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Original Article

## *On Social Justice and Political Struggle*

By

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This essay argues the necessity for political struggle by questioning and confronting the way in which legal and moral authority are conceptualized currently in the United States. Through such questioning, Americans are encouraged to take a critical view of their own feelings for the society in which they live and to reject the limitations of much mainstream political thought, which are hegemonic, anachronistic, and subversive to the noble American ideals of freedom, justice, and equality for all. Stated bluntly, my goal is to encourage Americans to demand fundamental changes in the interests of a just political and economic system.

The notion of social justice championed here embraces an equitable distribution of social resources, including nutrition, shelter, health care, and education. These resources can be reconceptualized as public goods so the ultimate aim of the state is to ensure that all people enjoy access to these goods. My call for social justice is not limited to the United States. Rather, my thesis is that social justice must be enacted on both the domestic and international levels and that the United States' legal system often interferes with these goals. In rejecting nationalism, we realize that the United States can no longer privilege itself at the expense of other nations. The American ideals of equality and freedom are meaningless if they do not denote substantive equality and freedom from suffering for all human beings. No one should profit from the suffering of another. Human identification can be grounded in a morality of inclusivity and the goal of culture is to devise social and economic institutions to achieve this on an international level. As Richard Rorty notes, the goal of critical analysis is to wake "us up to the possible obsolescence of the vocabularies in which we conduct our moral and political deliberations and frame our utopian visions."<sup>1</sup> The old vision, that of free-market wealth raising all boats, needs to be reassessed. With close scrutiny, we may acknowledge that "a rising tide will raise all boats only if the government constantly interferes to make sure it does."<sup>2</sup> In this regard, the

government often needs prompting.

More specifically, “social justice” means a political and structural commitment by society to direct the resources of modern civilization to benefit all people, particularly those “who are economically, socially, politically, and/or culturally underresourced.”<sup>3</sup> An implicit assumption of a social justice perspective is that the integrity of any community suffers when some of its members are systematically deprived of their dignity or equality and that structural poverty is a major contributor to this condition.<sup>4</sup> Structural poverty is defined as the institutionalized condition in which the social and economic marginalization of hundreds of millions of people throughout the world is the logical and anticipated end of government and intergovernmental policies that maximize tremendous wealth for a privileged few.<sup>5</sup>

Structural poverty is pervasive, perhaps even emblematic of the world, in the opening years of the twenty-first century. In response, this essay encourages a collective effort to redescribe the legal and economic conditions that contribute to structural poverty to enable inclusive and fair communities to emerge within a condition of pervasive substantive equality—defined here as equality in the results of social intercourse, equality in educational and economic opportunity, and a commitment by the legal order to human health and dignity for all.<sup>6</sup> Unfortunately, what we take in this country to be constitutional law often hinders this goal of creating domestic and international conditions of substantive equality<sup>7</sup>. The Constitution, therefore, should be changed so that a new, more humane social order can emerge. As U.S. society becomes more humane, our foreign policy and cultural influence will reflect that moral growth. In other words, if the United States is not committed to social justice, then the effort to achieve a socially just world will be made much more difficult, if not impossible.

In challenging our constitutional order in the United States, we should affirm that the future should be created by those living in the present and does not need to be limited by the terms and conditions of the past. A fundamental term and condition of the past was that the United States was to have a limited government; the Constitution was framed to provide an instrument for insuring that the government would wield little power—particularly power to redress social inequality. This is an historical—not an ideological—explanation. Social relationships throughout European and American society at the time of the American Revolution were profoundly and structurally unequal (divided on class, gender, racial, and religious lines). This inequality was accepted as a given at the time. The struggle for American independence was not intended to be egalitarian—it sought political freedom vis-à-vis England, not social equality for people lower on the social hierarchy. It was not until a few years after the Constitution was developed that the French Revolution challenged social inequality throughout Europe. The French Revolution was bitterly resisted by the

elites in the United States, who prepared to go to war against France to keep its radical ideas from American shores.<sup>8</sup>

Further, the economy of the United States was, at the time the Constitution was drafted, primarily agricultural, with most free citizens managing their own family farms. No other concerted power source during the Colonial period threatened people. It was enough for the government to protect citizens against attacks by Native Americans, slave revolts, provocations from European powers and to formalize commercial relationships. Other than these functions, the elites wanted to be left alone. The thought that the government owed any responsibility to intervene in the social hierarchy at the time was anathema to the drafters of the Constitution, who strenuously maintained that the government had no business interfering with what were assumed to be “natural” inequalities and hierarchies.

