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BOOK REVIEWS

Jefferson and Civil Liberties, The Darker Side. By Leonard W. Levy. Cambridge: Harvard University Press. 1963. Pp. 225. \$4.50.

Latter day historians have solidified the almost universally accepted image of Thomas Jefferson: "the apostle of liberty." As the title belies, Mr. Levy has concerned himself with establishing that there was a "darker side" to this image.

Mr. Levy readily confesses that he has chosen a difficult target. Even the staunchest critics had been moved to admit that Jefferson had "an ardent passion for liberty and the rights of man."¹ The Jefferson Memorial is inscribed: "I have sworn upon the altar of God, eternal hostility against every form of tyranny over the minds of man." It is no small wonder that historians and biographers have fixed Jefferson with what the author describes as a "libertarian halo."

The entrenched position of his subject has not prevented Mr. Levy from taking dead aim at this halo. The result is an often harsh, but always scholarly portrayal of a sharp contrast between Jefferson's libertarian principles and his actual practices.

The unfamiliar Jefferson at one time or another supported loyalty oaths; countenanced internment camps for political suspects; drafted a bill of attainder; urged prosecutions for seditious libel; trampled on the Fourth Amendment; condoned military despotism; used the army to enforce laws in time of peace; censored reading; chose professors for their political opinions; and endorsed the doctrine that the means, however odious, were justified by the ends.²

The case may be overstated, but most of these claims are supportable. Criminal prosecutions for seditious libel are borne out in our nation's earlier law reports.³ Other blatant inconsistencies in Jeffer-

¹ LEVY, *JEFFERSON AND CIVIL LIBERTIES, THE DARKER SIDE* 158 (1963) (quoting John Quincy Adams).

² *Id.* at 18.

³ *Republica v. Dennie*, 9 Pa. (4 Yeates') 267 (1805); *People v. Croswell*, 3 Johnson's (N.Y.) 336 (1804). In the latter case, an able argument was made by defendant's counsel, one Alexander Hamilton.

son's theory and practice are presented in his letters. He was willing to suspend the rules of evidence in trials of embargo violators. In his zeal to convict Aaron Burr and his supposed conspirators, he sanctioned denials of due process.

One cannot help being impressed by Mr. Levy's bill of particulars. He is a skillful and articulate advocate. His material is carefully organized and marshalled in a scholarly fashion. The book is well documented, containing footnotes for almost all of the author's more controversial assertions.

Still the reader may be left with an uneasy feeling. This is due in part to a limitation which is consciously self-imposed by the author.

Focusing upon the darker side creates an unbalance that has the characteristics of a lawyer's brief or an indictment, although my presentation balances the conventional one. Nevertheless, balance has not been my objective for I see no need to construct for every page that calls a spade a spade an equal number of pages of conventional encomiums about the expounder of the rights of man.⁴

Perhaps, as Mr. Levy indicates, the task of seeing Jefferson whole is for his biographers. Nonetheless, the size of the target does not lessen the need for fair play in the literary sense. Besides, the very onesidedness of his approach tends to subtract from the overall plausibility.

In order to place an author's writings in proper perspective, it is often helpful to check his motivations. This is especially true in the case of the iconoclast. According to the book jacket, Mr. Levy is Earl Warren Professor of Constitutional History and Dean of the Faculty of Arts and Sciences at Brandeis University. He has written two previous books for the same publisher, both concerning civil liberties. There is considerable indication in this book that he is an "absolutist" in his view of the scope of the first amendment. He discusses the "obnoxious restraint imposed on the freedom of speech of soldiers" (while conceding that "a case may be made against the enjoyment by the military of the same scope of free speech as civilians"). As the reader progresses, it becomes increasingly apparent that Mr. Levy discovers few situations which justify the abridgment of individual freedom.

The author's libertarian background helps explain the occasional

⁴LEVY, *op. cit.* *supra* note 1, at ix.

intrusion of emotion and bias into what is otherwise a rational and even treatment. Despite these few lapses, most readers will be forced to admit that Mr. Levy has struck his target—the “libertarian halo” of Thomas Jefferson—with unerring accuracy.

However, exposure of the “feet of clay” is not an end unto itself. An image placed in perspective is not a distortion. In Mr. Levy’s recognition of this fact and the struggle to place Jefferson in perspective for the reader lies the real merit of this book.

Perhaps the chief explanation of his darker side was his conviction that the great American experiment in self-government and liberty was in nearly constant danger. He completely identified with that experiment, to the point that an attack on him or the wisdom of his policies became transmuted in his mind as a threat to the security of the tender democratic plant.

During the Revolution, coercive loyalty oaths and proscriptions of Tory opinions seemed a cheap price to pay when independence was the goal and the outcome was in doubt. The Alien and Sedition Acts, following the enactment of Hamilton’s economic policies, forever convinced Jefferson that his political opponents were inalterably committed to the destruction of public liberty in America

Over the years he constantly sensed a conspiracy against republicanism. He had a feeling of being besieged by the enemies of freedom who would use it to subvert it. The face of the enemy changed—now that of a Tory; later that of a monarchist, a political priest, an Essex Juntoman, a Quid, or a Burrrite; still later that of a judicial sapper-and-miner, and American-system consolidationist, or a Richmond lawyer. The face of the enemy might change, but not his tory principles, nor his subversive goal.

