

Democracy and the National Security State

The Patriotic Act passed Congress with near unanimous approval. Exactly what it authorizes is not yet clear, but we see much evidence that it will be used to justify a full scale attack on hard-won civil liberties, including notably, the writ of Habeas Corpus. Ultimately, the actions of our Federal Courts will be decisive. Although required by the US Constitution, there has been no declaration of war, and, contrary to even to the War Powers Act of 1973, President George Bush has been given a blank check by a cooperative Congress to bomb “pre-emptively” Iraq-- with or without the support and endorsement of the United Nations. This presumably would be followed by an invasion and occupation of Iraq. The goals--disarmament and a “regime change”-- seem reasonable—even if the means manifestly violate international law and are at least hypocritical: There is zero evidence that Iraq supported the terrorist attack on the Pentagon and World Trade Center and some evidence that the Saudis, our oil allies, did provide support. Pakistan, China, and North Korea have nuclear capabilities. It seems increasingly that our government would like now to fight two wars, one with Iraq and one with Korea. Most chillingly, in marked contrast to the so-called “war on terrorism,” a war against Iraq or Korea will be a genuine war, perhaps a holocaust, and its costs in terms of human lives, destruction, and perhaps also the stability of the US and world economy cannot be calculated. But these costs will surely be enormous (See W.D Nordhaus: “Iraq: The Economic Consequences of War,” *New York Review of Books*, 5 December 2002). Finally, either war would certainly make ordinary Americans far less safe than now are, not merely overseas, but in their own homeland. Still, polls show that President Bush commands overwhelming majorities in his “job approval rating.”

How can we understand this? There are, of course, proximate causes: a volatile Middle East with the US playing a most critical role in defense of its “interests,” a stunning attack on the Pentagon and World Trade Center, followed by an American political climate of vigorous patriotism. But these became proximate causes only because of historical developments of institutions which are thoroughly taken-for-granted, developments which lead Presidents and ordinary people to think and do things which, when examined critically, could not be sustained. If part of the problem regards Ariel Sharon, Yassir Arafat, Saddam Hussein, Osama Bin Laden and President George W. Bush, a greater part of the problem regards what is taken for granted in all of this. Ultimately, it regards you and me.

The Modern State and Citizen

Machiavelli is the great prophet of the modern state, fit, as no entity ever had been, to carry on war.¹ For Machiavelli, the primary imperative of modern politics was

¹ The modern state had its genesis not earlier than the 17th century; the modern *nation*-state was inspired perhaps by the French Revolution. After this, “the people” comprised a nation and each “nation” required a state. See my *War and Democracy* (Oxford: Blackwell, 1989).

securing the "liberty" and "security" of the body politic. In its absence, all the possible goods of human life, family, work, art and leisure, were threatened. This is now thoroughly taken for granted by everybody. All must defend the state, since if it fails, all else fails.

Machiavelli's world, like ours, was a world of global aggrandisement where the powerful states swallowed the weak and the stateless. Accordingly, his model was not Sparta, but Rome. In a world of many incipient Romes each competing with one another for the ability to dominate those lacking the means, one must try to achieve a "great empire." Those who desire to preserve their freedom and security need to be populous, for without an abundance of citizens it is impossible to be powerful.

If...you wish to make a people numerous and warlike, so as to create a great empire, you have to constitute it in such a manner as will cause you more difficulty in managing it; and if you keep it small or unarmed, and you acquire other dominions, you will not be able to hold them, or you will become so feeble that you will fall prey to whoever attacks you (*Discourses*, I, 6).

Machiavelli saw that those who fought must be "citizens." Republican Rome would be his model. There, as today, to be a citizen meant only that one could claim rights--not, as in the Greek *polis*, that one could participate in ruling. And he saw also that governing a large and "nationally" heterogeneous population created problems, especially if the citizens were to be armed. Chief among these problems, of course, was the problem of legitimacy: assuring that "citizens" accepted the authority of the governing regime. They must not be insurrectionary and they must be willing to fight wars. There was, however, no choice. The logic of modern politics was relentless. Conquer or be conquered.

Moreover, it was this set of problems which led Machiavelli to his better known views on the behavior of "the Prince." If it is the statesmen's primary responsibility to secure and maintain the liberty and security of the body politic (*vivere civile*), then he is in a unique moral situation: he seeks the one end which justifies any means: "When the act accuses him, the result should excuse him" (*accusanda il fatto, lo effecto lo scusi*). It is surely wrong for the ordinary citizen to murder or to lie, but those with the responsibility for the safety of state are in a different and moral position. Lying to one's countrymen and manipulating sentiment to save the state, illegally funding enemies of the state's enemies, assassination--all are "excused" when the independence and security of the state are at issue. Although it will be denied, it is easy to show that Machiavelli's advice is heeded by all modern governments. All regularly lie, manipulate their populations, secretly seek to undermine the regimes of other states, and many, including

the US, have used assassination as a political tool—all in the name of securing the “liberty” and “security” of the state.