Since the eighteenth century, political, social, and economic conditions have changed dramatically, rendering the original Constitution anachronistic in many important respects. Popular assumptions of equality and community have changed since the Colonial period. To its credit, the Constitution has reflected that evolution, although almost two hundred years passed in order to do so. The economic and power relationships that contextualized the drafting of the Constitution also no longer exist. Today, power “in American society is by no means limited to the arena of government. In fact, an equally significant locus of societal power lies in the realm of economic activity, especially, the giant corporation, where decisions are made that shape the society’s work force, consumer market, and general economic condition.”<sup>9</sup> Unlike the struggle for social equality, the Constitution has not adapted much to reflect these changes.<sup>10</sup> In Rorty’s words:

The existence of a moral community which can plausibly and without qualification identify itself as “we, the people of the United States” is still a project rather than an actuality. In a few respects, my country is closer to accomplishing this project now than it has . . . ever been, thanks to the Civil Rights Revolution of the 1960s and to the continuing pressure exerted by feminists. In most respects, however, it is losing ground. For the gap between rich and poor Americans is widening steadily, and the latter are increasingly bereft of hope for their children’s future.<sup>11</sup>

In light of the rise of corporate power, almost wholly un-contemplated by the Framers of the Constitution in the eighteenth century, the Constitutional limitations on government are simply outdated (most notably in the economic realm). Far from protecting us from the government, the Constitution protects corporations from the people. As one commentator observes, “Limited

government means limited democracy and hence limited mass participation. By taking the most vital questions having to do with the structure of the state and its relation to society and placing them in a realm high above society's reach, it devitalizes politics."<sup>12</sup> In other words, the Constitution took many important issues off the political table.

Once removed from state power, the question of economic justice disappeared from the realm of popular politics, making it nearly impossible for a popular majority to use the government to pursue a sustained policy of substantive equality. The Constitution thus drained the new Republic of the very democracy in whose name the United States was established. The result is a cult that contributes to "America's solipsistic political culture,"<sup>13</sup> one establishing a faith in America that interferes with the practical day-to-day political work of creating a society that justifies our admiration of the Constitution. As Daniel Lazare explains, this "faith does not shore up democracy and civil liberties, but, quite the contrary, weakens them by shielding America's pre-modern, fundamentally irrational constitutional system from criticism and analysis."<sup>14</sup> Without such criticism, our own ability to engage with the political issues of our day deteriorates:

Intellectual deterioration leads to political decay, which leads to the sort of enervation that is now gripping the American system. The problem is not that Americans obey their ancient Constitution too little, as so many liberals seem to think. The problem is that they defer to it too much without considering why they should be controlled by a plan of government drawn up by a group of merchants and slaveowners at the dawn of the modern era.<sup>15</sup>

Analogously, an atheist, with good warrant, could criticize religious faith. However, the same community of believers—as typified by the social gospel movement of the nineteenth and early twentieth centuries and by some churches' engagement in the Civil Rights movement in the middle of the twentieth century—could proudly retort, and with equally good warrant, that, regardless of their faith, they nevertheless succeeded in specific concrete social objectives (i.e., feeding the hungry, clothing the poor, publicizing the need for social justice, etc.). In more modern terms and from a social justice perspective, George W. Bush's endorsement of the so-called "faith-based initiative" is not interesting because of the "faith" part of the program, although such faith may be a persuasive tool for enlisting committed volunteers. What matters is what these organizations accomplish. A congregation full of faithful millionaires who do nothing to help those in need is rightly recognized by society (and by some Christians) as hypocrites (recall the often-ignored Biblical idiom that it "is easier for a camel to

go through the eye of a needle than for a rich man to enter the kingdom of God)."<sup>16</sup>

