

performance was. When the nature of the problem played to his particular strengths—as it did in the dealings with Soviet leader Mikhail Gorbachev, when openness, insight, persuasion, and negotiation were the qualities most required—“it could be quite good. But in other situations”—such as the Iran-contra affair, when a detailed understanding of policy was required, and he was detached and at the mercy of others—“these skills could not compensate

for Reagan’s failings, and some of his strengths became weaknesses.”

Reagan believed that the Soviet Union would respond to changes in U.S. behavior, and many former Soviet officials, including Anatoly Dobrynin, long-time ambassador to the United States, agree that that was precisely what happened. “Reagan’s conciliatory policies toward the Soviet Union,” writes Farnham, “enabled Gorbachev to forge ahead in his domestic and international initiatives.”

How the Court Killed Privacy

“Privacy and the American Constitution” by David J. Garrow, in *Social Research* (Spring 2001), 65 Fifth Ave., Rm. 354, New York, N.Y. 10003.

Does the Constitution guarantee a right to privacy? In the minds of most Americans, landmark Supreme Court decisions such as *Griswold v. Connecticut* (1965) and *Roe v. Wade* (1973) established and defined such a right. But legal scholars assaulted the reasoning behind those decisions so successfully that the Court was long ago forced to rethink—and reject—privacy as a constitutional right.

Griswold, which struck down a state prohibition on contraceptive use by couples, is the pivotal case responsible for both the construction and the eventual collapse of the right to privacy as a constitutional concept. In his seven-page majority opinion, Justice William O. Douglas famously wrote that “specific guarantees in the Bill of Rights have penumbras, formed by emanations of those guarantees that help give them life and substance.” In those penumbras Douglas discovered the right to privacy.

The Court had been working up to an articulation of such a right since the late 19th century. As young lawyers, Louis Brandeis and Samuel Warren had introduced it in an 1890 *Harvard Law Review* essay titled “The Right to Privacy,” in which they advocated legal protection for “the private life, habits, acts, and relations of an individual.” Brandeis’s dissents as a Supreme Court justice in the 1920s carried the torch for an individual’s right to privacy.

Twice in 1940s the Court alluded to privacy rights in majority decisions.

While *Griswold* catalyzed young lawyers and activists of the late 1960s to use its protection of reproductive privacy to bring and win cases such as *Roe*, which established the right to abortion, many constitutional specialists found fault with Douglas’s opinion. The decision was correct, they argued, but his reasoning was too shaky and his language too nebulous to hold up as the foundational legal argument for right-to-privacy cases. Matters weren’t helped by Justice Harry A. Blackmun’s 51-page decision in *Roe*, which leaned on *Griswold* but struggled to find solid footing for the right to privacy. Legal critics from all points on the political spectrum pounced on the underlying reasoning. Harvard’s Lawrence H. Tribe did not criticize the result but expressed regret that “the substantive judgment on which [*Roe*] rests is nowhere to be found.”

One of the leading critics of *Griswold* and *Roe* was Judge Robert Bork, and his 1987 Supreme Court nomination foundered in large part because of his uncompromising rejection of the constitutional right to privacy that grew out of *Griswold*. Ironically, that right was already all but dead in the minds of constitutional scholars.

The Court reacted to criticism of *Griswold* and *Roe* by affirming those deci-

EXCERPT

Sizing Up the Roosevelts

It is possible to divide Americans into two groups: those who prefer President Theodore Roosevelt, and those who prefer Franklin Delano. . . .

TR came to the White House a few years too soon, before public opinion was ready for major changes. When President McKinley was assassinated in 1901, Roosevelt served out his term; won another term himself; then retired, bored, because there was not enough to do to use up his immense energy.

In 1912 he sniffed the winds of change and re-entered the fray, but all he succeeded in doing was to split the Republican vote and let Wilson slip into power. This was a tragedy, for TR would have brought America into the First World War two years earlier than Wilson did, and the whole of 20th-century history would have been different. . . .

TR was an Oyster Bay Roosevelt, traditionally Republican, while FDR was a Hyde Park Roosevelt, always Democrats. Relations between the two branches of the family were edgy, and when FDR married his Oyster Bay distant cousin, Eleanor, for reasons which are still mysterious, it was quite an event. TR and FDR had cordial relations but the authors exaggerate their intimacy. They were fundamentally very different men. TR was an extrovert, open, concealing nothing of his intentions or emotions.

He said “speak softly and carry a big stick,” and there is no doubt about the size of his stick—what is more difficult to find is evidence that he ever spoke softly. When he opened his mouth the decibels rose sharply. . . . TR, however, had a puritanical streak. He loathed his Long Island neighbor, the great glass artist Louis Tiffany, because “he lays his hands on other men’s wives,” and when he got to the White House smashed to bits Tiffany’s masterpiece, the superb dining-room screen that President Arthur had commissioned. He ostentatiously put morals, public and private, before any other consideration.

