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PI SIGMA ALPHA REVIEW

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PI SIGMA ALPHA REVIEW

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EDITOR'S PREFACE

I believe it was Adlai Stevenson who said that an editor is one who separates the wheat from the chaff--and prints the chaff. The flurry of editing that we have done this semester is, indeed, reminiscent of winnowing, but this year's *Pi Sigma Alpha Review* should prove Mr. Stevenson wrong. The papers which are published in *The Review* came out on top in this year's Political Science Writing Contest, a faculty judged event. Moreover, teams of student editors have been shaking these papers around for over a month. We hope this involved process has blown the chaff away so that you can enjoy page after page of sound and serious scholarship.

This year *The Pi Sigma Alpha Review* embarked on a new method of production. Using personal computer technology, laser printing, scissors, and glue, students did all of the design, typesetting, and layout. The time investment has been enormous, but the gains in knowledge, presentation, and savings have been significant.

The purpose of *The Pi Sigma Alpha Review* is to give exposure to the best student work in Political Science, and thereby encourage high quality research and writing. This year *The Review* offers a variety of topics and approaches: some papers are as current as *glasnost*, others as historical as the Cold War; some are as broad as *Zeitgeist*, and some as specific as a single clause of international law. Although they vary in content, each paper demonstrates a consistent level of rigor and scholarship in each paper.

I would like to thank the Department for their financial assistance, and the Faculty for their help in judging this year's contest. Most of all, however, I wish to thank the writers and editors who spent so many hours bringing this project to completion.

P.S.E.

NOTES ON THE CONTRIBUTORS

BLAKE EDWARD ADAMS will graduate in April with a bachelors degree in Political Science and History. This semester, Blake has been an associate editor for *The Pi Sigma Alpha Review*. After a year's respite from studies, Blake will start launch into a masters program in Public Administration. Outside of school, Blake enjoys writing fiction, reading biographies, and playing basketball. Blake is a national member of Pi Sigma Alpha.

CAM CHANDLER has been the Pi Sigma Alpha Vice President for Special Events this year. Cam is also a veteran teaching assistant for Political Science 200. During his undergraduate career, Cam has done significant research on environmental issues. Moreover, he has spent several summers in Yellowstone National Park as a first-hand observer of the grizzly bear and its habitat. Cam enjoys the outdoors by skiing, fly-fishing and backpacking. He will start law school this fall and will emphasize environmental law.

PAUL S. EDWARDS is a graduate student in Political Science. Paul did his undergraduate work in History at the Sorbonne and Brigham Young University. His honors thesis, "The Influential Constitutional Writings of John Adams," was published this year in a special bicentennial edition of *The World & I*. Currently, Paul is working with Noel Reynolds on a script for a feature-length film on the American Founding. He will continue his graduate studies in public law and jurisprudence this fall at the University of Chicago.

DOUGLAS MADSEN will graduate from the Political Science Department this April. Although he is an avid skier, Doug is best known as a teaching assistant for Political Science 200. Doug is interested in international law, an area that he hopes to emphasize in law school next year. Doug is a national member of both Pi Sigma Alpha and Phi Kappa Phi honor societies.

BRADLEY WOODWORTH is a graduate student in International Relations and a member of the National Russian Honor Society. He did his undergraduate work in Russian at Brigham Young University and graduated magna cum laude with University Honors. In addition to Russian, Brad also speaks Finnish, Estonian, and Uzbek. Brad spent the summer of 1985 at the Pushkin Institute in Moscow. He will continue his graduate work next year at the Russian Research Institute at Harvard University.

THE POLITICS OF SOVIET LITERATURE SINCE BREZHNEV

Throughout the history of the Soviet Union, literature and the arts have played a significant role in the formation of Soviet citizens' perceptions of their nation, their heritage, their leaders, and the world outside Soviet borders. Both Soviet and pre-revolutionary Russian political leaders have felt an overwhelming need to control dissent against their regimes. Because literature and freedom of speech have been vigilantly monitored, and often directly controlled, the written word in Russia has a significance and an immediacy which writing in the West has never acquired. Since the early 1930s, when the Communist Party replaced the previously existing and relatively independent writers' organizations VSP (All-Russian Union of Writers), RAPP (Russian Association of Proletarian Writers) and Left Front with its own Union of Soviet Writers, official writing and publication of Soviet literature have been in the secure grip of the Party.

Under Stalin, many free-thinking writers such as Pilniak, Babel, and Olesha, were conveniently disposed of in the gulag prison camps. Creativity in literature was brought to a virtual standstill in the second half of the 1930s, and until Stalin's death in 1953, literary henchmen imposed upon all writers the confining standards of socialist realism. The Soviet reader was plied with saccharine stories of selfless cement workers and of hardy *kolkhozniki* (collective farmers) who loved their combines and tractors more than their spouses.

Khrushchev relaxed somewhat the Stalinist requirements governing the creative arts, and this "thaw" in literary policy allowed writers such as Solzhenitsyn and Tendryakov to be more critical of both the Soviet past and present. However, with the ascendance of Brezhnev and Kosygin in 1964, potentially negative criticism of the state, as well as literary innovation,

was forbidden. Many who dared challenge official regime ideology, as did authors Andrei Sinyavsky (Tertz) and Yuli Daniel (Arzhak) in the mid-1960s, were sentenced to long terms in prison camps, followed by internal exile. Despite such actions, the Brezhnev regime was not entirely able to control the written word; the dissident movement which gained momentum in the late 1960s and throughout the 1970s popularized and established the *samizdat* underground publishing network.

After Brezhnev's death, Andropov and Chernenko maintained fundamental constraints on literature and the arts. However, when Mikhail Gorbachev assumed the position of General Secretary of the Communist Party, he began to initiate reforms supporting openness and candor in literature and the arts. Gorbachev calls his new policy *glasnost* (usually translated as "openness, or "publicity") and intends to apply it not only to the creative arts, but to all sectors of the community and the polity of the Soviet Union. One Western observer believes that the recent relaxation of constraints on literature is due largely to the 1982 death of Mikhail Suslov, the Party's chief ideologue.¹ Nicknamed "the grand inquisitor," Suslov was known for severe attempts to smother Soviet cultural and intellectual life. Despite Gorbachev's initiatives, many Soviet bureaucrats wish to return to the times of greater control when, because of the lack of criticism, their positions (or, for many, sinecures) were more secure, and their lack of innovation and efficiency was less noticeable. This new openness advocated by Gorbachev with regard to literature and writers is making progress, yet the traditions of past regimes still obstructs its development.

¹Christian Science Monitor, 7 October 1986, p.36.

The Writers' Union as an Interest Group

The Party wields control over literature and writers through the Union of Soviet Writers. (There are five other so-called "creative unions" for architects, composers, cinematographers, artists and journalists.) To publish broadly, one must be a member of the Writers' Union; thus, writers are dependent upon the Union for their income.² Membership in the Union is highly prestigious; a union card is the key to sundry perquisites such as better living quarters, access to special stores and preferential treatment by all sectors of society. As one can imagine, only the brave or the foolhardy dare risk their privileges by making waves with the Union.

The Writers' Union is headed by a committee of Party-appointed bureaucrats, who control the Union, and, consequently, what is and what is not published. Thus, through the Union, the Party can use literature to help further its goals. Nevertheless, the Writers' Union is not totally politicized; as a parapolitical organization the Writers' Union is a strong and influential interest group. With Gorbachev's new campaign of *glasnost* members of the Writers' Union have recently become quite bold in their pronouncements of which governmental actions are right and wrong. For example, a number of writers used the most recent Writers' Union Congress, held in July 1986, to voice their dismay at a project being planned by the Ministry of Land Reclamation and Water Resources. This ministry had proposed to divert the flow of a number of northern Siberian rivers into the Volga River, and from there some of the water was to be channeled to

²A handful of Soviet authors receive income from the sales of their books outside of the Soviet Union.

dry areas of Soviet Central Asia. At the Writers' Congress, Valentin Rasputin, a well-known Russian writer from Siberia, exclaimed:

Look how much we have talked about the problem of diverting the rivers, how much we have written about it, how our hearts have been wrenched, how many poems, novels and novellas we haven't written because of devoting our time and efforts to the defense of our native land--and all for naught: They listen to us and then do as they please!³

It is impossible to know precisely to what degree the opinions which the writers voiced at the Congress affected the plans to divert the water. Nevertheless, in August the Communist Party Central Committee and the Council of Ministers announced that the project was deferred indefinitely. As its reasons for doing so the Central Committee cited "the need, which has been expressed by broad sections of the public, for further study of the ecological aspects [of the problem.]"⁴ Here, it seems, is an example where the writers, as an interest group, influenced the regime to alter its policy.

At this same Congress, other writers voiced their dismay at the destruction of architectural monuments (churches, most likely) in rural areas, and at the state's construction of tasteless edifices to past glories. The popular writer Yuri Bondarev lamented:

³Literaturnaya Gazeta, 2 July 1986, p. 9. (Translated in The Current Digest of the Soviet Press [hereafter referred to as CDSP], 38[31]:8.)

⁴Pravda, 20 August 1986, p. 1. (CDSP, 38[33]:8.)

Can one deliver satisfactory words of praise . . . when hundreds of priceless historical monuments have been destroyed and architecture has come to be dominated by . . . the right angles of a styleless style that have disfigured our cities with standardized monstrosities, dissipated their warmth and spirit and history and, thereby, caused tremendous damage to the irreplaceable feeling of patriotism?⁵

The ultimate efficacy of these complaints remains to be seen; but the mere fact that they are being so earnestly expressed indicates that the writers expect them to have some effect upon the decision-making bodies of the Party and the government.

State Control of Literature

With control over what is published, the Party can use literature to articulate Party policy and decisions to ordinary citizens. Maurice Friedberg of the University of Illinois writes that "imaginative writing [literature] can suggest, directly or in an oblique manner, implications for day-to-day informal situations or current priorities and goals."⁶ It is typical for an author desiring publication to lace his work with subtle, and oftentimes blatant, pro-Soviet or pro-Party exhortations. Whether consciously or unconsciously included, these didactic elements seem designed to influence readers to subscribe to the goals of the Communist Party and the Soviet government. Authors often

⁵*Literaturnaya Gazeta*, 2 July 1986, p. 4. (CDSP, 38 [33]:8.)

⁶Maurice Friedberg, *Russian Culture in the 1980's* (Georgetown University, Washington, DC: Center for Strategic and International Studies, 1985), p. 61.

describe the ideal "Soviet man," a hard worker who unflinchingly fights bureaucracy and dangerous foreign ideologies. However, some authors, largely supported by their popularity and status, can write more freely than others. The degree to which an author may be critical of perceived problems or weaknesses in either Party or government policies depends on the current political atmosphere. Friedberg explains:

A Soviet author . . . attempts to strike a balance between the state's desires and those of the public. Complete disregard for either is impossible. There are times of 'liberalism,' when the state is not overly severe in enforcing its desires. There are also periods of 'freeze,' when its insistence on them is so strict that it ignores, in effect, the public's desires.⁷

Under Andropov, Party control over literature and the arts was insistent, despite occasional signs of liberalization: the ultimate goal of literature was to support the Party program. In a Central Committee plenary session in June 1983, Andropov asserted that Soviet writers were not allowed to deviate from "historical truth" when writing about Stalin's collectivization of agriculture. Religion and belief were also to be approached circumspectly; otherwise, "'God-seeking' motifs and idealization of the patriarchal order creep into [works of literature]."⁸ Andropov made it clear that governmental bodies dealing with literature were to dictate to the writers, and not the writers to the government: "The USSR Ministry of Culture, the USSR State Cinematography Committee and the USSR State

⁷ Ibid., p. 62.

⁸ *Pravda*, 15 June 1983. (CDSP, 35[24]:6-7.)

Committee for Publishing, Printing and the Book Trade must improve their guidance of the development of the spheres of society's spiritual life that are under their purview."⁹

While Andropov was in power these same directives for literature were echoed by prominent literary figures. In the fall of 1983, Soviet literary critic Yuri Lukin wrote in *Literaturnaya Gazeta*, the literary weekly of the USSR Writer's Union, that "it is [important] to use all the ways and means of literature and art in molding clear-cut class positions and developing the political standards and world view of the Soviet people, above all of our young people." Dismayed at statements of religious faith expressed by a few young *komsomoltsy*, members of the state-sponsored Young Communist League, Lukin went on to say "some sort of supernatural force does exist," and "I believe for myself." Yet, Lukin attacked writers and poets who "are playing up to these sentiments and into the hands of quasi-scientific myths and a 'religious complex'."¹⁰

Although the state retains firm control of the present literary scene, it can demonstrate its willingness to be flexible in the areas of literature and the arts by turning to the past--to past authors and works. For example, in June 1983, under Andropov there was published a new collection of short stories and essays by an author who had been anathematized by regimes of the 1950s and 1960s--Boris Pasternak. It is generally assumed that such shifts in Party policy and position require approval from the highest level. However, in very few instances are these swings in policy

⁹Ibid.

¹⁰*Literaturnaya Gazeta*, 2 November 1983, p. 2. (CDSP, 35 [52]:18.)

categorical. Here, the reviewer of the new book expresses reservations concerning the "development from the brilliant discoveries of Pasternak's youth [when he was more acceptable to the Soviet regime] to the 'unprecedented simplicity' of his mature years [an implied criticism of *Doctor Zhivago*]." ¹¹ Other writers of the past who refused to conform to the confines of socialist realism--many of whom died in Stalin's prison camps--have recently been rehabilitated. Some of the works of these writers have been made available, but only in small numbers, and generally only to scholars and tourists. During the summer of 1985 the hard-currency Beryozka shops in Moscow were well stocked with the collection of Pasternak's works, as well as a new collection of Boris Pilniak's short stories, novellas and travel notes. ¹² These same books could not be found in the ordinary bookstores open to Soviet citizens.

Nevertheless, the state clearly manipulates literature to communicate its policies and desires to the public; many critics and Writers' Union bureaucrats incessantly urge authors to portray more "positive heroes," worthy of emulation. During Chernenko's short time as the Kremlin's leader, this blatant use of literature as a political tool continued. In September 1984 Chernenko told a group of Soviet writers that at the center of Soviet literature is "the working man . . . an inquisitive, searching, active and vigorous builder of

¹¹ *Novyi Mir*, 6(June 1983):260-264. (CDSP, 35[40]:22.)

¹² Pilniak died in one of Stalin's camps some time in the early 1940s. Until the past few years he was ignored by official literary historians and critics.

socialism."¹³ That literature was intended to be a source of didactic role models was never a secret kept within the Writers' Union. Chernenko himself stated:

The most precise criterion of the success of literature and art as a whole is the real degree of influence that they exert on the molding of the people's ideological and moral makeup. . . . Problems of artistic creativity do not exist outside of politics. For us, this is an obvious truth."¹⁴

Soviet literature has always been used as a clarion call for the Soviet citizen to work harder and to bravely build socialism at all costs; so it was in the early 1980s as well. In early 1984, a novel by the young writer Andrei Molchanov, *New Year in October*, was criticized in *Pravda* for its portrayal of a research institute filled with indolent, power-hungry scientists whose only concern is to keep research funds for themselves. The reviewer complains that Molchanov, a radiophysicist by training, should have known how to write accurately about life at a research facility, and concludes: "The novel lacks any sort of struggle of ideas over the kinds of problems that a major research institute should be dealing with."¹⁵ The implications of such criticism are made clear to those who may have read this book: no one should conduct their work as do the scientists in this novel. Instead, all should conscientiously work as they know they should.

Under Chernenko, the regime apparently encouraged the Soviet citizen to see life as a clear-cut battle

¹³*Pravda*, 26 September 1984, p. 1. (CDSP, 36[39]:9.)

¹⁴*Ibid.*

¹⁵*Pravda*, 18 February 1984, p. 3. (CDSP, 36[7]:23.)

between right and wrong; if one simply viewed life in the ideological terms set by the Party and persevered to the end all would be well. One critic praised a work which emulated "the logic of our life, a logic which says that the good will inevitably triumph in the struggle against evil, no matter how hard the fight may be."¹⁶ In *Pravda*, during March 1984, one of the heads of the prominent Gorky Literary Institute lambasted a number of literary critics whose work was "still a long way from being purposeful, intensive work aimed at successfully accomplishing the tasks set in recent Party documents." This critic referred to a resolution from the June 1983 plenary session of the Communist Party Central Committee which attacked those critics who are "unable to handle complex materials and [who] display confusion in their world view and an inability to view social phenomena in historical perspective and from clear-cut class positions."¹⁷

Much as in Stalin's day, when history books were edited after the fall of each major political figure, the Soviet state of the 1980s also looks at history through modern socialist glasses. In the winter of 1983, a well-known Soviet critic, Feliks Kuznetsov, in the prestigious literary monthly *Novyi Mir*, attacked a then recently published historical novel on the life of the nineteenth century Russian writer, Nikolai Gogol. Kuznetsov berated this novel's "avoidance of concrete historicism and social analysis in dealing with the literary phenomena . . . of the past."¹⁸ Western literary cri-

¹⁶Literaturnaya Gazeta, 21 March 1984, p. 4. (CDSP, 36 [16]:18.)

¹⁷Pravda, 19 March 1984, p. 3. (CDSP, 36[11]:9.)

¹⁸Novyi Mir, 12(December 1983):227-241. (CDSP, 36[15]:18.)

tics believe that Gogol was, essentially, a non-political writer who strove to reestablish faith in Russian messianism. However, in his review of the novel, Kuznetsov accused the author of showing "nothing whatsoever of the Gogol whose earlier works so effectively exposed the evils of autocracy and serfdom and originated the literary method of critical realism." Kuznetsov also blamed the author for failing to accurately portray one of Gogol's contemporaries, the literary critic and political activist, Vissarion Belinsky. A westernizer, Belinsky is described by the novel's author as one who has lost faith in Russia. Kuznetsov, however, asserted that "Belinsky's attitude of rejection [of Russia] was aimed only at the specific, unjust social institutions of his time and reflected his true love for Russia and its people. . . ."¹⁹ By assessing history on the basis of the socialist institutions of the present, the Party assures its citizens that the goals and approaches to life espoused by the Party have answered all problems of the past, and will solve all problems of the present and of the future.

