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“AN EYE SINGLE FOR RIGHTEOUSNESS”

*Mark Sidel**

AMERICAN DREAMER: THE LIFE AND TIMES OF HENRY A. WALLACE. By *John C. Culver and John Hyde*. New York: W.W. Norton & Co. 2000. Cloth, \$35.

In an era in which American internationalism has once again met American empire on the field of law and politics, Henry Wallace's life and work are instructive. Wallace, one of the great internationalists of his era, was Secretary of Agriculture, Secretary of Commerce, Vice President under Franklin D. Roosevelt, the 1948 presidential nominee of the Progressive Party, and founder of Pioneer Hy-Bred, for decades the world's dominant hybrid seed company (pp. 82, 90). John Culver¹ and John Hyde's² new biography of Wallace brings this life before a newer generation of Americans concerned with America's place in the law and political architecture of a world in rapid change and raises new questions about the origins of the role of American legal power in the transformation of law outside our borders.

Henry Wallace's role as a pioneer and defender of an international law and polity based on international organizations and an early concern for a right to development sprang from unanticipated roots. Born in 1888 on a farm in central Iowa, he was an undocumented American of an earlier era, not obtaining a birth certificate until he reached adulthood. Wallace's ancestors and immediate older relatives were farmers, but they were also, crucially, scientists and preachers. Henry Wallace's grandfather, "Uncle Henry" Wallace, was both a corn farmer and one of Iowa's most prominent public citizens and publishers, the mainstay of a family that believed that "man must worship God through service to his fellow man. And the men Uncle Henry cared most about were farmers. Only by creating and sustaining a vibrant agricultural civilization, he thought, could the nation secure its future" (p. 4).

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1. Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C.
2. Author, journalist.

Sustaining American agriculture, not through protectionism and tariffs but through an internationalist, free-trade order, would be a guiding motif of Henry Wallace's life. It remains a leitmotif in the work of America's Midwestern progressives, of every party and political stripe, from Robert La Follette of Wisconsin and Albert Cummins of Iowa to Hubert Humphrey and Paul Wellstone of Minnesota, who have championed American agriculture and, often more broadly, protected American labor.³

Many — but not all — have advocated an internationalism that relied on free trade to make America prosperous, and international organizational life, in which America served and often dominated, to govern the world. In turn those progressive internationalists encouraged and strengthened a strikingly powerful, upper-Midwestern, academic streak of internationalism, particularly in the study and advocacy of public international law and human rights, that echoes down to the present at Wisconsin, Minnesota, Iowa, and elsewhere. The strength of these Midwestern academic internationalists, so far from America's European- and Pacific-oriented sea borders, owes much to the well-known political leaders of Midwestern progressive internationalism, as well as to an understanding of the global ties to farm prosperity.

The poverty of American farmers, scientific farming, a ministry of "social gospel," and fiery populism against cheap-money banking interests, railroad and manufacturing monopolies, and machine politics were early defining elements in Henry Wallace's life (pp. 5-8, 18). Just before his birth, his grandfather led joint action among Iowa farmers to destroy the Midwestern barbed-wire monopoly, a family lesson in the power of progressive collective will to resolve social problems. But regulatory policies to protect farmers were just as important, Henry Wallace learned at a young age, when his parents left the farm because of plunging commodity returns. "Many years later," Culver and Hyde write, "Henry A. Wallace summed up their plight in a single sentence: 'My father . . . had started to work farming when prices were higher than when he quit'" (p. 11). Wallace's grandfather, by the late 1890s the foremost agricultural columnist and writer of his day, "editorialized on the evil of monopolies, urged better farm tenancy laws, counseled farmers to refinance their debts, and preached the virtues of

3. See, e.g., CARL R. BURGCHARDT, ROBERT M. LA FOLLETTE, SR.: THE VOICE OF CONSCIENCE (1992); CARL SOLBERG, HUBERT HUMPHREY: A BIOGRAPHY (1984); DAVID P. THELEN, ROBERT M. LA FOLLETTE AND THE INSURGENT SPIRIT (Oscar Handlin ed., 1976); NANCY C. UNGER, FIGHTING BOB LA FOLLETTE: THE RIGHTEOUS REFORMER (2000).

