Cold War Political Justice: The Smith Act, the Communist Party, and American Civil Liberties by Michal R. Belknap
Review by: John J. Abt
Science & Society, Vol. 43, No. 1 (Spring, 1979), pp. 92-94
Published by: Guilford Press
Stable URL: http://www.jstor.org/stable/40402152
Accessed: 21/06/2014 03:40

BOOK REVIEWS

Cold War Political Justice: The Smith Act, the Communist Party, and American Civil Liberties, by Michal R. Belknap. (Contributions in American History, No. 66.) Westport, Conn.: Greenwood Press, 1978. $16.95. Pp. xii, 322.

In 1943, the Supreme Court with but a single dissenting vote ruled that membership in the Communist Party is not incompatible with attachment to the democratic principles of the Constitution. A review of the literature of Marxism-Leninism led it to "the tenable conclusion" that the Party advocates a peaceful path to socialism and contemplates violence only as a last resort against a reactionary government which has forcibly closed off all channels for peaceful change. (*Schneiderman* v. *United States*, 320 U.S. 118.) By the early 1940s, a series of Supreme Court decisions had also established that the First Amendment forbids any restraint on political advocacy which falls short of an incitement to imminent unlawful action under circumstances which make such action likely.

The Court's objective assessment of Marxist theory and its libertarian reading of the First Amendment could not survive the post-war reversal of U.S. policy under which our Soviet ally for the defeat of fascism became the enemy bent on our destruction. As Senator Vandenberg counseled Truman, it would be necessary to "scare hell out of the country" in order to sell it the new policy.

Accordingly, in 1949, on evidence consisting primarily of the books which the Court had exculpated six years earlier, the government secured the conviction of the national leaders of the Communist Party for violating the Smith Act by conspiring to advocate the violent overthrow of the government "as soon as circumstances would permit." Two years later, the Supreme Court affirmed the convictions. It refused to review the evidence adduced against the defendants, sparing itself the embarassing necessity of overruling the *Schneiderman* decision, and scuttled its enlightened interpretation of the First Amendment. (*Dennis* v. *United States*, 341 U.S. 494.)

The decision was followed by a series of Smith Act indictments which blanketed the country from Massachusetts to Hawaii. All told,

some 160 Party members were charged and 114 (substantially all those brought to trial) convicted. Twenty-nine of the latter served sentences of two to five years, and many others spent months in jail while awaiting bail.

These prosecutions formed one of the principal "scare" tactics, sometimes misnamed McCarthyism, which in their totality resulted in the repression of popular democratic rights and liberties on a scale unprecedented in the history of the nation. By 1957, the fight-back against repression had removed Senator McCarthy and many of his followers from the political scene. Furthermore, the changing balance of world forces had convinced some sections of the ruling class that the competition with the Soviet Union for the allegiance of the emerging and uncommitted nations required the United States to present a less repellent model of "the free world."

In response to these pressures, the Supreme Court (after declining review of two earlier cases) consented to take a look at the evidence against the California Smith Act defendants and found it insufficient because the government had proved only that the defendants had advocated "ideas" and not "action," as the Act was now said to require. (*Yates* v. *United States*, 254 U.S. 298.) The inability of the prosecution to satisfy this standard of proof ultimately led to dismissal of all but one of the pending cases.

The Carter Administration's threatened return to the cold war, its "human rights" demagogy, and the availability of the FBI and Department of Justice files under the Freedom of Information Act combine to call for an in-depth study of the Smith Act prosecutions. Michael R. Belknap has not provided one.

Originally written as a doctoral thesis, *Cold War Political Justice* is based almost exclusively on the transcripts, briefs and opinions in the cases, press accounts of the proceedings, and other published sources. The author excuses his failure to avail himself of the Freedom of Information Act because of the cost. He adds the unscholarly and, given the disclosures of FBI and prosecution machinations in other cases, totally unwarranted assertion that the government files would have added "nothing of significance."

Belknap did not interview any of the *Dennis* defendants although he devotes much of his book to that case. Instead, he draws his sketches of, and comments about, them from secondary sources which include such renegades and stool pigeons as Benjamin (*I Confess*) Gitlow and Herbert (*I Led Two Lives*) Philbrick.

Belknap's interpretation of the publicly available material is likewise unilluminating. It is hardly a novel perception that the Smith Act defendants "suffered unjustly, and the Bill of Rights suffered with

them." Yet the author feels obliged to temper this conclusion by assigning to the victims a full share of the responsibility for their fate. He makes frequent reference to what he calls "labor defense," a term he never defines, and at times criticizes the defendants for failing to employ, and at others for employing it. Thus he writes at one point that "The Communist response to the indictments fell short of what labor defense demanded" (whatever that was), while at another he rebukes the defense lawyers because they "refused to concentrate on rebutting" the prosecution evidence but, "true to the traditions of labor defense, they launched a prosecution of their own." Elsewhere, he taunts the Communists with "conservatism," and writes that "Fighting back would take a form no more revolutionary than asking the capitalists' Court to reverse itself."

He accuses the *Dennis* defendants of "stalling" and of "propaganda" without evaluating the merits of their contentions. He applies these epithets, for example, to their challenge to the biased method of jury selection but fails to note that the challenge was well founded and that the procedure has since been reformed to meet their objections.

Belknap's analysis of the Supreme Court Smith Act opinions is tedious and unenlightening. To cite but one example, he hails Justice Harlan's 1960 opinion affirming the conviction of Junius Scales as "a masterpiece of scholarship and reasoning." Harlan found that the evidence of Communist Party advocacy in that case satisfied the *Yates* "incitement to action" standard; but on the same day Harlan also handed down an opinion reversing the conviction of John Noto under the same statute on the ground that the evidence of Communist Party advocacy there was insufficient. This provoked Justice Black to remark: "I cannot join an opinion which implies that the existence of liberty is dependent upon the efficiency of the Government's informers." (*Noto* v. *United* States, 367 U.S. 290.) What kind of scholarship and reasoning is that?

Belknap rightly concludes that "the attitudes that produced" the Smith Act "are fully capable of fashioning other instruments of repression." Unfortunately, his book is not a useful weapon in the fight to prevent that from happening.

JOHN J. ABT

New York City