My argument is that the above is no different with those who profess faith in the Constitution or in democracy. The rallying calls of "Liberty" and "Freedom" are indeed persuasive and appealing, and they do encourage people to volunteer for a cause. Nevertheless, the value of faith in such ideographs lies in the practical work we do. A constitutional atheist such as myself can criticize, with good warrant, constitutional faith: to show that the Constitution (or what we take to be the Rule of Law, more generally) is undeserving of our faith and may be subject to intense scrutiny and reform with the goal of making it more equitable. This said, the task for the constitutional faithful now becomes clear. A gauntlet has been laid down—the job of constitutional apologists is to respond (as does the religious believer) and provide evidence for their proclamation—"your academic objections notwithstanding, look at all these good deeds. The Constitution works and it works for all!" American cultural wars are often fought over such challenges.

### **Barriers to Critical Thinking in the United States**

A goal of critical writing is to illustrate how the past came to be and how it now, to a large extent, limits our moral imaginations (as in the normalization of poverty and the institutionalization of greed). Understanding this, we can free ourselves from the restraints of the past and from thought that no longer serves our contemporary needs, which can be egalitarian and universal. When the weight of past superstitions, overly narrow identifications, and dysfunctional moral and economic assumptions gives way to a new conception of human beings, the heavy burden placed on humanity by our ancestors will be relieved. Achieving this change, however, requires a significant rethinking of the past. As Americans "awake to the absurdity of trying to force a modern society to conform to a pre-modern plan of government, they would have no choice but to toss ancient shibboleths overboard and replace them with something more modern and democratic."<sup>17</sup> We should not shy away from this challenge. The period for change is now; the exigence is great. The status quo remains because Americans are not united in their opposition to social injustice. Unfortunately, few people in the United States have a vocabulary to perceive the issues or sense the opportunities for change. In such an environment, social injustice thrives.

While increased critical thinking is clearly in order, most people in our society do not find it easy, particularly because American culture discourages it. In the words of David Rieff, "the United States is becoming if not a culture-free zone then at least a place in which the arts and humanities count for little compared with commerce, the entertainment industry, and therapy."<sup>18</sup> Our

society discourages critical thinking in a number of ways. The most important way in which critical thinking is discouraged is the conflation of intellectual life in the United States with that of academic life; the problem is compounded because the general population largely does not respect academia.<sup>19</sup> Throughout the history of the United States, “popularism” has been manifest in a pervasive anti-intellectualism (for example, in the administrations of George W. Bush and Ronald Reagan, the nativism represented by Pat Buchanan, and in the phenomena that surrounds the popularity of Rush Limbaugh). The role models of most Americans are sports figures, entertainers, and local or televised (often fundamentalist or quasi-fundamentalist) religious leaders. Higher education is seen mostly as technical and professional, with intellectuals considered irrelevant and perhaps even subversive and anti-American. This populism finds a target in politics as well as in primary and secondary education in the U.S.

Compared with Western Europe, which provided the intellectual heritage that America professes to uphold, Americans, unlike their Continental counterparts, are largely oblivious to the conversations and literatures that have influenced the modern world. The United States seemingly has bunkered itself dogmatically in the intellectual culture of the eighteenth century and has not allowed itself to consider the analysis, current thinking, and new direction of intellectual, political and cultural thought that has risen in the more than two hundred years since the founding of the U.S. We do this at our peril. Increasingly, Americans are perceived as arrogant, materialistic, anti-cultural, and anti-intellectual by Europeans and much of the rest of the world. While the U.S. has the power to force itself and its culture on the world, the United States dilutes its substantive contributions to humanity by its callousness toward the poor and by inundating the world with shallow cultural forms (i.e., Coca-Cola bottles, McDonald’s cheeseburgers, Hollywood films, cosmetics, and television). With the rise of American power and arrogance (evident since the end of the Cold War and brazenly obvious since September 11, 2001), we see, in practice, the repudiation of the Western Enlightenment. Ironically, with this repudiation, the United States threatens its own legitimacy as the philosophical and moral values and ideology that grounded the American Revolution begin to evaporate.

