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Book Review of Undeclared War and Civil Disobedience: The American System in Crisis

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Indochina. He focuses on four dilemmas: the constitutional allocation of control between the president and Congress over the initiation of American involvement in hostilities; the proper role of the courts in determining that allocation; the validity of civil disobedience as a means of shaping government policy; and the possibility of institutional legislation to prevent American war-making unless authorized by Congress.

Aside from presidential response to sudden attack on American lives or property, Mr. Velvel reads the Constitution to require prior congressional approval for "armed force against another nation or . . . group within another nation," given a "reasonable possibility that any degree of combat" will result "within the near future" (p. 106). To avoid unconstitutional delegation of legislative authority to the executive, Congress must specify "clear upper limits" on the kinds and sizes of the forces that may be used, the kinds of weapons, geographic areas of operations, objectives, and lengths of time that military actions may continue (p. 97).

Mr. Velvel would swing wide the courthouse door to citizen attacks on the legality of government action, especially executive involvement of the country in conflict. The author stresses a "clear distinction between the judicial question of whether the President may constitutionally fight an undeclared war and the political question of whether or not we *should* fight the war" (p. 134).

Buttressed by intricate criteria for distinguishing good protestors from bad, and by belief that America historically depends on protest as catalyst for reform, Mr. Velvel argues that "there *are* times when civil disobedience should be permitted as a means for obtaining constructive change" (p. 215). To encourage desired disobedience, he would have juries acquit good protestors even though they violated constitutional laws. Failing jury nullification of the law, he calls for sentences responsive to whether the protestor harmed persons or property and to "the need to mediate between the goal of punishing people heavily enough to deter them from violating the law and the goal of not punishing them so heavily that they could never risk violating the law no matter how just their cause or how fine their records" (p. 248).

Finally, Mr. Velvel seeks "an institutional method of insuring that at the very moment when war may occur, Congress will be forced to make a clear decision on whether to fight" (p. 256). His solution is legislation blocking

Undeclared War and Civil Disobedience: The American System in Crisis. By Lawrence R. Velvel. (New York: The Dunellen Co., 1970. Pp. xvii, 405. \$8.95.)

Undeclared War and Civil Disobedience pre-dates even the Cambodian incursion of spring, 1970. Mr. Velvel's concerns, however, were old before the United States went to war in

all funds for American involvement in combat until Congress authorizes it, except for executive response to sudden attack.

A theme recurrent through the four parts of *Undeclared War and Civil Disobedience* is the American system in crisis: the rule of law beset by executive usurpation, while Congress and the courts stand cravenly by, and citizens struggling for constitutionality are savaged. The rich development of this theme, in fact, is the book's most distinguished characteristic. Mr. Velvel captures the constitutional *angst* caused mainly by Vietnam and ensuing domestic ills.

Satisfying analysis of the dilemmas at hand is another matter. Although insight and sound argument are often present, the scope of the effort prevents thorough inquiry into the book's four concerns; vital problems go begging—for example, the possibility that American use of force may be in the national interest and only the president willing to act, as before World War II. Reliance on social and political salvation through judicial action is pushed beyond the bounds of the practical or desirable, a reflection perhaps of Mr. Velvel's battles in court against the war. His reasoning can be weak, for instance, misapprehension of the legal concept of neutral principles (pp. 186, 331). His use of history can be suspect; for example, he is "not at all sure that the Congressmen who didn't want to fight in World War I were wrong. One can make a pretty decent argument that without our entry into the war, it might have ended in a stalemate rather than in a situation which led to the rise of Hitler . . . and Communism in Russia" (p. 293).

Finally, Mr. Velvel takes on "the problem of how to prevent people in power from doing evil and how to force them to do good" (p. 253), under the imperative "of a certain distaste, not to say loathing, for what has occurred as a result of Vietnam" (pp. 9–10). Like St. George with the dragon, he wields a righteous blade. Cleft, for instance, are Lyndon Johnson, the "paradigm" of a man with "the most malign, even the most vicious, ideas" (p. 86); "the antiquarian and unthinking defenders of everything past who currently occupy too many of our judicial posts" (p. 113); the "classic imbecility and utter impracticality" of Frankfurter's view that malapportioned voters should seek legislative relief (p. 114); "red-neck Congressmen who hate the progressive ideas which demonstrators are fighting for" (p. 119); "the often stupid legal doctrine of mootness" (p. 143); the "Neanderthally stupid" use of the concept of standing to block

cases involving injury to the general public (p. 160); the "highly debatable" if not "abominably stupid" objection to distinguishing between good and bad demonstrators on the basis of the values they espouse (p. 188); and "aged rural bunglers and bigots and pork barrelers" promoted by the congressional seniority system (p. 265). The sound of such falling dragons enlivens the text but steadily signals its skew as well.

Footnotes come in three kinds, all separately presented in the back of the book. There is neither table of cases nor index. Thus the way is not easy, nor the burden light for the reader once he leaves the text. Perhaps unified footnotes, a table of cases, and index fell victim to rapid publication, so that Americans "[a]rmed with the arsenal of arguments arrayed in *Undeclared War and Civil Disobedience*" could "force their government . . . to end its lawlessness, to cease the senseless slaughter," in the words of the book's sponsor, the Lawyers Committee on American Policy Toward Vietnam (p. vi).

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