

bravely. However one may disagree with both in occasional detail, their thesis seems irrefutable. I doubt whether the Labour Party-Left would disagree with that thesis. The Finlandization of Britain has become a fact of international politics. □

1. David Widgery, ed., *The Left in Britain, 1956-1968* (Baltimore: Penguin, 1976). Harris' article is titled "The Loneliness of the Left."

2. "'Tory Democracy,' as Lord Randolph christened his policy, referred to the relationship between the new mass electorate and the traditional party leadership, not primarily to a policy of social reform, though it followed that some programmatic attractions were needed to ensure the loyalty of the masses." Peter Pulzer, *Political Representation and Elections* (New York: Praeger, 1967), p. 62.

3. It should be noted here that this slogan covers only capitalist countries. In Communist countries, the only real enemy to incumbent Politburos is on the left—whom does Tito fear more, the capitalist world or the USSR? Is there any greater enmity between the world's nations than that between China and the USSR? Stalin could allow for competitive co-existence with Hitler via a Nazi-Soviet Pact, but he could not allow co-existence with Leon Trotsky, his enemy on the left. The only genuine worker-peasant revolutions since 1953 have been in East Germany, Hungary, Poland, and Czechoslovakia, all of them against the Soviet Union. For the Kremlin, there are nothing but enemies on the left.

4. Labour Party moderates remind me of Julia in Byron's "Don Juan": "A little she strove, and much repented / And whispering, 'I will ne'er consent'—consented." An unnamed Labourite backbencher described Wilson with this *bon mot*: "Drive nails into Harold Wilson, and they come out screws." David Wood, "The struggle for the soul of socialism," *Times* (London), 14 April 1975.

5. Hayward's statement was published in *Labour Weekly* and reported in the *Times* (London) 29 September 1975. For the East German leader, see Heinz Lippmann, *Honecker and the New Politics of Europe* (New York: Macmillan, 1972), pp. 152 and 186.

6. When he was British Foreign Secretary, Prime Minister Callaghan was questioned in the House of Commons why the government hadn't pressured the British TUC to cancel the visit of Alexander Shelepin, former Soviet secret police chief and then head of the Soviet labor organization. The questioner recalled that as Home Secretary, Callaghan had

applied public pressure on the Middlesex Cricket Club to cancel a visit by a South African cricket team. Callaghan: "That was a domestic matter in which I was putting pressure on one of our own institutions in this country." Questioner: "Isn't the TUC?" Callaghan: "It is not my task to put pressure on the TUC to refuse to admit people to this country." Questioner: "Double standards?" Callaghan: "Yes. I don't know whether all honorable gentlemen apply a universal standard in their relations. Let's be honest—all of us at some stage in our lives apply double standards." *Vancouver Sun*, 11 April 1975.

7. Last January, Labour Attorney-General Sam Silkin refused to allow a private citizen to apply for an injunction against the post office workers union which had unanimously agreed, as part of a boycott of South Africa, not to handle any mail going to and coming from that country. Silkin himself refused to do anything about the union's illegal interference with the mail. The private citizen applied to the court of appeal which granted the injunction. Silkin then came to the court and told the judges they had no right to intrude into what was a matter for Parliament only. The court rejected his argument on the grounds that if his reasoning were correct he would become the final judge of when to suspend a law in favor of some powerful interests. "The judges put Sam Silkin in his place," the *Economist*, 29 January 1977, p. 19.

8. In 1961, the public sector of the British economy employed 5.8 million people or 24 percent of the nation's active labor force. Last year, 1976, the figure had risen to 7.5 million or nearly 30 percent—and this after 15 years of constant reduction! David Watt, "The latest battle of Britain: Cutting back the bureaucracy," *Boston Globe*, 1 May 1977.

9. Boris Ponomarev, head of the International Department of the Central Committee of the Soviet Communist Party, came to London in October 1976 at the invitation of the Labour Party international committee. His visit was widely protested, but not, of course, by the Labour Party or government.

