

position of sanctions and by the Syria Accountability Act. Hariri paid with his life because he could see how the wind is blowing, but other Lebanese politicians of all communities and faiths have also been backing away from Syria. This said, is Lebanon in fact regaining its independence? Do the photographs of smiling Syrian paratroopers on the buses going home, and of Syrian generals saluting flags lowered for the last time, reflect reality or the kind of staged charades inherent in this type of power politics? Senior intelligence and security officers, compromised by taking Syrian orders in the past, have fled to Paris, where troubled Lebanese habitually seek refuge. The Syrian Reform Party, a pressure group of Syrian democrats based in Washington, has issued a news release stating that Rami Makhlouf, a cousin and business partner of Bashar's, has transferred hundreds of millions of dollars outside the country—Saddam Hussein's cousins and partners were doing the same in their time. Is that a sign of consolidation or collapse?

There are also conflicting reports that Syrian military intelligence has taken up new positions south of Beirut and elsewhere, and that Syrian agents and informers—perhaps several thousand of them—remain embedded in political parties and institutions in a position to influence events. A million Syrians are said to work in Lebanon, and according to unofficial estimates Syria makes out of Lebanon \$4 billion a year, or the equivalent of a fifth of its gross domestic product. Highly placed Syrians with connections to Bashar and the core of the old Baathist regime control the drug trade and associated racketeering in Lebanon's Bekaa Valley. As Condoleezza Rice expressed it in the idiom of diplomacy, "With a country like Syria there is always non-transparent activity."

Bashar too could slip away to Paris and hope to catch up with Rami Makhlouf's millions, or resume his ophthalmological career in London. Reform at this point is hardly an option, because it is so long overdue that any attempt to mitigate the police state is bound to be interpreted as a sign of weakness, which is the moment of opportunity for every ambitious would-be successor. Traditionally, such struggles culminate in a coup, and Syria experienced an uninterrupted series of them

before the Assad dynasty took control.

Repression and violence are the absolute ruler's habitual tools. The secret police have already shot dead a score of Kurds in Qamishli and elsewhere demonstrating for autonomy on the lines of Iraqi Kurds. And in Lebanon Bashar can hope to activate those stay-behind agents to set the ethnic and religious communities against each other, in effect reviving the Lebanese civil war that contributed religiously inspired terror and the suicide bomber to the practices of the region. A couple of bombs have already exploded in Beirut. Hezbollah is waiting in the wings, and Sheikh Hassan Nasrallah, its leader in Lebanon, likes to emphasize that he is at the head of "a resistance movement and not a militia." Hezbollah, he also claims, is driving Israel to retreat, and it could do Bashar's dirty work—and precipitate fighting—by firing some of those rockets when and if the Israelis leave Gaza as planned. Hafez Assad was a master of black arts of that kind, but in the post-Baathist world a hand-me-down reprise of them may not be enough to save Bashar. NR

■ THE NATION

# The Doctor Is Not a Criminal

A painful drug-war case in Virginia

JACOB SULLUM

IN December, after a federal jury convicted Virginia pain doctor William Hurwitz of running a drug-trafficking operation, the jury's foreman made a puzzling comment to the *Washington Post*: "He wasn't running a criminal enterprise." Hurwitz, who was sentenced to 25 years in

Mr. Sullum, a senior editor at *Reason* and a syndicated columnist, is the author of *Saying Yes: In Defense of Drug Use*.

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prison on April 14, was charged with drug trafficking because some of his patients abused or sold the narcotic painkillers he prescribed for them. Calling him a "major and deadly drug dealer," prosecutors argued that his practice amounted to a "criminal enterprise" because he charged for his services and should have known that some of his patients were faking or exaggerating their pain.

Judging from the comments of their foreman, Ralph Craft, the jurors didn't really buy this theory. But they convicted Hurwitz anyway, because they felt he was "a bit cavalier" in the way he prescribed opioids. They confused their role as jurors in a criminal case with the roles of the state medical board that regulates doctors and the civil courts that hear malpractice lawsuits. By convicting Hurwitz of, in essence, trusting his patients too much, they put physicians on notice that they can go to prison for prescribing opioids to people who turn out to be addicts or dealers. That knowledge is bound to have a chilling effect on pain treatment, which is already scandalously inadequate because of the fear instilled by the war on drugs.

The prosecutors did not dispute that Hurwitz, a widely known pain specialist and prominent critic of federal drug policy, had helped hundreds of patients recover their lives by prescribing the narcotics they needed to control their chronic pain. Instead they pointed to the small minority of his patients—5 to 10 percent, by his attorneys' estimate—who were misusing the painkillers, selling them on the black market, or both. The prosecutors did not claim that Hurwitz got so much as a dime from illegal drug sales. Instead they pointed to his income as a physician, which they said was boosted by fees from bogus patients. The prosecutors did not allege that Hurwitz had any sort of explicit arrangement with those patients. Instead they described a "conspiracy of silence," carried out by "a wink and a nod."