To the experiment of democracy in America, as Jefferson called it, he was committed heart, mind, and soul. Believing that experiment to be in grave jeopardy throughout most of his public life, he was capable of ruthlessness in defeating its enemies To a mind that was keenly alerted against the conspiracies of a Federalist boogeyman and sensed a union between self, party, and nation, the virtue of an independent judiciary became the vice of judicial interference with majority rule; fair play and a strict interpretation of treason became obstacles to the preservation of the Union; academic freedom became a guise for the dissemination of pernicious doctrines.⁵

Oscar Handlin, who wrote the introduction, touches upon the timeliness of the overriding subject. He says in essence that a

⁵ *Id.* at 167-70.

survey of Jefferson's experience has particular relevance to the problems of the 1960's, a decade in which expediency seems often to demand a sacrifice of rights.

For those who are unwilling to follow Mr. Levy to the logical extremity of his argument, this book will serve as a subtle reminder that history is made and populated by human beings. Oscar Wilde puts the thought in context.

It is the feet of clay that makes the gold of the image precious.⁶

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The American Way of Death. By Jessica Mitford. New York: Simon and Schuster. 1963. Pp. 333. \$4.95.

Death has been called the great leveler. Traditionally rich and poor alike have faced dissolution with fear and humility. The Stygian shore has always been a place of mystery. Our fear of death has endured, but certain of death's properties have not abided. In twentieth century America death has been stripped of its once powerful leveling quality. The funeral industry has almost imperceptibly changed us into a society which accepts gracious dying much as it has accepted gracious living. Just as we surround ourselves with status symbols during life, we have surrounded our dead with similar symbols of affluence.

In America death is an opportunity to exit in a magnificent blaze of glory. American funerals have spiraled toward a lofty pinnacle of splendor and the cost has reached into the billions annually. In recent months several magazine publications have lighted the fuse to a great amount of public indignation and pent up resentment toward those claiming to "serve" the public in the "dismal trade." One of the most scathing attacks on the funeral profession has come from Jessica Mitford in *The American Way of Death*. The author's opening paragraph signals the onslaught:

O Death, where is thy sting? O grave, where is thy victory?
Where, indeed. Many a badly stung survivor, faced with the aftermath of some relative's funeral, has ruefully concluded that

⁶ WILDE, PICTURE OF DORIAN GRAY 208 (Reprint 1926).

the victory has been won hands down by a funeral establishment—in disasterously unequal battle.¹

The book is extremely convincing. It probes into the inner sanctums of the funeral trade. It removes the funerary language, funeralesque, from its setting and in a revealing light proceeds to expose its pagan characteristics. In funeral vernacular, cremated ashes are "cremains." The undertaker has been replaced by the more kindly "funeral director." Coffins are caskets and hearses are "coaches." Flowers are "floral tributes." The word "grave yard" has given way to "memorial garden" or "memorial park." The body is no longer a corpse. It is "the loved one" or more specifically "Mr. Jones." A new term which has become popular in the funeral business is "grief therapy," a service the funeral director offers at a premium. The reader finds himself concluding that under present conditions he can ill afford to die, and that he must wait until his income increases substantially or until the "dismal traders" reduce the high cost of leaving.

The book is basically divided into three portions. The overall purpose of the author is to drive the American funeral into a corner and reduce it to its lowest terms; to set it apart in horrible isolation. The author first attacks the funeral director.

The funeral director presented is the average one in the commonplace community. He is mild mannered, pleasant, and reassuring. He belongs to a local civic club, participates actively in fund raising drives, and backs the local Boy Scout troop. He speaks good English, tries to be sincere, friendly, dignified, prompt, and sympathetic. Most important of all, he is a super salesman. His profession is an extremely close knit group, banded together for a common purpose—to glean the bulk of the funeral dollars.

We are first taken to the casket selection room. This room has a rather casual appearance. The buyer observes no pattern in the position of the caskets. But the funeral director, with the aid of colleagues such as the National Funeral Directors Association, has reduced selection room sales to a highly precisioned art. He dares not arrange the caskets in order from least expensive to most expensive. This makes dollar comparisons too easy. Rather the director has studied model display rooms with great care. He has

¹ MITFORD, *THE AMERICAN WAY OF DEATH* 15 (1963).

adopted a plan designed to persuade the buyer to purchase the more expensive casket. The buyer under the circumstances is not sufficiently perceptive to recognize a sales technique. He is perhaps grief-stricken and is ready to complete the transaction as hurriedly as possible. There is usually a sum of insurance money available and the bereaved will not hesitate to spend a larger sum than his good senses would normally sanction. The funeral director has no problem justifying his eagerness to sell the more expensive casket. This gives the family a chance to salve its conscience by making some sacrifice. The author quotes from *National Funeral Service Journal*, August, 1961:

[A] funeral is also an occasion when feelings of guilt and remorse are satisfied to a large extent by the purchase of a fine funeral. It seems highly probable that the most satisfactory funeral service for the average family is one in which the cost has necessitated some degree of sacrifice. This permits the survivors to atone for any real or fancied neglect of the deceased prior to his death...²

The casket displayed in the selection room is a marvelous contraption. It may have an inner spring mattress. It may be lined with foam rubber and other beautiful trappings. The accent in casket fashions is on durability. The consumer desires something permanent and comfortable. A variety of styles is available ranging from French Provincial to the patriotic "Valley Forge."