10. A typical protest by Callaghan was reported in the *New York Times*, 11 December 1976. He told an audience that the most "hateful slogan he had heard recently was: 'What do we want? Everything! When do we want it? Now!' That's not socialism, that's fascism." He added, "There are too many people who have infiltrated already. Get them out." For Callaghan, the "enemy" is fascism, a most evanescent political phenomenon (Greece, Portugal, Spain, etc.). The enemy of socialism in Britain is not, of course, fascism but no Labour Government minister would dare call it by its right name. Not any more.

BOOK REVIEW

The Urban Predicament

William Gorham and Nathan Glazer, eds. / Urban Institute / \$4.95

Thomas Halper

Once upon a time, every guru from Father Groppi to Floyd McKissick* declaimed on the "urban crisis." With all the wit and vigor of a subway graffiti artist, they denounced and pronounced while behind them raged dozens of apocalyptic riots, complete with towering fires and tormented souls looting liquor stores. It seemed America's own special and self-created hell, and TV brought it home with a power and immediacy that an Elmer Gantry could only envy:

Was all this barely a decade ago? It seems so *passé*. The images, the terminology, the urban cause itself appear as old and decrepit as a Newark garbage truck, as quaintly dated as the promises from the last mayoral election. The urban crisis has been superseded by the war, the environment, Watergate, the energy crisis; and though New York City's lurching shuffle

toward oblivion has been widely reported, it seems to have been treated like a routine media disaster—a mass murder, perhaps, or a burst dam—which generates a certain amount of short-term platitudinizing but little more. In fickle America, where even nostalgia exists mainly as a fad, the present is everything, and yesterday's causes die easily and once dead, like other dead things, tend to remain so. The urban crisis, then, seems nearly as much a part of the ash can of history as the War of 1812 or the hula hoop.

The obsolescence of the urban crisis as an issue may have persuaded some Americans that, except for a few notorious exceptions, cities are no longer worth much concern. Yet speaking as a New Yorker—worse, a professor at the imperiled City University of New York—I

must report that news of the patient's recovery is greatly exaggerated. In fact, many cities are worse off today than when they commanded all those headlines, dominated all those sermons, and permeated all those cocktail party conversations.

What is different today is that, though the moaning and complaining continues, most of the shouting has stopped. In its place has arisen something less spectacular and telegenic but infinitely more helpful to those who care to know what the real problems are and what palliatives are available: sober, empirical study. The editors of *The Urban Predicament*, William Gorham and Nathan Glazer, draw on the best of such work. They have put together a highly informative collection of essays that engages the mind instead of the glands, and should be of interest to anyone to whom the American city is of interest. In fact, if I were to recommend one book on the subject to the concerned laymen, this would be it, for in its mixture of scope,

* At last report, Groppi was driving a bus in Milwaukee, and McKissick was a controversial real estate entrepreneur, a Republican, and a supporter of President Nixon(!).

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sophistication, and brevity it has no real competition. Lucidly and provocatively, it treats most of the classic urban problems, and if some of the discussions are better than others—George Peterson's chapter on finance and Michael Kemp's and Melvyn Cheslow's section on transportation seem especially thorough and thoughtful—none is less than good.

If all this sounds terribly ambitious, the reader nonetheless is struck by a healthy sense of humility. The contributors are frank to recognize the limits of their knowledge—James Coleman and Sara Kelly concede, for instance, that the worsening educational results in grades 4-12 in recent years are "inexplicable"—and they are candid about the obstacles preventing policy-makers from always responding rationally. Trusting facts and not impressions, the authors know that common sense—e.g., the assumption that increasing police expenditures will reduce crime—must never be exempt from challenge for the simple reason that, for all its obviousness, it may prove false. Such a stance implies the adoption of a detached and critical perspective, which confers the added benefit of sparing us moralizing but not moral concern. Thus, James Q. Wilson and Barbara Boland in one breath reassure us that crime is not "a disease of the American character," while in another insist that a crime policy must be evaluated by its justice as well as its efficiency. The writers, then, are not complacent, amoral technocrats, but tough thinkers addressing tough problems.

