

The Journal of Social Encounters

Volume 6
Issue 1 *Democracy and Political Change*

Article 12

2022

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Recommended Citation

Kendall III, Walter J. (2022) "Review Essay: A Contribution to the Debates about Law, Non-violence, and the Struggle for Democracy," *The Journal of Social Encounters*: Vol. 6: Iss. 1, 138-152.
Available at: https://digitalcommons.csbsju.edu/social_encounters/vol6/iss1/12

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**Review Essay: A Contribution to the Debates about Law,
Non-violence, and the Struggle for Democracy**

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Books discussed in this essay:

M.K. Gandhi. Charles DiSalvo. Berkeley: University of California Press, 2013. Hardback, \$34.95, 9780520280151.

On Tyranny: Twenty Lessons from the Twentieth Century. Timothy Snyder. New York, NY: Ten Speed Press, 2022. Paperback (graphic edition, illustrated by Nora Krug), \$16.95, 9781984859150. Originally published by Tim Duggan Press, 2017. Paperback, \$7.99, 9780804190114.

Twilight of Democracy: The Seductive Allure of Authoritarianism. Anne Applebaum. New York, NY: Anchor Books, 2020. Hardback, \$25.00, 9780385545808

Woe Unto You Lawyers, a Biblical warning (Luke 11:52), has been repeated and elaborated by twentieth century law professor, Fred Rodell, in his book by that name. The burden of his argument is that the law and lawyers are wedded by its and their language to the past. His book was published in 1939 as “legal realists” were challenging the “traditionalists”, and the Bench and the Bar debated The New Deal’s jurisprudence. Rodell was very supportive of the views of Justice Douglas and equally critical of the views of Justice Frankfurter. The debates continue, now thought of as between those believing the constitution to be a living document, and those who see it through originalist (how it was understood by people in 1789) or literalist eyes.

Rodell adopted Thomas More’s view that there were no lawyers in Utopia because lawyers were people whose duty was to disguise matters. He strongly preferred that law be written in “ordinary English”. If that were done it would be the end of lawyers, judges, and law schools. He ended his book by emphasizing the fallibility of judges and the uncertain connection between legal decisions and Justice.

Rodell was so critical of the law and lawyering that despite his excellence as a student at Yale Law School and forty years of law teaching, he never practiced law.

Gandhi was admitted to the Bar and practiced law for more than two decades. It was during this extended period that his views of the Law and lawyering developed and became transformative. Gandhi believed the law favored the rich and other elites. He was especially critical of lawyers for promoting, pursuing, and prolonging litigation, rather than seeking reconciliation, both in private contractual matters and in disputes about public policy. But he never lost faith in the Law. It was his sense of a higher law and his commitment to speaking, and embodying the Truth that underlies Satyagraha and his nonviolent, non-cooperative, actions for Indian independence.

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Charles DiSalvo, the Woodrow A. Potesta Professor of Law at West Virginia College of Law has written an important biography of Gandhi - *M.K. Gandhi, Attorney at Law - the Man before the Mahatma* (2013). I recommend that all law students, and, all those contemplating civil disobedience, read it. Studying this part of Gandhi's experience is essential to understanding both what lawyers do and can do, their moral challenges, and the dynamics and limitations of civil disobedience. It is important to keep in mind that when litigation and civil disobedience are properly understood and used, it is not either/or, but both as necessary for democratic based long term social change.

DiSalvo displays prodigious scholarship and archival research. He discusses a number of cases Gandhi was involved in, in Natal (33), South Africa Republic(3), Transvaal(9), and Union of South Africa(4), some in a brief paragraph, others over several chapters. He searched through the archives of 10 newspapers. In addition, it appears he scoured the 100+ volumes of Gandhi's writings (letters, uncollected essays etc.). He discusses Indian law and practice, and the Roman-Dutch law tradition which had great influence in South Africa. There are 35 pages of endnotes and a reference to a link to a more complete list of sources. Helpfully, there is also a chronology of Gandhi's entire life (1869 - 1948) and a map of the governmental segments of South Africa in Gandhi's time.

DiSalvo's book explains concepts and events the meaning of which were not clear to me on my reading of Gandhi's autobiography, in preparation for reading the book being reviewed. The book is sufficiently detailed that it also helps the reader to speculate (sentences throughout begin "Perhaps...") with the author on "why" and "how" Gandhi made certain choices. (p.11). As Leo Damrosch points out in describing the historiography of Edward Gibbon, "the best historians have always known that readers learn much more from being taken behind the scenes, pondering the available evidence along with the author". (Damrosch p. 332-333).

This most challenging "how" question is too often overlooked in books about achieving real social change. These portions of the book remind the reader of and reinforce the developmental nature of Gandhi's "experiments with Truth". With a humble recognition of the value of the failure of some of these, Gandhi wrote in his Autobiography "My uniform experience has convinced me that there is no other God than Truth". (p. 93)

There are eight pages of pictures of Gandhi at the time, and of several allies and adversaries. The pictures of Gandhi in Britain studying law, and in his practice in South Africa are especially helpful. The author apparently assumed that most readers have at least some pictorial sense of Gandhi in homespun in India, as there are none of these. The contrast is evidence of the dramatic transformation that took place in Gandhi's self-understanding by and through his 23 years of law practice in South Africa.