[prairie] grass” (p. 20). In all but the last, the role of law in securing the rights of the weak was an enduring theme.⁴

That American interests were only defensible if they were in the broader interests of mankind was another enduring lesson. Wallace’s schooling in this particular brand of progressive internationalism began early, when he turned to foreign languages and a high school American history teacher introduced “Senator Albert Baird Cummins’s plan for progressive trade practices, the so-called Iowa Idea, and gave young Wallace ‘some glimmering of the fact that there is such a thing as policy in American history’ ”(p. 31). At Iowa State University, Culver and Hyde write, William James’s essay “The Moral Equivalent of War,” “greatly influenced his dedication to the cause of peace” (pp. 31-33). A summer stint as a journalist on his father and grandfather’s farmers’ magazine, *Wallaces’ Farmer*, during which he traveled throughout the American agricultural west, brought home the value of cooperation. “[L]ack of capital and a crying need for water meant co-operation or leave the country. . . . All this soon develops in even the most independent of men a consideration for the rights of others and a realization of the benefits to be obtained by working together” (p. 35). His grandfather defiantly summed up the family credo as Henry Wallace graduated from Iowa State, in a way that would echo down through Wallace’s private and public lives: “[P]osterity will appreciate the man who does the right as he sees the right, and who has an eye single for righteousness” (p. 36).

Grandfather Wallace was an early source of Henry’s opposition to protectionist tariffs and American dominance. The elder Wallace strode into Woodrow Wilson’s offices shortly before the United States entered the First World War, anxious to find “a mechanism to control rampant nationalism,” and convinced that the only acceptable rationale for America’s entry into the war would be the prospects for an international order leading to long-term peace. He proposed “a plan for lasting peace . . . [based on] freedom of the seas enforced by an international fleet. Only then could all the nations on earth freely engage in trade without fear of molestation” (p. 42).

But the war struck home as well, with Henry Wallace editorializing about the need to prepare against postwar depression, uncomfortable with “war-driven profits” (p. 45). Law, morality, and internationalism combined in the Wallace family’s prewar and early war statements: “Dare we assume that the great Ruler plunges half the world into war, that the other half may profit by the manufacture of war materials and the growing of foodstuffs? Who are we, and what have we done, that material blessings should be showered upon us so lavishly?” (p. 45).

4. For further treatment of this era, see RUSSELL LORD, *THE WALLACES OF IOWA* (1947); EDWARD L. SCHAPSMEIER & FREDERICK H. SCHAPSMEIER, *HENRY A. WALLACE OF IOWA: THE AGRARIAN YEARS, 1910-1940* (1968).

And American and internationalist ideals melded in the Wallaces' support for Wilson's entry into the war: "Emperors fight for commercial supremacy, for extension of their domain, for their right to rule. Democracies fight for human liberty, for the rights of man" (p. 46).

In the immediate postwar era, Henry Wallace drew the direct link between an incipient American internationalism and protecting American farmers. He stood apart from other Midwestern progressives who favored tariff protection for American farmers, for Wallace understood that a freer trade policy would strengthen American manufacturing and rural competitiveness, reduce rural debt and poverty, and reduce "frustration and desperation" abroad.

When we demand that the European countries pay up the money they owe us and at the same time raise our tariff, it is just like our having hold of them back of the neck with one hand pulling them toward us, and using a pitchfork against their belly with the other hand poking them away from us. [p. 88]

But Henry Wallace's views went further. He supported Charles Evans Hughes's early calls for disarmament, "saying it would lower government expenditures and reduce the impulse of governments to make war in order to protect foreign investments."⁵ In this, Wallace's views, like those of a number of early American progressive internationalists, echoed Thorstein Veblen's views against nationalism and militarism and his guarded support for free trade.⁶ But the highest and most aggressive, if ironic, expression of Wallace's incipient internationalism was his sometime support for subsidies to American farmers to finance export subsidies on American farm products — a way to feed the world, in Wallace's view, and to save the American farm sector. By the early 1920s Henry Wallace was already chairman of the League of Nations Society of Iowa and an early supporter of American participation in the World Court, a leading internationalist in an upper-Midwestern environment friendly to its ideals. He was also soon to embrace — albeit briefly — the religion and philosophy of theosophy, with its "distaste for nationalism and strong appreciation of racial and religious tolerance" (p. 79).

Wallace was a strong supporter of the activist role of law in the New Deal, and his own brain trust (Rexford Tugwell, Jerome Frank, and others) drafted the legislation that restored some buying power to American farmers decimated by the depression.⁷ And he was a strong

5. Pp. 56-57. On Hughes, see also BETTY GLAD, *CHARLES EVANS HUGHES AND THE ILLUSIONS OF INNOCENCE: A STUDY IN AMERICAN DIPLOMACY* (1966) (on Hughes's disarmament views).