Though the state maintained strict control over literature, the post-Brezhnev period was marked by some small degree of openness and ideological freedom to examine the purposes of literature and the arts. In early 1984, during Chernenko's short interregnum, a Soviet critic published in *Literaturnaya Gazeta* an article in support of "artistic truth" over other imperatives. This writer argued against the simple black-and-white ideology which he often detected in recent literature. He wrote:

¹⁹*Ibid.*

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We cannot get away from the complexity of life and the complexity of spiritual problems. Some people are inclined to mock the expression "look the truth in the eye," but the ability to do so can come in handy. This whole discussion raises anew important and complex theoretical questions concerning the nature of artistic truth and its relation to the truth of real life.²⁰

This is an inherent criticism of the Party's position as ultimate arbitrator and decision maker on how reality (or what is perceived as reality by the author) should be reflected in art and literature. Near the end of 1984 another critic published an article in *Pravda* in defense of ambiguity in literature. He defended works with ambiguous, inconclusive endings as "serious literature" which "demands a concentration of thought and feelings."²¹

After Chernenko's death in March 1985, the new General Secretary, Mikhail Gorbachev, immediately called for *glasnost* in all areas of government and Party communication. In his first speech as the new head of state, Gorbachev explained: "The better people are informed, the more consciously they will act, the more actively they will support the party, its plans, and its programmatic goals."²² This introduction of mild reform in the fields of communication still in no way eclipsed the Party's supremacy over all aspects of society, yet it contributed to the post-Brezhnevian

²⁰*Literaturnaya Gazeta*, 7 March 1984, p. 3. (CDSP, 36[21]: 14.)

²¹*Pravda*, 12 December 1984, p. 3. (CDSP, 36[50]:8.)

²²Timothy J. Colton, *The Dilemma of Reform in the Soviet Union* (New York: Council on Foreign Relations, 1986), p. 161.

loosening of ideological control over all areas of communication--a phenomenon which then began to leak into literature and the arts. The works of sovietologist Timothy Colton concerning current official Party policy can be applied equally well to literature.

As concerns policy advocacy, it is not so much that heterodox ideas are being vented for the first time, for qualified experts and consultants already had latitude under Brezhnev, as that the ideas can be put more argumentatively and with less recourse to aesopian language, and appear in the central press and not only in specialized journals.²³

Soon writers began to reflect this new openness in their writings. Later in March 1985, in the newspaper *Izvestiya*, writer V. Kargalov, a Doctor of History, urged writers not to evaluate the past using modern constructs: "Historical merit is judged not in terms of what historical figures *failed to give* by present-day standards but by what they *did give that was new* in comparison with their predecessors."²⁴ In July 1985, *Literaturnaya Gazeta* published an article which praised the new emphasis on openness and topicality in communication and the arts. Gorbachev's *glasnost* clearly inspired these words:

It is natural that today literature, the arts, and the periodical press are required to show special sensitivity to the commands of the times...and keen powers of observation with respect both to what has outlived its time and to everything

²³Ibid.

²⁴*Izvestia*, 19 March 1984, p. 3, author's emphasis. (CDSP, 37[11]:22.)

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that is new and progressive, and in the spirit of the processes under way in society.²⁵

Yet it soon was clear that not all literary organizations and bureaucrats were ready to take Gorbachev's cue and gradually slacken literature's ideological reins. As shall be seen, this sort of reluctance to change has repeatedly made itself felt since Gorbachev's rise to power. Many seem eager and willing to rely upon these words of a Party literary bureaucrat, spoken upon the day Gorbachev became the new General Secretary: "The strategic line worked out at the 26th Congress and at subsequent plenary sessions of the Central Committee, with the active participation of Yuri Vladimirovich Andropov and Konstantin Ustinovich Chernenko, *remains unchanged*."²⁶ Shortly after Gorbachev's rise to power the editorial board of *Literaturnaya Gazeta* reaffirmed the Party's firm control of literature:

The social value of the artist's labor is determined above all by the active ideological-political and philosophical position that he takes and affirms. The Party will always direct the development of literature so that it serves the interests of the people.²⁷

²⁵*Literaturnaya Gazeta*, 14 March 1985, p. 5. (CDSP, 37[12]:14.)

²⁶*Ibid.*, emphasis added.

²⁷*Literature Gazeta*, 17 July 1985, p. 2. (CDSP, 37[12]: 24.)

Towards the end of 1985, the regime allowed a few liberties in the arts, indicating that a thaw in literary policy was in store. In December 1985, at the Congress for writers from the Russian Republic, the popular poet Yevgeny Yevtushenko made a strident plea for a relaxation of censorship. Apparently some did not welcome the possibility of such liberal steps by the state, because the published version of Yevtushenko's speech which appeared in *Literaturnaya Gazeta* was heavily censored.²⁸ At the same time, a number of daring new plays which explored negative aspects of Soviet society and history (one, *Dictatorship of Conscience*, was clearly anti-Stalinist) were presented in Moscow. Evidence of the thaw increased as government boards were established to examine the works of two artists previously ignored by the state. One, Osip Mandelshtam, a great poet of the 1930s, was lost in the whirlwind of Stalin's camps; the other was Vladimir Vysotsky, the rough balladeer-poet whose honest and critical songs were heard in the 1970s in all parts of the Soviet Union through homemade *magnetizdat* recordings. Later in the year the Soviet journal *Sobesednik* discussed the popular pilgrimage to Vysotsky's grave--a phenomenon which has existed since the singer's death in 1980. The positive tone of the published comments indicated a shift in the official position towards an artist who achieved greatness without Party approval.²⁹

²⁸Colton, p. 161.

²⁹*Sobesednik*, 31(July 1986):2. (*CDSP*, 38[32]:19-20.)

Writers' Congresses as a Political Forum

Writers' congresses such as the one mentioned earlier perhaps provide the best opportunities to examine the politics of Soviet literature. Representatives of the writers' unions of the various republics, as well as Party and government bodies, speak at these formal meetings. At these congresses, the policies of the Party, the government, and the USSR Writers' Union are both criticized and supported. Though the speeches range in tone from reactionary to liberal, rarely, if ever, does anyone openly take issue with established Party policy. The gray areas of policy, however, are widely discussed. For example, the issue of the diversion of the Siberian rivers mentioned earlier was one of the main topics of discussion at the December 1985 Congress of Russian writers. Not only critical, reformist voices were raised during the Congress, but conservative voices as well. One writer castigated those who desired to see the plans of the Ministry of Land Reclamation and Water Resources changed, calling such wishes out of harmony with "the language of the April and October [1985] plenary sessions of the CPSU [Communist Party of the Soviet Union] Central Committee."³⁰

At the 27th Party Congress held in late February of 1986, Gorbachev called for Soviet writers to discover "the truth of life, which had always been the essence of genuine art."³¹ He berated "not a few officials" who had "persecuted" literary critics. Colton writes that after the congress, Gorbachev passed mea-

³⁰Literaturnaya Gazeta, 18 December 1985, p. 10. (CDSP, 38[1]:10.)

³¹Pravda, 26 February 1986. (CDSP, 38[8]:37.)

asures to insure that the critics would not be subject to pressure or punishment from their supervisors. However, as Colton notes, at the Party Congress Gorbachev diminished the impact of his own campaign of openness by not even mentioning the men whose policies he was revising--Khrushchev and Brezhnev.³²

Following the Party Congress, Yegor Ligachev, the Politburo member in charge of ideology, gave guarded support for openness in literature in a meeting of actors, theatre directors, and Party secretaries. Ligachev asserted:

The Party calls on literature and art to reflect the truth and nothing but the truth . . . [which] is found in the people's achievements and the contradictions in society's development, in the heroism and daily routine of workdays, in victories and defeats . . . "33

On June 19, 1986, Gorbachev personally met with a number of prominent writers and asked them to join him in fulfilling his somewhat vague plans for reforms in Soviet society. He asked them to cooperate with his campaign of "profound and all-encompassing restructuring" of all spheres of Soviet life.³⁴ Gorbachev emphasized his policy of "self-criticism, and of extensive openness [*glasnost*]." He called upon them to im-

³²Colton, p. 162.

³³Pravda, 20 April 1986, p. 2. (CDSP, 38[16]:23.)

³⁴In his campaign to push both Soviet society and the Soviet economy forward, Gorbachev has popularized the word "restructuring" (*Perestroika*), a rather vague term which implies a more committed attitude towards work, and more efficient use of both technology and resources.

plement in their works a "psychological and moral restructuring" and to avoid stereotypes. Gorbachev concluded his remarks with an attack on the artists' unions, and accused them of harboring "inertia, self-satisfaction . . . [and] bureaucratism."³⁵ One participant told the Western press that the General Secretary criticized those not willing to change and to accept reform. Gorbachev reportedly said, "Mediocrity does not always welcome freedom. . . . It's easier for mediocre people to live within the framework of control."³⁶

Gorbachev's reforms in literature and the arts have been warmly welcomed by most Soviet writers, if not by some bureaucrats. In May 1986, the well-respected Belorussian writer, Vasil Bykov, said in an interview published in *Literaturnaya Gazeta*, that the "incipient changes in the life of society" (initiated by Gorbachev) are what "the people waited for and are continuing to wait for." In the interview, Bykov himself seemed glad to discuss the "arbitrariness" and "violence" of the years of Stalin's collectivization which Bykov witnessed as a child. In particular, he said he was pleased that writers "are [now] finally beginning to take on the bureaucrats in earnest." Bykov expressed his dissatisfaction with Party hacks whose opinions shift depending upon who is in power:

I find it disturbing now that people who for years preached and inculcated their stagnant views, including in literature, after the April [1985] plenary session of the CPSU Central Committee and after the Party Congress [February 1986] immediately began making statements about the need for re-

³⁵Pravda, 21 June 1986, p. 1. (CDSP, 38[25]:22-23.)

³⁶The Christian Science Monitor, 18 July 1986, p. 10.

structuring, pretending that that's all they were ever concerned about, that they thirsted for.³⁷

In 1986, many writers expressed their pleasure that bureaucratic rigidity and inertia were being eliminated. A showdown of sorts between the conservative elements of the literary establishment (usually bureaucrats) and those pushing for reform took place in late July 1986 at the eighth USSR Writers' Congress. The world-famous poets Andrei Vosnesensky and Yevgeny Yevtushenko were the most vocal liberals. Vosnesensky called for a restructuring of the publication process so that respected writers could help find publishers for exceptional works by lesser-known writers which otherwise might not be published. He also criticized the construction of an expensive, ungainly victory monument in Moscow.³⁸ Yevtushenko attempted to further the rehabilitation of Boris Pasternak, proposing that the author's home be converted into a museum, and he also called for the "development of democracy, openness and social justice."³⁹ The Party's representatives to the Congress sat calmly through each session and did not interrupt the speakers. This in itself was a departure from past Writers' Union Congresses, where Party leaders would cut off an overly critical speaker to voice their rebuttal.

³⁷ *Literaturnaya Gazeta*, 14 May 1986, p. 2. (CDSP, 38[25]: 10.)

³⁸ *Literaturnaya Gazeta*, 2 July 1986, p. 6. (CDSP, 38[28]: 1.)

³⁹ *Ibid.*, p. 7. (CDSP, 3, 15.)

Furthermore, the writer Dmitry Likhachev called for more extensive publication of the writings of the Orthodox Old Believer priest Avvakum, as well as the works of Andrei Bely (an early Soviet writer who wrote with an imaginative, non-conformist style very different from socialist realism), Anna Akhmatova (whose son and husband were sent to Stalin's camps), the poet Nikolai Gumilev (who was killed in the early 1920s by Lenin's Chekists, the predecessors of today's KGB) and Fyodor Sologub. Likhachev also expressed dismay that the complete works of Pasternak had not yet been published in the USSR. Likhachev justified his recommendations with an emotional appeal to remember the past: "Memory needs a refuge; it cannot be homeless. If we do not genuinely honor the memory of our spiritual forebears, we ourselves will be forgotten."⁴⁰ Until recently, such an appeal to the preservation of literature, with no mention of the Party or of Soviet history, would have been impossible until recently.

The Estonian writer Vladimir Beekman at the same Congress accused Moscow literary bureaucrats of wielding too much control over affairs in the Soviet republics. This writer was exceptionally bold in his criticism, which extends outside the sphere of literature: "To think that on any and every question things are always seen better from Moscow seems to me to be a form of scarcely warranted presumption."⁴¹

Amid these liberal opinions and appeals, the voices of a few conservatives who wished to maintain

⁴⁰*Literaturnaya Gazeta*, 14 May 1986, pp. 7-8. (CDSP, 38 [32]:9.)

⁴¹*Literaturnaya Gazeta*, 2 July 1986, p. 1. (CDSP, 38[26]: 2.)

strict Party control over literature were still heard. The writer Vitaly Ozerov affirmed his faith in Party ideology as the guide for literature: "The realist artist should identify and depict the social forces and ideological and moral principles that collide in our society and convey the people's faith in the triumph of the Party's policy."⁴² The main conservative at the congress was Georgy Markov, the First Secretary of the Board of the Writers' Union, and the Party's top literary bureaucrat. Markov affirmed that "the Party guides the literary-artistic process with the help of the creative unions," but then apologetically enumerated problems in the Writers' Union bureaucracy--problems for which he as the Union's First Secretary was most likely to blame:

It must be said that during the report period the work of the Secretariat of the Board of the USSR Writer's Union was also characterized by important shortcomings. We did not pay sufficient attention to improving the organization of our work. . . . We have limited ourselves to hearing an official report on the question and adopting the latest in a series . . . of documents.⁴³

Markov went on to describe how Soviet literature should extol the Soviet hero--the "collectivist man, the man who fights for communism."⁴⁴ At the end of the Writers' Union Congress, the conservative Markov, who had headed the Writers' Union since 1956, was replaced

⁴²Ibid., p. 14. (CDSP, 38[37]:13.)

⁴³Literaturnaya Gazeta, 25 June 1986, p. 1. (CDSP, 38 [26]:2.)

⁴⁴Ibid. (CDSP, 5.)

by a man with a more liberal orientation, Vladimir Karpov, and a number of prominent writers (instead of Party bureaucrats) were included in the Union's leadership.⁴⁵

At this most recent Congress of the Writers' Union, more liberal opinions were expressed and more calls made for reform--not only in the sphere of literature, but in many sectors of Soviet society--than in any other official meeting since Khrushchev. Of course, it remains to be seen to what degree Gorbachev will continue to loosen the bureaucratic and ideological restraints upon literature and the arts, but since last year's Writers' Congress positive signs have been observed. In August 1986 *Izvestiya* announced the opening of a museum to the poet Marina Tsvetaeva, who stubbornly opposed Stalin's regime until her suicide in 1941.⁴⁶ Also in 1986, Sergei Zalygin, who is not a member of the Communist Party, was made editor of *Novyi Mir*. (In the past, most, if not all, editors were high-ranking Party members.) Zalygin was the first Soviet writer to treat Stalin's brutal collectivization of peasants in the early 1930s, and 1985 marked the publication of his novel, *Posle buri* (*After the Storm*), which treats the now controversial New Economic Policy (NEP) of the 1920s--a period when private enterprise was allowed to coexist within an otherwise centralized economy. In 1986, Grigory Baklanov, the first Soviet writer to honestly and realistically portray the first months of World War II, which were so disastrous for the unprepared Soviet Union, was appointed editor of the literary journal *Znamya*.

⁴⁵Colton, p. 164.

⁴⁶*Izvestia*, 27 August 1986, p. 3. (CDSP, 38[34]:20.) Her husband, also a poet, died in one of Stalin's prison camps.

As a result of the attention given to Pasternak at the 1986 Writers' Union Congress, at the end of the year a commission was established to commemorate the officially maligned author. Andrei Vosnesensky, who heads the commission, believes that Pasternak's masterpiece, *Doctor Zhivago*, will in 1987 finally be published in the Soviet Union.⁴⁷ In addition, the plays of Mikhail Shatrov, who calls for a more realistic view of history, have recently received approval from high Party officials. Two of the characters in his newest play, which is to open this year, are Leon Trotsky and Nikolai Bukharin, Lenin's co-revolutionaries who were killed by Stalin and subsequently erased from official Soviet history.⁴⁸

It is highly likely that Gorbachev himself approved the publication of a number of controversial literary works which appeared in Soviet literary journals in 1986. In the spring the literary journal *Druzhba Narodov* published Victor Astafeyev's novel, *The Sad Detective* (*Pechal'nyi detektiv*), which takes an uncompromising look at corruption and inefficiency in high places. Also in 1986 *Novyi Mir* published Chingiz Aitmatov's novel, *The Executioner's Block* (*Plakha*), which tells the story of a young man in a Christian seminary, and also discusses the sensitive topic of drug abuse. *The Executioner's Block* is the first officially approved Soviet novel since Bulgakov's *The Master and Margarita* to examine Christianity and the image of Christ in a positive light. Aitmatov is one of the most popular of Soviet writers and can even include Gor-

⁴⁷The Christian Science Monitor, 21 January 1987, p. 9.

⁴⁸*Ibid.*, p. 32.

bachev among his readers.⁴⁹ In the fall of 1986 *Druzhba Narodov* announced that the "highest levels of the Kremlin" had approved the publication of a new novel by Anatoly Rybakov, *The Children of the Arbat*, which is to be a detailed portrayal of Stalin. In the author's own words, the novel "creates a full portrait of the man, multifaceted as he was, including his merits as a politician, his ambitions. Never was such a Stalin shown in literature."⁵⁰ Many believe that this work, scheduled to be published this year, will be highly critical of Stalin, demonstrating Gorbachev's determination to loosen up the controls and taboos of Soviet literature.

The bureaucratism and tolerance of inefficiency which marked the Brezhnev regime will likely continue to restrain Gorbachev's reforms in literature and the arts. Gorbachev realizes that he must proceed cautiously so as not to jeopardize his own power base by overly annoying the layers of Party and government bureaucracies which support the state's power structure. Nevertheless, it appears that the General Secretary is determined to expand not only the Soviet citizen's intellectual horizons, but also his awareness of the possibilities for a happier, more productive life. Gorbachev hopes to accomplish this by encouraging writers, and all Soviet citizens, to examine honestly and openly the Soviet Union's past as well as its present condition.

BRADLEY D. WOODWORTH

⁴⁹Ibid.

⁵⁰The New York Times, 31 October 1986, p. 7.

POSITIVE LAW IN HEGEL'S *PHILOSOPHY OF RIGHT*¹

This paper will examine Hegel's jurisprudence in his *Philosophy of Right*, particularly as it applies to positive law. To render the strictly legal elements of the work in the most straightforward way, I will abandon Hegel's own dialectical scheme of development in favor of a more traditional jurisprudential outline of topics. This approach has the danger of twisting Hegel into an Austin, but every attempt will be made to present a valid and textually verifiable interpretation of Hegel's *Philosophy of Right* which will harmonize with his masterfully complete and complex dialectic.