The evidence supporting this theory was ambiguous at best, leaving plenty of room for reasonable doubt. None of the surreptitiously recorded conversations with patients-turned-informants presented by the prosecution included any acknowledgment of the conspiracy Hurwitz supposedly led. To the contrary, the testimony of former patients convicted of drug dealing tended to confirm Hurwitz's defense that he was

tricked by "predators" who always knew the right thing to say to get more drugs.

A former patient called as a prosecution witness testified, "I had a lot of pain, but I exaggerated it, trying to get the drugs." On cross-examination, he added that he had "played a lot of doctors" over the years. He characterized Hurwitz as naive, saying, "He was concerned about me and my wife [also a patient]. Dr. Hurwitz is always concerned." Another former patient recalled using makeup to cover injection marks on his arm and smoking crack before appointments so he would not seem suspiciously sleepy. All described the lies they told: complaints of unrelieved pain, reports of lost prescriptions, explanations for brushes with the law.

If there was a conspiracy, asked defense attorney Patrick Hallinan, "why would you have to lie?" And if Hurwitz and his patient-dealers were in cahoots, why would he carefully record all the potential signs of trouble the prosecution would later cite as evidence of his "head-in-the-sand attitude"? Hallinan conceded that Hurwitz may have displayed "a degree of naïveté" and "even foolishness" in accepting some of his patients' stories. But he persuasively portrayed Hurwitz as "the perfect mark for these people": a doctor dedicated to helping patients in pain and reluctant to cut them off when they misbehaved.

Prosecutors maintained that Hurwitz's intentions didn't matter. As they put it in a post-verdict brief: "It is sufficient to prove a physician prescribed controlled substances while acting outside the bounds of medicine, regardless of whether he had a good faith belief that he was fulfilling a legitimate medical purpose." Since Hurwitz was "acting outside the bounds of medicine," the government argued, his prescriptions amounted to drug trafficking.

Hence the death of one patient from a morphine overdose that the government attributed to Hurwitz's excessive prescribing (the defense emphasized that the dose she took was smaller than what she had safely tolerated the day before) was not simply malpractice; it was "drug trafficking resulting in death." More generally, the prosecution criminalized (and federalized) what would ordinarily be treated as allegations of medical negligence. The point is not that Hurwitz's practice was beyond reproach. When the Virginia Board of Medicine reviewed allegations similar to

those underlying the Justice Department's case, it considered them serious enough to place him on probation (although it did not revoke his license). But Hurwitz's performance as a doctor is not the proper concern of federal drug agents and prosecutors.

To convince the jurors that Hurwitz was not really practicing medicine, prosecutors encouraged them to view high-dose prescriptions of narcotics as inherently suspicious. Craft, the jury foreman, told the *Post* that "the dosages were just astounding," calling them "beyond the bounds of reason." As an example, he cited a prescription for 1,600 pills a day. Hurwitz said this particular prescription, which was never filled, resulted from a nurse's calculation error that was discovered at the pharmacy. But it's true that many of his patients were taking very high doses of painkillers, doses that would kill someone unaccustomed to narcotics.

Such doses often are necessary for treating severe chronic pain because patients develop tolerance to the analgesic effects of narcotics. They are safe because patients also develop tolerance to the potentially fatal respiration-depressing effects of these drugs. Responses to pain medication vary widely from person to person, and there is no a priori limit to how high doses can go.

The prosecution deliberately obscured these points during Hurwitz's trial. The government's main medical expert, Michael Ashburn, testified that consumption of high narcotic doses by patients with chronic pain who do not have cancer is a sign of drug abuse. In a letter written before the verdict, six past presidents of the American Pain Society rebuked Ashburn for this statement, along with several other "serious misrepresentations" of pain-treatment standards. "We are stunned by his testimony," they said. "Use of 'high dose' opioid therapy for chronic pain is clearly in the scope of medicine."

As these pain experts recognized, Hurwitz was not the only person on trial at the federal courthouse in Alexandria. So was every doctor who has the courage to risk investigation by treating people who suffer from severe chronic pain with high doses of opioids. The threat of criminal prosecution will compound the "opiophobia" that prevents many of these patients from getting adequate treatment.

The Drug Enforcement Administration itself acknowledged the tension between

drug control and pain control in a pamphlet published last August. A product of extensive collaboration between the DEA and leading pain experts, the pamphlet explained that “simple exposure to opioids does not produce addiction,” which requires an attachment to a drug’s psychoactive effects. Confusion on this point, the pamphlet said, “can lead to the withholding of opioid medication because of a mistaken belief a patient is addicted when he or she is merely physically dependent.” The pamphlet also noted that “any physician can be duped,” that it’s hard to distinguish between addicts and patients in pain, and that prescriptions that look suspicious to the government may be perfectly justified.

