarchist theory and practice; “I will neither be dominated nor dominate others myself”.

**Ecology:** Means more than just environmentalism. Environmentalism refers to concern for the environment, while ecology also includes how humanity relates to the natural world while being a part of it. As a philosophy, ecology could be thought of as environmentalism + an examination of humanity’s role in the environment. The word later came to refer to the science of studying the natural world, being closely linked to biology. Social Ecology<sup>(153)</sup> is perhaps the most significant ecological perspective developed within anarchism, though Deep Ecology (developed outside of anarchism by Norwegian philosopher Arne Naess) also has a strong presence, especially among lifestyle anarchists.

**Ethics:** While there is no single set of anarchist ethics, different schools of anarchism do tend towards several of the main ethical traditions. Social anarchists tend towards consequentialist ethics and virtue ethics, while market anarchists tend towards deontological ethics (based on natural law theories) and ethical egoism. Not actually the same thing as morality, even though the two are often thought of as the same thing. Morality refers to objective standards of good and evil, while ethics refers to codes of behaviour. Some anarchists (like Emma Goldman) reject the notion that good and evil can have an “objective” basis outside of human interactions, and thus oppose “morality” while still supporting their own brand of ethics. Most settle on a few basic principles like non-domination, prefiguration (means-ends consistency), inclusiveness, and voluntary association as a must for all human relations.

**Federation/Confederalism:** These terms are normally employed to mean systems of government in which some powers are devolved to more local component parts. Anarchists, however, use federation/federalism/federative to mean decentralised forms of organisation in which autonomous groups cooperate with each other on a horizontal basis. Confederalism is somewhat more recent (though the idea isn’t) and refers more specifically to the large-scale voluntary union of free communes/municipalities in an anarchist society.

**Feminism:** As a theory of sexual equality and gender liberation, feminism is an essential component of anarchist theory and practice, along with masculism (men’s liberation) when it’s supportive of feminism. Emma Goldman and Voltairine de Cleyre are seen as key figures in the history of both anarchism and feminism. There’s been a close association between anarchism and the more left-wing varieties of feminism since the 1960s, with many of the consensus-based decision-making practices anarchists now use having been pioneered in feminist circles. Anarcha-feminists tend to be critical of so-called “sex-negative” schools of feminism and anti-transgender feminists.

**Freedom:** Anarchists understand freedom to mean more than just the absence of coercion (called negative freedom or formal freedom) and hold that one needs to have the capabilities for self-fulfillment and self-realisation if one is to be called free in any meaningful sense (called positive freedom or effective freedom). They think effective freedom is only possible in practice in conditions of equality and solidarity, where each individual has a guaranteed minimum (in terms of their economic needs). “My freedom ends where yours begins” is a frequently used phrase to emphasise the complementarity of freedom with equality. As Mikhail Bakunin put it “I can only be truly free when all those around me are equally free”.

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<sup>(153)</sup> [www.kurdishquestion.com](http://www.kurdishquestion.com)

**Guaranteed Minimum (also called Irreducible Minimum):** The ethic that each individual, simply by virtue of being a living person, should be entitled to a basic minimum standard of living and capabilities for satisfying their needs, whether or not they engage in socially valued work. Anarchists want to provide this through a voluntary, horizontally-organised *welfare commons* instead of a centralised welfare state. They find a Basic Income is a better way of providing this in present society than state welfare programs.

**Growth:** In economic terms, the expansion of GDP (gross domestic product), which is basically like the profit of an entire national economy measured through the amount of economic transactions that take place and how much capital (self-expanding money) is accumulated. Since the birth of the modern market economy — as distinct from markets (plural) — this *growth imperative*, or “grow-or-die” logic, has been the central organising principle of all major economies, both capitalist and even state-socialist. Anarchists want to replace economic growth as the way progress is measured with needs-satisfaction and increased well-being of people and the planet, moving from production-for-profit to production-for-use and from a growth-based economy to a needs-based economy.

**Hierarchy:** Originally derived from an older Greek term for “holy rulership”, the term is used in a more specific (somewhat idiosyncratic) way by anarchists to refer to relations and institutions in which one party is subordinate to another party *primarily for the higher party’s benefit*. As a result, they aren’t necessarily against all forms of “hierarchy” in the more mainstream sense, such as ranking systems and taxonomies, only hierarchies of power.

**Horizontalism:** Organising things on a decentralist and lateral basis where all parties involved share power equally. The opposite of hierarchy.

**Human Nature:** Anarchists have a contextual view of human nature and human social development. They don’t agree with many postmodernists who think human nature is an artificial social construct that biology and evolution play no role in. But neither do they agree with biological determinists who think that there are a fixed and static set of behaviours that all humans end up succumbing to regardless of environment. Instead, they view human beings as having two main tendencies in their biological and social evolution: the *egotistic* tendency and the *mutualistic* tendency. They believe that an environment that promotes sociality, personal freedom, unity-in-diversity, love, and equality will better bring out the mutualistic tendency, even if the egotistic tendency can never be expunged entirely.

**Intersectionality:** A big word but a fairly simple idea: that when examining different forms of social hierarchy/oppression, they can’t be examined in isolation from each other (or have one be given primary status as the only important one) but need to be analysed in terms of how the overlap and *intersect* with one another. Examples include how gender intersects with class or how sexuality intersects with race. A woman will experience class relations in different ways from a man and a black gay person will experience discrimination in a different way to a white gay person. While the term was only coined in the late 1980s, and is associated mostly with feminism, anarchists, in critically examining different forms of hierarchy, have arguably always been intersectional in their theory. Emma Goldman and Murray Bookchin in particular stand out as exemplars of proto-intersectional thinkers.

**Libertarian:** Synonym for “anarchistic” or “anti-authoritarian”. Despite being most often used in English-speaking countries today to mean “laissez-faire capitalist”, the word libertarian was first used in a political context by anti-capitalist anarchists all the way back in the 1850s (though it tended to be used as an adjective, not a noun). Something could be described as libertarian in

character, but the term libertarian-*ism* was only coined when American pro-capitalists adopted the word for their own beliefs.

**Managerialism:** The ideology of the professional-managerial class (or just *managerial class* for short), the class in between the ruling class and working classes who manage the relations between the two. Mikhail Bakunin called it the “bureaucratic class” and the “aristocracy of labour”. Strives to make the administration of things hierarchical and bureaucratic, claiming ordinary people can’t do it for themselves due to not having the right information, and capitalists can’t do it right due to being too greedy. Thus, everything needs to be made technocratic and centralised for the people’s own benefit, with an enlightened group of well-educated managers on top. This, anarchists claim, is the class the statist left (Marxists and left-liberals) have always represented the interests of, not the working classes.

**Market(s):** There’s a crucial difference to be made between markets (plural) and *the market* (singular). The former have existed in most organised societies throughout human history, while the latter is only about 200–300 years old. The difference is that while markets have usually formed a component part of economies, they were never the central organising factors of economic activity, always being subject to social controls and embedded within a social context. That started changing with the enclosure of the commons, in which dispersed local markets were “nationalised” by European states to form a single national market, which later via imperialism became an internationalised (and now globalised) market economy — in which all non-market means of organising economic activity become subordinated to the market logic of the growth imperative, the profit-motive, proprietarianism, and rugged individualism.<sup>5</sup> Many anarchists see no issue in supporting markets while opposing the market *economy* — also called the *cash nexus*. The problem, as they see it, is that markets (plural) and the market economy (singular) tend to be conflated, just as nationality is often conflated with nationalism.

**Means of Production:** Large-scale, physical and tangible resources that are used to produce things in the economy. “Big stuff that can be used to create smaller stuff — and to assemble that smaller stuff into big stuff”. Usually refers to factories, heavy machinery, transportation, communications centres, and (sometimes) land and natural resources. Social anarchists want the means of production to be socialised into the common property of confederated, democratic communities, while market anarchists want them to be under worker ownership or individual ownership by self-employed professionals. Neither want private or state ownership of productive resources.

**Mutual Aid:** Voluntary cooperation without hierarchy in which one party helps another, forming a bond in which the receiver would help out the giver when they’re in need. As an ethical practice, mutual aid goes beyond the traditional dichotomy of egoism vs. altruism, as it is neither entirely selfless nor entirely self-serving. It deliberately avoids quantifying obligations people have to each other, helping each party when they need assistance according to need.

**Neoliberalism:** (Also called market fundamentalism) The most prominent economic ideology since the late 1970s and early 1980s. Believes that the market economy is the natural state of human affairs and that state “intervention” in the economy always makes things worse.<sup>6</sup> Wants

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<sup>5</sup> And as David Graeber explains in *The Utopia of Rules*, contra the rhetoric of pro-privatisation neoliberals, increasing marketisation is almost always accompanied by increasing bureaucratisation. In Poland for instance, the number of public and private bureaucrats increased ten years after the fall of state-socialism.

<sup>6</sup> There’s really no such thing as state/government “intervention” in the economy for two reasons: (1) the state is *part* of the economy; (2) the state establishes the boundaries of the (legal) market economy in the first place.

to privatise as many things as possible and wants to cut state-provided social programs out of the belief that they make ordinary people lazy and that getting rid of them would encourage them to go out and get jobs. Anarchists have no love for the welfare state and managerialism, but see it as a lesser evil to the kind of society neoliberalism wishes to create.

**Pacifism/Pacificism:** Anarchists have a long history of association with anti-war, anti-militarist, and peace movements, and aside from a few isolated individuals who committed bombings and assassinations in the late 19<sup>th</sup> century, anarchism could actually be considered one of the *least* violent political philosophies in terms of body count. Pacifism means avoiding violence in absolutely all cases, even in self-defence or the defence of others from being hurt and killed. Pacificism<sup>(154)</sup> on the other hand is like pacifism *with exceptions*. It rests on an ethical aversion to war, militarism, and violence in general, while still allowing for the use of violence in self-defence when no other possible alternative is available to prevent more people from being hurt or killed. The broad anarchist tradition tends to be mostly pacifist, rather than pacifist (at one extreme) or insurrectionist (at the other). While there does exist a prominent anarcho-pacifist school of thought – associated at the theoretical level mostly with Gustav Landauer and Paul Goodman – even those two would more accurately qualify as pacifist, rather than pacifist in the strict sense. One example of an anarchist who actually was an Actual Pacifist<sup>(155)</sup> is Leo Tolstoy<sup>(156)</sup>.

**Politics:** The collective organisation of social affairs, which anarchists want to be directly democratic and organised from the bottom-up, starting with the local community through popular assemblies. Distinguished by anarchists from *statecraft*, for which the word politics is occasionally used as a synonym.

**Popular Assemblies:** Face-to-face meetings of people where they make decisions about issues that affect them (directly and without representation) through participatory democracy – using either majority voting or consensus decision-making, or a combination of the two. These have existed for most of human history as mechanisms of collective self-rule outside of the state, though the word democracy has not usually been applied to them, even though what they do is far closer to what the word democracy originally meant (in ancient Athens) than modern representative democracy.

**Power:** Roughly, “decision-making ability”. While the distinction exists in other languages (like in French with *pouvoir* and *puissance*) social power is really two different, albeit related, things. To make this distinction, the best way is to hyphenate the word. The first kind of power is *power-to* – which simply means the effective ability to do something. The other kind is *power-over* – which refers to having control over others and being capable of getting them to do things they otherwise wouldn’t do, usually by means of coercion. Anarchists seek to dissolve oppressive forms of power-over and disperse power-to equally to each individual, so that no person or group is able to wield power-over to lessen the freedom of others.

**Prefiguration:** Forms of action and organisation which prefigure the shape of a future libertarian socialist society – autonomy, voluntarism, participatory democracy, decentralisation, nonviolence (unless one is directly attacked), and ecological stewardship. Also the ethic of means-

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<sup>(154)</sup> en.m.wikipedia.org

<sup>(155)</sup> tvtropes.org

<sup>(156)</sup> tvtropes.org

ends consistency. Along with the anti-domination principle, prefiguration is the most pervasive ethic in anarchist theory and practice.

**Ruling Elite:** Those who wield the most hierarchical power in society. Includes the ruling (economic) class, but also politicians, important religious figures, media/cultural figures, and certain powerful intellectuals. Unlike the ruling class, you don't necessarily have to be rich to be a part of the ruling elite, in which social/political power is counted along with economic power.

**Socialism:** Perhaps no other word in political discourse causes more confusion and misunderstandings than the word socialism when used by anarchists. Many today, especially Americans, are baffled by how anarchism can be a form of socialism when they associate the term "socialist" with statism and collectivism (in the negative sense of the word). This is because anarchists use an earlier definition of the term (from the 19<sup>th</sup> century) which referred to several potential economic systems in which economic institutions were administered without bosses through *worker self-management*. In fact, most anarchists don't regard government-directed economic systems to be socialist at all, merely "state-capitalist" — as the economy is still premised on profit and growth (at the national level), people still work for wages instead of controlling their own workplaces, and class stratifications still exist. In other words, the economy is still technically capitalist (by their definition), only directed by a centralised state instead of polycentric private businesses. It is worth noting that anarchism has existed for longer than most other forms of socialism, including Marxism. Chinese anarchist Ba Jin even regarded anarchism as the most "pure" form of socialism.

**Statism:** The existence of the state and the ideology of believing the state is good and should exist. Anarchists make a distinction between state and government, with a state being used to mean an institution of class rule with a "monopoly on the legitimate use of physical force" (Max Weber), and government meaning the apparatus that controls the state. Different governments can control the same state, much like different people can wield the same sword, but the sword (state) remains constant and distinct. In other words, anarchists are not necessarily opposed to "government" (or more accurately governance), just centralised state government which relies on structural violence. The goal of anarchism is to dissolve the state and decentralise government — so that it becomes participatory self-governance of autonomous communities.

**Vegetarianism/Veganism:** A key aspect of contemporary anarchist life and ethics, with most anarchists adopting vegetarian or vegan diets out of their support for animal liberation. Most, however, don't believe that changing one's eating/spending habits is likely to have any real impact on the meat industry, and are critical of so-called ethical consumerism, which they see as the co-optation of animal/environmental causes. Only by replacing capitalism and statism do they see animal liberation as being fully possible. The classical anarchist and proto-Social Ecologist Elisee Reclus was one of the first modern western intellectuals to advocate vegetarianism on secular ethical grounds.

**Voluntarism:** The principle that relations and institutions should exist on the basis of voluntary association, with the freedom of any person or component unit to disassociate or secede. While anarchists see voluntary association as an essential feature of social organisation, they think that it is fundamentally incomplete unless accompanied by non-hierarchy. In other words, they don't agree that forms of hierarchy or centralised power are okay just because those subject to them give their formal consent. In fact, many view such forms of "voluntary" rulership as being more insidious than overtly coercive forms, as they present themselves as existing on the basis of formal equality between ruler and subordinate, when in reality the disparity of bargaining



power between the two makes the subordinate's "consent" little more than a ruse, as they can't effectively choose an alternative in which they would retain their autonomy. Voluntarism is not synonymous with *voluntaryism*, which is another (more accurate in fact) term for the philosophy of "anarcho-capitalism".

**Worker Self-Management:** (Also called workers' control, economic democracy, or just self-management) Where enterprises are organised from the bottom-up by their workers through democratic assemblies and councils instead of being administered through a hierarchy of bosses and managers. Cooperatives, commons-based peer-production, and self-employment are examples of worker self-management that already exist which anarchists would like to see expanded to the whole economy.

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## BRIEFLINE

# ACLU pushes Boulder to abandon 'unconstitutional' homeless policies

BY: MOE CLARK - JULY 29, 2021 4:27 PM



■ A man, who said he has been waiting on a housing list for a long time and is ready to work, is seen at an encampment on the Boulder Creek path on April 28, 2021. (Derek Miles for Colorado Newsline)

The American Civil Liberties Union of Colorado [sent a letter](#) to Boulder officials on Thursday regarding what it sees as the city's "unconstitutional and inhumane" treatment of unhoused residents.

The letter took aim at two policies impacting unhoused residents: a requirement that a person must live in Boulder for more than six months before being eligible to stay at a homeless shelter, and the city's enforcement of the urban camping ban for people who have no adequate alternatives. The residency requirement goes a step further by banning anyone who tries to access most homeless services before the six-month mark for the following two years.

"Records examined by the ACLU evidence a system that, with one hand, makes shelter available to only a limited few, and with the other, criminalizes those forced to sleep outdoors under the false narrative that they are resistant to services," Annie Kurtz, an attorney with the ACLU, wrote in the letter.



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"The scheme betrays a governmental aspiration ultimately to drive unhoused residents out of Boulder," she added. "This approach to homelessness violates the Constitution, and we urge the City and (Homeless Solutions for Boulder County) to change course."

The letter highlighted numerous U.S. Supreme Court rulings that have struck down attempts to implement residency requirements for homeless services and enforce an urban camping ban for people who have no other options.

Earlier this year, a Colorado district judge ruled that the city of Fort Collins violated the U.S. Constitution when it prosecuted a man for sleeping in his vehicle when he was not able to stay in a homeless shelter because it was at capacity. The city has had a "camping on public property" ordinance in place since 2018.

Similar to Fort Collins' ordinance, Boulder's camping ban makes it a crime to sleep overnight in public spaces. At the same time, the ACLU contests, inadequate shelter capacity, policies such as the six-month residency requirement, and other barriers to shelter make it difficult, if somewhat impossible, for many unhoused Boulder residents to seek shelter.

The civil rights group also took aim at recent policies and strategies implemented in Boulder, including the approval of [\\$2.7 million](#) in April to fund four proposals that increase the policing of people experiencing homelessness and the enforcement of the city's camping ban.

More recently, Boulder City Council approved an [emergency rule](#) that allows law enforcement to remove tents and issue tickets or citations as soon as a tent or structure is erected. Before the new ordinance was enacted, law enforcement was required to give people living outdoors 72 hours notice.

Council members also approved an ordinance making it illegal for propane tanks to be in public spaces without a permit. The tanks are often used by unhoused people for warmth during Colorado's harsh winter months and to cook food.

In response to a council member's question during a meeting on July 20, Sandra Llanes, Boulder's interim city attorney, said she is not worried about potential lawsuits related to the new ordinances.

A federal judge issued a ruling in January that requires Denver city officials to give a written [seven days notice](#) before clearing most homeless encampments, or two days notice if the area is deemed dangerous to public health and safety.

“The ACLU calls on HSBC and the City of Boulder to abandon these practices, which not only are counterproductive and morally untenable, but, as detailed herein, plainly violate the Constitution,” Kurtz wrote in the letter.

The demands were sent to the executive board for Homeless Solutions for Boulder County – the intergovernmental entity that coordinates services for people experiencing homelessness in Boulder County – Boulder’s city manager Nuria Rivera-Vandermyde, chief of police Maris Herold, Boulder City Council members, Boulder County Commissioners, and the CEO for Boulder Shelter for the Homeless, Greg Harms.

The ACLU asked city officials to respond by Aug. 12.