6. See JOSEPH DORFMAN, *THORSTEIN VEBLEN AND HIS AMERICA* (1934); Thorstein Veblen, *The Theory of the Leisure Class: An Economic Study of Institutions*, in 1 *THE COLLECTED WORKS OF THORSTEIN VEBLEN* (Routledge ed., 1994).

7. P. 116. Of the many works useful for this period, see, for example, REXFORD G. TUGWELL, *ROOSEVELT'S REVOLUTION* (1977).

early proponent (along with Nelson Rockefeller) of Pan-American hemispheric cooperation, and of the mystic Nicholas Roerich's "banner of peace" proposal for an international agreement to safeguard cultural landmarks during wartime, a move that even Cordell Hull's internationalist, free-trader State Department opposed.⁸ Wallace's internationalism made him

an uncommon figure among midwestern progressives of the era. Unlike William Borah of Idaho or George Norris of Nebraska or the La Follettes of Wisconsin, all firmly isolationist, Wallace tended toward internationalism. Fostering international trade was not only a means of helping American farmers, Wallace thought, but the surest path to world peace. In the [Roosevelt] cabinet [as Secretary of Agriculture he was] Secretary of State Cordell Hull's strongest ally in the effort to reduce trade barriers through negotiation of reciprocal agreements. [p. 191]

Wallace's internationalism was to have two major lasting consequences. Along with others, he championed the formation of international political and legal structures devoted to resolving global disputes and controlling nuclear weapons, elements of political and legal international cooperation that are by now well-known. That legacy, which led him into fierce conflict with isolationists and proponents of American domination in World War II and postwar years, is a well-known story, one well-told in this book.

But Wallace's internationalism had another intriguing result: his views resulted in substantial exports of American progress based on science, and at least substantial debate on exports of American modernism based in law. The legal export legacy is somewhat less well-understood, less well-described by his biographers, and demands further study.

The scientific legacy — the export of American scientific progress discovered and developed by Wallace and his colleagues in the Midwest — is better understood than the legal legacy. Perhaps Wallace's truest love was agricultural science, and he pioneered hybridization of corn in the face of strong doubts and disdain from traditional Midwestern farmers. Wallace and his colleagues' domestic interventions to produce hybrid corn dramatically increased U.S. farm yields and incomes in the 1930s and 1940s, led to similar hybridization efforts with wheat and other crops, and helped pull millions of farm families out of the depression and toward prosperity.⁹

8. Pp. 132-35. On the mystic Roerich, see JACQUELINE DECTER, *NICHOLAS ROERICH: THE LIFE AND ART OF A RUSSIAN MASTER* (1989).

9. Pp. 147-50. Senator George McGovern also addresses these issues in his eloquent remarks on the dedication of the Henry Wallace Room at the U.S. Department of Agriculture and in the USDA Millennium Lecture Series. See Senator George McGovern, *USDA Millennium Lecture and Dedication of the Henry A. Wallace Room* (Sept. 29, 1999) [hereinafter *McGovern Remarks*], at <http://www.usda.gov/millennium/speech2.htm>, and <http://www.usda.gov/news/releases/1999/09/0386>.

For our purposes, what is important is that Wallace was among the first, if not the earliest, to understand that hybrid corn production would not only transform American agriculture but also improve the lives of peoples around the world. As Culver and Hyde write, “the development and commercialization of hybrid corn in the United States was in actuality the first of the world’s ‘green revolutions.’ . . . [T]he American experience with [hybrid] corn made those revolutions possible.” They quote a Pioneer Hy-Bred official: “The methodology of hybrid development quickly spread from the United States throughout the developed world. . . . Many persons deserve credit for this revolution, among the foremost of whom is H.A. Wallace.”¹⁰

The first results of these efforts came in Mexico, an episode vibrantly described by Culver and Hyde. Wallace traveled to Mexico in 1940 as Vice President “in a humble green Plymouth” (p. 247) on a typical vice presidential foray to build relations with Mexico on the eve of the Second World War, to honor Mexico’s new president, and even to give the new Vice President something to do after eight energetic and controversial years heading the Department of Agriculture. But for Wallace those ceremonial accomplishments would be insufficient. He also — for him in fact the primary purpose of the trip — wandered around rural Mexico, discovering a nation mired in poverty resulting from low agricultural yields and considering solutions to its dilemmas. On his return — in typical Wallace fashion — he set about action (pp. 246-51).

