

APA Newsletters

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APA NEWSLETTER ON

Teaching Philosophy

Tziporah Kasachkoff & Eugene Kelly, Co-Editors Fall 2001

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LETTER FROM THE EDITORS

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This Fall 2001 edition of the *APA Newsletter on Teaching Philosophy* offers three articles of interest to teachers of philosophy.

The first article, John O'Connor's "Philosophical Humor, Lewis Carroll, and Introductory Philosophy," discusses how Carroll's celebrated children's books, *Alice in Wonderland* and *Through the Looking-Glass*, can make classroom presentations and discussions of classical philosophical questions more lively. Carefully referring selected passages from the *Wonderland* books to readings from the philosophical canon in which the questions raised by Carroll's characters are analyzed, Nunan brings his students to the practice of reflecting upon the abstract questions of philosophy by means of the amusement and delight provoked by the childlike ruminations of the Carroll characters. Convinced of the virtue of introducing students to philosophy through humor, O'Connor is yet aware of the limits and the possible pitfalls of his efforts, and he concludes his paper with some reflections on how his uses of these materials could be modified and improved.

Richard Nunan's article, "The 2000 Presidential Post-Election Campaign: A Cautionary Case Study on Civic Virtue and Democratic Theory," offers ideas, a chronology, and a bibliography to teachers desiring to incorporate a study of the events surrounding the outcome of the last Presidential election into a course on political philosophy. Believing that it is a responsibility of philosophy teachers to make students aware of conceptual issues arising out of political processes, and perhaps motivating an engagement in them, Nunan describes his classroom experiences with the material contained in his article. He grants that some of his choices of the material contained in the chronology may have been influenced by his own political commitments, and he describes those commitments briefly. The Editors have not vetted the material contained in the author's chronology of events following the election. Readers who discover errors or important omissions will please inform the Editors, and

we will check the matter and print a correction in the next *Newsletter* if necessary. Professor Nunan's entire chronology, and a new appendix summarizing the *Miami Herald's* post election recount, will be contained in the copy of the article posted at the APA's website; the address is cited in the printed article.

The third article, William Cannon's "Levels of Socratic Irony and Escape from the Cave in Introduction to Philosophy," analyzes what the author calls "levels" of Socratic irony, with a view to demonstrating correlations between those levels and typical stages in the intellectual development of college students. The pedagogical implications of these correlations are developed by Cannon in terms of his classroom practice. He devises tests for determining, with respect to material in Plato's *Dialogues*, what stages a student has reached in his or her understanding and appreciation of the multiples ways readers may take in the Socratic communications, and, ultimately, of the multiple ways persons may grasp communications in their everyday lives.

We always encourage our readers to suggest themselves as reviewers of books and other material that they think may be especially good for classroom use. The names of the other books and materials we have for review are listed at the end of this *Newsletter*. Please remember that our publication is devoted to pedagogy and not to theoretical discussions of philosophical issues, and that should also be borne in mind when reviewing material for our publication. As always, we encourage our readers to write for our publication. We welcome papers that respond, comment on, or take issue with any of the material that appears within our pages...

The following guidelines for submissions should be followed:

- The author's name, the title of the paper, and full mailing address should appear on a separate sheet of paper. Nothing that identifies the author or his or her institution should appear within the body or within the footnotes/endnotes of the paper. The title of the paper should appear on the top of the paper itself.
 - Four complete copies of the paper should be sent.
 - Authors should adhere to the production guidelines that are available from the APA and that are published in the present edition of the *APA Newsletters* on the front inside cover.
 - All material submitted to the *Newsletter* should be available on Windows-readable computer disk, but do not send the disk with the submitted paper. The editors will request the disk when the paper is ready to be published. In writing your paper to disk, please do not use your wordprocessor's footnote or endnote function;
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all notes should be added manually at the end of the paper.

- All articles submitted to the Newsletter are blind-reviewed by the members of the editorial committee. They are:

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ARTICLES

Philosophical Humor, Lewis Carroll, and Introductory Philosophy

John O'Connor
William Paterson University

The philosopher Ludwig Wittgenstein once remarked that it would be possible to write a serious philosophical work that consisted of nothing but jokes. Whether or not this is true, humor can help to involve students in the study of philosophy, not only by making the subject more interesting to them, but also, if the humor is philosophically sophisticated, by showing students that philosophy oftentimes involves taking seriously questions that in ordinary life might be considered silly or even absurd. I find that students who can laugh at a philosophical joke already demonstrate a potential for philosophical understanding.

During four previous semesters, I included Lewis Carroll's *Alice's Adventures in Wonderland* and *Through the Looking Glass* among the required readings for my twelve sections of Introduction to Philosophy.

Lewis Carroll was the pen name of Charles Dodgson, who was a Professor of Mathematics at Oxford University in the 19th century. He published a number of scholarly writings in logic and mathematics, along with the two "Alice" books and an extensive variety of humorous prose and poetry, word games and puzzles. According to one source Lewis Carroll is

the third most frequently quoted author in the English language. While the Alice books are his most famous works, he did write two articles for *Mind*, the leading English philosophy journal at that time.

The choice of the two Alice books was easy. They are easy to read, contain a large number of memorable characters (the Cheshire Cat, the Hatter and the March Hare, the Queen of Hearts, Humpty Dumpty, Tweedledum and Tweedledee, and the Red Queen, among others), and include a number of observations and conversations that are almost stunning in the way that they mirror important philosophical arguments and insights. They continually call attention to the fact that language can be a source of misinformation and miscommunication (as well as information and communication) – a point made explicitly by such philosophers as Berkeley, Nietzsche and Wittgenstein. They require the reader to enter into a series of adventures that challenge commonsense ideas of space and time, cause and effect, sense and nonsense, and dreaming and wakefulness, which is just what good philosophy often does.

It is possible to allot the Alice books a separate section of the syllabus, as one does with a Plato dialogue or Descartes' *Meditations*. I decided, however, that it would be better to assign two chapters of *Wonderland* and then *Looking Glass* each week throughout the term. Informal polls in my classes indicated that students much preferred to read Alice as we went along, rather than all at once. Some said they read Alice first before trying to read the regular assignment, which could be on occasion fiendishly difficult. Others said that they read Alice after the other assignment, as a sort of reward.

Before each class I would reread the assigned chapters, and make a list of between 15 and 20 brief items. I would note where Alice went, whom she met and the gist of their conversations. I would also note any relevant philosophical happenings: paradoxical statements, word play and puns and similar items.

In addition I would prepare brief quiz questions on the Alice books (and on the other readings assigned for that class). The questions were not difficult, because I wanted to encourage the students to do the reading and reward them for their efforts. Many of the correct answers were only one or two words long. Some sample questions: Alice finds herself swimming in a pool of what? (Her tears.) Who was the lizard Alice kicked up the chimney? (Bill). Each quiz would consist of two to four questions on Alice and two to four questions on the other reading. The quizzes, which I gave in almost every class, counted for 10% of the final grade.

I would give the quiz at the beginning of the class by reading the questions aloud and allowing the students between one and two minutes to complete the quiz. The quizzes were collected immediately, and graded and returned at the next class. There were no make-up quizzes, although I did drop the three lowest quiz grades at the end of the semester and did not penalize students for authorized medical absences. Once students learned that the quiz for, e.g. an 11:00 class would be given exactly at 11:00 o'clock, the number of students who came on time increased dramatically.

After the quizzes were collected, I would ask students if they had noted anything funny, interesting, or perplexing in the Alice reading, or if they had any questions. About half the

time one or more students responded and we had brief discussions of the points they raised. Then I would go quickly through my list of items, making sure that students were following the story and, more importantly, stressing the philosophical points and plays on words. Often I would ask the students questions such as “Why weren’t the dishes washed at the tea party?” Usually one or more students (and occasionally almost the whole class) would explain that Time was angry at the Hatter and just stopped at six o’clock – tea-time. Since it was always tea-time, there was never time to wash the dishes.

One class favorite was the passage in which the King of Hearts tried to remove Alice from the trial of the Knave of Hearts. He cited “ ‘Rule Forty-two. *All persons more than a mile high to leave the court*’ ”. When Alice protested that the King had just invented the rule, the King replied that it’s “the oldest rule in the book,” to which Alice appropriately responded that if it is, it should be rule number one.

I found that when discussing such items the students would often end up explaining the jokes to one another.

On occasion I would take a more substantial amount of time to explain a particular fallacy or paradoxical claim or larger philosophical point, and, where appropriate, link it to topics considered in the non-Alice part of the course. Some specific examples are presented below.

At the end of the first semester during which I assigned the Alice books, I asked students to submit anonymous written statements on whether or not they would encourage me to continue the assignment. Of the 85 who responded, 83 said yes.

In his recent review in *The New York Times* of Martin Gardner’s *The Annotated Alice*,¹ Adam Gopnic makes the following observation about *Alice’s Adventures in Wonderland* and *Through the Looking Glass*:

We return, therefore, to the original puzzle: why does this book work so well, better, even, than the other books Gardner has annotated? Perhaps it is because “Alice” is what literary theorists call – or if they don’t yet, they ought to – a “hub” book for modern thought, in the same way that Memphis is the hub airport for modern packages. Everything flies into it, and mostly everything flies out of it. Carroll deliberately packed it with everything he thought about, and everything in it has the life of an idea: Victorian piety in parody form, mathematical and logical speculation, bits of philosophy – even the sentiments are intellectualized, made strange. Ideas fly out, because ideas flew in. (Very few books – perhaps only “Gulliver’s Travels” in the 18th century and “Ulysses” and “Finnegans Wake” in the 20th – are hub books of quite this kind, and in Joyce one can still feel that the flights out have all been canceled because of fog.)²

What Gopnic refers to as “bits of philosophy” have stimulated lots of philosophers to mention Alice in their writings. Peter Heath, in *The Philosopher’s Alice*,³ published in 1974, lists the names of close to fifty philosophers who quote or allude to Alice, and notes that, at that time, the list was “only a beginning.” Presumably, twenty-seven years later, the list would have hundreds of names.

In what follows I hope to demonstrate how teachers of philosophy can put those “bits of philosophy” to service in introducing their students to significant philosophical arguments, distinctions, and ways of thinking. I will also attempt to show that using the Alice books to supplement traditional introductory course materials not only provides students with an accessible, entertaining, and at times delightful way to become acquainted with philosophy, but also, on a more subtle level, introduces them to philosophical humor.

Teaching an introductory philosophy course provides the instructor an opportunity to acquaint students with important philosophical distinctions and topics “along the way,” as well as to provide them with a more comprehensive understanding of some significant philosophical views. To indicate how valuable the Alice books can be in carrying out these activities, I will give three instances drawn from my courses.

A) Consider the distinction, stressed by pragmatists and positivists among others, between a disagreement concerning a matter of fact and one that is “merely verbal.” A famous instance of this distinction is presented by William James: A man wanted to catch a glimpse of a squirrel that was clinging to a tree. The squirrel was on the opposite side of the tree from the man. The man moved around the tree, but the squirrel, by moving at the same rate, kept the tree between itself and the man. When the man had traveled completely around the tree, he still hadn’t seen the squirrel. The question under consideration is: Did the man go around the squirrel or not? As James points out, the question is not one of fact, but of the meaning of the phrase “going around”. If “going around” means “being to the north, east, south and west” of the squirrel, the answer is yes. But if “going around” means “being in front, on one side, in back of, and on the other side of” the squirrel, the answer is no.⁴

Consider now the following exchange from *Alice’s Adventures in Wonderland*:

“Take off your hat,” the King said to the Hatter.

“It isn’t mine,” said the Hatter.

When I asked one class where the source of confusion lay, a student suggested that the King (mistakenly) thought the Hatter owned the hat he was wearing, and the Hatter’s response was designed to enlighten the King. Clearly the student took the issue to be one of fact: Did the Hatter own the hat he was wearing? But after further consideration the class reached the conclusion that the King was using the phrase “your hat” to mean “the hat you are wearing”, perhaps the normal sense of the words in such a context, while the Hatter was using it to mean “the hat that I own (as a personal possession, not as part of my business)”. This interpretation treats the confusion as “merely verbal.” I was able, I hope, to make clear the distinction in a way that was entertaining, at least to some students, without having to devote a significant amount of time to the matter, and without having to explain to the students why I was bothering to discuss the distinction. It just developed naturally in our reading of Alice.

B) Depending upon what materials the instructor uses in the course and the order in which those materials are presented, it may be possible to use passages from Alice to expand a point made earlier in the course. For example, in my opening lecture I spend some time discussing paradoxes, using the Liar Paradox and two examples from Lewis Carroll’s

non-Alice writings, one involving a crocodile and one involving training to become a lawyer.

The sentence “This sentence is false” always evokes some laughter when I present it after trying to convince students that “This sentence is in English” is true, and “This sentence is very long” is false. In my discussion I indicate that some philosophers have proposed the view that what is wrong with the paradoxical sentence (and indeed the other two) is that each refers to itself, but given time constraints I don’t go into any real discussion of metalanguages, the use-mention distinction, etc.

Consider the following passage, which we read near the end of the semester, from *Through the Looking Glass*:

“...The name of the song is called ‘Haddock’s Eyes.’”

“Oh, that’s the name of the song, is it?” Alice said, trying to feel interested.

“No, you don’t understand,” the Knight said, looking a little vexed. “That’s what the name is called. The name really is ‘*The Aged Aged Man*.’”

“Then I ought to have said ‘That’s what the song is called?’” Alice corrected herself.

“No, you oughtn’t: that’s quite another thing! The *song* is called ‘*Ways and Means*’: but that’s only what it’s called, you know!”

“Well, what *is* the song, then?” said Alice, who was by this time completely bewildered.

“I was coming to that,” the Knight said. “The song really is ‘*A-sitting On A Gate*’: and the tune’s my own invention.”

Once the students have read this, I use the occasion to point out that the idea of “levels” of language that the White Knight, in a sort of Marx Brothers semi-incoherent way, embodies in his discussion, offers a way to understand the proposed solution to the Liar Paradox that I had mentioned in my opening lecture. Now I take the time to discuss metalanguages and related topics. (I think this works better than attempting to lay out the details in the first class, before students have had a chance to get familiar with how philosophers think.)

I explain that by distinguishing among what the name of the song is called, the name of the song and the song itself, the White Knight is in effect drawing attention to the difference between talking about a thing (the song) and talking about its name. As mentioned above, one form of the Liar Paradox is generated by the sentence “This sentence is false,” which upon reflection is seen to be false if it’s true and true if it’s false, creating a paradox because no sentence can be both true and false at the same time.

Some philosophers have concluded that in talking about a thing (e.g., a song) we use what is called the object language, while in talking about words in the object language (e.g., the name of the song) we must ascend to a metalanguage. If we wish to speak about words in the metalanguage, we must use a metaphysics-metalanguage, and so on. The key point is that no meaningful sentence can be in two levels of language simultaneously. These philosophers argue that since the paradoxical sentence refers to itself it violates this principle of language and thus is really nonsensical. As a result it cannot be either true or false, thereby eliminating the contradiction. What is especially helpful is that the topic is raised in the context of reading Alice, and thus doesn’t require that the instructor interrupt

the regular assignments to pick up a loose end from the opening class.

To be honest, I have no way of knowing if this way of presenting the materials is more effective than doing it differently. All I can say is that it is more fun for the instructor, and presumably for some (or many) students.

C) The Alice books also provide an opportunity to the instructor to clarify the students’ understanding of classic philosophic texts and arguments. In my introductory classes I have the students read Descartes’ *Meditations*. Later in the semester in *Through the Looking Glass* we encounter Tweedledee and Tweedledum, who tell Alice that she is only a character in the Red King’s dream. Alice naturally objects, leading to the following exchange:

“I am real,” said Alice and began to cry.

“You won’t make yourself a bit realler by crying,” Tweedledee remarked: “there’s nothing to cry about.”

“If I wasn’t real,” Alice said – half laughing through her tears, it all seemed so ridiculous – “I shouldn’t be able to cry.”

“I hope you don’t suppose those are real tears?” Tweedledum interrupted in a tone of great contempt.

A number of students realize that Alice is in effect saying “I cry; therefore I am.” Although the *Meditations* doesn’t contain the sentence “I think, therefore I am” – it’s in the *Discourse* – it naturally came up in our earlier discussion of Descartes.

When I asked the students whether they thought Descartes would agree with Alice or Tweedledum and Tweedledee, I found (somewhat to my disappointment) that about half voted for Descartes and half for the two brothers. This result provided me with an opportunity to clarify Descartes’ view and to stress the sweeping nature of his doubt. It is true that Descartes thought he had established his own existence, and thus might be believed to sympathize with others trying to establish their own existence, at least following the sixth meditation. Nevertheless, some of the better students realized that, given the situation, Alice had no basis to claim to know that her tears were real, echoing in a way Descartes’ doubt about the existence of material objects. This provided me with an opportunity not only to clarify Descartes’ view, but also to stress the importance of realizing that a conclusion may be true but that unjustified premises do nothing to establish its truth.