“At this point, we are hoping they will read our letter, engage with the case law we cite, which is pretty straight forward, and change the laws,” said Kurtz, who is an equal justice works fellow at the ACLU, a fellowship sponsored by Greenberg Traurig, LLP. “It’s a little premature to say whether or not we will take additional action. We just hope they do the right thing.”

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**MOE CLARK**



Moe Clark is a former Colorado Newsline reporter that covered criminal justice, housing and homelessness, and other social issues.

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# Critical Legal Thinking

– Law & the Political –

## Towards a post-liberal theory of free expression

by [Eric Heinze](#) • 6 September 2016



Nigel Farage MEP campaigns for Brexit

Controversies about free expression now saturate the news more than ever before. They certainly erupt whenever [Donald Trump](#) opens his mouth. Questions have also arisen as to whether [anti-immigration](#) slurs incited post-Brexit attacks on minorities. By ‘expression’ I mean not only words, but also other expressive conduct—whatever messages the [burkini](#) sends, it’s causing the French to re-think their whole constitution.

Debates about free expression often divide along clear lines. At one end, an established civil libertarian tradition inevitably applies some version of John Stuart Mill’s familiar [harm principle](#) (even when its adherents don’t use the phrase and haven’t read Mill). Law, they claim, must always assume the background norm of free expression. That default position may be overridden only when some palpable risk of harm can be demonstrated, something more than ‘mere’ offense. The law must not penalise the sheer expression of repugnant ideas.

Such an approach is commonly called ‘liberal’. However, that label now covers such different meanings that phrases like ‘civil libertarian’ or ‘classically liberal’ are used to avoid confusion. Civil libertarianism once stood as the obviously progressive stance. Throughout much of European history it had been conservative forces of monarchy and church that were censoring provocative views. In the early and mid-20<sup>th</sup> centuries heavy censorship continued to be associated with dictatorial regimes. Yet

distinctions between democracy and dictatorship were already blurring. States liberal in principle contradicted their declared values in practice. African-Americans in Southern US states spoke 'freely' only at great risk to their lives and to their families, with scant protection from the law. Other ethnic minorities, along with women or sexual minorities, fared little better.

## Power and performativity

Since the late 20<sup>th</sup> century, post-colonial, black empowerment, radical feminist, queer, and other critical movements have waged forceful challenges to the civil libertarian tradition. Their advocates have questioned the classical liberal assumption that all citizens can speak with equal voices within an open 'marketplace of ideas'. White, middle-class, patriarchal and hetero-normative interests, they argue, inherently prevail through unequal arrangements of power, wealth, and influence.

For [Stanley Fish](#), the whole idea of 'free' speech remains a seminar-room fiction. It knows no real counterpart in the fabric of everyday life, which places endless constraints on expression. [Rae Langton](#), although working within Anglo-American linguistic performativity theory, has developed a strikingly Foucauldian view of language as a medium existing not distinct from the social world, but rather actively constructing and recapitulating power differentials.

Voices within those critical movements have not, however, been uniform. In *Excitable Speech*, Judith Butler turns the leftist concern with unequal power on its head. In the spirit of the master-slave dialectic (recalling her early interest in Hegel), Butler argues that the provocations of offensive speech need not keep their target groups subordinated, but can instead serve to mobilise and to empower those groups. *Excitable Speech* has certainly enjoyed a respectable readership. Now nearing its 20<sup>th</sup> birthday, however, it has attracted noticeably less attention than Butler's other major endeavours.

## Liberalism and capitalism

Raoul Vaneigem, veteran situationist and erstwhile collaborator of Guy Debord, fares little better. To situate Vaneigem's view within his longstanding critiques of capitalism, let's first turn back to Mill. Mill's harm principle had emerged in tandem with such movements as 19<sup>th</sup> century *laissez-faire* economics, Herbert Spencer's 'social' Darwinism, and scientific positivism. Those trends rallied to serve a crucial postulate: competition among, respectively, market forces, social forces, and empirical forces generate the greatest long-term truth and prosperity. In *On Liberty* (1859), Mill deems that same free competition among opinions to be equally conducive to those goals.

Those parallel currents peak well before the great market crises of the 1930s. After that turmoil, government regulation recaptures its role as a



necessary market actor, particularly within socially progressive schools. The analogy to free expression ultimately follows suit. By the post-World War II period, progressives increasingly believe that the state must balance opinions just as it must balance markets.

From that starting point, Vaneigem, too, seeks to turn a leftist orthodoxy on its head. In *Rien n'est sacré, tout peut se dire*, Vaneigem gallops far beyond conventional liberalism, towards a quasi-anarchic rejection of speech codes. He continues to insist that we conquer capitalism's illusory freedoms, which generate cultural commodification, individual homogenisation, and socio-economic hierarchy. For Vaneigem, however, a commitment to free expression serves not the perpetuation of market ideology, but, to the contrary, offers our best weapon against its grip on us. To absolutise and thereby to anarchise expression is to break precisely the kind of social regimentation imposed not only by governments but also by markets. Over a decade after its publication, however, that book remains scarcely commented and indeed untranslated.

### **Ambivalent positions**

Joining Butler and Vaneigem, Slavoj Žižek expresses doubts about speech regulation, albeit mostly to fuel his polemic against that nebulous bogeyman 'political correctness'. None of these three writers takes specific positions on preserving or replacing specific legal norms—and yet in that respect they're in distinguished company. After all, Foucault's depictions of discourse as power have certainly spurred advocates of regulation. Yet it is hard to reconcile viewpoint-selective censorship with that *parrhēsia* – direct, unabashed frankness, irrespective of a message's stupidity, danger, or effects on others – cherished in Foucault's *Le gouvernement de soi et des autres*. Foucault's writing certainly embrace values critical of dominant institutions, but never does he elevate any other institutionally-grounded political value to such revered political status.

Vaneigem's book never mentions Foucault yet displays both Foucauldian strands. On the one hand, Vaneigem's depiction of market hegemony promoted through mediatised dissemination could have been penned *verbatim* by Foucault. On the other hand, Vaneigem's strategy is not to acquiesce to the regulatory state, but to liberate free, public expression from its grasp.

The ambiguities don't stop there. Conversely to Foucault, John Rawls is often invoked against speech codes in view of his strong commitment to classical civil liberties. Yet Rawls, like Foucault, never stakes out any express position. Other scholars, notably Jeremy Waldron, just as confidently invoke Rawls's civility principles to defend controls on speech. Yet the most puzzling figure of all is Jürgen Habermas. Habermas's lifework is constantly about discourse and power. Unlike Rawls or Foucault, moreover, Habermas has lived well into the era of extreme speech as we know it today, including its electronic incarnations. However,

Habermas too, issuing no clear pronouncement, ends up cited on all sides.

Notable African-American scholars like Harvard's Henry Louis Gates, Jr. and Randall Kennedy have added doubts of their own about speech codes. Still, some observers would question whether they do so from progressive perspectives. Both men have distanced themselves from strong leftist positions, often embracing more traditional, civil-libertarian policies.

## **Liberalism and democracy**

So far that's quite a line-up of writers, yet we're all as confused as we were before. Could it be that we're having the wrong argument, an argument overly defined by the terms of 18<sup>th</sup> century liberalism? Even those who challenge that paradigm often end up entrenching it by viewing classical liberalism as the prime target, as the only real philosophy propelling opposition to speech codes.

Surely Butler and Vaneigem prove that such an assumption is no longer true. The foregoing chronicle makes at least one point clear: both historically and still today, it would be misleading to brand opposition to codes as politically regressive and support for them as politically progressive. Perspectives across the spectrum have long correlated to both positions. Robert Post, among the most influential opponents of bans, has complained that the American left's support for viewpoint-selective regulations has allowed the right to steer free speech jurisprudence away from the political realm, towards sheer market deregulation (most perniciously when the US Supreme Court's right-wing Justices voted to strike down laws limiting campaign contributions.<sup>1</sup>)

Amidst the 'No Platforming' controversies that have raged on several campuses, I recently attended a meeting at a prominent British university. A working group had been formed to condemn the trend. I was invited because I oppose 'No Platforming' approaches. More generally, I oppose the bans on offensive or extreme speech in force in most democracies. (I don't oppose bans for all cultures at all times. But I'll leave that point aside for now.) Because I take anti-ban positions, I end up invited to these events on the assumption that I'll present a traditional, civil libertarian view. Classical liberalism, it is assumed, necessarily entails opposition to bans, and opposition to bans necessarily entails classical liberalism.

The organisers circulated a model policy statement with the aim of submitting it for incorporation as official university policy. Yet it seemed almost literally cut-and-pasted from Chapter 2 of Mill's *On Liberty*, as if social dynamics had in no important respect moved on since the mid-19<sup>th</sup> century. The group by no means included only middle-class white males. I have no doubt that its members felt otherwise committed to a university open to staff and students of all backgrounds. Still, the draft – and the group members – failed to acknowledge even obliquely the genuine worries about free expression that were being voiced on university campuses, even



if the group rightly wished to propose an anti-censorship solution.

I objected to that approach and was greeted by blank stares. After a dead silence, the only response was, 'I really don't think we need to pander to them.' – 'To pander', as if 'they' were the enemy rather than partners in the values our group claimed to be promoting, namely, open and constructive dialogue. The group was well-intentioned, but were clearly no fans of, in the Athenian sense, dialectical reason. And as Plato and Aristotle tirelessly remind us, free speech without dialectic is nothing more than self-gratifying rhetoric.

And so I saw the necessity of moving beyond the terms of a classical liberalism which no longer serves either side. Butler and Vaneigem point beyond the hackneyed dualism of either affirming free expression solely in the form of a conventional liberal 'right' or challenging free expression in the form of what have become equally conventional critiques of classical liberalism.

When Mill was advocating free speech his target was the dominant institutions of power, not socio-economically subordinated groups. Given his views on other social issues (and the exceptions he adumbrates to the rule of free speech), it is by no means clear that his position today would be as absolutist as writers on all sides have long assumed him to be. Mill has become one side's straw man and the other side's straw hero. Tracing as far back as Rousseau, passing via Marx, it will come as no surprise to students of critical theory that liberalism and democracy have never been perfectly coextensive, and phrases like 'liberal democracy' all too readily conflate them. In much of the writing on free speech those two concepts still remain hopelessly confused.

A stubborn error is the assumption that we opponents of bans are insisting that the state remain value-neutral. No state, of course, can ever be value neutral, nor should it try. Leaving aside extreme libertarians (whose minimal state would equally fail to be value-neutral), no leading opponent of bans assumes any such thing. Civil libertarians like Post or James Weinstein insist on active state intervention against discrimination and aimed at promoting pluralist norms and practices. The line they draw, however, is that a democracy cannot legitimately penalise citizens who dissent, even crudely, from that pluralist ethos.

In fact, the links between liberalism, democracy, and free speech have never been straightforward. Some regimes liberal towards speech have not been democracies, and some democracies have by no means been havens of free speech. The ancient Athenian model almost straightforwardly equated free speech with democracy, though with no conception of a higher-order liberal 'right'.

I do not see a post-liberal approach as a crisply defined position aimed at a single normative outcome. Such an approach could, however, avoid untenable distinctions between progressive and regressive, between right

and left, between liberal and critical.

*Eric Heinze is Professor of Law and Humanities at the School of Law  
Queen Mary, University of London*

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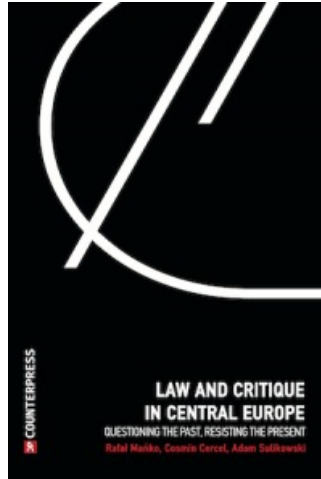
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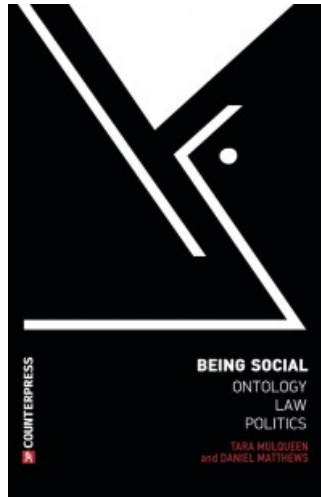
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# Civil libertarianism

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**Civil libertarianism** is a strain of political thought that supports civil liberties, or which emphasizes the supremacy of individual rights and personal freedoms over and against any kind of authority (such as a state, a corporation, social norms imposed through peer pressure and so on).<sup>[1]</sup> Civil libertarianism is not a complete ideology—rather, it is a collection of views on the specific issues of civil liberties and civil rights.

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## In the libertarian movement

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In the domain of libertarian philosophy, the primary concern of the civil libertarian is the relationship of the government to the individual. In theory, the civil libertarian seeks to restrict this relationship to an absolute minimum in which the state can function and provide basic services and securities without excessively interfering in the lives of its citizens. One key cause of civil libertarianism is upholding free speech.<sup>[2]</sup> Specifically, civil libertarians oppose bans on hate speech and obscenity.<sup>[2]</sup> Although they may or may not personally condone behaviors associated with these issues, civil libertarians hold that the advantages of unfettered public discourse outweigh all disadvantages.<sup>[2]</sup>

Other civil libertarian positions include support for at least partial legalization of illicit substances (marijuana and other soft drugs), prostitution, abortion, privacy, assisted dying or euthanasia, the right to bear arms, youth rights, topfree equality, a strong demarcation between religion and politics, and support for same-sex marriage.

With the advent of personal computers, the Internet, email, cell phones and other information technology advances a subset of civil libertarianism has arisen that focuses on protecting individuals' digital rights and privacy.

## See also

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- Civil and political rights
- Civil liberties
  - Civil liberties in the Democratic Republic of the Congo
  - Civil liberties in Finland
  - Civil liberties in Mali
  - Civil liberties in New Zealand
  - Civil liberties in the People's Republic of China
  - Civil liberties in the United Kingdom

- Civil liberties in the United States
- Cultural liberalism
- Drug liberalization
- Libertarianism
- Liberty
- World Index of Moral Freedom

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# American Civil Liberties Union

The **American Civil Liberties Union** (ACLU) is a nonprofit organization<sup>[6][7]</sup> founded in 1920 "to defend and preserve the individual rights and liberties guaranteed to every person in this country by the Constitution and laws of the United States".<sup>[8]</sup> The ACLU works through litigation and lobbying and it has over 1,200,000 members and an annual budget of over \$300 million. Local affiliates of the ACLU are active in all 50 states, the District of Columbia, and Puerto Rico. The ACLU provides legal assistance in cases when it considers civil liberties to be at risk. Legal support from the ACLU can take the form of direct legal representation or preparation of *amicus curiae* briefs expressing legal arguments when another law firm is already providing representation.

In addition to representing persons and organizations in lawsuits, the ACLU lobbies for policy positions that have been established by its board of directors. Current positions of the ACLU include opposing the death penalty; supporting same-sex marriage and the right of LGBT people to adopt; supporting reproductive rights such as birth control and abortion rights; eliminating discrimination against women, minorities, and LGBT people; decarceration in the United States; supporting the rights of prisoners and opposing torture; and upholding the separation of church and state by opposing government preference for religion over non-religion or for particular faiths over others.

Legally, the ACLU consists of two separate but closely affiliated nonprofit organizations, namely the American Civil Liberties Union, a 501(c)(4) social welfare group; and the ACLU Foundation, a 501(c)(3) public charity. Both organizations engage in civil rights litigation, advocacy, and education, but only donations to the 501(c)(3) foundation are tax deductible, and only the 501(c)(4) group can engage in unlimited political lobbying.<sup>[9][10]</sup> The two organizations share office space and employees.<sup>[11]</sup>

## American Civil Liberties Union



<b>Predecessor</b>	<span>National Civil Liberties Bureau</span>
<b>Formation</b>	January 19, 1920 <sup>[1]</sup>
<b>Founders</b>	<span>Helen Keller</span> · <span>Roger Nash Baldwin</span> · <span>Crystal Eastman</span> · <span>Walter Nelles</span> · <span>Morris Ernst</span> · <span>Albert DeSilver</span> · <span>Arthur Garfield Hays</span> · <span>Jane Addams</span> · <span>Felix Frankfurter</span> · <span>Elizabeth Gurley Flynn</span>
<b>Type</b>	<span>501(c)(4)</span> <span>nonprofit organization</span>
<b>Tax ID no.</b>	13-3871360
<b>Purpose</b>	Civil liberties advocacy
<b>Headquarters</b>	125 Broad Street, <span>New York, New York, U.S.</span>
<b>Region served</b>	United States
<b>Membership</b>	1.84 million (2018) <sup>[3]</sup>
<b>President</b>	<span>Deborah Archer</span>
<b>Executive Director</b>	<span>Anthony Romero</span>
<b>Budget</b>	\$309 million (2019;

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Victim groups

Reproductive Freedom Project

Mission

Accomplishments

Initiatives

Privacy

Allegations of bias

The Skokie case

Reagan era

## **Post-Cold War era**

1990 to 2000

Twenty-first century

Free speech

excludes  
affiliates)<sup>[2]</sup>


### **Staff**

Nearly 300 staff  
attorneys<sup>[4]</sup>

### **Volunteers**

Several thousand  
attorneys<sup>[5]</sup>

### **Website**

[www.aclu.org](http://www.aclu.org) (<http://www.aclu.org>) 



[LGBTQ issues](#)

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## Overview

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The ACLU was founded in 1920 by a committee including [Helen Keller](#), [Roger Nash Baldwin](#), [Crystal Eastman](#), [Walter Nelles](#), [Morris Ernst](#), [Albert DeSilver](#), [Arthur Garfield Hays](#), [Jane Addams](#), [Felix Frankfurter](#), [Elizabeth Gurley Flynn](#), and [Rose Schneiderman](#).<sup>[12]</sup> Its focus was on [freedom of speech](#), primarily for anti-war protesters.<sup>[13]</sup> It was founded in response to the controversial [Palmer raids](#), which saw thousands of radicals arrested in matters which violated their constitutional search and seizures protection.<sup>[14]</sup> During the 1920s, the ACLU expanded its scope to include protecting the free speech rights of artists and striking workers, and working with the [National Association for the Advancement of Colored People](#) (NAACP) to mitigate discrimination. During the 1930s, the ACLU started to engage in work combating [police misconduct](#) and supporting [Native American rights](#). Many of the ACLU's cases involved the defense of [Communist Party](#) members and [Jehovah's Witnesses](#). In 1940, the ACLU leadership voted to exclude communists from its leadership positions, a decision rescinded in 1968. During [World War II](#), the ACLU defended Japanese-American citizens, unsuccessfully trying to prevent their forcible relocation to [internment camps](#). During the [Cold War](#), the ACLU headquarters was dominated by [anti-communists](#), but many local affiliates defended members of the Communist Party.