Hegel's systematic philosophy has been frequently called a "total philosophy" because of its attempt to engulf all human experience into its "grotesque and rocky melody."² Therefore, any theoretical analysis of his mature *Philosophy of Right* needs to take into account that the text is only part of a much more comprehensive work. *Philosophy of Right* assumes familiarity with the concepts of "objective spirit" and "subjective spirit" as expounded in the *Logic*. This interweaving strengthens *Philosophy of Right* by grounding it in a rational system with powerful categories of

¹I wish to thank David Bohn for his enlightening lectures and discussions on Hegel's phenomenology, which provided access to Hegel's otherwise impenetrable work. I would also like to thank Noel Reynolds for his help and encouragement in contemporary jurisprudence.

²Karl Marx, Karl Marx: Selected Writings, ed. David McLellan (Oxford: Oxford University Press, 1977), p. 8.

analysis.³ The disadvantage of the assuming nature of the text is that for the novice the development of theory is opaque. Nevertheless, armed with even a minimal understanding of Hegelian notions of universality, particularity, and immediacy, *Philosophy of Right* is a wonder of brevity, insight, and completeness.⁴

Philosophy of Right is first and foremost a political philosophy which examines the progressive levels of human will in institutions. Although the text has no pretensions of being an historical treatment, it is clearly developmental. The three levels of human will are: (1) Abstract right--will is immediate, and right is only abstract or formal; (2) Morality--will is reflective or self-conscious, but morality or right is purely subjective; (3) Ethical life--will is self-conscious and becomes social, i.e., universal, right is also objectified, and freedom is actualized.⁵

Ethical life itself has three separate stages of progression. The first stage is the family, wherein ethical life itself is immediate and unreflective. The

³Klaus Hartmann, "Towards a new systematic reading of Hegel's *Philosophy of Right*," *The State and Civil Society*, trans. Stephen Bungay and Klaus Hartmann (Cambridge: Cambridge University Press, 1984), p. 117.

⁴One of the most concise and helpful introductions to the Hegelian concepts used in *Philosophy of Right* is T.M. Knox's "Translator's Forward," *Hegel's Philosophy of Right* (Oxford: Oxford University Press, 1967). See also Reyburn's *Hegel's Ethical Theory*. Scholars with serious interest in Hegel will want to look at the first part of Hegel's *Encyclopedia of the Philosophical Sciences*, usually referred to as his *Logic*.

⁵Bernard Cullen, *Hegel's Social and Political Thought* (Dublin: Gill and MacMillan, 1979), p. 73.

second stage is civil society. In civil society, ethical life is self-conscious, and individuals, which may refer to families as a body, recognize other individuals as important, and interaction results in the satisfaction and multiplication of needs. In broad terms, civil society is economic life which has a legal system and free association (*Korporationen*) to mitigate the excesses of the market. The final stage of development is the state, wherein all the component parts of civil society are subsumed and welded into unity, and the implicit universal ethical life of civil society is actualized without sacrificing subjective freedom.⁶

Hegel's primary discussion of positive law is not found in his treatment of the state, but in his development of civil society. Nevertheless, his ideal of the state does not preclude the existence of a legal system. Although the state is concerned with more than the security of individual life and property, which is the primary function of law for Hegel.⁷ The laws of the subsumed civil society are nevertheless an important institution of the state.⁸ Therefore, to extrapolate from Hegel's development of positive law in civil society, a general Hegelian approach to positive law does not do violence to the fabric of the text.

Looking to the text, one of the great difficulties in interpretation is the confusion over the use of the German word *Recht*. *Recht*, usually translated as "right" by Knox, also carries with it a notion of law in

⁶Ibid.

⁷Georg Wilhelm Friedrich Hegel, *The Philosophy of Right*, trans. T.M. Knox, Great Books of the Western World, vol. 42 (Chicago: Encyclopaedia Britannica, Inc., 1952), p. 107.

⁸Ibid., pp. 2, 99, 100.

a broad sense, although it is clearly distinguished from law in the particular sense, i.e., statute or sanction. I have interpreted Knox's "right," when spoken of positively, to be synonymous with law.

Hegelian Natural Law

Fortunately, Hegel himself provides some crucial distinctions as the text begins. Hegel clearly distinguishes between the laws of nature and the laws of the land. The laws of nature are a form of law. They are eternally valid. Nevertheless, they are external to man; that is, man's cognizance or ignorance of the laws of nature has no effect on their validity or operation. In brief, the laws of nature are those patterns of behavior in nature which are discoverable.⁹ The laws of the land, on the other hand are posited by man. They are not compulsive in the way the laws of nature are, "and their diversity at once draws attention to the fact that they are not absolute."¹⁰ Hegel sees in the laws of man a struggle between what is and what ought to be. The "need for studying the fundamentals of right" is a consequence of this struggle.¹¹ So, Hegel immediately avoids the ambiguous use of the word law *à la* Montesquieu, a common criticism made of natural law theories.¹²

Nonetheless, Hegel is a natural law theorist. His

⁹Ibid., p. 115.

¹⁰Ibid.

¹¹Ibid.

¹²H.L.A. Hart, *The Concept of Law*, Clarendon Law Series (Oxford: Oxford University Press, 1961), pp. 182-83.

approach, however, differs radically from that used by Catholic natural law theorists. Indeed, there are passages which, taken from context, would even suggest the amoral analysis of a positivist. But such a reading would be a gross misinterpretation. Hegel's system does have natural, *a priori* standards which the law must meet. However, although these standards are sufficient to deny the validity of positive law, there is never any suggestion that determination of legal validity is the purpose of natural law.¹³ Natural law is merely what is right "in the nature of things."¹⁴ Its standards are set by the demands of philosophical science.¹⁵

Philosophical science is thinking dialectically, which is the ability to conceive of both the universal and the particular in concrete unity. This is a purely Hegelian notion which should not be confused with the traditional idea of formal or abstract reason or rationality. Philosophical science is as distinct from the formal or empirical study of positive law as it is from the abstraction of pure logic and reason. Under the rubric of philosophical science, law must be "shown to be wholly to the purpose and necessary to the time" in order to fulfill the demands of history.¹⁶ As the *Zeitgeist* is manifest differently, law must be further differentiated. This grounding of law in the *Zeitgeist*, however, does not necessarily suggest accom-

¹³Hegel, *Philosophy of Right*, p. 139.

¹⁴T.M. Knox, trans., *Hegel's Philosophy of Right* (Oxford: Oxford University Press, 1967), p. 306n.

¹⁵Hegel, *Philosophy of Right*, pp. 1-7, 12.

¹⁶*Ibid.*, p. 11.

modation--it often suggests conservation since law "may have behind it the authority of tens of centuries."¹⁷

It should be noted at this point that for Hegel, God is in history--indeed, God is the *Zeitgeist*. Although Hegel grounds his natural law theory in his God, there is a profound metaphysical difference between his natural law, discovered through dialectical thinking, and Roman Catholic natural law discovered by reason, because Hegel's God is not an absolute atemporal being but a fundamentally temporal and historical spirit.

Since the natural standards of law are fundamentally historical, the criteria for judging the validity of positive law is quite lenient. For Hegel, positive law has validity if it has meaning in contemporary conditions.¹⁸ Moreover, the distinction between positive and natural law is attenuated in Hegel.

Natural law, or law from the philosophical point of view, is distinct from positive law; but to pervert their difference into an opposition and a contradiction would be a gross misunderstanding. The relation between them is much more like that between the Institutes and Pandects.¹⁹

Therefore, Hegel's discussion of natural law can hardly be read as a criticism of positive law.

¹⁷Ibid., p. 52.

¹⁸Ibid., pp. 10-11.

¹⁹Ibid., p. 10. The Institutes of Justinian was a brief textbook of law, and served as an introduction to the Pandects, the complete codex of Roman case law. They were not, however, as harmonious as Hegel would seem to suggest.

Positive Law

In fact, Hegel's *Philosophy of Right* is prefaced with an unrestrained attack on contemporary critics of law. Hegel characterizes the argument of Fries and others as purely subjective. Fries argues that if man were left to govern himself according to his subjective inclinations, a communal spirit of friendship would reign and people would dedicate themselves to service.²⁰ This argument, says Hegel, "turns the rich inward articulation of ethical life, . . . which sets determinate limits to the different circles of public life and their rights [into] the broth of 'heart, friendship, and inspiration.'"²¹ This murky reasoning is, for Hegel, nothing but superficiality which demonstrates a "hatred of the law."²²

Appreciation of law, on the other hand, is the trademark of reason. Justice and ethical life are only understood through thinking. Through thoughts, justice and ethical life receive rational form. However, this rational form is not merely the aggregate of everybody's first thought about the subject, but the careful and exact thinking of it. This rational form is law. Therefore, the conviction that unmitigated subjectivity represents utopia is not only opposed to law, but to reason itself.²³

This defense of law is not a defense of natural law, but of positive law, which is nothing more nor

²⁰Ibid., p. 3.

²¹Ibid.

²²Ibid., p. 4.

²³Ibid., pp. 1-7, 115.

less than abstract right posited by man and received as valid in a particular state.²⁴ In other words, through legislation law takes on its positive form. This positive form, in turn, receives positive content as the laws are administered.²⁵ The administration of justice brings greater particularity and differentiation to the law. For example, a law which prohibits theft is particularized as it is applied to plagiarism.²⁶

Hegel is quite clear about what the law is not. Law is not the function of "inclination, caprice, and the sentiments of the heart." Nor is law compatible with force and tyranny. Force and tyranny, says Hegel, are not part of a proper concept of law, and are merely accidental to it.²⁷ Rather, positive law is useful in meeting man's needs.²⁸ It serves an educative function by instructing individuals on how to conduct themselves within society.²⁹ Most of all, the end of law is the well being and happiness of private individuals as well as the actualization of their subjective freedom.³⁰

Hegel cannot be read as an apologist for all positive law. Although he considers the increasingly de-

²⁴Ibid., pp. 10, 115.

²⁵Ibid., p. 10.

²⁶Knox, p. 306n.

²⁷Hegel, *Philosophy of Right*, p. 10.

²⁸Ibid., p. 137.

²⁹Ibid., pp. 70-71.

³⁰Ibid., pp. 62, 99.

terminate character of law, and the differentiation or particularity of law as ultimately favorable elements of his theory, he admits that these very characteristics open up the possibility for discrepancy between positive law and the principles of rightness.³¹ Also, the science of positive law, as detailed as men may make it, will never resolve all the questions about the rationality of law.³² Nevertheless, Hegel also says in order for a right to be valid it must be posited in law, it must be a legal right, susceptible to proof and recognition within the law.³³

Procedural Justice

Although *Philosophy of Right* has a complex development of a natural law theory, justice within positive law is tied to notions of procedural fairness. Indeed, Hegel perceptively points out that an important area of law is directly related to the administration of justice and the state--law is not merely sanction.³⁴ Positive law, to be valid, must be known and recognized by all members of civil society. It, in turn, must recognize property and contract in its administration of the laws.³⁵ The denial of property, contract, or liberty is only valid after specified procedures of adjudica-

³¹Ibid., pp. 70-71.

³²Ibid., p. 46.

³³Ibid., p. 139.

³⁴Ibid., p. 71.

³⁵Ibid., p. 72.

tion are fulfilled.³⁶

The concept of promulgation receives particular attention from Hegel. Promulgation cannot be divorced from the positing of law. In order for law to be posited, i.e. become positive, it must be made known.³⁷

Hence making a law is not to be represented as merely the expression of a rule of behaviour valid for everyone, though that is one moment in legislation; the more important moment, the inner essence of the matter, is knowledge of the content of the law in its determinate universality.³⁸

For Hegel, the positing of law is the moment in which abstract right becomes both determinate and universal. This implies not only that universal knowledge of the law is necessary to make it binding, but that to conceal the law is, by definition, tyrannical.³⁹ Inasmuch as the outcome of a court of law has universal validity, judicial proceedings should be open to the public.⁴⁰

Hegel is so insistent on the idea of promulgation that he employs rather stirring language in favor of simplification and codification of the laws.

To hang the laws so high that no citizen could read them (as Dionysus the Tyrant did) is injustice of one and the same kind

³⁶Ibid., p. 73.

³⁷Ibid., pp. 69-70.

³⁸Ibid., p. 70.

³⁹Ibid., p. 71.

⁴⁰Ibid., p. 73.

as to bury them in row upon row of learned tomes, collections of dissenting judgments and opinions, records of customs, etc., and in a dead language too, so that knowledge of the law is accessible only to those who have made law their professional study.⁴¹

Codification of law is considered "a great act of justice" because it makes the law more accessible to all people. Hegel realizes that this call for codification could contradict his theory that the determination of law is a continuing process. Nevertheless, he believes that a code of simple general laws, based on true principles, is a necessity.

Implicit in Hegel's discussion of publicity of the law is the idea of generality. Once law is legislated, it is valid for all.⁴² Administration of justice does not discriminate on the basis of religion or race--every man counts as a man by virtue of manhood alone.⁴³ The only person exempt from the generality of law is the "personal majesty of the monarch," who is distinct from the executive in Hegel's constitution.⁴⁴ The reason for this exemption is that the monarch embodies the constitution and is therefore not bound by its differentiations.

It should be noted that generality, or universality of law, implies more than just general application of the law, but an elevation of law to a general or universal level. This means that as law is posited through

⁴¹*Ibid.*, p. 71.

⁴²*Ibid.*, p. 70.

⁴³*Ibid.*, p. 69.

⁴⁴*Ibid.*, p. 96.

legislation, then violation of that previously abstract right is no longer the mere violation of the property or contract of an individual, but a crime against civil society.⁴⁵

Although Hegel's scheme is concerned with the welfare of the poor, his concept of justice contains no notions of equality. Property, in Hegel's economy, is indispensable from individuality, and therefore it is treated with great deference. Since Hegel's scheme is differentiated and endlessly particularized, any sort of equal division of resources is unfathomable. "What and how much I possess," writes Hegel, "is a matter of indifference so far as rights are concerned."⁴⁶

Judicial Reasoning

As right is elevated from abstract immediacy to determinate universality in positive law, there arises a need for an institution to actualize posited right without the subjective feeling of private interest. This is the fundamental duty of public authority and the particular duty of the court of justice.⁴⁷ As mentioned earlier, injury, under law, is no longer subjective, but universal, and therefore all injury or wrong must be settled in the court. In this way the law is reconciled objectively--the injury or crime which suspends the law is annulled (presumably through punishment), and law is restored.⁴⁸

⁴⁵Ibid., p. 72.

⁴⁶Ibid., p. 24.

⁴⁷Ibid., pp. 72-73.

⁴⁸Ibid., p. 73.

Hegel spells out clearly and carefully the way in which the court arrives at a judgement. He divides judgement into two parts: (1) ascertainment of the nature of the case and (2) subsumption of the case under law.⁴⁹ The nature of the case is the indictment which instructs the judge on which laws are to be applied. The subsumption of the case under law means quite simply that only the general principle of law indicated by indictment can be applied. The judge is merely an organ of the law, and cannot act according to his own discretion.⁵⁰ There are only two checks external to law which Hegel places on judicial discretion: publicity and knowledge. As we have mentioned previously, the universal applicability of judicial decisions makes public access the people's only guarantee that proceedings are handled fairly, and public access is only an adequate check if people are able to understand the judicial process.⁵¹

Hegel therefore places a heavy burden on the laws themselves to be adequate instruments of justice. Hegel claims that the concept of positive law sets a general limit within which there is room for contingent and arbitrary decisions. Law merely sets a maximum and a minimum for the judge to work within, and in good law, those limits are set well within the limits of

⁴⁹*Ibid.*, pp. 73-74.

⁵⁰*Ibid.*, p. 74,

⁵¹*Ibid.*

justice.⁵² However, Hegel does not see the judicial process in mechanical terms, nor does he shut his eyes to the fact that in the administration of justice there are frequent clashes between laws, or the demand for further particularization of laws. Rather than avoid these hard cases by giving the judge "mere fiat" or discretion, Hegel's system offers an original and helpful way out of the hard case. The clash of laws invokes dialectical reasoning, and therefore, according to Hegel, it can be worked out objectively, rationally and legally, even when there may be no explicit solution in law.⁵³

Legal Obligation

Since a member of civil society lives within the law, he has a duty to acknowledge the decision of the court.⁵⁴ Of course, Hegel has a natural law theory, and legal obligation could be grounded in the natural law. Yet it must be remembered that the grounding of natural law for Hegel is not abstract. Therefore, Hegel is extremely critical of arguments for non-compliance with law which rely on abstract thinking. These abstractions, according to the text, elevate subjectivity above the universal, which demonstrates no understanding of the dialectic. Even logically, there are real problems with reducing ethics to the realm of private conviction. The logical and dialectical extremes of these non-compliance arguments are the destruction of right and wrong, and the elevation of

⁵²Ibid., p. 71.

⁵³Ibid., pp. 137-38.

⁵⁴Ibid., p. 70.

intention to the highest ethical standard.⁵⁵

To have no obligation to law is the same as law having no authority. At such a level or moment, Hegel hypothesizes a Hobbesian war against all, since coercion is annulled only by coercion.⁵⁶ At this level, any individual conviction would have veto power over convention.⁵⁷ Hegel mentions at least three sources for the authority of law--God, the State, and history. In Hegel, however, these three concepts are so tightly interwoven that it would be fruitless, in this paper, to make distinctions. What is important, is that in *Philosophy of Right* legal authority and obligation act as "the bond which gave men, with all their deeds and destiny coherence and subsistence."⁵⁸ This would imply that law acts as an institution which coordinates the disparate elements of society. In any case, abstract or mere thinking is not sufficient to deny the validity of a reasonable concept of law, and the existing positive law should be revered.⁵⁹

Freedom

Perhaps the most compelling reason for legal and political obligation is that the state is the "articulation of the concept of freedom," and therefore we have some duty or obligation to the institutions of the

⁵⁵Ibid., pp. 49-54.

⁵⁶Ibid., p. 36.

⁵⁷Ibid., pp. 50-54.

⁵⁸Ibid., p. 115.