By comparison, a crisis of legitimacy is occurring in much the same way as the similar crisis currently affecting the Chinese Communist Party (CCP). The legitimacy of the CCP has been evaporating with the economic reform of the post-Maoist period (starting after Mao’s death in 1976). Historically, the legitimacy of the CCP was situated in more than 50 years (the party was founded in 1921) of a stated Party commitment to social equality for all Chinese (whatever the faults of Maoism, it was egalitarian). Now that the Party leaders glorify wealth accumulation, tolerate massive corruption, and reify the social order in a structural inequality reminiscent of the late Qing and Republican periods of

Chinese history, modern China has lost its moral vision and its commitment to social justice. Like the United States, China is becoming wealthy and powerful and more like the United States. While wealth and power have the potential to be good, China, like the United States, risks repudiating (if it has not already) its larger social and moral agendas (i.e., socialism in the case of China and a commitment to democracy and human rights in the case of the United States). These agendas are essential for the international stature of these nations; these agendas, not the nations *per se*, deserve our respect. In the absence of these moral visions, the United States—and, increasingly, China—become nothing more than self-serving bullies undeserving of respect as political models for the twenty-first century to both their own citizens and to the world community.

Another major and related reason why critical thinking wields little influence in U.S. society is that the consumer culture and escapist entertainment make conditions difficult for citizens to understand honestly their basic human and social needs—those grounded in a healthy community and a healthy world.<sup>20</sup> The very premise behind our constitutional system—all the checks and balances against a popular democracy—is that the citizens do not understand their wants or needs.<sup>21</sup> As a result, control of government and industry rests firmly in the hands of a small, elite class and corporations that increasingly distances themselves from the average citizen. As this distance increases, the elite “have less and less at stake in America’s future, and more and more invested in an efficient and productive global economy—an economy made ever more efficient and productive by the constant expansion of the global labor market into poorer and poorer countries.”<sup>22</sup> The result of this trend, Rorty warns, is of the country devolving “into hereditary economic castes.”<sup>23</sup> Such a caste system is precisely the condition that existed in England during the colonial period and from which propagators of official American ideology self-consciously attempt to distance themselves. This time, however, no “New World” beckons to which to flee and start over. This time, we must make a stand as each year our voices and our needs grow increasingly inconsequential to the social and political elite. If we do not make a stand, we will acquiesce to our positioning as mere spectators in the construction of our society.

### **Discursive Amnesia and the Problem of Dissent**

At first glance, our task must seem odd and out of place in this society that rejects political non-conformity. Americans usually are encouraged to admire their government and to hold their culture in high respect. Perennially, Americans consider themselves “number one.” While Americans often believe that they live in the best country in the world, facts collected by international organizations, such as the United Nations, suggest otherwise. For example, in a 2000 World

Health Organization (WHO) ranking of Healthy Life Expectancy for children born in 1999, the United States was ranked #24 in the world. According to Christopher Murry, director of the WHO's global program for health policy, "Basically, you die earlier and spend more time disabled if you're an American rather than a member of most other advanced countries."<sup>24</sup> According to the report, one reason for this statistic is that in "the United States, some groups, such as Native Americans, rural African Americans, and the inner city poor, have extremely poor health, more characteristic of a poor developing country than a rich industrial one."<sup>25</sup> Such evidence reinforces my central argument: American pretensions of formal equality are revealed to be inadequate when we confront substantive differences between Americans so extensive that expansive portions of our population are reduced to poverty levels reminiscent of the developing world. Inequality worldwide is linked with inequality in the U.S. Both are equally avoidable and need to be addressed collectively.

Fundamental to the American phenomenon of self-idolatry is what Wen Shu Lee and Philip C. Wander call "discursive amnesia," the collective forgetting of events and history that call into question the apparently beneficent qualities of our current self-concepts and national identifications. Few individuals or nations view themselves unfavorably. Yet nation-states, which are comprised of individuals, are responsible for immense cruelties whose practitioners find ways to keep their idealistic self-images intact. This is the function of discursive amnesia; through it, "a group identifies itself not only through what it publicly or officially recalls but also through what it systematically forgets."<sup>26</sup> The most difficult issues to discuss are the ones that we do not even think about. This is a further reason why Americans distrust intellectuals; intellectuals encourage people to resist discursive amnesia, turning the platitudes of our politicians and official mythology into issues that influence our most intimate lives.