Transformations - from Mohandas to Mahatma:

As the title of this book suggests, the *Mahatma* Gandhi who nonviolently led India to independence is a person who was dramatically transformed by his experiences in South Africa as a public interest lawyer and Indian activist. I have discerned that this transformation occurred in five phases; perhaps there was a sixth.

Before developing brief thoughts on each phase, I want to refer to another book on Gandhi's South African years. In the same year that the book under review was published (1913) Ramachandra Guha had published the first volume of his two-volume biography of Gandhi: *Gandhi before India*. Despite having the same publication date, Guha referred to DiSalvo's book in several places (e.g., p.90, 120). (The second volume *Gandhi: The Years that Changed the World, 1914-1948*, was published in 2018). Guha identifies four major "callings," perhaps five, for Gandhi in South Africa: "freedom fighter, social reformer, religious pluralist, prophet (p.9); and perhaps also a fifth, editor and writer (p. 4). He mentions the seventeen (17) "identities" Henry Polak discerned in his friend: "*Diwan's* son, barrister, stretcher-bearer, pamphleteer, cultured thinker, courteous gentleman, manual laborer, nurse, teacher, agitator, propagandist, sterling friend, no man's enemy, ex-convict, *sadhu*, chosen leader of his people, and arch passive resister". (p. 9). This unique first volume of two, contextualizes Gandhi's multifaceted life in over 670 pages, including scholarly paraphernalia and pictures of leading personages. Guha's book mentions in a sentence or two most of the legal matters Gandhi handled, but the focus was that of an historian rather than a legal practitioner. Clearly Guha's book is an immense and very important contribution to Gandhi studies; but his attention was not focused on Gandhi the practitioner - the "Attorney at Law", as is DiSalvo's book. In fact, Guha entitled his prologue "Gandhi from All Angles".

Gandhi's transformative experiences:

1 - Becoming a British barrister- The titles to the first two chapters summarize this phase of Gandhi's growth as a lawyer and public person (chapter 1 - Dispatched to London; chapter 2 - The Barrister Who Couldn't Speak).

2 - Growing confidence in his roles as lawyer and public advocate. Chapter 6 describes the nature of Gandhi's very early practice (small claims, a divorce, minor criminal cases), and the "formation lessons" learned about such practice necessities as cross examination, and the quirks of the local rules and judges. One of the most important lessons was learned in a 1896 case involving a complex "shipping law" issue. The Magistrate asked Gandhi "a single, sharp question". 'Have you read your shipping law?' (P.94). Gandhi had to decide whether to emulate his partner and mentor, a known liar who had earlier been suspended from practice (p. 93), or to show himself to be unprepared (see chapter 16 - Malpractice). Gandhi answered "No"!

"Gandhi chose the Truth and never let it go." (p.94). This decision and commitment to the Truth helped set his life's course.

3 - Increasing recognition of the limits and dangers of the law and lawyering. *Hind Swaraj* Gandhi's 1909 book denouncing Western Civilization has an entire chapter which DiSalvo describes as "a blistering assault on the legal system to which (Gandhi) had belonged for two decades." (p. 256). "The harshest and most important of all the harsh points Gandhi makes is that it 'teaches immorality' in that "the very nature of the lawyer's job (is) to magnify disputes—rather than repress them..." (p.257). "A fundamental basis of his argument (is) the failure of the court system to bring justice to...people". (p. 256). Gandhi asserts "It is wrong to consider that courts are established for the benefit of the people. Those who want to perpetuate their power do so through the courts". (p.256).

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While an essential element of successful organizing is coalition building (1+1=3), it is true that litigation is conceptualized as a zero-sum game (1-1=0). Today, most private lawsuits are settled in a mutually “satisfactory” way. However, the use of plea bargains in criminal cases involves a more complex power dynamic. The government often charges the accused with a more serious crime carrying a longer sentence. If the accused agrees to plead guilty, the charges are reduced. Experienced litigators recognize that the outcome of a trial is never a certainty. So even the innocent run a serious risk of being convicted of the more serious offense if they insist on a trial. Hardly the reconciliation and justice Gandhi sought when resolving disputes.

Twenty five years ago I ended a short talk on William Stringfellow, “Radical Christian and Exemplary Lawyer” (the title of a book of essays about Stringfellow, edited by Andrew Mc Thenia) with a quote. Stringfellow was a similarly minded lawyer, who took his advocacy in a dramatically different direction than did Gandhi. He was the author of a short, but unforgettable book My People is the Enemy, about his law practice and experience working and living in Harlem, New York in the 50s. The Stringfellow quote was “I continue to be haunted by the ironic impression that I may have to renounce being a lawyer, the better to be an advocate”.

