

A LITTLE REBELLION NOW AND THEN IS A GOOD THING*

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REBELS WITH A CAUSE: THE MINDS AND MORALITY OF POLITICAL OFFENDERS. By Nicholas N. Kittrie. Boulder: Westview Press. 2000. Pp. xxviii, 411. \$35.

What do George Washington and Eldridge Cleaver have in common? Or John Brown and Mahatma Gandhi? The Stern Gang and the Palestine Liberation Organization? Jefferson Davis and Eugene Debs? In *Rebels with a Cause: The Minds and Morality of Political Offenders*, Nicholas Kittrie¹ says they are all political offenders — men and women who, “professing loyalty to a divine or higher law, to the call of individual conscience, or to the imperatives of some perceived public good, have challenged the legitimacy and authority of the institutions of their governments” (p. 6). Kittrie sets out to study the whole lot: “Civil disobedients. Conscientious objectors. Dissidents. Fanatics. Freedom fighters. Fundamentalists. Militants. Political prisoners. Pseudopoliticals. Rebels. Regicides. Resisters. Revolutionaries. Terrorists” (p. xv). In addition to surveying the entire range of political offenders, Kittrie sets out to answer a set of related questions about the appropriate role of dissent, both domestically and internationally. How can one distinguish worthy dissenters from unworthy terrorists and criminals? When is dissent legitimate? How should governments treat their own political dissenters? How should nations respond when other countries abuse political rebels? What principles should guide asylum and extradition decisions? When are host nations liable for having given safe harbor to international political offenders?

If Kittrie’s goals sound overly ambitious, they are. As a result, his book ends up giving mostly superficial attention to issues that require sustained analysis. This Review will examine Kittrie’s analysis from two perspectives. First, I will discuss what he has to say about rebels in

* Letter from Thomas Jefferson to James Madison (Jan. 30, 1787) in 11 THE PAPERS OF THOMAS JEFFERSON, 1 JAN.- 6 AUG. 1787, at 93 (Julian P. Boyd ed., 1955).

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the international arena. Kittrie purports to offer a classification scheme that will allow the international community to objectively and prospectively distinguish political rebels from common criminals, and freedom fighters from terrorists. As we shall see, however, his scheme provides less guidance in making such distinctions than he imagines. Second, I consider Kittrie's more successful discussion of American political rebels. In my discussion of Kittrie's argument concerning America's rebellious roots, government responses to political offenders, and the enduring importance of domestic dissent, I will draw particularly on the example of Dr. Martin Luther King, Jr.

I. THE INTERNATIONAL ARENA: CLASSIFYING REBELS THE KITTRIE WAY

Of Kittrie's many goals, one is paramount: to "classify[] and subdivid[e] the wide spectrum of political dissidence — from peaceful dissent to indiscriminate violence . . ." (p. 35). It is the absence of such a classification scheme, says Kittrie, that has led so many to accept "the jaded aphorism" that "one person's freedom fighter is another's terrorist" (p. xvii). If only somebody would create a typology of political offenders, says Kittrie, society could readily distinguish the legitimate dissenters from the outcast terrorists. A few pages later Kittrie repeats his goal, writing that "we must urgently proceed with our specified mission — categorizing the illusive political offenders and defining the rules of warfare that should control the conflicts between them and those in possession of power" (p. 44). Despite his promise to proceed "urgently," a few hundred pages later Kittrie has still not revealed his classification scheme. He instead assures the reader that one is possible, writing, "just political offenders can be identified and distinguished from both international outlaws and common criminals . . ." (p. 242). Near the end of the book Kittrie informs us that the previous 300 pages were foundational, and that he will soon present the classification scheme: "Upon the foundations laid in the intervening chapters, an ambitious framework can now be advanced to comprehensively classify all those who take part in what is described as political dissent, rebellion, and resistance" (p. 308). Kittrie does not finally divulge the classification scheme until the last page of *Rebels* — in the appendix, no less (p. 350).

Stating an aim, however, is not the same as achieving it. Kittrie calls his classification scheme "A Typology of Political Offenses: From Terrorism to Human Rights Struggles" (p. 350). The typology ranges from "International Rights Conflicts (i.e., Human Rights Struggles)" at one end of the spectrum to "International Crimes (i.e. Terrorism)" at the other. "Political Offenses," "Anti-Colonial and Anti-Racist Conflicts (i.e., Freedom Fighting)," "Non-International Armed Conflicts," and "Domestic Crimes" fill in the gaps between. Catego-

ries on the terroristic end of the spectrum are printed in dark gray, while those on the human rights end are lighter. A group's cause and the means it uses to achieve that cause are central. Fighting for an internationally approved cause with approved means earns one a place in the "Human Rights Struggle" category. Internationally condemned causes and means put one in the "Terrorist" category. Those in between fall into various middle categories. For example, a group that uses violence (a disfavored means) in pursuit of internationally approved goals would fall into a middle category, such as "freedom fighters." Using violence in pursuit of a goal that is not internationally approved but also not internationally proscribed would earn one a spot in the "non-international armed conflicts" category.