By 1964, membership had risen to 80,000, and the ACLU participated in efforts to expand [civil liberties](#). In the 1960s, the ACLU continued its decades-long effort to enforce [separation of church and state](#). It defended several [anti-war activists](#) during the [Vietnam War](#). The ACLU was involved in the [Miranda case](#), which addressed conduct by police during interrogations, and in the [New York Times case](#), which established new protections for newspapers reporting on government activities. In the 1970s and 1980s, the ACLU ventured into new legal areas, involving the rights of homosexuals, students, prisoners, and the poor. In the twenty-first century, the ACLU has fought the teaching of [creationism](#) in public schools and challenged some provisions of [anti-terrorism legislation](#) as infringing on privacy and civil liberties. Fundraising and membership spiked after the [2016 presidential election](#) and the ACLU's current membership is more than 1.2 million.<sup>[3]</sup>

## Organization

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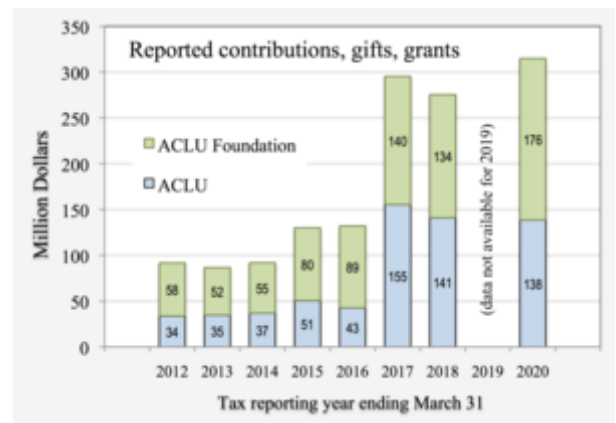
### Leadership

The ACLU is led by a president and an executive director, Deborah N. Archer and Anthony Romero, respectively, in 2021.<sup>[15][16]</sup> The president acts as chair of the ACLU's board of directors, leads fundraising, and facilitates policy-setting. The executive director manages the day-to-day operations of the organization.<sup>[17]</sup> The board of directors consists of 80 persons, including representatives from each state affiliate, as well as at-large delegates. The organization has its headquarters in 125 Broad Street, a 40-story skyscraper located in Lower Manhattan, New York City.<sup>[18]</sup>

The leadership of the ACLU does not always agree on policy decisions; differences of opinion within the ACLU leadership have sometimes grown into major debates. In 1937, an internal debate erupted over whether to defend Henry Ford's right to distribute anti-union literature.<sup>[19]</sup> In 1939, a heated debate took place over whether to prohibit communists from serving in ACLU leadership roles.<sup>[20]</sup> During the early 1950s and Cold War McCarthyism, the board was divided on whether to defend communists.<sup>[21]</sup> In 1968, a schism formed over whether to represent Benjamin Spock's anti-war activism.<sup>[22]</sup> In 1973, as the Watergate Scandal continued to unfold, leadership was initially divided over whether to call for President Nixon's impeachment and removal from office.<sup>[23]</sup> In 2005, there was internal conflict about whether or not a gag rule should be imposed on ACLU employees to prevent publication of internal disputes.<sup>[24]</sup>

## Funding

In the year ending March 31, 2014, the ACLU and the ACLU Foundation had a combined income from support and revenue of \$100.4 million, originating from grants (50.0%), membership donations (25.4%), donated legal services (7.6%), bequests (16.2%), and revenue (0.9%).<sup>[27]</sup> Membership dues are treated as donations; members choose the amount they pay annually, averaging approximately \$50 per member per year.<sup>[28]</sup> In the year ending March 31, 2014, the combined expenses of the ACLU and ACLU Foundation were \$133.4 million, spent on programs (86.2%), management (7.4%), and fundraising (8.2%).<sup>[27]</sup> (After factoring in other changes in net assets of +\$30.9 million, from sources such as investment income, the organization had an overall decrease in net assets of \$2.1 million.)<sup>[29][30]</sup> Over the period from 2011 to 2014 the ACLU Foundation, on the average, has accounted for roughly 70% of the combined budget, and the ACLU roughly 30%.<sup>[31]</sup>



Amounts reported to IRS as "Contributions, Gifts, Grants and Other Similar Amounts" by ACLU and ACLU Foundation.<sup>[25]</sup> Graph reflects an increase in donations following U.S. President Trump's January 2017 executive order barring millions of refugees and citizens of seven Muslim-majority countries.<sup>[26]</sup>

The ACLU solicits donations to its charitable foundation. The ACLU is accredited by the Better Business Bureau, and the Charity Navigator has ranked the ACLU with a four-star rating.<sup>[32][33]</sup> The local affiliates solicit their own funding; however, some also receive funds from the national ACLU, with the distribution and amount of such assistance varying from state to state. At its discretion, the national organization provides subsidies to smaller affiliates that lack sufficient resources to be self-sustaining; for example, the Wyoming ACLU chapter received such subsidies until April 2015, when, as part of a round of layoffs at the national ACLU, the Wyoming office was closed.<sup>[34][35]</sup>

In October 2004, the ACLU rejected \$1.5 million from both the Ford Foundation and Rockefeller Foundation because the foundations had adopted language from the USA PATRIOT Act in their donation agreements, including a clause stipulating that none of the money would go to "underwriting terrorism or

other unacceptable activities." The ACLU views this clause, both in federal law and in the donors' agreements, as a threat to civil liberties, saying it is overly broad and ambiguous.<sup>[36][37]</sup>

Due to the nature of its legal work, the ACLU is often involved in litigation against governmental bodies, which are generally protected from adverse monetary judgments; a town, state or federal agency may be required to change its laws or behave differently, but not to pay monetary damages except by an explicit statutory waiver. In some cases, the law permits plaintiffs who successfully sue government agencies to collect money damages or other monetary relief. In particular, the Civil Rights Attorney's Fees Award Act of 1976 leaves the government liable in some civil rights cases. Fee awards under this civil rights statute are considered "equitable relief" rather than damages, and government entities are not immune from equitable relief.<sup>[38]</sup> Under laws such as this, the ACLU and its state affiliates sometimes share in monetary judgments against government agencies. In 2006, the Public Expressions of Religion Protection Act sought to prevent monetary judgments in the particular case of violations of church-state separation.<sup>[39]</sup>

The ACLU has received court awarded fees from opponents, for example, the Georgia affiliate was awarded \$150,000 in fees after suing a county demanding the removal of a Ten Commandments display from its courthouse;<sup>[40]</sup> a second Ten Commandments case in the state, in a different county, led to a \$74,462 judgment.<sup>[41]</sup> The State of Tennessee was required to pay \$50,000, the State of Alabama \$175,000, and the State of Kentucky \$121,500, in similar Ten Commandments cases.<sup>[42][43]</sup>

## State affiliates

Most of the organization's workload is performed by its local affiliates. There is at least one affiliate organization in each state, as well as one in Washington, D.C., and in Puerto Rico. California has three affiliates.<sup>[44]</sup> The affiliates operate autonomously from the national organization; each affiliate has its own staff, executive director, board of directors, and budget. Each affiliate consists of two non-profit corporations: a 501(c)(3) corporation—called the ACLU Foundation—that does not perform lobbying, and a 501(c)(4) corporation—called ACLU—which is entitled to lobby. Both organizations share staff and offices<sup>[45][46][47]</sup>

ACLU affiliates are the basic unit of the ACLU's organization and engage in litigation, lobbying, and public education. For example, in a twenty-month period beginning January 2004, the ACLU's New Jersey chapter was involved in fifty-one cases according to their annual report – thirty-five cases in state courts, and sixteen in federal court. They provided legal representation in thirty-three of those cases, and served as amicus in the remaining eighteen. They listed forty-four volunteer attorneys who assisted them in those cases.



Howard Simon, executive director of the ACLU of Florida, joins in a protest of the Guantanamo Bay detentions with Amnesty International

ACLU state affiliates		
State	ACLU state affiliate	Notes
<u>Alabama</u>		
<u>Alaska</u>		
<u>Arizona</u>		
<u>Arkansas</u>		
<u>California</u>	ACLU of Northern California ACLU of Southern California ACLU of San Diego & Imperial Counties	
<u>Colorado</u>	<u>ACLU of Colorado</u>	
<u>Connecticut</u>		
<u>Delaware</u>	ACLU of Delaware	
<u>District of Columbia</u>		
<u>Florida</u>	<u>ACLU of Florida</u>	
<u>Georgia</u>		
<u>Hawaii</u>	ACLU of Hawaii	
<u>Idaho</u>		
<u>Illinois</u>		
<u>Indiana</u>		
<u>Iowa</u>		
<u>Kansas</u>		
<u>Kentucky</u>		
<u>Louisiana</u>		
<u>Maine</u>	ACLU of Maine	
<u>Maryland</u>		
<u>Massachusetts</u>	<u>ACLU of Massachusetts</u>	
<u>Michigan</u>		
<u>Minnesota</u>		
<u>Mississippi</u>		
<u>Missouri</u>	<u>ACLU of Missouri</u>	
<u>Montana</u>		
<u>Nebraska</u>		
<u>Nevada</u>		
<u>New Hampshire</u>		
<u>New Jersey</u>	<u>American Civil Liberties Union of New Jersey</u>	
<u>New Mexico</u>		
<u>New York</u>	<u>New York Civil Liberties Union</u>	
<u>North Carolina</u>		
<u>North Dakota</u>		

<u>Ohio</u>		
<u>Oklahoma</u>		
<u>Oregon</u>		
<u>Pennsylvania</u>	ACLU of Pennsylvania	
<u>Puerto Rico</u>	ACLU of Puerto Rico National Chapter	
<u>Rhode Island</u>		
<u>South Carolina</u>		
<u>South Dakota</u>		
<u>Tennessee</u>		
<u>Texas</u>		
<u>Utah</u>		
<u>Vermont</u>		
<u>Virginia</u>		
<u>Washington</u>		
<u>West Virginia</u>		
<u>Wisconsin</u>		
<u>Wyoming</u>	ACLU of Wyoming	

## Positions

As of January 2012, the ACLU's official position statements included the following policies:

- Affirmative action – The ACLU supports affirmative action.<sup>[48]</sup>
- Birth control and abortion – The ACLU supports the right to abortion, as established in the *Roe v. Wade* decision. The ACLU believes that everyone should have affordable access to the full range of contraceptive options. The ACLU's Reproductive Freedom Project manages efforts related to reproductive rights.<sup>[49]</sup>
- Campaign funding – The ACLU believes that the current system is badly flawed, and supports a system based on public funding. The ACLU supports full transparency to identify donors. However, the ACLU opposes attempts to control political spending. The ACLU supported the Supreme Court's decision in *Citizens United v. FEC*, which allowed corporations and unions more political speech rights.<sup>[50]</sup>
- Criminal law reform – The ACLU seeks an end to what it feels are excessively harsh sentences that "stand in the way of a just and equal society". The ACLU's Criminal Law Reform Project focuses on this issue.<sup>[51]</sup>
- Death penalty – The ACLU is opposed to the death penalty in all circumstances. The ACLU's Capital Punishment Project focuses on this issue.<sup>[52]</sup>
- Free speech – The ACLU supports free speech, including the right to express unpopular or controversial ideas, such as flag desecration, racist or sexist views, etc.<sup>[53]</sup> However, a leaked ACLU memo from June 2018 said that speech that can "inflict serious harms" and "impede progress toward equality" may be a lower priority for the organization.<sup>[54][55]</sup>
- Gun rights – The national ACLU's position is that the Second Amendment protects a collective right to own guns rather than an individual right, despite the 2008 Supreme Court decision in *District of Columbia v. Heller* that the Second Amendment is an individual right.

The national organization's position is based on the phrases "a well regulated Militia" and "the security of a free State". However, the ACLU opposes any effort to create a registry of gun owners and has worked with the National Rifle Association to prevent a registry from being created, and it has favored protecting the right to carry guns under the 4th Amendment.<sup>[56][57][58]</sup>

- HIV/AIDS – The policy of the ACLU is to "create a world in which discrimination based on HIV status has ended, people with HIV have control over their medical information and care, and where the government's HIV policy promotes public health and respect and compassion for people living with HIV and AIDS." This effort is managed by the ACLU's AIDS Project.<sup>[59]</sup>
- Human rights – The ACLU's Human Rights project advocates (primarily in an international context) for children's rights, disability rights, immigrants rights, gay rights, and other international obligations.<sup>[60]</sup>
- Immigrants' rights – The ACLU supports civil liberties for immigrants to the United States.<sup>[61]</sup>
- Lesbian, gay, bisexual and transgender rights – The ACLU's LGBT Rights Project supports equal rights for all gays and lesbians, and works to eliminate discrimination. The ACLU supports equal employment, housing, civil marriage and adoption rights for LGBT couples.<sup>[62]</sup>
- National security – The ACLU is opposed to compromising civil liberties in the name of national security. In this context, the ACLU has condemned government use of spying, indefinite detention without charge or trial, and government-sponsored torture. This effort is led by the ACLU's National Security Project.<sup>[63]</sup>
- Prisoners' rights – The ACLU's National Prison Project believes that incarceration should only be used as a last resort, and that prisons should focus on rehabilitation. The ACLU works to ensure that prisons treat prisoners in accordance with the Constitution and domestic law.<sup>[64]</sup>
- Privacy and technology – The ACLU's Project on Speech, Privacy, and Technology promotes "responsible uses of technology that enhance privacy protection", and opposes uses "that undermine our freedoms and move us closer to a surveillance society".<sup>[65]</sup>
- Racial issues – The ACLU's Racial Justice Program combats racial discrimination in all aspects of society, including the educational system, justice system, and the application of the death penalty.<sup>[66]</sup> However, the ACLU opposes state censorship of the Confederate flag.<sup>[67]</sup>
- Religion – The ACLU supports the right of religious persons to practice their faiths without government interference. The ACLU believes the government should neither prefer religion over non-religion, nor favor particular faiths over others. The ACLU is opposed to school-led prayer, but protects students' right to pray in school.<sup>[68]</sup> It opposes the use of religious beliefs to discriminate, such as refusing to provide abortion coverage or providing services to LGBT people.<sup>[69]</sup>
- Sex education – The ACLU opposes single-sex education options. It believes that single-sex education contributes to gender stereotyping and compares single-sex education to racial segregation.<sup>[70]</sup>
- Voting rights – The ACLU believes that impediments to voting should be eliminated, particularly if they disproportionately impact minority or poor citizens. The ACLU believes that misdemeanor convictions should not lead to a loss of voting rights. The ACLU's Voting Rights Project leads this effort.<sup>[71]</sup>
- Women's rights – The ACLU works to eliminate discrimination against women in all realms. The ACLU encourages government to be proactive in stopping violence against women. These efforts are led by the ACLU's Women's Rights project.<sup>[72]</sup>

## Support and opposition

The ACLU is supported by a variety of persons and organizations. There were over 1,000,000 members in 2017, and the ACLU annually receives thousands of grants from hundreds of charitable foundations. Allies of the ACLU in legal actions have included the National Association for the Advancement of Colored People, the American Jewish Congress, People for the American Way, the National Rifle Association, the Electronic Frontier Foundation, Americans United for Separation of Church and State and the National Organization for Women.

The ACLU has been criticized by liberals such as when it excluded communists from its leadership ranks, when it defended Neo-Nazis, when it declined to defend Paul Robeson, or when it opposed the passage of the National Labor Relations Act.<sup>[73][74]</sup> Since the 1990s, the organization has come under heavy criticism from feminists for taking political positions that primarily serve corporate interests at the expense of women's civil rights.<sup>[75]</sup> Conversely, it has been criticized by conservatives such as when it argued against official prayer in public schools, or when it opposed the Patriot Act.<sup>[76][77]</sup> The ACLU has supported conservative figures such as Rush Limbaugh, George Wallace, Henry Ford and Oliver North as well as liberal figures such as Dick Gregory, Rockwell Kent and Benjamin Spock.<sup>[22][78][79][80][81][82][83][84]</sup>

A major source of criticism are legal cases in which the ACLU represents an individual or organization that promotes offensive or unpopular viewpoints such as the Ku Klux Klan, neo-Nazis, the Nation of Islam, the North American Man/Boy Love Association, the Westboro Baptist Church or the Unite the Right rally.<sup>[85][86][87]</sup> As of 2000, the ACLU has historically responded to this criticism by stating "[i]t is easy to defend freedom of speech when the message is something many people find at least reasonable. But the defense of freedom of speech is most critical when the message is one most people find repulsive."<sup>[88]</sup> However, after the Unite the Right rally on August 17, 2017, the executive director of the ACLU announced that "the ACLU will no longer defend hate groups protesting with firearms."<sup>[89][90]</sup>

## Early years

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### CLB era

The ACLU developed from the National Civil Liberties Bureau (CLB), co-founded in 1917 during World War I by Crystal Eastman, an attorney activist, and Roger Nash Baldwin.<sup>[91]</sup> The focus of the CLB was on freedom of speech, primarily anti-war speech, and on supporting conscientious objectors who did not want to serve in World War I.<sup>[92]</sup>

Three United States Supreme Court decisions in 1919 each upheld convictions under laws against certain kinds of anti-war speech. In 1919, the Court upheld the conviction of Socialist Party leader Charles Schenck for publishing anti-war literature.<sup>[93]</sup> In Debs v. United States, the court upheld the conviction of Eugene Debs. While the Court upheld a conviction a third time in Abrams v. United States, Justice Oliver Wendell Holmes wrote an important dissent which has gradually been absorbed as an American principle: he urged the court to treat freedom of speech as a fundamental right, which should rarely be restricted.<sup>[94]</sup>

In 1918, Crystal Eastman resigned from the organization due to health issues.<sup>[95]</sup> After assuming sole leadership of the CLB, Baldwin insisted that the organization be reorganized. He wanted to change its focus from litigation to direct action and public education.<sup>[1]</sup>



Crystal Eastman was one of the co-founders of the CLB, the predecessor to the ACLU

The CLB directors concurred, and on January 19, 1920, they formed an organization under a new name, the American Civil Liberties Union.<sup>[1]</sup> Although a handful of other organizations in the United States at that time focused on civil rights, such as the National Association for the Advancement of Colored People (NAACP) and Anti-Defamation League (ADL), the ACLU was the first that did not represent a particular group of persons, or a single theme.<sup>[1]</sup> Like the CLB, the NAACP pursued litigation to work on civil rights, including efforts to overturn the disfranchisement of African Americans in the South that had taken place since the turn of the century.