4 - Merging of his personal self and his professional self. Role Differentiated behavior “is an occupational hazard for lawyers...(some) lawyers...rationalize professional behavior that is inconsistent with their personal morality by saying that if each player in the system vigorously plays his or her role, the system will take over and sort out both the truth and justice. (p.xv-xvi). Gandhi, with increasing discomfort, lived with this differentiation. (p. 246-248, 266-267) until 1911 when he essentially gave up the practice of law. (p. 270).

In 1903 Gandhi wrote a column about a lawyer who represented a client he “knew” to be guilty. He ends the column by saying that such representation is a decision for each lawyer to decide. In the 1920s he wrote of the same circumstance in unequivocal terms saying his devotion to the truth precluded representation and required termination of it. (p. 178).

Today, lawyers are guided in their practice by codes of professional responsibility. Code section 1.16 addresses the refusal to represent a client, and how and when it is ethical to withdraw from representation. The opinion and order of the US federal court Judge Linda V. Parker, in a case concerning the actions of the lawyers challenging the results of the 2020 US Presidential election on behalf of then President Donald Trump, set forth the consensus view of the bench and bar of the obligation of lawyers that they have a sound basis for their factual claims and a reasoned analysis for their legal arguments. Lacking either, threatens the integrity of the judicial system. (NYT August 25, by Alan Feuer).

5 - Evolving understanding of the power of nonviolence - passive resistance> active non-violence> Satyagraha.

Passive resistance was “principally a refusal to obey the law based on conscience”. (p.xxi). Active nonviolence seemed a better term to describe efforts to break through public apathy. (p. xxii). Finally, “satyagraha, that is to say, the Force which is born of Truth and Love or non-violence” was much preferable.

In fact, Gandhi wrote a book, published by Schocken in 1961, with the title Non-Violent Resistance (Satyagraha). In 1908 Gandhi concluded that winning or losing in the Courts did not determine the ultimate outcome of a dispute. Rather, when the serious personal sacrifice of the practitioners of Satyagraha “strikes the ears of General Smuts, his conscience will be stirred and he will acknowledge our rights, will see that we invite suffering to secure them, that we have suffered more than enough. It is then that we will get what we have been demanding...I am sure that we shall be free when...God stirs...our opponents’ conscience”. (p. 251).

DiSalvo writes at this point “There is no more explicit explanation of Gandhi’s argument for civil disobedience over litigation than this tribute to suffering’s ability to create change”. Yet Gandhi “remained less than fully convinced courts should be rejected as instruments of social change”. (p. 251). The matter was eventually settled. Gandhi chose satyagraha as the most perfect and saintly method of change (despite recognizing that neither perfection nor saintliness can be achieved). (p. 266).

Gandhi. Compromise, and the “interests” of others

DiSalvo presents Gandhi as a human person subject to all the biases and stereotypes of the times; and often uncertain as to the proper and best course. Gandhi’s “pragmatism” is referred to by DiSalvo throughout the book. (Perhaps a better way of referring to the incidents DiSalvo describes is as “a willingness to compromise). An example that illustrates a positive pragmatic element in Gandhi’s thinking occurred at the very beginning of his practice. Gandhi was ordered to remove the turban he then wore. He refuses, apologizes, and leaves the court.(p. 38). A year later when fully admitted to the Natal bar, Gandhi faced the same challenge. When ordered to remove his turban, this time he does. (p.58). Gandhi faced this demand a third time. This time it was his client’s turban that was forcibly removed. (p. 75). This despite a recent decision that Indians need not remove either their turbans or their shoes before entering the court. In much more serious situations along the way Gandhi, recognizing the “interests” of others involved, was willing to compromise. In a particularly controversial instance, at the time of the Boer war in 1899, Gandhi volunteered as a British ambulance driver and urged other Indians to do so, as a show of loyalty and support, despite their oppressed state in South Africa. (p.131).

However, when Gandhi uses racist terms in arguing that Indian merchants ought to be treated better than Black Africans, and class bias in differentiating the merchants from Indian laborers, DiSalvo refers to this willingness to compromise as “shocking and unsavory” (p. 153-154).

This earlier perspective was certainly contrary to Gandhi’s enlightened view of caste; India’s Dalits, formally called “untouchables”, were referred to by Gandhi as “children of God” (p154). Guha’s book contextualizes Gandhi’s views of race by referring to a “neglected” speech of Gandhi’s in 1908. He concludes that it “reflected a deeper change in his way of thinking” in that Gandhi referred to ‘Africans’ as such, rather than using the pejorative ‘Kaffirs’ as he often did in the past, and “brought all races within a single ambit”.(Guha p. 292-293). Perhaps a sixth transformation?

In conclusion, I found this book challenging but compelling reading. My own experience has convinced me that both litigation and organizing are complementary paths to social justice and peace. There is a moral core to both Law and Democracy that can only be excavated by both

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working in tandem. Learning so much more about Gandhi as a lawyer from DiSalvo's book makes this complementarity clearer and more compelling. (Kendall 2021).

