

A Week of Mondays

by Paul Gottfried

*"There is always a certain meanness in the argument of conservatism,
joined with a certain superiority in its fact."*

—Ralph Waldo Emerson

**Revolt From the Heartland:
The Struggle for an
Authentic Conservatism**
by Joseph Scotchie
New Brunswick: Transaction;
135 pp., \$29.95



Ward Soret

What helps set this study apart is its still largely *verboten* subject. Joseph Scotchie devotes his attention to that part of the American right that Lee Edwards, Jonathan M. Schoenwald, and William Rusher ignore in their discussions of “conservatism” or, at best, bring in to exemplify “extremist” aberrations. This book is not Scotchie’s first investigation into the topic. In 1999, Transaction Publishers brought out *The Paleoconservatives: New Voices of the Old Right*, which combines commentaries on second-generation Old Right theorists (including several of *Chronicles*’ editors) with selections from their writings. While Scotchie recognizes that the paleos have been marginalized through what Thomas Fleming and Samuel Francis describe as the “liberal and neoconservative left,” he also notes what these thinkers have brought to the American right. Literary ability, classical education, mordant wit,

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and a reflective critique of the left are qualities Scotchie identifies with the new Old Right, which emerged in the early 80’s and found its permanent home in *Chronicles*. Thus, he maintains in his final paragraph:

Paleoconservatism amounts to a thorough education in Western and American history: where the nation came from, what the nation was intended to become, what it has disintegrated into, and how Americans might find their way back.

Scotchie’s crisply told narrative should be familiar to *Chronicles* readers. He quotes generously from Fleming, Francis, and other *Chronicles* editors. While the periodization of his monograph was drawn, with due acknowledgement, from my revised edition of *The Conservative Movement*, this new study has an original

perspective, having been conceived more than a decade later and realized by someone of a younger generation.

According to Scotchie, these men stand for an “authentic” American right, while the neoconservatives, who swallowed up the conservative movement, are leftists who have succeeded in draining the right of any real conservative content. The now-marginalized revolt from the American heartland did have its chance in the early 90’s, when Pat Buchanan turned to the paleos during his presidential campaign and when some of their issues—such as immigration, decentralization, and opposition to American imperialism—became matters of national interest. Scotchie discusses the successive turning points that became a series of disappointments, all of them attributable to a single overarching cause: The liberal and neoconservative left would not allow Fleming, Francis, Clyde Wilson, M.E. Bradford, or any of the other authentically conservative voices into the left’s political conversation. As Scotchie puts it: “The Old Right faces a long road ahead. Every day is Monday.”

A marked difference between this work and *The Paleoconservatives* is Scotchie’s current view that paleoconservatives are not an updated version of an older right, whether Southern Agrarian, Taft Republican, or post-World War II *National Review*-ism. Paleos, that is, are not *just* the Old Right (although Scotchie persists in applying this term to them) but a movement forged out of the conservative wars of the 1980’s, which became a frequent journalistic topic by the early 90’s. Scotch-

ie tells us that the paleos can claim far more of a “conservative heritage” than those who have marginalized them can: Throughout his book, he seems to be searching for starting points and actuating causes for a distinctively paleoconservative movement. Moving from Richard M. Weaver’s critique of modernity and Bradford’s upholding of Patrick Henry as the archetypal American republican, through Fleming’s early career in South Carolina, the seminars of Russell Kirk, and the rediscovery of the interwar American isolationists, down to the conservative wars of the 80’s and the first presidential campaign of Buchanan, Scotchie brings to mind Thucydides, who also grappled with the questions of when and how historical processes begin.

In my view, paleoconservatism starts with those conservative intellectuals who would not go along with the neocon takeover in the early 80’s and who continued to resist that process. One way or another, those who resisted paid a heavy professional and social price that has not yet been fully assessed. It might be fitting to compare these men to those conveniently forgotten members of the French right who opposed the Vichy government and viewed Hitler’s occupation of France as an abomination. Not surprisingly, most of the French put up with that humiliation. Like our own “conservatives,” the French right had morally corrupt and/or senile leaders who largely called for “*ra-bibochage*” (making up with the enemy for the good of France). But the conservative nationalists who resisted Hitler refused to reinvent themselves. They understood that the immediate political enemy was an expansive Germany, then allied with the Soviets, and they set this concern above the opportunity for using the invader to increase their personal power, or to settle scores with personal opponents.

The paleos’ independent spirit has made it hard to mold them into a unified movement. Neocons have prevailed not only because they resemble the establishment left but because they picked up the sheep from among the old conservatives. And it is useful for a movement with changing party lines to have compliant adherents. Conversely, it is hard for those who spend their lives in moral revolt to mobilize effectively.