Since the Alice books are so rich, it is likely that instructors who wish to introduce philosophical distinctions or clarify points raised earlier in the class will find several opportunities to do so, and to do so in a manner that is more vivid and memorable than might otherwise be possible. For example, there is a discussion involving the White King’s use of “Nobody” as a name, providing a good example of the point that surface grammar is not a reliable guide to referential structure. Humpty Dumpty’s claim that “When I use a word...it means just what I choose it to mean – neither more nor less,” raises in a vivid way the issue of the conventionality of language. The White Queen’s account of a world in which punishment precedes trial and trial precedes crime, provides a link to a discussion of utilitarianism and fairness, and her claim that “I’ve believed as many as six impossible things before breakfast” raises William James’ query as to whether or not what we believe is up to us. These are, of course, only examples. The Gardner and Heath volumes supply many more.

The Gardner and Heath volumes both contain the full texts of the two Alice books with extensive annotations. Heath focuses more on philosophical matters, while Gardner includes references to physics, mathematics, literature, Victorian society, and Lewis Carroll's life, among other things. Both are valuable as references for instructors, especially the latest edition of the Gardner work.

Some instructors might want to put the Heath and Gardner books on reserve for the course. Since the Heath book is currently out of print and the Gardner work is reasonably expensive, it is probably best not to try to use them as texts for the course. Fortunately several inexpensive paperback editions of the two Alice books are available.

Having emphasized the virtues of using the Alice books in an introductory philosophy course, I should point out two possibly negative consequences of such use, one minor and one more significant.

i) As mentioned previously I would give frequent in-class quizzes on assigned readings, including Alice. On those occasions when there were two assignments for a single class session: Alice and, e.g., Mill or Kant or Berkeley, I would find some students had read Alice and skipped the harder assignment. This way they could get at least a grade of 50 out of 100 with a minimum of work. (One way to deal with this would be to count the Alice questions as only one-third of the grade.)

ii) Even though the time devoted to the Alice books each class meeting was quite small – typically five to seven minutes (these classes met twice a week) – it did, during the first semesters I used Alice, have an impact on how thoroughly I could cover some of the other assigned readings. Some of the more subtle points concerning, e.g. utilitarian and deontological theories, were compressed or omitted, and student understanding was slightly diminished. My solution was to omit one reading from my usual syllabus. But occasionally the discussion stimulated by the Alice books threatened to impinge on the time needed to cover other material. I believe this is the sort of problem that many instructors would find to be an invigorating challenge.

On balance it is clear to me that the use of the Alice books made the course more interesting to teach, and, based upon the comments of several students, more interesting to take. But beyond that, I believe that introducing students to philosophy through humor gives them an opportunity to develop a deeper appreciation of the subject and perhaps also an appreciation of why some very bright and slightly odd people dedicate their lives to it. I think that would be a nice gift to give to our students.⁵

Endnotes

1. *The Annotated Alice: The Definitive Edition*. Introduction and Notes by Martin Gardner (New York: W.W. Norton, 2000).
2. Gopnic, Adam. "Go Ask Alice Again," *The New York Times Book Review*, (December 5, 1999): 60.
3. *The Philosopher's Alice*. (Edited by Peter Heath. New York: St. Martin's Press, 1974): 247.
4. James, William. "What Pragmatism Means." (from Chapter II of *Pragmatism*). In: *Classic American Philosophers*, edited by Max H. Fisch. (New York: Fordham University Press, 1996): 128-136.
5. The author would like to thank William Paterson University for sabbatical year support that made possible the completion of this paper.

The 2000 Presidential Post-Election Election Campaign: A Cautionary Case Study on Civic Virtue & Democratic Theory

Richard Nunan

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I have always believed that one of the benefits occasioned by introductory philosophy courses focusing on contemporary moral problems, or more broadly on ethics and political philosophy, is the opportunity they provide to instill a little civic virtue, or at least some political sophistication, in our undergraduate students. Just as our discipline can help students with their writing skills, which are hardly the exclusive responsibility of English departments, and their sense of historical perspective, which is not the exclusive responsibility of History departments, so too we can help make students more effective citizens, a task which should not simply be left up to our colleagues in Political Science. This does not mean we should be in the business of political indoctrination, of course, but it does mean we ought to try to wake students from their politically dogmatic slumbers, on the one hand, or indiscriminate political cynicism, on the other.

Because of my own philosophical interests, I often include some material on constitutional adjudication of social policy issues in my introductory ethics courses. From this experience I have learned how surprisingly little our students know about the way our political system is actually designed, or why its founders thought to design it that way. Given that many of our students won't ever even see the inside of an American Government classroom (just as many others never see the inside of a philosophy classroom), I do feel the responsibility to shed a little light in this area rather keenly. Thus, I am always looking for new material to use in this context, and of course the dispute over the 2000 presidential election in Florida was a natural magnet.

The dramatically illustrated peculiarities of the Electoral College, the way our antiquated machinery of casting ballots works (or doesn't), the procedural mechanics of ballot recounts, and of protesting or contesting election results, all serve as an occasion for raising fundamental questions about what we mean by democratic governance, and about the importance of civic virtue (or the frequent lack of it in our society, and its surprising, sometimes quixotic resilience).

I personally found the disjointed television and print coverage more than a little overwhelming. In order to make the post-election fracas amenable to more-or-less dispassionate philosophical reflection, it's necessary to get beyond the partisan heat of the rhetorical flourishes on both sides, sort out the bloomin' buzzin' confusion of variable chad-counting standards, dueling litigation factories, conflicting interpretations of election statutes and constitutional authority, and the ceaseless obfuscatory spin rhetoric that went on, full tilt, for over a month. The only way I could sort matters out for myself, and I hope for my students, was to sit down with a variety of print news articles, op-ed commentary, court opinions, and transcripts of oral arguments, in order to reconstruct a fairly detailed chronology of the sequence of events which unfolded during the 36 days between November

7th, 2000, election day, and December 13th (marking Al Gore's concession speech following the U.S. Supreme Court's effective termination of further debate the previous day), one that was long enough to encompass and enumerate the central facts, but still short enough to be digestible by any reasonably attentive and patient adult reader.

What I've come up with runs to 14 pages of typescript. It includes brief summaries of some of the major court decisions and the reasoning which informed them. It also includes an appendix summarizing the findings, in the order they were publicized, of the *Miami Herald / U.S.A. Today* effort to count both the undervotes and overvotes in all Florida counties after the election was concluded, and Bush had been declared the winner. This document is too long to incorporate in an *APA Newsletter* article, however. For interested readers, the editors have offered to post the full chronology on the APA's website for the *Newsletter on Teaching Philosophy*: <http://www.apa.udel.edu/apa/governance/committees/teaching/orc/newsletters.html>.

Appended to this article, readers will find an abbreviated chronology, covering the first 18 days of this 36 day period, to give you a sense of the level of detail. (The full chronology is just slightly more detailed with respect to the first half.) Following the abbreviated chronology is a selective annotated bibliography of some useful materials that have appeared on the Florida recount, January – June, 2001. Some items you may find useful as background reading, others you may wish to assign to your students to get the juices flowing (e.g., the Dworkin/Fried exchange appearing in the *New York Review of Books*, or Lani Guinier's article in the *American Prospect*).

I used this chronology, initially at least, in my Introduction to Philosophy course, as general background for a two-week unit devoted to an examination of the concept of democracy, as it is usually presumed to work in our society. In my course, the chronology is conjoined with some additional easily accessible background material culled chiefly from the *New York Times* and the *Miami Herald* – e.g., statistical data about Florida vote counting, both real and hypothetical, illustrations of hanging and dimpled chads, a drawing of, and some statistics about, the now infamous Palm Beach butterfly ballot, some relevant statutory language from both Florida and Texas election law. I also had my students read and discuss the complete text of *Bush v. Gore*, the U.S. Supreme Court's final word on the subject, and had them look to broader abstract principles about representative government, through a few of the *Federalist Papers*. (Some selections from J.S. Mill's *Considerations on Representative Government* might also be useful in this regard.) I also gave them a selection of op-ed pieces to read among (both good ones and bad ones, in my opinion), with an assignment to select one of them on which to write a critical two-page analysis when we're finishing up this segment of the course. I was particularly interested in students' reactions to the following issues:

1. To what extent should we insist on citizens following instructions properly in order to have their ballots counted?
2. What did students think about the Democratic Party's "count every vote" rhetoric and the Republican Party's charges of unfairness directed against the Democrats, and their more general arguments that manual recounts were somehow illicit? Did any of these arguments have moral force, given the circumstances surrounding the recount?

3. What did students think about the behavior of the Florida legislature, in light of the Constitutional authority afforded state legislatures in presidential elections?

4. What did students think about Alexander Hamilton's characterization of the courts as the least dangerous branch of government, in light of the Florida Supreme Court's decision to count all the undervotes cast in Florida, and the U.S. Supreme Court's decision to shut that recount down? Had either court "done right"? Why or why not?

5. What did students think about the public reaction during the 36-day recount process? What about after the U.S. Supreme Court handed down its opinion in *Bush v. Gore*? What does all this say about us as citizen-voters? Do we need to worry about having a nation better educated in citizenship, or would that make any difference?

Responses to these questions were quite interesting. I was especially struck by student reactions to both (1) and (2). Many students expressed the view that voters who failed to follow instructions to the letter deserved to have their ballots discarded. When I gave them my imitation of a doddering octogenarian trying to fill out a punch card ballot with 29 people standing in line behind him, it may have given them some pause, but I'm not sure I persuaded many of them. Assigning Lani Guinier's article (see bibliography), which I hadn't read at the time, would I think be quite a useful foil for students in this regard, as would a detailed discussion of the concept "intent of the voter", and its core importance in a democratic system. (Think, e.g., about the educational and economic elitism exhibited in the conviction, expressed in some post-election op-ed pieces, that citizens who can't follow voting instructions very well are unlikely to have political views deserving of the light of day.)

I suppose I should not have been surprised, even after assigning the chronology, that students tended to react to (2) largely along party lines. Students who thought of themselves as Republicans (we have a good many at the College of Charleston) were still pretty confident, at least at the outset of discussion, that Al Gore was trying to perpetrate a swindle on the American people, while the Republicans were merely trying to secure an honest election result. With some exceptions on both sides, the perceptions were frequently reversed for students who thought of themselves as Democrats. Students' general tendency to world-weary cynicism rather than outrage is also, I suppose, understandable, given the difficulty individual citizens have in effecting any real change in the political juggernaut that is our system. But more than anything else, I think events in Florida illustrate the need for change in our voting methods, and in citizen participation in the political process. They also illustrate how relatively small changes (in balloting technology, in voter education, in increased registration of under represented and disaffected minorities [including convicted felons who have completed their sentences?], and in the availability and nature of judicial remedies for disenfranchisement) have the potential to make huge differences, not only in election outcomes, but even in the behavior of our political leaders, and the types of political leaders we attract to the fray.

The chronology could, I think, be easily adopted for use in a more advanced course in political philosophy or

philosophy of law. Like all such chronologies, however, it is bound to be somewhat iconoclastic in its perspective, not only because I've had to be fairly selective about what to include, but also because I assume that my own political biases have colored my commentary to some degree. So for the sake of truth in advertising, I should confess some of my own prejudices at the outset.

Like everybody else, I think there were heroes and villains in this morality play. The heroes in my version of the story tended to be more or less non-partisan: the Election Canvassing Boards of Broward, Palm Beach, and (especially) Volusia Counties. I do not fault the Broward Board for opting for a broad standard for manual recounts (dimpled ballots included), nor the Palm Beach Board for going with a narrow one (dimpled ballots excluded [mostly]). It seems to me that, given the badly drafted election law with which they were all saddled, there were legitimate reasons for each decision. (The Florida Legislature, on the other hand, deserves no praise for drafting such misbegotten legislation in the first place.) The election officials in Seminole and Martin Counties, abused by the Democrats, were probably also doing the best they could to try to enfranchise as many voters as possible, when allowing Republican Party officials to rectify errors on absentee ballot applications. I also think the Florida Supreme Court, so thoroughly vilified by the Republicans, sincerely attempted to function as an honest broker in applying the principle that everyone else was talking about, but no one else seriously interested in: that ballots *should* be counted in whatever (consistent) manner was most likely to reveal the intent of the voter.

A complete catalog of villains would be very long indeed. And of course there is a question about degree of villainy, but such cardinal rankings are likely to be too much influenced by one's own partisan leanings. Suffice it to say that I think neither Gore nor Bush behaved well – Gore because his “count every vote” campaign was so patently and sanctimoniously hypocritical, since it was restricted to only four Florida counties. And Bush? Well, he appointed James Baker to disseminate misinformation about the accuracy of manual recounts as devices for accurately capturing the wills of the voters, and to malign the Florida officials charged with the task. For both campaigns, the primary focus, if not the exclusive focus, was on winning, not on ascertaining the views of the electorate. (A question for democratic theory arises here: should we condemn such behavior, when the electorate is so evenly split anyway?)

I would also single out both Katherine Harris and the Republicans in the Florida Legislature for noteworthily bad behavior, both textbook cases of legally permissible, but morally repugnant, abuses of political power, in my opinion. And finally, in *Bush v. Gore*, I think the U.S. Supreme Court has come up with a nicely unambiguous example of exercise of raw judicial power in the cause of conservative ideology – a good deal more unambiguous a case of judicial activism than *Brown v. Board of Education* or *Roe v. Wade* ever was, for the liberal wing of the Warren and Burger Courts, respectively.

In the chronology, I've tried to keep these prejudices at bay as much as possible, but I certainly haven't entirely succeeded. So for those of you who don't share my perspective, but may yet have some use for the chronology, forewarned is forearmed!

Chronology: 2000 Presidential Election

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Nov 7 Election Day. At 7:50 pm EST, NBC projects Gore the winner of Florida, while Floridians in ten CST Panhandle counties still voting. (Claims were made after election that some Panhandle voters went home, thinking their votes no longer mattered.) Other commercial & cable news networks quickly follow suit. At 9:55 pm, CNN retracts its Florida projection for Gore; the other networks do the same within minutes.

Nov 8 Networks project Bush winner of Florida, and the national Presidential election, at 2:15 am, and then retract that projection about 3:45 am. During the interval, Gore first calls Bush to concede, then calls back to retract his concession, after an aborted trip to make televised concession speech before supporters in Nashville. (Gore was informed at the last minute that Bush's Florida lead had dropped gradually from 50,000 votes to less than 2,000.)

As the day unfolds, data emerging from Palm Beach County indicates that Pat Buchanan receives more than 3,000 votes in this heavily Democratic, Jewish, and black county, proportionately far in excess of his vote in other FL counties. Moreover, over 19,000 Palm Beach presidential ballots are disqualified for overvoting (two holes punched instead of one; most for Gore/Lieberman and Reform Party (Buchanan) tickets). This figure is also proportionately much higher than overvote percentages in all other Florida counties. An ill-conceived butterfly ballot design is blamed. (This ballot was designed and ultimately approved by Theresa LePore, Palm Beach County Supervisor of Elections, and a Democrat, after passing pre-election inspection by both Democratic and Republican party functionaries.)

Nov 9 Bush's Florida lead, pending automatic machine recounts required by Florida law (for elections with less than 0.5 % margin of victory) is 1,784 votes (less than a twentieth of a percentage point out of almost 6 million cast). Gore's national lead as of 5:00 pm EST is 201,596 votes, or a fifth of a percentage point out of over 101 million cast (with just over 3 million of those going to Ralph Nader & Pat Buchanan). Gore's Electoral College lead, not counting the still undecided states of Florida (25), New Mexico (5), and Oregon (7), is 255 to 246 (270 needed for majority).

In accordance with Florida election law, the Gore Campaign asks for manual recounts in three south Florida counties: Broward, Miami-Dade, Palm Beach. (Under Florida law, the decision whether to proceed with such recounts is up to local county election boards.) Voters angry over the butterfly ballots used in Palm Beach County take to West Palm Beach streets in peaceful protest. In Volusia County, the Florida Republican Party responds to some voting irregularities (one of them involving vote tabulation software) by requesting a manual recount of one precinct on Nov.

8th, which was done. Today the Florida Democratic Party requested a full manual recount. The Volusia County Canvassing Board voted 3-0 (including one Republican member) to comply with the request, and maintains a united front thereafter against Republican pressure to desist with the full recount.