After 40 years of teaching law, and roughly the same number working with public interest and activist organizations, I highly recommend this book to law students and to activist-organizers.

Coda -

To illustrate the kind of experiences public interest lawyers have, and insights theorists obtain through study about social change, that Gandhi and Rodell more or less shared, I want to summarily reference a series of voting rights cases involving primary elections in Texas. It is important to note that in Texas prior to the late 60s Democrats and the Democratic Party pretty much had a lock on all electoral politics.

The first of the five cases, all of which involved efforts by the Texas Democratic Party to exclude Blacks from voting in primaries, was decided in 1927. The fifth case was decided in 1953. The line of cases continues to the present day. This saga is illustrative of the determination of, especially the states of the old Confederacy, to limit the right to vote for black persons and other people of color; and students. It is in such a context that one can begin to understand why John Lewis and others concluded that the Roberts Supreme Court has gutted the Voting Rights Act of 1965, and set voting rights law back to before the civil rights movement of the 60s.

*Nixon v Herndon, 273 U.S. 536 (1927) Texas Democratic Party was given permission by the State Legislature to prevent Negroes from voting in its primary elections. The argument was that the Party was like a private club, and the 14th amendment prohibited only STATE ACTION, not that of private persons or entities. The Court ruled that it was State action and thus prohibited by the 14th amendment.

*Nixon v Condon, 286 U.S. 73 (1932) The Party Executive Committee, to get around the ruling, then adopted a rule that only whites could vote in their primaries. The Court rejected that approach as a violation of the Constitution

*Grover v Townsend, 295 U.S. 45 (1935) The State Party Convention (the members of the Club, so to speak) itself adopted the "Condon" rule. It was held valid as not State Action, thus not prohibited by the 14th amendment.

*During WW II as hundreds of thousands of black Americans served in the military, the Court in Smith v Allwright, 321 U.S. 649 (1944) held that such a racial bar violated the 15th amendment.

*Terry v Adams, 345 U.S. 461 (1953) The Democrats create a new approach. The Democratic Party agreed that the person winning an unofficial primary election conducted by a private organization (the Jay Birds) would be the Party's official candidate. The Supreme Court, seeing through the facade, ruled it unconstitutional.

During this period before the 60s civil rights movement, states imposed citizenship awareness tests, and poll taxes both of which were operated in such a way that they also

impeded Black voters. And of course, there were always intimidation; threats of job loss, bombing, etc.

*Eventually Congress passed the VOTING RIGHTS ACT of 1965 which gave the U S Department of Justice oversight review of all voting laws, especially those in the southern states

*After almost 40 years of successful oversight, preventing voter suppression actions by the States, in *Shelby County v Holder*, 570 U.S. 529 (2013) the Court ruled that section 4, the core of the VRA preclearance process, was in effect unconstitutional because the States had generally ceased to suppress Black voting. Section 2 of the VRA was sufficient to insure against such action going forward.

*Then, *Brnovich v DNC*, 200 U.S. 321 (2021) gutted section 2, which allows individuals to challenge voting limitations adopted by States.

The kind of debate about the propriety and effectiveness of litigation versus organizing that Gandhi had with himself, today seems to be seeking different resolutions than did Gandhi.

Back in 1991, Gerald Rosenberg, a Professor at the University of Chicago wrote *the Hollow Hope* (second edition was published in 2008. It includes his thoughts on the storm of criticism the book received). Rosenberg's argument is that the Court has been less than fully effective in bringing about social change across a range of issues, e.g., race, abortion, criminal justice. In fact, often it's decisions were counter-productive.

A recent New Yorker piece by Jelani Cobb focuses on Derrick Bell's view that the *Brown v. Board of Education*, 347 U.S. 483 (1954) actually was ultimately a setback for desegregation of the public schools. This is presented in the context of the current debate about "critical race theory".

These two views, that of Rosenberg and that of Bell are similar to, but different from Gandhi's view about the practice of law and litigation. 1) Gandhi was opposed to litigation because it was divisive. He was fully committed to unifying action. 2) I think Rosenberg was arguing that unless the culture was changed by legislative reform there would be serious back-sliding from the change ordered by the Court. Rosenberg was recognizing the democratic notion that the power of the majority almost always prevails in the long run; an optimistic pragmatism. 3) Bell, on another hand, seemed to be of the view that people's basic feelings and attitudes would have to dramatically change for change to be reasonably permanent. This possibility Bell doubted would or could occur. His was a pessimistic pragmatism.

Clearly, Gandhi was very critical of the law and lawyering. Without both, in my opinion democracy is not possible. (Kendall). Gandhi was also not much of a fan of democracy. Even more clearly he did not approve of authoritarianism or any other form of one party government. Recently, in response to then President Trump, and other world leaders seeming to be on a similar track towards authoritarianism, there has been a flurry of recent books speaking of these threats to democracy. Two of the most important of these books, contribute, each in its own way to thinking through the implications of Gandhi's challenges to law and lawyering.