During the first decades of the ACLU, Baldwin continued as its leader. His charisma and energy attracted many supporters to the ACLU board and leadership ranks.<sup>[96]</sup> Baldwin was ascetic, wearing hand-me-down clothes, pinching pennies, and living on a very small salary.<sup>[97]</sup> The ACLU was directed by an executive committee, and it was not particularly democratic or egalitarian. The ACLU's base in New York resulted in its being dominated by people from the city and state.<sup>[98]</sup> Most ACLU funding came from philanthropies, such as the Garland Fund.<sup>[97]</sup>

## Free speech era

In the 1920s, government censorship was commonplace. Magazines were routinely confiscated under the anti-obscenity Comstock laws; permits for labor rallies were often denied; and virtually all anti-war or anti-government literature was outlawed.<sup>[99]</sup> Right-wing conservatives wielded vast amounts of power, and activists that promoted unionization, socialism, or government reform were often denounced as un-American or unpatriotic.<sup>[99]</sup> In one typical instance in 1923, author Upton Sinclair was arrested for trying to read the First Amendment during an Industrial Workers of the World rally.<sup>[100]</sup>



Norman Thomas was one of the early leaders of the ACLU

ACLU leadership was divided on how to challenge the civil rights violations. One faction, including Baldwin, Arthur Garfield Hays and Norman Thomas, believed that direct, militant action was the best path.<sup>[100]</sup> Hays was the first of many successful attorneys that relinquished their private practices to work for the ACLU.<sup>[101]</sup> Another group, including Walter Nelles and Walter Pollak felt that lawsuits taken to the Supreme Court were the best way to achieve change.<sup>[101]</sup>

During the 1920s, the ACLU's primary focus was on freedom of speech in general, and speech within the labor movement particularly.<sup>[102]</sup> Because most of the ACLU's efforts were associated with the labor movement, the ACLU itself came under heavy attack from conservative groups, such as the American Legion, the National Civic Federation, and Industrial Defense Association and the Allied Patriotic Societies.<sup>[103]</sup>

In addition to labor, the ACLU also led efforts in non-labor arenas, for example, promoting free speech in public schools.<sup>[104]</sup> The ACLU itself was banned from speaking in New York public schools in 1921.<sup>[105]</sup> The ACLU, working with the NAACP, also supported racial discrimination cases.<sup>[106]</sup> The ACLU defended free speech regardless of the opinions being espoused. For example, the reactionary, anti-Catholic, anti-black Ku Klux Klan (KKK) was a frequent target of ACLU efforts, but the ACLU defended the KKK's right to hold meetings in 1923.<sup>[107]</sup> There were some civil rights that the ACLU did not make an effort to defend in the 1920s, including censorship of the arts, government search and seizure issues, right to privacy, or wiretapping.<sup>[108]</sup>

The Communist Party USA was routinely hounded by government officials, leading it to be the primary client of the ACLU.<sup>[109]</sup> At the same time, the Communists were very aggressive in their tactics, often engaging in illegal conduct such as denying their party membership under oath. This led to frequent



conflicts between the Communists and ACLU.<sup>[109]</sup> Communist leaders sometimes attacked the ACLU, particularly when the ACLU defended the free speech rights of conservatives, whereas Communists tried to disrupt speeches by critics of the USSR.<sup>[109]</sup> This uneasy relationship between the two groups continued for decades.<sup>[109]</sup>

## Public schools

### Scopes trial

When 1925 arrived – five years after the ACLU was formed – the organization had virtually no success to show for its efforts.<sup>[110]</sup> That changed in 1925, when the ACLU persuaded John T. Scopes to defy Tennessee's anti-evolution law in *The State of Tennessee v. John Thomas Scopes*. Clarence Darrow, a member of the ACLU National Committee, headed Scopes' legal team. The prosecution, led by William Jennings Bryan, contended that the Bible should be interpreted literally in teaching creationism in school. The ACLU lost the case and Scopes was fined \$100. The Tennessee Supreme Court later upheld the law but overturned the conviction on a technicality.<sup>[111][112]</sup>

The Scopes trial was a phenomenal public relations success for the ACLU.<sup>[113]</sup> The ACLU became well known across America, and the case led to the first endorsement of the ACLU by a major US newspaper.<sup>[114]</sup> The ACLU continued to fight for the separation of church and state in schoolrooms, decade after decade, including the 1982 case *McLean v. Arkansas* and the 2005 case *Kitzmiller v. Dover Area School District*.<sup>[115]</sup>

Baldwin himself was involved in an important free speech victory of the 1920s, after he was arrested for attempting to speak at a rally of striking mill workers in New Jersey. Although the decision was limited to the state of New Jersey, the appeals court's judgement in 1928 declared that constitutional guarantees of free speech must be given "liberal and comprehensive construction", and it marked a major turning point in the civil rights movement, signaling the shift of judicial opinion in favor of civil rights.<sup>[116]</sup>

The most important ACLU case of the 1920s was *Gitlow v. New York*, in which Benjamin Gitlow was arrested for violating a state law against inciting anarchy and violence, when he distributed literature promoting communism.<sup>[117]</sup> Although the Supreme Court did not overturn Gitlow's conviction, it adopted the ACLU's stance (later termed the incorporation doctrine) that the First Amendment freedom of speech applied to state laws, as well as federal laws.<sup>[118]</sup>

### *Pierce v. Society of Sisters*

After the First World War, many native-born Americans had a revival of concerns about assimilation of immigrants and worries about "foreign" values; they wanted public schools to teach children to be American. Numerous states drafted laws designed to use schools to promote a common American culture, and in 1922, the voters of Oregon passed the Oregon Compulsory Education Act. The law was primarily aimed at eliminating parochial schools, including Catholic schools.<sup>[119][120]</sup> It was promoted by groups such as the Knights of Pythias, the Federation of Patriotic Societies, the Oregon Good Government League, the Orange Order, and the Ku Klux Klan.<sup>[121]</sup>

The Oregon Compulsory Education Act required almost all children in Oregon between eight and sixteen years of age to attend public school by 1926.<sup>[121]</sup> Associate Director Roger Nash Baldwin, a personal friend of Luke E. Hart, the then-Supreme Advocate and future Supreme Knight of the Knights of Columbus, offered to join forces with the Knights to challenge the law. The Knights of Columbus pledged an immediate \$10,000 to fight the law and any additional funds necessary to defeat it.<sup>[122]</sup>

The case became known as *Pierce v. Society of Sisters*, a seminal United States Supreme Court decision that significantly expanded coverage of the Due Process Clause in the Fourteenth Amendment. In a unanimous decision, the court held that the act was unconstitutional and that parents, not the state, had the authority to educate children as they thought best.<sup>[123]</sup> It upheld the religious freedom of parents to educate their children in religious schools.

## Early strategy

Leaders of the ACLU were divided on the best tactics to use to promote civil liberties. Felix Frankfurter felt that legislation was the best long-term solution because the Supreme Court could not (and – in his opinion – should not) mandate liberal interpretations of the Bill of Rights. But Walter Pollak, Morris Ernst, and other leaders felt that Supreme Court decisions were the best path to guarantee civil liberties.<sup>[124]</sup> A series of Supreme Court decisions in the 1920s foretold a changing national atmosphere; anti-radical emotions were diminishing, and there was a growing willingness to protect freedom of speech and assembly via court decisions.<sup>[125]</sup>

## Free speech

Censorship was commonplace in the early 20th century. State laws and city ordinances routinely outlawed speech deemed to be obscene or offensive, and prohibited meetings or literature that promoted unions or labor organization.<sup>[83]</sup> Starting in 1926, the ACLU began to expand its free speech activities to encompass censorship of art and literature.<sup>[83]</sup> In that year, H. L. Mencken deliberately broke Boston law by distributing copies of his banned *American Mercury* magazine; the ACLU defended him and won an acquittal.<sup>[83]</sup> The ACLU went on to win additional victories, including the landmark case *United States v. One Book Called Ulysses* in 1933, which reversed a ban by the Customs Department against the book *Ulysses* by James Joyce.<sup>[126]</sup> The ACLU only achieved mixed results in the early years, and it was not until 1966 that the Supreme Court finally clarified the obscenity laws in the *Roth v. United States* and *Memoirs v. Massachusetts* cases.



The ACLU defended H. L. Mencken when he was arrested for distributing banned literature

The Comstock laws banned distribution of sex education information, based on the premise that it was obscene and led to promiscuous behavior.<sup>[127]</sup> Mary Ware Dennett was fined \$300 in 1928, for distributing a pamphlet containing sex education material. The ACLU, led by Morris Ernst, appealed her conviction and won a reversal, in which judge Learned Hand ruled that the pamphlet's main purpose was to "promote understanding".<sup>[127]</sup>

The success prompted the ACLU to broaden their freedom of speech efforts beyond labor and political speech, to encompass movies, press, radio and literature.<sup>[127]</sup> The ACLU formed the National Committee on Freedom from Censorship in 1931 to coordinate this effort.<sup>[127]</sup> By the early 1930s, censorship in the United States was diminishing.<sup>[126]</sup>

Two major victories in the 1930s cemented the ACLUs campaign to promote free speech. In *Stromberg v. California*, decided in 1931, the Supreme Court sided with the ACLU and affirmed the right of a communist party member to salute a communist flag. The result was the first time the Supreme Court used the Due Process Clause of the 14th amendment to subject states to the requirements of the First

Amendment.<sup>[128]</sup> In Near v. Minnesota, also decided in 1931, the Supreme Court ruled that states may not exercise prior restraint and prevent a newspaper from publishing, simply because the newspaper had a reputation for being scandalous.<sup>[129]</sup>

## 1930s

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The late 1930s saw the emergence of a new era of tolerance in the United States.<sup>[130]</sup> National leaders hailed the Bill of Rights, particularly as it protected minorities, as the essence of democracy.<sup>[130]</sup> The 1939 Supreme Court decision in Hague v. Committee for Industrial Organization affirmed the right of communists to promote their cause.<sup>[130]</sup> Even conservative elements, such as the American Bar Association began to campaign for civil liberties, which were long considered to be the domain of left-leaning organizations. By 1940, the ACLU had achieved many of the goals it set in the 1920s, and many of its policies were the law of the land.<sup>[130]</sup>

### Expansion

In 1929, after the Scopes and Dennett victories, Baldwin perceived that there was vast, untapped support for civil liberties in the United States.<sup>[126]</sup> Baldwin proposed an expansion program for the ACLU, focusing on police brutality, Native American rights, African American rights, censorship in the arts, and international civil liberties.<sup>[126]</sup> The board of directors approved Baldwin's expansion plan, except for the international efforts.<sup>[131]</sup>

The ACLU played a major role in passing the 1932 Norris-La Guardia Act, a federal law which prohibited employers from preventing employees from joining unions, and stopped the practice of outlawing strikes, unions, and labor organizing activities with the use of injunctions.<sup>[131]</sup> The ACLU also played a key role in initiating a nationwide effort to reduce misconduct (such as extracting false confessions) within police departments, by publishing the report Lawlessness in Law Enforcement in 1931, under the auspices of Herbert Hoover's Wickersham Commission.<sup>[131]</sup> In 1934, the ACLU lobbied for the passage of the Indian Reorganization Act, which restored some autonomy to Native American tribes, and established penalties for kidnapping Native American children.<sup>[131]</sup>

Although the ACLU deferred to the NAACP for litigation promoting civil liberties for African Americans, the ACLU did engage in educational efforts, and published Black Justice in 1931, a report which documented institutional racism throughout the South, including lack of voting rights, segregation, and discrimination in the justice system.<sup>[132]</sup> Funded by the Garland Fund, the ACLU also participated in producing the influential Margold Report, which outlined a strategy to fight for civil rights for blacks.<sup>[133][134]</sup> The ACLU's plan was to demonstrate that the "separate but equal" policies governing the Southern discrimination were illegal because blacks were never, in fact, treated equally.<sup>[133]</sup>

### Depression era and the New Deal

In 1932 – twelve years after the ACLU was founded – it had achieved significant success; the Supreme Court had embraced the free speech principles espoused by the ACLU, and the general public was becoming more supportive of civil rights in general.<sup>[135]</sup> But the Great Depression brought new assaults on civil liberties; the year 1930 saw a large increase in the number of free speech prosecutions, a doubling of the number of lynchings, and all meetings of unemployed persons were banned in Philadelphia.<sup>[136]</sup>

The Franklin D. Roosevelt administration proposed the New Deal to combat the depression. ACLU leaders were of mixed opinions about the New Deal, since many felt that it represented an increase in government intervention into personal affairs, and because the National Recovery Administration suspended antitrust

legislation.<sup>[137]</sup> Roosevelt was not personally interested in civil rights, but did appoint many civil libertarians to key positions, including Interior Secretary Harold Ickes, a member of the ACLU.<sup>[137][138]</sup>

The economic policies of the New Deal leaders were often aligned with ACLU goals, but social goals were not.<sup>[138]</sup> In particular, movies were subject to a barrage of local ordinances banning screenings that were deemed immoral or obscene.<sup>[139]</sup> Even public health films portraying pregnancy and birth were banned; as was *Life* magazine's April 11, 1938, issue which included photos of the birth process. The ACLU fought these bans, but did not prevail.<sup>[140]</sup>

The Catholic Church attained increasing political influence in the 1930s, and used its influence to promote censorship of movies, and to discourage publication of birth control information. This conflict between the ACLU and the Catholic Church led to the resignation of the last Catholic priest from ACLU leadership in 1934; a Catholic priest would not be represented there again until the 1970s.<sup>[141]</sup>

The ACLU took no official position on president Franklin Delano Roosevelt's 1937 court-packing plan, which threatened to increase the number of Supreme Court justices, unless the Supreme Court reversed its course and began approving New Deal legislation.<sup>[142]</sup> The Supreme Court responded by making a major shift in policy, and no longer applied strict constitutional limits to government programs, and also began to take a more active role in protecting civil liberties.<sup>[142]</sup>

The first decision that marked the court's new direction was *De Jonge v. Oregon*, in which a communist labor organizer was arrested for calling a meeting to discuss unionization.<sup>[143]</sup> The ACLU attorney Osmond Fraenkel, working with International Labor Defense, defended De Jonge in 1937, and won a major victory when the Supreme Court ruled that "peaceable assembly for lawful discussion cannot be made a crime."<sup>[144]</sup> The De Jonge case marked the start of an era lasting for a dozen years, during which Roosevelt appointees (led by Hugo Black, William O. Douglas, and Frank Murphy) established a body of civil liberties law.<sup>[143]</sup> In 1938, Justice Harlan F. Stone wrote the famous "footnote four" in *United States v. Carolene Products Co.* in which he suggested that state laws which impede civil liberties would – henceforth – require compelling justification.<sup>[145]</sup>

Senator Robert F. Wagner proposed the National Labor Relations Act in 1935, which empowered workers to unionize. Ironically, the ACLU, after 15 years of fighting for workers' rights, initially opposed the act (it later took no stand on the legislation) because some ACLU leaders feared the increased power the bill gave to the government.<sup>[146]</sup> The newly formed National Labor Relations Board (NLRB) posed a dilemma for the ACLU, because in 1937 it issued an order to Henry Ford, prohibiting Ford from disseminating anti-union literature.<sup>[19]</sup> Part of the ACLU leadership habitually took the side of labor, and that faction supported the NLRB's action.<sup>[19]</sup> But part of the ACLU supported Ford's right to free speech.<sup>[19]</sup> ACLU leader Arthur Garfield Hays proposed a compromise (supporting the auto workers union, yet also endorsing Ford's right to express personal opinions), but the schism highlighted a deeper divide that would become more prominent in the years to come.<sup>[19]</sup>

The ACLU's support of the NLRB was a major development for the ACLU, because it marked the first time it accepted that a government agency could be responsible for upholding civil liberties.<sup>[147]</sup> Until 1937, the ACLU felt that civil rights were best upheld by citizens and private organizations.<sup>[147]</sup>

Some factions in the ACLU proposed new directions for the organization. In the late 1930s, some local affiliates proposed shifting their emphasis from civil liberties appellate actions, to becoming a legal aid society, centered on store front offices in low income neighborhoods. The ACLU directors rejected that proposal.<sup>[148]</sup> Other ACLU members wanted the ACLU to shift focus into the political arena, and to be more willing to compromise their ideals in order to strike deals with politicians. This initiative was also rejected by the ACLU leadership.<sup>[148]</sup>

## Jehovah's Witnesses

The ACLU's support of defendants with unpopular, sometimes extreme, viewpoints have produced many landmark court cases and established new civil liberties.<sup>[145]</sup> One such defendant was the Jehovah's Witnesses, who were involved in a large number of Supreme Court cases.<sup>[145][149]</sup> Cases that the ACLU supported included *Lovell v. City of Griffin* (which struck down a city ordinance that required a permit before a person could distribute "literature of any kind"); *Martin v. Struthers* (which struck down an ordinance prohibiting door-to-door canvassing); and *Cantwell v. Connecticut* (which reversed the conviction of a Witness who was reciting offensive speech on a street corner).<sup>[150]</sup>

The most important cases involved statutes requiring flag salutes.<sup>[150]</sup> The Jehovah's Witnesses felt that saluting a flag was contrary to their religious beliefs. Two children were convicted in 1938 of not saluting the flag.<sup>[150]</sup> The ACLU supported their appeal to the Supreme Court, but the court affirmed the conviction, in 1940.<sup>[151]</sup> But three years later, in *West Virginia State Board of Education v. Barnette*, the Supreme court reversed itself and wrote "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." To underscore its decision, the Supreme Court announced it on Flag Day.<sup>[151][152]</sup>

## Communism and totalitarianism

The rise of totalitarian regimes in Germany, Russia, and other countries who rejected freedom of speech and association had a large impact on the civil liberties movement in the US; anti-Communist sentiment rose and civil liberties were curtailed.<sup>[153]</sup>

The ACLU leadership was divided over whether or not to defend pro-Nazi speech in the United States; pro-labor elements within the ACLU were hostile towards Nazism and fascism, and objected when the ACLU defended Nazis.<sup>[154]</sup> Several states passed laws outlawing the hate speech directed at ethnic groups.<sup>[155]</sup> The first person arrested under New Jersey's 1935 hate speech law was a Jehovah's Witness who was charged with disseminating anti-Catholic literature.<sup>[155]</sup> The ACLU defended the Jehovah's Witnesses, and the charges were dropped.<sup>[155]</sup> The ACLU proceeded to defend numerous pro-Nazi groups, defending their rights to free speech and free association.<sup>[156]</sup>

In the late 1930s, the ACLU allied itself with the Popular Front, a coalition of liberal organizations coordinated by the United States Communist Party.<sup>[157]</sup> The ACLU benefited because affiliates from the Popular Front could often fight local civil rights battles much more effectively than the New York-based ACLU.<sup>[157]</sup> The association with the Communist Party led to accusations that the ACLU was a "Communist front", particularly because Harry F. Ward was both chairman of the ACLU and chairman of the American League Against War and Fascism, a Communist organization.<sup>[158]</sup>

The House Un-American Activities Committee (HUAC) was created in 1938 to uncover sedition and treason within the United States.<sup>[159]</sup> When witnesses testified at its hearings, the ACLU was mentioned several times, leading the HUAC to mention the ACLU prominently in its 1939 report.<sup>[160]</sup> This damaged the ACLU's reputation severely, even though the report said that it could not "definitely state whether or not" the ACLU was a Communist organization.<sup>[160]</sup>



Elizabeth Gurley Flynn was voted off the ACLU board in 1940 because of her Communist Party membership, but reinstated posthumously in 1970