Nov11 Automatic machine recounts are now complete in most Florida counties, with Bush's margin down to 327 votes. The Bush campaign files the first lawsuit (in Miami Federal District Court: *Siegel v. LePore*), demanding that the manual recounts requested by the Gore campaign be prohibited by the Federal Court, on the ground that Florida election law unconstitutionally confers "arbitrary and unconstrained decision-making authority" on county election officials, concerning whether and how to conduct manual recounts. "If a manual recount gives effect to partially punched ballots, or counts ambiguous ballots based on the canvassing boards' subjective interpretation of voters' intent, it arbitrarily subjects voters in other counties to unequal treatment in violation of the 14th Amendment."

Nov12 A manual recount of all ballots (computer-readable "bubble sheet" or "mark sense" paper ballots) is now underway in Volusia County.

In a 2-1 vote, Palm Beach County announces that the result of a sample recount undertaken in four precincts produced enough discrepancies to warrant a full manual recount (a net increase of 19 votes for Gore, those four precincts representing about 1% of the total Palm Beach ballots). County election officials rely on standard established during a 1990 manual recount conducted in Palm Beach: "a chad that is hanging or partially punched may be counted as a vote, since it is possible to punch through the card and still not totally dislodge the chad. But a chad that is fully attached, bearing only an indentation, should not be counted as a vote."

At the end of the previous week, Gore brought in former Democratic Secretary of State Warren Christopher as point man for an 'every vote should be counted' PR campaign, and Bush brought in former Republican Secretary of State James Baker to lead a 'machines are more reliable vote counters than people' counter-PR campaign. As part of this strategy, Baker also impugns the integrity of south Florida county election board officials with his oft-repeated remark on this Sunday's edition of *Meet the Press*: "[hand recounting] opens up tremendous possibilities for something worse than human error, and for mischief." Also as part of this strategy, Baker repeatedly claims that Gore doesn't want to stop counting votes until the count produces the "right" result, a victory for Gore.

Nov13 Florida Secretary of State Katherine Harris (Bush's FL campaign co-chair) announces that, ongoing manual recounts notwithstanding, she will enforce a FL election law deadline of 5:00 pm, seven days after election day for official certification of statewide vote, thus establishing which slate of presidential electors FL would send to Washington on Tuesday evening, Nov. 14th.

In response to Harris's anticipated announcement, Volusia County immediately files suit in Leon County State Circuit Court (Tallahassee), seeking a court order to compel Harris to include any revised manual vote recount submitted after 5:00 pm the following day. The lead plaintiff in *Volusia Co. v. Harris* is joined by Palm Beach Co., still engaged in its own recount, and the Gore campaign. (First entry of Gore campaign in litigation, although not as the primary instigator of a suit.)

Meanwhile, Miami Federal District Court Judge Donald Middlebrooks rules in *Siegel v. LePore* that the federal courts have no jurisdiction over the state election laws governing manual recounts.

Broward County undertakes a sample precinct hand recount similar to the one conducted by Palm Beach Nov. 11-12. After Gore gains only 4 votes out of 4,000 recounted (again approximately 1%), the Broward Electoral Canvassing Board votes 2-1 against doing full recount.

Echoing Baker's 'machines are better counters than people' PR campaign, and the Bush campaign's legal argument in *Siegel v. LaPore*, Bush advisor Karen Hughes asserts that: "because there are no uniform standards governing this manual recount in four heavily Democratic areas, the votes in these four selective counties are not being counted fairly or accurately. They are being counted subjectively and selectively."

Nov14 Over the weekend, Palm Beach's Electoral Canvassing Board had submitted queries to the Director of Florida's Division of Elections (Katherine Harris's subordinate), and to Florida's Attorney General Robert Butterworth (Gore's FL campaign co-chair), concerning the legality of their proposed manual recount of all precincts. In response to conflicting opinions issued first by Harris's office, and then by the Attorney General, the Palm Beach Board voted at 8:15 am to suspend the scheduled start of their county-wide hand recount, and wait for a FL Supreme Court ruling on the issue.

FL election law allows for county-wide manual recounts whenever a sample precinct manual recount "indicates an error in the vote tabulation which could effect the outcome of the election." According to the Harris opinion, "an error in the vote tabulation" means a counting error in which the vote tabulation system fails to count properly marked mark sense or properly punched punchcard ballots....Therefore, unless the discrepancy between the number of votes determined by the tabulation system and by the manual recount of four precincts is caused by incorrect election parameters or [vote tabulation] software errors, the county canvassing board is not authorized to manually recount ballots for the entire county."

According to Butterworth's opinion, "the Division's opinion...ignores the plain language of the statute, which refers not to 'an error in the vote tabulation system' but to 'an error in the vote tabulation.'...The error in vote tabulation might be caused by a mechanical malfunction in the operation of the vote counting system [the Harris reading of the statute], but the error might also result from the failure of a properly

functioning mechanical system to discern the choices of the voters as revealed by the ballots.”

Shortly before noon, Miami-Dade agrees to undertake a partial hand recount similar to the one conducted by Palm Beach Nov. 11-12. But by 9:00 pm, after a manual recount of three sample precincts yields only 6 additional votes for Al Gore (and after Harris’s certification of machine-counted votes), Miami-Dade Electoral Canvassing Board votes 2-1 against doing full recount.

Shortly before 1:00 pm, Judge Terry Lewis rules in *Volusia Co. v. Harris* that FL law does require Katherine Harris to go ahead and certify results at 5:00 pm this same day. Lewis also rules, however, that Katherine Harris is wrong in her additional claim that she:

“is likewise required by law to ignore any untimely received returns unless the untimeliness is caused by a hurricane or other act of God....A reading of the entire Election Code suggests a legislative intent to balance the desire for accuracy with the desire for finality. By concentrating on the [seven-day certification] deadline imposed by §102.112, the Secretary has come down hard on the side of finality. This interpretation ignores, however, §102.166, which gives to the county canvassing boards the authority to authorize a manual recount....Depending on when a request is [legally] made and then acted upon, it is easy to imagine a situation where a manual recount could be lawfully authorized, commenced, but not completed within seven days of the election. The Secretary of State responds that the authority to authorize a manual recount is subject to the requirement that such recount be done and the results certified no later than the deadline imposed by §102.112. This would mean, however, that only in sparsely populated counties could a canvassing board safely exercise what the Legislature has clearly intended to be an option where the board has a real question as to the accuracy of the vote... Accordingly, it is ordered...that the Secretary of State is directed to withhold determination as to whether or not to ignore late-filed returns, if any, from plaintiff canvassing boards, until [she has exercised] due consideration of all relevant facts and circumstances consistent with the sound exercise of discretion. In all other respects, the motion for temporary injunction is denied.”

At 7:40 pm, Katherine Harris certifies FL election in accordance with deadline under state law. Volusia is the only county to have completed its manual recount at this time. Bush’s lead is down to 300 votes. In response to Judge Lewis’s decision earlier in the day, Harris indicates that she is willing to consider written explanations of the requests for delays in final vote submission from Palm Beach, Broward, and Miami-Dade, but that those explanations must be submitted by 2:00 pm Nov. 15th.

Nov15 In the morning, Palm Beach’s Electoral Canvassing Board votes again to wait for a Florida Supreme Court ruling as to whether it has the legal authorization to proceed with a manual recount. But Broward County reverses its earlier 2-1 vote against doing a full recount, after Judge Robert Lee, a Democrat and Chair of the Canvassing Board, switches his vote. (The lone Republican on the Board continues to oppose the full recount.) Bush supporters accuse Lee of caving into pressure from the Gore camp, but Lee himself claims he has not been contacted by the Democrats, and that he switched his vote in reaction to the FL Attorney General’s advisory opinion issued over the weekend. The Federal Court of Appeals in Atlanta (11th Circuit) agrees to hear Bush’s appeal of *Siegel v. LePore*, the original case in which he requested that the manual recounts requested by the Gore campaign be prohibited by a federal court order.

The Florida Supreme Court declines Katherine Harris’s request to consolidate and hear all 11 voting-irregularity lawsuits pending by Democratic voters in various parts of the state, and also declines Gore’s request to set standards for conducting recounts of punchcard ballots, so that Republicans will no longer be able to use the excuse that the manual recounting decisions are hopelessly subjective. Instead, the Court remands the lot back to the various lower courts in which the various lawsuits originated.

During evening news time on the East Coast, Gore schedules a brief televised announcement offering to end all litigation, and abide by the manual recount results, if Bush agrees to stop interfering with the recounts in Palm-Beach, Broward, and Miami-Dade Counties. He also offers to join with Bush in a request for manual recounts in all 67 counties. Bush appears on television around 10:00 pm EST and, despite the equal protection rhetoric of pending Bush litigation, declines both offers, after surrogates dismiss them as “nothing new” from the Gore camp during the intervening period. Similarly, despite the ‘count every vote’ rhetoric of the Gore PR campaign, Gore makes no unilateral effort to call for recounts in all 67 counties. By Katherine Harris’s 2:00 pm deadline, Palm Beach & Broward Counties submit their arguments for requesting certification of amended vote tallies in the presidential race, including in their explanations the delay caused by the Secretary of State’s own legal opinion (from the Director of the Division of Elections) that such recounts were “unauthorized”. Miami-Dade also submits a letter, requesting only that the 6-vote net increase in Gore’s tally be added to Miami-Dade’s total (from the sample recount completed the previous evening). Around 9:00 pm, Harris refuses all three requests, stating only that “The reasons given in the requests are insufficient to warrant waiver of the unambiguous filing deadline imposed by the Florida Legislature.” She declines to elaborate or answer questions from reporters.

Nov16 The Florida Supreme Court authorizes Palm Beach to resume its full manual recount, and Broward to continue with the one it began yesterday. Palm Beach finally commences its recount in the evening.

The Bush campaign decides not to contest close vote in Iowa by today's filing deadline, and indicates that it is unlikely to contest results in any of the other close states in Gore's camp (New Mexico, Oregon, and Wisconsin). (A sixth close state, New Hampshire, fell Bush's way by a somewhat larger percentage margin.) This decision is based at least partly on the fact that the Bush campaign has taken the position in Florida that manual recounts are unreliable, so it would undermine the PR campaign there to take a different position in Iowa. It is also the case, however, that Bush would have to contest and win the three largest of these states in order to secure enough electoral votes to offset a Gore win in a contested Florida election. (New Mexico, where Bush is the closest, wouldn't help unless he were to win the other three challenges, because it has only 5 electoral votes.) I.e., Electoral College politics make Bush's prospects a real long shot if all close states are to be contested. The current vote margins in the relevant states are: Iowa (7 electoral votes) – 4,130 vote lead for Gore, out of 1.3 million cast (three-tenths of 1% margin); New Hampshire (4 electoral votes) – 7,282 vote lead for Bush, out of 570,000 cast (1.3% margin); New Mexico (5 electoral votes) – 380 vote lead for Gore, out of just under 1.2 million cast (three-fifths of 1% margin); Oregon (7 electoral votes) – 4,130 vote lead for Gore, out of 1.4 million cast (one quarter of 1% margin); Wisconsin (7 electoral votes) – 5,708 vote lead for Gore, out of 2.5 million cast (one-fifth of 1% margin).

Nov17 In the state Circuit Court in Leon County, Judge Terry Lewis rules in the ongoing *Volusia Co. v. Harris* case that Katherine Harris had not exceeded her discretionary authority when she rejected the requests for late emendations to the certified vote from the South Florida counties still conducting manual recounts. Later in the day, however, the Florida Supreme Court barred Katherine Harris from certifying a final statewide tally on the evening of the 18th, after the overseas absentee ballot deadline has expired, and agreed to hear appeal arguments concerning Judge Lewis's decision on Monday, November 20th.

Simultaneously, the 11th Circuit Court of Appeals in Atlanta (Federal Court, one level below the U.S. Supreme Court), upheld Donald Middlebrook's November 13th ruling, in *Siegel v. LePore*, that the federal courts have no jurisdiction to stop recounts implemented via state election laws.

Meanwhile, citing the Florida Supreme Court's authorization of manual recounts in Broward and Palm Beach yesterday, one of the Miami-Dade Electoral Canvassing Board officials switches her vote on the full manual recount, so the Board now has a 2-1 majority for going ahead with the manual recount (although the recount does not actually commence until Monday, the 20th).

Nov18 Bush's lead increases to 930 in FL, after overseas absentee ballots are added to total Harris certified on Nov 14 (in accordance with the deadline specified in FL absentee ballot law).

Nov19 Up until now, Broward County election officials have been counting undervotes only when a chad is attached to its punchcard by at most two corners. But acting upon the legal advice of County Counsel, who thought this standard would not hold up in court, Broward County's Electoral Canvassing Board votes 3-0 this morning to start counting ballots with chads separated from their punch cards at just one corner, and also 'dimpled' chads—those chads which were indented by the stylus used to poke holes through punchcards, but not actually separated from the cards. In anticipation of this possibility, Broward election officials have all along been setting aside one-corner and dimpled chad undervote ballots, which they now begin reviewing and adding to their previous totals. (This applies, of course, only to those cards on which only *one* chad in the Presidential race has been so affected. Punchcards with two or more dimpled or loose chads are overvotes, and thus disqualified from being counted for either candidate.)

Nov20 Miami-Dade finally begins its manual recount (but suspends it two days later, when it becomes apparent that Katherine Harris will refuse to certify any revised county total not received by 5:00 pm Nov 26, the revised certification date imposed by FL Supreme Court [see entries for Nov. 21 & 22]).

In Palm Beach District Court, Judge Jorge LaBarga rejects the revote remedy sought in *Fladell v. Election Commission of Palm Beach Co.*, initiated by dozens of local Democratic voters who filed suit the previous week on grounds that the Palm Beach butterfly ballot was illegal and confusing, disenfranchising over 19,000 voters who inadvertently double-punched their presidential ballots because of the confusing layout of the candidates on facing ballot pages. The Gore campaign, although not a party to this lawsuit, did not discourage it, either. LaBarga rules that "Given the uniqueness of presidential elections and the undue advantage a revote or new election may afford one candidate over the other(s), it was the clear and unambiguous intention of the framers of the Constitution of the United States that presidential elections be held on a single day throughout the United States."

Nov21 Florida Supreme Court reverses Terry Lewis's District Court ruling, holding instead (unanimously) that manual recounts conducted thus far must be included in the Florida election certification. Ruling reduces Bush's lead to 652 votes. In addition, the Court compels the Secretary of State to accept manual recounts up until a new court-designated deadline: 5:00 pm, Sunday, Nov. 26th (if her office is open to receive them at that time), or 9:00 am, Monday, Nov. 27th (if not open on Sunday). In the words of the Court:

"Courts must not lose sight of the fundamental purpose of election laws: The laws are intended to facilitate and safeguard the right of each voter to express his or her will in the context of our representative democracy. Technical statutory requirements must not be exalted over the substance of this right. Based on the foregoing, we conclude that the authority of the Florida

Secretary of State to ignore amended returns submitted by a County Canvassing Board may be lawfully exercised only under limited circumstances.”

The Court does not however explicitly address a Gore campaign request for a specific statewide standard for manual recounts of punchcard ballots (a broad standard—allowing the inclusion of dimpled ballots, as is being done in Broward County, but not in Palm Beach). The closest the Court comes to this question is to quote with approval a 1990 case, in which the Supreme Court of Illinois ruled that a recount requiring a chad to be either fully detached or “hanging”—detached enough to swing out (i.e., detached on at least two corners)—would “set too rigid a standard” for voting intent:

“This Court should not, under the appearance of enforcing the election laws, defeat the very object which those laws are intended to achieve. To invalidate a ballot which clearly reflects the voter’s intent, simply because a machine cannot read it, would subordinate substance to form and promote the means at the expense of the end. The voters here did everything which the Election Code requires when they punched the appropriate chad with the stylus. These voters should not be disenfranchised where their intent may be ascertained with reasonable certainty, simply because the chad they punched did not completely dislodge from the ballot.”

Nov22 Bush Campaign appeals both the 11th Circuit’s ruling that Federal Courts do not have jurisdiction to bar hand recounts in Florida (in *Siegel v. LePore*, handed down on Friday, November 17th), and the Florida Supreme Court’s ruling yesterday (*Bush v. Palm Beach Co.*), to U.S. Supreme Court.

Florida’s Republican legislators, angry about the Florida Supreme Court’s ruling, vow to reclaim their Constitutional authority to select Presidential electors, and appoint a Bush slate anyway, under cover of the argument that Florida’s voters should not be disenfranchised because legal wrangling may prevent clear certification of a slate of electors until after the national certification deadline (December 12th, for an “unchallengeable” certification [which can in fact be challenged in the courts, although perhaps not in Congress], or December 18th, the federally-mandated deadline when electors must be installed in order to cast their votes). [Never mind that the Legislature may thereby effectively disenfranchise a *majority* of Florida’s voters, depending on the nature of the (currently unknown) true FL presidential vote count.]

