



## LAW AND DISORDER

Sunday, April 26, 2009

*Every weekend CUIP's president Jacqueline Salit and strategist and philosopher Fred Newman watch the political talk shows and discuss them. Here are excerpts from their dialogues compiled on Sunday, April 26, 2009 after watching selections from "The NewsHour with Jim Lehrer," "The Chris Matthews Show," a Charlie Rose interview and "This Week with George Stephanopoulos."*

**Salit:** I hate to torture you with the torture issue but I'm going to.

**Newman:** If you insist.

**Salit:** Here's the story. We used interrogation techniques that violate the Geneva Convention and are illegal in the United States. It was sanctioned by Bush administration officials. The Obama administration says they're putting a stop to it. They've released CIA memos that authorized it. But, they don't want any kind of Truth Commission to investigate what happened, why it happened, how we got there, whether there were violations of law, etc. Obama wants to move forward. You said to me earlier, there's a problem here, because in real life situations on the ground, whether you have military intelligence or CIA agents or whatever, certain kinds of techniques are used to extract information. You can put guidelines in place that limit that, but when you're in the middle of Afghanistan and you're talking to a prisoner that you've picked up and you're looking to get some intelligence from him, I presume that what you're saying is that people do what they do.

**Newman:** Forget Afghanistan.

**Salit:** OK.

**Newman:** When you're in the middle of trying to get somebody to tell you something and your job depends on getting something out of them, you don't have to be in Afghanistan.

**Salit:** OK.

**Newman:** You'll do all kinds of things that you wouldn't normally do.

**Salit:** Well, there are basically two arguments to address what you're pointing to. One is that the information that you get when you torture somebody is not good intelligence. And, two, if we want to prevent it from happening in the future, we have to take a hard public look at why it happened in this last round.

**Newman:** No we don't.

**Salit:** Because?

**Newman:** It doesn't make a difference.

**Salit:** It doesn't make a difference if you understand what happened and why?

**Newman:** It doesn't impact.

**Salit:** Because?

**Newman:** This is how human beings are. Don't you watch soap operas?

**Salit:** Sometimes.

**Newman:** Soap operas often dramatize this part of human behavior. The guy shouts at his girlfriend *You tell me what the hell you did or else....* And the woman says, *Alright, I'll tell you....* True confessions are the essence of soap opera.

**Salit:** OK.

**Newman:** So, what does that portray? How male rage and threatening behavior can get a woman to say whatever they want to hear. And it works on men, too. If you threaten people, and you do it under certain circumstances, they'll say whatever you want to hear. The statement doesn't have any value, except the personal value of satisfying the interrogator's need to get them to talk and the tortured person's need to get them to stop. None of it's reliable. And yet no commission or investigation or laws will deter it. It will continue to happen.

**Salit:** But, we are a society of laws and we live by the law.

**Newman:** We're also a society of human behavior. And we live by the rules of human behavior.

**Salit:** Yes. But, sometimes we make laws to try to civilize ourselves and prevent ourselves from engaging in certain kinds of behavior that is anti-social or anti-human or destructive because of the very thing that you're saying, which is that human beings, in certain situations, will do those kinds of things.

**Newman:** Right, and relative to some modes of behavior, the laws don't appear to work at all. This is one of them – not the only one, but one of them.

**Salit:** Take the issue of domestic abuse. You're not allowed to beat up on your spouse. You're not allowed to beat up on people in general – but you're not allowed to beat up on your spouse. And if you're at home and you're having a fight with your spouse and you call the police, the police will come into your house, and let's say it's a woman who made the call, they'll arrest her husband for domestic abuse. That doesn't stop what's already happened, but it could prevent it from getting worse. Maybe it never stops people from doing it, because if a husband and wife are having a fight and the husband starts to get physical, he doesn't stop and say *Oh gee, I really shouldn't do this because it's illegal*. He does it out of rage, he does it out of frustration, he does it out of all the reasons that he does it. And then the police come in afterwards and they arrest him. So, maybe I'm making your point, that these laws are really not a deterrent.

**Newman:** I'm not saying that the police don't stop it in some immediate sense of stopping, and that's good, because it gives the woman something to do to stop the violence. Now, does it deter in the future? I don't know what the statistics are, but I'm inclined to think not. It's a deterrent if you put the man in jail because if he's not around for 12 years, he's deterred for 12 years. But the system of laws and punishment in these areas has been notoriously unsuccessful. That's why our prisons are so full and our rehab centers are so empty.

**Salit:** But, take the case of Khalid Shaikh Mohammed – the number two guy in Al Qaeda who was apprehended and was waterboarded 183 times.

**Newman:** Yes.

**Salit:** It's hard to imagine this, but they kept doing it, I presume, because they thought that every time they waterboarded him they were going to get some other piece of

information that they needed about Al Qaeda. But, we did outlaw waterboarding. You're not allowed to use that technique.

**Newman:** That's been true for a long time.

**Salit:** Right, but it was done, and in this case it was done with the authorization of higher-ups in the Justice Department.

