



## **The Death of the Bill of Rights in America (Part II) - 10/28/2004 12:44**

Thomas Jefferson, the author of the Declaration of Independence, once said: "When the people are afraid of the government, that's tyranny. But when the government is afraid of the people, that's liberty."

To minimize the possibility of this tyranny developing, and to ensure the inviolability of certain fundamental rights and freedoms, America's founding fathers created the Bill of Rights to serve as a "check-and-balance" between the government and the governed. Unfortunately, as prescient as these founders were, they resided in an agrarian culture and therefore did not foresee the impact that industrialization and the private economic sector would have on people's ability to exercise their rights and freedoms. Fear of losing employment for advocating "unpopular" ideas, fear of censorship by a corporate-controlled media more devoted to enhancing their profits and promoting their agendas than serving the public interest, and fear of "civil law," where monetary damages can be assessed against individuals or groups engaged in speech activities, have incessantly transformed the Bill of Rights into a litany of impotent platitudes.

Although the private sector's capacity to nullify the Bill of Rights should have sufficiently assuaged any governmental desires to further intrude upon civil rights and liberties, this has not been the case. As anthropologist Margaret Mead once remarked, "small groups of thoughtful, committed people" are capable of changing the world, and history is replete with stories of intrepid men and women who were willing to risk their livelihoods, and even their lives, challenging the abuses and injustices perpetrated by corrupt power structures.

Those who profit from these power structures, however, are always fearful of and resistant to change, and thus strive to preserve the status-quo, no matter how unjust this status-quo happens to be. This has constantly resulted in the suppression of civil rights and liberties.

Since its inception, America has been in an inexorable state of war. Independence from England after the Revolutionary War brought America to the brink of war with France a few years later. Then followed the War of 1812, with England once again the enemy; the doctrine of "Manifest Destiny" inspired the Mexican-American War; and the institution of human slavery in a nation that boasted "all men are created equal" sparked the Civil War.

Throughout the Nineteenth Century countless wars were waged against Native-American tribes struggling to retain their lands and cultures. And conquered tribes herded onto dismal reservations did not enjoy the right to "the free exercise of religion." Instead governmental efforts to "Christianize the Indians" resulted in the imprisonment, starvation and execution of Native-American holy men, the murder of Chief Sitting Bull, the 1890 massacre of Native-American men, women and children at Wounded Knee, South Dakota, and the forced relocation of Native-American children to "Indian schools," where they were forbidden to practice their traditional beliefs.

The Nineteenth Century ended with the Spanish-American War, a conflict largely instigated, much like George W. Bush's war against Iraq, by a media lusting after the profits war coverage would provide.

The Twentieth Century witnessed American involvement in World War One, World War Two, the Korean War, the Vietnamese War, the Grenada invasion, the Panamanian war, and the first Gulf War (waged against Iraq).

The dawn of the Twenty-First Century ushered in what appears to be a perpetual "war against terrorism," and finds Americans in combat situations in Columbia, Afghanistan and Iraq. In addition to the wars already listed, there have been a plethora of minor conflicts in "third world" countries, like Angola, the Dominican Republic, Guatemala, El Salvador and Nicaragua, precipitated by "Cold War" tensions between the United States and the former Soviet Union.

Although the late Supreme Court justice William O. Douglas once remarked that "[r]estriction on free thought and free speech is the most dangerous of all subversions, and [t]he one un-American act that could most easily defeat us, those who question the government's motivations and/or express dissent during times of war are incessantly the ones labeled 'un-American.' Existing in an inexorable state of war normally means 'free thought and free speech' are the first casualties.

In fact, the American government wasted little time weakening the Bill of Rights. John Adams, the country's second president, implemented the "Alien and Sedition Acts," which prohibited criticism of the government and government officials.

And even when the end of the Civil War added three noble amendments to the Bill of Rights,— the Thirteenth, that abolishes slavery; the Fourteenth, that provides for "equal protection of the laws"; and the Fifteenth, that proclaims the right to vote cannot be denied on the basis of "race, color, or previous condition of servitude"—Rutherford B. Hayes, in exchange for being declared the winner of a disputed presidential election, agreed not to enforce these amendments. The result was a century of injustice as "chattel" slavery was simply replaced by economic slavery, as "equal protection" came to embrace the segregationist doctrine of "separate but equal," and as African-Americans were disenfranchised from the electoral process through legal machinations and overt intimidation.