Where one fits in the typology matters quite a lot — a host of international protections or punishments are implicated. For example, an actor engaged in a human rights struggle is entitled to asylum, not subject to extradition, and, if criminally prosecuted, may use his engagement in a human rights struggle as a defense. A freedom fighter, by contrast, gets less protection under asylum and extradition law, though he would be entitled to the protections of the Geneva Conventions and could not be prosecuted as a common criminal. At the dark end of the spectrum is the terrorist, who is subject to the universal jurisdiction of all states and can be prosecuted wherever found, with no benefit from the Geneva Conventions.

The problem with the typology is that it doesn't answer the hard questions and we don't need it for the easy ones. Kittrie believes that his typology outlines principles that "can be concretely and objectively applied to virtually all categories of actors taking part in political conflicts" (p. 340). But there is reason to question his enthusiasm. Since each distinction that Kittrie makes is a matter of deep moral and political controversy, anything resembling a factual and objective test faces enormous difficulties from the outset. Consider, for example, Nelson Mandela and his African National Congress ("ANC"). Even by its own account, the ANC used violence,² sometimes against civilians.³ So, under Kittrie's typology, its members cannot claim the man-

2. Even the term "violence" is itself contested. See Robert Paul Wolff, *On Violence*, 66 J. PHIL. 601, 610 (1969):

When you occupy the seats at a lunch counter for hours on end, thereby depriving the proprietor of the profits he would have made on ordinary sales during that time, you are taking money out of his pocket as effectively as if you had robbed his till or smashed his stock. If you persist in the sit-in until he goes into debt, loses his lunch counter, and takes a job as a day laborer, then you have done him a much greater injury than would be accomplished by a mere beating in a dark alley. He may deserve to be ruined, of course, but, if so, then he probably also deserves to be beaten.

3. Timothy Phelps, *Defining Terror*, NEWSDAY, Nov. 23, 2001, at A54. Though the ANC directed its violence mostly at government sites, it occasionally attacked civilians. *Id.* In 1988, Chris Hani, the chief of the ANC's military wing, explained why attacking civilians was necessary. Under apartheid, whites are guaranteed "a happy life . . . a sweet life." *Id.* "Part

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tle of human rights advocates. But were they freedom fighters or terrorists? The answer turns on the ANC's goals. Were Mandela and his followers fighting for a free and democratic South Africa? Or were they trying to achieve a Communist dictatorship? According to the ANC and its defenders, their goal was the former. But in the 1980s, many congressional Republicans and President Ronald Reagan vehemently disagreed. Both the ANC and its Namibian counterpart, the South West African People's Organization ("SWAPO"), were "Soviet-sponsored terrorist organizations," said Senator Strom Thurmond, Chairman of the Senate Subcommittee on Security and Terrorism.⁴ The ANC, said Reagan, consisted of "Soviet-armed guerrillas," and "the South African government is under no obligation to negotiate the future of the country with any organization that proclaims the goal of creating a Communist State and uses terrorist tactics and violence to achieve it."⁵ The weakness in Kittrie's typology is that it assumes agreement about such things as the goals of a revolutionary movement, as if they were not subject to competing (and complexly motivated) descriptions.

In the same vein, Kittrie mistakenly believes that the emergence of universally accepted international norms will solve classification problems. According to Kittrie, "the community of civilized nations is in the process of arriving at a common core of universal principles regarding both proper governance and proper response to political resistance and rebellion."⁶ But Kittrie overlooks deep international disagreements about the proper *application* of universal norms. Assume, for example, that there exists an evolving international norm against racism. The disputes arise over how to apply it. Kittrie believes that the anti-racism norm was properly invoked against South African apartheid but does not apply to Israeli Zionism (p. 44). The United States agrees with Kittrie, but many nations don't. So is an actor fighting against Israel's occupation of the West Bank and Gaza en-

of our campaign is to prevent that sweet life When they are maimed and they are in the hospital, others will go there to visit them and will say, 'This is the price of apartheid.' " *Id.*

4. *FBI Oversight Hearing Before the Subcommittee on Security and Terrorism of the Senate Committee on the Judiciary*, 87th Cong. 28 (1982). For a detailed treatment of U.S. foreign policy toward South Africa, see ROBERT KINLOCH MASSIE, *LOOSING THE BONDS: THE UNITED STATES AND SOUTH AFRICA IN THE APARTHEID YEARS* (1997).