⁵⁹Ibid., p. 115.

state.⁶⁰ However, this is counterintuitive to prevalent concepts of freedom which would characterize freedom only in its positive sense, or what Hegel calls arbitrariness.⁶¹ Hegel, however, is very critical of this absolutist view of freedom. His first criticism is that since human will is finite, choice itself will never allow will to escape its finitude.⁶² Hegel complains that too many theories of freedom divorce freedom from its objects and aims, and therefore, freedom is treated abstractly and formally rather than dialectically.⁶³ If we look at the concrete aims of freedom, then limitations on caprice and impulse are actually viewed as liberation, or, in other terms, law and morality are "indispensably requisite" to the ideal of freedom.⁶⁴ Because Hegel finds the origin, substance and goal of law in freedom, subjective freedom is only actualized within a system of law.⁶⁵ In this way freedom is maintained without sacrificing objectivity. Indeed, the activity of the will is the dissolution of the contradiction between subjectivity and objectivity.⁶⁶

⁶⁰Ibid., pp. 57, 99, 107.

⁶¹Ibid., p. 16.

⁶²Ibid.

⁶³Hegel, *The Philosophy of History*, trans. J. Sibree, Great Books of the Western World, vol. 42 (Chicago: Encyclopaedia Britannica, Inc., 1952), p. 172.

⁶⁴Ibid.

⁶⁵Hegel, *Philosophy of Right*, p. 17.

⁶⁶Ibid., p. 18.

The Constitution of the State

The modern state is the institution which finally brings unity to the universal and the particular. In the place of the arbitrary will of the sovereign, there is a legal system which recognizes civil rights.⁶⁷ Thus, freedom is actualized. However, there are important differences between the legal system of the civil society and the legal system of the state. In civil society, the legal system acts as the arbiter between and coordinator of individual interests. In the state, the law embodies the mind of a nation, so that there is not mere coordination and arbitration, but some defined purpose.⁶⁸ Whereas man in civil society may have only considered himself a creature of the state were he an employee of the government, man in the state, by virtue of his manhood alone, is very conscious of being a member of the state.⁶⁹

Therefore, the state is not an externally constituted system. It must harmonize, in all ways, with the particular development of law and custom of a given nation.⁷⁰ It is for this reason that Hegel is wary of mere constitution writing as the way to elevate society to the level of the state. He cites the notable failure of Napoleon's attempt to give the Spanish a rational constitution as an example of an external

⁶⁷Ibid., p. 142.

⁶⁸Ibid., p. 92,

⁶⁹Ibid., pp. 84-89, 97, 104.

⁷⁰Ibid., p. 145.

constitution which "is meaningless and valueless."⁷¹

Although the state may give "fresh and extended determination"⁷² to the law of civil society, the constitution of the state is primarily intended to embody and strengthen the existing legal system. Contrary to some interpretations of Hegel, I find ample evidence to suggest that the consciously adopted ends of the state are the individual's interests. Therefore, the elements of procedural justice which exist in civil society are implicit in the law of the state.⁷³ The state, however, is concerned with the political as well as the legal. Therefore, legal obligation is accompanied by political obligation or duty. Hegel does not address as well as he might the maintenance of fairness and freedom in a universalized political system with a strong sense of duty. We have already alluded to his repudiation of the concept of material equality.⁷⁴ But there are other hints in *Philosophy of Right* about how political power is restrained. For one thing, in a good state, individual duties to the state are proportionate to individual rights against the state.⁷⁵ There are institutional controls on the misuse of state power. Among them, is an educated, non-partisan civil service. Another control is the size and prestige of the state;

⁷¹Ibid.

⁷²Ibid., p. 99.

⁷³Ibid., pp. 84-85.

⁷⁴Ibid., p. 24. " . . . all kinds of intellectual mediocrity stumble on it [equality] at once when they are confronted by the relation of unity to difference."

⁷⁵Ibid., p. 83.

both through emulation and extension, the stability of the state is protected against ambition and faction.⁷⁶ Yet none of these ideas is fully developed.

Conclusion

Philosophy of Right presents a complex and complete theory of law which grounds law and politics in the unfolding dialectic of history. However, Hegel does not ever satisfactorily distinguish the natural from the positive law. Moreover, he never gives us a firm foundation for legal authority, although there is a strong sense of legal obligation. These problems seem to be part and parcel of his over-arching metaphysical theory because Hegel does not appeal to an absolute or formal realm of authority, only to the unfolding spirit of history; justification is temporal. It is for this reason that Hegel has been derogatorily labeled as a defender of the status quo. *Philosophy of Right* is most instructive in its analyses of procedural justice, judicial reasoning, and freedom under law. Curiously, these analyses focus on the rule of positive law in society, albeit in relation to the further differentiation of the mind and will. Even in the state, law applies equally to all, even government officials (the noted and notable exception being the monarch). Furthermore, there are procedural rules to insure that the law is used only as an instrument of justice.

The importance of this implicit defense of the rule of law cannot be overestimated, primarily in the way in which it functions *vis à vis* the Marxist critique of law, which also employs a form of the dialectic, and the Critical Legal Studies movement, which claims some of its ascendancy from the continental tradition.

⁷⁶*Ibid.*, pp. 98-99.

Inasmuch as there has been a great revival of Hegelian studies in continental philosophy, Hegel's discussion of positive law in *Philosophy of Right* may be a way of bridging several different schools of jurisprudence.

PAUL STRINGHAM EDWARDS

REFERENCES

- Cullen, Bernard. *Hegel's Social and Political Thought*. Dublin: Gill and MacMillan, 1979.
- Hart, H.L.A. *The Concept of Law*. Clarendon Law Series. Oxford: Oxford University Press, 1961.
- Hartmann, Klaus. "Towards a new systematic reading of Hegel's *Philosophy of Right*." *The State and Civil Society*. Translated by Stephen Bungay and Klaus Hartmann. Cambridge: Cambridge University Press, 1984. 114-36.
- Hegel, Georg Wilhelm Friedrich. *Hegel's Philosophy of Right*. Translated by T.M. Knox. Oxford: Oxford University Press, 1967.
- _____. *The Philosophy of History*. Translated by J. Sibree. Great Books of the Western World, vol. 42. Chicago: Encyclopaedia Britannica, 1952.
- _____. *The Philosophy of Right*. Translated by T.M. Knox. Great Books of the Western World, vol. 42. Chicago: Encyclopaedia Britannica, 1952.
- Marx, Karl. *Karl Marx: Selected Writings*. Edited by David McLellan. Oxford: Oxford University Press, 1977.

THE GOVERNMENT AND THE GRIZZLY: THE POLITICS OF PRESERVATION

*Man shapes himself through decisions that
shape his environment.*

RENE DUBOS

Each year, millions of people travel to one of the most beautifully unique areas of the world: Yellowstone National Park. Despite the park's ecological and recreational diversity, geysers and grizzly bears have historically been two of the park's main attractions for the majority of tourists.¹

Unlike the geysers, however, grizzlies are rarely seen today by park visitors. Besides queries about the time of Old Faithful's next eruption, probably the most frequently expressed question in the park is, "Where are all the bears?" The answer is tragically simple: the bears are dying. Unfortunately, explanations of why the bears are dying are much more complex.

While weather cycles, habitat depletion, and poaching are all significant factors, the principal reason for the bears' decline in Yellowstone Park is political, not biological. The National Park Service--the park's caretaker--has followed a bear management policy that is based on an unattainable philosophical ideal which has been carried out by bureaucratic managers more intent on preserving their political reputations than on preserving the grizzly bear.²

¹Gary Brown, "The Yellowstone Perspective: Where Have All the Yellowstone Bears Gone?" Western Wildlands, Winter 1982, pp. 29-30.

²Alston Chase, "The Grizzly and the Juggernaut," Outside, January 1986, p. 30.

The purpose of this paper is three-fold: First, to describe the precarious position of Yellowstone grizzlies. Second, to outline the assumptions behind the Park Service's bear management policy. Last, to analyze the effect of the government's policy on the bears.

In sorting out information for this paper, one thing was evident immediately. Opinions about the grizzly's management in Yellowstone are strong and polemical. Writing this paper, I've tried to be as objective as possible. Obviously, the Park Service is not the only villain in the tragedy, nor do I believe there is a government conspiracy to eradicate bears from national parks. However, as one who has had more than one encounter with this impressive animal, I must confess a certain pro-bear bias; I believe the grizzly bear, a symbol of our shrinking wilderness, is a species that must be saved.

Background

Beginnings of the Bear Problem. When the Park Service took control of Yellowstone Park in 1916, between forty and fifty grizzlies roamed the area. As more people visited the park, the amount of garbage dumped inside park boundaries increased as well. The grizzly (*Ursus arctos horribilis*), an omnivorous opportunist, was naturally attracted to this new source of readily available food. Large numbers of grizzlies and black bears routinely gathered at dumpsites to feed. The National Park Service quickly capitalized on the attraction.

Beginning in 1919 and continuing until 1941, the bear-feeding spectacle at the dumps had reached such a pitch that grandstands were erected and the garbage spread out buffet-style on raised platforms. There were regular feeding schedules

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just as in a zoo, and the parking lots nearby overflowed with five to six hundred cars nightly. On a good night, you might see seventy grizzly bears.³

For most species, the availability of food often determines the number of animals that a given environment can support. If the food supply increases, the population generally does too. The inverse is usually equally true: if food supplies shrink, the carrying capacity, i.e., the number of animals an ecosystem can sustain, of the land is diminished and the population decreases. Such is the case with the grizzly. Food is directly related to the longevity, the ability to survive hibernation, and the reproductive rate of a grizzly.⁴ For Yellowstone bears, the park's dumps served as a rich source of highly caloric food. Thus, although the dumps were neither naturally created or aesthetically pleasing, they boosted the park's carrying capacity for bears. In fact, "Censuses taken at the dumps indicated that the number of grizzlies increased from 40 in 1920 to 260 by 1930."⁵ Between 1959 and 1967, bear researchers measured a 2.4% average growth rate in population indicating that the carrying capacity had been reached.⁶

³Thomas McNamee, The Grizzly Bear (New York: Alfred Knopf, 1984), p. 96.

⁴*Ibid.*, pp. 116, 232-33. See also, Frank C. Craighead, Jr. The Track of the Grizzly (San Francisco: Seirra Club Books, 1979).

⁵Alston Chase, Playing God in Yellowstone (New York: Atlantic Monthly Press, 1986), p. 146.

⁶Craighead, Track of the Grizzly, pp. 175-76.

The population increase was not good news for the Park Service. Bears, particularly black bears that had come to associate humans with food, were a menace to campers and residents living near the park. For Park Service officials, reports of property damage and personal injury were all too common. By the 1950s, it was obvious that new regulations needed to be established and enforced in order to avoid dangerous confrontations between man and bear.

Through the 1960s, the new regulations amounted to little more than educating tourists to the hazards of feeding the bears. The policy was working, however, as the number of bear incidents declined.⁷ But with the number of park visitors steadily rising, park officials were concerned the problem would only get worse.

Their fears were not unfounded, for in 1967, two women were fatally mauled by grizzlies in Glacier National Park. And although only three deaths were caused by grizzlies in national parks in the previous ninety-four years, a crisis atmosphere developed.

The Park Service, accused that it could have prevented the deaths and fearful of lawsuits, quickly moved to formulate a new bear management strategy.⁸ Yellowstone grizzlies, animals with few natural enemies, were suddenly subject to a new danger: The National Park Service.

The Leopold Report: Park Policy Defined. For Park Service officials, the tragic events in Glacier reinforced their desire to "go forward with a proposal of some long standing: to close down the earth-filled

⁷Chase, "The Grizzly and the Juggernaut," p. 31.

⁸Jack Olsen, Night of the Grizzlies, cited by Craighead, The Track of the Grizzly, p. 192.

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dumps scattered throughout the park and used as foraging areas by grizzlies."⁹ Before examining the proposal itself, it is vital to examine its misguided philosophical basis.

In 1963, A. Starker Leopold, son of noted environmentalist Aldo Leopold, prepared a paper entitled "Wildlife Management in the National Parks." The paper focused attention on wildlife biology and management--new concepts at that time. According to Leopold, the primary goal of park wildlife management should be to see "that biotic associations within each park be maintained, or where necessary recreated, as nearly as possible in the condition that prevailed when the area was first visited by the white man."¹⁰

Simply put, the philosophical ideal behind the report was that nature should be allowed to take its course inside national parks. Park officials were essentially advocating a hands-off policy. Only where necessary would they intervene in the natural order of things, and even then, human manipulation was required only to recreate primeval ecological conditions.

Certainly, minimizing human intervention in our national parks is a lofty and noble goal, but is it attainable? The policy seems fraught with inherent problems.

First, how does one preserve or recreate primeval conditions in today's national parks? Earlier, these areas were completely wild, but are presently visited by millions of people, dotted with homes and businesses, and are laced with thousands of miles of asphalt.

⁹Craighead, p. 192.

¹⁰McNamee, p. 105.

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Ironically, A. Starker Leopold's father understood the impossibility of attempting to turn the clock back. In 1927, he recognized the futility of trying to restore a sense of balance in nature because nature had been altered too fundamentally. "The only option we have is to create a new balance objectively determined upon for each area in accordance with the intended use of that area."¹¹

Second, which "biotic associations" are to be recreated? Assuming it's decided which ecological systems and associations to restore, how does one know when they are completely restored? If the goal is to recreate the systems that existed before man arrived, it is impossible to know when the restoration is complete.

Third, attempts to restore natural order while minimizing the impact of man ignores the role Indians played in the area:

If restoring wilderness meant re-creating a hunter-gather culture long since exterminated, the task of restoration was impossible, and if it meant giving land back to the Indians, it was undesirable.¹²

Moreover, the hands-off approach to wildlife management ignores current realities. National parks are not self-contained ecosystems. Park boundaries are artificially created, and the species that inhabit these areas frequently wander beyond park borders where they are no longer subject to the Park Service's management ideals.

¹¹ Aldo Leopold, cited by Chase, Playing God in Yellowstone, p. 26.

¹² Chase, Playing God in Yellowstone, p. 46.

Overall, it is unrealistic to expect national parks to be truly or completely wild. Untouched wilderness is no longer possible in areas that are so accessible. As long as man and animals both use the area, biotic self-regulation is impossible.

In theory, the idealism behind the Leopold Report is noble and appealing. Unfortunately, by formulating the recommendations of the document into actual policy, the Park Service would jeopardize the survival of the grizzly in Yellowstone National Park.

Dump Closure

Hasty Assumptions. In 1967, Park Superintendent Jack Anderson, a firm supporter of the philosophy behind the Leopold Report, had work to complete before Yellowstone Park's Centennial Celebration. The celebration was

... five years away and an international conference of park managers was to be held there in honor of the occasion. If the world's flagship national park was to be shipshape in terms of the Leopold Report by then--restored as nearly as possible to its pristine primeval condition--work would have to begin at once, and one of the new leadership's goals was to close open-pit garbage dumps.¹³

In the aftermath of the events in Glacier National Park and consistent with thinking of the Leopold Report, the Park Service concluded that the dumps had no place in national parks, especially not in Yellowstone. The Park Service decided to close the dumps and wean the bears from garbage cold-turkey. The sooner bears found a new source of food, the

¹³McNamee, pp. 105-6.

better. The decision to abruptly close the dumps was based on three assumptions.

First, in the opinion of park biologist Glen Cole, although grizzlies had become habituated to garbage and people, they would rapidly adjust to new sources of food once the dumps were closed. Bears, he felt, weren't picky about where they received their food. If food was no longer available at the dumps, the bears would be forced to return to wild, more natural sources of food. The thought of bears eating roots and berries instead of stale twinkies and leftover spaghetti was certainly more in keeping with the Leopold Report's notion of restoring pristine ecological environments.

Second, although Cole and the Park Service had not conducted formal population censuses, they felt confident that there was a larger population of "wild" grizzlies elsewhere in the park. Their belief in a larger population of grizzlies was derived by extrapolating the density figures of the number of black bears that were attracted to bait in various parts of the park.¹⁴ Population estimates collected by people who had conducted more scientific grizzly censuses--namely independent bear researchers John and Frank Craighead--were not used.¹⁵

Moreover, when garbage bears were forced to compete with "wild" bears, the Park Service assumed, the latter would dominate. Ultimately, a fitter, stronger, more natural population of grizzly bears would emerge in the park.¹⁶

¹⁴Chase, *Playing God in Yellowstone*, p. 148.

¹⁵*Ibid.*

¹⁶McNamee, p. 108.

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Last, government officials were of the opinion that because bears associated humans with food, the dumps had caused bears to lose their fear of man.¹⁷ Once the dumps had closed and the bears had moved to more remote areas of the park, the number of bear/human incidents would decline.

Based on unsubstantiated biological opinions and consistent with the philosophical underpinnings of the Leopold Report, the decision to close the dumps seemed only natural. In one masterful stroke, the Park Service found a way to rid itself of unsightly garbage and the bear problem while simultaneously demonstrating its commitment to "ecosystems management."

Predictably, the Park Service's assumptions were in sharp contrast to the opinions of the Craigheads, the deans of grizzly research. The Craigheads studied grizzlies in Yellowstone for ten years; their research, though debated, is often thought of as the most authoritative and definitive of bear studies.¹⁸

Their research told them that the grizzlies were not habituated to humans at all because the dumps where grizzlies fed were closed to park visitors. Moreover, the garbage was as much a natural food for the grizzlies as bulbs, ants, or even elk.¹⁹ The Park Service was partly correct in saying that grizzlies are not picky eaters, but this ignores the fact that a rich

¹⁷ Chase, *Playing God in Yellowstone*, p. 151. See also, U.S. National Park Service, "A Detailed Response from the National Park Service to the 'The Grizzly and the Juggernaut' by Alston Chase," February 1986, p. 11.

¹⁸ McNamee, p. 100.

¹⁹ *Ibid.*, p. 108.

source of food was suddenly removed from bears who had relied on it for years.

In further contrast to the Park Service, the Craigheads did not believe there were two separate populations of grizzlies. Their data, from 1959 to 1969, showed that as much as 77% of Yellowstone's grizzly population used the dumps at one time or another, and they felt that the number of non-garbage-feeders was much too small to sustain the elimination of many dump bears.²⁰ Even if there were two separate populations, no one had--nor could have--shown that the two populations would eventually become combative forces, each battling to supplant the other.

Finally, the Craigheads argued that the dump closure would increase rather than decrease the number of bear incidents:

Indeed they [the Craigheads] felt that the dumps helped prevent campground problems, by drawing grizzlies to a high-quality food source isolated from the park's developed areas. Recalling that there had been a camp-raiding rampage following the garbage reductions of 1941, and knowing how important a food source the dumps had been for a number of bear generations, the Craigheads reasoned that a cold-turkey dump closure would bring about a sudden, confused dispersal of suddenly very hungry grizzly bears, who would inevitably be drawn to the campgrounds and big trouble. And an abrupt dump closure, they argued, would be bad for both bears and people.²¹

Towns with public dumps such as Gardiner and West Yellowstone would thus be subject to an accelerated

²⁰Ibid.