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Anne Applebaum has written a short, confessional book of reflections on *The Twilight of Democracy*, brought on by the seductive allure of authoritarianism. She seems to be writing about the “illiberal one-party state” (25), and the evolution of her own thinking on the state of “the Western liberal order”; rather than authoritarianism in any larger sense. Timothy Synder, whose own book *On Tyranny: Twenty Lessons from the Twentieth Century* will be discussed below, wrote in endorsing Applebaum and her book that she is “a penetrating investigator of contemporary politics...she sets her sights on the big question...How did our democracy go wrong?”

She begins her book with Julien Benda’s 1927 classic of that era *La traits on des clerics*, often translated as *The Treason of the Intellectuals*. Benda saw the duty of “clerks”, or intellectuals in a more modern term, as having a duty of transcending contemporary debates about class or nationalism. Applebaum describes clerks as “thinkers, intellectuals, journalists, bloggers, writers, and artists” (p.18). She sees some on the left, especially in the Academy as the kind of clerk Benda and she fears. But most of the clerks today, especially those”who have attained real *political* power...operating inside governments, participating in ruling coalitions, guiding important political parties” (p. 19) are found, as she recognizes, on what is today ordinarily called the “new right”. She alleges they are “more Bolshevik than Burkean: these are men and women who want to overthrow, bypass, or undermine existing institutions, to destroy what exists.” (P.20). And she points to guiding lights, and confesses at the same time: “Alexander Hamilton warned against them, Cicero fought against them. Some of them used to be my friends”. (p. 21).

Applebaum refers to the work of Karen Stenner, a behaviorist economist. Stenner found that “about a third of the population in any country has what she calls an authoritarian predisposition, one that favors homogeneity and order...it is a frame of mind, not a set of ideas” (p. 16). Importantly, Stenner distinguishes three psychological profiles among people “lumped together under the unhelpful rubric of ‘conservative’”: laissez faire conservatives (really libertarians or 19th century liberals); status quo conservatives (typically favor stability, and resist rapid change and uncertainty); and authoritarians (driven less by an aversion to change than by complexity; favor obedience, conformity, oneness, and sameness over freedom and difference). (Stenner and Haidt in Sunstein 2018 p. 181-184)” Stenner emphasizes that she is writing about “a psychological predisposition and not of political ideology, nor of the character of political regimes. (Stenner and Haidt p.182).

Applebaum discusses in chapter II how Demagogues win. She begins by diminishing the power of “degrees on inequality or standards of living” to explain this widespread phenomenon occurring across disparate countries. (p.105). Rather she takes a more psychological approach. She identifies a revival of nostalgia, the disappointment with meritocracy, the appeal of conspiracy theories, and the frightening nature of the complexity of modern discourse as important to understanding what lies behind contemporary authoritarianism. (p. 109).

The rapidity of change has discombobulated how folks receive and transmit political information. Applebaum continues in a chapter entitled “Cascades of Falsehood”. “Above all, we have lost the possibility of a single national conversation”. She finds that “without authorities-political, cultural, moral- and no trusted sources, there is no easy way to distinguish between conspiracy theories and true stories.” ((p. 113). Algorithms reinforce this by constantly serving up “”information” that confirms one's existing biases.

But how does the demagogue reach out to this mass of people predisposed to authoritarianism? The kind of “soft dictatorship” Applebaum is describing is dependent upon a cadre of elites to run the bureaucracy, the state media, the courts, and in some places, state companies”. (p. 25). In exchange for “defend(ing) the leaders, however dishonest their statements, however great their corruption, and however disastrous their impact on ordinary people and institutions... they (the Clerks) know they will be rewarded and advanced.” (p. 25-26).

To illustrate her analysis she discusses throughout the book Orban’s Fidesz party in Hungary, Law and Justice in Poland, Putin’s Russia, Duterte’s Philippines, Vox in Spain, Brexit in England, and of course, Trump’s America. Also, Websites operated by foreigners that spread disinformation, especially around elections in the U.S., Italy, Brazil, France, and other countries. (p. 134-138).

Applebaum devotes an entire chapter to the U.S. She builds her argument around the *Prairie Fire* statement of the Weather Underground of the Sixties. The Statement aggressively rejected American exceptionalism, opening, in her opinion, the rhetorical door to arguments of “whataboutism” (p. 155) or of moral equivalence between democracies like the U.S. and authoritarian or totalitarian countries like the former Soviet Union. She impliedly dismisses the work of Howard Zinn, focused on a people’s historical experience, as being in this vein (p. 147). Significantly the culture’s loss of its undergirding of “faith, family, and country” (p.149) has become common.