The precedent set by John Adams was resurrected during World War One with the passage of the "Espionage and Sedition Acts." But while the previous "sedition" acts had resulted in only twenty-five prosecutions and ten convictions, the World War One acts resulted in over fifteen hundred prosecutions and over one thousand convictions. The hypocrisy was so pungent that even famed Supreme Court justice Oliver Wendell Holmes, who once proclaimed, "We should be eternally vigilant against attempts to check the expression of opinions that we loathe," joined a unanimous Supreme Court in upholding the conviction of Socialist Leader Eugene Debs for the "crime" of making an anti-war speech in Canton, Ohio. The same result occurred in the case of SCHENCK VS. UNITED STATES, where the defendants were convicted for distributing anti-war leaflets. Holmes exposed the court's perfidy by writing, "[We] admit that in many places and in ordinary times the defendants in saying all that was said would have been within their constitutional rights." In other words, the Bill of Rights thrives when it is not needed and perishes when it is needed most.

As World War Two raged throughout Europe, America again criminalized speech through the passage of the "Smith Act, which made it illegal to advocate the overthrow of the government by force or violence. When America entered this war after the 1941 attack on Pearl Harbor, the Bill of Rights was eroded even further when Earl Warren, then the Attorney-General of the State of California, decided that Americans of Japanese ancestry were not entitled to "due process" or "equal protection of the laws," and therefore could be forcibly removed from their homes and placed in "internment camps." Although Warren later expressed regret over his actions, the attacks on September 11th, 2001 prompted some pundits to argue that citizens of Middle Eastern descent should also be placed in internment camps.

The end of World War Two ushered in the "Red Scare" of the McCarthy era, and countless Americans found their careers and lives shattered because of allegations about their past political activities. Some, like William Remington, even lost their lives. During this period and well into the 1960s, many agents from the Federal Bureau of Investigation (FBI), with the blessing of its megalomaniacal director J. Edgar Hoover, ignored the very Constitution they were sworn to uphold by wiretapping and/or searching the mail of alleged "subversives" without first obtaining warrants. Although hearings conducted by Senator Frank Church in the mid-1970s weakened these practices, the deceptively named "Patriot Act," has given them renewed vigor.

Although the Bill of Rights was designed to protect speech across the political spectrum, the selective enforcement of constitutionally dubious laws made this protection more illusory than real. The "Espionage and Sedition Acts," for example, were rarely enforced against religious institutions opposing America's involvement in World War One. Instead "radical" organizations or individuals, like the Industrial Workers of the World (IWW) and Eugene Debs, were targeted to destroy their political effectiveness.

According to Hoover biographer Richard G. Powers, FBI agents assigned to the American South during the early days of the civil rights movement also selectively enforced the laws. When the rights of African-Americans were abused or denied, these agents acted as "vaguely-interested observers of injustice, who diffidently wrote down complaints and did no more." But if the alleged victims were white and the alleged perpetrators were African-American, these agents became, according to author Stephen B. Oates, as "thick as hogs" in their zeal to obtain criminal indictments.

Historian Howard Zinn reported in his book THE NEW ABOLITIONISTS that one intrepid civil rights

activist, Fannie Lou Hamer—a woman who had been beaten so badly while in police custody she could no longer raise her arms above her head—became so disgusted with the FBI's selectivity that she exclaimed, "If I get to heaven and I see [these FBI agents] there, I will tell St. Peter to send me on back to Mississippi!"

This selective enforcement was also used for appeasement. When Stalin's Soviet Union was allied with America during World War Two, the Smith Act was almost exclusively aimed at Americans who subscribed to the ideologies of Leon Trotsky, a rival Stalin had ordered assassinated. The end of World War Two, however, also brought an end to this appeasement, and Stalinist communists, many of whom had applauded the prosecutions of the "Trotskyites," were also imprisoned for violations of the Smith Act.

Besides selective enforcement of the laws, the government has also bypassed the Bill of Rights by encouraging private individuals or organizations to do what the government is constitutionally precluded from doing. Groups like the American Protective League were used to quash dissent during World War One. Groups like AWARE, the American Legion and a bevy of paid informants were used to ferret out alleged "communists" during the McCarthy era. During the early 1960s, organized crime figures were solicited by the Central Intelligence Agency (CIA) to assassinate Cuban leader Fidel Castro, while, according to the prestigious Atlanta Journal and Constitution, members of the United States Army's 20th Special Forces Group in Alabama provided paramilitary training to the Ku Klux Klan in exchange for information on civil rights activities, and members of the army's 113th division supplied a private organization known as the "Legion of Justice" with "tear gas, mace, electronic surveillance equipment and money to harass anti-war groups."