²¹Ibid., pp. 108-9.

dispersal of hungry bears. "The net result," warned the Craigheads, "could be tragic personal injury, costly damages, and a drastic reduction in the number of grizzlies."²²

The decision to close the dumps became the "core of an essentially scientific disagreement" between the Craigheads and the Park Service.²³ The Craigheads called for gradual closure of the dumps using human research and manipulation to aid the grizzlies' transition. The Park Service, claiming the "jury was still out" on the relationship between the dumps and the bear population and clinging to its philosophic ideal, stressed the need for a quick change to allow the bears more time to return to natural sources.²⁴ But what began as merely a scientific difference of opinion rapidly escalated into a heated political battle.

The Craighead Controversy. As independent researchers in Yellowstone, the Craigheads provided grizzly information to the park staff, but as the Park Service's grizzly policy became more controversial, the Craigheads began to provide their own management recommendations. Trying to help, "the Craigheads violated a cardinal bureaucratic rule: never challenge the chain of command."²⁵ As Thomas McNamee describes the researchers' relationship with the Park Service, the Craigheads' belief that more information would grant them more influence in the decision-making process "indicated a certain naivete about the nature of in-

²²Chase, Playing God in Yellowstone, p. 32.

²³McNamee, p. 109.

²⁴U.S. National Park Service, p. 9.

²⁵Chase, Playing God in Yellowstone, p. 153.

stitutional authority."²⁶ Deputy Assistant Secretary of the Interior, Curtis Bohen, wrote later: "When scientists attempt to extend their products of research into the realm of policy and management decision making, this goes beyond the normal prerogatives of scientific endeavor."²⁷ So long as Park Service bureaucrats had authority in Yellowstone, scientists and biologists had no business formulating wildlife policies.

In 1971, the Park Service agreed to renew the Craigheads' research permit only if the men would not speak out against the park's policies without first obtaining Park Service approval. The Craigheads refused, viewing the condition as a threat to their academic and personal freedoms under the First Amendment.²⁸ Their ten-year study of bears in Yellowstone was over.

Meanwhile, though the dumps had closed, the number of problems involving bears increased. The exact number of control actions--removal or disposal of bears that invaded campgrounds or homes--was in dispute. The Park Service reported one figure. The Craigheads, maintaining the park's records were "grossly incomplete," reported another. Frank Craighead claimed that some park rangers admitted the park's unofficial policy was "get rid of the bears, just don't let anybody know."²⁹ Alston Chase, relying on three

²⁶McNamee, p. 110.

²⁷Curtis Bohen, as cited by Chase, "The Grizzly and the Juggernaut," p. 32.

²⁸Chase, *Playing God in Yellowstone*, p. 157. Craighead, pp. 197-99. McNamee, pp. 110-13.

²⁹Craighead, pp. 197-99.

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separate sources, verifies the Park Service cover-up of bear kills.³⁰

So why the discrepancies over numbers and all the government secrecy? Besides the outrage that likely would have occurred if the public was aware of the park's policy, according to Chase, the Park Service was breaking the law:

A year before the Trout Creek dump was closed, Congress passed the Environmental Policy Act. This law required that no major federal action be taken until an Environmental Impact Statement (EIS) had been completed. But no such review was begun until 1974. "Suddenly, in the early seventies," one former senior Park Service official explained to me, "just as the Park Service was in the midst of killing bears, they found what they were doing was in violation of the EPA. They had to cover it up."³¹

The news media, catching wind of the controversy and the adverse effects upon the grizzly, began to inform the public. Feeling the pressure in 1973, the Department of Interior authorized a National Academy of Sciences committee to look into and report on bear management problems in Yellowstone. The committee's report was almost a complete vindication of the Craig-heads' research and sharply reproved the Park Service and Cole for supplying exaggerated estimates of bear numbers.³²

Strangely in 1975, Ian Cowan, the committee's chairman, reversed his decision and concluded that the

³⁰Chase; *Playing God in Yellowstone*, pp. 155-56.

³¹*Ibid.*, p. 157.

³²McNamee, p. 115.

number of backcountry bears was now more in accordance with Cole's numbers.³³ The debate over whose estimates are most accurate continues today, only clouding the issue of how to best manage the bears.

In order to collect more objective data, a new interagency committee, the Interagency Grizzly Bear Study Team (IGBST) was established from members of the Park Service, the Fish and Wildlife Service, the Forest Service, and representatives of the Idaho, Montana, and Wyoming state governments.

From the outset, however, it quickly became obvious that the agency would be a lackey for Yellowstone Park officials. The Park Service, specifically Glen Cole, was given authority to choose the team's leader.³⁴

The controversy, which sprung from differences of scientific opinion, evolved into allegations of wrong doing, bureaucratic reshuffling, and job loss. Ultimately, however, the grizzly was the big loser. While all the hullabaloo and reorganization went on in Washington, the bears continued to die in Yellowstone.

Effects on the Grizzly. Following the dump closure in 1968, the grizzly fought a double-edged sword. On the one side, a significant source of food suddenly disappeared. In his quest for alternative food sources, the grizzly faced the other edge of the sword: being trapped, relocated, and killed by the National Park Service.

Logs kept by Park Service employees in the Fishing Bridge area revealed a change in the bears' behavior directly after the dump closures. During the summer of 1967, before the dumps were closed, black

³³National Park Service, p. 13.

³⁴McNamee, p. 117.

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bears accounted for 25 of the 31 incidents of activity in the Fishing Bridge campground area. The next year, following closure of nearby Trout Creek dump, 78 of the 91 reported entries involved grizzlies, indicating the degree to which grizzlies were now wandering into campgrounds looking for food.³⁵ Witnessing the increased dispersal of grizzlies, many began to recognize that the Craigheads' predictions were absolutely correct.³⁶

In response to the increase in bear activity, the Park Service performed more control actions. The Craigheads' records showed that in the Trout Creek area there were only nine control actions in 1967. In 1968, following the closure of the dump, the number jumped to eighty-four.³⁷ As previously noted, the Park Service disputed these data and claimed only twenty-four control actions were performed in 1968.³⁸ But according to the report by the National Academy of Science

...the number of control actions [parkwide] rose from an average of 13 a year in 1967 and earlier, to 63.3 a year between 1968 and 1970. The number of grizzlies reported killed by control actions rose from an average of three a year before 1967 to nine a year between 1968 and 1970. The number of grizzlies reported killed by control actions, according

³⁵Chase, "Grizzly and the Juggernaut," p. 32.

³⁶Douglas Chadwick, "'Grizz' Of Man and the Great Bear," National Geographic, February 1986, p. 192.

³⁷Craighead, p. 196.

³⁸National Park Service, p. 13.

to these official figures, rose from an average of 18.9 bears per year to 31.5.³⁹

All told, the Park Service says that 261 bears have been killed since 1968. The Craigheads believe 320 is closer to the truth.⁴⁰

In June 1972, park managers' worst nightmare became a reality. Harry Walker, hiking in the park near Old Faithful, was fatally mauled by a grizzly. Grizzlies had become a deadly menace. The incident is even more tragic because, in the opinion of Frank Craighead, it could have been avoided by Yellowstone authorities.⁴¹ Others agreed.

In a civil suit brought on behalf of the deceased's estate, the Park Service was declared negligent. In a fatal case of misplaced aggression, the Park Service responded by killing even more bears. The government's policy followed a lamentable train of events: Park officials would sanitize an area to discourage bear use. Bears, in turn, would then wander through campgrounds and backyards searching for food. Eventually, the bears would either be drugged, captured and relocated, or killed outright.

By the 1980s, it was evident that the Park Service's policy had been a failure. "Whereas in 1974 the IGBST saw an average of 1.58 black bears and 2.5 grizzlies on every observation flight, by 1980 the ratio had dropped drastically, to .22 for blacks and 1.16 for

³⁹Chase, *Playing God in Yellowstone*, p. 155.

⁴⁰"The Fall of the Wild," *Newsweek*, 28 July 1986, p. 54.

⁴¹Craighead, pp. 212-14.

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grizzlies."⁴² Moreover, as one senior park official purportedly told Mr. Chase, "When Dick Knight told me in 1980, that in five years he had been able to find only 46 bears, I suddenly realized we had been had. The Park Service got what it wanted [to get rid of the bear] and they had succeeded."⁴³ And while the present situation for the grizzly is precarious, the future may be even more bleak.

Future Implications. The grizzly's future in Yellowstone National Park is tenuous at best. Although Park Service policies have, perhaps irreparably, harmed the bear, other factors such as increased poaching and the development of land bordering the park are working against this magnificent animal. Much work remains to be done if the bears are to be preserved.

In order to save the grizzlies it is essential that the Park Service reevaluate its interpretation of ecosystems management. As has been shown, the concept of natural regulation is fraught with problems. One of the worst problems is the range depletion caused by the ever-burgeoning elk population. Unless park officials act soon, many species other than the bears will be harmed.

The grizzly was removed from the Endangered Species List in 1969. Today, they are classified as only as "threatened." What this means is that the grizzlies can still be killed by hunters and by park officials. Though controversial, especially with hunters and politicians, upgrading the grizzly's classification to "endangered" would certainly help the bears. The Park Service is not presently advocating such a change.

To this point, I have focused on past abuses of

⁴²Chase, *Playing God in Yellowstone*, p. 163.

⁴³*Ibid.*, p. 167.

the grizzly by the Park Service. Unfortunately, the abuse is not over. On the shores of Yellowstone Lake lies another example of Park Service malfeasance: Grant Village. The Grant Village project is a development complex--complete with parking lots, souvenir shops, and sewage treatment facilities--built right on top of five cutthroat trout spawning streams. The area contains some of the best and most heavily used grizzly habitat in the park.⁴⁴

The purpose behind Grant Village is to move overnight facilities and park visitors away from environmentally sensitive areas such as Old Faithful and Fishing Bridge. The idea was to exchange land that could be developed at Grant Village for land at Fishing Bridge that would be left to the animals.

Unfortunately, the land at Grant is generally considered better grizzly habitat than the area near Fishing Bridge.⁴⁵ When recommending the plan to the Park Service, the Fish and Wildlife Service stated that "grizzly densities [are] higher [in the Fishing Bridge/Pelican Valley complex] than at other locations in the park--with the exception of the Yellowstone Lake spawning streams."⁴⁶ Thus, in trying to reduce human involvement in the wilds, as prescribed in the Leopold Report, park officials did nothing but shift the problem from one area of the park to another.

In the original deal orchestrated with the Fish and Wildlife Service, the Park Service agreed to close Fishing Bridge to campers by 1985. As of yet, this has

⁴⁴McNamee, p. 175.

⁴⁵Chase, Playing God In Yellowstone, p. 213. Craighead, p. 197. McNamee, p. 176.

⁴⁶McNamee, p. 175.

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not occurred. Recreational organizations and business people in communities near the park such as Cody, Wyoming, have lobbied hard in Washington to keep the area open.⁴⁷ Operating both developments forces grizzlies to compete with man--contests grizzlies usually lose.

Once again, National Park Service policy has placed the wants of people ahead of the needs of the grizzly bear--despite laws stipulating that it do just the opposite. And once again the Park Service, in trying to separate bears and humans, actually brought them closer together.⁴⁸

Unfortunately, it will be extremely difficult to reverse the effects of the Grant Village development. "Like the Tennessee-Tombigbee Waterway or the war in Vietnam, Grant Village seems to be one those lousy things so hugely lousy that nobody can stop them."⁴⁹

The National Park Service was established to ". . . conserve the scenery and the natural and historic objects and wildlife therein and to provide for the enjoyment of same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations."⁵⁰ Decisions to push ahead on projects such as Grant Village warrant concern because they reflect the preference of the Park Service for recreation and tourism over wilderness preservation.

⁴⁷"Battling for the Bears at Fishing Bridge Campground," National Parks, July/August 1984, p. 33.

⁴⁸Chase, Playing God in Yellowstone, p. 232.

⁴⁹McNamee, p. 177.

⁵⁰National Park Service Act, U.S. Statutes at Large, vol. 39, p. 535.

During the last three years, perhaps more has been done for the grizzlies of Yellowstone than for any wild species in history. The federal government in 1984 spent \$2.7 million on Yellowstone grizzly management--more than \$13,500 per bear.⁵¹ Though well funded, management programs have been ill-advised and detrimental to the bears. Somewhat ironically, political fortitude, more than money or further research, is what may yet save the bear. John Craighead has said:

We already know enough about grizzly biology to save these bears. No matter what else we learn, we're not going to have grizzlies very long unless we preserve large enough tracts of good wildlife habitat. Too often, when a tough political decision in favor of the bear is called for, we put it off by ordering up another research project to--you know--"study the situation." We could end up studying the grizzly to death.⁵²

Craighead is not alone in his warnings about what may lie ahead for the grizzly without a reversal of political inertia. Alston Chase, who has studied the events in Yellowstone for several years, observes:

. . . this tragic course of events could, very possibly, be reversed tomorrow if there were the bureaucratic will to do so. But if history is any guide, that almost certainly will not happen. Seventeen years after its introduction, government grizzly policy still enjoys the support of the federal bureaucracy and many environmental groups. Neither wants to admit that they have been mistaken and are bringing about

⁵¹Chase, "Grizzly and the Juggernaut," p. 30.

⁵²Chadwick, p. 213.

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the extinction of a threatened species. And while the trendy slogan of "ecosystems management" continues to hold many under its sway, the plight of the grizzly is serving a variety of hidden political agendas. Taken together, these disparate forces may soon bring about a Yellowstone without bears.⁵³

Conclusion

The grizzly bears' history is closely tied with our own; we have both helped and hindered them. The garbage we brought into Yellowstone helped the grizzlies multiply. But, we thought, the population was too large and trouble would eventually occur. To protect us from grizzlies, the government adopted an illogical policy based on unsound philosophical and biological assumptions. The policy is directly responsible for much of the grizzlies' present plight. If a viable population of grizzlies is to be preserved, it will be a victory against government indifference and malfeasance.

If we don't make a far-sighted, deliberate effort to preserve the grizzly in Yellowstone, we will lose not only a powerful symbol of the wilderness, but also one of nature's most magnificent achievements: the grizzly bear.

The quotation from Dubos that prefaced this paper is particularly apt in terms of describing man's relationship with the grizzly. The problem is not protecting ourselves from the bear, it is protecting the bear for and from ourselves.

The grizzlies of Yellowstone National Park represent not only what man has done to harm his environment, but also the opportunity he has for environmental preservation. If we do succeed in preserving this

⁵³Chase, "Grizzly and the Juggernaut," p. 30.

unique creature, we will have demonstrated compassion and unselfishness, and thereby become all the more human. In the words of nature lover Bil Gilbert, "solving the problem will be hard work, but we need the exercise."⁵⁴

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⁵⁴Bil Gilbert, Our Nature (Lincoln, NE: University of Nebraska Press, 1986), p. 247.

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REFERENCES

- Alder, Jerry; Hagler, Mary and Copeland, Terry. "The Grand Illusion," *Newsweek*, 28 July 1986, pp. 48-51.
- "Battling for the Bears at Fishing Bridge Campground," *National Parks*, July/August 1984, p. 33.
- Brown, Gary. "The Yellowstone Perspective: Where Have all the Yellowstone Bears Gone?" *Western Wildlands*, Winter, 1982, pp. 29-30.
- Chadwick, Douglas H. "'Grizz' Of Men and the Great Bear," *National Geographic*, February 1986, pp. 182-213.
- Chase, Alston. *Playing God in Yellowstone*. New York: Atlantic Monthly Press, 1986.
- _____. "The Grizzly and the Juggernaut," *Outside*, January 1986, pp. 28-34, 55-65.
- Craighead, Frank C., Jr. *The Track of the Grizzly*. San Francisco: Sierra Club Books, 1979.
- Gilbert, Bil. *Our Nature*. Lincoln, NE: University of Nebraska Press, 1986.
- McNamee, Thomas. *The Grizzly Bear*. New York: Alfred Knopf, 1984.
- "The Fall of the Wild," *Newsweek*, July 28, 1986, pp. 52-54.
- U.S. National Park Service. "A Detailed Response from the National Park Service to 'The Grizzly and the Juggernaut,' by Alston Chase," February, 1986.

THE FOREIGN SOVEREIGN IMMUNITIES ACT: A CONSIDERATION OF THE THIRD CLAUSE OF 1605(a)(2)

The concept of sovereign immunity is based on the idea of protecting the dignity of sovereign entities, a principle worthy of continuation. However, when it is applied unfettered, it has the possibility of obstructing justice. Until 1952 the United States courts, under State Department consent, applied immunity to all sovereigns that were brought before them. In 1952, the State Department issued a letter drafted by Jack B. Tate which introduced the theory of restrictive sovereign immunity to U.S. courts. The Tate letter held that governments brought before U.S. courts must still be considered immune from jurisdiction for their public acts (*jure imperii*), but must be held accountable for their private acts (*jure gestionis*).¹

The Tate letter was an attempt to allow governments to go about their administrative responsibilities unhindered, but allow private parties to have recourse for wrongs committed by a government outside those administrative responsibilities. Although it was a step in the right direction, it was not all that was needed. The area encompassing public and private acts was left extremely vague and open.

Congress, recognizing that further codification was necessary, passed the Foreign Sovereign Immunities Act (FSIA) in 1976. The purpose of the act is to lay down a standard that can be uniformly applied to cases involving a foreign government which claims to

¹Deborah Schloss, "Commercial Activity in the Foreign Sovereign Immunity Act of 1976," Journal of International Law and Economics 14 (Number 1 1980):163.

be immune from jurisdiction. Obviously the FSIA cannot give extraterritorial jurisdiction, but it does provide the exceptions of immunity applicable in U.S. courts. Although the purpose of the act is on target, the FSIA is criticized for allowing ambiguity to run rampant within the act itself.² To understand the problems arising from the application of the FSIA to commercial actions brought to court, the purpose of the act needs to be examined more closely. Two points within the third clause of subsection 1605(a)(2) in particular need to be analyzed: what constitutes 1) a commercial activity, and 2) a direct effect in the United States.

Introduction to the FSIA

As stated earlier, one of the purposes of the restrictive theory of immunity is to bring governments to a position of equality in the marketplace. One of the purposes of the FSIA is to codify the application of that principle. Within subsection 1605(a)(2) the conditions that are necessary for a sovereign to lose its immunity through a commercial activity and fall within the jurisdiction of the U.S. courts are enumerated. The third clause of subsection 1605(a)(2) follows:

[F]oreign state shall not be immune from the jurisdiction of a court of the United States in any case--[in which the action takes place] outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

²Joseph W. Dellapena, "Suing Foreign Governments and Their Corporations: Sovereign Immunity," Commercial Law Journal 85 (June/July 1980):232.