Applebaum throughout the book refers to lost friends, and her own changing views. Having multiple and diverse friendships is an important point in Snyder’s lesson #12 for resistance to tyranny. Applebaum’s former political friendships, both her own and those of her husband, were primarily on the conservative side of matters. These friendly, political and social friendships deteriorated so substantially that she refers to some of these former friends as “enemies” (p. 7). A word she herself criticizes later.(p. 90-91). Here is how she describes her evolving relationship with Laura Ingraham, and it’s deterioration over time, “in an earlier era I would have been glad to have her at a party...and she would have been delighted to come. But since the 1990s, our trajectories have gone in radically different directions...her Reaganite optimism disappeared and slowly hardened into apocalyptic pessimism”. (p. 164-165).

Applebaum ends her powerful analysis, and sad personal story, with a brief discussion of Ignacio Silone’s views of the 50s, especially in Italy. He had been a Communist, was expelled from the Party, and was deeply engaged as an anti-fascist activist. He came to believe that nihilism was a disease of the spirit. And he saw that in the world “there is no final solution, no theory that will explain everything. There is no road map to a better society, no didactic ideology, no rule book. All we can do is choose our allies and friends- our comrades as he puts it- with great care, for only with them, together, is it possible to avoid” future authoritarianisms. “The fight against them requires new coalitions... together we can fight back against lies and liars; together we can rethink what democracy should look like in a digital world.” (p. 188). Applebaum refers to Mill, Jefferson, and Havel as a reminder that the allures of authoritarianism never disappear. “But maybe, picking our way through the darkness (a Arendtian concept), we will find that together we can resist them.” (p. 189).

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Applebaum remains an old fashion liberal in the tradition of Mill, and Jefferson; and anti-authoritarian in the tradition of Havel. Snyder expressly mentions Havel's commitment to "living as is; to living in the truth" in both editions of his book. (original p.78; revised p. 28.

Another, already mentioned, important book sounding the alarm during the (continuing?) Trump era is by Professor Timothy Snyder: *On Tyranny: Twenty Lessons from the Twentieth Century* (original edition 2017; revised, graphic edition 2012). Snyder is the Levin Professor of History at Yale and the author of a dozen books on European history.

The two editions of Snyder's book both have a Prologue: History and Tyranny, and an Epilogue: History and Liberty. Both editions have a quote from Leszek Kolakowski as an Epigraph: "In politics, being deceived is no excuse." Certainly, there is no excuse after reading Applebaum's description of living under authoritarian governments, and Snyder's listing of actions needed to prevent the emergence of such governments.

In both Prologues and in his commentary on each lesson to be learned, Snyder emphasizes that European history of the last century "shows us that societies can break, democracies can fall, ethics can collapse, and ordinary men can find themselves standing over death pits with guns in their hands." He emphasizes the importance of looking to this history "to understand the deep sources of tyranny and to consider the proper responses to it". In fact, the lessons are primarily concerned with identifying proper responses to the growing signs of tyranny since the entry of Donald Trump into presidential politics. The first lesson is "do not obey in advance". The commentary begins with a caution based on the Milgram experiments at Yale in the early sixties. People were told by the Professor to apply electric shocks to others if they responded improperly to a series of questions. The shocks were increased as the experiment advanced despite the recipients screaming that they felt heart pain and feared death. In fact there were no shocks. There was no pain. It was all an act, a part of the experiment. Milgram's conclusion was that many people, too many people, were willing to follow orders in service of a proper authority figure.

In the Epilogues, Snyder cautions readers to avoid the twin traps of thinking of History as either a story of inevitability, or a story of eternity ("a longing for past moments that never really happened"). The first leads to a passivity that allows tyranny to flourish. The second defines the nation "by its inherent virtue rather than its future potential. Politics becomes a discussion of good and evil rather than discussion of possible solutions to real problems".

The danger we now face is of a passage from the politics of inevitability to the politics of eternity, from a naive and flawed sort of democratic republic to a confused and cynical sort of fascist oligarchy...One thing is certain, if people do not begin to make history, politicians of eternity and inevitability will destroy it.

Several of the lessons focus on the need for people to be strong, to think for themselves. #4 take responsibility for the face of the world focuses on the power of symbols. Snyder summarizes a story Vaclav Havel told in his essay *The Power of the Powerless*. During the Soviet occupation there was a grocer who put in his window a sign with the hammer and sickle, reading "workers of the world unite". The grocer's only concern was avoiding trouble. As Havel explains, the grocer went along with the system. In accepting the rules of the game he made it possible for the game to go on. Havel asked "What happens if no one plays the game?" And #17 listen for dangerous words

similarly cautions against the use of words like “extremism” or even “exception” as they are often excuses for enhancing the power of the rulers. Similarly for example, #8 stand out, #14 establish a private life, and #20 be as courageous as you can be.

Others of the lessons urge people to be good citizens. These seem to acknowledge that the US at the time of the writing of both editions was not yet a tyranny. But certainly, warnings of the danger of slipping from our flawed democracy to tyranny were necessary. For instance, #2 defend institutions, #12 make eye contact and small talk, #13 contribute to good causes, #18 be calm when the unthinkable arrives, and #19 be a patriot. Of course the commentaries distinguish between a good understanding and a bad understanding of the lessons. For instance, good patriotism where criticizing the government is allowed, and bad patriotism or exclusionary nationalism.