While the ACLU rushed to defend its image against allegations of being a Communist front, it also worked to protect witnesses who were being harassed by the HUAC.<sup>[161]</sup> The ACLU was one of the few organizations to protest (unsuccessfully) against passage of the Smith Act in 1940, which would later be used to imprison many persons who supported Communism.<sup>[162][163]</sup> The ACLU defended many persons who were prosecuted under the Smith Act, including labor leader Harry Bridges.<sup>[164]</sup>

ACLU leadership was split on whether to purge its leadership of Communists. Norman Thomas, John Haynes Holmes, and Morris Ernst were anti-Communists who wanted to distance the ACLU from Communism; opposing them were Harry F. Ward, Corliss Lamont, and Elizabeth Gurley Flynn, who rejected any political test for ACLU leadership.<sup>[165]</sup> A bitter struggle ensued throughout 1939, and the anti-Communists prevailed in February 1940, when the board voted to prohibit anyone who supported totalitarianism from ACLU leadership roles. Ward immediately resigned, and – following a contentious six-hour debate – Flynn was voted off the ACLU's board.<sup>[20]</sup> The 1940 resolution was considered by many to be a betrayal of its fundamental principles. The resolution was rescinded in 1968, and Flynn was posthumously reinstated to the ACLU in 1970.<sup>[164]</sup>

## Mid-century

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### World War II

When World War II engulfed the United States, the Bill of Rights was enshrined as a hallowed document, and numerous organizations defended civil liberties.<sup>[166]</sup> Chicago and New York proclaimed "Civil Rights" weeks, and President Franklin Delano Roosevelt announced a national Bill of Rights day. Eleanor Roosevelt was the keynote speaker at the 1939 ACLU convention.<sup>[166]</sup> In spite of this newfound respect for civil rights, Americans were becoming adamantly anti-communist, and believed that excluding communists from American society was an essential step to preserve democracy.<sup>[166]</sup>

Contrasted with World War I, there was relatively little violation of civil liberties during World War II. President Roosevelt was a strong supporter of civil liberties, but – more importantly – there were few anti-war activists during World War II.<sup>[167]</sup> The most significant exception was the internment of Japanese Americans.<sup>[167]</sup>

### Japanese American Internment



The ACLU was internally divided when it came to defending the rights of Japanese Americans who had been forcibly relocated to internment camps

Two months after the Japanese attack on Pearl Harbor, Roosevelt authorized the creation of military "exclusion zones" with Executive Order 9066, paving the way for the detention of all West Coast Japanese Americans in inland camps. In addition to the non-citizen Issei (prohibited from naturalization as members of an "unassimilable" race), over two-thirds of those swept up were American-born citizens.<sup>[168]</sup> The ACLU immediately protested to Roosevelt, comparing the evacuations to Nazi concentration camps.<sup>[169]</sup> The ACLU was the only major organization to object to the internment plan,<sup>[167]</sup> and their position was very unpopular, even within the organization. Not all ACLU leaders wanted to defend the Japanese Americans; Roosevelt loyalists such as Morris Ernst wanted to support Roosevelt's war effort, but pacifists such as Baldwin and Norman Thomas felt that Japanese Americans needed access to due process before they could be imprisoned.<sup>[170]</sup> In a March 20, 1942, letter to Roosevelt, Baldwin

called on the administration to allow Japanese Americans to prove their loyalty at individual hearings, describing the constitutionality of the planned removal "open to grave question."<sup>[171]</sup> His suggestions went nowhere, and opinions within the organization became increasingly divided as the Army began the "evacuation" of the West Coast. In May, the two factions, one pushing to fight the exclusion orders then being issued, the other advocating support for the President's policy of removing citizens whose "presence may endanger national security," brought their opposing resolutions to a vote before the board and the ACLU's national leaders. They decided not to challenge the eviction of Japanese American citizens, and on June 22 instructions were sent to West Coast branches not to support cases that argued the government had no constitutional right to do so.<sup>[171]</sup>

The ACLU offices on the West Coast had been more directly involved in addressing the tide of anti-Japanese prejudice from the start, as they were geographically closer to the issue, and were already working on cases challenging the exclusion by this time. The Seattle office, assisting in Gordon Hirabayashi's lawsuit, created an unaffiliated committee to continue the work the ACLU had started, while in Los Angeles, attorney A.L. Wirin continued to represent Ernest Kinzo Wakayama but without addressing the case's constitutional questions.<sup>[171]</sup> (Wirin would lose private clients because of his defense of Wakayama and other Japanese Americans.)<sup>[172]</sup> However, the San Francisco branch, led by Ernest Besig, refused to discontinue its support for Fred Korematsu, whose case had been taken on prior to the June 22 directive, and attorney Wayne Collins, with Besig's full support, centered his defense on the illegality of Korematsu's exclusion.<sup>[171]</sup>

The West Coast offices had wanted a test case to take to court, but had a difficult time finding a Japanese American who was both willing to violate the internment orders and able to meet the ACLU's desired criteria of a sympathetic, Americanized plaintiff. Of the 120,000 Japanese Americans affected by the order, only 12 disobeyed, and Korematsu, Hirabayashi, and two others were the only resisters whose cases eventually made it to the Supreme Court.<sup>[169]</sup> Hirabayashi v. United States came before the Court in May 1943, and the justices upheld the government's right to exclude Japanese Americans from the West Coast,<sup>[173]</sup> although it had earlier forced its local office in L.A. to stop aiding Hirabayashi, the ACLU donated \$1,000 to the case (over a third of the legal team's total budget) and submitted an *amicus* brief. Besig, dissatisfied with Osmond Fraenkel's tamer defense, filed an additional *amicus* brief that directly addressed Hirabayashi's constitutional rights. In the meantime, A.L. Wirin served as one of the attorneys in Yasui v. United States (decided the same day as the Hirabayashi case, and with the same results), but he kept his arguments within the perimeters established by the national office. The only case to receive a favorable ruling, *ex parte Endo*, was also aided by two *amicus* briefs from the ACLU, one from the more conservative Fraenkel and another from the more putative Wayne Collins.<sup>[171]</sup>

Korematsu v. United States proved to be the most controversial of these cases, as Besig and Collins refused to bow to the national ACLU office's pressure to pursue the case without challenging the government's right to remove citizens from their homes. The ACLU board threatened to revoke the San Francisco branch's national affiliation, while Baldwin tried unsuccessfully to convince Collins to step down so he could replace him as lead attorney in the case. Eventually Collins agreed to present the case alongside Charles Horsky, although their arguments before the Supreme Court remained based in the unconstitutionality of the exclusion order Korematsu had disobeyed.<sup>[171]</sup> The case was decided in December 1944, when the Court once again upheld the government's right to relocate Japanese Americans,<sup>[174]</sup> although Korematsu's, Hirabayashi's and Yasui's convictions were later overturned in *coram nobis* proceedings in the 1980s.<sup>[175]</sup>

The national office of the ACLU was even more reluctant to defend anti-war protesters. A majority of the board passed a resolution in 1942 which declared the ACLU unwilling to defend anyone who interfered with the United States' war effort.<sup>[176]</sup> Included in this group were the thousands of Nisei who renounced their US citizenship during the war but later regretted the decision and tried to revoke their applications for "repatriation." (A significant number of those slated to "go back" to Japan had never actually been to the

country and were in fact being deported rather than repatriated.) Ernest Besig had in 1944 visited the Tule Lake Segregation Center, where the majority of these "renunciants" were concentrated, and subsequently enlisted Wayne Collins' help to file a lawsuit on their behalf, arguing the renunciations had been given under duress. The national organization prohibited local branches from representing the renunciants, forcing Collins to pursue the case on his own, although Besig and the Northern California office provided some support.<sup>[177]</sup>

During his 1944 visit to Tule Lake, Besig had also become aware of a hastily constructed stockade in which Japanese American internees were routinely being brutalized and held for months without due process. Besig was forbidden by the national ACLU office to intervene on behalf of the stockade prisoners or even to visit the Tule Lake camp without prior written approval from Baldwin. Unable to help directly, Besig turned to Wayne Collins for assistance. Collins, using the threat of habeas corpus suits managed to have the stockade closed down. A year later, after learning that the stockade had been reestablished, he returned to the camp and had it closed down for good.<sup>[178][179]</sup>

## End of WWII in 1945

When the war ended in 1945, the ACLU was 25 years old, and had accumulated an impressive set of legal victories.<sup>[180]</sup> President Harry S. Truman sent a congratulatory telegram to the ACLU on the occasion of their 25th anniversary.<sup>[180]</sup> American attitudes had changed since World War I, and dissent by minorities was tolerated with more willingness.<sup>[180]</sup> The Bill of Rights was more respected, and minority rights were becoming more commonly championed.<sup>[180]</sup> During their 1945 annual conference, the ACLU leaders composed a list of important civil rights issues to focus on in the future, and the list included racial discrimination and separation of church and state.<sup>[181]</sup>

The ACLU supported the African-American defendants in *Shelley v. Kraemer*, when they tried to occupy a house they had purchased in a neighborhood which had racially restrictive housing covenants. The African-American purchasers won the case in 1945.<sup>[182]</sup>

## Cold War era

Anti-Communist sentiment gripped the United States during the Cold War beginning in 1946. Federal investigations caused many persons with Communist or left-leaning affiliations to lose their jobs, become blacklisted, or be jailed.<sup>[183]</sup> During the Cold War, although the United States collectively ignored the civil rights of Communists, other civil liberties – such as due process in law and separation of church and state – continued to be reinforced and even expanded.

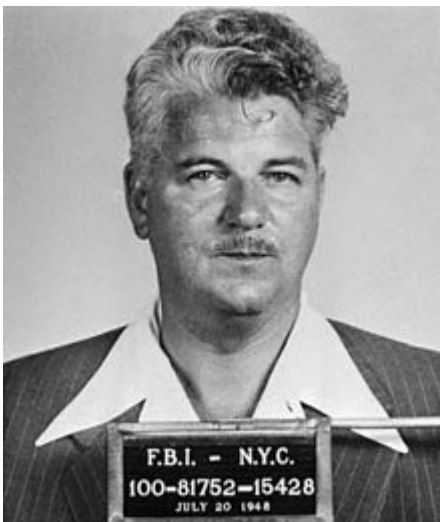
The ACLU was internally divided when it purged Communists from its leadership in 1940, and that ambivalence continued as it decided whether to defend alleged Communists during the late 1940s. Some ACLU leaders were anti-Communist, and felt that the ACLU should not defend any victims. Some ACLU leaders felt that Communists were entitled to free speech protections, and the ACLU should defend them. Other ACLU leaders were uncertain about the threat posed by Communists, and tried to establish a compromise between the two extremes.<sup>[184]</sup> This ambivalent state of affairs would last until 1954, when the civil liberties faction prevailed, leading to the resignation of most of the anti-Communist leaders.<sup>[21]</sup>

In 1947, President Truman issued Executive Order 9835, which created the Federal Loyalty Program. This program authorized the Attorney General to create a list of organizations which were deemed to be subversive.<sup>[185]</sup> Any association with these programs was ground for barring the person from employment.<sup>[186]</sup> Listed organizations were not notified that they were being considered for the list, nor did



they have an opportunity to present counterarguments; nor did the government divulge any factual basis for inclusion in the list.<sup>[187]</sup> Although ACLU leadership was divided on whether to challenge the Federal Loyalty Program, some challenges were successfully made.<sup>[187]</sup>

Also in 1947, the House Un-American Activities Committee (HUAC) subpoenaed ten Hollywood directors and writers, the *Hollywood Ten*, intending to ask them to identify Communists, but the witnesses refused to testify. All were imprisoned for contempt of Congress. The ACLU supported the appeals of several of the artists, but lost on appeal.<sup>[188]</sup> The Hollywood establishment panicked after the HUAC hearings, and created a blacklist which prohibited anyone with leftist associations from working. The ACLU supported legal challenges to the blacklist, but those challenges failed.<sup>[188]</sup> The ACLU was more successful with an education effort; the 1952 report *The Judges and the Judged*, prepared at the ACLU's direction in response to the blacklisting of actress Jean Muir, described the unfair and unethical actions behind the blacklisting process, and it helped gradually turn public opinion against McCarthyism.<sup>[189]</sup>



The ACLU chose not to support Eugene Dennis or other leaders of the US Communist Party, and they were all imprisoned, along with their attorneys

The federal government took direct aim at the US Communist Party in 1948 when it indicted its top twelve leaders in the Foley Square trial.<sup>[190]</sup> The case hinged on whether or not mere membership in a totalitarian political party was sufficient to conclude that members advocated the overthrow of the United States government.<sup>[190]</sup> The ACLU chose to not represent any of the defendants, and they were all found guilty and sentenced to three to five years in prison.<sup>[190]</sup> Their defense attorneys were all cited for contempt, went to prison and were disbarred.<sup>[180]</sup> When the government indicted additional party members, the defendants could not find attorneys to represent them.<sup>[180]</sup> Communists protested outside the courthouse; a bill to outlaw picketing of courthouses was introduced in Congress, and the ACLU supported the anti-picketing law.<sup>[180]</sup>

The ACLU, in a change of heart, supported the party leaders during their appeal process. The Supreme Court upheld the convictions in the *Dennis v. United States* decision by softening the free speech requirements from a "clear and present danger" test, to a "grave and probable" test.<sup>[191]</sup> The ACLU issued a public condemnation of the *Dennis* decision, and resolved to fight it.<sup>[191]</sup> One reason for the Supreme Court's support of Cold War legislation was the 1949 deaths of Supreme Court justices Frank Murphy and Wiley Rutledge, leaving Hugo Black and William O. Douglas as the only remaining civil libertarians on the Court.<sup>[192]</sup>

The *Dennis* decision paved the way for the prosecution of hundreds of other Communist party members.<sup>[193]</sup> The ACLU supported many of the Communists during their appeals (although most of the initiative originated with local ACLU affiliates, not the national headquarters) but most convictions were upheld.<sup>[193]</sup> The two California affiliates, in particular, felt the national ACLU headquarters was not supporting civil liberties strongly enough, and they initiated more cold war cases than the national headquarters did.<sup>[192]</sup>

The ACLU also challenged many loyalty oath requirements across the country, but the courts upheld most of the loyalty oath laws.<sup>[194]</sup> California ACLU affiliates successfully challenged the California state loyalty oath.<sup>[195]</sup> The Supreme Court, until 1957, upheld nearly every law which restricted the liberties of Communists.<sup>[196]</sup>

The ACLU, even though it scaled back its defense of Communists during the Cold War, still came under heavy criticism as a "front" for Communism. Critics included the American Legion, Senator Joseph McCarthy, the HUAC, and the FBI.<sup>[197]</sup> Several ACLU leaders were sympathetic to the FBI, and as a consequence, the ACLU rarely investigated any of the many complaints alleging abuse of power by the FBI during the Cold War.<sup>[198]</sup>

In 1950, Raymond L. Wise, ACLU board member 1933–1951, defended William Perl, one of the other spies embroiled in the atomic espionage cases (made famous by the execution of Julius Rosenberg and Ethel Rosenberg).<sup>[199]</sup>

## Organizational change

In 1950, the ACLU board of directors asked executive director Baldwin to resign, feeling that he lacked the organizational skills to lead the 9,000 (and growing) member organization. Baldwin objected, but a majority of the board elected to remove him from the position, and he was replaced by Patrick Murphy Malin.<sup>[200]</sup> Under Malin's guidance, membership tripled to 30,000 by 1955 – the start of a 24-year period of continual growth leading to 275,000 members in 1974.<sup>[201]</sup> Malin also presided over an expansion of local ACLU affiliates.<sup>[201]</sup>

The ACLU, which had been controlled by an elite of a few dozen New Yorkers, became more democratic in the 1950s. In 1951, the ACLU amended its bylaws to permit the local affiliates to participate directly in voting on ACLU policy decisions.<sup>[202]</sup> A bi-annual conference, open to the entire membership, was instituted in the same year, and in later decades it became a pulpit for activist members, who suggested new directions for the ACLU, including abortion rights, death penalty, and rights of the poor.<sup>[202]</sup>

## McCarthyism era

During the early 1950s, the ACLU continued to steer a moderate course through the Cold War. When leftist singer Paul Robeson was denied a passport in 1950, even though he was not accused of any illegal acts, the ACLU chose to not defend him.<sup>[203]</sup> The ACLU later reversed their stance, and supported William Worthy and Rockwell Kent in their passport confiscation cases, which resulted in legal victories in the late 1950s.<sup>[204]</sup>

In response to communist witch-hunts, many witnesses and employees chose to use the fifth amendment protection against self-incrimination to avoid divulging information about their political beliefs.<sup>[205]</sup> Government agencies and private organizations, in response, established policies which inferred communist party membership for anyone who invoked the fifth amendment.<sup>[206]</sup> The national ACLU was divided on whether to defend employees who had been fired merely for pleading the fifth amendment, but the New York affiliate successfully assisted teacher Harry Slochower in his Supreme Court case which reversed his termination.<sup>[207]</sup>

The fifth amendment issue became the catalyst for a watershed event in 1954, which finally resolved the ACLU's ambivalence by ousting the anti-communists from ACLU leadership.<sup>[208]</sup> In 1953, the anti-communists, led by Norman Thomas and James Fly, proposed a set of resolutions that inferred guilt of persons that invoked the fifth amendment.<sup>[202]</sup> These resolutions were the first that fell under the ACLU's new organizational rules permitting local affiliates to participate in the vote; the affiliates outvoted the national headquarters, and rejected the anti-communist



In the 1950s the ACLU chose to not support Paul Robeson and other leftist defendants, a decision that would be heavily criticized in the future.

resolutions.<sup>[209]</sup> Anti-communists leaders refused to accept the results of the vote, and brought the issue up for discussion again at the 1954 bi-annual convention.<sup>[210]</sup> ACLU member Frank Graham, president of the University of North Carolina, attacked the anti-communists with a counter-proposal, which stated that the ACLU "stand[s] against guilt by association, judgment by accusation, the invasion of privacy of personal opinions and beliefs, and the confusion of dissent with disloyalty."<sup>[210][211]</sup> The anti-communists continued to battle Graham's proposal, but were outnumbered by the affiliates. The anti-communists finally gave up and departed the board of directors in late 1954 and 1955, ending an eight-year reign of ambivalence within the ACLU leadership ranks.<sup>[212]</sup> Thereafter, the ACLU proceeded with firmer resolve against Cold War anti-communist legislation.<sup>[213]</sup> The period from the 1940 resolution (and the purge of Elizabeth Flynn) to the 1954 resignation of the anti-communist leaders is considered by many to be an era in which the ACLU abandoned its core principles.<sup>[213][214]</sup>

McCarthyism declined in late 1954 after television journalist Edward R. Murrow and others publicly chastised McCarthy.<sup>[215]</sup> The controversies over the Bill of Rights that were generated by the Cold War ushered in a new era in American Civil liberties. In 1954, in *Brown v. Board of Education*, the Supreme Court unanimously overturned state-sanctioned school segregation, and thereafter a flood of civil rights victories dominated the legal landscape.<sup>[216]</sup>