5. Ronald Reagan, *Remarks to Members of World Affairs Council and the Foreign Policy Association*, July 22, 1886, in 22 *WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS* 30, at 978. British Prime Minister Margaret Thatcher joined Reagan, calling the ANC a "typical terrorist organisation." Richard Dowden, *Red Carpet for Mandela in Downing Street*, *INDEPENDENT* (London), July 2, 1990, at 10.

6. P. 340. Kittrie does not specify which nations are "civilized." Nor does Kittrie discuss structural characteristics of the international order that serve as obstacles to this international consensus. See HEDLEY BULL, *THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS* 85-86 (1977).

gaged in an anti-racist struggle? It's not so much that this question is unanswerable as it is that Kittrie's typology doesn't help.

Kittrie overstates the utility of his classification scheme. He rejects the notion that "history is written by the victors and that the legitimacy of a political struggle and its participants can only be established by their success" (p. 242). To the contrary, says Kittrie, armed with his typology we will finally be able, "in a consistent and forward looking fashion, to distinguish the political hero from the villain" (p. 242). But the legitimacy of a rebel's claim is often better evaluated in hindsight, and not because "history is written by the victors." In part, this is because the rebels' very struggle may itself change the international consensus regarding the justness of their cause. As Hedley Bull instructs,

[Today] it may be argued that there is a consensus in international society that the sovereignty of colonial powers over their subject territories is not legitimate, and that violence waged against such powers for the aim of national liberation is just. But this consensus did not exist in the early decades of the anti-colonial struggle, and indeed if it exists today, it is a consequence of that struggle.⁷

Moreover, we can better assess rebels after they have won because then we can tell whether they were sincere about their stated goals. As Kittrie knows, "[h]istory is replete with these destructive rebels — tyrants, butchers and megalomaniacs who pursued and often attained power as an end in itself" (p. 123).

To return to Mandela and the ANC, Mandela is revered today because the ANC gained power and proved Reagan and other Republican conservatives wrong — the ANC proved, through governing, that it did not seek a Communist dictatorship but rather a multi-party democracy. Our government was as spectacularly mistaken about the intent of the CIA-funded Afghan mujahadeen and Osama bin Laden, but again, that is perhaps more knowable in retrospect.⁸ This is not to say that one should not look for signs of rebels' intent along the way, but rather that some humility is in order when assessing the ability of any classification scheme to answer the hard questions in advance.

Perhaps the most unfortunate thing about Kittrie's classification scheme is that others have more capably taken on the same topic in ways less taxing to the reader. Consider Timothy Garton Ash's recent essay, *Is There a Good Terrorist?*⁹ Ash identifies "four things to look

7. BULL, *supra* note 6, at 94.

8. The extent to which the U.S. government had knowledge of who received the money sent to support Afghan anti-Soviet fighters is a matter of some dispute. Even those who argue that the CIA did not have actual knowledge of the money's destination, however, do not dispute that the CIA paid insufficient attention to the matter. See PETER BERGEN, *HOLY WAR INC.: INSIDE THE SECRET WORLD OF OSAMA BIN LADEN* 63-75 (2001).

9. Timothy Garton Ash, *Is There a Good Terrorist?*, N.Y. REV. BOOKS, Nov. 29, 2001, at 30-33.

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at in deciding whether someone is a terrorist, and, if they are, what kind of terrorist.”¹⁰ First is biography — who are they and where are they coming from? Second is goals — what do they really want? Third is methods — the single most important criterion, says Ash. Do they use violence? If so, are the targets limited to state representatives? Does the group try to limit civilian casualties? Ash’s last issue is context, a matter not sufficiently accounted for in Kittrie’s typology. According to Ash,

[It] therefore matters hugely what kind of state you’re in. It is one thing for groups like the IRA or the ETA¹¹ to use political violence in states like Britain or Spain, where the means of working for peaceful change are equally available to all in a mature democracy. It is another thing for Palestinian groups to use political violence against an oppressive military occupation in the Gaza strip or the West Bank. Another again for the ANC against the South African apartheid regime. Yet another for the violently repressed Kosovo Albanians to take up arms against the Milosevic regime in Serbia. We may want to uphold the universal principle “No violence!” but we all know that these are, in political fact and in moral context, very different things, and some violent political reactions are — shall we say — less unjustified than others.¹²

Ash’s four criteria don’t answer every question, but, unlike Kittrie, he doesn’t claim that they do.