Wallace was convinced that the export of U.S. discoveries in crop hybridization could dramatically increase crop yields in Mexico, as they had in the United States, and help lift Mexico and other poor nations out of poverty. Among his first stops was the Rockefeller Foundation, which was already concerned that, in the words of Paul Mangelsdorf, “its world-wide public health programs, which had contributed effectively to controlling debilitating diseases such as hookworm, yellow fever, and malaria might be saving people from disease only to subject them to slow starvation resulting from inadequate diets.”¹¹

Wallace strongly agreed — progress in public health alone without progress in crop yields would lead to widespread starvation in Mexico

10. P. 149. On the revolution in American corn production, see A.H. RICHARD CRABB, *THE HYBRID CORN MAKERS* (1947); PAUL C. MANGELSDORF, *CORN: ITS ORIGIN, EVOLUTION, AND IMPROVEMENT* (1974); HENRY A. WALLACE & EAN N. BRESSMAN, *CORN AND CORN GROWING* (J.J. Newlin, et al. eds., 5th rev. ed. 1949); HENRY A. WALLACE & WILLIAM L. BROWN, *CORN AND ITS EARLY FATHERS* (rev. ed., 1988); McGovern Remarks, *supra* note 9.

11. P. 251; *see also* Paul Mangelsdorf, *Henry Agard Wallace (1888-1965)*, in *YEAR BOOK OF THE AMERICAN PHILOSOPHICAL SOCIETY* 195 (1966). On the Rockefeller Foundation’s role more generally, see *MISSIONARIES OF SCIENCE: THE ROCKEFELLER FOUNDATION AND LATIN AMERICA* (Marcos Cueto ed., 1994).

and elsewhere in the developing world. His forceful intervention led directly to Rockefeller's support for agricultural research and hybridization in Mexico. And those efforts later led directly to the global, Rockefeller- and Ford-supported group of institutions today known as the Consultative Group on International Agricultural Research — the institutions that helped to establish the “green revolution” in India, the Philippines, and around the world.¹² Culver and Hyde put it clearly:

One of the first scientists to join the Rockefeller station in Mexico, a young Iowa agronomist named Norman Borlaug, would win the Nobel Peace Prize for his development of high-yielding wheat. The work of Borlaug and others in expanding yields of corn, wheat, and rice averted worldwide famine and saved an estimated one billion lives over the next half century. Ever after, Borlaug would credit Wallace as the inspiration for the “green revolution.” So also did the Rockefeller Foundation. [p. 251]

Export of U.S.-driven progress in discovering and applying the laws of science to agriculture was one thing. All agreed on the universal applicability of the new laws of crop hybridization around the world, and — perhaps paradoxically but usefully over the longer run — American private foundations and not the U.S. government piloted and captained the export of these technologies overseas. So international science-based aid and cooperation to improve agricultural yields can be traced, at least in part, to Wallace's scientific innovations in the Midwest and his push for the export of American science to Mexico and beyond.¹³

But his internationalism led in another direction as well, into arenas in which Wallace would come into conflict with State Department mandarins of foreign aid and the Marshall Plan after the Second World War. These debates over the role, goals, and efficacy of American exports of technologies and values, while little understood today, presaged the great debates of the 1970s over law, development, and the export of American legal models. And in an era in which the export of American law has erupted in a new wave of law and development, this period is important for an understanding of the origins of the great debate over export of American law as well as of American technology and equipment.

Even as the war with Japan was beginning, Wallace was arguing that an American victory over fascism would not be complete until

12. See JOCK R. ANDERSON ET AL, *SCIENCE AND FOOD: THE CGIAR AND ITS PARTNERS* (1988).

13. Pp. 250-51; see PAUL MANGELSDORF, HENRY AGARD WALLACE (1888-1965): *YEARBOOK OF THE AMERICAN PHILOSOPHICAL SOCIETY* 195 (1966). See generally NORMAN BORLAUG, *FOOD PRODUCTION IN A FERTILE, UNSTABLE WORLD* (Iowa State University Press, 1978).

American principles of liberal law and democracy — as well as agricultural productivity — made their way around the world.

