

# Confessing Democracy's Dirty Little Secret

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**THE LAWLESS STATE: The Crimes of the U.S. Intelligence Agencies.** By Morton H. Halperin, Jerry J. Berman, Robert L. Borosage, and Christine M. Marwick. Penguin. 328 pp. \$2.95 paperback.

By STEPHEN S. ROSENFELD

**THE LAWLESS STATE?** By the gross abuses of secret power of the postwar period, summarized in this book in a way that makes even a faithful newspaper reader gasp at the scope and relentlessness of official arrogance, did we become a state without law? Truly so?

It depends, I think, on whether we feel that our system is an imperfect one and that it repeatedly made horrible mistakes but endured to try to do better, or that our system is a perfectible one that somehow was taken over by bad men, who deserve to be punished, while the rest of us go on to make "structural" reforms that will prevent our cold-war nightmare from ever recurring again.

Halperin, Berman, Borosage and Marwick operate on the latter premise. The cold fury they pour upon COINTELPRO, CHAOS and all the other atrocities of secret bureaucracy arises from an almost puritanical commitment to the highest ideals of democracy. This is the strength of their book, charging its dogged documentation with fire.

The four authors are absolutists. They poke their light into every corner. They see no legitimate reason why the Bill of Rights must be shaded in the slightest for any imperative of national security. To them a state is

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lawless if it does not respect the law in every way. They believe that as long as the government is still caught burglarizing the Socialist Workers Party or maneuvering in Angola nothing essential has changed, notwithstanding the last few years' revelations and reforms.

Certainly the 30-year record of governmental lawbreaking provides powerful evidence for their case. The need to generate political steam for further reforms—which is the priority purpose of this book—offers another compelling consideration.

But I am not quite ready to meet all the authors' standards, or to ask others to. For it seems to me that our system is an imperfect one run by frail human beings, people who make mistakes; and that the tendency to regard it as perfectible imposes goals that cannot be met and provides an unacceptable rationale for taking vengeance against public officials who serve for a while but cannot do anything else—measured by an absolutist standard—but fail.

This is not our usual public rhetoric. It can be misused—and I condemn such misuse—as an excuse for corruption or covering up. This is, nonetheless, democracy's dirty little secret. We should aspire, but we are not going to make it. Credit should be given for effort and intention. In a complex and difficult situation, high performance is almost a bonus. Pride may be our bicentennial boast. Humility is what we must live with.

HBB&M are too seized by their purpose of generating outrage to accept this as a political fact. They see the public's ebbing attention to intelligence abuses as a civic failure. They believe that new laws can assure the fidelity to principle that assertions of executive authority—even open and positive assertions—cannot.

To the four authors, secrecy is the bugaboo. They protest that the government still wishes to keep, covert operations secret. But it was not just

secrecy that the officials whose acts they recount were operating under. They were also operating under a permissive national consensus, one holding—however unpersuasive it may now seem—that the nation's security was in peril.

The proof is that the public life of the nation in that period was going in exactly the same direction as its secret life: the direction of McCarthyism and interventionism. In effect, citizens were commissioning secret operatives to perform precisely and only those missions—restricting domestic dissent, hedging against foreign risks—that were already being performed in public. There was a certain fastidiousness about means; hence some tasks were given over to be done underground. There was little about ends.

I am not prepared to condone lawbreaking but neither am I ready to condone the retroactive scapegoating of people who, though they betrayed one trust, the trust of power, did so—or so many of them felt—to serve another trust, the trust of national security, which they had ample reason to believe was the public's choice. To call their acts (as in this book's subtitle) "the crimes of the U.S. intelligence agencies" is to ignore who ordered them up.

I want to honor and encourage people of conscience who put their careers at jeopardy for the sake of the Bill of Rights, and I want to kick out the people responsible for past policy. But I do not wish to pay court to a measure of public duty so high that it cannot be met, practically assuring performance that would make us seem even more hypocritical as a nation than we already are.

The authors fault the executive reforms so far made: Ford's Executive Order 11906 on intelligence organization, the attorney general's guidelines for domestic security investigations, the proposed security and wiretap reform bills. They find them ti-

mid, licensing unconstitutional practices in the guise of establishing accountability.

They don't accept as legitimate, or as useful to the public, that Ford had a political need to do something while the public's attention was engaged, and that his steps are a serviceable patch job which will hold while Congress, inevitably grinding more slowly, contemplates permanent repairs.

Permanent legislation endorsed by the four authors would end all covert operations, safeguard the whole political spectrum, fashion charters for all the intelligence agencies, and ensure fair law enforcement. All of this, of course, will be on the plate of the new Congress.

This is as it should be. Laws, publicly made, are the way the people tell officials how to use official power. But I wonder if new legislation will fully respect the premium which the authors place on libertarian values. They see Congress as the crucial check on executive freewheeling. I am not so sure they understand that the Congress, open as it is to popular currents, is not the temple of libertarianism they would like it to be.

We are not yet that kind of society. There is too much residual national security anxiety. There is far from full tolerance of dissent. We aspire to be a government of laws but laws cannot be enacted or enforced to serve a purpose not supported by a broad public consensus.

There is cause for dismay here but not, I believe, cause for despair. We are not, and have not been, a lawless state. Russia is lawless: power is wielded by a few individuals subject only to arrangements made among themselves. Short of revolution or war, that system provides no method of remedying its characteristic abuses of central power and no method of altering the fact that power is centralized. That is lawlessness. □