They do not see the problems they describe as embodying the failure of a civilization, nor do they propose a restructuring of society. It is rarely possible, in any event, to "solve" social problems, and even greatly reducing their attendant hardships may prove exorbitantly expensive or produce unanticipated consequences that lead to more suffering than the original difficulty. But while the hysterical criticisms of the sixties amounted, practically speaking, to a counsel of despair, *The Urban Predicament's* analysts plainly feel that there is something that can be done to aid us in coping with our afflictions. Peterson argues, for example, that state-wide equalization of tax bases would help "to arrest the continuing erosion of the cities' fiscal position." Also, modifying the traditional level-payment mortgage, suggest the authors of the housing chapter, might alleviate some of the burden of high interest rates. These are not earthshaking proposals, but they are clearly cause for some rational optimism.

But, inevitably, the authors remind us that the great old cities of America are too large and too complicated to be managed efficiently, that they long ago surrendered to a service-state mentality that entails unbearable fiscal and social burdens, that their precious jobs continue to flee and their vital tax base to shrink, and that our knowledge of the causes of the great urban

problems remains woefully sketchy and meager.

More than this, it seems to me that the plight of the nation's great old cities goes beyond problems of housing, education, crime, and finance, though these are surely formidable and durable difficulties in their own right. The root problem is that the old city represents a way of life which to an ever-expanding majority seems irretrievably obsolete. This is a country in which the single-family detached dwelling, not the bier-sized apartment, is the goal, in which immigration is a topic taught in school and not one encountered on the streets and in the factories, in which cars and shopping centers and little leagues and lawn chores are the stuff of life's routine and not buses and stickball and lounging on fire escapes during the dog days of August. As my students make

painfully clear to me on almost a daily basis, the old city is widely seen as a place to escape *from* and not *to*. Replacing it are the suburbs and so-called cities like Houston and Phoenix which are really aggregations of suburbs. To a New Yorker, they may seem philistine and dull, but such name-calling may merely reflect the jealousy and irritation of one whose hometown's time has already come and gone. The old city's key productive residents—businesses, the middle class, and affluent working class—may therefore be expected to continue to desert as quickly as circumstances permit, and the indifference and hostility of the rest of the nation may be expected to persist. The city's potent and glorious momentum may forestall collapse for a while, but only a reckless Pangloss could be sanguine about the coming resolution of the urban predicament. □

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BOOK REVIEW

Hugo Black and the Judicial Revolution
Gerald T. Dunne / Simon & Schuster / \$12.50

Christopher Wolfe

Gerald Dunne's biography interweaves the personal story of Justice Hugo Black with a history of the post-1937 Supreme Court, and examines the "judicial revolution" which culminated under Chief Justice Earl Warren. That revolution, says Dunne, was based on "the proposition...that judicial power not only grows out of political impasse but has the duty and sanction to impose the results that the democratic process should have reached." The decisive promulgation of this doctrine came in *Brown v. Bd. of Education*, with its promise of equal protection to racial minorities. The Court also extended protection to other groups: religious and moral dissidents (*Abington v. Schempp*, the school prayer decision, and *Memoirs v. Mass.*, the Fanny Hill case); defendants in criminal prosecutions (*Miranda v. Arizona*); and urban voters underrepresented due to malapportionment (*Baker v. Carr*). Dunne wholeheartedly accepts the judicial revolution and rejoices in the ultimate transformation of Black's pioneering libertarian dissents into majority opinions; but this puts him in an awkward position vis-à-vis Black. For if the Justice was libertarian, to Dunne's admiration, he was also a "constitutional fundamentalist," somewhat to Dunne's discomfiture.

Black thought that the Constitution ought to be interpreted literally and in accordance with the historical intentions of the Founders. No judge, he once said, "can arrogate to himself a power to 'adapt' the Constitution to new times." This suspicion of judicial subjectivism led him to attack the use of any "natural law formula," because it "subtly conveys to courts, at the expense of legislatures, ultimate power over public policies in fields where no specific provision of the Constitution limits legislative power."

But while Dunne cannot bring himself to accept Black's interpretive principles, he does not really criticize them either. He argues that "for all its infirmities" Black's admittedly inaccurate reading of legal history "could be put forward as being every bit as good a guide to decision as that provided by the interior and private revelation of untrammelled judicial discretion." Dunne can arrive at this peculiar judgment—which may suggest that Black's poor history is better than other judges' good history—because he fully

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sympathizes with the *results* of Black's decisions.