He sought a postwar world in which New Deal liberalism thrived in America and would spread throughout the world . . . His vision of the postwar world featured international economic cooperation, an end to imperialism, the abolition of poverty and illiteracy, and a global federation with sufficient power to maintain world peace. “Now at last the nations of the world have a second chance to erect a lasting structure of peace . . . such as that which Woodrow Wilson sought to build but which crumbled away because the world was not yet ready.” [p. 271; second alteration in original]

This was the vision of Wallace’s “century of the common man,” his famous speech of 1942, the phrase by which he was perhaps best known in the 1940s and 1950s.¹⁴ Wallace’s vision was in direct opposition to one articulated by Henry Luce, who appealed for an “American century” of domination in which a postwar United States would “accept whole-heartedly our duty and our opportunity as the most powerful and vital nation in the world . . . to exert upon the world the full impact of our influence, for such purposes as we see fit and by such means as we see fit.”¹⁵

Wallace’s view of the role of American law and values outside American borders directly clashed with Henry Luce’s view. As he noted in the “century of the common man” speech,

When the freedom-loving people march — when the farmers have an opportunity to buy land at reasonable prices and to sell the produce of their land through their own organization, when workers have the opportunity to form unions and bargain through them collectively . . . when these opportunities are open to everyone, then the world moves straight ahead. [p. 276]

Henry Wallace is not generally regarded as a rights-based legal exporter. Even where not limited to scientific technology, his contributions are usually seen as being in the arena of public international law and United Nations governance. But his work went beyond the public international law frameworks for which he is also justly known: the debates in which he engaged firmly implicate rights and presage the debate on law and development of the 1960s and 1970s. While directing the Board of Economic Warfare during the Second World War, for example, Wallace and his colleagues were responsible for foreign as well as domestic purchasing for the U.S. war effort. Wallace ordered the Board of Economic Warfare — in a move sharply attacked by the State Department and business interests — to insert fair-labor-treatment clauses in Board of Economic Warfare contracts “to main-

14. HENRY A. WALLACE, *THE CENTURY OF THE COMMON MAN* (Russell Lord ed., 1943).

15. P. 277 (quoting Luce’s call for an “American century,” *LIFE MAG.*, Feb. 17, 1941).

tain such conditions of labor as will maximize production,' to comply with the labor laws of the country of origin, to furnish 'adequate shelter, water, safety appliances' . . . and to consult with the buyer regarding wage scales" (p. 286). Wallace-driven contracts for war purchasing required foreign sellers to "cooperate in a plan to improve conditions of health and sanitation of workers, with the seller and the U.S. government sharing costs equally" (p. 286). Many in Washington — particularly in the State Department and in business-oriented economic units of the Cabinet — opposed both the ideology of rights-based legal exports and Wallace's aggressive practice in introducing and implementing them at the Board of Economic Warfare.¹⁶

Wallace's larger visions for the legal shape of the postwar world — some now largely forgotten — reflected these views. Of course his support for postwar international collective security remains well-known, but he also stood against U.S. proposals for the international control of atomic energy that limited American releases of technological information and required the Soviet Union to commit to no further bomb building. And what about his emphasis on "free international airways and airports," a vision that went considerably further than United Nations governance (p. 291)?

Wallace's vision for American influence in the world began from a vision of the struggle underway at home:

Those of you who must read the [conservative, isolationist] McCormick press know the inevitable conflict is here. Now — not tomorrow. We shall soon know whether the Common Man shall have "democracy first" or whether under the smooth phrase "America first" the Common Man shall be robbed. Beautiful advertisements and slick editorials say "Let our soldiers come home to America as it used to be." What they are really saying is "Let us go back to normalcy, depressions, cartels and a war every twenty-five years." [p. 315]

He went further during a 1946 trip to China, providing a more detailed political basis for what postwar American aid to the "common man" should mean in Asia: "In Asia there are political and racial entities now in a state of colonial dependency, whose aspirations to self-government should receive prompt and positive attention after victory" (p. 336).