Nov23 In order to meet the new Sunday-night deadline (just four days away) Miami-Dade election officials first decide to count only the 10,750 ballots rejected by machine count as having no clear presidential selection (out of over 650,000 ballots cast county-wide). [These are undervotes, as distinct from overvotes—two or more presidential selections, which don’t get counted because voter intent is undeterminable in

such cases.] But after an orchestrated and angry demonstration protesting this decision (conducted by Republican Congressional staffers shipped in by the G.O.P. for the purpose of intimidating the Electoral Canvassing Board into “seeing things their way”), the Miami-Dade Canvassing Board votes unanimously to call off the entire recount, on the grounds that it would be unfair to count some votes manually, but not others. The Gore campaign immediately files suit in the Florida Supreme Court to get the recount resumed—at least for the ten thousand undervotes. At this point, all the votes from 99 out of 614 precincts have been manually recounted, yielding a net increase of 157 votes for Gore.

Nov24 Despite the fact that legal experts gave Bush’s Supreme Court appeal a slim chance of even being heard, today the U.S. Supreme Court grants certiorari to hear arguments in *Bush v. Palm Beach Co.*, concerning two appeal issues presented there. First, the Bush campaign argued that the Florida Supreme Court created new law when it interpreted the state’s election law to require that late-filed returns be counted rather than “ignored”, as one section of the state law specified, and when the Court set Nov. 26 as the date for certification, rather than Nov. 14, as specified by state law. Bush lawyers contended that this pair of decisions runs afoul of Title 3, Section 5 of the U.S. Code, governing disputes over electors in presidential elections. §5 provides that in resolving a dispute, a state’s laws enacted “prior to” Election Day “shall be conclusive”, thus protecting a state’s electors against Congressional challenge. By creating new law, the Florida Supreme Court was exposing the resulting vote totals to possible Congressional challenge. Second, the Bush appeal argued that the state court’s ruling was inconsistent with Article II, §1 of the U.S. Constitution, which provides that electors shall be chosen by each state “in such manner as the legislature thereof may direct.” I.e., by creating new law, the state court was also interfering with the Constitutional prerogative of the state legislature in Florida.

In a decision which would later prove disastrous for the Gore campaign (see Dec. 12th entry), the Supreme Court declines, however, to review a third argument offered in the Bush appeal of the Florida Supreme Court’s decision: the argument that, by permitting one candidate to demand selective manual recounts in *some* counties, Florida law subjects voters in other counties, where manual recounts are not conducted, to unequal treatment in violation of the 14th Amendment. The Supreme Court declines a second time to review this argument by denying certiorari for the other Bush appeal, made with respect to the 11th Circuit’s ruling in *Siegel v. LePore*, the original source of the Bush campaign’s equal protection argument.

Nov26 Katherine Harris recertifies Florida’s vote totals at 5:00 pm, including Broward County’s revised manual tally completed previous day, but refuses to include the revised Palm Beach manual tally, completed 2 hours later, or the partial Miami-Dade tally, abandoned the previous Wednesday. New Bush lead: 537 votes. The additional net gain for Gore in Palm Beach would have

been 215. Miami-Dade officials did not actually request that their partial manual recount (an additional 168 for Gore) be included in the certified tally. (There is a Fourteenth Amendment equal protection issue about partial recounts.)

Nov27 Gore campaign files a lawsuit (*Gore v. Harris*) in Leon County Circuit Court contesting result of Harris's certification the previous day, requesting that the 10,000+ machine undercount vote in Miami-Dade, and 4,000 undervote ballots in Palm Beach be counted, and the election returns amended accordingly. (The 4,000 Palm Beach ballots consist of undervote punchcards which the election officials had declined to count because the chads were either dimpled or still attached by three corners. The Miami-Dade undercount is approximately 9,000, according to the Gore lawsuit, allowing for inclusion of 20% of ballots already covered in partial manual recount—see below.) The Gore suit also requested that the 215 + 168 additional votes for Gore from Palm Beach's full manual recount and Miami-Dade's partial (20%) manual recount be added to amended election certification totals. Judge N. Sanders Sauls, appointed to the Circuit Court by a Republican governor, is randomly selected (by computer) to preside over case.

The Gore suit also requested the inclusion of 51 additional Gore votes in Nassau County, where election officials amended their Presidential vote tally to reflect the initial vote count (more favorable to Bush) rather than the machine recount mandated by Florida law and conducted the day after the election.

If the Gore contest of the election proves to be successful, Bush's lead would be reduced to just over 100 votes before any recounting of the 13,000+ remaining undervotes in Miami-Dade and Palm Beach Counties. Applying the standard used in Broward County, and extrapolating from the results of manual recounts in all three counties, a manual count of those remaining undervotes would almost certainly result in a Gore victory in Florida, by a margin of perhaps a thousand votes.

Nov28 Gore campaign declines to get involved with *Jacobs v. Seminole County Board of Elections*, a case in which a Seminole County Democrat filed suit to throw out 15,000 Seminole absentee ballots because election officials illegally allowed Republican workers to correct improperly completed absentee ballot applications from Republican voters. (It was a matter of poorly-designed application forms, which were themselves the fault of a company hired by Republican Party functionaries to print the absentee ballot application forms; Republicans argue [with some justice] that they were merely trying to correct their own error, so that legitimate voters would not be disenfranchised). The Gore team concluded that support for this lawsuit would undermine their 'every vote should count' PR campaign. But Gore does nothing to publicly repudiate or condemn the Seminole County lawsuit. Republicans move to combine the Seminole County case with *Gore v. Harris*, Gore's suit to have the remaining undervotes from Palm Beach and Miami-Dade counted and added to the certified Florida total. The purpose of the

Republican motion is a PR stratagem: try to link Gore with a case designed to exclude rather than include arguably legitimate votes. Judge Nikki Clark, presiding in this case, won't cooperate with the Republicans, and rules against the motion.

A similar case emerges today in Martin County (with over 9,000 absentee ballots in question), and leads to a similar lawsuit (filed on Dec. 1) by local Democrats (also without Gore campaign support). The two cases run simultaneously, with different judges presiding, and are both ultimately decided in favor of the Republicans in rulings made, coincidentally, on the same day (Dec. 8th), decisions subsequently upheld in the Florida Supreme Court.

Republican allegations that the electorate is fed up with Gore for prolonging the election are significantly undermined by a national New York Times/CBS News poll completed today (published on the 30th). Of those polled, 48% say it's too soon for any concession, while 42% think that Gore should concede, and 3% that Bush should. An even split existed among those polled (47% each) as to whether the Florida vote certification was fair and accurate. But the poll also indicated a partisan division among the electorate, mirroring the partisan behavior of the two campaigns, and sometimes reflecting opinions arguably as irrational as some of the post-campaign "spin" rhetoric. Thus, while nearly a third of Bush voters polled said they did not know which candidate got the most support from Florida's voters, and 8% of them conceded that Gore probably really won Florida, 89% of Bush voters nonetheless claimed that they regarded the certified Florida results as fair and accurate, and 83% of them thought Gore should concede.

Gore voters polled were more consistent in their views, but almost equally partisan: 77% of them thought that Gore should *not* concede, and an additional 5% thought that Bush should concede. Consistent with these numbers, 83% of Gore voters polled believed that the certified Florida results were *not* fair and accurate. The poll has a 3% margin of error.

Nov29 Florida Governor Jeb Bush announces that it would be an "act of courage" for the Florida Legislature to convene a special session to name 25 (Bush) electors, if the Gore campaign persists in contesting the certified result of the Florida presidential ballot. He indicates that he would be willing to sign such a bill.

Dec 1 Deferring to Judge Sanders Saul's preference to hear the arguments and rule in *Gore v. Harris* before any more vote-counting is done, the Florida Supreme Court rejects an appeal from the Gore campaign to immediately resume counting the 14,000+ undervotes from Palm Beach and Miami-Dade.

In a separate ruling also handed down today, the Florida Supreme Court upholds Judge LaBarga's rejection of the revote remedy sought in *Fladell v. Palm Beach Co.*, the butterfly ballot case, although the Supreme Court offered rather different reasoning for its ruling that LaBarga's original argument. The Court said the only remedies for a defective ballot were a revote or a statistical reallocation of the vote totals. Because of the drastic nature of those remedies, the

court said, a defective ballot must be “in substantial noncompliance” with election laws. “In the present case, even accepting appellants’ allegations, we conclude as a matter of law that the Palm Beach County ballot does not constitute substantial noncompliance.”

Dec 2 Testimony in *Gore v. Harris*, Gore’s contestation of Katherine Harris’s Nov. 26th certification of the Florida election totals in the presidential race, begins its two-day run for court-tv junkies in Sanders Saul’s Leon County trial court. An expert witness for the Gore side, explaining how the voting machines used with the punchcard ballots in Palm Beach and Miami-Dade could be subject to mechanical failures for various reasons, is effectively discredited by a Bush attorney on cross-examination. The consensus among legal experts: while some of the arguments for mechanical failure *might* be correct, others were simply implausible, and Gore’s expert witness didn’t have the evidence to support even the more plausible hypotheses, which were thus reduced to “mere speculation” through effective cross examination. A second Gore expert witness, testifying about statistical anomalies in the Palm Beach and Miami-Dade vote counts fares better on the merits, but Bush lawyers adroitly use his testimony to further undermine the first expert witness’s mechanical arguments by showing that his claims lacked firm statistical support.

As part of their attack on the Gore case for using a broad standard in counting the undervotes, Bush lawyers use their cross examination of Gore’s expert witnesses as an occasion to introduce a ‘recoil in horror’ theory of dimpled chads. They ask each witness (and continue with this strategy the following day) if it might not be possible that some prospective Gore voters, upon entering the voting booth and inserting the voting machine stylus in the hole marked for the Gore/Lieberman ticket, might then recoil in horror at the prospect of actually punching the stylus on through the ballot and voting for such a fundamentally repugnant candidate, and thus, in an act of political *coitus interruptus*, withdraw the stylus before making the fatal stab, leaving a dimpled chad behind. The idea behind this pretty fiction was to introduce some doubt about the reliability of dimpled chads as evidence of voter intent.

Dec 3 After a Bush expert who helped develop one of the punchcard voting machines used in South Florida counties testifies at length as to their steady reliability in the second day of *Gore v. Harris* testimony, a cross-examining Gore lawyer effectively ruins his credibility by producing an old patent application authored by the witness, concerning various improvements to be made on the voting machine, and detailing a variety of mechanical problems with the original edition. Ultimately, the Gore lawyer gets the witness to concede that, in close elections, a manual recount is not a bad idea. In making this claim, expert witness reflects a view widely shared by non-partisan voting experts across the country: manual recounts are almost always more accurate than machine recounts (although both have margins of error).

During closing arguments, one singularly fatuous lawyer supporting Bush’s side (on behalf of some Republican Florida citizens in non-South Florida counties) contends that Bush would not insist on manual recounts in the other 64 Florida counties because, as a Yale graduate, he was an honorable man. (Yale is also one of Bill Clinton’s alma maters.)

In an unrelated development, the *Miami Herald* publishes the results of a non-partisan statistical analysis it commissioned, indicating that, if all the state’s contested ballots had been error-free, Gore would have won by a 23,000-vote margin. Republicans brand the analysis as “statistical voodoo”.

Dec 4 U.S. Supreme Court issues its opinion in *Bush v. Palm Beach Co.*, vacating the Florida Supreme Court opinion, and remanding the case to the state court for further resolution. While that sounds bad for the Gore campaign on the surface, the Supreme Court’s opinion is really a non-opinion, offering the Florida Supreme Court some guidance on how *not* to frame it’s opinion, if it wants federal court ratification of its decision to force the inclusion of the manually counted ballots in the certified election results.

The Court raises two issues for further clarification by the Florida Supreme Court. First, it is unclear from the language of the Florida Supreme Court’s decision whether it is relying primarily on interpretation of existing Florida election statutes in its determination that the manual recounts ought to be included, or on Florida’s state constitution. In support of the thesis that election statutes are the issue, the Florida Supreme Court talks about the fact that the statute specifying the certification date as coming seven days after the election is clearly at odds with the statute allowing for manual recounts, which could not typically be completed in that time frame. Under this analysis, the Florida Supreme Court’s job is simply to resolve the statutory conflict by interpreting or weighting the statutes to eliminate the conflict. In support of this analysis, we find language in the Florida Supreme Court opinion referring to its reliance on “our traditional rules of statutory construction” and its understanding of “legislative intent.” On the other hand, the opinion also contains language referring to the Declaration of Rights in the Florida Constitution, arguing that the right to vote is “the preeminent right” included there. The full vindication of this right should therefore be the goal of the Court’s application of the “usual rules of statutory construction”.

Which of these two arguments is primary in the Florida court’s opinion? The answer to that question matters, at least for the more conservative U.S. Supreme Court justices, because they were sympathetic to the argument in the Bush appeal that the state court’s ruling was inconsistent with Article II, § 1 of the U.S. Constitution. Bush lawyers argued that, by providing that electors shall be chosen by each state “in such manner as the legislature thereof may direct,” this clause effectively prohibited state courts from invoking state constitutions to override legislatively enacted statutes, because the U.S. Constitution invests that authority solely in the state legislature, and takes

precedence over state constitutions. If, on the other hand, the state court is merely interpreting potentially conflicting election statutes, it is simply trying to execute the will of the legislature.

The second issue on which the U.S. Supreme Court calls for further clarification concerns the other argument in the Bush appeal, that Title 3, § 5 of the U.S. Code provides that, in a presidential election dispute, a state's laws enacted "prior to" Election Day "shall be conclusive", thus protecting a state's electors against Congressional challenge. The Court asks the Florida court for some assurance that it has taken this issue into account, since "a legislative wish to take advantage of the 'safe harbor' would counsel against any construction of the Election Code that Congress might deem to be a change in the law."

Of course the Florida Supreme Court can effectively address both of these problems by declaring that it is engaged in statutory construction designed to implement the true will of the legislature, and references to the Florida Constitution's Declaration of Rights are simply cited as part of a package of evidence offered in support of the judges' construal of that legislative intent. (I.e., Florida's legislators are presumably mindful of the provisions of the Florida Constitution, and of the popular will concerning the importance of effective exercise of the universal franchise, when they enact election statutes.)

The Supreme Court ruling is eclipsed later in the day, when Judge Sanders Saul hands down his ruling in *Gore v. Harris*. Contending that "there is no credible statistical evidence [offered by the plaintiff] and no other competent substantial element to establish by a preponderance a reasonable probability that the results of the statewide election in...Florida would be different from the result which has been certified," Saul denies Gore relief on every count: no additional votes will be included in the certified result from Palm Beach and Miami-Dade, no more manual recounts will be conducted in those counties, and neither will the contested certification from Nassau County be added to the total. The Gore campaign files an immediate appeal for reversal in the Florida Supreme Court, pointing out that it was not reasonable for Saul to draw this conclusion without even examining all the evidence he had at his disposal: specifically the 14,000+ contested undervotes from Palm Beach and Miami-Dade already transported to Tallahassee (by Saul's own order).

Dec 6 For the second time, after granting a rehearing and (at the Bush campaign's request) postponing oral arguments until the day after the Supreme Court handed down its ruling in *Bush v. Palm Beach Co.*, the 11th Circuit Court of Appeals upholds the November 13th Federal District Court ruling in *Siegel v. LePore*, that the federal courts have no jurisdiction to stop recounts implemented via state election laws.

Dec 8 The Florida Legislature convenes a special session this morning to draft and pass legislation certifying Bush electors regardless of what the Florida Supreme Court does (potentially precipitating a constitutional crisis in Florida, and nationally).

At 4:00 pm, in a 4-3 decision, the Florida Supreme Court issues its opinion in the appeal of *Gore v. Harris*, embracing the Gore argument that Saul made a judicial error by ignoring available evidence in drawing his conclusion: "The trial court has presented the plaintiffs with the ultimate Catch-22, acceptance of the only evidence that will resolve the issue but a refusal to examine such evidence." Based on this conclusion, the Florida Supreme Court ordered that the Bush lead of 537 votes be reduced to 154 by the addition of the net increases of 215 votes plus 168 votes already counted for Gore in the completed manual recount in Palm Beach and the partial manual recount in Miami-Dade. (The Court rejected the Gore campaign's argument concerning Nassau County.) More importantly, the Court ordered recounts of the undervotes in all counties where machines could not read significant numbers of inadequately marked ballots, some two dozen counties altogether, most of them jurisdictions using punchcard ballots, which averaged three times as many discarded undervote (and overvote) ballots as counties using optical scanner technology (computer-readable bubble sheets). The Florida Supreme Court again declines, however, to offer any judicially-mandated standard for counting undervoted punchcards, citing the Legislature's statutory authorization for county election officials to use their own judgment in order to ascertain "the clear intent of the voter" wherever possible.