By contrast, FDR was an amoralist, devious, secretive and, especially in his love affairs, unfathomable. Not even his closest associates knew his inner mind, and none of the hundreds of vast tomes written about this great but flawed man pluck the heart of his mystery. That is why, as with Napoleon, there is always room for one more study. I suspect FDR lacked self-confidence, a weakness which his polio increased. His attitude to governing was quite unlike TR’s.

The latter ruled in the traditional manner. Indeed, he picked an exceptionally strong and independent-minded cabinet. . . . FDR, by contrast, bypassed the cabinet and began the modern White House system of rule through personal followers, or brains trusts, as they were called, who were entirely dependent on his patronage.

Was there a special reason for FDR’s brittle self-respect? At Harvard, TR—friendly and popular, whose favorite term of approval was “bully”—sailed into the Porcellian, probably the most exclusive club in the world, even then. FDR was found too introvert and failed, the most bitter disappointment of his entire life. The pain did not diminish. When TR’s daughter Alice married another member, the authors record that all the Porcellians present gathered in another room to drink special toasts and sing club songs. FDR, who attended the wedding, found himself excluded, as he always did on such occasions.

The Oyster Bay Roosevelts looked down their noses on the Hyde Park cousins, not least on FDR, who got the cold shoulder. Perhaps that is really the reason why he married Eleanor, to bolster his social self-confidence.

—Paul Johnson, a British historian, in a review of *The Three Roosevelts: The Leaders Who Transformed America*, at www.booksonline.co.uk.

sions in substance while rebuilding the argument underneath them. In *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992), a landmark case in which the Court reaffirmed *Roe*, three of the five justices in the majority found that “choices central to personal dignity and autonomy” such as abortion fall under “the liberty protected by the Fourteenth Amendment.” The *Casey* trio made no mention of the “p-word.”

Constitutional scholars applauded

Casey, and the Court has shunned the right to privacy, as a term and as a concept, ever since—though it does recognize a zone of privacy created by the Fourth Amendment ban on unreasonable searches and seizures. It’s “sad,” Garrow thinks, that America’s elite legal commentators have killed off a constitutional right most Americans think they possess—and at precisely the moment when new technologies are raising fresh concerns about individual privacy.

FOREIGN POLICY & DEFENSE

Baltic Madness?

“The Next NATO: Building an American Commonwealth of Nations” by James Kurth, in *The National Interest* (Fall 2001), 1112 16th St. N.W., Ste. 540, Washington, D.C. 20036.

Ten years ago, the plucky Baltic republics of Estonia, Latvia, and Lithuania claimed their independence from a crumbling Soviet Union, and ever since they’ve been sterling citizens in the new global order of liberal democracy, free-market economics, and the rule of law. Now it seems only natural that they’re in line for membership in the North Atlantic Treaty Organization (NATO). But that’s worse than a bad idea, argues Kurth, a Swarthmore College political scientist—it’s insane.

President George W. Bush’s call last June for NATO’s enlargement “from the Baltic to the Black Sea” should have sparked a “Great Debate” on the scale of the League of Nations fight of 1920. Instead, the nation snoozed. Meanwhile, it’s taking on military commitments of unprecedented scope, and for the wrong reasons.

“For the past decade, the grand project of the United States in world affairs has been globalization,” Kurth writes. That has meant securing in Europe a “solid base” that accepts “the American way of globalization” against those parts of the world that don’t, which include China and Russia, and the large portions of Africa, Southeast Asia, and Latin America that have simply been left out. But for this economic and political project—which Kurth sees as an undertaking of danger-

ous hubris—the United States has no suitable vehicle. So it has adapted a military alliance (NATO) to its purposes. And that’s the problem.

What’s rarely considered in the talk about extending membership to the Baltic is that the American global predominance so easily taken for granted today may not exist decades from now. Yet, as NATO members, the Baltic countries would always be able to call upon the United States to come to their defense. And that call may not be as unlikely as it now seems. Estonia’s border, for example, lies only 30 miles from St. Petersburg, and while Russia is surly but weak today, it could be surly and strong tomorrow. Most troubling to Kurth is the problem of Kaliningrad, the Russian oblast, or province, cut off from the rest of Russia when Lithuania got its independence. This “dismal slum” of 900,000 is full of Russian soldiers and Russian woes: crime, infectious disease, and pollution. If Lithuania joins NATO, Kaliningrad “will become a Russian island and strategic anomaly surrounded by a NATO sea”—“a crisis in waiting.”

It’s no accident that the Baltic countries have not enjoyed the protection of an outside power for several centuries, Kurth observes. The looming presence of Russia ensured that no European power would