The Supreme Court handed the ACLU two key victories in 1957, in *Watkins v. United States* and *Yates v. United States*, both of which undermined the Smith Act and marked the beginning of the end of communist party membership inquiries.<sup>[217]</sup> In 1965, the Supreme Court produced some decisions, including *Lamont v. Postmaster General* (in which the plaintiff was Corliss Lamont, a former ACLU board member), which upheld fifth amendment protections and brought an end to restrictions on political activity.<sup>[218]</sup>

## 1960s

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The decade from 1954 to 1964 was the most successful period in the ACLU's history.<sup>[219]</sup> Membership rose from 30,000 to 80,000, and by 1965 it had affiliates in seventeen states.<sup>[219][220]</sup> During the ACLU's bi-annual conference in Colorado in 1964, the Supreme Court issued rulings on eight cases in which the ACLU was involved; the ACLU prevailed on seven of the eight.<sup>[221]</sup> The ACLU played a role in Supreme Court decisions reducing censorship of literature and arts, protecting freedom of association, prohibiting racial segregation, excluding religion from public schools, and providing due process protection to criminal suspects.<sup>[219]</sup> The ACLU's success arose from changing public attitudes; the American populace was more educated, more tolerant, and more willing to accept unorthodox behavior.<sup>[219]</sup>

## Separation of church and state

Legal battles concerning the separation of church and state originated in laws dating to 1938 which required religious instruction in school, or provided state funding for religious schools.<sup>[222]</sup> The Catholic church was a leading proponent of such laws; and the primary opponents (the "separationists") were the ACLU, Americans United for Separation of Church and State, and the American Jewish Congress.<sup>[222]</sup> The ACLU led the challenge in the 1947 *Everson v. Board of Education* case, in which Justice Hugo Black wrote "[t]he First Amendment has erected a wall between church and state.... That wall must be kept high and impregnable."<sup>[222][223][224]</sup> It was not clear that the Bill of Rights forbid state governments from supporting religious education, and strong legal arguments were made by religious proponents, arguing that the Supreme Court should not act as a "national school board", and that the Constitution did not govern social issues.<sup>[225]</sup> However, the ACLU and other advocates of church/state separation persuaded the Court to declare such activities unconstitutional.<sup>[225]</sup> Historian Samuel Walker writes that the ACLU's "greatest impact on American life" was its role in persuading the Supreme Court to "constitutionalize" so many public controversies.<sup>[225]</sup>

In 1948, the ACLU prevailed in the *McCullum v. Board of Education* case, which challenged public school religious classes taught by clergy paid for from private funds.<sup>[225]</sup> The ACLU also won cases challenging schools in New Mexico which were taught by clergy and had crucifixes hanging in the classrooms.<sup>[226]</sup> In the 1960s, the ACLU, in response to member insistence, turned its attention to in-class promotion of religion.<sup>[227]</sup> In 1960, 42 percent of American schools included Bible reading.<sup>[228]</sup> In 1962, the ACLU published a policy statement condemning in-school prayers, observation of religious holidays, and Bible reading.<sup>[227]</sup> The Supreme Court concurred with the ACLU's position, when it prohibited New York's in-school prayers in the 1962 *Engel v. Vitale* decision.<sup>[229]</sup> Religious factions across the country rebelled against the anti-prayer decisions, leading them to propose the School Prayer Constitutional Amendment, which declared in-school prayer legal.<sup>[230]</sup> The ACLU participated in a lobbying effort against the amendment, and the 1966 congressional vote on the amendment failed to obtain the required two-thirds majority.<sup>[230]</sup>



Supreme Court justice Hugo Black often endorsed the ACLU's position on the separation of church and state

However, not all cases were victories; ACLU lost cases in 1949 and 1961 which challenged state laws requiring commercial businesses to close on Sunday, the Christian Sabbath.<sup>[226]</sup> The Supreme Court has never overturned such laws, although some states subsequently revoked many of the laws under pressure from commercial interests.<sup>[226]</sup>

## Freedom of expression

During the 1940s and 1950s, the ACLU continued its battle against censorship of art and literature.<sup>[231]</sup> In 1948, the New York affiliate of the ACLU received mixed results from the Supreme Court, winning the appeal of Carl Jacob Kunz, who was convicted for speaking without a police permit, but losing the appeal of Irving Feiner who was arrested to prevent a breach of the peace, based on his oration denouncing president Truman and the American Legion.<sup>[232]</sup> The ACLU lost the case of Joseph Beauharnais, who was arrested for group libel when he distributed literature impugning the character of African Americans.<sup>[233]</sup>

Cities across America routinely banned movies because they were deemed to be "harmful", "offensive", or "immoral" – censorship which was validated by the 1915 *Mutual v. Ohio* Supreme Court decision which held movies to be mere commerce, undeserving of first amendment protection.<sup>[234]</sup> The film *The Miracle* was banned in New York in 1951, at the behest of the Catholic Church, but the ACLU supported the film's distributor in an appeal of the ban, and won a major victory in the 1952 decision *Joseph Burstyn, Inc. v. Wilson*.<sup>[234]</sup> The Catholic Church led efforts throughout the 1950s attempting to persuade local prosecutors to ban various books and movies, leading to conflict with the ACLU when the ACLU published its statement condemning the church's tactics.<sup>[235]</sup> Further legal actions by the ACLU successfully defended films such as *M* and *la Ronde*, leading the eventual dismantling of movie censorship.<sup>[234][236]</sup> Hollywood continued employing self-censorship with its own Production Code, but in 1956 the ACLU called on Hollywood to abolish the Code.<sup>[237]</sup>

The ACLU defended beat generation artists, including Allen Ginsberg who was prosecuted for his poem "Howl"; and – in an unorthodox case – the ACLU helped a coffee house regain its restaurant license which was revoked because its Beat customers were allegedly disturbing the peace and quiet of the neighborhood.<sup>[238]</sup>

The ACLU lost an important press censorship case when, in 1957, the Supreme Court upheld the obscenity conviction of publisher Samuel Roth for distributing adult magazines.<sup>[239]</sup> As late as 1953, books such as Tropic of Cancer and From Here to Eternity were still banned.<sup>[231]</sup> But public standards rapidly became more liberal though the 1960s, and obscenity was notoriously difficult to define, so by 1971 prosecutions for obscenity had halted.<sup>[221][231]</sup>

## Racial discrimination

A major aspect of civil liberties progress after World War II was the undoing centuries of racism in federal, state, and local governments – an effort generally associated with the civil rights movement.<sup>[240]</sup> Several civil liberties organizations worked together for progress, including the National Association for the Advancement of Colored People (NAACP), the ACLU, and the American Jewish Congress.<sup>[240]</sup> The NAACP took primary responsibility for Supreme Court cases (often led by lead NAACP attorney Thurgood Marshall), with the ACLU focusing on police misconduct, and supporting the NAACP with amicus briefs.<sup>[240]</sup> The NAACP achieved a key victory in 1950 with the Henderson v. United States decision that ended segregation in interstate bus and rail transportation.<sup>[240]</sup>

In 1954, the ACLU filed an amicus brief in the case of Brown v. Board of Education, which led to the ban on racial segregation in US public schools.<sup>[241]</sup> Southern states instituted a McCarthyism-style witch-hunt against the NAACP, attempting to force it to disclose membership lists. The ACLU's fight against racism was not limited to segregation; in 1964 the ACLU provided key support to plaintiffs, primarily lower-income urban residents, in Reynolds v. Sims, which required states to establish the voting districts in accordance with the "one person, one vote" principle.<sup>[242]</sup>

## Police misconduct

The ACLU regularly tackled police misconduct issues, starting with the 1932 case Powell v. Alabama (right to an attorney), and including 1942's Betts v. Brady (right to an attorney), and 1951's Rochin v. California (involuntary stomach pumping).<sup>[218]</sup> In the late 1940s, several ACLU local affiliates established permanent committees to address policing issues.<sup>[243]</sup> During the 1950s and 1960s, the ACLU was responsible for substantially advancing the legal protections against police misconduct.<sup>[244]</sup> The Philadelphia affiliate was responsible for causing the City of Philadelphia, in 1958, to create the nation's first civilian police review board.<sup>[245]</sup> In 1959, the Illinois affiliate published the first report in the nation, Secret Detention by the Chicago Police, which documented unlawful detention by police.<sup>[246]</sup>

Some of the most well known ACLU successes came in the 1960s, when the ACLU prevailed in a string of cases limiting the power of police to gather evidence; in 1961's Mapp v. Ohio, the Supreme court required states to obtain a warrant before searching a person's home.<sup>[247]</sup> The Gideon v. Wainwright decision in 1963 provided legal representation to indigents.<sup>[248]</sup> In 1964, the ACLU persuaded the Court, in Escobedo v. Illinois, to permit suspects to have an attorney present during questioning.<sup>[249]</sup> And, in 1966, Miranda v. Arizona federal decision required police to notify suspects of their constitutional rights, which was later extended to juveniles in the following year's in re Gault (1967) federal ruling.<sup>[250]</sup> Although many law enforcement officials criticized the ACLU for expanding the rights of suspects, police officers also used the services of the ACLU. For example, when the ACLU represented New York City policemen in their lawsuit which objected to searches of their workplace lockers.<sup>[251]</sup> In the late 1960s, civilian review boards in New York City and Philadelphia were abolished, over the ACLU's objection.<sup>[252]</sup>

## Civil liberties revolution of the 1960s

The 1960s was a tumultuous era in the United States, and public interest in civil liberties underwent an explosive growth.<sup>[253]</sup> Civil liberties actions in the 1960s were often led by young people, and often employed tactics such as sit ins and marches. Protests were often peaceful, but sometimes employed militant tactics.<sup>[254]</sup> The ACLU played a central role in all major civil liberties debates of the 1960s, including new fields such as gay rights, prisoner's rights, abortion, rights of the poor, and the death penalty.<sup>[253]</sup> Membership in the ACLU increased from 52,000 at the beginning of the decade, to 104,000 in 1970.<sup>[255]</sup> In 1960, there were affiliates in seven states, and by 1974 there were affiliates in 46 states.<sup>[255][256]</sup> During the 1960s, the ACLU underwent a major transformation tactics; it shifted emphasis from legal appeals (generally involving amicus briefs submitted to the Supreme Court) to direct representation of defendants when they were initially arrested.<sup>[255]</sup> At the same time, the ACLU transformed its style from "disengaged and elitist" to "emotionally engaged".<sup>[257]</sup> The ACLU published a breakthrough document in 1963, titled *How Americans Protest*, which was borne of frustration with the slow progress in battling racism, and which endorsed aggressive, even militant protest techniques.<sup>[258]</sup>

African-American protests in the South accelerated in the early 1960s, and the ACLU assisted at every step. After four African-American college students staged a sit-in in a segregated North Carolina department store, the sit-in movement gained momentum across the United States.<sup>[259]</sup> During 1960–61, the ACLU defended black students arrested for demonstrating in North Carolina, Florida, and Louisiana.<sup>[260]</sup> The ACLU also provided legal help for the Freedom Rides in 1961, the integration of the University of Mississippi, the Birmingham campaign in 1963, and the 1964 Freedom Summer.<sup>[260]</sup>

The NAACP was responsible for managing most sit-in related cases that made it to the Supreme Court, winning nearly every decision.<sup>[261]</sup> But it fell to the ACLU and other legal volunteer efforts to provide legal representation to hundreds of protestors – white and black – who were arrested while protesting in the South.<sup>[261]</sup> The ACLU joined with other civil liberties groups to form the Lawyers Constitutional Defense Committee (LCDC) which subsequently provided legal representation to many of the protesters.<sup>[262]</sup> The ACLU provided the majority of the funding for the LCDC.<sup>[263]</sup>

In 1964, the ACLU opened up a major office in Atlanta, Georgia, dedicated to serving Southern issues.<sup>[264]</sup> Much of the ACLU's progress in the South was due to Charles Morgan Jr., the charismatic leader of the Atlanta office. He was responsible for desegregating juries (*Whitus v. Georgia*), desegregating prisons (*Lee v. Washington*), and reforming election laws.<sup>[265]</sup> The ACLU's southern office also defended African-American congressman Julian Bond in *Bond v. Floyd*, when the Georgia congress refused to formally induct Bond into the legislature.<sup>[266]</sup> Another widely publicized case defended by Morgan was that of Army doctor Howard Levy, who was convicted of refusing to train Green Berets. Despite raising the defense that the Green Berets were committing war crimes in Vietnam, Levy lost on appeal in *Parker v. Levy*, 417 US 733 (1974).<sup>[267]</sup>

In 1969, the ACLU won a major victory for free speech, when it defended Dick Gregory after he was arrested for peacefully protesting against the mayor of Chicago. The court ruled in *Gregory v. Chicago* that a speaker cannot be arrested for disturbing the peace when the hostility is initiated by someone in the audience, as that would amount to a "heckler's veto".<sup>[268]</sup>

## Vietnam War

The ACLU was at the center of several legal aspects of the Vietnam war: defending draft resisters, challenging the constitutionality of the war, the potential impeachment of Richard Nixon, and the use of national security concerns to preemptively  censor newspapers.

David J. Miller was the first person prosecuted for burning his draft card. The New York affiliate of the ACLU appealed his 1965 conviction (367 F.2d 72: *United States of America v. David J. Miller*, 1966), but the Supreme Court refused to hear the appeal. Two years later, the Massachusetts affiliate took the card-burning case of David O'Brien to the Supreme Court, arguing that the act of burning was a form of symbolic speech, but the Supreme Court upheld the conviction in *United States v. O'Brien*, 391 US 367 (1968).<sup>[269]</sup> Thirteen-year-old Junior High student Mary Tinker wore a black armband to school in 1965 to object to the war, and was suspended from school. The ACLU appealed her case to the Supreme Court and won a victory in *Tinker v. Des Moines Independent Community School District*. This critical case established that the government may not establish "enclaves" such as schools or prisons where all rights are forfeit.<sup>[269]</sup>



The ACLU contends that the Bill of Rights protects individuals who burn the US flag as a form of expression

The ACLU defended Sydney Street, who was arrested for burning an American flag to protest the reported assassination of civil rights leader James Meredith. In the *Street v. New York* decision, the court agreed with the ACLU that encouraging the country to abandon one of its national symbols was constitutionally protected form of expression.<sup>[270]</sup> The ACLU successfully defended Paul Cohen, who was arrested for wearing a jacket with the words "fuck the draft" on its back, while he walked through the Los Angeles courthouse. The Supreme Court, in *Cohen v. California*, held that the vulgarity of the wording was essential to convey the intensity of the message.<sup>[271]</sup>

Non-war related free speech rights were also advanced during the Vietnam war era; in 1969, the ACLU defended a Ku Klux Klan member who advocated long-term violence against the government, and the Supreme Court concurred with the ACLU's argument in the landmark decision *Brandenburg v. Ohio*, which held that only speech which advocated *imminent* violence could be outlawed.<sup>[271]</sup>

A major crisis gripped the ACLU in 1968 when a debate erupted over whether to defend Benjamin Spock and the Boston Five against federal charges that they encouraged draftees to avoid the draft. The ACLU board was deeply split over whether to defend the activists; half the board harbored anti-war sentiments, and felt that the ACLU should lend its resources to the cause of the Boston Five. The other half of the board believed that civil liberties were not at stake, and the ACLU would be taking a political stance. Behind the debate was the longstanding ACLU tradition that it was politically impartial, and provided legal advice without regard to the political views of the defendants. The board finally agreed to a compromise solution that permitted the ACLU to defend the anti-war activists, without endorsing the activist's political views. Some critics of the ACLU suggest that the ACLU became a partisan political organization following the Spock case.<sup>[22]</sup> After the Kent State shootings in 1970, ACLU leaders took another step towards politics by passing a resolution condemning the Vietnam War. The resolution was based in a variety of legal arguments, including civil liberties violations and a claim that the war was illegal.<sup>[272]</sup>

Also in 1968, the ACLU held an internal symposium to discuss its dual roles: providing "direct" legal support (defense for accused in their initial trial, benefiting only the individual defendant), and appellate support (providing amicus briefs during the appeal process, to establish widespread legal precedent).<sup>[273]</sup> Historically, the ACLU was known for its appellate work which led to landmark Supreme Court decisions, but by 1968, 90% of the ACLU's legal activities involved direct representation. The symposium concluded that both roles were valid for the ACLU.<sup>[273]</sup>



## 1970s and 1980s

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### Watergate era

The ACLU supported *The New York Times* in its 1971 suit against the government, requesting permission to publish the Pentagon papers. The court upheld the *Times* and ACLU in the *New York Times Co. v. United States* ruling, which held that the government could not preemptively prohibit the publication of classified information and had to wait until after it was published to take action.<sup>[274]</sup>

On September 30, 1973, the ACLU became first national organization to publicly call for the impeachment and removal from office of President Richard Nixon.<sup>[275]</sup> Six civil liberties violations were cited as grounds: “specific proved violations of the rights of political dissent; usurpation of Congressional war-making powers; establishment of a personal secret police which committed crimes; attempted interference in the trial of Daniel Ellsberg; distortion of the system of justice and perversion of other Federal agencies.”<sup>[276]</sup> One month later, after the House of Representatives began an impeachment inquiry against him, the organization released a 56-page handbook detailing “17 things citizens could do to bring about the impeachment of President Nixon.”<sup>[277]</sup> This resolution, when placed beside the earlier resolution opposing the Vietnam war, convinced many ACLU critics, particularly conservatives, that the organization had transformed into a liberal political organization.<sup>[278]</sup>



The ACLU was the first national organization to call for the impeachment of Richard Nixon

### Enclaves and new civil liberties

The decade from 1965 to 1975 saw an expansion of the field of civil liberties. Administratively, the ACLU responded by appointing Aryeh Neier to take over from Pemberton as executive director in 1970. Neier embarked on an ambitious program to expand the ACLU; he created the ACLU Foundation to raise funds, and he created several new programs to focus the ACLU's legal efforts. By 1974, ACLU membership had reached 275,000.<sup>[279]</sup>

During those years, the ACLU worked to expand legal rights in three directions: new rights for persons within government-run "enclaves", new rights for members of what it called "victim groups", and privacy rights for citizens in general.<sup>[280]</sup> At the same time, the organization grew substantially. The ACLU helped develop the field of constitutional law that governs "enclaves", which are groups of persons that live in conditions under government control. Enclaves include mental hospital patients, members of the military, and prisoners, and students (while at school). The term enclave originated with Supreme Court justice Abe Fortas's use of the phrase "schools may not be enclaves of totalitarianism" in the *Tinker v. Des Moines* decision.<sup>[281]</sup>

The ACLU initiated the legal field of student's rights with the *Tinker v. Des Moines* case, and expanded it with cases such as *Goss v. Lopez* which required schools to provide students an opportunity to appeal suspensions.<sup>[282]</sup>



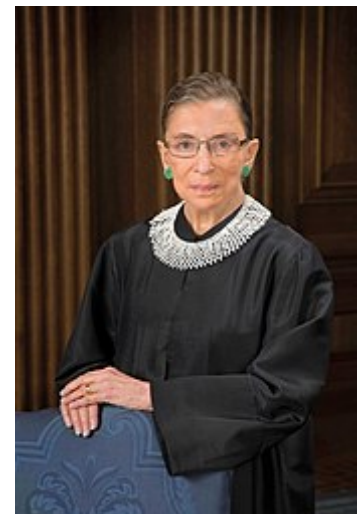
As early as 1945, the ACLU had taken a stand to protect the rights of the mentally ill, when it drafted a model statute governing mental commitments.<sup>[283]</sup> In the 1960s, the ACLU opposed involuntary commitments, unless it could be demonstrated that the person was a danger to himself or the community.<sup>[283]</sup> In the landmark 1975 *O'Connor v. Donaldson* decision the ACLU represented a non-violent mental health patient who had been confined against his will for 15 years, and persuaded the Supreme Court to rule such involuntary confinements illegal.<sup>[283]</sup> The ACLU has also defended the rights of mentally ill individuals who are not dangerous, but who create disturbances. The New York chapter of the ACLU defended Billie Boggs, a mentally ill woman who exposed herself and defecated and urinated in public.<sup>[284]</sup>

Prior to 1960, prisoners had virtually no recourse to the court system, because courts considered prisoners to have no civil rights.<sup>[285]</sup> That changed in the late 1950s, when the ACLU began representing prisoners that were subject to police brutality, or deprived of religious reading material.<sup>[286]</sup> In 1968, the ACLU successfully sued to desegregate the Alabama prison system; and in 1969, the New York affiliate adopted a project to represent prisoners in New York prisons. Private attorney Phil Hirschkop discovered degrading conditions in Virginia prisons following the Virginia State Penitentiary strike, and won an important victory in 1971's *Landman v. Royster* which prohibited Virginia from treating prisoners in inhumane ways.<sup>[287]</sup> In 1972, the ACLU consolidated several prison rights efforts across the nation and created the National Prison Project. The ACLU's efforts led to landmark cases such as *Ruiz v. Estelle* (requiring reform of the Texas prison system) and in 1996 US Congress enacted the Prison Litigation Reform Act (PLRA) which codified prisoners' rights.