Manual vote-counting for the Miami-Dade undervotes gets underway immediately. Election officials in some of the other affected counties start machine retabulation of votes with new computer software designed to screen for presidential undervote ballots. Meanwhile, the Bush campaign appeals to the U.S. Supreme Court, requesting an immediate stay of the Florida court's order, so as to halt the manual ballot counting, pending a subsequent hearing on the merits of their appeal.

Dec 9 In a 5-4 decision, the U.S. Supreme Court grants Bush's request for a temporary stay, and halts the Florida recount, until the Court has a chance to address the merits of the appeal. Liberal Supreme Court Justice John Paul Stevens writes a strongly worded dissent: "It is clear that a stay should not be granted unless an applicant makes a substantial showing of a likelihood of irreparable harm. In this case, applicants [Bush campaign] have failed to carry that heavy burden. On the other hand, there is a danger that a stay may cause irreparable harm to the respondents [Gore campaign] and, more importantly, the public at large because of the risk that the entry of the stay would be tantamount to a decision on the merits in favor of the applicants. Preventing the recount from being completed will inevitably cast a cloud on the legitimacy of the election."

In a concurrence to the stay, conservative Supreme Court Justice Antonin Scalia responds to Stevens charge as follows: "The counting of votes that are of questionable legality does in my view threaten irreparable harm to petitioner [Bush], and to the country, by casting a cloud upon what he claims to be

the legitimacy of his election. Count first, and rule upon legality afterwards, is not a recipe for producing election results that have the public acceptance democratic stability requires. Another issue...is the propriety, indeed the constitutionality, of letting the standard for determination of voters' intent—dimpled chads, hanging chads, etc., vary from county to county, as the Florida Supreme Court opinion...permits.”

Dec11 In their special session, committees in both chambers of the Republican-dominated Florida Legislature vote along party lines (with one defection among the House committee's Democrats), to pass identical resolutions to appoint the Bush electors by legislative fiat. The full House of Representatives is scheduled to vote on the resolution on the 12th, and the Senate on the 13th.

In the evening, in response to the U.S. Supreme Court's remand of *Bush v. Palm Beach Co.* [see Dec 4th entry], the Florida Supreme Court reissues its opinion in that case, stating that it was simply interpreting two conflicting election statutes issued by the Florida Legislature, not making new law or basing its opinion on the state constitution. Unlike the previous unanimous opinion, the revised opinion is 6-1, accompanied by a dissent from Chief Justice Charles Wells, who fails to explain why he now disagrees with an opinion on which he signed off less than three weeks earlier. He does however criticize the Court's timing, which comes several hours after U.S. Supreme Court Justice Sandra Day O'Connor complains (during oral argument for *Bush v. Gore*) that the Florida Supreme Court never bothered to address the Court's remand of the earlier case in its *Gore v. Harris* ruling on Saturday.

Dec12 Over the objections of infuriated Democratic House members who warn of a “constitutional train wreck” and contend that their Republican colleagues are trying to circumvent the will of the Florida voters, the Florida House of Representatives votes to appoint Bush's electors, with two Democrats joining the 79-41 Republican majority. Although the Florida Senate was expected to vote the same way the following day, that action is overtaken by events when, at 10:00 pm, the Supreme Court issues its opinion in *Bush v. Gore*.

After having previously declined to hear the Bush campaign's equal protection arguments (back on Nov. 24th in *Bush v. Palm Beach County*, the Bush appeal of the Florida Supreme Court's initial ruling, the one that compelled the Secretary of State to accept manual recounts up until Nov. 26th), the U.S. Supreme Court now embraces that argument, 7-2: the Court agrees that, by permitting one candidate to demand selective manual recounts in *some* counties, Florida election law subjects voters in other counties, where manual recounts are not conducted, to unequal treatment in violation of the 14th Amendment.

In a narrower vote, the Supreme Court goes on to conclude (5-4) that it is now too late to remedy this problem by conducting a state-wide manual recount of all previously uncounted presidential ballots. Souter and Breyer part company with the other five members of the majority on the remedy, arguing that, since

electoral votes are not due to be cast for six more days, there is still sufficient time for the requisite state-wide manual recount.

The five vote majority holds, however, that Dec. 12th is the relevant date, because any count completed subsequent to that date would be potentially subject to Congressional challenge, a development which the Florida legislature clearly wished to avoid: “Because the Florida Supreme Court has said that the Florida Legislature intended to obtain the safe harbor benefits of 3 U.S.C. 5, Justice Breyer's proposed remedy – remanding to the Florida Supreme Court for its ordering of a constitutionally proper contest until December 18 – contemplates action in violation of the Florida election code, and hence could not be an ‘appropriate’ order.”

In her dissent (one of four issued from the more liberal wing of the Court), Justice Ruth Bader Ginsburg points out that, by issuing a stay against the state-wide manual recount commenced five days earlier, the U.S. Supreme Court is itself complicit in the delay preventing the state-wide manual recount, cutting out four of those days by its own actions. To this argument, one might add that the current mess is of the U.S. Supreme Court's making in a much more fundamental way, because of its failure to signal to the Florida Supreme Court in a timely fashion that the Equal Protection argument would in fact pose a legal barrier to the selective manual recounts allowed by Florida law. It was fully *three weeks* earlier that the U.S. Supreme Court passed up that opportunity. [See Nov. 24th entry.]

Dec13 In a brief nationally-televised speech, Gore concedes the election to Bush, although also acknowledging that he does not agree with the Supreme Court's decision the previous day. At this time, Gore leads Bush in the national vote count, 50,158,094 to 49,820,518, a margin of 337,576, or roughly a third of a percentage point out of the total number of votes cast for all candidates. The electoral margin is 271-267, favoring Bush.

Jan 12 Al Gore presides over the counting of electoral votes, overruling the demands of the Black Congressional caucus, made one by one, to be recognized in order to protest the filing of Florida's electoral votes, on grounds that many minority citizens were disenfranchised during Florida's election. To give just two examples, newly registered voters in some predominantly black Miami-Dade precincts were turned away because their poll officials could not reach county election officials by phone to verify registration, while nearby hispanic (and therefore predominantly Republican) districts were furnished with lap-top computers to do the confirmation checks. Florida's statutory prohibition against reinstating the voting rights of ex-felons, has the effect of disproportionately disenfranchising potential black voters, as it does in 12 other states. In Florida alone, more than 400,000 felons who had completed their sentences and been released into society, could not vote in the 2000 Presidential election. Almost half of that group was black. Because no white Senator would rise to protest along with the Black Caucus, Gore had no obligation

to recognize the protesting Congressional Representatives, and George W. Bush was duly elected.

Appendix

Miami Herald Post-Election Recount Summary

On December 8th the Florida Supreme Court ordered that the manual recount of the Palm Beach County undervote be added to the certified total (after Florida Secretary of State Katherine Harris had refused to do so on the ground that the total came in two hours past the court-extended deadline), and required not only that the recount of undervotes be resumed in Miami-Dade, but also that county-by-county manual recounts be conducted wherever previously uncounted undervotes had been reported. But after the U.S. Supreme Court handed down its December 12, 2000 ruling in *Bush v. Gore*, reversing the Florida Supreme Court's ruling, and effectively appointing George W. Bush President by judicial fiat, without further examination of contested vote totals in Miami-Dade County or anywhere else, the *Miami Herald*, with financial and staff assistance from Knight-Ridder newspaper conglomerate and *U.S.A. Today*, employed B.D.O. Seidman, an independent accounting firm, and proceeded to conduct its own manual recount of undervotes and overvotes. The results appeared in a series of articles over a four-month period from mid-January to mid-May, 2001, summarized below.

The *Miami Herald* began with an investigation of what would have happened if the U.S. Supreme Court had declined to overrule the Florida Supreme Court's manual recount order. Under this scenario, a manual recount of undervotes was begun in Miami-Dade with Bush holding a 140-vote lead, calculated as follows.

On November 14, Harris certified the election results, as permitted under Florida law. At that time, only Volusia's manual recount had been completed, adding 98 votes to Gore's total, yielding a 300-vote Bush victory margin. On November 18, Bush's margin was increased to 930, in virtue of a 630-vote net gain from the absentee ballot totals. But the previous day the Florida Supreme Court ruled that Harris could not yet certify the final vote count, even with the absentee ballots, and on November 21, the Court ruled that the certification would be delayed until 5:00 pm, November 26. As a consequence, Gore gained 567 votes on Bush from the manual recount in Broward, and would have gained an additional 174 votes from Palm Beach's manual recount, if the Florida Court's order to include the Palm Beach recount had been allowed to stand. This would have meant that, going into the *Miami Herald's* manual recount, Bush would have held a mere 189-vote advantage over Gore. Given this background, the *Herald* published three sets of findings in February, April, and May.

February 26, 2001: *Miami Herald* announces that its recount of Miami-Dade undervotes is complete, and yielded a net gain of only 49 votes for Gore, under the loosest possible standard of review, where every ballot with a clearly discernable dimple or pinprick which could be assigned to a single presidential candidate was counted. This reduced Bush's lead to 140. Under what has come to be known as the Palm Beach standard (used, at least some of the time, during the original Palm Beach manual recount), Gore's gain would have been reduced to 26 votes. (This was a more stringent manual recount criterion, requiring a pattern of

dimples in at least two or more other races before treating a dimple as a valid vote in the presidential race.)

Although this result reflects only a small part of the *Miami Herald's* recount investigation, and only a small part of the Florida Supreme Court's order calling for manual recounts of all outstanding undervotes, the announcement quickly came to be perceived as firm evidence that Bush would have won anyway, had the U.S. Supreme Court not intervened. (The headline helped: "Dade Undervotes Support Bush Win".)

April 4-7, 2001: *Miami Herald* announces that its recount of all undervotes is complete, and produces two sets of results, based on three plausible standards for including undervotes. In addition to the 'loose' and 'Palm Beach' standards mentioned above, the *Miami Herald* team also considered a 'hanging chad' standard, requiring that a chad be detached by at least two corners (i.e., a chad hinged along one side) before treating a machine-tabulated undervote as a valid vote.

Each of these three standards have appealing features. The loose standard applies a principle of charity to the voter's behavior, on the assumption that, on average, a dimpled chad is more likely to represent the will of the voter than it is to represent a mistake, where a voter actually intended to vote for no candidate in the race where the dimpled chad appears. The Palm Beach standard effectively eliminates the 'voter mistake' hypothesis by requiring evidence supporting a 'light touch voter' hypothesis instead (the requirement that extra dimples appear in at least some other races). The hanging chad standard has the virtue of requiring that voters actually follow the principal instruction accompanying punch card ballots: use the stylus to punch all the way *through* the ballot card, an action which can still leave a hanging chad in place, given the relatively crude mechanics of the punch card voting system.

In light of the likelihood of occasional hanging chads with such a mechanism, a fourth standard, the clean punch standard, repeatedly advocated by the Republicans during the November/December recounts, was utterly unreasonable, if the point was to capture voter intent as accurately as possible. The clean punch standard requires the complete absence of a chad in one of the card punch holes designated for a presidential candidate. Such undervotes occur either because some defect in the machine scanner, card feeder, or card itself somehow prevented the scanner from reading the vote on that particular card, or because the card originally went through the machine with a chad that was only partially dislodged, but which fell free in virtue of the card's motion through the machine. Conceptually, there is no difference between this last group of clean-punch ballots, and ballots still bearing hanging chads. Both represent sincere efforts of voters to properly follow the instructions necessary to register their votes, thwarted by a faulty vote-recording system. The only defect in the behavior of these voters was to fail to follow an additional ballot instruction to make sure that there are no chads (or "chips") hanging from your card after voting. For this sin, advocates of the clean punch standard would insist that *some* of the voters who failed to follow the 'check for hanging chads' instruction should have their votes discarded, while other "luckier" voters guilty of the same venality (those whose hanging chads were knocked loose as a result of their passage through the counting machines) would have their votes counted – a clearer candidate for an

equal protection violation than the one actually countenanced by the U.S. Supreme Court.

Of the three reasonable standards for manual recounts, the hanging chad standard appears to be the most common one nationwide. But with the goal of most accurately capturing voter intent in mind, the loose standard is arguably the best of the three. The *Miami Herald* team speculated, as a result of their exhaustive investigation of ballots, that where dimpled chads were not systemic throughout a ballot (light touch voters), they were most likely to be the product of “practice runs”, with a pattern of voters improving their card punch skills as they progressed through the ballot, and generating dimpled chads only in the presidential race, in which they voted first, or the presidential race and one or two major races appearing early on the ballot.

For those who would prefer to err on the side of caution rather than on the side of charity in ascertaining voter intent, the Palm Beach standard seems a good compromise: wherever there is even the possibility of an inadvertent but aborted poke at a chad, discount the apparent vote. The hanging chad standard, on the other hand, seems overly legalistic and unsympathetic to inexperienced or illiterate voters, requiring them to follow written voting instructions to the letter in a flawed and relatively complicated voting system. As compared to the loose or Palm Beach standards, it would be very hard to argue that the hanging chad standard does a better job, on balance, of capturing voter intent.

Under each of these standards, the *Miami Herald* first examined the undervotes which had not been subjected to manual recount during the protest or contest phases of the election. These were the undervotes for which the Florida Supreme Court ordered a recount on December 8, and exclude the previously counted undervotes in Volusia, Palm Beach, Broward, the partial recount in Miami-Dade, and the results in several small counties which managed to complete their court-ordered recounts prior to the U.S. Supreme Court’s cessation order. In other words, if the Court’s order had been executed by December 12 (or, more reasonably, by December 18, the date set for the recognition of the Electoral College delegates in Washington), and all counties had *consistently* used one of the three standards in question (not particularly likely, either inter-county or even intra-county, given the evidence from the earlier recounts in Palm Beach and Broward [see discussion of second set of displayed figures below]), the state-wide victory margins would have been as follows:

Standard	Margin	Winner
Loose	1,665	Bush
Palm Beach	884	Bush
Hanging Chad	363	Bush

Ironically, the inverse correlation between Bush’s margin of victory and stringency of the standard of review is precisely the opposite of what Republicans expected. During the original recount effort, Republicans had repeatedly protested the looseness of the standards being applied, on the theory that Gore supporters were more likely to be incompetent voters than Bush supporters. The *Miami Herald* went on to point out that, under the preferred Republican ‘clean punch’ standard, Gore would have won by three votes under the Florida Supreme Court order.

It’s important to note that these numbers are misleading in two ways. First, the *Miami Herald* was conducting its recount under ideal conditions, when compared with the temporal and political pressure cooker environment experienced by the manual counters and the canvassing boards during the Palm Beach, Broward, and partial Miami-Dade recounts of November and December. By reviewing the undervotes previously subjected to manual recounts in those counties, the *Miami Herald* staff discovered that neither the counters nor the canvassing boards were able to maintain much consistency in adhering to their chosen standards. This phenomenon need not be attributed to any kind of conspiratorial scheme, but was rather the natural outcome of exhaustion, trying to complete a large job in a small time window, coupled with a desire to avoid confrontation with hostile partisan observers from the two major political parties (especially the Republicans, it would appear from the outcome [again, see discussion of next set of displayed figures]). In light of this evidence, the victory margins listed above would be well within the margin of error that one could anticipate, if the recounts were conducted at the time the Court ordered them. So there is no guarantee that, if a recount were permitted to proceed at that time, the end result would have corresponded particularly closely to the figures listed above. However, if the pattern of the actual recounts conducted is any guide (again, see below), the likely outcome would have favored Bush more heavily than the margins predicted by the *Miami Herald*’s research suggests for each counting standard.