As a native of Asheville, North Carolina, and the author of underappreciated monographs on Richard Weaver and Thomas Wolfe, Scotchie has a marked

predilection for the Southern Agrarians. The foundations of the paleos whose story he tells are linked repeatedly to a Southern Agrarian tradition, while the seminal paleo figures on whom Scotchie focuses—such as Bradford, Fleming, and Wilson—are viewed as part of a lineage of thought and sensibility going back to the contributors to *I’ll Take My Stand*. Scotchie recounts the literary efforts of Southern conservatives in 1981 to commemorate the 50th anniversary of that anthology. His emphasis points to the Southern paleos’ self-conscious sense of place and the regionally situated political and cultural tradition that they defend. In a controversial symposium, “The State of Conservatism” (published in the Spring 1986 issue of *Modern Age* and which Scotchie surprisingly does not mention), Wilson described the neoconservatives as “interlopers” crossing into his “camp,” though they remained unreconstructed leftists. Prescinding from the usual neoconservative invectives against unreconstructed Southerners as holocaust-prone antisemites, Wilson’s statements reveal a highly particularistic understanding of a properly defined conservatism that permeates *Why the South Will Survive* (his attempt to update *I’ll Take My Stand*). Those who were presuming to steal the conservative label, and who were (and still are) profiting from that theft, were (and are) intensely hostile to the region and culture Wilson associated with his conservative outlook.

The South deeply offends those “interlopers” who were not simply “crossing” technical political boundaries but were making it impossible for Southern conservatives to be taken seriously as anything but bigots. Without being simplistic, it is fair to say that how one relates to the South and its tragic cause has become the acid test of who is, or is not, a conservative. Although it is possible to find an isolated descendant of a New England or Midwestern Brahmin who supports the Union’s invasion of the South, sympathy at least for the courage and gallantry of the Old South and its aristocratic manners seems to me a *sine qua non* of the truly conservative mind. Moreover, it is now clear that, even beyond the slavery question, what makes the figure of Lincoln so appealing to the left, and so reprehensible to the paleos and the old *National Review* crowd, is the mission that has remained identified with his career and death: the use of consolidated government to achieve federal-

ly mandated equality, of which American citizens never seem to have enough, and in enough ways. The “Lincoln myth” has fueled political-managerial interventions in civil society that no true conservative would be able to stomach.

As for the Southern Agrarians whom Scotchie exalts, overlaps can be found between what they fought and what the paleos are now opposing. In the 30’s, the Agrarians saw themselves as both anti-Marxist and anticommunist. They correctly perceived a strong resemblance between Marxism and a form of capitalism that destroys the possibility of a decentralized economy focused on households and communities. Although the socioeconomic ideal they upheld has, in all probability, been buried by economic “progress,” the critical observations they made regarding a plastic materialist hypermodernity remain valid nonetheless, applying to the noisily proclaimed values of the *Wall Street Journal* and to the editorials of Francis Fukuyama and Virginia Postrel (celebrating our victories over the past and our advances toward a global society based on markets, homogeneous cultures, “human rights,” etc.).

Allow me, finally, to elaborate on a statement from one of my own books that Scotchie paraphrases. He refers to my remark that, in the end, what matters for people is the economy. The statement is true, with two significant qualifications. Materialism is a worldview, as Thomas Molnar once observed to me, not merely a quest for material acquisitions. Moreover, beyond materialist values, voters throughout the Western world believe in—or expect their elites to believe in—the politics of guilt (that is, in the steady reaching out to sexual degenerates and alien Third World populations who are widely depicted as victims of Western Christian civilization). But these two disagreeable fixations sometimes come into conflict—for example, over the immigration question or over Islamic attitudes toward homosexuals—and it is possible for the heartland right to exploit such a conflict whenever it occurs. In the absence of a traditional belief system incarnated by traditional communities, such opportunistic politics may be the only kind that the right can presently pursue with some assurance of success. With these minor clarifications aside, I repeat the obvious: Joseph Scotchie has written knowledgeably on an intellectually sparkling but woefully neglected political and literary movement.