In the 1960s and 1970s, these debates would be continued on a range of issues, including Vietnam. But the 1960s and 1970s were also a time of substantial export of American law as well as American arms and goods, to Latin America, Africa, and Asia, in what we now know as the first wave of law and development activities. The debate that erupted in the 1970s over American aid in the export of American law

16. For more on this period, see EDWARD L. SCHAPSMEIER & FREDERICK H. SCHAPSMEIER, *PROPHET IN POLITICS: HENRY A. WALLACE AND THE WAR YEARS, 1940-1965* (1970).

ended this first wave,¹⁷ and only after a long hiatus are those activities now resuming with active American and multilateral assistance to legal reform and development in the former Soviet Union, central and eastern Europe, and throughout Asia.¹⁸ As a new law and development movement takes root in American law schools, the American Bar Association, and U.S. and multilateral aid institutions, attention is focusing anew on the law and development debate that ended the first wave of American law exports in the 1960s and 1970s. Yet the very origins of the American debates — now over three decades old — on American law exports and the utility and role of American “aid” lie in now largely ignored discussions on the Marshall and Point Four plans for the rescue of a Europe decimated after the war. Culver and Hyde’s volume begins to disinter those crucial debates at a time when America’s role in the world — and particularly the role of American law — are being debated anew.

What was to be the purpose of American aid and the export of American power and American values? This issue echoes down the remainder of Henry Wallace’s public life, and into the critiques of the American law and development movement that erupted some twenty years later.¹⁹ Opposing Truman’s plans for American aid that focused on military assistance to repressive governments to curb the Soviet Union, Wallace proposed William James’s “‘replacing power of the highest affection.’ [W]e must give the common man all over the world something better than communism. I believe we have something better than communism here in America. But President Truman has not spoken for the American ideal” (p. 437). And in London in the spring of 1947, when Wallace had begun speaking for what would become the Progressive Party, he went further: “The world is devastated and hungry: The world is crying out, not for American guns and tanks to

17. The discussions and critiques were numerous and diverse. See, e.g., JAMES A. GARDNER, *LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA* (1980); John Henry Merryman, *Comparative Law and Social Change: On the Origins, Style, Decline and Revival of the Law and Development Movement*, 25 *AM. J. COMP. L.* 457 (1977); David M. Trubek, *Toward a Social Theory of Law: An Essay on the Study of Law and Development*, 82 *YALE L.J.* 1 (1972); David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development*, 1974 *WIS. L. REV.* 1062.

18. Among the many recent discussions of this theme, see, for example, William P. Alford, *Exporting the “Pursuit of Happiness,”* 113 *HARV. L. REV.* 1677 (2000); Jacque de Lisle, *Lex Americana? United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond*, 20 *U. PA. J. INT’L ECON. L.* 179 (1999); Carol Rose, *The “New” Law and Development Movement in the Post Cold War Era: A Vietnamese Case Study*, 32 *LAW & SOC’Y REV.* 93 (1998); Mark Sidel, *Law and Development and Its Modern Critics: Foreign Legal Assistance to India After Fifty Years* (2001) (manuscript on file with author).

19. Wallace’s statements reflected both a persistent, defiant internationalism and a continuing faith in aspects of American liberalism — a liberalism that, exported later, would become the target of substantial criticism after Wallace’s time.

spread more hunger, but for American plows and machines to fulfill the promise of peace” (p. 440). In place of American military aid he proposed a United Nations-run development effort to assist countries afflicted by war, including the Soviet Union, in a “ten-year, \$50 billion” program (p. 440). Wallace’s proposal for a United Nations role in coordinating post-war development assistance directly presaged the crucial role that the United Nations Development Programme would play in later years.²⁰

From early, grudging support for Truman and Marshall’s European Recovery Plan (the Marshall Plan)²¹, Wallace had come to suspect that the U.S.-controlled Marshall Plan effort was an attempt “to revive Germany for the purpose of waging a struggle against Russia” (p. 452). Wallace opposed such an instrumental use of foreign aid, continued to press for United Nations control of relief and recovery funds, and remained suspicious of the direction of aid from the United States for American foreign policy purposes. “I have fought and shall continue to fight programs which give guns to people when they want plows,” he said in 1948. “By acting outside the purview of the UN, the United States resembled ‘France and England after the last war and the end result will be the same — confusion, depression and war’ ” (p. 457). In the spring of 1948, testifying before Congress, he argued that the Marshall Plan was “not a plan for international understanding but a vehicle to dominate world markets” (pp. 471-72). Truman’s December 1948 proposal of Point Four, an American technical assistance program for the less developed world, partially mollified Wallace for its humanitarian rather than military and trade emphasis. He still “disliked the fact that the United Nations had once again been disregarded.”²² By 1948, as Culver and Hyde point out; Henry Wallace stood virtually alone in American public life when he proclaimed that

20. For further information on this era, see, for example, CURTIS D. MACDOUGALL, *GIDEON’S ARMY* (1965); RICHARD J. WALTON, *HENRY WALLACE, HARRY TRUMAN, AND THE COLD WAR* (1976).