In October, a few weeks after Hurwitz’s attorneys tried to introduce the pamphlet as evidence in his trial, the DEA removed the document from its website, citing unspecified “misstatements.” The next month the DEA published an “Interim Policy Statement” in the *Federal Register* that listed some of the points it no longer wished to endorse, including the statement that “the number of patients in a practice who receive opioids, the number of tablets prescribed for each patient, and the duration of therapy with these drugs do not, by themselves, indicate a problem, and they should not be used as the sole basis for an investigation by regulators or law enforcement.” The DEA emphasized that it reserves the right to investigate any physician at any time, even if only to make sure the physician *isn’t* breaking the law. The upshot of the DEA’s retraction was to leave doctors more nervous about prescribing opioids than they were before the ostensibly reassuring pamphlet was published.

Dozens of Hurwitz’s former patients described the consequences of such nervousness in pre-sentencing letters to U.S. district judge Leonard Wexler. They recounted how, after other doctors had repeatedly turned them away, Hurwitz saved them from the constant agony caused by migraines, back injuries, and other painful conditions that left them disabled, homebound, despondent, and in some cases suicidal. “It is to Dr. Hurwitz’s credit,” wrote one, “that he chose to trust that his patients were genuinely seeking relief from pain that cannot be objectively measured. This trust is, in my experience, all too rare.” Threatening doctors with prison for believing their patients will make it even rarer. **NR**

■ ESSAY

# The New-Time Religion

Liberalism and its problems

JONAH GOLDBERG

**L**IBERALISM today has two maladies; Howard Dean is both of them. Or, more accurately, he represents both of them. The first has received a remarkable amount of attention among liberals themselves in recent months: American liberalism is intellectually exhausted, or “bookless,” as *New Republic* editor-in-chief Martin Peretz recently called it. The second is less visible but perhaps more deadly: Modern liberalism has taken on the trappings of a religion.

This second diagnosis runs counter to the reigning clichés about the GOP’s becoming the party of theocracy. While it’s true that the Republican party and the conservative movement are invested in the agenda of religious groups, conservatism maintains a far clearer separation of religious and political impulses than liberalism, which often conflates the two into a single ideology. Like many spiritual movements, liberalism emphasizes deeds and ideals over ideas. As a result, when liberals gather there’s a revivalist spirit in the air, with plenty of talk about fighting the forces of evil and testifying about good deeds done. Conservatives tend to behave like *Star Trek* conventioners when they get together, making jokes, swapping trivia, and showing off their knowledge of arcana.

It was the philosopher Eric Voegelin who, in a phrase made famous by William F. Buckley Jr., decried the liberal impulse as an attempt to “immanentize the eschaton,” or to create a heaven on earth. The often spiritual nature of the environmental movement; the quasi-messianic treatment of Martin Luther King Jr.; Bill Clinton’s invocation of “covenants” with

the American people; Hillary Clinton’s hibernating “politics of meaning,” which claimed to redefine what it meant to be a human being in the post-modern world—all of these are examples of what Voegelin would describe as the neo-Gnostic effort to make the hereafter simply *here*.

This is all the inevitable consequence of a political movement that deliberately turned its back on philosophy and its own intellectual history. A movement without ideas must be driven by *something*, and if ideas and principles aren’t it, what’s left is a stew of emotional and quasi-religious notions about “doing good.” Well before the current bout of liberal self-flagellation, E.J. Dionne noted in *Stand Up Fight Back* that “liberals and Democrats tend not to view themselves as the inheritors of a grand tradition. Almost on principle, they are suspicious of such traditions, of too much theorizing, of linking themselves too much to the past.” Of course, liberalism doesn’t lack intellectual giants—Herbert Croly, John Dewey, Reinhold Niebuhr—but, Dionne concedes, “not one of them is routinely celebrated by today’s liberals.”

Yesterday’s liberals didn’t revere them much either. Compare, for example, the gaseous, solipsistic spirit of the Port Huron Statement—which famously launched the New Left and is still revered by liberals today—to the matter-of-factness of the Sharon Statement, which signaled the beginning of conservative youth activism. The former begins, “We are people of this generation, bred in at least modest comfort, housed now in universities, looking uncomfortably to the world we inherit.” It drones on like that for 50 pages. The Sharon Statement was designed to rally the budding righties of Young Americans for Freedom, who proudly wore buttons proclaiming, “Don’t Immanentize the Eschaton!” It begins, “In this time of moral and political crisis, it is the responsibility of the youth of America to affirm certain eternal truths.” The whole document runs less than 370 words. Such brevity is possible when you take it as a given that most of the important things have already been said.

Liberals tend to deride conservatism for its faith in dogma. But the reality is that liberal dogma is settled while conservative dogma remains a work in progress.