## Victim groups

The ACLU, during the 1960s and 1970s, expanded its scope to include what it referred to as "victim groups", namely women, the poor, and homosexuals.<sup>[289]</sup> Heeding the call of female members, the ACLU endorsed the Equal Rights Amendment in 1970<sup>[290]</sup> and created the Women's Rights Project in 1971. The Women's Rights Project dominated the legal field, handling more than twice as many cases as the National Organization for Women, including breakthrough cases such as *Reed v. Reed*, *Frontiero v. Richardson*, and *Taylor v. Louisiana*.<sup>[291]</sup>

ACLU leader Harriet Pilpel raised the issue of the rights of homosexuals in 1964, and two years later the ACLU formally endorsed gay rights. In 1972, ACLU cooperating attorneys in Oregon filed the first federal civil rights case involving a claim of unconstitutional discrimination against a gay or lesbian public school teacher. The US District Court held that a state statute that authorized school districts to fire teachers for "immorality" was unconstitutionally vague, and awarded monetary damages to the teacher. The court refused to reinstate the teacher, and the Ninth Circuit Court of Appeals affirmed that refusal by a 2 to 1 vote. *Burton v. Cascade School District*, 353 F. Supp. 254 (D. Or. 1972), aff'd 512 F.2d 850 (1975). In 1973, the ACLU created the Sexual Privacy Project (later the Gay and Lesbian Rights Project) which combated discrimination against homosexuals.<sup>[292]</sup> This support continued into the 2000s. For example, after then-Senator Larry Craig was arrested for soliciting sex in a public restroom in 2007, the ACLU wrote an amicus brief for Craig, saying that sex between consenting adults in public places was protected under privacy rights.<sup>[293]</sup>



Ruth Bader Ginsburg co-founded the ACLU's Women's Rights Project in 1971.<sup>[288]</sup> She was later appointed to the Supreme Court of the United States by President Bill Clinton.

Rights of the poor was another area that was expanded by the ACLU. In 1966 and again in 1968, activists within the ACLU encouraged the organization to adopt a policy overhauling the welfare system, and guaranteeing low-income families a baseline income; but the ACLU board did not approve the proposals.<sup>[294]</sup> However, the ACLU played a key role in the 1968 *King v. Smith* decision, where the Supreme Court ruled that welfare benefits for children could not be denied by a state simply because the mother cohabited with a boyfriend.<sup>[294]</sup>

## Reproductive Freedom Project

### Mission

The Reproductive Freedom Project was founded by the ACLU in 1974 to defend individuals who are obstructed by the government in cases involving access to abortions, birth control, or sexual education. According to its mission statement, the project works to provide access to any and all reproductive health care for individuals.<sup>[295]</sup> The project also opposes abstinence-only sex education, arguing that it promotes an unwillingness to use contraceptives.<sup>[296][297][298]</sup>

### Accomplishments

In 1929 the ACLU defended Margaret Sanger's right to educate the general public about forms of birth control. In 1980, the Project filed *Poe v. Lynchburg Training School & Hospital* which attempted to overturn *Buck v. Bell*, the 1927 US Supreme Court decision which had allowed the Commonwealth of Virginia to legally sterilize persons it deemed to be mentally defective without their permission. Though the Court did not overturn *Buck v. Bell*, in 1985 the state agreed to provide counseling and medical treatment to the survivors among the 7,200 to 8,300 people sterilized between 1927 and 1979.<sup>[299]</sup> In 1977, the ACLU took part in and litigated *Walker v. Pierce*, the federal circuit court case that led to federal regulations to prevent Medicaid patients from being sterilized without their knowledge or consent.<sup>[300]</sup> In 1981–1990, the Project litigated *Hodgson v. Minnesota*, which resulted in the Supreme Court overturning a state law requiring both parents to be notified before a minor could legally have an abortion.<sup>[301]</sup> In the 1990s, the Project provided legal assistance and resource kits to those who were being challenged for educating about sexuality and AIDS. In 1995, the Project filed an amicus brief in *Curtis v. School Committee of Falmouth*, which allowed for the distribution of condoms in a public school.<sup>[302]</sup>

### Initiatives

The Reproductive Freedom Project focuses on three ideas: (1) to "reverse the shortage of trained abortion providers throughout the country" (2) to "block state and federal welfare "reform" proposals that cut off benefits for children who are born to women already receiving welfare, unmarried women, or teenagers"<sup>[303]</sup> and (3) to "stop the elimination of vital reproductive health services as a result of hospital mergers and health care networks".<sup>[304]</sup> The Project proposes to achieve these goals through legal action and litigation.

### Privacy

The right to privacy is not explicitly identified in the US Constitution, but the ACLU led the charge to establish such rights in the indecisive *Poe v. Ullman* (1961) case, which addressed a state statute outlawing contraception. The issue arose again in *Griswold v. Connecticut* (1965), and this time the Supreme Court adopted the ACLU's position, and formally declared a right to privacy.<sup>[305]</sup> The New York affiliate of the

ACLU pushed to eliminate anti-abortion laws starting in 1964, a year before *Griswold* was decided, and in 1967 the ACLU itself formally adopted the right to abortion as a policy.<sup>[306]</sup> The ACLU led the defense in *United States v. Vuitch* (1971) which expanded the right of physicians to determine when abortions were necessary.<sup>[307]</sup> These efforts culminated in one of the most controversial Supreme Court decisions, *Roe v. Wade* (1973), which legalized abortion in the first three months of pregnancy.<sup>[308]</sup> The ACLU successfully argued against state bans on interracial marriage, in the case of *Loving v. Virginia* (1967).

Related to privacy, the ACLU engaged in several battles to ensure that government records about individuals were kept private, and to give individuals the right to review their records. The ACLU supported several measures, including the 1970 Fair Credit Reporting Act, which required credit agencies to divulge credit information to individuals; the 1973 Family Educational Rights and Privacy Act, which provided students the right to access their records; and the 1974 Privacy Act, which prevented the federal government from disclosing personal information without good cause.<sup>[309]</sup>

## Allegations of bias

In the early 1970s, conservatives and libertarians began to criticize the ACLU for being too political and too liberal.<sup>[310]</sup> Legal scholar Joseph W. Bishop wrote that the ACLU's trend to partisanship started with its defense of Spock's anti-war protests.<sup>[311]</sup> Critics also blamed the ACLU for encouraging the Supreme Court to embrace judicial activism.<sup>[312]</sup> Critics claimed that the ACLU's support of controversial decisions like *Roe v. Wade* and *Griswold v. Connecticut* violated the intention of the authors of the Bill of Rights.<sup>[312]</sup> The ACLU became an issue in the 1988 presidential campaign, when Republican candidate George H. W. Bush accused Democratic candidate Michael Dukakis (a member of the ACLU) of being a "card carrying member of the ACLU".<sup>[313]</sup>

## The Skokie case

It is the policy of the ACLU to support the civil liberties of defendants regardless of their ideological stance. The ACLU takes pride in defending individuals with unpopular viewpoints, such as George Wallace, George Lincoln Rockwell, and KKK members.<sup>[314]</sup> The ACLU has defended American Nazis many times, and their actions often brought protests, particularly from American Jews.<sup>[315]</sup>

In 1977, a small group of American Nazis, led by Frank Collin, applied to the town of Skokie, Illinois, for permission to hold a demonstration in the town park. Skokie at the time had a majority population of Jews, totaling 40,000 of 70,000 citizens, some of whom were survivors of Nazi concentration camps. Skokie refused to grant permission, and an Illinois judge supported Skokie and prohibited the demonstration.<sup>[74]</sup> Skokie immediately passed three ordinances aimed at preventing the group from meeting in Skokie. The ACLU assisted Collin and appealed to federal court.<sup>[74]</sup> The appeal dragged on for a year, and the ACLU eventually prevailed in *Smith v. Collin*, 447 F. Supp. 676.<sup>[316]</sup>

The Skokie case was heavily publicized across America, partially because Jewish groups such as the Jewish Defense League and Anti Defamation League strenuously objected to the demonstration, leading many members of the ACLU to cancel their memberships.<sup>[74]</sup> The Illinois affiliate of the ACLU lost about 25% of its membership and nearly one-third of its budget.<sup>[317][318][319][320]</sup> The financial strain from the controversy led to layoffs at local chapters.<sup>[321]</sup> After the membership crisis died down, the ACLU sent out a fund-raising appeal which explained their rationale for the Skokie case, and raised over \$500,000 (\$2,135,365 in 2020 dollars).<sup>[322][323]</sup>

## Reagan era

The inauguration of Ronald Reagan as president in 1981, ushered in an eight-year period of conservative leadership in the US government. Under Reagan's leadership, the government pushed a conservative social agenda.

Fifty years after the Scopes trial, the ACLU found itself fighting another classroom case, the Arkansas 1981 creationism statute, which required schools to teach the biblical account of creation as a scientific alternative to evolution. The ACLU won the case in the McLean v. Arkansas decision.<sup>[324]</sup>

In 1982, the ACLU became involved in a case involving the distribution of child pornography (New York v. Ferber). In an amicus brief, the ACLU argued that child pornography that violates the three prong obscenity test should be outlawed, but that the law in question was overly restrictive because it outlawed artistic displays and otherwise non-obscene material. The court did not adopt the ACLU's position.<sup>[325]</sup>

During the 1988 presidential election, Vice President George H. W. Bush noted that his opponent Massachusetts Governor Michael Dukakis had described himself as a "card-carrying member of the ACLU" and used that as evidence that Dukakis was "a strong, passionate liberal" and "out of the mainstream".<sup>[326]</sup> The phrase subsequently was used by the organization in an advertising campaign.<sup>[327]</sup>

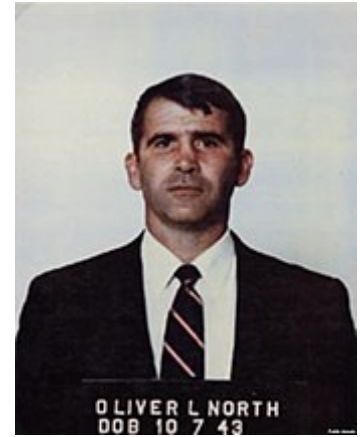
## Post–Cold War era

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### 1990 to 2000

In 1990, the ACLU defended Lieutenant Colonel Oliver North,<sup>[328]</sup> whose conviction was tainted by coerced testimony – a violation of his fifth amendment rights – during the Iran–Contra affair, where Oliver North was involved in illegal weapons sales to Iran in order to illegally fund the Contra guerillas.<sup>[329][330]</sup>

In 1997, ruling unanimously in the case of Reno v. American Civil Liberties Union, the Supreme Court voted down anti-indecency provisions of the Communications Decency Act (the CDA), finding they violated the freedom of speech provisions of the First Amendment. In their decision, the Supreme Court held that the CDA's "use of the undefined terms 'indecent' and 'patently offensive' will provoke uncertainty among speakers about how the two standards relate to each other and just what they mean."<sup>[331]</sup> In 2000, Marvin Johnson, a legislative counsel for the ACLU, stated that proposed anti-spam legislation infringed on free speech by denying anonymity and by forcing spam to be labeled as such, "Standardized labeling is compelled speech." He also stated, "It's relatively simple to click and delete."<sup>[332]</sup> The debate found the ACLU joining with the Direct Marketing Association and the Center for Democracy and Technology in 2000 in criticizing a bipartisan bill in the House of Representatives. As early as 1997, the ACLU had taken a strong position that nearly all spam legislation was improper, although it has supported "opt-out" requirements in some cases. The ACLU opposed the 2003 CAN-SPAM act<sup>[333]</sup> suggesting that it could have a chilling effect on speech in cyberspace. It has been criticized for this position.



The ACLU defended Oliver North in 1990, arguing that his conviction was tainted by coerced testimony.



A California affiliate of the ACLU sued to remove the Mt. Soledad Cross from public lands in San Diego

In November 2000, 15 African-American residents of Hearne, Texas, were indicted on drug charges after being arrested in a series of "drug sweeps". The ACLU filed a class-action lawsuit, Kelly v. Paschall, on their behalf, alleging that the arrests were unlawful. The ACLU contended that 15 percent of Hearne's male African-American population aged 18 to 34 were arrested based only on the "uncorroborated word of a single unreliable confidential informant coerced by police to make cases." On May 11, 2005, the ACLU and Robertson County announced a confidential settlement of the lawsuit, an outcome which "both sides stated that they were satisfied with." The District Attorney dismissed the charges against the plaintiffs of the suit.<sup>[334]</sup> The 2009 film American Violet depicts this case.<sup>[335]</sup>

In 2000, the ACLU's Massachusetts affiliate represented the North American Man Boy Love Association (NAMBLA), on first amendment grounds, in the Curley v. NAMBLA wrongful death civil suit. The organization was sued because a man who raped and murdered a child had visited the NAMBLA website.<sup>[328]</sup> Also in 2000, the ACLU lost the Boy Scouts of America v. Dale case, which had asked the Supreme Court to require the Boy Scouts of America to drop their policy of prohibiting homosexuals from becoming Boy Scout leaders.<sup>[336]</sup>

## Twenty-first century



The ACLU submitted arguments supporting Rush Limbaugh's right to privacy during the criminal investigation of his alleged drug use

During the 2004 trial regarding allegations of Rush Limbaugh's drug abuse, the ACLU argued that his privacy should not have been compromised by allowing law enforcement examination of his medical records.<sup>[78]</sup> In June 2004, the school district in Dover, Pennsylvania, required that its high school biology students listen to a statement which asserted that the theory of evolution is not fact and mentioning intelligent design as an alternative theory. Several parents called the ACLU to complain, because they believed that the school was promoting a religious idea in the classroom and violating the Establishment Clause of the First Amendment. The ACLU, joined by Americans United for Separation of Church and State, represented the parents in a lawsuit against the school district. After a lengthy trial, Judge John E. Jones III ruled in favor of the parents in the Kitzmiller v. Dover Area School District decision, finding that intelligent design is not science and permanently forbidding the Dover school system from teaching intelligent design in science classes.<sup>[337]</sup>

In April 2006, Edward Jones and the ACLU sued the City of Los Angeles, on behalf of Robert Lee Purrie and five other homeless people, for the city's violation of the 8th and 14th Amendments to the US Constitution, and Article I, sections 7 and 17 of the California Constitution (supporting due process and equal protection, and prohibiting cruel and unusual punishment). The Court ruled in favor of the ACLU, stating that, "the LAPD cannot arrest people for sitting, lying, or sleeping on public sidewalks in Skid Row." Enforcement of section 41.18(d) 24 hours a day against persons who have nowhere else to sit, lie, or sleep, other than on public streets and sidewalks, is breaking these amendments. The Court said that the anti-camping ordinance is "one of the most restrictive municipal laws regulating public spaces in the United States". Jones and the ACLU wanted a compromise in which the LAPD is barred from enforcing section 41.18(d) (arrest, seizure, and imprisonment) in Skid Row between the hours of 9:00 p.m. and 6:30 am. The compromise plan permitted the homeless to sleep on the sidewalk, provided they are not "within 10 feet of any business or residential entrance" and only between these hours. One of the motivations for the compromise was the shortage of space in the prison system. Downtown development business interests and the Central City Association (CCA) were against the compromise. Police Chief William Bratton said the case had slowed the police effort to fight crime and clean up Skid Row, and that when he was allowed to clean up Skid Row, real

estate profited.<sup>[338]</sup> On September 20, 2006, the Los Angeles City Council voted to reject the compromise.<sup>[339]</sup> On October 3, 2006, police arrested Skid Row's transients for sleeping on the streets for the first time in months.<sup>[340][341]</sup>

## Free speech

In 2006, the ACLU of Washington State joined with a pro-gun rights organization, the Second Amendment Foundation, and prevailed in a lawsuit against the North Central Regional Library District (NCRL) in Washington for its policy of refusing to disable restrictions upon an adult patron's request. Library patrons attempting to access pro-gun web sites were blocked, and the library refused to remove the blocks.<sup>[342]</sup> In 2012, the ACLU sued the same library system for refusing to temporarily, at the request of an adult patron, disable Internet filters which blocked access to Google Images.<sup>[343]</sup>

In 2006, the ACLU challenged a Missouri law that prohibited picketing outside of veterans' funerals. The suit was filed in support of the Westboro Baptist Church and Shirley Phelps-Roper, who were threatened with arrest.<sup>[344][345]</sup> The Westboro Baptist Church is well known for their picket signs that contain messages such as, "God Hates Fags", "Thank God for Dead Soldiers", and "Thank God for 9/11". The ACLU issued a statement calling the legislation a "law that infringes on Shirley Phelps-Roper's rights to religious liberty and free speech".<sup>[346]</sup> The ACLU prevailed in the lawsuit.<sup>[347]</sup>

On June 21, 2018, a leaked memo showed that the ACLU has explicitly endorsed the view that free speech can harm marginalized groups by undermining their civil rights. "Speech that denigrates such groups can inflict serious harms and is intended to and often will impede progress toward equality," the ACLU declared in guidelines governing case selection and "Conflicts Between Competing Values or Priorities."<sup>[348]</sup> The ACLU had previously defended the free speech rights of the KKK and Nazis.<sup>[349][350][348][55]</sup>

The ACLU argued that a Massachusetts law, later unanimously struck down by the Supreme Court, was constitutional.<sup>[351]</sup> The law prohibited sidewalk counselors from approaching women outside abortion facilities and offering them alternatives to abortion but allowed escorts to speak with them and accompany them into the building.<sup>[352]</sup> In overturning the law in McCullen v. Coakley, the Supreme Court unanimously ruled that it violated the counselors' freedom of speech and that it was viewpoint discrimination.