II. REDISCOVERING AMERICA’S REBELLIOUS ROOTS

If Kittrie’s weakness is his international classification scheme, his strength is his chapter on political rebels in America, a topic on which he has done previous important work.¹³ In an important sense, *Rebels* is an extended argument against the tendency to ignore history. Kittrie’s obsession — and I use that term as a compliment — with history is most evident in his chapter on America, in which he joins the historian’s “struggle of memory against forgetting,”¹⁴ by targeting “the

10. *Id.* at 30.

11. The ETA is a Basque separatist group.

12. Ash, *supra* note 9, at 32.

13. Kittrie is the co-editor of a superb documentary history on American dissent and rebellion. See *THE TREE OF LIBERTY: A DOCUMENTARY HISTORY OF REBELLION AND POLITICAL CRIME IN AMERICA* (Nicholas Kittrie & Eldon Wedlock, Jr. eds., 1986). Kittrie has also written previously on European political rebels, and his chapter on Europe in *Rebels* borrows heavily from earlier work. See NICHOLAS KITTRIE, *WAR AGAINST AUTHORITY: FROM THE CRISIS IN SOCIAL LEGITIMACY TO A NEW SOCIAL CONTRACT* (1995).

14. Heather Gerken recently employed this Milan Kundera phrase in reviewing another historical piece. See Heather Gerken, *Morgan Kousser’s Noble Dream*, 99 MICH. L. REV. 1298, 1300-01 (2001) (book review) (quoting MILAN KUNDERA, *THE BOOK OF LAUGHTER AND FORGETTING* 3 (1986)). As Gerken argues, “History is worth fighting over because the past is used to sanction or sanctify authority and provides the means by which we define ourselves and our community.” *Id.* at 1301 (internal quotation and footnote omitted).

myth of America's peaceable kingdom" (p. 131). Kittrie says that although a few commentators have looked at America's history of violent dissent,¹⁵ "the American public and American law enforcement agencies continue to assert that political criminals and criminality do not exist, and have never existed, in the United States" (p. 135). This assertion is easily refuted, he says. An honest historical accounting is essential to any discussion of political rebels, and Kittrie points to a "formidable list . . . of political offender[s]" that includes, among others, George Washington, Jefferson Davis, Crazy Horse, John Brown, John Wilkes Booth, the Rosenbergs, Martin Luther King, Jr., Randall Terry and Timothy McVeigh (pp. 135-36).

Kittrie is equally interested in how reluctant America has been to recognize domestic political dissent as a distinct subset of general criminality. He offers a host of explanations: Identifying political criminality would (1) appear to be excusing it; (2) require courts to make inappropriate motive determinations; (3) raise troubling questions about the legitimacy of nonparliamentary means of change; (4) remind Americans that theirs is a country founded on violent rebellion; and (5) run counter to a majoritarian orthodoxy that requires obedience to the law even by those who disagree (pp. 136-37). Kittrie's list is accurate, but incomplete. To it should be added that identifying and remembering domestic political dissenters would require that Americans reject their cherished belief in their own innocence.

Lewis Lapham has written that America believes itself "innocent by definition."¹⁶ For Americans, says Lapham, evil is "never intrinsic to the American landscape or the American character," but rather "is a deadly and unlicensed import."¹⁷ Accordingly, we do not need "to appoint truth commissions similar to those established by South Africa, Chile, Burundi, and any other country seeking to come to terms with its inevitably tragic past. The American past isn't tragic. We are the children of revelation, not history . . ."¹⁸ Lapham somewhat overstates his case. Another way to interpret America's relationship with its past is to recognize that while many Americans admit a

15. Kittrie cites RAMSEY CLARK, *CRIME IN AMERICA: OBSERVATIONS ON ITS NATURE, CAUSES, PREVENTION AND CONTROL* (1970), RICHARD E. RUBENSTEIN, *REBELS IN EDEN: MASS POLITICAL VIOLENCE IN THE UNITED STATES* (1970), and Richard Brown, *Historical Patterns on Violence in America in VIOLENCE IN AMERICA: HISTORICAL AND COMPARATIVE PERSPECTIVES* (Hugh Graham & Ted Gurr eds., 1969). The only comprehensive survey of domestic political crime, says Kittrie, was a 1969 report by the U.S. National Commission on the Causes and Prevention of Violence. It found that during the mid-1960s the U.S. experienced "more civil and political agitation than most other nations." P. 143. A well-received recent contribution to the history of violence in America is CALEB CARR, *THE LESSONS OF TERROR* (2002).