21. The European Recovery Program (Marshall Plan) was a U.S.-led effort to reinvigorate the European economies after the second World War, rebuild democratic processes, and thus counter the attractiveness of Soviet models. Outlined by Secretary of State John Marshall in a Harvard address in June 1947, the program came to include Austria, Belgium, Denmark, France, Greece, Holland, Iceland, Ireland, Italy, Luxembourg, Norway, Portugal, Sweden, Switzerland, Turkey, the United Kingdom and western German and, through the Economic Cooperation Administration, provided about \$13 billion in assistance for those countries from 1948 to 1952. The Marshall Plan was a model for the 1949 Point Four program of assistance in the developing world. See MICHAEL J. HOGAN, *THE MARSHALL PLAN: AMERICA, BRITAIN, AND THE RECONSTRUCTION OF WESTERN EUROPE, 1947-1952* (1987); *PRESENT AT THE CREATION: THE FORTIETH ANNIVERSARY OF THE MARSHALL PLAN* (Armand Clesse & Archie C. Epps eds., 1990).

22. P. 503. Wallace’s congressional testimony on the Marshall Plan was later published as *THE WALLACE PLAN OR THE MARSHALL PLAN* (1948).

postwar American aid sought to expand American markets, to support American-backed governments, and to expand American power.²³

Rereading Henry Wallace helps us to historicize and reorient the intellectual and political critique of 1960s American legal exports to Asia, Africa, and Latin America, and to see these exports for what they were: an expansion of Marshall Plan aid ideology into the legal realm. In the 1970s that first wave of American law and development activities drew sharp critiques from American legal scholars and some development actors, including such prominent critics as David Trubek, Marc Galanter and James Gardner.²⁴ With few exceptions, they tended not to historicize their critiques of “law and development” in terms that went much earlier than the beginning of the “development decade” in 1960.

But in their attacks on the values and assumptions underlying the spread of American law abroad through American aid, these critics were, in fact, direct inheritors of Henry Wallace’s sharp, powerful, and prescient critiques of American foreign aid and the export of American power and values. He mooted those critiques for a time in the mid- and late-1940s, before they were crushed, beginning in 1947 and 1948, under the weight of loyalty boards, an incipient McCarthyism, and the power of an American liberalism detached from its progressive roots.

American law and development efforts overseas have returned in a new, second wave of highly prominent legal export activities that differ in important ways from the exports of the 1960s. Key institutions of multilateralism — the United Nations Development Programme, World Bank, Asian Development Bank, and others — play a considerably more substantial role in today’s support for legal development and reform in the developing world than they did several decades ago. And the new wave of law and development aid focuses not only on economic and financial law, as in the 1960s and 1970s, but also on expansion of political and legal rights. The second wave of legal exports seeks to broaden its base in the developing world beyond government officials and development lawyers and seeks to trump the rights-based critique of legal liberalism and law and development of the 1970s.

A critique of the second wave of law and development is just beginning.²⁵ Given the new law and development movement’s partial fo-

23. In these views Wallace was at once a critic of the expansion of American power and often an admirer of the utility of the American liberal ideal beyond American borders — though by the late 1940s the critical views were more often and strongly expressed.

24. See *supra* note 17.

25. See, e.g., Viet D. Dinh, *What Is the Law in Law and Development?* 3 GREEN BAG 2D 19 (1999); Rose, *supra* note 18. The present author’s forthcoming *Law and Development and Its Modern Critics: Foreign Legal Assistance to India after Fifty Years* (draft manuscript on file with author) will also address these issues. On the somewhat broader topic of American “democracy promotion,” see William P. Alford, *Exporting the “Pursuit of Happiness,”* 113

cus on protection and expansion of rights, and its base in the multilateral community, situating that critique is considerably more difficult. In the 1970s, the aid agenda's focus on economic law and American modes of legal education, and its financial base in American public and private foreign aid provided a large and focused target for attack. Today, as renewed discussion flares on the goals and values of American legal exports in a new era, it will be worth revisiting first principles as we try to evaluate these new products of the American aid policy. John Culver and John Hyde help us to return to the American progressive roots of internationalism and to disinter the key role of Henry Wallace in formulating and publicizing the progressive origins of the aid critique, an important service as scholars now attempt to historicize a newly emerging debate on law, development, and the role of liberal American power and values.