It is obvious that the intent of Congress here is to allow private individuals--whether personal or corporate entities--to redress grievances suffered at the hands of a foreign sovereign while engaged in commerce.³ By applying the restrictive principle of sovereign immunity in a codified form there will be two positive effects: (1) commerce is enhanced by allowing private individuals to confidently proceed into commercial transactions with sovereigns knowing that they are not left without defense, and (2) impress upon sovereigns their responsibilities as trading partners.⁴ Before this concept can be applied however, it must be understood what constitutes a 'commercial act'. Briefly scanning the development of this term through history will allow for a more stable understanding of the present conceptions.

Public and Private Acts

The basis of the distinction between the types of acts a state can participate in comes from the French idea of public and private acts. While this distinction began within the French domestic judicial system, the French soon applied it to international cases and the theory spread rapidly.⁵

In attempting to make the public and private dis-

³Texas Trading v. Federal Republic of Nigeria 647 F.2d 311 (1981).

⁴Robert H. Yaffe, "Direct Financial Effect Under the Foreign Sovereign Immunity Act," Lawyer of the Americas 14 (Fall 1982):363.

⁵Dellapena, "Suing Foreign Governments and their Corporations," p. 230.

tion, two different tests developed: 1) the nature test, and 2) the purpose test. The nature test reduces the issue to the nature of the act.⁶ In other words, if the act were something which could be performed by a private individual, the act would be a private act and not immune. This would apply to acts like entering into contracts and managing property, things that do not require the power of the state to perform. The purpose test on the other hand ignores the nature of the act and judges only the purpose of the act: why was the contract entered into? If it is determined that the contract was entered into for a public purpose--clothing the military for example--then that contractual act which the nature test would allow to be adjudicated would be immune under the purpose test.

The question of what test to apply to cases in U.S. courts spawned a dispute between the State Department and the courts; the State Department held to the nature test while the courts held to the purpose test. It was to settle disputes like this and help solidify the application of immunity that the FSIA was enacted. The FSIA gives the decision making power for such cases to the courts, but also holds that they must apply the nature test to questions of immunity.

A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.⁷

⁶Ibid., p.231.

⁷Public Law 94-583, ss 1603(d).

While it is clear that the nature test must be applied, another distinction must be made: was the act in question itself a commercial action, or was it a sovereign action committed through a commercial facade? This is a determination that usually must be made independent of the nature test. This distinction is brought out in *Arango v. Guzman Travel Advisors Corp.* 621 F.2d 1371. The court ruled that although Guzman was obviously involved in political activities, the specific act in question stemmed directly from their commercial activities in the United States and therefore, was not covered by sovereign immunity. Thus, it is not the nature of the entity, but the nature of the act that must be ruled on.

Establishing Direct Effects--Case Examples

With the nature test for a commercial activity established, there still remain numerous ambiguities. With the limitless number of possible cases, there is no feasible way to codify a perfect definition of commercial activity. Therefore, this penumbral area will have to be pronounced individually by each court to hear such a case, using the guidelines of the FSIA. Although not perfect, it appears that this is as close as the courts can come to erecting a uniform standard to solidify the commercial activity clause. With this in place, the focus needs to be shifted to perhaps the most problematic clause of 1605(a)(2): what constitutes "a direct effect in the United States?"

Through its case history, the direct effect clause has proven to be extremely fluid. There are, however, three common threads that can be seen when examining cases where the jurisdiction of the case has turned on this clause: 1) there must be certain minimum contacts between the acts of the sovereign in question and the United States, 2) the act's effects in the Uni-

ted States must be foreseeable and the act must be engineered, and 3) the effects in question must be directly felt in the United States.

In order to illustrate these common points, four cases will be compared, with additional examples used when helpful. These cases are: 1) *Texas Trading v. Federal Republic of Nigeria* 647 F.2d 200 (1981), 2) *Callejo v. Bancomer, S.A.* 764 F.2d 1101 (1985), 3) *Reale Interns, Inc. v. Federal Republic of Nigeria* 562 F.Supp 56 (1983), and 4) *East Europe Domestic International Sales Corp. v. Terra*. 467 F.Supp 383 (1979). By looking at these cases and applying the three previously mentioned common threads, it is possible to gain some insight into the subtleties of the direct effects clause.

Rather than attempting to give the facts of each case as well as an explanation of the court's action, attention will be focused on the common threads, with reference to the court's action on each case as it applies.

First to be examined is the criteria for what constitutes minimum contacts. While the case which set the standard for minimum contacts was not dealing with immunity it did raise the question of the court's jurisdiction.⁸ The same principle applies to immunity cases; the court must first establish jurisdiction and to make this determination in cases involving a sovereign as the defendant, the court must establish that there are indeed minimum contacts. A very loose reading of the above cases might suppose that direct financial effects could be considered sufficient to establish minimum contact. Upon closer examination, however, it is found that financial effects within the U.S. are not

⁸*International Shoe v. State of Washington et al* 326 US 310 (1945).

enough; in each case the financial effect must be linked to other contacts within the United States.

Texas Trading, a case that has been thought by some to be the first case to establish financial harm as sufficient minimum contact, can be seen to contain deeper commercial connections within the United States than the financial loss to the corporation.⁹ When determining their jurisdiction, the court made note of the harmed corporation being an American entity, but the court also noted that the method of payment was to be conducted through an American institution within the jurisdiction of the court. Thus, not only had an American entity been financially harmed, it had been harmed by a sovereign availing itself of American banking institutions.

This same principle can be seen in *Reale*. In many ways *Reale* mirrors *Texas Trading*, but one major difference is the location of the bank of payment. In *Reale*, payment was to be made through a Spanish bank. The minimum contacts were established by the Nigerian use of an American financial firm--Morgan--as a link in the chain of payment.

It is clear from the record testimony that, although the documents called for by the letter of credit could be presented to Banco de Bilbao, payment could be effected only by Morgan in New York, to whom Banco de Bilbao would be obliged to transmit the papers presented to obtain payment.

That being so, the case clearly falls within the FSIA, 28 U.S.C. subsection 1605 (a)(2)¹⁰

⁹Yaffe, "Direct Financial Effect Under the Foreign Sovereign Immunity Act," p. 363.

¹⁰*Reale Intern., Inc. v. Federal Republic of Nigeria* 562 F.Supp 56 (1983).

It would appear from the above that while the court's interpretation of a direct effect has expanded to where financial loss is a definite factor, minimum contacts must still be established for the court to claim jurisdiction under the FSIA.

Likewise, in *Callejo* it appears that minimum contacts are again guiding the court. While there are grounds to assert that the commercial action taken by Bancomer may have actually taken place within the United States--shifting the issue from the third clause of 1605(a)(2) to the first clause of that same paragraph--the court denied this possibility and ruled on the direct effects clause. The court held that the breach of the certificates of deposit in question caused a direct effect within the United States, but this effect appears to be simply financial loss to an individual. The court, however, may have also used the concept of American banking activities to establish minimum contact within the United States, if not explicitly, at least implicitly.¹¹

Callejo also makes the point that "the conduct must have a 'substantial' effect in the United States 'as a direct and foreseeable result of the conduct outside the territory.'"¹² In other words, the courts recognize a difference between acts which are fortuitous and those which are engineered. In *Callejo*, the courts ruled that the direct effect of Bancomer's action was foreseeable within the United States because of his extended business dealings with the Callejos.

Also in *Reale*, a connection was made between the action, cancelling payment, and its foreseeable effects within the United States. This almost appears to be

¹¹*Callego v. Bancomer, S. A.* 764 F.2d 1110-11 (1985).

¹²*Ibid.*, p. 1111.

related to the concept of minimum contacts. Not only must the sovereign commit an action with direct effects in the United States, the effects of that action must be foreseeable, and therefore, the act engineered.¹³ This distinction protects the immunity of sovereigns when an attempt is made to hold them accountable for fortuitous wrongs. Also, in conjunction with fortuitous wrongs committed, the courts often hold that the act did not in fact produce a direct effect within the United States.¹⁴

This brings up the last point: the criterion of a direct effect within the United States. This problem could easily be separated into two parts: what are the criteria for (1) a *direct* effect, and (2) *in the United States*.

One of the tests that the courts have applied to determine if the effect was direct is similar to a test applied in constitutional law: what was the intent of the framers? In the case of the FSIA, the courts have referred to the intent of Congress to allow the courts jurisdiction over certain types of cases.¹⁵ In each case, the courts have put forth the notion that they were ruling on the type of case Congress intended to remedy with the FSIA. The Second Circuit put it this way:

The question is, was the effect sufficiently "direct" and sufficiently "in the United States" that Congress would have wanted an American court to hear the case? No rigid parsing of ss 1605(a)(2) should lose sight of that purpose. We

¹³Ibid.; Reale, p. 57.

¹⁴Harris v. Intourist, Moscow 481 F.supp 1062 (1980).

¹⁵Callego, p.1111; Reale, p. 57; Texas Trading, p. 311.

have no doubt that Congress intended to bring suits like these into American courts.¹⁶

The courts also see a limit to this intent and recognize acts that produce indirect effects in the United States; in such cases, the courts protect the immunity of the sovereigns. Two examples examining corporate financial effects illustrate this trend.

In *East Europe Domestic International Sales Corp. v. Terra*, 467 F.Supp 383, the court ruled that the immunity of Romania should be protected although the effects of the action--a cancelled contract--would obviously be felt in the United States.¹⁷ Two points illuminate the protection of immunity. First, the courts held that Terra. had not "projected itself" into the United States market to an extent that would allow jurisdiction; there were not minimum contacts established.¹⁸ When compared with *Texas Trading*, *East Europe* had lost potential profits from the cancellation of a contract rather than payment. The loss was only potential; they did not suffer a direct financial loss.

Another example of an indirect financial loss is found within *Carey v. National Oil Corp.*, 592 F.2d 673. National Oil Corp., a Libyan state owned firm, failed to deliver oil to a Bahamian subsidiary of an American corporation. The court held that although an American corporation suffered a financial loss, it was because of

¹⁶Texas Trading, p. 313.

¹⁷Noyes E. Leech, Covey T. Oliver, and Joseph M Sweeney, The International Legal System (Mineola, NY: The Foundation Press, 1981), pp. 334-40.

¹⁸Ibid., p. 338.

an action that directly affected a Bahamian firm, and only secondarily affected the American parent corporation. Therefore, while it is obvious that there was a financial effect within the U.S., the court held that the effect was not directly within the U.S.

Conclusion

It is obvious that although Congress intended to codify a rule which would bring sovereigns and private entities into a more equal relationship in the marketplace, there remains an amorphous element to sovereign immunity in commercial matters. Two symptoms of this element remain: what are the criteria which must be met to establish (1) a commercial activity, and (2) a direct effect in the United States. As cases develop that fall into the penumbral areas of these exceptions, the courts have several avenues through which to reach their decision. One option traces the intent of Congress to see if it encompasses the case at bar. Another avenue goes back through the case history of the FSIA looking for common applications. Regardless of the avenue chosen--or more properly the mixtures of avenues--the application of the FSIA appears to have been fairly fluid in the past, and promises to remain so in the future.

Congress certainly did not enumerate each act that would be considered commercial, or which effects would be considered direct; to expect such an enumeration from either Congress or the courts is unreasonable. Congress did, however, enlighten their intended meaning of commercial activity, and the courts are applying three principles to cases which come before them: (1) there needs to be minimum contact with the act in question and the United States; (2) the effects must have been foreseeable and the act in question engineered, not fortuitous; and (3) the effects must be directly felt in the United States.

As long as the courts of the United States function under the present Constitution which allows judges to weigh the facts and pronounce their opinions, this is probably the greatest extent to which sovereign immunity can be codified. Although the individual remains at some risk in the marketplace, the FSIA increases the level of order and certainty found in the application of the principle of restrictive sovereign immunity.

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REFERENCES

- Arango v. Guzman Travel Advisors Corp.* 621 F.2d 1371 (1980).
- Callejo v. Bancomer, S.A.* 764 F.2d 1101 (1985).
- Carey v. National Oil Corp.* 592 F.2d 676 (1979)
- Dellapena, Joseph W. "Suing Foreign Governments and Their Corporations: Sovereign Immunity." *Commercial Law Journal* 85 (June/July 1980):228-34.
- East Europe Domestic International Sales Corp. v. Terra* 467 F.Supp 383 (1979).
- Harris v. Intourist, Moscow*, 481 F.Supp 1062 (1980).
- International Shoe v. State of Washington, et al* 326 US 310 (1945).
- Leech, Noyes E.; Oliver, Covey T.; and Sweeney, Joseph M. *The International Legal System*. Mineola, NY: Foundation Press, 1981.
- Reale Intern., Inc. v. Federal Republic of Nigeria* 562 F.Supp 56 (1983).
- Schloss, Deborah. "Commercial Activity in the Foreign Sovereign Immunity Act of 1976." *Journal of International Law and Economics* 14 (Number 1 1980):163-73.
- Texas Trading v. Federal Republic of Nigeria* 647 F.2d 200 (1981).

Yaffe, Robert H. "Direct Financial Effect Under the Foreign Sovereign Immunity Act." *Lawyer of the Americas* 14 (Fall 1982):361-79.

PRESIDENT TRUMAN'S PERSONALITY AND LEADERSHIP

The New York Times eulogized him as a "decisive president."¹ The compliment was well-deserved. Harry Truman made more than his share of major decisions while presiding over the nation as its 33rd president. The atomic bomb, the Soviet intervention in the affairs of Greece and Turkey, and the communist invasion of South Korea were only a few of the developments that required prompt decisions with far-reaching consequences. Sometimes Truman embroiled himself in controversy unnecessarily. He did not have to dismiss General MacArthur or seize the steel mills. But he never hesitated to make these decisions and others like them when he felt they were necessary. Handling so many decisions is an accomplishment in itself.

The seven and a half years of Truman's administration were anything but uneventful; the President faced one problem after another in rapid succession. Two of his decisions, the bomb and the Marshall Plan, literally meant the difference between life and death for thousands of people. Many men would have broken under the strain. But Truman did not break, nor did he push his problems aside. He faced them with courage and determination, aged very little while in office, and lived longer (to age 88) than any other president who served more than four years.²

It is no accident that Harry Truman bore the burden of the presidency so well. His psychological

¹"Harry S. Truman: Decisive President," *New York Times*, 27 December 1972, p. 42.

²John Adams and Herbert Hoover, each of whom served one term of four years, both lived to the age of 90.

makeup, reflected in his personality and style, help explain both why he made the decisions he did, and how he was able to deal with the effects of those decisions without letting the pressure take years off his life. A look at Truman's personal characteristics and some of the major decisions he made will show that his personality (how he perceived things) and style (how he did things) enabled him to make numerous major decisions, some of them highly controversial, and to deal effectively with the stress of his presidency.

Truman had no qualms about making decisions and accepting full responsibility for them. He felt this was the only way he could ever be numbered among the successful presidents. He told Merle Miller, one of his biographers,

There's always a lot of talk about how we have to fear . . . a strong man, but . . . if I read my American history right, it isn't the strong men that have caused us most of the trouble, it's the ones who were weak . . . the ones who just sat on their asses and twiddled their thumbs when they were President.³

Decision making was more than a responsibility to Harry Truman; it was the key to effective government.

President Truman took a common-sense approach to making decisions. He said he always consulted with his Cabinet on major policy decisions because he considered it "much better having pooled brains on important subjects than trying to have one head do the

³Merle Miller, *Plain Speaking: An Oral Biography of Harry S. Truman* (New York: Berkely Publishing Corporation, 1974), p. 375.

work."⁴ He learned to listen to both sides of an argument, think about it, and then come to a decision.⁵ According to Merle Miller, the President "asked his associates to tell him how long he had to decide whatever was to be decided, and when the deadline came, the decision had been made."⁶ For him, it was as simple as that.

Coupled with Truman's ability to make a decision was his willingness to make an unpopular one. He seldom worried about how his statements and actions would affect his popularity. "He spoke his mind, reckless of the consequences for himself."⁷ He felt this was the only way he could properly exercise his role in American government. "If you keep your mouth shut about things you think are important," he said, "I don't see how you can expect the democratic system to work at all."⁸ He wrote in his memoirs: "If a President is easily influenced and interested in keeping in line with the press and the polls, he is a complete

⁴William Hillman, *Mr. President* (New York: Farrar, Straus, and Young, 1952), p. 18.

⁵Hadley Donovan, ed., "The World of Harry Truman," *Time*, 8 January 1973, p. 17.

⁶Merle Miller, *Plain Speaking: An Oral Biography of Harry S. Truman* (New York: Berkley Publishing Corporation, 1974), p. 13.

⁷Peter McGrath, et al., "The Truman Centennial," *Newsweek* 14 May 1984, p. 26.

⁸Miller, p. 131-32.

washout."⁹ Truman exemplified this principle by firing General MacArthur. It was more than a controversy; it was one of the most unpopular decisions ever made by an American president.

Standing up for his principles in the face of political danger was not a quality Truman acquired in the White House; it had been ingrained in his character throughout his political career. As a country judge seeking reelection in 1924, he attended a meeting of the Ku Klux Klan, not to identify himself with the organization, but to tell them off. He called them "a bunch of cheap, un-American fakers"¹⁰ and told them to "go to hell."¹¹ After he had his say, he walked through the crowd and left.¹² Courageous an act as it was, it did not help him on Election Day. The Klan had significant political influence at that time, and when the votes were in, Truman was out, defeated in part by his own determination to say what he thought needed to be said.

Part of the reason Truman could take an unpopular stand was that he did not fear criticism. He saw criticism as a healthy part of the democratic process. According to Political Scientist James David Barber, Truman was able to learn from negative feedback because he could "separate the moral castigations from

⁹Harry S. Truman, *Years of Trial and Hope*, 2 vols. (New York: New American Library, 1956), 2:229.

¹⁰Margaret Truman, *Harry S. Truman* (New York: Pocket Books, 1974), p. 74.

¹¹Miller, p. 74.