16. Lewis Lapham, *The American Rome: On the Theory of Virtuous Empire*, *HARPER'S MAG.*, Aug. 2001, at 34.

17. *Id.*

18. *Id.*

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rebellious history, they deny that it is relevant to determining the legitimacy of more recent claims of rebellion. Whatever may have happened then, the argument goes, has little to say about today, since our society is now just.

Whatever its source, our sense of our own virtue was evident in President Bush's response to a question about how he feels when he hears that America is hated in many Muslim countries. "I'll tell you how I respond," said Bush. "I'm amazed. I'm amazed that there's such misunderstanding of what our country is about that people would hate us. [L]ike most Americans, I just can't believe it. Because I know how good we are."¹⁹ Bush's comments, while provoking laughter and outrage overseas,²⁰ were profoundly American.

Remembering "how good we are" as Americans means that we often need to remake domestic rebels in a more appealing image. Consider the case of Martin Luther King, Jr., who Kittrie says began as a "noted political offender" and ended up "one of only five Americans to have a national holiday established in his memory" (p. 151). King spent his life appealing to America's virtue so that it might repent its sins. Today we remember the virtue and forget the sins. "[W]e have sanitized his ideas," says Michael Eric Dyson.²¹ We have forgotten the King who called for reparations for blacks²² (and poor whites).²³ We

19. *A Nation Challenged: Excerpts from the President's Remarks on the War on Terrorism*, N.Y. TIMES, Oct. 12, 2001, at B4.

20. An Australian columnist responded, "I beg your pardon George? The world is angry about September 11 and mourns the loss of life, the deaths from many countries. And we all feel for Americans who now have to live in constant fear that again some lunatic sponsored by mad Osama bin Laden will strike at a fresh target. But for God's sake, get off your preacher's box and open your eyes The world, despite what you might think, isn't in love with America or all Americans We all share your desire to hunt down and exterminate Osama bin Laden and anyone else involved on September 11, but we don't have to fall in love with you to do it." Steve Price, *Some Yanks Hard to Take*, HERALD SUN, Oct. 17, 2001, at 18; see also *US Risks Being Seen as Doltish Bully*, BANGKOK POST, Oct. 19, 2001; George S. Hishmeh, *America's Warped Policy*, GULF NEWS, Oct. 21, 2001, available at www.gulfnews.com/Articles/Opinion.asp?ArticleID=2984.

21. MICHAEL ERIC DYSON, *I MAY NOT GET THERE WITH YOU: THE TRUE MARTIN LUTHER KING, JR.* (1998), at ix.

22. According to King,

No amount of gold could provide an adequate compensation for the exploitation and humiliation of the Negro in America down through the centuries. Not all the wealth of this affluent society could meet the bill. Yet a price can be placed on unpaid wages. The ancient common law has always provided a remedy for the appropriation of the labor of one human being by another. This law should be made to apply for American Negroes. The payment should be in the form of a massive program by the government of special, compensatory measures which could be regarded as a settlement in accordance with the accepted practice of common law. Such measures would certainly be less expensive than any computation based on two centuries of unpaid wages and accumulated interest. I am proposing, therefore, that, just as we granted a GI Bill of Rights to war veterans, America launch a broad-based and gigantic Bill of Rights for the Disadvantaged, our veterans of the long siege of denial.

MARTIN LUTHER KING, JR., *WHY WE CAN'T WAIT* 150-51 (1964).

23. DYSON, *supra* note 21, at 28-29.

have forgotten the King who moved beyond race to issue a more fundamental challenge to American society.²⁴ And we have forgotten the King who took a hugely unpopular stance against our role in Vietnam.²⁵

Perhaps more telling than our selective national memory of the King legacy is our near-complete amnesia about the role the government played in attempting to destroy him and the civil rights movement he helped lead. Throughout time, says Kittrie, political offenders “have often been subject to overzealous, oppressive, and unnecessary governmental responses in the name of public order.”²⁶ This has been no less true in America, he says, for this nation has produced severe “laws, procedures, and sanctions to counter the perceived threats posed by those pursuing political, socioeconomic, racial or other goals through illegal or unorthodox means” (p. 144). Yet just as our belief in our own virtue causes us to recast dissenters in a more appealing light, so too does it let us forget our nation’s frequent intolerance of dissenters.