Perhaps the greatest deterrent to the profitable casket sale is the "nosey clergy." The funeral director fears the sight of the minister for he generally has experienced the director's sales pitch and his presence imparts an aura of moderation and temperance. Not to be outwitted, the undertaker quotes the prices to the family and then with a solemn, understanding tone, but with tongue in cheek, suggests that the family be left alone to make this important decision.

Once the mortician is alone with the body of "Mr. Jones" his true professional qualities emerge. His apparatus includes, among other things, "Nature-Glo—the ultimate in cosmetic embalming." There are ingenious contrivances to prop and support the body. He has fluids, sprays, pastes, oils, powders, creams, plaster of paris, scalpels, scissors, augers, forceps, clamps, needles, pumps, tubes, bowls and basins, and a large array of other accessories. After much

² *Id.* at 22.

tedious labor the body is presentable. It has acquired a more youthful appearance in the process and is prepared to bestow upon those aggrieved at its parting, a beautiful memory picture. This is the undertaker's *raison d'être*; his most significant contribution to psychologically aiding the mourners; his grief therapy.

The undertaker's most fervent wish is that the casket be opened for viewing the body. This gives him the chance to display his handiwork. If the casket remains closed, there is little need for the professional care he offers the deceased. It should be noted that America is the only nation in the world which indulges in the luxury of embalming or in viewing the body. Embalming is not required by law in most states and pathologists tell us there is little hygienic merit in this practice.

There are now twenty-five thousand funeral establishments in the United States. The author sets out heartening news:

The funeral service profession of the United States is proud of the fact that there is not a person within the continental limits of the United States who is more than two hours away from a licensed funeral director and embalmer in case of need. That's one that even the fire fighting apparatus of our country cannot match.³

The large number of funeral establishments and the decreasing death rate in this country is cause for alarm among the members of the dismal trade. But there is hope. A member of the funeral industry made this observation: "We are coming to the end of a line, we cannot continue to expand the span of life for people indefinitely. It has to turn down."⁴

The funeral director has not born the sting of Miss Mitford's darts alone. The florist has also faced her onslaught. The florist derives roughly seventy per cent of his revenue from the sale of funeral flowers. The practice of sending flowers to honor the deceased is comparatively recent and has been denounced as pagan and wasteful. Florists have organized in an effort to preserve this "valuable" practice, but there is an annoying trend toward requesting that funds which would go toward the purchase of flowers go instead to worthy charities. Three little words are feared by the florists: Please omit flowers. The florists have succeeded in many

³ *Id.* at 66.

⁴ *Id.* at 52.

instances in persuading newspapers not to include these words in obituary notices even when the family of the deceased requests that flowers be omitted.

The funeral director finds the florist and the flowers irritating. It is he who must arrange the flowers, record the names of the senders and dispose of the flowers when they have served their purpose. But worst of all, there may be a spray which hides the beautiful casket "at the very moment when there is a maximum audience on hand to drink in its beauty and note its enduring qualities."

The undertaker and florist are assisted by a third member of the funeral team, a team dedicated to scoring "an upset victory over death." The third member of the team is the interment industry. Gone are the days of the ten dollar grave dug by the church sexton. Burial has become an enormous operation and burial costs have soared at an even higher rate than undertaking costs. The handiwork of the cemetery company can be seen on the outskirts of hundreds of cities and towns. The land is undesirable for any other use. It can be purchased inexpensively. The cemetery companies obtain extremely favorable tax benefits. They subdivide, placing as many as three thousand graves on one acre of land. Property purchased for as little as five hundred dollars an acre may yield many thousands of dollars. The cemeteries are arranged into status areas and sections are provided for various clubs and lodges. Bronze markers have replaced the old granite and marble headstones, and these markers are provided at an extra expense to the estate of the deceased. These markers greatly facilitate maintenance operations and costs are thus held at a minimum.

When the undertaker is given the task of arranging the entire funeral he generally selects an inexpensive grave, thereby saving the bulk of the funeral assets for his own pocket. The interment industry, though, has niftily thwarted the undertaker here. Reasoning that Mr. Jones would purchase a more expensive "spot" if reached before he actually needed it, the cemetery companies launched huge pre-need sales campaigns. These campaigns met with immediate success and as a result there are a great many Americans whose final resting places have been neatly set aside long before the actual need arises.

When the funeral team has completed its "services" the average cost for the adult is 1,450 dollars. Indeed this seems to be a