Second, even if we accept the quite different assumption that, because of the relatively ideal conditions subsequently in effect, and a sincere journalistic ethos to “get the story right,” the *Miami Herald*’s predicted victory margins under the various standards are larger than the margin of error inherent in the B.D.O. Seidman and *Herald* staff’s own counting procedures, it’s still important to remember that this result is piled on top of nearly six million machine-counted ballots, which almost certainly contain some mistakes as well, augmenting the margin of error. Those mistakes, however, are now irretrievable. More importantly, the above figures are based exclusively on the 42,000 undervote ballots which would have been affected by the Florida Supreme Court order, leaving out still more *retrievable* errors among 22,000 undervotes already reviewed during the November/December official recounts. Those ballots are not reflected in the *Miami Herald*’s Bush victory margins listed above, because the Florida Supreme Court regarded those undervotes, primarily from Palm Beach, Broward, and Miami-Dade’s partial recount, as already settled by the previously conducted manual recounts. But the *Miami Herald* went on to review those votes as well, and the results shift rather dramatically in Gore’s favor under the two more reasonable standards of voter intent:

Standard	Margin	Winner
Loose	393	Gore
Palm Beach	299	Gore
Hanging Chad	352	Bush

The discrepancy between this set of figures, reflecting all 64,248 undervote ballots, and the earlier figures based exclusively on the 42,897 previously unexamined undervotes, illustrates two noteworthy features of the original vote count:

(1) contrary to Republican predictions, a charitable standard for assessing undervotes does not clearly favor Democratic candidates over Republican ones – Bush gained the most ground from the loose standard when Republican-leaning counties were assessed (included among the 43,000 votes), and Gore gained the most ground from the loose standard when the more predominantly Democratic Counties of Palm Beach, Broward, and Miami-Dade were reassessed (the extra 22,000 votes); (2) contrary to Republican complaints, when the loose and Palm-Beach standards are applied consistently in the three counties where they were used in the original manual counts, it turns out that the counters erred on the side of the Republicans – under those two standards, far more Gore votes than Bush votes were discarded by the counting teams or the canvassing boards.

May 5-11, 2001: *Miami Herald* announces that its recount of all overvotes is complete. Out of 111,261 overvotes, 97% proved to be genuine overvotes (voting for two or more candidates), but the remaining 3,146 represent clearly discernable votes for a single presidential candidate – most typically from listing Gore or Bush twice, once in the designated oval (on an optical scanner ballot), and a second time as a write-in candidate. Like the dimpled punchcard ballots, such ballots represent a clear failure to follow instructions. But voter intent, the Florida standard for manual recounts, is entirely unambiguous. Among these pseudo-overvotes, Gore secured a 682-vote advantage. Added to the undervote totals listed above, this result would mean that Gore held a slim majority of Florida votes under all three standards. But the original Bush lead had been reevaluated since the *Miami Herald* had made its previous pre-manual recount estimate back in April, increasing from 930 to 1,133. This change was the result of some minor changes in the absentee ballot totals, favoring Bush; some minor changes in small counties filing revised totals by the November 26 deadline, also generally favoring Bush, and mostly uncontroversial (save 51 Bush votes in Nassau County; unsuccessfully contested by Gore); and some additional Orange County undervotes discovered since the April story, favoring Gore).

In addition to the 203-vote increase in the initial Bush margin, 540 Gore votes had been subtracted from Broward County, the balance between Gore and Bush ‘clean punch’ undervotes, which collectively totaled over 1,000 votes for actual candidates, a figure an order of magnitude higher than the typical number of clean punch “undervotes” for actual candidates produced in comparably large punch card counties elsewhere in Florida (i.e., Duval (Jacksonville), 132; Hillsborough (Tampa), 96; Miami-Dade, 73; Palm Beach, 98; Pinellas (St. Petersburg), 41). The *Miami Herald* apparently reasoned that the number of clean punch undervotes in Broward was just too anomalous to be explained by the usual hypotheses of chads which had fallen out during machine counts, etc. (see earlier explanation), and chose to throw them all out of the count, on the theory that they might have already been counted once during one of the machine counts immediately following the election. It would have been more reasonable, perhaps, to run the cards back through the machine card scanners again, and see what emerged, or to assign a tenth of the original margin to Gore (54 votes instead of 540), bringing the result in line with those in the other large punch card counties, but if the latter estimate were roughly correct, it would not marginally affect the outcome. Erring

instead on the side of a statistically conservative (and therefore pro-Bush) estimate, the *Miami Herald* came up with the following totals, once the overvote counts were added to the April estimates of the true undervote counts:

Standard	Margin	Winner
Loose	332	Gore
Palm Beach	242	Gore
Hanging Chad	407	Bush

In another ironic twist, on the same date that these results were published in the *Miami Herald* (May 5), the Republican-dominated Florida legislature, which disgraced itself back in December by plotting to employ its federal constitutional authority to certify a slate of Bush delegates regardless of the potential outcome of a then still possible manual recount, now voted 120-0 in the House, and 39-1 in the Senate, to require a manual review of both undervotes and overvotes in any Florida election which results in a victory margin less than or equal to a quarter of a percentage point, and charging the secretary of State with responsibility to set explicit standards for evaluating those ballots. Under this new bill, signed into law the following week by Jeb Bush, the most relevant estimates we have concerning what the outcome would have been, are the last set of figures above, the ones including the overvotes.

Of course it is worth remembering that margin of error is a problem with this set of results, too. On the one hand, the evidence concerning voter intent among the overvoters is either much clearer, or much more irretrievably ambiguous, than the evidence sometimes proved to be in the case of the undervotes (see the earlier discussion of ‘single dimple’ cases), rendering the job of assigning the 3,146 pseudo-overvotes (the clear cases), and discarding the rest, much more straightforward and objective. On the other hand, B.D.O. Seidman staff were employed only to count the undervotes, each of which decisions were cross-checked with independent judgments made by a *Miami Herald* or a *U.S.A. Today* reporter. In the case of the overvotes, each decision was made by a single reporter – no cross-checking with Seidman accountants. Even if the resulting figures are as close an estimate of the true intent of the Florida voters that human efforts can reasonably hope to achieve, these numbers leave us no more secure in the conviction that Gore “really won” in Florida (using the most reasonable standards for counting undervotes) than the previous numbers can persuade us that Bush would have been declared the winner if the Florida Supreme Court’s order had been allowed to play itself out (i.e., ignoring the inaccuracies in the official manual recounts in South Florida, and the effect of the overvotes). Moreover, even under the new Florida election law, the outcome would have still depended (*ceteris paribus*) on which voter intent standard the Secretary of State chose to adopt prior to a manual recount.

This situation remains unchanged after one final chapter is added to the post-election recount effort: the *New York Times* July 15, 2001 report on errors in the overseas absentee ballot count. These were the ballots initially counted on November 17 & 18 in accordance with Florida’s legal deadline of receipt within ten days of the election. According to the *Times* report, the Gore campaign adopted a strategy of insisting that overseas absentee ballots be rejected whenever they failed to satisfy Florida’s statutory requirements for valid ballots in this class. The Bush campaign, however, adopted

a two-pronged strategy: let the Gore campaign have its way in predominantly Democratic counties, but argue for more liberal standards in predominantly Republican counties. During the week following the statutory deadline to certify such ballots, the Republicans used the Florida Supreme Court's extension of the certification deadline to good advantage by pressing their case further with canvassing boards in the smaller, more Republican counties, securing consent to include an additional 288 (previously rejected) absentee ballots in the total certified on the Court-instituted November 26th deadline.

According to the *Times* analysis, this strategy ultimately resulted in 680 legally invalid ballots being accepted by various canvassing boards around the State, before and after November 17th. The net result was a 739-vote advantage for Bush. Because the absentee ballot envelopes are separated from the ballots after opening, there is no way to trace the actual votes associated with the illegal ballots. But a *Times*-commissioned statistical analysis suggests that, to secure a reasonably accurate count of *valid* overseas absentee ballots, the Bush advantage should be reduced by something in the neighborhood of 292 votes. If we couple this with the 54-vote pro-Gore adjustment discussed earlier with respect to Broward County's clean punch manually recounted ballots, the final best estimates we can get for the Florida vote margin under the three plausible standards are as follows:

Standard	Margin	Winner
Loose	678	Gore
Palm Beach	588	Gore
Hanging Chad	061	Bush

These new margins, under all three standards examined by the *Miami Herald*, are still too close to encompass the margin of error endemic in the various processes of vote-counting. What would actually result in a binding recount, conducted under the stress of serious time constraints and in the heat of competing political rhetoric, may not depend altogether on "who is doing the counting", as Joe Stalin was reputed to have suggested, but it would be, at best, a crap shoot. This does not excuse, in my opinion, the obfuscatory behavior of various parties involved. We ought, as a nation, strive to do the best we can in assessing the true intent of the voters. Going with a machine count, simply because it happened to be the first count we came up with, not the most accurate one we might hope to devise, seems both arbitrary and unfair, not just to the losing side, but to the voters themselves.

Finally, a word about the genuine Palm Beach and Duval County overvotes. These two counties, primarily in heavily democratic precincts, produced more than a third of the overvotes in all of Florida: almost 19,000 in Palm Beach, and almost 22,000 in Duval. Both anomalies have been blamed on confusing ballot design, and both almost certainly cost Gore enough votes to win the Florida election beyond any shadow of doubt (close to 6,000 votes in Palm Beach alone, according to one recent statistical study). But the harsh reality is that mistakes of *this* sort occur in elections all the time, and are historically regarded by the courts as being beyond repair (as happened this time around, when Palm Beach voters unsuccessfully sought a judicial remedy). In light of what happened in Palm Beach and Duval, it is a virtual certainty that more voters in Florida *intended* to vote for Gore

than for Bush, but given our election law history and judicial precedent in this area, some of those voters, the genuine overvoters, inadvertently disenfranchised themselves irredeemably. We might argue that our state judicial systems ought to deal with such voters differently, whenever ballot confusion takes place on such a systematic scale. But that would certainly be novel judicial territory. It would not be reasonable to expect courts to undertake such a sea change in judicial precedent in the midst of the heat of political battle. Or at least, that is what I would have said before the U.S. Supreme Court reversed federal election precedent in an equally dramatic fashion in *Bush v. Gore*. There is an important difference in emphasis, of course: the federal court's action was for the purpose of suppressing rather than retrieving a record of voter intent. We should all hope for better in future.

Selective Annotated Bibliography

Even though the aftermath of the Presidential election is only six months old as of this writing, the following bibliography is quite selective. Books and journal commentary on the topic are being generated at a rapid pace, so I have restricted myself to a handful of influential articles in the popular press, and those post-election books which focus primarily on the initial election outcome and events surrounding the Florida recount, and which strike me as displaying some objectivity, and offering a substantive contribution. Because these perspectives are, I suppose, somewhat time sensitive, I have chosen to list the entries chronologically rather than alphabetically.

Miami Herald, "The Florida Count, What Went Wrong?" series, Dec. 20, 2000–Feb. 8, 2001.

Miami Herald, "Who Won?" series, April 4–May 11, 2001.

For now, at least, these two series, and several related articles, can be retrieved from the *Miami Herald's* website at: <http://www.miami.com/herald/special/news/flacount/index.htm>. They relate the details, and the gradually unfolding results, of the joint effort by the *Miami Herald*, Knight Ridder, *U.S.A. Today*, and B.D.O. Seidman, an independent accounting firm, to recount all the Florida undervotes, summarizing the results under each of the different imaginable standards for determining voter intent, and detailing also a less systematic, but very illuminating effort to assess the possibility and outcome of determining voter intent with the overvotes, which were never challenged by either the Democrats or the Republicans. This body of articles is arguably the single most important, and revealing, set of documents to emerge since the election.

Ronald Dworkin, "A Badly Flawed Election," *New York Review of Books* (January 11, 2001), 53-55.

Charles Fried & Ronald Dworkin, "A Badly Flawed Election: An Exchange," *New York Review of Books* (February 22, 2001), 8-10.

One of the earliest and most influential public intellectual discussions of the significance of the 5-4 role reversal of the Court's conservatives and liberals in *Bush v. Gore*, with Dworkin, writing two days after the decision was handed down in that case, labeling the conservatives as unprincipled judicial activists exercising their power in aid of partisan cause, and Fried defending their honor.

Samuel Issacharoff, Pamela Karlen, & Richard H. Pildes (eds.), *When Elections Go Bad: The Law of Democracy and the Presidential Election of 2000* (Foundation Press, January, 2001)

Written by the editors of *Law of Democracy: Legal Structure of the Political Process*, a 1998 law school case book, this short paperback (172 pp.) compiles a summary of the prior history of statutory and case law relevant to the central question in *Bush v. Gore*: when does a claim of voting rights violation rise to a level that implicates federal interest, and therefore the involvement of the federal courts? Excerpted 2000 Election decisions in lower Florida courts, the Florida Supreme Court, the 11th Circuit Federal Appeals Court, and the U.S Supreme Court are included.

E. J. Dionne & William Kristol (eds.), *Bush v. Gore: The Court Cases and the Commentary* (Brookings Institute, February, 2001)

A more comprehensive reprinting of the various Florida election court opinions, as well as four advisory opinions issued by various Florida officials during the November recount phase, coupled with a large selection of op-ed pieces written from pro-Gore or pro-Bush perspectives (hence the editorial combination). The op-ed compilation is, I suppose, of some historical and substantive interest, but the main value of this book is the compilation of relevant court cases in a single source. Dionne & Kristol, together with Issacharoff *et al* (above) provide the materials necessary to make your own assessment of the accuracy and fairness of Bugliosi's and Dershowitz's somewhat polemical analyses of the majority opinion in *Bush v. Gore* (below).

New York Times (ed.), *36 Days: The Complete Chronicle of the 2000 Presidential Election Crisis* (*Times Books*, February, 2001)

A compilation of the relevant articles which appeared in the *New York Times* during the period from election day to December 12th, the date when the U.S. Supreme Court effectively appointed Bush to the Presidency, this book adds nothing new to the retrospective discussion of these events, but it does provide a useful single source documenting the chronology of events – basically a much longer and more detailed version of the Chronology I have compiled from the *New York Times* and other sources to accompany this article.

Lani Guinier, "What We Must Overcome," *The American Prospect*, March 12-26, 2001

In the vein of Dworkin and Fried (above), and Bugliosi (below), this is another public intellectual discussion of the significance of the Florida election, focusing specifically on the disenfranchisement of black voters there, the level of collective public indifference to that phenomenon, and what all this might mean for the future of our democracy. Guinier's is one of several long articles appearing in this issue of *The American Prospect*, devoted to the significance of the 2000 presidential election and its aftermath.

David von Drehle & the Political Staff of the *Washington Post*, *Deadlock: The Inside Story of America's Closest Election* (Public Affairs, March, 2001)

For my money, this book, and the *Miami Herald's* contribution (below), are the two most important books on the election aftermath to appear thus far. Unlike the *New York Times*

contribution (above), this book represents a significant contribution of new material, involving detailed analysis of both the Bush and Gore campaigns' post-election behavior and evolving political and legal strategies during the same 36-day period. The treatment is predominantly factual, leavened with only a modest amount of reflective commentary about the significance of the behavior of the battling parties, and the courts and Florida officials who found themselves in the middle of this mess. But the factual details themselves convey a great deal about what actually went on in Florida. Based on interviews with a wide variety of players in these events, *Deadlock* is actually an expanded reprint of a series of articles published under the same title in the *Washington Post*, January 28th–February 4th. (The claim made in the 'Editor's Note', that the book contains over twice the material appearing in the original series, is considerably overblown, however.)

Martin Merzer & Staff of *Miami Herald*, *Miami Herald Report: Democracy Held Hostage* (St. Martin's Press, May, 2001)

Like the *Washington Post's* contribution (above), the *Miami Herald's* effort is an important contribution to the historical record, focusing more on the details of the recount effort, and the behavior of local political officials, rather than the political and legal strategies of the national parties (the principal focus of the *Post's* effort). *Democracy Held Hostage* is a good supplement to, but not a replacement for, the series of recount articles published by the *Miami Herald* between January and May, 2001.

Jeff Greenfield, *Oh Waiter, One Order of Crow: Inside the Strangest Presidential Election Finish in American History* (Putnam Publishing Group, May, 2001)

Somewhat less directly relevant than the other entries here, Greenfield's book is a humorously cynical, but fairly evenhanded and unpretentious review of several different themes: the role of the press in fouling up the Florida election projection twice in one night; a journalistic insider's view of the broader election campaign; and a commentary on the Florida recount debacle. Because the coverage treats of the entire election campaign and goes into considerable detail on what happened on election night, the coverage of the Florida recount and the court decisions is relatively sketchy, compared to other entries here.

Vincent Bugliosi, *The Betrayal of America: How the Supreme Court Undermined the Constitution and Chose Our President* (Thunder's Mouth Press/*Nation's Books*, May, 2001)

An expanded version of the former Los Angeles Prosecutor's polemical analysis of the majority opinion in *Bush v. Gore*, which first appeared in *The Nation* (Feb. 5, 2001), an article which generated more mail than anything ever published previously in that magazine. Although Bugliosi's prose is impassioned and extremely critical of the Court majority, he does back up his charges with careful legal analysis.