Today, less than thirty years after King’s death, news stories about government suppression of political dissent ignore or minimize what our government did to King. Typical is a December 1, 2001 *New York Times* article discussing proposals to give the FBI more freedom to spy on Americans. It noted that “the FBI had run a widespread domestic surveillance program, called Cointelpro, to *monitor* antiwar militants . . . and Dr. Martin Luther King, Jr., among others, while Mr. Hoover was director.”²⁷

24. King said,

[T]he black revolution is much more than a struggle for the rights of Negroes. It is forcing America to face all its interrelated flaws — racism, poverty, militarism and materialism. It is exposing evils that are rooted deeply in the whole structure of our society. It reveals systemic rather than superficial flaws and suggests that radical reconstruction of society itself is the real issue to be faced.

Martin Luther King, Jr., *A Testament of Hope*, in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR.* 315 (James M. Washington ed., 1986) [hereinafter *TESTAMENT*].

25. Calling America the “greatest purveyor of violence in the world today,” King demanded an end to the war and a redirection of resources back toward domestic issues such as poverty and education. Martin Luther King, Jr., *A Time to Break the Silence*, in *TESTAMENT*, *supra* note 24, at 233.

26. P. 35. Kittrie devotes greater attention to government response to dissent in *NICHOLAS KITTRIE, WAR AGAINST AUTHORITY: FROM THE CRISIS IN SOCIAL LEGITIMACY TO A NEW SOCIAL CONTRACT*, *supra* note 13, at 109-59.

27. David Johnston & Don Van Natta Jr., *Ashcroft Weighs Easing F.B.I. Limits for Surveillance*, *N.Y. TIMES*, Dec. 1, 2001, at A1 (emphasis added); *see also* Erica Goode, *Finding Answers in Secret Plots*, *N.Y. TIMES*, Mar. 10, 2002, § 4 (Week in Review), at 3 (discussing “surveillance” of King); Robert F. Worth, *A Nation Defines Itself by its Evil Enemies*, *N.Y. TIMES*, Feb. 24, 2002, § 4 (Week in Review), at 1 (discussing the impact of the Red Scare on civil liberties throughout the twentieth century without mentioning the 1960s).

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The FBI monitored King, but that was just the beginning. From 1963 to 1968 the Bureau waged an unrelenting “secret war” against King and the civil rights movement.²⁸ The FBI’s goal was to “neutraliz[e] King as an effective Negro leader.”²⁹ Its agents tailed King, bugged his room, took secret pictures of him, and examined his tax records. The FBI was particularly interested in any sexual infidelity, misconduct or deviance that it could discover. In November 1964, the FBI compiled the results of the surveillance into an edited tape and sent it to King along with an anonymous letter.³⁰ King interpreted the letter as a threat — unless he killed himself, the FBI would reveal the secrets it had collected.³¹

The FBI’s destabilization campaign went far beyond King,³² and included sending forged documents from fictional scorned lovers and

28. S. REP. NO. 94-755, Book II, at 219 (1976).

29. *Id.* at 220. According to the Senate Committee that investigated the FBI campaign, the war began in December 1963, four months after King’s celebrated “I Have a Dream” speech. At the conclusion of a nine-hour marathon meeting at FBI headquarters, agents around the country were instructed “to gather information concerning King’s personal activities . . . in order that we may consider using this information at an opportune time in a counterintelligence move to discredit him.” *Id.*

29. The letter read in part:

KING,

In view of your low grade . . . I will not dignify your name with either a Mr. or a Reverend or a Dr.

King, look into your heart. You know you are a complete fraud and a great liability to all of us Negroes King, like all frauds your end is approaching

Your ‘honorary’ degrees, your Nobel Prize (what a grim farce) and other awards will not save you. King, I repeat you are done.

The American public, the church organizations that have been helping — Protestant, Catholic and Jews will know you for what you are — an evil, abnormal beast. So will others who have backed you. You are done. . . .

King, there is only one thing left for you to do. You know exactly what it is. You have just 34 days in which to do [this] . . . You are done. There is but one way out for you. You better take it before your filthy, abnormal fraudulent self is bared to the nation.

DAVID GARROW, *THE FBI AND MARTIN LUTHER KING, JR.* 125-26 (1981).

31. S. REP. NO. 94-755, Book II, at 11 (1976). Coretta Scott King was the first to open the package with the tape and accompanying letter, and shortly thereafter King himself listened to it. Convinced that the FBI was behind the package, King called friends to tell them “they are out to break me.” GARROW, *supra* note 30, at 134. Overburdened, overworked and now distraught over the government’s persecution of him, King sought rest at a private location. FBI agents in Atlanta responded by calling in a false fire alarm sending fire trucks to the address to disturb King. *Id.* The FBI’s plotting against King and his legacy did not end with his death, as agents in the field later proposed methods for harassing his widow Coretta Scott King. S. REP. NO. 94-755, Book II, at 223 (1976).