A Bad Man's View of the Law

by Stephen B. Presser

Law Without Values: The Life, Work, and Legacy of Justice Holmes

by Albert W. Alschuler

Chicago and London: The University of Chicago Press; 325 pp., \$30.00



Law professors rarely write books. When they write at all, they typically produce incomprehensible and heavily footnoted articles (usually unread) for obscure law reviews. It is even rarer to find a law professor who can write with flair about something of more than ephemeral interest. And it is rarest of all to find a law professor who can address a topic important to the readers of *Chronicles* and reach a conclusion that makes good sense. That has happened, however, in the case of University of Chicago Law Professor Albert Alschuler's pungent little jurisprudential biography of Oliver Wendell Holmes, Jr.—one of the best works on Holmes, legal theory, and legal education to appear in the last 30 years.

With the possible exception of Chief Justice John Marshall, no figure in American legal history is more venerated in law schools than Oliver Wendell Holmes, Jr. (1841-1935). No one gives a major address to a law-school audience without taking care to quote Holmes at least once, while among the milder encomiums distinguished law professors have lavished on him are that he was "the great oracle of American legal thought," "America's most distinguished citizen," "the only great American legal thinker," and "the most illustrious figure in the history of American law." As Alschuler demonstrates with almost savage grace, Holmes' is one of the great undeserved reputations of our era. Alschuler argues that none of the man's ideas was original, much of his writing was undistinguished and impenetrable (especially his book, *The Common Law* (1881), a tome virtually unread today but still widely regarded as the greatest American law book ever written). Moreover, he was a nasty, crabby, mean, and selfish man.

So why the unparalleled obeisance to Holmes? Alschuler hints at some possi-

ble explanations: Holmes was a patrician's patrician, a Boston Brahmin, a member of the Porcellian at Harvard as an undergraduate and a law professor there before serving on the Massachusetts Supreme Judicial Court for 30 years and the U.S. Supreme Court for another 20. Holmes brilliantly developed a circle of admirers and sycophants, many of whom went on to become influential in government and the academy; he knew everybody, corresponded with several, and possibly made love to at least one British aristocrat; and he cultivated one of the great mustaches of his time. (Alschuler fails to mention that he was a dead ringer for Michelangelo's rendering of God as painted on the Sistine Chapel.)

None of this really explains, though, how someone of pedestrian legal skills could end up regarded as our only authentic jurisprudential oracle. Alschuler's answer is that Holmes wrote "five great paragraphs" in *The Common Law* and that, in doing so, he limned a philosophy of law perfectly in tune with the desires of those who took over the teaching of law, in the postwar period especially. In his "great paragraphs," he explains that "The life of the law has not been logic: It has been experience," and that

The substance of the law pretty nearly corresponds at any given time, so far as it goes, with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work out desired results, depend very much upon its past.

Most importantly, he holds that

in substance the growth of the law is legislative. . . . The very considerations which judges most rarely mention, and always with an apology, are the secret root from which the law draws all the juices of life. I mean, of course, considerations of what is expedient for the community concerned.

Adopted by a group calling themselves "Legal Realists" and waving the banner of Holmes, these ideas permeated law schools in the 20th century and eventually gave license to a slew of state and federal judges fundamentally to remake American private and public law in accordance with their particular notions of what was best for Americans. The loss of the Amer-

ican people's ability democratically to make law for themselves through their constitutions and the acts of their elected representatives is bad enough, but, for Alschuler, there is a greater dimension to this tragedy: The revolution in the nature of judgment and legal education that Holmes furthered resulted in a body of law (and, probably, a society) bereft of what had given it greatness. This is the problem of "Law Without Values," flagged in the title of Alschuler's book. While American law in the 18th and most of the 19th century was lodged firmly in the tradition of Plato, Aquinas, Blackstone, Washington, and others who believed that there could be no law without morality and no morality without religion, the followers of Holmes in the 20th century embraced their master's notion that this assumption was nonsense.

For all of Holmes' considerable charm, Alschuler reminds us, he had a terrible emptiness, if not an evil, within him. He was selfish, vain, and ambitious, had few really close friends, and seemed to take a perverse delight in the physical tragedies of others. He actually advocated exterminating unfit infants, brought snobbery to a fine art, and thought, like Thrasymachus, that justice and morals were simply what the strong chose to impose on the weak. Alschuler's thesis is that this deeply flawed man gave us a deeply flawed jurisprudence. He believes that a country in which law without values takes hold—a country where the preferences of those wielding power on the bench and off are the only tests of what is good law—is in deep trouble.

Alschuler concludes his book with an eloquent plea for a return to law *with* values and, in particular, a return to Socrates' notion that a standard of justice exists, against which human laws can be measured and found wanting. Holmes famously (and, perhaps, characteristically) claimed that we should look at the law as a "bad man" would and that all that law students should be concerned with is a prediction of "what the courts will do in fact." Instead, Alschuler proposes that, if

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