Alan M. Dershowitz, *Supreme Injustice: How the High Court Hijacked Election 2000* (Oxford University Press, June, 2001)

Another polemical critique of the *Bush v. Gore* majority opinion, nearly twice the length of Bugliosi's effort. Dershowitz spends some time impugning the motives of the five justices in the majority, accusing some of them not only of exercising their power in judicially illicit aid of partisan ideology (which is hardly new to the Court, Dershowitz's

rhetoric about the uniqueness of this court majority's behavior notwithstanding), but also of seeking personal professional gain. The latter claim is not especially compelling, and smells of partisan rhetorical excess on Dershowitz's part. But through some reasonably careful—and very accessible—legal analysis of Constitutional and statutory precedent relevant to the decision, he makes a convincing case for the former claim. Of course, that's a bit like shooting fish in a barrel, but Dershowitz does us the service of actually explaining why that is so.

David Barstow & Don Van Natta, Jr., "How Bush Took Florida: Mining the Overseas Absentee Vote," *New York Times* (July 15, 2001)

A novel contribution to the Florida vote recount effort, the rest of which is laid out in the *Miami Herald* series referred to above. The *Times* effort focuses specifically on the manner in which Florida's overseas absentee ballots were tabulated during the period between the election and the Florida Supreme Court-mandated vote certification date (November 26th). The gist can be distilled to three claims: (1) the Gore campaign adopted a strategy of insisting that overseas absentee ballots be rejected whenever they failed to satisfy Florida's statutory requirements for valid ballots in this class. (2) the Bush campaign adopted a two-pronged strategy: let the Gore campaign have its way in predominantly Democratic counties, but argue for more liberal standards in predominantly Republican counties. (3) According to the *Times* analysis, this strategy ultimately resulted in 680 legally invalid ballots being accepted by various canvassing boards around the State. The official tally, including those votes, netted a 739-vote advantage for Bush. A *Times*-commissioned statistical analysis suggests that the Bush advantage should be reduced by something in the neighborhood of 292 votes, in order to secure a reasonably accurate count of *valid* overseas absentee ballots.

Richard A. Posner, *Breaking the Deadlock: The 2000 Election, the Constitution, and the Courts* (Princeton University Press, October, 2001)

Posner's contribution is the conservative counterpoint to Dershowitz's attack on the U.S. Supreme Court's behavior in *Bush v. Gore*. Posner's substantive arguments concern: (1) the claim that the Florida Supreme Court exceeded its authority, thereby legitimating the U.S. Supreme Court's intervention on Article II grounds (like Dershowitz, Posner has little patience for the equal protection argument upon which the Court majority actually based its reversal of the Florida Supreme Court); and (2) the claim that federal court intervention was also justifiable on pragmatic grounds – an argument relying not so much on the popular prophecy of impending political crisis in the absence of judicial intervention, but rather on a thought-provoking theoretical account of the purpose of elections in representative democracy. Posner's rhetoric is just as polemical as Dershowitz's, but the polemic is more subtle. The same is true of his substantive arguments. They may not be very convincing in the final analysis, but they afford the reader a greater appreciation of how a reflective conservative might think it reasonable to be indignant about the Gore campaign's recount rhetoric, and sympathetic to the conflicting rhetoric of the Bush campaign, and to the Supreme Court majority in *Bush v. Gore*.

Cass R. Sunstein & Richard A. Epstein, *The Vote: Bush, Gore, and the Supreme Court* (University of Chicago Press, October, 2001)

This book is the first serious scholarly anthology on the 2000 Florida presidential election, with original contributions solicited from a distinguished group of law professors ranging across the political spectrum. Like Posner's book, the focus here is as much on the Florida Supreme Court as it is on the U.S. Supreme Court, and there are several more forays into democratic theory. *The Vote* is likely to become a core reference work for future scholarly discussions of the election and its aftermath.

Jeffrey Toobin, *Too Close to Call: The 36-Day Battle to Decide the 2001 Election* (Random House, October, 2001)

Another review of the sequence of events during the recount, covering much the same ground as the Washington Post's effort in *Deadlock* (above), but contributing some new minutiae, and accompanied by more reflective analysis of the significance of the behavior of Democratic and Republican party loyalists involved in Florida's post-election political theater. Toobin writes from an unapologetically Democratic slant, arguing that, while the Democrats treated the recount phase of the election as a discrete event which ought to be done in accordance with proper legal procedures, the Republicans treated it as yet another election campaign, took pains to foster that perspective in public sentiment, too, and proceeded quite ruthlessly in their goal of securing a Republican presidency. Toobin's take on Gore is much more charitable: he was afflicted with an overriding desire to sustain the approval of the Washington political establishment, and thus tried to adhere to the official rules of the recount game, despite the prospect of failure to secure the Presidency. As one might expect given this slant, Toobin has no patience whatsoever for the behavior of the U.S. Supreme Court majority.

Levels of Socratic Irony and Escape from the Cave in Introduction to Philosophy

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In teaching Introduction to Philosophy, I have found it pedagogically helpful to sensitize students to several levels of meaning involved in the irony of Socrates exhibited in Plato's early dialogues. More specifically, we explore how an appreciation for Socrates' irony can sensitize a hearer or reader to different levels of meaning in the dialogues and analogous levels of meaning in anyone's pretensions to knowledge and wisdom, including one's own.

The first serious philosophical reading we do in the course is from Plato and specifically from the early dialogues in order to get a clear grasp of Socrates as paradigm philosopher. We spend a good bit of time working at making sense of Socrates' irony – the non-coincidence between what he seems to be saying on the surface and what, beneath the surface and indirectly communicated, he means. This is what trips up his interlocutors in Plato's early dialogues so often, not having yet developed in themselves the capacity to glimpse this non-coincidence of what is said and what is meant – or, differently put, the multiple layering of meaning

that can occur in dramatic and real life conversation. Taking in these underlying and indirectly communicated meanings is not simply a developed skill, for a sensibility for them requires a corresponding inward development of the person as well, an inward distancing of oneself from being taken in by surface meanings and pretensions. Analogous to the capacity for perceiving humorous situations and seeing the point of jokes, there is also a more or less developed capacity in persons for perceiving irony. The point of developing an appreciation for Socrates' irony lies not only in better understanding what Socrates has to say and what Socrates is up to in his conversations. It lies as well in developing a capacity to perceive and take in the unintended ironies to be found in Socrates' interlocutors, in those around us, and in ourselves.¹

Several years ago Robert Paul Wolff in an introductory textbook² described the kind of irony we find in Socrates as "a kind of speech or communication that assumes a double audience. When a speaker makes an ironic statement [e.g., Socrates in conversation with Euthyphro claiming to be ignorant of the nature of piety], he seems to be directing it at one group of people [in this case Euthyphro]. This group is called the first, or superficial audience. But in reality he is directing his remarks at a second audience, called the real audience. His statement has a double meaning, and the trick of the irony is that the second audience understands both meanings. The second audience knows that the first audience has misunderstood, so the irony becomes a private joke between the speaker and the second audience – a joke at the expense of the first audience which never suspects a thing." I would only add that a person might suspect something who happens to be in a transition from being one sort of audience to being the other. Wolff goes on to remark that at a deeper level, which Socrates' own followers sometimes don't really understand, there is another, double irony, whereby he genuinely means that he is ignorant: "But Socrates believes that every man must find the truth for himself, and so his followers cannot shortcut their journey by learning the truth from Socrates any more than they could by observing the mistakes and confusions of Socrates' opponents. In this deeper double irony, we...are the real audience, and both Socrates' opponent and his disciples are superficial or apparent audiences.

Note here we have (at least) three audiences, three levels of meaning, three different ways of taking Socrates' claim that he is ignorant – and, as well, Euthyphro's claim that he is expertly knowledgeable.

A helpful analogy for thinking about these three audiences/levels of meaning/different ways of taking in claims is the idea of stages on the way between being a prisoner in Plato's Allegory of the Cave and emerging from the cave's mouth.

But first differentiate, if you will, the story of the cave from the interpretation placed on it by Plato. Recall that the prisoners in the cave of Plato's allegory take the shadows projected upon the wall (projected by images carried by other persons in front of a fire) to be reality. They don't realize that the shadows are representations of images, which images are themselves putative representations of reality. Quite apart from Plato's rather contrived analogy of the situation of the prisoners with sense perception, the real genius of the story of the cave, as I see it, lies in its illumination of the

predicament of persons who simply take the mental representations (the "answers") that peers, experts, or other persons in authority provide them (pertaining to basic ideas and assumptions) to be reality. Philosophical liberation and enlightenment comes in breaking free of that predicament, examining critically the representations whose projected shadows one has heretofore been taking to be reality, and, crucially, finding one's way out of the cave so as to have one's critical examination draw upon a deepening acquaintance for oneself with the realities purportedly represented by these images. Note the crucial point here of getting out of the cave, not as the aim or terminus of philosophical inquiry, but in order effectively to do philosophical inquiry. This interpretation of philosophical liberation works for objects we perceive with our senses no less than for normative principles like justice – an important point that Plato appears to miss. I urge my students to consider philosophical thinking on their part to be the effort to escape the predicament of the prisoners in the cave and thereby to be in a position to do philosophy effectively for themselves.

The transition from being a prisoner to escaping from the cave can be divided into several stages or levels. At the first level, a kind of pre-critical level, knowledge is supposed to be simply an answer (to some basic or fundamental question, such as what is piety or what is justice) that is provided by an expert or authority, with no justification needed, and ignorance is thought to be the absence of such an answer. This stage corresponds to the first audience of Socratic irony mentioned above. It has no clue that a pretension to knowledge, even of an expert, could be wildly off the mark. At a second, apparently critical but still unphilosophical level, knowledge is supposed to be simply an answer one has come to for oneself (regardless of how and regardless of what answer) and ignorance is thought to be (a) not realizing this and/or (b) not yet having come to an answer for oneself. This would be a level of sophistic (sophomoric?) relativism that would define truth as whatever a person has come to believe for herself, as opposed to having it determined by some external authority. It corresponds to one version of the second audience of Socratic irony mentioned above. At a third, fully critical and conventionally philosophical level, knowledge is to have an answer with justification that will withstand repeated critical examination, and ignorance is the lack of such an answer. This is the stage where the different images/answers paraded before the fire in the cave are examined for their coherence, their consistency with other things assumed to be known, and their overall justification. Here is where a good many of Socrates' admirers seem stuck: they think he has an answer with justification, but one that he's simply not telling. For example, in Socrates' discussion with Euthyphro, they clearly see that Euthyphro's answers lack justification; his responses to Socrates' questioning have shown him to be ignorant. But Socrates' skill in asking penetrating questions show Socrates to be far other than ignorant in the sense of levels one or two. Though he refrains from it, he clearly seems to be capable of offering an answer with fully thought out justification. This level corresponds to the second audience of Socratic irony mentioned above, but a version of that level quite distinct from the relativist level just mentioned. (Alternatively and perhaps more sensibly, we could go beyond Wolff's idea of three audiences to differentiate four audiences to correspond to each of the four levels or stages here being discussed.)

There is a fourth distinctively Socratic level, often overlooked, partly because it has an air of paradox about it. It corresponds to Wolff's third, doubly ironic audience. (I would like to call it post-critical, because it connects in interesting ways with what Michael Polanyi calls "post-critical philosophy."³) It is where knowledge ceases to be identified primarily with having an answer, even an answer with justification, and only emerges when the existing available answers have been examined and have been found wanting in one respect or another. Some answers are clearly better than others, but none can be taken as completely adequate. Called by Nicholas of Cusa – in explicit allusion to Socrates – "learned ignorance," this level is the one in which one recognizes that true knowledge is a developed consciousness of the present partiality, fallibility, uncertainty, and incompleteness of one's explicit grasp of the reality in question – indeed, of *any* explicit grasp of that reality.

To be at this fourth level is to be at the mouth of the cave, and to be in a position fully to appreciate one's ignorance and to come into possession of the little but most precious knowledge, of what one truly does know. At this fourth level, explicit, propositional knowledge is recognized not to be the truth itself but only our own best present grasp of the truth, to be revised and modified as we proceed.

I need to say that some of my students are relatively quick to catch on to what the fourth level is about, others catch on to it with more difficulty, and still others have difficulty making sense of it at all, even by the end of the course. It is important to realize that it is a matter of "catching on." I have no magic tricks up my sleeve. Some of my students, I have come to believe, are simply not ready for the shift to thinking at the fourth level. Often many are unready to make the shift to the third. A good deal of what I am trying to do with my students in my introductory course involves helping my students come to see things from a different perspective, from a different frame of reference, and with a different paradigm than they are accustomed to. Helping them make to do this certainly is an art and not a science, and certainly no technique can insure success. Indeed, in important respects it is a matter of spirit – meaning, at the very least, that it often is a delicate matter of timing, taking advantage of the teachable moment, fitness of response to the situation, etc. And sometimes I feel wholly inadequate to the task. Nevertheless, most of my students do make it, I believe.

How does one tell whether and when a student has made the transition to the fourth level of Socratic irony? Indeed, how does one tell whether and when a student has made a transition to any of the levels? I make use of a few relatively concrete strategies: While getting my students to read, discuss, use a study guide, and re-read the early Socratic dialogues, we focus in on the perceptions and misperceptions taking place, multiple ways people take in the meaning of what Socrates, Euthyphro, and other characters have to say – both in the dialogues and in the classroom. We attempt to differentiate what these different perceptions, interpretations, or "readings" amount to and what assumptions seem to be governing them. We develop a classification system and diagram of the different perspectives or "levels" and sort out what "knowledge," "ignorance," and "truth" are taken to mean for each. We don't just go over what Wolff or I have prepared in advance. We develop the whole dialectically with the students contributing to the outcome. Then I have my students apply the resulting classification to further reading

in Plato, to other philosophical selections as we proceed through the course, and to situations they encounter in their own lives. In so far as they show that they can intelligently identify and discuss with understanding examples of any one level (especially in relation to the other levels), I infer that they have attained at least to that level.

Interestingly, there appears to be some correlation between the levels I have described and research on the typical stages of intellectual development college students seem to go through – males somewhat differently than females – by William Perry, Mary Belenky and associates, and Joanne Kurfiss. If so, the kind of philosophical development encouraged in the Intro to Philosophy course described here would directly contribute to the intellectual maturation of students generally – at least as defined by these researchers.

Endnotes

1. My discussion of levels of meaning to which Socrates' irony sensitizes us has been shaped by Søren Kierkegaard's *The Concept of Irony with Constant Reference to Socrates*, trans. by Lee M. Capel (New York: Harper and Row, 1965).
2. Robert Paul Wolff, *About Philosophy* (New York: Prentice-Hall, 1976), p. 7-9. Wolff calls Socrates' irony "a verbal form of judo" in order to get inside people's defenses so that he could make them see – really see – that they were not truly wise. "The basic trick of judo is to let your opponent's force and momentum work for you. Instead of launching a frontal attack, you let him swing or grab, and then you roll with his motion so that, in effect, he throws himself on the mat."
3. An account of the post-critical orientation of my introductory course in philosophy is given in a previous article of the *Newsletter on Teaching Philosophy*, "A Post-Critical Introduction to Conceiving and Teaching Introduction to Philosophy."

REVIEWS

Stanley Cavell. *The Claim of Reason: Wittgenstein, Skepticism, Morality, and Tragedy*. (New edition, Oxford University Press, 1999) 511 + xxvi pp.

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Twenty years after the first appearance of *The Claim of Reason*, Oxford has reissued the book in a handsome new paperback edition. This is quite a favor to the book's many fans, above all because of the new volume's improved legibility. The original hardcover rendition of *The Claim of Reason* was readable enough, but the paperback reduced the hardcover's already crowded pages into cramped little print. That miniaturized volume whetted the philosophical appetite but also wetted the philosopher's straining eyes. No more.

Cavell's brief new preface (xi-xiii) warrants special attention for its hints about the unity of the book's remarkable Part Four with the preceding three parts.

It has sometimes been said that *The Claim of Reason* is in fact two books: Cavell interprets this to mean that Parts

One through Three form a traditional work of academic philosophy concerning the relationship between skepticism and the ordinary, while Part Four, the putative second book, takes its reader on a *sui generis* exploration, beyond the confines of academic philosophy, of the way in which philosophy has repeatedly chafed at and returned to the embrace of such ordinary words as “know,” “self” and “good.” In his reply to this comment, Cavell directs the reader to the points at which Part Four turns back to reexamine the earlier chapters, and to set their passages in conversation with one another. For it is not just the heavy-freight words of official philosophizing that Part Four examines again but also the ones that might seem to be traveling free, words we might have assumed were to mundane for philosophy to fight over. (The Preface lists the many words at stake.)

Cavell’s preface inspires the reader to look back into the first three parts of *The Claim of Reason* with new attention to the opportunities that those parts create for further self-examination—which is to say, the openings they leave for the questions that Part Four raises. This redirection of the reader’s attention should have at least one excellent result in the classroom. Students often want to flip ahead to the exciting discontinuities and reflexive ruminations of Part Four; now they have reason to pore over the earlier chapters in search of the same excitements.