32. Though beyond the scope of this Review, perhaps the most extreme FBI tactics were reserved for its war on the Black Panther Party. Against the Panthers, the FBI employed a two-prong strategy. The first was to “eradicate [the Panthers’] ‘serve the people’ programs,” as Director of Domestic Intelligence William Sullivan ordered the San Francisco FBI office to do. KENNETH O’REILLY, *RACIAL MATTERS: THE FBI’S SECRET FILE ON BLACK AMERICA* 302 (1989). The second, in the words of one FBI agent, was “to divide and conquer.” *Id.* at 309. The divide and conquer policy took the form of “aggravat[ing] gang war-

political rivals in an effort to break up marriages and cause conflict among protest groups. As the Senate Committee that ultimately investigated the matter found, the letters were intended “to ‘produce ill-feeling and possibly a lasting distrust’ between husband and wife, so that ‘concern over what to do about it’ would distract the target from ‘time spent in the plots and plans’ of the organization.”³³ The Committee concluded, “The image of an agent of the United States Government scrawling a poison-pen letter to someone’s wife in language usually reserved for bathroom walls is not a happy one.”³⁴ In addition, the Committee found that the FBI’s forged letters had led to violent fights among rival organizations, leading the Committee to conclude “that the chief investigative branch of the Federal Government, which was charged with investigating crimes and preventing criminal conduct, itself engaged in lawless tactics and responded to deep-seated social problems by fomenting violence and unrest.”³⁵

III. CONCLUSION: REBELS AS PATRIOTS

Domestic dissenters are no more popular today than they were in King’s era. In the current American campaign against terrorism, dissenters have come under fierce attack. The White House spokesperson tells Americans to “watch what they say,”³⁶ while our Attorney General claims that dissenters “aid terrorists.”³⁷ Political correctness is

fare,” among different organizations and different factions of the Panthers. S. REP. NO. 94-755, Book III, at 189 (1976).

33. S. Rep. No. 94-755, Book II, at 216 (1976) (quoting Memorandum from St. Louis Field Office to FBI Headquarters).

34. *Id.*

35. S. REP. NO. 94-755, Book III, at 189 (1976).

36. Two weeks after the terror attack, Bill Maher, host of the late-night talk show “Politically Incorrect,” called the United States cowardly for launching cruise missiles on targets thousands of miles away. Bill Carter and Felicity Barringer, *In Patriotic Time, Dissent is Muted*, N.Y. TIMES, Sept. 28, 2001, at A1. White House spokesman Ari Fleischer fired back that “[t]he reminder is to all Americans, that they need to watch what they say, watch what they do, and that this is not a time for remarks like that.” Maureen Dowd, *We Love the Liberties They Hate*, N.Y. TIMES, Sept. 30, 2001, § 4 (Week in Review), at 13.

37. “[T]o those who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists — for they erode our national unity and diminish our resolve. They give ammunition to America’s enemies, and pause to America’s friends.” Testimony of John Ashcroft before the Senate Committee on the Judiciary, Dec. 6, 2001, available at <http://www.usdoj.gov>. In the months since Ashcroft’s comments, the administration has not relented in its suggestion that opposition is unpatriotic. On March 1, 2002, Senator Trent Lott responded to criticism from Senate Majority Leader Tom Daschle, by saying: “How dare Senator Daschle criticize President Bush when we are fighting our war on terrorism, especially while we have troops in the field.” *Majority Leader: Find bin Laden or War has Failed*, USA TODAY, Mar. 1, 2002, at 4A.

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the order of the day in the media,³⁸ among critics of the academy,³⁹ and among some students themselves.⁴⁰

None of this would surprise Kittrie, who expects dissenters to be unpopular, even reviled. “The lives — and deaths — of Dr. King, John Brown, Joan of Arc, Socrates, and other rebels” all demonstrate “the stubborn unwillingness of those in authority . . . to listen and respond to their critics” (p. 247). Nor would it surprise King, who introduced his speech against the Vietnam War by saying, “men do not easily assume the task of opposing their government’s policy, especially in time of war.”⁴¹ A majority of Americans supported the war and even a

38. A Panama City, Florida newspaper mandated that its editors not lead stories with photos or reports of civilian Afghan casualties. HARPER’S MAG., Jan. 2002, at 14. The memo to staff from the copy desk editor read in part:

DO NOT USE photos on Page 1A showing civilian casualties from the U.S. war on Afghanistan. Our sister paper in Fort Walton Beach has done so and received hundreds and hundreds of threatening emails and the like.