Machiavelli left a huge legacy of assumptions which we take for granted; but we shall not yet understand the willingness of "citizens" both to abandon their civil liberties and to slaughter in the name of the "nation" until we look further.

The Nation as the Sovereign People

Almost always ignored is the contribution of the Americans. It was the Americans who stumbled onto a remarkable solution to many of the problems of rule that had been analysed by Machiavelli. The idea of the sovereign people, invented by the Americans, obliterated the bifurcation of rulers and ruled and provided an entirely new basis for the legitimacy of decisions made by "governments"--a modern term for what is also an entirely modern idea.

The colonists had fought for Independence. The thirteen states (each in its original sense a sovereign entity) were united under the Articles of Confederation. When Madison and Hamilton managed to get a convention convened in Philadelphia (after the failed Annapolis meeting), the group of "founders" decided, extra-legally, to scrap their mandate to amend the Articles. They would instead offer plans for a "national government." There were a number of huge problems. One of them regarded the authority of the proposed new government. Under the Articles, the Congress (the older name for an assembly of ambassadors from independent states), represented States, not individuals. Under the proposal, individuals in the several states would be accountable to legislation passed by the new Federal Government. As Patrick Henry well put the matter: "The question turns, sir, on that poor little thing--the expression, We the people, instead of the States of America." If indeed, the National government could legislate over individuals, then where was sovereignty located? From at least Bodin on, the sovereign held the final power in a state. The King was sovereign exactly in the sense that he could make laws and declare war. Where was sovereignty in this historically novel constitution?

The solution was at hand: If the people were sovereign, sense could be made of the whole system. Indeed, Madison saw clearly that if special conventions were convened to decide on ratification (again bypassing the existing law of the land), then, ratification could be understood as "a WHOLE PEOPLE exercising its first and greatest power--performing an act of SOVEREIGNTY, ORIGINAL, and UNLIMITED."

Thereafter, "the people" could be sovereign even if they did not rule; and democracy could be redefined not as government *by* the people, but as government *of* and *for* the people. As Madison rightly put the matter (in his usually unread *Federalist Paper, No. 63*), "The true distinction between [earlier republics] and the American Government lies in *the total exclusion of the people in their collective capacity* from any

share [in the American System] and not in *the total exclusion of the representatives of the people* in [former Republics]. That is, in the ancient republic (Greek: *polis*), citizens had a real share in ruling including the decision to go to war. In the modern republic this would no longer be the case. Machiavelli, indeed, would have been impressed.

Americans like to think that our “democratic institutions” prevent abuse of state power. But we need to be clear what this does *not* mean. It does *not* mean that “the people” rule, that they determine “the national interest” or they decide when to go to war. “Deriving their just powers” from “the consent of the governed,” modern republican governments rule and, as I shall suggest, there is no effective mechanism which can turn rule *of* and *for* the people to rule *by* the people.

In his remarkable “Project for Perpetual Peace,” Kant, with one eye on the new United States and the other on the aftermath of the French Revolution, argued that in a world of “republics,” there would be no wars—for it would be clear to all the citizens of republics that war was *irrational*, that all conflicts between republics could be rationally adjudicated. Indeed, the point of the republican form of regime was that it served to protect the interests of persons. Persons in the aggregate could have no interest in a war - unless of course, their persons and property were under threat. As states achieved the status of republics, they would agree among themselves not to engage in war. Each would recognize the absolute sovereignty of the other and promise non-interference. Here one should think of the current European Union. Republics would reserve the right to defend themselves, of course, but as Kant rightly saw, they had to abolish standing armies, leaving in their stead militias of citizens. Standing armies were “mere machines and instruments on the hands of [the state].”

Of course, modern states did not all abandon their standing armies—and navies and air forces—and weapons of mass destruction, even if each insisted that their sole purpose was “self-defense.” And the reasons for this were not merely technological. Indeed, *the real flaw in Kant’s argument was in rejecting democracy for the form of a republic*. That is, there is no good reason to suppose that the interests of the regime are identical with the interests of the people so governed.

The fifty-five at Philadelphia knew this. Accordingly, they wanted some assurance that the power to make war would not be solely in the hands of the President. They failed in this--- and monumental failure indeed it was. Brian Hallett has provided a full-fledged account of this,² but a case can be made that the failure was inevitable. The Machiavellian imperative licensed its irrelevance. Presumably the War Powers Act was, at least in part, a response to this failure. But for many of the same reasons, this also fails. This leaves us where we are: One man, the President of the most powerful

² *The Lost Art of Declaring War* (Urbana: University of Illinois Press, 1998).

nation-state in the history of world, can commit its citizens to a pre-emptive war against another nation—with millions more suffering the consequences of his decision.