When the government could not find allies from the private sector to help "neutralize" political dissidents, it covertly encouraged assassinations, fueled internal conflicts within political movements and/or incited violence between rival groups or organizations through a largely illegal operation known as COINTELPRO.

Since the Bill of Rights has existed more in myth than reality throughout much of American history, the inevitable question becomes, "Why are Americans so consistently willing to sacrifice the very rights and liberties they claim to revere?"

One answer is that America's inexorable state of war habitually requires the government to instill in every generation the belief that war is a "natural" state, and that peace, and those who advocate it, are the aberrations. Movies and television programs nurture the myth of "bloodless" wars, while politicians, celebrities, and pundits fight choreographed battles on film, or exhilarate their audiences with entrancing tales of wartime heroism. These sentiments, coalesced with the desperation of poverty and the propaganda that wars are always fought for "freedom and democracy," help to ensure that the government is always going to have a surplus of individuals willing to risk their lives in combat, regardless of the veracity of the cause.

Another answer is that many Americans fail to recognize the hypocrisy of those in the political or legal arenas who praise the Bill of Rights with their words, but not their deeds.

I witnessed this hypocrisy first-hand when a Supreme Court "justice" visited the law school I was attending to lecture on the doctrine of "certiorari"—the voting system the nine "justices" use to decide what cases the court will hear. "Ordinary cases," this "justice" explained, "were given ordinary scrutiny. But death penalty cases were subjected to extraordinary scrutiny to minimize the risk of executing an innocent person."

During the course of my studies, however, I discovered a death penalty case where the required votes had been obtained to grant certiorari, but where one additional vote was needed to delay the execution. This one vote never came, and since the condemned man had been convicted in the State of Texas, the death penalty capital of the civilized world, he was executed before the Supreme Court could hear his appeal.

Yet when I asked how such a procedural travesty could occur if death-penalty cases were treated with such diligence, this "justice" simply responded with an assurance that, in the future, there would always be sufficient votes to delay an execution. Predictably, there was no explanation as to how such an assurance was possible, especially since the composition of the court frequently changes as "justices" retire or pass away.

In 1928, Louis Brandeis, another former Supreme Court "justice," stated: "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest

dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding.!

Despite these lofty sounding words, Brandeis exhibited the same hypocrisy as Oliver Wendell Holmes by also voting to uphold the conviction of Eugene Debs. Still, his words reveal the basic strategy that has been employed throughout American history to dilute the Bill of Rights.

But, contrary to Brandeis-s words, many of the zealots who threaten liberty are not well meaning nor do they lack understanding. They are the demagogues and opportunists who prey upon prevailing hysterias or fears to promote or further their own agendas. By concealing the suppression of civil rights and liberties in the garments of beneficence and/or patriotism, they can create a myopia in the populace that normally will not dissipate until an inordinate amount of injustices have occurred. By then, whatever political movement they have targeted has been irreparably shattered.

As Michael Moore pointed out in his documentary FAHRENHEIT 9/11, the desire to destroy the Bill of Rights has persisted for many years, but the milieus conducive to this destruction have not. Once fears and hysterias fade, and once people begin to pierce the veil of false beneficence, they also begin to demand the reinstatement of fundamental rights and liberties.

So what the government is seeking is a strategy that will give fear and hysteria a permanent place in American society. And, as Brandeis said, this task will best be accomplished by convincing the people, or at least the majority of them, that their loss of liberty is somehow ?beneficent.!

Currently three methods are being used to create this facade of ?beneficence.!

The first is the ? random drug testing! of students in America-s public schools. Children under no suspicion of wrongdoing are arbitrarily summoned from their classrooms, required to provide personal information about their mental or physical health, and then forced to produce a sample of their bodily fluids, usually in the form of urine or saliva.