Indeed, many Americans—perhaps most—believe in the superiority of their government and their culture and point to its unparalleled influence in the history of the world as warrant for this belief. To these people, the kinds of issues raised here will seem foreign, subversive, and, possibly, even anti-American. My goal is to challenge fundamentally what it means to be an American and to encourage Americans to become critical thinkers. Our consumerist model of culture deadens critical thought and can be countered only through an intellectual model of a democratic society, one in which a commitment to social justice defines the self-consciousness of most U.S. citizens. In the words of Todd Gitlin, "What is required are challenges to unjust monopolies of power, but what is also required is a certain generosity on the part of all. Above all, the privileged need to commit themselves to remedy the most bitter exclusions: those of poverty."<sup>27</sup>

People are most enriched by engagement with enriching ideas. Intellectual fulfillment is immensely more fulfilling than material engorgement. Material

wealth is heavy and divisive, interfering with the construction of meaningful inclusive moral communities—the kind that Thomas Jefferson envisioned as the political backbone of American society. Thus, at second glance, it should be clear to students of American history and political science that my challenge to the normative legal and political values of this nation is, itself, a paradigmatic American activity. This tradition, while currently suffocating, cannot be displaced entirely, at least in the United States as we currently imagine it. No law, no sense of duty, and no obligation exists for Americans to worship the state. This point was made most clear in 1943, when the U.S. Supreme Court struck down mandatory flag salutes and daily recitation of the Pledge of Allegiance for school children. In holding such coerced affirmations unconstitutional, the Court declared: “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”<sup>28</sup> Any attempt to coerce such conformity, the Court reasoned, creates only the “unanimity of the graveyard.”<sup>29</sup>

In other words, while our actions are governed by law, our spirits are free to probe, to question, and ultimately to reject that law and the society reified by that law and related laws. The Constitution expects that dissent should—indeed, must—flourish if democracy has any hope of being meaningful. Yet, such dissent is increasingly difficult in our organizational culture. As John Dewey notes:

Why is it, apart from our tradition of violence, that liberty of expression is tolerated and even lauded when social affairs seem to be going in a quiet fashion, and yet is so readily destroyed whenever matters grow critical? The general answer, of course, is that at bottom social institutions have habituated us to the use of force in some veiled form.<sup>30</sup>

Dewey argues that the United States tolerates liberty only when it does not threaten the status quo. To the extent that individual liberty does threaten the status quo, “every effort is put forth to identify the established order with the public good.”<sup>31</sup> Dewey’s observation is as true today as in the era in which he wrote, if not truer. We are, as Erich Fromm suggests, living in an era in which our capacity to disobey has atrophied to the point that we are unaware, even, of how our obedience has become second nature. Such an era is not unlike the one that produced Adolf Eichmann. As Fromm notes:

Eichmann is a symbol of the organization man, of the alienated bureaucrat for whom men, women and children have become numbers. He is a symbol of all of us. We can see ourselves in

Eichmann. But the most frightening thing about him is that after the entire story was told in terms of his own admissions, he was able in perfect good faith to plead his innocence. It is clear that if he were once more in the same situation he would do it again. And so would we—and so do we.<sup>32</sup>

Fromm's remarks should give Americans pause. Americans pride themselves on their individuality, yet that individuality is largely a myth. While we have choices as consumers, larger structural forces condition our public morality and impel conformity. The most despicable acts are perpetrated by people who are otherwise moral, productive, well-socialized members of a civilized community (such as in the recent Abu Ghraib Prison scandal in which the American and British government acknowledged the widespread torturing and humiliation of Iraqi prisoners by their military forces.). As Kenneth Burke reminds us, the devastation wrought against Vietnam by the United States in the 1960s "was made possible by humble, orderly, obedient, peacefully behaving job-holders, who raise their families in the quiet suburbs, and perhaps do not even spank their children."<sup>33</sup> Recognizing this point is the first step toward reining in the Eichmann in all of us.