Instructors who use both the early sections of *The Claim of Reason* and some or all of Part Four in their courses would do well to pause between those two stretches of readings and assign the new preface, as a guide to what’s coming and to what’s past. Even better (if this suggestion does not sound as deranged as Kinbote’s wild rules for reading *Pale Fire*’s commentary before its poem), they might consider beginning with some of Part Four, then reading the new preface before going on to Parts One or Two.

Michael Rosen and Jonathan Wolff, editors.
Political Thought. (Oxford University Press, 1999.
Paperback, 442 pages, \$ 22.95)

Reviewed by David Coady
Deakin University,

Probably much that deserves to be included in this anthology is not. This is an inevitable consequence of the important and controversial nature of its subject. However, though there are many sins of exclusion, there are few sins of inclusion. Almost all the contributions to this book are historically influential or intrinsically interesting. Many contributions are both. The anthology is divided into eight sections, each accompanied by a useful introduction by the editors. Each section is divided into two or more parts with each part consisting of brief readings (none of them are more than five pages long) arranged in chronological order.

The first section is on human nature, the first part of which focuses on whether there is such a thing, and if so what it is like. The readings are all classics on the subject. Although there are two well-chosen readings from Charles Darwin, it is unfortunate that no more recent participants in the debate, especially from the biological sciences, are included. Readings on this subject by R. C. Lewontin and Richard Dawkins, for example, would have made this more interesting for many students. The second part of this section looks at

the question of whether there is a difference between male nature and female nature. The readings are well chosen, and this time there are some contemporary writers. I was disappointed, however, that Joyce Trebilcot was omitted.

The second section is on the nature of the state, whether its existence can be justified, and if so how. This is mainly devoted to arguments for and against the view that the state (or some states) can be justified by the concept of a *social contract*. There are some surprising omissions: Glaucon’s classic articulation of contractarianism in Plato’s *Republic* and are more recent defenses of contractarianism, such as those by T.M. Scanlon and D. Gauthier, are absent.

The third section is about democracy. This section would also have been improved by the inclusion of more contemporary thinkers, perhaps Richard Wollheim or Jon Elster. This section includes readings by the statesmen Frederick the Great, James Madison, and V.I. Lenin.

The fourth section is devoted to the concepts of *liberty* and *rights*. Each part of this section contains well-balanced readings on significant historical debates such as the value of tolerance, the duties of citizenship, and the nature of punishment. Each part concludes with a reading by an important recent or contemporary participant in those debates.

The fifth section is devoted to issues of economic justice and covers, among other things, the status of private property and free markets. The authors in this section range from communists, including Karl Marx and Gerald Winstanley, through welfare-statists, including John Rawls and Ronald Dworkin, to libertarians, including F. A. Hayek, Milton and Rose Friedman and Robert Nozick. I was disappointed that the Friedmans are the only twentieth century economists to be included. This section would have been usefully supplemented with readings from J.M. Keynes, J. K. Galbraith, or Amartya Sen.

The sixth section deals with justice between various groups, including generations, nations, and minority and majority groups within nations. Although the topics are interesting, the readings in this section are less well chosen than those in other sections of the anthology. A reading by Thomas C. Hill arguing for affirmative action is included, but Bernard R. Boxill, T. Alexander Aleinikoff and Ronald Dworkin are all omitted, despite their having presented the case for affirmative action more persuasively and recently. There is no reading that presents the case against affirmative action. The arguments by Brian Barry, Peter Singer and Onora O’Neill that we have extensive duties to those spatially or temporally remote from us are not sufficiently different one from the other to justify including all of them, particularly since no opposing views are included. The editors should have considered including Garrett Hardin’s “Living on a Lifeboat”, if only to give students a clear idea of what the other readings are arguing against. There are good readings on Nationalism by Isaiah Berlin and Alasdair Macintyre, but current events call for something more recent on this subject, perhaps papers by Nenand Miscevic, Judith Lichtenberg and Margaret Moore, all of whom have written excellent pieces on Nationalism in recent years.

The seventh section is devoted to criticisms—from both the left and the right—of liberalism (an ideology that the editors concede has set the agenda for most of the anthology. Represented here are post-modernists, socialists,

communitarians, and conservatives. Unfortunately, there is an absence of feminist critics of liberalism, for example, Iris M. Young, Carole Pateman or Frances Olsen.

The eighth and final section of the anthology is devoted to the concepts of *progress* and *civilization*. The editors have chosen well in to this section, though I think they should have included readings by Sigmund Freud or J. B. Bury.

This anthology will be a useful text for courses on western political thought, especially those which emphasize the history of ideas. But it could also serve as a supplementary text for courses which include nonwestern traditions of political thought.

William F. Lawhead, *The Philosophical Journey: An Interactive Approach*. Mayfield Publishing Company, 2000. xviii + 798 pp. Cloth \$54.95.

Reviewed by Peter P. Cvek
Saint Peter's College

This introductory textbook provides a topical approach to the study of philosophy. The text is divided into six rather lengthy chapters. Chapter one provides an overview of the text itself with a brief introduction to philosophy, an examination of Socrates and the Socratic method, and a brief introduction to logic. The next two chapters, each divided into eight sections, deal with epistemology and metaphysics. Chapter two includes a discussion of skepticism, rationalism, empiricism, Kantian *constructionism*, epistemological relativism, existentialism, pragmatism, and feminist epistemology. Chapter three is a very engaging examination of both the mind-body problem (that covers dualism, physicalism, functionalism and artificial intelligence) and the problem of freedom and determinism (that covers hard determinism, libertarianism, and compatibilism). Chapter four deals with the philosophy of religion, in particular, the cosmological arguments for the existence of God, the argument from design, the ontological argument, pragmatic and subjective justifications for belief in God, the problem of evil, and the alternative religious traditions of Hinduism and Buddhism. The search for ethical values is the subject of chapter five, and covers ethical relativism, ethical egoism, Utilitarianism, Kantian ethics, virtue ethics, and feminist ethics. Finally, chapter six is devoted to political philosophy and investigates the justification of government, the problem of justice, the relationship between the individual and the state, and the justification of civil disobedience.

The topics selected for investigation are not surprising. What distinguishes this textbook from the numerous other introductory textbooks on the market is the careful, perhaps even obsessive, attention paid to pedagogical strategies and instructional techniques. This is not the usual anthology of edited primary texts arranged around the major areas of philosophical discourse. It is in many ways a study in teaching methods aimed at promoting a continuous interactive response from the first-time undergraduate philosophy student.

The metaphor of philosophy as a journey contained in the title is employed throughout the text itself. The subtitle, "An Interactive Approach," is, to say the least, taken quite

seriously. The introductory section of each chapter follows a standard outline, with each part of the outline indicated by its own heading and an identifying icon in the margin. The parts of the outline represent guideposts that mark the path along the way. Each of the main topics begins with an overview of the journey and is typically introduced by a literary piece called "Scouting the Territory" that introduces the philosophical problem to be studied in that chapter and is followed by a section, entitled "Charting the Terrain," that is a more precise presentation of the philosophical problem. The third part of the overview, "Choosing a Path," is a section that describes the opposing positions on the issue, and includes each position's answer to crucial questions. Finally, a brief questionnaire and answer key is provided to allow students to determine their own initial philosophical position on the topic under consideration.

Following the overview for each topic is a section that examines in more detail each of the previously introduced philosophical positions. Each alternative stance is initially explored through a series of leading questions that attempt to elicit a sympathetic response to the position under consideration. This is followed by a more detailed explanation of the position along with justifying arguments, discussion, and analysis. This part includes brief readings from primary texts, both classical and contemporary, along with questions and commentary. An additional section provides examples of applications of the philosophical position to novel situations. Each unit concludes with a series of critical questions that serve as an opportunity for students to evaluate the strengths and weaknesses of the position under review. At the end of each chapter there is a list of the names of all the major philosophers covered in that chapter, a list of key philosophical concepts, suggestions for further reading, and extensive endnotes.

There are also a number of special boxes liberally distributed throughout the text that are aimed at enhancing the student's understanding of the material. Some very useful "Thought Experiment" and "Stop and Think" boxes add considerable depth to the readings and are especially useful for initiating class discussions. (Many of the thought experiments, such as "The Brain in the Vat," "The Happiness Machine," and "The Deathbed Promise," may be well known to teachers of introductory philosophy courses, but others will be less familiar and some are culled from the author's own experiences.) Special boxes called "Spotlight on" are intended to provide additional information that is relevant to the topic under analysis, but does not fit easily into the main body of the discussion. Another boxed section called "Philosophy in the Market place" encourages students to share questions with their friends and report back to class on their findings.

When I first began to work through the text's highly structured style of presentation and plethora of special boxes, the word "overproduced" came to mind. A full four pages of chapter one are devoted to explaining these unique features. There appeared to be far too many distractions and far too little main text – another stunning example, I took it, of the triumph of style over substance. As it turned out, my initial reactions proved to be without foundation. What I initially found needlessly repetitive, my students found informative and gently encouraging. They are especially helped by Lawhead's explanations, on levels, of even the most

complicated material. A number of students in personal exchanges commented favorably on the text, and end-of-semester course evaluations gave the textbook one of the highest ratings in recent memory.

As with all introductory textbooks, it is easy to quibble with one thing or another, so I will keep my own quibbles to a minimum. Although the text is arranged topically, some philosophers are given more space than others, especially the author's favorite classical philosopher, Plato, whose philosophy is discussed under the headings "epistemology," "metaphysics," "ethics," and "political philosophy". In contrast, the philosophy of Aristotle is given scant attention with Aristotle's *Nicomachean Ethics* being discussed only as an example of virtue-based ethics in the penultimate chapter. Given that references to Aristotelian philosophy are inevitable, the introduction of Aristotle so late in the text renders prior references to him – such as the reference to his view of efficient cause in the analysis of Thomas Aquinas' second argument for the existence of God – rather obscure. Aristotle's metaphysics would have been better introduced earlier in the text, perhaps in conjunction with the earlier review of Plato's metaphysics.

Professor Lawhead's discussion of ethics rounds up the usual suspects, with Kant and J.S. Mill at the top of the list. Although the virtue-based ethics of Aristotle is briefly considered, generally, ethical theories that focus on the relationship between ethics and the study of human nature (such as traditional natural law theories of ethics or early modern moral sense theories) are given short shrift. Oddly enough, Professor Lawhead does discuss the idea of natural law as an example of a theory of justice, but he leaves unexplained the connection between "natural law" and ethics. Natural law theory is reduced simply to the claim that knowledge of what is right is arrived at by the "natural" faculties of human beings and that a government and its laws are just if they conform to the dictates of "natural law". Exactly what these dictates might be and how they might be known is never fully addressed.

Professor Lawhead does a good job of incorporating nontraditional and nonwestern materials into the body of the text. The discussions of Feminist epistemology and ethics are well integrated into the text and provide a good contrast with the traditional positions in these areas. The brief examinations of Hinduism and Buddhism serve as contrasts to western monotheistic conceptions of divinity. An investigation of the Taoist philosophy of ancient China would have provided another illuminating contrast with western monotheism as the former managed to avoid the move to a theistic understanding of reality altogether. The inclusion of Confucius in the section on virtue ethics is too brief to be really informative.

All in all, the text is quite readable. This is one of the few introductory textbooks that is almost self-explanatory, without being simplistic and superficial. What is most impressive about Professor Lawhead's presentation is the extent to which the arguments on all sides of an issue are thoroughly explained and critically examined in a spirit of fairness and impartiality.

An *Instructor's Manual*, which contains some useful tips on how to use some of the interactive features, is available. An audio CD-Rom tutorial is included with each copy of the text. The book has a ten page index. Each chapter includes its own subject-specific bibliography.

David A. White: *Philosophy for Kids*
Waco, Texas: Prufrock Press, 2001

Reviewed by Sue Leung Eichler
Scarsdale High School

I am a teacher of Social Studies at a suburban public high school in New York. I find White's book to be interesting and stimulating in both content and approach. As I thought about its usefulness in a classroom setting, where it is used by teachers rather than by parents, I came to the conclusion that teachers of upper elementary and middle school students could employ the work most successfully. Dr. White states that he had field-tested the book's contents on grades four through ten. Was it his intent that these grades be the targeted audience? If so, the range of the audience is too diffuse. Although the topics are certainly ones that can be considered by young people and adults alike, the tone and language tend to be more on the elementary/middle school level than on the senior high level. Of course, the understanding of the material depends also upon the reading and analytical skills of each individual child.

Dr. White indicates that he did not intend the book to be a textbook although it could be utilized as one. However, it is written as a textbook, rather than as a book in philosophy. This is a minor point, but the author should be clear about his intentions.

With regards to the content of *Philosophy for Kids*, the selection of philosophers is a broad one that includes ancient and contemporary philosophers. This is instructive in and of itself in showing the timelessness of philosophical questions. However, Confucius seems to be the only non-European philosopher represented and an African proverb the only non-European thought presented. The rest of the philosophers and ideas are all European and American in origin. I guess Dr. White's expertise is in classical Western philosophy; otherwise, he might have included additional non-Western examples and quotations in his book. It is important for children of all backgrounds to realize that philosophers exist in all cultures and that they all wonder about the same questions about life.

What the author does choose to include are outstanding and familiar philosophers of western civilization. These individuals are excellent illustrations of and demonstrations for the ideas behind the "Forty Fun Questions" that he devised. The organization of these questions into the four major categories of Values, Knowledge, Reality, and Critical Thinking reflects logically the four major branches of philosophy.

The forty essential questions are succinct, provocative and fun for youngsters to ponder. The accompanying activities vary in their level of seriousness and difficulty, which makes it very useful for a teacher to use with students who are on different grade levels and /or with students who possess varying degrees of analytical skills. The activities and explanations are also written in clear and simple language, allowing youngsters to gain access to complicated ideas with relative ease. Dr. White excels in his ability to simplify ideas that otherwise might overwhelm the minds of children. Yet, he never loses the philosophical perspective and the intellectual challenge the questions raise.

Also useful are the sections, "For Further Thought" and "Additional Reading in Philosophy," which extend the learning

activities. The “Glossary,” while limited in scope, gives a quick and handy reference for some of the key terms used in philosophy.

Dr. White’s book is light in style and approach, but he is quite serious about the significance of the questions raised and quite earnest in his desire to have young people enjoy thinking about and playing with philosophical ideas.

Philosophy for Kids is an enjoyable introduction to philosophy.

LETTER TO THE EDITORS

To the Editors:

In the upcoming months the APA, Hackett Publishing Company, and Cornell University’s philosophy department will be establishing a service to provide philosophers with the opportunity to teach in prison. Philosophy classes are already being taught behind our prisons’ walls — for more than a year now I have been teaching the History of Ethics with a fellow graduate student, Keith McPartland, at the Corrections Facility in Auburn, NY — but this new service promises to make philosophical education available to a much greater portion of the prison community.

Most inmates today have no access to higher education. This has been the case in New York since legislation passed in 1995 prohibited the granting of academic awards to inmates under the state’s Tuition Assistance Program. The current situation is unacceptable both because education provides the best means for preventing recidivism, and because without education incarceration does not even hold the pretense of rehabilitation and is instead purely and blatantly punitive.

As philosophers, we have the resources to ameliorate a growing social problem and directly improve the lives of incarcerated men and women. To this end, I have been compiling a national database with the names and numbers of those in the prison administration who are in charge of volunteer services. Tziporah Kasachkoff and Jacquelyn Kegley at the APA are committed to making this data available to the philosophical community, and Jay Hullett at Hackett, who supplies books for the course that I teach over at Auburn, has offered to make textbooks available to other volunteers. Hackett also has books for anyone interested in teaching a course in Classics.

I hope that when the APA makes the database available at committee meetings and in future issues of their newsletter, philosophers will seize upon the opportunity to teach in prison. The experience will more than compensate those who make the effort.

Sincerely,

Aaron Z. Zimmerman
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LIST OF BOOKS RECEIVED

Cambridge University Press

Brunschwig, Jacques, and Geoffrey E.R. Lloyd, eds. *Greek Thought: A Guide to Classical Knowledge*.

Harvard University Press

Ebbs, Gary. *Rule-Following and Realism*

Hornsby, Jennifer. *Simple Mindedness: In Defense of Naïve Naturalism in the Philosophy of Mind*

Longuenese, Beatrice. *Kant and the Capacity to Judge: Sensibility and Discursivity in the Transcendental Analytic of the Critique of Pure Reason* (Charles T. Wolfe, translator)

Rawls, John. *Justice as Fairness: A Restatement* (Erin Kelly, ed.)

Toulmin, Stephen. *Return to Reason*

Routledge

Gingell, John, Adrian Little, and Christopher Winch, eds. *Modern Political Thought: A Reader*

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