While the alleged ?benefits! of random drug testing have made it widely accepted and difficult to condemn, the real purpose of this testing is far more insidious. In many school districts random drug testing begins when a child is in the sixth grade and continues until the child graduates, normally a period of six years. Throughout this period a child-s attitudes and personality are also developing. Students who are indoctrinated into believing that even their most intimate bodily functions can be controlled by the government will undoubtedly be less resistant to further intrusions upon their civil liberties when they become adults,

The second method is concealed in the incessant quest to amend the Bill of Rights to ban ? desecration! of the American flag—supposedly a ?patriotic! response to rulings by the Supreme Court that found flag burning to be a form of speech protected by the First Amendment.

Again the political popularity of this amendment makes its purported ?beneficence! difficult to ignore. But, like random drug testing, the true motives are far more devious. If the ban on flag desecration is passed by Congress and ratified by a majority of the States, it will be the first time in American history that the amendment process has been used to REMOVE AN ESTABLISHED FREEDOM from the Bill of Rights. Once this ominous precedent is set, how many more established freedoms will follow? Will ? freedom of religion ! be amended to mean ?except for unpopular religions?! Will the right to ?peaceably assemble! be amended to mean ?as long as the assembly doesn-t criticize governmental policies?! Clearly the Bill of Rights will not survive the long-term effects of an ?anti-desecration! amendment.

Finally there is a continuing controversy over whether the words ?under God,! in America-s ?Pledge of Allegiance! violate the ?Establishment Clause! of the First Amendment, which prohibits government from promoting or establishing a state-sponsored religion. Even though these words were not inserted into the pledge until decades after it was written (not out of reverence to God, but as a McCarthy era jab to ?godless communists,! a somewhat ironic action since the pledge was authored by a socialist named Francis Bellamy), the House of Representatives recently voted to strip the Supreme Court of its authority to hear Pledge of Allegiance cases, a devastating, if not fatal, assault on the Constitution-s delicate system of ?checks and balances.!

Yet, as many critics have pointed out, the House-s action, as ?beneficent! as it may appear, was in reality little more than a tactless election year move. Those rare politicians courageous enough to oppose this legislation knew they were exposing themselves to accusations of being ?anti-God.!

Yet logic clearly dictates that the revulsion and opprobriums should be aimed at those politicians who reduced God to the status of a political football, and who voted to destroy the very principles the Pledge of Allegiance represents—the Bill of Rights and the ?check and balance! system. By focusing America-s attention on the words ?under God,! these demagogues and hypocrites are diverting

attention away from their cynical crusade to transform the pledge-s promise of ?liberty and justice for all! into ?liberty and justice for the few and oppression and injustice for the many.!

Throughout American history the courts have frequently endorsed unconstitutional laws. But these same courts are normally the first to recognize when these laws have exceeded their original intent. This is why, in recent months, courts have held that certain provisions of the ?Patriot Act! violate the Bill of Rights. But given the intransigence of John Ashcroft-s ?Justice! Department, these rulings may do little more than revive the COINTELPRO ideology of doing covertly and illegally what cannot be done overtly and legally.

As a former university professor, I have consistently been dismayed by the number of college students who know almost nothing about the Bill of Rights. While some may argue that this lack of knowledge is attributable to the apathy of today-s youth, it is evident that public school systems are not emphasizing the Bill of Rights in their curriculums.

But how can they? How do you teach students they are entitled to ?the right to be left alone,! which Louis Brandeis described as ?the right most valued by civilized men,! when they can be summoned from their classrooms at will and forced to submit to ?random drug tests.! How do you expand upon William O. Douglas-s words that ?[r]estriction on free thought and free speech! is ?un-American,! when the ones being censored and castigated as un-American are those who exercise free speech through dissent? How do you emphasize the freedoms enshrined in the Bill of Rights when opportunistic politicians vote to destroy them, and America-s economic sector demands materialistic cogs, not free-thinkers? How do you discuss the ?right to privacy! when technology exists to classify people according to their genetic makeup, when computer chips can be inserted under people-s skin to monitor their movements, when omnipresent video cameras constantly record daily activities, and when all but the most reclusive cannot survive without sacrificing their privacy on a daily basis?

At the close of the Constitutional Convention, Benjamin Franklin, one of America-s founding fathers, was asked: ?What have you wrought?!

He replied, ?A Republic, if you can keep it.!

The Republic has not always been kept, but it has always been restored. But now, as fear is increasingly exploited as a political strategy, as the erosion of basic rights and freedoms is concealed in deceptively appealing garments of beneficence, and as America-s children are indoctrinated into believing the Bill of Rights is more mythical than real, the end of the Republic may indeed be near.

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