¹²*Ibid.*, p. 131.

the substance of the arguments he received."¹³ It did not bother him when ordinary citizens were critical of him and his administration. In 1951 he said: "If the people couldn't blow off steam they might explode. Half the fun of being a citizen in this country comes from complaining about the way we run our government . . ." ¹⁴

One of Harry Truman's more enviable qualities was that once he made a decision, he never worried about it. Former President Lyndon Johnson observed that

the great thing about Truman is that once he makes up his mind about something--anything, including the A Bomb--he never looks back and asks, "Should I have done it? . . ." he just knows he made up his mind as best he could and that's that. There's no going back. ¹⁵

Merle Miller added that there were "no regrets, no looking back, no wondering if-I-had-to-do-it-all-over-again, would I have?"¹⁶ Truman himself explained, "Worrying never does you any good. So I've never worried about things much. The only thing that I ever do worry about is to be sure that where I'm respon-

¹³James David Barber, The Presidential Character: Predicting Performance in the White House, 2d ed. (Engelwood Cliffs, NJ: Prentice-Hall, 1977), p. 277.

¹⁴Mark Goodman, ed., Give 'em Hell, Harry! (New York: Universal Award House, 1974), p. 162.

¹⁵Doris Kearns, Lyndon Johnson & the American Dream (New York: New American Library, 1976), p. 365.

¹⁶Miller, p. 13.

sible . . . the job is properly done."¹⁷ Dean Acheson, Truman's Secretary of State, wrote that his chief was totally without what he called, "that most enfeebling of emotions, regret."¹⁸

One of Truman's more questionable attributes was that he often saw things in simple terms. This made it easier to make hard decisions, but it led him to make some ill-fated decisions and created other problems. For example, he failed to understand his opponents' points of view and therefore could not see the reason behind the opposition to his national health insurance proposal. He wrote in his memoirs that he was "never able to understand all the fuss some people make about government wanting to do something to improve and protect the health of the people."¹⁹ Many would naturally wonder whether the federal government was the answer to health concerns or whether it could even afford to finance a national health insurance program. But all Truman could see was that Americans, especially the elderly, who needed health care and could not afford it, should be able to get it. He had strongly defined values, and all too often he saw things as either right or wrong, good or bad, with nothing in between.

He tended to judge people the same way. Robert J. Donovan, a former White House correspondent, wrote that "Truman was a man who saw things in very strong hues. He saw blacks and whites; he didn't see grays .

¹⁷Ibid., p. 33.

¹⁸Ibid., p. 14.

¹⁹Truman, Years of Trial, 2:31.

. . .²⁰ The book *Plain Speaking: An Oral Biography of Harry S. Truman*, based on a series of interviews between Truman and Merle Miller, confirms this analysis. An example of Truman's strongly defined values is the way he viewed two American generals, George C. Marshall and Dwight D. Eisenhower. He liked Marshall and could not say enough for him. Of Marshall not receiving a parade like other World War II generals, Truman said that "he deserved it more than all the rest put together. I gave him a decoration or two, but there wasn't a decoration anywhere that would have been big enough for General Marshall."²¹ From Truman's perspective, it was almost as if Marshall had never made a mistake in his life. As for Eisenhower, Truman did not like him at all and found it difficult to give him credit for much of anything. After Eisenhower warned the American people about the Pentagon's growing power in peacetime, Truman shared the concern but refused to praise the president-general for the speech. He concluded that "somebody must have written it for him, and I'm not sure he understood what he was saying . . ."²² Truman was blind to the weaknesses of those he liked and blind to the strengths of those he disliked. His lack of objectivity was perhaps his most serious character fault.

In summary, Harry Truman was an interesting man because he possessed an interesting combination of positive and negative qualities. He was direct and decisive, with a sensible approach to problem-solving. He had the courage to make unpopular decisions, and

²⁰ McGrath et al., p. 27.

²¹ Miller, p. 250.

²² Ibid., p. 180.

he was never intimidated by criticism. He did not fret over past decisions; once made, there were no regrets. On the other hand, he tended to see things in black and white, which led to some oversimplifications in his thinking. He had a hard time being objective about issues and people.

All these characteristics at one time or another played a significant role in major decisions Truman made while serving as President of the United States. At least one of the above-mentioned attributes was partly responsible for each of his decisions regarding the atom bomb, the Marshall Plan, the Truman Doctrine, Point Four, Korea, the firing of General MacArthur, and the seizure of the steel mills.

President Truman had hardly taken office upon the death of Franklin D. Roosevelt when he was called upon to make the first and biggest of these decisions: whether to drop an atomic bomb on Japan. He had been President only three months when an atomic bomb was successfully tested in New Mexico on July 16, 1945. Now he had to decide whether to drop on over Japan in an effort to end World War II.

Truman had appointed an interim committee that recommended the use of the bomb over invasion of Japan with two million men as the administration had planned. After the July 16th test, he promptly consulted with War Secretary Henry Stimson, Generals Marshall and Eisenhower, and others. Most of them favored using the bomb. General Marshall told him that if the bomb worked it would save 250,000 Americans and perhaps millions of Japanese.²³

Truman opted to drop two atomic bombs on Japan. He said this decision was the hardest one he ever

²³William Hillman, Mr. President (New York: Farrar, Straus, and Young, 1952), p. 248.

made and that he only made it after "long and prayerful consideration,"²⁴ but he wrote in his memoirs that he never doubted the bomb should be used.²⁵

A B-29 bomber dropped the first atomic bomb on Hiroshima, Japan on August 6, 1945. More than 92,000 people were killed or missing; an equal number were injured. More than four and a half of the city's square miles were destroyed. The second bomb fell on Nagasaki three days later and destroyed nearly two square miles of land. At least 40,000 were killed or missing; just as many were injured. Japan surrendered five days later, and the war was over.

Two factors enabled Truman to make this decision and live with it. One was his decisiveness, reflected by his common-sense approach to problem-solving. Had an invasion of Japan been necessary, half a million soldiers on both sides would have been killed and a million more "would have been maimed for life."²⁶ The bomb ended the war and saved lives. This consideration was all it took for Truman to feel he made the right decision, despite the criticisms and questions that would surface later.²⁷ The other factor in his favor was freedom from regret. He never looked back with second thoughts.²⁸

²⁴T.S. Settel, ed., The Quotable Harry S. Truman (New York: Berkley Publishing Corporation, 1967), p. 33.

²⁵Harry S. Truman, Year of Decisions, 2 vols. (New York: New American Library, 1955), 1:462.

²⁶Miller, p. 244.

²⁷Ibid.

²⁸Ibid., p. 15.

After the war, the enormous task of rebuilding Europe remained. Secretary of State George Marshall suggested that the United States take the lead in promoting the recovery, and his recommendation, officially called the European Recovery Plan, became known as the Marshall Plan. Truman said it was designed "purely for postwar rehabilitation in the countries of western Europe whose production and economy were ruined by the war."²⁹ According to reports he received, Europe needed help. People were starving, and food riots broke out in France and Italy. The winter of 1946-47 was unusually cold, and to add to the food and coal shortages, tuberculosis became a problem.³⁰ Truman believed the Marshall Plan was vital to help Europeans "get back on their feet,"³¹ and he pushed for its congressional support.

Congress approved the Marshall Plan, which proved to be highly successful. Between 1948 and 1952, sixteen countries in Europe received \$13.15 billion in aid that included food, machinery, and other products. The real GNP of those countries rose by 25 percent, with a 35 percent increase in industrial production. The increases in chemicals, engineering, and steel industries were even more significant. Winston Churchill called the Marshall Plan "the most unsordid act in history."³² Even Richard Nixon, a political enemy of Truman's, admitted that it "was successful in every way: it saved Europe from starvation, it ensured

²⁹Truman, *Years of Trial*, 2:268.

³⁰Miller, pp. 257-58.

³¹*Ibid.*, p. 257.

³²*Ibid.*, p. 249.

Europe's economic recovery, and it preserved Europe from communism."³³

Truman's tendency to see things in black and white worked to his benefit when it helped him decide to support the Marshall Plan. Although it was extremely expensive, Truman knew that countless Europeans needed food as well as protection from communism. They had to get the aid, regardless of cost, so the Marshall Plan was implemented. It became one of the crowning achievements of Truman's administration.

Other problems developed in Europe, particularly in Greece and Turkey. The Soviet Union demanded, among other things, the right to set up air and naval bases in Turkey. In Greece, Soviet Premier Joseph Stalin supplied arms and ammunition to a guerilla army of 20,000 men that threatened to overthrow the existing government.³⁴

For about six weeks Truman struggled with what he called a "terrible decision."³⁵ If the U.S. supplied aid to Greece and Turkey, its action was certain to increase tensions with the Soviet Union. Also, the fact that Greece and Turkey had corrupt governments would embarrass the Truman Administration.³⁶ But if

³³Richard Nixon, The Memoirs of Richard Nixon, 2 vols. (New York: Warner Books, 1978), 1:62.

³⁴Margaret Truman, Harry S. Truman (New York: Pocket Books, 1974), p. 376.

³⁵Margaret Truman, Letters from Father (New York: Pinnacle Books, 1981), p. 90.

³⁶Robert H. Farrell, ed., Off the Record: The Private Papers of Harry S. Truman (New York: Harper & Row, 1980), pp. 105-06.

the U.S. did nothing, these two nations would likely succumb to communism.³⁷

As mistrust between the United States and the Soviet Union intensified, an anonymous article appeared in the journal *Foreign Affairs* that had a significant impact on American foreign policy. George F. Kennan, a civilian diplomat in the American embassy at Moscow, gained wide publicity for the article which he signed "X." Kennan used the article to share his philosophy on containment. He argued that Soviet insecurities would lead to an activist and possible hostile Soviet foreign policy. He also stated that the United States could increase the strains on Soviet leadership in a way that would produce "either the break-up or the gradual mellowing of Soviet power."³⁸ Kennan took a stand on how American policy towards the Soviets should be conducted, saying "In these circumstances it is clear that the main element of any United States policy toward the Soviet Union must be that of a long-term, patient but firm and vigilant containment of Russian expansive tendencies."³⁹ His viewpoint gained widespread attention and acceptance, and signaled the birth of containment policy in the United States.⁴⁰

Charles Kegley and Eugene Wittkopf of the Uni-

³⁷Truman, Harry S. Truman, p. 376.

³⁸X, "The Sources of Soviet Conduct," *Foreign Affairs* 25 (July 1947):582.

³⁹*Ibid.*, p. 575.

⁴⁰Charles W. Kegley, Jr. and Eugene R. Wittkopf, *World Politics: Trend and Transformation*, 2d ed. (New York: St. Martin's Press, 1985), pp. 51-52.

versities of South Carolina and Florida, respectively, argued that Kennan's point of view influenced Truman's foreign policy. They wrote: "It was not long before this intellectual assessment received such wide publicity that Truman made it the cornerstone of American postwar policy."⁴¹ Whether Truman was right or wrong, he did show a willingness to listen and learn from others, an important element in his decision-making habits.

President Truman addressed a joint session of Congress on March 12, 1947 to outline his policy. He asked for \$400 million in aid to strengthen Greece against Communist-led revolutions and to help Turkey resist Soviet pressure. He announced "that it must be the policy of the United States to support free people who are resisting attempted subjugation by armed minorities or by outside pressures."⁴² This policy, which became known as the Truman Doctrine, marked the beginning of an overt American effort to contain Communist expansion. It was the first time the United States had ever committed military aid overseas in peacetime. A new era in American foreign policy was underway.

Truman had a hard time with this decision, but it would have been even more difficult for him were it not for his decisive approach to problem-solving and his simplistic view of the situation. Barton Bernstein, an author critical of the Truman Doctrine, gave useful insights into the President's reasoning. He said Truman believed that a communist victory in Greece would probably lead to communist victories in other European nations and that the spread of communism

⁴¹Ibid.

⁴²Truman, Years of Trial, 2:129.

would undermine world peace and thus threaten the security of the United States.⁴³ This logic, broken down into simple terms, made it easier for Truman to formulate his policy, which helped save Greece and Turkey from communist takeovers.

Truman also made major decisions in his second term. When he was sworn into the presidency on January 20, 1949, he proposed "a bold new program for making the benefits of our scientific advances and industrial progress available for the improvement and growth of underdeveloped areas."⁴⁴ This policy became known as Point Four because it was the fourth point in his inaugural address. It was designed to use American skills, knowledge, equipment, and investment capital to help developing nations in such areas as industry, agriculture, and education. Truman said the program was not designed to be a government handout but to "help people to help themselves, with the theory that prosperity of all parts of the world means the prosperity of the whole world."⁴⁵ Reporter William Hillman wrote that President Truman considered "his Point Four Program the most important peace policy development of his administration."⁴⁶

Point Four won congressional approval on June 5,

⁴³Barton J. Bernstein, "American Foreign Policy and the Origins of the Cold War," In Politics and Policies of the Truman Administration, p. 15-77, Edited by Barton J. Bernstein (Chicago: Quadrangle Books, 1970), p. 55.

⁴⁴Truman, Year of Trial, 2:267.

⁴⁵William Hillman, Mr. President (New York: Farrar, Straus, and Young, 1952), pp. 249-50.

⁴⁶*Ibid.*, p. 249.

1950, and it grew rapidly. In a little over a decade, 6,000 American technicians were working in 58 nations helping the natives.

Truman used a common-sense approach that enable him to make a decision in favor of Point Four. The inhabitants of many countries suffered a low standard of living even though those countries had immense natural resources. Since the people obviously did not know how to use those resources to their best advantage, Truman found it easy to be decisive in sending American technicians to teach them.

If President Truman thought the end of World War II would end his administration's involvement in overseas fighting, he was sadly mistaken. After the Second World War, the Soviets exercised considerable influence in North Korea. They established a communist puppet government there, organized an army of Koreans, and militarized the 38th parallel line. North Koreans also created problems for South Koreans with their program of propaganda, subversion, and terrorism. It was only a matter of time before they would clash in warfare.

The clash came on June 25, 1950. Claiming they had to repel an invasion of South Koreans, North Koreans crossed the border into South Korea and headed to Seoul, its capital city. South Koreans, caught by surprise with their forces dispersed, offered little effective resistance to the advancing troops.

President Truman was relaxing in his home in Independence, Missouri when he received word of the invasion. At his urging, the U.N. Security Council adopted a resolution condemning the invasion and demanding an end to the fighting. This was made possible by the absence of Soviet delegates, who were involved in a temporary boycott of the U.N. On June 27, Truman authorized the use of air and naval forces to help the South Koreans. Three days later, he ex-

tended this aid to include American ground forces. So began American involvement in an undeclared war that lasted three years and cost thousands of American lives.

Peter McGrath and his associates, in an article for *Newsweek* magazine, wrote that Truman's habit of seeing things in black and white led to his decision to commit troops to Korea.⁴⁷ According to Merle Miller, Truman's attitude about the North Koreans was that "we've got to stop the sons of bitches no matter what . . ." ⁴⁸ Truman's daughter wrote that he thought the invasion would lead to World War III,⁴⁹ and he undoubtedly felt a need to help South Korea in order to prevent such a war.

Senator Robert Taft, the Republican majority leader, recommended a joint congressional resolution to authorize intervention in Korea. Truman ignored the suggestion and committed troops on his own. Historian Arthur Schlesinger wrote that this was Truman's "great mistake," and that by disagreeing with Senator Taft the President "created the precedent of inherent presidential power to send troops into combat."⁵⁰ In this case, Truman's tendency to see things in black and white led to a serious blunder. Because he felt that the important thing was to stop the North Koreans, and since he regarded the Commander-in-Chief clause of the Constitution as authority enough to intervene, he increased presidential power in a way that has since

⁴⁷ McGrath, p. 27.

⁴⁸ Miller, p. 285.

⁴⁹ Truman, *Harry S. Truman*, p. 495.

⁵⁰ McGrath, p. 27.

haunted the American people.

Another major decision Truman made regarding the Korean conflict is less controversial today than it was at the time. Douglas MacArthur, a popular general who led the American troops in Korea, often disagreed with the President on how the war should be conducted. When Truman had finally had enough, he fired the general for insubordination.

The trouble between these leaders started after communist China got involved in the war. U.N. forces recaptured most of South Korea and proceeded north to the Yalu River, the border separating North Korea and China. MacArthur had received permission to destroy military forces in North Korea. Truman also let him proceed to the Yalu based on the assurance the general had given him that China would not attack. But China did attack. Chinese soldiers not only routed MacArthur's forces but drove them back across the 38th parallel.

MacArthur now felt that China should be fought as well as North Korea. He wanted to bomb supply centers in Manchuria and unleash Chinese nationalists in Taiwan to help fight the communist mainland. The President, however, stood firm in his determination to prevent World War III. The disagreement lasted for months.

The final showdown came in March 1951, when MacArthur and his men reached the 38th parallel. The President wanted him to stop there and hopefully negotiate a cease-fire, but MacArthur publicly disagreed, saying that only expansion of the war could lead to lasting peace. He proposed blockading China's coast, bombing its industrial cities, and using Chiang Kai-shek's forces in Taiwan to invade South China. After that statement, the President knew the general had to go.

The last straw broke on April 5 when MacAr-

thur's letter to Representative Joseph W. Martin, expressing his disagreement with the policies of the administration, was read in Congress. Truman fired him six days later. In the official announcement prepared for reporters, the President stated:

With deep regret, I have concluded that General of the Army Douglas MacArthur is unable to give his wholehearted support to the policies of the United States Government and of the United Nations in matters pertaining to his official duties . . . I have, therefore, relieved General MacArthur of his commands and have designated Lieutenant General Matthew B. Ridgway as his successor.⁵¹

The dismissal aroused a storm of criticism through the United States. According to the Gallup Poll, only 29 percent of the American people supported the President's decision.⁵² Less than 5 percent of the letters and telegrams that poured into the White House favored the dismissal.⁵³ Some Senators who supported the President said that telegrams from their constituents were running "ten to one" against him.⁵⁴ Most newspapers condemned the action.⁵⁵ When Truman entered Griffith Stadium in Washington, D.C. to watch a base-

⁵¹Truman, Years of Trial, 2:509.

⁵²Miller, p. 333.

⁵³Ibid.

⁵⁴"G.O.P. Hits Ouster: Republicans in Congress Raise Threat of Step to Impeach Truman," New York Times, 12 April 1951, p. 3.

⁵⁵Miller, p. 333.

ball game, he was booed by the fans. When he left, he was booed again, and a few shouted, "Where's Mac-Arthur?"⁵⁶ There was talk of impeachment on Capitol Hill.⁵⁷ The President was also "burned in effigy in numerous towns, and even on a few college campuses. Something very close to mass hysteria gripped the nation."⁵⁸

In this day and age of persistent poll-watching, it is difficult to imagine a politician making a decision that he knew would spark such an uproar. But Truman was able to make such a decision because he had the courage to do what he felt was right at the cost of severe criticism. Letting the beloved general go was unquestionably the most unpopular decision he ever made, and his character empowered him to make it.