Other lessons are warnings. For instance, #2 defend institutions they are necessary for a thriving civil society. #3 beware the one party state, #6 be wary of paramilitaries. And a specific warning to all members of the police, especially the militarized police #7 be reflective if you must be armed or more directly, people have a right to protest and to be protected in exercising that right. So think before you use force, especially lethal force, against them.

Lesson #10 believe in truth, seems especially central to today’s political circumstances. The commentary explains the four modes in which Peace dies. They were discerned by Victor Klemperer, a German diarist during the Nazi era. First, “open hostility to verifiable reality”; second, “shamanistic incantation” or endless repetition; third, “magical thinking or the open embrace of contradictions”; and fourth, “misplaced faith”. Snyder discusses Eugene Ionesco’s absurdist play *Rhinoceros*. I not help but wonder if he might not have been influenced by Thomas Morton’s essay *Rain and the Rhinoceros* in his book Raids on the Unspeakable. In Ionesco’s play “University professors, students, intellectuals were becoming Nazis. It began when someone in their conversation said “I don’t agree with them, to be sure, but on certain points, nevertheless, I must admit, for example, the Jews..., etc”. Three weeks later most were rhinoceros.”

This reference leads naturally to a discussion of the graphic version of Snyder’s book. The discussion of Ionesco’s play has the conclusion of an italicized paragraph in the original, turned upside down, to encourage the reader to pause and hopefully reflect on the words. Frankly, I appreciate the value of, and the artistry required to illustrate an abstract verbal point. The graphics of Nora Krug, a prize-winning artist and author are attention grabbing. However there is a message in Snyder’s text that is dependent on logic and linearity. Colorful and engaging graphics, and they are both, with the text embedded therein can be distracting. Having said that, I recognize the desire to get these important lessons before a non-academic audience. Today it seems that learners are more pictorial than lineal in their learning. Thus, there is a need for both versions.

One questioning comment on the text. Snyder recognizes in lessons #9 be kind to our language, (avoid the phrases everyone else uses) and #17 listen for dangerous words. Yet he refers to people with disabilities as “handicapped”. Nazis described people with disabilities as “handicapped”, “crippled” and as “life unworthy of life”. These categories suggest that people with disabilities are not people in the fullest sense of the word, and not worthy of opportunity and dignity. The disability rights activists consider themselves as persons who happen to have a disability. In other words as persons with rights to equal status in society.

*Review Essay: A Contribution to the Debates about Law,
Non-violence, and the Struggle for Democracy*

For the record, there are a few differences in the text of the two editions. There are changes in grammar recognizing that the earlier edition was inspired by Trump's candidacy and that the graphic edition came out after President Trump had left office. (For example, compare page 31 of the original with page 23 of the graphic version). There is at least one deletion to correct what appears to have been a factual error on page 75 of the original edition about Trump's businesses. It is no longer on the comparable page of the graphic version; page 67. There are slight adjustments to tone or emphasis in a few places. For instance, in the original at page 73 a sentence begins "Like Hitler, the President...". In the graphic version at page 65, Trump's name is not as closely linked to Hitler. It reads "As President...(he referred to the media) as "enemies of the people (as Hitler and the Nazis had done)"

Three major criticisms of both Applebaum and Snyder books. Both are brilliantly conceived and written, yet: (1) neither book has an index. Anthony Grafton is perhaps the leading scholar of the scholarly apparatus of books. In a recent issue of the *London Review of Books* he reflects on Dennis Duncan's recent book, *Index. A History of the*. As Grafton explains "Indexes are trouble...An index can distort, as well as facilitate, a reader's understanding...indexes create excitement as well as anxiety, just as digital aids do now. Trouble is still their business, and we can't do without them" (LRB 23 September 2021 p.3-6).

(2) Neither author discusses the law, its legitimacy, how laws and courts operate in a democracy, or the limitations of the law as a means of social change. Thus, leaving an analytic void that remains yet to be filled. A recent book whose title and its seventeen essays are inspired by Sinclair Lewis' 1935 novel *It Can't Happen Here* contains nine essays by elite law professors, perhaps a start on filling the void. For instance Jack Balkin, a Professor at Yale Law school, suggests that the defects in the American system which account for what he calls "Constitutional Rot" are "(1) political polarization; (2) loss of trust in government; (3) increasing economic inequality; and, (4) policy disasters like the 2008 financial crisis" (Sunstein p.22). These specifics resulted from a substantial period of leaders spending less and less time working for the public good. Instead they spent hours a day trying to raise tens of millions of dollars for their own re-election campaigns, creating an oligarchical system; rather than the republican system the founders thought they created. One can not help but recall Benjamin Franklin's remark that the founders had produced "a republic...if (we) can keep it". (Sunstein 20-21).