. . . DO NOT USE wire stories that lead with civilian casualties from the U.S. war in Afghanistan. They should be mentioned further down in the story. If the story needs rewriting to play down the civilian casualties, DO IT.

Id. Aaron McGruder, creator of the Boondocks cartoon, suggested in a strip shortly after September 11 that former President Reagan played a role in creating Osama Bin Laden. In response, some newspapers pulled the Boondocks temporarily, others moved it off the comics page to another location, and a few stopped carrying it entirely. Bryan Robinson, *Cartoonists’ Quandry*, abcnews.com, Oct. 9, 2001, available at http://www.abcnews.go.com/sections/entertainment/DailyNews/WTC_Cartoonists.html.

Some have argued that since September 11 the media has been less vigilant in challenging government imposed restrictions on access to information. Former ABC White House correspondent Josh Gerstein, for example, has pointed to the government’s aggressive use of material witness warrants to indefinitely incarcerate an unidentified number of individuals since September 11, despite the fact that the government does not have probable cause to believe they committed a crime. Josh Gerstein, *Under Charge: The Real 9/11 Liberties Problem*, NEW REPUBLIC, Apr. 8, 2002, at 22. Gerstein argues that the media has done little to challenge the secret nature of the material witness proceedings. *Id.*

39. The American Council of Trustees and Alumni noted that while “citizens have rallied behind the President wholeheartedly . . . not so in the academy.” Am. Council of Trustees and Alumni, *Defending Civilization: How our Universities are Failing America and What Can be Done About It*, Nov. 2001, at 1, available at <http://www.goacta.org.2001>. The Council criticized professors for “moral equivocation,” “refus[ing] to make judgments,” and “invok[ing] tolerance and diversity as an antidote to evil.” *Id.* Examples of the objectionable include the following: “[We should] build bridges and relationships, not simply bombs and walls.” *Id.* at 14. “[B]reak the cycle of violence.” *Id.* at 15. “It’s good for the government to know that there are people who want peace instead of bloodshed. Not all Americans want revenge.” *Id.* at 17. “Hate breeds hate.” *Id.* at 19. “If Osama Bin Laden is confirmed to be behind the attacks, the United States should bring him before an international tribunal on charges of crimes against humanity.” *Id.* at 24. The American Council was founded by Lynn Cheney, the wife of Vice-President Dick Cheney. Democratic Senator Joe Lieberman sits on its National Council.

40. Timothy Egan, *In Sacramento, A Publisher’s Questions Draw the Wrath of the Crowd*, N.Y. TIMES, Dec. 19, 2001, at B1 (describing how a commencement speaker at California State University was booed off the stage for calling for the protection of civil liberties in the government’s response to terrorism).

41. TESTAMENT, *supra* note 24, at 231.

majority of black Americans disagreed with King on Vietnam.⁴² King's supporters in the national media abandoned him after he publicly denounced the war. The Washington Post said that King had "diminished his usefulness to his cause, to his country, and to his people."⁴³ The national newsweeklies characterized King's forays into international affairs as the work of a "drawling bumpkin, so ignorant that he had not read a newspaper in years, who had wandered out of his native haunts and away from his natural calling . . ."⁴⁴ President Lyndon Johnson called Martin Luther King, Jr., a "goddamned nigger preacher."⁴⁵

But far from being unpatriotic, dissenters such as King can be among the truest of patriots. Though it was not understood as such at the time, King's patriotism was robust — it was "of the head and heart."⁴⁶ It was "a patriotism of loyal opposition," a patriotism that demanded that the country that promised so much "be true to what [it] said on paper."⁴⁷ Accordingly, dissenters should understand, as did King and the best of Kittrie's rebels, that "those who heroically suffered America into its noblest expression of its ideals are the real patriots, 'the true saviors of democracy.'"⁴⁸

42. DYSON, *supra* note 21, at 61.

43. *A Tragedy*, WASH. POST, Apr. 6, 1967, at A20.

44. RICHARD LENTZ, *SYMBOLS, THE NEWS MAGAZINES, AND MARTIN LUTHER KING* 177 (1990).

45. ANDREW YOUNG, *AN EASY BURDEN: THE CIVIL RIGHTS MOVEMENT AND THE TRANSFORMATION OF AMERICA* 434 (1996).

46. DYSON, *supra* note 21, at 246.

47. *Id.* at 247.

48. *Id.* For another perspective on the costs of uncritical patriotism, see Emma Goldman, *Patriotism*, in *EMMA GOLDMAN, ANARCHISM AND OTHER ESSAYS* 133-50 (1910).