Truman's simplistic analysis of the situation also helped. "He disobeyed orders, and I was Commander-in-Chief, . . . So I acted as Commander-in-Chief and called him home."⁵⁹

Not all of President Truman's problems were related to foreign affairs. Labor problems were among the domestic issues that faced his administration. Strikes were a constant threat, and Truman often lost his patience with labor leaders. When U.S. steelworkers went on strike in 1952, he ordered the federal government to seize and operate the steel mills.

The Wage Stabilization Board had recommended a

⁵⁶"Boos and Blows," *Newsweek*, 30 April 1951, p. 22.

⁵⁷Miller, p. 335.

⁵⁸Truman, *Harry S. Truman* (New York: Pocket Books, 1974), p. 563.

⁵⁹Miller, p. 335.

raise of 26.4 cents an hour for the Steelworkers Union. The company would not bargain with the union and would only grant the raise on the condition they could raise the price of steel by \$12 a ton.⁶⁰ When an agreement could not be reached, the United Steelworkers went on strike, and "the flow of steel to Korean War armament manufacturers was effectively stopped."⁶¹

In the name of national security, President Truman issued Executive Order 10340, authorizing federal seizure of the steel mills. The next day he asked Congress for authority to operate them. When Congress refused to act, the mills took their case to court. Federal Judge David Pines held that Truman's order was unconstitutional. The Supreme Court, in a 6-3 decision, upheld that ruling.⁶²

The steel companies got their mills back, and the strike continued. It lasted a total of fifty-five days. Total losses during that time were estimated to be \$2.5 billion.⁶³

Truman had ordered government seizure of the steel mills because he felt that victory in Korea could depend on it. National security, he reasoned, depended on defense production, which depended on steel.⁶⁴ Therefore, steel had to be produced even if the gov-

⁶⁰Truman, Harry S. Truman, p. 583.

⁶¹David S. Thomson, A Pictorial Biography: HST (New York: Grosset & Dunlap, 1973), p. 85.

⁶²Truman, Harry S. Truman, p. 583.

⁶³Thompson, Pictorial Biography, p. 85.

⁶⁴Truman, Years of Trial, 2:534.

ernment had to step in and produce it.

The courts did not accept this argument, and neither did historians. In his book *The American Presidency*, Clinton Rossiter, who spoke highly of Truman, condemned the steel seizure as one of his "sins of commission."⁶⁵ A journal article in *Economist*, written in tribute to Truman after his death, stated that his "efforts to get tough with the unions when he considered that strikes on the railways and in the steel industry were endangering national security ended in humiliating failure."⁶⁶

Truman's oversimplified perception that victory in Korea depended on consistent steel production led him to make a decision that would have been better left unmade. Ordering the government to take over the steel mills was an extreme measure not justified by the circumstances; the strike did not cause an American collapse in Korea. Truman overestimated the seriousness of the problem and overreacted, producing an embarrassing repudiation by the Supreme Court that could have been easily avoided. It was unfortunate that a president who played such a large role in ending a world war and feeding a foreign continent could not deal effectively with strikes at home.

In conclusion, Harry Truman was a man of extraordinary strengths and forgivable weaknesses. He was a president whose personality and style affected decisions that in large measure would determine his place in history. Some of those decisions, like the Marshall Plan and Point Four, needed to be made.

⁶⁵Clinton Rossiter, *The American Presidency*, rev. ed. (New York: New American Library, 1960), p. 148.

⁶⁶"The Man from Independence," *Economist* 245 (30 December 1972): 14.

They improved the condition of the world and secured Truman's status as an excellent president. Other decisions, like seizing the steel mills and leaving Congress out of the decision-making process that put American troops in Korea, were serious mistakes that needlessly stained the presidency. The rightness or wrongness of other decisions, such as committing troops to Korea in the first place, is more debatable. But on the whole, the country and the world were better off as a result of Harry Truman's leadership. In the words of Arthur Schlesinger: "Truman had to face major crises and he handled them well--and without all the nonsense and the pomp of subsequent presidents."⁶⁷ Truman not only handled those problems well, but he did so in a way that allowed him to preserve his health and live more than nineteen years as a former president.

One of the most eloquent tributes to Truman's service in the White House came from Richard Nixon, who many years before had been one of Harry Truman's harshest critics. Nixon was President of the United States when Truman died and issued a statement upon his passing that said, in part: "He did what had to be done, when it had to be done, and because he did the world today is a better and safer place--and generations to come will be in his debt."⁶⁸

BLAKE EDWARD ADAMS

⁶⁷McGrath, p. 27.

⁶⁸"Nixon Leads Truman Tributes from U.S. and World Leaders," New York Times, 27 December 1972, p. 44.

REFERENCES

- Barber, James David. *The Presidential Character: Predicting Performance in the White House*, 2d ed. Englewood Cliffs, NJ: Prentice-Hall, Inc., 1977.
- Bernstein, Barton J. "The Limitations of Pluck." *Nation*, January 1973, pp. 38-41.
- Berstein, Barton J. "American Foreign Policy and the Origins of the Cold War." In *Politics and Policies of the Truman Administration*, pp. 15-77. Edited by Barton J. Bernstein, Chicago: Quadrangle Books, 1970.
- "Boos and Blows." *Newsweek*. 30 April 1951, p. 22.
- Donovan Hadley, ed. "The World of Harry Truman." *Time*, 8 January 1973, pp. 15-18.
- Farrell, Robert H., ed. *Off the Record: The Private Papers of Harry S. Truman*. New York: Harper & Row, 1980.
- Goodman, Mark, ed. *Give 'em Hell, Harry!* New York: Universal-Award House, 1974.
- "G.O.P. Hits Ouster: Republicans in Congress Raise Threat of Step to Impeach Truman." *New York Times*, 12 April 1951, pp. 1, 3.
- "Harry S. Truman: Decisive President." *New York Times*, 27 December 1972, pp. 46-48.
- Hillman, William. *Mr. President*. New York: Farrer, Straus and Young, 1952.

Kearns, Doris. *Lyndon Johnson & The American Dream*. New York: The New American Library, 1976.

Kegley, Charles W. Jr., and Wittkopf, Eugene R. *World Politics: Trend and Transformation*, 2d ed. New York: St. Martin's Press, 1985.

McGrath, Peter; Cliff, Eleanor; and Gonzalez, David L. "The Truman Centennial." *Newsweek*, 14 May 1984, pp. 26-27.

Miller, Merle. *Plain Speaking: An Oral Biography of Harry S. Truman*. New York: Berkley Publishing Corporation, 1974.

"Nixon Leads Truman Tributes from U.S. and World Leaders." *New York Times*, 27 December 1972, p. 44.

Rossiter, Clinton. *The American Presidency*, rev. ed. New York: New American Library, 1966.

Settel, T.S., ed. *The Quotable Harry S. Truman*. New York: Berkley Publishing Corporation, 1967.

"The Many from Independence." *Economist* 245 (30 December 1972):13-14.

Thomson, David S. *A Pictorial Biography: HST*. New York: Grosset & Dunlap, 1973.

Truman, Harry S. *Year of Decisions*. 2 vols. New York: New American Library, 1955.

Truman, Harry S. *Year of Trial and Hope*. 2 vols. New York: New American Library, 1956.

Truman, Margaret. *Harry S. Truman*. New York: Pocket Books, 1974.

Truman, Margaret. *Letters from Father*. New York: Pinnacle Books, 1981.

X. "The Sources of Soviet Conduct." *Foreign Affairs* 25 (July 1947):566-82.

FACULTY NOTES

DONNA LEE BOWEN is in the process of completing *Everyday Life in the Contemporary Middle-East*, a project which she has been working on for three-years with Evelyn Early, the Public Affairs Officer at the American Embassy in Kartoun, Sudan. Dr. Bowen is also rewriting existing research on family planning and religion in Morocco.

DAVID BOHN has started work on a monograph on human freedom. Dr. Bohn was the graduate coordinator for the department during 1986. He is currently in Vienna as the director of the Study Abroad program.

JOHN BAYLIS joins us this year from Wales. Since his arrival in the states, Dr. Baylis has been appointed to the British Steering Committee of *The Nuclear Weapons History Project*, a four nation study funded by the Ford Foundation and Volkswagen. Here at Brigham Young, Dr. Baylis has lectured at the Peace Symposium and at the Kennedy Center on Western European defense issues. In February, Dr. Baylis, with his colleagues K. Booth, J. Garnett, and P. Williams, published vols. I and II of *Contemporary Strategy*. He is presently working on *The Case For and Against a Non-Nuclear Strategy* with K. Booth, and *The Makers of Modern Nuclear Strategy* with J. Garnett.

GARY BRYNER has just published *Bureaucratic Discretion: Law and Policy in Federal Regulatory Agencies*. Bryner and Richard Vetterli have just published *In Search of the Republic: Public Virtue and the Roots of American Government*. Bryner is also working on a volume with Noel Reynolds, *Constitutionalism and Rights*, which will be published later on this year by SUNY Press. This year Dr. Bryner is in Washington, D.C. as a Research Fellow at the National Academy of

Public Administration. He headed up the Washington Seminar Program last Fall.

BYRON DAYNES is a professor of Political Science at Depauw University. He has been a visiting professor at Brigham Young University during the 1986-87 school year. He has recently written a book entitled *The Social Agenda: Political Conflict and Public Policy* which has been accepted for publication. Since coming to Brigham Young, Dr. Daynes has participated in symposia on pornography and politics at Loyola of Chicago and the Utah Political Science Association. Dr. Daynes is the author of "Mormons and Abortion Politics in the United States," published last summer in *International Review of History and Political Science*.

LEE FARNSWORTH is the editor for the *Newsletter of Research on Japanese Politics*, published by the Japanese Studies Group of the American Political Science Association. Dr. Farnsworth is working with research that he has done in Japan and Washington, D.C., and has completed a manuscript entitled "Legislative Restraint on U.S.-Japanese Relations," and is preparing two other manuscripts, one on the policy-making process in Japan, the other on factions in Japan. Dr. Farnsworth presented a paper on "Policy-making Networks in Japan" at the Western Conference of the Association for Asian Studies in October 1986.

EARL FRY has had the opportunity to make numerous presentations on Canada-U.S. trade relations, including a presentation to the Institute for Research on Public Policy in Ottawa. In addition to these conferences, Dr. Fry was a co-editor and contributor to the Kennedy Center's recent book, *Canada/U.S. Free Trade Agreement: An Assessment*. He has had several articles and reviews published in *American Review of Canadian*

Studies, Trade Trends, and American Political Science Review.

MARTIN HICKMAN has been devoting most of his time this past year to writing a biography of David M. Kennedy. The book is tentatively entitled *David M. Kennedy: Banker, Statesman, Churchman*.

RAY HILLAM, Director of the David M. Kennedy Center, has done extensive travel this year as liaison for the University's international programs. Dr. Hillam will be travelling to Sweden this year to lecture on American Foreign Policy. His continuing research interest is in the history of the causes of war.

LADD HOLLIST is the program chairman for the 28th convention of the International Studies Association, an organization of scholars and policy makers from 48 countries, which will meet in Washington, D.C. this April. Dr. Hollist and LaMond Tullis are publishing *Pursuing Food Security*, which will be volume three of *The International Political Economy Yearbook* by Lynne Rienner Publishers.

ERIC JONES is working on a book about the politics of energy policy in the Soviet Union from 1976-86. He is also working on two papers: one explaining fluctuations in world crude oil prices from 1985-87, and the other is about decision making on electricity policy in China's energy sector.

DAVID MAGLEBY is in Washington, D.C. this semester as a Congressional Fellow assigned to the Democratic Policy Committee. Among other things, Magleby has helped the committee with the Boren-Byrd Campaign Spending Bill. While in Washington, Dr. Magleby has addressed the American Political Science Association.

Fall Semester, Dr. Magleby successfully spearheaded another KBYU Exit Poll. Among several articles in the mill are "Religion and the Vote," "Participation in Mail Ballot Elections," and "Mistaken Measures of Partisan Representation in U.S. Legislative Elections."

KEITH MELVILLE has recently written an article entitled "Joseph Smith: The Constitution and Individual Liberties" which will be published in *B.Y.U. Studies*. He has also recently written "First Lady Lou Henry Hoover: America's Ombudsman During the Great Depression" and "First Lady and the Cowgirl" which have been submitted for publication. Dr. Melville will be retiring after this year.

LOUIS MIDGLEY has written an essay on the doing of Mormon History in response to an essay by Professor Martin Marty at the University of Chicago. The essay, "Modernity and the Mormon Crisis of Faith," will be published in the forthcoming *Nibley Festschrift*. He has also written an article responding to recent criticisms of Dr. David Bohn and himself entitled "Apology and Indignation: The Alexander Affair," which will be published in *Dialogue*.

EDWIN MORRELL will be the director of Brigham Young University's Vienna Study Abroad program from July until December 1987.

NOEL REYNOLDS has returned from a year at the University of Edinburgh. He has recently published an essay, "Reason and Revelation," in *A Thoughtful Faith*. This year, Brigham Young University Press will be publishing his monograph *Interpreting Plato's Meno and Euthyphro: A Defense of the Literary Approach*. Also scheduled for publication this year at SUNY Press

is *Constitutionalism and Rights*, of which Reynolds is a contributor and co-editor. Dr. Reynolds is currently working with Brigham Young University Studios on a feature length film dramatizing the American Founding.

A. DON SORENSEN has had the distinction of being the Honors Professor of the Year for the 1986-87 school year. Dr. Sorensen is continuing his research into the moral foundations of human life.

STANLEY TAYLOR has been working on a book about U.S. foreign policy with Dr. Earl Fry. He has been doing research with his senior seminar class on the effects of smoking tobacco by Third World nations. He hopes to write a paper on this project when it is completed. Dr. Taylor recently lectured at the Air Force Command and Staff College on Congress and Foreign Policy.

DENNIS THOMPSON continues to serve as Secretary of the Research Committee on Politics and Ethnicity of the International Political Science association and edits their newsletter. In addition, he co-chaired the conference on African Religion held at Brigham Young University last fall where he presented a paper on "African Religion and Mormon Doctrine: Conformity and Commonalities." He also organized the conference on Moral Values and Higher Education chaired by President Holland this winter. He has co-edited a book with Dov Ronen of Harvard University, *Ethnicity, Politics and Development* published by Lynne Rienner Publishers last fall.

LA MOND TULLIS has just completed a volume for the *International Political Economy Yearbook* with Ladd Hollist entitled *Pursuing Food Security: Stra-*

tegy and Obstacles in Africa, South Asia & China, Latin America, and the Middle East. Dr. Tullis is currently serving as Associate Academic Vice-President.

RICHARD VETTERLI has published a book with Gary Bryner called *In Search of the Republic: Public Virtue and the Roots of American Government*. Dr. Vetterli is currently doing research in the field of natural law.

LARRY WALTERS presented a paper, "Education Policy Outcome Measures" at the TIMS College on Public Programs and Processes. Dr. Walters also gave a presentation to the APPAM Research Conference in Austin, Texas entitled "How Well Are We Housed: A Hazard Function Approach to Housing Quality."

CARWIN WILLIAMS has written an article for the Western Political Science Association entitled "Original Intent vs. Contemporary Ratification of the Constitution." He is currently writing a paper for the same association on "Constitutional Creativity or Trivialism: The Gathering Judicial Storm." This fall Dr. Williams will be teaching a special class on the Constitution in commemoration of the Constitution's Bicentennial.

CHAPTER NOTES

The Beta Mu Chapter has been rewarded with an extraordinary number of quality events throughout the 1986-87 school year. The variety of activities has, in itself, been exciting. Much of the year's success can be traced directly to *MARGY ULLMANN*'s work as director of publicity for the chapter. Margy was frequently the minuteman who had to get the word out at a moments notice. Her efforts were not in vain.

One of this year's most successful ongoing activities was Café PSA, a weekly series of student-led discussions on current events. The discussions in the Political Science Commons each week were lively, intelligent and informative. *CAM CHANDLER*, vice-president for special events, developed the concept of Café PSA and was able to obtain a grant from the National Office for program enhancement. Cam also oversaw the current events discussions at Eldred Center.

Perhaps the nicest feature of Pi Sigma Alpha is the opportunity that it gives students to interact closely with faculty. Colloquia, headed up by *GREG MATIS*, provide a superb way for students to see first hand the sort of work that their professors are preparing for publication, and it gives professors an opportunity to get important feedback. This year, Dr. David Magleby presented a paper on "Religion and Voting Behavior in a Religiously Homogeneous State," prepared from data collected in the KBYU Exit Polls. Dr. Noel Reynolds delivered "Law and Morality," a paper of Reynold's most recent theoretical work on the relationship between conventions, the rule of law, and moral obligation. In conjunction with the Peace Symposium, Dr. John Baylis, a visiting professor from Wales, delivered a presentation on "NATO Strategy: A Case for Reform," culled from his research in strategic studies.

However, when it comes to rubbing shoulders with

professors, there is nothing that can compare with Welches and Cheese, our own answer to sherry hour with faculty. *BECKY NOAH* has done an incomperable job with our socials this year. We have had the opportunity to meet in the homes of Dr. Donna Lee Bowen, Dr. Larry Walters, Dr. Ladd Hollist and Dr. LaMond Tullis to talk about theoretical and contemporary problems in a relaxed and cordial atmosphere. The receptions at Dr. Richard Vetterli's home for Larry Birns, Colonel Tracey, and Lady Caroline Cox have been equally charming. Becky has also been in charge of the opening and closing socials.

Pi Sigma Alpha is also responsible for bringing in speakers from around the nation. *DAN NIELSON* has helped Pi Sigma Alpha to that end this year, as the chapter has sponsored lectures from Dr. Peretz, Dr. Ralph Hancock, Dr. John Orbell, and Lady Caroline Cox. *ROB EATON*, president, has played a significant role in heightening political consciousness on campus by inviting speakers of national stature. Rob was responsible for sponsoring a campus-wide debate on U.S. Central American Policy, and for bringing in presidential-hopeful, Senator Joseph Biden.

We could not let the year slip away without thanking *MYLON DETWEILER* and *BRENTELWOOD* who organized and arranged a Symposium on the Rights of the Accused, as well as this year's Constitutional Convention, and class. Their efforts made all the events surrounding the Convention a great success.

We appreciate your enthusiastic support for the efforts and goals of Pi Sigma Alpha.

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