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## Notes

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1. "Can Philosophers Help Their Clients?" *The New Leader* (April 7, 1997), 12.
2. "First Projects, Then Principles," *The Nation* (December 22, 1997), 18.
3. Lawrence R. Frey, W. Barnett Pearce, Mark A. Pollock, Lee Artz, and Bren A. O. Murphy, "Looking For Justice In All The Wrong Places: On a Communication Approach to Social Justice," *Communication Studies* 47 (1996), 110.

4. Ibid., 111.
5. See, for example, David O. Friedrichs and Jessica Friedrichs, "The World Bank and Crimes of Globalization: A Case Study," *Social Justice* 29 (2002), 13-36.
6. See Catherine Barnard and Bob Hepple, "Substantive Equality," *Cambridge Law Journal* 59 (2000), 562-585.
7. Omar Swartz, "Toward a Critique of Normative Justice: Human Rights and the Rule of Law," *Socialism and Democracy* 18 (2004), 185-209.
8. From 1798-1800, the United States fought an undeclared naval war against France. Ellen C. Collier, "Instances of Use of United States Forces Abroad, 1798-1993," *CRS Issues Brief*, [http://www.fas.org/man/crs/crs\\_931007.htm](http://www.fas.org/man/crs/crs_931007.htm).
9. Martin N. Marger, *Race and Ethnic Relations: American and Global Perspectives* 4<sup>th</sup> ed. (Belmont, CA: Wadsworth, 1997), 181.
10. The New Deal period is the most notable exception; however, the beneficial structural changes of the New Deal have been abandoned in recent years.
11. "Who Are We? Moral Universalism and Economic Triage," *Diogenes* 44 (1996), 11. Elsewhere, Rorty writes, "When I look back over the history of the United States in my lifetime, I can see as many causes for shame as for pride. For we seem always to have taken three steps forward and two back." See "American Pride, American Shame," *The Chronicle of Higher Education* (January 31, 2003), B10.
12. Daniel Lazare, "America the Undemocratic," *New Left Review* 232 (Nov/Dec 1998), 31.
13. Ibid., 8.
14. Ibid.
15. Ibid.
16. *New Testament*, Book of Matthew 19:24.
17. Lazare, "American the Undemocratic," 39.
18. "Theory or Democracy? The Culture Wars Twenty Years On," *World Policy Journal* (Summer 1998), 66.
19. Richard Rorty, "Thinking in Public," *American Literary History* 10 (1998), 63.
20. This, of course, is a major theme behind the work of Neil Postman and is most clearly expressed in his *Amusing Ourselves to Death* (New York: Penguin, 1985).
21. A discussion of this appears in Noam Chomsky, "'Consent Without Consent': Reflections on the Theory and Practice of Democracy," *Cleveland State Law Review* 44 (1996), 415-438.
22. Richard Rorty, "Back to Class Politics," *Dissent* (Winter 1997), 33. Otherwise stated, "There is little reason to believe that what is good for GM or Microsoft is good for America." Ibid.

23. Ibid.
24. "WHO Issues New Healthy Life Expectancy Rankings," Press Release WHO, Released in Washington, D.C. and Geneva, Switzerland, June 4, 2000, <http://www.who.int/inf-pr-2000/en/pr2000-life.html>.
25. Ibid. I would add to this list elderly women.
26. Lee and Wander, "On Discursive Amnesia: Reinventing the Possibilities for Democracy Through Discursive Amnesty," in *The Public Voice in a Democracy at Risk*, eds. Michael Salvador and Patricia M. Sias (Westport, CT: Praeger, 1998), 154.
27. "After the Failed Faiths: Beyond Individualism, Marxism, and Multiculturalism," *World Policy Journal* 12 (1995), 68.
28. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), 642.
29. Ibid., 641.
30. *The Political Writings* (Indianapolis: Hackett, 1993), 142.
31. Ibid.
32. "Disobedience as a Psychological and Moral Problem," in *Morality and the Law*, eds., Robert M. Baird and Stuart E. Rosenbaum (Buffalo: Prometheus Books, 1988), 98.
33. "Realisms, Occidental Style," in *Asian and Western Writers in Dialogue: New Cultural Identities*, ed., Guy Amirthanayagam (London: Macmillan, 1982), 41.