Justice Black, then, was not so much a strict constructionist as he claimed. Perhaps this is best shown by examining those of Black's interpretations which Dunne calls the "fruits of the judicial revolution that were peculiarly his: a Bill of Rights binding the states to the same substantial degree as it did the nation; a First Amendment shielding preachers and pornographers alike; a right to a lawyer in any criminal trial on American soil; and an electoral calculus of one man, one vote."

Black argued that the Fourteenth Amendment made the entire Bill of Rights applicable to the states, a doctrine that the Court has indirectly adopted by gradually expanding a list of "fundamental rights." The notable thing about Black's own interpretation is the extent to which he does not follow the words of the Constitution. In *Adamson v. Calif.*, he concentrates on the vague and broad intention of the framers, relying on the Fourteenth Amendment "taken as a whole" (i.e., not looking at the parts too closely!). The closest he gets to the text is an appeal to the "privileges and immunities" clause which, he argues, is an "eminently reasonable" way to express the idea that the states are bound by the Bill of Rights. Black never answers the question why the framers of the Fourteenth Amendment used those words if, as he argues, they meant the rights of the first eight Amendments, and only those. Why didn't they just mention the Bill of Rights itself?

Black is famous for his belief in an "absolute" First Amendment: "I read 'no law abridging' to mean no law abridging." But the First Amendment doesn't end there—it says no law abridging "the freedom of speech or of the press." What is the meaning of this "freedom"? Can it be opposed to "license," for instance? Might it mean freedom from prior restraint only, or must it include freedom from subsequent punishment pursuant to law as well? And if Black wants to rely on historical intention here, his case is altogether weak. Virtually all the framers (including Jefferson, on the state level) distinguished between freedom and license, e.g., regarding seditious speech.

In *Johnson v. Zerbst*, Black produced the opinion re-making the Sixth Amendment "right to counsel" into a "right to be provided with counsel by the government." In overruling the long-established historical practice to the contrary, Black did not so much as make one argument based on the text or history. From the

opinion, one would not even know that a new right had been created.

Finally, the electoral calculus of one-man, one-vote reached by Black in *Wesberry v. Sanders* was based on the phrase stating that representatives shall be chosen "by the People," a leap that Dunne embarrassingly admits has "not quite the literalism of some other views."

The list of such cases is virtually endless, and on this question Black must be found guilty of what Professor Louis Jaffe called resourceful manipulation of the specifics of the Bill of Rights, but with a "moral assurance so great that he is not led to question his mental processes."

Thus, one must finally choose: adhere either to Black's "constitutional fundamentalism" or to the libertarian policy views he mistakenly sees in the Constitution. Professor Dunne does choose, but unfortunately he does not choose well. For in a democratic society based on the rule of law, it is necessary to affirm "constitutional fundamentalism" or rather, to eliminate Dunne's pejorative phrase, fidelity to the fundamental law. Without that fidelity, judicial review is indeed undemocratic, and opposition to the Court's decisions reflects a rejection only of personal rule, not the rule of law.

This idea finds its classic expression in Justice John Marshall's opinion in *Osborne v. Bank of U.S.*: "Judicial power is never exercised for giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislature; or in other words, to the will of the law." Or, as Alexander Hamilton puts it in *Federalist 78*, "the judiciary...may truly be said to have neither force nor will, but merely judgment." In fact, of course, modern courts, with the approbation of Professor Dunne and many others, have exercised their wills rather freely.

What is absent in this book is any serious argument about the merits of the judicial revolution. The author describes it and obviously approves of it, but he does not really argue for it. Part of the problem is that modern legal thinkers have generally rejected the possibility of a close adherence to the Constitution, a rejection that has only been encouraged by Justice Black's caricature of strict interpretation. The main alternative to Black's approach has been the type of judicial self-restraint advocated by Justice Felix Frankfurter. But that self-restraint is more a restraint in policy-making than a form of strict constitutional interpretation. Frankfurter too, in his adoption of the "balancing approach" to adjudication (whereby