The experiences and thinking of Gandhi as discussed in DiSalvo's important book suggest both litigation (Law) and organizing (Politics) are needed for achieving democratic social change!

And (3) neither Snyder nor Applebaum refer to the work of A. O. Hirschman, a brilliant, widely travelled author, a person of wide experience from his rescue efforts during the Holocaust to his work on building both markets and democracies during the Cold War era.

Hirschman's brilliant essay, Political Economics and Possibilism, in his book *A Bias for Hope: Essays on Development and Latin America* (1971), makes major contributions to theories of democratic social change. Possibilism, by widening the lens of imagination, moved beyond the limits implicit in looking at only the probable. (Adelman 2014 p. 450-451). Hirschman recognized the impossibility of complete knowledge, and embraced uncertainty. (Adelman 2014 p. 450). He recognized that change could not be planned, nor did it come naturally. "one can only grope for it." (Adelman 2014 p. 452).

Pope Francis in his message to the Fourth World Meeting of Popular Movements in October of 2021 wrote in similar terms about the value of and need for the use of “imagination” as a tool for discerning how to live as Good Samaritans. He called the activist/organizers of popular movements “social poets”, that is, creators of “hope”, of possibilities yet unimagined. The Pope highlighted essential, grounded, and time tested principles to be followed in the quest for justice; Solidarity in pursuit of the “common good”; participation (active voices of all); and, subsidiarity in that it resists collectivization, and creates space for “private initiative, local identity or community projects”.

Perhaps Hirschman’s best known work is *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (1970). There he dealt with the impact of simultaneous decline and chaos. In that book he identified two dangers relevant to the questions we are discussing. One, that people might let voice get carried away. The second was that exit might “atrophy the development of the art of the voice” (Adelman p.443).

Less well known, but also relevant to this essay, is his *The Rhetoric of Reaction: Perversity, Futility, Jeopardy* (1991). The perversity argument of conservative folks is that “the attempt to push society in a certain direction will result in its moving all right, but in the opposite direction. (p. 11). The futility argument is summarized in the expression the more things change, the more they remain the same. (p. 43). The jeopardy argument is that the proposed change, though perhaps desirable in itself, involves unacceptable costs or consequences of one sort or another. (p. 81).

There are progressive arguments on the other side of those above. Progressives argue that inaction now will result in negative change; that the proposed changes are supported by active, powerful historical forces, so opposing them would be futile; and that the new reforms will mutually reinforce the existing old reforms. (p. 167). In other words, progressives are “eternally convinced that all good things go together, in contrast to the zero-sum, *Ceci-tuera-cela* mentality of the reactionaries” (“this will kill that”, the slogan of Frollo the archdeacon in Victor Hugo’s *Notre Dame de Paris*). Importantly, Hirschman sees disorder, instability, and disequilibrium as endogenous to democracy. (Adelman p. 444).

Rather than a stand-off resulting in mere tolerance, Hirschman concludes that democracy requires “deliberation...an opinion-forming process (wherein) participants (are) ready to modify initially held opinions in light of arguments of other participants and also as a result of new information which becomes available in the course of the debate.” (p. 169). Yet, he recognized that “the real criticism of the reformer is not that he is ineffective but that he might just be effective and thereby deprive the oppressed from achieving victory on their own terms.” (Adelman p. 450). What Hirschman is urging is akin to C. Wright Mills’ “sociological imagination”.

In addition to recognizing the need for litigation and organizing, as well as a sense of history, Hirschman’s further insights are valuable. He identifies the missing structure of the US democracy (an opinion-forming forum and process that has the capacity to function as he describes).

Conclusions

Hirschman's thinking on democracy leads me to conclude that policy debates today ought to begin with the following question to each participant: "Is there anything I can say or do that might change your mind?" This insistence on recognition of the possibility of change, and respect for others in such debates is an essential ingredient of the methodology of both Gandhi and Dr. King. And essential to democratic processes in times of especially disorienting social change. As Stanley Hauerwas put it, somewhat colloquial, in a recent interview:

Healthy politics itself can be a form of non-violence to the extent that I have to listen to what my opponent has to say and not kill him, though I might want to. Non-violence is more than an attitude. It calls for political engagement in a way that is quite surprising.

Let me underline the insights of Hirschman with a quote from Salman Rushdie's short essay *Courage* found in his book Languages of Truth at page 215. "It is harder for us to see politicians, with the exception of Nelson Mandela, as courageous these days. Perhaps we have seen too much, grown too cynical about the inevitable compromises of power. There are no Gandhi's, no Lincoln's anymore". Rushdie here recognizes the realism of the politicians he mentions. This recognition of the power of compromise was for them, and Dr. King, of a compromise that was fenced-in by what Arendt called "bannisters", more accurately, a compromise that recognized transcendent norms beyond which it was unwilling to go.

Without such limits, and without a democratic form of policy debate and development, as well as legal enforcement through an independent judiciary, each of the three principal authors discussed in this essay find that history indicates that authoritarianism lies ahead.

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