But this is not all. As is well-known, what we rightly regard as precious civil liberties became institutionalized in the Bill of Rights, a compromise to ensure passage of the New Constitution. But if fear that a majority would be tyrannical clearly motivated the fifty-five at Philadelphia, it was fear that government could too easily infringe on the rights of citizens that motivated the defenders of a Bill of Rights. But with the Machiavellian imperative, these rights are also fragile. Too often unnoticed, when they have been protected, our debt is owed to an independent judiciary—not to the machinery of elective politicians. The history of this is grim.

It begins at least with Thomas Jefferson and his concern that Aaron Burr threatened “the safety of the republic.” Faced with a recalcitrant Supreme Court, he argued against an independent judiciary on grounds that “the nation will judge both the offender and the judges themselves.” The question is not whether Burr was a scoundrel, but how this episode revealed a deep tension in the institutionalization of the modern republic—not what are the rights of the majority against citizens, but what are the rights of a “representative” of the people acting *in the name of* “the people.”

Of course, Jefferson, like all the politicians in republics who followed him, could convince himself that he spoke for “the people.” Indeed, he was perfectly willing to break the laws if he, as the elected President, deemed it necessary. This was the case as regards his defense of the Alien and Sedition Acts and most clearly with the embargo acts enforced against Britain.

Jefferson famously asserted that “information to the people” is “the most certain, and the most legitimate engine of government. Educate and inform the whole mass of the people...They are the only sure reliance for the preservation of our liberty” (Letter to Madison, 20 December 1887).

But Jefferson did not even try to communicate his understanding of the need for the embargo, either to “the people” or to their “representatives.” Representative Barent Gardenier of New York observed:

Why we passed the embargo law itself, I have been always unable to tell. It does appear to me, sir, that we are led on, step by step, by an unseen hand....Darkness and mystery overshadow this House and the whole nation. We know nothing, we are permitted to know nothing. We sit here as mere automata; we legislate without knowing, nay, sir, without wishing to know, why or wherefore....If the motives and principles of the Administration are honest and patriotic, we would support them with a fervor which none could surpass. But sire, we are kept in

total darkness. We are treated as the enemies of our country (Cited from Levy, *Jefferson and Civil Liberties*, p. 98).

As is perfectly clear, the nation was in no danger, politically or economically. Worse offences had been committed against the flag and the policy had no chance whatever of succeeding. But not only did the embargo devastate the American economy—with no effect on the British, but it is quite amazing how much discretionary authority Jefferson could appropriate and how much repression he was able to justify to assure what *he* had defined as in “the national interest.” Republicans had protested Washington’s use of the militia to enforce the whisky tax, yet Jefferson employed the regular army to enforce statutes which totally disregarded Fourth Amendment constraints on unreasonable search and seizure. He had feared, rightly, that the Constitution was a quixotic response to Shay’s little rebellion, but he was now ready to define “insurrection” to include attempts to avoid custom’s men! Indeed, Leonard Levy could say of the fifth embargo act that “[t]o this day it remains the most repressive and unconstitutional legislation every enacted by Congress in time of peace” (Levi, p. 139). Of course, Levi wrote this in 1973.

But Jefferson was perfectly clear on why he was prepared to violate law and the Constitution. After leaving public office, he wrote:

A strict observance of the written laws is doubtless *one* of the high duties of a good citizen, but it is not the highest. The laws of necessity, of self-preservation, of saving the country when in danger are of higher obligation. To lose our country by a scrupulous adherence to written laws, would be to lose the law itself...thus absurdly sacrificing the end to the means...It is incumbent on those only who accept great charges, to risk themselves on great occasions, when the safety of the nation, or some of its very high interests are at stake (Letter of 20 September 1810).

But again, who is to decide when “the safety of the nation, or some of its very high interests” are at stake? Indeed, our history is filled with similar examples of Presidents who, in “the name of the people,” violated law and morality. So indeed, we should not have been shocked by revelations of violations of the Constitution, in learning *—after the fact—* of lies told by our Presidents, of illegal and generally secret wars against Mossedehe, Allende, the Sandinistas, of protection of dictators and murderers, e.g., in Guatemala, Panama, Columbia, of assassinations and attempted assassinations (of e.g., Fidel Castro).

Jefferson well articulated the limits of “democracy” in the extended republic.³ At election day, the people can judge. Unfortunately, this presupposes that they will have the pertinent information so as to form a rational judgment, that they will have a real choice, and worse, that the people have not already lost their liberties and that the nation is not already so thoroughly mired in an unwinnable war that ending it has become more painful than pursuing it.

Instead, myth will suffice: We are Americans and must preserve our “democratic way of life.” The President was “elected” and is our Commander-in-Chief. We must stand behind him. We must pay our taxes to fuel the war machine. We must sacrifice our privacy and our freedom in a phony “war on terrorism.” Our warriors must do their duty—even if this means unleashing terror on innocents. Wake-up America! You can do better.

Peter Manicas
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³ See the various writings of Robert Dahl, most recently, *How Democratic Is the American Constitution?* (New Haven: Yale University Press, 2002).