**Newman:** Right.

**Salit:** But the country can say, if you work for the government, you're not allowed to do that. That's what Obama just said.

**Newman:** Yes.

**Salit:** So, I'm trying to understand how you see the issue. Because I thought the issue was, what are the laws that we need to have in place so you minimize the chances or the opportunities for that kind of thing happening.

**Newman:** I guess what I'm saying is that laws are of value to varying degrees and in varying ways. And laws which attempt to alter behavior which is endemic to a whole system or culture characteristically don't work. That's all I'm really saying. So, you can make laws and you can crank them out on a fax machine all day long. But it doesn't make a difference if the behavior patterns you're trying to prohibit are part and parcel of a whole system. And these are. So until that changes, the laws aren't going to make much of a difference. Now, you may say, maybe they'll make a slight difference with some forms of behavior. Well, maybe they will – but long term success, I think is virtually out of the question. Are laws going to eliminate racism in this country? No. Were they part of a whole complex process which has led to Barack Obama becoming president? Well, yes, I would agree that they were. But they were only a part of the story. People sometimes think about laws as if they were laws of nature, written down. But they're not laws of nature. They're man-made. They're made about men and women, by men, and a few women. But to be effective, they have to have a certain complex, even organic relationship to the broader social system of which they are a part. A lot of people assume that if you make a law, then a problem is taken care of. But, it's not. That's not accurate.

**Salit:** Maybe Obama's reluctance to do the Truth Commission investigation had to do with a recognition that if you were to do something like that, it would be politicized

immediately and so it's not clear that you could have an "independent" review of this kind of thing, and that it's not clear that kind of thing does make a difference.

**Newman:** I'd like to think that's what he thought. I hope he's not so jaundiced by Washington that he's totally political. But I don't know.

**Salit:** Can you get jaundiced in 100 days?

**Newman:** Well, he's been there for more than 100 days. He was a senator before he became president.

**Salit:** OK, let me ask you about the new focus on volunteerism. Obama signed a bill this week that expands AmeriCorps and the call to public service. The level of volunteerism in this country is very, very high.

**Newman:** It is.

**Salit:** And it didn't just happen with Obama.

**Newman:** That's true. But he's certainly a great publicist for that kind of thing.

**Salit:** The press is now trying to analyze why this is the case. Why do so many Americans volunteer? They say 'Well, the economic crisis has made people more aware of the shortcomings in publicly-funded social services.'

**Newman:** Right, and I suspect that's true for some people because some people are very nice people. It's also the case that the Peace Corps or AmeriCorps or any of these things are not bad to put on your resume, particularly when you can't find a job anyhow. I'm not being cynical. That's just being accurate.

**Salit:** OK. The press says 'In this economic climate, non-profits are hurting. They're doing less well in terms of their ability to fundraise. People have less money and so they contribute less charitably.'

**Newman:** Well, let me comment on your "law" – that if you have less money, you give less money. If you have less money, for some people, what you do is you re-evaluate what it is that you're really committed to and you change your budget accordingly.

People don't stop eating because they have less money unless they're very, very poor. They figure out how to make their budget work overall. And the same is true with their charitable giving.

**Salit:** Do you think this kind of economic situation stimulates people to think more about systemic changes that have to be made as opposed to – and I'm not putting these things down – Meals on Wheels or programs that provide short term survival-related services to people.

**Newman:** Well, those kinds of programs are charitable, but they also prevent people from doing just that.

**Salit:** Doing what?

**Newman:** From thinking about more systemic things. After all, that kind of safety net, amongst other things, does have the effect of keeping people from saying *Let's change the whole system! We need a revolution!* I'm not even criticizing that. I'm just saying that's how it works. So far, it's been pretty effective.

**Salit:** Yes.

**Newman:** Even though, in "classical" terms the conditions for social revolution have grown enormously, I'll bet the number of people in political parties advocating revolution has not gone up dramatically during this profound economic crisis.

**Salit:** I'm sure that's true, but that is certainly connected to the fact that so many of those parties are "classical," or rigid, in their thinking and tactics. Their concept of revolutionary transformation hasn't evolved.

**Newman:** Let's say it has little to do with the American situation.

**Salit:** On the subject of non-revolutionary parties, we watched several discussions of "What does the Republican Party need to do to reinvent itself?" What does it do about the fact that its success over the last 40 years was tied to the strength of a conservative wing of the party?

**Newman:** Well, it's curious that only one significant conclusion came out of all that discussion, it seems to me.

**Salit:** Which was?

**Newman:** It all depends on how the Democrats do.

**Salit:** But, it does, of course.

**Newman:** Yes, but, interestingly the Republican pundits didn't give an answer premised on the Democrats doing well. They discussed what happens to the Republican Party if the Democrats do badly. But I'd like to hear what those people have to say about what happens if the Democrats' program essentially works. I would suppose it would mean that the Republicans go the way of the Whigs. Even on that scenario, I don't think it's the end of the social problems that face America. But, I do think it's the end of the Republican Party.

**Salit:** Thanks, Fred.