In 2009, the ACLU filed an amicus brief in Citizens United v. FEC, arguing that the Bipartisan Campaign Reform Act of 2002 violated the First Amendment right to free speech by curtailing political speech.<sup>[353]</sup> This stance on the landmark Citizens United case caused considerable disagreement within the organization, resulting in a discussion about its future stance during a quarterly board meeting in 2010.<sup>[354]</sup> On March 27, 2012, the ACLU reaffirmed its stance in support of the Supreme Court's Citizens United ruling, at the same time voicing support for expanded public financing of election campaigns and stating the organization would firmly oppose any future constitutional amendment limiting free speech.<sup>[355]</sup>

## LGBTQ issues

In March 2004, the ACLU, along with Lambda Legal and the National Center for Lesbian Rights, sued the state of California on behalf of six same-sex couples who were denied marriage licenses. That case, Woo v. Lockyer, was eventually consolidated into In re Marriage Cases, the California Supreme Court case which led to same-sex marriage being available in that state from June 16, 2008, until Proposition 8 was passed on November 4, 2008.<sup>[356]</sup> The ACLU, Lambda Legal and the National Center for Lesbian Rights then challenged Proposition 8<sup>[357]</sup> and won.<sup>[358]</sup>



In 2010, the ACLU of Illinois was inducted into the Chicago Gay and Lesbian Hall of Fame as a Friend of the Community.<sup>[359]</sup>

In 2011, the ACLU started its Don't Filter Me project, countering LGBT-related Internet censorship in public schools in the United States.<sup>[360]</sup>

On January 7, 2013, the ACLU reached a settlement with the federal government in Collins v. United States that provided for the payment of full separation pay to servicemembers discharged under "don't ask, don't tell" since November 10, 2004, who had previously been granted only half that.<sup>[361]</sup> Some 181 were expected to receive about \$13,000 each.<sup>[362]</sup>

## Second amendment

In light of the Supreme Court's Heller decision recognizing that the Constitution protects an individual right to bear arms, ACLU of Nevada took a position of supporting "the individual's right to bear arms subject to constitutionally permissible regulations" and pledged to "defend this right as it defends other constitutional rights".<sup>[363]</sup> Since 2008, the ACLU has increasingly assisted gun owners in recovering firearms that have been seized illegally by law enforcement.<sup>[364]</sup> In 2021, the ACLU supported the position that the 2nd Amendment was originally written to ensure that Southern states could use militias to suppress slave uprisings, and that Anti-Blackness ensured its inclusion in the Bill of Rights.<sup>[365]</sup> <sup>[366]</sup>

The gun violence epidemic continues to spark debate about the Second Amendment and who has a right to bear arms. But often absent in these debates is the intrinsic anti-Blackness of the unequal enforcement of gun laws, and the relationship between appeals to gun rights and the justification of militia violence. Throughout the history of this country, the rhetoric of gun rights has been selectively manipulated and utilized to inflame white racial anxiety, and to frame Blackness as an inherent threat.

<sup>[367]</sup>

## Anti-terrorism issues

After the September 11 attacks, the federal government instituted a broad range of new measures to combat terrorism, including the passage of the Patriot Act. The ACLU challenged many of the measures, claiming that they violated rights regarding due process, privacy, illegal searches, and cruel and unusual punishment. An ACLU policy statement states:

Our way forward lies in decisively turning our backs on the policies and practices that violate our greatest strength: our Constitution and the commitment it embodies to the rule of law. Liberty and security do not compete in a zero-sum game; our freedoms are the very foundation of our strength and security. The ACLU's National Security Project advocates for national security policies that are consistent with the Constitution, the rule of law, and fundamental human rights. The Project litigates cases relating to detention, torture, discrimination, surveillance, censorship, and secrecy.<sup>[368]</sup>

During the ensuing debate regarding the proper balance of civil liberties and security, the membership of the ACLU increased by 20%, bringing the group's total enrollment to 330,000.<sup>[369]</sup> The growth continued, and by August 2008 ACLU membership was greater than 500,000. It remained at that level through

2011.<sup>[370]</sup>

The ACLU has been a vocal opponent of the USA PATRIOT Act of 2001, the PATRIOT 2 Act of 2003, and associated legislation made in response to the threat of domestic terrorism. In response to a requirement of the USA PATRIOT Act, the ACLU withdrew from the Combined Federal Campaign charity drive.<sup>[371]</sup> The campaign imposed a requirement that ACLU employees must be checked against a federal anti-terrorism watch list. The ACLU has stated that it would "reject \$500,000 in contributions from private individuals rather than submit to a government 'blacklist' policy."<sup>[371]</sup>

In 2004, the ACLU sued the federal government in American Civil Liberties Union v. Ashcroft on behalf of Nicholas Merrill, owner of an Internet service provider. Under the provisions of the Patriot Act, the government had issued national security letters to Merrill to compel him to provide private Internet access information from some of his customers. In addition, the government placed a gag order on Merrill, forbidding him from discussing the matter with anyone.<sup>[372][373][374]</sup>

In January 2006, the ACLU filed a lawsuit, ACLU v. NSA, in a federal district court in Michigan, challenging government spying in the NSA warrantless surveillance controversy.<sup>[375]</sup> On August 17, 2006, that court ruled that the warrantless wiretapping program is unconstitutional and ordered it ended immediately.<sup>[376]</sup> However, the order was stayed pending an appeal. The Bush administration did suspend the program while the appeal was being heard.<sup>[377]</sup> In February 2008, the US Supreme Court turned down an appeal from the ACLU to let it pursue a lawsuit against the program that began shortly after the September 11 terror attacks.<sup>[378]</sup>

The ACLU and other organizations also filed separate lawsuits around the country against telecommunications companies. The ACLU filed a lawsuit in Illinois (Terkel v. AT&T) which was dismissed because of the state secrets privilege.<sup>[379]</sup> and two others in California requesting injunctions against AT&T and Verizon.<sup>[380]</sup> On August 10, 2006, the lawsuits against the telecommunications companies were transferred to a federal judge in San Francisco.<sup>[381]</sup>

The ACLU represents a Muslim-American who was detained but never accused of a crime in Ashcroft v. al-Kidd, a civil suit against former Attorney General John Ashcroft.<sup>[382]</sup> In January 2010, the American military released the names of 645 detainees held at the Bagram Theater Internment Facility in Afghanistan, modifying its long-held position against publicizing such information. This list was prompted by a Freedom of Information Act lawsuit filed in September 2009 by the ACLU, whose lawyers had also requested detailed information about conditions, rules and regulations.<sup>[383][384]</sup>

The ACLU has also criticized targeted killings of American citizens who fight against the United States. In 2011, the ACLU criticized the killing of radical Muslim cleric Anwar al-Awlaki on the basis that it was a violation of his Fifth Amendment right to not be deprived of life, liberty, or property without due process of law.<sup>[385]</sup>

## Trump administration

Following Donald Trump's election as president on November 8, 2016, the ACLU responded on Twitter saying: "Should President-elect Donald Trump attempt to implement his unconstitutional campaign promises, we'll see him in court."<sup>[386]</sup> On January 27, 2017, President Trump signed an executive order



The ACLU represented Internet service provider Nicholas Merrill in a 2004 lawsuit which challenged the government's right to secretly gather information about Internet access



indefinitely barring "Syrian refugees from entering the United States, suspended all refugee admissions for 120 days and blocked citizens of seven Muslim-majority countries, refugees or otherwise, from entering the United States for 90 days: Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen".<sup>[387]</sup> The ACLU responded by filing a lawsuit against the ban on behalf of Hameed Khalid Darweesh and Haider Sameer Abdulkhaleq Alshawi, who had been detained at JFK International Airport. On January 28, 2017, a US District Court Judge Ann Donnelly granted a temporary injunction against the immigration order,<sup>[388]</sup> saying it was difficult to see any harm from allowing the newly arrived immigrants from entering the country.<sup>[389]</sup>



Abdi Soltani, executive director of Northern California ACLU, speaks at a San Francisco protest of the US immigration ban

In response to Trump's order, the ACLU raised more than \$24 million from more than 350,000 individual online donations in a two-day period. This amounted to six times what the ACLU normally receives in online donations in a year. Celebrities donating included Chris Sacca (who offered to match other people's donations and ultimately gave \$150,000), Rosie O'Donnell, Judd Apatow, Sia, John Legend, and Adele.<sup>[390][391]</sup> The number of members of the ACLU doubled in the time from the election to end of January to 1 million.<sup>[391]</sup>

Grants and contributions increased from \$106,628,381 USD reported by the 2016 year-end income statement to \$274,104,575 by the 2017 year-end statement. The primary source of revenue from the segment came from individual contributions in response to the Trump presidency's alleged infringements on civil liberties. The surge in donations more than doubled the total support and revenue of the non-profit organization year over year from 2016 to 2017.<sup>[392]</sup> Besides filing more lawsuits than during previous presidential administrations, the ACLU has spent more money on advertisements and messaging as well, weighing in on elections and pressing political concerns. This increased public profile has drawn some accusations that the organization has become more politically partisan than in previous decades.<sup>[393]</sup>

Following WikiLeaks founder Julian Assange's arrest, Ben Wizner from the ACLU said that if authorities were to prosecute Assange "for violating U.S. secrecy laws [it] would set an especially dangerous precedent for U.S. journalists, who routinely violate foreign secrecy laws to deliver information vital to the public's interest."<sup>[394]</sup>

On August 10, 2020, in an opinion article for USA Today by Anthony D. Romero, the ACLU called for the dismantling of the United States Department of Homeland Security over the deployment of federal forces in July 2020 during the George Floyd protests.<sup>[395]</sup> On August 26, 2020, the ACLU filed a lawsuit on behalf of seven protesters and three veterans from the following the protests in Portland, Oregon, which accused the Trump Administration of using excessive force and unlawful arrests with federal officers.<sup>[396]</sup>

In June 2020, the ACLU sued the federal government for denying Paycheck Protection Program loans to business owners with criminal backgrounds.<sup>[397]</sup> At least two ACLU affiliates in Montana and Texas obtained PPP loans, according to the SBA.<sup>[398][399]</sup>

## Shooting of Jocques Clemmons

The ACLU of Tennessee protested the shooting of Jocques Clemmons which occurred in Nashville, Tennessee, on February 10, 2017.<sup>[400]</sup> On May 11, 2017, as Glenn Funk, the district attorney of Davidson County, decided not to prosecute police officer Joshua Lippert, they called for an independent community

review board and for Nashville police officers to wear body cameras, which was approved by local voters in a referendum.<sup>[400]</sup>

## See also

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- [American Civil Rights Union](#)
- [British Columbia Civil Liberties Association](#)
- [Canadian Civil Liberties Association](#)
- [Institute for Justice](#)
- [Liberty](#), a British equivalent<sup>[401]</sup>
- [List of court cases involving the American Civil Liberties Union](#)
- [National Emergency Civil Liberties Committee](#)
- [New York Civil Liberties Union](#)
- [Southern Poverty Law Center](#)
- [Political freedom](#)

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127. Walker, p. 85.
128. Walker, p. 90
129. Walker, p. 91.
130. Walker, p. 112
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133. Walker, p. 89.
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137. Walker, p. 96.
138. Walker, p. 97
139. Walker, p. 100.
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141. Walker, p. 98.
142. Walker, pp. 105–06.
143. Walker, p. 106.
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145. Walker, p. 107.
146. Wagner, p. 101.
147. Walker, p. 103.
148. Walker, p. 104.
149. The ACLU was not the primary legal representative; the Witnesses had their own legal team, led by Hayden C. Covington during this era.
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151. Walker, p. 109.
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153. Walker, p. 115.
154. Walker, pp. 116–17.
155. Walker, p. 117.
156. Walker, pp. 117–18.
157. Walker, p. 118.
158. Walker, p. 119.
159. Walker, p. 120.
160. Walker, p. 121.
161. Walker, p. 122.
162. Walker, p. 123.
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182. Walker, p. 164.
183. Walker, pp. 173–75.
184. Walker, pp. 175–76.
185. walker, p. 176.
186. Walker, p. 177.
187. Walker, p. 179
188. Walker, p. 181.
189. Walker, p. 183.
190. Walker, p. 185.
191. Walker, p 187.
192. Walker, p. 195.
193. Walker, p. 188.
194. Walter, pp. 188–89.
195. Walker, p 190. The case was *Speiser v. Randall*.
196. Walker, photo caption of Flynn, page following 214.
197. Walker, pp. 193, 195–96.
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203. Walker, p. 199.
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205. Walker, p. 201.
206. Walker, pp. 201–02.
207. Walker, p. 202. The case was *Slochow v. Board of Higher Education of New York City*, 350 US 551 (1956).
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209. Walker, p. 209.
210. Walker, p. 210.
211. Graham's proposal quoted in Walker
212. Walker, pp. 210–11.
213. Walker, p. 211.
214. Corliss Lamont, in particular, portrayed that era as a major lapse of principle.
215. Walker, p. 212.
216. Walker, pp. 213–14, 217–18.
217. Walker, pp. 240–42.
218. Walker, p. 246.
219. Walker, p. 217
220. Membership numbers are from 1955 and 1965.
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222. Walker, p. 219
223. Black quoted by Walker.
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227. Walker, p. 223
228. Walker, p. 223.
229. Walker, p. 224
230. Walker, p. 225.
231. Walker, p. 227.
232. Walker, p. 229.
233. Walker, p. 230.
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235. Walker, p. 232.
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243. Walker, p. 247.
244. Walker, pp. 246–50.
245. Walker, pp. 246–48.
246. Walker, pp. 248–49.
247. Walker, pp. 249–51.

248. Walker, pp. 252–53.
249. Walker, p. 250.
250. Walker, pp. 250–51.
251. Walker, p. 252.
252. Walker, p. 274.
253. Walker, pp. 257, 261–62.
254. Walker, pp. 262–64.
255. Walker, p. 262
256. The count of affiliates is of affiliates with a permanent staff.
257. Walker, p. 263. Characterizations by Samuel Walker.
258. Walker, pp. 263–64.
259. Walker, p. 261.
260. Walker, p. 263.
261. Walker, p. 264.
262. Walker, pp. 264–65.
263. Walker, p. 266.
264. Walker, p. 267.
265. Walker, pp. 268–69.
266. Walker, pp. 270–71.
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- Kauffman, Christopher J. (1982). *Faith and Fraternalism: The History of the Knights of Columbus, 1882–1982* (<https://archive.org/details/faithfraternalis00kauf>). Harper and Row. ISBN 978-0-06-014940-6.
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- Walker, Samuel (1990). *In Defense of American Liberties: A History of the ACLU*. Oxford University Press. ISBN 0-19-504539-4.

## Further reading

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- Klein Woody, and Baldwin, Roger Nash (2006). *Liberties lost: the endangered legacy of the ACLU*. Greenwood Publishing Group, 2006. A collection of essays by Baldwin, each accompanied by commentary from a modern analyst.
- Krannawitter, Thomas L. and Palm, Daniel C. (2005). *A Nation Under God?: The ACLU and religion in American politics*. Rowman & Littlefield.
- Sears, Alan, and Osten, Craig (2005). *The ACLU vs America: Exposing the Agenda to Redefine Moral Values*. B&H Publishing Group.
- Smith, Frank LaGard (1996). *ACLU: The Devil's Advocate: The Seduction of Civil Liberties in America*. Marcon Publishers.

## Archives

- American Civil Liberties Union of Southern California records (<https://oac.cdlib.org/findaid/ark:/13030/kt9c60151m/>). 754 boxes. UCLA Library Special Collections.
- American Civil Liberties Union of Washington. (<http://digital.lib.washington.edu/findingsaids/view?docId=AmericanCivilLibertiesUnionofWashington1177.xml>) 1942–1996. 136.66 cubic

feet (including 13 microfilm reels and 1 videocassette) plus 62 cartons and 2 rolled posters. *Labor Archives of Washington*. University of Washington Special Collections.

- <https://web.archive.org/web/20151117022142/http://reuther.wayne.edu/node/2181>) 1952–1966. This collection documents the early years of the Detroit ACLU branch. The collection contains documents related to academic freedom; censorship; church and state; civil liberties; police brutality; HUAC; and legal assistance to prisoners. *Walter P. Reuther Library*, Detroit, Michigan.
- <https://web.archive.org/web/20151117014756/http://reuther.wayne.edu/node/2180>) 1970–1984. This collection illustrates that the branch was formed to address issues such as Oakland County jail conditions, lie detector use, senior housing rights, and attempts to reinstate the death penalty. *Walter P. Reuther Library*, Detroit, Michigan.

## Selected works sponsored or published by the ACLU

- *Annual Report – American Civil Liberties Union*, American Civil Liberties Union, 1921.
- *Black Justice*, ACLU, 1931.
- *How Americans Protest*, American Civil Liberties Union, 1963.
- *Secret detention by the Chicago police: a report*, American Civil Liberties Union, 1959.
- *Report on lawlessness in law enforcement*, Wickersham Commission, Patterson Smith, 1931. This report was written by the ACLU but published under the auspices of the Wickersham Commission.
- Miller, Merle, (1952), *The Judges and the Judged*, Doubleday.
- *ACLU organization records, 1947–1995*. Princeton University Library, Mudd Manuscript Library.
- *The Dangers of Domestic Spying by Federal Law Enforcement*, American Civil Liberties Union, 2002.
- *Engines of Liberty: The Power of Citizen Activists to Make Constitutional Law*, David D. Cole, 2016

## External links

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- [Official website \(https://www.aclu.org\)](https://www.aclu.org)
  - [American Civil Liberties Union Records \(https://archive.today/20121215000319/http://findingaids.princeton.edu/getEad?eadid=MC001.01&kw\)](https://archive.today/20121215000319/http://findingaids.princeton.edu/getEad?eadid=MC001.01&kw), Princeton University. Document archive 1917–1950, including the history of the ACLU.
  - [Debs Pamphlet Collection \(http://library.indstate.edu/about/units/rbsc/debs/pamphlet.html\)](http://library.indstate.edu/about/units/rbsc/debs/pamphlet.html), Indiana State University Library. An array of annual ACLU reports in PDF.
  - [List of 100 most important ACLU victories \(https://web.archive.org/web/20120701045320/http://www.nhclu.org/ACLU-greatest-hits.php\)](https://web.archive.org/web/20120701045320/http://www.nhclu.org/ACLU-greatest-hits.php), New Hampshire Civil Liberties Union.
  - [De-classified FBI records on the ACLU \(https://vault.fbi.gov/ACLU\)](https://vault.fbi.gov/ACLU)
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